

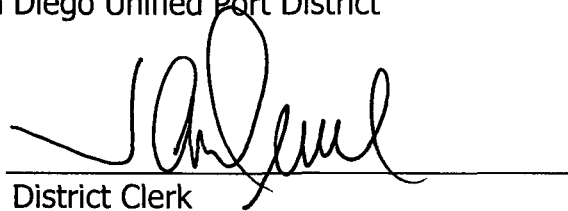
**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

At the last regularly scheduled meeting of the Board of Port Commissioners of the San Diego Unified Port District on December 7, 2010, the Chairman adjourned the next scheduled meeting of the Board of Port Commissioners to the January 11, 2011 Special Meeting at the Don L. Nay Port Administration Building, 3165 Pacific Highway, San Diego, California, which convened at 2:00 p.m.

Mary Ann Liner
Clerk of the Board of Port Commissioners
San Diego Unified Port District



by


District Clerk

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 2:04 p.m., Tuesday, January 11, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Nelson, Padilla, Peters, Smith, and Valderrama.

OFFICERS Bennett, Darbeau, Kirkpatrick, Liner and McEntee.

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Commissioner Nelson led the Pledge of Allegiance.

APPROVAL OF MINUTES

Agenda Item 3. On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board approved the minutes submitted for the special meeting and regular meeting of December 7, 2010, by the following vote: Yeas-Burdick, Malcolm, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Nelson.

PUBLIC COMMUNICATIONS

Agenda Item 4. San Diego City Council Member Kevin Faulconer addressed the Board and encouraged the Board to move forward with the action regarding the North Embarcadero Visionary Plan Phase 1 Coastal Access Features Project. Chairman Peters requested and received clarification from Council Member Faulconer that he was in support of the compromise to approve parts A, B and D of the staff recommendation.

Claudia Valenzuela, San Diego Gas & Electric, introduced herself to the Board, and expressed her interest in working with the District in the near future.

Diane Coombs, Navy Broadway Complex Coalition, addressed the Board regarding the North Embarcadero Visionary Plan, delivered a report regarding the Re-Envisioning our Waterfront Workshop held on October 23, 2010, and presented informational video featuring members of the public commenting on the North Embarcadero area. (A copy of the handout and video presentation is on file in the Office of the District Clerk.)

CONSENT AGENDA

Chairman Peters requested that Deputy District Clerk Laura Nicholson announce any proposed docket changes. Ms. Nicholson announced the proposed changes to the agenda as follows: **Consent Agenda Item 14**, Resolution Authorizing Change Order No. 20 to Contract No. 2008-27 with Jaynes Corporation in an amount not to exceed {Dollar Amount}., Board action was no longer required; **Consent Agenda Item 15**, Resolution Authorizing 2010 Federal Clean Water Act Section 319(h) Non-point Source Grant Agreement with State Water Resources Control Board for the Shelter Island Yacht Basin Copper Hull Paint Conversion Project in the amount of \$600,000 and accepting indemnification language, staff requests it be continued to a future Board meeting; **Action Agenda Item 18AB**, San Diego Convention Center Hotel and Phase III Expansion Project, Board requests it be continued to a future Board meeting; and **Action Agenda Item 20**, Resolution Authorizing Building 11A Demolition Financing Agreement with USS Midway Museum in a loan amount not to exceed \$2.25 million dollars and granting indemnity to the USS Midway Museum, the Board requests it be continued to a future Board meeting.

On motion of Commissioner Smith, seconded by Commissioner Padilla, the Board accepted the proposed changes to the agenda by the following vote: Yeas-Burdick, Malcolm, Nelson, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Burdick requested that **Consent Agenda Item 12**, an Ordinance Granting 22 Year Lease with Continental Maritime of San Diego, Inc. from January 1, 2011 through December 31, 2032, be pulled for a separate discussion and vote.

Commissioner Valderrama requested that **Consent Agenda Item 6**, a Resolution Adopting Plans and Specifications and Awarding Contract No. 2010-11 to Sergio Becerra, dba Becerra's HVAC for Administration Building 5th Floor Information

Technology Server Room HVAC Upgrade, San Diego, California in the amount of \$257,000.00, be pulled for clarification prior to the vote. Chief Engineer Steve Kirkpatrick provided Commissioner Valderrama with clarification regarding the sum of the expenditure cited in the staff report for project in comparison to the budget amount shown.

On motion of Commissioner Padilla, seconded by Commissioner Smith, the Board adopted Consent Agenda items 5, 6, 7, 8, 9, 10, 11, and 13 (**Resolution 2011-01** through and including **Resolution 2011-07** and **Ordinance 2637**) by the following vote: Yeas-Burdick, Malcolm, Nelson, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 5. **Resolution 2011-01**, Adopting Plans and Specifications and Awarding Contract No. 2009-25 to ATP General Engineering Contractors for Shelter Island Pavement Repair in the amount of \$638,958.50, was adopted as part of the consent agenda.

Agenda Item 6. **Resolution 2011-02**, Adopting Plans and Specifications and Awarding Contract No. 2010-11 to Sergio Becerra, dba Becerra's HVAC for Administration Building 5th Floor Information Technology Server Room HVAC Upgrade, San Diego, California in the amount of \$257,000.00, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2011-03**, Authorizing the Allocation of Funds in the amount of \$133,652 to the B Street and Broadway Shore Power Project from the FY 09-13 Capital Development Program Contingency, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2011-04**, Authorizing Amendment No. 1 to Agreement with Glenn A. Rick Engineering and Development Corporation, dba Rick Engineering Company for additional design services for the extension of H Street from Bay Boulevard to Marina Park Way, in Chula Vista in the amount of \$28,000, for a new not to exceed total of \$392,813, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2011-05**, Authorizing Amendment No. 1 to Agreement with Merkel & Associates, Inc. for design and construction services for the Chula Vista Wildlife Reserve Restoration and Enhancement project in the amount of \$54,038 for a new not to exceed total amount of \$187,577, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2011-06**, Authorizing and Consenting to Assignment and Assumption of Agreement from Reliable Elevator, Inc. to Schindler Elevator Corporation, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2011-07**, Waiving BPC Policy No. 110 and Authorizing First Amendment to Three-Party Agreement with Pacific Gateway, Ltd., PBS&J, Inc., and the District for Environmental Review Consulting Services for the San Diego Marriott Hotel & Marina Facilities Improvement Project for an additional \$238,172 and to extend term ten (10) months, was adopted as part of the consent agenda.

Agenda Item 13. **Ordinance 2637**, Amending Section 8.15 of the San Diego Unified Port District (UPD) Code – Parking Regulations Enforcement, was adopted as part of the consent agenda.

Agenda Item 14. **Board action no longer required.**

Agenda Item 15. **Item continued to a future Board meeting.**

PUBLIC HEARING AGENDA

NORTH EMBARCADERO VISIONARY PLAN PHASE 1 COASTAL ACCESS FEATURES PROJECT

- A) CONDUCT A PUBLIC HEARING AND ADOPT RESOLUTION FINDING THAT THE NORTH EMBARCADERO VISIONARY PLAN PHASE 1 COASTAL ACCESS FEATURES PROJECT IS WITHIN THE SCOPE OF THE NORTH EMBARCADERO VISIONARY PLAN MASTER ENVIRONMENTAL IMPACT REPORT**
- B) CONDUCT A PUBLIC HEARING AND ADOPT RESOLUTION AUTHORIZING ISSUANCE OF AN APPEALABLE COASTAL DEVELOPMENT PERMIT**

Agenda Item 16AB. Chairman Peters called to order the public hearing that was continued from the December 7, 2010 regular Board meeting. Celia Brewer, Assistant Port Attorney, addressed the Board regarding the item. She clarified that the recently appointed Commissioners who met certain legal standards were eligible to participate in the discussion and take action on the item. She explained those standards and requested that the newly seated Commissioners state for the record their intent to participate in the discussion or abstain from voting on the item. For the benefit of the public and any reviewing body, Ms. Brewer recommended that Chairman Peters request each Commissioner to disclose, for the record, any contacts they may have had with

members of the community regarding the project to the extent that information shared in those contacts was not already part of the public record. Concluding her remarks by addressing the matter of recent newspaper articles, Ms. Brewer stated that the Board had not reached an agreement with the Navy Broadway Complex Coalition (NBC Coalition) regarding the matter; nor could the District take action on the matter outside of the public hearing process; and any action required a vote of the Board of Port Commissioners as a whole at a noticed public meeting. Ms. Brewer stated that the version of the Coastal Development Permit (CDP) under consideration was posted on the District website, included with the staff report, and that no changes were made since the December 7, 2010 regular Board meeting. (A copy of the staff report and presentation are on file with the Office of the District Clerk.) She also stated that there were no due process or Brown Act violations and all the public hearing notices were properly noticed. Ms. Brewer turned the presentation over to Darlene Nicandro, Environmental and Land Use Management Director.

Ms. Nicandro addressed the Board and announced information updates since the December 7, 2010 Board meeting and public hearing. She read into the administrative record information regarding California Environmental Quality Act (CEQA) analysis, the Master EIR (Environmental Impact Report), and the certified Port Master Plan. Ms. Nicandro stated that the addendum to the Master EIR and Initial Study was made available to the Board and public more than thirty days in advance of the hearing. She requested that the Board re-open the public hearing, take testimony, and consider the addendum prior to taking action on the NEVP Phase 1 project. Ms. Nicandro reviewed the coastal analysis, described the components of the revised CDP, and then explained that the North Embarcadero Visionary Plan Phase 1 was organized into four sub-phases; she briefly described the characteristics of each phase. Ms. Nicandro then turned the presentation over to Shaun Sumner, Real Estate Department Area Manager.

Mr. Sumner addressed the Board regarding the major changes to the Coastal Development Permit for the North Embarcadero Visionary Plan, including phases 1C: Broadway Pier Improvements and 1D: Lane Field Setback Park. He discussed the NEVP Phase 1 District/Coalition/Lane Field Memorandum of Understanding (MOU), the revised conditions of approval related to the MOU, and the Coastal Commission conditions regarding parking and landscaping. Mr. Sumner thereafter turned the presentation back to Ms. Brewer.

Ms. Brewer addressed administrative matters regarding the MOU, explained that additional action would be required to guarantee consistency if the Board approved the CDP without Phase 1C, and discussed the amendments to the Notice of Preparation for consistency with the MOU agreement. In the event that the Board removed Phase 1C

from consideration, Ms. Brewer explained that the Coalition had requested the Board make a motion to confirm or re-affirm, by vote or resolution, that the provisions of the MOU remain in effect. Chairman Peters acknowledged for the record the information presented by Ms. Brewer.

Chairman Peters restated that the public hearing was open. He requested the individuals who indicated they were in favor of the item state whether they were in support of the modifications to the permit.

Individuals addressed the Board with varying viewpoints regarding the item. Scott Andrews stated the public would be appealing the Coastal Development Permit. Mr. Andrews expressed concerns regarding: the public process, inclusion of public parks and open spaces, and design of the project related to the Port Master Plan. Jim Unger, Hornblower Cruises and Events/Chairman of the San Diego Port Tenants Association, addressed the Board in favor of the staff recommendation with the omission of Phase 1C. Cory Briggs, Counsel representing the Navy Broadway Complex Coalition, addressed the Board stating that the Coalition did not support the staff recommendation noticed in the staff report. He continued his remarks by stating that the Coalition would be willing to support the staff recommendation with the omission of Phase 1C and under the following conditions: reaffirm that the MOU is still fully binding with the District; where the MOU refers to a revised Phase 1 permit it is to be explicit that it does not include Phase 1C; reissue the Notice of Preparation for Phase 2; and, in reference to the staff presentation, Mr. Briggs restated language from section 1B of the MOU regarding the design, funding and construction timeline of the remainder of the set back park plaza and 1220 Pacific Highway. (A copy of the MOU is on file in the Office of the District Clerk.) Jerry Trammer, Lane Field San Diego Developers, stated for the record, they were 100 percent in favor of the Board issuing the NEVP Phase 1 with the omission of Phase 1C. He also stated that there were provisions in the Lane Field option agreement that provide for the set back park to be constructed on Phase 1B. Mr. Trammer also stated that the provision referred to by Mr. Briggs requires the District to allocate funds understanding that the District may, or may not, be in the position to acquire the 1220 Pacific Highway leasehold at that point. Graham Forbes, Unite Here, addressed the Board in favor of the staff recommendation with the omission of Phase 1C. Evan McLaughlin, San Diego Labor Council, addressed the Board in favor of the staff recommendation with the omission of Phase 1C and requested the Commissioners reaffirm the MOU. Ian Trowbridge expressed his support for the project with the omission of Phase 1C and acknowledged the efforts of staff. Gary Smith, San Diego Downtown Residents Group, urged the Board to move forward to facilitate work on Phase 1B. Pat Stark, Center City Advisory Committee, addressed the Board in support of moving forward with the project. David Morgan, Irvine Company, addressed the Board

in support of moving forward with the project. Sharon Cloward, San Diego Port Tenants Association, addressed the Board in support of the project for Phases 1A, 1B and 1D. Rob Quigley addressed the Board in support of the project, thanked the Coalition for their efforts, and requested that the Board begin developing a long-term plan to relocate the cruise industry operations from the North Embarcadero.

Chairman Peters requested that each Commissioner announce anything they would like to add to the record regarding their contacts with members of the public related to the agenda item.

Chairman Peters stated that he met with the following individuals: City of San Diego City Council Member Kevin Faulconer, Aimee Faucett, James Lawson, Cory Briggs, Ian Trowbridge and Stacey Pennington.

Commissioner Padilla stated that he had met with the following individuals: Graham Forbes of the San Diego/Imperial County Labor Council – Unite Here Local 30 and Cory Briggs.

Commissioner Burdick stated that she met with San Diego Mayor Jerry Sanders, Commissioner Emeritus Steve Cushman, City of San Diego City Council Member Kevin Faulconer, City of San Diego staff representatives, and Cory Briggs.

Commissioner Malcolm stated he had no ex parte communications regarding the project. He stated that he had reviewed the full public record of the item, had met with staff and attended the December 7, 2010 regular Board meeting. He expressed his intention to deliberate on the item during the meeting and render a decision.

Commissioner Smith stated he had no communication of any sort regarding the matter.

Commissioner Valderrama stated that as the former Chairman of the Board of Port Commissioners he had communications with Cory Briggs, Commissioner Emeritus Steve Cushman, Ian Trowbridge, and Lane Field Developers.

Commissioner Nelson stated he had no communications with anyone regarding the matter; and that in light of his recent appointment to the Board he would abstain.

Commissioner discussion ensued. Commissioner Burdick stated for the record that letters of support for the NEVP were received from the following individuals: WC Lusardi, Kyle Dunning, Elaine and Mark Regan, and Carol Wallace, President and CEO San Diego Convention Center Corporation. She stated her support for the staff

recommendation. She explained that in light of the State of California budget crisis she urged moving forward in a timely way to begin the construction of Phase 1 for the NEVP redevelopment funded project. Acknowledging that Phase 1C was included as a response to the California Coastal Commission, she explained that issues related to the Broadway Cruise Ship Terminal were, and continue to be, vetted in at least three other proceedings before the Board. She cited those proceedings as the following: the Port Master Plan Amendment process for NEVP Phase 2; the RFP process for selecting a consultant for activating the pier; and the ongoing Broadway Complex Coalition mitigation discussions. Addressing Mr. Briggs comments regarding the staff presentation and seeking funding for the 1220 Pacific Highway project, Commissioner Burdick stated the language from the MOU was included word-for-word in the CDP; and if approved, there would be no ambiguity regarding the District's responsibility for pursuing the funding to acquire the leasehold at 1220 Pacific Highway. She made a motion to accept the staff recommendation to approve NEVP Phase 1 omitting Phase 1C proposal, and that the Board affirm the objectives set forth in the District/Coalition/Lane Field Memorandum of Understanding (MOU).

Chairman Peters accepted the motion for discussion. He requested and received confirmation from Commissioner Burdick that her motion for approval of the staff recommendation included a finding that the North Embarcadero Visionary Plan Phase 1 Coastal Access Features Project was within the scope of the North Embarcadero Visionary Plan Master Environmental Impact Report.

Commissioner Padilla seconded the motion. He requested additional clarification regarding how the contemplated permit and the implementing documents were consistent with the Certified Port Master Plan, and how it executes and implements those objectives.

Ms. Nicandro responded with additional details augmenting information from the staff report. She stated that in the event of Board approval, staff would file a Notice of Board Action with the California Coastal Commission including a Coastal Consistency Analysis going through chapters 3 and 8 of the Coastal Act. She discussed the Land Use and Planning section of the Initial Study that outlines exactly how the project is consistent with the Port Master Plan. She reiterated information regarding the project location and planning district area; and then articulated several of the public benefits of the project that encourage and accommodate public access to the Bay. Ms. Nicandro continued her response by discussing the Public Access Program, an attachment to the CDP, which was vetted through the California Coastal Commission. She stated that ultimately the District and the Port Master Plan would ensure the public's physical access to the Bay, except as necessary to provide for the safety and security of the

public or interference with waterfront activities, and would implement such pieces including public access and recreational amenities that are outlined in the NEVP Phase 1 project for the benefit of not only the local community but for the state of California. Regarding the Port Master Plan, Mr. Sumner stated that in their April 2010 staff report, and in the subsequent findings, the Coastal Commission noted that there was a unique emphasis on finding a replacement park. Replacing the park was part of the project that staff was proposing and was part of the permit, thus further ensuring consistency with the Port Master Plan.

Commissioner Padilla commented on his reasoning for supporting the motion regarding NEVP Phase 1 with the omission of Phase 1C. He stated that the record had demonstrated the Broadway Pier design features could be handled in a number of other ways, such as being folded into the advancing Port Master Plan Amendment. He continued his remarks with respect to achieving some of the goals of the Port Master Plan Amendment. He explained that the particular component of the draft permit were primarily design feature elements and not in themselves anything whose absence would prohibit any level of public access or enjoyment. He also reiterated the fact that omitting Phase 1C was at the suggestion of the Coalition.

Commissioner Smith thanked all the individuals who had participated in the process over so many years. He acknowledged the efforts of staff and expressed his support for moving forward with the project.

Commissioner Malcolm stated he was supportive of the motion. He discussed the importance of the project and the benefits of redeveloping that area of the tidelands to help make a great first impression for visitors as well as the community members. He acknowledged the Coalition members for their efforts to make a stronger project for consideration by the California Coastal Commission.

Commissioner Valderrama acknowledged the hard work and stated that he was in support of the staff recommendation with the omission of Phase 1C.

Regarding the diverse efforts of many individuals to move the project forward, Chairman Peters acknowledged the Coalition members, the public, business partners, City of San Diego stakeholders, Centre City Development Corporation partners and key District staff members. Chairman Peters closed the public hearing.

On motion of Commissioner Burdick, seconded by Chairman Padilla, the Board with a single vote, adopted **Resolution 2011-08** finding that the North Embarcadero Visionary Plan Phase 1 Coastal Access Features Project with the omission of Phase 1C is

within the scope of the North Embarcadero Visionary Plan Master Environmental Impact Report, **Resolution 2011-09** authorizing issuance of an Appealable Coastal Development Permit; by the following vote: Yeas-Burdick, Malcolm, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Nelson.

On motion of Commissioner Burdick, seconded by Chairman Padilla, that in light of the action taken in Resolution 2011-08, the Board re-affirmed the objectives set forth in the District/Coalition/Lane Field Memorandum of Understanding (MOU); by the following vote: Yeas-Burdick, Malcolm, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Nelson.

CONSENT AGENDA CONTINUED

ORDINANCE GRANTING 22 YEAR LEASE WITH CONTINENTAL MARITIME OF SAN DIEGO, INC. FROM JANUARY 1, 2011 THROUGH DECEMBER 31, 2032

Agenda Item 12. Commissioner Burdick stated that, at the December 7, 2010 regular Board meeting, she had questions as to whether the lease extension conformed to the requirements and intent of BPC Policy No. 355 and the item was continued. Regarding her queries, staff explained the District had participated in the tenant improvements and investments during the previous 20+ years and the specific concerns regarding basing a lease extension on retroactive improvements was addressed in the Continental Maritime of San Diego, Inc. matter. In light of the discussions and the concept that the real estate policy is an incentive for future investments, Commissioner Burdick offered that BPC Policy No. 355 required revisions to clarify for the public, as a matter of due process, when improvements invested in the current leasehold would be considered for future lease extension. She explained she was in support of the staff recommendation and made a motion to adopt the ordinance.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board adopted **Ordinance 2636**, Granting 22 Year Lease with Continental Maritime of San Diego, Inc. from January 1, 2011 through December 31, 2032, by the following vote: Yeas-Burdick, Malcolm, Nelson, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

ACTION AGENDA

UPDATE PRESENTATION ON POND 20 AND DIRECTION TO STAFF

Agenda Item 17. Penny Maus, Real Estate Department Asset Manager, addressed the Board with a presentation regarding Pond 20 and requested direction to staff. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner Padilla left the dais at 3:37 p.m.

Imperial Beach Mayor James Janney addressed the Board and expressed concerns regarding the current aesthetics of the Pond 20 site. He urged the District to take the opportunity to collaborate by establishing a formal Memorandum of Understanding (MOU) with the City of Imperial Beach and the City of San Diego to investigate ways to improve Pond 20's aesthetics and explore economic development opportunities.

Doug Paul, South County Economic Development Council, addressed the Board in support of the staff recommendation. He urged the Board to look at a pedestrian and environmentally friendly use of Pond 20 that would also enhance the economics of the area.

Cindy Gompper Graves, South County Economic Development Council, thanked the District for their efforts regarding the matter and expressed support of the staff recommendation. In addition to a long-term vision to explore the economic potential, she requested that an immediate solution be sought to address the current condition of Pond 20.

Vivian Moreno, representing San Diego City Council Member David Alvarez, addressed the Board regarding Pond 20. She thanked the District, and local stakeholder representatives for their work and effort, and urged that the future potential for Pond 20 be addressed.

Commissioner discussion ensued. Commissioner Malcolm addressed the Board with some background regarding Pond 20, advocated for District stewardship of the area and spoke to the need for extensive public outreach. He acknowledged that in the context of engaging all stakeholders, there was no preconceived development plan. Pond 20 was an environmentally sensitive area and that such a project would take a number of years to complete. Commissioner Malcolm offered a motion, as direction to staff, to move ahead with the MOU regarding Pond 20. He requested that following the

negotiations of the MOU, staff return with very specific benchmarks and a timeline with respect to pre-development activities. He stated that he would like the District to be the lead agency. He thanked the City of Imperial Beach and the City of San Diego for their support.

Commissioner Smith seconded the motion. Then he offered an amendment to the motion. Commissioner Smith requested that, in the short term, the District have their General Services staff remove the chain link fence and allocate the necessary resources and funding to improve the appearance of the area prior to the completion of a formal redevelopment planning process. Commissioner Malcolm accepted the amendment.

Chairman Peters reiterated the motion and Commissioner Smith's amendment.

Commissioner Padilla returned to the dais at 3:41 p.m.

Commissioner Nelson requested and received clarification from Eileen Maher, Assistant Director, Environmental and Land Use Management, who confirmed that a wetlands analysis and any required mitigation measures would be studied in conjunction with any consideration for redevelopment in the area. Ms. Maher confirmed that staff is investigating the use of the land as an environmental asset as well as a potential development asset.

On motion of Commissioner Malcolm, seconded by Commissioner Smith, the Board directed staff to move ahead with developing a three-party Memorandum of Understanding with the District, the City of Imperial Beach and the City of San Diego; return with specific benchmarks and a timeline with respect to pre-development activities for Pond 20; and allocate the necessary resources to address short-term maintenance needs, by the following vote: Yeas-Burdick, Malcolm, Nelson, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

SAN DIEGO CONVENTION CENTER HOTEL AND PHASE III EXPANSION PROJECT

- A) RESOLUTION AUTHORIZING EXCLUSIVE NEGOTIATING AGREEMENT WITH ONE PARK BOULEVARD, LLC FOR A PROPOSED EXPANSION OF THE HILTON SAN DIEGO BAYFRONT HOTEL.**
- B) RESOLUTION AUTHORIZING AGREEMENT BETWEEN THE SAN DIEGO CONVENTION CENTER CORPORATION, ONE PARK BOULEVARD, LLC, AND DISTRICT FOR ENTITLEMENT COST SHARING PERCENTAGES FOR THE**

**PROPOSED SAN DIEGO CONVENTION CENTER HOTEL AND PHASE III
EXPANSION PROJECT**

Agenda Item 18. Item continued to a future Board meeting.

**REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE
MEETING OF FEBRUARY 8, 2011**

Agenda Item 19. Executive Director Wayne Darbeau requested that staff add the following items: A Resolution authorizing a Temporary Use Occupancy Permit (TOUP) to Sailing Events Association San Diego for promotional sponsorship of RC44 Sailing Exhibition, March 1 - 6, 2011 in the amount of \$-- (Port Services Only - No Cash), an event in the America's Cup Sailing competition series; and a presentation of the proposed Capital Development Program Policy by the ad hoc Board committee and staff.

On a motion by Burdick, seconded by Malcolm, the Board adopted the proposed agenda for the meeting of February 8, 2011 with the announced addition, by the following vote: Yeas-Burdick, Malcolm, Nelson, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

**RESOLUTION AUTHORIZING BUILDING 11A DEMOLITION FINANCING
AGREEMENT WITH USS MIDWAY MUSEUM IN A LOAN AMOUNT NOT TO
EXCEED \$2.25 MILLION DOLLARS AND GRANTING INDEMNITY TO THE
USS MIDWAY MUSEUM**

Agenda Item 20. Item continued to a future Board meeting.

OFFICER'S REPORT

Agenda Item 21. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director, were reported:

- A) Change Order No. 1 for Reduces Contract Bid No. 2, to Allow Addition of 10 Sign Type "E" Blank Signs with Stands and 0 Calendar Days to Contract No. 2010-21 with Censource, Inc. for Broadway Pier Cruise Ship Terminal Signage Package, 1000 North Harbor Drive, San Diego, CA.
- B) Change Order No. 2 for Reallocation of Line Items and 0 Calendar Days, to Contract No. 2010-21 with Censource, Inc. for Broadway Pier Cruise Ship Terminal Signage Package, 1000 North Harbor Drive, San Diego, CA.

- C) Change Order No. 3 to Deduct Item No. 2 on the Contract Bid to Pay for Work Described on Items 1 through 7 and 10 Calendar Days, to Contract No. 2010-21 with Censource, Inc. for Broadway Pier Cruise Ship Terminal Signage Package, 1000 North Harbor Drive, San Diego, CA.
- D) Change Order No. 1 for Decrease Contract by \$215,396.03 and 0 Calendar Days, to Contract No. 2007-25 with Miller Environmental, Inc. for TDY Site Demolition Phase 1, San Diego, CA.
- E) Change Order No. 2 for Decrease Contract by \$18,500.00 and 0 Calendar Days, to Contract No. 2010-13 with Remedial Civil Constructors, Inc. for L-Ditch Habitat Replacement, Chula Vista, CA.
- F) Change Order No. 1 for \$1,997.50 and 15 Calendar Days, to Contract No. 2010-30 with The Glass Company Inc. dba C & C Glass for Broadway Pier Port Pavilion Security Screenings Installation for Customs and Border Protection Requirements, San Diego, CA.
- G) Change Order No. 19 for \$30,822.00 and 0 Calendar Days, to Contract No. 2008-27 with Jaynes Corporation of California for Broadway Pier Cruise Ship Terminal, San Diego, California.

PRESIDENT'S REPORT

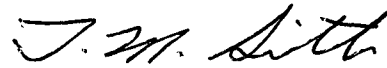
Agenda Item 22. Executive Director Wayne Darbeau turned the presentation over to Rita Vandergaw, Business Development and Marketing Director. Ms. Vandergaw offered a presentation regarding the District's efforts to assist the passengers and crew of the *Carnival Splendor*, a cruise ship that was stranded off the coast of Mexico and was subsequently towed to the Port. She thanked the many volunteers, District staff members, and regional partners who assisted the passengers and crew; she outlined the economic impact to the region, and shared the public relations successes. Ms. Vandergaw relayed the thanks of the President of Carnival Cruise Corporation to the Board and the District.

COMMISSIONER COMMENTS

Agenda Item 23. Commissioner Burdick expressed condolences for those that were killed or injured during the shooting incident on January 8, 2011 in Tucson, Arizona. She expressed her concern regarding the event, explained for the record the need to condemn violence, and addressed the importance of the continual development of a greater understanding among people regardless of their political ideology.

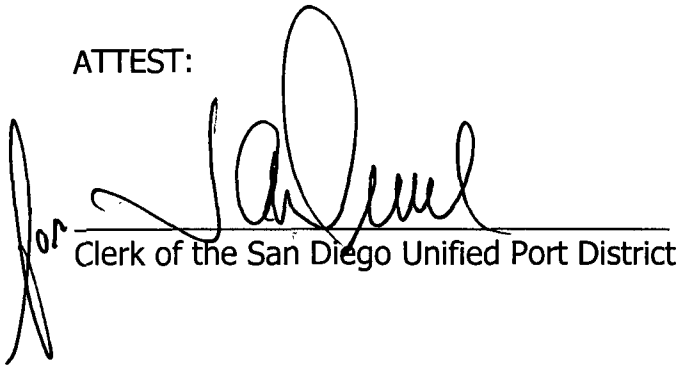
Commissioners Valderrama acknowledged the efforts of District staff for providing support to the passengers and crew of the *Carnival Splendor*.

As there were no additional Commissioner comments, Chairman Peters adjourned the meeting.



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



for
Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

As previously posted, a special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 8:46 a.m., Tuesday, February 1, 2011, at the City of Coronado Community Center, Nautilus Room, 1845 Strand Way, Coronado, California.

ROLL CALL

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama.

OFFICERS Bennett, Darbeau, and McEntee.

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

RETREAT

Agenda Item 3. Chairman Peters welcomed the Commissioners and Executive Leadership Group (ELG) to the retreat and introduced Steve Alexander, of the Steve Alexander Group, as facilitator of the retreat.

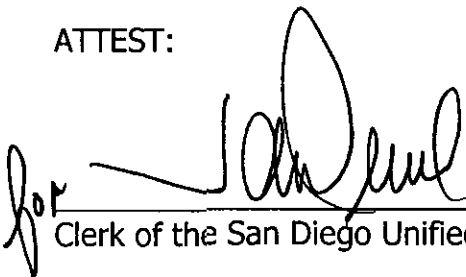
Mr. Alexander discussed the retreat agenda and objectives. Mr. Alexander reviewed the pre-session questionnaire results and observations and conducted a team effectiveness exercise. The Commissioners and the ELG identified and discussed teambuilding issues and the characteristics of effective teams. Mr. Alexander and Celia Brewer, Assistant Port Attorney, conducted training on Board Best Practices, including public communications and protocols, ex parte communications, use of Robert's Rules of Order, staff reports and BPC Advisory Committees. (A copy of the presentation and handouts are on file in the Office of the District Clerk.)

There was no further action taken, whereupon Chairman Peters adjourned the special meeting at 4:30 p.m.



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 11:00 a.m., Tuesday, February 8, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS Bennett and Darbeau.

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

CLOSED SESSION

Port Attorney Duane Bennett announced the closed session agenda as follows:

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 5 Acres of Tideland Area Leased to the San Diego Convention Center Corporation Along Convention Way, and All Bayward of the San Diego Convention Center

Negotiating Parties: Carol Wallace, CEO, San Diego Convention Center Corporation;
Karen Weymann, Shahriar Afshar, and Nick Markos, SDUPD

Under Negotiation: Price and Terms

In light of his recent service as the Chairman of the San Diego Convention Center Corporation Board, Commissioner Nelson announced that he would recuse himself from participating in this discussion regarding the San Diego Convention Center.

Agenda Item 4.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: South Bay Power Plant Consisting of Approximately 115 Acres of Property located South of J Street and West of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services, Beck Mayberry, Manager, Asset Manager West and Daniel Thompson, Vice President, West Region Operations, Dynegy South Bay, LLC;
Randa Coniglio, Karen Weymann, Chris Hargett, Kristine Zortman, SDUPD

Under Negotiation: Price and Terms

Port Attorney Duane Bennett, announced that Irene McCormack would substitute for Karen Weymann as a negotiating party for the District.

There was no other formal or reportable action, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

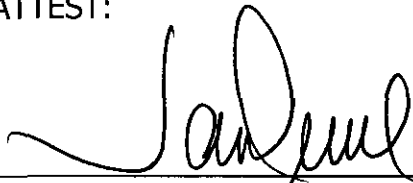
February 8, 2011

page 21



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:00 p.m., Tuesday, February 8, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Commissioner Valderrama led the Pledge of Allegiance.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS Bennett, Darbeau, Kirkpatrick and McEntee.

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PUBLIC COMMUNICATIONS

Agenda Item 4. Greg Cox, First District Supervisor, San Diego County Board of Supervisors, addressed the Board and requested their consideration for taking a position in support of the California Coastal Commission staff recommendation to approve Poseidon Resources proposed mitigation site in south San Diego Bay. He briefly addressed the matter in relationship to the District's adjacent property on Pond 20.

ACTION AGENDA

RESOLUTION ELECTING OFFICERS OF THE BOARD OF PORT COMMISSIONERS;

- A) VICE CHAIR OF THE BOARD OF PORT COMMISSIONERS FOR A TERM BEGINNING FEBRUARY 8, 2011 AND ENDING DECEMBER 31, 2011.**
- B) SECRETARY OF THE BOARD OF PORT COMMISSIONERS SHOULD A VACANCY OCCUR DUE TO THE ELECTION OF THE VICE CHAIR FOR A TERM BEGINNING FEBRUARY 8, 2011 AND ENDING DECEMBER 31, 2011**

Agenda Item 23AB. Commissioner discussion ensued. Commissioner Valderrama offered a motion nominating Commissioner Lou Smith as Vice-Chair and Commissioner Ann Moore as Secretary to serve for the remainder of calendar year 2011. Commissioner Malcolm second the motion.

On motion of Commissioner Valderrama, seconded by Commissioner Malcolm, the Board adopted, with a single vote **Resolution 2011-19** electing Louis H. Smith as Vice Chair of the Board of Port Commissioners, and Ann Y. Moore as Secretary of the Board of Port Commissioners for the remainder of calendar year 2011, by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Burdick.

Commissioner Smith was sworn-in as Vice Chair by Timothy Deuel, Acting District Clerk. Commissioner Moore was sworn-in as Secretary by her husband, Curtis Moore.

Chairman Peters welcomed Commissioner Moore as the newest member of the Board of Port Commissioners. The Chairman stated that Commissioner Moore was previously sworn-in as a Port Commissioner on January 13, 2010. Following the swearing-in ceremonies, the Chairman invited the members of the public present to participate in a reception to honor the new Commissioner. He announced the Board would take a brief recess. The Board was in recess from 1:15 p.m. to 1:27 p.m.

APPROVAL OF MINUTES

Agenda Item 3. Commissioner Nelson requested that the title of Consent Agenda 9 be revised to include the word "cost." The Deputy District Clerk acknowledged the request.

On motion of Commissioner Smith, seconded by Commissioner Valderrama, the Board approved the minutes with the revision requested for the special meeting of January 11, 2011, by the following vote: Yeas-Burdick, Malcolm, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Moore.

PUBLIC COMMUNICATIONS CONTINUED

Agenda Item 4. Sharon Cloward, President of the San Diego Port Tenants Association, addressed the Board regarding the 2011 RC44 Championship Tour Regatta in early March 2011 and the upcoming San Diego Port Tenants Association Annual Meeting on March 2, 2011.

Bridgette Browning, President, UNITE HERE Local 30 and Robert Bell, Kona Kai hotel worker and UNITE HERE member, addressed the Board regarding worker retention and successorship in light of a pending sale of the Kona Kai Resort and Hotel. They requested the Board direct staff to work with UNITE HERE regarding the matter. Chairman Peters explained that while the Board could not discuss non-agenda related matters, the Board would direct staff to investigate the matter and survey the action taken by other agencies.

CONSENT AGENDA

Chairman Peters requested that Laura Nicholson, Deputy District Clerk, announce any proposed docket changes. Ms. Nicholson announced the proposed changes to the agenda as follows: **Consent Agenda Item 13**, Resolution to Amend the San Diego Unified Port District Personnel Rules and Regulations, Rule 10.4 Injury Leave, staff requests it be continued to a future Board meeting; **Consent Agenda Item 14**, Resolution Authorizing Amendment No. 2 to Agreement with Richman Management Corporation dba Heritage Security Services increasing the total compensation by \$2.3 million and extending the term of agreement by 10 months, staff requests it be continued to a future Board meeting; **Consent Agenda Item 15**, Ordinance Adopting UPD Code Section 4.14 for Regulation of In-Water Hull Cleaning, staff requests it be continued to a future Board meeting; **Consent Agenda Item 16AB**, One Park Boulevard A) Resolution Consenting to Encumbrance of One Park Boulevard, LLC Leasehold for \$240 million in favor of Aareal Capital Corporation to refinance the existing mortgage for the Hilton San Diego Bayfront Hotel, with conditions; B) Ordinance Granting Amendment to Lease with One Park Boulevard, LLC, staff requests it be continued to a future Board meeting; **Action Agenda Item 24AB**, Palm Street Parking and Intermodal Facility A) Preliminary Project Review for the Proposed Palm Street Parking and Intermodal Facility. B) Direction to Staff to Proceed with

Environmental Review for the Palm Street Parking and Intermodal Facility, staff requests it be continued to a future Board meeting.

Commissioner Smith requested that **Action Agenda Item 19**, Presentation of the Proposed Capital Improvement Program Policy by the Ad-Hoc Board Committee and staff, and direction to staff; be continued to a future Board Meeting.

Commissioner Malcolm stated that he wished to pull Consent Agenda Item 11 for a separate discussion and vote.

In light of the motion to continue **Action Agenda Item 19**, Chairman Peters requested clarification from those members of the public who had submitted speaker slips as to whether they wished to address the Board regarding the continuance. Diane Takvorian, Environmental Health Coalition and Lisa Schmidt, representing San Diego City Council member David Alvarez withdrew their request to address the Board.

On motion of Commissioner Malcolm, seconded by Commissioner Moore, the Board accepted the proposed changes to the agenda by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

On motion of Commissioner Malcolm, seconded by Commissioner Smith, the Board adopted Consent Agenda items 5, 6, 7, 8, 9, 10, 12, 25A, and 25B, (**Resolution 2011-10** through and including **Resolution 2011-15**, **Resolution 2011-17**, **Resolution 2011-20**, **Resolution 2011-21**) by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 5. **Resolution 2011-10**, Adopting Plans and Specifications and Awarding Contract No. 2010-02 to Daniel Sullivan, Sole Owner, dba Sullivan Solar Power, for General Services Building Photovoltaic Installation, National City, California in the amount of \$310,500, was adopted as part of the consent agenda.

Agenda Item 6. **Resolution 2011-11**, Authorizing Entering into 319(h) Grant Agreement with State Water Resources Control Board for the Shelter Island Yacht Basin Copper Hull Paint Conversion Project in the amount of \$600,000 and granting indemnity to the State and State Water Board, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2011-12**, Authorizing a three year Agreement and Granting Indemnity to the County of San Diego to receive Law Enforcement/Homeland Security Grant Funds in the amount of \$361,574 for FY 2010 "Operation Stonegarden", was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2011-13**, Granting Indemnity to the County of San Diego for Cooperative Automotive Fuel Sales, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2011-14**, Granting Indemnity to the County of San Diego for the Graffiti Tracker Program Agreement, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2011-15**, Consenting to \$2,103,000 Encumbrance of Mrs. Kelly's, Inc. dba Point Loma Seafoods Leasehold in favor of Sunrise Bank, with conditions, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2011-17**, Authorizing a Tideland Use and Occupancy Permit (TUOP) with Sailing Events Association of San Diego (SEA SD) and District promotional sponsorship in the amount of \$272,500 in District services in support of the RC44 Sail Regatta, March 2 - 6, 2011, was adopted as part of the consent agenda.

Agenda Item 13. **Item continued to a future Board meeting.**

Agenda Item 14. **Item continued to a future Board meeting.**

Agenda Item 15. **Item continued to a future Board meeting.**

Agenda Item 16. **Item continued to a future Board meeting.**

Agenda Item 25A. **Resolution 2011-20**, Authorizing Three Party Agreement with the San Diego Convention Center Corporation, Jones & Stokes Associates, Inc., and the District for environmental review consulting services for a total not to exceed \$503,907 and Granting Indemnity to the San Diego Convention Center Corporation for the hotel program of the project, was adopted as part of the consent agenda.

Agenda Item 25B. **Resolution 2011-21**, Authorizing Agreement between the San Diego Convention Center Corporation and the District for entitlement cost sharing percentages for the proposed San Diego Convention Center Hotel and Phase III Expansion Project, was adopted as part of the consent agenda.

RESOLUTION ADOPTING REVISIONS TO BPC POLICY NO. 355 AND ITS ADMINISTRATIVE PRACTICES FOR REAL ESTATE LEASING; AUTHORIZING STAFF TO ADMINISTRATIVELY APPROVE CERTAIN FLAT RENT REVIEWS, ASSIGNMENTS OF LEASEHOLD INTERESTS AND ENCUMBRANCES OF LEASEHOLD INTERESTS

Agenda Item 11. Tony Gordon, Senior Asset Manager, Real Estate Department, addressed the Board with a presentation regarding the staff recommendation for revisions to BPC Policy No. 355 and its Administrative Practices for Real Estate Leasing; authorizing staff administrative approval of certain Flat Rent Reviews, Assignments of Leasehold Interests and Encumbrances of Leasehold Interests. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. In light of the dollar value criteria established to amend BPC Policy No. 355 and administrative approval of certain flat rent reviews, assignment of leasehold interests and encumbrances of leasehold interests, Commissioner Malcolm offered a motion in support of the staff recommendation. Commissioner Nelson seconded the motion.

Commissioner Valderrama expressed his support for the staff recommendation.

Commissioner Burdick requested and received clarification from Mr. Gordon regarding the dollar value criteria of a significant increase in loan amount. He confirmed that in those cases in which a qualifying loan was in excess of \$250,000 or 10% of the original loan amount, the encumbrance would require Board consideration.

On motion of Commissioner Malcolm, seconded by Commissioner Nelson, the Board adopted **Resolution 2011-16**, Adopting Revisions to BPC Policy No. 355 and its administrative practices for Real Estate Leasing; authorizing staff to administratively approve certain Flat Rent Reviews, Assignments of Leasehold Interests and Encumbrances of Leasehold Interests, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PRESENTATION AGENDA**PRESENTATION OF SERVICE AWARDS TO EMPLOYEES WITH 15 OR MORE YEARS OF SERVICE**

Agenda Item 17. Wayne Darbeau, Executive Director introduced the Service Award Program and then turned the presentation over to Eric Lawrence, Human Resources Technician. Mr. Lawrence addressed the Board with a presentation regarding District Employee Service Award recognition program. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Chairman Peters and Mr. Darbeau presented Service Awards to four employees for their longevity in service to the District. Craig Behning, Maintenance Supervisor, General Services, was recognized for 20 years of service; John DePrima, Mapping Technician II, Real estate, was recognized for 20 years of service; Charles Sanders, Construction Inspector Supervisor, Engineering and Construction, was recognized for 25 years of service; and William Winchell, Manager, Architectural and Mapping Services, was recognized for 25 years of service. Mr. Winchell passed to Mr. Darbeau a figurine of a whale. Mr. Winchell explained that early in his career, the paperweight had been presented to him by a former District employee with 40-years of tenure and who had started with the Harbor Department.

ACTION AGENDA CONTINUED

Duane Bennett, Port Attorney, explained that under Government Code §54954.2B (2), the Brown Act affords a legislative body the ability to add an item where the need to take action on an item arose after the preparation of the agenda, and on this occasion there was an immediate need. As staff considered the item an immediate-need matter, Mr. Bennett announced that the title of the proposed item was "Resolution Finding the need for Redevelopment Funds to finance the Proposed San Diego Convention Center Hotel and Phase III Expansion Project." He explained that approval to add the item required a two-thirds vote of the Board. Mr. Bennett explained that a written staff report was available for distribution to the Board and copies were available for the public should the Commissioners vote to consider accepting the recommendation to add it to the agenda. He further offered his opinion that the item under consideration would satisfy the requirements under the Brown Act.

Chairman Peters stated he received a call from Aimee Faucett, a staff member of San Diego Mayor Jerry Sanders, requesting assistance in retaining the City of San Diego's redevelopment funds for the proposed expansion of the San Diego Convention

Center. He explained that the Mayor had requested this action be taken by the end of February 2011, and in the event that the Board was not comfortable adding the item, a Special Meeting of the Board of Port Commissioners could be called before the end of February 2011 to consider the matter. Chairman Peters stated that while the findings were similar to those discussed in the staff report prepared for Action Agenda Item 18, the Board could take a brief recess and review the new staff report.

In light of the urgent request by the City of San Diego, and to alleviate the need for a Special Meeting, Commissioner Burdick made a motion to add the item to the agenda for discussion purposes. Commissioner Valderrama seconded the motion.

On a motion by Commissioner Burdick, seconded by Commissioner Valderrama, the Board voted to add the item titled "Resolution finding the need for Redevelopment Funds to finance the Proposed San Diego Convention Center Hotel and Phase III Expansion Project," to the agenda by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

The staff report for the item titled "Resolution finding the need for Redevelopment Funds to finance the Proposed San Diego Convention Center Hotel and Phase III Expansion Project," was distributed to the Board and copies were made available to the public.

RESOLUTION FINDING THE NEED FOR REDEVELOPMENT FUNDS TO FINANCE THE NORTH EMBARCADERO VISIONARY PLAN

Agenda Item 18. Shaun Sumner, Real Estate Department Area Manager, addressed the Board with a presentation regarding a resolution finding the need for redevelopment funds to finance the North Embarcadero Visionary Plan and requested their consideration of the matter. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Smith made a motion to approve Action Agenda Item 18. He requested and received confirmation from the Deputy District Clerk that the additional item regarding Redevelopment Funds to finance the Proposed San Diego Convention Center Hotel and Phase III Expansion Project, which the Board voted to add per the Port Attorney's recommendation, would become Action Agenda Item 29AB. Commissioner Burdick seconded the motion.

Commissioner Nelson requested and received confirmation from Mr. Sumner that the findings shown in the staff presentation were evidence supporting the District's position that there was no other reasonable means to fund the project.

On a motion by Commissioner Smith, seconded by Commissioner Burdick, the Board adopted **Resolution 2011-18**, Finding the need for Redevelopment Funds to finance the North Embarcadero Visionary Plan, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION FINDING THE NEED FOR REDEVELOPMENT FUNDS TO FINANCE THE PROPOSED SAN DIEGO CONVENTION CENTER HOTEL AND PHASE III EXPANSION PROJECT

Agenda Item 29AB. Port Attorney Bennett turned the presentation over to Shahriar Afshar, Director, Government and Community Relations, who addressed the Board regarding the similar findings regarding a need for Redevelopment Funds to finance the Proposed San Diego Convention Center Hotel and Phase III Expansion Project. Mr. Afshar clarified that while the agenda sheet included reference to the proposed San Diego Convention Center Hotel, staff was not requesting that the Board consider any findings related to that property. However, he explained that staff was requesting Board consideration regarding a finding of the need for funding for the San Diego Convention Center Phase III Expansion Project.

Chairman Peters requested and received clarification from Mr. Afshar that the Board action under consideration was for a finding of the need to seek redevelopment funds to complete the project outside of the District's general operating fund.

On a motion by Commissioner Burdick, seconded by Commissioner Smith, the Board adopted **Resolution 2011-22**, Finding the need for Redevelopment Funds to finance the Proposed San Diego Convention Center Phase III Expansion Project by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PRESENTATION OF THE PROPOSED CAPITAL IMPROVEMENT PROGRAM POLICY BY THE AD-HOC BOARD COMMITTEE AND STAFF, AND DIRECTION TO STAFF

Agenda Item 19. Item continued to a future Board meeting.

PRESENTATION ON MARINE TERMINAL FREEWAY ACCESS IMPROVEMENT PROJECTS; AND AUTHORIZE STAFF TO REALLOCATE REMAINING \$4.62 MILLION IN PROJECT FUNDING TOWARDS CESAR CHAVEZ AND CIVIC CENTER PROJECTS COMPLETION

Agenda Item 20. Paul Brown, Transportation and Maritime Policy Manager, Government and Community Relations, addressed the Board with a presentation regarding the Marine Terminal Freeway Access Improvement Projects, presented three District freeway access projects alternatives, and requested direction to staff to reallocate the remaining funds. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Peters offered that the entitlement projects documents were only valid for three years; thus, he cautioned that the time necessary to secure funding for the large projects could exceed the life of the documents. He also addressed the need to collaborate with the U.S. Navy regarding the completion of the Vesta Street project and that stakeholders work jointly to seek priority-funding dollars from the Federal Government. Chairman Peters concluded his remarks with his support for the staff recommendation to memorialize the progress thus far and move forward by effectively utilizing the available funding.

In light of the uncertainty regarding Federal government funding support for the completion of the Vesta Street project, Commissioner Valderrama concurred with the staff recommendation to use the available resources to move forward with alternative number two: complete a Project Study Report on 32nd Street and Vesta Street, complete construction of Civic Center, Bay Marina and Cesar Chavez projects.

Commissioner Smith acknowledged the efforts of staff; discussed the importance of completing the projects; addressed the merits of the 28th Street project's impact on goods movement and impacts to the neighborhoods, and cautioned against delaying work on the 28th Street project. He also offered that the projects under consideration were outside of the standard Capital Improvement Program project allocation process. Commissioner Smith stated that the projects under consideration were off-tidelands. He expressed his support for the staff recommendation and offered a motion in support of staff recommendation for staff alternative number two.

Commissioner Nelson seconded the motion. He requested and received clarification from Mr. Brown regarding the public outreach efforts related to the projects offered in the staff recommendation. Mr. Brown explained that staff had reached out to community leaders, he reported their concern regarding the lack of funding to move

forward with the overall program; however, the community leaders were not second-guessing the staff recommendation. Mr. Brown stated that the District was not abandoning efforts to address 32nd Street and Vesta. He noted that the Government & Community Relations team was also working on the matter through their legislative efforts. Commissioner Nelson requested and received clarification from Mario Orso, Caltrans, that the environmental documents have a three year shelf-life before a re-evaluation would be necessary. Mr. Orso offered that, per Federal Highway Regulations and in order for Caltrans to certify the environmental documents, the District would also have to commit to funding the future-phase design costs. He characterized the utility relocation costs as substantial and noted the impact of committing funds before certifying the environmental documents.

Commissioner Burdick offered that the projects under consideration were some of the most important environmental justice projects the District could undertake. She advocated for moving forward with the commitment to move commercial trucks out of the National City and Barrio Logan neighborhoods. She expressed her concern regarding the progress made to date, and stated for the record that she was hugely disappointed that for two years the District sought Federal Transportation Investment Generating Economic Recovery (TIGER) grant funding for a \$212 million dollar project that has been re-engineered down to approximately \$87 million. She hypothesized as to whether if the smaller sum was requested; then, would the District have received the resources to complete all of it. Commissioner Burdick offered her support for the staff recommendation.

Commissioner Malcolm reiterated the importance completing the phases of the project in a fiscally prudent manner. He discussed the importance of being good stewards of the District's limited resources and expressed his support for the motion.

Chairman Peters stated that the Vesta Street project was a priority for 2011; he addressed the benefits of the project; discussed the Federal funding opportunities by working in partnership with the U.S. Navy to allocate the \$60 million; and addressed the importance to infrastructure improvement as a precursor to get commercial trucks out of the neighborhoods.

On a motion by Commissioner Valderrama, seconded by Commissioner Nelson, the Board directed staff to move forward with Alternative Number 2: Complete a Project Study on 32nd and Vesta Street, Complete construction on Civic Center, Bay Marina and Cesar Chavez projects, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

GOVERNMENT & COMMUNITY RELATIONS UPDATE & DIRECTION TO STAFF

Agenda Item 21. Chairman Peters noted, for the record that earlier in the day the Board heard testimony related to the item from Greg Cox, San Diego County Supervisor.

Shahriar Afshar, Director, Government and Community Relations, who addressed the Board with a presentation and update regarding the roles of the newly created Government and Community Relations department staff. Mr. Afshar introduced Michele White, Environmental Policy Manager, Government and Community Relations and the District's Sacramento lobbyist, Jonathan Clay of Carpi and Clay. Mr. Afshar discussed staff's efforts in building partnership opportunities as a means to address all key stakeholders' needs in a timely manner. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Burdick left the dais at 2:35 p.m. and returned at 2:37 p.m.

Mr. Clay addressed the Board with a Sacramento legislative and policy update related to California Governor Brown's efforts regarding the proposal to eliminate the State's funding of redevelopment projects.

Ms. White addressed the Board regarding the request from Supervisor Cox that the Board draft a letter in support of the California Coastal Commission staff recommendation to approve Poseidon Resources proposed mitigation site, and area adjacent to the District's property on Pond 20, in south San Diego Bay.

Commissioner discussion ensued. Commissioner Smith commended staff for moving forward with the implementation of the Government and Community Relations department. He advocated for providing timely information in a transparent and proactive manner to all stakeholders. As the District moves forward with projects, he challenged the team to broaden the definition of stakeholder. Commissioner Smith requested that all District staff members be informed and demonstrate the ability to articulate organizational goals and priorities.

Commissioner Malcolm concurred with Commissioner Smith's comments and offered that the definition of stakeholder be broadened to include the California State Land's Commission. Regarding Supervisor Cox's earlier comments, Commissioner Malcolm explained the request was regarding an off-tideland area that is contiguous to District property called Pond 20. He explained that as an environmental steward, he found it appropriate to provide a letter of support regarding the California Coastal

Commission staff recommendation to approve Poseidon Resources proposed mitigation site. He offered a motion to direct staff to prepare a letter in support of the California Coastal Commission staff recommendation. He also requested that staff review the request and investigate whether there was a requirement for any environmental buffers and/or tideland impact considerations.

Commissioner Valderrama seconded the motion.

Commissioner Nelson explained that he was in support of Poseidon desalination project and would support the motion. He expressed concern that the land under consideration for mitigation was not located near the desalination project, nor would that land be available in the future for mitigation of any District projects.

Chairman Peters announced that he had met with California Senator Christine Kehoe regarding the banning of copper-based boat hull paint and its effect on the marine environment. The Chairman offered to work with the Port Tenant Association to implement any such action in a proactive way that would be workable for vessel owners.

On a motion by Commissioner Malcolm, seconded by Commissioner Valderrama, the Board directed staff to submit a letter in support of the California Coastal Commission staff recommendation to approve Poseidon Resources proposed mitigation site and the area adjacent to the District's property on Pond 20 in south San Diego Bay; and, investigate any impacts to District property related to the mitigation efforts, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Valderrama explained that he was in full support of former Commissioner Steve Padilla's recommendation to move forward with a formal legislative program. Chairman Peters acknowledged the benefit of the recommendation.

Commissioner Nelson expressed concern regarding the copper-bottom boat hull paint issue in relationship to pursuing opportunities to bring world-class sailing vessel races to San Diego Bay.

Chairman Peters acknowledged the complex matter of copper-bottom boat hull paint. He noted Commissioner Nelson's remarks and the need to address the matter of visiting vessels and impacts to the Bay.

Commissioner Malcolm cited the requirements of the State of California Regional Water Quality Control Board - San Diego Region to reduce the copper levels in

the Shelter Island Yacht Basin. He recommended the District work with regulatory agencies by requesting their assistance to develop practical solutions to meet the upcoming load-level requirements.

Wayne Darbeau, Executive Director announced that he met with David Gibson, Executive Director, Regional Water Quality Control Board - San Diego Region, and discussed the concerns raised by the Board. Mr. Darbeau explained that while copper leaching in the Bay is a complex issue, he offered that the Regional Water Quality Control Board views the District as a best practice agency and will work with staff and the tenants on the matter.

Chairman Peters acknowledged that the Regional Water Quality Control Board - San Diego Region was another District stakeholder for the Government and Community Relations to engage.

Mr. Clay addressed the Chula Vista Bayfront Master Plan Land Exchange and the proposed state legislation which would grant to the District the lands, subject of the trustee grant land exchange that was approved by the California State Lands Commission in December 2010. He requested that the Board consider directing staff to send a letter of support to the California State Lands Commission so that the measure could be included in an omnibus proposal that had yet to be packaged.

Commissioner Moore offered a motion directing staff to send the letter of support to the California State Lands Commission. The motion was seconded by Chairman Peters.

On a motion by Commissioner Moore, seconded by Chairman Peters, the Board directed staff to submit a letter to the California State Lands Commission in support of an omnibus bill for the consideration of a land exchange agreement between the District, North C.V. Waterfront, L.P. and the State Lands Commission involving certain parcels located within the City of Chula Vista and San Diego County, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Mr. Afshar summed up his report and acknowledged the Commissioners' requests to broaden stakeholder outreach and formally report such outreach efforts in the written staff reports related to agenda items.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE MEETING OF MARCH 8, 2011

Agenda Item 22. Chairman Peters requested that an item be added regarding the responses to the RFQ for waterfront activation.

Commissioner Smith requested that Agenda item 19, which was continued, regarding the Capital Improvement Program be added to the March docket. Regarding Agenda item 5 on the draft listing, a Resolution Adopting Revisions to BPC Policy No. 110 - Procedure for the Administration of Contracts, Agreements, and the Purchasing of Supplies, Materials, Equipment of the draft agenda, he requested that the item, and in the future any change to a BPC Policy, be moved to the Action Agenda for consideration.

Wayne Darbeau, Executive Director, requested that staff add to the March docket the following items: A Resolution amending the Public Art Master Plan to revise the appointment and composition of the Public Art Committee, and an update presentation regarding the South Bay Power Plant.

On a motion by Commissioner Valderrama, seconded by Commissioner Malcolm, the Board adopted the proposed agenda for the meeting of March 8, 2011 with the additions as announced, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PALM STREET PARKING AND INTERMODAL FACILITY

Agenda Item 24AB. Item continued to a future Board meeting.

OFFICER'S REPORT

Agenda Item 26. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director or designee, were reported:

- A) Change Order No. 2 for \$17,703.98 and 0 Calendar Days, to Contract No. 2007-25 with Miller Environmental, Inc. for TDY Site Demolition Project Phase 1, San Diego, California.
- B) Change Order No. 1 for \$2,005.00 and 0 Calendar Days, to Contract No. 2010-01 with Marathon Construction Corporation for Chula Vista Wildlife Reserve Restoration & Enhancement Project, Chula Vista, California.

- C) Change Order No. 3 for \$22,270.00 and 0 Calendar Days, to Contract No. 2010-13 with Remedial Civil Constructors, Inc. for L-Ditch Habitat Replacement, Chula Vista, California.
- D) Change Order No. 4 for (\$131.74) and 0 Calendar Days, to Contract No. 2010-21 with Censource, Inc. for Broadway Pier Cruise Ship Facility Signage Package, 1000 North Harbor Drive, San Diego, California.

PRESIDENT'S REPORT

Agenda Item 27. Executive Director Wayne Darbeau announced that Dave Thompson, Director of General Services and Procurement, had achieved the designation of Certified Public Procurement Officer from the Universal Public Procurement Certification Council. Mr. Darbeau, Chairman Peters and the Board offered their congratulations and presented Mr. Thompson with a lapel pin and certificate.

COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING

Agenda Item 28. Chairman Peters announced that one outcome of the recent Board retreat was a request that the Commissioners be afforded the time to offer comments on the Board meetings.

Commissioner Valderrama acknowledged the efforts of staff and the high quality level of the staff reports offered for the Board's review. He also acknowledged Chairman Peters for leading the meeting in an efficient manner.

Commissioner Smith acknowledged staff for their professional and timely assistance while responding to requests for additional agenda related information prior to the Board meeting.

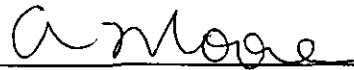
Regarding his recent appointment, Commissioner Nelson expressed gratitude for the support he received from the Commissioner Services team and all the District staff.

Commissioner Moore also acknowledged staff for well-written staff reports and thanked everyone for welcoming her on-board.

Chairman Peters thanked the Board for their assistance, acknowledged the quality work accomplished, and productive tone offered during Closed Session. As there were no additional Commissioner's comments, Chairman Peters adjourned the meeting.

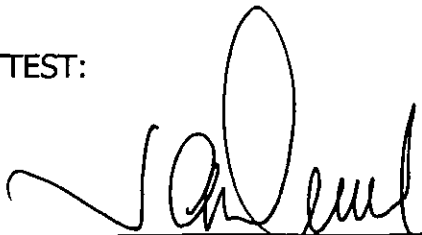
February 8, 2011

page 38

A handwritten signature in cursive script, appearing to read "A. Moore", written over a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "J. [unclear]", written over a horizontal line.

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

As previously posted, a special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Valderrama at 10:00 a.m., Monday, February 25, 2011, in the Boardroom at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama

OFFICERS Bennett, Darbeau and McEntee.

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PLEDGE OF ALLEGIANCE

Agenda Item 1.

Commissioner Moore led the Board in the Pledge of Allegiance.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

ACTION AGENDA

NORTH EMBARCADERO VISIONARY PLAN PHASE 1

- A) Resolution Authorizing First Amendment to the Joint Exercise of Power Agreement Between the District, the City of San Diego and Redevelopment Agency of the City of San Diego acting through Centre City Development Corporation;
- B) Resolution Authorizing Acceptance of Capital Contribution of Approximately \$5,723,862 from the Redevelopment Agency of the City of San Diego acting through Centre City Development Corporation;
- C) Resolution Authorizing the Allocation of Funds in the amount of \$14,705,450 to the FY 09-13 Capital Improvement Program for the Construction of the Phase 1 Project; and
- D) Resolution Authorizing addition of Broadway Pier Surface Improvement Project in the amount of \$1,000,000 to the FY 09-13 Capital Improvement Program.

Agenda Item 4ABCD. Shaun Sumner, Area Real Estate Manager, addressed the Board with a presentation regarding securing funds for the North Embarcadero Visionary Plan (NEVP) Phase 1 and requested consideration of the matters detailed in the staff report. He addressed the typographical error on page two of the staff report in the table illustrating the cost shares for the NEVP Phase 1 construction. Mr. Sumner stated for the record that the cost share of the Redevelopment Agency of the City of San Diego, acting through Centre City Development Corporation (CCDC), was a net total of \$28 million and the total sum for the project is \$28,600,000. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Jerry Trammer, Lane Field San Diego Developers, addressed the Board and spoke in favor of the staff recommendation.

Chairman Peters requested and received confirmation from Mr. Sumner that he was not aware of any opposition to the action under consideration.

Commissioner discussion ensued. Commissioner Smith offered a motion in support of the staff recommendation and urged moving forward on the project in the most expedient manner possible. Acknowledging the requirement for a maintenance reserve fund, he offered his concerns regarding "fencing off" monies. Commissioner Burdick seconded the motion.

Commissioner Burdick explained her concern regarding what she characterized as being at odds with California Governor Jerry Brown and the determination of how

redevelopment funds should be spent. She continued her remarks by stating that in light of the uncertainty at the State level the Board action would not guarantee that funding would be available. She characterized the project as one of the most important beautification projects in San Diego and explained her belief that government serves the public better at the local level. Thus, she offered that the Board should take action to preserve the funds for local use and not other State-wide imperatives.

Commissioner Valderrama requested clarification regarding the financing and source of funding for the project. Jeff McEntee, CFO/Treasurer, addressed the request and explained that ideally the repayment stream would come from Lane Field Hotel Development revenues. Mr. McEntee explained that if Lane Field Hotel revenues were not available the funding would come from the District's general revenue stream. Commissioner Valderrama acknowledged the challenges that the Lane Field San Diego Developers team had faced to secure their funding; he acknowledged that the District would be required to fund its portion of the NEVP Phase 1 construction costs through the general operating fund if needed; and expressed his faith in the Lane Field San Diego Developers' abilities to fulfill their obligations.

Commissioner Nelson requested clarification on two points: 1) in the event that the District would have to pay to complete the project with CCDC, was it the assumption that the entitlements would be returned to the District, or 2) in the event that the hotel was not built, what thing of value might the District receive in exchange for committing the funds to the construction of NEVP Phase 1.

Mr. Sumner responded that the value was two-fold. He offered that, while difficult to quantify, there was a public benefit of an improved waterfront. Secondly, he offered that one of the long-term goals of the NEVP was to create an improved public space at the foot of Broadway and along Harbor Drive in order to benefit the District's future re-development projects. Mr. Sumner explained that the current condition of the waterfront may not be attractive to a higher-end hotel or nicer commercial development. He explained the need for roadway improvement and that there was not sufficient park space. He concluded his response stating that in the event that the Lane Field Development was not completed as planned the economic benefit to the District would come much further down the line.

Commissioner Nelson requested confirmation that in the event that the hotel development project did not materialize Lane Field San Diego Developers had no obligation to pay any portion of that \$3 million pursuant to the existing agreements.

Mr. Sumner acknowledged that Commissioner Nelson's statement was correct and further explained that the District would require a future developer to reimburse the District and CCDC for its share. He also confirmed that a failure to complete the project would in effect return that entitlement to the District. Regarding the entitlements, Mr. Sumner stated that, in effect, the District already owns them.

Commissioner Nelson requested clarification as to whether there was a need for an additional resolution to accept the funds from CCDC. Mr. Sumner explained his belief that the currently proposed resolutions were acceptable to receive the funds from CCDC. He offered that, if necessary, the matter could come back before the Board at the time of fund acceptance.

Commissioner Malcolm requested clarification as to the timeline for release of the funds; or, if there was a penalty for returning the funds should the California Coastal Commission deny the permit. He also requested an update regarding the California Coastal Commission consideration of the matter.

Regarding the funds, Mr. Sumner explained that the District would not actually be receiving any funds until construction began and would essentially have a CCDC account to be drawn down on to pay invoices. As to comments from the California Coastal Commission regarding the permit, Mr. Sumner stated that staff believed the California Coastal Commission staff was willing to work with the District and believed the California Coastal Commission staff thought it was much improved and a good project. He stated that staff was optimistic that they could work with the California Coastal Commission staff over the next thirty days or so to get a favorable staff recommendation.

Chairman Peters stated for the record that following the public comment period, Ian Trowbridge submitted a speaker slip registering his support for the project. The Chairman called for the vote.

On a single motion by Commissioner Smith, seconded by Commissioner Burdick, the Board adopted with a single vote **Resolution 2011-23**, Authorizing First Amendment to the Joint Exercise of Power Agreement Between the District, the City of San Diego and Redevelopment Agency of the City of San Diego acting through Centre City Development Corporation; **Resolution 2011-24**, Authorizing Acceptance of Capital Contribution of Approximately \$5,723,862 from the Redevelopment Agency of the City of San Diego acting through Centre City Development Corporation; **Resolution 2011-25**, Authorizing the Allocation of Funds in the amount of \$14,705,450 to the FY

09-13 Capital Improvement Program for the Construction of the Phase 1 Project; and **Resolution 2011-26**, Authorizing Addition of Broadway Pier Surface Improvement Project in the amount of \$1,000,000 to the FY09-13 Capital Improvement Program, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PUBLIC COMMUNICATIONS CONTINUED

Agenda Item 2. Ian Trowbridge acknowledged the Board for the aforementioned action taken.

There was no further action taken, whereupon Chairman Peters adjourned the special meeting.

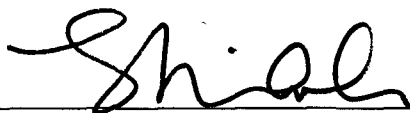
February 25, 2011

Page 44

A handwritten signature in cursive script, appearing to read "A. Moore", positioned above a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "Shial", positioned above a horizontal line.

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 10:00 a.m., Tuesday, March 8, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS Bennett and Darbeau.

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

CLOSED SESSION

Port Attorney Duane Bennett announced the closed session agenda as follows:

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: South Bay Power Plant Consisting of Approximately
115 Acres of Property located South of J Street and
West of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services,
Beck Mayberry, Manager, Asset Management West, and
Daniel Thompson, Vice President, West Region Operations,
Dynergy South Bay, LLC;

Karen Weymann, Chris Hargett and Kristine Zortman,
SDUPD

Under Negotiation: Price and Terms

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Subdivision (b)(1) of
Government Code Section 54956.9:

One Case

Agenda Item 5.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 5 Acres of Tideland Area Leased to the
San Diego Convention Center Corporation Along
Convention Way, All Bayward of the San Diego Convention
Center

Negotiating Parties: Carol Wallace, CEO, San Diego Convention Center
Corporation
Karen Weymann, Shahriar Afshar and Nick Markos, SDUPD

Under Negotiation: Price and Terms

Port Attorney Duane Bennett, announced that Irene McCormack will participate
as a negotiating party for the District.

Agenda Item 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Hilton San Diego Bayfront Hotel located at
One Park Boulevard, San Diego

Negotiating Parties: Gregory Rockett, Hilton Worldwide
Shahriar Afshar, Karen Weymann and Nick Markos, SDUPD

Under Negotiation: Price and Terms

Mr. Bennett announced that Irene McCormack will participate as a negotiating party for the District.

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Lane Field located at the Northeast Corner of Harbor Drive
and West Broadway, San Diego, and 1220 Pacific Highway,
San Diego

Negotiating Parties: Jerome Trammer, Lane Field San Diego Developers, LLC;
Karen P. Ringel, United States Department of the Navy,
Naval Facilities Engineering Command Southwest

Irene McCormack, Karen Weymann, Shahriar Afshar and
Shaun Sumner, SDUPD

Under Negotiation: Price and Terms

Agenda Item 8.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Kettenburg Boatyard Consisting of Approximately 100,744
Square Feet of Land and Approximately 108,520 Square
Feet of Water located at 2702 Shelter Island Drive in
America's Cup Harbor, San Diego

Negotiating Parties: Driscoll Inc., Tom Driscoll, President;
Karen Weymann and Kristine Zortman, SDUPD

Under Negotiation: Price and Terms

Mr. Bennett announced that Irene McCormack will participate as a negotiating party for the District.

Agenda Item 9.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Subdivision (a) of Government Code Section 54956.9:

San Diego Navy Broadway Complex Coalition v. SDUPD, et al.
San Diego Superior Court No. 37-2009-00096726-CU-MC-CTL

There was no formal or reportable action as to any closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

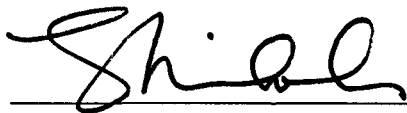
March 8, 2011

page 49

A handwritten signature in cursive script, appearing to read "A. Moore".

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "Shial".

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:00 p.m., Tuesday, March 8, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, Kirkpatrick and McEntee.

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Commissioner Malcolm led the Pledge of Allegiance.

APPROVAL OF MINUTES

Agenda Item 3. Regarding the minutes from the regular meeting of February 8, 2011 related to Consent Agenda Item 11, Commissioner Burdick requested and received confirmation from the Deputy District Clerk that the minutes had been corrected. The correction showed the following: the word "and" was changed to the word "or" in the passage on page six regarding "...those cases in which a qualifying loan was in excess of \$250,000 *or* 10% of the original loan amount, the encumbrance would require Board consideration."

Commissioner Nelson requested and received confirmation that his minor changes to the draft minutes from the special meeting of February 8, 2011 and the regular meeting of February 8, 2011 were addressed. Commissioner Nelson requested and received confirmation from the Deputy District Clerk that the matter raised by Commissioner Burdick was corrected and that the proper word was "or."

On motion of Commissioner Smith, seconded by Commissioner Valderrama, the Board approved the minutes with the revisions requested for the special meeting of January 25, 2011, special meeting of February 8, 2011, and regular meeting of February 8, 2011 by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PUBLIC COMMUNICATIONS

Agenda Item 4. Sharon Cloward, President of the San Diego Port Tenants Association, addressed the Board regarding the success of the Oracle RC44 Cup San Diego Regatta. She thanked the Board and the District staff for their assistance.

Uri Feldman, Sunroad Resort Marina, addressed the Board with a presentation regarding the success of the San Diego Boat Show at the Sunroad Marina. Announcing an improved year-over-year attendance, he thanked the Board for the \$15,000 grant used to market the event.

CONSENT AGENDA

Chairman Peters requested that Laura Nicholson, Deputy District Clerk, announce any suggested docket changes. Ms. Nicholson announced the proposed changes to the agenda as follows: **Consent Agenda Item 12**, Ordinance Adopting UPD Code Section 4.14 for Regulation of In-Water Hull Cleaning, staff requests it be continued to a future Board meeting; **Consent Agenda Item 13**, Resolution Adopting Plans and Specifications and Awarding Contract No. 2009-17 to {company name} for Tenth Avenue Marine Terminal Communication and Fire Alarm System upgrade in the amount of {dollar amount}, staff requests it be continued to a future Board meeting; **Action Agenda Item 28**, Resolution Waiving BPC Policy No. 110 and Authorize Staff to enter into a Sole Source Purchase Agreement with Metalcraft Marine Inc. for the procurement of three marine firefighting/harbor patrol and Homeland Security Vessels utilizing Port Security Grant Program Funds (PSGP) for a total price not to exceed \$3,162,000, staff requests it be continued to a future Board meeting.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board accepted the suggested changes to the agenda by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

On motion of Commissioner Malcolm, seconded by Commissioner Moore, the Board adopted Consent Agenda items 5, 6, 7, 8, 9 and 10, (**Ordinance 2638**,

Resolution 2011-27 through and including **Resolution 2011-31**) by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 5. **Ordinance 2638**, Amending the FY 2009-2013 Capital Improvement Program and the FY 2010-2011 Operating Budget – decreasing the Capital Improvement Program Budget by \$2,000,000 and increasing the Operating Budget by \$2,000,000, was adopted as part of the consent agenda.

Agenda Item 6. **Resolution 2011-27**, Consenting to Shared Parking Agreement between Seaport Village and Old Police Headquarters Properties, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2011-28**, Consenting to Assignment of operating contract from Five Star Parking to Ampco System Parking for the Lane Field Parking Lot, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2011-29**, to Amend the San Diego Unified Port District Personnel Rules and Regulations, Rule 10.4 Injury Leave, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2011-30**, Authorizing Amendment No. 2 to Agreement with Aztec Landscaping, Incorporated dba Aztec Janitorial Services for additional scheduled and non-scheduled special event activities at the Broadway Pavilion and increasing the second year amount by \$34,836.30 for a new total agreement amount of \$1,307,445.20, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2011-31**, Adopting an Amendment to the Public Art Master Plan revising the composition and appointment of the Public Art Committee, was adopted as part of the consent agenda.

Agenda Item 11. **Item moved to the Action Agenda as Item No. 29.**

Agenda Item 12. **Item continued to a future Board meeting.**

Agenda Item 13. **Item continued to a future Board meeting.**

ACTION AGENDA

SOUTH BAY POWER PLANT

- A) STAFF PRESENTATION AND UPDATE ON JOINT PLANNING EFFORT AND TEAM CHARTER WITH THE CITY OF CHULA VISTA.**
- B) RESOLUTION ESTABLISHING RENT FOR DYNEGY SOUTH BAY, LLC, FOR THE PERIOD FROM NOVEMBER 2, 2009 THROUGH DECEMBER 31, 2014.**

Agenda Item 21. Kristine Zortman, Senior Asset Manager, Real Estate Department, addressed the Board with a presentation and an update on the South Bay Power Plant Joint Planning Effort and Team Charter with the City of Chula Vista. She requested that the Board consider adopting a Resolution Establishing Rent for Dynegy South Bay, LLC, for the period from November 2, 2009 through December 31, 2014. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Chula Vista Mayor Cheryl Cox addressed the Board and urged the expedient removal of the South Bay Power Plant facility. She acknowledged the benefits of collaborative work efforts and discussed the merits of the Chula Vista City Attorney and Chula Vista City Manager working together with District senior leadership to facilitate the removal of the power plant in a responsible manner by using the best-managed practices possible. Regarding Action Agenda Item 23, she requested the Board consider supporting the sponsorship opportunity to fund additional barges for Chula Vista and Imperial Beach as part of the Port of San Diego Big Bay Boom July 4, 2011 fireworks display in conjunction with the City of Chula Vista's centennial celebrations. Regarding the fireworks, she offered support in working with those agencies that were demanding monitoring and testing.

Glen Googins, Chula Vista City Attorney, introduced Scott Tulloch, City of Chula Vista Assistant City Manager. Acknowledging the complexity of the demolition of the power plant and the implementation of the Bayfront Master Plan, Mr. Googins addressed the Board and offered his support for the South Bay Power Plant Joint Planning and Project Implementation Process outlined by District staff. Mr. Tulloch addressed the Board on behalf of the City of Chula Vista City Management Department; he acknowledged the past results of working collaboratively, stated that the project meetings had been productive and thanked the Commissioners.

Laura Hunter, Environmental Health Coalition, expressed her strong support of the joint planning efforts of the City of Chula Vista and the District. Beginning with the

power plant demolition, she offered that a phased-approach be considered as work on the project moves forward. She requested that sediment assessments be completed in a timely manner. Referencing the lease rent amendments she characterized the rent as a "wind-fall" for the District, and Ms. Hunter offered that considerations be made regarding the use of the rent. She suggested that the rent revenues be held in reserve, or, dedicated to funding future issues related to the implementation of the Chula Vista Bayfront Master Plan. Ms. Hunter recommended that the District work with Dynegy South Bay, LLC for full access to the escrow account to use the funds for the appropriate purposes as a means to expedite the project.

Commissioner discussion ensued. Commissioner Moore explained that all of the stakeholders would benefit from the expeditious removal of the power plant. She acknowledged the benefits working collaboratively to demolish the power plant with a phased approach to the project. She offered that a clear action plan was needed which begins with identifying the required permits and working with the issuing agencies to ensure compliance with all applicable laws. Commissioner Moore stated that actions should be directed to protecting the environment and expeditious removal of the power plant should remain the overall goal. Regarding the resolution of the rent issue, she concurred with the statements that offered to set aside the rent revenue in reserve to help fund mitigation efforts related to the impacts the power plant on the entire Chula Vista Bayfront. She offered a motion to move the staff recommendation and clarified that her motion included consideration of the concept of a "set-aside" for the rent during the budget discussion process.

Commissioner Malcolm seconded the motion.

Commissioner Burdick acknowledged Mayor Cox; she thanked Mr. Googins and Mr. Tulloch for their work. She concurred with Commissioner Moore's remarks regarding the expeditious removal of the power plant. She stated that it was not yet the time to have discussions regarding the use of the rent revenue. As part of the joint collaborative process, Commissioner Burdick stated that the Board would very much appreciate a signal, hopefully in writing, that the City of Chula Vista had abandoned their negotiations with Dynegy. She explained that such a signal would send a clear message that both agencies were on working in the same direction to complete the project.

Commissioner Nelson stated that he supported the motion as amended and appreciated the public comments offered. Regarding the characterization of rent being paid to the District as "gaining a wind-fall," he explained that he did not think of a

tenant paying their rent as being "a wind-fall." He offered that it was appropriate to consider the use of revenue during the regular budget process.

Commissioner Valderrama acknowledged the value of forming of a team to work collaboratively to achieve the goal of removing the power plant. He requested clarification from Commissioner Moore regarding her motion and a rent revenue "set-aside."

Commissioner Moore explained her request that discussions regarding setting aside rent revenue would be included during the upcoming budgetary process.

Regarding unexpected monies received by the District, Commissioner Valderrama stated that it was his belief that uses for such revenue should be considered as part of the total budgetary process. He concurred that consideration of such funds should be deferred until the over-all budget needs were fully evaluated. Noting that the 120-day negotiation period was ending soon, Commissioner Valderrama addressed the City of Chula Vista representatives and requested clarification as to the status of their negotiations with Dynegy.

Mayor Cox explained that she was not one to close any discussion or reveal things from closed session. She stated that the City of Chula Vista concurred that the assessment of the risks and the benefits was something that needed review. She stated that while the Chula Vista City Council had not taken a specific position regarding the 120-day negotiation process, and that she would estimate that since the progress thus far was so productive that the Board would not hear the Chula Vista City Council saying "no, no, no we need to hang on to this." Mayor Cox reiterated the goal was to get the South Bay Power Plant down and remediate whatever contaminants might be in the land or water. She offered Mr. Googins the opportunity to comment as to whether he was going to bring anything else to the Council. Mr. Googins replied that if the Mayor had adequately answered the question then he was comfortable with her answer.

Acknowledging the nature of Closed Session discussions and the negotiation process, Commissioner Valderrama requested further comment regarding a finite timeline in which the Board could expect a resolution regarding the City of Chula Vista's negotiations with Dynegy. Mr. Googins stated that the City was in discussions with Dynegy, he could not give a precise timeframe as to when those discussions may be brought to fruition, and they expected a resolution within the next thirty days.

Commissioner Malcolm thanked the representatives from the City of Chula Vista for providing testimony. He concurred with the desire for the timely removal of the

power plant, and stated that the District and the City of Chula Vista were providing a model for governmental agency collaboration. Acknowledging all of the progress since October 2010, he extended his thanks to staff for their efforts to put forward a purposeful transparent process to facilitate the removal of the power plant.

Commissioner Smith thanked Mayor Cox and all of those who have worked on the project. He advocated for focusing efforts on tearing down the power plant and completing the remediation of the site.

Chairman Peters announced the Board was committed to tearing down the power plant and the District was proceeding with that task whether a letter from the City of Chula Vista regarding their negotiations with Dynegy was received or not. He expressed his agreement with Commissioner Moore's suggestion to refer a legitimate budget issue to the budget review process and supported her motion.

Commissioner Moore offered that the focus was on the joint efforts that the District and the City of Chula Vista were making regarding demolishing the power plant in an expeditious manner and moving forward with the site remediation process.

On motion of Commissioner Moore, seconded by Commissioner Malcolm, the Board adopted, **Resolution 2011-38** Establishing Rent for Dynegy South Bay, LLC, for the period from November 2, 2009 through December 31, 2014; and, that the Board consider the concept of allocating the South Bay Power Plant rental funds during the annual budget process discussions, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTIONS CONSENTING TO AGREEMENTS FOR ASSIGNMENT OF THE MANCHESTER GRAND HYATT LEASE TO HOST HOTELS & RESORTS

Agenda Item 18. Nicholas Markos, Asset Manager, Real Estate Department, provided the Board with an overview of staff recommendation related to the change of control of the Manchester Grand Hyatt Hotel to Host Hotels & Resorts. He requested the Board consider approving the Resolutions Consenting to Agreements for Assignment of the Manchester Grand Hyatt Lease to Host Hotels & Resorts. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Burdick commended staff for their efforts to put together a good package for the Board's consideration despite the complexity of the matter. Regarding page one of the staff report and the statement

"the proposed transaction will not result in a change to the District's lessee," she offered that the action under consideration would indeed result in a change of control and a change to the District's lessee. She explained that the change was significant and discussed the importance of clarifying the record. In light of the District's ongoing relationships with Host Hotels and upon considering their ability to honor lease obligations, she expressed her support for the staff recommendation. Lastly, Commissioner Burdick commented on the structure of the organizational charts of the entities. She offered a motion to approve the staff recommendations.

Commissioner Smith seconded the motion.

Commissioner Nelson requested clarification, for the record, regarding Commissioner Burdick's remarks about the staff report and the passage referenced on page one of the staff report. "The proposed transaction will not result in a change to the District's lessee under the lease, will have no impact on the District enforcing its rights under the lease, and Hyatt Corporation (Hyatt) will continue to manage the Hotel."

Mr. Markos clarified that the actual lessee, Manchester Grand Resorts, shown in the lease, would not change as a result of the transaction. He further stated that the controlling entity, which will own that entity (Manchester Grand Resorts), would change.

Duane Bennett, Port Attorney, offered that as a matter of law, Mr. Markos' statement was correct.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board adopted, with a single vote **Resolution 2011-32** rescinding resolution 2010-111 authorizing consent to change of control of Manchester Grand Resorts, L.P. dba Manchester Grand Hyatt Hotel to Hyatt Hotels Corporation; **Resolution 2011-33** consenting to change of control of Manchester Grand Resorts, L.P. dba Manchester Grand Hyatt Hotel and Manchester Grand resorts, Inc. to Host Hotels & Resorts, L.P., or wholly owned affiliates thereof, with conditions; **Resolution 2011-34** consenting to sublease from Manchester Grand Resorts, L.P. to HST San Diego HH LP; **Resolution 2011-35** consenting to Amendment No. Three to Management Agreement among HST San Diego HH LP, Manchester Grand Resorts, L.P. and Hyatt Corporation; and **Resolution 2011-36** consenting to Consent, Assignment and Assumption and Amendment of Management Agreement among HST San Diego HH LP, Manchester Grand Resorts, L.P. and Hyatt Corporation, by the following vote: Yeas-Burdick,

Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION GRANTING CONCEPT APPROVAL FOR PROPOSED INTERIOR HOTEL RENOVATIONS TO THE SAN DIEGO MARRIOTT MARQUIS & MARINA

Agenda Item 19. Penny Maus, Asset Manager, Real Estate Department, addressed the Board with a presentation regarding the staff recommendation and requested consideration of a Resolution Granting Concept Approval for Proposed Interior Hotel Renovations to the San Diego Marriott Marquis & Marina. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Malcolm congratulated the Marriott for their commitment to the improvements of their property. He pointed out that in light of the proposed-project cost of \$1.5 million, and in conjunction with the standards set forth in BPC Policy No. 355; it was likely the tenant would return to request consideration for a comprehensive lease extension based upon a qualifying retroactive capital investment. He suggested that staff continue to clarify BPC Policy No. 355 concerning the consideration of previous capital investments as related to the processes used by staff when considering the necessary qualifications for lease extensions.

Commissioner Burdick acknowledged that revisions to BPC Policy No. 355 would be coming before the Real Estate Committee in the near future. She explained that one of the proposed operational procedure changes would be clarifying the record related to the approval of commitments for supporting lease extensions. She commended staff for including that information regarding the proposal in the staff report and recommendation.

Commissioner Nelson stated that he is a tenant of the Marriott Marina – Marina Operation and rents a boat slip. Announcing his assumptions, that because the renovation project would benefit the general-public and the project was not of a manner to improve the value of his personal vessel, he would participate in the consideration of the item. He requested confirmation from Duane Bennett, Port Attorney, as to whether he was correct.

Mr. Bennett requested clarification from staff as to whether there was anything relative to their presentation that would affect anybody who has a vessel in the marina. Karen Weymann, Director, Real Estate Department, responded no, there was not. Based upon the staff response, Mr. Bennett queried as to whether Commissioner Nelson

felt he could be fair and impartial relative to the item notwithstanding his slip rental. Commissioner Nelson responded that he believed he could make such a decision.

Commissioner Smith offered approval of the staff recommendation. Commissioner Burdick seconded the motion.

Commissioner Valderrama requested and received clarification from Ms. Weymann regarding at what point a tenant may request a lease extension. She discussed the standard practices employed by staff for evaluating lease extension requests relative to the capital investments that the tenant had made to enhance the value of the property and to reposition the asset.

On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted, **Resolution 2011-37** Granting Concept Approval for Proposed Interior Hotel Renovations to the San Diego Marriott Marquis & Marina, by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Burdick.

PUBLIC COMMUNICATIONS CONTINUED

John Laun, President and Executive Director of Sailing Events Association San Diego (SEA San Diego) addressed the Board with a video-recap regarding the 2011 RC44 Championship Tour Regatta held on San Diego Bay on March 2-6, 2011. He thanked the District and the other sponsors for their support. He noted the use of the Port Pavilion on Broadway Pier by members of the public; the number of spectators on the pier and on the adjacent tidelands; and explained that the facility also served as an area for the teams to dry the sails. In light of the success of the event, he discussed submitting proposals for an opportunity for San Diego to host three America's Cup World Series Regattas in the future.

Chairman Peters stated that he was encouraged that the Port Pavilion on Broadway Pier had proven to be a venue that could support some very positive public events. He concluded that the event was a "win-win" and demonstrated a way to activate the waterfront while engaging the public.

Commissioner Nelson commended SEA San Diego, the District staff, and the corporate sponsors for their efforts to put together a fantastic event.

Commissioner Burdick acknowledged Mr. Laun and the SEA San Diego volunteers for devoting thousands of hours supporting the event. She acknowledged the success and offered that such an event proved to be a way in which

the world could see San Diego as a great sailing venue. She offered the District's support for upcoming events.

PRESENTATION AGENDA

PRESENTATION OF THE SAN DIEGO UNIFIED PORT DISTRICT (DISTRICT) 2010 EMPLOYEE OF THE FOURTH (4TH) QUARTER

Agenda Item 14. Elsa Juarez, Human Resources Analyst and Chair of the Employee Recognition Program, addressed the Board with a presentation regarding the District Employee of the Quarter program. She turned the presentation over to Wayne Darbeau, Executive Director who acknowledged Nick Markos, an Asset Manager in the Real Estate Department as the 2010 Employee of the 4th Quarter. Mr. Markos was cited for his consistent superior performance and skillful management of complex real estate negotiations and transactions, his diplomacy and tact and skill in working on sensitive negotiations. Mr. Markos offered words of thanks to his co-workers for his nomination. The other employees nominated for Employee of the Quarter were Ray Felgenhauer, a Harbor Police officer; Kathy Fischer, Executive Assistant, Harbor Police; Editha Freeman, Accounting Technician, Financial Services; John Reilly, Harbor Police sergeant; and Rachel Verhoeks, Administrative Assistant, Environmental and Land Use Planning. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

PRESENTATION OF THE SAN DIEGO UNIFIED PORT DISTRICT (DISTRICT) 2010 EMPLOYEE OF THE YEAR

Agenda Item 15. Elsa Juarez, Human Resources Analyst and Chair of the Employee Recognition Program, addressed the Board with a presentation regarding the District 2010 Employee of the Year program. She turned the presentation over to Wayne Darbeau, Executive Director who acknowledged Justin Kanoya, Marketing and Public Relations Representative as the 2010 Employee of the Year. He was recognized for developing several organization systems in the marketing department to help track files and invoices. His project management systems have been replicated by other departments. Mr. Kanoya offered remarks regarding his work at the District and thanked his family and fellow co-workers. The other employees nominated for Employee of the Year included Marguerite Elicone, Corporate Communications, first quarter; John Cole, General Services & Procurement, third quarter and Nick Markos, Real Estate, fourth quarter. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

PRESENTATION OF THE SAN DIEGO UNIFIED PORT DISTRICT (DISTRICT) 2010 TEAM OF THE YEAR

Agenda Item 16. Elsa Juarez, Human Resources Analyst and Chair of the Employee Recognition Program, addressed the Board with a presentation regarding the District 2010 Team of the Year program. She turned the presentation over to Wayne Darbeau, Executive Director who acknowledged The Cruise Ship Terminal Shore Power Team as the 2010 Team of the Year. He cited the team for their superior work on the installation of the shore power system at the cruise ship terminal. He offered that residents and visitors would be enjoying cleaner air because of the system. The members of the Cruise Ship Terminal Shore Power Team are: Yeshi Mulugeta, Engineering; Perfecto De Ocampo, Engineering; Mark McIntire, Engineering; Mark Brunelle, Construction; Chris Fox, Engineering; Michelle White, Government & Community Relations; Cody Hooven, Environmental & Land Use Management; Bruce Cummings, Marine Operations; Joely Habib, Environmental & Land Use Management; Allision Gutierrez, Environmental & Land Use Management; Amy Wang, Financial Services; Roger Manucdoc, Financial Services; Rita Vandergaw, Business Development & Marketing; Charlie Niven, Business Development & Marketing; Eileen Maher, Environmental & Land Use Management; Brion Bargo, Marine Operations; Harry Jones, Marine Operations and Mahmoud Akhavain, Engineering.

