

**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 Bixler at 1:26 p.m., Tuesday, December 2, 2008, in the Board Room at 3165 Pacific Highway, San Diego, California.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Chairman Bixler led the Pledge of Allegiance.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Bixler, Cushman, Najera, Rios, Spane, and Valderrama.

OFFICERS Bennett, Hollingsworth, Kirkpatrick, McEntee, and Liner.

Absent: No Commissioners absent.

Excused: Commissioner Black was excused for personal business.

Chairman Bixler announced that the Board had returned from closed session.

APPROVAL OF MINUTES

Agenda Item 3. On motion of Commissioner Spane, seconded by Najera, the Board approved, in a single vote, the minutes submitted for the special and regular meetings of November 4, 2008, by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

PUBLIC COMMENTS

Agenda Item 4. None.

ACTION AGENDA

RESOLUTION AUTHORIZING MEMORANDUM OF UNDERSTANDING BETWEEN SAN DIEGO UNIFIED PORT DISTRICT, SAN DIEGO CONVENTION CENTER CORPORATION AND FIFTH AVENUE LANDING, LLC CONCERNING THE FUTURE EXPANSION OF THE SAN DIEGO CONVENTION CENTER; AND GRANTING MUTUAL INDEMNITY AND

Agenda Item 42a. Shahriar Afshar, Senior Asset Manager, Real Estate, addressed the Board and presented the staff recommendation regarding the Memorandum of Understanding between the San Diego Unified Port District, San Diego Convention Center Corporation and Fifth Avenue Landing, LLC concerning the future expansion of the San Diego Convention Center. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

The following members of the public addressed the Board in support of the staff recommendation: Mayor Jerry Sanders, City of San Diego; and Cheryl Kendrick, San Diego Convention Center Corporation.

Commissioner discussion ensued. Chairman Bixler requested and received confirmation from Ray Carpenter, Fifth Avenue Landing, LLC that he would strongly consider including dock and dine facilities in any future projects developed at the site.

On a motion by Commissioner Cushman, seconded by Commissioner Najera, the Board adopted **Resolution 2008-279**, Authorizing Memorandum of Understanding between San Diego Unified Port District, San Diego Convention Center Corporation and Fifth Avenue Landing, LLC concerning the future expansion of the San Diego Convention Center; and Granting Mutual Indemnity, by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

ADOPT THE FOLLOWING ORDINANCE CONDITIONED UPON THE BOARD'S APPROVAL OF ITEM A ABOVE: ORDINANCE AUTHORIZING AMENDMENT NO. 5 TO FIFTH AVENUE LANDING, LLC OPTION AGREEMENT TO EXTEND THE TERM TO NOVEMBER 30, 2009

Agenda Item 42b. Commissioner discussion ensued. Commissioner Cushman stated, for the record, that dock and dine is a policy of the Board of Port Commissioners, and he also noted that the staff report included a statement that a hotel must be included in any project located on the site, and that market rents shall be

paid to the District. Mr. Carpenter acknowledged that the dock and dine program was included in the agreement for the project.

On a motion by Commissioner Cushman, seconded by Commissioner Rios, the Board adopted **Ordinance 2539**, Conditioned upon the Board's approval of item 42A: Ordinance Authorizing Amendment No. 5 to Fifth Avenue Landing, LLC Option Agreement to extend the term to November 30, 2009, by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

CONSENT AGENDA

Chairman Bixler stated that the following consent agenda items would be pulled for discussion:

Agenda Item 5. Resolution Adopting Revisions to Board of Port Commissioners (BPC) Policy No. 401 – Repair of Vessels at Public Berths.

Agenda Item 10. Resolution Authorizing staff to request exemption from California Air Resources Board Drayage Truck Regulations for all Tidelands Areas not including the Tenth Avenue and National City Marine Terminals.

Agenda Item 21. Resolution Authorizing Amendment No. 1 to Amended and Restated Cruise Ship Terminal Financing and Berthing Agreement with Carnival Corporation.

Agenda Item 15b. Resolution Conditioned upon the Board's approval of item (A) above, Consenting to Encumbrance of Seaport Village Operating Co., LLC's Leasehold Estate in the amount of \$23.8 million in favor of Wells Fargo Bank with conditions, was adopted as part of the consent agenda.

Agenda Item 26. Resolution Selecting and Authorizing a Service Agreement with Magic Brite Janitorial for janitorial services for an amount not to exceed \$1,320,000.

Agenda Item 30. Resolution Authorizing staff to submit an application to the State Department of Boating and Waterways for a grant with the Department of Boating and Waterways for Shelter Island Boat Launching Facility Improvement Project.

Agenda Item 31. Resolution Waiving BPC Policy No. 110 and Increasing the Executive Director's Change Order execution authority from 6.0% to 10.0% of the original contract award for the Palm Avenue Street End improvement project in Imperial Beach.

