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BPC Policy No. 775

SUBJECT: GUIDELINES FOR THE PROTECTION, ENCOURAGEMENT AND, WHERE FEASIBLE, PROVISION OF LOWER COST VISITOR AND RECREATIONAL FACILITIES

PURPOSE: To establish a policy for the protection, encouragement and, where feasible, provision of lower cost visitor and recreational facilities within the jurisdiction of the San Diego Unified Port District (District).

BACKGROUND: The California Legislature has declared the purposes and uses of tidelands and submerged lands matters of statewide concern and has, through the San Diego Unified Port District Act (Port Act), established the District and the boundaries thereto. In enacting the Port Act, the Legislature proclaimed the District a trustee for the people of the State of California. As trustee of the tidelands and submerged waters, the District is vested with the authority to hold and manage the tidelands and submerged lands in and around San Diego Bay "for the development, operation, maintenance, control, regulation, and management of the harbor of San Diego . . . and for the promotion of commerce, navigation, fisheries, and recreation therein." The California Legislature also granted the District broad police powers to make and enforce all necessary rules and regulations governing the use of tidelands and submerged water and balance the needs of commerce, navigation, fisheries and recreation thereon.

Accordingly, the District has the express authority to manage the tidelands and submerged waters in accordance with the Port Act and the Public Trust doctrine and that authority, includes without limitation, the ability regulate, acquire, construct, erect, maintain or operate within the District all improvements or facilities necessary for the promotion and accommodation of commerce, navigation, fisheries and recreation upon the lands and waters under the control and management of the Board of Port Commissioners (Board). The Port Act also requires the District to approve a Port Master Plan, which sets forth the public trust land and water uses within the District.

Consistent with common law, the District has the affirmative duty to take the public trust into account and to protect public trust uses whenever feasible. However, in doing so, the District has the authority to choose between different public trust uses and balance the needs of the people of California.

Additionally, the District is within the California Coastal Zone and, hence, is subject to the California Coastal Act (Coastal Act). Consistent with the Port Act and the Coastal Act, the District has a certified Port Master Plan, which sets forth goals, policies, and objectives, as well as land and water uses within the District. The Coastal Act does not dictate the exact policies or uses that must be in the Port Master Plan. Rather, the Coastal Act grants the District the flexibility and autonomy to impose a variety of different policies and uses to further the Coastal Act. One of the policies codified in Chapter 3 of the Coastal Act, is

Section 30213, which states: "Lower cost visitor and recreational facilities shall be protected, encouraged and, where feasible, provided. Developments providing recreational opportunities are preferred." Under the Coastal Act, the District has the ability to decide among numerous policies and possibilities on how it will advance the goals set forth in Section 30213. However, pursuant to Section 30213, the California Coastal Commission (Coastal Commission) may not dictate room rates as a condition of approval of a development or require the establishment of lower-cost room rates as a policy in the Port Master Plan. This Policy is intended to further the goals of Section 30213.

Because the District does not impose taxes, leasehold revenues collected by the District are used to provide public benefits, including lower cost visitor and recreational facilities. For example, as of the date of this Policy, the District and its tenants have developed and maintain an estimated 22 parks, six playgrounds, six fire rings, seven swim beaches, 22 miles of promenade, five fishing piers, four public viewing piers and platforms, three boat launch ramps, free mooring and docking, shuttle services, bikeways and numerous public art displays. The revenues also are used to provide public infrastructure, such as streets, sidewalks, public restrooms, and landscaping. Therefore, it is important for the District to balance providing such facilities with revenue generating efforts.

POLICY STATEMENT: The District acknowledges that the importance of lower cost visitor and recreational facilities and recognizes that such facilities, depending on their nature, are consistent with the Port Act and the Public Trust Doctrine. Pursuant to the authority granted to the District by the Port Act, as more particularly described herein, it is the policy of the District to:

Protect, encourage and, where feasible, provide for lower cost visitor and recreational facilities to enhance the public's enjoyment of the San Diego Bay. The protection, encouragement and provision, where feasible, of lower cost visitor and recreational facilities should be examined on a project-by-project basis taking into account, without limitation, the Port Master Plan, the type and nature of the project and project site, whether a nexus exists that justifies the project's protection or provision of the facilities, the project's fair share for protecting or providing the facilities, as well as whether the protection or provision of the facilities can be accomplished in a successful manner within a reasonable period of time considering economic, environmental, social, legal and technological factors.

There are many types of lower cost visitor and recreational facilities that may be consistent with this Board Policy, as well as other laws, such as Section 30213 of the Coastal Act. Some of the facilities that would advance this Policy are listed on Exhibit 1. Exhibit 1 is intended to illustrate different types of lower cost visitor and recreational facilities, but not every project will necessarily protect or provide such facilities, and a mix of the same may be provided. Additionally, some facilities not listed on Exhibit 1 may still be considered lower cost visitor and recreational facilities in satisfaction of this Policy.

Exhibit 1

Examples of Lower Cost Visitor and Recreational Facilities

Lower cost visitor and recreational facilities may include, but are not limited to, the following:

- Public recreational opportunities such as active and passive parks, open space, gardens, promenades, walkways and bikeways/bike paths.
- Wayfinding signage, seating, bicycle racks and other enhancements to public access areas.
- Free or lower-cost public events or tours.
- Public art, museums or exhibits.
- Public viewing areas or piers.
- Free or lower cost transportation, including shuttles, van pools, water taxis and bicycle racks.
- Public fishing piers or floating docks.
- Low cost or free moorings or boat slips.
- Dock and dine piers.
- Parking facilities/spaces that are free or lower cost.
- Kitchenettes, free Wi-Fi, free or reduced cost breakfast, and free parking at hotels or motels.
- Hostels, motels, hotels, campgrounds, yurts, RV parks, or tent campsites; provided, however, the District shall not regulate the amount for overnight stay at such facilities through a Coastal Development Permit or the Port Master Plan and therefore, the District needs to further evaluate on how this type of accommodation could be provided.