The other employees nominated for Team of the Year included the General Services Gardeners Team: Tony Ambrose, Billy Bankhead, Chris Bennett, Jose Cravo, Celina Cumberbatch, Gabriel Gonzalez, Mark Ivey, Don Jones, Jeff Lees, Brett Marshall, Marty McDaniel, Paul Morison, Jorge Osuna, Ruben Rico, Jeff Snell, Jim Straub and Mark Williams; the General Services Weekend Trash Crew Team: Jessie Arberry, Michael Decker, Manny Delgado, Lardo Cortez, Nikki Tatum and Hector Rincon, and the Furlough Team: Anna Lisa Acedo, Mike Arons, Brandy Christian, Michelle Corbin, Marina Dion, Marialice Dunne, Hope Elie, Karen Emison, Renee Errasquin, Deborah Finley, Ellen Gross, Joy Hunter, Elsa Juarez, Eric Lawrence, Eric Lieberman, Tom Lockwood, Delia Parmenter, Karen Porteous, Ron Powell, Rita Reddy, Paula Rians, Jeanette Sales, Bob Schuck and Melissa Steeg. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Burdick congratulated all of the honorees and acknowledged their work. Noting the efforts of the Cruise Ship Terminal Shore Power Team, she reported that the Port of San Diego was cited in the March 2011 issue of *Travel and Leisure* magazine as a Port that passengers choose to travel from and that green initiatives influence many consumers' buying habits.

Chairman Peters called for a brief recess at 2:30 p.m. while he and Mr. Darbeau presented Mr. Markos, Mr. Kanoya and the Shore Power Team members with their awards. Chairman Peters called the meeting back to order at 2:37 p.m.

ACTION AGENDA CONTINUED

PRESENTATION OF THE PROPOSED CAPITAL IMPROVEMENT PROGRAM POLICY BY THE AD-HOC BOARD COMMITTEE AND STAFF, AND DIRECTION TO STAFF

Agenda Item 17. Steve Kirkpatrick, Chief Engineer, addressed the Board with a Presentation regarding the Proposed Capital Improvement Program Policy as prepared by the Ad-Hoc Board Committee and staff, and requested direction to staff. Chairman Peters noted that some of the comments received regarding suggested changes had been included in the staff report. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Diane Takvorian, Environmental Health Coalition, addressed the Board, congratulated the Cruise Ship Terminal Shore Power Team on their award, and offered that they begin work at the Tenth Avenue Marine Terminal. She commended the committee for bringing transparency to the process. She acknowledged that the District was taking steps to address the off-tideland impacts on the health of residents in Barrio Logan and National City. She offered that the Board consider increasing the allocation from the Capital Improvement Program (CIP) for the Marine Terminal Enhancement Fund and use those funds for off-tideland projects to mitigate maritime industry impacts. Ms. Takvorian discussed the importance of cooperation and exploring non-monetary projects as a mitigation means. Referencing funding for expanding the San Diego Convention Center, she discussed the notion of member city equity when the Board considers projects for each of the diverse areas of the San Diego tidelands. She recommended that Barrio Logan have a separate impact fund. Ms. Takvorian made a direct request that the policy include a provision to allow stakeholders, such as impacted residents, to propose projects for the off-tideland category.

Commissioner discussion ensued. Commissioner Smith thanked staff and the stakeholders. He discussed the efforts of the Ad-Hoc Committee regarding the process. In an effort to amend BPC Policy No. 120, he explained that the goal of the committee was to bring forward a balanced and fair policy with procedures that would serve the needs of the stakeholders, the member cities and the District. He acknowledged that the funding level allocated to the Marine Terminal Enhancement Fund was a floor and not a ceiling. Commissioner Smith discussed the merits of off-tideland projects. He

offered a motion directing staff to take the policy and return with a revised BPC Policy No. 120 reflecting the framework developed and then work on developing the follow-on items and ideas. Some of the examples of follow-on items were the development of forms and evaluation schedules.

Commissioner Burdick seconded the motion. She thanked Commissioner Smith for his efforts to move through the process. She stated her feeling that it demonstrated the District's commitment to being transparent and accountable concerning how projects from the communities, stakeholders and members cities would be considered as part of a cohesive, well thought out Capital Improvement Program. Discussing the history of the creation of the Marine Terminal Enhancement Fund related to SB 1039, she offered that the current funding allocation was "seed money" for the types of projects necessary to mitigate the effects of on-tideland operations, on off-tideland areas and in adjacent neighborhoods. In response to a recommendation from former Senator Denise Ducheny, Commissioner Burdick discussed the merits of developing a comprehensive planning district from the 10th Avenue Marine Terminal to the National City Marine Terminal and shared the benefits of involving the U.S. Navy and all the vested stakeholders in the joint planning efforts. She acknowledged the revisions suggested by the Board and explained she looked forward to the item returning for consideration.

Commissioner Valderrama thanked the Ad-Hoc Committee members for their efforts. He expressed his support for moving forward with the revised policy to fulfill the District's commitments related to SB1039.

Commissioner Moore thanked the Ad-Hoc Committee members and the staff for their work. She discussed the merits of the new process and offered that it was clear, consistent, transparent, and an improvement for all the involved parties.

Commissioner Peters added his thanks to the members of the Ad-Hoc Committee for their attention to detail, and expressed support for the motion.

Commissioner Nelson thanked the Ad-Hoc Committee members for their aid in assisting him with understanding the process and policy down to the core. He expressed his support for the motion without any reservation.

On a motion by Commissioner Smith, seconded by Commissioner Burdick, the Board directed staff to return with a revised BPC Policy No. 120 reflecting the framework developed and prepare the necessary processes to move forward with the Capital Improvement Program, by the following vote: Yeas-Burdick, Malcolm, Moore,

Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION TO AUTHORIZE AGREEMENT WITH SAN DIEGO ARMED FORCES YMCA – JULY 4 FIREWORKS TO ADD BARGES FOR CHULA VISTA AND IMPERIAL BEACH TO THE PORT OF SAN DIEGO BIG BAY BOOM JULY 4, 2011 EVENT FOR A TOTAL OF \$115,000 IN SPONSORSHIP DOLLARS AND AN ESTIMATED \$70,000 IN DISTRICT SERVICES

Agenda Item 23. Rita Vandergaw, Director of Business Development and Marketing, addressed the Board with a presentation regarding a Resolution to Authorize an Agreement with San Diego Armed Forces YMCA – July 4 Fireworks to add barges for Chula Vista and Imperial Beach to the Port of San Diego Big Bay Boom July 4, 2011 Event for a total of \$115,000 in sponsorship dollars and an estimated \$70,000 in District Services and requested their consideration. She discussed the merits of expanding the program and the benefits to the District's public relations campaign. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Sandy Purdon, San Diego Armed Services YMCA, addressed the Board in favor of the staff recommendation; he thanked staff for their assistance and stated that he was available for any questions.

Commissioner discussion ensued. Commissioner Valderrama thanked Mr. Purdon for his support of the Port of San Diego Big Bay Boom events. He acknowledged the public relations benefit of the program and stated his overall support for celebratory fireworks on the Bay and throughout the county. Commissioner Valderrama expressed his concerns that the request had been made outside of the normal project review process. He explained that 37 organizations had been denied funding due to the Board's previous action to suspend the Financial Assistance Program for FY10-11, and he questioned as to whether such an action may be precedent setting and could open the door to other requests to approve funding individual projects outside of the standard process.

Commissioner Moore offered that the proposal was consistent with activating the tidelands throughout the District. She reiterated the marketing benefits of the program and noted that there would be businesses in the cities of Chula Vista and Imperial Beach that gain exposure from the fireworks display. Commissioner Moore discussed the process issue and explained that while she appreciated Commissioner Valderrama's concerns, she felt the issue was an exception in that the recipient was a member city

seeking to activate their waterfront and increase revenues to businesses on the tidelands.

Commissioner Malcolm echoed Commissioner Moore's comments regarding the fireworks program and he found it an appropriate opportunity to activate the waterfront. Despite the suspension of the Financial Assistance program and upon consideration of the benefits, he stated that the authority to approve the matter rested with the Board.

Commissioner Smith explained that he liked fireworks. Relating to Commissioner Valderrama's remarks, he expressed his conflicts with considering financial support requests outside of the budget cycle or proposals that were not part of the standard funding considerations sequence. He explained that he felt the fireworks were an annual event, thus he did not view the matter under consideration as a singular event. He offered comments about fairness, the benefit of reviewing requests in consideration of the overall budget, and the merits of projects competing on equal footing for a limited amount of resources. Commissioner Smith cautioned that approving the matter might open the door for other singular events that could be brought forward for consideration.

Commissioner Nelson requested and received clarification regarding the reasoning that Chula Vista and Imperial Beach had not been included as part of the overall Big Bay Fireworks event. Ms. Vandergaw explained the history of the funding request from Imperial Beach. She discussed the direct return on investment criteria established for an applicant's event to receive funding from the District's Marketing/Fee for Service program. Ms. Vandergaw offered that in the case of the Imperial Beach fireworks the applicant determined it would not meet the Marketing/Fee for Service program criteria and opted to apply for funding via the Financial Assistance Program. Commissioner Nelson stated that while he saw both sides of the issue and that it would be easy to support the Independence Day event, he is a big believer in process and to support the recommendation would not feel consistent with his belief that good process is good government. He further explained that he hoped that the member city constituents and staff understood his position was not a lack of support for them being included and he hoped that they were included in next year's program.

Chairman Peters acknowledged the comments from Commissioner Valderrama and Commissioner Smith regarding fairness and stated that in most cases the District should really try to adhere to the process. While he acknowledged that consideration of the request was not according to the process, he explained that, in his view, it was a better thing for the District to move forward to provide some funding for fireworks in

the south bay as well as in San Diego. Chairman Peters also offered that the process be amended to accommodate projects which the Board determined as important. He stated that when considering two imperfect options, having fireworks all along the Bay would be the better one.

Commissioner Valderrama offered remarks regarding his support of each member city having the financial means to activate their respective waterfront; discussed the premise under which the program was originally established; and offered that the Financial Assistance Program was designed to offer an equal level of funding for each member city to sponsor an event.

Commissioner Moore offered a motion to approve the staff recommendation. Commissioner Malcolm seconded the motion.

Mr. Purdon was recognized by Chairman Peters, and offered clarification regarding the application process and explained the 18-month advance timeline required to secure funding for the program. He discussed his desire to bundle together funding requests for all of the member cities to allow for fireworks displays on the entire bay.

In light of the suspension of the Financial Assistance Program, Commissioner Malcolm offered additional remarks regarding the concerns raised regarding the process under which the action was being considered.

On a motion by Commissioner Moore, seconded by Commissioner Malcolm, the Board adopted **Resolution 2011-40**, to Authorize Agreement with San Diego Armed Forces YMCA – July 4 Fireworks to add barges for Chula Vista and Imperial Beach to the Port of San Diego Big Bay Boom July 4, 2011 Event for a total of \$115,000 in sponsorship dollars and an estimated \$70,000 in District Services, by the following vote: Yeas-Burdick, Malcolm, Moore, Peters; Nays-Nelson, Smith, Valderrama; Excused-None; Absent-None; Abstained-None.

PRELIMINARY PROJECT REVIEW AND DIRECTION TO STAFF TO CONDUCT ENVIRONMENTAL REVIEW FOR A PUBLIC PARKING AND INTERMODAL FACILITY AT PALM STREET AND PACIFIC HIGHWAY

Agenda Item 20. Tony Gordon, Senior Asset Manager, Real Estate Department, addressed the Board with a presentation regarding the Preliminary Project Review and sought direction to conduct an environmental review for a Public Parking and an

Intermodal Facility at Palm Street and Pacific Highway. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Nelson requested and received confirmation from Mr. Gordon that the proposed plan was to be developed in such a manner that it would work with the future phases of the Destination Lindbergh Draft Concept at San Diego International Airport and Lindbergh Field. Since truck staging currently takes place on airport property, Commissioner Nelson requested clarification regarding the District planning efforts for alternative locations for staging trucks that service the San Diego Convention Center and the cruise ship terminal. Regarding the staff analysis of the matter, Mr. Gordon explained staff was looking at a vacant parcel underneath the flyover on Pacific Highway and Sassafras as well as a parcel under the jurisdiction of CalTrans.

Commissioner Valderrama requested clarification regarding the fiscal impact section of the staff report. Candice Disney Magnus, Associate Redevelopment Planner, Environmental and Land Use Management Department, confirmed that staff would seek a funding allocation for the environmental review analysis expenses in the FY11-12 Environmental and Land Use Management Department budget.

Commissioner Smith thanked staff and expressed his support for the proposed project. He requested clarification as to whether the District could move ahead with the project separate and apart from the Destination Lindbergh plan under the California Environmental Quality Act (CEQA). Referencing the San Diego International Airport plans for a Consolidated Rental Car Facility and the North-side Improvements Plan, Ms. Disney Magnus explained that a cumulative analysis, including the District project, would be considered and mitigated accordingly. Commissioner Smith offered a motion to accept the staff recommendation. Commissioner Burdick seconded the motion.

On a motion by Commissioner Smith, seconded by Commissioner Burdick, the Board directed staff to proceed with the environmental review for the Palm Street Parking and Intermodal Facility, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION SELECTING AND AUTHORIZING AN AGREEMENT WITH PUBLIC WORKS, INC. TO PROVIDE SERVICES IN SUPPORT OF ACTIVATION OF THE PORT TIDELANDS FOR A PERIOD OF FOUR YEARS AND THREE MONTHS AND APPROVING FUNDING FOR THE FIRST YEAR AND THREE MONTHS IN AN AMOUNT NOT TO EXCEED \$195,000

Agenda Item 22. Brandy Christian, Vice President, Strategy and Business Development, addressed the Board with a presentation regarding a Resolution Selecting and Authorizing an Agreement with Public Works, Inc. to provide services in support of activation of the Port Tidelands for a period of four years and three months and approving funding for the first year and three months in an amount not to exceed \$195,000. She turned the presentation over to Jim Hutzelman of the Business Development and Marketing Department who discussed the scope of work and staff recommendation. Mr. Hutzelman turned the presentation over to Lewis Siris, President, Public Works Inc. who briefed the Board regarding his company and its work. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Burdick welcomed the staff recommendation, discussed the importance of finding the best use of the District's resources, and offered that hiring a management firm was a proactive approach to managing the activation of the waterfront. With respect to the contract, she discussed her concerns with the contract being awarded, and called it "too broad" in some respects and "too narrow" in others. Commissioner Burdick reiterated her commitment to activating the waterfront in all of the five member cities and cautioned that the resources may be "spread too thin" when considering the entire waterfront area. She offered that beginning with a more narrow focus might prove to be more appropriate. Commissioner Burdick noted the absence of any focus on a plan to activate the North Embarcadero. She expressed concern that there was nothing in the contract specifically targeting the North Embarcadero to feed into Port Master Plan Amendment (PMPA) process. She supported the award of the contract and urged that staff focus the efforts of the contractor to ensure the success of the program.

Commissioner Valderrama expressed his support for the staff recommendation. He noted that the staff reported in the fiscal impact statement that the expenditure had not been anticipated during the development of the FY10/11 Operating Budget yet the required funds were identified in anticipated savings in the District's FY10/11 Operating Budget. He requested clarification as to the total sum of the FY10/11 Operating Budget anticipated savings and suggested that the Board consider the allocation of such savings. Jeff McEntee, CFO/Treasurer, explained that at the present the figures showed an under spending of approximately \$1 million and staff was finalizing a process in

which departments were re-examining their anticipated spending levels and unanticipated budgetary needs. Mr. McEntee confirmed that \$2 million in unbudgeted revenue had been recently received.

Commissioner Smith thanked staff and explained that he shared many of Commissioner Burdick's concerns. He offered that with 33 miles of waterfront, the District was trying to implement a program and doing a proof of concept. In light of the needs for programming around Harbor Drive, he discussed his concerns regarding the implementation of a program in the first year and queried as to whether it was possible to serve all of the stakeholders' needs without diluting the contractor's efforts. Commissioner Smith offered a motion to accept the staff recommendation. Commissioner Burdick seconded the motion.

Chairman Peters requested that staff address the Commissioners' concerns. Regarding the North Embarcadero, Mr. Hutzelman explained that it was staff's intent to reach out to all stakeholders to ensure that form and function work together when moving forward with Phase 1 of the North Embarcadero Visionary Plan.

Mr. Siris discussed his skill set for multi-tasking and acknowledged that he would take direction regarding the District's priorities and use similar process methods to develop concepts for implementing location specific events around the tidelands.

Darlene Nicandro, Director, Environmental and Land Use Management Department, addressed the Board and explained that the North Embarcadero Visionary Plan Phase 1 Team and the Port Master Plan Amendment Team had been working very closely with the District's Strategy, Business Development and Marketing group to help to activate the waterfront. She explained that the events were considered to be concurrent with the existing and certified land uses in the Port Master Plan. She offered examples that included park uses, which maximize and promote coastal and public access opportunities and recreational opportunities along the Bayfront, which were called for in the Coastal Act. She stated that those types of events facilitate consistent uses and therefore do not require a PMPA and therefore staff recommended it not be included in the PMPA.

Chairman Peters expressed his support for trying the new program and suggested that an evaluation of the economic benefit be completed regarding the activation of the waterfront.

Responding to Ms. Nicandro's remarks, Commissioner Burdick clarified her earlier comments. She stated that she did not suggest a Port Master Plan Amendment would

be necessary to activate the waterfront. She explained that the District was involved in a Port Master Plan Amendment process and looking at potentially reconfiguring the land use decisions all along the North Embarcadero and the activation recommendations would facilitate making informed land use decisions. She reiterated that as staff manages the contract they remain aware that activation efforts should support making informed land use decisions.

On a motion by Commissioner Smith, seconded by Commissioner Burdick, the Board adopted **Resolution 2011-39**, Selecting and Authorizing an Agreement with Public Works, Inc. to provide services in support of activation of the Port Tidelands for a period of four years and three months and approving funding for the first year and three months in an amount not to exceed \$195,000, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

ADOPTING REVISIONS TO BPC POLICY NO. 110 - PROCEDURE FOR THE ADMINISTRATION OF CONTRACTS, AGREEMENTS, AND THE PURCHASING OF SUPPLIES, MATERIALS, AND EQUIPMENT

Agenda Item 24. On a motion by Commissioner Nelson, seconded by Commissioner Valderrama, the Board adopted **Resolution 2011-41** Adopting Revisions to BPC Policy No. 110 - Procedure for the Administration of Contracts, Agreements, and the Purchasing of Supplies, Materials, and Equipment, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION AMENDING BPC POLICY NO. 021, MEETINGS OF THE BOARD OF PORT COMMISSIONERS

Agenda Item 29. Commissioner Smith offered a motion to accept the staff recommendation. Commissioner Malcolm seconded the motion.

Commissioner discussion ensued. Commissioner Burdick expressed two concerns. The first regarding the draft wording, Commissioner Burdick requested that the term "ex parte disclosures" be changed to read "ex parte communications." Duane Bennett, Port Attorney, acknowledged her request. Secondly, she offered that the definition of ex parte communications was not satisfactory and discussed what she felt constituted ex parte communications. She explained that in her experience whether the communication goes to the substance of the quasi-judicial proceeding it was clearly an ex parte communication; however if it goes to the procedure it should not be

considered an ex parte communication. She requested that the matter be tabled for further consideration and requested that the definition of ex parte communication be clarified for the benefit of members of the public communicating with the Board regarding quasi-judicial proceedings.

Commissioner Nelson associated himself with Commissioner Burdick's comments. In an effort to set forth a good policy, he queried as to whether excluding the disclosure of discussions with elected officials from an appointing member city would be appropriate.

Commissioner Moore clarified that the policy does not prohibit ex parte communication. She stated that should the Chairman call for such a disclosure, the policy would provide a means for reporting such communications on matters dealing with quasi-judicial matters but not legislative matters.

Chairman Peters responded that it was appropriate to send the matter back to staff for additional refinement. He explained the benefits of the policy to stakeholders as well as District staff. He discussed efforts to create an accurate record and the desire to disclose everything that the Board considers as part of the record in order to make a decision on quasi-judicial matters, which are evidentiary. Chairman Peters offered that it was fair for staff to know whom a Commissioner had contact with for the record and it was as a matter of transparency for the public.

Commissioner Moore suggested that the policy clarify what defines a quasi-judicial matter in simple and understandable terms.

Chairman Peters discussed using the agenda listing to note which items would require such disclosures. He offered that there was consensus to continue work on the policy and suggested that Commissioner Burdick assist with the draft and review.

RESOLUTION AMENDING BPC POLICY NO. 105 PROCEDURES TO INCREASE THE MINIMUM THRESHOLD FOR STAFF NOTIFICATION TO THE BOARD FOR TRANSFER OF ACCOUNTS RECEIVABLE TO CONTINGENT ACCOUNTS RECEIVABLE, AND WRITE OFF OF CONTINGENT ACCOUNTS FROM \$1,000 TO \$5,000

Agenda Item 25. On a motion by Commissioner Smith, seconded by Commissioner Nelson, the Board adopted **Resolution 2011-42** Amending BPC Policy No. 105 procedures to increase the minimum threshold for staff notification to the Board for transfer of Accounts Receivable to Contingent Accounts Receivable, and write

off of contingent accounts from \$1,000 to \$5,000, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION AMENDING BPC POLICY NO. 021, MEETINGS OF THE BOARD OF PORT COMMISSIONERS

The motions to accept the staff recommendation for approval of Action Agenda 29 were withdrawn.

Agenda Item 29. On a motion by Commissioner Smith, seconded by Chairman Peters, the Board continued the item regarding consideration of a Resolution Amending BPC Policy No. 021, Meetings of the Board of Port Commissioners and referred the matter back to staff for further clarification, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

GOVERNMENT & COMMUNITY RELATIONS

Agenda Item 26. Shahriar Afshar, Director, Government and Community Relations, addressed the Board with a presentation and update regarding legislative and policy issues and discussed stakeholder dialogues on matters that affect the District. Mr. Afshar introduced Michele White, Environmental Policy Manager, Government and Community Relations and the District's Sacramento lobbyist, Jonathan Clay of Carpi and Clay. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Mr. Clay addressed the Board with a Sacramento legislative and policy update. He presented a co-sponsorship request from Senator Christine Kehoe regarding Senate Bill 623 regarding banning copper in marine anti-fouling paint. He addressed some of the concerns raised by Port tenants and potential unintended economic impacts on tideland related businesses.

Commissioner discussion ensued. Commissioner Smith requested and received clarification that it was not a requirement to be a member of the legislature to be co-sponsors of a State bill in Sacramento, nor was he aware of any other local governmental agency that was formally approached.

Alicia Glassco, San Diego Coastkeeper, addressed the Board and urged consideration of co-sponsoring SB 623.

Sharon Cloward, San Diego Port Tenants Association, announced that the SDPTA Board had not taken a position regarding the SB 623 co-sponsorship. She expressed the concerns regarding the impacts of the proposed bill on the tideland businesses that service U.S. Navy contracts, the related expenses for local boaters, and questioned the source of the copper in Shelter Island in relationship to the Total Maximum Daily Load (TMDL) program under Clean Water Act (CWA).

Chairman Peters requested and received confirmation from Ms. Cloward that the tenants did not take a position on whether the District should support or oppose the bill and the matter was included on the docket for their upcoming meeting.

Commissioner Nelson commented on the sentiments he observed by some port tenants and members of the boating community in questioning the science used to measure the environmental effects by the use of copper-based hull paint. He offered that the questions were legitimate and discussed the need to address the concerns. He also requested and received confirmation from staff that the District remained under an order to reduce the copper load in the Shelter Island water basin. He encouraged staff to continue the dialogue and inform boaters of alternatives for copper bottom paint. While he expressed his appreciation of the bill, Commissioner Nelson stated concerns about the practicality of the 2015 implementation date shown in the bill. He suggested that the Board support a move toward some kind of gradual compliance program that could possibly be linked to the sale of a vessel. He recognized that there would be consequences regardless of how the District proceeds to comply with the order. Commissioner Nelson expressed his hope that before the Board weighed in on the matter that some analysis could take place; and, by working with the Port Tenants Association, a model could be completed to determine what compliance method could offer the least economic disruption to tenants and boaters. Responding to Ms. Cloward's comments regarding the port tenants' work with the U.S. Navy, he explained that he was unaware of any requirements mandating a specific hull paint for U.S. Navy ships but would keep the matter under consideration.

Commissioner Burdick requested clarification from Mr. Clay as to whether port tenants would be at risk of an enforcement action in which the use of copper paint was required to service U.S. Navy vessels. He responded that the U.S. Navy had expressed that concern because the bill's current structure bans the manufacture, sale and distribution of copper paint in California. Mr. Clay explained that the U.S. Navy had approached Senator Kehoe and presented language from what they would see as an exemption, and that pre-empted the State bill requirements at the Federal level. He also explained that the Senator understood the types of impacts the bill may have on ship builders and boatyards, and she was trying to weigh how those impacts were

factored into the equation. In response to Commissioner Nelson's comments, Mr. Clay explained the bill does not envision checking the type of paint on vessels, but focusing on banning the sale of such paint. Thus, the matter would be addressed through natural attrition, and boat owners would be presented with a different menu of option for products when they found hull painting necessary. Regarding the timeline, he explained that an implementation date of 2020 or somewhere a little further out was more probable. Commissioner Burdick confirmed Mr. Clay's recommendation regarding the benefits of co-sponsoring the bill and participating in the process. She explained the Board adopted a resolution making a commitment to do everything reasonably necessary to reduce copper in the marinas and the bay and expressed her belief that co-sponsoring the bill was consistent with the previous action. She requested and received confirmation from Mr. Clay that the Board could withdraw the District's co-sponsorship in the future. She explained that the bill would address the concerns expressed by the port tenants regarding requests to paint boat hulls with copper-based paints and would increase the range of discretion and enforcement alternatives. In the event that other marinas in the State were not required to adhere to similar copper level requirements, she offered that the bill addressed what could be considered a potential anti-competitive impact on the District by being under the TMDL. Commissioner Burdick offered a motion that the District undertake to co-sponsor the bill; participate in the process and discuss the issues raised by Port Tenants Association; and if at any point in time District staff or lobbyists became concerned that the bill discussion was taking a direction that was contrary to the interests expressed, the Board be made immediately aware of the situation.

Chairman Peters requested that Commissioner Burdick consider adding to her motion the development of a transition plan that accommodates District boat owners and tenants.

Commissioner Burdick explained that the bill currently includes a phase-out plan but she would expect that by participating as a co-sponsor that would be one of the elements discussed. She agreed to amend her motion.

Commissioner Smith seconded the motion and the amendment.

Commissioner Valderrama expressed support for the motion and discussed the importance of participating in the process.

Commissioner Malcolm stated that he could support the motion under the provision that the Board was provided with additional information regarding the timeline, the proposals, and specific impact to the District, port tenants and

stakeholders. He addressed his concerns and requested specifics as the enforcement agency required to achieve a 76% reduction in the TMDL by 2021.

Chairman Peters concurred with the expressed concerns. Responding to Commissioner Malcolm's remarks, he explained the environmental stakeholders and the boat owners concurred that the only means to reduce the TMDL level was to eliminate copper paint. He noted that last year the District sent a letter addressing the matter and requested direction from the State. Chairman Peters offered his support of the motion and that support of the bill was the appropriate approach and a means to develop a transition plan for recreational boaters and for the ship repair and ship building industry. Regarding the U.S. Navy, he offered that they had a means to address the matter, but Chairman Peters explained that he was not against the U.S. Navy adopting a transition plan as well.

Commissioner Smith discussed the basics of water quality and stated that heavy metals are cumulative in higher animals and a number of heavy metals have proved to be toxic. He expressed the benefit of participating in the process and supported co-sponsoring SB 623.

Commissioner Nelson requested and received clarification as to whether the U.S. Navy was required to follow the State of California regulations. Commissioner Nelson queried as to whether it was possible to offer the bill with an undefined implementation date. Mr. Clay clarified that while the bill could have an undefined implementation date, however by doing so it could have been labeled as a spot bill, and referred to committee. Mr. Clay also discussed the likelihood that amendments to the bill would be made before the first hearing as early as April 4, 2011. Commissioner Nelson requested and received confirmation that should the Board so desire, the District's name could be removed as a sponsor. He acknowledged Commissioner Smith's remarks. Concluding his comments, Commissioner Nelson offered that in light of the proximity to Ensenada, Mexico, some boat owners may opt to employ hull-painting services that would not fall under the same mandates that disallow the use of copper paint.

On a motion by Commissioner Burdick, seconded by Commissioner Smith, the Board adopted **Resolution 2011-43** that the Board authorizes the District to become a co-sponsor of SB 623 Banning Copper in Marine Antifouling Paint by 2015 subject to the following conditions: the District would be able to participate in discussions regarding SB 623 and provide input; and part of any discussion should be focused on exact issues raised by the San Diego Port Tenants association; and if at any point in time, District staff or the District lobbyist becomes concerned that said SB 623 is taking a direction contrary to interests expressed at the Board Meeting held on March 8, 2011

and that the Board be immediately advised; and a transition plan be developed that accommodates boat owners located in San Diego bay and District tenants, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Mr. Afshar requested Board direction to send a letter of support Assembly Bill 206 (Harkey) exempting municipal fireworks shows under the California Environmental Quality Act (CEQA) from requiring a permit from the California Coastal Commission.

Commissioner Smith offered a motion in support of the staff recommendation, which was seconded by Commissioner Burdick.

Mr. Clay offered additional clarification regarding AB 206.

Duane Bennett, Port Attorney, remarked that he recognized the CEQA and Federal Clean Water Act implications related to the firework displays; and he also offered that the board might wish to consider those issues made before taking action on such a policy as the District acts as the environmental steward of San Diego Bay.

Chairman Peters requested and received confirmation from Mr. Bennett that the bill does not affect the Regional Water Quality Control Board jurisdiction and the requirement remains for acquiring the necessary permits. Chairman Peters stated that the permit is the means by which the District administers the Clean Water Act.

Mr. Clay offered additional background on the AB 206 and discussed the probability of the bill moving out of the policy committee hearing.

On a motion by Commissioner Smith, seconded by Commissioner Burdick, the Board directed staff to submit a letter of support for AB 206 (Harkley), exemption for municipal fireworks shows, by the following vote: Yeas-Burdick, Malcolm, Moore, Peters, Smith; Nays-Nelson, Valderrama; Excused-None; Absent-None; Abstained-None.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE MEETING OF APRIL 12, 2011

Agenda Item 27. Commissioner Smith requested that staff consider forming a year-over-year budget analysis and review for presentation at an upcoming meeting. Wayne Darbeau, Executive Director, acknowledged the request and offered that the budget review schedule be maintained as proposed. Responding to Commissioner Moore's request for clarification, Duane Bennett, Port Attorney, stated that it was his

intent to add an update regarding the South Bay Power Plant matter to the proposed agenda for the Closed Session of April 12, 2011.

On a motion by Commissioner Valderrama, seconded by Commissioner Malcolm, the Board adopted the proposed agenda for the meeting of April 12, 2011, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

WAIVING BPC POLICY NO. 110 AND AUTHORIZE STAFF TO ENTER INTO A SOLE SOURCE PURCHASE AGREEMENT WITH METALCRAFT MARINE INC. FOR THE PROCUREMENT OF THREE MARINE FIREFIGHTING/HARBOR PATROL AND HOMELAND SECURITY VESSELS UTILIZING PORT SECURITY GRANT PROGRAM FUNDS (PSGP) FOR A TOTAL PRICE NOT TO EXCEED \$3,162,000

Agenda Item 28. Item continued to a future Board meeting.

OFFICER'S REPORT

Agenda Item 30. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director or designee, were reported:

- A) Change Order No. 3 for \$49,706.99 and 0 Calendar Days, to Contract No. 2007-25 with Miller Environmental, Inc. for TDY Site Demolition Project Phase 1, San Diego, California.
- B) Change Order No. 20 for \$112,879.00 and 0 Calendar Days, to Contract No. 2008-27 with Jaynes Corporation of California for Broadway Pier Cruise Ship Terminal, San Diego, California.
- C) Change Order No. 4 for 10 Calendar Day Time Extension thru 2/25/2011 to Contract No. 2010-13 with Remedial Civil Constructors, Inc. for L-Ditch Habitat Replacement, Chula Vista, California.
- D) Change Order No. 1 for \$1,195.00 and 5 Calendar Days to Contract No. 2010-20 with JJJ Enterprises for Administration Annex Fire Alarm System Installation, San Diego, California.
- E) Change Order No. 1 for \$1,357.99 and 15 Calendar Days, to Contract No. 2010-29 with Neal Electric, Inc. for Broadway Pier Port Pavilion Public Art and IT System Electrical Work, San Diego, California.
- F) Change Order No. 2 for 44 Calendar Day Time Extension thru 3/11/2011 to Contract No. 2010-29 with Neal Electric, Inc. for Broadway Pier Port Pavilion Public Art and IT System Electrical Work, San Diego, California.

PRESIDENT'S REPORT

Agenda Item 31. John Bolduc, Harbor Police Chief, reported out to the Board with the staff participation regarding the Centennial of Naval Aviation Event on February 12, 2011. He then announced that District staff from the Harbor Police, Homeland Security and Corporate Communications departments participated in a nation-wide program called the Solid Curtain-Citadel Shield 2011 Harbor Police/NRSW, a Navy Region Southwest Anti-Terrorism Exercise, conducted in late February. (A copy of the presentation is on file in the Office of the District Clerk.)

COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING

Agenda Item 32. Chairman Peters offered words of remembrance regarding the passing of Mark Coniglio, husband of Randa Coniglio, Vice President of Operations.

Commissioner Valderrama acknowledged the management skills of Chairman Peters and his ability to conduct a productive Closed Session and Regular Meeting.

Commissioner Nelson offered to participate in an upcoming RC44 Championship Tour Regatta debriefing.

On a motion by Commissioner Nelson, seconded by Commissioner Burdick, the Board approved that the March 8, 2011 regular meeting be adjourned in memory of Mark Coniglio, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

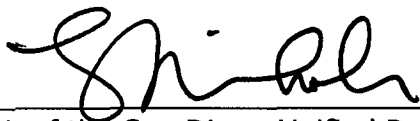
March 8, 2011

page 79

A handwritten signature in cursive script, appearing to read "A. Moore", positioned above a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "Shirley", positioned above a horizontal line.

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 10:01 a.m., Tuesday, April 12, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett.

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

CLOSED SESSION

Celia Brewer, Assistant Port Attorney, announced the closed session agenda as follows:

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: South Bay Power Plant Consisting of Approximately
115 Acres of Property located South of J Street and
West of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services,
Beck Mayberry, Manager, Asset Management West,
and Daniel Thompson, Vice President, West Region
Operations, Dynegy South Bay, LLC;
Randa Coniglio, Irene McCormack, Kristine Zortman,
SDUPD

Under Negotiation: Price and Terms

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Subdivision (b)(1) of Government
Code Section 54956.9:

One Case

Agenda Item 5.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Subdivision (a) of Government Code Section 54956.9:

City of San Diego v. National Steel & Shipbuilding Company, SDUPD, et al.
United States District Court, Southern District of California,
Case No. 09 CV 2275-W-WVG

Agenda Item 6.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Subdivision (a) of Government Code Section 54956.9:

Kelcy Davis v. SDUPD, San Diego Harbor Police Department;
Corporal Laura Sweeney, et al.
San Diego Superior Court No. 37-2010-00101008-CU-OE-CTL

Agenda Item 7.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9:

Four Claims

Agenda Item 8.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9:

SDUPD v. Northwestern National Insurance Company, Does 1-100, Inclusive
San Diego Superior Court No. 37-2010-00088414-CU-BC-CTL

Agenda Item 9.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: Hilton San Diego Bayfront Hotel located at
One Park Boulevard, San Diego

Negotiating Parties: Greggory Rockett, Hilton Worldwide
Randa Coniglio, Irene McCormack, Shahriar Afshar, Karen
Weymann, Nick Markos, SDUPD

Under Negotiation: Price and Terms

There was no formal or reportable action as to any closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

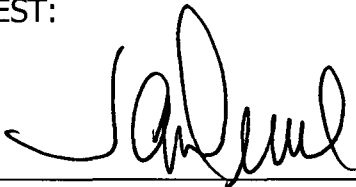
April 12, 2011

page 83



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:00 p.m., Tuesday, April 12, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, and McEntee.

Absent: No Commissioners absent.

Excused: Commissioner Burdick excused for Port Business.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Commissioner Smith led the Pledge of Allegiance.

PRESIDENT'S REPORT

Agenda Item 18. Kelly Falk, Asset Manager, Real Estate Department, addressed the Board with a presentation in memory of founding District tenant, Jerry Driscoll. Mr. Falk acknowledged the members of the Driscoll family who were present at the Board meeting.

John Bolduc, Chief of Harbor Police, introduced Commander CDR Chris Conley and Lieutenant Commander Dean Jordan, U.S. Coast Guard. The Coast Guard representatives acknowledged the response by Harbor Police Officers and District dispatchers to the grounding of the *Sea Venture II* charter vessel on June 19, 2010. Coast Guard Meritorious Team Commendations were presented to the following employees: Harbor Police Officer Nino Williams, Harbor Police Officer Kris Sarka, Harbor Police Officer Shawn Woody, Harbor Police Officer Bob Twardy, Lead Dispatcher Sara

Welch, Dispatcher Susie Blake and Dispatcher Aimee Fearey. (A copy of the presentation is on file in the Office of the District Clerk.)

APPROVAL OF MINUTES

Agenda Item 3. On motion of Commissioner Malcolm, seconded by Commissioner Smith, the Board approved the minutes for the special meeting of February 25, 2011, special meeting of March 8, 2011, and regular meeting of March 8, 2011 by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Burdick; Absent-None; Abstained-None.

PUBLIC COMMUNICATIONS

Agenda Item 4. Don Laun, President and Executive Director of Sailing Events Association San Diego, (SEA San Diego) addressed the Board with an update on efforts to bring world-class sailing regattas to San Diego and announced the negotiation of a Memorandum of Understanding with the World Cup Association. He thanked the Board and staff for their assistance during the negotiations and the creation of a proposed agreement for consideration at the May 10, 2011 regular Board meeting. He then played a video of a news broadcast featuring the sailing competitions in New Zealand.

CONSENT AGENDA

Chairman Peters requested that Laura Nicholson, Deputy District Clerk, announce any suggested docket changes. Ms. Nicholson announced the proposed changes to the agenda as follows: **Consent Agenda Item 6**, Resolution Adopting Plans and Specifications and Awarding Contract No. 2010-25 to {company name} for NCMT to Admin Bldg Wireless Connectivity in the amount of {dollar amount}, staff requests this item be continued to a future Board meeting; **Action Agenda Item 9**, Ordinance Granting Option Agreement with Sunroad Marina Partners, LP for new 55 Year Lease for a 175 room hotel on Harbor Island, staff requests this item be continued to a future Board meeting; **Action Agenda Item 13**, Resolution Adopting the Findings of the Mitigated Negative Declaration Prepared by the California Department of Boating and Waterways and Authorize Staff to File the Notice of Determination, staff announced Board action was no longer required; **Presentation Agenda Item 15**, Presentation on Port of San Diego cruise strategy and Update on "B" Street Cruise Terminal Improvements Design, staff requests this item be continued to a future Board meeting; and **Presentation Agenda Item 16**, Presentation on Downtown San Diego Wayfinding and Signage Program by Centre City Development Corporation, staff requests this item be continued to a future Board meeting;

On motion of Commissioner Smith, seconded by Commissioner Nelson, the Board accepted the suggested changes to the agenda by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Burdick; Absent-None; Abstained-None.

RESOLUTION WAIVING BPC POLICY NO. 110 AND AUTHORIZING STAFF TO ENTER INTO A SOLE SOURCE PURCHASE AGREEMENT WITH METALCRAFT MARINE INC. FOR THE PURCHASE OF THREE MARINE FIREFIGHTING/ HARBOR PATROL AND HOMELAND SECURITY VESSELS UTILIZING PORT SECURITY GRANT PROGRAM FUNDS FOR A TOTAL PRICE NOT TO EXCEED \$3,162,000

Agenda Item 5. Sharon Cloward, Port Tenants Association, addressed the Board with concerns regarding the staff recommendation to award a sole source agreement to a firm that was not based in San Diego. She offered that local tenants were capable of fulfilling the District's requirements for the customized firefighting/harbor patrol and homeland security vessels.

Commissioner Valderrama requested and received clarification as to whether any local boatyards had been considered. Wayne Darbeau, Executive Director, offered that he personally visited a local boatyard with the capacity to build good vessels. He explained that the vessels under consideration were a proprietary design that the local boatyard could not fulfill and then discussed the benefits of maintaining a standardized vessel platform, which meet federal standards. During his concluding remarks, Mr. Darbeau explained that he had requested staff investigate local suppliers when considering the future procurement of other sorts of vessels.

Commissioner Smith offered a motion to approve the staff recommendation. He acknowledged Ms. Cloward's remarks and explained the benefits of procuring the commercial off-the-shelf vessels offered by the proposed supplier.

On motion of Commissioner Smith, seconded by Commissioner Valderrama, the Board adopted Resolution 2011-44, Waiving BPC Policy No. 110 and Authorizing staff to enter into a Sole Source Purchase Agreement with Metalcraft Marine Inc. for the purchase of three Marine Firefighting/ Harbor Patrol and Homeland Security Vessels utilizing Port Security Grant Program Funds for a total price not to exceed \$3,162,000, by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Burdick; Absent-None; Abstained-None.

Agenda Item 6. **Item continued to a future Board meeting.**

ACTION AGENDA

RESOLUTION WAIVING BPC POLICY NO. 357 TENANT PROJECT PLAN AND DEMOLITION OF SOUTH BAY POWER PLANT

Agenda Item 7. Laura Hunter, Environmental Health Coalition, requested the Board's consideration to continue the item to a future meeting to allow stakeholders the opportunity to work with staff and gain more clarity on the process, timeline and project plan.

Commissioner Moore stated for the record that the District and the City of Chula Vista remains committed to expeditiously moving forward with the demolition of the power plant. She acknowledged the importance of all stakeholders being comfortable with the process. Commissioner Moore offered a motion to continue the item to the May 10, 2011 regular meeting of the Board of Port Commissioners. Commissioner Malcolm seconded the motion.

Chairman Peters requested and received confirmation from Kristine Zortman, Area Real Estate Manager, that staff had no objection to the continuance.

On motion of Commissioner Moore, seconded by Commissioner Malcolm, the Board continued Action Agenda Item 7, a Resolution Waiving BPC Policy No. 357 Tenant Project Plan and Demolition of South Bay Power Plant, to the May 10, 2011 regular Board meeting, by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Burdick; Absent-None; Abstained-None.

Celia Brewer, Assistant Port Attorney, offered that the continuance would also allow staff to make a correction to the staff report. She offered that the staff report would be corrected to reflect that only ministerial actions would remain in administering the District's environmental ordinances. Ms. Brewer offered that it was likely that additional information would be added to the staff report regarding the asbestos abatement and removal process.

RESOLUTION ADOPTING A REVISED BPC POLICY NO. 120 - CAPITAL IMPROVEMENT PROGRAM

Agenda Item 8. Jeffrey McEntee, CFO/Treasurer, stated a correction to the agenda sheet noting that the references to a February 8, 2011 date should have been March 8, 2011. He provided the Board with a presentation and an overview of the revisions to BPC Policy No. 120. He requested the Board consider approving the

Resolution. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Smith thanked Commissioner Burdick, former Commissioner Steve Padilla and the staff who worked on updating the policy. He offered a motion to adopt the revised policy.

Commissioner Valderrama seconded the motion. He also congratulated the members of the ad hoc committee and staff for a job well done.

Chairman Peters echoed Commissioner Valderrama's remarks and thanked Commissioner Smith for his leadership as Chair of the ad hoc committee.

On motion of Commissioner Smith, seconded by Commissioner Valderrama, the Board adopted, **Resolution 2011-45** Adopting a Revised BPC Policy No. 120 - Capital Improvement Program, by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-Burdick; Absent-None; Abstained-None.

ORDINANCE GRANTING OPTION AGREEMENT WITH SUNROAD MARINA PARTNERS, LP FOR NEW 55 YEAR LEASE FOR A 175 ROOM HOTEL ON HARBOR ISLAND

Agenda Item 9. Item continued to a future Board meeting

Commissioner Nelson disclosed that from 1995 to 1999 he held a diminimus interest in a company that was known as Sunstone Properties. He stated that since 1999 he has had no financial dealings with that former company, which had gone through re-organizations of ownership. He stated that he had reviewed the staff report and related materials; discussed the materials with staff; and irrespective of his prior financial involvement he felt that he had no problem making a decision in the public interest on the matter.

ONE PARK BOULEVARD, LLC DBA HILTON SAN DIEGO BAYFRONT HOTEL

- A) RESOLUTIONS CONSENTING TO AGREEMENTS FOR TRANSFER OF OWNERSHIP IN THE LESSEE OF THE HILTON SAN DIEGO BAYFRONT HOTEL.**
- B) RESOLUTIONS CONSENTING TO ITEMS FOR THE REFINANCE OF THE EXISTING HOTEL MORTGAGE**

Agenda Item 10. Nicholas Markos, Senior Asset Manager, Real Estate Department, addressed the Board with an overview presentation regarding the proposed transfer of ownership of One Park Boulevard, LLC dba Hilton San Diego Bayfront Hotel and requested consideration of the matter. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Malcolm disclosed that he met with representatives from Sunstone and District staff to discuss their financial ability to fulfill the terms of the lease, inquiries regarding their debt restructuring were made, and the Commissioner and staff received a commitment that the debt restructuring was completed and there would be no further debt restructuring on any of their assets. He stated that based upon that meeting he believed that Sunstone had met the necessary criteria for approval of the transfer of ownership and for operating the property. Commissioner Malcolm further explained that, while not a condition of the transfer, representatives from Sunstone reiterated their commitment to moving forward with an expansion of the Hilton Hotel and various other items that were important in terms of the Convention Center expansion.

Commissioner Valderrama offered a motion to approve the staff recommendation. Commissioner Smith seconded the motion.

On motion of Commissioner Valderrama, seconded by Commissioner Smith, the Board adopted with a single vote, **Resolution 2011-46** consenting to transfer of East Harbor Property, Inc.'s 75% ownership interest in One Park Boulevard, LLC to Sunstone Park, LLC; **Resolution 2011-47** consenting to sublease from One Park Boulevard, LLC to Sunstone Park Lessee, LLC; **Resolution 2011-48** consenting to assignment, assumption, and amendment of the Management Agreement from One Park Boulevard, LLC to Sunstone Park Lessee, LLC; **Resolution 2011-49** consenting to \$240 million encumbrance by One Park Boulevard, LLC in favor of Aareal Capital Corporation, Aareal Bank AG, Compass Bank, and the Canadian Imperial Bank of Commerce and secured by the Hilton San Diego Bayfront Hotel; **Resolution 2011-50** consenting to Aareal Capital Corporation, Aareal Bank AG, Compass Bank, the Canadian Imperial Bank of Commerce,

and any wholly owned affiliates of said lenders as consented-to lenders and consent-to assignees under the lease; **Resolution 2011-51** authorizing issuance of Estoppel Certificate in favor of Aareal Capital Corporation and **Resolution 2011-52** authorizing issuance of Estoppel Certificate in favor of One Park Boulevard, LLC., by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-Burdick; Absent-None; Abstained-None.

RESOLUTION AUTHORIZING MEMORANDUM OF UNDERSTANDING BETWEEN SAN DIEGO UNIFIED PORT DISTRICT, SAN DIEGO CONVENTION CENTER CORPORATION AND ONE PARK BOULEVARD, LLC CONCERNING THE FUTURE SAN DIEGO CONVENTION CENTER HOTEL AND PHASE III EXPANSION PROJECT

Agenda Item 10.1. Nicholas Markos, Senior Asset Manger, Real Estate Department, addressed the Board with an overview presentation regarding the authorization of a Memorandum of Understanding between San Diego Unified Port District, San Diego Convention Center Corporation and One Park Boulevard, LLC (MOU) concerning the future San Diego Convention Center Hotel and Phase III Expansion Project and requested consideration of the matter. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Peters explained that the District sees itself as a partner in the permitting process, understands that the Convention Center Expansion is a very important project, and appreciated the willingness of Sunstone to work toward the hotel expansion. He continued by stating that the Board had considered a draft resolution and would not normally do so in such a short amount of time. He explained that all parties had not seen the document and offered that it be the position of the Board by motion to authorize the draft proposal with the understanding that there may be changes. Chairman Peters reiterated the complexity of the project approval, permitting and financing; he acknowledged the importance of the project to the region.

Commissioner Nelson explained that, to his knowledge, the Convention Center staff first learned of the MOU on Monday, April 11, 2011. He commended staff and the Sunstone personnel executives for moving quickly to facilitate the matter. Explaining that during the meeting in which he attended with Commissioner Malcolm, Commissioner Burdick, District senior staff and Sunstone executives it had become clear that there were mutual benefits for expediently moving forward with expansion discussions. Commissioner Nelson offered further explanation regarding his communications with Carol Wallace, Convention Center CEO, and expressed his

hopefulness that it was understood by all parties that it was not appropriate to bring the Convention Center staff into the discussions during an on-going real estate negotiation. He concluded his remarks by stating his hope that the Convention Center would find the MOU as beneficial to the community as he believed it was.

Commissioner Moore offered a motion to adopt a resolution authorizing an MOU between San Diego Unified Port District, San Diego Convention Center Corporation and One Park Boulevard, LLC concerning the future San Diego Convention Center Hotel and Phase III Expansion Project; with the caveat that any changes to the MOU would come back to the Board of Port Commissioners for further discussion. Commissioner Valderrama seconded the motion.

Chairman Peters reiterated that any changes would be brought back to the Board at a future Board meeting.

On motion of Commissioner Moore, seconded by Commissioner Valderrama, the Board adopted, **Resolution 2011-53** authorizing Memorandum of Understanding between San Diego Unified Port District, San Diego Convention Center Corporation and One Park Boulevard, LLC concerning the future San Diego Convention Center Hotel and Phase III Expansion Project, and that any changes to the Memorandum of Understanding would come back to the Board of Port Commissioners for further discussion by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-Burdick; Absent-None; Abstained-None.

GOVERNMENT & COMMUNITY RELATIONS

Agenda Item 11. Shahriar Afshar, Director, Government and Community Relations, addressed the Board with a presentation and an update regarding the progress made by the Government and Community Relations program. He also discussed the first District sponsored Legislative Briefing event held on March 29, 2011. Mr. Afshar briefed the Board regarding meetings held during a recent trip to Mexico City that was hosted by the San Diego Chamber of Commerce, in which he and Commissioner Nelson participated. He discussed the upcoming Maritime Days events and legislative staff tours. Mr. Afshar turned the presentation over to Michele White, Environmental Policy Manager, Government and Community Relations.

Ms. White offered an update regarding changes to the draft language of Senate Bill 623 that proposes the banning of copper in marine anti-fouling paint and explained the submittal timeline. She announced that staff received several letters from Port tenants requesting that language regarding an exemption for transient vessels be

included in the bill, and those letters were submitted to State Senator Christine Kehoe's staff. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Sharon Cloward, Port Tenants Association, addressed the Board and requested that the Commissioners consider excluding foreign-flagged vessels from the proposed requirement. Ms. Cloward read into the record a letter received by Captain Ted McCumber, Washington Yachting Group, regarding the potential impact on the Port of San Diego if the proposed bill was adopted. Kate Pearson, San Diego Superyacht Association, addressed the Board and requested consideration regarding an amendment to the proposed language in SB 623 to exclude foreign-flagged transient vessels. Deborah Pennell, Shelter Island Marina, addressed the Board and requested that the Board consider adding her specific language to SB 623, regarding transient vessels and the application of copper paint, from the letter that she submitted prior to the regular meeting. (Copies of the letters referenced are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Nelson acknowledged the port tenants and the other speakers who addressed the Board regarding SB 623. He discussed the benefits derived from co-sponsoring the bill and acknowledged that the language had improved from the original draft. He requested clarification regarding the effects of passive leaching from the prolonged mooring of vessels in the marinas.

Karen Holman, Senior Environmental Specialist, Environmental and Land Use Management Program, addressed the question. She confirmed the majority of the copper entering the water resulted from the use of copper hull paint. She continued by stating that one means in which the copper enters the water column was through passive leaching.

Commissioner Nelson requested clarification as to whether it was staff's opinion that the tenants who were applying the paint were doing so in a manner that prevents the paint from entering the water.

Ms. Holman explained that the paints were being applied properly at the yards and subsequently the paints were responding as designed and not migrating to the water.

Commissioner Nelson summarized his concerns regarding the issue, discussed the matter of an exemption for transient and foreign-flagged vessels, and addressed the benefits of maintaining a vigorous economy for the tenants, which in turn helps fund District services to the region.

Commissioner Valderrama requested clarification as to whether there was any statistical analysis regarding the boat yards and the commercial basins that shows how much sediment had been going into the water in comparison to the load levels at the marinas. Ms. Holman stated that there may be some data, however the vessels in those boat yards were being painted out of the water and they were not having a contribution to the load levels. She continued that those boat yards fall under industrial permits and all of the wash water was captured, thus the passive leaching was a result of painted boats in the marinas.

Commissioner Valderrama requested and received confirmation from Ms. White that the four letters regarding the impact to commercial tenants had been forward to Senator Kehoe's staff. She reported that the Senator's staff was looking into the proposed language, a permit or a form, and the potential costs either to the state or to the boat yards to implement an exemption for transient vessels that come to San Diego to have copper hull paint applied. Ms. White explained that no decision regarding the exemption language had been reached by Senator Kehoe's staff.

Citing the staff discussion regarding the boat yard's impact on the load levels, Commissioner Valderrama offered a motion to support the exemption language as presented in the letters submitted. Ms. White clarified that the exemption would be for transient recreational vessels.

Commissioner Nelson seconded the motion.

Chairman Peters clarified that the motion would be to support directing staff going forward to work on an exemption for transient vessels but not commercial vessels.

Commissioner Nelson recognized the need for a technical and legal review of the exact wording for an exemption. He discussed a proposed timeline in which transient and foreign-flagged vessels could remain in California under the exemption. Addressing the implementation of a regulation mechanism and the associated costs, he offered that self-certification under the penalty of perjury, annual declarations by boat yards, and State conducted spot-checks could be more effective alternatives.

Chairman Peters commented that it was clear to him that by the way the legislation was constructed, there would continue to be Navy ships being painted with copper and the application of such coatings to commercial vessels would remain in California. He expressed his consideration of creating an exemption for "transient recreational boats and foreign flagged-vessels" but offered cautions when creating

exemptions that were too broad, and would eviscerate the intent of the law. He expressed his hope that an alternative to copper-based paints would be accepted by the boating community.

Wayne Darbeau, Executive Director offered that there were two issues in the balance, the environment and the economy and both of which were equally important. He explained that the matter would be reviewed by all ports in the United States through industry organizations and cautioned about unintended consequences. Mr. Darbeau acknowledged the comments from the Commissioners, and offered that a sensible approach be employed that takes care of the environment but does not destroy the California's port driven economy.

Celia Brewer, Assistant Port Attorney, clarified that the item was noticed as a staff report, and while the Board could give direction to staff, there was no formal action before the Board.

Chairman Peters commented that it was the District's desire to comply with the Regional Water Quality Control Board's action and requested staff investigate as to whether the passage of such a law would result in compliance and would alleviate some of the burden of testing and monitoring. He offered Commissioner Nelson the opportunity to make any additional comments regarding his recent trip to Mexico on behalf of the District.

Commissioner Nelson expressed his appreciation to Ruben Barrales and James Clark of the San Diego Regional Chamber of Commerce as well as District staff. He briefly discussed meetings with the direct reports to the Secretary of Tourism for Mexico, the Secretary of the Economy for Mexico, and the Secretary of Communications and Transportation for Mexico. He offered his observations pertaining to Mexico's communication efforts regarding the challenges faced by the cruise industry and California ports as fewer passengers consider Mexico as a vacation destination. He explained that the industry has projected a tremendous loss in revenue that affects all of the businesses that surrounds the Port. Commissioner Nelson reported that, following one meeting, he received a call from the CEO for New Ports Development reporting to the Mexico's Secretary of Tourism, who discussed some of his country's plans to address the concerns. Commissioner Nelson reiterated his appreciation to regional stakeholders for their assistance.

Chairman Peters requested that, on the advice of counsel, Commissioner Valderrama withdraw his motion. Commissioner Valderrama withdrew his motion. Commissioner Nelson withdrew his motion.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE MEETING OF MAY 10, 2011

Agenda Item 12. Chairman Peters stated that the items continued would be included in the proposed agenda for May 10, 2011.

On a motion by Commissioner Valderrama, seconded by Commissioner Malcolm, the Board adopted the proposed agenda for the meeting of May 10, 2011, by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-Burdick; Absent-None; Abstained-None.

RESOLUTION AMENDING BPC POLICY NO. 021, MEETINGS OF THE BOARD OF PORT COMMISSIONERS

Agenda Item 12.1. Commissioner discussion ensued. Commissioner Valderrama requested clarification regarding the documentation of all communications.

Chairman Peters explained that a note would be included on the agenda listing indicating which items would have ex parte disclosures by the Board. The Chairman reiterated the commitment to transparency in the adjudicatory decision making process.

Commissioner Smith requested clarification regarding any retention requirements of email communications received from the public.

Celia Brewer, Assistant Port Attorney, explained that upon notice of the item, any communication that was received during the period should be kept. She further offered that the public is entitled to know the basis of the Board's decisions and the disclosure of ex parte communications is a procedural safeguard designed to protect the public.

Commissioner Nelson requested and received clarification from Ms. Brewer that none of the items considered on the April 12, 2011 agenda were quasi judicial. She further clarified that an individual's rights are taken into consideration when considering whether a matter is quasi judicial. She reiterated that the Board was to be fair and impartial and the disclosure is a way of assuring that everyone knows on what the Commissioners are basing their decisions.

Commissioner Nelson acknowledged the public policy benefits and concurred that such items be noticed to alert the Board of the expectation for an ex parte communication disclosure. He also expressed his concern regarding the disclosure of communications between commissioners and officers of other governmental

jurisdictions including all elected officials plus anyone that was named in some manner as an officer. He queried as to whether such disclosure would encourage candor.

Ms. Brewer addressed Commissioner Nelson's concern and reiterated that the intent was to disclose any communication that may be perceived to have influenced a decision. Commissioner Nelson acknowledged Ms. Brewer's remarks.

On motion of Commissioner Nelson, seconded by Commissioner Malcolm, the Board adopted, **Resolution 2011-54** Amending BPC Policy No. 021, Meetings of the Board of Port Commissioners, by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-Burdick; Absent-None; Abstained-None.

PRESENTATION AGENDA

PRESENTATION OF WIND TURBINE DEMONSTRATION PROJECT ON HARBOR ISLAND

Agenda Item 14. Jenner Smith, Asset Manager, Real Estate addressed the Board with a Presentation regarding a Wind Turbine Demonstration Project on Harbor Island. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Smith thanked staff for their responsiveness to his inquiries regarding the matter. He discussed the benefits of what he characterized as the "second generation" of wind turbine technology. He concluded his remarks in support of the District's participation in the program.

Commissioner Moore requested clarification regarding the connection of the turbine to the sewage pump station. Mr. Smith explained that it would have a wire that runs underground approximately 10 yards from the turbine to the sewage pump station power-out connection.

Commissioner Nelson requested and received clarification from Mr. Smith regarding no reported or few reported bird strikes on both turbine configurations discussed during the staff presentation.

Chairman Peters stated that he was aware of San Diego Gas & Electric Company's interest in the project on tidelands. He acknowledged the progress staff has made to move the Wind Turbine Demonstration Project forward.

PRESENTATION ON PORT OF SAN DIEGO CRUISE STRATEGY AND UPDATE ON "B" STREET CRUISE TERMINAL IMPROVEMENTS DESIGN

Agenda Item 15. Item continued to a future Board meeting.

PRESENTATION ON DOWNTOWN SAN DIEGO WAYFINDING AND SIGNAGE PROGRAM BY CENTRE CITY DEVELOPMENT CORPORATION

Agenda Item 16. Item continued to a future Board meeting.

OFFICER'S REPORT

Agenda Item 17. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director or designee, were reported:

- A) Change Order No. 1 for \$9,012.97 and 10 Calendar Days to Contract No. 2009-30 with PAL General Engineering, Inc. for Tidelands ADA Accessibility Improvements Phase II, San Diego, CA.
- B) Change Order No. 5 for \$48,350 and 14 Calendar Days to Contract No. 2010-13 with Remedial Civil Constructors, Inc. for L-Ditch Habitat Replacement Chula Vista, California

COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING

Agenda Item 19. Chairman Peters introduced a marketing promotional video produced by the District Marketing and Communication team featuring the marine terminals. He thanked many members of the District staff for their assistance in the writing, filming, editing and production of the promotional video.

Commissioner Valderrama requested a follow up report from staff regarding the various benefits of the sailing regattas like the RC44.

CLOSED SESSION

Celia Brewer, Assistant Port Attorney, stated for the record that the Board met, considered each item on the Closed Session agenda and gave direction, but there was no reportable action.

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR Government Code Section 54956.8

Property: South Bay Power Plant Consisting of Approximately 115 Acres of Property located South of J Street and West of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services, Beck Mayberry, Manager, Asset Management West, and Daniel Thompson, Vice President, West Region Operations, Dynegy South Bay, LLC;
Randa Coniglio, Irene McCormack, Kristine Zortman, SDUPD

Under Negotiation: Price and Terms

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9:

One Case

Agenda Item 5.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION Pursuant to Subdivision (a) of Government Code Section 54956.9:

City of San Diego v. National Steel & Shipbuilding Company, SDUPD, et al.
United States District Court, Southern District of California,
Case No. 09 CV 2275-W-WVG

Agenda Item 6.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9:

Kelcy Davis v. SDUPD, San Diego Harbor Police Department;

Corporal Laura Sweeney, et al.

San Diego Superior Court No. 37-2010-00101008-CU-OE-CTL

Agenda Item 7.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9:

Four Claims

Agenda Item 8.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9:

SDUPD v. Northwestern National Insurance Company, Does 1-100, Inclusive

San Diego Superior Court No. 37-2010-00088414-CU-BC-CTL

Agenda Item 9.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: Hilton San Diego Bayfront Hotel located at
One Park Boulevard, San Diego

Negotiating Parties: Greggory Rockett, Hilton Worldwide
Randa Coniglio, Irene McCormack, Shahriar Afshar, Karen
Weymann, Nick Markos, SDUPD

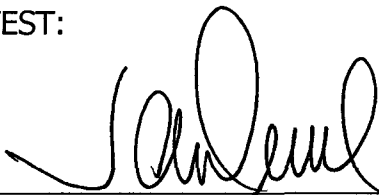
Under Negotiation: Price and Terms

There was no formal or reportable action as to any closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

As previously posted, a special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 8:03 a.m., Thursday, April 21, 2011, at the Holiday Inn at the Bay, Harborside Room, 1355 North Harbor Drive, San Diego, California.

ROLL CALL

Present: COMMISSIONERS Burdick, Moore, Nelson, and Peters.

Excused: Malcolm, Smith, and Valderrama.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

PRESENTATION

Agenda Item 3. Chairman Peters presented information regarding the Port's activities on the waterfront at the Citizens Coordinate for Century 3 (C3) breakfast dialogue meeting. (A copy of the presentation and handouts are on file in the Office of the District Clerk.)

There was no further action taken, whereupon Chairman Peters adjourned the special meeting at 8:50 a.m.

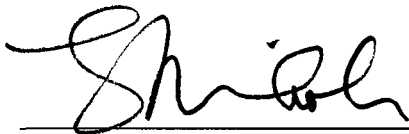
April 21, 2011

page 102



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

As previously posted, a special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 9:00 a.m., Tuesday, May 3, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS, Malcolm, Moore, Peters, Smith, and Valderrama
OFFICERS: Darbeau, Bennett, and McEntee.

Absent: None.

Excused: Burdick and Nelson were excused for personal reasons.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

WORKSHOP

Agenda Item 3. Chairman Peters called the workshop to order. He turned the presentation over to Wayne Darbeau, Executive Director. Mr. Darbeau began the staff presentation by addressing the economic challenges of the past, discussed the forward-moving goals for the future, and requested the Board consider taking the opportunity to make strategic investments for the future of the District. (Copies of the staff report, the handouts, and presentation are on file in the Office of the District Clerk.)

Mr. Darbeau turned the presentation over to Randa Coniglio, Vice President Operations.

Ms. Coniglio discussed the budget preparation process, the new ways that revenues and expenses were estimated, and the assumptions that were embedded in the FY11-12 budget. She announced staff used a granular approach to estimate revenue from Real Estate, Maritime Operations, the Harbor Police services and

non-operating revenues from legal settlements and insurance reimbursements. Ms. Coniglio explained that the expense budgets were reviewed in a similar granular fashion and department budgets were analyzed line-item by line-item. Based upon the proposed budget, she provided an overview of the District services as well as the Capital Improvement Projects allocated for in the proposed budget, and offered that no significant provisions were included for contingent expenses. She acknowledged the value of a mid-year budget review. Ms. Coniglio explained that staff was presenting a deficit budget, to be balanced with surplus revenues realized approximately \$3 million in FY10-11, which were undesignated and unrestricted funds. As part of staff's recommendation a portion of the \$10 million major maintenance expense, would be funded with FY10-11 surplus revenues as an investment in the District maintenance, public infrastructure, and in public amenities that support future growth of opportunities along the waterfront. Ms. Coniglio turned the presentation over to John Bolduc, Vice President Public Safety/Harbor Police Chief.

Chief Bolduc addressed the Board, discussed the methodology used to craft the Harbor Police department budget, reviewed the restructuring of the department staff, and discussed the importance of collaborating with the public safety departments in member cities. He addressed the use of grant funding to ensure that the Harbor Police department remains a regional asset. Chief Bolduc announced that staff would pursue recovering the full cost of providing services to the San Diego International Airport as indicated in the cost allocation plan developed by MAXIMUS Incorporated.

Commissioner Valderrama requested clarification regarding the grant funding and the level of matching fund requirements. Jeff McEntee, CFO/Treasurer, explained that the matching fund requirement is determined on a case-by-case situation and he would provide a memo regarding the specific matching fund level percentage following the workshop. Commissioner Valderrama reiterated that when a grant requires matching fund dollars, that expense might not be reflected in the budget and may require the use of reserve funds. Mr. McEntee offered that the District has had success in fulfilling Federal grant matching fund requirements with Home Land Security grants secured from the State of California. Chief Bolduc stated recent Port Security Grants did not require matching funds from local governments.

Chief Bolduc turned the presentation over to Brandy Christian, Vice President Strategy and Business Development. Ms. Christian provided some context to the strategy that staff took when developing the FY11-12 budget. She reviewed the reinvestment strategies behind the proposed funding levels allocated for major maintenance, equipment outlay, technology and automation, and staff development. She discussed the plans for reinvestment and growth which included a focus on core

services and maximizing strategic capabilities, redevelopment projects with partners, waterfront activation, and efforts to develop new business.

Chairman Peters left the dais at 9:27 a.m. and returned at 9:29 a.m.

Ms. Christian turned the presentation over to Irene McCormack, Vice President External Relations. Ms. McCormack addressed the Board regarding the two concepts of ROI which she defined as "return on investment" and "return on involvement." She discussed the District's benefits of supporting the development of collaborative partnerships, relationships, and friendships on local, regional, national and international levels. Ms. McCormack discussed stakeholder outreach efforts; collaboration opportunities with member cities; the new Government and Community Relations department; community services and bayside events; and the benefit of community involvement to address the environmental issues impacting the bay and the tidelands. Ms. McCormack turned the presentation over to Karen Porteous, Vice President Administration.

Ms. Porteous addressed the Board regarding the five-year strategy implemented to address funding of benefit levels in the future and the phased implementation of the current hybrid retirement plan for new general members, as well as the post retirement health benefits based on a fixed formula for public safety members and general members. She discussed the implementation of a hiring freeze, the work furlough program, the down-sizing plan, the Early Retirement Incentive Plan and DROP Acceleration program and the District wide re-organization with regards to the impact on personnel. Ms. Porteous turned the presentation over to Jeff McEntee, CFO/Treasurer.

Mr. McEntee addressed the Board and provided a brief overview of the District's current financial position and the plan for investments for the future. He then presented the District's Draft FY11-12 Preliminary Budget. He concluded his presentation by reviewing the FY11-12 Budget and Strategy Timeline. Chairman Peters requested and received confirmation from Mr. McEntee that staff had planned for a mid-year budget review in January 2012.

Commissioner discussion ensued. Acknowledging Commissioner Nelson's written comments, Commissioner Smith offered that comments and queries from the Board members who were present be taken first. Commissioner Smith acknowledged that the consideration of a resolution to adopt the FY11-12 preliminary budget was docketed as a Consent Agenda item on the May 10, 2011 regular meeting and requested that the item be moved to the Action Agenda. He acknowledged staff for their efforts during the

budget preparation process and for the "bottom up" review. Regarding the projected increase in revenues from the Harbor Police Department, Commissioner Smith addressed the need for contingency alternatives should the District find that the San Diego Regional Airport Authority not fund the full cost of service provided as indicated in the cost allocation plan. He acknowledged the continuing efforts to secure grant funding for the District's environmental program and public safety needs. He recognized Ms. McCormack's presentation and the commitment to community involvement and outreach. He expressed his concern that an unbalanced budget had been presented. Commissioner Smith discussed the importance of allocating the actual amount of funding necessary to run the business versus continuing a trend of over-budgeting and under-spending in an area such as professional services. He addressed the importance of benchmarking and that spending decisions in public agencies should be data driven, and expressed that the budget cycle was the only time that staffing levels were discussed. He offered that staffing levels and the like should be addressed as a matter of Board policy and discussed further. Commissioner Smith discussed the need to produce a balanced budget and offered his concern regarding the timeline presented as to when the District would return to profitability as an organization.

Commissioner Valderrama thanked all of the staff for their hard work and their professionalism when facing the District's challenges. He also expressed concerns that an unbalanced budget was presented. He discussed the importance of maintaining a six month reserve and acknowledged that any change to the maintenance of reserve funding levels would be considered as a matter of Board policy. Commissioner Valderrama cautioned that unanticipated expenses would likely arise and supported even more frequent budget reviews.

Commissioner Malcolm complimented staff for the amount of work that goes into preparing the budget. He acknowledged Mr. Darbeau's opening remarks and appreciated the granular approach taken in reviewing revenue and expenses. He expressed concerns regarding staff's request that the Board consider an unbalanced budget and that no contingency funds were included in the FY11-12 budget. He requested that staff review the proposed budget again in an effort to bring forward a balanced budget. Commissioner Malcolm cautioned against over estimating expenses. Stating for the record, the cost allocation study performed by MAXIMUS Incorporated was completed at the request of the San Diego Regional Airport Authority and based on those findings, the District included \$2.8 million of revenue in the FY11-12 budget. He acknowledged the benefits of stakeholder collaboration by addressing the return on involvement as explained earlier by Ms. McCormack. He spoke in support of the outreach efforts taken by the new Government and Community Relations department.

Commissioner Moore applauded staff for their hard work on the budget and acknowledged the efforts of the entire District staff. She echoed her fellow Commissioner's comments regarding maintaining a six month reserve fund, expressed concern regarding the request to consider adopting an unbalanced budget, and the exclusion of a contingency fund for unplanned expenditures. In that staff had included revenue in the FY11-12 budget based on pending negotiations, she expressed concerns regarding the unresolved status of the contract between the District and the San Diego Regional Airport Authority for the Harbor Police Department's services. She acknowledged the efforts to improve community involvement, the activation of the areas along the entire bay and the continued development of the long-range strategic plan and subsequent goals.

Chairman Peters also acknowledged the efforts by Mr. Darbeau and the staff for looking at the budget process in a new way and bringing team members into the process. He reiterated Commissioner Malcolm's concern regarding the Harbor Police Department's projected revenues in relationship to full cost recovery for services provided to the airport. He stated that Mr. Darbeau had contacted the airport leadership to discuss the results of the MAXIMUS Incorporated study and to address the matter of receiving a complete reimbursement for District services. Chairman Peters recognized that staff had presented a deficit budget, and, in the event that the Board was to direct staff to bring forward a balanced budget, he requested that staff provide scenarios to fill either a \$2 million or \$5 million revenue gap. He addressed the matter raised regarding under spending; requested that staff be as close to their budgeted spending projections as possible; offered that it was the Board's decision to determine where funds should be allocated when significant under spending opens budgeted monies; and acknowledged the benefits of a six month budget review as an opportunity to make any necessary adjustments.

Commissioner Valderrama requested that staff return with a balanced budget for the Board's consideration at the May 10, 2011 regular meeting.

Based upon the Board's direction and the time available for revisions to the budget as presented, Mr. McEntee requested the Commissioners consider that the staff would acknowledge the Board's direction during the presentation scheduled for May 10, 2011. He explained that staff would make the necessary revisions between adopting the preliminary budget on May 10, 2011 and adopting the final budget on June 14, 2011.

Commissioner Smith acknowledged Mr. McEntee's request and concurred with Commissioner Valderrama's direction that staff present options which could lead to a balanced budget.

Mr. Darbeau acknowledged the Board's request for the presentation of balanced-budget scenarios. He explained that, from his perspective, such cuts would severely impact staff and the District services. In light of the District's history as a well-run organization he offered that this was the time to consider utilizing the reserves to help balance the budget.

Mr. McEntee concurred with Mr. Darbeau's remarks. He clarified that the reserves referenced during the discussion were not operating reserves; instead staff proposed to draw from the projected FY10-11 budget surpluses. Mr. McEntee requested the Board consider the request to fund technology infrastructure as a means to increase efficiencies and also pursue new revenue opportunities.

Commissioner Moore stated that she was in agreement with her colleagues regarding the airport contract matter and strongly believed that the District be paid for the cost of the services provided. She acknowledged Mr. Darbeau's remarks regarding the proposed budget as and also supported the preparation of scenarios to balance the budget; and then discussed the benefits of a six month budget review. 1:42:09

Commissioner Malcolm also acknowledged Mr. Darbeau's remarks regarding the budget. He explained that he understood that staff presented a "bare-bones" budget, addressed the consideration of adopting an unbalanced budget a matter of policy, and also expressed his concerns regarding the public perception of approving an unbalanced budget for the District. Stating that his first choice was not to "backfill" the deficit with reserve funds, Commissioner Malcolm requested that staff return with some alternatives for the Board's consideration to balance the budget.

Acknowledging the effort by staff to present the budget as part of a longer term strategy, Chairman Peters clarified his request of the staff to provide some scenarios or alternatives to close the projected budget gap. He discussed the efforts made in previous years by District leadership to address the budget concerns and offered that there was an opportunity to share those cost saving measures with the public.

Commissioner Smith reiterated his remarks regarding the year-over-year improvement of the budgeting process and how far the team had come. He concurred that a mid-year budget review and adjustments are beneficial, and then explained that the Board should be more involved in any proposed budget realignments.

Commissioner Valderrama also acknowledged Mr. Darbeau's comments and restated the Board's desire to look at scenarios in the event that revenues did not meet projections.

Chairman Peters requested and received confirmation from Mr. Darbeau that he understood the Board's direction regarding next steps in consideration of approving the FY11-12 Budget. Regarding Commissioner Nelson's questions, staff acknowledged they would provide written responses to the entire Board.

Chairman Peters called a recess at 10:54 a.m. The Budget Workshop was called back to order at 11:06 a.m.

Brandy Christian, Vice President Strategy and Business Development, reviewed the Compass Strategic Plan Renewal process. (A copy of the presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Valderrama requested and received confirmation from Ms. Christian that a timeline regarding the process would be addressed by the ad hoc committee and provided in advance of the December 2011 rollout of the plan.

Chairman Peters requested and received confirmation from Ms. Christian that the Board members who were not present would be briefed on the presentation.

Chairman Peters announced that there were no additional comments and adjourned the workshop.

May 3, 2011

Page 110



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 10:03 a.m., Tuesday, May 10, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett.

Absent: No Commissioners absent.

Excused: Commissioner Moore was excused until she arrived at 10:47 a.m.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

CLOSED SESSION

Chairman Peters announced that Commissioner Moore was in route and would be joining the Board upon her arrival.

Duane Bennett, Port Attorney, announced the closed session agenda as follows:

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 5 Acres of Tideland Area Leased to the San Diego Convention Center Corporation along Convention Way, and 10.72 Acres of Tideland Area Leased to One Park Boulevard, LLC

Negotiating Parties: Carol Wallace, CEO, San Diego Convention Center Corporation and Charles Black, CB Urban Development, LLC, Consultant; Kip Howard, Allegis Development Services, Inc. and Lindsay Monge, One Park Boulevard, LLC; Irene McCormack, Karen Weymann, Shahriar Afshar, Nick Markos, SDUPD

Under Negotiation: Price and Terms

Mr. Bennett announced that Randa Coniglio, Vice President Operations, would also be participating in the Closed Session as a District representative.

Agenda Item 4.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: South Bay Power Plant Consisting of Approximately 115 Acres of Property located South of J Street and West of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services, Beck Mayberry, Manager, Asset Management West, and Daniel Thompson, Vice President, West Region Operations, Dynegy South Bay, LLC; Irene McCormack, Randa Coniglio, Karen Weymann, Kristine Zortman, SDUPD

Under Negotiation: Price and Terms

Agenda Item 5.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9:

Two Cases

Agenda Item 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: Sheraton San Diego Hotel & Marina Consisting of
Approximately 27 Acres of Tideland and Water Area located
at 1380 and 1590 Harbor Island Drive, San Diego

Negotiating Parties: Christopher Ford, Vice President, Asset Management,
Host Hotels & Resorts, Inc.; Craig Mason, Senior Vice
President, Asset Management, Host Hotels & Resorts, Inc.;
Irene McCormack, Randa Coniglio, Karen Weymann,
Annette Dahl, Penny Maus, SDUPD

Under Negotiation: Price and Terms

Agenda Item 7.

PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
EXECUTIVE DIRECTOR AND PORT ATTORNEY
Government Code Section 54957.6

Agenda Item 8.

CONFERENCE WITH LABOR NEGOTIATOR
Government Code Section 54957.6

District Negotiator: Executive Director

Employee Organizations: Harbor Police Officers Association; California
Teamsters, Public Professional & Medical Employees
Union Local 911; Unrepresented Employees

There was no formal or reportable action as to any closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

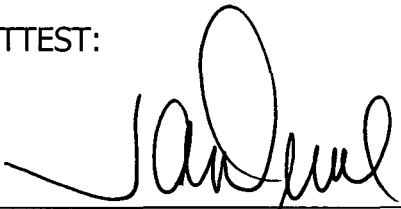
May 10, 2011

page 115

A handwritten signature in cursive script, appearing to read "A. Moore".

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "Janet".

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:02 p.m., Tuesday, May 10, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, and McEntee.

Absent: No Commissioners absent.

Excused: No Commissioners absent.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Commissioner Burdick led the Pledge of Allegiance.

APPROVAL OF MINUTES

Agenda Item 3. Commissioner Nelson requested that the spelling of Nicholas Markos' name be corrected in the minutes of the special meeting of April 12, 2011. Commissioner Nelson requested that the following corrections to the minutes of the regular meeting of April 12, 2011 be considered: 1) page 12 the word leaching be replaced with the word migrating; 2) page 12 add the word "and" to amend the sentence to read transient and foreign flagged vessels; 3) page 14 add the word "and" to amend the sentence to read transient and foreign flagged vessels; and 4) page 15 correct the reference to read CEO New Port Development and the word countries be corrected and shown as a possessive country's.

Commissioner Burdick stated for the record that she was not present for most of the meetings and would abstain from approving the minutes.

On motion of Commissioner Smith, seconded by Commissioner Valderrama, the Board approved the minutes for the special meeting of April 12, 2011 and the regular meeting of April 12, 2011 with the proposed changes, by the following vote: Yeas-Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Burdick.

PUBLIC COMMUNICATIONS

Agenda Item 4. Sharon Cloward addressed the Board regarding a new exhibit opening at the Maritime Museum on May 29, 2011 entitled *Cook, Melville, and Gauguin: Voyages to Paradise Treasures of the Kelton Collection*. She announced that on June 24, 2011 the Maritime Museum would open the San Salvador Build Site to the public.

Tom Wilkinson addressed the Board with his concerns regarding the enforcement of overnight parking regulations that were scheduled to begin on May 11, 2011 at Coronado Tidelands Park. He requested that the Board consider implementing a parking permit for those boaters with vessels tied to mooring balls. He stated that vehicles displaying handicapped placards were also subject to the enforcement of overnight parking regulations.

Chairman Peters thanked Mr. Wilkinson and explained that the item was not noticed on the docket for discussion; however, the matter would be referred to staff for a recommendation.

Mark Ballam, San Diego State University – Center for International Business addressed the Board and acknowledged the support of District leadership in reaching out to the United States Secretary of Education to explain the importance of maintaining funding support for their program and its goals. He thanked District staff, Commissioner Nelson and Chairman Peters for their participation in the World Trade Center San Diego Global Supply Chain Management Symposium.

PRESIDENT'S REPORT

Agenda Item 35. Wayne Darbeau, Executive Director introduced Joel Valenzuela, Director, Maritime Operations, to make a presentation regarding the San Diego Project Heart Beat Lifesaving Award. (A copy of the presentation is on file in the Office of the District Clerk.)

Mr. Valenzuela announced that the prompt action of Anthony Palombit, Wharfinger, Maritime Department saved the life of a cruise ship passenger who

collapsed on March 27, 2011, on a bus at the B Street Pier Cruise Ship Terminal. Mr. Valenzuela reported that Mr. Palombit deployed an Automated External Defibrillator (AED) and, subsequently, administered Cardio Pulmonary Resuscitation (CPR) until the San Diego Paramedics took over care of the woman.

Maureen O'Conner, Program Manager San Diego Project Heart Beat, introduced Lorelee Olejnik, Community Relations Specialist and addressed the Board regarding the Heart Beat Hero award. Mr. Valenzuela, Chairman Peters and Wayne Darbeau, Executive Director, presented a Heart Beat Hero award from San Diego Project Heart Beat to Mr. Palombit.

Mr. Darbeau addressed the Board regarding the District's participation in the National Safe Boating Week from May 24 – May 27, 2011. The program is sponsored by the National Safe Boating Council. Mr. Darbeau invited Jim Davis of the United States Coast Guard to join Chairman Peters and himself at the podium to receive an award in honor of the National Safe Boating Week.

CONSENT AGENDA

Chairman Peters requested that Laura Nicholson, Deputy District Clerk, announce any suggested docket changes. Ms. Nicholson announced the proposed changes to the agenda as follows: **Consent Agenda Item 12**, Resolution Adopting the FY 11/12 Preliminary Budget and setting the date for Public Hearing on the budget as June 14, 2011, has been moved to the Action Agenda as Item No. 29.1; **Consent Agenda Item 22**, Resolution Adopting Plans and Specifications and Awarding Contract No. 2010-32 to {Company Name} for B Street Pier North and West Berths Bull Rail Safety Modification in the amount of {dollar amount}, staff requests this item be continued to a future Board meeting; **Action Agenda Item 30**, Ordinance Adopting UPD Code Section 4.14 for Regulation of In-Water Hull Cleaning, staff requests this item be continued to a future Board meeting; and **Action Agenda Item 31**, Resolution Waiving BPC Policy No. 360 and Authorizing an Exclusive Negotiating Agreement with Port of San Diego Biofuels, LLC, to develop a Green Energy Park at the National City Marine Terminal, staff requests this item be continued to a future Board meeting.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board accepted the suggested changes to the agenda by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Valderrama requested that **Consent Agenda Item 7**, Resolution Consenting to \$4,447,500 Loan between Banco Popular and PLA-Art International, Inc., dba San Diego Cold Storage and **Consent Agenda Item 19**, Resolution Authorizing a Tideland Use & Occupancy Permit (TUOP) for the San Diego Symphony to conduct its 2011 Summer Pops Concert Series at Embarcadero Marina Park South and finding that no further environmental review is required, be pulled for comment and a separate vote.

On motion of Commissioner Malcolm, seconded by Commissioner Moore, the Board adopted Consent Agenda items 5, 6, 8, 9, 10, 11, 13ABC, 14, 15, 16, 17, 18, 20 and 21, (**Ordinance 2639, Resolution 2011-55, Resolution 2011-57** through and including **Resolution 2011-59, Ordinance 2640, Resolution 2011-60** through and including **Resolution 2011-67**, and **Resolution 2011-69**) by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 5. Ordinance 2639, Granting Amendment No. 1 to Lease with San Diego County Regional Airport Authority to increase leased premises by approximately 35,179 square feet, was adopted as part of the consent agenda.

Agenda Item 6. Resolution 2011-55, Consenting to Assignment of Ownership Interests within Eichenlaub Marine, Inc, was adopted as part of the consent agenda.

Agenda Item 8. Resolution 2011-57, Authorizing Amendment No. 1 to the Memorandum of Understanding (MOU) with San Diego Association of Governments for a change order of \$671,320 to extend the Port-Wide Fiber Optic Connectivity Project for a total MOU amount of \$970,000, was adopted as part of the consent agenda.

Agenda Item 9. Resolution 2011-58, Adopting Plans and Specifications and Awarding Contract No. 2011-04 to Pal General Engineering, Inc. for National City Marine Terminal Pavement Maintenance in the amount of \$288,776.25, was adopted as part of the consent agenda.

Agenda Item 10. Resolution 2011-59, Authorizing a Transfer of Ownership Agreement with San Diego Gas & Electric Company transferring ownership of a utility pipeline located on the former Teledyne Ryan Leasehold, was adopted as part of the consent agenda.

Agenda Item 11. **Ordinance 2640**, Amending the FY 2010-11 Equipment Outlay Budget - increasing the Equipment Outlay Budget by \$50,000, was adopted as part of the consent agenda.

Agenda Item 12. **Item moved to the Action Agenda as Item No. 29.1.**

Agenda Item 13A. **Resolution 2011-60**, Authorizing Amendment No. 1 to Agreement with PBS&J for as-needed Engineering, Project Management and Construction Management Services to change consultant name from PBS&J to Atkins North America, Inc, was adopted as part of the consent agenda.

Agenda Item 13B. **Resolution 2011-61**, Authorizing Second Amendment to Agreement with PBS&J for Environmental Review Consulting Services for the Tenth Avenue Marine Terminal Building Demolition and Office Relocation Project to change service provider name from PBS&J to Atkins North America, Inc, was adopted as part of the consent agenda.

Agenda Item 13C. **Resolution 2011-62**, Authorizing Second Amendment to Three-Party Agreement with Pacific Gateway, Ltd. and PBS&J for Environmental Review Consulting Services for the San Diego Marriott Hotel & Marina Facilities Improvement Project to change consultant name from PBS&J to Atkins North America, Inc, was adopted as part of the consent agenda.

Agenda Item 14. **Resolution 2011-63**, Authorizing an Agreement with En Pointe Technologies Sales Inc. for the purchase of 575 Microsoft Office 2010 Standard Licenses in the amount of \$152,020.54, was adopted as part of the consent agenda.

Agenda Item 15. **Resolution 2011-64**, Declaring Items of Equipment to be Surplus to the needs of the Port District and Authorizing their sale or disposal In Accordance with BPC Policy No. 111, was adopted as part of the consent agenda.

Agenda Item 16. **Resolution 2011-65**, Authorizing Acceptance of the Transportation Security Administration FY11 Grant Award Modification #6 in the amount of \$46,477 for the Harbor Police Department (HPD) Explosive Detection Canine Team Program per BPC Policy No. 109, was adopted as part of the consent agenda.

Agenda Item 17. **Resolution 2011-66**, Authorizing Execution of a Memorandum of Understanding (MOU) between the City of San Diego and the District and provide mutual indemnity to participate in the Urban Area Security Initiative (UASI) Grant Program and accept any and all grant funds that may be awarded, was adopted as part of the consent agenda.

Agenda Item 18. **Resolution 2011-67**, Approving Proclamation to Honor and Acknowledge Captain Thomas H. Farris, U.S. Coast Guard, for his positive contribution to the Port of San Diego Regional Community, as the Captain of the Port, was adopted as part of the consent agenda.

Agenda Item 20. The Recommendation of Port Scholarship Advisory Committee to Award two scholarships totaling \$3,000 to recipients of School Year 2011/2012 for the Port With No Borders Scholarships, was adopted as part of the consent agenda.

Agenda Item 21. **Resolution 2011-69**, Proclaiming Support of National Public Works Week, May 15-21, 2011, was adopted as part of the consent agenda.

Agenda Item 22. **Board Action No Longer Required.**

PUBLIC HEARING AGENDA

SUNROAD HARBOR ISLAND HOTEL

- A) ORDINANCE GRANTING OPTION AGREEMENT FOR 55-YEAR LEASE.**
- B) CONDUCT PUBLIC HEARING, CERTIFY ENVIRONMENTAL IMPACT REPORT, ADOPT FINDINGS OF FACT AND A STATEMENT OF OVERRIDING CONSIDERATIONS, ADOPT MITIGATION MONITORING AND REPORTING PROGRAM, AND DIRECT FILING OF THE NOTICE OF DETERMINATION**
- C) CONDUCT PUBLIC HEARING, APPROVE PORT MASTER PLAN AMENDMENT, AND DIRECT FILING WITH THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION.**
- D) RESOLUTION GRANTING CONCEPT APPROVAL FOR HOTEL PROJECT**

Agenda Item 23ABCD. Chairman Peters stated that, for the purposes of transparency, the item was one in which the Board members would disclose their ex parte communications.

Chairman Peters requested that each Commissioner announce anything they would like to add to the record regarding their contacts with members of the public related to the agenda item.

Commissioner Nelson stated that he was contacted by San Diego City Council Member Carl DeMaio and UNITE HERE Local 30 representative, Brigitte Browning.

Commissioner Valderrama requested and received clarification from Chairman Peters that it would be most helpful for the public to know who contacted the Commissioner and the gist the request.

Commissioner Nelson offered that Council Member DeMaio wanted to express his firm opinion that the District should not be involved, in any manner, in determining the business practices of Port tenants. He offered that Ms. Browning wanted to express concern about the manner in which their communication efforts with the tenant had developed.

Commissioner Valderrama stated that he had a conversation with UNITE HERE Local 30 representative, Brigitte Browning. He offered that Ms. Browning sought support in adding an item to the contract, which would allow a better negotiation position for their organization. Commissioner Valderrama stated that he informed Ms. Browning that he could not support the request and shared that, as in the past, he would work toward bringing the negotiating parties together to open communications. He stated that he telephoned Uri Feldman of Sunroad Developers and informed him of UNITE HERE's concerns regarding communication. Commissioner Valderrama stated that Mr. Feldman informed him that he had been in communication with them and represented that he would continue to keep that line of communication open, but, at the time, he did not feel his organization was in a position to go ahead and enter into that sort of agreement because a hotel operator had not been selected. Commissioner Valderrama then stated that Mr. Feldman explained that upon selection of a hotel operator, they would meet with the local union representatives.

Commissioner Moore stated Dan Rottenstreich of UNITE HERE contacted her. Mr. Rottenstreich informed her that the parties, Sunroad and UNITE HERE, had never met to discuss the issue of any labor peace agreements or provisions. She stated Chula Vista Mayor Cheryl Cox contacted her. Mayor Cox offered that her past-experience with Sunroad had been excellent and they were a great community asset.

Commissioner Malcolm stated he had no ex parte communication regarding the matter.

Commissioner Burdick stated that she had two conversations with UNITE HERE Local 30 representative, Brigitte Browning on May 3, 2011. Ms. Browning confirmed that their efforts to meet with Sunroad had been rejected, and expressed her desire for

the inclusion of labor peace language in the District's option agreement for the project. Commissioner Burdick stated that she had spoken with Ms. Browning earlier in the morning regarding the possibility of revising that language and ultimately the possibility of continuing the matter to allow the parties to meet.

Commissioner Smith stated he had spoken to Coronado City Council Member, Mike Woiwode about the project. Mr. Woiwode spoke of his support for Sunroad constructing the hotel.

Chairman Peters stated he received a telephone call from State Assembly Member Ben Hueso who expressed his view that the project was important for consideration for approval. Mr. Hueso offered that he was hopeful that something could be worked out that would also satisfy the hotel workers. Chairman Peters stated that he spoke by telephone with Lorena Gonzales of the San Diego and Imperial Counties Labor Council, AFL-CIO who indicated her support for labor peace as part of the lease. He stated that he received a call from UNITE HERE Local 30 representative, Brigitte Browning that he was unable to return. He stated that the meeting scheduled with the port tenants for May 9, 2011 was canceled at their request.

Tony Gordon, Area Real Estate Manager, addressed the Board with a staff report regarding the proposed development of the Sunroad Harbor Island Hotel and requested the Board's consideration of the matter. (A copy of the staff report and presentation are on file in the Office of the District Clerk.) Mr. Gordon turned the presentation over to Anna Buzaitis, Assistant Redevelopment Planner, Environmental and Land Use Management.

Ms. Buzaitis reviewed the Environmental Impact Report and Port Master Plan Amendment. Ms. Buzaitis turned the presentation over to Randa Coniglio, Vice President of Operations.

Ms. Coniglio explained that staff supported the project based on its merits. She also addressed a matter outside of the real estate transaction and the environmental review process. She offered that the matter was between the hotel developer, Sunroad, and the union representing local hotel workers, UNITE HERE. Ms. Coniglio referenced a memo outlining the staff's position related to the matter and announced that copies were available for the public at the Clerk's desk. She explained that District staff had worked with the parties and encouraged an open dialogue to resolve their respective concerns. She reported that it appeared as no resolution had come about between the developer and the labor organization. She stated that the UNITE HERE had taken a position that the District, in the role as an administrator of

public lands and as a trustee on behalf of the people of California, should mandate labor peace agreements upon its tenant. She explained that as a condition for the approval of the option agreement, UNITE HERE requested a provision requiring Sunroad, as the developer, to enter into a labor peace agreement with any labor union that requested one. Ms. Coniglio outlined that labor's position was based on the belief that the District has a fiduciary duty to maximize revenues from the public lands; so the basic premise was that business interruption caused by labor disputes translated as lost public revenues. She stated that labor believed the District should impose such a condition in order to reduce the risk of labor disputes that could result in negative impacts to public revenues. She offered that construction or entitlement delays; delayed, reduced or interrupted revenue streams resulting from strikes, pickets walkouts were examples of such negative impacts to public revenues. She explained that should the Board approve the project, the next step would be to seek approval for a Port Master Plan Amendment from the California Coastal Commission. Ms. Coniglio offered staff's concern regarding deploying limited staff resources and limited financial resources to what could be a very challenging gauntlet of opposition at the California Coastal Commission. Regarding the District's budget challenges, she also offered that consideration be given to assess the opportunity to increase revenue from a currently leased property. Ms. Coniglio explained that in a recent request for proposal process for a new development opportunity and during the developer selection process, the District recognized the benefits of peaceful labor relations. She offered that the District has not imposed regulations on tenants that mandated how they conduct their business relative to employee relations, public relations, procurement practices or labor relations. She offered that including a labor peace agreement, as an agreement condition, was a policy decision for the Board's consideration. (A copy of the memo is on file in the Office of the District Clerk.)

Chairman Peters opened the public hearing. The following members of the public addressed the Board in opposition to the staff recommendation: Brigitte Browning, UNITE HERE Local 30; Lorena Gonzalez, San Diego Imperial County Labor Council; Tanya Gulesserian, attorney with Adams Broadwell Joseph & Cardozo representing UNITE HERE Local 30; Graham Forbes, UNITE HERE Local 30, and Ian Trowbridge, Navy Broadway Complex Coalition. Ms. Browning, Ms. Gulesserian, Mr. Forbes and Mr. Trowbridge requested that the matter be continued to a future Board meeting. Ms. Gulesserian provided the Board with a document detailing her firm's position regarding their opinion that consideration of the matter should not move forward. (A copy of the document is on file in the Office of the District Clerk.)

The following members of the public addressed the Board in favor of the staff recommendation: Sharon Cloward, San Diego Port Tenants Association; Cynthia Eldred,

Sunroad; Max Frazier, Pulice Construction Co. Inc.; Lisa Carr, LLG Engineers; Don Adair, Swinerton Builders; and Uri Feldman, Sunroad Enterprises.

Ms. Buzaitis addressed the concerns raised during the public comments. She stated that the Ruben E. Lee restaurant project was approved by the Board in June 2008 and is a project analyzed in the cumulative impacts chapter of the Environmental Impact Report (EIR). The matter of project list changes referenced by Mr. Trowbridge was at the discretion of the Board. Regarding references to soil contamination at the site, she explained that both Phase I and Phase II of the EIR included on-site assessments. She read from the Phase II report that stated the investigation results from soil and ground water samples indicated that the site did not contain toxic contaminants such as PCBs or VOCs, and that the project did not pose significant hazards to the public through PCB contamination. However, part of the Phase II report indicated that the samples collected may not be representative of the entire project site and mitigation measures were included in a site safety plan, and a contingency plan was offered in the event that hazardous materials were encountered. Regarding the Notice of Preparation released in December 2008, indicated that the proposed Sunroad Harbor Island Hotel project and Port Master Plan Amendment project encompasses the redevelopment of one leasehold which was currently leased to Sunroad Marina Partners, LP. Ms. Buzaitis stated that one public scoping meeting was held in accordance with the California Environmental Quality Control Act (CEQA) requirements. Regarding the matter of parking referenced during the public testimony, she noted that the EIR data reported that there was an excess of parking on the project site and street parking available to the public on the south side of East Harbor Island Drive.

Mr. Gordon offered that the option and lease agreement was available on the District website in advance of the Board meeting and available to the public.

Chairman Peters closed the public hearing.

Commissioner discussion ensued. Commissioner Moore stated that no matter how good a project or development may be she thought that the presentation by Ms. Gulesserian, attorney with Adams Broadwell Joseph & Cardozo representing UNITE HERE Local 30, showed what may be in store for the project in the future. She stated that it raised several concerns. The first concern was bringing a project with the kind of acrimony between the various stakeholders, like the one under consideration, to the Coastal Commission. In light of the number of very important projects going forward, she did not believe that sort of attention would be in the District's best interest. Referencing the staff remarks, Commissioner Moore also expressed her concern regarding allocating significant staff time and resources processing a project that may

end up having some questionable results. As an effort to work out their differences, she stated her preference that the parties at least meet and discuss some of the issues before coming forward to the Board. She offered a motion to continue the item to allow the parties' time to meet, to discuss and to resolve the issues. Commissioner Burdick seconded the motion.

Chairman Peters acknowledged Ms. Moore's motion and Commissioner Burdick's second. He explained that under ordinary circumstances the motion to continue would take precedence. However, for the benefit of the stakeholders present, he explained his desire that the Commissioners have the opportunity to comment and/or express their thoughts or their position on the matter.

Commissioner Burdick thanked Sunroad for their commitment to bringing a top quality hotel to the Bayfront and expressed her confidence in their ability to complete the development. She stated her concern that Sunroad did not fully appreciate the magnitude of the public interest associated with the granting of the project. She stated that the District is obligated to manage the tidelands in the public's interest and ensure that public resources were maximized. Commissioner Burdick acknowledged that while one of the issues raised falls between a labor organization and a private third-party commercial developer, she offered that the public was also a party to the contract. She stated that the Board was obligated to act in favor of public interest and considered the project illusory until it goes before the Coastal Commission. She commented on the Coastal Commission's position regarding labor peace. She offered that delays due to labor strife result in less money to the public through the District's leasing agreements and Port revenues. She expressed her support of the motion to continue the matter and then spoke about her desire that the stakeholders form a unified purpose to overcome the obstacles presented. Commissioner Burdick clarified that labor peace, in her view, was not a direction to enter into a collective bargaining agreement, and was not a direction to enter a project labor agreement. She offered that it was a contractually defining a process where by the parties would come together and state how they would respect the federally protected right of workers to organize.

She stated that if language was included in the option, which led to a lease agreement for the development, the management firm hired by Sunroad would be bound to respect that contractually mandated process. Commissioner Burdick reiterated that the matter was not a collective bargaining agreement, but merely a statement of expectation that the laborers would be treated in a fair manner if they decided to try to organize; or, that the developer would not engage in obstructionist tactics to try to derail any effort to organize. She discussed the importance of preserving a fair process and expressed concern regarding Sunroad's position that such a labor peace agreement

was the responsibility of the yet to be selected management firm. She stated that it was her belief that it was the appropriate stage for the Board to consider whether labor peace language ought to be required in the agreement or whether it is not.

In response to the staff report, she offered that she found four specific provisions in the option agreement where upon an unsatisfactory finding the Board had reserved the right to over-turn third party contracts. She explained that the provision that she found most analogous to the current situation was section 5m regarding equal employment opportunity and a non-discrimination program.

She restated her hope that Sunroad would see the value in including a process in their contractual arrangement with the District regarding their response to efforts to organize. In conclusion, she reiterated her concerns that the Board was considering what she characterized as an illusory project; the District could spend considerable resources trying to advance the project only to have it to come back, and then the Board would be required to decide the labor peace issue for the District. She urged the parties to come back to the Board with a project to approve and send forward to the Coastal Commission.

Commissioner Nelson acknowledged Mr. Feldman as a District tenant and for his the investment in the Sunroad Marina development. He clarified that in none of the memoranda, discussions, or staff briefings had the phrase project labor agreement or PLA been used. He stated that he had always associated a project labor agreement with a construction related agreement and offered that he told Mr. DeMaio that he had not heard anything related to a PLA. He acknowledged the document supplied by Ms. Gulesserian during her presentation, and explained that while he was willing to spend the time necessary to read the document, he would rather do so after members of the Port Attorney's staff reviewed the document. He requested that staff respond to the legal points raised in the document and deferred to Chairman Peters regarding the timeline for a staff response. Regarding Mr. Trowbridge's query as to a pathway or walkway around the development, he requested that staff address that specific question. He offered remarks regarding his professional experience with large corporations and labor unions and remarked on Mr. Feldman's use of represented labor for construction work and unrepresented labor for service industry positions. Commissioner Nelson offered that he could not support the lease as presented due to non-conformance issues related to BPC Policy No. 355 with respect to some of the legal process issues. He expressed his reservations regarding voting on any portion of the staff recommendation. He supported the stakeholders meeting face-to-face to discuss the matter and arriving at a mutually agreeable resolution.

Commissioner Valderrama expressed his concern that the document provided by UNITE HERE's counsel was provided during the meeting, which did not afford the Board the opportunity to review the document. Regarding the legal issues raised by Ms. Gulesserian, and in an effort to allow the Port Attorney's staff to review the document, he offered that it was difficult to move forward with the staff recommendation. Thus, he requested that the Port Attorney review the document and report as to the validity of the issues raised, and how to address those issues if necessary. In light of his previous conversation regarding the developer's position of waiting until the hotel operator was, selected Commissioner Valderrama asked Mr. Feldman if he saw any benefit to moving the item forward and seeing if any kind of an agreement could be reached with UNITE HERE.

Mr. Feldman responded that while the project was a long way from getting ready to break ground, Sunroad would like to move forward. In regards to whether the Board was to make a policy requiring labor peace agreements or a recommendation that the tenants speak with whatever organizations want to speak with them, he stated that his preference would be that the Board move the item forward and accept his commitment that Sunroad would speak with whomever requested a meeting. He reiterated Sunroad's commitment to follow their obligations as required by the law, by their lease and by their ethics. He stated that they will always comply with all of the Federal regulations and will never interfere with an employee's right to organize. Mr. Feldman addressed the prior delays to the project, stated that they had not been contacted during the past month and then restated his commitment to talk with whomever wants to talk.

Commissioner Smith commented on the volume of data supplied regarding the matter and thanked staff for their hard work on the project. He acknowledged his requirement, as a Board member, was to review the process regarding support for the action. He stated that the District and tenant were three-years into the process. He discussed the benefits to the local economy by hiring construction workers to move forward on such a project. He thanked all of those who had participated in the process to date. He cautioned against seeking additional delays or continuances. While he concurred with the maker of the motion, he encouraged that progress be made during the upcoming 30 days and the Board take action at their next meeting. Commissioner Smith referenced the documents provided by Ms. Gulesserian, and stated that the matter was properly noticed and expressed his interest in moving something good forward. Regarding the lease contract, he addressed the use of legal terminology and acknowledged that a contract regarding public land should be good for the tenant and the public. He offered that the contract included items that he found as a reinforcement of federal law, equal opportunity protections and included language that a tenant must

obey all existing laws. Commissioner Smith restated his belief that the right thing to do was to keep the process moving forward; he supported the continuance and cautioned against on-going delay.

Commissioner Malcolm thanked Sunroad for coming forward with the proposal and acknowledged their operation of the marina property. He offered that the proposal was important to San Diego and would benefit guests, local residents and enhances an area of public access. While acknowledging the request for a continuance, he expressed his concerns regarding the negative impacts of delay to developments as often encountered when working with public agencies. Regarding the matter of noticing the item, he requested that a continuance be supported as a means to assure the matter was properly noticed. He offered that he was prepared to discuss the matter of a labor peace agreement and the notion of adding such an agreement as a condition in order to approve the action. Commissioner Malcolm stated that he was prepared to address the matter in respect to an existing exemplary lessee with 26 years left on their lease, and how that all fits into BPC Policy No. 355. He stated his support of taking the time to have the parties make the effort to get together to see if they could work out an acceptable arrangement. Commissioner Malcolm concluded his remarks by stating that he was willing to share his feelings with regard to the inclusion of a labor peace condition following the continuance.

Chairman Peters expressed his preference for not using public land for surface parking lots when possible and requested clarification regarding the availability of parking at the leasehold to the general public.

Mr. Gordon stated that there are public parking spaces along Harbor Island Drive. In an attempt to attract customers to their businesses, he explained that currently Sunroad's two leaseholds on the end of the Island do not contain public parking. He stated that it is common practice that tenant leasehold parking was not specifically noticed as public parking. Chairman Peters offered that there was plenty of support for the continuance. When the item comes back for consideration, he requested that Mr. Gordon and Ms. Buzaitis address whether there was enough parking on Harbor Drive and the matter of a defined bicycle path.

Chairman Peters addressed the concerns raised by Sharon Cloward representing the Port Tenants. He expressed his concern that litigation related to the matter would be the District's problem as well as the tenants. He acknowledged the financial benefit of the development and the overall design, and suggested that working together would yield a much more favorable outcome. Chairman Peters explained the recent negotiations regarding Lane Field and the North Embarcadero Visionary Plan (NEVP)

Phase I resulted in a favorable outcome at the Coastal Commission hearing. He expressed his desire to hear the Commissioners' views on the matter, offered that labor could be a powerful ally or a powerful opponent. He suggested that in lieu of Board mandates, consideration be given as to how BPC Policy No. 355 could address the concerns raised regarding the matter of labor peace agreements and explore offering incentives for forming partnerships when going before the Coastal Commission for project approval. He offered that differences could be considered for existing leases or for new projects. Chairman Peters stated his intent to engage stakeholders and requested that the Real Estate Advisory Committee take up the issue of building in incentives without mandates. He stated that no decision had been made regarding whether mandates would be implemented and he acknowledged the concerns expressed by the Port Tenants. With respect to the project, he offered his personal help, and with the aid of two other Commissioners, they would assist in facilitating a conversation with Sunroad and the UNITE HERE representative. He acknowledged the benefit of a 30-day continuance to address the issues. He acknowledged Ms. Gulesserian's comments and the possible impact on the Coastal Commission. He thanked UNITE HERE for their assistance in the NEVP process. Chairman Peters explained his desire was understand the issue better and offered his hope that the matter could be resolved.

In deference to the developer and the labor representatives, Commissioner Valderrama urged that the Board to make a decision regarding the project when the matter comes back before his fellow Commissioners.

On motion of Commissioner Moore, seconded by Commissioner Burdick, the Board continued Public Hearing Agenda Item 23ABCD, regarding the Sunroad Harbor Island Hotel, to a future Board meeting, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Nelson left the dais at 2:58 p.m.

CONSENT AGENDA CONTINUED

RESOLUTION CONSENTING TO \$4,447,500 LOAN BETWEEN BANCO POPULAR AND PLA-ART INTERNATIONAL, INC., DBA SAN DIEGO COLD STORAGE

Agenda Item 7. Commissioner Valderrama stated that while he was in support of the recommendation, he offered a comment to Ed Plant, PLA-Art International, Inc. He stated that the Board was considering a retroactive approval in addition to the two

other loan modifications that the Board previously considered. Commissioner Valderrama confirmed with Mr. Plant his expectation that the Board would not see the situation happen again in the future and that the administrative process would be followed. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner Smith echoed the concerns raised by Commissioner Valderrama.

Commissioner Valderrama clarified that his statements regarding that the adherence to the Board policy was applicable to all tenants with lease amendments related to loan modifications.

Commissioner Nelson returned to the dais at 3:01 p.m.

On motion of Commissioner Valderrama, seconded by Commissioner Smith, the Board adopted **Resolution 2011-56** Consenting to \$4,447,500 Loan between Banco Popular and PLA-Art International, Inc., dba San Diego Cold Storage, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION AUTHORIZING A TIDELAND USE & OCCUPANCY PERMIT (TUOP) FOR THE SAN DIEGO SYMPHONY TO CONDUCT ITS 2011 SUMMER POPS CONCERT SERIES AT EMBARCADERO MARINA PARK SOUTH AND FINDING THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED

Agenda Item 19. Commissioner Valderrama stated that he was in support of the staff recommendation. He requested clarification regarding as to whether the matter of securing an electrical permit was resolved.

Jim Hutzelman, Assistant Director Community Services, Business Development and Marketing Department, confirmed that while the matter had not been resolved the San Diego Symphony was aware it was a requirement that all necessary permits were required to receive the Tideland Use & Occupancy Permit.

On motion of Commissioner Valderrama, seconded by Commissioner Nelson, the Board adopted, **Resolution 2011-68** Authorizing a Tideland Use & Occupancy Permit (TUOP) for the San Diego Symphony to conduct its 2011 Summer Pops Concert Series at Embarcadero Marina Park South and finding that no further environmental review is required, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Valderrama left the dais at 3:01 p.m. and returned at 3:05 p.m.

Commissioner Burdick left the dais at 3:01 p.m. and returned at 3:05 p.m.

Commissioner Smith left the dais at 3:11 p.m. and returned at 3:12 p.m.

ACTION AGENDA

RESOLUTION AUTHORIZING A SPONSORSHIP AGREEMENT WITH SEA SAN DIEGO (SEA SD) FOR A CASH CONTRIBUTION IN THE AMOUNT OF \$316,000 AND FOR PROMOTIONAL SPONSORSHIP IN SUPPORT OF AN AC45 SAILBOAT RACING REGATTA, AND GRANTING INDEMNITY FOR DISTRICT NEGLIGENCE

Agenda Item 24. Paul Fanfera, Principal, Business Development & Financing, Business Development & Marketing Department, addressed the Board with a presentation regarding a Sponsorship Agreement with SEA San Diego (SEA SD) and a promotional sponsorship in support of an AC45 Sailboat Racing Regatta. (A copy of the staff report and presentation is on file in the Office of the District Clerk.) Mr. Fanfera introduced Chuck Nichols, Chairman of Board, SEA SD, who continued the presentation. He thanked the Board for their support and offered information regarding the projected fiscal benefits of the regatta to the region. He described the activities and discussed waterfront activation opportunities for all of the member cities. Mr. Nichols turned the presentation over to Mr. Fanfera. Mr. Fanfera reviewed the financial impact of the sponsorship on the District, revenue-generating opportunities, public relations, advertising and marketing benefits, environmental outreach opportunities, and explained that disadvantaged youth would be invited to attend the event. He discussed the challenges related to the pending NEVP construction projects, impacts to harbor tour tenants operations and the dock repairs, and effects on traffic flow on Harbor Drive detour during the event. Mr. Fanfera requested the Board consider approving the staff recommendation.

The following members of the public addressed the Board in support of the staff recommendation: Jim Unger, Hornblower Cruises & Events and Tom Voss, The Grand Del Mar Resort.

Commissioner discussion ensued. Commissioner Burdick expressed her support for the efforts to bring the international sailing competitions to San Diego. She thanked the representatives from SEA SD and District staff for their efforts. She acknowledged Mr. Fanfera for presenting an informative staff report that detailed the costs as well as the benefits of the event. She encouraged member city participation to activate and

engage the entire Bayfront. She expressed the benefit of engaging young people at area schools in the process that could enhance their interest in technology, math and science. She offered a motion to adopt the staff recommendation.

Commissioner Nelson seconded the motion. He commented that on several occasions during the last two months he previously said to Mr. Nichols and John Laun, SEA SD, that he did not support ad hoc projects or off-cycle budgeting of marketing funds. He explained that the program presented was not off-cycle budgeting. He acknowledged Mr. Fanfera for the analysis presented in the staff report; he explained that upon further examination of the projections he found the data yielded solid numbers. Commissioner Nelson offered that the event would bring international recognition to the District and the San Diego region. He concurred with Commissioner Burdick's comment regarding encouraging more involvement by the South Bay member cities in the event.

Commissioner Malcolm acknowledged Mr. Nichols for his presentation and expressed his support for what would be an exciting event that activates many areas the tidelands. He acknowledged that the projections offered a solid return on the investment. Commissioner Malcolm acknowledged the multi-layered benefits of visitor impacts to tideland restaurants, shops and hotels, as well as the world wide television broadcast exposure of the Port and the region. He offered that during high tides the event organizers consider bringing the vessels to the South Bay as another opportunity to engage the public from another area of the tidelands.

Commissioner Smith acknowledged Mr. Nichols and the SEA SD team for their efforts to bring sailing events to San Diego. He requested clarification from Mr. Fanfera as to where the funds were in the budget. Mr. Fanfera stated that it was from off setting revenues. He commended Mr. Fanfera and staff for presenting a detailed cost analysis for the event.

Commissioner Moore stated that it sounded like an exciting event and commended staff that the report was an excellent example of the type of analysis that she would like to see in all of the sponsorship applications coming forward.

Chairman Peters stated that it was a very enterprising project and innovative approach to the waterfront. He thanked staff for their efforts to move forward with the opportunity and work with the SEA SD team. He requested clarification regarding the timing of the construction at the Embarcadero and as to whether there would be any effect. Mr. Fanfera stated that the District Engineering staff had planned to work with SDG&E to be on site as early as possible in September and expected completion of the

work before the event begins on November 12, 2011. He explained that the event would conclude on December 11, 2011 and Engineering staff planned on the contractor being in place around December 15, 2011.

On motion of Commissioner Burdick, seconded by Commissioner Nelson, the Board adopted, **Resolution 2011-70** Authorizing a Sponsorship Agreement with Sea San Diego (Sea SD) for a cash contribution in the amount of \$316,000 and for promotional sponsorship in support of an AC45 Sailboat Racing Regatta, and granting indemnity for district negligence, by the vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION AUTHORIZING FUNDING IN AN AMOUNT NOT TO EXCEED \$722,250 AND DISTRICT SERVICES NOT TO EXCEED \$838,000 FOR FISCAL YEAR 2012 MARKETING SPONSORSHIP AND FEE FOR SERVICE PROGRAM AND WAIVING BPC POLICY NO. 110 WITH RESPECT TO THE SELECTION PROCESS FOR THOSE AGREEMENTS BETWEEN \$75,000 AND \$125,000

Agenda Item 25. Brandy Christian, Vice President Strategy & Business Development, addressed the Board with a presentation regarding the Fiscal Year 2012 Marketing Sponsorship and Fee for Service Program and requested the Commissioners consider the staff recommendation. Ms. Christian noted that the staff recommendation was to fund the program as budgeted, which was actually less than the Committee's total dollar recommendation. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Smith commended the Marketing Committee members and District staff for their hard work. He offered that the Marketing Sponsorship and Fee for Service Program addressed three issues: 1) submitted projects, 2) applying the formula to weigh and score the projects and 3) the policy surrounding the program and balancing funding for small opportunities, large opportunities and long term contracts. He offered a motion to accept the staff recommendation. Commissioner Burdick seconded the motion to accept the staff recommendation.

Commissioner Moore offered that as a Committee member she felt that there a number of policy issues that required addressing by the Board. She also expressed concern that the program was not very balanced and the recommendation included 30 San Diego only events and only five South Bay events. She explained that only 1 to 2 percent of the over-all budget would be used to fund events in all four of the

South Bay cities. She stated that the statistics were contrary to the recent selection of a consultant to activate the entire waterfront. She requested that the District do a better job at eliciting responses from all of the member cities and assist stakeholders to ensure that the applications were formatted correctly. Commissioner Moore expressed concern regarding the assessment of the Chula Vista Nature Center application and stated that it was not adequately addressed. She offered that there was a benefit that could have accrued to the tenants in the South Bay area in Chula Vista and that benefit was not considered in the analysis criteria. She expressed her support of the motion to move forward with the staff recommendation.

In light of the budget challenges, Commissioner Burdick supported Commissioner Smith's motion, as the Chair of the Marketing Sponsorship and Fee for Service Committee, to accept the staff recommendation. She commented on the importance of determining a return on investment (ROI) when allocating marketing dollars and discussed the over-all budget implications of accepting the Committee recommendation.

Commissioner Valderrama expressed his support of the staff recommendation. He requested and received clarification from Rita Vandergaw, Director of Marketing, Strategy & Business Development that the funding allocated for the Armed Services YMCA fireworks also included 2012 funding for Coronado and National City. She explained that if those two cities did not go forward with a fireworks event then the District would not offer reimbursement for those barges. Referencing Commissioner Moore's comments regarding the disproportionate amount of funding allocated to projects in the south bay cities, Commissioner Valderrama noted that the matter was also brought to his attention as a member of the Board of the South County Economic Development Corporation.

Commissioner Nelson thanked the committee members as well as the staff for their efforts. He acknowledged his colleagues comments regarding equity with respect to the other cities and offered that he did not look at lines in the water, but rather he saw the Board as trying to do the best thing for the District. He expressed his hope that going forward, a discussion would occur regarding separating out the good works that were happening in certain communities that were tideland related from the designated marketing dollars. He suggested that such a discussion may be appropriate during the Compass strategy meetings. Commissioner Nelson offered that granting funds for marketing projects could be considered based on ROI or return on investment, and granting funds for community outreach activities, such as students visiting the Chula Vista Nature Center, could be assessed in an alternate manner.

Chairman Peters stated that he believed it was fair to recognize that some of the projects designed to activate the waterfront were expenditures. He appreciated that the formula concentrated on hotel room nights and acknowledged that some member cities were not ready to generate the same occupancy levels. He offered that the Marketing Committee consider modifying the formula so applicants could receive points for projects that take place in under utilized areas. In light of the selection of the District's new service provider, he stated that data regarding the waterfront activation programs would be available in the upcoming year for review. Chairman Peters also recommended the development of outreach efforts to assist south bay applicants, and that contact with those member cities and the South County Economic Development Corporations be made regarding the program.

Commissioner Moore responded to the statements offered by Commissioner Nelson. She addressed the matter of the scoring formula criteria used by the District, and, in addition to the hotel room nights measure, she noted other criteria such as the waterfront activation attendance was given 30 percent, and exposure and impressions was given 20 percent. She offered that in addition to room nights other considerations may need to be taken into account to recognize that there were other types of tenants along the bay front requiring service. She concluded her remarks by explaining that activation events could also help spur development.

On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted, **Resolution 2011-71** Authorizing Funding in an amount not to exceed \$722,250 and District Services not to exceed \$838,000 for Fiscal Year 2012 Marketing Sponsorship and Fee For Service Program and Waiving BPC Policy No. 110 with respect to the selection process for those agreements between \$75,000 and \$125,000, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION AUTHORIZING REVISED MEMORANDUM OF UNDERSTANDING BETWEEN SAN DIEGO UNIFIED PORT DISTRICT, SAN DIEGO CONVENTION CENTER CORPORATION AND ONE PARK BOULEVARD, LLC CONCERNING THE FUTURE SAN DIEGO CONVENTION CENTER HOTEL AND PHASE III EXPANSION PROJECT

Agenda Item 26. Nicholas Markos, Asset Manager, Real Estate Department addressed the Board regarding a Resolution Authorizing a Revised Memorandum of Understanding between San Diego Unified Port District, San Diego Convention Center Corporation and One Park Boulevard, LLC concerning the future San Diego Convention

Center Hotel and Phase III Expansion Project. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Chairman Peters left the dais at 3:57 p.m. and returned at 4:01 p.m.

Commissioner Malcolm left the dais at 4:00 p.m. and returned at 4:05 p.m.

Charles Black addressed the Board regarding his belief that, if One Park Boulevard goes through the process, negotiates an agreement, and was able to exercise the sole source rights to develop the alternative site for the hotel, that it was agreeable to relinquishing its leasehold in an amount that was determined to be necessary, as part of the entitlement process to develop the Convention Center expansion. He stated that he understood that there was closure on the issue; if that sole source development agreement went forward then One Park Boulevard would relinquish the leasehold without additional compensation. He explained that it was an important issue to the City of San Diego because the project would have a constrained budget. He stated that the City of San Diego was trying to accomplish a number of things with the project, and one of the things that the city would be unable to do was to purchase the leasehold. Thus, they tried to create opportunities both for the public and for the District by creating a new potential development site for the expansion hotel. Mr. Black stated that he believed that the issue was important enough at that point to give it some additional clarity and requested some more discussion.

Commissioner discussion ensued. Commissioner Nelson stated for the record his prior disclosures. He stated that from 1995 to 1999 he owned a diminimus interest in what was called then Sunstone Properties, which was totally reorganized three or four times, and that he had not had any kind of business relationship or economic interest with the reorganized entity since 1999. He also stated that he served as a member of the Convention Center Corporation for five years, which culminated in his Chairmanship. He explained that his Chairmanship of the Convention Center Corporation Board terminated the night before he was sworn in as a Port Commissioner.

On motion of Commissioner Malcolm, seconded by Commissioner Burdick, the Board adopted, **Resolution 2011-72** Authorizing Revised Memorandum of Understanding between San Diego Unified Port District, San Diego Convention Center Corporation and One Park Boulevard, LLC concerning the future San Diego Convention Center Hotel and Phase III Expansion Project, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION ADOPTING PLANS AND SPECIFICATIONS AND AWARDING CONTRACT NO. 2010-23 TO MILLER ENVIRONMENTAL, INC. FOR TELEDYNE RYAN SITE DEMOLITION PROJECT PHASE III IN THE AMOUNT OF \$11,908,671

Agenda Item 27. Charlene Dennis, Capital Project Manager II, Engineering/Construction Department, addressed the Board with a presentation regarding Adopting Plans, Specifications, and Awarding Contract No. 2010-23 to Miller Environmental, Inc. for Teledyne Ryan Site Demolition Project Phase III in the amount of \$11,908,671. Ms. Dennis announced that staff received one bid protest regarding the electronic bid submittal process. Ms. Dennis turned the presentation over to Dave Thompson, Director, General Services and Procurement. Mr. Thompson addressed the matter of the bid protest from West Tech Contracting, Inc., and referenced the letter received from the law firm of Marks, Golia & Finch LLP. He described the bid submittal process for the solicitations under consideration. Mr. Thompson announced that Ms. Arpie Zavian of PlanetBids, Inc. was present to answer any questions regarding their service as the District's vendor that provides the electronic bid submittal service. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Moore left the dais at 4:07 p.m. and returned at 4:10 p.m.

Randolph Finch, Jr., Marks, Golia & Finch LLP, addressed the Board with a presentation regarding the bid protest submitted on behalf of his client West Tech Contracting, Inc. (A copy of the bid protest letter and counsel's presentation are on file in the Office of the District Clerk.) Mr. Finch requested that the Board consider his client's position, reject all of the bids, re-open the solicitation process and re-award the contract.

Chad Mitten, West Tech Contracting, Inc., addressed the Board and described his experience with the electronic bid submittal process. He offered that he clicked on the submit button prior with time remaining, a dialogue box appeared regarding a confirmation, after checking their email then found that no email confirmation was sent, and upon returning to the PlanetBids page the tabs to receive the bid were closed out, the low bidder was posted and West Tech was not listed.

Iraj Ghaemi, San Diego County Regional Airport Authority, addressed the Board and offered his support of the staff recommendation to award the contract to Miller

Environmental, Inc. for the Teledyne Ryan Site Demolition Project Phase III. He commended District staff for their efforts to move the project forward.

Arpie Zavian, Chief Technology Officer, PlanetBids, Inc. addressed the Board regarding their bid submittal business. She stated that there was no record of West Tech contacting her company for technical assistance regarding the use of the electronic bid submittal tools.

Commissioner discussion ensued. Referencing the bid protest letter submitted by Marks, Golia & Finch LLP, Commissioner Malcolm requested clarification from Ms. Zavian as to whether there was any evidence of when a user had clicked the submit button or the system could retrieve a bid after the solicitation closed. Ms. Zavian stated the PlanetBids system does not have a record of when West Tech clicked the submit button and the only information PlanetBids has was when the user entered the electronic bidding system and when they saved work. Commissioner Malcolm requested and received confirmation from Ms. Zavian that there was no record of West Tech clicking on the submit button. Commissioner Malcolm requested and received confirmation from Ms. Zavian that she had not talked to West Tech regarding the matter and PlanetBids had not been contacted by West Tech. Commissioner Malcolm offered a motion to accept the staff recommendation to award the contract to Miller Environmental, Inc.

Commissioner Moore requested clarification from Ms. Zavian as to whether a situation such as the one described had happened in the past. Ms. Zavian stated that her company had conducted over 50,000 bids and this was the first occurrence of a user stating that they had clicked submit and the bid was not received. She further offered there had been instances of users stating they had run out of time and reporting they had logged in three minutes before the submittal deadline, however the PlanetBids logs showed they logged in a few seconds before closing. Commissioner Moore requested and received clarification from Ms. Zavian that her company is not required by law to keep track of when a user clicks submit button and they have no record of West Tech clicking the submit button. Ms. Zavian further stated that under the California Public Contracting Code her company is required to track when the bid is received before a time stamp and confirmation is given. Commissioner Moore offered that there would have been benefits if PlanetBids kept records of when a user clicks on the submit button. Ms. Zavian reiterated that this was the first occurrence of such an issue, and in light of the situation, PlanetBids was in the process of further adjustments to their system in the future.

Referencing the table in the letter dated May 3, 2011 from Ms. Zavian of PlanetBids to Dave Thompson regarding the matter, Commissioner Burdick requested

clarification from Ms. Zavian. Ms. Zavian explained that the table shown in the letter detailed the time and date of West Tech's "login" to the "Place eBid history module" and the data in the paragraph below the table related to West Tech clicking "save" and receiving a "draft" status notice. (A copy of the letter is on file in the Office of the District Clerk.) Referencing Mr. Mitten's comment regarding his use of the system, Commissioner Burdick requested clarification as to what dialogue box may have appeared after a user clicks the submit button. Ms. Zavian that described the two messages that may occur after the submit button is selected and there is no reference to confirmation in either of the messages. She continued her explanation by stating that following the processing step, and if the bid had not closed, the user would receive a confirmation number with a time stamp. Commissioner Burdick requested and received clarification from Ms. Zavian that, if the user had clicked the submit button after the closing date and time, a dialogue box would appear indicating the bid had closed.

Commissioner Smith disclosed that he had done jobs with West Tech in the past and acknowledged their service level. He requested a point of information regarding the submittal of a bid protest, and should the bid protest be denied what would be the bidder's next legal recourse.

Duane Bennett, Port Attorney, offered that in his experience he had not seen a bid protest that was denied go any further. He explained that under the Public Contract Code should a procedural irregularity be found, the bidders remedy was to go to court and the restoration is the cost of the bid documents themselves. Mr. Bennett stated that the matter before the Board was an anomaly, but not a bid protest, because the District did not receive the bid. In response to Commissioner Smith's statements, Mr. Bennett confirmed that the Board could take action to award the contract or direct staff to re-bid the project.

Commissioner Smith explained that the matter was unfortunate, he acknowledged the manner in which District staff handled matter, and spoke to the preferred use of electronic submittal processes in the general contracting industry. He stated that he was not in support going back out for bids on the project. Commissioner Smith seconded the motion to award the contract to Miller Environmental, Inc.

Commissioner Valderrama requested and received confirmation from Ms. Zavian that there is no record in the PlanetBids system if a bid was submitted after bid closing. Mr. Thompson confirmed Commissioner Valderrama's query that the District had not received any printed or electronic bid materials to substantiate the statements from

West Tech's counsel that his client's bid would have been \$300,000 lower than the bid submitted by Miller Environmental, Inc.

Commissioner Nelson requested and received confirmation from Mr. Bennett that the discussion was not a quasi-judicial hearing; the Board was not evaluating an appeal of a bid; the Board was voting to consider the staff recommendation; and the Commissioner could offer comment and/or ask direct questions. Commissioner Nelson offered his sympathy to West Tech, shared his own experiences with on-line transactions, discussed planning for unforeseen traffic conditions when submitting timely bids in person, and reiterated the importance of personally verifying the receipt of electronic confirmations.

In a similar way that a postmark tracks when an item was mailed, Chairman Peters requested that staff address the tracking issue raised, and that capturing the actual time when a user clicks the submit button be addressed and such tracking be implemented by the vendor. He expressed his support of the motion.

In response to Chairman Peters' comments, Commissioner Nelson stated that based on the available information he was not convinced that the matter was one the District should address and discussed the challenge in ascertaining whether the bidder's computer system was properly operating to submit an on-time bid.

As a means to avoid such concerns in the future, Chairman Peters restated his request for the system be modified to log the actual time that any bid is submitted so all of the stakeholders have the necessary data submittal information.

On motion of Commissioner Malcolm, seconded by Commissioner Smith, the Board adopted, **Resolution 2011-73** Adopting Plans and Specifications and Awarding Contract No. 2010-23 to Miller Environmental, Inc. for Teledyne Ryan Site Demolition Project Phase III in the amount of \$11,908,671, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

GOVERNMENT & COMMUNITY RELATIONS UPDATE & DIRECTION TO STAFF

Agenda Item 28. Michele White, Environmental Policy Manager, Government and Community Relations department, addressed the Board with a presentation regarding the legislative update on Senate Bill 623 that proposes the banning of copper in marine anti-fouling paint. She explained that the language in the bill had not changed since the last Board meeting. She stated that on May 2, 2011, the bill passed the Senate

Environmental Policy Committee with a 5-1 vote. She noted that stakeholder feedback was received. The Board recommendation regarding an exemption for transient vessels as well as the three other primary issues raised by a variety of stakeholders were communicated to Senator Kehoe's staff. The three other issues were as follows: 1) including a prohibition of all biocide paints in addition to a prohibition of copper paints, 2) to allow low-leech copper paints as an option either in place of, or at a later time, in addition to a ban on copper paints, and 3) the incorporation of hull cleaning best management practices and/or marina signage requirements. Ms. White stated that work with stakeholders continued and District staff anticipated that the language would be amended. She explained that work was proceeding at an accelerated pace to have the bill pass the Senate floor by June 3, 2011. She reported that District staff and a representative from the Port Tenants Association would participate in a stakeholder forum in Sacramento, California on May 19, 2011. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Chairman Peters briefly discussed his thoughts regarding the discussions with stakeholders that occurred in conjunction with the Senate Environmental Policy Committee on May 2, 2011 in Sacramento.

Commissioner Nelson requested and received clarification from Jonathan Clay, the District's Sacramento Lobbyist from Carpi and Clay, that all bills must pass out of the house of origin by June 3, 2011 or it would become a two-year bill or one that requires roll waivers. Commissioner Nelson expressed concern that the Board would not meet again before the June 3, 2011 deadline, and requested clarification regarding the decision making process should the language modifications regarding transient vessels not be made in a timely way. In light of the stakeholder forum and referencing the way in which bills move through the legislative process in Sacramento, Mr. Clay offered that the key point in time to look at the bills is early July 2011, when the first policy committee in the Assembly hears the bill in its near final form. He explained that by June 14, 2011, staff would have a better framework of how the bill would move forward. Mr. Clay provided an update regarding the steps to address the matter of including the transient vessel language in the bill.

RESOLUTION ADOPTING THE FY11/12 PRELIMINARY BUDGET AND SETTING THE DATE FOR PUBLIC HEARING ON THE BUDGET AS JUNE 14, 2011

Agenda Item 29.1. Regarding the May 3, 2011 Budget Workshop, Wayne Darbeau, Executive Director addressed the Board with an update on the Executive Leadership Group's and budget team's work toward presenting a balanced budget for

FY11-12. Mr. Darbeau turned the presentation over to Randa Coniglio, Vice President, Operations.

Ms. Coniglio described the process staff used to prepare the preliminary budget as a granular approach. She discussed recent developments regarding bid estimates and the re-allocation of staffing resources as an effort to meet the highest priority needs for implementation of the North Embarcadero Visionary Plan (NEVP) Phase I and the subsequent modifications to engineering project timelines. Because of those developments, staff presented a significant reduction to the initial deficit figure shown in the draft budget presented on May 3, 2011. Ms. Coniglio continued her presentation and offered the three budget-balancing scenarios for the Board's consideration. Ms. Coniglio turned the presentation over to Jeff McEntee, CFO/Treasurer. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Mr. McEntee presented the financial data regarding the FY11-12 budget. He discussed the rationale behind the reduction in the major maintenance budget expenditures and explained that it was related to the capacity given the limited staff resources. He offered additional information regarding the budget-balancing scenarios and explained why staff preferred scenario three. Mr. McEntee reviewed the timeline, requested the Board consider adopting the FY11-12 preliminary budget and set the final budget hearing for June 14, 2011, and he announced staff plans for a mid year budget review in early 2012.

Commissioner discussion ensued. Commissioner Smith acknowledged the efforts of staff to address the Board's concerns as expressed during the Budget Workshop. He stated that he supported scenario three and viewed it as a reasonable approach in public finance and good fiscal policy. He made a motion to accept the staff recommendation and move forward with scenario three.

Commissioner Burdick requested and received clarification from Mr. McEntee regarding the source of the revenue increase. Mr. McEntee explained that \$300,000 was a refund from San Diego Gas & Electric related to the shore power installation, and approximately \$174,000 was an increase in projected parking revenues related to the America's Cup World Series, and a detailed memo regarding all of the changes from the preliminary budget to the final budget would be provided to the Board. Commissioner Burdick also requested clarification regarding the reduction in major maintenance expenses. Mr. McEntee explained that the expenditure for five projects, including the National City Marine Terminal building repairs, would be pushed further out into FY11-12 to reduce the level of expenditures in the upcoming fiscal year. In light of the proposed surplus in FY10-11, Commissioner Burdick queried as to why there was a

need to reschedule work on projects. Mr. McEntee explained that the Engineering Department examined their priorities and, in light of the NEVP project, it was determined that the necessary resources were not available to address all of the major maintenance needs. Mr. McEntee confirmed that allocating a set-aside fund from the FY10-11 surplus was an alternative to address the FY11-12 preliminary budget deficit.

Commissioner Burdick requested clarification regarding the increases from the preliminary budget in non-personnel expenses. Karen Porteous, Vice President Administration, explained that approximately \$68,000 of the increase resulted from restoring the allocation of undesignated contingency funds in the professional services category of the General Services Department budget. She explained that those funds would be used for urgent needs that may arise due to weather or other similar circumstances.

Commissioner Peters left the dais at 5:10 p.m. and returned to the dais at 5:06 p.m.

In light of the projected \$9 million budget surplus for FY10-11, Commissioner Burdick repeated her query as to why there was a need to reduce the major maintenance cap and expense by \$1.5 million. Mr. McEntee reiterated that there was a capacity issue and staff would not have the ability to execute those projects. Commissioner Burdick requested and received clarification from Mr. McEntee regarding staff's budget-balancing scenarios related to funding of the Environmental Fund and the Public Art Fund. Commissioner Burdick stated, for the record, that while she was unable to attend the May 3, 2011 Budget Workshop in person, she had listened to an audio recording of the proceedings and received a copy of the presentation for review. She concurred with the recommendation to postpone any discussion of the reserve policy. She appreciated the concern expressed by staff during the workshop regarding the elimination of contingencies and acknowledged that, in the event of any significant deviations from the budget, staff would return to the Board for direction. Commissioner Burdick offered that a lack of a contingency fund offered an opportunity for good budget discipline. She commended everyone that had a hand in the development of the budget, and acknowledged the careful staff analysis of each expense category. Commissioner Burdick reported the positive feedback she received from stakeholders who stated that they experienced a sense of transparency in District's budgeting process at the workshop.

Commissioner Malcolm acknowledged that staff used a granular approach to examining revenues and expenses. He discussed the budget-balancing scenarios and expressed his support for scenario three to pre-fund from FY10-11 estimated surplus.

He offered that a very important public message should be sent that informs stakeholders that the District is a good steward of its resources. Commissioner Malcolm requested and received confirmation from Mr. McEntee that funds could be allocated from the FY10-11 estimated budget surplus to add a reasonable contingency fund in the FY11-12 budget. Commissioner Malcolm then offered that a small contingency be added into the FY11-12 budget that would be funded from the FY10-11 estimated budget surplus. Mr. McEntee concurred with Chairman Peters' suggestion that staff return with a recommendation regarding Commissioner Malcolm's request.

Commissioner Burdick requested clarification from Commissioner Nelson regarding the addition of a separate contingency fund in addition to the sum discussed in the presentation. Commissioner Nelson stated that he was requesting a separate line item that was not already in the budget.

Commissioner Nelson stated that he was in support of the motion offered by Commissioner Smith. He then thanked the staff for their efforts and acknowledged Commissioner Smith for his assistance. He offered his view that the District is a business enterprise; then he discussed the importance of the Compass Strategic Planning process. Commissioner Nelson offered that consideration should be given to whether it is the Board's job to balance a budget or to build an on-going successful economic engine and, then determine the best way to achieve the organizational goals. He addressed his conflicts related to the source of the \$9 million FY10-11 budget surplus.

Mr. McEntee confirmed that a good portion of the surplus resulted from awards or settlements the District received regarding environmental remediation, and a portion resulted from the efforts of staff to halt spending. Commissioner Nelson acknowledged the reduction in staffing levels. He requested that the District track the source of all revenues; analyze the level of resources utilized to pursue the remediation awards and settlements; determine the level of reinvest in remediation efforts and provide a memo with the results. He concluded his remarks by offering that such topics raised during his comments were to be part of the Compass Strategic Planning process, and he reiterated support for the motion.

Chairman Peters acknowledged staff's hard work. He also acknowledged Commissioner Smith for his assistance.

On motion of Commissioner Smith, seconded by Commissioner Valderrama, the Board adopted, **Resolution 2011-74** Adopting the FY 11/12 Preliminary Budget and setting the date for Public Hearing on the budget as June 14, 2011, by the following

vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE MEETING OF JUNE 14, 2011

Agenda Item 29. On motion of Commissioner Valderrama, seconded by Commissioner Malcolm, the Board adopted the proposed agenda for the meeting of June 14, 2011, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

ORDINANCE ADOPTING UPD CODE SECTION 4.14 FOR REGULATION OF IN-WATER HULL CLEANING

Agenda Item 30. Item continued to a future Board meeting.

STAFF PRESENTATION AND UPDATE ON SOUTH BAY POWER PLANT

Agenda Item 33. Kristine Zortman, Area Real Estate Manager, addressed the Board with a presentation regarding the South Bay Power Plant. She offered an update on the decommissioning process, the demolition permitting, remediation plan and project timeline. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

There were no additional comments from the member of the public representing the City of Chula Vista or the Board regarding the update.

RESOLUTION WAIVING BPC POLICY NO. 360 AND AUTHORIZING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH PORT OF SAN DIEGO BIOFUELS, LLC, TO DEVELOP A GREEN ENERGY PARK AT THE NATIONAL CITY MARINE TERMINAL

Agenda Item 31. Item continued to a future Board meeting.

Commissioner Valderrama left the dais at 5:30 p.m. and was excused for the remainder of the meeting.

PRESENTATION AGENDA

RESOLUTION APPROVING PROCLAMATION COMMEMORATING MAY 22, 2011 AS NATIONAL MARITIME DAY AND PRESENTATION OF MARITIME WEEK ACTIVITIES

Agenda Item 32. Joel Valenzuela, Director Maritime Operations, addressed the Board with a presentation regarding National Maritime Day and the Maritime Week activities. He requested the Board consider adopting a resolution approving a proclamation commemorating May 22, 2011 as National Maritime Day. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Nelson offered a motion in support of the resolution. Chairman Peters seconded the motion. Commissioners Nelson explained that the United States Postal Service would soon be issuing a commemorative postage stamp honoring the contributions of the commercial maritime industry; then he recommended that the District consider acquiring a number of the commemorative postage stamps for use on official District correspondence.

On motion of Commissioner Nelson, seconded by Chairman Peters, the Board adopted, **Resolution 2011-74** Approving a Proclamation Commemorating May 22, 2011 as National Maritime Day and Presentation of Maritime Week Activities, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters and Smith; Nays-None; Excused-Valderrama; Absent-None; Abstained-None.

OFFICER'S REPORT

Agenda Item 34. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director or designee, were reported:

- A) Change Order No. 4 for \$50,000.00 and 0 Calendar Days to Contract No. 2007-25 with Miller Environmental, Inc. for TDY Site Demolition Project Phase 1, San Diego, California.
- B) Change Order No. 1 for \$3,982.00, Change Order No. 2 for \$2,773.00 and Change Order No. 3 for \$1,576.00 with 0 Calendar Days change to Contract No. 2009-25 with ATP General Engineering Contractors for Shelter Island Pavement Repair, San Diego, California.
- C) Change Order No. 2 for (\$37,842.10) and 0 Calendar Days to Contract No. 2010-01 with Marathon Construction Corporation for Chula Vista Wildlife Reserve Restoration & Enhancement Project, Chula Vista, California.
- D) Change Order No. 1 for \$2,200.00 and 7 Calendar Days to Contract No. 2010-11 with Becerra's HVAC for Administration Building 5th Floor IT Server Room HVAC Upgrade, San Diego, California.
- E) Change Order No. 1 for \$0.00 and 0 Calendar Days to Contract No. 2010-37 with Chula Vista Electric for Broadway Pier Port Pavilion Exterior Lighting Back-Up Power System, San Diego, California.

COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING

Agenda Item 36. Regarding Phase I of the North Embarcadero Visionary Plan (NEVP), Commissioner Burdick offered her congratulations to each of the staff members for their hard work, professionalism, and diligent efforts related to the project approval by the California Coastal Commission. She commented on the importance of the public outreach efforts and building support. Taking the opportunity to thank staff, Commissioner Burdick read the names of District staff members who work across many departments, and she acknowledged the efforts Commissioner Emeritus Steven Cushman and Commissioner Valderrama who worked to bring the diverse parties together and build a coalition.

Commissioner Nelson thanked staff for their support to deliver an audio copy of the Budget Workshop in a timely manner and acknowledged that he received responses to his queries that he had submitted in the form of a memo. He acknowledged the public safety department for addressing the matter of painting the hulls of Harbor Police vessels with non-biocide paints.

Chairman Peters announced that the Board would reconvene in Closed Session.

CLOSED SESSION

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 5 Acres of Tideland Area Leased to the San Diego Convention Center Corporation along Convention Way, and 10.72 Acres of Tideland Area Leased to One Park Boulevard, LLC

Negotiating Parties: Carol Wallace, CEO, San Diego Convention Center Corporation and Charles Black, CB Urban Development, LLC, Consultant; Kip Howard, Allegis Development Services, Inc. and Lindsay Monge, One Park Boulevard, LLC;
Irene McCormack, Karen Weymann, Shahriar Afshar, Nick Markos, SDUPD

Under Negotiation: Price and Terms

Mr. Bennett had announced that Randa Coniglio, Vice President, Operations, would also be participating in the Closed Session as a District representative.

Agenda Item 4.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: South Bay Power Plant Consisting of Approximately 115 Acres of Property located South of J Street and West of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services, Beck Mayberry, Manager, Asset Management West, and Daniel Thompson, Vice President, West Region Operations, Dynegy South Bay, LLC;

Irene McCormack, Randa Coniglio, Karen Weymann,
Kristine Zortman, SDUPD

Under Negotiation: Price and Terms

Agenda Item 5.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Subdivision (b)(1) of Government
Code Section 54956.9:

Two Cases

Agenda Item 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Sheraton San Diego Hotel & Marina Consisting of
Approximately 27 Acres of Tideland and Water Area
located at 1380 and 1590 Harbor Island Drive, San Diego

Negotiating Parties: Christopher Ford, Vice President, Asset Management,
Host Hotels & Resorts, Inc.; Craig Mason, Senior Vice
President, Asset Management, Host Hotels & Resorts, Inc.;
Irene McCormack, Randa Coniglio, Karen Weymann,
Annette Dahl, Penny Maus, SDUPD

Under Negotiation: Price and Terms

Agenda Item 7.

PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
EXECUTIVE DIRECTOR AND PORT ATTORNEY
Government Code Section 54957.6

Agenda Item 8.

CONFERENCE WITH LABOR NEGOTIATOR
Government Code Section 54957.6

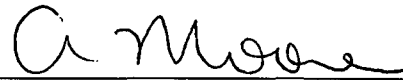
District Negotiator: Executive Director

Employee Organizations: Harbor Police Officers Association; California
Teamsters, Public Professional & Medical Employees
Union Local 911; Unrepresented Employees

There was no formal or reportable action as to any closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

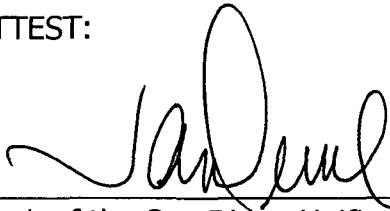
May 10, 2011

page 152

A handwritten signature in cursive script, appearing to read "A. Moore".

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "Janet".

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 10:00 a.m., Tuesday, June 14, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, and McEntee

Absent: No Commissioners absent.

Excused: Commissioner Moore was excused until she arrived at 10:01 a.m.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

CLOSED SESSION

Chairman Peters announced that Commissioner Moore was in route and would be joining the Board upon her arrival.

Duane Bennett, Port Attorney, announced the closed session agenda as follows:

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Sheraton San Diego Hotel & Marina Consisting of
Approximately 27 Acres of Tideland and Water Area Located
at 1380 and 1590 Harbor Island Drive, San Diego

Negotiating Parties: Christopher Ford, Vice President, Asset Management, Craig Mason, Senior Vice President, Asset Management, Host Hotels & Resorts, Inc.
Irene McCormack, Randa Coniglio, Karen Weymann, Annette Dahl, Penny Maus, SDUPD

Under Negotiation: Price and Terms

Mr. Bennett announced that there would be no recommended closed session regarding item 3. He stated that the matter would be coming back to the Board under confidential cover.

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION
Pursuant to Subdivision (c) of Government Code Section 54956.9:

One case

Agenda Item 5.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 5 Acres of Tideland Area Leased to the San Diego Convention Center Corporation along Convention Way, all Bayward of the San Diego Convention Center.

Negotiating Parties: Carol Wallace, CEO, and Steve Cushman San Diego Convention Center;
Irene McCormack, Randa Coniglio, Karen Weymann, Shahriar Afshar, Nicholas Markos, SDUPD

Under Negotiation: Price and Terms

Agenda Item 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: South Bay Power Plant Consisting of Approximately 115 Acres of Property located South of J Street and West of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services, Beck Mayberry, Manager, Asset Management West, and Daniel Thompson, Vice President, West Region Operations, Dynegy South Bay, LLC;
Irene McCormack, Randa Coniglio, Karen Weymann, Kristine Zortman, SDUPD

Under Negotiation: Price and Terms

Mr. Bennett announced that there would be no recommended closed session regarding item 6. He stated that the matter would be coming back to the Board under confidential cover.

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 872,043 Square Feet of Land located at Tenth Avenue Marine Terminal, San Diego

Negotiating Parties: Stuart Jablon, Vice President Operations, Dole Fresh Fruit Company;
Irene McCormack, Randa Coniglio, Karen Weymann, Kristine Zortman, Joel Valenzuela, SDUPD

Under Negotiation: Price and Terms

Agenda Item 8.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9:

One Case

Agenda Item 9.

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

Pursuant to Subdivision (b)(1) of Government Code Section 54956.9

One case

Claim filed against the District on behalf of Marathon Construction. A copy of the claim is on file in the office of the District Clerk

Agenda Item 10.

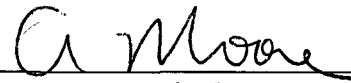
PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
EXECUTIVE DIRECTOR AND PORT ATTORNEY

Government Code Section 54957.6

There was no formal or reportable action as to any closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

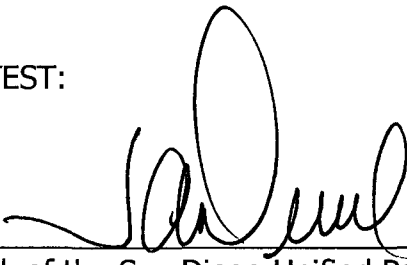
June 14, 2011

page 157

A handwritten signature in cursive script, appearing to read "A. Moore", positioned above a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "Salvador", positioned above a horizontal line.

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:01 p.m., Tuesday, June 14, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, and McEntee.

Absent: No Commissioners absent.

Excused: No Commissioners absent.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Commissioner Nelson led the Pledge of Allegiance.

APPROVAL OF MINUTES

Agenda Item 3. Commissioner Burdick requested that consideration be given regarding the following corrections to the minutes of the regular meeting of May 3, 2011: 1) page 11 the word losery to be replaced with the word illusory and 2) page 12 the word losery to be replaced with the word illusory.

Commissioner Nelson stated he would abstain from approving the minutes from the May 3, 2011 special meeting.

On motion of Commissioner Smith, seconded by Commissioner Valderrama, the Board approved the minutes for the special meeting of April 21, 2011; the special meeting of May 3, 2011; the special meeting of May 10, 2011; and the regular meeting of May 10, 2011 with the proposed changes, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Nelson for the May 3, 2011 special meeting.

PUBLIC COMMUNICATIONS

Agenda Item 4. Christian Chaffee, San Diego Historic Streetcars, addressed the Board and urged the Commissioners to visit the San Diego Historic Streetcars website. He requested that the District consider the use of historic San Diego Class 1 Streetcars as a means of public access along the waterfront.

Dr. John E. Warren, Publisher, *San Diego Voice & Viewpoint* newspaper, addressed the Board with his concerns regarding the District's marketing campaign, selection of advertising outlets, distribution of press releases and public notices, and the District's outside marketing firm. He requested that the Board direct the Executive Director to meet him and address his concerns regarding a perceived lack of inclusiveness in the District's relationship with his publication. He requested that the Executive Director report back to the Board regarding efforts to resolve any issues.

Chairman Peters explained that while the item was not noticed on the docket for discussion and the Board looked forward to a report regarding the matter.

Ron Morrison, Mayor, City of National City, addressed the Board, offered a video presentation regarding the Marina Gateway Community Revitalization Project, and acknowledged Commissioner Valderrama and former Commissioner Jess VanDeventer for their support. He presented a California Redevelopment Association Awards of Excellence Program award to Commissioner Valderrama in recognition of his efforts to move the revitalization efforts forward. Mayor Morrison also acknowledged that the Phoenix Awards Institute, Inc., a Pennsylvania based environmental and community service non-profit, also honored the project.

Chairman Peters thanked Mayor Morrison and acknowledged the benefits of collaborating on redevelopment projects.

Commissioner Valderrama concurred with Chairman Peters. He acknowledged that with the efforts of the District, the City of National City and private investors, a previously blighted area was redeveloped into a prosperous marina area.

PRESENTATION AGENDA

PRESENTATION OF THE SAN DIEGO UNIFIED PORT DISTRICT 2011 EMPLOYEE OF THE FIRST QUARTER

Agenda Item 21. Eric Lawrence, Human Resources Technician and Chair of the Employee Recognition Program, addressed the Board with a presentation regarding the

District Employee of the Quarter program. He turned the presentation over to Wayne Darbeau, Executive Director, who announced that Renee Errasquin, Human Resources Technician, in the Human Resources Department was named the 2011 Employee of the 1st Quarter. Ms. Errasquin was cited for her contributions to improving the business processes of the District. She spearheaded the implementation of NeoGov Insight, an online recruiting system designed specifically for public agencies. Anthony Palombit, Wharfinger in Maritime Operations was also nominated for Employee of the Quarter. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

PRESENTATION TO RECIPIENTS OF SCHOOL YEAR 2011/2012 PORT WITH NO BORDERS SCHOLARSHIPS

Agenda Item 22. Ron Powell, Director of Corporate Communications, addressed the Board with a presentation regarding the Port with No Borders Scholarship program. Mr. Powell introduced the recipients of the 2011/2012 Port with No Borders Scholarships. Commissioner Smith, Chairman Peters, Wayne Darbeau, Executive Director, and Mr. Powell presented checks to Ms. April G. Amezquita and Thomas B. Sears, respectively.

PRESENTATION AGENDA CONTINUED

PRESENTATION OF PROCLAMATION TO CAPTAIN THOMAS H. FARRIS, U.S. COASTGUARD, TO HONOR AND ACKNOWLEDGE HIS POSITIVE CONTRIBUTIONS TO THE PORT OF SAN DIEGO REGIONAL COMMUNITY, AS THE CAPTAIN OF THE PORT

Agenda Item 23. Board action no longer required as the proclamation was presented during the President's Report.

PRESENTATION UPDATE ON THE FUTURE SAN DIEGO CONVENTION CENTER HOTEL AND PHASE III EXPANSION PROJECT

Agenda Item 24. Item continued to a future Board meeting.

PRESIDENTS REPORT

Agenda Item 30. Wayne Darbeau, Executive Director, acknowledged the contributions of the USS Midway Museum. He turned the presentation over to Rita Vandergaw, Director of Business Development & Marketing who addressed the Board regarding some of the achievements of the Midway Museum and congratulated the organization on their seventh anniversary. She discussed the international accolades

bestowed upon the museum and reviewed some of the many student-serving programs featured at the attraction. She acknowledged Scott McGaugh, Director of Marketing, USS Midway Museum, who accepted an award from Chairman Peters and Mr. Darbeau.

Mr. McGaugh addressed the Board and acknowledged the volunteer staff and their many hours of service in support the museum. He thanked the Board and the District for their assistance in achieving their goals and expressed support for the redevelopment efforts along the embarcadero.

Mr. Darbeau turned the presentation over to John Bolduc, Vice President Public Safety/Chief Harbor Police. Chief Bolduc acknowledged Captain Thomas H. Farris, U.S. Coastguard for his positive contributions to the Port of San Diego regional community, as the Captain of the Port. Chairman Peters, Wayne Darbeau, Executive Director and Chief Bolduc presented a proclamation to Captain Farris.

Ken Franke, President, Sport Fishing Association of California and Jim Unger, Chairman, Port Tenants Association, acknowledged Captain Farris for his achievements and his efforts to work with regional stakeholders. They presented Captain Farris with a Lifetime Achievement Award.

Captain Farris addressed the Board and thanked them for their leadership in the maritime community. He acknowledged the working relationships with District as well as the local law enforcement agencies.

On behalf of the District, Chairman Peters acknowledged Captain Farris for his collaborative abilities and thanked him for his service.

Chairman Peters announced a 10-minute recess at 1:40 p.m. for a short reception honoring Captain Farris. Chairman Peters called the meeting back to order at 1:51 p.m.

PUBLIC HEARING AGENDA

FY 11/12 FINAL BUDGET

Agenda Item 20ABCD. Jeffrey McEntee, CFO/Treasurer, addressed the Board with the staff presentation regarding the FY 11/12 Final Budget. He discussed Item 20B and the staff recommendation to authorize payment of the District's FY 11/12 Retirement Plan Annual Required Contribution. (A copy of the staff report and presentation are on file in the Office of the District Clerk.) Mr. McEntee stated that the Office of the District Clerk had not received any public comment relative to the draft

FY 11/12 Budget. He concluded his remarks by thanking the Board and staff for their assistance during the budget process.

Michele Corbin, Director, Human Resources, addressed the Board with the staff presentation regarding Public Hearing Agenda Items 20CD. She requested the Board's consideration of the staff recommendation regarding amendments to Salary Ordinance No. 2618 and the adoption of a resolution establishing the District's Directory of Classification Specifications for FY 11/12. Ms. Corbin announced that on page 3 of the staff report, two classification numbers were incorrectly listed; and subsequently corrected. She noted that due to late changes, two titles on page 4 and 5 of the staff report did not match the budget, and had been corrected.

Commissioner discussion ensued. Commissioner Nelson requested clarification regarding how much of the \$9 million dollar surplus from FY 10/11 was from one-time payments received by the District for settlement of environmental remediation or investigation. Mr. McEntee explained that approximately \$6 million of the sum was from one-time settlements. He offered those settlements were from environmentally related sources and from the anti-submarine base matter. Mr. McEntee confirmed that any related expenses to those settlements for remediation were in the past.

Chairman Peters opened the Public Hearing.

Cory Briggs, attorney representing the Navy Broadway Complex Coalition, addressed the Board in opposition to the staff recommendation. He expressed his concern that no funding in the FY 11/12 budget had been allocated for 1220 Pacific Highway in San Diego.

As there were no other public speakers, Chairman Peters closed the public hearing.

Randa Coniglio, Vice President of Operations, explained that funds were not identified in the FY 11/12 budget for the acquisition of the U.S. Navy leasehold at 1220 Pacific Highway. She offered that, in light of the recent changes to the Lane Field hotel development project, staff had considered revisiting the acquisition, the phasing for the acquisition, and the purchase price. Ms. Coniglio stated it had not been staff's strategy to fund the acquisition with District operating funds. She further confirmed Chairman Peters' query that staff had taken steps to comply with the settlement obligations. She stated that staff had met with representatives from the U.S. Navy and reported that they were open to considering ways to move forward to meet mutual

objectives. Ms. Coniglio confirmed that staff would provide the Board and the stakeholders with periodic updates on the matter.

Commissioner Smith offered a motion to approve the staff recommendations for items A-D. Commissioner Valderrama seconded the motion. Commissioner Smith acknowledged the entire team for their collaborative work on the budget process.

Commissioner Burdick requested clarification regarding the expense figures shown on slide five of the staff presentation regarding the FY 11/12 changes between the preliminary budget and the final budget. Mr. McEntee explained that the .1 million dollars resulted from a number of sources and was netted against what was budgeted as a contingency for FY 11/12. Commissioner Burdick requested clarification regarding the source of funding for the FY 10/11 \$13 million dollar budget surplus, and how the sum was shown in the preliminary budget and the final budget. Mr. McEntee explained that budget surplus was from FY 10/11. He stated that at the preliminary budget hearing he offered that one means to close the FY 11/12 budget gap was to utilize surplus funds from FY 10/11. He further explained that at the May 10, 2011 regular Board meeting staff recommended to the Board that one alternative to close the FY 11/12 budget gap would be to use a portion of the FY 10/11 budget surplus to pre-fund \$1.1 million for Public Art and the Environmental Fund. Commissioner Burdick requested and received clarification from Mr. McEntee regarding the timeline for funding the FY 11/12 and FY 12/13 retirement fund payment to the San Diego City Employees Retirement System (SDCERS). Mr. McEntee clarified that in the past any budget surpluses could be used for any number of purposes, one of which could be to fund Capital Improvement Programs. He explained that the balance of the FY 10/11 surplus would remain in unrestricted and undesignated funds unless the Board offered other direction. In light of pre-payment of the retirement plan annual required contribution to SDCERS, Commissioner Burdick concluded her remarks by requesting that her fellow Board members consider seeking funding sources in anticipation of the expiration of the current Capital Improvement Program.

In regards to Mr. Briggs' public testimony, Commissioner Valderrama requested clarification as to whether the District was obligated to fund the acquisition of the Navy property in the event that any alternative source for the funding was not successful. Ms. Coniglio stated that the District's obligation was to make a good faith effort to acquire the portion of 1220 Pacific Highway that is included in the 150 foot set back park.

Mr. Briggs noted that while Ms. Coniglio's remarks were correct, he stated that the District was also obligated to ensure the park was completed within a certain

timeframe. Mr. Briggs offered that consideration be given to allocate a portion of any budget surplus to the project. Commissioner Valderrama confirmed that the District's obligation was to complete the project.

Commissioner Malcolm commended staff for their efforts to bring forth a balanced budget. He offered that by including a contingency in the FY 11/12 budget the District was answering its fiduciary obligation and being good stewards of the available resources. Commissioner Malcolm requested clarification as to whether the use of the contingency fund would require Board approval. Mr. McEntee explained that prior to using the contingency fund, staff would seek alternative funding sources within the District and offered that it was his belief that consideration of uses for the contingency fund was under the purview of the Executive Director.

Commissioner Nelson stated that he was in support of pre-payment of the retirement plan annual required contribution to SDCERS. He offered his support whenever staff is presented with an opportunity to consider the prepayment of any obligation as a means to avoid interest payments. He expressed his concern that the budget surplus could give an impression that extra funds were available. He stated that the District is going through a very slow climb out of an international recession and would be recovering finances slowly. He offered his hope that the Board would be very careful about protecting a sufficient level of reserves for major maintenance projects. Commissioner Nelson cautioned that the protection of such reserves might impact future business opportunities. He stated that consideration of the business need for an annual balanced budget might be a topic for discussion at the upcoming Compass Strategic Planning sessions.

On a motion by Commissioner Smith, seconded by Commissioner Valderrama, the Board with a single vote, adopted **Ordinance 2641** adopting the FY 11/12 Final Budget; **Resolution 2011-76** authorizing payment of \$12,600,000 on July 1, 2011 for the District's FY 11/12 Retirement Plan Annual Required Contribution; **Ordinance 2642** Amending Salary Ordinance No. 2618, and **Resolution 2011-77** Establishing the San Diego Unified Port District (District) Directory of Classification Specifications for Fiscal Year 2011 – 2012, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

CONSENT AGENDA

Chairman Peters requested that Laura Nicholson, Deputy District Clerk, announce any suggested docket changes. Ms. Nicholson announced the proposed changes to the agenda as follows: **Consent Agenda Item 5**, Resolutions Authorizing Agreements –

A) Cook & Schmid, for public relations services, on an as needed basis, for one-year, with two one-year options and approve funding not to exceed \$175,000 for the first year. B) Katz & Associates, for facilitation services, on an as needed basis, for one-year, with two one-year options and approve funding not to exceed \$25,000 for the first year; staff submitted corrected language to the attachments and copies were available from the District Clerk, **Consent Agenda Item 16**, Resolution Consenting to Sublease and First Amendment to Sublease from Host San Diego Hotel, LLC to FedEx Office and Print Services, Inc., for five years with one option to extend for five years, staff requests this item be continued to a future Board meeting; **Consent Agenda Item 17**, Ordinance Granting two 10-Year Tideland Use and Occupancy Permits with two 5-year options with Verizon Wireless (VAW), LLC for Cellular Telecommunication Equipment, staff requests this item be continued to a future Board meeting; **Presentation Item 23**, Presentation of Proclamation to Captain Thomas H. Farris, U.S. Coastguard, to honor and acknowledge his positive contributions to the Port of San Diego regional community, as the Captain of the Port, Board action was no longer required; **Presentation Item 24**, Presentation Update on the future San Diego Convention Center Hotel and Phase III Expansion Project, staff requests this item be continued to a future Board meeting; **Action Item 27**, Resolution Authorizing Memorandum of Understanding between San Diego Unified Port District; City of San Diego; and City of Imperial Beach to explore uses for Pond 20; staff requests this item be continued to a future Board meeting; and **Action Item 28**, Ordinance Adopting UPD Code Section 4.14 for Regulation of In-Water Hull Cleaning; staff requests this item be continued to a future Board meeting.

Chairman Peters noted that presentation item 23 honoring Captain Farris had taken place earlier in the meeting. The Clerk noted that a member of the public requested that **Consent Agenda Item 9**, a Resolution Consenting to \$18,500,000 loan between Prime Finance and Sunroad Marina Partners, LP dba Sunroad Resort Marina, be pulled for a separate discussion and vote. Commissioner Smith requested that **Consent Agenda Item 14**, Resolution Notifying the San Diego City Employees' Retirement System (SDCERS) Board of Administration that the San Diego Unified Port District (PORT) will continue to pay for under-funding caused by affected purchase of service contracts, be pulled for a separate vote. Commissioner Burdick requested that **Consent Agenda Item 5**, be pulled for a separate discussion and vote.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board accepted the suggested changes to the agenda by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board adopted Consent Agenda items 6, 7, 8, 10, 11, 12, 13, and 15, (**Resolution 2011-80** through and including **Resolution 2011-82**, **Resolution 2011-84** through and including **Resolution 2011-87**, and **Resolution 2011-89**) by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 6. **Resolution 2011-80**, Consenting to Transfer of Ownership of Continental Maritime of San Diego, Inc., was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2011-81**, Consenting to \$2,349,155 loan between Regents Bank and Nielsen Beaumont Marine, Inc., was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2011-82**, Establishing Minimum Annual Rent for Port Coronado Associates, LLC dba Coronado Ferry Landing for the period of July 1, 2011 through June 30, 2016, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2011-84**, Authorizing the District to Grant Indemnity to the City of Escondido for the use of its Firearm Training Facility, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2011-85**, Approving a Memorandum of Understanding (MOU) between the District and the California Department of Transportation (Caltrans) for the purpose of facilitating the implementation of an artistic lighting project for the San Diego-Coronado Bay Bridge, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2011-86**, Authorizing the First Amendment to the Agreement with MJE Marketing Services, Inc. to fund period two, FY 11/12 in an amount not to exceed \$600,000 for Marketing and Advertising Services, Media Buying and Campaign Development, was adopted as part of the consent agenda.

Agenda Item 13. **Resolution 2011-87**, Authorizing Agreement with Amerit Consulting, Inc., for Temporary Staffing Services on an as-needed basis for thirty six (36) months starting on July 1, 2011, and ending June 30, 2014, for an aggregate amount not to exceed \$567,300, and subject to annual funding, was adopted as part of the consent agenda.

Agenda Item 15. **Resolution 2011-89**, Authorizing Amendment No. 2 to Agreement with California Strategies increasing the total by \$45,000 for a total amount of \$169,000, was adopted as part of the consent agenda.

Agenda Item 16. **Item continued.**

Agenda Item 17. **Item continued.**

PUBLIC HEARING AGENDA CONTINUED

SUNROAD HARBOR ISLAND HOTEL

- A) ORDINANCE GRANTING OPTION AGREEMENT FOR 55 YEAR LEASE.**
- B) CONDUCT PUBLIC HEARING, CERTIFY ENVIRONMENTAL IMPACT REPORT, ADOPT FINDINGS OF FACT AND A STATEMENT OF OVERRIDING CONSIDERATIONS, ADOPT MITIGATION MONITORING AND REPORTING PROGRAM, AND DIRECT FILING OF THE NOTICE OF DETERMINATION**
- C) CONDUCT PUBLIC HEARING, APPROVE PORT MASTER PLAN AMENDMENT, AND DIRECT FILING WITH THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION.**
- D) RESOLUTION GRANTING CONCEPT APPROVAL FOR HOTEL PROJECT**

Agenda Item 18ABCD. Tony Gordon, Area Real Estate Manager, addressed the Board with a staff report regarding the proposed development of the Sunroad Harbor Island Hotel, discussed the proposed changes to the language in the lease documents regarding the rights of employees to organize, and requested the Board's consideration of the matter. (A copy of the staff report and presentation are on file in the Office of the District Clerk.) Mr. Gordon turned the presentation over to Anna Buzaitis, Assistant Redevelopment Planner, Environmental and Land Use Management.

Ms. Buzaitis addressed the issues raised in the Adams Broadwell Joseph & Cardozo comment letter presented at the May 10, 2011 regular meeting. She also addressed pedestrian access, viewpoints, bike lanes and public parking on East Harbor Island. She concluded her presentation with a new recommendation regarding the draft Port Master Plan Amendments project list.

Uri Feldman, Sunroad Marina Partners, addressed the Board with an update regarding the discussions with UNITE HERE Local 30. He explained that they had agreed to insert a paragraph into the lease documents stating Sunroad's commitment to abide by labor laws.

Chairman Peters explained that at the May 10, 2011 Regular Board Meeting Commissioner Moore offered a motion to continue the matter. He explained that time she did not include a specific timeframe in which the matter was to return for the Board's consideration. However, upon repeating the motion he stated that the matter would return for consideration in 30 days. He apologized for misinterpreting Commissioner Moore's intent regarding her motion and explained that it was within the Board's purview to continue the matter again if they preferred. Chairman Peters summarized his ex parte communications with Lorena Gonzalez, former Port Commissioner Bill Hall and Sharon Cloward of the Port Tenants Association and Uri Feldman. He called on each Commissioner to disclose any ex parte communications.

Commissioner Smith stated he had spoken to Jim Ryan of the Association of General Contractors, Bill Hall, Sharon Cloward and Uri Feldman.

Commissioner Burdick stated she had spoken with Sharon Cloward regarding the project and BPC Policy No. 355, and UNITE HERE Local 30 representative, Brigitte Browning.

Commissioner Malcolm stated he had spoken to Bill Hall, Sharon Cloward and Uri Feldman.

Commissioner Moore stated Dan Rottenstreich of UNITE HERE contacted her and requested clarification regarding her motion to continue the item and confirmed that she had not included a 30 day limitation. She also stated that she talked with Bill Hall regarding Labor Peace Agreements.

Commissioner Valderrama stated he had spoken to Uri Feldman several times, Bill Hall, Sharon Cloward and former Port Commissioner Steve Cushman.

Commissioner Nelson stated that he had spoken to Sharon Cloward and Sophie Silvestri of the Port Tenants Association; San Diego City Council Member Carl DeMaio; Lorena Gonzalez, San Diego Imperial County Labor Council; Brigitte Browning; Graham Forbes, UNITE HERE; Dan Rottenstreich and Uri Feldman.

Chairman Peters opened the public hearing. The following members of the public addressed the Board in opposition to the staff recommendation: Lorena Gonzalez, San Diego Imperial County Labor Council; Brigitte Browning, UNITE HERE Local 30; Tanya Gulesserian, attorney with Adams Broadwell Joseph & Cardozo representing UNITE HERE Local 30; Graham Forbes, UNITE HERE Local 30, Cory Briggs, Navy Broadway Complex Coalition and Ian Trowbridge, Navy Broadway Complex Coalition.

Mr. Forbes provided a memo to the Board outlining the Board's legal rights to protect their fiduciary interests in the organization and requested that the item be continued. (A copy of the letter is on file in the Office of the District Clerk.)

The following members of the public addressed the Board in favor of the staff recommendation: Alex Beaton, James Farrell, member of the construction community, Sophie Silvestri, San Diego Port Tenants Association; Cynthia Eldred, an attorney representing Sunroad; Don Adair; and Uri Feldman, Sunroad Enterprises.

Chairman Peters closed the public hearing.

Commissioner discussion ensued. Commissioner Moore expressed concern as to how the project had proceeded during the past thirty days. She stated that based upon the comments offered opposing the development the process could be quite costly as the project moves forward. If the project goes forward, she recommended that approval be conditioned on a change to the option agreement indemnification language where the developer agreed to indemnify the District for any litigation that would result from California Environmental Quality Act (CEQA) or the approval of the project. She stated for the record that it was her belief that staff included additional language regarding the number of hotels at the site to the Port Master Plan Amendment project list based upon her request for clarification.

Commissioner Valderrama stated that while he was disappointed that Sunroad and UNITE HERE Local 30 had not yet reached an agreement, however he did not believe it was the District's position to direct a tenant regarding how to operate their business. He stated that employees maintain the right to organize regardless of the position taken by the Board. Commissioner Valderrama offered a motion to accept the staff recommendation and to include the indemnification language suggested by Commissioner Moore. He encouraged Mr. Feldman to continue working with labor and cautioned that approval of the project may face significant challenges should a resolution with UNITE HERE not occur.

Commissioner Malcolm requested clarification related to the proposed indemnification language regarding the motion. Commissioner Moore stated that the option agreement, under the indemnification clause, did not contain language that indemnifies the District from lawsuits that arise from CEQA litigation or by approval of the project. Given the circumstances, she stated that she would like staff to insert such language.

Duane Bennett, Port Attorney, stated that staff understood the direction and read into the record the proposed standard indemnity language that was in the option agreement. (A copy of the language is on file in the Office of the District Clerk.) Mr. Bennett stated staff would ensure that the indemnity language that relates to civil litigation based on the outcome of the matter would address the concerns raised by Commissioner Moore.

Chairman Peters requested clarification as to whether Mr. Feldman objected to the proposed indemnity language modification. Mr. Feldman stated that conceptually he would agree to the language, subject to review.

Based upon the circumstances, Commissioner Moore reiterated that it was her desire that such indemnification language be added to the option agreement. Commissioner Moore clarified that should the Board make a motion to approve the matter, then the motion would be contingent on including such indemnification language that would also be agreed to by the developer.

Commissioner Valderrama accepted the amendment to his motion. Commissioner Malcolm seconded the motion.

Commissioner Burdick requested clarification from Mr. Feldman regarding the status of the negotiations with UNITE HERE Local 30. Mr. Feldman confirmed that progress was being made and he better understood their issues. He discussed his process for reviewing labor's proposed language and stated that potential hotel operators reviewed it. He reiterated that at this phase of the project, he was not the hotel property operator and there were no employees for the union to represent. Mr. Feldman offered some of his concerns with the agreement language regarding work rules and neutrality in the context of operating a limited service hotel property. Commissioner Burdick requested clarification from Ms. Browning regarding the discussions with Sunroad and if anything other than organization process issues were discussed. Ms. Browning explained that Sunroad had been presented a document drafted by counsel. She further confirmed that they had not requested anything else beyond "card check" and "neutrality," but then stated they had also discussed a succession clause. Commissioner Burdick offered her appreciation that the stakeholders met and discussed the matter. She expressed her concern that another thirty day delay would not get the parties any closer to an agreement because of their fundamental differences to finding labor peace. She expressed her concern regarding the outcome if labor peace had not been achieved by the date of the Coastal Commission hearing for consideration of the project. Commissioner Burdick expressed her concerns that the District, as a government landlord, would consider imposing collective bargaining

agreements or labor peace process requirements on a third party independent developer under the current Board policies. She requested that title of paragraph 20 of the lease agreement as well as line six of the same paragraph be amended to add "and labor laws" when referring to the compliance with all federal and state employment laws.

Chairman Peters requested confirmation from Mr. Feldman as to whether he would accept the modifications to the language in paragraph 20 of the lease agreement regarding compliance with labor laws as proposed by Commissioner Burdick. Ms. Eldred expressed her concerns regarding the request. Commissioner Valderrama accepted the amendment to the motion based upon Mr. Feldman's agreement to the revision. Commissioner Malcolm seconded the motion.

Mr. Feldman requested and received clarification regarding Commissioner Burdick's proposed amendment. Mr. Feldman acknowledged and agreed to the proposed amendment to the language. Commissioner Burdick requested that staff address the environmental concerns that had been raised during the public hearing.

Commissioner Moore left the dais at 3:48 p.m. and she was excused for the remainder of the regular meeting to attend to personal business.

Commissioner Nelson requested and received confirmation from Chairman Peters that the motion included items A through D. Stating that the other issues aside; he offered that he felt it was a superb project that would serve the public, the District and the tenant. He stated his belief that the District operates as a government agency and a business and has a responsibility to generate revenues sufficient to finance operations, to protect and enhance the environment, and to also provide parks and other amenities to serve the public. He continued his remarks stating that as a government agency there was some obligation to consider the welfare of the larger community including employees of the District's tenants. Commissioner Nelson stated that in data comparing the statewide average of wages, in most other California metro areas, indicated that San Diego restaurant workers and food servers were paid more than their peers were. However, the same was not true for maids and housekeepers. He expressed concern that so many employees in the region were paid so poorly. Commissioner Nelson stated that he welcomed a vigorous discussion regarding the Board's powers in that regard. He acknowledged the benefits of following good policy. He stated that he was in support of the motion. He urged Chairman Peters to engage in a timely community wide discussion regarding the possible merits of revising BPC Policy No. 355 to incorporate the issues of labor neutrality outside of the context of a specific project and for the long term greater good of the community.

Commissioner Malcolm thanked the developer for bringing the project forward and reiterated the projected positive financial impact of the project to the District and City of San Diego revenues. He expressed his concern regarding project delays. He offered that the project received a full public vetting. In terms of process and policy, he stated that it was his belief that public trust is demonstrated when a governmental agency follows its own policy. Commissioner Malcolm stated that it was inappropriate to inject a new condition on an existing developer with an existing lease who was redeveloping their property, which was not in the current policy. Commissioner Malcolm addressed the importance of unions and living wages for all employees. He offered that the unions and the developers have the right to get together and do what is best. Commissioner Malcolm offered that a case had been made that entering into some sort of labor peace agreement would be to the developer's best interest; however such an agreement should not be mandated by the agency. Commissioner Malcolm expressed his support for the project and encouraged the parties to keep talking in hopes of reaching an agreement.

Commissioner Smith offered that construction would start on the project in the next thirty days and that there was time for the parties to continue their dialogue in hope of reaching a labor peace agreement. He acknowledged the project would bring a number of much needed jobs to the construction worker sector of the economy. He expressed his support of the motion to move the project forward.

Anna Buzaitis stated for the record that all of the comments raised by Ms. Gulesserian during the public hearing were addressed in the written staff response provided on June 10, 2011. (Upon request, the Office of the District Clerk can provide a copy of the staff response.) Regarding the comments offered by Commissioner Moore referencing changes to the Port Master Plan Amendment project list, she stated that the Board has the discretion to change the Port Master Plan Amendment language. She requested clarification, for the record, as to whether the Board wished to adopt the staff recommendation of the changes to the project list.

Chairman Peters stated that he felt it was clear that the motion was in support of the staff recommendation as presented. He stated that the Board was not in a position to impose a labor peace agreement on the developer; however, the Board agreed that continuing such discussions would likely be beneficial to the approval of the project as it moves forward toward Coastal Commission consideration. Chairman Peters offered that in a partnership, the unions and the port tenants must work together to understand and acknowledge the needs of each organization. He suggested that there were two issues to consider within the real estate policy: 1) regarding incentives for creating quality jobs, and 2) acknowledging the partnerships with investors, business people and labor

while listening to and considering the needs of the waterfront partners. Chairman Peters supported addressing the concerns raised as a policy matter.

On motion of Commissioner Valderrama, seconded by Commissioner Malcolm, the Board, with a single vote adopted **Ordinance 2643** Granting Option Agreement for 55-Year Lease with the amendments to the language proposed by Commissioner Moore and Commissioner Burdick; **Resolution 2011-90** to Certify the Environmental Impact Report, Adopt Findings of Fact and a Statement of Overriding Considerations, Adopt Mitigation Monitoring and Reporting Program, and Direct Filing of the Notice of Determination; **Resolution 2011-91** Approval of the Port Master Plan Amendment, and Direct Filing with the California Coastal Commission for Certification and **Resolution 2011-92** Granting Concept Approval for Hotel Project, by the following vote: Yeas-Burdick, Malcolm, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-Moore; Absent-None; Abstained-None.

Chairman Peters called for a five minute recess at 4:08 p.m. Chairman Peters reconvened the meeting at 4:16 p.m.

CONSENT AGENDA CONTINUED

RESOLUTION CONSENTING TO \$18,500,000 LOAN BETWEEN PRIME FINANCE AND SUNROAD MARINA PARTNERS, LP DBA SUNROAD RESORT MARINA

Agenda Item 9. Chairman Peters called on Ian Trowbridge, who had submitted a public comment form regarding the item. Mr. Trowbridge was not present.

Commissioner discussion ensued. Commissioner Nelson requested clarification regarding the loan-processing fee. Karen Weymann, Director, Real Estate, stated that under BPC Policy No. 355, the District may charge transaction processing fees in the cases in which no revenue is earned. Jenner Smith, Asset Manager, Real Estate Department, described the procedure staff utilized to process the transaction and that the sum was determined based upon the level of staff resources utilized.

On motion of Commissioner Smith, seconded by Commissioner Malcolm, the Board adopted, **Resolution 2011-83** Consenting to \$18,500,000 loan between Prime Finance and Sunroad Marina Partners, LP dba Sunroad Resort Marina, by the following vote: Yeas-Burdick, Malcolm, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Moore; Absent-None; Abstained-None.

PUBLIC HEARING AGENDA CONTINUED

CONDUCT A PUBLIC HEARING AND ADOPT AN ORDINANCE AMENDING THE PORT OF SAN DIEGO TARIFF NO. 1-G

Agenda Item 19. Joel Valenzuela, Director, Maritime Operations, addressed the Board with a staff report; he requested the Chairman conduct a public hearing and that the Board consider adopting an ordinance amending the Port of San Diego Tariff No. 1-G. (A copy of the presentation and staff report is on file in the Office of the District Clerk.)

Chairman Peters opened the public hearing. The following members of the public addressed the Board in opposition to the staff recommendation: Lawrence Graf and John Gallagher. Chairman Peters acknowledged the handout supplied by Mr. Graf and explained that it would be included in the record.

As there were no other speakers, Chairman Peters closed the public hearing.

In response to Mr. Graf's statement that he was not a transient but a resident, Mr. Valenzuela clarified that the term transient vessel only refers to a vessel that is temporarily or irregular in voyage and transient was not meant to be a pejorative term.

Commissioner discussion ensued. Commissioner Burdick requested and received confirmation that Mr. Graf would be subject to an increase should the Board approve the tariff. She requested clarification as to whether any provisions in the tariff particularly related to transient vessels in which an individual could seek a waiver for indigency or other circumstances such as disability access or the like. Mr. Valenzuela stated that he was not aware of such a waiver. She requested clarification regarding ADA (American's with Disability Act) access on the transient and or public docks. Mr. Valenzuela stated that the Port Attorney's Office indicated that a rate increase does not constitute an ADA violation. Commissioner Burdick acknowledged the speakers' concerns, and offered that the matter could be explored through the form of a policy regarding indigence and added to the tariff in the future. She requested that staff review the matter and be prepared to present the Board some constructive resolution alternatives.

Commissioner Nelson requested and received confirmation from Mr. Valenzuela that the dock in question was currently ADA accessible. He also requested clarification as to the amount of annual revenue anticipated by the increase at the transient vessel

dock. Captain Kim Fives, Harbor Police, explained that the anticipated revenue based on maintaining the current occupancy rate would increase from \$83,500 to \$220,000.

Commissioner Smith offered a motion to accept the staff recommendation. Commissioner Burdick seconded the motion.

On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted, **Ordinance 2644** Amending the Port of San Diego Tariff No. 1-G, by the following vote: Yeas-Burdick, Malcolm, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Moore; Absent-None; Abstained-None.

CONSENT AGENDA CONTINUED

RESOLUTIONS AUTHORIZING AGREEMENTS -

A. COOK & SCHMID, FOR PUBLIC RELATIONS SERVICES, ON AN AS NEEDED BASIS, FOR ONE-YEAR, WITH TWO ONE-YEAR OPTIONS AND APPROVE FUNDING NOT TO EXCEED \$175,000 FOR THE FIRST YEAR.

B. KATZ & ASSOCIATES, FOR FACILITATION SERVICES, ON AN AS NEEDED BASIS, FOR ONE-YEAR, WITH TWO ONE-YEAR OPTIONS AND APPROVE FUNDING NOT TO EXCEED \$25,000 FOR THE FIRST YEAR

Agenda Item 5. Commissioner discussion ensued. Commissioner Burdick requested clarification as to the location of information regarding the other three applicants. She expressed concern that the Board could not evaluate the ratings of all of the applicants based on the request for proposal (RFP) criteria if such data was not included in the staff report. Jerine Rosato, Senior Manager, External Relations, explained the RFP selection process utilized by staff and that they only included information regarding the top two applicants being recommended in the staff report. Commissioner Burdick acknowledged the response, expressed concern that she did not have sufficient information to determine if the staff recommendation was accurate, and offered as a matter of transparency that having such information in the record would behoove the District and the public. She stated that she would oppose the staff recommendation or would consider a thirty day continuance to receive the information if the Board desired.

Commissioner Smith commented that while staff could present the total scores of all five companies, without reviewing the actual RFP and participating in the interview and screening process, the summary data might not meet Commissioner Burdick's

need. He offered that the review and selection process was a staff function. He expressed his trust in the staff and their efforts.

Commissioner Nelson stated that he was in support of the staff recommendation. Regarding Commissioner Burdick's comments, he offered comments regarding his experience as an applicant during the RFP process for government agencies. He further explained that some government agencies make it a policy to destroy all applicant data after the staff recommendation had been finalized. He acknowledged Commissioner Burdick's request to see the data and expressed his support for the staff recommendation.

Commissioner Valderrama acknowledged that it would have been helpful to have information regarding the other applicants, such as the company names. He concurred with Commissioner Smith's comments as well. He offered a motion to support the staff recommendation. Commissioner Smith seconded the motion.

Chairman Peters explained that in the future the Board would like staff to report all of the scores in the staff report.

On motion of Commissioner Valderrama, seconded by Commissioner Smith, the Board with a single vote adopted, **Resolution 2011-78** Cook & Schmid, for public relations services, on an as needed basis, for one-year, with two one-year options and approve funding not to exceed \$175,000 for the first year and **Resolution 2011-79** Katz & Associates, for facilitation services, on an as needed basis, for one-year, with two one-year options and approve funding not to exceed \$25,000 for the first year; by the following vote: Yeas-Malcolm, Nelson, Peters, Smith and Valderrama; Nays-Burdick; Excused-Moore; Absent-None; Abstained-None.

RESOLUTION NOTIFYING THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM (SDCERS) BOARD OF ADMINISTRATION THAT THE SAN DIEGO UNIFIED PORT DISTRICT (PORT) WILL CONTINUE TO PAY FOR UNDERFUNDING CAUSED BY AFFECTED PURCHASE OF SERVICE CONTRACTS

Agenda Item 14. Commissioner discussion ensued. Commissioner Smith explained that he pulled the item for a separate vote as a matter of transparency for the benefit of current employees and retirees. Commissioner Smith offered a motion to adopt the staff recommendation. Commissioner Malcolm seconded the motion.

On motion of Commissioner Smith, seconded by Commissioner Malcolm, the Board adopted, **Resolution 2011-88** Notifying the San Diego City Employees'

Retirement System (SDCERS) Board of Administration that the San Diego Unified Port District (PORT) will continue to pay for under funding caused by affected purchase of service contracts; by the following vote: Yeas-Burdick, Malcolm, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Moore; Absent-None; Abstained-None.

ACTION AGENDA

GOVERNMENT & COMMUNITY RELATIONS UPDATE & DIRECTION TO STAFF

Agenda Item 25. Shahriar Afshar, Director, Government and Community Relations, addressed the Board with an update regarding the Maritime Week Legislative Boat Tours; recent outreach events and speaking engagements; and Senate Bill 623 (SB 623 that proposed the banning of copper in marine anti-fouling paint. He reviewed the planning coordinating issues with the City of San Diego related to the Barrio Logan Community Plan Update and the proposed Fat City Lofts apartment development across from Port tenant, Solar Turbines. Mr. Afshar briefly turned the presentation over to John Helmer, Senior Manager, Government and Community Relations. Mr. Helmer addressed the Board regarding the Barrio Logan Industrial Areas and the Tenth Avenue Marine Terminal Transition Zone and the potential impact resulting in a loss of land used for maritime industrial business in the area. (A copy of the presentation and staff report is on file in the Office of the District Clerk.)

Sophie Silvestri, San Diego Port Tenants, addressed the Board regarding the City of San Diego planning update regarding the Barrio Logan Community Plan and the Tenth Avenue Marine Terminal transition zone. She referenced a letter addressed to the Chairman of the City of San Diego Planning Commission on the Barrio Logan Transition Zone that had been provided to the Commissioners. She read a list of the Working Waterfront Group's proposed designated uses for the transition zone, discussed their opposition to a reduction of industrial lands, spoke about incorporating green spaces, and addressed neighborhood impacts of the area businesses and truck traffic. She stated that the Working Waterfront Group did not support Alternative one, presented by the City of San Diego Planning Commission, and offered support to Alternative two with modifications. (A copy of the letter is on file in the Office of the District Clerk.) Chairman Peters requested and received confirmation that Ms. Silvestri would submit her comments in writing for inclusion in the record.

The following members of the public addressed the Board regarding SB 632 that proposed the banning of copper in marine anti-fouling paint: Gabriel Solmer, San Diego Coastkeeper; Kate Pearson, San Diego Super Yacht Association; Deborah Pennell, Shelter Island Marina; Shelley Griffin, Bay Club Hotel and Marina/San Diego

Dockmasters Association; Cris Wenthur, Wenthur Law Group; Todd Roberts, Marine Group Boat Works; Frank Szafranski, International Paint; and Jim Unger, San Diego Port Tenants Association.

Responding to some of the comments offered by the speakers, Chairman Peters clarified that while the District could make a recommendation; the Board could not amend the language in SB 623, as it was a Senate function. He requested and received confirmation from Michele White, Environmental Policy Manager, Government and Community Relations, that the Board had requested an exemption for transient vessels.

Commissioner discussion ensued. Commissioner Nelson thanked the staff and the stakeholders for the progress made regarding SB 623. He acknowledged Ms. Solmer's comments and cautioned that care be taken when considering language regarding transient vessels, and that without an exemption for such vessels many local business could be subject to a considerable loss in potential revenues or suffer great damage. He expressed his support for crafting language in a way to protect the opportunity for transient vessels to be refit and repainted at regional businesses. Referencing an attachment to the staff memo titled Update on Senate Bill 623 (Kehoe) - Banning Copper Marine Antifouling Paint dated June 8, 2011, he requested and received clarification as to whether it was staff's belief that the revised language submitted in section 2, paragraph 760, "On and after January 1, 2015, it shall be unlawful to use on or apply to a recreational vessel antifouling paint containing copper that does not meet the definition of low-leach rate copper antifouling paint," was intentionally omitted or was a drafting error. (A copy of the memo is on file in the Office of the District Clerk.)

Ms. White offered that staff had worked with Ms. Solmer and Senator Kehoe's staff regarding the crafting of language that would still allow low-leech copper antifouling paint while still ensuring that efforts to protect water quality was maintained. She stated that the language was intentional, thus by initially having the low-leech copper paints applied to the transient vessels if a future ban on biocide paints occurred, then the transient vessel exception would be triggered. Ms. White stated that the intent was to craft a bill that would be acceptable to as many stakeholders as possible. Jonathan Clay, Carpi and Clay, added that Senator Kehoe was attempting to balance concerns related to the focus on recreational vessels raised by other stakeholder groups.

Commissioner Nelson expressed his concern regarding the impact on local businesses and their family livelihood and offered that caution should be taken in the approach to the matter. Ms. White confirmed that the language, which passed the Senate floor, was the same text presented several months ago. She explained the

language shown in the memo were proposed amendments that would be submitted to legislative counsel. Ms. White stated that the deadline for amended language to be heard at the first assembly committee was by the close of business on June 15, 2011. Commissioner Nelson requested clarification that if the Board believed that the bill was no longer in the best interest of the District by what means would the District remove itself.

Mr. Clay stated his belief that time still remained for the Board to take action to withdraw support for the bill if after the Board's review of the proposed language did not meet their approval. If the Commissioners found it necessary, they could take such action at the July regular Board meeting.

Chairman Peters confirmed that the Board was on record regarding support of a transient vessel exemption. In response to Commissioner Nelson's query, Mr. Clay offered that he would again state the Board's intention regarding withdrawing support in the event a transient vessel exemption is not included in the SB 623.

Wayne Darbeau, Executive Director, acknowledged Commissioner Nelson's question and offered that several national port authority organizations were carefully observing the situation. He stated that staff would return to the Board should they find the impact of the Bill would be harmful to the District or the port industry.

Commissioner Valderrama referred to the comments offered by Mr. Wenthur during the public testimony on the matter. Responding to Commissioner Valderrama, Ms. White confirmed that the language offered by Mr. Wenthur's was consistent with the Board's original direction. Commissioner Valderrama requested consideration that the Board directs staff to convey to Senator Kehoe their desire to include the additional language as offered by Mr. Wenthur.

Chairman Peters acknowledged the recommendation by Commissioner Valderrama and offered that a motion on the specific words offered by Mr. Wenthur may not be necessary, as there may be another way to express the thought. He stated that he believed that the overall message regarding an exemption for transient vessels was consistently conveyed.

Commissioner Burdick requested and received clarification from staff regarding the cost differential to a vessel owner to have their mega yacht coated with a copper-based paint versus another type of biocide paint. Ms. White stated that staff had conducted a survey investigating alternative paints and the cost of applying those paint and had some assessment data of the associated costs over the life of the product.

Karen Holman, Environmental and Land Use Management Department, stated that while staff did not have the specific figures requested by Commissioner Burdick, a study was conducted regarding the specific cost analysis data on non-copper alternative paints compared to biocide or non-biocide products. Ms. Holman explained that there was a greater upfront cost of up to three or four times for vessel preparation and stripping for the non-biocide coatings. Commissioner Burdick requested and received confirmation from Ms. White that staff had some data from the tenants regarding the number of transient vessels in their marinas. Ms. White confirmed that staff had not studied the cumulative impacts to the Bay by those transient vessels with copper hull paint.

Commissioner Smith thanked everyone for engaging in the process and acknowledged that the process was consistent with a bill passing through the legislature. He offered his support for including a provision exempting transient vessels and advocated for participating in the process of crafting the best language possible.

Commissioner Malcolm thanked the members of the public who expressed their comments. He stated that the Board was in support of an exemption for transient vessels and offered that the legislation as currently proposed would negatively influence a significant part of revenue in many of the local marine trades. Speaking in support of the water quality in the Bay, he also stated that weighing the maritime revenue versus the impact to the environment would be challenging.

Chairman Peters reiterated that in prior Board action the Commissioners voted to support a bill to ban copper based hull paints with an exception for transient vessels. He requested that staff return with information requested by Commissioner Burdick regarding potential impacts of transient vessels.

Commissioner Nelson offered his perspective on the number of transient vessels serviced locally on an annual basis versus the total number of recreational vessels docked in local marinas.

Mr. Afshar stated that upon his next visit to Sacramento, he would ensure that the stakeholders have a clear sense of the financial impact to the region, the local stakeholders input on the matter, and Board's direction regarding an exemption for transient vessels. Echoing Mr. Darbeau's earlier sentiments, he concluded that staff would proceed carefully as the details emerged.

Commissioner Nelson acknowledged the concern expressed by the Port Tenants regarding the Barrio Logan Industrial Areas and the transition zone. He offered his own

concern regarding what he perceived as a change in the position by the stakeholders who had previously supported the District's position on the transition zone, and that there was some change in position relative to industrial land versus residential land. Commissioner Nelson stated that he had supported the Board action regarding the Marine Terminal Enhancement Fund to mitigate the off-site impacts. He acknowledged that the establishment of the Marine Terminal Enhancement Fund was the result of a long process, and considerable time was invested by a number of colleagues and stakeholders to develop a package that worked. He expressed his hope that, as the Board approaches the transition zone topic, the Commissioners do not look at individual parcels but offer input given in the context of the spirit of what was accomplished by the Board and the staff when Resolution 2008-112 establishing BPC Policy No. 725 was adopted. Commissioner Nelson stated that he requested staff to review the resolution, examine Alternative one and Alternative two with respect to the transition area, and present their findings as to whether either or both of the alternatives relate to Resolution 2008-112.

Mr. Helmer addressed Commissioner Nelson's request and spoke about Board Policy No. 725, which is accompanied by three pages of guiding principles. He stated that the policy was heralded by both sides of the argument and it appears to be their belief that the policy actually supported their own position. Mr. Helmer stated that staff is examining the matter and would be offering Board briefings, discussing the matter at the Maritime Advisory Committee meeting, and that it would return to the Board at a future meeting for further discussion. Chairman Peters requested that staff coordinate with Commissioner Nelson to schedule a briefing.

Referencing Commissioner Nelson's comments that some stakeholders had changed their position regarding support of the transition zone, Commissioner Valderrama requested a briefing in hope of better understanding stakeholder concerns. Mr. Helmer acknowledged the request and stated that following the stakeholder meetings staff would report to the Board.

Mr. Afshar turned the presentation over to Darlene Nicandro, Director, Environmental and Land Use Management Department. She provided a brief update regarding a letter drafted on behalf of the District to the Centre City Development Corporation regarding the staff's strong objections to development of residential units as part of the proposed Fat City Lofts project. She offered information regarding the staff's concern, that over time, such residential units would negatively impact the basic industrial applications at Solar Turbines. Ms. Nicandro addressed the economic impact of Solar Turbines to the San Diego region.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE MEETING OF JULY 12, 2011

Agenda Item 26. On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted the proposed agenda for the meeting of July 12, 2011, by the following vote: Yeas-Burdick, Malcolm, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Moore; Absent-None; Abstained-None.

RESOLUTION AUTHORIZING MEMORANDUM OF UNDERSTANDING BETWEEN SAN DIEGO UNIFIED PORT DISTRICT; CITY OF SAN DIEGO; AND CITY OF IMPERIAL BEACH TO EXPLORE USES FOR POND 20

Agenda Item 27. Item continued to a future Board meeting.

ORDINANCE ADOPTING UPD CODE SECTION 4.14 FOR REGULATION OF IN-WATER HULL CLEANING

Agenda Item 28. Item continued to a future Board meeting.

OFFICER'S REPORT

Agenda Item 29. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director or designee, were reported:

- A. Change Order No. 3 for \$4,930 and 0 Calendar Days to Contract No. 2010-11 with Becerra's HVAC for Administration Building 5th Floor IT Server Room HVAC Upgrade, San Diego, CA.
- B. Change Order No. 2 for \$15,311 and 0 Calendar Days to Contract No. 2010-11 with Becerra's HVAC for Administration Building 5th Floor IT Server Room HVAC Upgrade, San Diego, CA.
- C. Change Order No. 1 for \$469.29 and 0 Calendar Days to Contract No. 2010-17 with Khavari Construction, Inc. for Harbor Police Shed #2 Training Room Drywall Finishing , San Diego, CA.
- D. Change Order No. 1 for \$9,918.00 and 0 Calendar Days to Contract No. 2011-12 with Khavari Construction, Inc. for Administration Building Complex Various Locations Office Reconfiguration, 3165 Pacific Highway, San Diego, CA.
- E. Change Order No. 4 for \$11,100 and 14 Calendar Days to Contract No. 2009-25 with ATP General Engineering Contractors for Shelter Island Pavement Repair, San Diego, CA.

- F. Change Order No. 3 for Not-To-Exceed \$31,287.00 and 10 Calendar Days to Contract No. 2010-37 with Chula Vista Electric for Broadway Pier Port Pavilion Exterior Lighting Back-Up Power System, San Diego, CA.
- G. Change Order No. 2 for \$0.00 and 14 Calendar Days to Contract No. 2010-37 with Chula Vista Electric for Broadway Pier Port Pavilion Exterior Lighting Back-Up Power System, San Diego, CA.

COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING

Agenda Item 31. Commissioner discussion ensued. Commissioner Valderrama expressed his concern that during the discussion of the Sunroad Hotel Development project, the Board requested Mr. Feldman consider approving changes to the lease agreement language. To avoid any confusion by the tenants regarding the Board's direction, he stated that the Commissioners consider not negotiating from the dais. He requested that staff provide a recommendation when those sorts of situations arise in the future.

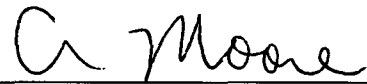
Chairman Peters explained that the better form would have been to continue the item for another thirty days, but he felt the port tenants would not have supported another continuance. He also suggested that a determination should be made on a case-by-case assessment when such language changes, as the ones requested, were offered by the Board.

Commissioner Nelson acknowledged the quality work by staff members Randa Coniglio, Vice President of Operations, Connie LeFevre, Senior Maritime Account Manager, and Ron Popham, Chief Trade Representative, who represented the District on the recent European trade mission.

Chairman Peters thanked the Board and staff for their efforts and adjourned the regular meeting.

June 14, 2011

page 184

A handwritten signature in cursive script, appearing to read "C. Moore", written over a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "L. [unclear]", written over a horizontal line.

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 11:00 a.m., Tuesday, July 12, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, and McEntee

Absent: No Commissioners absent.

Excused: Commissioner Nelson was excused for personal business.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

CLOSED SESSION

Duane Bennett, Port Attorney, announced the closed session agenda as follows:

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: South Bay Power Plant Consisting of Approximately 115 Acres of Property located South of J Street and West of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services, Beck Mayberry, Manager, Asset Management West, and Daniel

Thompson, Vice President, West Region Operations,
Dynegey South Bay, LLC;
Irene McCormack, Randa Coniglio, Karen Weymann,
Kristine Zortman, SDUPD

Under Negotiation: Price and Terms

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Subdivision (b)(1) of Government
Code Section 54956.9

One Case

Agenda Item 5.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Sheraton San Diego Hotel & Marina Consisting of
Approximately 27 Acres of Tideland and Water Area
Located at 1380 and 1590 Harbor Island Drive,
San Diego

Negotiating Parties: Christopher Ford, Vice President, Asset Management,
Craig Mason, Senior Vice President, Asset Management,
Host Hotels & Resorts, Inc.
Penny Maus, Randa Coniglio, Karen Weymann,
Annette Dahl, SDUPD

Under Negotiation: Price and Terms

Agenda Item 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 5 Acres of Tideland Area Leased to the San Diego Convention Center Corporation along Convention Way, all Bayward of the San Diego Convention Center

Negotiating Parties: Carol Wallace, CEO, San Diego Convention Center Corporation;
Randa Coniglio, Karen Weymann, Shaun D. Sumner, Nicholas Markos, SDUPD

Under Negotiation: Price and Terms

Mr. Bennett announced that Randa Coniglio would also be a negotiating party for the District.

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: 1220 Pacific Highway

Negotiating Parties: Karen Ringel, Naval Facilities Engineering Command Southwest, Department of the Navy
Randa Coniglio, Karen Weymann, Shaun D. Sumner, SDUPD

Under Negotiation: Price and Terms

Agenda Item 8.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Subdivision (a) of Government Code Section 54956.9

Traylor v. SDUPD, et al.
United States District Court Case No.08-CV-1019-L (WVG)

Agenda Item 9.

PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
EXECUTIVE DIRECTOR AND PORT ATTORNEY
Government Code Section 54957

Agenda Item 10.

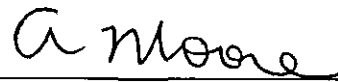
CONFERENCE WITH LABOR NEGOTIATOR: EXECUTIVE DIRECTOR
Government Code Section 54957.6

The Board, by a 7-0 vote, adjusted the base salary of the Executive Director by 25%.

There was no formal or reportable action as to any other closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

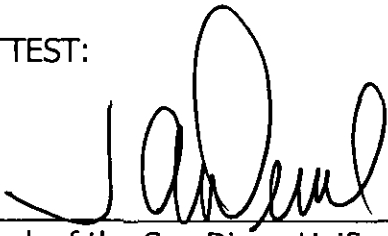
July 12, 2011

page 189



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:01 p.m., Tuesday, July 12, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, and McEntee

Absent: No Commissioners absent.

Excused: Commissioner Nelson was excused for personal business.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Commissioner Valderrama led the Pledge of Allegiance.

APPROVAL OF MINUTES

Agenda Item 3. Commissioner Burdick requested that consideration be given regarding the following changes to the draft of the minutes for the regular meeting of June 14, 2011: 1) on page 11 of the draft minutes, Ms. Burdick requested the pronoun "he" be corrected to "she" and 2) that Bill Hall was not present at the meeting with Sharon Cloward; and 3) on page 13 of the draft minutes, she requested that after "card check" and "neutrality" the following text be inserted: "but then stated that they had also discussed a succession clause."

Explaining that she was not present for the latter half of the June 14, 2011 regular meeting, Commissioner Moore stated she would abstain from approving that portion of the minutes.

Commissioner Malcolm stated that on page 15, paragraph one of the draft minutes, the reference to Commissioner Nelson should have read Commissioner Malcolm.

On motion of Commissioner Smith, seconded by Commissioner Malcolm, the Board approved the minutes for the special meeting of June 14, 2011 and the regular meeting of June 14, 2011 with the proposed corrections, by the following vote: Yeas-Burdick, Malcolm, Moore, Peters, Smith and Valderrama; Nays-None; Excused-Nelson; Absent-None; Abstained-Moore for a portion of the June 14, 2011 regular meeting.

PUBLIC COMMUNICATIONS

Agenda Item 4. None.

PRESIDENT'S REPORT

Agenda Item 26. Wayne Darbeau, Executive Director, announced the District had been awarded a 2011 Online Video Bronze Telly Award for the video *Disabled Veterans Compete in VA Summer Sports Clinic on San Diego Bay*. The video was produced in-house by Glenn Batuyong, Senior Web Developer, and Barbara Moreno, Web Content Specialist, of the District's Corporate Communications Department. The award-winning video was then played. Mr. Darbeau requested that Urban Miyares, Challenged America co-founder and Ken Gyer, Dock Master, San Diego Marriott and Marina join Mr. Batuyong, Ms. Moreno, Chairman Peters and himself for a photograph.

Timothy A. Deuel was sworn-in by his father, Rodney Deuel, as District Clerk.

Randa Coniglio, Vice President of Operations, addressed the Board regarding a piece of joint correspondence submitted on behalf of the District and the City of Chula Vista to Deborah Lee, District Manager, California Coastal Commission. The letter under the signature of Wayne Darbeau, Executive Director and Jim Sandoval, City Manager, City of Chula Vista would be hand delivered. To facilitate hearing the matter at the November 2011 California Coastal Commission meeting in Oceanside, California, the authors requested the timely consideration of the Chula Vista Bayfront Master Plan – City of Chula Vista LCP Amendment (LCPA) No. 1-11 and Port Master Plan Amendment (PMPA) No. 41. (A copy of the letter is on file in the Office of the District Clerk.)

CONSENT AGENDA

Chairman Peters requested that Laura Nicholson, Deputy District Clerk, announce any suggested docket changes. Ms. Nicholson announced the proposed changes to the

agenda as follows: **Consent Agenda Item 10**, Resolution Accepting Vendor Indemnification language and language for attorneys' fees and authorizing staff to utilize the Scottish Rite Event Center for a Harbor Police written examination on October 1, 2011 for a fixed rental fee of \$2,160, Board action was no longer required; **Consent Agenda Item 11**, Resolution Consenting to Sublease and First Amendment to Sublease from Host San Diego Hotel, LLC to FedEx Office and Print Services, Inc., for five years with one option to extend for five years, staff requests this item be continued to a future Board meeting; **Consent Agenda Item 12**, Resolution Adopting Plans and Specifications and Awarding Contract No. 2009-17 to {company name} for Tenth Avenue Marine Terminal communication and fire alarm system upgrade in the amount of {dollar amount}, staff requests this item be continued to a future Board meeting; **Consent Agenda Item 13**, Resolution Authorizing Agreement with _____ for dumpster services at various District locations in an amount not to exceed \$330,000, staff requests this item be continued to a future Board meeting; **Action Item 17B**, San Diego Convention Center Hotel and Phase III Expansion Project (Project): Resolution Approving Partial Assignment and Assumption Agreement with One Park Boulevard, LLC for payment of entitlement costs for the San Diego Convention Center Hotel and Phase III Expansion Project, staff requests this item be continued to a future Board meeting; **Action Item 17C**, San Diego Convention Center Hotel and Phase III Expansion Project (Project): Resolution Approving First Amendment to Agreement for Environmental Consulting Services to add One Park Boulevard, LLC as an applicant, staff requests this item be continued to a future Board meeting; **Action Item 23**, Government & Community Relations Update & direction to staff; Board action was no longer required; and **Action Item 24**, Resolution Authorizing Memorandum of Understanding between San Diego Unified Port District; City of San Diego; and City of Imperial Beach to explore uses for Pond 20; staff requests this item be continued to a future Board meeting.

Chairman Peters clarified that there were representatives from the San Diego Convention Center Corporation present and the Board would hear their presentation regarding item 17A, San Diego Convention Center Hotel and Phase III Expansion Project (Project): Project Update Presentation.

On motion of Commissioner Valderrama, seconded by Commissioner Burdick, the Board accepted the suggested changes to the agenda, by the following vote: Yeas-Burdick, Malcolm, Moore, Peters, Smith, and Valderrama; Nays-None; Excused-Nelson; Absent-None; Abstained-None.

Commissioner Moore thanked staff for putting together the letter to the California Coastal Commission and expressed her desire that efforts regarding the Chula Vista Bayfront Master Plan continue to move forward.

On motion of Commissioner Malcolm, seconded by Commissioner Smith, the Board adopted Consent Agenda items 5, 6, 7, 8, and 9, (**Resolution 2011-93** through and including **Resolution 2011-97**) by the following vote: Yeas-Burdick, Malcolm, Moore, Peters, Smith, and Valderrama; Nays-None; Excused- Nelson; Absent-None; Abstained-None.

Agenda Item 5. **Resolution 2011-93**, to Reappoint Kimberlee Eskierka, John Gandy, Laura Martella, Kyle McCarthy, and Michelle Pagni to the San Diego Unified Port District Personnel Advisory Board for a second term of three years duration commencing September 2, 2011; Appoint Annabella Griffo, Belinda Hein, and Clifford Williams to the PAB for a term of three years duration commencing September 2, 2011; and Appointing Kyle McCarthy as Chairperson of the PAB from September 2, 2011 to September 1, 2012, was adopted as part of the consent agenda.

Agenda Item 6. **Resolution 2011-94**, Adopting Plans and Specifications and Awarding Contract No. 2011-07 to Whillock Contracting, Inc. for Marina Parkway sand filter, along the L-Ditch alignment, Chula Vista, CA in the amount of \$742,653.50, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2011-95**, Adopting Plans and Specifications and Awarding Contract No. 2010-25R to Tetra Tech Construction Services, Inc. for National City Marine Terminal to Administration Building Wireless Connectivity Project in the amount of \$290,000, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2011-96**, Granting Indemnity and Waiving Rights to consequential damages to San Diego Gas and Electric for net energy metering interconnection for General Services Building photovoltaic system, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2011-97**, Selecting and Authorizing Agreements with Driscoll Boat Works, Nielsen Beaumont Marine, Shelter Island Boatyard, Koehler Kraft, Knight & Carver, and Marine Group Boat Works to provide as needed hull paint removal services for the Shelter Island Yacht Basin Copper Hull Paint Conversion Project for a total aggregate amount not to exceed \$600,000, was adopted as part of the consent agenda.

Agenda Item 10. **Board action no longer required.**

Agenda Item 11. **Item continued.**

Agenda Item 12. **Item continued.**

Agenda Item 13. **Item continued.**

Commissioner Burdick stated that regarding Consent Agenda Items 6 and 7, in which the Board was awarding contracts, she commended staff for their reports that included references to all of the parties who submitted responses to the request for proposal. She explained that last month she raised her concerns that staff reports on such consent agenda contracting items were not complete without that information. In addition, Commissioner Burdick encouraged staff to state why they selected one responder over the other in all future staff reports. She continued that if, in fact, the sole reason was that the responder submitted the lowest responsive bid that was fine. However, if there were other considerations she would like those other considerations to be included in the staff report. Commissioner Burdick stated that the Board was finding that those contracts, even though they were legitimately on the consent agenda, could expose the Board to great risk and offered her belief regarding the importance of a full record as to why those items were being moved forward. She requested that such details be "fleshed out" completely in the staff reports. She thanked Mr. Darbeau for improving staff reporting on those items.

PRESENTATION AGENDA

SERVICE AWARD PRESENTATION TO EMPLOYEES WITH 15 OR MORE YEARS OF SERVICE

Agenda Item 16. Hope Elie, Human Resources Technician, addressed the Board with a presentation regarding the Service Award Presentation program. She turned the presentation over to Wayne Darbeau, Executive Director, who introduced the recipients. He announced the following employees were being recognized for 20 years of service: Kelly Falk, Asset Manager, Real Estate Department and Eunice Oliver, Staff Assistant I, Corporate Communications. Chairman Peters and Mr. Darbeau presented certificates to the employees. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

PUBLIC HEARING AGENDA

CORONADO YACHT CLUB REDEVELOPMENT PROJECT

- A) CONDUCT PUBLIC HEARING, CERTIFY ENVIRONMENTAL IMPACT REPORT, ADOPT FINDINGS OF FACT, ADOPT MITIGATION MONITORING AND REPORTING PROGRAM, AND DIRECT FILING OF THE NOTICE OF DETERMINATION.**
- B) CONDUCT PUBLIC HEARING, APPROVE PORT MASTER PLAN AMENDMENT, AND DIRECT FILING WITH THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION.**

Agenda Item 14AB. Chairman Peters requested the Board disclose any ex parte communications regarding the matter.

Commissioner Smith stated he had spoken to Mark Warner, Coronado Yacht Club Commodore. Casey Tanaka, City of Coronado Mayor, Mike Woiwode, Coronado City Council Member and Blair King, Coronado City Manager.

Wileen Manaois, Senior Redevelopment Planner, Environmental & Land Use Management, addressed the Board with the staff presentation regarding the Coronado Yacht Club Redevelopment Project and requested Chairman Peters conduct a public hearing. She summarized the comments received from Todd Anson, Coronado resident; Ian Trowbridge; Bridgette Browning, President, UNITE HERE Local 30; and Cory Briggs, Briggs Law Corporation, who expressed their concerns regarding the project. Ms. Manaois turned the presentation over to Darlene Nicandro, Director, Environmental & Land Use Management.

Ms. Nicandro requested the Board consider the modified staff recommendation as follows: open the public hearing; take public testimony; and that the Board direct staff to work with the Coronado Yacht Club, California Coastal Commission staff, and City of Coronado staff to resolve the shoreline public access issue. The recommendation was for the matter to be continued and staff would return to Board for Environmental Impact Report (EIR) certification and Port Master Plan Amendment (PMPA) adoption no later than September 2011. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Chairman Peters opened the public hearing.

Mark Warner, Coronado Yacht Club Commodore and Bill Sandke, Board Member, Coronado Yacht Club, addressed the Board in opposition to the modified staff recommendation to continue the matter. Tom Ritter, City of Coronado, addressed the Board in support of the Coronado Yacht Club redevelopment project and supported the staff recommendation to continue the matter.

Chairman Peters closed the public hearing.

Commissioner discussion ensued. Commissioner Smith thanked staff and the members of the Coronado Yacht Club for their work. Commissioner Smith disclosed that he did not own a vessel and was not a member of any yacht club. He acknowledged the benefits of the Glorietta Bay Master Plan to the city, the stakeholders and the environment. He discussed public access in the area. Commissioner Smith acknowledged the speakers' frustrations regarding an additional delay to the project. He encouraged the parties to follow the process and that additional outreach be conducted. He acknowledged the efforts of the California Coastal Commission to do their work in accord with the State law. Commissioner Smith offered a motion to accept the staff recommendation to continue the matter. He expressed his hope that such a continuance would allow for the time necessary for the stakeholders to work with the California Coastal Commission and that those efforts would result in a positive outcome.

Commissioner Burdick seconded the motion. She stated that she would just like to make sure that the Commodore of the Coronado Yacht Club and the Coronado Yacht Club members understood that the Board had no doubts about the value or the validity of the project. Commissioner Burdick offered that the redevelopment project would not have happened but for a cooperative effort among the tenants, the City of Coronado and the District. She stated that unfortunately the Board simply did not have the luxury of looking at the project all by itself in a vacuum. She continued that the Port of San Diego is a unified port district tasked to maintain a cooperative relationship with the California Coastal Commission, the State Lands Commission, and other government agencies. Along with the Board's responsibility to recommend what was in the greater public interest, those agencies also had input as to what was in the greater public interest from their perspective. Commissioner Burdick explained that because of those on-going relationships, which affect all five member cities, the Board cannot look at any one project as if it was a stand-alone project without ripples and ramifications on all the work that the District has to do with those government agencies. She stated her belief that staff would negotiate very diligently to ensure that some resolution would be achieved. She explained that in the very recent past she thought there were some very good ideas on how to solve the California Coastal Commission staff's concerns without affecting the Coronado Yacht Club's proposal at all. Commissioner Burdick stated that

she would like to see if some of those alternatives could be pursued where the Coastal Commission staff's concerns could be addressed and allow the project to move forward. She encouraged staff to work diligently to resolve the concerns in the August timeframe as opposed to the September timeframe. She reiterated that staff's recommendation, which she supported with her second, was that the matter will return to the Board for EIR certification and PMPA adoption no later than September. Referencing her prior concerns with the North Embarcadero Visionary Plan approval process, she explained that the sooner the matter could be addressed the more likely the District's project would be docketed on Commission's agenda for February 2012. Commissioner Burdick urged staff to work with the City of Coronado, the California Coastal Commission and the State Lands Commission to try to resolve the issues at the earliest opportunity.

Commissioner Valderrama stated that he concurred with the comments offered by Commissioner Smith and Commissioner Burdick. He acknowledged Commissioner's Smith motion and expressed the importance of all stakeholders working together to address the California Coastal Commission's concerns as an effort to move the project forward for the Commission's approval.

Chairman Peters stated that he would support the motion, and explained his belief that the recommendation could be managed as to not delay the overall project and stay on the same California Coastal Commission schedule. He requested clarification regarding the prior California Coastal Commission report, and as to whether in 2003, the Commission requested putting the pathway in the same location as they were presently requesting. Ms. Manaois stated that it was her understanding that in 2003, the pathway was not in the same location and explained that the plan was for the promenade to go around the Coronado Yacht Club. She clarified that the bay front park would end at the pocket park and go around the Coronado Yacht Club. Chairman Peters requested and received confirmation from Ms. Manaois that it was her understanding there was no discussion in 2003 to put the pathway where it was being considered today. Chairman Peters requested confirmation from Ms. Nicandro as to whether that was also her understanding. Ms. Nicandro stated that in the 2003 approval of the Glorietta Bay Master Plan it was holistically planned to have the promenade go along the street side of the Coronado Yacht Club leasehold. She stated at that it was the understanding of District staff that shoreline access was not proposed by the California Coastal Commission staff. Chairman Peters stated that space would be provided on the September 13, 2011 or August 9, 2011 regular meeting agenda to take up the matter. He acknowledged the benefits of the project and thanked the City of Coronado as well as the stakeholders for their work and encouraged the parties to work together to achieve a good resolution.

On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted the staff recommendation to continue the matter and that staff would return to the Board for Environmental Impact Report (EIR) certification and Port Master Plan Amendment (PMPA) adoption no later than September 2011, by the following vote: Yeas-Burdick, Malcolm, Moore, Peters, Smith and Valderrama; Nays-None; Excused-Nelson; Absent-None; Abstained-None.

**CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION AUTHORIZING
ISSUANCE OF AN APPEALABLE COASTAL DEVELOPMENT PERMIT FOR
NATIONAL CITY AQUATIC CENTER**

Agenda Item 15. Anna Buzaitis, Assistant Redevelopment Planner, Environmental & Land Use Management, addressed the Board with a staff report regarding the National City Aquatic Center; requested the Board conduct a public hearing; and that the Commissioners consider the staff recommendation to adopt a resolution regarding the issuance of an Appealable Coastal Development Permit. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Chairman Peters requested the Board disclose any ex parte communications regarding the matter.

Commissioner Valderrama stated that as the Commissioner for National City, he had conversations with Ron Morrison, Mayor, City of National City; many of the city of National City senior staff members; John Pasha, Pasha Automotives; Greg Boeh, Pier 32; Ivar Leetma, Chief Operating Officer, MRW Group and Mike Lucas, Sycuan.

Chairman Peters opened the public hearing.

Greg Boeh, G.B. Capital Holdings – Point Loma Marina, Pier 32 Marina and San Diego Mooring Company, addressed the Board and expressed concern regarding safety-related issues including the training of people in the operation of small vessels in a close proximity to the public boat launch ramp. He offered that such activity might cause congestion and could create a liability for the City of National City and the District. He suggested considering alternative locations for the aquatic center.

Chairman Peters requested and received confirmation from Patricia Beard, Redevelopment Manager, City of National City, that she submitted a speaker slip indicating her support for the project; that she did not wish to formally address the Board and that she was available for any questions.

There were no other speakers and Chairman Peters closed the public hearing.

Commissioner discussion ensued. Commissioner Valderrama addressed the boat launch ramp safety concerns raised during the public hearing. Commissioner Valderrama stated that the City of National City was aware of the concern, and that with the appropriate due diligence and appropriate supervision, the issue could be mitigated. He stated that the City of National City representatives felt comfortable moving forward. Commissioner Valderrama offered a motion in support of the staff recommendation. Commissioner Malcolm seconded the motion.

Commissioner Smith commended Commissioner Valderrama and staff for the efforts regarding the National City Aquatic Center project. He offered that Pepper Park was well utilized by community members and was National City's only bay front park. He stated that the project would benefit area residents.

Commissioner Burdick requested confirmation regarding data in the staff report. Ms. Buzaitis confirmed that the National City Aquatic Center had been operating in temporary trailers located at the Pepper Park parking lot since 2004. She explained that the National City Aquatic Center staff have launched kayaks from the boat launch ramp and would continue to do so after completion of the facility. Commissioner Burdick requested and received confirmation from Ms. Buzaitis that nothing would change from the current operations that had been going on since 2004. Commissioner Burdick requested and received confirmation from Adam Meyer, Asset Manager, Real Estate Department, who stated that staff was not aware of any accidents reported since the kayaks and aquatic activities had been launched out of the boat ramp.

Chairman Peters stated, for the information of the record, that kayakers in La Jolla frequently run in to each other, and while he would not be surprised if the same things were to occur near the National City Aquatic Center, it has nothing to do with the project.

On motion of Commissioner Valderrama, seconded by Commissioner Malcolm, the Board adopted **Resolution 2011-98** Authorizing Issuance of an Appealable Coastal Development Permit for National City Aquatic Center, by the following vote: Yeas-Burdick, Malcolm, Moore, Peters, Smith and Valderrama; Nays-None; Excused-Nelson; Absent-None; Abstained-None.

Commissioner Burdick left the dais at 2:07 p.m. and returned at 2:13 p.m.

ACTION AGENDA

SAN DIEGO CONVENTION CENTER HOTEL AND PHASE III EXPANSION PROJECT (PROJECT)

A) PROJECT UPDATE PRESENTATION.

B) RESOLUTION APPROVING PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT WITH ONE PARK BOULEVARD, LLC FOR PAYMENT OF ENTITLEMENT COSTS FOR THE SAN DIEGO CONVENTION CENTER HOTEL AND PHASE III EXPANSION PROJECT.

C) RESOLUTION APPROVING FIRST AMENDMENT TO AGREEMENT FOR ENVIRONMENTAL CONSULTING SERVICES TO ADD ONE PARK BOULEVARD, LLC AS AN APPLICANT.

Agenda Item 17ABC. Nick Markos, Asset Manager, Real Estate, addressed the Board and clarified that staff requested that items 17B and 17C be continued to a future Board meeting and staff was working diligently to finalize the agreements in an effort to present them to the Board in the near future. Mr. Markos introduced Shaun Sumner, Area Real Estate Asset Manager, Real Estate Department. He turned the presentation over to Charles Black, Project Manager, San Diego Convention Center Expansion Project. Mr. Black offered a presentation and update regarding the proposed Convention Center expansion and the outreach efforts regarding the design of the public spaces. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Peters thanked Mr. Black for his efforts to work with District staff regarding the project. Referencing the proposed design, Chairman Peters requested clarification as to the design plan. He explained that he recalled retail space on the bayside face of the structure and that the proposed roadway for automobiles had been removed.

Mr. Black explained that this was the difference from the due diligence test fit, where the road was actually inside of the building and was referred to as the 1000 foot tunnel. He explained that Convention Way was moved back outside, ran adjacent to the promenade so that it was in daylight; creating an opportunity for up to 30,000 square feet of retail space. He acknowledged that the exact amount of waterfront retail space for development was not yet determined.

Chairman Peters requested clarification regarding the rationale for taking that public space and giving it to cars.

Mr. Black stated there were two rationales: 1) the road was the only access to Embarcadero Marina Park South, and 2) the road was also an egress for some of the parking from the Marriott.

Chairman Peters offered his understanding that those two uses were also addressed when the roadway was planned for inside of the building.

Mr. Black explained that he thought Port staff did not view the idea of the sole public access point to an important park space like Embarcadero Marina Park South, through a long enclosed tunnel, favorably. He further commented that he thought many from the City felt the same way. He offered that, while currently the road is heavily traveled with trucks serving the Convention Center, following the proposed expansion, the truck traffic would be moved inside the Convention Center and should result in the road being lightly traveled. Mr. Black continued that there would be few automobile and pedestrian conflicts and it would be easy for pedestrians to move back and forth across the road. He explained that they thought it was a good solution.

Chairman Peters expressed his concern that District staff had not discussed the modified concept. He explained his belief that the trend was to take spaces and give them over to pedestrians and bicycles and not automobiles. He stated that he thought the inside road was an innovative solution and queried as to why it was moved away from. Commissioner Peters expressed his support for the rest of the project.

Mr. Black explained that if the road remained inside the building it would force the building to be closer to the waterfront. He stated that the concept of moving a building, which is about 80 feet tall at the highest point, another 25 or 30 feet closer to the waterfront was negatively received by the California Coastal Commission.

Chairman Peters acknowledged Mr. Black's statements regarding the California Coastal Commission's review. He expressed that one of the exciting things about the project as it was first proposed was the idea that there would be an interaction between retail and public space. He expressed concern that if a road were put through it, the character of the space would change. Chairman Peters reiterated that the revised concept was not what he had anticipated and acknowledged that the public may also offer varying comments on that part of the design.

In conclusion, Mr. Black explained that from a practical point there were a number of utilities in that roadway; most of those utilities could not be moved inside of the building because they required access by construction equipment that could not operate indoors. He reiterated that there were substantial constraints on the site and they thought it was a very good solution.

Commissioner Smith requested and received clarification regarding the roof design and the depiction of the green roof on the structure shown as being a kind of flat slope between two flat areas. He stated that he had previously seen it as being represented as undulating.

Mr. Black explained that the green space on top of the building had not been designed and was to be the topic of the public outreach. He confirmed that he expected there to be undulation and it would not be a big, plain expanse. He offered that, with plantings and hardscape, the area would have considerable detail and offer different functionality for the different zones. Mr. Black explained that the area was shown in green to try to illustrate the fact that it was public realm space. He stated that while there was quite a bit of work to do on that area, the designers still needed to reconnect with the public to understand better what they had in mind for that space.

Commissioner Smith thanked Mr. Black and expressed his support that the planning for the space would go before the public.

Chairman Peters thanked Mr. Black and offered the opportunity for any staff response. Mr. Sumner acknowledged the comments offered by the Chairman regarding automobile traffic, pedestrian access, and the proposed location of the roadway in proximity to the promenade. Chairman Peters stated that he felt a fuller discussion of the matter would be necessary.

RESOLUTION SELECTING AND AUTHORIZING AGREEMENT WITH RICHMAN MANAGEMENT CORPORATION DBA HERITAGE SECURITY SERVICES TO PROVIDE SECURITY SERVICES FOR MARINE TERMINAL ENTRANCES AND FACILITIES FOR A 2 YEAR 10 MONTH TERM NOT TO EXCEED \$6,400,000 WITH TWO ONE YEAR EXTENSIONS

Agenda Item 18. Jessica Thomas, Assistant Facility Security Officer, Harbor Police Department, addressed the Board with a staff report regarding the selection of Richman Management Corporation dba Heritage Security Services to provide security services for marine terminal entrances and facilities; she requested that the Commissioners consider the staff recommendation authorizing an agreement with

Richman Management Corporation dba Heritage Security Services. She introduced Paul Libuda, Facility Security Officer. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Peters left the dais at 2:27 p.m. and returned at 2:29 p.m.

Commissioner discussion ensued. Commissioner Burdick offered that similar to her earlier comments, she commended staff for what she considered a well-drafted statement of their evaluation. She explained that, whether the decisions were for the magnitude under current consideration or for a \$100,000 contract being awarded pursuant to a competitive bidding process; if the matter required Board approval, she would like to know the thoughts behind the staff decision-making process. Commissioner Burdick offered that the discussion section, from pages 3 to 6 of the staff report, was an excellent example to follow. She offered a motion to accept the staff's recommendation.

Commissioner Smith seconded the motion.

Commissioner Valderrama requested clarification regarding cost difference between the two highest-ranking firms. Ms. Thomas explained that while each firm had similar costs, Allied Barton Security Service, LP, the second ranked firm, also added equipment costs to their proposal. She continued, because of the limited number of cruise ship calls and to justify the purchase of the necessary security-screening equipment, Allied Barton's costs were higher. She stated that Richman Management Corporation dba Heritage Security Services already owned that necessary equipment. In that the recommendation was to select the current service provider, Commissioner Valderrama requested and received clarification from Ms. Thomas that overall cost increase in basic services for the agreement over the prior year's agreement was approximately two percent. Commissioner Valderrama thanked staff and requested that in the future, details regarding the cost difference in responders be included in the staff report.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board adopted **Resolution 2011-99** Selecting and Authorizing Agreement with Richman Management Corporation dba Heritage Security Services to provide security services for marine terminal entrances and facilities for a 2 year 10 month term not to exceed \$6,400,000 with two one year extensions, by the following vote: Yeas-Burdick, Malcolm, Moore, Peters, Smith and Valderrama; Nays-None; Excused-Nelson; Absent-None; Abstained-None.

ORDINANCE ADOPTING NEW PORT CODE SECTION 4.14 - REGULATION OF IN-WATER HULL CLEANING

Agenda Item 19. Karen Holman, Environmental Programs Manager, Environmental & Land Use Planning Department, addressed the Board with a staff report regarding an ordinance adopting a new Port Code Section 4.14 – Regulation of In-Water Hull Cleaning and requested that the Commissioners consider the staff recommendation. She introduced Darlene Nicandro, Director, Environmental & Land Use Management Department and Celia Brewer, Assistant Port Attorney. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Moore left the dais at 2:37 p.m. and returned at 2:43 p.m.

Members of the public addressed the Board regarding the staff recommendation. Ron Presley addressed the Board with his concerns regarding the proposed ordinance and presented a set of recommended Best Management Practices (BMPs) based upon his experience in the marine service industry. (A copy of Mr. Presley's recommendation is available on file in the Office of the District Clerk.) Frank Szafranski, International Paints, submitted a speaker slip in favor of the staff recommendation, but declined speaking. Sharon Cloward, San Diego Port Tenants Association, addressed the Board in support of the staff recommendation and discussed several of the concerns expressed by the port tenants. She encouraged the Board to consider implementing permits for divers to facilitate compliance. Ms. Cloward distributed a copy of a sign currently branded with the Marine Recreation, San Diego Port Tenants Association and Clean Marina logos respectively, alerting divers and boat owners of rules for in-water hull cleaning. (A copy of the sign is on file in the Office of the District Clerk.) Gabriel Solmer, San Diego Coastkeeper, addressed the Board in support of the staff recommendation and acknowledged the staff for their efforts to develop the ordinance and spoke in opposition to mandating permits for divers.

Commissioner discussion ensued. Chairman Peters offered his appreciation to the staff for their efforts to arrive at the recommendation and acknowledged their consideration of the stakeholder input. In light of the timeline to reduce the total maximum daily load (TMDL) of copper in the bay, he offered support for the staff recommendation to implement the ordinance and requested that the public be informed that if portions of the ordinance were not working, the District would implement modifications or adjustments at a later date.

Commissioner Burdick explained that the focus of her concerns were on the Best Management Practices (BMPs). She stated that at the Environmental Advisory

Committee meeting, Ms. Holman was asked very directly if an applicant submitted an application and their proposed BMPs plan did not meet the District's standard, would staff grant or deny the application.

Ms. Holman replied that staff would grant ministerial approval if they submit a BMPs plan. She stated that staff would provide a BMPs plan template that had been developed to offer applicants some guidance. She offered that staff was aware that some individuals currently have BMPs plans available. Ms. Holman stated that staff would approve those plans on a ministerial basis; however, staff would not be making a determination regarding the plan effectiveness. She explained that staff would make a field observation to determine whether their BMPs plan resulted in a plume from the cleaning methods utilized. As was indicated at the Environmental Advisory Committee, she stated that staff has provided guidance and identified tools with some general language; however, staff was not identifying specifics but only offering the applicants some guidance. She continued her response by stating that the District would accept something like the marina signs, and if a diver wanted to say those were their BMPs and their BMPs plan, the District would accept that. She explained that the District would not accept as a BMPs plan, a document that was not specific to the task, such as how one would wash a car. She reiterated that staff would only grant ministerial approval. Ms. Holman stated that the District would not grant discretionary approval, which was reviewing the BMPs plan and validating that the practices worked.

Commissioner Burdick acknowledged the staff response and why, from a legal standpoint, the District would not suggest that the approval of a BMPs plan means that it would work for several of the reasons stated in the staff presentation. She continued, that it was subjective to the user and just because they have an approved BMPs plan did not mean that they were not going to injure the boat, or, that they were not going to produce a plume of paint in the water. She restated her question as whether the District would deny the application if an applicant submitted a BMPs plan that did not meet what staff believed the BMPs plan ought to be.

Ms. Holman stated that if staff determined that the BMPs plan did not appear to protect water quality, the District would deny the application. Staff would provide them with information regarding preparation of BMPs plans.

Commissioner Burdick expressed her concern that, while staff referenced a template, she had not seen a template and could not review it for the type of guidance it offered. She stated that her concern, and the concern expressed by others at the Environmental Advisory Committee was that, if the District was going to be denying applications because of an insufficient BMPs plan, staff needed to give guidance on

acceptable minimum standards. She stated it is a due process concern. Commissioner Burdick expressed her dissatisfaction with the staff presentation and the memo of July 7, 2011 regarding what would be a minimum standard of acceptable BMPs. She explained that much discussion had taken place regarding the idea that someone would think that enforcement may be precluded because District had approved an applicant's BMPs plan. Referring to slide number 18 in the staff presentation, Commissioner Burdick requested clarification from Ms. Brewer as to whether, from her view, if staff approved a BMPs plan, was the District then limiting its ability to enforce the permit.

Ms. Brewer stated that the enforceable standard that was currently contained in the permit is the visible plume. She stated that she did not think the District would be precluded from enforcing the visible plume standard because of a BMPs plan. She suggested that the permit is linked to some BMPs and standards. She offered that she saw the template and it does set forth the basic tools and basic procedures for the hull cleaning and apologized that copies were not readily available for review. Ms. Brewer acknowledged the complexity of the hull-cleaning process. She offered that the District has a good standard for enforceability because an enforcement officer on the ground could observe as to whether a plume was created, and whether the diver had an authorization card to perform the service. Regarding the BMPs, she suggested that staff could be more helpful by providing an educational tool/template that serves as a minimum standard so staff can have a ministerial approval process that assesses whether the basics were met. Ms. Brewer stated that staff would not direct the applicant on their process to address each unique problem; but if the applicant met the standards set forth in the template, they would have complied with the BMPs requirement. She concluded that if a best management practice did not work and in the case where staff saw a plume, a citation would be issued.

Commissioner Burdick confirmed affirmatively that was what she wanted to see developed. She reiterated that a minimum set of standards for what the District would require for BMPs were necessary and if not met at the time of the application then the applicant would be denied a permit. She stated that enforcement was a completely separate issue. Commissioner Burdick restated her frustration with the way staff had approached the issue, citing the July 7, 2011 memo, on page two of three; item number four began with "Ensuring compliance with permit conditions should be non-subjective." Then she cited a bullet point from page 18 of the staff presentation, "enforcement should be subjective." She queried "should enforcement and should ensuring non-compliance be subjective or should it non-subjective?" Commissioner Burdick explained her dislike for putting out into the public mixed messages about what the District expects of them in light of the controversy and the importance of ensuring compliance with best management practices to decrease the amount of copper in the

marinas. She urged Ms. Brewer to work with staff to develop something for the Board's recommendation or approval with respect to communicating to the public what the minimum standards would be before the District denies an application. She explained that the District should encourage applicants to adopt Best Management Practices that were above-and-beyond the minimum and should allow them the freedom to choose. With that understanding, she moved the staff's recommendation with the caveat that coming forward in the near future, the Board would see some recommendations, a policy, or a template for approval that will set forth that minimum standards of what the District would consider acceptable BMPs.

Commissioner Valderrama seconded the motion with the recommendation from Commissioner Burdick.

Chairman Peters requested clarification from Ms. Brewer as to whether staff was comfortable with moving forward at the meeting, or whether the Board should see the document before going forward. Ms. Brewer stated that, if the Board granted staff the regulatory authority of the ordinance, staff could then implement the suggested permit conditions and practices and clarify the matter for the public. Chairman Peters requested and received confirmation from Ms. Brewer that she believed she understood Commissioner Burdick's direction.

Ms. Nicandro expressed her appreciation for Commissioner Burdick's comments, explained that the template developed would be posted on the District website, and staff would make sure that they addressed her concerns.

In response to inaudible comments from the audience, Chairman Peters explained that the time for public comment had ended; Commissioner comments would proceed; and stated that the speaker was out of order.

Commissioner Moore stated she agreed with a number of Commissioner Burdick's comments with respect to the best management practices. She also offered that she was impressed with what staff was proposing overall. She stated that it was a rational approach to a very difficult issue and agreed that enforcement was always a tricky issue. Commissioner Moore stated that she was impressed with the way the enforcement had been set up because it could actually work and help to resolve the issue that the regulation had been put in place to address. She also agreed with Chairman Peters in that it was time to move forward and that refinements could be made in the future. She acknowledged the approach suggested by Ms. Brewer regarding having the ordinance adopted and staff coming back with a policy regarding the BMPs and defining the guidelines. She requested clarification as to the concept of

permitting divers and requested staff address why that was not approached as a tactic in the enforcement ordinance.

Ms. Holman discussed the staff's position. She offered that permitting businesses was part of the District's current practice and staff determined that the responsibility would be placed on the business to manage their employees rather than placing the evaluation of the business's employees on District staff. She explained that staff also linked responsibility into the business' BMPs plan to make sure that their divers follow those practices rather than having every individual diver develop their own practices. She concluded that staff wanted to leave employee training to the businesses, and to place the responsibility on that business to make sure their divers and the people that are working for them under their business name were doing the right things.

Commissioner Valderrama requested clarification regarding the enforcement process and the marinas' accountability if a diver, working after hours, caused a plume. In addition to holding the marinas accountable, he discussed the merits of permitting all divers.

Ms. Holman thanked Commissioner Valderrama for his comments and explained that staff discussed the possibility of divers working after hours and recognized the potential loophole. She explained that staff would not anticipate placing responsibility on that marina, and the District would issue some type of citation or fine to that diver. She stated that if staff found that the situation was happening consistently at a specific marina, the issue regarding the diver and the business would be escalated. Ms. Holman acknowledged the comments offered by Ms. Cloward that staff could consider adding language to the permit that states any divers working after-hours should notify the marinas. She stated that she believed that staff and the Harbor Police would be able to look at and enforce the District Code provisions on an individual diver or on that diver and that business if they were in violation for example after hours.

Commissioner Valderrama reiterated his comments and explained that in an effort to resolve the issue, everyone has to be a participant in the process and permitting is a means to ensure such participation.

Commissioner Smith stated that he approached the matter from two points. The first: in the future, copper-based marine antifouling paint would be discontinued. The second: the District was under an order to clean up the bay and clean copper out of the bay. He acknowledged staff for their work, recognized Commissioner Burdick for her probing questions, and offered that the task at hand was a new one and the District would be regulating people who had never been regulated for the work they do.

Despite the outreach meetings, designing of the framework, and creation of templates, Commissioner Smith offered that at the current stage in the process there would still be a number of questions. He expressed his support to move forward and agreed that in the event that modifications were required, such issues would be addressed.

Commissioner Malcolm explained that he approached the matter as a boat owner. He stated that he recognized the District's obligation to provide clean water for people to use the bay. He stated that as mandated by the Regional Water Quality Control Board, the District is required to effect a 76% reduction in the TMDL in 10 years.

He acknowledged that the ordinance was a first step. He advocated for educating boaters to be more aware of paint plumes, BMPs, the proper methodology to cleaning the bottom of a boat and offered that the District needed to let the boaters in the bay know what they should be looking for when they are hiring bottom-hull cleaning companies. Commissioner Malcolm stated that, in his experience as a boater, there were a number of workers in every marina that approach vessel owners and offer their maintenance services. He stated that he thought that a licensing procedure for individual workers was not a bad idea. He requested clarification as to whether the District had the ability to fine workers as part of the ordinance if they were violating paint plume standards.

In response to Commissioner Malcolm's inquiry and Commissioner Burdick's request for the response to be on the record, Ms. Brewer confirmed that the District has the ability to fine workers. She stated that the workers, who were authorized under a company, were required to keep an authorization card. Thus, every person cleaning a hull would have a permit card or an authorization card from the issuing business. She explained that one of those two things would be visible on their tank. Ms. Holman also stated that under the code section, the District also has BMPs requirements for all persons. She clarified that no persons can produce a visible paint plume, thus individual boaters who wished to clean their vessels were also required to do proper cleaning and could be subject to a fine.

Commissioner Malcolm reiterated the importance of education as a means to make the boaters aware of the requirements. He stated that he thought the paint plume was an objective standard. He thanked the staff, and acknowledged that the District was doing something good for the bay. He concurred that the Board could assess how the ordinance was working and that any necessary changes would be considered at a later date.

On motion of Commissioner Burdick, seconded by Commissioner Valderrama, the Board adopted **Ordinance 2645** Adopting new Port Code Section 4.14 - Regulation of In-Water Hull Cleaning, by the following vote: Yeas-Burdick, Malcolm, Moore, Peters, Smith and Valderrama; Nays-None; Excused-Nelson; Absent-None; Abstained-None.

Commissioner Valderrama left the dais at 3:21 p.m. and returned at 3:23 p.m.

UPDATE ON SENATE BILL 623 (KEHOE) BANNING COPPER MARINE ANTIFOULING PAINT AND DIRECTION TO STAFF

Agenda Item 21. Michele White, Environmental Policy Manager, Government & Community Relations Department, addressed the Board with a staff report regarding an Update on Senate Bill 623 (Kehoe) Banning Copper Marine Antifouling Paint and requested direction. Ms. White introduced Jonathan Clay, District lobbyist, Carpi and Clay, and John Helmer, Manager, Government & Community Relations Department. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Valderrama left the dais at 3:28 p.m. and returned at 3:29 p.m.

Chairman Peters requested and received confirmation from Gabriel Solmer, San Diego Coastkeeper, that she wished to register her support for the staff recommendation and that she was available to answer any questions.

The following member of the public addressed the Board in support of the staff recommendation: Sharon Cloward, San Diego Port Tenants Association and Deborah Pennell, San Diego Super Yacht Association and Shelter Island Marina.

Commissioner discussion ensued. Commissioner Malcolm thanked staff, recognized that the District took a leadership role at the beginning of the process, which ended in a positive result. He stated that he thought Senator Kehoe's bill was acceptable to a diverse group of stakeholders and was well balanced. Commissioner Malcolm acknowledged study results that showed that transient vessels had a negligible impact on water quality; and, in contrast, the positive impact the transient vessels have on the local maritime business economy.

Commissioner Burdick acknowledged the port tenants for bringing forth information and she stated that with that assistance, the District now has on record the de minimis impact that transient vessels have on the copper leaching into the bay and the Board can make informed policy decisions based on an evidentiary record as opposed to stories and anecdotes. She reiterated and validated Commissioner Malcolm's remarks regarding the bill. Commissioner Burdick stated she liked the phased approach

based on success measurement when considering the use of low-leach copper paints. She urged staff to support moving the phased approach forward.

Commissioner Smith concurred with his colleagues' comments and offered thanks to staff and all of the stakeholders. He discussed the benefits of working with the State representatives. He requested clarification from Mr. Clay as to whether it was his belief that the bill would be passed and signed by Governor Brown. Mr. Clay stated that he thought the District had a good shot with the bill because most of the opponents to the bill were considering removing their opposition and would switch to neutral or support. He explained that work to secure the paint manufacturers' support continued. Mr. Clay acknowledged that the cost of the bill was an unknown factor that would be addressed by Senator Kehoe with the State Assembly. Commissioner Smith reiterated his request regarding the likelihood of approval and Mr. Clay responded that it was his belief that there was a greater than fifty percent chance the bill would be passed for signature by the Governor.

Commissioner Valderrama left the dais at 3:42 p.m. and returned at 3:47 p.m.

Chairman Peters acknowledged the results and that he appreciated the data to support the transient vessel exemption. He discussed the crafting of the bill, and offered that the solution regarding a phased approach was a creative one. He acknowledged the benefits of the District participating in the process and encouraged staff to continue working on relationships in Sacramento. Chairman Peters suggested a motion that the staff be directed to continue to address the framework as discussed.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board directed staff to continue to address the framework that was laid out, by the following vote: Yeas-Burdick, Malcolm, Moore, Peters, Smith; Nays-None; Excused-Nelson, Valderrama; Absent-None; Abstained-None.

BPC POLICY NO. 018, BOARD ADVISORY COMMITTEES

A) RESOLUTION ADOPTING AMENDMENTS TO BOARD OF PORT COMMISSIONERS (BPC) POLICY NO. 018, BOARD ADVISORY COMMITTEES.

B) DIRECTION TO STAFF REGARDING PURPOSES FOR ALL BOARD ADVISORY COMMITTEES

Agenda Item 20. Duane Bennett, Port Attorney, addressed the Board stating that the request to consider the item stemmed from direction given at the Board retreat held earlier in the year to Wayne Darbeau, Executive Director and the Port Attorney.

Mr. Bennett explained that Celia Brewer, Assistant Port Attorney would be presenting the staff recommendation. He offered that the staff recommendation and the information being presented, was the beginning of the process in terms of issues that confront the Board regarding the advisory committees. He stated that staff drafted modifications to BPC Policy No. 018, Board Advisory Committees, relating to structure and policy clarification. Mr. Bennett stated that some aspects of the policy could not be addressed by staff, and would require the Board's consideration and direction. He offered that some of those issues included the following points: whether or not the committee members should file the California Fair Political Practice Commission Statement of Economic Interests (Form 700); other matters related to financial disclosure issues; conflicts of interest relative to issues that come before certain committees; Government Code Section 1090 issues and the committee member's relationship to monetary support and funding recommendations; whether or not some of the advisory committees were still necessary; and modifying the function of a committee based upon the needs of the Board. He reported that he had worked with Mr. Darbeau, Ms. Brewer and Donna Morales, Commissioner Services Manager, to streamline the BPC policy issues but the other matters require Board direction regarding how to proceed. Mr. Bennett turned the presentation over to Ms. Brewer. Ms. Brewer addressed the Board with a staff report regarding proposed modifications to BPC Policy No. 018, Board Advisory Committees and explained the staff's recommendation. She concluded her remarks by requesting direction regarding how the Board wished to proceed with the advisory committee review process. (A copy of the staff report is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Peters stated that he was not comfortable requesting advisory committee members to file a Form 700. He explained that there might be some general disclosures requested, but the Form 700 was a fairly burdensome process for advisory committee members who were volunteering their service. He discussed the benefits of staggered terms for committee members and recommended that the practice be looked at in the near future. Referencing Item No. 1 of the ethics provision, which states that "no person shall be appointed to serve on a committee that recommends any funding in which that person is an interested party," Chairman Peters requested clarification as to whether staff was confident they would know that at the beginning of the year.

Ms. Brewer stated that staff was not confident they would know of the committee members' interests unless the question was asked as part of the appointment process. Chairman Peters clarified that his query was in terms of the scope of the committee itself. Ms. Brewer offered that the membership criteria should be determined when the committee is formed.

Mr. Bennett acknowledged Chairman Peters question and advised the Board regarding those specific committees that may have recommended funding. He offered that in the past, concerns were raised related to conflict of interest when a funding recommendation was considered by members sitting on the Real Estate Advisory Committee, the Environmental Advisory Committee, to some extent the Maritime Advisory Committee, the Financial Assistance Program Advisory Committee and the Marketing Advisory Committee.

Chairman Peters offered an example: a committee member appointed in January might not be aware of an issue that involves them until it arises in July and requested clarification from staff as to whether they recommended that committee member offer a recusal or a resignation. Mr. Bennett stated that concerning that scenario, the matter required more study, and he offered that a recommendation of recusal or resignation might be made on a case-by-case basis based on the scope of the committee and the request.

Commissioner Malcolm stated that upon consideration of the matter, he did not think it was appropriate or productive for the Commissioners to review each point or term in the draft policy and offer an opinion at the regular meeting. He explained that he appreciated the staff's effort, but he offered that a subcommittee or some other mechanism would be a more appropriate to thoroughly address the matter.

Commissioner Burdick acknowledged the work on the draft policy. She stated that she liked the approach to the ethics section, as it was much clearer than the previous version. Concurring with Chairman Peters, she explained that she did not believe that the people who come forward and volunteer their time for one or two hours every other month should be considered public officials nor should they be required to file a Form 700. Commissioner Burdick stated that one thing she thought was missing, and that she strongly felt should be added, was "that to the extent that a Board member serves on an advisory committee, they should not vote". She offered that, in her view, it should be a matter of policy and not a matter of discretion. She stated, for the record, her belief that it shows an inclination of mind that is contrary in principle to the Brown Act, which requires the Board to keep an open mind until it is

able to deliberate as a body. She stated she would like to see that provision added to this policy regarding Commissioner service on any of the District's advisory committees.

Commissioner Moore stated that she concurred with the other Commissioners that it was a good first start at a very complex issue. With respect to the ethics section, she stated it was needed; she liked the wording, she commented on the 1090 issue, and suggested that some sort of committee be formed to examine the issues and work to resolve them.

Commissioner Smith offered his compliments to staff for their efforts. As chair of several committees, he discussed the diversity in which the committee members approach matters and how they view their role and their relationship with the District and the Board. He supported using a system point of view when analyzing the committees and spoke about implementing standardization. Commissioner Smith stated he tended to agree that committee members should not have to complete the Form 700 but cautioned about a perceived conflict of interest when considering assigning matters for a committee recommendation. He offered his support for forming an ad hoc committee to look at the matter and continue with the re-writes to the policy.

Commissioner Valderrama concurred with the comments offered by his fellow Commissioners. As an alternative to forming an ad hoc committee, he offered that the Board's Executive Committee led policy revisions review.

Chairman Peters offered that two courses of action be considered. The first, that the Commissioners forward their specific comments regarding the policy draft to Ms. Brewer, the comments would be aggregated, and staff would return with another draft. Second, the Board consider the matter in a workshop setting. Ms. Brewer responded that she could take the Board comments and draft another revision and a workshop would be the means to address the policy questions. Chairman Peters stated a reminder email would be sent to the Board with his request that the Commissioners send their comments regarding the draft policy to staff, and upon review of the comments the Executive Committee would determine whether a workshop was needed.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE MEETING OF AUGUST 9, 2011

Agenda Item 22. On motion of Commissioner Valderrama, seconded by Commissioner Malcolm, the Board adopted the proposed agenda for the meeting of August 9, 2011, by the following vote: Yeas-Burdick, Malcolm, Moore, Peters, Smith and Valderrama; Nays-None; Excused-Nelson; Absent-None; Abstained-None.

GOVERNMENT & COMMUNITY RELATIONS UPDATE & DIRECTION TO STAFF

Agenda Item 23. Board action no longer required.

RESOLUTION AUTHORIZING MEMORANDUM OF UNDERSTANDING BETWEEN SAN DIEGO UNIFIED PORT DISTRICT; CITY OF SAN DIEGO; AND CITY OF IMPERIAL BEACH TO EXPLORE USES FOR POND 20

Agenda Item 24. Item continued to a future Board meeting.

OFFICER'S REPORT

Agenda Item 25. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director or designee, were reported:

- A. Change Order No. 2 for \$2,109.00 and 0 Calendar Days to Contract No. 2011-12 with Khavari Construction, Inc. for Administration Building Complex Various Locations Office Reconfiguration, 3165 Pacific Highway, San Diego, CA.
- B. Change Order No. 4 for \$3,250.00 and 13 Calendar Days to Contract No. 2010-11 with Becerra's HVAC for Administration Building 5th Floor IT Server Room HVAC Upgrade, San Diego, CA.
- C. Change Order No. 1 for \$0.00 and 0 Calendar Days to Contract No. 2010-38 with Cavalry Systems, Inc. for Broadway Pier Port Pavilion Security System and Door Assembly Revisions for Customs and Border Protection (CBP) Requirements, San Diego, CA.
- D. Change Order No. 2 for (\$990.00) and 0 Calendar Days to Contract No. 2010-38 with Cavalry Systems, Inc. for Broadway Pier Port Pavilion Security System and Door Assembly Revisions for Customs and Border Protection (CBP) Requirements, San Diego, CA.
- E. Change Order No. 4 for \$0.00 and 17 Calendar Days to Contract No. 2010-37 with Chula Vista Electric for Broadway Pier Port Pavilion Exterior Lighting Back-Up Power System, San Diego, CA.
- F. Change Order No. 5 for \$0.00 and 18 Calendar Days to Contract No. 2010-37 with Chula Vista Electric for Broadway Pier Port Pavilion Exterior Lighting Back-Up Power System, San Diego, CA.
- G. Change Order No. 5 for \$29,129.00 and 22 Calendar Days to Contract No. 2009-25 with ATP General Engineering Contractors for Shelter Island Pavement Repair, San Diego, CA.

COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING

Agenda Item 27. Chairman Peters announced that an item was noticed regarding the regular Board meeting procedures. He explained that, following the Board discussion and subsequent Board action at the June 14, 2011 regular meeting in regards to the Sunroad development item, there was some concern among the Board and staff as to how the deal was closed. He stated his intent was to offer the Board the opportunity to discuss the matter. The Chairman Peters offered Wayne Darbeau, Executive Director, the opportunity to discuss a memo regarding the matter that staff had prepared.
(A copy of the letter is on file in the Office of the District Clerk.)

Mr. Darbeau offered his observations regarding the discussion and in the matter of the Sunroad project, he explained that all of the stakeholders were seeking clarification to bring a timely resolution to the matter. He offered that while the situation was unique, in the future, if such situations arose, the Board could request staff consider their direction given from the dais, and in an effort to seek some resolution, staff could address the matter with the tenant outside of the format of the Boardroom.

Chairman Peters stated that it is the job of the Board to craft a motion for consideration and approval. He explained that his goal as the Chair was that everyone's opinion and viewpoint on the matter was respected. He acknowledged there were requests by two Commissioners offered for the tenant's consideration during the discussion; and explained that while the best course of action would have been continuing the matter, he noted that it was apparent that the applicant did not want a continuance. Chairman Peters offered that in the future, if such matters arose, he would request a 10-minute break to make sure that everyone had an opportunity to review what was being discussed. He also suggested that in lieu of a continuance he would consider trailing the item to later in the meeting to allow staff the time to review the item with the applicant. Chairman Peters requested that his colleagues inform him when they need additional time, or were seeking further clarification regarding the motion or the discussion.

Commissioner Valderrama discussed the discourse at the last regular meeting and acknowledged the professional recommendations offered by his fellow Commissioners regarding modifications to the staff recommendation. He discussed his process for preparing for the board meeting and reading the materials in advance.

He acknowledged that it puts one in an uncomfortable position to vote on an item or a modified recommendation without a clear understanding of the amendment. He discussed his feelings regarding negotiating at the dais; acknowledged that it was the prerogative of the body to do so and cautioned that such negotiations have led to some current litigation regarding a differing interpretation of a particular issue. Acknowledging the concerns of the applicant to move forward, he maintained support for continuing matters to the next Board meeting when such changes arise.

Commissioner Smith thanked Chairman Peters for bringing the subject forward for discussion. Relating to his experience with contracting, he offered remarks regarding the potential challenges of negotiating at the dais and offered that the District could be subject to the law of unintended consequences. While he did not support negotiating from the dais as a general practice, he concurred with the other Commissioners that should a negotiating point be offered then either the matter should be continued to a future meeting or the item should be trailed to later in the regular meeting to allow all the parties to review the request.

Commissioner Burdick stated she was glad that the time was being taken to talk through the matter as a body to facilitate a better ability to work with each other in a respectful way. She explained that she started from the premise that the Brown Act says the meeting is the only time the Commissioners get to talk to each other about the matters under consideration. She continued that as an inherently deliberative body, the Board can only deliberate, share concerns, or express ideas at a public meeting. She stated that as much as she appreciated the concern about negotiating from the dais, the bottom line was that sometimes it was the only opportunity the Commissioners have to express, as a body, what they were thinking. Commissioner Burdick stated that last month she specifically offered the applicant another 30 days and he specifically turned it down. She said the Board found itself forced into the position where if a motion was to go forward, it had to happen that day to satisfy the applicant. She stated that the memo that fostered the discussion raised several concerns that she thought were important to think about and address. Commissioner Burdick acknowledged that Commissioner Valderrama affirmed one of those concerns, which was a Commissioner not completely understanding the matter under discussion. She stated that it behooves every Commissioner that, if they do not feel comfortable or prepared to vote or require clarification regarding their questions, that they address their colleagues and request the matter be trailed or deferred. Commissioner Burdick addressed the staff concerns by stating that the staff has a duty to give the Board the opportunity to think about the ramifications of what they were proposing to do and request the Chair to trail the item should the staff not feel prepared to adopt the Board's recommendation. She acknowledged the importance of a clear record and in

the event that a concern was raised, it could be corrected at a later meeting. She acknowledged what she felt was a very strong leverage negotiating position at the prior meeting when the request to add an indemnity provision arose and the Board approved the recommendation with the understanding that staff would negotiate the indemnity provision. She explained that in the event that the negotiations did not prove successful the matter would be brought back to the Board in the next month. She stated that assurance must be made that if an applicant standing at the podium agreed to something, it must be memorialized on paper before the documents are signed. She expressed concern regarding one of the things in the memo and quoted, "...in talking about the potential risks in direct interactive discussion during public meetings, there is a risk that the public could perceive that an action was taken without proper public discourse or that the agreement was reached by somehow exerting pressure." She stated that "if the District has been accused of anything in the history of time it has been the distrust of the public for negotiating in the backrooms, it has never been distrust of the public for negotiating in an open meeting and making our positions very clear. So, if that is in fact a risk, I would suggest that it is a preferred risk to the prior risk. So I am willing to accept that risk and am grateful to have the opportunity to share my views with my colleagues."

Commissioner Moore offered that development projects are inherently "messy" processes and there is always going to be something that "pops up" that is unexpected; or, there is usually going to be a discourse that happens at a public hearing and it is just the nature of having a process where the public has the opportunity to speak. She stated that because the Commissioners cannot meet outside of a meeting and do not have any other opportunities in which to talk to each other except at the meeting because of due process concerns, the Commissioners are suppose to look at and consider all the evidence and there may be something that was raised at that public hearing that the Board needs to address, or that sparks questions that requires the Board's consideration. Commissioner Moore offered that she did not see how the Board could get past doing anything other than having a sort of interactive dialogue between the Commissioners, the applicants, members of the public and as well as members of the staff. She expressed her concern with the exact same wording of the staff memo that Commissioner Burdick brought up regarding a risk that the public could perceive that an action was taken without proper public discourse. She stated that she thought it was the exact opposite and spoke about public perception if a Board said nothing and all they did was agree or disagree regarding a project approval. Commissioner Moore concurred that it is incumbent on the other Commissioners to say "I don't understand" or to request clarification; as well as staff must say, "we need more time" in which to react to something, and that the applicant should also voice their concerns.

Commissioner Moore noted in the case under discussion, the applicant wanted to go forward and offered that he would rather take some risk of perhaps not understanding something in the agreement than he would have in another months delay. She stated that there was nothing stopping the applicant from being able to say, "I need to have a recess" and/or come back next month because "I need to fully understand the impacts of what you are asking me to do."

Chairman Peters summarized that he would never make a change without asking staff and it was staff's responsibility to inform him of a request for a continuance or if the requested change prejudices the project. Addressing his colleagues, he acknowledged that it was also likely that others in the room required the same point clarified. He acknowledged the benefit of working together to address those kinds of matters and follow through on the premise established at the retreat. He acknowledged that staff comes with great recommendations and reiterated that the Board may have to make motions modifying those recommendations. Chairman Peters stated that in light of the Brown Act and the things the Board must do, the idea that there was some prohibition from negotiating from the dais was not possible. He offered that he would give more time in the future to assure clarity and acknowledged that the Board and staff did good work at that meeting.

Commissioner Valderrama stated that it falls on each Commissioner to stop the process and request a matter be deferred to a later time. He stated that it was a good healthy discussion and reiterated that it was incumbent on the Board and staff to stop the process if they were uncomfortable.

Duane Bennett, Port Attorney, offered two suggestions. He acknowledged that the Brown Act forum was the only time the Commissioners could all share their views and he suggested that Board could always approve an item conditioned on direction from the dais, and then refer the matter back to the staff for implementation. He acknowledged that it falls on the Port Attorney, as to legal matters, to honor the Board's direction; therefore, the Board could trust staff to implement Board direction. He also requested that when applicants, or their attorneys, recognizes a concern regarding Board issues, that the concerns are raised during the meeting to avoid challenges or misunderstandings after the fact.

Chairman Peters acknowledged the discussion was good and very helpful.

Commissioner Smith acknowledged the plaques presented by the Japanese Defense Force who were moored in the bay. He also announced that earlier in the day, visiting dignitaries from the Chilean Navy presented a plaque to the District.

Chairman Peters thanked the Board and staff for their efforts and announced the Board would return to Closed Session.

CLOSED SESSION

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: South Bay Power Plant Consisting of Approximately 115 Acres of Property located South of J Street and West of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services, Beck Mayberry, Manager, Asset Management West, and Daniel Thompson, Vice President, West Region Operations, Dynegy South Bay, LLC;
Irene McCormack, Randa Coniglio, Karen Weymann, Kristine Zortman, SDUPD

Under Negotiation: Price and Terms

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9

One Case

Agenda Item 5.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Sheraton San Diego Hotel & Marina Consisting of Approximately 27 Acres of Tideland and Water Area Located at 1380 and 1590 Harbor Island Drive, San Diego

Negotiating Parties: Christopher Ford, Vice President, Asset Management,
Craig Mason, Senior Vice President, Asset Management,
Host Hotels & Resorts, Inc.
Penny Maus, Randa Coniglio, Karen Weymann,
Annette Dahl, SDUPD

Under Negotiation: Price and Terms

Agenda Item 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 5 Acres of Tideland Area Leased to the
San Diego Convention Center Corporation along
Convention Way, all Bayward of the San Diego Convention
Center

Negotiating Parties: Carol Wallace, CEO, San Diego Convention Center
Corporation;
Randa Coniglio, Karen Weymann, Shaun D. Sumner,
Nicholas Markos, SDUPD

Under Negotiation: Price and Terms

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: 1220 Pacific Highway

Negotiating Parties: Karen Ringel, Naval Facilities Engineering Command
Southwest, Department of the Navy
Randa Coniglio, Karen Weymann, Shaun D. Sumner,
SDUPD

Under Negotiation: Price and Terms

Agenda Item 8.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Subdivision (a) of Government Code Section 54956.9

Traylor v. SDUPD, et al.
United States District Court Case No.08-CV-1019-L (WVG)

Agenda Item 9.

PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
EXECUTIVE DIRECTOR AND PORT ATTORNEY
Government Code Section 54957

The Board, by a 7-0 vote, adjusted the base salary of the Executive Director by 25%.

Agenda Item 10.

CONFERENCE WITH LABOR NEGOTIATOR: EXECUTIVE DIRECTOR
Government Code Section 54957.6

There was no formal or reportable action as to any closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

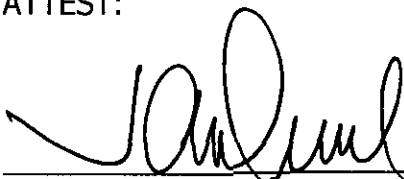
July 12, 2011

page 223



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 10:00 a.m., Tuesday, August 9, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, Deuel and McEntee

Absent: No Commissioners absent.

Excused: Commissioner Nelson was excused until he arrived at approximately 10:35 a.m.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

CLOSED SESSION

Celia Brewer, Assistant Port Attorney, announced the closed session agenda as follows:

Agenda Item 3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Subdivision (a) of Government Code Section 54956.9

Kelsy Davis v. SDUPD, San Diego Harbor Police Department;
Corporal Laura Sweeney, et al.
San Diego Superior Court Case No.: 37-2010-00101008-CU-OE-CTL

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9

Five Cases

Agenda Item 5.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9

Castellanos/Johnson v. SDUPD, et al.

San Diego Superior Court Case No.: 37-2009-000103325-CU-PO-CTL

Agenda Item 6.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9

Hensel Phelps Construction Company v. SDUPD, et al.

San Diego Superior Court Case No.: 37-2008-00086718-CU-PT-CTL

Agenda Item 7.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: South Bay Power Plant consisting of approximately 115 acres of property located South of J Street and west of Interstate 5 and Bay Boulevard in Chula Vista, California.

Negotiating Parties: Lawrence Randel, Director, Technical Services,
Beck Mayberry, Acquisitions, West Region Operations -
Dynegy South Bay
Randa Coniglio, Irene McCormick, Karen Weymann,
Kristine Zortman, Jeff McEntee SDUPD

Under Negotiations: Price and Terms

Agenda Item 8.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Kettenburg Boatyard consisting of approximately 100,744 square feet of land and approximately 108,250 square feet of water located at 2702 Shelter Island Drive, in America's Cup Harbor, San Diego

Negotiating Parties: Tom Driscoll, President, Driscoll, Inc.
Randa J. Coniglio, Karen J. Weymann,
Kristine A. Zortman, Irene McCormack and Jeff McEntee
SDUPD

Under Negotiations: Price and Terms

Agenda Item 9.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Knight and Carver YachtCenter consisting of approximately 265,758 square feet of land and approximately 98,424 square feet of water located at 1313 Bay Marina Drive, National City

Negotiating Parties: Michael J. O'Leary, President /CEO, Knight and Carver YachtCenter, Inc.

Randa Coniglio, Karen Weymann, Kristine Zortman,
Adam Meyer, Irene McCormack and Jeff McEntee SDUPD

Under Negotiations: Price and Terms

Agenda Item 10.

PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
APPOINTMENT OF THE PORT ATTORNEY
Government Code Section 54957

There was no formal or reportable action as to any other closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

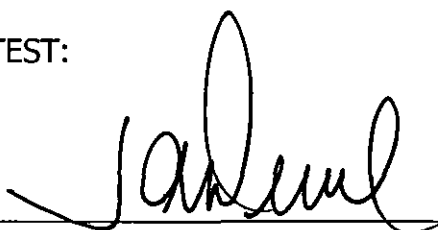
August 9, 2011

page 228



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:01 p.m., Tuesday, August 9, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, Deuel, and McEntee

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Commissioner Moore led the Pledge of Allegiance.

PRESIDENT'S REPORT

Agenda Item 33. Wayne Darbeau, Executive Director, recognized Priscilla Wolfe, Commissioner Services Assistant, Commissioner Services Department, on her impending retirement after 25 years of service at the District. Ms. Wolfe offered brief remarks of thanks to the Board, her colleagues and the District staff. Chairman Peters also expressed his thanks to Ms. Wolfe.

Sheila Kanoya, Business Development and Marketing Specialist, Business Development & Marketing Department, opened the presentation with information regarding the Annual Parade of Lights on San Diego Bay, a Fee for Service and Marketing Sponsorship program grant recipient. She turned the presentation over to Larry Baumann, chairperson of the 40th Annual Parade of Lights, who thanked the Board for the District's support of the annual event. He informed the Commissioners of

a unique request from the crew of the ABC television program, *Extreme Makeover Home Edition*, to coordinate an impromptu Parade of Lights on San Diego Bay in conjunction with the filming of their holiday episode due to inclement weather in Florida.

APPROVAL OF MINUTES

Agenda Item 3. Laura Nicholson, Deputy District Clerk, announced the Board received a revised version of the draft minutes for the special meeting – closed session of July 12, 2011. She stated copies were available for the public.

Commissioner Burdick requested that consideration be given regarding the following change to the draft of the minutes for the regular meeting of July 12, 2011: on page 21 of the draft minutes, Ms. Burdick requested that the spelling of the term *de minimis* be corrected.

Explaining that he was not present for the July 12, 2011 regular meeting and July 12, 2011 special meeting, Commissioner Nelson stated he would abstain from approving those minutes.

On motion of Commissioner Smith, seconded by Commissioner Malcolm, the Board approved the minutes for the special meeting of July 12, 2011 and the regular meeting of July 12, 2011 as amended, by the following vote: Yeas-Burdick, Malcolm, Moore, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Nelson.

PUBLIC COMMUNICATIONS

Agenda Item 4. None.

CONSENT AGENDA

Chairman Peters requested that Laura Nicholson, Deputy District Clerk, announce any suggested docket changes. Ms. Nicholson announced the proposed changes to the agenda as follows: **Consent Agenda Item 8**, Resolution Consenting to the partial Assignment of One Park Boulevard, LLC'S \$240 million loan secured by the Hilton San Diego Bayfront Hotel from Aareal Capital Corporation to PB Capital Corporation in the amount of \$40 million, PB Capital Corporation should read PB USA Realty Corporation, a wholly owned affiliate of PB Capital Corporation; **Consent Agenda Item 22**, Resolutions Authorizing Agreements – A) with Xxx, for Coastal Consulting Services, on an as needed basis, for two years and approve funding not to exceed \$xxx. B) with Xxx,

for Coastal Consulting Services, on an as needed basis, for two years and approve funding not to exceed \$xxx, staff requests this item be continued to a future Board meeting; **Consent Agenda Item 23**, Resolution Selecting and Authorizing Agreement with {Company Name} for Professional Engineering Services for the Shelter Island Boat Launching Ramp Facilities Improvement Project, in San Diego California in an amount not to exceed {Dollar Amount}, staff requests this item be continued to a future Board meeting; **Consent Agenda Item 24**, Resolution Consenting to Sublease and First Amendment to Sublease from Host San Diego Hotel, LLC to FedEx Office and Print Services, Inc., for five years with one option to extend for five years, staff requests this item be continued to a future Board meeting; **Consent Agenda Item 25**, Resolution Granting Indemnity and Agreeing to a Limitation of Liability to Ecotality North America for Electric Vehicle Charging Infrastructure, staff requests this item be continued to a future Board meeting; **Consent Agenda 7C**, Resolution Approving Partial Assignment and Assumption Agreement with One Park Boulevard, LLC for payment of entitlement costs for the San Diego Convention Center Hotel and Phase III Expansion Project, staff requests this item be continued to a future Board meeting; **Consent Agenda 7D**, Resolution Approving First Amendment to Agreement for Environmental Consulting Services to add One Park Boulevard, LLC as an Applicant, staff requests this item be continued to a future Board meeting; **Action Item 31**, Barrio Logan Community Plan Update: Presentation by staff and Board direction; staff requests this item be continued to a future Board meeting.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board accepted the suggested changes to the agenda, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Burdick requested that Consent Agenda Item 18, SANDAG's Regional Beach Sand Project II - Imperial Beach: A) Resolution Adopting the Findings of the Final Environmental Impact Report Certified by SANDAG and Authorize Staff to File the Notice of Determination. B) Resolution Authorizing the Issuance of a Non-Appealable Coastal Development Permit, be pulled for a separate vote and discussion.

Commissioner Valderrama requested that Consent Agenda Item 10, a Resolution Adopting Plans and Specifications and Awarding Contract No. 2009-23 to R.E. Staite Engineering, Inc. for Embarcadero Marina Park South Revetment Replenishment, San Diego, in the amount of \$949,965.06, be pulled for a separate vote and discussion.

Commissioner Smith requested that Consent Agenda Item 19, a Resolution Amending the Audit Advisory Committee Charter outlining the composition and

reporting duties of the Audit Advisory Committee, be pulled for a separate vote and discussion.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board adopted Consent Agenda items 5, 6, 7A, 7B, 8, 9, 11, 12, 13, 14, 15, 16, 17, 20, and 21 (**Ordinance 2646** through and including **Ordinance 2647**, **Resolution 2011-100** through and including **Resolution 2011-103**, **Resolution 2011-105** through and including **Resolution 2011-111**, **Resolution 2011-115** through and including **Resolution 2011-116**,) by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 5. **Ordinance 2646**, Granting a Sixty-Six Year Sewer Easement to the City of San Diego on Harbor Drive between Broadway and B Street, was adopted as part of the consent agenda.

Agenda Item 6. **Ordinance 2647**, Granting a Twenty-One Year and Ten Month Electric and Gas Utility Easement to San Diego Gas and Electric on Harbor Drive between Ash Street and E Street, was adopted as part of the consent agenda.

Agenda Item 7A. **Resolution 2011-100**, Consenting to the Assignment of Agreement for Payment of Entitlement Costs for the San Diego Convention Center Hotel and Phase III Expansion Project from the San Diego Convention Center Corporation to the City of San Diego, was adopted as part of the consent agenda.

Agenda Item 7B. **Resolution 2011-101**, Consenting to the Assignment of Agreement for Environmental Consulting Services from the San Diego Convention Center Corporation to the City of San Diego, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2011-102**, Consenting to the partial Assignment of One Park Boulevard, LLC'S \$240 million loan secured by the Hilton San Diego Bayfront Hotel from Aareal Capital Corporation to PB Capital Corporation in the amount of \$40 million, PB Capital Corporation should read PB USA Realty Corporation, a wholly owned affiliate of PB Capital Corporation, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2011-103**, Adopting Plans and Specifications and Awarding Contract No. 2011-02 to R.E. Staite Engineering, Inc. for B Street Pier South Berth Fender System upgrade in the amount of \$977,984.05, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2011-105**, Waiving BPC Policy No. 110 and Authorizing Agreement with Project Design Consultants for Design Support Services during construction of the North Embarcadero Visionary Plan Phase 1 in the amount of \$567,287.46, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2011-106**, Adopting Plans and Specifications and Awarding Contract No. 2009-17R to Jose Pereira Engineering and Mechanical, Inc. for Tenth Avenue Marine Terminal Communications and Fire Alarm System upgrade in the amount of \$960,000, was adopted as part of the consent agenda.

Agenda Item 13. **Resolution 2011-107**, Authorizing Change Order No. 7 to Contract No. 2010-11 with Sergio Becerra, dba Becerra's HVAC for the Administration Building 5th Floor IT Server Room HVAC upgrade in an amount not to exceed \$20,530, was adopted as part of the consent agenda.

Agenda Item 14. **Resolution 2011-108**, Authorizing Acceptance of Transportation Security Administration FY11 Grant Award Modification #7 in the amount of \$47,185.53 for the Harbor Police Department Explosives Detection Canine Team Program per BPC Policy No. 109, was adopted as part of the consent agenda.

Agenda Item 15. **Resolution 2011-109**, Authorizing Amendment No. 1 to Agreement with Visionary Integration Professionals to extend the Agreement for one year and increase the maximum expenditure by \$100,000, from \$300,000 to \$400,000, was adopted as part of the consent agenda.

Agenda Item 16. **Resolution 2011-110**, Authorizing Agreement with Third Wave Corporation for Technology Strategic Plan Development Services in an amount not to exceed \$241,485, was adopted as part of the consent agenda.

Agenda Item 17. **Resolution 2011-111**, Authorizing Second Amendment to Agreement with Merkel & Associates to Extend the Agreement for 2 Years and for Additional Services to Conduct Long Term Monitoring of the Restoration and Enhancement Project at the Chula Vista Wildlife Reserve in the amount of \$41,000 for a new not to exceed total of \$228,577, was adopted as part of the consent agenda.

Agenda Item 20. **Resolution 2011-115**, Selecting and Authorizing Agreement with Public Financial Management, Inc. for Financial Advisory Services for five years for a total amount not to exceed \$330,000, was adopted as part of the consent agenda.

Agenda Item 21. **Resolution 2011-116**, Ratification of Adoption of the Fiscal Year 11/12 Preliminary Budget, was adopted as part of the consent agenda.

Agenda Item 22. **Item continued.**

Agenda Item 23. **Item continued.**

Agenda Item 24. **Item continued.**

Agenda Item 25. **Item continued.**

Agenda Item 31. **Item continued.**

RESOLUTION ADOPTING PLANS AND SPECIFICATIONS AND AWARDED CONTRACT NO. 2009-23 TO R.E. STAITE ENGINEERING, INC. FOR EMBARCADERO MARINA PARK SOUTH REVETMENT REPLENISHMENT, SAN DIEGO, IN THE AMOUNT OF \$949,965.06

Agenda Item 10. Commissioner Valderrama stated that while he supported the staff recommendation regarding the selection, he expressed concern that only one bid was submitted in response to the project. He stated that, in the future, if subsequent projects receive only one bid he would oppose the staff's recommendation. He acknowledged that staff had made outreach efforts to discover why only one bidder responded, however, he offered that his preference was for staff to have re-bid the project.

Agreeing that the company recommended was well qualified to do the work, Commissioner Smith shared Commissioner Valderrama's concerns. He offered comments regarding the benefits of competition and spoke about receiving only one bid in light of the challenging economic situation currently experienced by the construction industry. He stated that as a matter of public policy he was not in support of considering only one bid on such projects.

Commissioner Nelson associated his comments with the prior remarks, both with respect to the selected bidder and the concerns regarding receiving only one bid. Upon the close of the bid submittal deadline, and in the case when only one bid was submitted, he requested clarification as to whether there was a manner to reach out to likely bidders to survey why they did not participate without re-starting the 90-day process.

Dave Thompson, Director, General Services and Procurement, stated that the sealed bid process, as described by the State of California, requires that staff open and evaluate all the bids at the same time. In order to evaluate the bid submittal process, staff would have to wait until they made a determination regarding a recommendation

of award. He stated that staff had very little latitude related to the State regulation, except to accept the lowest responsive and responsible bid. Mr. Thompson stated that following the acceptance of the lowest responsive and responsible bid staff could proceed with research as to the matter under discussion. Although staff presented a recommendation to the Board, he stated that the Commissioners may reject all bids and request that staff re-bid the project.

Duane Bennett, Port Attorney, confirmed that the Board's directive is to consider the matter and has the authority to reject the bids.

Commissioner Valderrama acknowledged Mr. Thompson's remarks. He requested clarification if, in the future, when only one bid was received whether the process could be modified in the following way: if the single bid received was not opened and the bid results not revealed, could the project automatically require a re-bid?

Mr. Thompson replied that implementing that sort of a process could result in a bid protest being brought by the single responding bidder.

Mr. Bennett stated that Commissioner Valderrama's scenario as to rejecting all single bids was in the Board's discretion; and, if the bids were not open, staff would be required to return to the Board regarding the matter to seek direction to re-bid the project.

Commissioner Nelson requested that staff prepare a response, in the form of a memorandum or the like, to the Board regarding the discussion of the policy.

Chairman Peters confirmed that staff should continue to make the appropriate outreach efforts regarding bid openings for projects.

On motion of Commissioner Valderrama, seconded by Commissioner Smith, the Board adopted **Resolution 2011-104** Adopting Plans and Specifications and Awarding Contract No. 2009-23 to R.E. Staite Engineering, Inc. for Embarcadero Marina Park South Revetment Replenishment, San Diego, in the amount of \$949,965.06, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

SANDAG'S REGIONAL BEACH SAND PROJECT II - IMPERIAL BEACH:**A) RESOLUTION ADOPTING THE FINDINGS OF THE FINAL ENVIRONMENTAL IMPACT REPORT CERTIFIED BY SANDAG AND AUTHORIZE STAFF TO FILE THE NOTICE OF DETERMINATION.****B) RESOLUTION AUTHORIZING THE ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT**

Agenda Item 18AB. Stating for the record, Commissioner Burdick offered comments regarding the Board's consideration of these types of projects in the future in light of the work being done on the Climate Mitigation and Adaptation Plan (Climate MAP). Stating that upon review of the efforts that the District has undertaken related to the Climate MAP, she explained that the analysis showed a significant sea level rise in the future and addressed needs for planning related to the associated vulnerabilities on port tidelands. She offered that based on the preliminary review of the assessment, and at some point in the future, the sand replenishment in Imperial Beach would not be a reasonable response to adaptation to sea level rise. She stated that one reason the District was participating in the process was to create an umbrella procedure under the California Environmental Quality Act (CEQA) that would govern future Environmental Impact Reports (EIR) and lend guidance as to how the Board approves projects all along the port tidelands, including projects like the one proposed. She offered that in the future the Board may be asked to consider whether politically popular projects should be approved in relationship to whether those projects are aligned with the District's role as an environmental leader protecting the tidelands. Commissioner Burdick stated that Imperial Beach is one of the most vulnerable parts of the tidelands subject to sea level rise. Acknowledging that the Board was being asked to adopt SANDAG's CEQA findings as their own, she offered that in the future an independent consideration of similar actions would require the Board to determine whether the matter was consistent under the District's Climate MAP and consistent under the District's own CEQA review. She offered her motion in support of the staff recommendation. Commissioner Malcolm seconded the motion.

Commissioner Smith acknowledged the near-term benefits of the project, thanked staff for their briefings regarding the matter, and acknowledged Commissioner Burdick's comments.

Commissioner Nelson stated that he was in support of the project and had a clear understanding of the need. He stated that he wished to associate himself with the concerns raised by Commissioner Burdick, particularly with respect to the rise in sea

levels. Commissioner Nelson discussed future impacts of sea level rise and the necessary investments to preserve tidelands. He offered that matters related to climate, change requires consideration during the strategic planning and long-term vision process, and that such matters be considered in relationship to future construction and development projects, preservation needs, and restoration requirements throughout the tidelands.

Commissioner Nelson stated that he associated himself with his colleagues' comments. He stated that the project was very important to Imperial Beach as well as the other beaches that are impacted by the Regional Beach Sand Project II. He discussed the man-made factors, such as dams, that influenced the need for the sand replenishment program. Commissioner Nelson discussed the merits of the process and the mitigation measures in the EIR under consideration.

Commissioner Valderrama expressed his support of the matter and acknowledged Commissioner Emeritus Michael Bixler's commitment to moving the project funding forward.

Chairman Peters expressed his support for the motion as a near-term action. Following on to Commissioner Burdick's remarks, he noted that the project was a short-term strategy. He stated that the District is engaged in a partnership with the member cities as part of the nationwide leadership effort to plan for sea level rise that would offer guidance in the future.

On a single motion of Commissioner Burdick, seconded by Commissioner Malcolm, the Board adopted with a single vote **Resolution 2011-112**, Adopting the Findings of the Final Environmental Impact Report Certified by SANDAG and Authorize Staff to File the Notice of Determination and **Resolution 2011-113**, Authorizing the Issuance of a Non-Appealable Coastal Development Permit, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION AMENDING THE AUDIT ADVISORY COMMITTEE CHARTER OUTLINING THE COMPOSITION AND REPORTING DUTIES OF THE AUDIT ADVISORY COMMITTEE

Agenda Item 19. Commissioner Smith stated that he pulled the matter because he believed that the Board should consider all policy matters as Action items, and they should not be approved as one of the routine Consent Agenda items. He stated that he had no objection to the content in the staff report. He acknowledged the Audit

Department staff for their efforts. Commissioner Smith offered a motion in support of the staff recommendation. Commissioner Burdick seconded the motion.

Commissioner Burdick stated that she liked the revisions to the policy and supported having two community members serve on the committee in addition to the three Commissioners. Referencing page two of the draft policy, she offered that the term "three year" should be hyphenated and read "three-year."

Chairman Peters expressed concern regarding the annual re-appointment process of the District's committees and offered that the system could be improved to increase continuity. While not recommending codifying the matter of the committee membership make up in the policy, he offered his support for continuing the practice that the Chairman, Vice-Chair and Secretary of the Board serve on the Audit Advisory Committee.

On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted **Resolution 2011-114** Amending the Audit Advisory Committee Charter outlining the composition and reporting duties of the Audit Advisory Committee, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PRESENTATION AGENDA

PRESENTATION ON STATUS OF PORT OF SAN DIEGO WATERFRONT ACTIVATION EFFORT

Agenda Item 26. Brandy Christian, Vice President Strategy and Business Development, addressed the Board with a presentation on the status of the Port of San Diego waterfront activation effort. She introduced Rita Vandergaw, Director, Business Development & Marketing Department; Jim Hutzelman, Manager, Community Services Business Development & Marketing Department; and Lewis Siris, President, Public Works Inc. Ms. Christian turned the presentation over to Mr. Siris who briefed the Board regarding the District's waterfront activation efforts. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Moore thanked staff and Mr. Siris. She reported that the representatives from Chula Vista have been very complimentary of the staff's outreach efforts and looked forward to the south bay events in the future.

Chairman Peters acknowledged Mr. Siris' presentation. He reiterated the desire for a comprehensive plan, developing something that meets infrastructure needs, and takes the tenants needs into consideration. He stated that he looked forward to more activation events to come.

ACTION AGENDA

RESOLUTION ADOPTING PLANS AND SPECIFICATIONS AND AWARDING CONTRACT NO. 2010-10 TO LEDCOR CONSTRUCTION INC. FOR THE CONSTRUCTION OF RUOCCO PARK, SAN DIEGO, CA IN THE AMOUNT \$3,453,042.47

Agenda Item 27. Ernesto Medina, Associate Engineer, Engineering/Construction, addressed the Board with a presentation regarding adopting plans and specifications and awarding Contract No. 2010-10 to Ledcor Construction Inc. for the Construction of Ruocco Park, San Diego. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Gary Smith, President, San Diego Downtown Residents Group addressed the Board in support of the staff recommendation and moving forward with the project. He thanked the Board, the Ruocco Foundation and the San Diego Foundation for making the project possible.

Commissioner discussion ensued. Commissioner Burdick congratulated staff on what appeared to be a successful bidding process for a qualified local contractor. She stated that she looked forward to watching the timely progress of the contractor to engage with the District to build what she thought would be an extraordinary tribute to an extraordinary local architect. She discussed her participation in the process where by the public art element design was approved. Commissioner Burdick offered a motion in support of the staff recommendation. Commissioner Valderrama seconded the motion.

Commissioner Nelson requested and received clarification from Mr. Medina regarding the demolition portion of the project and rebuilding of the existing structure. Mr. Medina stated that a part of a structure will need to be demolished to make room for the park, but a wall will be added as part of this project to close off the remaining portion of the structure. Commissioner Nelson requested clarification as to the status of the occupancy of the remaining building and the tenancy relationship between the District and the occupant there. Nicholas Markos, Senior Asset Manager, Real Estate Department, explained that the remaining portion of the building would be occupied by Chesapeake Fish Company who is on a short-term permit with the District. He stated

that staff is also working with Aquamarine Seafood Brokerage, one of the current tenants who would be displaced, to occupy a vacant portion of the building.

On motion of Commissioner Valderrama, seconded by Commissioner Malcolm, the Board adopted **Resolution 2011-117** Adopting Plans and Specifications and Awarding Contract No. 2010-10 to Ledcor Construction Inc. for the Construction of Ruocco Park, San Diego, CA in the amount \$3,453,042.47, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION SELECTING AND AUTHORIZING AGREEMENT WITH ARCADIS US, INC. FOR CONSTRUCTION AND PROJECT MANAGEMENT SERVICES FOR THE NORTH EMBARCADERO VISIONARY PLAN PHASE 1 PROJECT, SAN DIEGO CALIFORNIA IN AN AMOUNT NOT TO EXCEED \$1,697,278.72

Agenda Item 28. Linda Scott, Capital Project Manager, Engineering/Construction, addressed the Commissioners with a presentation regarding the Board's consideration of authorizing agreement with Arcadis US, Inc. for construction and project management services for the North Embarcadero Visionary Plan Phase 1 Project, San Diego. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Gary Smith, President, San Diego Downtown Residents Group addressed the Board in support of the staff recommendation and encouraged the efforts to keep the project on schedule.

Commissioner discussion ensued. Commissioner Burdick stated that she understood, from talking with Jeff McEntee, CFO/Treasurer, because the responses were responsive to a request for qualifications the District was not allowed, under the law, to consider bid amounts. She requested and received confirmation from Ms. Scott that her understanding was in alignment with that conversation described by Commissioner Burdick with Mr. McEntee. She confirmed that the project was advertised with criteria that would be the basis for the selection and cost was not one of those criteria. Ms. Scott stated that staff determined the bids were responsive to the request for qualifications. Commissioner Burdick requested confirmation as to whether Ms. Scott believed that because the responses were responsive to a request for qualifications we were not allowed, under the law to consider in essence bid amounts. Ms. Scott

confirmed Commissioner Burdick's query and began to restate how staff had advertised the request for qualifications.

As a follow up question, Commissioner Burdick requested clarification as to how the staff was making the recommended selection without regard to proposed cost or cost bids, if the sum for the construction management would not exceed \$1.7 million. Ms. Scott explained that after staff selected the recommended consulting firm, for the Board's consideration, then staff begins the negotiations with that team. She explained staff reviews the scope of the work that they anticipate the firm providing, review the firms associated fee schedule, assess the regional rates, and negotiate the associated fees related to that work. Ms. Scott stated that the recommended firm was very cooperative in negotiating and staff believes that they have a very competitive fee schedule. She noted that the firm was not escalating their fees throughout the duration of the project and they were not adding any additional percentages on to sub-consultant fees or direct costs, thus staff felt they were able to negotiate a very fair contract.

Commissioner Burdick stated she appreciated Ms. Scott's remarks. She expressed her concerns about staff's approach in bringing the matter to the Board for their consideration. She explained that staff in response to her request for the data prepared the Board package supplement, showing all nine responsive submittals. She requested substantially more information regarding the decision-making process and not simply the scoring system staff used to arrive at the four potential respondents identified in the staff report. She discussed the importance of public visibility and transparency in the process and stated the need to disclose to the public at least a list of all the respondents that responded to competitive contracting. As it is important from a public policy and economic standpoint, she stated her preference for knowing more information about the respondents; such as where they are from, are they local, regional, are they out of state. She requested that the schedule be included in the public record. Commissioner Burdick stated that she was disturbed that staff had already presumed the outcome of the Board's vote on the matter because they had already negotiated an agreement with a contractor that the Commissioners may not accept. She stated that because it is such an important project, and she wants to see a ground breaking at the earliest opportunity, she was likely going to vote for it. She stated that if she sees another project come forward in this way she would vote against it. Commissioner Burdick urged staff to take the procedural concerns seriously for all further projects that they bring forward.

Commissioner Valderrama shared many of the same concerns that Commissioner Burdick raised. He restated his understanding of the process regarding the ranking the

top four firms and then staff initiated contract negotiations with the highest-ranking responder. He cautioned staff regarding the practice of negotiating a price for services after selecting the top ranking firm. Commissioner Valderrama expressed his discomfort with the process of negotiating a price after staff has selected a firm, but yet another company may present a different price but that company may never have the opportunity to present their rates. He stated that he was confused as to why pricing was not included in the whole process from the very beginning.

Ms. Scott explained that staff employed what has been a standard procedure in procuring professional services agreements.

Mr. McEntee stated staff's understanding that the District's process was in accordance with the law for the selection of a firm for this type of work, and the selection was to be done based on the qualifications first and not price. He stated that the law does say that after having made the selection based on qualifications, then the District was to make sure that a fair and reasonable price was negotiated. Mr. McEntee offered that breaking the process into two steps, the first in which the Board awards the agreement and then followed by negotiating a rate, could result in the concerns regarding inflated pricing and put the District at a disadvantage in terms of selection as expressed by Commissioner Valderrama. Mr. McEntee explained that with the current process even though the firm might know that they the highest-ranking responder they have not yet been awarded the agreement by the Board's action.

Commissioner Valderrama stated that his biggest concern as a Board member with fiduciary responsibilities was that the District has selected a firm without having a clearly negotiated upfront fee.

In light of the discussion, Dave Thompson, Director, General Services and Procurement, offered clarification regarding the request for qualifications procedures and the negotiation of a fair and reasonable price as prescribed in Government Code Section 4525 as related to professional organizations or persons who provide professional services such as construction project management.

Commissioner Valderrama requested clarification as to whether staff could select the top two most qualified firms and start negotiating price with them. Mr. Thompson replied that as a standard, if staff were to find that cost was not considered fair and reasonable based on industry standards of costs for certain types of charges for different skills and by different staff, they could try to negotiate those costs down.

Chairman Peters requested that Mr. Thompson respond to Commissioner Valderrama's query regarding the ability of staff to negotiate with the top two most qualified firms. Mr. Thompson stated, "the answer is no, we cannot do that." He continued that staff has to first negotiate with the most qualified firm. Then if staff fails to negotiate with them, they may move to the next qualified firm.

In light of on-going market changes, Commissioner Valderrama requested clarification regarding how staff would determine what would be a fair and reasonable price. Mr. Thompson explained that staff regularly uses industry comparatives data for the different types of skills, different types of engineers, architects, and construction project managers. Reiterating his concern with the process and then expressing his desire to move the project forward, Commissioner Valderrama offered a motion in support of the staff recommendation. He also stated his desire to re-evaluate the process that had been presented.

Mr. Thompson further stated that staff receives and reviews the fee schedules from each of the proposers before starting negotiations. He stated that if a proposer's fee schedule is out of line staff moves on to someone else if they cannot negotiate the fees down.

Commissioner Burdick seconded the motion.

Commissioner Smith offered remarks regarding his professional experience with the California Contract Code and the procurement of professional services. He stated that one must find the most highly qualified team to perform the work and those firms are required to submit a fee schedule with their response. He offered that in the future staff considers how their findings are presented when presenting their recommendation for these types of procurements. Commissioner Smith stated he found that staff followed the standards for price and other-factors-procurement under the California Contract Code, and they followed the appropriate checks and balances practice.

Commissioner Moore stated that she had the same concerns that the other Commissioners expressed and acknowledged Commissioner Smith's comments. She requested clarification regarding the ideas expressed regarding the approach that the law dictates staff is not allowed to base their selection on dollar amount but other qualifications regarding such procurements. She recommended that in the future staff review the manner in which such matters are presented, and that if the recommendation is based on relative costs versus others factors it should be explained in the staff report. Commissioner Moore stated that the Board does have a fiduciary

duty to make sure that the best consultant with the best qualifications is selected, and that the firm gives a fair and reasonable cost for providing their service.

Commissioner Nelson offered his thoughts regarding making selections of professional services and that the law is directing leadership to not be looking first at price when selecting services, but looking first at the quality that underlies the service so the public receives the greatest value. He said that he very much associated himself with what Commissioner Smith had said about the presentation of the matter. He offered that in the context of continuous quality improvement, the whole discussion could have been disposed of with a very small statement upfront saying that as part of the consideration staff was providing the standard rates being proposed by the various responders. Commissioner Nelson thanked Commissioner Burdick for the idea of helping the Board be aware, as a matter of standard operating procedure, by providing a list of all of the firms responding to the request. He stated that such transparency provides him with a higher level of confidence that the District is outreaching properly and that there is not any effort being made to direct business to any one individual.

Commissioner Malcolm offered the same concerns as Commissioner Valderrama when initially considering the matter and that he appreciated staff's clarification regarding procurement practices related to a request for qualifications and professional services. Regarding comparing all the different qualification measures to determine the highest scoring companies, he requested clarification as to whether the code specifically disallows looking at their fee schedule as one of those measures in order to determine a responder's ultimate score. Mr. Thompson replied by citing a part of code section 4528 and he stated that there is nothing that specifically says an agency should not look at the fee schedule, but rather to look at the qualifications first and then try to negotiate from that fee or price schedule. Commissioner Malcolm acknowledged Mr. Thompson for citing the code and stated that he did not hear anything that would preclude the Board from making the fee schedule one of the determining measured factors in the score. He offered that as a fiduciary of the District's resources part of a measurement was price when he considered approving the contract. Duane Bennett, Port Attorney, confirmed that Commissioner Malcolm was correct; there was nothing in the code that prohibits the Board from considering the fee schedule as a qualifying factor. He offered that a firm that over prices their services may not be qualified and that is a factor that the staff can consider. Commissioner Malcolm stated that he believed that a competitive fee schedule should be included in the request for qualifications and considered as a factor in making the final scoring decision and ranking of firms. Mr. Bennett confirmed his understanding of the concern relative to the Public Contracts Code and the conservative approach that the District takes. He explained that staff could address the

matter of looking at the fee schedule, and find a means to resolve the issue to avoid bringing the matter back to the Board at a subsequent Board meeting.

On motion of Commissioner Valderrama, seconded by Commissioner Burdick, the Board adopted **Resolution 2011-118** Selecting and Authorizing Agreement with Arcadis US, Inc. for Construction and Project Management Services for the North Embarcadero Visionary Plan Phase 1 Project, San Diego California in an amount not to exceed \$1,697,278.72, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Malcolm left the dais at 2:40 p.m. and was excused for the remainder of the meeting.

Commissioner Nelson stated that he was in favor of the idea, to the extent that it is not prohibited by statute or something else, that the District include as standard operating procedure in all request for qualifications that responders declare their standard rates. Mr. Thompson confirmed that staff requires rate sheets to be forwarded with the submittal and are inclusive as part of that package. Commissioner Nelson requested and received confirmation from Mr. Thompson that the consideration of rate sheets is part of the staff deliberations and looked at when making a determination that staff can reach a fair and reasonable agreement with that party. Mr. McEntee offered that he was very clear in terms about what the Board was looking for and his staff would work with the Port Attorney's Office regarding this process.

Commissioner Moore reiterated her understanding that basically the law does not prohibit considering cost as part of the qualifications when you are a looking at professional consultants.

Commissioner Burdick left the dais at 2:40 p.m. and returned at 2:45 p.m. Commissioner Nelson left the dais at 2:42 p.m. and returned at 2:44 p.m.

UPDATE ON SENATE BILL 623 (KEHOE) BANNING COPPER MARINE ANTIFOULING PAINT AND DIRECTION TO STAFF

Agenda Item 29. Irene McCormack, Vice President External Relations, addressed the Board with a staff report regarding an Update on Senate Bill 623 (Kehoe) Banning Copper Marine Antifouling Paint. Ms. McCormack turned the presentation over to Jonathan Clay, District lobbyist of Carpi and Clay. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Nelson thanked the local stakeholders, District staff and Mr. Clay for their efforts. He acknowledged Senator Kehoe and her staff for taking the additional time necessary to get the bill done right. He thanked staff for following through on the requests by Commissioner Burdick regarding the need to quantify the transient vessel contribution to the issue of copper load. He offered that the transient vessel issue is one that requires caution and the prudent use of time and patience to craft language and avoid bureaucratic or regulatory consequences being imposed on a business segment positively impacting the local working waterfront economy. In considering keeping the bill on track, he stated that the best situation was to move quickly in hopes of getting it accomplished early in the next term. In the case of transient vessels, he stated that the legislation in effect does two things: 1) that transient vessels are exempt from the legislation, and 2) it specifically provides that nothing within the legislation would prevent any competent jurisdiction, such as the San Diego Unified Port District, from enacting requirements that are more stringent. He offered comments regarding such an approach and cautioned that stakeholders may believe there would be nothing to worry about with such an approach. He explained that the District may have very different issues than other ports or jurisdictions that would be covered by the legislation both because of the unique situation regarding the with the copper load levels in Shelter Island Yacht Basin and in some other areas, and also with the kind of jurisdiction in which there is comprehensive responsibility both in terms of how lands are used and how things are regulated. Restating his thought, he offered that the best thing might be for the legislation to find that transient vessels are exempt, but it would in no means exempt agencies from enacting complimentary but not contradictory steps.

Chairman Peters acknowledged Commissioner Nelson's comments and noted that the extended time provides the District the opportunity to consider step two. He expressed his confidence in the team, stated his appreciation for working with stakeholders in a sensitive manner, and acknowledged that they have taken the appropriate steps in dealing with the matter. Chairman Peters requested and received confirmation that Senator Kehoe was briefed regarding the strategy and walked through

all the issues and the concerns about involving stakeholders. Mr. Clay reported the Senator made the decision that she thought it was in the best interest to make it a two-year bill. Mr. Clay stated that the process did not re-start and the bill was essentially on hold for a hearing in the Assembly Appropriations Committee. Based on the progress staff anticipates that the bill will move forward very quickly at the beginning of the year.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE MEETING OF SEPTEMBER 13, 2011

Agenda Item 30. Chairman Peters stated that the continued matters regarding the Convention Center would come back to the Board.

Commissioner Burdick requested clarification as to whether it was the intent of staff to revisit the matter of Kettenberg Boat Yard in closed session. Duane Bennett, Port Attorney, clarified the matter was regarding Knight and Carver.

On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted the proposed agenda for the meeting of September 13, 2011, by the following vote: by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-Malcolm; Abstained-None.

BARRIO LOGAN COMMUNITY PLAN UPDATE: PRESENTATION BY STAFF AND BOARD DIRECTION

Agenda Item 31. Item continued to a future Board meeting.

OFFICER'S REPORT

Agenda Item 32. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director or designee, were reported:

- A) Change Order No. 1 for \$25,468.89 and 0 Calendar Days to Contract No. 2011-04 with PAL General Engineering, Inc. for National City Marine Terminal Pavement Maintenance, National City, California.
- B) Change Order No. 5 for \$0.00 and 15 Calendar Days to Contract No. 2010-11 with Becerra's HVAC for Administration Building 5th Floor IT Server Room HVAC Upgrade, San Diego, California.
- C) Change Order No. 6 for \$0.00 and 31 Calendar Days to Contract No. 2010-11 with Becerra's HVAC for Administration Building 5th Floor IT Server Room HVAC Upgrade, San Diego, California.

COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING

Agenda Item 34. Chairman Peters announced that the Board completed the performance review for Wayne Darbeau, Executive Director. He stated that the Board was pleased with Mr. Darbeau's work, confident in his leadership, and thankful for all his efforts. He explained that one of the matters that arose from the process was a discussion regarding communication with tenants. He stated that Mr. Darbeau had suggested considering the implementation of the role of an ombudsman. Chairman Peters stated that if there was a topic for discussion by the Board the matter should be noticed on the agenda under the Commissioner Comments' section, per the Brown Act. Thus, he suggested that the Board could discuss the matter of an ombudsman but not take any action. He requested that Mr. Darbeau introduce the concept.

Mr. Darbeau stated that a constant theme he heard during his performance review was how staff creates a process to address intractable issues or policy concerns that may involve an agency executive or a member of the staff that are raised by tenants on an on-going basis. He offered that one thought was to create a staff position as an ombudsman. Following a conversation with Commissioner Valderrama, the concept was explored further that the ombudsman's role could be to include being a trouble-shooter to address issues for the member cities.

Commissioner Valderrama commented on his conversation with Mr. Darbeau. He offered that upon considering the role of an ombudsman he looked at it from a partnership perspective and that the ombudsman should be accessible to the port tenants and the member cities.

Mr. Darbeau requested that Chairman Peters open the discussion with the Board and following the discussion he would ask for further direction regarding moving forward the matter.

Commissioner Nelson offered comments regarding the role that an ombudsman would take for the District, and suggested that specific needs or stakeholder concerns be defined in order to implement the most effective solutions. He discussed the concepts of ambassadors and account executives. Commissioner Nelson stated that the port tenants have a unique relationship to the District and wondered what message it may send to other interested parties and stakeholders that the port tenants get an ambassador. He concluded that he was not opposed to the concept, but was simply offering additional matters for consideration.

Commissioner Moore stated the concept sounded good. She stated that an ombudsman was somebody that acts, as more of an advocate, and an ambassador would be a better title. She stated that it is a good idea to open it up to member cities, as they are also an important part of the District. Commissioner Moore acknowledged the questions offered by Commissioner Nelson.

Commissioner Burdick offered her concerns, the first one she called the most highest arching, was that typically when someone calls for an ombudsman it is because there is distrust that the organization can respond appropriately when presented with whatever the issue the caller has in mind. She offered that while in some instances there may be a belief that the port tenants may have distrust with the staff or the Board, she cautioned as to whether creating another element of a bureaucratic mechanism to try to respond to that was not necessarily the right answer. She offered that as a government agency with appointees the District is obligated to make a good faith effort to the public to distribute information, accept alternative views, do the internal inventory and perhaps change the procedures. Regarding the idea that if the District needs to create a position that is going to become an ambassador to the member cities, the port tenants and other stakeholders, she stated that she did not understand why her city for instance would go to such a person. She stated her feeling was that her constituents have placed their trust and confidence in her to carry their message. She concurred that the whole concept raises many questions and concurred with Commissioner Nelson's comments regarding uncovering what the problem is we are trying to resolve. Commissioner Burdick stated that she believed that a cure for the distrust is transparency and the cure for the lack of communications and lack of information sharing is outreach. She stated that such communication and outreach is not the role of a single ambassador but the responsibility of every representative of the organization. She acknowledged Mr. Darbeau for modeling the way in which the District operates which is with a sense of voluntary, sincere and authentic outreach to every stakeholder. She concluded that such a concept required more consideration.

Responding to Commissioner Burdick's comments, Mr. Darbeau provided some history regarding a concept of implementing a tenant liaison position, which was originally proposed ten years ago. He explained that upon reflection, District leadership did not see the wisdom for it back then. He offered that following the remarks from the Port Tenants Association leadership then staff could determine whether or not this was really a bureaucratic bottleneck, or whether the District already has a way to deal with our tenants.

Commissioner Smith stated that he thought the idea of an ombudsman was a good one when initially presented and he wondered how it would work. He explained that in his experience, public agencies tailored the role of an ombudsman to serve stakeholder needs. He also acknowledged Mr. Darbeau for the work he has done in reaching out to all stakeholder groups and not just tenants. Commissioner Smith suggested that if you are going to have an ombudsperson, you cannot have just one for one particular group, you have to have someone who can speak to everybody. He expressed support for the idea as a means to resolve confusion and to be a complement to on-going outreach efforts. He suggested that the idea be distilled and determine what one staff member could actually hope to accomplish, and that staff return with ideas on how to reach out to people to continue to open the channels of communication.

In response to the Commissioner comments, Commissioner Valderrama stated that he did not believe anything was really broken but one of the biggest concerns that he has had and heard from the member cities was that there has been a disconnect. He continued that there were not enough open lines of communication but he thought that has improved tremendously and he also acknowledged Mr. Darbeau's role in the improvement. He stated that it never hurts to be able to have an open line of communication with the port tenants or a member city. He concurred with Commissioner Smith that staff should look at the matter and come back with some recommendations to facilitate an open dialogue with the people.

Commissioner Moore restated that she thought it was a good idea for staff to come back with more information. She agreed that it would be helpful to hear from the port tenants as to whether they actually think it is a good idea. In addition, if they thought an ombudsman or ambassador would be to their benefit as a means to address what their issues.

Jim Unger, Chairman of the San Diego Port Tenants Association, acknowledged Mr. Darbeau's efforts regarding the District's improved communication outreach efforts. He offered that there is a wish by tenants to improve communication and expressed his appreciation that the Commissioners would consider the matter staff presented. Mr. Unger then stated that the Port Tenants Association feel the staff has never been in a better position of service in their communication when looking at projects or issues that have come up and made efforts to work closely with stakeholders to address them on a timely basis. He expressed concern that an ombudsman may not clearly understand a complex issue. Mr. Unger queried as to whether the concept of an ombudsman as a buffer was a response to staff feeling overwhelmed with communication at this time.

Chairman Peters stated that he found the discussion illuminating and was curious about the need for the position, whether it is a practical solution, and whether the District is ready for it. He acknowledged the staff members present who are working on outreach efforts that are relative to their respective job roles and their efforts to address the unique needs of stakeholder groups. He requested that the Board and staff continue to think about the issue and consider whether it is necessary. Regarding the issue of communication, Chairman Peters stated that some matters require face-to-face interactions and conversations with the concerned parties, which could not be conducted by an ombudsman.

Mr. Darbeau thanked the Board and Mr. Unger and confirmed that the conversation clearly showed that the District is an organization that cares about its external and internal stakeholders. He stated that the reorganization was designed to address the kinds of issues discussed and in a commitment to the Board as policy makers that he has dedicated to opening his office to the tenants and the community to hear them in an unbiased and objective manner. Mr. Darbeau confirmed that he would continue to study the matter and offered that while the resources for such a position were not allocated, he would ask staff to continue to listen and seek ways to keep improving and opening up the channels of dialogue.

Regarding the District sponsored Eco-Friendly Hull Paint Expo on August 6, 2011 at Shelter Island. The participants learned about alternative hull paint options and grant funding available to assist Shelter Island boat owners to switch from copper hull paint to a more eco-friendly paint. Commissioner Nelson acknowledged Chairman Peters for his remarks, and thanked staff, tenants, and stakeholders who participated in what he reported to be a successful event.

Chairman Peters thanked the Board and staff for their efforts and announced the Board would return to Closed Session.

CLOSED SESSION

Agenda Item 3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9

Kelsy Davis v. SDUPD, San Diego Harbor Police Department;

Corporal Laura Sweeney, et al.

San Diego Superior Court Case No.: 37-2010-00101008-CU-OE-CTL

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9

Five Cases

Agenda Item 5.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9

Castellanos/Johnson v. SDUPD, et al.

San Diego Superior Court Case No.: 37-2009-000103325-CU-PO-CTL

Agenda Item 6.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9

Hensel Phelps Construction Company v. SDUPD, et al.

San Diego Superior Court Case No.: 37-2008-00086718-CU-PT-CTL

Agenda Item 7.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: South Bay Power Plant consisting of approximately 115 acres of property located South of J Street and west of Interstate 5 and Bay Boulevard in Chula Vista, California.

Negotiating Parties: Lawrence Randel, Director, Technical Services,
Beck Mayberry, Acquisitions, West Region Operations -
Dynegy South Bay
Randa Coniglio, Irene McCormick, Karen Weymann,
Kristine Zortman, Jeff McEntee SDUPD

Under Negotiations: Price and Terms

Agenda Item 8.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Kettenburg Boatyard consisting of approximately 100,744 square feet of land and approximately 108,250 square feet of water located at 2702 Shelter Island Drive, in America's Cup Harbor, San Diego

Negotiating Parties: Tom Driscoll, President, Driscoll, Inc.
Randa J. Coniglio, Karen J. Weymann,
Kristine A. Zortman, Irene McCormack and Jeff McEntee
SDUPD

Under Negotiations: Price and Terms

Agenda Item 9.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Knight and Carver YachtCenter consisting of approximately 265,758 square feet of land and approximately 98,424 square feet of water located at 1313 Bay Marina Drive, National City

Negotiating Parties: Michael J. O'Leary, President /CEO, Knight and Carver YachtCenter, Inc.

Randa Coniglio, Karen Weymann, Kristine Zortman,
Adam Meyer, Irene McCormack and Jeff McEntee SDUPD

Under Negotiations: Price and Terms

Agenda Item 10.

PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
APPOINTMENT OF THE PORT ATTORNEY
Government Code Section 54957

There was no formal or reportable action as to any closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

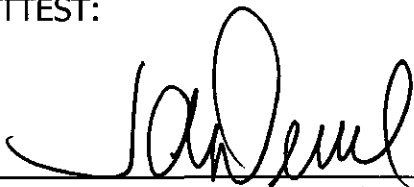
August 9, 2011

page 256



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:05 p.m., Tuesday, August 23, 2011, at the Don L. Nay Port Administration Building, 3165 Pacific Highway, San Diego, California.

ROLL CALL

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama.

OFFICERS Bennett, Deuel and McEntee.

Absent: No Commissioners absent.

Excused: Commissioner Nelson excused until he arrived at 1:10 p.m.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

EQUAL EMPLOYMENT OPPORTUNITY TRAINING.

Agenda Item 3. Chairman Peters welcomed the Commissioners and Senior Team to the workshop. Duane Bennett, Port Attorney, introduced Dave Carothers, of Carlton DiSante & Freudenberger as facilitator of the workshop.

Mr. Carothers discussed an overview of the training and introduced his fellow presenters, Karimah J. Lamar, Cindy R. Caplan, and Nicole C. Baldwin all of Carlton DiSante & Freudenberger. The following topics were discussed during the workshop: 1) Discrimination/Retaliation; 2) Harassment; 3) Investigations and Discipline; 4) Accommodation of Disabilities; 5) Accommodation of Religious Beliefs; and 6) Discrimination/Wrongful Termination Lawsuits. (A copy of the presentation and handouts are attached.)

Labor & Employment Law: Discrimination, Harassment & Reasonable Accommodation



**Carlton DiSante
& Freudenberger LLP**
ATTORNEYS

**Labor and Employment Law:
Discrimination, Harassment and
Reasonable Accommodation**

**SD Unified Port Authority
Training**
August 23, 2011

Presented By
Dave Carothers, Esq.
Cindy R. Caplan, Esq.
Nicole C. Baldwin, Esq.
Karimah J. Lamar, Esq.

www.CDFLaborLaw.com | Website
www.CallaborLaw.com | CA Labor Law Blog



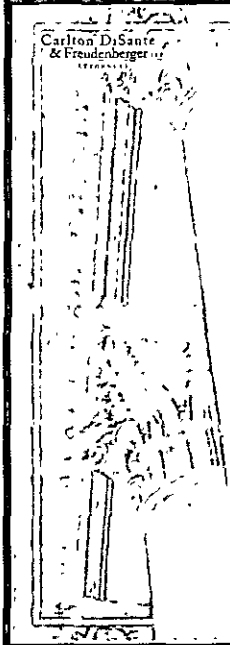
**Carlton DiSante
& Freudenberger LLP**
ATTORNEYS

Training Overview

Introduction - Dave Carothers
Pre-Test

- I. Discrimination/Retaliation**
Karimah J. Lamar
- II. Harassment**
Cindy R. Caplan
- III. Investigations and Discipline**
Cindy R. Caplan
- IV. Accommodation of Disabilities**
Nicole C. Baldwin
- V. Accommodation of Religious Beliefs**
Nicole C. Baldwin
- VI. Discrimination/Wrongful Termination
Lawsuits**
Dave Carothers
- VII. Questions and Answers**

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



About CDF

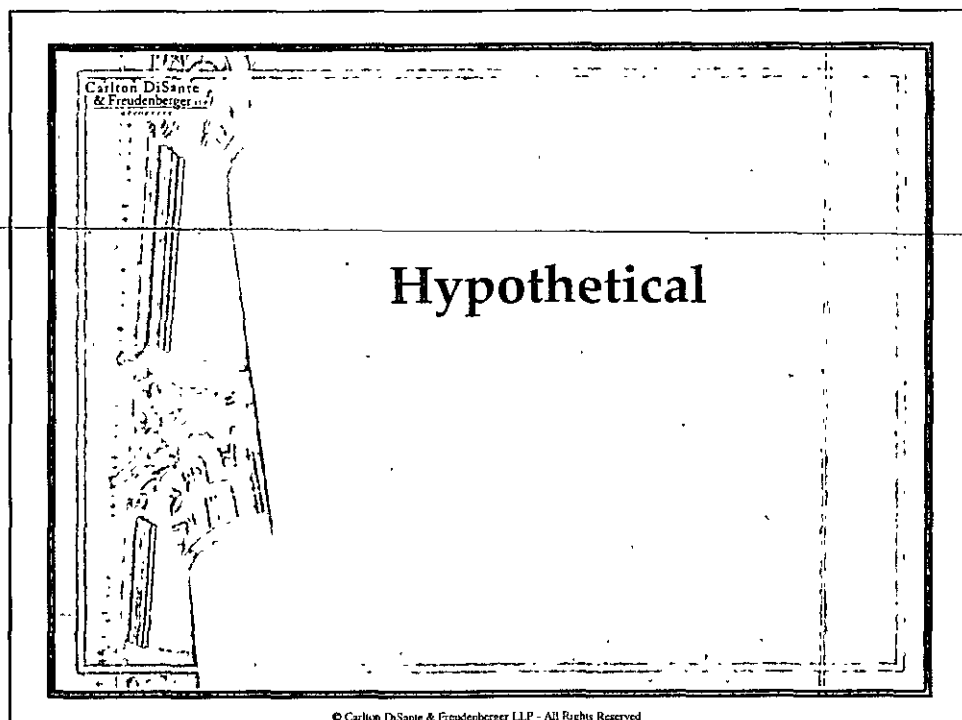
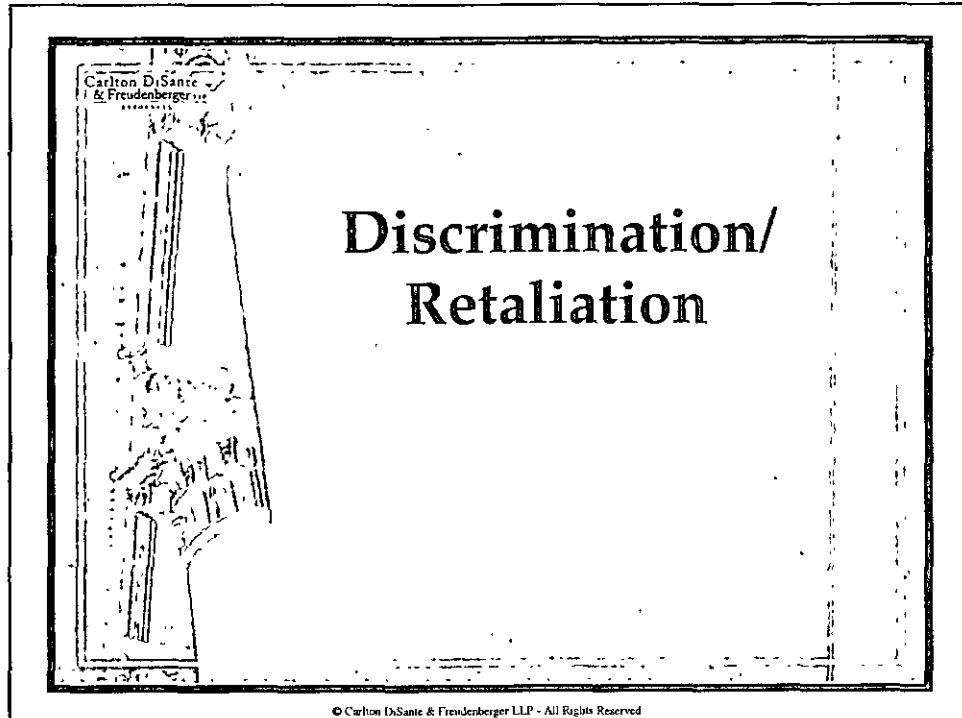
- **Exclusively Represents CA Employers in All Aspects of Labor & Employment Law**
 - Employment claims and litigation
 - Wage and hour class action defense
 - Advice and counseling
 - Immigration: Visas, sponsorships, compliance
- **Five Offices Throughout California**
 - Sacramento, San Francisco, Los Angeles, Orange County and San Diego

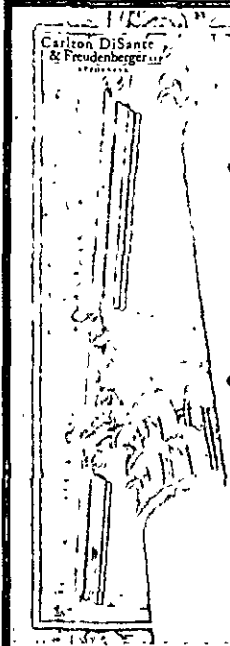
© Carlton DiSante & Freudenberg LLP - All Rights Reserved



Pre-Test

© Carlton DiSante & Freudenberg LLP - All Rights Reserved



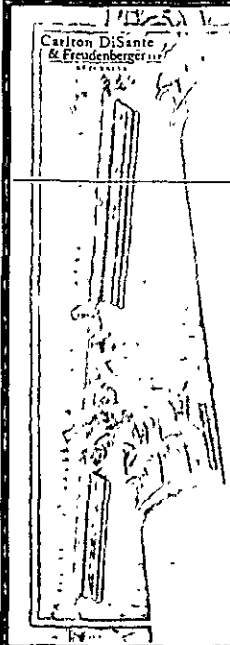


Carlton DiSante
& Freudenberger LLP

Sources of Law

- **Federal**
 - Title VII, Civil Rights Act of 1964
 - Age Discrimination in Employment Act (ADEA), protects individuals who are 40 years of age or older.
- **State**
 - California Fair Employment and Housing Act (FEHA)

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP

Discrimination

Employers may not use an individual's *protected category* as a basis to:

- Refuse employment;
- Discharge/discipline; or
- Determine compensation, terms, conditions, or privileges.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Protected Category

- "Protected category" includes:
 - Race
 - Sex
 - National origin
 - Religion
 - Age
 - Sexual orientation
 - Physical or mental disability
 - Medical condition
 - Pregnancy
 - Marital status
 - Veteran status
 - Citizenship

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

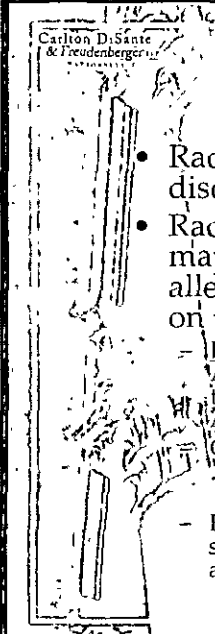


Discrimination Claims on Rise

- When the economy slows down, it is not uncommon to see an increase in discrimination filings.
- Employers are therefore advised to remain vigilant in the enforcement of anti-discrimination, harassment and retaliation policies; and to ensure that supervisory employees receive all legally required training.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

Labor & Employment Law: Discrimination, Harassment & Reasonable Accommodation



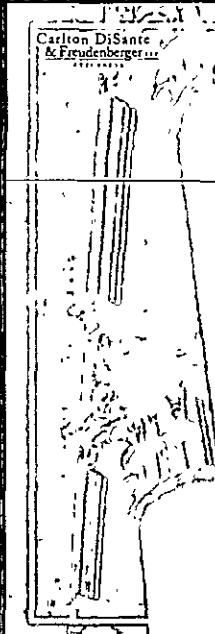
Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination

Race/Color

- Race and color are *distinct* bases for discrimination claims.
- Race claims are more common, but employees may also bring discrimination claims based on allegations of less favorable treatment based on the color of their skin.
 - **Example:** Plaintiff alleged that a dark-skinned African-American supervisor discriminated against Plaintiff on the basis of skin color where Plaintiff was a light-skinned African American.
 - Court found the claim actionable.
 - *Walker v. Secretary of Treasury, I.R.S.*, 713 F. Supp. 403, 405 (N.D. Ga. 1989)
 - Employee may be able to bring a "color" discrimination suit even where the alleged discriminator is the same race as the plaintiff.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination

Race/Color

- "Race" and "color" discrimination claims are *not* limited to groups traditionally perceived as minorities.
 - Race discrimination claims brought by whites are equally cognizable when appropriate underlying facts exist
- Prohibition of race and color discrimination extends to persons associated with members of a protected class.
 - **Hypo:** Plaintiff, a white male, alleges that an employer failed to hire him due to his marriage to an African-American woman.
 - **Question:** Can he proceed with a race discrimination claim?

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination

Race/Color

- Courts have also recognized the concept of "race plus" discrimination
 - i.e., where discrimination occurs against a subgroup of a particular race.
 - For example, a "race plus" discrimination claim could be based on an allegation that a supervisor discriminated against black males, even if there clearly is no discrimination against black females or white males.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination

Religion

- Employers may not discriminate against an employee based on that employee's religion or religious creed.
- A complicated body of case law addresses the precise definition of the terms "religion" and "religious creed."
 - Employer's duty to make reasonable accommodations for an employee's religious beliefs.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination
Sex, Gender, and Related Categories

- Sex discrimination claims focus more on alleged discrimination based on someone's biological sex.
- "Gender" discrimination claims generally focus on alleged discriminatory conduct based on a person's behavioral characteristics as they relate to gender stereotypes.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP

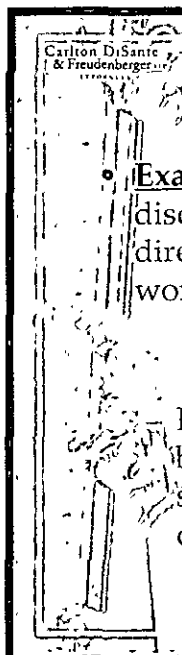
Specific Unlawful Grounds of Discrimination
Sex, Gender, and Related Categories

Distinguishing Simple Rudeness (or Favoritism) from Sex Discrimination

- Mere rudeness alone insufficient.
- Simple favoritism alone insufficient.
- Must be some *discriminatory animus* based on protected category.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

Labor & Employment Law: Discrimination, Harassment & Reasonable Accommodation



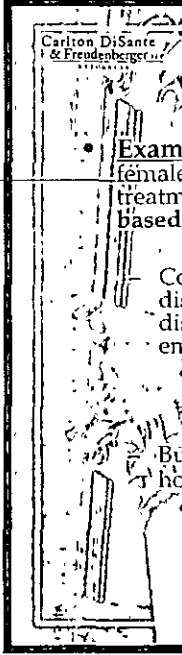
Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination Sex, Gender, and Related Categories

- **Example 1:** Calling a woman a "bitch" not sex discrimination where evidence shows that term directed at a particular individual, rather than at women in general.
 - *Kriss v. Spring Communications Co., LP*, 58 F.3d 1276, 1281 (8th Cir. 1995)

From a practical perspective, it will obviously be quite difficult to avoid the inference that such offensive conduct does indicate discriminatory animus.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



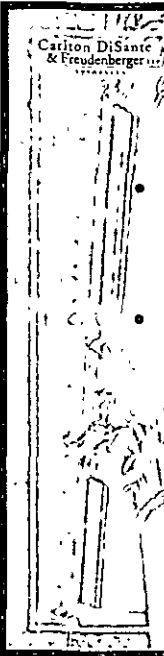
Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination Sex, Gender, and Related Categories

- **Example 2:** Male supervisor has a romantic relationship with a female employee and consequently grants that employee favorable treatment. Can a male employee bring a sex discrimination claim based on this conduct?
 - Courts have held that favoritism of this kind is not discrimination based on sex because there is no indication of discriminatory animus toward either gender – all other employees, regardless of gender, are equally disadvantaged.
 - See, e.g., *Proskel v. Gattis*, 41 Cal. App. 4th 1626, 1629-30 (1996)
 - But widespread sexual favoritism may give rise to a claim for hostile work environment sexual harassment.
 - *Miller v. Dep't of Corrections*, 36 Cal. 4th 446, 466 (2005) (supervisor engaged in sexual relationships with several female subordinates and treated other employees less favorably).

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

Labor & Employment Law: Discrimination, Harassment & Reasonable Accommodation



Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination

Pregnancy, Childbirth & Related Medical Conditions

- "Sex" includes pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.
 - 42 U.S.C. § 2000e(k); Cal. Gov't Code § 12926(p)
- Pregnancy as a disability?
 - Courts interpreting Title VII's prohibition on pregnancy discrimination have opined that the statute treats pregnancy as a temporary, non-occupational injury or disability.
 - Statute requires employers to treat women affected by pregnancy and related conditions "the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work."

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination

Pregnancy, Childbirth & Related Medical Conditions

- **NOTE:** Under CA law, employers must provide **reasonable accommodations** requested by an employee on the advice of a health care provider for conditions related to pregnancy, childbirth, or related conditions. Cal Gov't Code § 12945(b)(1).
- Employer cannot refuse a pregnant worker's request (based on advice of a health care provider) for transfer to a less strenuous position if the employer has a program or policy allowing such transfers for temporarily disabled employees.
- Employer who does not have such a program must comply with the request if the transfer can be *reasonably* accommodated. Cal Gov't Code § 12945(b)(2), (3).

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



**Carlton DiSante
& Freudenberger LLP**
ATTORNEYS

Specific Unlawful Grounds of Discrimination

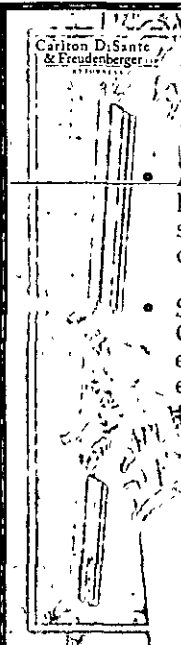
Transsexuals

Example: Plaintiff brings a gender discrimination claim alleging that:

- Plaintiff was born a male, but suffers from a gender identity disorder.
- Plaintiff suffered discrimination either because the employer felt Plaintiff's behavior and appearance were inappropriate for a male, or simply because the employee identified himself as a transsexual.

QUESTION: Can Plaintiff proceed with a gender discrimination claim?

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



**Carlton DiSante
& Freudenberger LLP**
ATTORNEYS

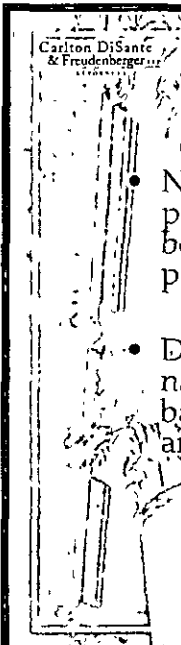
Specific Unlawful Grounds of Discrimination

Transsexuals

- Although courts have expressed differing opinions, at least one decision held that the allegations were sufficient to state a Title VII gender discrimination claim. *Smith v. City of Salem, Ohio*, 375 F.3d 566, 569 (6th Cir. 2004)
- Similar result appears likely under FEHA since California law requires employers to allow an employee "to appear or dress consistently with the employee's gender identity." Cal. Gov't Code § 12949

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

Labor & Employment Law: Discrimination, Harassment & Reasonable Accommodation



Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination National Origin/Ancestry

- National origin means the country where a person was (or that person's ancestors were) born. Both Title VII and California's FEHA prohibit discrimination on this basis.
- Despite above definition, courts have held that national origin / ancestry discrimination can be based upon membership in a group not tied to an existing country.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



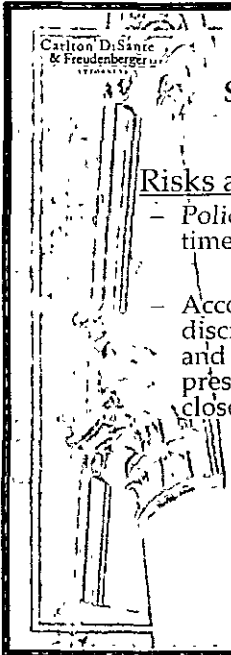
Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination National Origin/Ancestry

- Example 1: Ninth Circuit held in one case that the antidiscrimination laws prohibited discrimination against Serbians even before Serbia became an independent nation. *Pejic v. Hughes Helicopters, Inc.*, 840 F.2d 667, 673 (9th Cir. 1988).
- Example 2: Ninth Circuit held that discrimination against an employee due to that employee's membership in an American Indian tribe constitutes national origin discrimination. *Dawavendewa v. Salt River Project Agricultural Improvement & Power Dist.*, 154 F.3d 1117, 1119 (9th Cir. 1998).
- Question: Are English-only policies permissible?

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

Labor & Employment Law: Discrimination, Harassment & Reasonable Accommodation



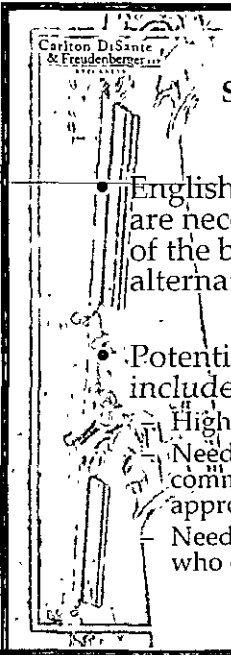
Carlton DiSante & Freudenberger LLP

Specific Unlawful Grounds of Discrimination National Origin/Ancestry

Risks associated with English-only policies:

- Policies requiring employees to speak English at all times may discriminate based on national origin.
- According to EEOC guidelines on national origin discrimination, such a policy "is a burdensome term and condition of employment" and the EEOC will presume that such a rule violates Title VII and will closely scrutinize it.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



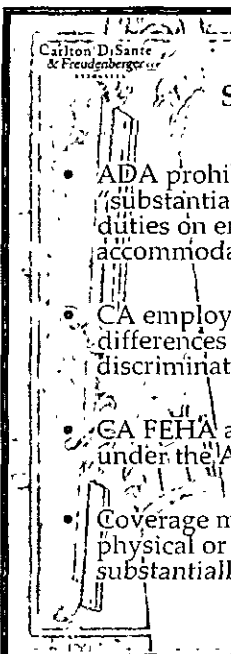
Carlton DiSante & Freudenberger LLP

Specific Unlawful Grounds of Discrimination National Origin/Ancestry

- English-only policies may be valid where they are necessary to the safe and efficient operation of the business and no less discriminatory alternative exists.
- Potential reasons for a valid English-only policy include:
 - High risk of injury or accident,
 - Need of supervisors to monitor employee communications to ensure efficient work and appropriate behavior, or
 - Need for communication with customers/co-workers who only speak English.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

Labor & Employment Law: Discrimination, Harassment & Reasonable Accommodation



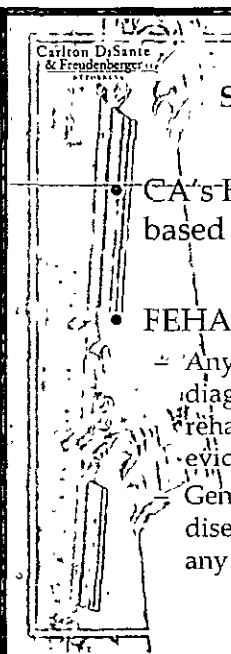
Carlton DiSante
& Freudenberger LLP
ATTORNEYS

Specific Unlawful Grounds of Discrimination

Physical or Mental Disability

- ADA prohibits discrimination based on a disability that "substantially limits" a major life activity and imposes various duties on employers regarding the making of reasonable accommodations.
- CA employers should be aware, at a minimum, of the differences between the prohibitions on disability discrimination imposed by the ADA and FEHA.
- CA FEHA applies to all conditions covered as disabilities under the ADA.
- Coverage may result from the fact that, under FEHA, a physical or mental disability need only "limit" (rather than substantially limit) a major life activity.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP
ATTORNEYS

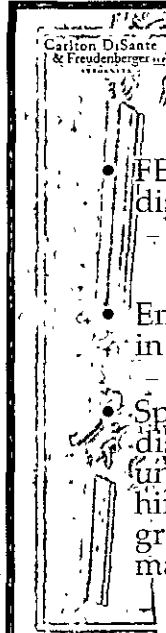
Specific Unlawful Grounds of Discrimination

Medical Conditions

- CA's FEHA explicitly prohibits discrimination based on a "medical condition."
- FEHA defines "medical condition" as:
 - Any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured based on competent medical evidence, *or*
 - Genetic characteristics known to increase the risk of a disease or disorder and presently not associated with any symptoms of any disease or disorder.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

Labor & Employment Law: Discrimination, Harassment & Reasonable Accommodation



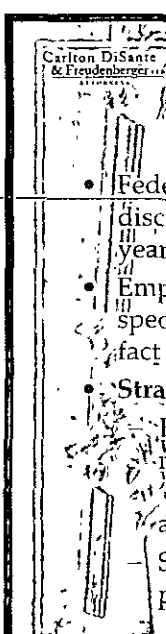
Carlton DiSante
& Freudenberger LLP
ATTORNEYS

Specific Unlawful Grounds of Discrimination

Marital Status

- FEHA also protects employees from discrimination based on marital status.
 - “Marital status” includes an individual’s state of marriage, non-marriage, divorce or separation, widowhood, annulment, or other marital state.”
- Employers can regulate the working of spouses in the same department.
 - Cal. Gov’t Code § 12940(a)(3).
- Specific examples of unlawful marital status discrimination would include refusing to hire unwed mothers *because they are unwed*, refusing to hire single people *because they are single*, or only granting maternity leave to employees who are married.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP
ATTORNEYS

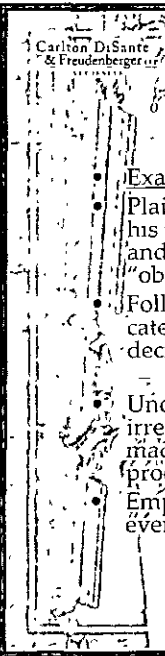
Specific Unlawful Grounds of Discrimination

Age

- Federal ADEA and CA FEHA prohibit employer discrimination based on age against persons who are 40 years of age or older.
- Employers must take care not to adopt policies or take specific actions that treat employees differently based on the fact that they are over 40.
- **Stray Remarks:**
 - Employers must be aware of how individual comments may appear if a plaintiff later attempts to use a “collection” of such comments as the basis for a claim of any type of discrimination.
 - Stray remarks, by even non-decision makers, can a powerful tool to show intent to discriminate.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

Labor & Employment Law: Discrimination, Harassment & Reasonable Accommodation



Carlton DiSante
& Freudenberger
ATTORNEYS

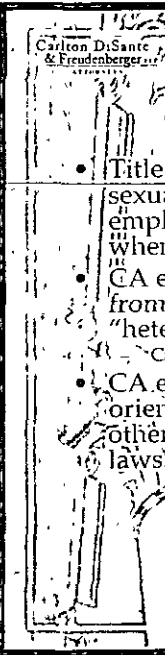
Specific Unlawful Grounds of Discrimination

Age

Example:

- Plaintiff in *Reid v. Google, Inc.* (who was 54 years old at the time of his termination) claimed he had been called "fuzzy," "sluggish," and "lethargic" at work, and that he had been told his ideas were "obsolete" and "too old to matter."
- Following several appeals, the stray remarks doctrine categorically excluding evidence of stray remarks from non-decision makers was invalidated.
 - *Reid v. Google, Inc.*, 50 Cal 4th 512 (2010)
- Under federal stray remarks doctrine, a federal court will deem irrelevant any remarks made by non-decision makers or remarks made by decision making supervisors outside of the decisional process.
- Employees should be disciplined for making such remarks, or even joking about it.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



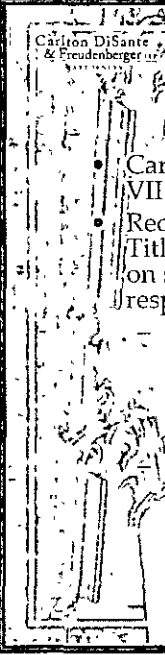
Carlton DiSante
& Freudenberger
ATTORNEYS

Specific Unlawful Grounds of Discrimination

Sexual Orientation

- Title VII does not explicitly prohibit discrimination based on sexual orientation, but federal courts have held that employers are liable under Title VII for sex discrimination when discrimination is based on gender stereotypes.
- CA employers subject to FEHA are expressly prohibited from discriminating based on an individual's "heterosexuality, homosexuality or bisexuality."
 - Cal. Gov't Code §§ 12926(m), (q), 12940(a)-(d).
- CA employers should address potential issues of sexual orientation discrimination the same as issues relating to other protected categories under the anti-discrimination laws.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



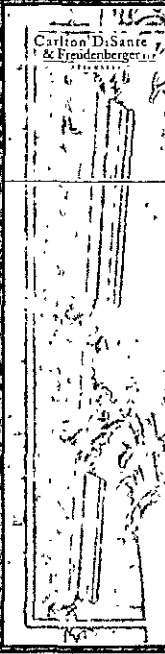
Carlton DiSante
& Freudenberger LLP

Specific Unlawful Grounds of Discrimination

Parents/Caregivers

- Caregivers are not an explicitly protected group under Title VII or FEHA.
- Recent EEOC guidance suggests that an employer may face Title VII liability for making employment decisions based on stereotypes or assumptions regarding caregiving responsibilities.
 - Example: Employer may violate Title VII by failing to offer a deserving employee a promotion that would require extended work hours where the employer *assumes* the employee would rather spend time with her family.
 - Example: Employer also would violate Title VII by denying a male employee's request for a part-time position so he can care for his child where the employer is reserving that part-time position in case a female employee with caregiving needs requests it.

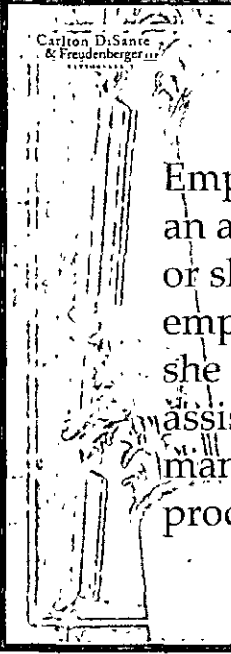
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP

Hypothetical

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



**Carlton DiSante
& Freudenberger LLP**

Retaliation

Employers may not retaliate against an applicant or employee because he or she has opposed an unlawful employment practice or because he or she has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



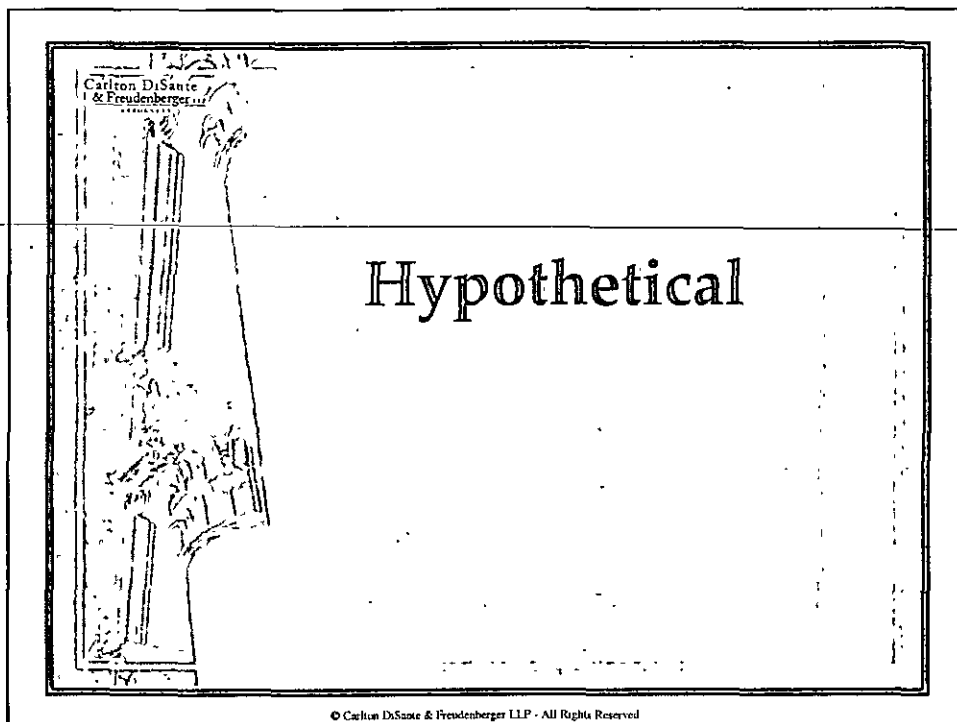
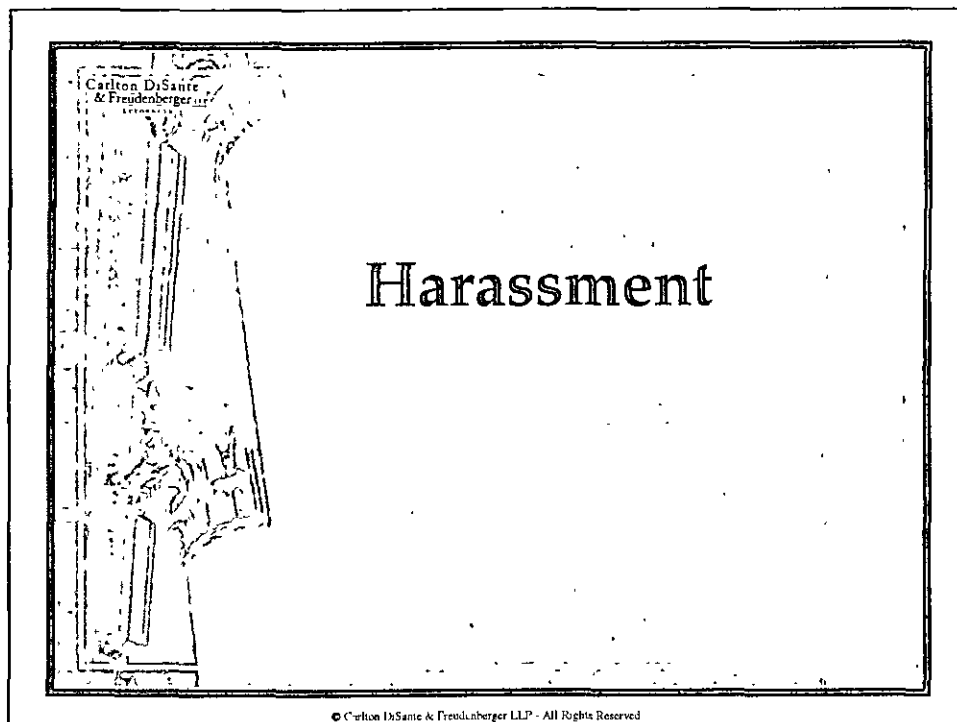
**Carlton DiSante
& Freudenberger LLP**

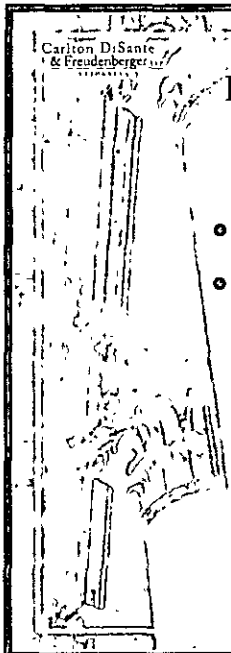
EEOC Filings

January 11, 2011, 99,922 charges

- Retaliation = 36,258 – 1st year to surpass race
- Race = 35,890
- Religion = 3,790,
- Disability = 25,165
- Age = 23,264

© Carlton DiSante & Freudenberger LLP - All Rights Reserved





Harassment - Sources of Law

- Title VII
- California Fair Employment & Housing Act (FEHA)

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Why do I care?

- Negative impact on morale and productivity
- Liability for the organization
- Personal Liability

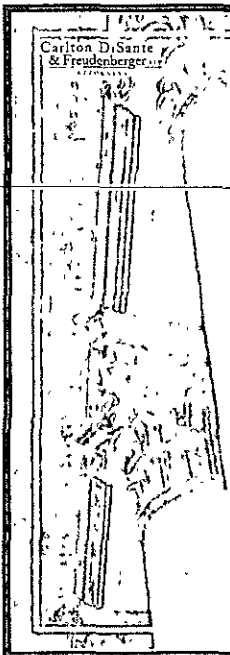
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



What is Harassment?

- Intimidating, offensive, or hostile working environment or that interferes with work performance.

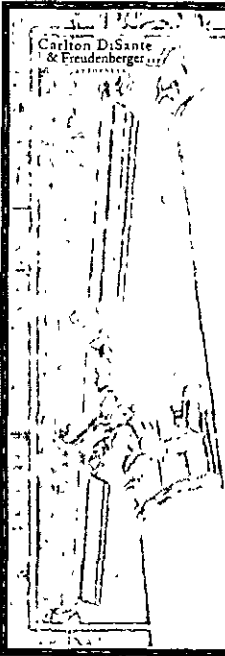
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



What types of Harassment are unlawful?

- Race
- Sex
- National Origin
- Religion
- Age
- Disability
- Medical Condition
- Marital Status
- Sexual Orientation
- Veteran Status
- Citizen status

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

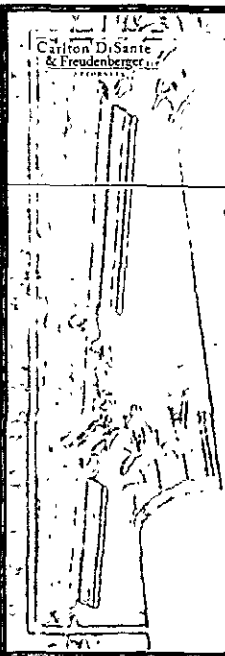


Carlton DiSante
& Freudenberger LLP

Types of Harassment

- There are three types of harassment:
 - Verbal
 - Visual
 - Physical

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



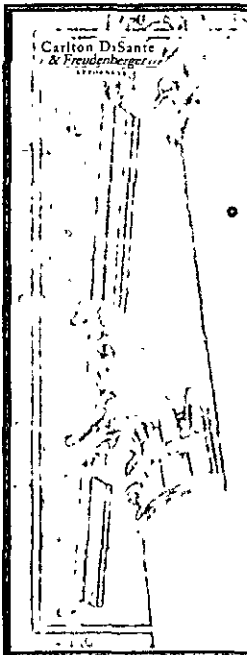
Carlton DiSante
& Freudenberger LLP

Types of Harassment

Verbal Conduct

- Verbal conduct includes such things as:
 - Slurs
 - Insults
 - Jokes
 - Teasing
 - Using slang expressions with co-workers in one protected category that you would not use with others
 - Pressure to participate in religious events
 - Stereotyping
 - Asking about marital status or plans for having a family
 - Requests for sexual favors in exchange for continued employment or employment benefits
 - Comments the recipient indicates are unwelcome, such as jokes or obscene comments
 - Unwanted conduct, attention or comments consistently targeted at only group, even if the content is not overtly sexual, racist, etc.

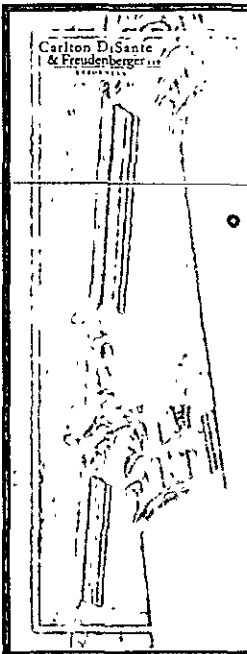
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Types of Harassment
Visual Conduct

- Visual conduct includes such things as:
 - Derogatory gestures, posters, photographs, cartoons, and drawings
 - Mocking someone
 - Symbols in the workplace
 - Other displays in the workplace of derogatory or sexually suggestive objects

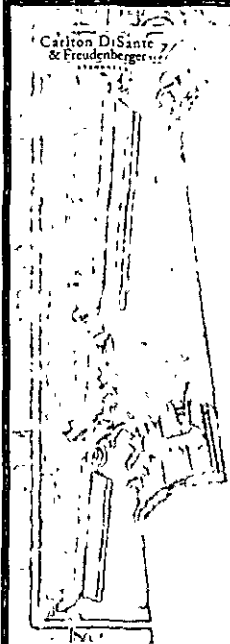
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Types of Harassment
Physical Conduct

- Physical conduct includes such things as:
 - Giving "gag" gifts related to a protected category
 - Unwelcome touching
 - Blocking of normal movements
 - Leaning over someone
 - Leering
 - Whistling
 - Suggestive or obscene gestures

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP

Not Sure if it is Harassment?

- Not all harassment is obvious
- The perspective of the victim, not the harasser is key
- Even if you do not intend your conduct to be harassing, it may be perceived that way:

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberger LLP

The Innocent Harasser?

Virtual Humor by Kevin Duffy



Santa's sexual harassment trial takes a dramatic change for the worse

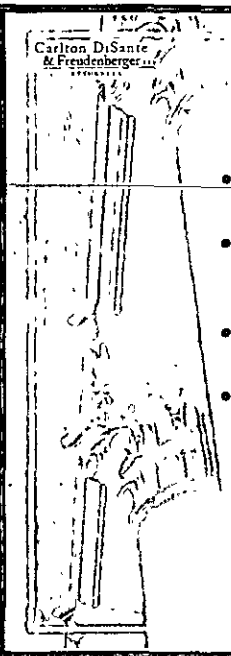
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Harassment

- Some “rule-of-thumb” tests for determining what behavior is appropriate:
 - Would you say or do the same thing if your wife, husband, boyfriend, girlfriend or mother were standing right next to you?
 - Would you say or do the same thing if you knew it was going to be videotaped and shown at a staff meeting or on the evening news? Or in front of a jury?
 - Would you say or do the same thing if the other person were of a different race, religion, gender and/or different sexual orientation?

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Prevention of Harassment

- Employer's affirmative duty
- Employees must feel comfortable bringing up complaints
- Supervisors should lead by example
- Employees within hearing range of conversations may feel uncomfortable.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Employee's Personal Liability

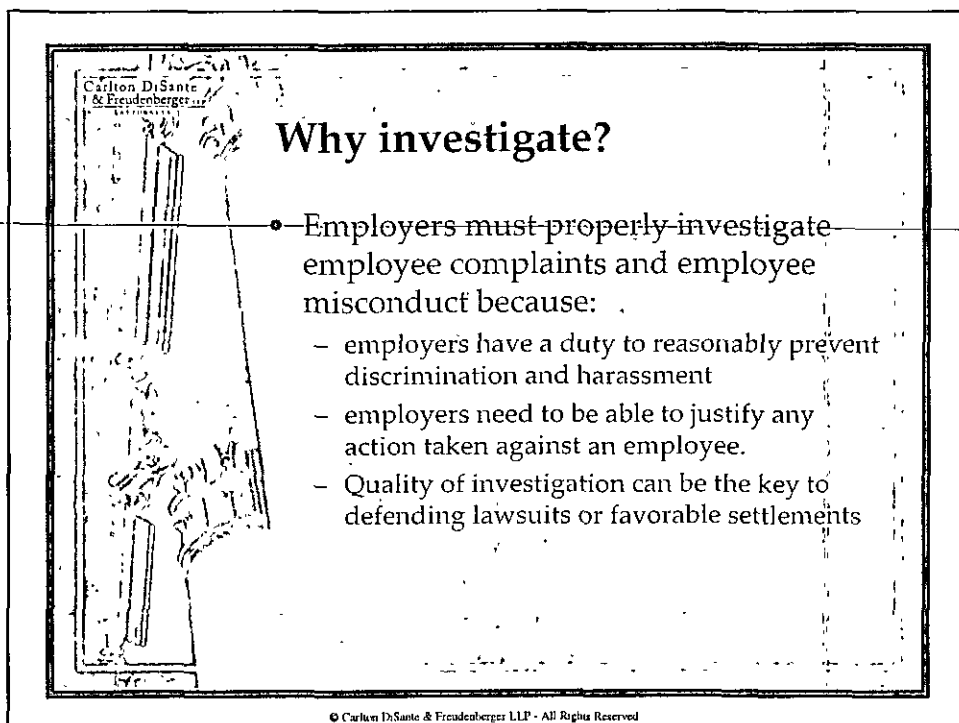
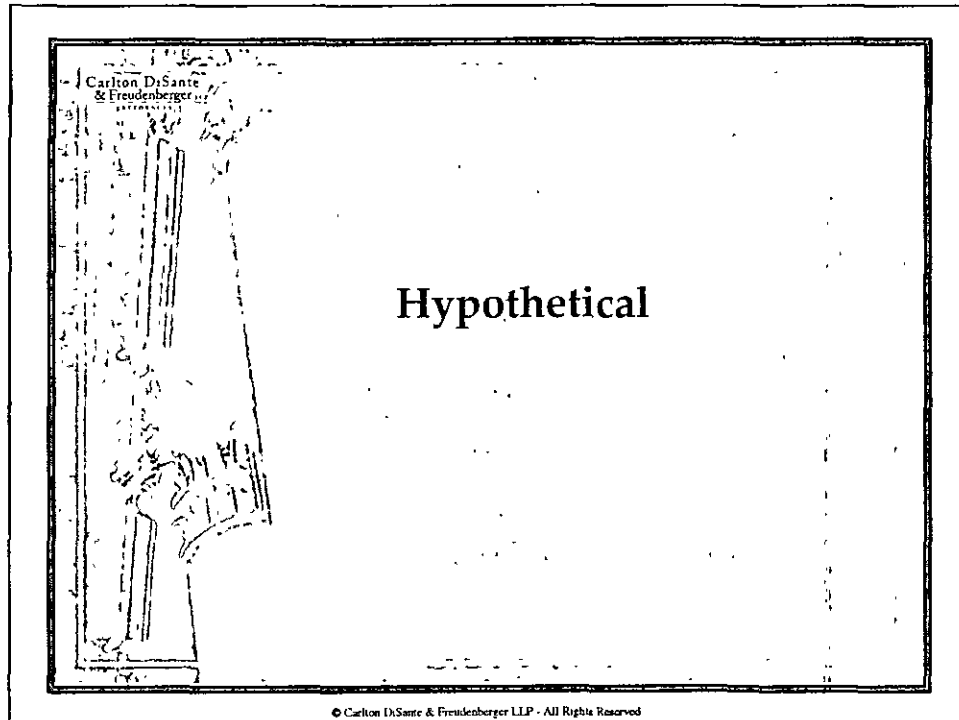
- **Discrimination = No**
 - Employee (supervisor or coworker) who discriminates another employee may not be held personally liable under CA law regardless of the employer's liability.
- **Harassment = Yes**
 - An employee who harasses another employee may be held personally liable under CA law regardless of the employer's liability..
- **Retaliation = No**
 - Employee (supervisor or coworker) who retaliates against another employee for reporting harassment may not be held personally liable under CA law regardless of the employer's liability.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



**Investigations and Discipline
for Discrimination and
Harassment**

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

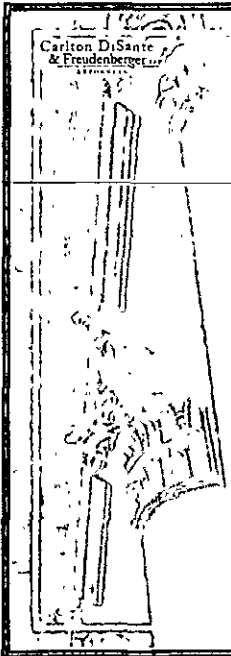




What Triggers an Investigation?

- Complaints made to an office manager, supervisor, or under the Company's internal complaint procedures
 - “Supervisor” is defined liberally
- Informal complaints must be investigated
 - Employee need not use buzz words
 - Investigation must be done even if the employee asks for the complaint to be “off the record”

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Employee Privacy

- Consult HR/Legal before:
 - Drug testing
 - Phone taps
 - Searching email/desks
 - Lie detector test

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



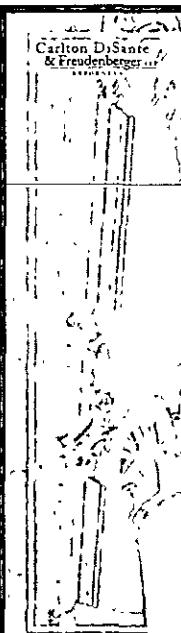
Carlton DiSante
& Freudenberger LLP

Guidelines for Receiving a Complaint

When you get a complaint:

- Give it immediate attention;
- Talk to the complaining employee;
- Assure the person that you are *taking their complaint seriously*;
- *Thank them* for reporting the alleged incident according to company policy;
- Tell them that an *investigation will be done immediately* to determine the facts of the incident.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

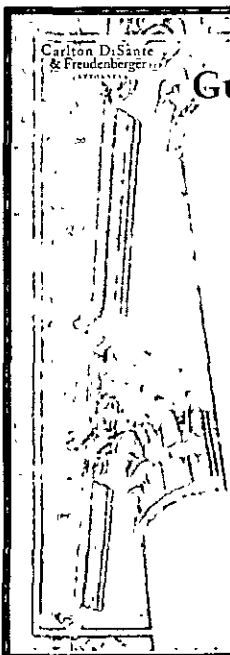


Carlton DiSante
& Freudenberger LLP

Guidelines for Receiving a Complaint

- Remind the employee that HR (or other executive) will be brought in
- Do not promise confidentiality
- Tell the complainant what your *next step* will be and when you will next contact them
- Document

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Guidelines for Receiving a Complaint

- Ask the employee to provide a written statement
- Get a list of any and all witnesses
- *If you are not a member of HR, notify the HR Mgr* (or other responsible executive) as soon as possible after ending your conversation with the complainant

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Common Mistakes

- Ignoring potential violations of the employer's harassment/discrimination policy
 - Inappropriate jokes, posters, behavior when no one complains
- Failing to act on a harassment/discrimination complaint when the alleged victim says he or she does not want the company to take any action
 - Alleged victim says he or she wants to talk about the situation "off the record" or "in confidence."
- Not taking all complaints seriously

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Common Mistakes

- Assuming the accused is innocent or guilty
- Failing to take follow up action where harassment is found.
- Failing to follow up with the complaining party to make sure that no retaliation has occurred.
- Failing to communicate the end and outcome of the investigation to the complainant.

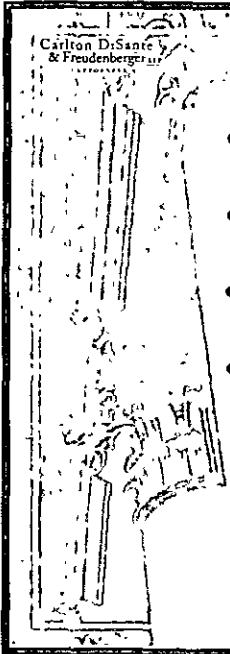
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Importance of Documentation

- Good documentation is necessary to support employment decisions.
- It will provide your best defense to charges of unfair or discriminatory treatment.
- It will be your best evidence against employees or ex-employees who are willing to lie about past events.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Tips for Documenting Statements

- Open ended questions first
- One question at a time
- Try to establish chronology
- Save tough/embarrassing questions for the end

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Disciplining Employees

- Make sure discipline is consistent with company policy/union contract

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Disciplining Employees

Document Everything, Even Verbal Warnings

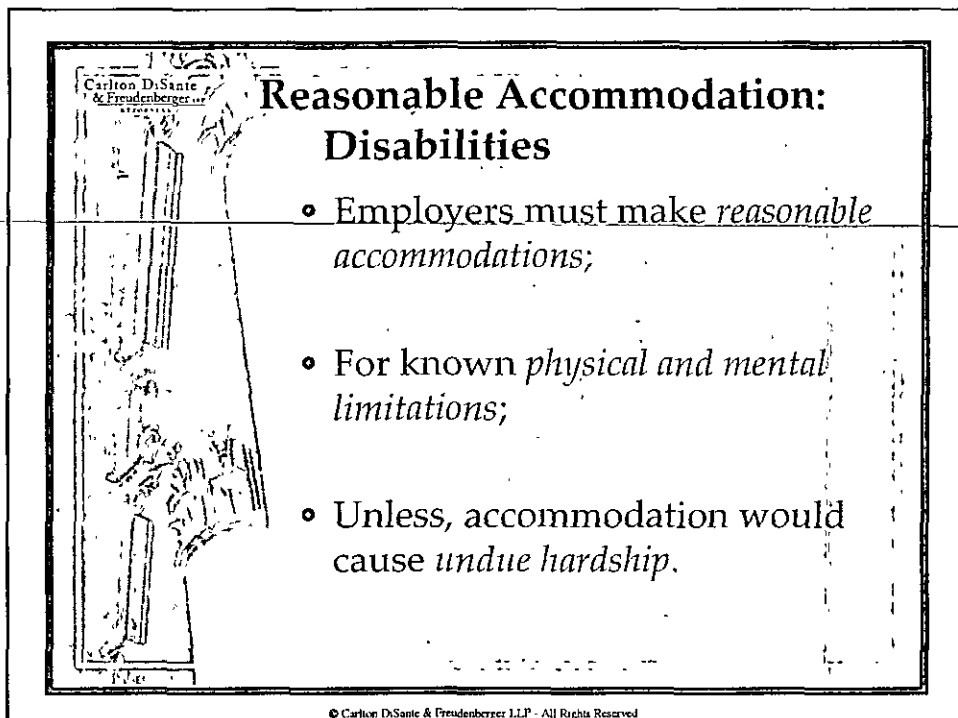
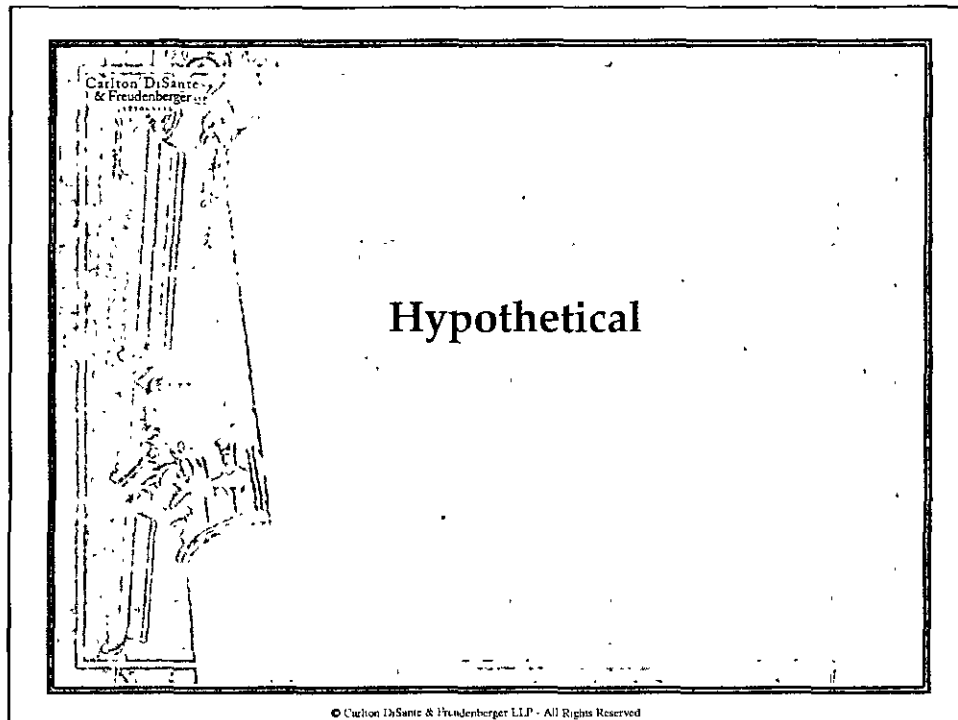
- It is a good practice to document times when you counsel or coach employees about performance problems, even if these instances do not rise to the level of a written warning.
- For major issues, keep documentation of the problems (such as schedules, pictures showing poor performance, customer complaints, etc.).

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Reasonable Accommodation: Disabilities

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

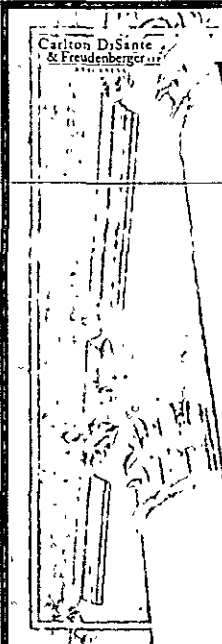




Reasonable Accommodations

- Part-time or modified work schedules
- Granting leave time for medical treatment and/or recuperation time
- Job restructuring to assign marginal (non-essential) job functions to another employee
- Reassignment
- Purchasing special equipment or tools (e.g. headsets, speaker phones) to assist the employee in performing his or her job.

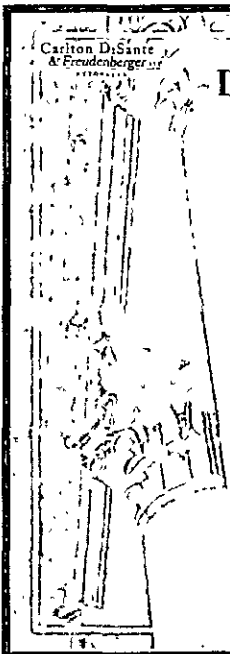
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



What is a Disability?

- An individual with a physical or mental impairment,
- That substantially limits one or more major life activities (CA broader standard, "limit" v. "substantially limit")

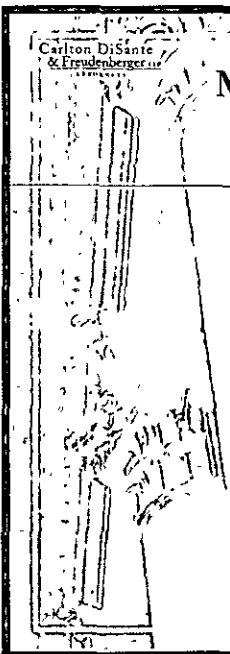
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Disability v. Non-Disability

- **Disability:** Orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; cancer; heart disease; diabetes; mental retardation; emotional illness; HIV disease; and alcoholism.
- **Not a Disability:** Gender identity disorders; voyeurism; exhibitionism; pedophilia; compulsive gambling; kleptomania; pyromania; and psychoactive substance use disorders from illegal drug use.

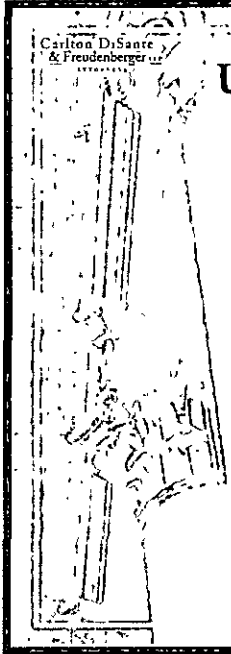
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Major Life Activities

- Caring for oneself
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Sleeping
- Reproduction
- Learning
- Thinking
- Concentrating
- Reading
- Interacting with others
- Working
- Participating in community activities

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

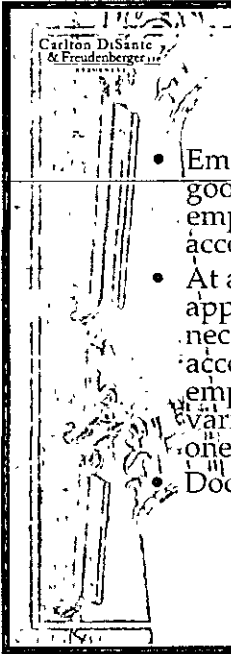


Carlton DiSante
& Freudenberger LLP

Undue Hardship

- An employer is not required to provide a reasonable accommodation if the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business.
- An undue hardship is an action requiring *significant difficulty or expense*.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

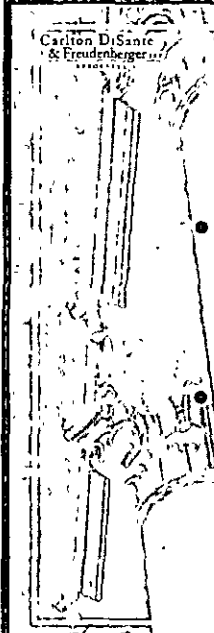


Carlton DiSante
& Freudenberger LLP

Interactive Process

- Employers are required to engage in a timely, good-faith, interactive process with the employee regarding a requested reasonable accommodation.
- At a minimum, employers should meet with the applicant or employee as many times as necessary to discuss possible reasonable accommodations, be open to the applicant's or employee's suggestions, and be willing to try various accommodations in an attempt to find one that is successful.
- Documentation of process is important!

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

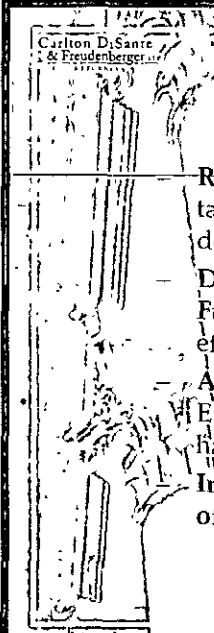


Carlton DiSante
& Freudenberger LLP

Interactive Process

- An employer and employee should engage in a *four step process*,
- To determine what accommodations can be implemented that will eliminate the applicant's or employee's barriers to employment.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

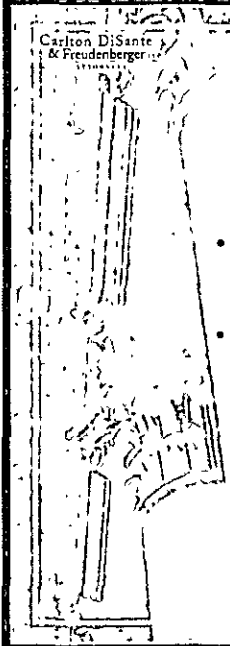


Carlton DiSante
& Freudenberger LLP

Interactive Process – Four Step Process

- **Review Job:** Distinguish essential and nonessential tasks, figure out purpose of job, recheck job description.
- **Determine Employee Limitations & Essential Job Functions:** Identify potential accommodations and effectiveness.
- **Assess Reasonableness of Accommodation:** Effectiveness for the disabled individual and hardship imposed on the employer?
- **Implement the Accommodations** serving the needs of both employee and employer.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Common Reasonable Accommodation Mistakes

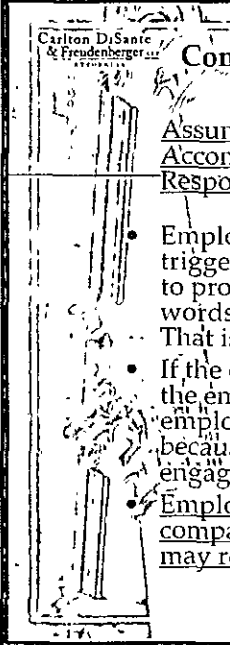
Placing Burden on Disabled Employee to Find a Transfer Position

- Duty to reasonably accommodate employee may require employer to offer an open alternative position for which the employee is qualified
- Some courts have held that if an employer becomes aware of an employee's permanent disability, employer has an *affirmative duty* to inform employee of suitable job opportunities and determine whether employee is qualified.

NOTE: Employer does not have to create a new position or bump another employee from a position to accommodate.

- Promotion to another position is not considered a "reasonable" accommodation.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

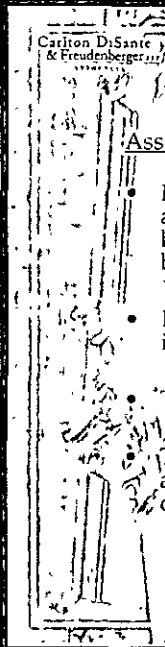


Common Reasonable Accommodation Mistakes

Assuming Employee Needs to Use Term "Reasonable Accommodation" or "Disability" to Trigger Employer Response

- Employers sometimes mistakenly believe that in order to trigger a duty to engage in the interactive process and/or to provide accommodation, an employee must use the words "reasonable accommodation" and/or "disability." That is not the case.
- If the employee gives the employer information leading the employer to believe that the employee that the employee needs time off or some other accommodation because of a medical condition, the employer's duty to engage in the interactive process is triggered.
- Employer must initiate the interactive process if the company knows of disability. Failure to initiate process may result in liability to the employer.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

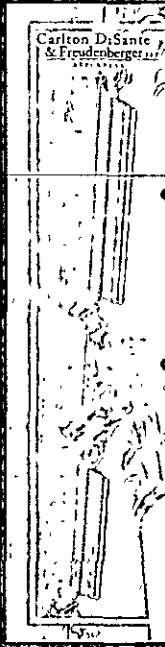


Common Reasonable Accommodation Mistakes

Assuming That Accommodation Would Be an Undue Hardship

- Employers sometimes mistakenly assume that a requested accommodation (e.g. extended leave) would be an undue hardship, without analyzing actual difficulty, cost and/or burden.
- Employer's burden to demonstrate requested accommodation is an undue hardship.
- This is not an easy standard to meet.
- To establish undue hardship, the employer must show that the accommodation would require *significant difficulty or expense*, considering the employer's size and resources.

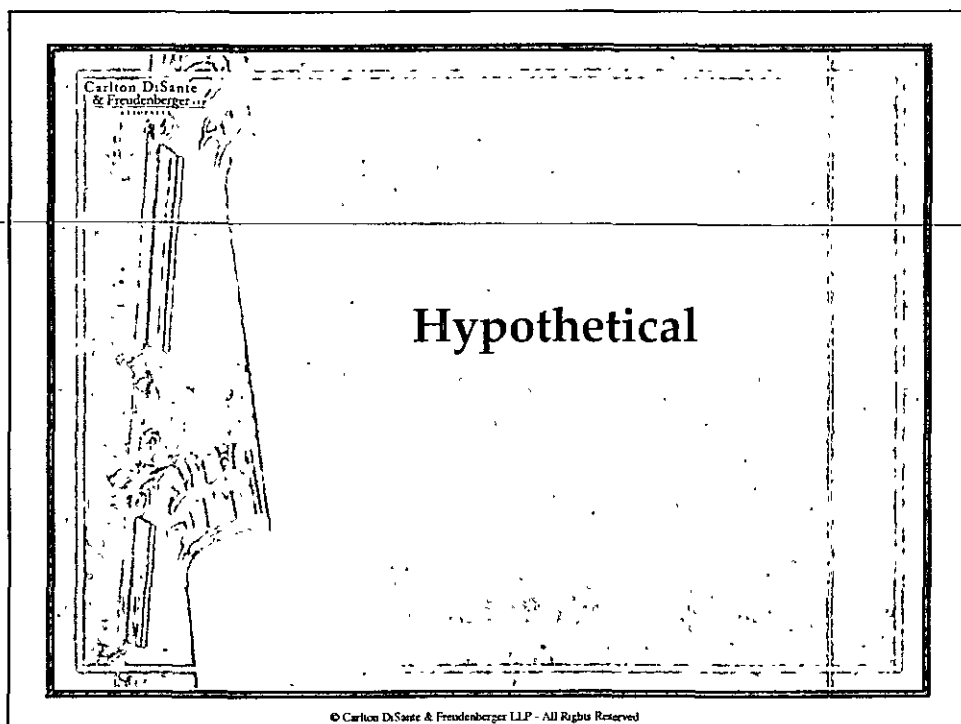
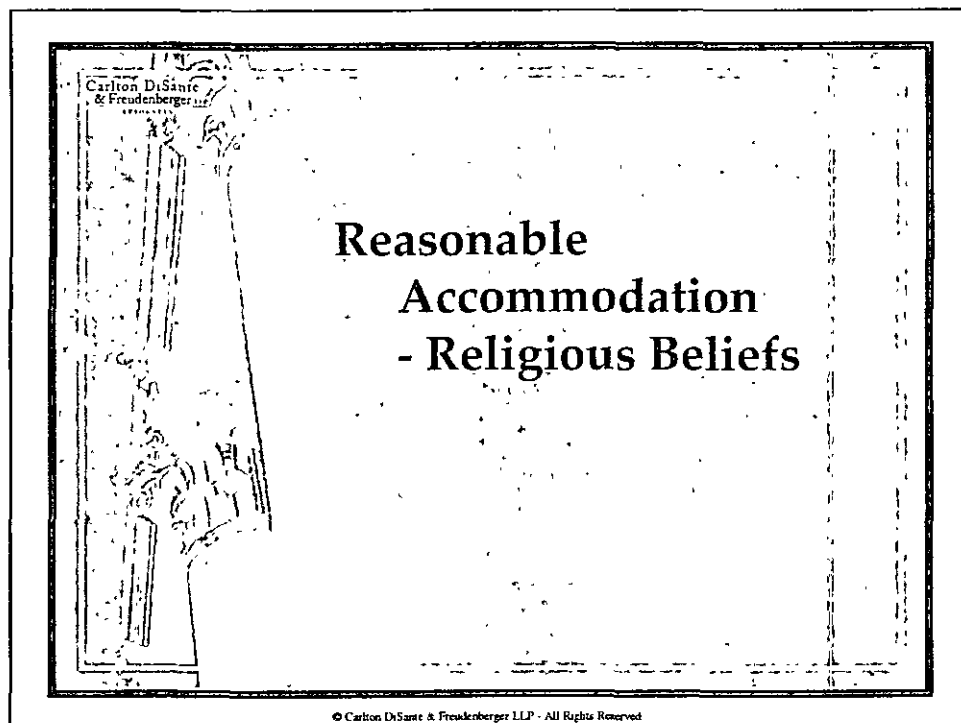
© Carlton DiSante & Freudenberger LLP - All Rights Reserved

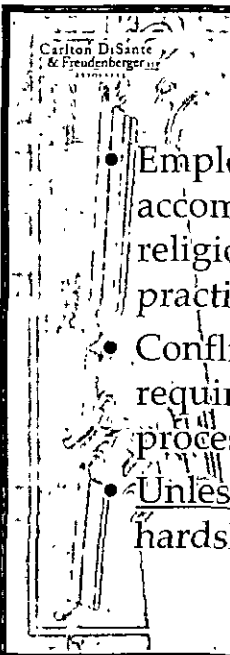


Genetic Information Nondiscrimination Act (GINA)

- Genetic tests used to determine predisposition for cystic fibrosis, breast and prostate cancer, diabetes and Lou Gehrig's disease.
- Genetic Information Nondiscrimination Act (GINA) prohibits employers from using genetic data in hiring, firing, and other workplace decisions affecting employment.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

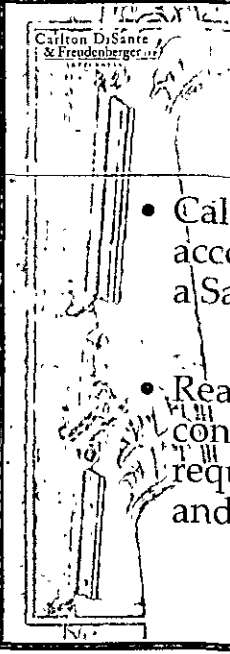




Reasonable Accommodation
Religious Beliefs

- Employers must make reasonable accommodations when a person's religious beliefs, observances, or practices,
- Conflict with a specific task or requirement of the job or the application process,
- Unless, the employer can show undue hardship.

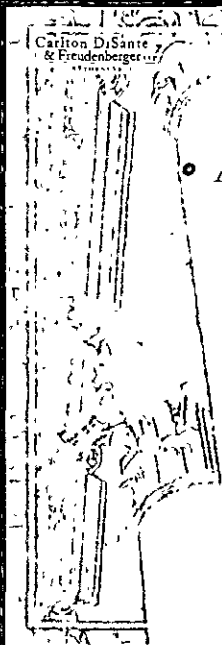
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



**Reasonable Accommodation:
Religion**

- California law requires reasonable accommodation for the observance of a Sabbath or other religious holy days.
- Reasonable accommodation eliminates conflicts between employment requirements and religious practices and can take many forms.

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Common types

- Adjustment to or exception from
 - task requirement so that the employee may be able to practice his or her religious beliefs or observances,
 - dress and grooming standards,
 - work schedules, or
 - religious expression or practice while at work.

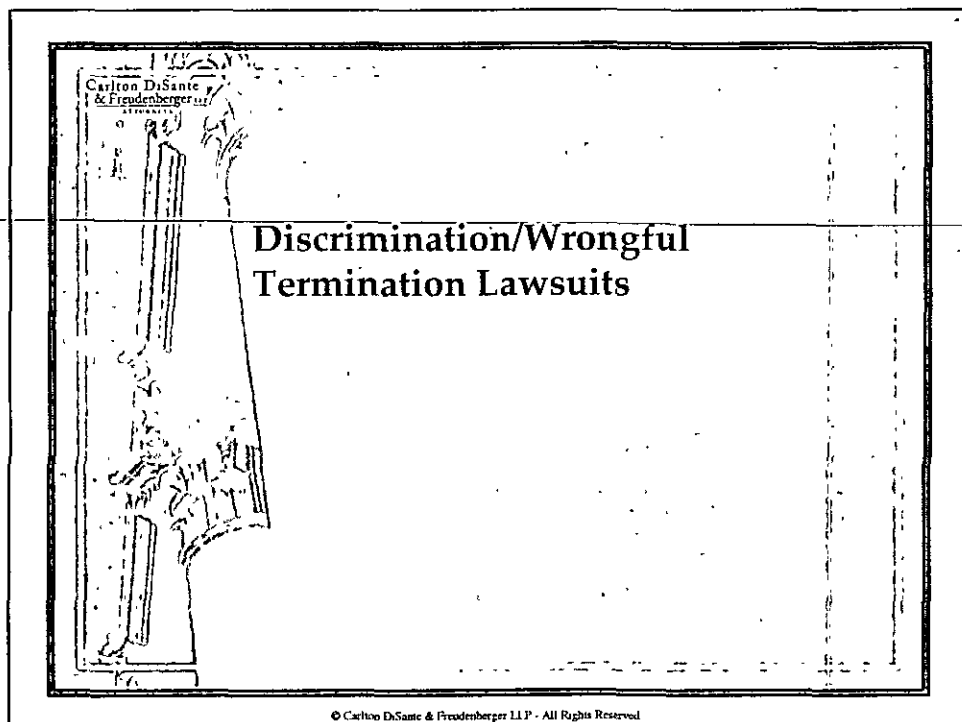
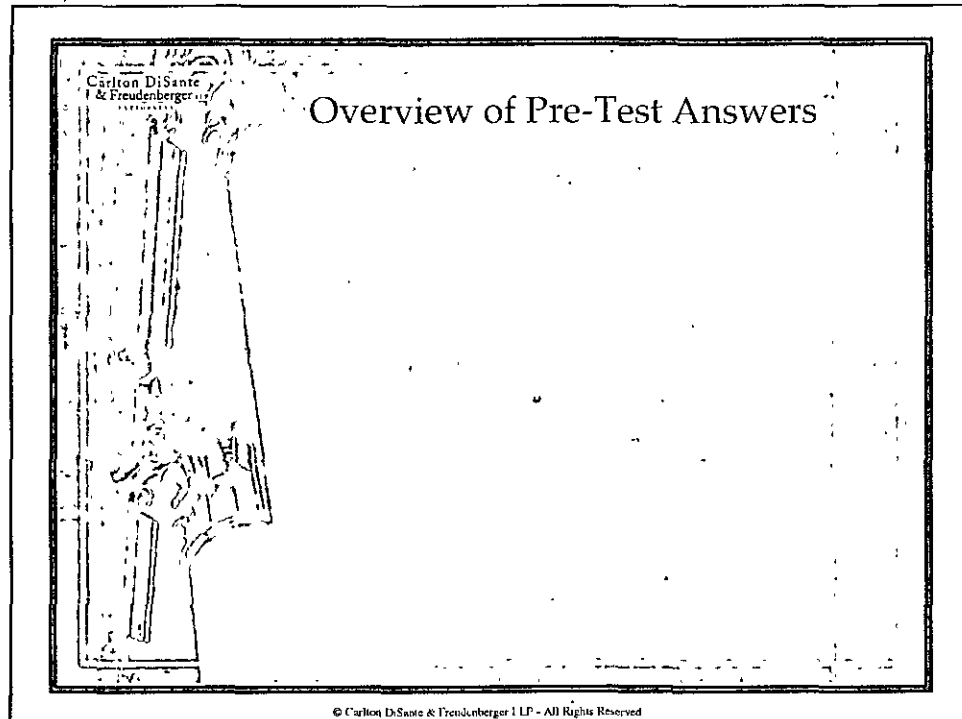
© Carlton DiSante & Freudenberger LLP - All Rights Reserved



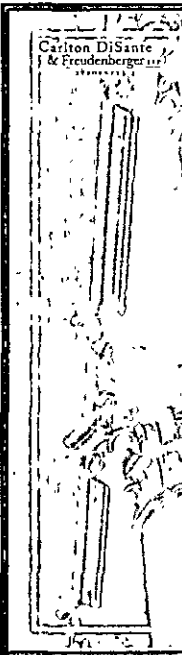
Interactive Process

- Employers must engage in a timely, good faith "interactive process" with the employee to determine effective reasonable accommodations.
- Only sincere religious beliefs need to be accommodated.
 - Law leaves little room for an employer to challenge the sincerity of an employee's supposed beliefs.
 - However, law does not guarantee the employee gets the accommodation of his or her choice as it must not place an undue hardship on the employer

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Labor & Employment Law: Discrimination, Harassment & Reasonable Accommodation



Discrimination/Wrongful Termination Lawsuits

- Prior to Lawsuit
 - Demand Letter
 - DFEH/EEOC Complaint
 - Right to Sue Letter
- Lawsuit Commences
 - Complaint
 - Answer/Responsive Pleading/Removal - Demurrer, Motion to Strike, 12-B-6 Motion
 - Discovery
 - Summary Judgment
 - ADR is Attempted (Mediation/Non-Binding Arbitration)
 - Trial
 - Appeal

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

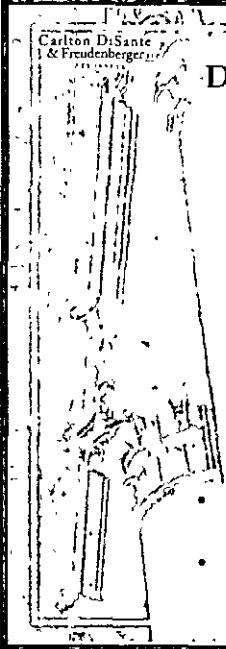


Discrimination/Wrongful Termination Lawsuits

- Discovery
 - Interrogatories
 - Request for Admissions
 - Request for Production of Documents/Inspection
 - Third Party Subpoenas for Records
 - Physical/Mental Examinations
 - Depositions

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

Labor & Employment Law: Discrimination, Harassment & Reasonable Accommodation



Discrimination/Wrongful Termination Lawsuits

- Average Billing Rate of Experienced San Diego Labor and Employment Attorney
\$250-\$450 per hour
- Average Cost of Single Plaintiff Litigation
\$65,000 plus verdict or settlement amount if any
- Typical Cost of Taking the Deposition of the Plaintiff
\$4,000 - \$5,000
- Typical Cost of Motion for Summary Judgment
\$20,000
- Typical Cost of Trial Preparation (30 days prior to trial)
\$30,000 (if courtroom is available on first try)
- Typical Cost of Trial (12 court days – 2 attorneys)
\$75,000
- Typical Cost of Litigation from Time of Filing Through Trial
\$200,000 - \$300,000

- In most cases of discrimination, harassment, retaliation – if the employer loses, the employer must pay the fees and costs for itself and for the plaintiff
- Translation – *half a million dollars in fees and costs*

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



**Questions
&
Answers?**

© Carlton DiSante & Freudenberger LLP - All Rights Reserved

**Labor & Employment Law: Discrimination,
Harassment & Reasonable Accommodation**



Thank you for attending!

Dave Carothers, Esq.
dcarothers@cdfsaborlaw.com

Cindy R. Caplan, Esq.
ccaplan@cdfsaborlaw.com

Nicole C. Baldwin, Esq.
nbaldwin@cdfsaborlaw.com

Karimah J. Lamar, Esq.
klamar@cdfsaborlaw.com

(858) 646-0007

© Carlton DiSante & Freudenberger LLP - All Rights Reserved



Carlton DiSante
& Freudenberg LLP

ATTORNEYS

Counsel to California EmployersSM

**Labor and Employment Law:
Discrimination, Harassment and
Reasonable Accommodation**

SD Port Authority Presentation

Pretest

1. In an effort to be more inclusive, a supervisor fired an employee who was often seen associating with minority employees only. The supervisor's actions cannot be considered race discrimination.

True / False

2. An employee cannot have a viable claim for retaliation if she or he is demoted, but the benefits and pay remain the same.

True / False

3. An employee is fired two days after her workers' compensation claim is settled. The employer will be liable for retaliation.

True / False

4. An employee informed her supervisor of acts of race discrimination against her, but made her supervisor promise not to report the acts of discrimination because the employee feared retaliation. Because the employee being discriminated against requested that there not be an investigation, the supervisor is not obligated to investigate.

True / False

5. An employee never requested reasonable accommodations for her disability, but the employer was aware that she needed accommodations. Because the employee did not request accommodations, the employer is not required to accommodate the employee's disability.

True / False

6. In a meeting with several employees, one employee announced that she was pregnant. The CEO of the company said "Oh great! Now you are going to have take leave." The employee took leave. The CEO's comments can be considered sex discrimination.

True / False

7. An employer requires employees to work on Sundays, but the employee observes Sunday for religious purposes. The employer allows employee to take unpaid leave to observe the Sabbath. This is a permissible accommodation.

True / False

8. Members of the public complained that some of the employees' traditional headdress concerned them. To address the public's concerns, the employer prohibited headdresses, but allowed the employees to wear a scarf. This is permissible religious accommodation.

True / False

9. An employee's religion forbids her from shaking hands with strangers. The employee refused to shake hands with customers. Her manager berated her for this and routinely made rude comments about her religion. This is not religious harassment.

True / False

10. An employee is disliked by her co-workers because of her physical disability; her co-workers feel she is "slowing" the team down. Her co-workers tries to get her fired, by spreading untrue and malicious gossip about her. This is disability harassment/ hostile work environment.

True / False



Carlton DiSante
& Freudenberg LLP

ATTORNEYS

Counsel to California EmployersSM

**Labor and Employment Law:
Discrimination, Harassment and
Reasonable Accommodation**

SD Port Authority Presentation

Hypotheticals

I. Discrimination/ Retaliation

Hypo 1: An employee was fired because he was often seen associating with minority employees.

Question: Was this race discrimination?

Answer:

Hypo 2: After an employee asserted a claim of race discrimination, his supervisor failed to give the employee the more sought after projects. However, the employee's benefits and pay stayed the same.

Question: Was this retaliation?

Answer:

II. Harassment

Hypo 3: Many co-workers of a minority employee made racial jokes and comments towards the employee. These jokes were based on the employee's perceived race, but the employee was not actually a member of the perceived race. Additionally, the co-workers who made the jokes were the employee's subordinates.

Question: Was this racial harassment?

Answer:

III. Investigations and Discipline

Hypo 4: An employee informed a supervisor of acts of race discrimination by his co-workers. However, the employee asked the supervisor to not investigate further and to just leave it as it is. In fact the employee stated that he will not cooperate with an investigation even if there were one. Consequently, the supervisor did not investigate the race discrimination claim.

Question: Did the supervisor violate her duty to investigate?

Answer:

IV. Reasonable Accommodation of Disabilities

Hypo 5: An employee, whose physician had recommended, that he use marijuana to treat his chronic pain, requested that he be allowed to use medical marijuana at work as a part of his reasonable accommodation.

Question: Is this a reasonable accommodation?

Answer:

V. Reasonable Accommodation of Religious Beliefs

Hypo 6: An employer requires an employee to work on Sundays but the employee observes the entire day for religious purposes.

Question: Is requiring the employee to work on Sunday a violation of the law?

Answer:

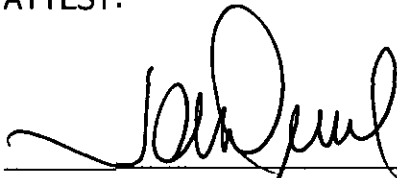
Chairman Peters called a recess at 2:28 p.m. The workshop was called back to order at 2:35 p.m.

There was no further action taken, whereupon Chairman Peters adjourned the special meeting at 4:00 p.m.



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 10:03 a.m., Tuesday, September 13, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Deuel and McEntee

Absent: No Commissioners absent.

Excused: Commissioner Malcolm was excused for Port business.
Commissioner Moore was excused until she arrived at 10:24 a.m.

Commissioner Burdick led the Pledge of Allegiance.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

PRESENTATION AGENDA**UPDATE PRESENTATION ON THE CHULA VISTA BAYFRONT MASTER PLAN**

Agenda Item 3. Chris Hargett, Area Manager, Real Estate, addressed the Board with an update presentation regarding the Chula Vista Bayfront Master Plan. Mr. Hargett turned the presentation over to Lesley Nishihira, Manager, Land Use Planning, Environmental & Land Use Management. Ms. Nishihira offered background information on the Chula Vista Bayfront Master Plan and the project timeline. Ms. Nishihira turned the presentation over to Mike Kennedy, Senior Asset Manager, Real Estate. Mr. Kennedy described the land exchange by and between the District and North C.V. Waterfront L.P. regarding the Pacifica Holdings and the Memorandum of Understanding process. Mr. Kennedy turned the presentation over to Gary Halbert, Deputy City Manager and Director of Development Services, City of Chula Vista. Mr. Halbert addressed the Board regarding several different agreements including the Financing Agreement between the City of Chula Vista, the District and the Redevelopment Agency to finance the bay front public infrastructure and the convention center; the Polanco Agreement with the Regional Water Quality Control Board; and the Owner Participation Agreement with Pacifica. Mr. Halbert turned the presentation over to Ernie Medina, Associate Engineer, Engineering/Construction. Mr. Medina addressed the Board regarding the progress of the infrastructure projects related to the Chula Vista Bayfront Master Plan. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Laura Hunter, Environmental Health Coalition, addressed the Board regarding the efforts to move the Chula Vista Bayfront Master Plan forward. She discussed progress related to the establishment of the Wildlife Advisory Group (WAG) to oversee the creation of the Natural Resource Management Plan.

Allison Rolfe, Pacifica Companies, addressed the Board and acknowledged their continued engagement in the process, and thanked the environmental community stakeholders for their efforts. Ms. Rolfe acknowledged that her company was looking forward to taking the project to the California Coastal Commission for their consideration.

Commissioner discussion ensued. Commissioner Nelson requested clarification regarding the WAG and which species of flora and fauna as being of particular interest had been identified. Laura Hunter stated that specific flora and fauna had not yet been identified, but the endangered and threatened species were the top priority. She stated the intention of the Natural Resource Management Plan was to look at protecting the

habitats, which would help to protect species and that part of the food web. She discussed efforts to protect the clapper rail and other migratory waterfowl that winter in the area. Ms. Hunter also discussed the matter of addressing any invasive species that could do harm to the salt marshes and other tideland areas.

Commissioner Nelson continued his remarks with respect to the anticipated sea level rise, and how that was being factored into the project, specifically with respect to the existing wetlands. Mr. Kennedy stated that during the planning process, staff anticipated a future sea level rise and raised the overall grades by 18 inches. He discussed the grading for the Pacifica property and the proposed hotel, both of which would have a raised foundation.

Commissioner Nelson requested clarification as to how sea level rise was factored into the investment in habitat preservation and protection. More specifically, he requested what staff anticipated under the plan will be spent on land that could be inundated by sea level rise in fifty years. Ms. Nishihira explained that the Chula Vista Bayfront Master Plan does account for sea level rise in the areas adjacent to existing wetlands along with the buffer areas along the western perimeter of the southern portion of the Chula Vista Bayfront Master Plan, as well as the Sweetwater District to the north. Ms. Hunter stated that in the Sweetwater District-stakeholders did a very good job in allowing for a very large buffer and then discussed the survival of the salt marsh through natural migration. She discussed the different challenges in the Otay District and explained there is a buffer in that area and a hard edge of rip wrap. She explained that more detailed planning would be required regarding the treatment of that gradual slope. Ms. Hunter offered that more discussion regarding adaptation to sea level rise, as related to Climate Mitigation and Adaptation Plan (Climate MAP) process, would occur with staff. Darlene Nicandro, Director, Environmental & Land Use Management Department, discussed the Climate MAP and explained that part of the plan was to analyze risk and consequence in the likelihood of such impacts from sea level rise and that this area would be analyzed as part of the Climate MAP process.

Commissioner Nelson requested clarification regarding Goodrich's position related to the acquisition of their property. Mr. Hargett offered that staff has had several discussions with Goodrich representatives, who have been cooperating up to that point in time. Staff was hopeful that they would continue to do so. As the matter would be discussed in closed session, Chairman Peters offered caution regarding the discussion of any additional questions specifically related to negotiations. Commissioner Nelson acknowledged Chairman Peters' counsel and withdrew the follow up question.

With respect to the conference space, Commissioner Nelson requested clarification as to how much would be contiguous exhibit space. Mr. Kennedy stated that he believed the figure to be approximately 100,000 square feet of contiguous exhibit space.

Commissioner Moore thanked everyone for their presentation and acknowledged that during such a big project, challenges may be presented and that those challenges would be tackled during the course of moving forward. She requested clarification regarding the status of the Chula Vista Bayfront Master Plan being on the docket during the November 2-4, 2011 hearing before the California Coastal Commission. Ms. Nishihira stated that, other than staff's preliminary discussion with the California Coastal Commission staff, they had not heard anything definitive from them since the July 21, 2011 meeting. She stated that the California Coastal Commission staff indicated that it would be very difficult to move the item to the November 2011 hearing and it would more likely be heard in January or February 2012. Ms. Nishihira confirmed that she regularly follows up with Diana Lilly, Coastal Program Analyst, California Coastal Commission, in an effort to keep the project on target and moving forward. Commissioner Moore requested clarification regarding the "H" Street project and the issues regarding drainage and the efforts to work with the City of Chula Vista to finalize the plans. Mr. Medina stated that staff has identified some additional infrastructure requirements and are closely coordinating with the City of Chula Vista. Brian Stup, Acting Chief Engineer/Director of Engineering-Construction, explained there was a delta between the original improvements and what was determined as standards for the project and that staff was continuing to work on those with City staff. He stated that the plan was to complete the cost estimates in the next month or so, and then follow up with a Capital Improvement Program (CIP) memo regarding the status.

Commissioner Burdick thanked staff for their update and acknowledged the timeline management. She acknowledged the collaboration efforts of all stakeholders to ensure the success of the project. Referencing Chula Vista Councilwoman Pamela Bensoussan's letter dated September 1, 2011, Commissioner Burdick reiterated her support for the project. She stated that the Port Commissioners, regardless of the member city they represent, are committed to the development as well as the long-term planning of the Chula Vista Bayfront Master Plan. She offered a motion that the Board accept the staff report. Commissioner Nelson seconded the motion.

Commissioner Valderrama requested clarification regarding the amount of additional CIP costs that may be associated with the "H" Street extension project. Mr. Medina replied the increase was approximately \$2.5 million. In addition to the original improvements, Mr. Stup described a number of items that make up the

increase. Those included regional upgrades to the storm drain, landscape improvements; the street was brought to the City of Chula Vista standard; an upgrade to the water-looping system, and a series of utilities. Commissioner Valderrama requested and received confirmation that the additional costs would be discussed during the CIP workshop process.

Commissioner Nelson stated that he believes his colleagues on the Board were in total support of the Chula Vista Bayfront Master Plan and concurred with other statements that the pending project was one of the most important on the tidelands. He stated that he hoped that the representatives from Chula Vista would alleviate any concerns that Councilwoman Bensoussan or others may have.

Commissioner Moore concurred that she had never heard anything from her fellow Commissioners that did not stress the importance of the project and for the need to go forward with the plan. She said that any sensitivity on the part of Chula Vista was because the project had a very long history and it was getting close to the finish line. With respect to "H" Street, she reiterated that some of the additional improvements were due to having storm water drains in the area accept a larger amount of water. She explained that in the long-run, making the enhanced improvements now would be more cost effective and curtail the need to make more costly upgrades required by a future development.

Chairman Peters thanked staff for the presentation. He acknowledged that the project has been many years in the planning and acknowledged the progress to date. He encouraged those stakeholders to continue the work in anticipation of a great outcome.

Laura Nicholson, Deputy District Clerk, requested clarification regarding the status of the pending motion to accept the staff report. Duane Bennett, Port Attorney, offered that the Board could accept the staff report without a motion.

Chairman Peters acknowledged Mr. Bennett and stated that the Board would accept the report. He requested that Mr. Bennett read the closed session items into the record.

CLOSED SESSION

Mr. Bennett explained that the Board would reconvene in open session to read the 12 p.m. special meeting item into the record. He then announced the closed session agenda as follows:

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9

Two Cases

Agenda Item 5.

CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION

Pursuant to Subdivision (c) of Government Code Section 54956.9

One Case

Agenda Item 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: South Bay Power Plant consisting of Approximately 115 Acres of Property located South of J Street and West of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services, Beck Mayberry, Manager, Asset Management West, and Daniel Thompson, Vice President, West Region Operations, Dynegy South Bay, LLC;
Karen Porteous, Randa Coniglio, Karen Weymann, Kristine Zortman, Jeffrey McEntee, William D. McMinn, Celia Brewer, SDUPD

Under Negotiation: Price and Terms

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: Kettenburg Boatyard consisting of approximately 100,744 square feet of land and approximately 108,250 square feet of water located at 2702 Shelter Island Drive, in America's Cup Harbor, San Diego

Negotiating Parties: Tom Driscoll, President, Driscoll, Inc.;
Randa J. Coniglio, Karen J. Weymann, Kristine A. Zortman,
Karen Porteous, Jeffrey McEntee, SDUPD

Under Negotiations: Price and Terms

Agenda Item 8.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Knight and Carver YachtCenter consisting of approximately
265,758 square feet of land and approximately 98,424
square feet of water located at 1313 Bay Marina Drive,
National City

Negotiating Parties: Michael J. O'Leary, President/CEO, Knight and Carver
YachtCenter, Inc.;
Randa Coniglio, Karen Porteous, Karen Weymann, Kristine
Zortman, Adam Meyer, Jeffrey McEntee, SDUPD

Under Negotiations: Price and Terms

Agenda Item 9.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Lane Field located at the Northeast Corner of Harbor Drive
and West Broadway, San Diego

Negotiating Parties: Jerome Trammer, Lane Field San Diego Developers, LLC;
Randa Coniglio, Karen Porteous, Karen Weymann, Shaun
D. Sumner, Nicholas Markos, Jeffrey McEntee, SDUPD

Under Negotiation: Price and Terms

Agenda Item 10.

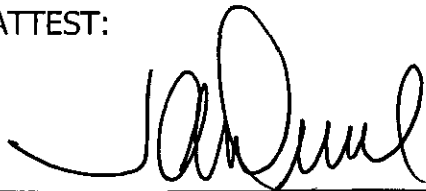
PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
APPOINTMENT OF THE PORT ATTORNEY
Government Code Section 54957

There was no formal or reportable action as to any other closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 12:00 p.m., Tuesday, September 13, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Deuel and McEntee

Absent: No Commissioners absent.

Excused: Commissioner Malcolm was excused for Port business.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

CLOSED SESSION

Duane Bennett, Port Attorney, announced the closed session agenda as follows:

Agenda Item 11.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9

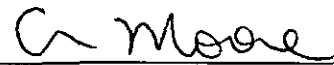
Castellanos/Johnson v. SDUPD, et al.

San Diego Superior Court Case No.: 37-2009-000103325-CU-PO-CTL

There was no formal or reportable action as to any other closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

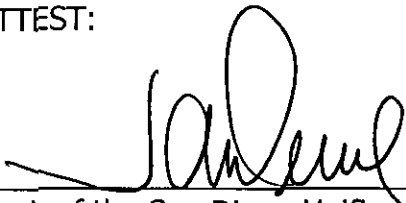
September 13, 2011

page 268



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:01 p.m., Tuesday, September 13, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Deuel, and McEntee

Absent: No Commissioners absent.

Excused: Commissioner Malcolm excused for Port business.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Commissioner Smith led the Pledge of Allegiance.

Chairman Peters announced that Wayne Darbeau, Executive Director, was conducting Port related business in China and Randa Coniglio, Executive Vice President Operations, was representing Mr. Darbeau during the special meetings (closed sessions) and the regular meeting.

PRESIDENT'S REPORT

Agenda Item 33. Randa Coniglio, Executive Vice President Operations, turned the presentation over to John Bolduc, Vice President Public Safety/Harbor Police Chief, who introduced Harbor Police Officer Columbus Offord and the newest canine member of the Explosive Detection Team, Fredy, a two-year-old German Shepherd. Chief Bolduc explained that Officer Offord graduated from the Transportation Security Administration handler course in May 2011 and the team was assigned to the San Diego International Airport. Officer Offord briefly addressed the Board regarding his duties.

Ms. Coniglio stated that on behalf of Mr. Darbeau, she acknowledged staff's professionalism and emergency response capabilities employed to maintain key port operations resulting from the extensive regional power outage on September 8, 2011. She thanked staff for their response to the blackout.

PRESENTATION AGENDA

PRESENTATION OF THE SAN DIEGO UNIFIED PORT DISTRICT 2011 EMPLOYEE OF THE SECOND QUARTER

Agenda Item 19. Eric Lawrence, Human Resources Technician and Chair of the Employee Recognition Program Committee, addressed the Board with a presentation regarding the District Employee of the Quarter program. He turned the presentation over to Randa Coniglio, Executive Vice President Operations, who announced that Terrie Eichholz, Commissioner Services Assistant, in the Office of the District Clerk, was named the 2011 Employee of the Second Quarter. Ms. Eichholz was cited for her work in administering the agenda process for Board of Port Commissioners meetings. Ms. Coniglio explained that she was being recognized for her effort, dedication, and diligence, thus Board meetings run smoothly, showing the Office of the District Clerk and the District to be well organized and professional. Ian Fidel, Wharfinger in Maritime Operations was also nominated for Employee of the Quarter. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Ms. Eichholz addressed the Board and thanked the Commissioners, her colleagues and staff for their support. Chairman Peters offered his congratulations on behalf of the Board.

PRESENTATION OF GREEN PORT PROGRAM 2010/2011 YEAR IN REVIEW, KICK OFF OF GREEN PORT MONTH, AND EMPLOYEE ENVIRONMENTAL AWARDS

Agenda Item 20. Cody Hooven, Senior Environmental Specialist, Environmental & Land Use Management Department, addressed the Board with a presentation regarding the Green Port Program 2010/2011 Year in Review and announced the kick off of the annual Green Port Month. Ms. Hooven introduced Brisha Cordella, Customer Programs Advisor, Local Government Partnerships, San Diego Gas and Electric (SDG&E) who addressed the Board regarding the Local Government Energy Efficiency Partnership efforts and their continued funding support. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner Valderrama left the dais at 1:17 p.m. and returned at 1:18 p.m.

Chairman Peters thanked the SDG&E representatives for their partnership. He then announced the recipients of the 2011 Employee Environmental Awards: Bridgett Reid, Associate Engineer, Engineering and Construction; and General Services and Procurement Services Electricians: Robert Alcala, Enrique Lemus, Ronnie Lucero, Michael Silva and Alfonso Marquez.

APPROVAL OF MINUTES

Agenda Item 3. On motion of Commissioner Smith, seconded by Commissioner Nelson, the Board approved the minutes for the special meeting of August 9, 2011 and the regular meeting of August 9, 2011, by the following vote: Yeas-Burdick, Nelson, Moore, Peters, Smith and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

PUBLIC COMMUNICATIONS

Agenda Item 4. Sharon Cloward, President, San Diego Port Tenants Association, ceded her time to Sophie Silvestri, Director of Operations, San Diego Port Tenants Association. Ms. Silvestri addressed the Board regarding the Operation Clean Sweep event held on August 27, 2011. She announced that nearly 1,300 volunteers participated, filled 14 dumpsters and removed over 21 tons of debris. She thanked Navy Region Southwest, District staff, port tenants and the many participants for their support.

Commissioner Nelson acknowledged the Port Tenants Association for their sponsorship.

Ian Trowbridge, co-chair, Navy Broadway Complex Coalition, addressed the Board in opposition to the Coronado Yacht Club redevelopment proposal without making changes to coastal access. He read into the record the testimony he presented to the California Coastal Commission. (A copy of his testimony attached to a project opposition letter from Unite Here Local 30, dated September 30, 2011, is on file in the Office of the District Clerk.)

Sean Sims, GTI Fertigation, addressed the Board regarding the application of fertilizers and other products to landscape through an existing irrigation/sprinkler system to address fertilizer runoff. Chairman Peters thanked Mr. Sims and stated that the Board would forward his recommendations on to staff for evaluation. (A copy his sales collateral is on file in the Office of the District Clerk.)

CONSENT AGENDA

Chairman Peters requested that Laura Nicholson, Deputy District Clerk, announce any suggested docket changes. Ms. Nicholson announced the proposed changes to the agenda as follows: **Consent Agenda Item 5**, Resolution Authorizing Change Order No. 9 to Contract with Sergio Becerra for HVAC Upgrade in an amount not to exceed \$50,000, and a time extension of 60 calendar days; staff requests that Board action was no longer required; **Consent Agenda Item 16** Resolution Selecting and Authorizing Agreement with {Company Name} for Professional Engineering Services for the Shelter Island Boat Launching Ramp Facilities Improvement Project, in San Diego California in an amount not to exceed {Dollar Amount}, staff requests this item be continued to a future Board meeting; **Consent Agenda Item 17** Resolution Authorizing Advertisement of Request for Proposals for Environmental Projects to benefit San Diego Bay, staff requests this item be continued to a future Board meeting; **Consent Agenda Item 18** Resolution Authorizing Agreement with _____, to provide 800-Mhz Radio Maintenance Services for three years in an amount not to exceed \$225,000, staff requests that Board action no longer required; **Presentation Agenda Item 22** Presentation from USS Midway Museum on Navy Pier Park, staff requests the Board consider the Museum's request to continue this item to a future Board meeting; **Action Agenda Item 26** Update on Senate Bill 623 (Kehoe) Banning Copper Marine Antifouling Paint and direction to staff, staff requests this item be continued to a future Board meeting.

Ms. Nicholson announced that Jeff McEntee, CFO/Treasurer wished to address the Board regarding **Consent Agenda Item 5**, Resolution Authorizing Change Order No. 9 to Contract with Sergio Becerra for HVAC Upgrade in an amount not to exceed \$50,000, and a time extension of 60 calendar days. Mr. McEntee reported out with a

brief summary of the emergency action related to an upgrade to the HVAC system in the administration building's computer network server-room, which was authorized in accordance with Board of Port Commissioners Resolution 2000-13.

Commissioner Valderrama left the dais at 1:49 p.m. and returned at 1:53 p.m.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board accepted the suggested changes to the agenda, by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

Commissioner Moore requested that Consent Agenda Item 13, San Diego Convention Center Hotel and Phase III Expansion Project, be pulled for further clarification. She requested and received confirmation from Nick Markos, Senior Asset Manager, Real Estate Department that the assignment document included in the staff report was accepted by One Park Boulevard as shown.

On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted Consent Agenda items 6, 7, 8A, 8B, 9, 10, 11, 12A, 12B, 13A, 13B, 14A, 14B, 15 and 15.1 (**Resolution 2011-119** through and including **Resolution 2011-125, Ordinance 2648, Resolution 2011-126** through and including **Resolution 2011-129, Ordinance 2649, Resolution 2011-130** through and including **Resolution 2011-131**,) by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

Agenda Item 5. Board action no longer required.

Agenda Item 6. Resolution 2011-119, Authorizing Amendment No. 1 to Agreement with Verotek Systems for an increase of \$385,000 for a new total agreement amount of \$3,385,000 and an eleven (11) month extension to the term through December 31, 2012, was adopted as part of the consent agenda.

Agenda Item 7. Resolution 2011-120, Authorizing the District to enter into a Mutual Non-Disclosure Agreement and Granting Indemnity to General Electric Company for the transit of wind energy components through the Tenth Avenue Marine Terminal, was adopted as part of the consent agenda.

Agenda Item 8A. Resolution 2011-121, Authorizing Fleet Owner Participation Agreement and Granting Indemnity and Agreeing to a Limitation of Liability to Ecotality North America for Electric Vehicle Charging Infrastructure, was adopted as part of the consent agenda.

Agenda Item 8B. **Resolution 2011-122**, Authorizing Charging Site Host Participation Agreement and Granting Indemnity and Agreeing to a Limitation of Liability to Ecotality North America for Electric Vehicle Charging Infrastructure, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2011-123**, Selecting and Authorizing an Agreement with Aztec Landscaping, Inc. for Landscape Maintenance Services in an amount not to exceed \$480,012.36 for the period from October 1, 2011 to June 30, 2014, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2011-124**, Selecting and Authorizing an Agreement with USA Waste of California Inc., dba Waste Management for Dumpster Services in an amount not to exceed \$248,308.69 for the period from October 1, 2011 to June 30, 2014, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2011-125**, Declaring Items of Equipment to be Surplus to the needs of the Port District and Authorizing their Sale or Disposal in accordance with BPC Policy No. 111, was adopted as part of the consent agenda.

Agenda Item 12A. **Ordinance 2648**, Establishing a Schedule of Compensation for All Officers and Employees of the San Diego Unified Port District, was adopted as part of the consent agenda.

Agenda Item 12B. **Resolution 2011-126**, Amending the San Diego Unified Port District Directory of Classification Specifications for Fiscal Year 2011–2012, was adopted as part of the consent agenda.

Agenda Item 13A. **Resolution 2011-127**, Approving Partial Assignment and Assumption Agreement with One Park Boulevard, LLC for payment of entitlement costs for the San Diego Convention Center Hotel and Phase III Expansion Project, was adopted as part of the consent agenda.

Agenda Item 13B. **Resolution 2011-128**, Approving First Amendment to Agreement for Environmental Consulting Services to add One Park Boulevard, LLC as an applicant, was adopted as part of the consent agenda.

Agenda Item 14A. **Resolution 2011-129**, Entering into a Memorandum of Understanding between the City of National City and the San Diego Unified Port District to provide matching funds of \$830,000 for Construction of Center, was adopted as part of the consent agenda.

Agenda Item 14B. **Ordinance 2649**, Amending the FY 2009-2013 Capital Improvement Program and the FY 2011-2012 Operating Budget – decreasing the Capital Improvement Program by \$830,000 and increasing the Operating Budget by \$830,000, was adopted as part of the consent agenda.

Agenda Item 15. **Resolution 2011-130**, Authorizing staff to Submit an Application for a State Grant, to Accept Funds that may be awarded, Designate the Chief Financial Officer as Authorizing Representative, and Indemnifying the State, for the construction of Lane Field Park, was adopted as part of the consent agenda.

Agenda Item 15.1. **Resolution 2011-131**, Authorizing Acceptance of Transportation Security Administration (TSA) FY11 Grant Award Modification #8 in the amount of \$156,837.47 and modification of the Cooperative Agreement for the Harbor Police Department (HPD) Explosives Detection Canine Team Program per BPC Policy No. 109, was adopted as part of the consent agenda.

Agenda Item 16. **Item continued.**

Agenda Item 17. **Item continued.**

Agenda Item 18. **Board action no longer required.**

PUBLIC HEARING AGENDA

CORONADO YACHT CLUB REDEVELOPMENT PROJECT

- A) CONDUCT PUBLIC HEARING, CERTIFY ENVIRONMENTAL IMPACT REPORT, ADOPT FINDINGS OF FACT, ADOPT MITIGATION MONITORING AND REPORTING PROGRAM, AND DIRECT FILING OF THE NOTICE OF DETERMINATION.**
- B) CONDUCT PUBLIC HEARING, CONDITIONALLY APPROVE PORT MASTER PLAN AMENDMENT AND DIRECT FILING WITH THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION, SUBJECT TO THE FOLLOWING:**
 - 1) THE PORT MASTER PLAN AMENDMENT APPROVAL IS NOT EFFECTIVE UNLESS AND UNTIL AN OPTION AMENDMENT IS APPROVED.**

2) CORONADO YACHT CLUB AGREES TO DEFEND AND INDEMNIFY THE DISTRICT IN THE EVENT OF A LEGAL CHALLENGE.

Agenda Item 23. Darlene Nicandro, Director, Environmental & Land Use Management Department, addressed the Board with a presentation regarding the Glorietta Bay Master Plan implementation efforts and the proposed Coronado Yacht Club (CYC) Redevelopment Project. Ms. Nicandro turned the presentation over to Wileen Manaois, Senior Redevelopment Planner, Environmental & Land Use Management Department. Ms. Manaois presented the staff report; requested Chairman Peters open the public hearings on the matter, and the Board then consider the staff recommendations. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Chairman Peters opened the public hearing. Chairman Peters requested and received confirmation that David Steel, Unite Here Local 30, wished to cede his time to Ian Trowbridge. Ian Trowbridge spoke in opposition to the staff recommendation. Michael Larison, Outra Construction Company, addressed the Board with general questions regarding the bid submittal timeline for the project and the number of job opportunities that would be created to complete the project. The following members of the public spoke in support of the staff recommendation: Blaire King, City of Coronado City Manager; Mark Warner, Commodore, Coronado Yacht Club; Sharon Cloward, San Diego Port Tenants Association; Mary Taylor, and Richard Odiorne, Coronado Yacht Club. Chairman Peters closed the public hearing.

Chairman Peters asked whether staff was prepared to provide any relevant and brief responses to any of the matters raised during the public hearing. Ms. Nicandro thanked Mr. King of the City of Coronado and the representatives of the CYC. In reference to Mr. Larison's queries, she clarified, for the record, that the sum of \$13.2 million was the project cost. She also stated as the project was a private development and the CYC would be advertising for the construction of the slips, and offered that the timeline proposed was contingent on the receiving required approvals by State agencies. Responding to Mrs. Taylor's remarks regarding the impacts of light and sound from the CYC, Ms. Nicandro offered that the matter was addressed in the Environmental Impact Report (EIR) and the consultant who prepared it was available for further clarification.

Commissioner discussion ensued. Commissioner Smith thanked the involved parties and staff for their work on the project. He announced that, while he is not a member of the CYC, he acknowledged the efforts of the members to enhance their leasehold and serve community members. Commissioner Smith expressed optimism

that the concerns raised regarding public access would be addressed prior to the California Coastal Commission hearing scheduled for early 2012. He offered a motion to approve the staff recommendations as noticed.

Commissioner Burdick seconded the motion.

Commissioner Nelson explained that he supported the motion. He acknowledged the CYC and the Junior Sailing Program scholarships designed to serve local youth. He offered that the CYC consider expanding the program to include area youth living in other nearby communities. He recognized the CYC's commitment to the environment through their eelgrass program. Commissioner Nelson acknowledged the benefits of private yacht clubs. He explained his reasoning for supporting the staff recommendation and the redevelopment project that had begun with prior approvals by the Board and the California Coastal Commission in 2003. He expressed his belief that the public access projects developed by the City of Coronado were outstanding. Commissioner Nelson expressed concern regarding the portion of the staff presentation pertaining to section 30212 of the Coastal Act, in which staff asserted that the CYC project would not be required to provide public shoreline access because it would be inconsistent with public safety. He acknowledged the need for more slips and offered that additional opportunities for boaters to dock their vessels should be explored in future projects. Commissioner Nelson reiterated his hope that the Coastal Commission would be consistent in their 2003 findings and support the planning efforts approved for the Glorietta Bay Master Plan. He concluded by restating his support for the motion.

Commissioner Burdick expressed her support for the motion to approve the certification of the EIR and approval of the Port Master Plan Amendment (PMPA) associated with the redevelopment project. She explained that upon review of the CYC's feasibility analysis of additional public access possibilities, she did not believe it was a thorough feasibility analysis, nor did it live up to her expectations as to any reasonable feasibility analysis. She further stated that it was self-serving in terms of trying to rationalize why the CYC should be allowed to proceed with in their redevelopment project because the CYC did not want to change their design plan or incorporate any additional public access elements in their redevelopment project. Commissioner Burdick stated she was skeptical of the feasibility analysis; and skeptical of staff's inclusion of the CYC charitable work in their analysis. She continued that she did not believe those matters were consistent with what the Board should consider when certifying an EIR and the finding of facts. She stated that she did not believe that any of those considerations regarding their general corporate citizenship were to be considered in the Board's approval of a PMPA or used to determine whether it is consistent with the State Lands obligations or the California Coastal Act. Despite her skepticism regarding

the CYC feasibility analysis, or any reference to their general good corporate citizenship, she stated her belief that there was adequate public access along those parts of the waterfront and revisions to the CYC redevelopment project were not required in order to get approval of the EIR or approval of the PMPA. She stated that she believed that the CYC should be held to the standards that were approved in 2003 regarding the Glorietta Bay Master Plan and the CYC redevelopment project was consistent with the Glorietta Bay Master Plan. Commissioner Burdick stated she was dismayed at the Coastal Commission suggestion regarding changes to what should be required of a redevelopment project that is consistent with the Glorietta Bay Master Plan. She stated 60 days had passed and the CYC has done a good faith effort to work with the District and try to address the Coastal Commission's concerns. She stated her belief that if the Coastal Commission were to act consistently with the Glorietta Bay Master Plan, approved in 2003, they would find that the redevelopment project was consistent with that master plan and that the project needs to be moved forward. She stated that the District should expand its efforts to convince the Coastal Commission why the project is consistent with the Glorietta Bay Master Plan. Commissioner Burdick discussed the agreement with Sunroad during the consideration of their lease option. She continued that in anticipation of the Board's consideration of the CYC option agreement, that she expected to see the same language regarding the effects of an optionee violating employment law or labor law provisions incorporated in the option agreement. She recalled that Commissioner Valderrama expressed grave concerns about negotiating provisions like that from the dais and that it would be unnecessary for the Board to do so if staff works diligently with the yacht club to ensure that that language was negotiated and included in that option agreement. She reiterated her second in support of the motion.

Commissioner Valderrama discussed his support for the public's access to the waterfront. He explained that during the National City Marina development negotiations any barriers to the waterfront, such as fencing, were removed. He offered statements in support of the public having access to the waterfront in Coronado. However, based upon the action in 2003, he supported the motion under consideration. Commissioner Valderrama stated that the City of Coronado had been consistent with the direction set forth in the Master Plan and has lived up to their obligations. He noted that Coronado's promenade is an area that serves the public well. He offered his support for the staff recommendations.

Commissioner Moore stated that she was in support of the staff recommendation based upon the fact that the project is consistent with the Glorietta Bay Master Plan as adopted in 2003. She offered comments regarding her belief that governmental agencies should remain consistent and honor their commitments. She stated that public

access was extremely important and public access along the waterfront was even more valuable. She stated that public access needs to be protected and preserved whenever possible. Referring to the comments made by Commissioner Nelson, she expressed her concerns about the statements in the staff report regarding public safety issues. While she acknowledged the CYC's commitment to providing services to the public, she offered that such efforts do not equal public access. In conclusion, she stated she was voting for the project based upon the actions that were taken in 2003.

Chairman Peters stated he was in support of the motion. He encouraged everyone to work towards the most feasible means to improve access. He suggested working with the Coastal Commission staff to address their issues. Regarding Mrs. Taylor's comment, he confirmed her concerns and acknowledged that District staff would work with area residents regarding any changes related to the impacts from light and noise. As a former member of the Coastal Commission, he offered his recollection of the discussions regarding the Glorietta Bay Master Plan in 2003 and that the redevelopment plan presented is consistent with the plan as it had been approved. Summing up his comments by stating that there was integrity in the process that ought to be respected.

On a single motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted with a single vote **Resolution 2011-132**, Certifying Environmental Impact Report, Adopting Findings of Fact, Adopting Mitigation Monitoring and Reporting Program, and Directing Filing of the Notice of Determination and **Resolution 2011-133**, Conditionally Approving Port Master Plan Amendment and Directing Filing with the California Coastal Commission for Certification, subject to the following: 1) The Port Master Plan Amendment Approval is not effective unless and until an Option Amendment is approved. 2) Coronado Yacht Club Agrees to defend and indemnify the District in the event of a legal challenge Authorizing the Issuance of a Non-Appealable Coastal Development Permit, by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

Commissioner Burdick left the dais at 2:55 p.m.

ACTION AGENDA**BARRIO LOGAN COMMUNITY PLAN UPDATE: PRESENTATION BY STAFF AND BOARD DIRECTION**

Agenda Item 25. John Helmer, Land Use Policy Manager, Government and Community Relations Department, began his presentation by offering that staff's role was to present the Board with facts and their best professional recommendation. Staff's role was not to convey other people's perspectives or opinions; and, in the event that the Environmental Health Coalition or any other stakeholders believed that he misrepresented their point of view on the Barrio Logan Community Plan, he apologized. He continued that it was not his intent, nor did he believe it was his job as a District employee, to do that. He offered that the presentation was an opportunity to hear from the stakeholders, the representatives from the City of San Diego, and staff. The presentation was informational only, and since the plan was completely located within the jurisdiction of the City of San Diego, and did not require formal Board action. He addressed the Board with a presentation regarding the Barrio Logan Community Plan Update and requested Board direction. (A copy of the staff report and presentation is on file in the Office of the District Clerk.

Commissioner Burdick returned to the dais at 3:10 p.m.

Chairman Peters requested and received confirmation from Maria Moya, Environmental Health Coalition that she would cede her time to Georgette Gomez. The following members of the public addressed the Board regarding the Barrio Logan Community Plan: Georgette Gomez, Environmental Health Coalition spoke about clarifying the staff report; Maria Martinez, with the assistance of a translator, spoke in favor of Alternative One; Rudolph Pimentel, spoke in favor of Alternative One; Sharon Cloward, San Diego Port Tenants Association and Supervisor Greg Cox, San Diego County Board of Supervisors, discussed the Bayshore Bikeway project relative to the plan.

Commissioner discussion ensued. Commissioner Nelson commended Mr. Helmer for making his introductory comments regarding any misunderstanding that may have occurred with respect to positions taken or not taken by community-groups and he hoped that Mr. Helmer's apology was received in the manner it was intended. He stated the focus of his inquiries was on the transition zone because of its pertinence to the District. He requested clarification as to at what the City of San Diego considered a transition zone and what the District considered a transition zone. Lara Gates, Barrio Logan Plan Update Project Manager, City of San Diego, stated that the District provided

the Transition Zone Policy in 2008 and from that point forward, it was the City's intent to recognize the transition zone because of the importance of maritime industries to the San Diego economy. She said if you look at the existing character of the area down to Main Street, there is currently no residential west of Main Street and the only development had been the Restaurant Depot. She said the Mercado Apartments are located across the street on Main Street. Consisting of 144 units, she explained the Mercado Apartments were constructed as a redevelopment agency assisted affordable housing project. She then described the new Mercado retail development that had been in play for approximately 15 years and the residential component is under construction and described the location of the new market. Commissioner Nelson requested and received clarification regarding the location of the existing neighborhood or residential use. As to the definition of the transition zone, he then read from the BPC Policy No. 725 regarding the definitions of boundaries and land uses. (A copy of the policy is on file in the Office of the District Clerk.) He explained that he was not challenging the sovereignty of the City of San Diego, nor was he trying to impose the will of the District on any member city. He then stated that his first concern was that it is difficult to establish a series of graduated uses as described in BPC Policy No. 725 when the transition area is only one-block wide and eight-blocks long. Mr. Helmer compared the District's transition zone plan to the Barrio Logan Community Plan and explained his belief that in 2008 the Board intended to incorporate the Working Waterfront Transition Zone Concept Policy language into the policy which was to be read as a whole. Ms. Gates stated that she believed that the City's transition zone implements the Board of Port Commissioner's Policy in terms of the boundary. Following Mr. Helmer's comments regarding the language in the policy and the intent of the Working Waterfront Group related to the lands designated for heavy industrial uses, Commissioner Nelson offered that the policy narrative and the map be reviewed for consistency.

Chairman Peters acknowledged that the purpose of the hearing was to afford the Board and stakeholders the opportunity to answer questions related to the matter.

Chairman Peters left the dais at 3:27 p.m. and returned at 3:30 p.m.

Commissioner Smith commended the community stakeholders, members of the Environmental Health Coalition, and the Port Tenants Association for the briefings. He requested clarification as to whether the plan would move forward with the Logan Heights Master Plan Update or separately. Ms. Gates stated that the plan was an independent document started in 2008; she discussed the timeline regarding the screen checks of the environmental documents, and they anticipated moving forward in 2012 with the adoption of the community plan. She stated that the community plan would go

to the Coastal Commission for consideration and approval. Commissioner Smith stated that he was happy to see the Mercado development moving forward. He supported developing more locally accessible community services such as creating additional parks, a neighborhood library, and increasing housing in appropriately located areas. He stated that he was sensitive to a need for a buffer with the community and discussed the matter that the community is up-wind from the tideland and the maritime industrial tenants. Commissioner Smith then addressed the importance of the Tenth Avenue Marine Terminal and the working waterfront to the local job base and the regional economy.

Commissioner Valderrama requested clarification regarding the end-result regardless of the plan selected and whether the intent was to zone specific areas. Dan Joyce, Senior Planner, City of San Diego, replied that the city is addressing the grandfathered or previously conforming businesses with liberal regulations. He explained that the business can continue operating as long as they want and if they should cease operating for a period of over two years they can request a neighborhood use permit to return. If a business is gone for even longer periods, they may request a plan development permit. He explained the intent of the City when it developed such liberal regulations. He offered that in the event that there are residential businesses that have been there for a long time, the intent was not to be so restrictive that those businesses, in order to remain, have to let their buildings fall apart and become a hazard. He stated that businesses could continue to operate there for as long as they chose to. Commissioner Valderrama explained that National City has an amortization ordinance that rank the businesses zoned in a non-conforming status with the plan to determine how the business will be relocated in the long-term. Mr. Joyce explained that what Commissioner Valderrama described was not how the City of San Diego was proceeding.

Chairman Peters thanked the representatives from the City of San Diego for their participation in the presentation and update.

Commissioner Burdick left the dais at 3:42 p.m. She was excused for the remainder of the regular meeting.

Commissioner Moore left the dais at 3:44 p.m. and returned at 3:51 p.m.

PRESENTATION AGENDA CONTINUED**PRESENTATION ON CRUISE MARKET UPDATE BY BERMELLO AJAMIL & PARTNERS, INC**

Agenda Item 21. Brandy Christian, Vice President, Business Development and Strategy, addressed the Board and explained that the purpose of the presentation was to share the results of the District's cruise industry assessment and future market forecast. She turned the presentation over to Luis Ajamil, Bermello Ajamil & Partners, Inc., who presented the Market Analysis Assessment findings. Ms. Christian discussed the next steps including: an update to the cruise marketing and sales plans; continuing major maintenance repairs; installation of mooring dolphins and the design and cost estimates for the phased remodel of the B Street Pier Cruise Ship Terminal. She announced that the District is working with BEA Architects to develop designs for the remodel of the B Street Pier Cruise Ship Terminal and discussed the status of the design efforts. She stated that the District received a request to undertake a study to look at all the deep-water berthing assets in San Diego Bay, including the Tenth Avenue Marine Cargo Terminal, for possible relocation of the cruise operation. She stated staff would issue a request for proposal for a comprehensive study following the completion of the Maritime Operations Cargo Market Analysis. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner Smith left the dais at 3:52 p.m. and returned at 3:53 p.m.

Commissioner discussion ensued. Chairman Peters stated that in March the District had contacted representatives in Ensenada, Mexico to convey a willingness to work with them to address safety concerns and the crime-related perceptions.

Commissioner Valderrama thanked Mr. Ajamil for the report, concurred with the assessment, acknowledged that the cruise industry business will return and explained the District must be prepared for that business.

To the extent that staff is actually considering moving the major cruise operation from B Street Pier, Chairman Peters requested that staff notify the Board as soon as possible. Rita Vandergaw, Marketing Director, Business Development and Strategy, stated the matter would be brought back to the Board. She further stated that it was staff's recommendation to conduct a deep-water berthing study looking at all the sites for both cargo and cruise.

Commissioner Smith, as chair of the Cruise Industry Advisory Committee, commended staff and those who completed the study for their analysis. He stated that the cruise business will return and offered that renovations and improvements to the infrastructure would best be completed when fewer passengers would be impacted.

Commissioner Nelson acknowledged that it is a useful thing to step back and look at all the deep-water opportunities. In light of the recent efforts to reduce the emissions from trucks coming to Tenth Avenue Marine Terminal he recommended that a possible increase in vehicle emissions be taken into account when considering relocation of cruise passenger operations. Similar to shuttles used by airports, Commissioner Nelson offered that the study look at considering some kind of non-polluting, cost-efficient rapid way to quickly move large numbers of people. In conclusion, he queried as to whether the landside operations needed to be near the water at all.

In addition to studying the Tenth Avenue Marine Terminal, Commissioner Valderrama offered that 24th Street Marine Terminal in National City should also be analyzed.

Chairman Peters concluded by offering his thanks for the update and stated that during public speaking engagements, he is most often asked about the convention center and the cruise industry. He concluded by remarking that the cruise industry is an important one to the region's economy.

VISIONING PROCESS FOR SEAPORT VILLAGE AND SURROUNDING AREA

A) PRESENTATION ON VISIONING PROCESS AND DIRECTION TO STAFF.

B) RESOLUTION ADOPTING VISIONING GOALS

Agenda Item 24. Nick Markos, Senior Asset Manager, Real Estate Department presented the staff report regarding the Visioning Process for Seaport Village and the surrounding area, requested direction to staff and the Board's consideration of the Resolution Adopting Visioning Goals. Mr. Markos turned the presentation over to Rick Phillippe, Associate Principal, Callison Architects, who discussed the visioning process for the area. Mr. Phillippe turned the presentation over to Alex Liftis, Senior Vice President, Terramar Retail Centers who discussed their company, Seaport Village and expressed Terramar's interest in moving forward with the Old Police Headquarters development. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Nelson left the dais at 4:14 p.m. and returned at 4:22 p.m.

Commissioner discussion ensued. Chairman Peters thanked Mr. Liftis and Bruce Walton, Senior Vice President from Terramar. He acknowledged that the presentation was thorough.

Commissioner Nelson offered a motion to accept the staff recommendation regarding adopting the visioning goals. Commissioner Valderrama seconded the motion. Commissioner Nelson acknowledged the presentation and thanked the local Terramar staff for a commitment to continuous quality improvement. He requested clarification regarding a "California – San Diego architecture" style, in terms of the visioning goals. Mr. Phillippe offered that the term was more of a reference in terms of color and architectural style or flavor of the area. He requested that Mr. Phillippe put the Old Police Headquarters in the context of "California – San Diego architecture" style. Mr. Phillippe described the characteristics of the building and discussed the notion of creating shade and shadow in terms of sustainability.

Commissioner Moore acknowledged Commissioner Nelson's request for more clarification regarding the references to a "California – San Diego architecture" style. She requested and received more clarification from Mr. Phillippe who discussed the work of San Diego architect, Irving Gill. He then offered there was a variety of building types in the west village area, and a mix of styles from different periods that blends old and new that adds to the richness of any environment. Commissioner Moore discussed the importance of having vibrancy and excitement, or some sort of "wow" factor, in some form or fashion to draw local residents and visitors.

On motion of Commissioner Nelson, seconded by Commissioner Valderrama, the Board adopted **Resolution 2011-134**, adopting the Visioning Goals, by the following vote: Yeas-Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Malcolm, Burdick; Absent-None; Abstained-None.

UPDATE ON SENATE BILL 623 (KEHOE) BANNING COPPER MARINE ANTIFOULING PAINT AND DIRECTION TO STAFF

Agenda Item 26. Item continued to a future Board meeting.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE MEETING OF OCTOBER 11, 2011

Agenda Item 27. Chairman Peters stated that Commissioner Burdick requested the agenda include a presentation regarding the public outreach regarding the North Embarcadero Visionary Plan. The item was included on the proposed agenda.

On motion of Commissioner Valderrama, seconded by Commissioner Nelson, the Board adopted the proposed agenda for the meeting of October 11, 2011, by the following vote: by the following vote: Yeas-Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Malcolm, Burdick; Absent-None; Abstained-None.

OFFICER'S REPORT

Agenda Item 28. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director or designee, were reported:

- A) Change Order No. 1 for <\$3,015> and 15 Calendar Days to Contract No. 2010-02 with Sullivan Solar Power for General Services Building Photovoltaic Installation, National City, California.
- B) Change Order No. 6 for \$20,000 and 14 Calendar Days to Contract No. 2010-37 with Broadway Pier Port Pavilion Exterior Lighting Back-Up Power System, San Diego, California.

COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING

Agenda Item 30. Commissioner Nelson stated that on August 23, 2011 he was pleased to accept a plaque on behalf of the District during the reception he attended aboard the *Golden Bear*, a training ship for the California Maritime Academy. He recommended that staff look into the Hospitality and Tourism Management Program at San Diego State University and explore something similar relative to maritime operations such as an internship program. He stated that the California Maritime Academy training is part of the California State University system.

Chairman Peters concluded the meeting and the Board returned to Closed Session.

CLOSED SESSION

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9

Two Cases

Agenda Item 5.

CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION

Pursuant to Subdivision (c) of Government Code Section 54956.9

One Case

Agenda Item 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: South Bay Power Plant consisting of Approximately 115 Acres of Property located South of J Street and West of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services, Beck Mayberry, Manager, Asset Management West, and Daniel Thompson, Vice President, West Region Operations, Dynegy South Bay, LLC;
Karen Porteous, Randa Coniglio, Karen Weymann, Kristine Zortman, Jeffrey McEntee, William D. McMinn, Celia Brewer, SDUPD

Under Negotiation: Price and Terms

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Kettenburg Boatyard consisting of approximately 100,744 square feet of land and approximately 108,250 square feet of water located at 2702 Shelter Island Drive, in America's Cup Harbor, San Diego

Negotiating Parties: Tom Driscoll, President, Driscoll, Inc.;
Randa J. Coniglio, Karen J. Weymann, Kristine A. Zortman,
Karen Porteous, Jeffrey McEntee, SDUPD

Under Negotiations: Price and Terms

Agenda Item 8.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Knight and Carver YachtCenter consisting of approximately 265,758 square feet of land and approximately 98,424 square feet of water located at 1313 Bay Marina Drive, National City

Negotiating Parties: Michael J. O'Leary, President/CEO, Knight and Carver YachtCenter, Inc.;
Randa Coniglio, Karen Porteous, Karen Weymann, Kristine Zortman, Adam Meyer, Jeffrey McEntee, SDUPD

Under Negotiations: Price and Terms

Agenda Item 9.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Lane Field located at the Northeast Corner of Harbor Drive
and West Broadway, San Diego

Negotiating Parties: Jerome Trammer, Lane Field San Diego Developers, LLC;
Randa Coniglio, Karen Porteous, Karen Weymann, Shaun
D. Sumner, Nicholas Markos, Jeffrey McEntee, SDUPD

Under Negotiation: Price and Terms

Agenda Item 10.

PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
APPOINTMENT OF THE PORT ATTORNEY
Government Code Section 54957

Agenda Item 11.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Subdivision (a) of Government Code Section 54956.9

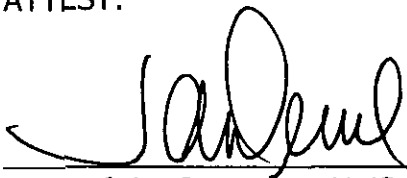
Castellanos/Johnson v. SDUPD, et al.
San Diego Superior Court Case No.: 37-2009-000103325-CU-PO-CTL

There was no formal or reportable action as to any other closed session items,
pursuant to Government Code Section 54950 et seq, to report from the closed session;
whereupon, Chairman Peters adjourned the meeting.

A handwritten signature in cursive script, appearing to read "C. Moore", positioned above a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "Janet", positioned above a horizontal line.

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 10:00 a.m., Tuesday, October 11, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, Deuel and McEntee

Absent: No Commissioners absent.

Excused: Commissioner Burdick was excused until she arrived at 10:05 a.m.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

CLOSED SESSION

Chairman Peters announced that Commissioner Burdick was expected soon and would be joining the Board upon her arrival.

Celia Brewer, Assistant Port Attorney, announced the closed session agenda as follows:

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: South Bay Power Plant Consisting of Approximately 115 Acres of Property located South of J Street and west of Interstate 5 and Bay Boulevard, Chula Vista

Negotiating Parties: Lawrence Randel, Director, Technical Services, Beck Mayberry, Acquisitions, West Region Operations, Dynegy South Bay, LLC;
Irene McCormack, Randa Coniglio, Karen Weymann, Larry Sherry, Karen Porteous, Kristine Zortman, Jeffrey McEntee, William D. McMinn, SDUPD

Under Negotiation: Price and Terms

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9

Two Cases

Agenda Item 5.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Subdivision (a) of Government Code Section 54956.9

Traylor Bros., Inc. v. San Diego Unified Port District, et al.
United States District Court Case No.: 08-CV-1019 L WVG

Agenda Item 6.

CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION
Pursuant to Subdivision (c) of Government Code Section 54956.9

One Case

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 5 acres of tideland area leased to the San Diego Convention Center Corporation along Convention Way, all bayward of the San Diego Convention Center

Negotiating Parties: Carol Wallace, CEO, San Diego Convention Center Corporation;
Karen Weymann, Shaun Sumner, Nick Markos;
Randa Coniglio, Jeffrey McEntee; Karen Porteous, SDUPD

Under Negotiation: Price and Terms

Ms. Brewer announced that agenda item 8 had been pulled and would not be appearing on closed session. Staff requested that the item be continued to a future Board meeting.

Agenda Item 8.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Kettenburg Boatyard consisting of approximately 100,744 square feet of land and approximately 108,250 square feet of water located at 2702 Shelter Island Drive, in America's Cup Harbor, San Diego

Negotiating Parties: Tom Driscoll, President, Driscoll, Inc.;
Randa J. Coniglio, Karen J. Weymann, Kristine A. Zortman,
Karen Porteous, Irene McCormack, Jeffrey McEntee,
SDUPD

Under Negotiations: Price and Terms

Agenda Item 9.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Subdivision (a) of Government Code Section 54956.9

City of San Diego v. San Diego Unified Port District, et al.
United States District Court Case No.: 09-CV-2275 W BGS

Agenda Item 10.

PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
APPOINTMENT OF THE PORT ATTORNEY
Government Code Section 54957

As to items 3 and 4: The Board by a 7-0 vote authorized a conditional acceptance of a settlement agreement between Dynegy and the District. The Final Settlement agreement that includes the conditions imposed by the Board is on file in the Clerk's Office.

There was no formal or reportable action as to any other closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

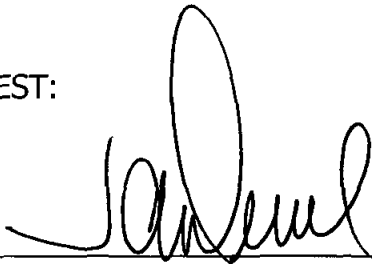
October 11, 2011

page 295

A handwritten signature in cursive script, appearing to read "A Moore".

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "J. [unclear]".

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:03 p.m., Tuesday, October 11, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, Deuel, McEntee and Stup

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PLEDGE OF ALLEGIANCE

Agenda Item 2. Commissioner Nelson led the Pledge of Allegiance.

APPROVAL OF MINUTES

Agenda Item 3. Commissioner Malcolm announced he would abstain from voting on the minutes for the September meetings. On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board approved the minutes for the special meeting of August 23, 2011; special meeting of September 13, 2011 and the regular meeting of September 13, 2011, by the following vote: Yeas-Burdick, Nelson, Moore, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Malcolm.

PUBLIC COMMUNICATIONS

Agenda Item 4. Hugh Constant, World Trade Center San Diego, addressed the Board regarding the 9/11 Commemoration Event to honor the victims and first responders. The event, held on September 8, 2011, began with a march from the San Diego County Administration Building to the Port Pavilion on Broadway. He acknowledged Commissioner Nelson for his participation as a speaker at the event and thanked the District for its sponsorship. Mr. Constant announced the attendance exceeded 2,000 members of the public, and despite the regional power outage, the event continued thanks to the timely response of District staff that restored power to the Port Pavilion.

Susan Johnson, Chula Vista Harbor Days, thanked the District for the sponsorship grant to assist in funding the Harbor Days event held in conjunction with the celebration of Chula Vista's centennial. She thanked the Board and invited the Commissioners to attend the Chula Vista's Centennial Celebration on October 15, 2011 at the Olympic Training Center. (A copy of her presentation is on file in the Office of the District Clerk.)

Commissioner Moore acknowledged Ms. Johnson's remarks and thanked District staff for assisting with the event. She stated that it was her hope that more events would occur on the Chula Vista waterfront.

Don Wood addressed the Board and thanked District staff and the Commissioners for collaborating efforts with the community to bring forth the waterfront Ruocco Park. He discussed the planning concepts for the proposed park space as part of the North Embarcadero Visionary Plan. He encouraged allocating additional park space west of Harbor Drive when the Board considers the redevelopment plan for the Holiday Inn.

Carlos Mejia, Vice President, Justice Overcoming Boundaries, addressed the Board and thanked the District for the sponsorship support of Fiesta de la Sol, a Latino Family Music and Cultural Festival on August 13 and 14, 2011 held at César Chávez Park in Historic Barrio Logan.

CONSENT AGENDA

Chairman Peters requested that Timothy A. Deuel, District Clerk, announce any suggested docket changes. Mr. Deuel announced the proposed changes to the agenda as follows: **Consent Agenda Item 7**, Resolution Authorizing Agreements with

California Strategies and RRM Design Group for Coastal Consulting Services, on an as needed basis, for two years and approve funding not to exceed \$313,000; staff requests this item be continued to a future Board meeting; **Consent Agenda Item 19AB**, Pro Build Company, LLC, dba Dixieline Lumber Company: A) Ordinance Granting an Amended, Restated and Combined Lease, with Guaranty; reducing lumber yard acreage; Minimum Annual Guarantee (MAG); and rent and B) Ordinance Granting an Amended, Restated and Combined Industrial/Commercial Multi-Tenant Lease with Guaranty, separating National Distribution Center Area from Lumber Yard Leasehold; staff requests this item be continued to a future Board meeting; **Action Agenda Item 25**, Presentation of the Draft Report and Preliminary Recommendation for the Cabrillo Circulator Shuttle and request for direction to staff; staff requests this item be continued to a future Board meeting; **Action Agenda Item 26**, Presentation on Proposed Changes to Board of Port Commissioners' (BPC) Policy No. 355 – Real Estate Leasing Policy and Administrative Practices and direction to staff; staff requests this item be continued to a future Board meeting; **Action Agenda Item 27**, Presentation on Visionary Concepts for San Diego Seaport Village and surrounding area and direction to staff; staff requests this item be continued to a future Board meeting; **Action Agenda Item 28**, Revisions to BPC Policy Related to Receipt of Donations and Loans and Board Policies related to Public Art: A) Resolution Deleting BPC Policy No. 610 - Memorials, Markers and Plaques, B) Resolution Adopting Revisions to BPC Policy No. 611 - Receipt of Donations and Loans, C) Resolution Adopting Revisions to BPC Policy No. 609 - Public Art, D) Resolution Adopting BPC Policy No. 608 - Tenant Percent for Art; staff requests this item be continued to a future Board meeting.

On motion of Commissioner Malcolm, seconded by Commissioner Smith, the Board accepted the suggested changes to the agenda, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

In that members of the public had submitted request to speak slips Chairman Peters announced that the following items would be pulled for public comment and a separate vote: **Consent Agenda Item 5**, Ordinance Amending the Conflict of Interest Code of the San Diego Unified Port District, and **Consent Agenda Item 17**, Ordinance Granting Option Amendment No. 1 to Extend Term of Option and Lease Agreement with Coronado Yacht Club for 36 Months to November 3, 2014.

ORDINANCE AMENDING THE CONFLICT OF INTEREST CODE OF THE SAN DIEGO UNIFIED PORT DISTRICT

Agenda Item 5. Scott Andrews addressed the Board and requested the proposed change in the language to the Ordinance amending the Conflict of Interest Code of the San Diego Unified Port District be presented before the meeting for public analysis. Chairman Peters acknowledged the item would be pulled and requested a motion of approval be offered for the balance of the consent agenda.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board adopted Consent Agenda items 6, 8, 9, 10, 11, 12, 13A, 13B, 14, 15, 16 and 18 (**Resolution 2011-135** through and including **Resolution 2011-140**, **Ordinance 2651**, **Ordinance 2652**, **Resolution 2011-141** through and including **Resolution 2011-143**, and **Resolution 2011-144**) by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 6. **Resolution 2011-135**, Authorizing First Amendment to Agreements with AMEC Earth & Environmental, Inc.; Weston Solutions, Inc.; and Merkel & Associates, Inc. for \$250,000 for a new total not to exceed amount of \$625,000 to comply with Regional Water Quality Control Board Investigative Order, was adopted as part of the consent agenda.

Agenda Item 7. Item Continued.

Agenda Item 8. **Resolution 2011-136**, Accepting the FY 2011 Port Security Grant Program Award for the San Diego Port Area, resulting in a total award amount of \$3,063,888, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2011-137**, Authorizing Amendment No. 2 to Agreement with ONA, Inc. for additional construction support services for Ruocco Park in the amount of \$85,000 for a new not to exceed total of \$703,825, and an extension of the agreement until December 31, 2012, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2011-138**, Selecting and Authorizing Agreement with Transystems Corporation for professional services for design of the Shelter Island Boat Launching Facility Improvement in San Diego, California, in an amount not to exceed \$495,000, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2011-139**, Waiving BPC Policy No. 110 and Authorizing an Agreement with Civitas, Inc. for design of Broadway Pier Surface

Enhancements and Security Fence, in an amount not to exceed \$176,780, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2011-140**, Adopting Plans and Specifications and Awarding Contract No. 2011-15 to Hearne Corporation for Administration Building First and Second Floor Security Upgrade, in the amount of \$369,281, was adopted as part of the consent agenda.

Agenda Item 13A. **Ordinance 2651**, Rescinding Ordinance 2641 Adopting the Annual Budget for FY 11/12, was adopted as part of the consent agenda.

Agenda Item 13B. **Ordinance 2652**, Adopting the Annual Budget for FY 11/12, was adopted as part of the consent agenda

Agenda Item 14. **Resolution 2011-141**, Consenting to Sublease and First Amendment to Sublease from HST Lessee San Diego LP to FedEx Office and Print Services, Inc., for five years with one option to extend for five years, was adopted as part of the consent agenda.

Agenda Item 15. **Resolution 2011-142**, Authorizing the following actions with the San Diego and Arizona Eastern Railway (SDAE) for the "H" Street At-Grade Crossing in Chula Vista: A) Accepting Easement; B) Entering into a Construction and Maintenance Agreement; and C) Granting Indemnity, was adopted as part of the consent agenda.

Agenda Item 16. **Resolution 2011-143**, Establishing Minimum Rent for Joe's Crab Shack Restaurant for the period from November 1, 2011 through October 31, 2016 in the amount of \$77,200, was adopted as part of the consent agenda.

Agenda Item 18. **Resolution 2011-144**, Approving Proclamation Welcoming the Tara Oceans Research Vessel to the Port of San Diego, was adopted as part of the consent agenda.

Agenda Item 19. **Item continued.**

ORDINANCE AMENDING THE CONFLICT OF INTEREST CODE OF THE SAN DIEGO UNIFIED PORT DISTRICT

Agenda Item 5. Chairman Peters requested that Scott Andrews address the Board. Mr. Andrews stated he had already made his comment regarding the item.

On motion of Commissioner Smith, seconded by Commissioner Malcolm, the Board adopted **Ordinance 2650**, Amending the Conflict of Interest Code of the San Diego Unified Port District, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

GRANTING OPTION AMENDMENT NO. 1 TO EXTEND TERM OF OPTION AND LEASE AGREEMENT WITH CORONADO YACHT CLUB FOR 36 MONTHS TO NOVEMBER 3, 2014

Agenda Item 17. Ian Trowbridge, San Diegans for Open Government, addressed the Board, in opposition to the staff recommendation. He offered concerns regarding the extension of the term of the option and lease agreement for 36 months and the possible impact on public access to the waterfront. He requested clarification as to whether the terms of the extension were available for public review and how the slip fees were calculated.

Chairman Peters stated that the Board had been provided with a copy of the ordinance.

Jenner Smith, Asset Manager, Real Estate addressed the Board and explained that the 36-month option extension to the lease term was in accord with BPC Policy No. 355. He continued by stating that staff felt the length of the term was appropriate given the number of agency approvals required. Mr. Smith stated that all the documents under consideration had been provided in the staff report. Regarding the slip fee calculations, he explained that the yacht clubs are charged a blended single percentage rate derived from all of their revenues in accordance with the BPC Policy No. 355. Mr. Smith clarified that the District does not set the individual slip rates that a tenant would charge their sub-tenants. He noted that in the case of the yacht club the slip renters are their sub-tenants. He stated that in the case of the Coronado Yacht Club the blended rate would begin at 8.25 percent and increase to 11 percent.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board adopted **Ordinance 2653**, Granting Option Amendment No. 1 to Extend Term of Option and Lease Agreement with Coronado Yacht Club for 36 Months to November 3, 2014, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PRESENTATION AGENDA**PRESENTATION ON NORTH EMBARCADERO PORT MASTER PLAN AMENDMENT CITIZENS ADVISORY COMMITTEE**

Agenda Item 20. James Hirsch, Manager, Land Use Planning, Environmental and Land Use Management, addressed the Board with a presentation regarding the recently concluded North Embarcadero Port Master Plan Amendment Citizens Advisory Committee (CAC). Mr. Hirsch stated that the item was a presentation only and staff would seek Board direction at a future time. He concluded his presentation by thanking the members of the public, regional stakeholders and the Board for their service during the six-month process. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Members of the public addressed the Board regarding the CAC process. Ian Trowbridge thanked staff; expressed his concerns regarding the lack of formal minutes or recording of the meetings; expressed his concerns as to how the discussion of subject matter was determined and that no "straw votes" were taken regarding the participants' support of issues. Mr. Trowbridge offered that while it was a useful process he continued that it was not as useful as it could have been. He expressed his concern regarding the time period in which that the District requested approval from the California Coastal Commission to install mooring dolphins at B Street Pier.

Scott Andrews addressed the Board as a member of the CAC. He stated that his concerns were regarding adherence to the law regarding the implementation and/or mitigation of the Port Master Plan. He also offered his concern regarding how presentation items were placed on the agenda but not presented. He urged the Board to consider the careful placement of parks on the land parcels in the area. He spoke about the relationship of adding more parks to the North Embarcadero and the potential increase to the number of visitors to the area. Mr. Andrews also discussed the economic benefits of tourism as a means to mitigate the loss of revenue from the recent decline in the cruise industry on the West Coast.

Don Wood addressed the Board; he explained he had emailed additional comments to the Board. (A copy of the email is on file in the Office of the District Clerk.) As a member of the Navy Broadway Complex Coalition, he offered comments regarding the CAC process regarding his assertion that the District was out of compliance with the Port Master Plan and Port Master Plan Amendment No. 27, regarding the Navy Pier Mitigation Plan as related to the views from downtown to Broadway Pier. In light of the construction of the Port Pavilion, he requested that the

District find equivalent views to the bay as a mitigation measure to comply with the Port Master Plan.

Jim Frost addressed the Board as a member of the CAC and thanked the District and Mr. Hirsch for opening the process to the community. He acknowledged that, despite some challenges, it was the first step and he appreciated the effort. He suggested that the District make the efforts necessary to encourage the County of San Diego and the United States Navy to participate in the planning process. Mr. Frost requested the Board to continue its efforts to make the Port Master Plan Amendment process open and transparent. Mr. Frost encouraged the District to accept all of the public input without regard to whether an idea may be feasible.

Gary Smith, San Diego Downtown Residents Group, stated that he served on the CAC and offered comments regarding the group discussions and acknowledged that District staff did an excellent job in ensuring that every participant's ideas were captured. He stated that staff had an opportunity to refute items of factual disagreement by presenting the applicable supporting documents. Mr. Smith acknowledged that while there may be differences of opinion he explained that summary reports were prepared regarding the meeting content, and every participant had an opportunity to make changes at the subsequent meeting. He urged the Board to look at the staff report and review the summary reports. Mr. Smith stated that the summary reports were a fairly accurate description of the events of each meeting. Regarding the staff presentation, he discussed the importance of considering the small drawings depicting the 2011 Representative Project Components that surround the larger map of the area. He urged the Board not to constrain the staff when it comes to a reasonable selection of alternatives and advocated for the use of imaginative ideas.

Jim Unger, San Diego Port Tenants Association, stated that he served on the CAC representing the tenants. Regarding the criticism around record taking, he offered that he felt staff did a good job and the summary reports were accessible. He stated that at the beginning of the process there was a clear setting of guidelines regarding how the committee would work throughout the process, it was clarified that the committee was not a voting or decision-making authority. Mr. Unger stated that there was a real-time capture of every meeting that could be read while the discussion was fresh in the participants' minds and any clarifications were immediately incorporated. He acknowledged that overall the process was a good one and discussed the benefits of hearing the opinions of other stakeholders in addition to the opinions of the tenants.

Chairman Peters thanked the members of the public who participated as well as the members of the public who spoke regarding the process. He offered staff to clarify any factual matters for the record.

Darlene Nicandro, Director, Environmental and Land Use Management, thanked the members of the CAC for sharing their views on the process. She stated that all of the materials regarding the project, in addition to the ideas, drawings and plans brought forth during the process, were placed on a District website dedicated to the CAC. She stated there was a record of over-arching design principles. Copies of the report that was presented to the Board were provided to the CAC members and to Diana Lily from the California Coastal Commission. As suggested by the Coastal Commission staff, Ms. Nicandro stated that staff intends to perform a comprehensive evaluation of all of the parks along the embarcadero. Regarding the Midway Museum, she clarified that staff is working toward the plans for Navy Pier and a presentation was planned for a future Board meeting. Regarding the comments related to the Navy Broadway Complex Coalition, she offered that a number of those issues were addressed in a legal matter that was recently resolved in favor of the District. Chairman Peters stated that the legal matters referenced by Ms. Nicandro were resolved in favor of the compliance of the facility with the permits.

Commissioner discussion ensued. Commissioner Burdick acknowledged that while there were more people who expressed an interest in participating in the CAC than could serve on the committee; she offered there was a wonderfully representative selection of stakeholders who were assigned to bring forth their most creative ideas. She stated that she was impressed by the creativity and "outside of the box" thinking and visions for the waterfront presented. Commissioner Burdick acknowledged that the CAC process was a means to hear the community's best thinking in conjunction with a thorough and detailed analysis from District staff. She recognized District staff for their efforts to bring together a diverse yet principled view from the community. She explained that despite the timeline restraints set forth by the California Coastal Commission regarding the completion of the Environmental Impact Report (EIR), the District extended the comment period by two months to allow for more thorough community input. She explained she followed the CAC activities on the dedicated website and acknowledged the seven design principles and nearly 100 planning principles were developed and incorporated into the environmental review process. Regarding the public comments, Commissioner Burdick responded to the comments regarding official minutes, discussed her belief that voting on such matters may not be conducive to developing a community consensus, or conducive to the interactive and evolving nature of the process. She expressed her concern regarding the public comments offered at the end of August regarding how the ending of the CAC process

was perceived and how it was reported in the media. She stated that following the six-month timeframe and ten meetings, that phase of the process was completed in an open and transparent manner. She said the next key component of the process was forming the description of the project and the draft EIR, thus the public process involvement would be triggered again. She acknowledged what the public commenter had said about including alternatives in the EIR and encouraged staff to include numerous alternatives that are broad and set up the extreme ends of the spectrum to encourage public input. Regarding the Board's evaluation of land use alternatives and upon taking into account the public's comment, she offered the District could always compromise in the middle. She stated that she did not want staff and the Commissioners to come forward with the District's view of what was proper and then force the public to comment on it. She offered that staff starts with the outer parts of the spectrum in each of the planning target areas, again take public input based on the District's evaluation of those alternatives, and refine the thinking based upon that input. Commissioner Burdick stated she believed as a matter of transparency and as a matter of good land use planning, that the alternatives included in the EIR should be broad, numerous and creative to allow for continued public interaction. She thanked everyone for their patience, commitment and interest in the best waterfront for San Diego.

Commissioner Nelson stated he found himself in the position of incorporating his own views fully within those of Commissioner Burdick. He thanked the members of the committee, which he described as a group of super consultants, who volunteered huge amounts of time, effort and love to give the District their best ideas. He explained he personally liked the Little Italy Beach idea and found, from an aesthetic point of view, the crescent pier idea submitted to be interesting. He continued that such an imaginative idea requires more study but may prove to be a good idea. He commented on the curvilinear treatment of Harbor Drive, and stated he found it aesthetically very interesting. Commissioner Nelson offered it might also serve an additional purpose by organically slowing traffic down and making it a more pleasant experience for pedestrians by providing a chance to have the line of sight to be the median as opposed to straight lines of a road. He commented on the public statement regarding the issue of whether B Street needed a cruise ship terminal. He acknowledged that staff would be looking throughout the Bay at the deep-water opportunities and any possible constraints. He discussed the need for the District to assess the investments in supporting a working waterfront, the feasibility of the economic components and the commitment to maintaining maritime industry jobs when considering reorganizing the uses for the waterfront. He stated he believed the recovery in the cruise ship industry would pick up in about 2015 or 2016 because there are many ships coming on-line throughout the world and discussed the pending need for the

mooring dolphins. Commissioner Nelson explained that he would not want to do anything regarding reconfiguring the current relationship with the cruise ships without a lot of thought and acknowledged the District's ability to investigate opportunities should that space become available.

Commissioner Valderrama offered that he appreciated the diversity of the committee membership and he thanked the CAC members for their input into the process. In response to the comment regarding the installation of the mooring dolphins, Commissioner Valderrama requested clarification regarding the timing of the project, which had been planned through the Capital Improvement Program (CIP). Ms. Nicandro stated that the issue of the B Street Pier mooring dolphins was addressed via a Board memo sent at the end of September. (A copy of the memo is on file in the Office of the District Clerk.) She continued that the B Street Pier mooring dolphins proposed project was sent to the California Coastal Commission because it was outside of the District's jurisdiction. Staff followed all the rules and acted upon the recommendation of the Coastal Commission including posting signage and the item was considered at the June 15, 2011 Coastal Commission meeting. She stated staff followed the procedures for an operational need for the area. Joel Valenzuela, Director, Maritime Operations, offered a further point of clarification that the mooring dolphin project was first identified as a CIP project in June 2009, and the permitting process occurred in 2011. Commissioner Valderrama concurred that the project had been planned well ahead of the Coastal Commission hearing.

Commissioner Smith thanked everyone who took part in the process, from staff, to the committee members and the community stakeholders. He concurred with the earlier comments that the representative project components were very interesting and acknowledged the team effort.

Chairman Peters also thanked those who invested their time in the process. He stated his belief that it would prove to be very helpful to the process and appreciated all of the public input. He stated that the District tried to reach beyond the usual proponents and selected some people who had been the harshest critics, to participate in the process. Acknowledging that not everyone will get everything they wanted, he agreed that the District ought to be reaching in terms of a vision for what the Board analyzes. He stated that it is not the time to say something is infeasible, but to put an idea through an analysis and see if it works. Regarding B Street, he explained that the current Master Plan says it is a cruise facility. He raised the idea that in the context of the discussion, maybe the B Street Pier cruise facility could be considered for a joint project in light of the length of the cruise season. He continued that during the summer when those facilities are not being utilized for port business operations, he

encouraged investigating the use of the cruise facility in a similar way to the Port Pavilion. Chairman Peters offered that if funds were allocated, something that works great should be developed to take full advantage of the amazing location that cruise ships necessarily occupy. He acknowledged recent partnerships including the approval Phase I permit of the North Embarcadero Visionary Plan, and the ground breaking of Ruocco Park, and then stated his belief that there is a lot of opportunity ahead related to Seaport Village and the Old Police Headquarters. Offering his thanks, Chairman Peters stated he feels very confident in the rest of the North Embarcadero Phase II planning and that the efforts given by everyone who have gotten the District to this point deserves a lot of credit.

Ian Trowbridge offered inaudible remarks from the audience. As the public comment period had concluded Chairman Peters requested that he clarify his statements by submitting his remarks in writing or by email.

ACTION AGENDA

MARINA CORTEZ LANDSIDE REDEVELOPMENT

A) RESOLUTION GRANTING CONCEPT APPROVAL TO MARINA CORTEZ, INC., FOR PROPOSED MARINA LANDSIDE RENOVATION.

B) ORDINANCE GRANTING AN OPTION AGREEMENT WITH MARINA CORTEZ, INC., FOR A NEW 40 YEAR LEASE.

Agenda Item 21. Jenner Smith, Asset Manager, Real Estate, addressed the Board with a presentation regarding the Marina Cortez landside redevelopment concept, the option terms for a new 40-year lease, and requested the Board consider the staff recommendations. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Malcolm thanked staff and the developers for bringing forward what he described as a well thought out project and stated he looked forward to the project's completion. Based upon his recent visit to the property, he offered comments regarding the replacement of the marina slips and the durability of the materials used in the hardwood deck float system. He concurred that a building renovation appeared to be necessary and acknowledged he liked the design elevations presented. He requested clarification regarding staff's statement regarding the use of 20 percent sustainable materials. Mr. Smith clarified that some of the sustainable features proposed were the use of low-e glass, energy efficient mechanical

systems, and incorporating recycled materials on the roof and for some railing components throughout the property. Mr. Smith stated that while the proposed building was not to be Leadership in Energy and Environmental Design (LEED) certified, staff encouraged the developer to investigate the use of sustainable components throughout the process. Commissioner Malcolm also encouraged the applicant to consider ways to work toward incorporating a green standard or LEED model during the redevelopment. He stated that he liked the promenade concept allowing the public access to enjoy the view corridors from the property.

Commissioner Burdick thanked the developer for their commitment to creating a green project and acknowledged the use of sustainable building materials and practices. She also stated that she looked forward to other tenants taking this developer's lead when considering their redevelopment projects. In that the District and tenants were environmental stewards of the Bay, she stated her desire to work together in the development of a reasoned green building standard and a green leasing policy. She thanked the tenant for their work and stated she looked forward to seeing good results. She offered a motion to approve the staff recommendation.

Commissioner Malcolm seconded the motion.

Commissioner Valderrama thanked staff for keeping the project moving forward. He requested clarification as to whether the granting of a 40-year lease term was upon exercising of the option or upon completion of the option. Mr. Smith stated that it was upon exercising of the option and beginning of the construction of the landside improvements. Acknowledging that he had faith in the tenant's ability to fulfill their obligation, Commissioner Valderrama stated that his question was offered from a business standpoint, and queried what recourse the District had should a developer not complete the project following the granting of an option. Mr. Smith stated the option includes provisions such as completion guarantees, performance bonds and other factors and conditions that ensure completion of the project. Commissioner Valderrama acknowledged the staff response and offered that from a business standpoint that in the future, consideration of lease term extensions is given upon the completion of the project.

On behalf of the District, Chairman Peters thanked the tenant/developer for their investment in the waterfront. He offered his support for the motion.

On a single motion of Commissioner Burdick, seconded by Commissioner Malcolm, the Board adopted with a single vote **Resolution 2011-145**, Granting Concept Approval to Marina Cortez, Inc., for proposed Marina Landside Renovation and

Ordinance 2654, Granting an Option Agreement with Marina Cortez, Inc. for a new 40 Year Lease, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION AUTHORIZING THE ANNUAL ADOPTION OF BPC POLICY NO. 115, GUIDELINES FOR PRUDENT INVESTMENTS

Agenda Item 22. Jeff McEntee, CFO/Treasurer, addressed the Board and requested the Board consider Authorizing the Annual Adoption of BPC Policy No. 115, Guidelines for Prudent Investments.

On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board adopted **Resolution 2011-146**, Authorizing the Annual Adoption of BPC Policy No. 115, Guidelines for Prudent Investments, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE MEETING OF NOVEMBER 8, 2011

Agenda Item 23. On motion of Commissioner Valderrama, seconded by Commissioner Moore, the Board adopted the proposed agenda for the meeting of November 8, 2011, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION ELECTING CHAIR, VICE-CHAIR AND SECRETARY OF THE BOARD OF PORT COMMISSIONERS TO SERVE FOR CALENDAR YEAR 2012

Agenda Item 24. Commissioner Valderrama nominated Commissioner Lou Smith as Chair; Commissioner Ann Moore as Vice-Chair; and Commissioner Lee Burdick as Secretary to serve for calendar year 2012.

On motion of Commissioner Valderrama, seconded by Commissioner Nelson, the Board adopted, **Resolution 2011-147** electing Louis H. Smith as Chair of the Board of Port Commissioners, Ann Moore as Vice Chair of the Board of Port Commissioners, and Lee Burdick as Secretary of the Board of Port Commissioners for the upcoming year 2012, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Chairman Peters, the Board and staff offered their applause as they congratulated the newly elected officers.

PRESENTATION OF THE DRAFT REPORT AND PRELIMINARY RECOMMENDATION FOR THE CABRILLO CIRCULATOR SHUTTLE AND REQUEST FOR DIRECTION TO STAFF

Agenda Item 25. Item continued to a future Board meeting.

PRESENTATION ON PROPOSED CHANGES TO BOARD OF PORT COMMISSIONERS' (BPC) POLICY NO. 355 – REAL ESTATE LEASING POLICY AND ADMINISTRATIVE PRACTICES; AND DIRECTION TO STAFF

Agenda Item 26. Item continued to a future Board meeting.

PRESENTATION ON VISIONARY CONCEPTS FOR SAN DIEGO SEAPORT VILLAGE AND SURROUNDING AREA AND DIRECTION TO STAFF

Agenda Item 27. Item continued to a future Board meeting.

REVISIONS TO BPC POLICY RELATED TO RECEIPT OF DONATIONS AND LOANS AND BOARD POLICIES RELATED TO PUBLIC ART

- A) Resolution Deleting BPC Policy No. 610 - Memorials, Markers and Plaques.
- B) Resolution Adopting Revisions to BPC Policy No. 611 - Receipt of Donations and Loans.
- C) Resolution Adopting Revisions to BPC Policy No. 609 - Public Art.
- D) Resolution Adopting BPC Policy No. 608 - Tenant Percent for Art.

Agenda Item 28. Item continued to a future Board meeting.

OFFICER'S REPORT

Agenda Item 29. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director or designee, were reported:

- A) Change Order No. 7 for (\$174.00) and 0 Calendar Days to Contract No. 2010-37 with Chula Vista Electric for Broadway Pier Port Pavilion Exterior Lighting Back-Up Power System, San Diego, CA.

- B) Change Order No. 9 for \$50,000.00 and 0 Calendar Day Time Extension to Contract No. 2010-11 with Becerra's HVAC for Administration Building 5th Fl IT Server Room HVAC Upgrade, San Diego, California.
- C) Change Order No. 8 for \$0.00 and 54 Calendar Day Time Extension to Contract No. 2010-11 with Becerra's HVAC for Administration Building 5th Fl IT Server Room HVAC Upgrade, San Diego, California.
- D) Change Order No. 2 for \$81,614.88 and 0 Calendar Day Time Extension to Contract No. 2009-30 with PAL Engineering, Inc. for Tidelands ADA Accessibility Improvements Phase II, San Diego, California.

PRESIDENT'S REPORT

Agenda Item 33. Wayne Darbeau, Executive Director, addressed the Board and began his report regarding the San Diego-Yokohama Sister City Society. He turned the presentation over to Irene McCormack, Vice President External Relations, who announced that on September 25, 2011, District representatives were presented with the Sister City Spirit Award, which was presented by the Society's President, Kaneko Bishop. Ms. Bishop addressed the Board regarding the support offered by the District during the planning and installation of the *Girl in Red Shoes* commemorative sculpture, which was given to the District as a gift from Yokohama in 2010. She thanked the Board for the District's support over the years and for its dedication in building a bridge of friendship between the cities of San Diego and Yokohama. She discussed the art piece that would be given to the City of Yokohama in commemoration of the organization's 55th anniversary.

Mr. Darbeau continued his report by stating that the Port of San Diego is an advocate for a national system of ports to provide American ports with crucial money for infrastructure, security and other critical improvements to make America's maritime facilities competitive on the national and global stage. He stated that in mid-August Ray LaHood, United States Transportation Secretary announced he would accept questions from the public about transportation issues of importance to America. In that regard, Mr. Darbeau explained that upon his direction, Alfred Collazo, District Intern in the Executive Office, drafted a question that Secretary LaHood answered during a live webcast. The video of the webcast response was played for the Board and Mr. Collazo's effort was acknowledged during the meeting. Mr. Darbeau spoke about the formation of the new Marine Transportation System National Advisory Council (MTSNAC) by Secretary Ray LaHood and the importance of the MTSNAC to the District as well as all U.S. Ports. Chairman Peters requested and received confirmation that Gary Gallegos, Executive Director, San Diego Association of Governments, was a member of the

Council. Mr. Darbeau also stated that Fred Harris, President, NASSCO - General Dynamics San Diego, would be serving as a member of the Council. Chairman Peters offered that while Mr. Darbeau was an active advocate on behalf of the District, having Mr. Gallegos, as a member of the Council was also important because of the highway network that connects to the port.

Mr. Darbeau stated the next item was the Recognition of Citizens Coordinate for Century 3 (C3) and requested that Ms. McCormack present the item. She explained that C3 is a non-partisan, non-profit organization of informed citizens interested in regional planning issues, preservation and revitalization of downtown San Diego. She stated that Lloyd Ruocco and Esther Scott founded it in 1961 with the support of Hamilton Marston and Ellen Revelle. Ms. McCormack explained that the group's objectives were to conserve and promote "a handsome and functional community" through research, education and coordinated citizen action. The group just celebrated its 50th anniversary, and at the November Board meeting, staff would be asking the Board to consider adopting a resolution approving a proclamation to C3 that will commemorate their work over the years. (A copy of the presentation is on file in the Office of the District Clerk.)

COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING

Agenda Item 30. Commissioner Valderrama announced he received a call over the weekend from a stakeholder requesting his assistance with opening the boat launch facility at Pepper Park in National City. He thanked Joel Valenzuela, Director, Maritime Operations, for making the appropriate telephone calls that facilitated the opening of the boat launch to serve the needs of those boaters who were waiting for access to the facility.

Chairman Peters concluded the meeting and announced the Board did not need to return to Closed Session.

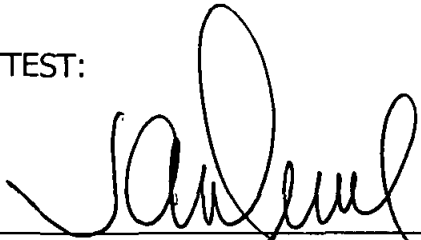
October 11, 2011

page 313

A handwritten signature in cursive script, appearing to read "A. Moore", written over a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "S. [unclear]", written over a horizontal line.

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

As previously posted, a special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 9:45 a.m., Tuesday, November 2, 2011, at the Dempsey Holder Safety Center, 950 Ocean Lane, Imperial Beach, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, Deuel, McEntee.

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PUBLIC COMMUNICATIONS

Agenda Item 2.

Jim Janney, Mayor, City of Imperial Beach, welcomed the Board of Port Commissioners to Imperial Beach and expressed his appreciation of the partnership that exists between the City of Imperial Beach and the San Diego Unified Port District.

STRATEGIC PLANNING WORKSHOP

Agenda Item 3.

Chairman Peters provided a brief overview of the District's Strategic Planning Program and introduced Steve Alexander from The Steve Alexander Group, who would served as the facilitator for the workshop.

Mr. Alexander provided the Board with an overview of the tools, rules and roles of each member of the workshop.

Chairman Peters opened the floor to any public comment on the Draft Strategic Plan. He then introduced Commissioner Dan Malcolm, who also welcomed the Board to Imperial Beach and gave a brief history of the Safety Center and the Pier Plaza, stating that the development was a result of successful partnership between the City and the District.

Andrew J. Schneller, WILDCOAST, addressed the Board and requested that the District include sea level rise, habitat restoration and habitat mitigation banking in future planning efforts.

Mr. Alexander introduced Brandy Christian, Vice President, Strategy & Business Development, who addressed the Board with a brief overview of the strategic planning process and described the process by which stakeholder input was solicited and incorporated into the Draft Strategic Plan (a copy of the staff report is on file in the Office of the District Clerk).

The Board began with a discussion regarding the proposed Mission Statement, Vision Statement & Values for the District (a copy of the material presented is on file in the Office of the District Clerk). Commissioner discussion ensued.

Chairman Peters re-opened the floor for an additional public comment. Pat Beard, Redevelopment Manager, City of National City, addressed the Board regarding adding the phrase "Member Cities" to the proposed Mission Statement.

The Board continued their discussion of the Mission Statement. Chairman Peters recessed the workshop for lunch at 11:45 p.m. and called the workshop back to order at 12:30 p.m.

Mr. Alexander clarified some procedural aspects of the afternoon session and then Chairman Peters re-opened the floor for one additional public comment. Kayla Race, Environmental Health Coalition, addressed the Board with comments regarding the inclusion of sea level rise and climate change mitigation as future challenges and critical issues into the draft goals. In addition, she commented on several items including: the importance of providing public access to the strategic planning documents to individuals without internet access, the importance of looking for outside grant monies and funding opportunities for environmental compliance matters and that workers' health and safety should be added to the District's goal around public safety.

The Board discussed the eight (8) proposed strategic goals for the District and the strategies to achieve those goals (a copy of the material presented is on file in the

Office of the District Clerk). Ms. Christian added clarification on the goals and strategies as requested. Commissioner discussion ensued.

Mr. Alexander summed up the next steps in the process and stated that the revised Draft Strategic Plan would be returning to the Board for approval at the December 13, 2011 Regular Board Meeting.

Wayne Darbeau, Executive Director and the members of the Board thanked the staff and each other for their participation in the process.

Chairman Peters also thanked the Board and staff for their efforts, thanked Mr. Alexander for his role during the process and adjourned the meeting at 4:04 p.m.

November 2, 2011

page 317



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 10:00 a.m., Tuesday, November 8, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Deuel and McEntee

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

CLOSED SESSION

Duane Bennett, Port Attorney, announced the closed session agenda as follows:

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: SDUPD - South Bay Power Plant consisting of approximately 115 acres of property located South of J Street and west of Interstate 5 and Bay Boulevard in Chula Vista, California.

Negotiating Parties: Lawrence Randel, Director, Technical Services,
Beck Mayberry, Acquisitions, West Region Operations -
Dynegey South Bay
Randa Coniglio, Irene McCormick, Karen Weymann,
Kristine Zortman, Larry Sherry, Jeffrey McEntee,
Karen Porteous – SDUPD

Under Negotiations: Price and Terms

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Subdivision (b)(1) of Government
Code Section 54956.9

Two Cases

Agenda Item 5.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Subdivision (a) of Government Code Section 54956.9

City of San Diego v. San Diego Unified Port District, et al.
United States District Court Case No. 09-CV-2275-AJB(BGS)

Agenda Item 6.

CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION
Pursuant to Subdivision (c) of Government Code Section 54956.9

San Diego Unified Port District v. General Dynamics, Tow Basin , et al.
San Diego Superior Court Case No. GIC847281

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Lane Field located at the Northeast Corner of Harbor Drive
and West Broadway, San Diego

Negotiating Parties: Jerome Trammer, Lane Field San Diego Developers, LLC;
Karen Weymann, Shaun D. Sumner, Nick Markos, Jeffrey
McEntee, Randa Coniglio Karen Porteous, SDUPD

Under Negotiation: Price and Terms

Agenda Item 8.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: SDUPD - Kettenburg Boatyard consisting of approximately
100,744 square feet of land and approximately 108,250
square feet of water located at 2702 Shelter Island Drive,
in America's Cup Harbor, San Diego

Negotiating Parties: Tom Driscoll, President, Driscoll, Inc.
Randa J. Coniglio, Karen J. Weymann, Kristine A. Zortman,
Jeffrey McEntee, Karen Porteous - SDUPD

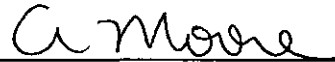
Under Negotiations: Price and Terms

Agenda Item 9.

PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
APPOINTMENT OF THE PORT ATTORNEY
Government Code Section 54957

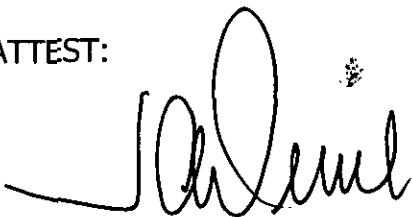
As to item 9: The Board by a 7-0 vote appointed Celia Brewer as Interim Port Attorney effective December 5, 2011 and directed the negotiating committee to negotiate a contract with Ms. Brewer to serve in an interim capacity.

There was no formal or reportable action as to any other closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:05 p.m., Tuesday, November 8, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Darbeau, Deuel, McEntee and Stup

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PLEDGE OF ALLEGIANCE

Agenda Item 2. Commissioner Valderrama led the Pledge of Allegiance.

APPROVAL OF MINUTES

Agenda Item 3. Commissioner Nelson requested the spelling of the word curvilinear be corrected. On motion of Commissioner Burdick, seconded by Commissioner Smith, the Board approved the minutes for the special meeting of October 11, 2011; and the regular meeting of October 11, 2011 with the correction requested, by the following vote: Yeas-Burdick, Nelson, Malcolm, Moore, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PUBLIC COMMUNICATIONS

Agenda Item 4. Jesus Preciado Castro addressed the Board regarding job creation as a means to service the unemployed and expressed concern regarding implementation of a four-day public school schedule. He requested the Board consider taking a leadership role in assisting everyone in the San Diego County region regardless of their proximity to San Diego Bay when making decisions on behalf of the District.

Don Wood addressed the Board regarding the Port Master Plan Amendment Environmental Impact Report (EIR) and urged the Commissioners not to take any actions in the interim that would undercut reviewing alternatives in the EIR process. He requested the District keep the process open, honest and moving forward.

Mary Brigden, Sailing Events Association San Diego (SEASD), addressed the Board regarding the Port Cities Challenge held in San Diego Bay as part of the America's Cup World Series competition that will begin on November 12, 2011 on San Diego Bay. Ms. Brigden with JJ Fetter, SEASD Event Coordinator and Board member, presented the Commissioners with the Port Cities Challenge Trophy, a stainless steel scale model of the AC45 Catamaran by British welder and artist Richard Vasey, to be awarded to the winner of the Port Cities Challenge.

ACTION AGENDA

RESOLUTION APPROVING A PROCLAMATION HONORING PORT ATTORNEY DUANE E. BENNETT ON THE OCCASION OF HIS RETIREMENT FROM THE SAN DIEGO UNIFIED PORT DISTRICT

Agenda Item 16. Ron Powell, Director, Corporate Communications, addressed the Board and read a proclamation honoring Port Attorney Duane E. Bennett on the occasion of his retirement from the San Diego Unified Port District. Mr. Powell requested the Commissioners consider the staff recommendation and approve the proclamation. (A copy of the staff report and the proclamation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Each Commissioner offered their personal congratulations to Mr. Bennett and thanked him for his service to the District. Wayne Darbeau, Executive Director, offered his personal and professional gratitude. Commissioner Emeritus Steve Cushman expressed his appreciation. Chairman Peters offered his congratulations and stated that the Board selected Celia Brewer, Assistant

Port Attorney, as the interim Port Attorney while a search is conducted to fill the Port Attorney position.

On motion of Commissioner Valderrama, seconded by Commissioner Smith, the Board adopted **Resolution 2011-156**, approving a Proclamation Honoring Port Attorney Duane E. Bennett on the occasion of his Retirement from the San Diego Unified Port District, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Mr. Bennett recognized the support of his wife, Lena Bennett, who was in attendance. He remarked on his time at the District. He thanked the staff members of the Port Attorney's Office, acknowledged the members of the Port family, District leadership and recognized the current Board members and the former Commissioners for their support.

CONSENT AGENDA

Chairman Peters requested that Timothy Deuel, District Clerk, announce any suggested docket changes. Mr. Deuel announced that two information memos regarding **Action Agenda Item 20**, Resolution Authorizing Agreements with California Strategies and RRM Design Group for Coastal Consulting Services for two years and approve funding not to exceed \$400,000 and direction to staff and **Action Agenda Item 21**, Center for Bay and Coastal Dynamics A) Resolution Authorizing a Memorandum of Understanding between the District, San Diego State University, the Regents of the University of California, Scripps Institution of Oceanography at the University of California San Diego, and Hubbs SeaWorld Research Institute. B) Resolution Appointing a Port Commissioner to the Advisory Board of the Center for Bay and Coastal Dynamics were distributed to the Board earlier in morning and copies were available for the public. Mr. Deuel announced the proposed changes to the agenda as follows: **Consent Agenda Item 13**, Ordinance Granting 30 Year Lease with the Comfort Inn for a 6,454 square foot parcel at the Corner of Scott and Garrison Streets in Point Loma; staff requests this item be continued to a future Board meeting; **Action Agenda Item 18**, Resolution Authorizing Memorandum of Understanding between San Diego Unified Port District, City of San Diego and City of Imperial Beach to explore uses for Pond 20, conditioned upon approval by the City of San Diego; staff requests this item be continued to a future Board meeting; **Action Agenda Item 20**, Resolution Authorizing Agreements with California Strategies and RRM Design Group for Coastal Consulting Services for two years and approve funding not to exceed \$400,000 and direction to staff; staff requests this item be continued to a future Board meeting;

Action Agenda Item 23, Update on Fireworks and direction to staff; staff requests this item be continued to a future Board meeting; **Action Agenda Item 26**, Presentation of Draft Waterfront Activation Master Plan and direction to staff; staff requests this item be continued to a future Board meeting; On motion of Commissioner Malcolm, seconded by Commissioner Valderrama, the Board accepted the suggested changes to the agenda, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

In that members of the public had submitted request to speak slips Chairman Peters announced that the following items would be pulled for public comment and a separate vote: **Consent Agenda Item 7**, Resolution Adopting Plans and Specifications and Awarding Contract No. 2011-06 to Sullivan Solar Power of California Inc. for Broadway Pier Port Pavilion Photovoltaic System Expansion in the amount of \$131,337, and **Consent Agenda Item 8**, Resolution Adopting Plans and Specifications and Awarding Contract No. 2010-34 to Ensley Electric, Inc. for B Street Cruise Ship Terminal electrical upgrade in the amount of \$361,000.

On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted Consent Agenda items 5A, 5B, 5C, 9, 10, 11, and 12 (**Resolution 2011-148, Ordinance 2655** through and including **Ordinance 2657, Resolution 2011-151** through and including **Resolution 2011-154**) by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 5A. Resolution 2011-148, Resolution Consenting to Transfer of Ownership of Dixieline Lumber to Pro Build Company, was adopted as part of the consent agenda.

Agenda Item 5B. Ordinance 2655, Granting Amended, Restated and Combined Lease to Pro Build Company at 2740 Tidelands Avenue, National City, California, was adopted as part of the consent agenda.

Agenda Item 5C. Ordinance 2656, Granting Amended, Restated and Combined Lease to Pro Build Company at 1000-1022 Bay Marina Drive, National City, California, was adopted as part of the consent agenda.

Agenda Item 6. Ordinance 2657, Authorizing Acceptance of Easement and Granting Indemnity to the San Diego and Arizona Eastern Railway (SDAE) for the "H" Street at-grade crossing in Chula Vista, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2011-151**, Authorizing the Write-Off of Uncollectible Accounts Receivable totaling \$119,900 from the District's Financial Records and an extension of the agreement until December 31, 2012, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2011-152**, Approving the Internal Audit Plan for Fiscal Year 2012, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2011-153**, Establishing the Board of Port Commissioners' Meeting Dates for the Calendar Year 2012, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2011-154**, a Proclamation Honoring Citizens Coordinate for Century 3 on its 50th Anniversary and **Resolution 2011-155**, a Proclamation Welcoming the America's Cup World Series, was adopted as part of the consent agenda.

Agenda Item 13A. **Item Continued**

PRESENTATION AGENDA

PRESENTATION FROM CITY OF SAN DIEGO ON PROPOSED FINANCING FOR SAN DIEGO CONVENTION CENTER PHASE III EXPANSION

Agenda Item 14. Chairman Peters recognized Jerry Sanders, Mayor, City of San Diego, who addressed the Board regarding the efforts to expand the San Diego Convention Center. Mayor Sanders introduced Steve Cushman, Special Assistant on the project. He turned the presentation over to Mary Lewis, Chief Financial Officer, City of San Diego, who addressed the Board with a presentation on the proposed financing for San Diego Convention Center Phase III Expansion and the creation of a Convention Center Facilities District (CCFD), the financing mechanism proposed for area hotels. (A copy of the staff report and the City of San Diego's presentation is on file in the Office of the District Clerk.)

As the presentation had concluded, Chairman Peters stated Mayor Sanders requested the opportunity to make a presentation and requested a response from the Board by December 5, 2011. He stated that a special meeting of the Board of Port Commissioners was scheduled for November 29, 2011 to provide a timely response to the request. He explained it was an opportunity for the Board to ask questions and receive clarification regarding the matter.

Members of the public addressed the Board with their concerns regarding the City of San Diego's request of the District regarding the proposed financing for San Diego Convention Center Phase III Expansion.

Graham Forbes, UNITE HERE, Local 30 addressed the Board with concerns regarding the proposed CCFD and stated that the public should decide spending priorities of public tax dollars. He stated a copy of a letter dated October 24, 2011 from Mulvaney, Kahan & Barry to the San Diego City Council was sent earlier for distribution to the Commissioners. (A copy of the letter is on file in the Office of the District Clerk.)

Ian Trowbridge, San Diego Broadway Complex Coalition, addressed the Board with concerns regarding the impacts of funding the proposed San Diego Convention Center Phase III Expansion in relation to the Memorandum of Understanding with the Coalition regarding funding for the purchase of the property at 1220 Pacific Highway. He also commented on the formation of the CCFD and raising Transient Occupancy Tax (TOT) as a source of funding to be available for general purposes such repairs to City infrastructure.

Cory Briggs, San Diego Broadway Complex Coalition, echoed Mr. Trowbridge's concerns regarding the District's funding the purchase of 1220 Pacific Highway and requested the City provide clarification regarding the filing of a validation action related to the City's ordinance referenced in the presentation.

Commissioner discussion ensued. Commissioner Nelson confirmed with Chairman Peters that the matter before the Board was not an action item. He explained that the request was for a large amount of money for a long period of time and there are competing interests for District funds. Commissioner Nelson requested that any questions regarding the City forming the CCFD be investigated by the Port Attorney's Office and clarification be provided to the Board. He requested and received clarification from Ms. Lewis that the District would not be a party to the CCFD, but the City would need the District's consent for the Convention Center asset to have an expansion associated with it. Commissioner Nelson stated that he required clarification as to whether the Board's consent would violate or jeopardize any of the District's existing bond obligations or representations made to financial institutions or in any manner impede the District's ability, in the future, to seek bond and indebtedness on behalf of the District. He requested and received clarification from Ms. Lewis that use of the term "district" in the City's presentation in regard to the collection of taxes, was in reference to the Convention Center Facilities District. Commissioner Nelson concluded his comments by stating that, at a future time, he would like clarification as to whether the District by entering into any cooperative agreements, other than just the permission

to expand and work on the building, in any manner encumbered the value in nearby existing properties. He also requested clarification as to any lease residual value the District might have following the expiration of the existing hotel property leases.

Commissioner Burdick thanked Mayor Sanders and the members of the Convention Center team for their dedication to working collaboratively with the District in pursuit of the expansion of the Convention Center to serve the community. She requested and received confirmation from Ms. Lewis that even after applying the special tax on hoteliers and based on the financial models indicating the resulting revenue flow to support the bond repayment, plus the incremental TOT, and the annual payments from the District; a funding gap would still remain. Commissioner Burdick requested clarification regarding the annual amount of the gap. Ms. Lewis stated that it is several million dollars and certainly less than five at the time of the meeting. Ms. Lewis continued by stating they were still putting together a finance plan and looking at some alternatives to bridge that gap. Commissioner Burdick requested and received confirmation from Ms. Lewis that the annual sum of five million dollars was a rough number and described it as a "ballpark figure." Commissioner Burdick requested clarification as to whether Ms. Lewis could share what the additional revenue sources they were looking at to help fill the funding gap. In addition to incremental TOT revenues, Ms. Lewis stated a number of possibilities were being looked into and that Mr. Cushman could report on those efforts. Commissioner Burdick requested and received confirmation from Ms. Lewis that an additional increment of TOT, beyond the one that she used in the current computation, was also under consideration. Ms. Lewis further stated that they were looking at all the options and would be sharing more information with the Board, the public and the San Diego City Council on December 5, 2011 at their regular meeting. She further offered that the matter would be docketed before the December 5 meeting to present a conceptual plan of finance that would lay out the various funding options to make up that gap.

Commissioner Moore thanked Mayor Sanders and the representatives from the City of San Diego for attending and making this presentation. She expressed her support for the idea of the expansion of the Convention Center, but stated she had some real issues with the new community facility district mechanism proposed that required answers before she could make a decision moving forward. Her first question was regarding the ability to place a lien on District property, given the fact that it is not technically owned by the District per se, but is held in a State Trust; and, whether anyone looked at that and whether or not it would need any type of State Lands Commission approval or approval from some other body. Continuing her remarks, she offered queries regarding the tenants' authority to vote and liens placed on District property. Commissioner Moore also requested clarification regarding the idea of the

tenants paying the assessments for a lien that was placed on the District's property. She continued by requesting clarification regarding what incentive someone had to pay an assessment on a timely basis on property they did not own. She also offered whether the matter had been explored regarding the idea of placing a lien on the leaseholds itself in that it is a real property interest. She queried as to who determines the maximum amount of the lien that would be placed on the District's property and of the ballpark figure of \$33,000,000 million, what percentage of that sum was under District control. In regards to the presentation and citing San Jose as an example, Commissioner Moore wondered if a lien was placed on property that the City of San Jose owned or was it placed on the property owned by the people who would actually be paying the assessments. She concluded her remarks that she would like answers to those matters to be able to move forward on any decision.

Chairman Peters requested that Mayor Sanders pass on the Board's congratulations to Carol Wallace, San Diego Convention Center President and CEO, as the recipient of the 2011 Leadership California 20th Anniversary Trailblazer Award. He stated that the District has been a committed partner, had been helping and cooperating in the permitting process, and acknowledged there was a lot more work to be done related to the permitting. With respect to the financing, Chairman Peters stated he had always maintained that to the extent that someone benefited by a project, they should participate in making it happen. He stated his belief that the Convention Center has been a tremendous benefit to the District and that the expansion would be too. He supported advocating an appropriate contribution from the District to help make the proposed expansion happen. He stated it was a matter of working over the numbers and getting some these questions answered prior to the special meeting on November 29, 2011 to facilitate discussion at the December 5, 2011 San Diego City Council Meeting.

PRESENTATION FROM USS MIDWAY MUSEUM ON PROPOSED NAVY PIER PARK

Agenda Item 15. Kristine Love, Asset Manager, Real Estate, addressed the Board and introduced the team from the USS Midway Museum. Ms. Love turned the presentation over to Mac McLaughlin, President & CEO, USS Midway Museum and Rear Admiral McLaughlin, USN, Retired, who addressed the Board with a presentation regarding the proposed Navy Pier Park. RADM McLaughlin turned the presentation over to Harold Sadler, Chairman of the Board, Tucker Sadler. Mr. Sadler discussed the design features of the proposal and then turned the presentation over to Ward Gill, Executive Director, San Diego Symphony. Mr. Gill addressed the Board regarding participating in the development process to facilitate a permanent performance venue for the

Symphony. RADM McLaughlin announced that public outreach meetings would be held in November and December at the Port Administration Building. He concluded his presentation by announcing the USS Midway Museum has a confirmed pledge for a donation of \$35 million from philanthropist Denny Sanford to initiate the project and offered that the USS Midway Museum intended to secure as much private funding for the project as possible. (A copy of the staff report and the tenant presentation is on file in the Office of the District Clerk.)

Members of the public addressed the Board regarding the presentation. Don Wood addressed the Board regarding the District's obligations to the California Coastal Commission under the Port Master Plan and Master Plan Amendment. He encouraged the Board to consider all of the proposed alternatives regarding parking and public park space at the site. He discussed the height of the proposed sculpture and potential impact to the view corridor. He urged the Board to incorporate the project into the Port Master Plan Environmental Impact Report process.

Commissioner Nelson left the dais at 2:36 p.m. and returned at 2:40 p.m.

Cory Briggs, Attorney, Navy Broadway Complex Coalition, addressed the Board regarding the District's relationship with the USS Midway Museum. He stated his belief that the proposal offered was prohibited under the District's Coastal Development Permit, the USS Midway Museum lease, and the Master Plan. He addressed the matter of the donation, the commitment to building a park at grade level, the covered parking requirement, and maintaining unobstructed views of the bay. He encouraged the USS Midway Museum representatives to discuss alternatives with the Navy Broadway Complex Coalition members.

Diane Coombs, representative, Citizens Coordinate for Century 3 and Port Master Plan Citizens Advisory Committee, addressed the Board. She discussed the Port Master Plan Citizens Advisory Committee process, expressed her concern regarding the installation of mooring dolphins off B Street Pier and offered that private citizens would be taking a role in planning for use of the Navy Broadway Complex site. She encouraged the Board to slow down, look at the Port Master Plan Amendment and consider the future opportunities for the site.

Ian Trowbridge addressed the Board; he encouraged keeping an open mind, and discussed alternative uses for B Street Pier as a form of mitigation for the USS Midway Museum proposal. He expressed concern regarding "piecemeal" development and that it was in the District's interest to work with stakeholders to develop a workable solution. He discussed the matter of the Navy Broadway Complex development.

Commissioner discussion ensued. Commissioner Smith thanked the team from the USS Midway Museum for their presentation. He expressed his appreciation for those members of the community with the vision to bring the USS Midway to San Diego. He stated he liked the sculptures shown in the proposal and that the right individuals were on the team to realize the plan.

Commissioner Nelson acknowledged the members of the public who spoke and restated his commitment to continuity and an open and transparent public planning process. He stated that he appreciated the comments regarding looking at things with new eyes in relation to the recent action by the California Coastal Commission regarding the Navy Broadway Complex project. He acknowledged the members of the USS Midway Museum and stated the proposal was one of the most dramatic he had seen and compared it to the vision that inspired the St. Louis Gateway Arch. Commissioner Nelson discussed the wings and sails concept in the design and its regional significance. He acknowledged the need for more funding to augment the funding pledge announced during the presentation.

Commissioner Malcolm discussed the vision necessary to create a great city and discussed the many hours of testimony offered a number of years ago regarding the installation of the USS Midway and its subsequent success. He offered comments regarding the benefits that the USS Midway Museum brings to the region. Commissioner Malcolm remarked on the park and the vision for the art piece proposed, the challenges related to adding a second deck on the site, as well as the Port Master Plan Amendment. He stated that those issues would require appropriate public outreach efforts to address those concerns. Commissioner Malcolm thanked the presenters and acknowledged the presentation, and stated that, on first look, he could not think of a better location for a veterans' park.

Commissioner Burdick requested clarification from RADM McLaughlin regarding any conditions placed upon the \$35 million pledge and subsequent donation to fund a park on Navy Pier. RADM McLaughlin replied that while he could not answer the questions regarding any specific conditions, he stated that the donor, in spirit, was very much behind the entire concept and the symbol that the wings and sail sculptural element represents. RADM McLaughlin continued by stating that he could not speak for the other donors, however there were other stakeholders that would come to the conversation as the project moves forward in the approval process. Commissioner Burdick acknowledged RADM McLaughlin candor. She then requested staff provide a briefing on the scope of the District's obligations and commitments made to the California Coastal Commission regarding putting a park on the Navy Pier. She requested that special attention be paid to view corridor obligations and placing a second deck on

top of the pier. Commissioner Burdick stated she would like a briefing on how the concept was vetted within the Citizens Advisory Committee regarding the Port Master Plan Amendment (PMPA). She stated it might be helpful to have Environmental and Land Use Management staff available to participate in the briefing to discuss alternatives in the PMPA process regarding the park on Navy Pier. Additionally, she requested an opinion from legal counsel regarding whether characterizing the sculptural element as an architectural component takes it outside the scope of the Public Art Master Plan. Moreover, if the sculptural element fell within the scope of the Public Art Master Plan would it require an initial vetting through the Public Art Committee. Commissioner Burdick stated that following the requested briefing she would be better prepared to offer comment on the proposal at a future Board meeting.

Commissioner Valderrama acknowledged the vision offered during the USS Midway Museum presentation. He recognized the comments offered by members of the public and concurred with Commissioner Burdick's request that those concerns should be addressed prior to moving forward. As in the past, Commissioner Valderrama stated that a positive resolution was possible when an open dialogue with interested stakeholders and the District leadership was facilitated.

Commissioner Moore stated she agreed with the other Commissioners that the sculptural element is an iconic symbol that does "take your breath away" and is amazing to look at. In light of those remarks, she also stated her need to have an understanding regarding the District's obligations with respect the view corridors, the second deck and the parking requirements. She confirmed the importance that the District upholds its existing obligations. Commissioner Moore reaffirmed the need to get such information before moving forward.

Chairman Peters acknowledged the USS Midway Museum's success and stated that based on the attendance numbers alone, he supported the presentation. Regarding the process, he stated that the USS Midway Museum was under a lease obligation to bring their preferred plan to the District for the Board's consideration. He offered his gratitude that the tenant had brought forth what he characterized as a "bold concept." He discussed the many benefits offered in the proposal. Chairman Peters requested clarification regarding the engineering of such large sail and wing shaped figures as consideration of the proposal moves forward. He acknowledged the public's comments, offered his comments regarding preserving views to the water, the ability to see the water while driving along Harbor Drive, and the benefits of creating a venue at which the public can gather at the waterfront.

Commissioner Valderrama left the dais at 3:09 p.m. and returned at 3:11 p.m.

ACTION AGENDA CONTINUED**PRESENTATION FROM SEAPORT VILLAGE OPERATING COMPANY ON A REDEVELOPMENT PROPOSAL FOR SEAPORT VILLAGE AND DIRECTION TO STAFF**

Agenda Item 17. Randa Coniglio, Executive Vice President, Operations, addressed the Board and clarified that the tenant, Terramar Retail Centers, has two separate agreements with the District. She described one as a long-term lease for Seaport Village and the second as a short-term option agreement to lease the Old Police Headquarters (OPH). She stated that should Terramar not exercise their option agreement, on the OPH leasehold by December 30, 2011, staff would seek Board direction regarding next steps. Ms. Coniglio stated that staff believed that Terramar would exercise its option on the OPH property. She stated that the redevelopment proposal for Seaport Village, before the Board, would have no impact on the deadline in exercising the option regarding the OPH property. Even though there are two separate agreements and timelines, she explained that the redevelopments were being planned in parallel to compliment one another and take advantage of adjacencies by the same entity. She turned the presentation over to Nick Markos, Senior Asset Manager, Real Estate, to address the Board.

Mr. Markos explained that while no Board action was required staff requested the Board to consider the presentation and direct staff to consider the plan for consistency in light of the adopted visioning goals previously presented by Terramar. Mr. Markos introduced Alex Liftis, Senior Vice President Development, Terramar Retail. Mr. Liftis addressed the Board with a presentation regarding the initial concept plan for the redevelopment proposal for Seaport Village. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Members of the public addressed the Board regarding the matter. Gary Smith, President, Downtown Residents Group, acknowledged the work on Kettner Boulevard. He stated that while they did not have a concern regarding a hotel, they did express concern of the arrangement of the block on the east side of Kettner Boulevard. He recommended that the site be reconfigured to put parking on the interior areas that face the Hyatt Hotel service docks and position the hotel so all guestrooms offer a waterfront view. He discussed the challenges for pedestrians while walking down Harbor Drive and the preferred use of Kettner Boulevard for pedestrian traffic and expressed concern regarding the esthetics of a proposed parking structure.

Greg Murphy, representing San Diego County Supervisor Greg Cox's office, stated that Supervisor Cox is an advocate for the Bayshore Bikeway. He thanked Terramar for their public outreach efforts and encouraged that a commitment to the progress of the Bayshore Bikeway along the waters edge as the Seaport Village redevelopment process is considered.

Michael Thorsnes requested a copy of the presentation and the materials presented.

Don Wood acknowledged the architectural design and the relative low-rise of the proposal. He expressed concern regarding the proposed parking structure and requested that the developer consider ways to place more of the parking structure below ground. He requested the end of Harbor Drive be free of buildings, the vehicle turn around area be eliminated, and extending the view corridor south to create a new public pier at the water. Mr. Wood offered that any buildings that may be eliminated as a result of such a plan be relocated to the deck on top of the parking facility.

Commissioner discussion ensued. Commissioner Burdick requested clarification regarding the plan to upgrade or refurbish the remaining existing buildings. Mr. Liftis explained that while many of the buildings were in good shape, it was not the intent to take down those buildings but the village would have a new look and feel that would be more clearly defined following a feasibility study. He explained a renovation scheme would be presented at a future meeting. Regarding relying on sublessee reinvestment to fund the project, Mr. Liftis clarified for Commissioner Burdick that Terramar would fund the majority of the \$40 million reinvestment for the refurbishment of building exteriors, erecting new buildings and the parking garage. He explained that at their lease renewal, the tenants would be funding renovation of the interiors of their space. She offered a motion to accept the staff recommendation by directing staff to evaluate the concept in the context of the visioning goals. Commissioner Smith seconded the motion. Commissioner Burdick offered comments that when traveling down Harbor Drive by car finding Seaport Village could be challenging based on the location of the proposed gateway signage. Commissioner Burdick stated she was pleased and recognized Mr. Liftis and Terramar for their responsiveness and good work regarding the visioning goals and the revitalization plan.

Commissioner Malcolm thanked Terramar for their work and acknowledged District staff for their collaborative efforts to foster the partnership with the tenant. He requested clarification regarding the parking structure and whether separate at-grade parking would be made available at the Old Police Headquarters project. Mr. Liftis stated the parking was at a joint ratio based on the total square footage in the entire

project and no at-grade parking was planned for Old Police Headquarters. Mr. Liftis responded to Commissioner Malcolm's queries regarding the Old Police Headquarters option and explained that Terramar had always intended to pursue both projects simultaneously and continue to work diligently to exercise the option by the December 30, 2011 deadline. Commissioner Malcolm requested that Mr. Liftis share information regarding the types of tenant mix they are considering in light of the new building proposed. Mr. Liftis stated that while the current configuration of the retail stores attracted small businesses but with the new square footage, the developer hoped to open opportunities to a mix of new tenants who were looking for larger spaces. Commissioner Malcolm stated that upon examining the goals for the project he was looking for more clarification and elevations regarding the plan for the signature entry. He concluded his remarks by thanking the Terramar team and acknowledging their concept as well thought out.

Commissioner Nelson supported Commissioner Burdick's remarks regarding the challenges navigating the intersection at Harbor Drive, Pacific Highway and Kettner Boulevard leading into Seaport Village and requested staff discuss the matter with the appropriate stakeholders to address a more functional solution.

Commissioner Valderrama acknowledged Bruce Walton and the Terramar team for their commitment to the project. He supported the motion and the direction to staff. He concluded by stating he looked forward to the final designs and the completed project.

Commissioner Moore concurred with her fellow Commissioners that there was a lot to like about the plan. She offered similar comments regarding the entryway and encouraged that it be "punched up more" to be given more of the "wow" factor in addition to the Spanish steps concept. She stated she looked forward to seeing the project plans return.

Chairman Peters acknowledged the responsiveness of Terramar. He stated that at the next meeting he would like the developer to respond to Gary Smith's remarks regarding the positioning of the proposed hotel. He also requested a better understanding of what the pedestrian experience would be like in relationship to the east side of the parking garage. He also discussed his preference to propose ways to soften the appearance of the parking garage. In reference to the Spanish themed design elements, Chairman Peters requested that their appearance remain of a high quality into the future.

Commissioner Smith also thanked the developers and acknowledged their efforts toward moving forward with the development. He acknowledged the design of the plan and expressed concern regarding the timing of the traffic lights at Pacific Highway and Harbor Drive.

Commissioner Nelson requested clarification regarding the motion and whether the Board was providing staff guidance relative to the architectural style as a result of the vote. Mr. Markos stated that the presentation was a preliminary concept of the location of the buildings and staff had not analyzed anything beyond that. Commissioner Nelson offered remarks regarding the style of Irving Gill and the essence of California style architecture and found the renderings did not reflect those earlier discussions.

Chairman Peters acknowledged Commissioner Nelson's remarks and requested that staff evaluate the renderings and bring the matter back before the Board at an upcoming meeting.

On a motion of Commissioner Burdick, seconded by Commissioner Smith, the Board adopted **the staff recommendation of directing staff to analyze the proposal against the adopted visioning goals for the site**, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Burdick left the dais at 3:53 p.m. and returned at 3:58 p.m.

Commissioner Moore left the dais at 3:54 p.m. and returned at 4 p.m.

RESOLUTION AUTHORIZING MEMORANDUM OF UNDERSTANDING BETWEEN SAN DIEGO UNIFIED PORT DISTRICT, CITY OF SAN DIEGO AND CITY OF IMPERIAL BEACH TO EXPLORE USES FOR POND 20, CONDITIONED UPON APPROVAL BY THE CITY OF SAN DIEGO

Agenda Item 18. Item continued to a future Board meeting.

CENTER FOR BAY AND COASTAL DYNAMICS

- A) Resolution Authorizing a Memorandum of Understanding between the District, San Diego State University, the Regents of the University of California, Scripps Institution of Oceanography at the University of California San Diego, and Hubbs SeaWorld Research Institute.**

B) Resolution Appointing a Port Commissioner to the Advisory Board of the Center for Bay and Coastal Dynamics

Agenda Item 21. Michelle White, Environmental Policy Manager, Government & Community Relations, introduced Dr. Tony Haymet, Director, Scripps Institution of Oceanography, Stephen Welter Vice President for Research & Dean of Graduate Affairs, San Diego State University Research Foundation and Pam Yochem, Executive Vice President, Hubbs-SeaWorld Research Institute. Ms. White addressed the Board with a presentation and requested the Board consider resolutions regarding the Center for Bay and Coastal Dynamics. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

The following members of the public addressed the Board and thanked them regarding the support of the formation of the Center for Bay and Coastal Dynamics: Stephen Welter, Pam Yochem and Dr. Tony Haymet.

Commissioner discussion ensued. Chairman Peters offered remarks regarding the importance of moving forward with implementing the Center for Bay and Coastal Dynamics and discussed the benefits of utilizing the bay to create a national science lab in which scientists from around the world may conduct their research. To alleviate his concerns regarding only having a Commissioner sit on the Center's Board, he requested that a senior staff member also be involved in the effort. He reported that in addition to Ms. White, Randa Coniglio, Executive Vice President, Operations, would also participate.

Commissioner Burdick concurred with Chairman Peter's remarks. She offered that for the Center to be more of a benefit to the District, the language has to be memorialized in a dynamic way and one that is much more directed providing the District with actionable information. She expressed her support for the more directive language put forward in the Memorandum of Understanding (MOU). Commissioner Burdick requested that in the draft MOU, she cited page three, section six, sub-point "E" and requested that the phrase read "of concern to the District" be clearly included in the text. Commissioner Burdick requested that the spelling of the word compliment be corrected to read complement in section 6 sub paragraph D. Regarding item number eight in the recital clauses, "WHEREAS, the Parties will support funding requests made by any of the Parties for projects recommended by the Center," she expressed her concern that it would be challenging to support unknown requests and recommended it be removed.

Commissioner Malcolm stated that he was also supportive of the creation of the MOU and discussed the opportunities the Center would open to the District. He stated it

was the opportunity to leverage grant funding and research projects that would make a difference to Statewide stakeholders as well as the San Diego Bay. Regarding the references to an annual report, he requested that a formal and detailed presentation be given to the Board in addition to a written report.

Commissioner Nelson requested and received clarification from Chairman Peters regarding his recommendations related to the District's representation on the Center Board. Chairman Peters confirmed that in addition to a Commissioner serving he also wanted a senior staff member to be present. Commissioner Nelson stated that in the future there might not be a Board member with the technical level of experience that the representatives from the other institutions may contribute. Thus, he explained that he was open to the language being altered and allowing the Chair to appoint another appropriate representative in lieu of a Board member. Commissioner Nelson echoed Commissioner Burdick's concern regarding the language related to funding, and requested and received her approval that the word "may" be substituted for "will" into the recital, "WHEREAS, the Parties 'may' support funding requests made by any of the Parties for projects recommended by the Center." He discussed Commissioner Burdick's comments regarding the District receiving actionable information and concurred with the recommended spelling correction.

Commissioner Valderrama requested and received counsel from Duane Bennett, Port Attorney, regarding the requested modification and deleting the recital.

Chairman Peters offered that based upon the discussion, the Board would consider adopting the resolution to approve the agreement with a provision to be added for an annual report to the Board of Port Commissioners, change the "will" in the recitals to "may" and in Part B of the recommendation, a member of senior staff as well as a Commissioner be assigned.

Commissioner Nelson moved the motion to accept the staff recommendation with the revisions. Commissioner Malcolm seconded the motion.

Randa Coniglio, Executive Vice President, Operations, responded to Commissioner Burdick's concern regarding the use of the words "of concern to the District" and offered that she consider it being revised to read, "of concern to the parties, including the District." Commissioner Burdick indicated her support and Commissioner Nelson incorporated that revision into his motion.

On a single motion of Commissioner Nelson, seconded by Commissioner Malcolm, the Board adopted with a single motion **Resolution 2011-158**, Authorizing a

Memorandum of Understanding between the District, San Diego State University, the Regents of the University of California, Scripps Institution of Oceanography at the University of California San Diego, and Hubbs SeaWorld Research Institute and **Resolution 2011-159**, Appointing a Port Commissioner and a member of the District senior staff to the Advisory Board of the Center for Bay and Coastal Dynamics, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

CONSENT AGENDA CONTINUED

RESOLUTION ADOPTING PLANS AND SPECIFICATIONS AND AWARDING CONTRACT NO. 2011-06 TO SULLIVAN SOLAR POWER OF CALIFORNIA, INC. FOR BROADWAY PIER PORT PAVILION PHOTOVOLTAIC SYSTEM EXPANSION IN THE AMOUNT OF \$131,337

Agenda Item 7. Chairman Peters called Cory Briggs who had submitted a request to speak regarding the matter. Mr. Briggs was not present. The Chairman offered his hypothesis regarding the likely nature of Mr. Briggs' comments.

On a motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted **Resolution 2011-149**, Plans and Specifications and Awarding Contract No. 2011-06 to Sullivan Solar Power of California, Inc. for Broadway Pier Port Pavilion Photovoltaic System Expansion in the amount of \$131,337, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION ADOPTING PLANS AND SPECIFICATIONS AND AWARDING CONTRACT NO. 2010-34 TO ENSLEY ELECTRIC, INC. FOR B STREET CRUISE SHIP TERMINAL ELECTRICAL UPGRADE IN THE AMOUNT OF \$361,000

Agenda Item 8. Chairman Peters called upon Don Wood, who reiterated his earlier comments and cautioned that the District not take any actions to undercut the Environmental Impact Report process for the North Embarcadero Visionary Plan Master Plan process and offered that B Street Pier is part of the area under consideration.

Commissioner discussion ensued. Commissioner Burdick requested and received clarification from Mahmoud Akhavain, Manager, Engineering/Construction, regarding the proposed upgrade and the related increase in capacity. Mr. Akhavain stated that the additional demand referenced in the agenda sheet refers to additional current demand and that this was a maintenance project that would ensure efficiency, reliability and

safety of the current electrical infrastructure system at the terminal. She requested and received clarification from Mr. Akhavain that the upgrade would not support additional demand beyond the current levels that has been serviced by the additional subpanels installed at various times since 1953. Commissioner Burdick requested and received confirmation from Mr. Akhavain that the upgrade was also necessary to bring the panel up to code to address safety needs.

Commissioner Smith offered that any electrical panel that had been in operation in a marine environment since 1953 should be replaced as expeditiously as possible.

Chairman Peters stated that the facility is currently permitted as a Cruise Ship Terminal and would be used for its intended purpose until assistance is received to expand its use as a public building.

On a motion of Commissioner Smith, seconded by Commissioner Burdick, the Board adopted **Resolution 2011-150**, Resolution Adopting Plans and Specifications and Awarding Contract No. 2010-34 to Ensley Electric, Inc. for B Street Cruise Ship Terminal electrical upgrade in the amount of \$361,000, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Moore left the dais at 4:31 p.m. and returned at 4:32 p.m.

ACTION AGENDA CONTINUED

RESOLUTION ADOPTING PLANS AND SPECIFICATIONS AND AWARDING CONTRACT NO. 2009-13 TO CAL BUILDERS, INC. FOR NORTH EMBARCADERO VISIONARY PLAN, PHASE 1 IN THE AMOUNT OF \$18,611,920

Agenda Item 19. Linda Scott, Capital Project Manager II, Engineering/Construction, addressed the Board with a presentation and requested the Board consider a Resolution adopting plans and specifications and awarding Contract No. 2009-13 to Cal Builders, Inc. for North Embarcadero Visionary Plan, Phase 1 in the amount of \$18,611,920. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner Malcolm offered a motion to adopt the staff recommendation. Commissioner Nelson seconded the motion.

On a single motion of Commissioner Malcolm, seconded by Commissioner Nelson, the Board adopted **Resolution 2011-157**, Adopting Plans and Specifications and Awarding Contract No. 2009-13 to Cal Builders, Inc. for North Embarcadero Visionary Plan, Phase 1 in the amount of \$18,611,920, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION AUTHORIZING AGREEMENTS WITH CALIFORNIA STRATEGIES AND RRM DESIGN GROUP FOR COASTAL CONSULTING SERVICES FOR TWO YEARS AND APPROVE FUNDING NOT TO EXCEED \$400,000 AND DIRECTION TO STAFF

Agenda Item 20. Item continued to a future Board meeting.

REVISIONS TO BPC POLICIES RELATED TO PUBLIC ART AND DONATIONS AND LOANS

- A) Resolution Deleting BPC Policy No. 610 – Monuments, Memorials and Plaques.**
- B) Resolution Adopting Revisions to BPC Policy No. 611 - Receipt of Donations and Loans.**
- C) Resolution Adopting Revisions to BPC Policy No. 609 - Public Art.**
- D) Resolution Adopting BPC Policy No. 608 - Tenant Percent for Art.**

Agenda Item 22. Yvonne Wise, Art Curator, Public Art Program, addressed the Board regarding Revisions to BPC Policies related to Public Art and Donations and Loans. She introduced Terry Hall, Public Art Committee Chair and Larry Baza, Public Art Committee member. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

The following member of the public addressed the Board regarding the matter: Sharon Cloward. She complimented staff regarding BPC Policy No. 608, discussed the tenants' participation in the public art program, and incorporating incentives.

Commissioner discussion ensued. Commissioner Valderrama offered concerns on the provision in BPC Policy No. 609 regarding membership of the public art committee and excluding District employees or employees of a member city for appointment as member city representative on the committee.

Commissioner Nelson offered his prepared comments regarding proposed changes to the policy related to the creative directions section. He also offered an

amendment to BPC Policy No. 609 regarding membership of the public art committee and offered the following revision "that a member shall be recommended based upon their substantive professional or volunteer experience in nationally recognized visual arts, professional or voluntary experience for this purpose shall be defined as individuals recognized by peers as curators, nationally recognized artists, art critics, art historians, professional arts collections managers, professors of art and others with considerable public arts experience as well as nationally respected architects and landscape architects with relevant public art experience." (A copy of Commissioner Nelson's remarks is on file in the Office of the District Clerk.)

In lieu of immediately accepting Commissioner Nelson's motion, Chairman Peters suggested a procedure that a motion is requested to adopt the staff recommendation and that Commissioner Nelson's revision be offered as an amending motion.

Commissioner Burdick offered her observations regarding the section regarding membership and explained the policy was likely crafted to avoid a possible conflict of interest. She explained that upon visiting with the mayor of each member city, she had a better understanding of their concerns regarding appointing their city's representatives as a member of the Public Art Committee. Thus, as a compromise, the District agreed to provide a qualification list of individuals who are acceptable to serve on the committee to serve the District's need to build a world-class art collection. She then explained the cities have agreed they would endeavor to appoint someone that would fit those criteria. Regarding Commissioner Valderrama's remarks and Commissioner Nelson's proposal, she stated her concern that the District may be too limiting. She offered that the Board was considering the policy regarding the governing of advisory committees and adopting a conflict of interest policy, thus she proposed removing the reference to the conflicts of interest in the policies under consideration. Regarding Commissioner Nelson's proposal, she stated that while she viewed it as a good idea she did not believe the five member cities could submit a candidate that met the criteria. Commissioner Burdick requested and received clarification regarding Ms. Hall's and Mr. Baza's experience that brought them to serve on the committee. She then requested clarification as to whether they believed that the District Public Art Master Plan's statement of creative direction was too limiting or mutually exclusive to building an outstanding awe-inspiring world-renowned art collection that Commissioner Nelson and she would like to see the District have.

Ms. Hall stated she manages Seaport Village, a Port tenant appointee on the Committee, and while she has no formal art training she does appreciate art and is a self-described layperson. Regarding the question regarding the creative direction related to the working port, public port, the green port she stated that while she initially

felt it might have been limiting she now believed that it does not limit and provides flexibility. Ms. Hall stated that she did not believe she met the committee membership criteria offered by Commissioner Nelson.

Mr. Baza offered that with over 34 years of experience in arts administration, he formally served as Executive Director of the County of San Diego's Public Art Advisory Council; currently serves on the City of San Diego Commission for Arts and Culture and had run several not-for-profit arts organizations. Regarding the question regarding the creative direction related to the working port, public port, the green port he stated that it absolutely did not impede building what Commissioner Burdick characterized as an outstanding awe-inspiring world-renowned art collection. He concluded his remarks by offering that having tenant representatives on the committee was beneficial.

Commissioner Burdick offered that the paragraph regarding the conflict of interest be removed from BPC Policy No. 609. She then stated that with all due respect to Commissioner Nelson, she explained that she could not support his proposed amendments.

Chairman Peters left the dais at 4:58 p.m. and returned at 5:03 p.m.

Commissioner Smith acknowledged the concerns raised by Commissioner Valderrama and Commissioner Burdick. He offered remarks regarding "fenced money" and queried whether there was a way to support the arts without it. He offered that he would support the staff recommendation with the understanding that the Board monitor the progress and amend the policy as necessary. He offered a motion to approve all four parts of the staff recommendation. Chairman Peters seconded the motion.

Chairman Peters concurred with Commissioner Nelson's remarks regarding the composition of the committee and explained that he would not vote for it because he felt the District Public Art Program was not at a point where it has been a proven successful to the member cities or the leaders in the art community. He suggested maintaining the policy of keeping the politics out of the committee appointees.

Commissioner Nelson acknowledged the comments offered by Chairman Peters. He discussed the purpose of an advisory committee. He expressed his concern that by setting a narrow focus related to the creative direction, the District might decline accepting significant pieces that would enhance the agencies collection. He supported the policy regarding the make up of the committee and not including employees of the member cities, mayor staff members or city council member staffers.

Commissioner Burdick requested clarification regarding the history behind the conflict of interest provision in the policy. Ms. Wise stated that during the development of the Public Art Master Plan, the belief was that the committee should be comprised of individuals who have careers that are focused professionally in the arts. Chairman Peters stated that when the committee was comprised of city managers it was very difficult to have professional artists volunteer to serve.

Commissioner Valderrama reiterated his concern for the section of the policy that eliminates city employees from serving on the committee. He stated that he would accept the staff recommendation and monitor the progress.

On a single motion of Commissioner Smith, seconded by Chairman Peters, the Board adopted **Resolution 2011-160**, Deleting BPC Policy No. 610 – Monuments, Memorials and Plaques; Adopting Revisions to BPC Policy No. 611 - Receipt of Donations and Loans; Adopting Revisions to BPC Policy No. 609 - Public Art; and Adopting BPC Policy No. 608 - Tenant Percent for Art; by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

UPDATE ON FIREWORKS AND DIRECTION TO STAFF

Agenda Item 23. Item continued to a future Board meeting.

DISCUSSION OF CONFLICTS OF INTEREST AND ADVISORY COMMITTEES AND DIRECTION TO STAFF

Agenda Item 24. Duane Bennett, Port Attorney, addressed the Board with a presentation regarding the Conflicts of Interest and Advisory Committees and requested direction to staff. Wayne Darbeau, Executive Director, offered that the staff recommended that the Commissioners accept the report and consider the alternatives, as no action was required before the December meeting. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Chairman Peters left the dais at 5:29 p.m. and was excused for the remainder of the meeting.

Sharon Cloward, Port Tenants Association, addressed the Board and encouraged the Board to take their time when considering the matter. She supported standardizing the committees and offered comments regarding the reason behind the forming of the Real Estate Advisory Committee.

Commissioner discussion ensued. Commissioner Burdick stated she personally found the advisory committees valuable and acknowledged the diversity of the tasks that the District addresses. She offered that she could not support only appointing financially disinterested individuals to the advisory committee, in that they may also be the experts in their industry. Regarding recommendation number two, and clarifying standardized voting, she stated it was a way to protect the integrity of the decision making process. She stated that she liked having Commissioners on the committee to provide guidance but she did not want the Commissioners to vote. Commissioner Burdick offered comments regarding her views on how Commissioners participate in discussions at committee meetings as related to the Brown Act and offered that they serve as a "liaison role" only to carry the concerns of the Board to the committee and seek the committee's direction that would be helpful to the Board. She stated that she was in support of recommendation four regarding having no more than two Commissioners serve on a committee and recommendation five regarding the Chair's prerogative to immediately remove a committee member should a conflict of interest be violated.

Commissioner Valderrama acknowledged that it was a good beginning, and, as the recommendations impact tenants and committee, members it was appropriate to take time and assess the information before moving forward. He stated his belief that as Chair of the Maritime Committee it was his role to bring the committee members input back to the full Board.

Commissioner Nelson concurred that no more than two Commissioners should serve on any single committee and a Commissioner should Chair the committee. He stated that in the event that a Commissioner attempted to move their personal opinion forward he hoped that a staff member would go to the Executive Director to address the matter with the Committee Chair. He offered that the conflict of interest matters should be resolved but offered concern that some uniquely qualified individuals in academia or civic agencies may be unable to serve. Regarding service to the Real Estate Committee, he offered that staff consider members who may be leaders in like industries but not be a District tenant. He offered a proposed definition of an interested party.

Commissioner Moore thanked Mr. Bennett for bringing the matter forward and acknowledged the complexity of that area of law. She expressed concern regarding Government Code section 1090 as the matter was more challenging than recusing oneself because the courts had so broadly interpreted the matter. She stated that she appreciated the notion of taking the time necessary to review the matter. Regarding Commissioner Nelson's proposed definition of interested parties, she recommended the

Board simply adopt the definition provided in the law. Commissioner Moore stated that she concurred with recommendations four and five. She agreed with the concept that advisory committees provide a great deal of expertise and should consider how the participation is structured. Regarding recommendation number two with only citizen stakeholders voting, she requested clarification as to whether that would still be considered a District sponsored committee and would Commissioners be involved in the discussions. She continued by stating that her concerns were with what the court may define as "making contracts" issues. Mr. Bennett acknowledged Commissioner Moore's questions and stated his belief that the stakeholders would still constitute a District committee. Regarding the issue of making or forming a contract in which there is a financial interest, Mr. Bennett offered his opinion that it would be appropriate for a Commissioner committee member to ask clarifying questions in that the matter would still have to come before the full Board for consideration. Commissioner Moore requested and received clarification from Mr. Bennett regarding the differences in recommendation two and three. He explained that in both recommendations the Commissioner committee members would not be voting on the matters before the committee.

Commissioner Malcolm expressed his concern regarding the rules under which the committees work. He offered that considerations regarding Government Code section 1090 be looked at related to the committee makeup and recommendations. He stated that it was his belief that having an individual serve on a committee in which they have an interest in the contract under consideration is not a good thing. He concurred that the committees are valuable. He offered his concerns regarding recommendations two and three as related to Government Code section 1090. He stated that while he did not have immediate concerns regarding recommendations four and five he concurred that further analysis was required.

Commissioner Smith urged his fellow Commissioners to consider the committees that they would be most interested in serving on, he acknowledged the amount of time invested by the volunteer members and staff in the committee process, and offered that a framework be created to ensure that the meetings are productive and meaningful. He acknowledged Mr. Bennett for his presentation and concurred that the matter would return to the Board later for additional discussion.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE MEETING OF DECEMBER 13, 2011

Agenda Item 25. Commissioner Nelson requested that staff contact the County of San Diego to determine whether they would be coming before the Board with a presentation regarding health services before the end of the year.

On motion of Commissioner Valderrama, seconded by Commissioner Moore, the Board adopted the proposed agenda for the meeting of December 13, 2011, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Smith and Valderrama; Nays-None; Excused-Peters; Absent-None; Abstained-None.

PRESENTATION OF DRAFT WATERFRONT ACTIVATION MASTER PLAN AND DIRECTION TO STAFF

Agenda Item 26. Item continued to a future Board meeting.

OFFICER'S REPORT

Agenda Item 27. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director or designee, were reported:

- A) Change Order No. 1 for \$0.00 and 30 Day Calendar Days to Contract No. 2010-26 with The Glass Company dba C&C Glass for B St. Pier CST Install Storefront Entrance at Door # 2.
- B) Change Order No. 1 for T&M (NTE) \$10,000 and 0 Calendar Days to Contract No. 2010-10 with Ledcor Construction, Inc. for Ruocco Park, San Diego, California.

PRESIDENT'S REPORT

Agenda Item 28. Wayne Darbeau, Executive Director, turned the presentation over to Ron Popham, Principal Trade Advisor, Maritime Trade, who shared a report regarding a recent trade mission to India in which he and Mr. Darbeau visited over 40 companies and attended the first annual India Wind Power Conference. He announced that new customers would be bringing incoming wind power cargo to the Port. Mr. Popham announced that the District had been invited by the State Department to participate in another trade mission to India in February 2012.

COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING

Agenda Item 29. Vice Chairman Smith reported out from the Audit Advisory Committee and stated that a discussion regarding hiring a Port Auditor would be coming to the Board for consideration as a future Closed Session matter. He then concluded the meeting and announced the Board did not need to return to Closed Session.

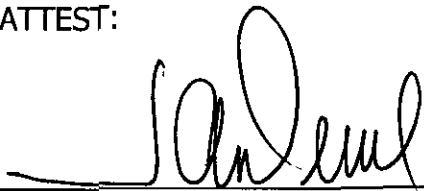
November 8, 2011

page 349

A handwritten signature in cursive script, appearing to read "A Moore", positioned above a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "S. Daniel", positioned above a horizontal line.

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

As previously posted, a special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 2:02 p.m., Tuesday, November 29, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Malcolm, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Darbeau, Deuel, McEntee and Stup.

Absent: No Commissioners absent.

Excused: No Commissioners excused.

PUBLIC COMMUNICATIONS

Agenda Item 2.

None.

Chairman Peters announced that a matter regarding the District's bond counsel required the Board's consideration and requested that Celia Brewer, Interim Port Attorney, brief the Commissioners.

Ms. Brewer explained that an issue arose with respect to the law firm of Orrick, Herrington & Sutcliffe LLP (ORRICK). She stated the firm had been retained by the District and the City of San Diego to represent each client on different aspects of the proposed expansion. She stated that under the Rules of Professional Conduct, Orrick could not represent both clients without the parties' mutual consent. Ms. Brewer stated that on November 28, 2011 the City of San Diego consented to Orrick continuing to represent both parties, and she requested the Board consider taking the same action

prior to the staff presentation so that Orrick could provide assistance, should the need arise. She offered that Orrick was representing the City of San Diego primarily in relation to the formation of the Convention Center Facilities District (CCFD); conversely, Orrick had long been the District's bond counsel and financial advisor on issues related to the Convention Center. She concluded that while they are different aspects of the same project, they are unrelated and neither the Port Attorney's Office nor the City of San Diego, City Attorney's Office sees any detriment to either party in having Orrick continue to represent both parties. She requested the Board consider the staff recommendation and consent to the waiver.

Chairman Peters stated that there was no public testimony regarding that matter and stated that if the Board desired they could convene in closed session regarding the matter.

Commissioner Nelson offered a motion to accept the staff recommendation and consent to the waiver. Commissioner Valderrama seconded the motion.

On motion of Commissioner Nelson, seconded by Commissioner Valderrama, the Board adopted the staff recommendation consenting to the waiver allowing the firm of Orrick, Herrington & Sutcliffe LLP to represent the District and the City of San Diego regarding the San Diego Convention Center Phase 3 Expansion, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

CLOSED SESSION

The closed session matter was publicly noticed and no Closed Session was required.

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property:	Approximately 5 Acres of Tideland Area Leased to the San Diego Convention Center Corporation along Convention Way, all Bayward of the San Diego Convention Center

Negotiating Parties: Charles Black, City of San Diego; Karen Weymann, Shaun Sumner, Nicholas Markos, Randa Coniglio, Karen Porteous, Jeffrey McEntee, SDUPD

Under Negotiations: Price and Terms

ACTION AGENDA

PRESENTATION REGARDING THE CITY OF SAN DIEGO'S REQUEST FOR A \$3 MILLION ANNUAL PORT DISTRICT CONTRIBUTION TOWARDS FINANCING THE PROPOSED CONVENTION CENTER EXPANSION PROJECT AND RESOLUTION DIRECTING STAFF TO NEGOTIATE DEFINITIVE AGREEMENTS FOR THE PORT DISTRICT'S CONTRIBUTION WITH THE CITY OF SAN DIEGO, WITH CONDITIONS.

Agenda Item 4. Chairman Peters recognized Jerry Sanders, Mayor, City of San Diego, who addressed the Board regarding the efforts to expand the San Diego Convention Center and discussed the regional economic benefits of the proposal. He thanked the Board for convening the special meeting and requested consideration of the District's contribution towards financing the Proposed Convention Center Expansion Project.

Randa Coniglio, Executive Vice President of Operations, addressed the Board with a presentation regarding the proposed financial participation by the District in the San Diego Convention Center Phase 3 Expansion. Ms. Coniglio discussed the November 8, 2011 request made by Mayor Sanders on behalf of the City of San Diego. She then provided a brief history of the Convention Center and the District's involvement in its development. She also provided an overview regarding the 1994 Memorandum of Understanding (MOU) with the Convention Center, the District and the City of San Diego for the Convention Center Phase 2 Expansion and the 1995 MOU to fund capital projects on the tidelands entered into with the member cities of Chula Vista, Coronado, Imperial Beach and National City. Ms. Coniglio discussed the preservation of the District's existing entitlements for a 250-room Spinnaker hotel rooms as provided in the current Port Master Plan in the process of the entitling of the Convention Center Phase 3 expansion. She continued her portion of the presentation by offering information on the amended restated and combined Convention Center lease, the formation of the Mayor's Special Task Force to consider the feasibility and economic impact of the proposed expansion; and the proposed financing and funding mechanisms for the

expansion.

Ms. Coniglio turned the presentation over to Celia Brewer, Interim Port Attorney.

Ms. Brewer introduced the District's financial team for the project: Kathleen Leak, Orrick Harrington Sutcliffe, the District's financial counsel on the Convention Center since 1995, and Warren Diven from Best, Best and Krieger, an industry leader in land-secured financing such as the CCFD proposed by the City of San Diego. Ms. Brewer addressed the Board with a presentation regarding the formation of the CCFD; the Joint Community Facilities Agreement (JCFA); offered clarification of impacts to the District and recourses or remedies in the event of potential delinquencies in the special tax liens. She offered that any actions taken by the District would ultimately need to be consistent with the requirements of the California State Lands Commission. She reiterated information included in the staff report regarding California Environmental Quality Act (CEQA). She stated it was very important that this Board and the public understand that regardless of the direction given today regarding financial negotiations, the Port District has reserved its discretion to approve or disapprove all actions related to the proposed Convention Center expansion and retains full discretion with respect to the environmental review required by CEQA. She explained that the District is the lead agency for CEQA purposes on the Convention Center expansion project, and was in the process of preparing a draft Environmental Impact Report (EIR). She stated the District retains its full discretion in consideration of that draft EIR. Ms. Brewer announced that Mike Hogan, the District's CEQA Counsel, was also available to answer any questions. She turned the presentation over to Nick Markos, Senior Asset Manager, Real Estate Department.

Mr. Markos addressed the Board and provided an overview of the economic benefits of the expansion project and its potential impact on District revenues as demonstrated by the staff analysis. He explained that the consultant's studies attached to the staff report estimate that the Convention Center expansion alone will not produce annual revenues in excess of \$3 million until 2017 or 2018. Mr. Markos concluded by stating that the District's ability to provide financial support is entirely dependent upon the incremental new revenues from the Convention Center expansion and the Hilton Hotel expansion projects. He offered that staff concluded that the project was a good financial deal for the District, but only after the expansion was open and had stabilized. Mr. Markos stated that staff's analysis is consistent with the consultants' recommendations with the additional conditions that Ms. Coniglio would provide later in the staff presentation. He stated that any District financial support prior to reaching stabilization may have fiscal impacts and turned the presentation over to Jeff McEntee, CFO/Treasurer to address them.

Mr. McEntee addressed the Board and stated that on paper, the project was a good deal for the District. On the low end of the revenue range, the project revenues would cover the District's support payments. On the high end, the revenues would provide a positive return, which could be used for other District purposes. He continued, by offering that the timing of the support payments would significantly effect the District's cash flow and funding of major maintenance projects. Mr. McEntee discussed the implications of using the District's cash reserves. He suggested that the optimal solution, for the District, was to time the support payments to coincide with the incremental revenues generated by the Convention Center and the Hilton Hotel expansions. He turned the presentation back over to Ms. Coniglio.

Ms. Coniglio addressed the Board and explained that based upon the staff assessment there was a case for moving forward with the City of San Diego in further discussion and further study of what she characterized could be a very good opportunity for the District, the City and the region. She discussed the importance of coordinating the price, the timing and financing structure. She offered there were a number of conditions that the Board could consider attaching to any sort of preliminary or conceptual approval of the City's request for a District contribution. She stated that the first staff recommendation was that the Board conditionally approves a funding contribution of no more than \$3 million per year for no longer than 20 years, subject to any or all of the conditions as directed by the Board. She offered the approval could be with any of the following conditions: certification of an EIR and an approved Port Master Plan amendment; the City's continued support for the hotel expansion as it moves through the entitlement process; the timing and amount of support payments to better align with the realization of new revenues in a way that works for the District and for the City; terms to protect the District's interests in ground leases, particularly under the formation of the CCFD; terms to protect the District's credit rating; provisions that relate to expansion cost management; maintenance costs; and the timing of completion and quality of the public spaces to be built in conjunction with the expansion. She also offered that there could be an opportunity to enhance the District's partnership with the City of San Diego and then request that in return for any sort of funding contribution, the City of San Diego would support the agency on other projects important to the District. Regarding the proposed expansion Ms. Coniglio provided an update regarding the related action taken by the City of National City; she reported that a letter was received from Mayor Jim Janney of Imperial Beach, and that a resolution was expected from the City of Chula Vista. She stated that the member cities referenced supporting the expansion in consideration of developing an MOU similar to the one adopted in 1995. Based upon of the District's current financial forecast she cautioned the consideration of the development of an MOU as a source of funding and discussed

several alternatives to assist the cities with developing revenue-generating projects and quality of life projects that would be considered in a balanced and strategic manner. She concluded the presentation and restated the staff recommendation that the Board direct staff to negotiate terms and conditions of a support agreement with the City of San Diego. The District's financial participation would not exceed \$3 million a year for no longer than 20 years with conditions; and simultaneously developing alternatives to address balancing benefits among all of the District's member cities. (A copy of the staff report and the presentation is on file in the Office of the District Clerk.)

The following members of the public addressed with Board with varying opinions regarding the proposal: Mayor Ron Morrison, City of National City; Don Wood; Ian Trowbridge; Graham Forbes, UNITE HERE LOCAL 30; Cindy Gompper-Graves, South County Economic Development Council; and Sharon Cloward, Port Tenants Association.

Chairman Peters requested staff address any of the matters raised during the public comment. Shaun Sumner, Area Real Estate Manager, Real Estate Department addressed Mr. Wood's remarks regarding the draft Environmental Impact Report (EIR) and stated staff planned to release it in early 2012. Regarding Mr. Trowbridge's questions related to the MOU between the Navy Broadway Complex Coalition (Coalition) and the District Mr. Sumner explained the language requires the District to continue to look for opportunities to acquire the property at 1220 Pacific Highway, but it does not pre-commit the Board to set aside any funding other than what is required to complete the setback-park; which would be a subject of discussion during the 2012 Capital Improvement Program (CIP) workshop. Mr. Sumner stated that Cory Briggs, an attorney representing the Coalition, had been provided the same information.

Commissioner discussion ensued. Commissioner Nelson first addressed the request from Mr. Trowbridge that the Commissioner recuse himself from the discussion based upon his previous service on the San Diego Convention Center Board of Directors. Commissioner Nelson explained that he had no economic interest in the Convention Center. He stated that in the very first closed session that he attended as a member of the Board of Port Commissioners, the Convention Center was being discussed and he recused himself. He went on to state that he left the room and did not participate in the discussion not because of a legal reason, but he felt he needed a "cooling off period" of a month to really understand his job as a Port Commissioner which he characterized as one very different than his job as a member of the Convention Center Corporation Board and as its Chair. He added that he believed his prior experience was beneficial to the District, then briefly discussed the benefits of the proposed convention and hotel facilities in Chula Vista, and offered clarification regarding Mr. Trowbridge's observations of the data showing the hotel room night

occupancy levels. Commissioner Nelson thanked staff for their presentation and acknowledged Ms. Coniglio's remarks that the matter be considered with an open mind and in a way that meet the needs of the entire community. He discussed the District's funding and subsequent construction of the first phase of the Convention Center. He then discussed the development and subsequent approval of the MOU in 1995 in conjunction with funding the expansion of the Convention Center. Commissioner Nelson requested clarification from Mr. Markos regarding the Economic Planning Systems (EPS) report attached to the staff report and the data regarding the annual revenue received by the District from business conducted at the Convention Center. Michael Nimon, District Consultant, EPS, clarified the baseline data referenced in table five referred to the scenario where the Convention Center is expanded as well as the Hilton Hotel expansion. Commissioner Nelson requested clarification as to where in the report it showed how much the District currently receives in convention business related revenues from hotels or other tidelands properties. Mr. Nimon stated that they had not explicitly evaluated the current operation and their analysis was predominantly geared towards evaluating the net increases. Mr. McEntee offered that while such data regarding revenues from hotels and adjacent properties was not immediately available he could provide data regarding parking revenues. Commissioner Nelson continued by stating his belief that by extrapolating data from the number of convention attendees, it could be shown that the Convention Center generates net revenue to the District. He offered that based on the District's current financial position, an investment that produces net cash flow with no non-essential encumbrances should be moved forward. Acknowledging the future fiscal needs of the District, whether related to planning for the impacts of sea level rise or the future plans for Pond 20, he encouraged his fellow Commissioners to consider the Phase 3 Expansion funding question solely on the basis of whether or not the project makes sense for the District as an investment and/or for business operations. Commissioner Nelson expressed his support of the request from the City based on a number of conditions that would be developed going forward and offered a motion in support of the staff recommendation. Chairman Peters seconded the motion for discussion.

Commissioner Valderrama requested clarification regarding the motion in relationship to the staff recommendation. He expressed his support for the expansion project and offered that the Convention Center had been, and would continue to be, an economic engine for the region. He discussed the matter of timing and that the project is of a benefit or a "win-win-win" for all parties including the Convention Center, the City of San Diego, the District tenants, and the member cities. He offered that staff be directed to meet with the respective parties and form a recommendation to ensure a "win" for the region and the member cities. He stated that moving forward with the

matter allows the staff to work with the City of San Diego and demonstrates support for the project. He expressed concern regarding authorizing funding for a project without the necessary resources identified and acknowledged that funding for the project was predicated on new monies that would be generated from the respective projects and he saw the upside in the long term. Commissioner Valderrama reiterated his support for the motion based upon the directing of staff to work with all of the parties to ensure a "win-win-win" outcome.

Commissioner Burdick requested clarification from Mr. Sumner regarding the community members' concern regarding the District's commitment to the Coalition. He confirmed her statement that in the MOU signed with the Coalition in November 2010, regarding acquisition of 1220 Pacific Highway, a commitment to make a good faith effort to try to acquire 1220 Pacific Highway was made. She continued by stating that she thought their concern was now the District proposed to put money towards another development project before acquiring the property at 1220 Pacific Highway. She requested clarification as to whether it was staff's belief that by moving forward with the Convention Center Phase 3 funding, or, if monies were committed to some other development project the District was going to undermine its ability to act in good faith to acquire 1220 Pacific Highway. Mr. Sumner acknowledged the question and stated his understanding that the MOU was structured in such that the Port was obligated to continue to do its best to try to acquire the property. He continued stating that staff made efforts to that end in the intervening months. He stated the District requested the City of San Diego Redevelopment Agency fund the acquisition, which they declined. He stated staff continues to work with the Navy to restructure the terms of that deal in order to make it more economical for the District to acquire the property. Mr. Sumner stated the existing Lane Field developer had the option to secure the funding necessary to acquire the property and develop it. Thus, he stated staff was continuing to actively pursue the acquisition of 1220 Pacific Highway. Mr. Sumner stated, should the District acquire the property it has an obligation to set aside funding to complete the setback-park on the site and staff proposed to do that during the upcoming CIP process in early 2012. He offered that all of those efforts considered together demonstrated that the District continues to make an effort to acquire that property. Mr. Sumner stated the District reserves discretion in the MOU for the Board to continue to make its decisions as to how resources are allocated.

Ms. Brewer added that during negotiations of that MOU with the Coalition, the District was very clear that the agency did not have the funds to commit. She added that while in a very similar position, but unlike the project under consideration, the setback-park does not generate a cash flow that would be sufficient to finance that acquisition. She concluded that staff continues to work on the acquisition.

Commissioner Burdick requested and received confirmation from Ms. Brewer that she understood the Parol Evidence Rule prohibits the use of prior negotiations to interpret the MOU. Ms. Brewer stated that she was merely alluding to the fact that the situations were very similar when the District entered into that MOU with the coalition.

Commissioner Burdick requested clarification regarding the timing of the support payments and whether the City represented to staff that, they will be impeded in their ability to secure bonds if the District delays those payments until 2018. Ms. Coniglio stated the City had in fact objected to the District's position that it would begin making payments later than 2014-2015. She further explained that the District had engaged in some conversations with agents of the City regarding looking at the matter with some creativity and consider that as the agency moves through the project it assess the policy regarding the use of reserve funds and consider the five-year payback provision. She offered that it was her belief that the situation would continue to evolve and further conversation was needed. Commissioner Burdick responded that considering the use of the reserve fund and five-year payback period could conceivably allow the District some money to advance toward the project prior to 2018 and be consistent with the reserve policy. She restated that she was generally opposed to "dipping into" the reserve for purposes of a capital project. She stated her belief that the reserves are there for emergency and operating revenues for the most part and it is important that the Board view any "dips into the reserves" conservatively.

Commissioner Burdick continued by requesting clarification regarding the California State Lands Commission, the proposed CCFD and whether the implementation of an Infrastructure Improvement District (IID) or a possible equivalent, had been discussed in similar matters that related to the San Francisco Tidelands. Ms. Brewer stated State Lands staff did not indicate what the approval process for the San Francisco Tidelands was or if they had an IID. She continued by stating that State Lands staff had reviewed an issue similar to the CCFD and the type of lien that would be placed on a leasehold interest which was the reason she cited it in the staff report. In light of the time period to prepare for the Special Meeting, Ms. Brewer stated staff was unable to get State Lands staff to provide additional information. However, District staff continues to work with them on the project and would provide the Board additional information as quickly as possible. Commissioner Burdick stated she understood, as part of staff's recommendation that the motion pending was subject to the State Lands Commission approval to move forward. She spoke about the judicial action and issues regarding the enforcement and remedy mechanisms associated with the liens on District tenants' leaseholds. Regarding the case of a recalcitrant tenant who did not pay the CCFD special tax and the timing in which the City could begin foreclosure proceedings, and concurrently the District would examine the lease and

begin default proceeding, she requested staff clarify how they viewed what leasehold interest the City would have to foreclose upon and how staff anticipated that those two remedies would work together. Ms. Brewer re-introduced Warren Diven, public finance partner with Best Best and Krieger to address the matter. He offered, as a Charter City, the City of San Diego ordinance states that if the payment of the special taxes are delinquent on a particular hotel property, and the collection efforts under the provisions provided in the Transient Occupancy Tax ordinance is unsuccessful in getting those back taxes current, then the City Treasurer has the ability to place the special taxes on the tax roll. He stated if they continue to be delinquent after having been placed on the tax roll, then the City can exercise its right under the Mello-Roos Act and the Charter City Ordinance to initiate judicial foreclosure proceedings against the possessory interest held by the delinquent hotel operator. Commissioner Burdick stated and Mr. Diven confirmed, in the case under discussion, it would be against the leasehold interest. She requested Mr. Diven offer his opinion regarding what leasehold interest exists if the District begins a default proceeding for failure to pay the same tax. He offered the City would be foreclosing against whatever interest might exist, subject to the default proceedings taken by the District itself. He continued that it was staff's hope to be able to work out a mechanism with the City that would enable the District to get prior notification of any delinquencies in the payment of the special taxes so that there would be an opportunity for the agency to act affirmatively before a default situation arises. Commissioner Burdick stated she would like to see some cooperative language concerning the matter in the Joint Convention Facilities Agreement and offered that the language address timing of any foreclosure proceedings to ensure both parties' interests were best protected. Mr. Diven acknowledged that while they had not seen any specific language, it was very common in those kinds of covenants that the issuer, the City, send notices to the property owners letting them know that in fact they are delinquent, that they do not have the five-year grace period for delinquent property taxes, and foreclosure proceedings would be initiated. Commissioner Burdick requested and received clarification as to whether it may be possible, with respect to the judicial validation action regarding the City's ability to foreclose on Port Tidelands property, to establish some kind of mechanism that clarifies the District's rights in foreclosure and establishing the City's foreclosure mechanism on tideland leaseholds. Mr. Diven stated the District could work with the City in framing that validation action and request the court to specifically opine as to what the foreclosure remedy is that the City has and help frame that in terms of the judgment that might be entered by the court. Commissioner Burdick offered that it would be helpful to address the matter to ensure the District has a validly enforceable contract.

Commissioner Burdick then discussed the gap financing, and the analysis provided and reiterated her concern that the District not be at risk to fill the gap and the District's participation under consideration was not to exceed \$3 million a year for up to 20 years. Her final questions regarded CEQA, and she restated her understanding that the Board reserves discretion to approve or disapprove the project. She expressed her concern that if by conditionally committing, subject to all the caveats, \$3 million a year for 20 years, it could be argued that the Board had predetermined the outcome so as to preclude the objective CEQA review required under the law. Ms. Brewer stated that it was staff's intention to construct the meeting and the Commissioner's decision-making process such that they would have the future use of the Board's discretion and then requested that Mike Hogan, District Special CEQA counsel address the concern. Mr. Hogan offered that within the last several years there was case law guidance from the California Supreme Court that dealt with a conceptually similar situation in the City of Los Angeles. Mr. Hogan offered that the matter was addressed in the staff report and while it is a very complicated real estate and development transaction, it will continue to require a number of preliminary agreements; none of those agreements can be phrased as a binding commitment. He continued by stating that any financing agreement the District might reach with the City of San Diego with respect to participating in the funding, before the EIR is certified, can only be a conditional agreement and the agreement must be based on the following steps: 1) the Board reserves full discretion to decide not to proceed with the Convention Center expansion; 2) the courts would look beyond the letter of the agency's agreement, such as at the statements made in interviews to media, and whether statements were offered by decision makers, notwithstanding the language of an agreement that would be considered evidence in the overall picture. Mr. Hogan offered that the Board members keep an open mind, reserve their discretion, consider their express language and not make a binding commitment with respect to anything until after they considered and then approved the environmental review. Commissioner Burdick acknowledged Mr. Hogan's counsel regarding CEQA. She expressed her concern with developing the alternatives to address balancing benefits among the member cities; she recognized how staff discussed the matter and acknowledged Commissioner Valderrama's support for the project. She also acknowledged that two member cities had taken action requesting a formal MOU and a third one may be considering something similar. She stated, for the record, her belief that MOUs were bad policy for the member cities and bad policy for the District. She offered that for the District an MOU in essence requires the agency to earmark dollars for projects that do not yet exist. She continued by stating her second reason was an MOU limits the District's discretion over its own funds and at the present time the most discretion and flexibility is needed. Commissioner Burdick offered her third reason for opposing MOUs was they strongly violate the CIP

policy that was adopted earlier in the year. She continued by stating that MOUs were wrong for the member cities "because the only thing worse than bad policy is bad policy arbitrarily applied." She discussed the challenges inherent when considering the return on investment (ROI) for all projects when a consideration of a development project arises and then providing dollar-for-dollar reciprocal benefits in the form of an MOU to the other member cities that may not directly benefit from that project. She offered that it was her belief that an MOU maybe attached to an ROI project where revenues would be generated, but then not to a park project where no revenue would be generated. She did not see the need to survey public amenities throughout the tidelands and offered that activity was part of the CIP process. She did not support developing a process to spend specific net gains or surpluses, from the expansion, on projects located only in specific member cities for the same reasons she did not think MOUs were good policy. She stated that she did not understand why any alternatives needed to be addressed regarding how to balance the benefits among the member cities when the District adopted a new policy that sets out a public process and encourages the member cities to identify specific projects. She offered her support of the motion, restated that a process to balance the benefits among the member cities existed and thanked her colleagues for their consideration regarding developing alternatives to address balancing the benefits in lieu of an MOU.

Commissioner Malcolm began his remark by stating he was fully in support of a Convention Center expansion for the reasons already stated. He acknowledged the need for addressing timing and the return on the investment. He discussed the data in the EPS report and PFK reports attached to the staff report and remarked that the data appeared to be compiled rather quickly. He expressed concern that there was only one page regarding sensitivity analysis. He offered that, in his opinion, the data did not consider market fluctuations, market changes, or scenarios if the projections of a 20 to 27 percent growth in Convention Center business did not occur. The report did not offer a range of conclusions based on best and worse case scenarios. He stated his desire to have more detail regarding possible outcomes. Commissioner Malcolm continued by offering that in concept he believed the sum of \$3 million was fair and the expansion would benefit the District, tenants, region and stakeholders. He discussed the data and projections made in the AECOM study. He requested that as the project moves forward, actual users of the expanded Convention Center facilities be identified and commitments secured or, alternatively letters of intent from meeting planners could be received. He stated that such commitments would lend support to the cash flow assumptions and the growth figures projected. Nick Markos offered that representatives from EPS were present to address the Commissioner's concerns regarding the report and clarified that the initial estimates and assumptions were based on more recent

historical figures with the District's hotels and revenue performance and reflected the recent downturn in the economy. Commissioner Malcolm acknowledged that the reports looked at historical figures to build their model but stated the need to be forward-looking. He requested the development of a sensitivity analysis also be based on current market conditions as well as future projections. Ms. Coniglio acknowledged the Commissioner's request and stated staff would request an additional study along those lines as the project moves forward.

Regarding the development of actual convention business and based upon his past experience, Commissioner Nelson offered remarks regarding the convention market on the West Coast, the competition, existing business, and the market research indicating local market growth. He offered that in his view, that requesting a convention event planner to book their event in advance of the facility being operational was unlikely because most events were planned five to six years in advance. Commissioner Nelson concluded his remarks stating that he personally found the market data compelling enough to support consideration of an expansion to the facility.

Commissioner Malcolm acknowledged Commissioner Nelson's comments and reiterated his request that one could not get a letter of intent or some more formal expression of interest based upon putting together a \$60 million financing plan by the City.

Chairman Peters offered that the matter be directed to staff for action and included into the conditions under consideration. Commissioner Nelson concurred with the request as it related to his original motion. Commissioner Malcolm also requested and received concurrence that an expanded sensitivity analysis would be addressed. He requested clarification from Mr. Markos regarding the prospect for expanding the Hilton Hotel and a status update from One Park Boulevard LLC, the District's lessee. David Sloan, Sunstone Hotels, stated that as a 75% joint venture partner with the Hilton they were committed to the project and near the end of their feasibility analysis. He offered the biggest contingency they conveyed to the District and to the City, was that they not be bound to building the project absent a reasonable financing contingency. Mr. Sloan stated that moving forward was dependent upon having access to capital below a certain cost threshold. Commissioner Malcolm acknowledged Mr. Sloan's statements and the public expression of continued interest as well as their contingencies.

Commissioner Malcolm addressed the matter of financing the District's portion of the project prior to revenue stabilization and offered that while not requiring an immediate solution before his consideration of the approval of a conceptual commitment, he stated the matter would require a resolution. He requested and

received confirmation from Ms. Brewer that with regard to the Mello-Roos Community Facilities Act and the approval of a JCFA would be considered at a future meeting. Commissioner Malcolm requested clarification regarding the special tax, foreclosure or whether placing a lien on a property would have any effect on the District's future bonding capacity. Mr. McEntee requested that Bob Gamble, the District's financial advisor with Public Financial Management respond. Mr. Gamble stated he believed the answer was no and continued that it would not effect the future bonding capacity because the expansion bond issue would be supported by the CFD which would only be supported by special tax revenues and not from the District's revenues.

Commissioner Malcolm stated his appreciation of Commissioner Burdick's comments, the City of National City's resolution, Mayor Jim Janney's letter on behalf of the City of Imperial Beach and acknowledged that Chula Vista was considering making a resolution. He stated he understood Commissioner's Burdick's comments with respect to the MOU and that it is arbitrary to put a box around future money. He offered remarks regarding the benefits to the member city communities resulting from the projects built with the funds designated in the 1995 MOU. He offered that a number of the existing projects would not have been supported based upon their ROI and likely would not be supported under the new CIP. He offered that it would be fair to look at excess revenue from the expansion, to the extent it exists, and consider that revenue as a potential source of future CIP funding. He stated that while he understood that within the new CIP policy there was way to rank projects but there was not a methodology for funding. He concluded by restating that he thought it was fair to look at excess revenue coming from the project as one source of funding those CIP projects that are important to the South Bay cities.

Commissioner Smith thanked Mayor Sanders and Mayor Morrison for giving time in their schedule, as a demonstration their commitment to the project. He stated that he liked the project and it was a good thing for the economy and for the City of San Diego. He discussed the total sum, \$60 million, under consideration and acknowledged staff for their efforts to bring the matter forward for the Board's consideration in such short order. He stated that there were four major areas of issue: legal, financial, business and the joint agreement, which would have been called an MOU in the past. He offered that the legal matters were addressed and concurred with Commissioner Malcolm regarding the business issues, that there was a need for more sensitivity analyses. Focusing his remarks on financial issues, he expressed concern that during a time of declining budgets and with no new sources of revenue coming on line and the planned CIP needs demand on cash flow, he did not support taking funds from cash reserves. In considering the payback calculations, he stated that he found the five years to be very optimistic. Based upon the previous Convention Center expansion,

Commissioner Smith cautioned the Board that in the time required negotiating and constructing the agreement, the San Diego City's leadership may not see things in the same way. He acknowledged Commissioner Burdick's earlier queries regarding the timeframe in which the City expects the District payment schedule to begin. He requested clarification regarding the staff recommendation and requested that Chairman Peters consider taking a brief recess for staff to type up exactly what the Board would be considering prior to the vote. Commissioner Smith acknowledged that he wanted to move forward. Referencing the proposed expansion project, he addressed the matter of accountability, leadership and adherence to schedules to Wayne Darbeau, Executive Director. He reiterated his concern that the matter move forward in an expedient way and cautioned that after Mayor Sanders leaves office they could not say what would happen regarding the matter.

Commissioner Moore stated she was in support of the expansion of the Convention Center and that she understood the need. She also stated she was supportive of moving forward with discussions with the City of San Diego, subject to the conditions that had been offered by the staff and the other provisions listed in their recommendation. She stated that one of the big issues was with the timing of the payments and expressed her concern about payments being made before the revenues were received. She stated her concern with utilizing reserves and noted the importance of adhering to the reserve policy given the uncertainty of the economy. She stated her concern about making payments before a project is approved or before the CFD was established. She concurred with Commissioner Malcolm's comments and expressed the need for data showing a worse case scenario in the analysis if the District does not receive the projected \$6 million in revenue. She stated she wished to hear from the Coalition, as well as from the member cities, to make sure that the District lives up to its current commitments. The outreach efforts would also ensure there was an understanding of the need for the District to move forward on other projects or investment opportunities. She stated she thought there was a feeling that the Board needs to make sure that the District's commitments that were made to other member cities and to other projects were actually lived up to in the future and that the matter under consideration did not jeopardize that. Commissioner Moore requested that her fellow Commissioners consider the matter to make sure that the District remains financially healthy. Regarding the last item, developing alternatives, she concurred that while vague it gives the District room to have participation with and a dialogue among the member cities. Concurring with Commissioner Smith and in relationship to the limited operating fund resources, she offered that the member cities needs should also be considered when assessing spending \$60 million in the future. Regarding the concept of allocating extra revenues from the expansion, she stated she did not think

that was a bad thing. She was not necessarily saying that an MOU was the solution but acknowledged developing alternatives to address balancing the benefits among member cities. She concluded by stating it was her belief of the importance of keeping all of the member cities part of the process.

Chairman Peters stated his belief that it was the Board's obligation to draft the motion and then turn it over to staff. He requested confirmation from Commissioner Nelson that his motion, as it was offered, was based on the text shown on the slide with the two additions made for Commissioner Malcolm. Chairman Peters stated that additional sensitivity analysis was requested to determine any effects of the economy and scenarios if the revenue projections were not be achieved. Secondly, staff would request information from the Convention Center staff regarding commitments for future convention business in the coming years. Chairman Peters acknowledged Commissioner Smith's remarks regarding the form of the motion and requested confirmation that the Board understood their action was a conditional approval. Chairman Peters requested and received confirmation from Commissioner Nelson that it was his intent of the motion that the District participation not exceed \$3 million per year for up to 20 years with conditions listed in the staff presentation.

Commissioner Nelson called for a point of order, and requested confirmation that Commissioner Valderrama seconded the motion. Chairman Peters acknowledged Commissioner Valderrama and stated that he initially seconded the motion for discussion. He acknowledged staff for their work and thanked them for their business-like approach to a complex and sensitive matter. He stated that there was a lot of work left to be done and reminded everyone who said "it was the right thing to do" that the project remains subject to environmental review before completion. He acknowledged the comments regarding caring for the District, timing the funding and consideration of use of the reserves. Regarding the balancing of benefits among member cities, he stated it was the Board's intent to determine a way to do it. He explained that some projects were completed for fiscal benefits, some were completed to enhance a community, and they were two different matters. He discussed the return on investment of the project and stated his belief that the Board had committed to providing economic opportunities and recreational opportunities throughout the whole tidelands. Chairman Peters stated that he thought the District should be accountable for equity and reiterated the financial benefit of the investment. He expressed his concern regarding the MOU process and that the CIP process was the right way to be clear and transparent to allow stakeholders the opportunity for an enhanced quality of life throughout the tidelands. He acknowledged staff's recommendation regarding being "open to the discussion" regarding seeking alternatives when the Board considers a balance the benefits among the member cities. While acknowledging the matter of

equity among the member cities, he expressed his support for the expansion project and stated there was an ROI.

Commissioner Nelson first stated that speaking for himself, as one of three San Diego Commissioners he had received no requests regarding the matter from his appointing authority who is the San Diego City Council. Secondly, as the Board considered the pro forma, and upon a quick examination of the facts, the San Diego Convention Center had exceeded its sales expectations and its revenue expectations in 19 out of 20 years. Third, regarding the balancing of alternatives, he acknowledged that while that matter required resolution; he acknowledged Commissioner Smith's comment regarding the continuity of City management and encouraged wrapping the project up very rapidly. Regarding the final condition proposed and the stating the City's support for District projects with regional benefits, he requested the matter be conveyed to Mayor Sanders and that the projects were to be inclusive and not exclusive. He stated that he looked for staff to talk to the City about several projects in the jurisdiction of the City of San Diego and the District, that were stalled and impeding the ability to get infrastructure projects that are beneficial to the City and the entire region completed. Regarding balancing the alternatives, he clarified that when he made the motion it was not about balancing the District's various obligations as the Unified Port of San Diego, nor was it not only based on ROI, but it was also based on the second category of development projects completed to make great communities. While referring to balance, he stated that he was not implying that some kind of a numeric formula be developed and he was personally opposed to any kind of a numeric formula and acknowledged the remarks opposed to an MOU. He acknowledged the need for flexibility, transparency, reliability and that the process developed would be consistent with the CIP process and the maintenance of all our reserves pursuant to Board Policy No. 117.

Chairman Peters clarified that the motion intended to have any discussion regarding balancing benefits, MOUs, the CIP and use of reserve funds be conducted at a future meeting. Commissioner Nelson concurred with the Chairman's assessment.

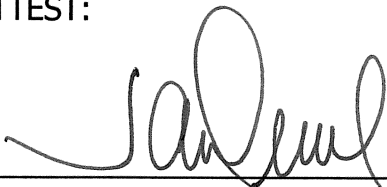
On motion of Commissioner Nelson, seconded by Commissioner Valderrama, the Board adopted **Resolution 2011-161**, directing staff to negotiate Definitive Agreements for the San Diego Unified Port District's contribution to the proposed San Diego Convention Center Phase 3 Expansion with conditions, by the following vote: Yeas-Burdick, Malcolm, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Chairman Peters thanked the members of the public who were in attendance and his colleagues for making time to consider such an important issue at a special meeting and adjourned the meeting.

A handwritten signature in cursive script, appearing to read "A Moore", written over a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "S. [unclear]", written over a horizontal line.

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 10:02 a.m., Tuesday, December 13, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Bennett, Brewer and Deuel

Absent: No Commissioners absent.

Excused: Commissioner Malcolm was excused for personal business.

PUBLIC COMMUNICATIONS

Agenda Item 2. None.

CLOSED SESSION

Celia Brewer, Interim Port Attorney, announced the closed session agenda as follows:

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 872,043 square feet of land located at Tenth Avenue Marine Terminal, San Diego.

Negotiating Parties: Stuart Jablon, Vice President Operations, Dole Fresh Fruit Company;
Randa J. Coniglio, Karen Weymann, Kristine A. Zortman,
Joel Valenzuela, Karen Porteous, Jeffrey McEntee, SDUPD

Under Negotiations: Price and Terms

Agenda Item 4.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: Old Police Headquarters located at the southeast corner of Pacific Highway and Harbor Drive, and Seaport Village, 849 W. Harbor Drive, San Diego

Negotiating Parties: Alex Liftis, Senior Vice President, Seaport Village Operating Co., LLC; by its Managing Member, Terramar Retail Centers, LLC;
Karen Weymann, Shaun Sumner, Randa J. Coniglio, Karen Porteous, Jeffrey McEntee – SDUPD

Under Negotiation: Price and Terms

Agenda Item 5.

PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:

APPOINTMENT OF THE PORT ATTORNEY

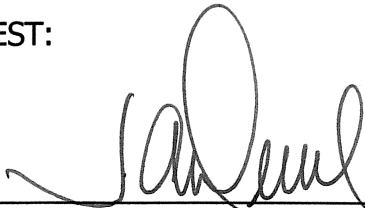
Government Code Section 54957

There was no formal or reportable action as to any closed session items, pursuant to Government Code Section 54950 et seq, to report from the closed session; whereupon, Chairman Peters adjourned the meeting.

A handwritten signature in cursive script, appearing to read "A Moore", positioned above a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "S. [unclear]", positioned above a horizontal line.

Clerk of the San Diego Unified Port District

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Peters at 1:03 p.m., Tuesday, December 13, 2011, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Burdick, Moore, Nelson, Peters, Smith, and Valderrama.

OFFICERS: Brewer, Darbeau, Deuel, McEntee and Stup

Absent: No Commissioners absent.

Excused: Commissioner Malcolm excused for personal business.

PLEDGE OF ALLEGIANCE

Agenda Item 2. Commissioner Moore led the Pledge of Allegiance.

APPROVAL OF MINUTES

Agenda Item 3. On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board approved the minutes for the special meetings of November 2, 2011 and November 8, 2011 and the regular meeting of November 8, 2011, by the following vote: Yeas-Burdick, Nelson, Moore, Peters, Smith and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

PUBLIC COMMUNICATIONS

Agenda Item 4. Members of the public addressed the Board with non-agenda public comments. Bill Swank requested consideration of placing a statue of Ted Williams at the Lane Field site. Sharon Cloward, Sailing Events Association San Diego, ceded her time to Bob Vincent. Bob Vincent, Sailing Events Association San Diego, addressed the Board with a presentation regarding the volunteer efforts employed to build green-

solution dock systems for the America's Cup World Series Sailing Event. Miriam E. Clark, Activist San Diego Board Member, spoke in support of Occupation San Diego and the efforts to close California Ports for a day on December 12, 2011. Bridgette Browning, UNITE HERE, spoke on behalf of the Kona Kai Resort workers and advocated for worker job security after a new owner acquires the property. Via Spanish to English translation by Ms. Browning, George Lagos, UNITE HERE, addressed the Board as a Kona Kai Resort worker who also advocated for hotel worker job security and employee retention. Antonio Villalpando, UNITE HERE, on behalf of the Kona Kai Resort workers and Lupe Ayalla, UNITE HERE, on behalf of the Kona Kai Resort workers had submitted speaker slips but did not speak. Chairman Peters stated the matter was not noticed on the agenda and the Board could not address the matter. However, he offered that the matter would be referred to staff and the Port Attorney for evaluation. Shelley Griffin, Bay Club and Shelter Island Yacht Basin Master Leaseholders Group, addressed the Board regarding new study data related to the Total Maximum Daily Load (TMDL) data collection, TMDL compliance, and requested the Board re-evaluate its position regarding Senate Bill 623. Kayla Race, Environmental Health Coalition, stated she requested to speak on consent agenda item 7. Peter Brown addressed the Commissioners, then advocated for the Board of Port Commissioners to be an elected body, and requested an extension of the public comment period to accommodate representatives of the Occupy San Diego movement who had not yet arrived. Chairman Peters acknowledged the extension request and offered that the public comment period could be extended near the end of the meeting if it was necessary.

CONSENT AGENDA

Chairman Peters requested that Timothy Deuel, District Clerk, announce any suggested docket changes. Mr. Deuel announced the proposed changes to the agenda as follows: **Consent Agenda Item 9**, Resolution Selecting and Authorizing a Purchase Agreement with Haaker Equipment Company of La Verne, California for the purchase of one (1) mechanical street sweeper in the amount of \$220,149.15; staff requests this item be continued to a future Board meeting; **Consent Agenda Item 10**, Resolution Selecting and Authorizing a Purchase Agreement with Altec Industries Inc of Dixon, California for the purchase of one (1) hydraulic telescopic crane truck in the amount of \$154,606.29; staff requests this item be continued to a future Board meeting; **Consent Agenda Item 17AB**, Resolution Authorizing Agreements for Coastal Consulting Services, for two years and approve funding: A) California Strategies & Advocacy LLC for an amount not to exceed \$280,000, and B) RRM Design Group, on an as needed basis, not to exceed \$120,000; staff requests this item be continued to a future Board meeting; **Consent Agenda Item 18AB**, ADA Accessibility Improvements at the Embarcadero: A) Resolution Authorizing a Memorandum of Understanding with the City

of San Diego for joint construction of ADA Accessibility Improvements at the Embarcadero for an amount not to exceed \$____,____. B) Resolution Authorizing Change Order No. 4 to Contract No. 2009-30 Tidelands ADA Accessibility Improvements (Phase II) with Pal General Engineering, Inc. for an amount not to exceed \$____,____ and a calendar day extension through _____.; staff requests this item be continued to a future Board meeting; **Action Agenda Item 24**, Presentation on North Embarcadero Port Master Plan Amendment Proposed Project Components and direction to staff; staff requests this item be continued to a future Board meeting; **Action Agenda Item 25**, Presentation regarding Procurement Policies and direction to staff; staff requests this item be continued to a future Board meeting; **Action Agenda Item 26**, Ordinance Granting Amendment No. 1 to Amended, Restated and Combined Option to Lease Agreement to Lane Field San Diego Developers for Development of Lane Field, with conditions; staff requests this item be continued to a future Board meeting; **Presentation Agenda Item 32**, Presentation from the City of San Diego on the San Diego Convention Center Expansion Project and update from staff; staff requests the Board consider the City of San Diego Convention Center's Team request to continue this item to a future board meeting.

Mr. Deuel announced that three agenda related memos were received after the agenda was posted. Those memos were distributed to the Board and copies of the documents were available at the Clerk's desk for public review.

On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board accepted the suggested changes to the agenda, by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

In that members of the public had submitted request to speak slips Chairman Peters announced that the following items would be pulled for public comment and a separate vote: **Consent Agenda Item 7**, Resolution Authorizing staff to Issue a Request for Statements of Interest and Qualifications to develop Renewable Energy Facilities, and **Consent Agenda Item 16**, Resolution Authorizing Payment of \$1,000,000 to the City of Imperial Beach for Funding for the SANDAG Regional Beach Sand Project II. Commissioner Nelson requested that **Consent Agenda Item 6**, Resolution Accepting Seaport Village Operating Company's Financing Plan for the Redevelopment of the Old Police Headquarters, be pulled. Commissioner Burdick also requested that **Consent Agenda Item 7** be pulled.

On motion of Commissioner Nelson, seconded by Commissioner Valderrama, the Board adopted Consent Agenda items 5A, 5B, 5C, 5D, 8, 11, 12, 13, 14 and 15

(**Resolution 2011-162** through and including **Resolution 2011-164, Ordinance 2658, Resolution 2011-165, Resolution 2011-167** through and including **Resolution 2011-172**) by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

Agenda Item 5A. **Resolution 2011-162**, Consenting to Assignment and Assumption of Ownership Interests from WW San Diego Harbor Island, LLC to Waterfront Harbor GL, LLC, was adopted as part of the consent agenda.

Agenda Item 5B. **Resolution 2011-163**, Consenting to Sublease from Waterfront Harbor GL, LLC to Waterfront Harbor OL, LLC, was adopted as part of the consent agenda.

Agenda Item 5C. **Resolution 2011-164**, Consenting to Management Agreement between Waterfront Harbor OL, LLC and Westplace Hospitality Management, Inc, was adopted as part of the consent agenda.

Agenda Item 5D. **Ordinance 2658**, Granting Amendment No. 2 to Lease with Waterfront Harbor GL, LLC, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2011-165**, Adopting Plans and Specifications and Awarding Contract No. 2009-20 to Bowcon Company, Inc, for Tuna Harbor Promenade Pavers and Flatwork Repair in the amount of \$148,232, was adopted as part of the consent agenda.

Agenda Item 9. **Item Continued**

Agenda Item 10. **Item Continued**

Agenda Item 11. **Resolution 2011-168**, Granting Indemnity and Authorizing a five year Agreement with the County of San Diego Fleet Management Division for as-needed cooperative automotive fuel sales in an amount not to exceed \$550,000, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2011-169**, Authorizing Amendment No. 4 to Agreement with Aztec Landscaping, Inc. dba Aztec Janitorial Services for the addition of janitorial services at the District's Administration and Annex Facilities and for the addition of event cleaning at the Broadway Pavilion increasing the third year agreement amount by \$326,180.00 for a new total agreement amount of \$1,633,625.26, was adopted as part of the consent agenda.

Agenda Item 13. **Resolution 2011-170**, Selecting and Authorizing a Three-Year Agreement with Schindler Elevator Corporation for Elevator/Escalator Maintenance Services at District Facilities for a total amount not to exceed \$127,061, was adopted as part of the consent agenda.

Agenda Item 14. **Resolution 2011-171**, Authorizing Agreement with Aecom Technical Services Inc. for Environmental Review Consulting Services for the Public Parking and Intermodal Facility at Palm Street and Pacific Highway for an amount not to exceed \$167,900, was adopted as part of the consent agenda.

Agenda Item 15. **Resolution 2011-172**, Resolution Selecting and Authorizing an Agreement with Aon Risk Insurance Services West, Inc. for Property/Casualty Insurance Brokerage Services for the period February 1, 2012 through January 31, 2017 in an amount not to exceed \$427,125, was adopted as part of the consent agenda.

Agenda Item 17AB. **Item Continued**

Agenda Item 18AB. **Item Continued**

RESOLUTION AUTHORIZING STAFF TO ISSUE A REQUEST FOR STATEMENTS OF INTEREST AND QUALIFICATIONS TO DEVELOP RENEWABLE ENERGY FACILITIES

Agenda Item 7. Kayla Race, Environmental Health Coalition, spoke in support of having renewable energy solutions on District property, requested that any harmful impacts to public health, as well as benefits, should be considered as part of the Request for Statements of Interest and Qualifications, and that the Environmental Health Coalition would remain a stakeholder in the process.

Commissioner discussion ensued. Commissioner Nelson stated that he was in favor of doing everything possible for the development of alternative energy facilities throughout the area. In reference to his previous concerns regarding the use of limited resources, such as tidelands areas, for such a facility and in consideration of service to the District's overall mission, he queried as to what means staff used to arrive at the recommendation of locating a renewable energy facility on tidelands, as opposed to seeking other "less precious" land.

Paul Brown, Senior Asset Manager, Real Estate Department, stated the purpose of the item was to solicit input from the potential developers on the nexus between

alternative energy and the District's maritime use and that staff was looking for the market place to identify that connection.

Commissioner Nelson restated his query as to why the District was seeking to put a renewable energy development, which could also operate off-tidelands, as opposed to considering a more directly related maritime use, which could only be conducted on tideland property.

Mr. Brown acknowledged the question and stated that staff had also considered the matter. He restated that staff was seeking connections and that one advantage of developing a renewable energy facilities on tidelands was that it could directly benefit the sustainability of the current tidelands tenants' operations.

Commissioner Nelson stated he supported moving forward and offered a motion with a modification to the staff recommendation. His motion was that the text be revised to include "Authorize staff to issue a Request for Statements of Interest and Qualifications to develop renewable energy facilities on 'or near' tidelands." Commissioner Valderrama seconded the motion.

Commissioner Burdick stated that she could not support the motion with the amendment to the staff recommendation as offered by the maker because the District did not have any jurisdiction to develop renewable energy resources near tidelands. She offered that in certain instances, where off-tideland mitigation was required for on-tideland impacts, they should be addressed during the Capital Improvement Program (CIP) process. She discussed staff's response as to whether such a project was the highest and best use of tideland property. Commissioner Burdick stated that two Board committees had found the project to have a legitimate maritime supporting use. She offered that the project would be a diversification of the District's maritime operations and related revues and that it supported the Green Port initiatives to sustain an environmentally sound region. She offered that there were two references in the staff report that she believed were inconsistent and requested they be clarified prior to issuing the Request for Statements of Interest and Qualifications. She quoted the reference on page one of the staff report, "That by co-locating multiple renewable energy operations into a consolidated area staff, believes there could be synergies in permitting an entitlement process as well as a development of common infrastructure." She requested clarification as to whether, upon the conclusion of the process, staff would consider the possibility of licensing more than one green energy facility on the parcel. Karen Weymann, Director, Real Estate Department, confirmed that the intent of the item was to explore the opportunities that could bring new potential uses to the District. Commissioner Burdick reiterated her request for clarification as to whether it

was staff's specific intent, when upon issuing the Request for Statements of Interest and Qualifications, to inform applicants that the District may be leasing to more than one entity. Ms. Weymann confirmed that was correct. Commissioner Burdick then turned to page two of the staff report, and quoted "In addition, the renewable energy facility would further diversify the District's real estate portfolio and exemplify a forward-looking approach to supporting key missions of the District." She stated that the reference to "the renewable energy facility" suggested staff was only looking at one facility when the staff report suggested that more than one co-located facility. She acknowledged that Ms. Weymann's responses clarified the two inconsistencies. Commissioner Burdick reiterated that while she supported the project, she could not support the motion unless the maker and the second were to remove the "near tidelands" amendment.

Chairman Peters stated that he did not mind Commissioner Nelson's amendment because the intent of the item was to solicit ideas. He acknowledged that clarification regarding the matter of jurisdiction of off-tideland property might be required.

In light of the newly developed CIP process, Commissioner Valderrama expressed concern with the proposal. He offered that a potential project, like the one under consideration, could be subject to "piece-meal" consideration without vetting through the CIP process if a project comes back to the Board for consideration.

As a member of the Maritime Advisory Committee and the Environmental Advisory Committee, Commissioner Nelson offered that the members concurred that the item was to be brought to the Board for its consideration, but they did not offer direction as to whether it be adopted. He reiterated his concern as to whether a project of the type presented was a superior use for the tideland property under consideration.

Randa Coniglio, Executive Vice President, Operations, offered that staff identified that a sustainable energy development was the sort of use staff would like to pursue for tidelands. Staff based their determination on the District's environmental stewardship mission and also as a means to diversify the District's portfolio. She stated staff was requesting Board approval to pursue the investigation of opportunities in a forward-looking manner in lieu of relying on the traditional uses of tidelands and was seeking to find a project that complimented maritime industrial operations.

Commissioner Burdick responded to Commissioner Valderrama's remarks related to the CIP. She stated that she did not view the matter as a CIP project, but rather a real estate matter and leasing land to a tenant to build an alternative energy facility.

She offered clarification regarding her references to the CIP, off-tideland mitigation and the "off-tidelands" reference in the motion amending the staff recommendation.

Commissioner Moore offered that consideration be given as to whether the location of the property was appropriate for the type of facility under discussion. Thus, she was in support of Commissioner Nelson's comments.

On a motion of Commissioner Nelson, seconded by Commissioner Valderrama, the Board adopted **Resolution 2011-166**, authorizing staff to issue a Request for Statements of Interest and Qualifications to develop Renewable Energy Facilities, by the following vote: Yeas-Moore, Nelson, Peters, Smith and Valderrama; Nays-Burdick; Excused-Malcolm; Absent-None; Abstained-None.

RESOLUTION AUTHORIZING PAYMENT OF \$1,000,000 TO THE CITY OF IMPERIAL BEACH FOR FUNDING FOR THE SANDAG REGIONAL BEACH SAND PROJECT II

Agenda Item 16. Michael Garcia addressed the Board, announced the title of the item under consideration, and offered remarks regarding the Occupy Movement's effort to shut down California's ports on December 12, 2011.

On a motion of Commissioner Valderrama, seconded by Commissioner Smith, the Board adopted **Resolution 2011-173**, authorizing payment of \$1,000,000 to the City of Imperial Beach for funding for the SANDAG Regional Beach Sand Project II, by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

RESOLUTION ACCEPTING SEAPORT VILLAGE OPERATING COMPANY'S FINANCING PLAN FOR THE REDEVELOPMENT OF THE OLD POLICE HEADQUARTERS

Agenda Item 6. Commissioner Nelson requested and received confirmation from Shaun Sumner, Area Manager, Real Estate Department, that the option had been amended 14 times since January 2005. Mr. Sumner offered clarification regarding the types of circumstances necessitating the amendments. He also stated there were other leaseholds with amendments to option agreements that were generally due to economic changes.

Commissioner Nelson made a motion to adopt the staff recommendation with an amendment to toll expiration of the option until the January 11, 2012 Board Meeting to negotiate amended terms to the Old Police Headquarters lease. He stated that the

Board may accept the amended terms or the option would expire on that date. Commissioner Valderrama seconded the motion.

On a motion of Commissioner Valderrama, seconded by Commissioner Smith, the Board adopted **Resolution 2011-165**, Accepting Seaport Village Operating Company's Financing Plan for the Redevelopment of the Old Police Headquarters and to toll expiration of the option until the January 11, 2012 Board Meeting to negotiate amended terms to the Old Police Headquarters Lease, by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

PRESENTATION AGENDA

PRESENTATION OF THE 2011 SAN DIEGO UNIFIED PORT DISTRICT EMPLOYEE OF THE THIRD QUARTER

Agenda Item 28. Eric Lawrence, Human Resources Technician and Chair of the Employee Recognition Program Committee, addressed the Board with a presentation regarding the District Employee of the Quarter program. He turned the presentation over to Wayne Darbeau, Executive Director, who announced that Jenny Lybeck, Assistant Environmental Specialist in the Environmental and Land Use Management Department, was named the 2011 Employee of the Third Quarter. Ms. Lybeck's work supports the environmental and sustainability goals of the District. Mr. Darbeau explained she helped carry out the Green Port Program and produced the Green Port Year in Review publication. She has utilized funding from San Diego Gas and Electric to improve the District's capacity for energy efficiency and sustainability, thus far saving a total of \$227,000 on utilities with additional savings to come in the future. Craig Behning, Maintenance Supervisor, General Services and Procurement Department and Mervin Nocum, Senior Financial Analyst, Financial Services Department were also nominated for Employee of the Quarter. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

PRESENTATION OF THE SAN DIEGO UNIFIED PORT DISTRICT (DISTRICT) EQUAL OPPORTUNITY PROGRAM ANNUAL REPORT FOR FISCAL YEAR 2011 (JULY 1, 2010 THROUGH JUNE 30, 2011)

Agenda Item 29. Item continued.

**PRESENTATION ON SAN DIEGO UNIFIED PORT DISTRICT (DISTRICT)
UNIVERSAL DESIGN INITIATIVES**

Agenda Item 30. Item continued.

ACTION AGENDA

SOUTH BAY POWER PLANT DEMOLITION AND REMEDIATION

- A) PRESENTATION REGARDING THE STATUS OF THE DEMOLITION AND REMEDIATION OF THE SOUTH BAY POWER PLANT AND DIRECTION TO STAFF.**
- B) RESOLUTION AUTHORIZING AGREEMENT WITH TETRA TECH, INC. FOR ENVIRONMENTAL SERVICES RELATED TO THE DEMOLITION AND REMEDIATION OF THE SOUTH BAY POWER PLANT FOR A TERM OF ONE YEAR IN AN AMOUNT NOT TO EXCEED \$600,000, AND WAIVING THE SOLICITATION PROVISIONS OF BOARD POLICY 110(II).**
- C) RESOLUTION AUTHORIZING AN AGREEMENT WITH TETRA TECH, INC. AND SEDIMENT EXPERTS TO PERFORM SEDIMENT SAMPLE COLLECTION AND CHEMICAL ANALYSIS IN THE VICINITY OF THE SOUTH BAY POWER PLANT FOR A TERM OF ONE YEAR IN AN AMOUNT NOT TO EXCEED \$350,000, AND WAIVING THE SOLICITATION PROVISIONS OF BOARD POLICY 110(II).**

Agenda Item 19. Kristine Zortman, Area Real Estate Manager, Real Estate, addressed the Board with an update and presentation on the South Bay Power Plant Demolition and Remediation and requested the Board consider adopting two resolutions. She stated that District staff time and the services provided to the District by external entities were not subject to any reimbursement of funds through the South Bay Power Plant Escrow Account. She reviewed the timeline of the progress made to date related to the demolition of the South Bay Power Plant and remediation efforts. She turned the presentation over to former Port Attorney Duane Bennett. Mr. Bennett was introduced as a District retained outside counsel.

Mr. Bennett addressed the Board regarding what he described as a multi-faceted approach to the South Bay Power Plant demolition and remediation project. He described the methodology selected to address the matter. He introduced members of

the outside consultant team: Margaret Sohagi, Sohagi Law Group, was engaged to assist with analysis related to California Environmental Quality Act (CEQA) and the Coastal Act; Victor Vilaplana, Foley & Lardner, LLP, was present to monitor and analyze any potential bankruptcy issues of entities within the overall corporate structure of Dynegy South Bay; Bill Brown, Brown and Winters, was present for purposes of environmental compliance and environmental support; Doug Butz, Butz, Dunn & DeSantis, was engaged for analysis and support regarding potential litigation and arbitration; and WorleyParsons was engaged for purposes of demolition. Mr. Bennett turned the presentation over to Margaret Sohagi.

Chairman Peters left the dais at 1:57 p.m. and returned at 2:00 p.m.

Ms. Sohagi addressed the Board with a brief summary of the CEQA process the California Coastal Commission staff would be following. She turned the presentation over to Victor Vilaplana.

Mr. Vilaplana addressed the Board and explained that he had been working with the District as counsel in connection to the South Bay Power Plant and more specifically with the possible implications of the Chapter 11 Bankruptcy of Dynegy Holdings and four other affiliated companies of Dynegy Holdings in New York. He offered that there were no legal implications of those bankruptcies on the obligations of Dynegy South Bay to carry out the end of term obligations under the lease. In addition, he stated there were no legal implications from those bankruptcies on the escrow funds, which were contained in a property escrow agreement created in the late 1990s when San Diego Gas & Electric sold the power plant. He stated the bankruptcies of the companies in New York have no legal implication on the Duke Energy South Bay, LLC (Duke) guarantees, which had been reaffirmed a number of times over the years under the property escrow agreements and the lease agreements. He stated that the District was managing submissions for reimbursement from the escrow account. Mr. Vilaplana stated that a letter was sent on November 14, 2010 on behalf of the District to Dynegy South Bay requesting further assurances of their obligations with respect to the end of term actions. He stated that they had repeatedly told District representatives, verbally, that they have the intent and ability to carry out the end of term obligations to completion and a response letter was expected.

Ms. Zortman continued the presentation and discussed the establishment of the interest bearing escrow account and the governing of the account. She stated that use of the escrow funds were solely for the end of term actions and remediation measures as performed by Duke or its assignees and in 2006, the District consented to Dynegy South Bay assuming Duke's obligations under the transaction agreements. Ms. Zortman

reiterated that under the terms of the property escrow agreement, none of the District staff time or costs incurred by the District for any external expert team or legal counsel qualifies for reimbursement. She stated that only the entity that was performing the end of term actions or remediation measures could seek reimbursement from the property escrow account. She offered a high-level of detail review of the certificates for reimbursement Dynegy had submitted. She turned the presentation over to Jay Jahangiri, Director Ports and Maritime Programs, WorleyParsons.

Mr. Jahangiri discussed his firm's review process and recommendations for the appropriate procedures related to cost reimbursements submitted by Dynegy for their work on the South Bay Power Plant. He stated that particular consideration was paid to the status of the employees of Dynegy. He explained that all of the Dynegy employees involved in the project beyond 271 days would be considered as a "long-term commitment employee" and had to be relocated. Mr. Jahangiri discussed the comparative analysis results from a survey of other California ports and local government agencies used to assess their standards for reviewing costs. He stated that a "per diem cap" was derived from the survey. He offered his firm's recommendations to place a "per diem cap" on temporary and relocated employees who were providing services on behalf of Dynegy. He discussed his firm's service regarding the retroactive review of reimbursement submittals and explained they would also review new submittals.

Commissioner Nelson left the dais at 2:21 p.m. and returned at 2:23 p.m.

Regarding the Dynegy letter of assurance referenced by Mr. Vilaplana, Mr. Bennett offered clarification by announcing a letter was received earlier in the day; however, it was not reviewed prior to the meeting. He assured the Board that the information conveyed in the letter would be communicated to them in a timely manner. Regarding the action items under the Board's consideration, he offered background information on the expert team members retained by the District to address the remediation issues at the site. He turned the presentation over to Dr. David Liu, Senior Vice President, Tetra Tech.

Dr. Liu addressed the Board regarding the environmental condition of the South Bay Power Plant and offered recommendations regarding the appropriate remediation efforts. He reviewed the scope of services that Tetra Tech would offer, should the resolutions under consideration be adopted. He also reviewed recommendations regarding matters to address prior to regulatory closure and before proceeding with future site development. Those matters were not included in the resolutions proposed

by staff. Dr. Liu concluded by reviewing the anticipated investigation schedule and timeline. He turned the presentation back over to Mr. Bennett.

Mr. Bennett briefly discussed how staff arrived at the recommendation before the Board and requested the Commissioners' consideration of the proposed action.

Members of the public addressed the Board regarding the item. Don Wood, discussed the removal of polychlorinated biphenyls (PCBs) and cautioned the Commissioners regarding using a two-phased approach to remediate the above and below ground portions of the site. He stated that the businesses engaged in operating the site should be fiscally responsible for the project and no public agency funds should be utilized for the clean up. He encouraged treating the remediation efforts as a single project when going before the Coastal Commission.

Gaudencio A. Labrador encouraged the Commissioners to consider preserving the decommissioned plant as a historical structure to honor the individuals who built and operated the plant. He suggested that the funding set aside for site clean up be used to retrofit the facility and develop a new green-energy operation using ocean water.

Laura Hunter, Environmental Health Coalition, addressed the Board in support of the proposed action. Based on the work site area map shown she expressed concerns that the allocated level of funding to perform the sediment assessment may be inadequate. She advocated for having the entities that constructed and operated the plant follow through with providing the necessary funding to clean up the site. She discussed the project's restoration efforts and offered it should include shoreline hardening. Regarding Mr. Labrador's public comment, she offered that upon completion of the plant removal and site remediation a plaque or an educational area could be placed at the site to acknowledge the area's previous purpose and honor the workers.

Commissioner discussion ensued. Commissioner Moore thanked Mr. Bennett and Ms. Zortman for their leadership role in moving the demolition and clean up of the power plant site forward as well as addressing questions regarding the use of funds from the escrow account. She requested and received confirmation from Ms. Zortman that resulting from the change in operational status at the plant; all past invoices from Dynegy were being audited in conjunction with the WorleyParsons review. Ms. Zortman discussed the purpose of performing the audit and explained that the reimbursement criteria used while the plant was operational differs from when the plant is post operational. She explained that questions arose due to the status of Dynegy employees hired for long-term assignment. Commissioner Moore requested and

received confirmation from Ms. Zortman that as part of the review process, if staff were to find expenses that should not have been reimbursed, those costs will be retroactively disallowed and deducted from future reimbursement requests. Concerning Mr. Wood's comments, Commissioner Moore discussed the benefits of taking a two-phase approach to the project and re-stated the purpose of engaging consultants was to assess the site. She concurred that the responsible parties would fund the remediation. She offered a motion to accept the staff recommendation. Commissioner Valderrama seconded the motion.

Chairman Peters stated it was the District's desire to present all of the information in detail to keep the public well informed. Chairman Peters requested that Ms. Hunter convey to Chula Vista area stakeholders the efforts the District put forward and that any information presented by staff and the District's outside consultant team would be made available at their convenience.

On a motion of Commissioner Moore, seconded by Commissioner Valderrama, with a single vote, the Board adopted **Resolution 2011-174**, Authorizing Agreement with Tetra Tech, Inc. for Environmental Services related to the Demolition and Remediation of the South Bay Power Plant for a term of one year in an amount not to exceed \$600,000, and waiving the solicitation provisions of Board Policy 110(II), and **Resolution 2011-175**, Authorizing an Agreement with Tetra Tech, Inc. and sediment experts to perform sediment sample collection and chemical analysis in the vicinity of the South Bay Power Plant for a term of one year in an amount not to exceed \$350,000, and waiving the solicitation provisions of Board Policy 110(II), by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

Commissioner Burdick left the dais at 2:53 p.m. and returned at 2:57 p.m.

PUBLIC HEARING AGENDA

SAN DIEGO MARRIOTT MARQUIS & MARINA FACILITIES IMPROVEMENT PROJECT:

- A) CONDUCT PUBLIC HEARING, ADOPT RESOLUTION CERTIFYING ENVIRONMENTAL IMPACT REPORT, ADOPT FINDINGS OF FACT, ADOPT MITIGATION MONITORING AND REPORTING PROGRAM, AND DIRECT FILING OF THE NOTICE OF DETERMINATION.**
- B) CONDUCT PUBLIC HEARING, ADOPT RESOLUTION APPROVING PORT MASTER PLAN AMENDMENT, AND DIRECT FILING WITH THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION**

Agenda Item 27. Commissioner Nelson announced, for the record, that he rents a boat slip at the Marriott Marquis Marina. He stated that the value of his vessel is in no manner influenced by what was done on the real property. He stated he has no economic interest in the matter, he did not feel any conflict in loyalties on the issue, and he intended to engage in the discussion.

Penny Maus, Senior Asset Manager, Real Estate Department, addressed the Board with a presentation on the San Diego Marriott Marquis & Marina Facilities Improvement Project and requested the Board conduct two public hearings and consider the matters. Ms. Maus stated staff understood that the Board could condition its approval on Host Hotels and Resorts (Host) indemnifying the District in the event of California Environmental Quality Act (CEQA) litigation. She stated that Host staff agreed to do so and was working with staff to explore language for an indemnification agreement. She turned the presentation over to Wileen Manaois, Senior Redevelopment Planner, Environmental and Land Use Planning Department.

Ms. Manaois reviewed the proposed Marriott Hall component, the proposed Marina Terrace and the proposed Marina Walk site. She reviewed the CEQA process, stakeholder coordination, the Draft Environmental Impact Report (EIR), the proposed Port Master Plan Amendment and the coordination with the California Coastal Commission staff. She summarized the staff responses to the written testimony received regarding the Port Master Plan Amendment (PMPA). Ms. Manaois requested the Board conduct public hearings and consider the following actions: adopt a resolution certifying the EIR, adopt the Findings of Fact, adopt the Mitigation Monitoring and Reporting Program, and direct the Filing of the Notice of Determination and adopt a

resolution approving the PMPA and direct filing with the California Coastal Commission for certification.

Chairman Peters opened the public hearings and stated the Board would take testimony on all of the items under consideration.

The following members of the public addressed the Board in opposition to the staff recommendations: Brigette Browning, UNITE HERE/Coalition for Responsible Coastal Development (CRCDC); Rick Bates, UNITE HERE/CRCDC; Lorena Gonzalez, San Diego and Imperial Counties Labor Council, AFL-CIO; Joe Bagby ceded his time to Tom Enslow; Thomas Enlow, CRCDC/UNITE HERE; Ann Lebaron; Emily Serafy Cox, Empower San Diego; Eliana Gomez, UNITE HERE Local 30, ceded her time to Ian Trowbridge; Ian Trowbridge; David Whaley; Santiago Garza; Lana Whaley; Carlos Cota, International Alliance for Theatrical Stage Employees #122 (IATSE); Steven Kirkeby; Micah Mitrosky, IBEW 569. Don Wood offered comments of concern regarding submitting PMPAs for separate projects and for segmenting the planning areas.

Commissioner Valderrama left the dais at 3:32 p.m. and returned at 3:34 p.m. Commissioner Smith left the dais at 3:34 p.m. and returned at 3:37 p.m. Chairman Peters left the dais at 3:56 p.m. and returned at 3:58 p.m.

The following members of the public addressed the Board in favor of the staff recommendations: Kip Howard, Allegis Development; Chris Ford, Host Hotels and Resorts; Ignacio M. Lozano, San Diego Marriott Marquis employee; Gwen Mosley, Marriott Marquis employee; Jeffrey Jay Gonzalez, Marriott Marquis employee; Rural (Danny) Barber, Jr., Marriott Marquis employee; Ray Warren, Marriott Marquis General Manager; Katie Hansen representing San Diego City Councilmember Kevin Faulconer; Gary Smith, San Diego Downtown Residents Group; Kris Michell, Downtown San Diego Partnership and Margie Sitton, Senior Vice President Sales, San Diego Convention and Visitors Bureau. Chairman Peters closed the public hearing.

Commissioner discussion ensued. Commissioner Nelson congratulated staff, thanked the representatives of organized labor who spoke on issues in addition to labor management relationships, and acknowledged Host and the Marriott Marquis team. He expressed concerns regarding the issues raised related to consistency of the plans presented and the Marina Walk and requested staff address the matter. He also expressed concern regarding the adjacency to roadways and operational challenges related to access. He expressed his opinion regarding the loss of the view corridor of the bay at grade and characterized any loss as de minimis. Commissioner Nelson addressed the matters raised regarding parking and the tenant's current lease

arrangements. He requested staff address the loss of parking in relationship to the District's parking plan for the property. He discussed whether there was a tenant requirement to implement employee inducements to use public transit. He concluded by offering remarks on how an expanded San Diego Convention Center, a convention center on the Chula Vista Bayfront and the proposed project at the Marriott Marquis could operate together to make San Diego the premiere destination for conventions.

Ms. Manaois addressed the Marina Walk portion of the project and stated that it complied with the previously approved Hyatt Coastal Development Permit. In response to Commissioner Nelson's remarks regarding parking, she explained the evolution of the District's parking guidelines. She stated that a parking surplus developed as the Marriott Marquis, which initially opened as the Intercontinental Hotel, transitioned from a destination property to more of a convention attendee-serving hotel. In relation to the queries regarding employee use of public transit, she offered that concept is part of the District's parking guidelines and requirements. She discussed the parking mitigation and monitoring requirements and stated that Marriott provides its employees incentives for use of public transit.

Commissioner Burdick stated that the Board is obligated under the Port Act to attract people to the bayfront and then offered remarks regarding the challenges of balancing the use of the tidelands. While she acknowledged the concerns raised during the public hearing regarding what she characterized as "piece meal" or "project-by-project" planning, she explained the challenges with long-term planning on the South Embarcadero. She stated that the North Embarcadero offered "big-picture" planning opportunities as there was more open-space available. She requested staff address the level of attention paid to the cumulative impacts for planning in the area related to the proposed San Diego Convention Center expansion, the proposed Convention Center Hotel (Hilton expansion), the Seaport Village re-visioning and the Old Police Headquarters redevelopment. Ms. Manaois explained confirmed that the EIR looked at cumulative projects in the area including the North Embarcadero Visionary Plan and off-tideland projects in the City of San Diego. Commissioner Burdick offered comments regarding statements made during the public hearing regarding soil contamination and testing, acknowledged the Construction Workers' Safety Plan and requested clarification regarding the Excavation Monitoring Mitigation Plan. She requested clarification regarding in what case, hypothetically, work would cease should levels of contamination in the soil exceed expectations. Joanne Dramko, Senior Environmental Manager, Atkins, provided some history of the work at the site during the initial hotel construction. She addressed Commissioner Burdick's queries by stating that during the excavation, an on-site monitoring process would begin, and if levels exceeding expectations were detected work on the project would be halted for further testing; and potential remediation

would be completed. In reference to the draft EIR, Ms. Atkins stated that halting work and further testing was part of the compliance with the Department of Environmental Health (DEH) standards. She confirmed that the draft language states that monitoring and compliance would utilize the DEH standards. Commissioner Burdick acknowledged the response for the record and restated that one of the standards that Host would be held to during the construction activities were the DEH standards. Regarding the Parking Management and Monitoring Program, she requested and received confirmation from Ms. Manaois that the Marriott provides employee incentives for using public transportation. Darlene Nicandro, Director, Environmental and Land Use Management, followed up and explained that an employee incentive program for non-auto transit was addressed in the draft EIR; and further details regarding subsidized mass transit, providing off-site employee parking and bicycle parking for employees is included in the Parking Management Plan. Ms. Nicandro confirmed that the Parking Management Plan would be required as part of the project approval. Commissioner Burdick discussed the phrase of "walling off of the bay" and stated, for the record, that she did not understand how building back into a piece of land with obstructed view corridors to the Bay constituted a concern that could be mitigated. Stating for the record, she did not see the project as having a significant cumulative impact on obstructing the existing view corridors, and it may create a new view corridor in the middle of a block. She acknowledged the concerns raised regarding the availability of public access to the proposed Marina Terrace. Commissioner Burdick requested some negotiations occur or some affirmations to ensure that Marina Terrace would be made available for public use for a yet to be determined number of days of the year. Next, she stated that there was not an opportunity to update lease agreements and expressed her dissatisfaction. She requested that the Port Attorney's office prepare a separate document for an indemnification agreement in respect related to lawsuits or Coastal Commission appeals that would stand alone from the current lease agreements or any options. She offered a motion in support of the staff recommendation conditioned upon the acceptance of negotiation and acceptance of an indemnification agreement on litigation and Coastal Commission approvals.

Commissioner Moore stated that it was common place to condition approvals on such things, acknowledged Commissioner Burdick's request regarding an indemnification agreement and seconded the motion.

Commissioner Smith thanked all those who participated in the public hearing. He discussed the view corridor from across the bay in Coronado. He acknowledged Mr. Wood's remarks, expressed concern regarding fragmented planning, and discussed the timeline for CEQA applications. He offered that the project would create jobs, help San Diegans and on balance, make things better. Thus, he supported moving forward.

Commissioner Moore concurred with the concerns regarding the issue of “piece meal” planning. She concurred with Commissioner Smith’s remarks regarding timing of project approval. She offered that more comprehensive planning was needed and had been discussed during the strategic planning process. She requested clarification regarding assuring public accessibility on the Marina Walk. Ms. Manaois stated that the Marina Walk was designated in the Port Master Plan as a promenade and was one of the original 11 public access ways originally approved in the late 1990’s as part of the South Embarcadero Redevelopment Program. Commissioner Moore concurred with the staff response of including public accessibility language in the Coastal Development Permit (CDP). Ms. Manaois stated that any requirements regarding signage to indicate the public’s access to the area would be part of the concept approval process considered in conjunction with the CDP. Commissioner Moore expressed concern regarding the public’s access to the Marina Terrace and requested clarification as to whether that something more definitive would be a condition of approval. Ms. Manaois clarified that, in the draft EIR, the assumed expectation was stated that the Marina Terrace would be open to the public approximately 85 percent of the year, and concurred with Commissioner Moore that the assumption could be incorporated into the CDP as a condition of project approval. She reiterated the importance of negotiating an indemnification document as a condition of the approval for going forward and restated her desire to address the concerns regarding “piece meal” planning in the future.

Commissioner Valderrama acknowledged the benefits of moving forward and referenced Commissioner Smith’s remarks. He concurred with the condition added to the staff recommendation to negotiate an indemnification document as a condition of approval. He requested clarification regarding the process of negotiating the indemnification document. As the indemnification document was part of the motion, Chairman Peters explained staff would address the matter administratively. He concurred with Commissioner Burdick’s remarks regarding the references to “walling of the bay” and agreed there were not substantial issues at the location. Commissioner Valderrama requested information regarding next steps. Celia Brewer, Interim Port Attorney, stated that the matters before the Board were the necessary next steps that would lead to consideration of project approval. She stated that the Board was being requested to consider certification of the EIR and approval of the PMPA conditioned upon indemnification. She offered that upon approval of the PMPA by the Coastal Commission, the concept approval would be brought back to the Board. Acknowledging the concerns expressed during the hearing, Commissioner Valderrama stated his support for moving forward with the project.

Commissioner Nelson requested and received clarification from Ms. Maus that the Hilton Hotel has access to a public park near their property under a Master Special

Events Permit. Concerning the item before the Board, she stated that the property was part of the Marriott Marquis' leasehold and there would be no requirement by the tenant to book events. In reference to Attachment D to the staff report, depicting the Marina Terrace and the adjacent landscaping, he expressed concern as to how the public would understand the area was accessible. To address that concern, Ms. Maus explained that the tenant has proposed to place public art and signage at both ends of the walkway.

Commissioner Moore requested and received clarification from Ms. Manaois that the Board was considering certification of the EIR and approval of the PMPA conditioned upon indemnification. Commissioner Moore confirmed that following the Coastal Commission certification of the PMPA, the next step was consideration of the concept approval; then the issues raised regarding public access would be addressed prior to the Board authorizing issuance of the CDP and then construction begins.

Chairman Peters requested that a definition of the time the Marina Terrace would be accessible to the public be stated before issuing the permit. He requested that Mr. Howard work with staff to propose some assurance that the public has access to the Marina Terrace for reasonable amount of time when the CDP returns to the Board for consideration. He acknowledged the tenant's participation in the Accessibility Advisory Committee process and incorporating recommendations to improve access to members of the disabled community. Chairman Peters urged the tenant developer to work with the stakeholders who expressed concern with the project to insure permits are issued and a development goes forward.

Ms. Nicandro stated, for the administrative record, that staff and the consultant had adequately analyzed issues regarding traffic, parking, ground water contamination and the other issues addressed in the letter submitted by Adams Broadwell Joseph & Cardozo. Regarding parking, she stated that parking would be removed to improve public access and at a site specific level, staff had analyzed the impacts of parking and mitigation measures, which were incorporated into the EIR. She stated that a bayfront shuttle would be part of the project and a parking management plan. She stated in section 4.8-10, an employee incentive program would address the matters brought forth from UNITE HERE. Regarding "piece meal" planning, she stated that the project PMPA was in direct response to a letter dated January 18, 2011 from Coastal Commission staff, where they stated that the expansion was an improvement to the visitor-serving overnight accommodation and had specifically requested the District provide a PMPA. She reiterated the PMPA under discussion was in response to the Coastal Commission staff request. Regarding aesthetics, she responded to the comments regarding a respect for private views and referenced section 4.1-11 of the

aesthetics portion of the draft EIR that specifically addresses no private rights to unobstructed views.

On a motion of Commissioner Burdick, seconded by Commissioner Moore, with a single vote, the Board adopted **Resolution 2011-178**, Certifying Environmental Impact Report, Adopt Findings of Fact, Adopt Mitigation Monitoring and Reporting Program, and Direct Filing of the Notice of Determination, and **Resolution 2011-179**, Approving Port Master Plan Amendment, and Direct Filing with the California Coastal Commission for Certification, by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

ACTION AGENDA CONTINUED

SEAPORT VILLAGE REDEVELOPMENT PROPOSAL

- A) RESOLUTION FINDING SEAPORT VILLAGE OPERATING COMPANY'S REDEVELOPMENT PROPOSAL CONSISTENT WITH THE DISTRICT'S VISION FOR THE SITE, WITH CONDITIONS.**
- B) DIRECT STAFF TO NEGOTIATE AN OPTION TO LEASE AGREEMENT WITH SEAPORT VILLAGE OPERATING COMPANY FOR SEAPORT VILLAGE REDEVELOPMENT**

Agenda Item 20. Shaun Sumner, Area Manager, Real Estate, addressed the Board with a presentation regarding the Seaport Village Redevelopment proposal, next steps in the redevelopment process, projected timeline and requested the Board consider the staff recommendation as detailed in the staff report. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Chairman Peters called upon Gary Smith, San Diego Downtown Residents Group, who submitted a request to speak form. Mr. Smith had left but Mr. Sumner stated that he had relayed concerns regarding the parking structure, the addition of new structured parking, and he requested review of the mid-block crossing at the Old Police Headquarters to ensure that pedestrians can travel through the old California Street.

Don Wood addressed the Board with concerns regarding "piece meal" projects on the South Embarcadero. He suggested that the Board consider putting forth a Port Master Plan Amendment to make the entire downtown embarcadero a single planning area or re-organize the District staff to work on the whole downtown embarcadero area

instead of being tasked to work on individual projects. He discussed the redevelopment proposal in relationship to view corridor traveling south on Pacific Highway and recommended opening up the vista to the bay. He discussed as budgeting for a new public ferry pier in Seaport Village. He opposed building a new parking garage.

Commissioner Burdick left the dais at 5:03 p.m. and returned at 5:07 p.m.

Commissioner discussion ensued. Commissioner Moore offered that the reference on page 10 of the staff report, in the section regarding density, she cited "Proposal should incorporate more usable green spaces to break up the density and create a park like feel..." should have been added as a condition of approval. She continued, referring the footprint of buildings and references on page 12 of the staff report regarding incorporating "an iconic building" at the site should also be added as a condition of approval. Mr. Sumner stated he believed those would consistent and they could be added as conditions. As a means to address the issues raised, she called for further discussion regarding the need for a parking structure at the site. Mr. Sumner discussed the benefits of a centralized parking facility for access to the nearby parks and amenities. He continued by discussing means to "soften" the parking structure with landscaping in addition to ground floor retail businesses to enhance the pedestrian experience. Commissioner Moore requested and received confirmation that language could be added as a condition, "to consider 'softening' the parking structure" as he had described.

Commissioner Nelson expressed concern whether eight-foot wide sidewalks in that public area were sufficient. He urged consideration of the impact of the emerging bicycle rental business designed to target visitors.

Commissioner Valderrama offered a motion in support of the staff recommendation. He requested clarification from Mr. Sumner regarding the project. Mr. Sumner stated that it would take approximately four to six months to negotiate an option agreement; the option agreement would include a schedule of submittals for design and a determination of the level of environmental review for the Board's consideration.

Commissioner Moore requested and received confirmation from Chairman Peters that the additional conditions she offered were included in the motion.

Chairman Peters acknowledged staff for responding to the public input and offered his support for the project as it moves forward.

On a single motion of Commissioner Valderrama, seconded by Commissioner Smith, the Board adopted with a single motion **Resolution 2011-176**, finding Seaport Village Operating Company's Redevelopment Proposal Consistent with the District's Vision for the Site, with conditions and **directing staff to** negotiate an Option to Lease Agreement with Seaport Village Operating Company for Seaport Village Redevelopment, by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

RESOLUTION ADOPTING THE COMPASS STRATEGIC PLAN FY 2012 – 2017

Agenda Item 21. Brandy Christian, Vice President, Strategy & Business Development, addressed the Board with an overview of the District's Strategic Planning process and requested Board consideration of adopting the Compass Strategic Plan FY 2012 – 2017. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Kayla Race, Environmental Health Coalition, addressed the Board urged stronger language be included regarding climate change mitigation and emission reduction in addition to the references to sea level rise. Regarding goal eight with respect to regional economic impacts, she offered that a focus be made on the local economy and local jobs.

Commissioner discussion ensued. Describing them as a valuable stakeholder, Commissioner Nelson thanked the Environmental Health Coalition staff for their support and review of the plan. He outlined his proposed changes to the Compass Strategic Plan (Strategic Plan) FY 2012 – 2017.

Commissioner Smith offered his thanks to everyone who worked on the Strategic Planning process. He discussed the importance of the Strategic Plan as the guide for the District's work. Regarding the proposed changes as outlined by Commissioner Nelson and in light of all the checks and balances that the plan had been through, he stated his instinct was to add nothing.

Commissioner Moore also commended staff for their efforts to develop the plan. Referencing strategy 5.2 in the staff report attachment, she offered her hopes that it would result in curing the issue raised regarding "piece meal" planning. She stated that, while she was not opposed to some minor language changes, adding concepts or new ideas at the Board meeting was a concern and she would not be comfortable making those amendments.

Commissioner Burdick stated that the changes, which appeared to be simple, may have unintended consequences if not given further reflection. She offered that the item be deferred for a month to allow time for the Board and staff to assess Commissioner Nelson's requests. She began to offer a motion to table the item where upon Chairman Peters suggested she withdraw the motion and reconsider approval of the staff recommendation with no changes.

Commissioner Valderrama offered a motion to accept the staff recommendation, and that the changes proposed by Commissioner Nelson would be considered at a future meeting.

Commissioner Burdick expressed concerns and explained she would not be in support of approving a five-year Strategic Plan and then amending it, even with minor modifications, at a future meeting. Chairman Peters acknowledged her concerns; stated that he wished to approve the Strategic Plan as presented; and requested confirmation that Commissioner Burdick was in support of the motion to consider the staff recommendation as presented.

Commissioner Smith seconded Commissioner Valderrama's motion.

Commissioner Nelson acknowledged his colleagues comments, stated that he met with Ms. Christian to review the proposed changes. He explained that, in the spirit of the Brown Act, he did not feel it was appropriate to circulate his proposed changes to the Commissioners in advance of the meeting. He continued his remarks stating that most of the changes were arrived at through consultations with stakeholders. He spoke about the importance of incorporating concerns regarding the health and well-being of the environment and of employees. He stated he would like to move forward with a policy, in accordance with applicable laws, to encourage employment of the people who live within the respective cities. He stated that he had discussed the matter with legal counsel and District procurement personnel and as there were policy and legal issues he proposed a general position on that matter. He concurred with Commissioner Burdick, that upon a lack of consensus he preferred to continue the item for further evaluation by the Commissioners.

Chairman Peters requested and received information from Ms. Christian regarding the process staff utilized to assess Commissioner Nelson's proposed changes. She offered that, upon reflection, staff considered that the proposed revisions to numbers 5, 8.4, and 8.10 were policy matters that would require more review. Ms. Christian stated that staff was comfortable with the other wording changes proposed.

Commissioner Smith reflected on the Strategic Plan development process, acknowledged that amendments could be made in the future, and reiterated his support for moving forward with the Strategic Plan as presented.

Commissioner Moore offered that the proposed modifications regarding strategy 4.6 would change the original meaning of the goal. She stated that the proposed changes could be considered after staff had time to reflect and consider the concepts presented, and would allow the Board more time to provide thoughtful input into the language. Chairman Peters requested and received clarification that Commissioner Moore was in support of adopting the Strategic Plan as presented and was in favor of considering bringing the changes back in the future.

Commissioner Nelson offered a motion to continue the discussion. Commissioner Burdick seconded the motion. The motion failed for a lack of majority by the following vote: Yeas-Nelson and Burdick; Nays-Moore, Peters, Smith and Valderrama; Excused-Malcolm; Absent-None; Abstained-None.

Commissioner Burdick restated, for the record, that she did not believe that a Compass Strategic Plan is meant to be an iterative document. "By adopting it, the Port was saying this is our plan for five years." Commissioner Burdick stated that a Strategic Plan "is more than just a document with words on it – words matter. That is why we spent a thousand hours on it."

Commissioner Nelson stated he intended to vote against the motion as there were issues not included in a 5-year Strategic Plan that he believed should be included. Those issues or concepts were incorporating the impacts of storm water on District facilities and communities, addressing air quality issues and impacts on residents living near the tidelands, and that the District should work toward building more jobs in the Unified Port District area.

Commissioner Valderrama stated that he "did not disagree" with Commissioner Nelson statements. He confirmed with Commissioner Nelson that outside stakeholders who attended the Compass Strategic Plan Workshop had provided the recommendations. However, he did express concerns regarding modifying the plan without adequate time to consider the changes and offered that the item could come back at another meeting for discussion.

Commissioner Moore concurred with Commissioner Valderrama's comments. She acknowledged the merits of the plan, recognized all of the hard work in creating the

plan, and stated it was not her intent to vote for the recommendation as some kind of political expediency. She offered that the changes could be considered at a later time.

Wayne Darbeau, Executive Director, offered that the Strategic Plan as presented could accommodate tactical business plans around the issues raised by Commissioner Nelson. He stated that the Strategic Plan provides the Board with the District's priorities at a macro level view and staff would work with the Commissioners to develop tactical plans. He cautioned regarding making material changes, without more careful consideration, could result in unintended consequences.

Chairman Peters offered his concern that his motives for supporting moving forward were mischaracterized. He congratulated staff for the progress made, stated that based on the time invested and the level of public input the process was not rushed in any sense, and he acknowledged the benefit of moving forward.

On a motion of Commissioner Valderrama, seconded by Commissioner Smith, the Board adopted **Resolution 2011-177**, Adopting the Compass Strategic Plan FY 2012 – 2017, by the following vote: Yeas-Moore, Peters, Smith and Valderrama; Nays-Nelson; Excused-Malcolm; Absent-None; Abstained-Burdick.

INFORMATIONAL PRESENTATION ON GOVERNMENT AND COMMUNITY RELATIONS ISSUES AND DIRECTION TO STAFF

Agenda Item 23. Shahriar Afshar, Director, Government & Community Relations, addressed the Board with a presentation regarding Solar Turbines, the proposed Fat City Lofts project and the tenant requested amendments to BPC Policy No. 725 regarding the Transition Zone Policy. He requested direction to staff. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Chairman Peters stated that Gary Smith had submitted a request to speak form but was no longer present. Jim Dawe, attorney with Seltzer, Caplan, McMahon and Vitek, representing Fat City Lofts, addressed the Board in opposition to the staff recommendation. Mr. Dawe submitted a letter from his firm regarding the matter to the Clerk for inclusion into the record. (A copy of the letter dated December 13, 2011 is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Smith's requested clarification regarding the matter of building residential units in close proximity to industrial land, and whether they could be considered sensitive receptors as referenced in the Board's letter in support of Solar Turbines that was sent to Centre City Development

Corporation (CCDC). Darlene Nicandro, Director, Environmental and Land Use Planning, stated that, following submittal of the letter, staff had received no additional information regarding the sensitive receptor matter. He acknowledged that the matter would trigger the consideration of amendments to BPC Policy No. 725. Mr. Afshar explained that while the Working Waterfront Group had suggested an amendment to the policy, staff recommended that the Board discuss the matter at hand prior to moving forward with any proposed amendments. He offered that, following the appropriate stakeholder outreach, staff intended to bring forward a discussion regarding integrated planning on maritime waterfront industrial uses in San Diego and National City. Commissioner Smith acknowledged the comments offered by Mr. Afshar, stated that consistency was important and offered that a discussion was necessary to address the matter.

Commissioner Nelson stated his two concerns were regarding air quality issues and the disadvantage of "dead-heading" incoming cargo as related to maritime activity. He discussed the merits of leveraging relationships with local industrial business partners, such as Solar Turbines, to build scheduled regularity into the District's export operations in an effort to grow the maritime business revenue stream.

Commissioner Burdick stated that, as a Board member, she was inclined to do everything possible to protect the economic viability of the tenants, operators and hoteliers and everyone who works with the District on the tidelands. She stated that she was aware of a nationwide drive in response to the environmental concerns of vehicle miles traveled and the availability of economically viable public transit in consideration of an increased density in urban areas. She acknowledged the matter of "co-located" land uses when considering the close proximity of personal residences to industrial land. She stated her belief that a complete and appropriate level of evaluation was necessary to form what she characterized as a key "forward-looking" policy decision. Commissioner Burdick referenced the letter sent to CCDC that stated the District's position in support of Solar Turbines and suggested that the District takes no further action until the policy was evaluated. She cautioned against amending policies to address individual leaseholds matters as they may arise. She recommended that consideration be given to revising BPC Policy No. 725 in an effort to put forward a policy that protects all District tenants, thus a stakeholder could clearly anticipate consistency in the District's response should similar circumstances arise.

Chairman Peters concurred with Commissioner Burdick's remarks that BPC Policy No. 725 should be addressed and requested staff return to the Board with recommendations to clarify it. Acknowledging the challenges with the timing of the matter related to the proposed Fat City Lofts project, he stated that staff was doing the

right thing to work with the tenant to ensure they can continue their business operations.

He requested that staff objectively evaluate the alleged interference of the proposed project, continue to work with all the stakeholders to seek a satisfactory solution for all the parties, and requested clarification from Mr. Afshar as to whether staff required any further Board direction.

Mr. Afshar acknowledged Chairman Peter's statement and offered the timeline regarding the consideration of the project at the meeting of the CCDC Board in early January 2012. Regarding the request from Solar Turbines as to the District's position, he acknowledged that staff would stand on the letter previously submitted that conveyed the Board's recommendation. Regarding amendments to BPC Policy No. 725, he stated that staff would work with other departments and return with a holistic approach to address member cities' needs.

In light of the timing of the next CCDC Board Meeting, Commissioner Nelson requested clarification as to whether some sort of action was required at the January 10, 2012 Board of Port Commissioners meeting to facilitate a statement to express the District's concerns by Commissioner Smith, as the incoming District Chairman, at the CCDC Board meeting on January 11, 2012.

Commissioner Burdick restated her understanding of Commissioner Nelson's direction to staff, which was that the incoming Chairman would address the CCDC Board regarding the District's position even though an evaluation of the policy would not yet have been completed. Chairman Peters confirmed that her understanding was correct because there would not be enough time available to reconsider the policy. Commissioner Burdick restated that, in her view, the Board had already taken a position on the proposed Fat City Lofts project matter. She reiterated her concern regarding addressing any specific matters before the policy was re-worked.

Chairman Peters clarified that the direction to staff included two distinct matters. First, to address the BPC Policy No. 725 after the appropriate study was complete. Second, in light of the Board's position previously taken on the proposed Fat City Lofts project, staff was encouraged to be consistent and use their resources to investigate the best possible alternatives.

PRESENTATION ON NORTH EMBARCADERO PORT MASTER PLAN AMENDMENT PROPOSED PROJECT COMPONENTS AND DIRECTION TO STAFF

Agenda Item 24. Item continued to a future Board meeting.

PRESENTATION REGARDING PROCUREMENT POLICIES AND DIRECTION TO STAFF

Agenda Item 25. Item continued to a future Board meeting.

ORDINANCE GRANTING AMENDMENT NO. 1 TO AMENDED, RESTATED AND COMBINED OPTION TO LEASE AGREEMENT TO LANE FIELD SAN DIEGO DEVELOPERS FOR DEVELOPMENT OF LANE FIELD, WITH CONDITIONS

Agenda Item 26. Item continued to a future Board meeting.

PRESENTATION AGENDA CONTINUED

PRESENTATION OF THE SAN DIEGO UNIFIED PORT DISTRICT (DISTRICT) EQUAL OPPORTUNITY PROGRAM ANNUAL REPORT FOR FISCAL YEAR 2011 (JULY 1, 2010 THROUGH JUNE 30, 2011)

Agenda Item 29. On a motion by Commissioner Valderrama, seconded by Commissioner Smith, the Board continued the presentation of the San Diego Unified Port District Equal Opportunity Program Annual Report for Fiscal Year 2011 (July 1, 2010 through June 30, 2011) to the January 11, 2012 Board Meeting, by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

PRESENTATION ON SAN DIEGO UNIFIED PORT DISTRICT (DISTRICT) UNIVERSAL DESIGN INITIATIVES

Agenda Item 30. On a motion by Commissioner Valderrama, seconded by Commissioner Burdick, the Board continued the presentation on San Diego Unified Port District Universal Design Initiatives to the January 11, 2012 Board Meeting, by the following vote: Yeas-Burdick, Moore, Nelson, Peters, Smith, and Valderrama; Nays-None; Excused-Malcolm; Absent-None; Abstained-None.

PRESENTATION OF DRAFT WATERFRONT ACTIVATION MASTER PLAN AND DIRECTION TO STAFF

Agenda Item 31. Jim Hutzelman, Manager, Community Services, Business Development & Marketing Department, addressed the Board regarding waterfront activation and the proposed implementation of measurement tools. He turned the presentation over to Lewis Siris, President, Public Works, Inc., who continued with the presentation of the Draft Waterfront Activation Master Plan. Mr. Siris turned the

presentation back over to Mr. Hutzelman who requested Board direction. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner Nelson left the dais at 6:19 p.m. and excused for the remainder of the meeting.

Chairman Peters requested and received confirmation that staff was seeking Board approval of the general concepts presented to move forward.

Don Wood addressed the Board regarding the draft plan, expressed concern on the focus on big annual events and festivals and encouraged the Board to consider offering daily or weekly regularly scheduled classes as activation opportunities. He discussed the civic benefits of activating the parks to encourage public use and access to the tidelands.

Commissioner discussion ensued. Commissioner Burdick acknowledged staff and Mr. Siris for their efforts related to the activation plan. She offered it was her belief that activation spurs public access. She concurred with Mr. Wood's comments, which to the extent that permitting incentives may be allowed, that yoga or tai chi instructors could be encouraged to consider tideland parks as a venue for their classes. She requested that the phrase "five cities – one bay" be used consistently throughout the Waterfront Activation Master Plan, and then she offered a motion to accept the staff recommendation.

Commissioner Moore seconded the motion. She complimented Mr. Siris and staff for their efforts, recognized the development of what she called an "exciting plan" and acknowledged the importance of listening to the stakeholders.

Chairman Peters also acknowledged staff and Mr. Siris for their efforts.

Mr. Siris acknowledged the Commissioners' responses and offered that the plan was designed to create opportunities, focus needs and develop activation events as a catalyst for waterfront activation.

On a motion by Commissioner Burdick, seconded by Commissioner Moore the Board accepted the Draft Waterfront Activation Master Plan, by the following vote: Yeas-Burdick, Moore, Peters, Smith, and Valderrama; Nays-None; Excused-Malcolm, Nelson; Absent-None; Abstained-None.

UPDATE ON FIREWORKS AND DIRECTION TO STAFF

Agenda Item 23. Item continued to a future Board meeting.

PRESENTATION FROM THE CITY OF SAN DIEGO ON THE SAN DIEGO CONVENTION CENTER EXPANSION PROJECT AND UPDATE FROM STAFF

Agenda Item 32. The Board accepted the City of San Diego Convention Center's Team request to continue this item to a future board meeting.

ACTION AGENDA CONTINUED

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR THE MEETING OF JANUARY 10, 2012

Agenda Item 22. On motion of Commissioner Valderrama, seconded by Commissioner Burdick, the Board adopted the proposed agenda for the meeting of January 10, 2012, by the following vote: Yeas-Burdick, Moore, Peters, Smith, and Valderrama; Nays-None; Excused-Malcolm, Nelson; Absent-None; Abstained-None.

OFFICER'S REPORT

Agenda Item 33. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director or designee, were reported:

- A) Change Order No. 1 for \$0.00 and 0 Calendar Days to Contract No. 2009-23 with R.E. Staite Engineering, Inc. for Embarcadero Marina Park South Revetment Replenishment, San Diego, CA.
- B) Change Order No. 3 for (\$1,283.66) and 30 Calendar Days to Contract No. 2009-30 with PAL General Engineering, Inc. for Tidelands ADA Accessibility Improvements Phase II, San Diego, CA.

COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING

Agenda Item 35. Commissioner Smith thanked Chairman Peters for his leadership on behalf of the Board and the District.

PRESIDENT'S REPORT

Agenda Item 34. Wayne Darbeau, Executive Director, turned the presentation over to John Bolduc, Vice President Public Safety/Harbor Police Chief. Chief Bolduc introduced Mark Stainbrook as the new Assistant Harbor Police Chief. Assistant Chief Stainbrook thanked the District and the Board for welcoming him.

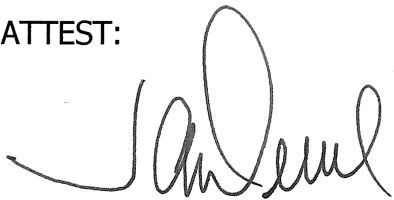
COMMISSIONER COMMENTS/REVIEW OF TODAY'S MEETING CONTINUED

Agenda Item 35. Commissioner Valderrama echoed Commissioner Smith's sentiments and thanked Chairman Peters for his service.

A handwritten signature in cursive script, appearing to read "A. Moore".

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "Janet".

Clerk of the San Diego Unified Port District