Chairman Bixler stated that the following consent agenda items would be pulled from the December 2, 2008 regular meeting and continued to a future meeting:

Agenda Item 38. Resolution Authorizing increase of \$_____ to the District's total project cost for the North Embarcadero Visionary Plan Phase 1 and authorize payments up to \$_____ to Centre City Development Corporation (CCDC) for District's Share of Amendment No. 1 to Agreement with Project Design Consultants for design services.

Agenda Item 39. Resolution Selecting and Authorizing Agreements with Dudek; ICF Jones and Stokes; and Helix Environmental Planning, Inc. for on-call, as-needed environmental review consulting services in an aggregate amount not to exceed \$_____ for two years with a one-year option to extend.

Chairman Bixler stated that the following consent agenda item would be pulled from the December 2, 2008 regular meeting and no longer required Board action:

Agenda Item 37. Resolution Selecting and Authorizing a Service Agreement with _____ for graffiti removal services in an amount not to exceed \$405,000 for the period January 1, 2009 to December 31, 2011.

Discussion ensued regarding the consent agenda items pulled for comment or clarification.

Regarding consent agenda item 5, Chairman Bixler requested and received confirmation for the record from Bruce Hollingsworth, Executive Director, that the types of vessels referenced in the staff report included all commercial and recreational vessels. (A copy of the staff report is on file in the Office of the District Clerk.)

Regarding consent agenda item 10, Tony LoPresti, Environmental Health Coalition, addressed the Board and took exception regarding the portion of the staff recommendation exempting vehicles hauling lumber at the National City Marine Terminal from the Drayage Truck Regulations. Chairman Bixler noted, for the record,

that lumber is also transported by boat and rail, thus there may be a basis for the exemption.

In light of his small interest in Wells Fargo Bank, Chairman Bixler requested and received clarification from Duane Bennett, Port Attorney, regarding abstaining from the vote for consent agenda item 15b. Mr. Bennett explained to the Chairman that under the circumstances he declare a possible conflict and recommended that he abstain from the vote on the item, although it was not necessary for him to leave the dais.

Regarding consent agenda item 21, Chairman Bixler requested and received clarification from Rita Vandergaw, Marketing Director, regarding the proposed change to the accounting procedure. She stated that staff had requested an administrative change regarding the accounting procedure; however, Carnival Cruise Line requested that the procedure not be changed. Staff agreed to their request, thereby the staff request to the Board was to only approve the term length of the agreement. (A copy of the staff report is on file in the Office of the District Clerk.)

Regarding consent agenda item 30, John Miles, Outboard Boating Group of San Diego, addressed the Board in support of the staff recommendation and also encouraged the timely completion of the project.

Regarding consent agenda item 31, Commissioner Valderrama requested and received confirmation for the record from Bruce Hollingsworth, Executive Director, that the staff request to increase the aggregate amount of change orders was only regarding the specific contract under consideration in the staff report. (A copy of the staff report is on file in the Office of the District Clerk.)

On motion of Commissioner Cushman, seconded by Commissioner Valderrama, the Board, with a single vote, adopted Consent agenda items 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15a, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35a, 35b, 35c, 35d, 35e, 36 and 53 (**Resolutions 2008-249** through and including **2008-256**; **Ordinances 2532** through and including **2533**; **Resolution 2008-257**; **Resolution 2008-259**; **Ordinances 2534** through and including **2536**; and **Resolutions 2008-260** through and including **2008-262**; **Ordinances 2537** through and including **2538**; **Resolutions 2008-263** through and including **2008-278**; and **Resolution 2008-284**) by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

Agenda Item 5. **Resolution 2008-249**, Adopting Revisions to Board of Port Commissioners (BPC) Policy No. 401 – Repair of Vessels at Public Berths, was adopted as part of the consent agenda.

Agenda Item 6. **Resolution 2008-250**, Rescinding Board of Port Commissioners (BPC) Policy No. 450 – Rental of B Street Pier for Non-Cruise Ship Functions and Permit Fee Schedule, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2008-251**, Authorizing Amendment No. 2 to Agreement with Raphael's Party Rentals, Inc. increasing the total compensation amount by \$75,000, for a total of \$535,000, to accommodate additional Cruise Ship traveler processing needs at Broadway Pier, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2008-252**, Authorizing Amended and Restated Exclusive Negotiating Agreement with San Diego International Terminals, Inc., was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2008-253**, Authorizing the Executive Director to execute a Memorandum of Agreement with United States Maritime Administration regarding certain Maritime related infrastructure improvements, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2008-254**, Authorizing staff to request exemption from California Air Resources Board Drayage Truck Regulations for all Tidelands Areas not including the Tenth Avenue and National City Marine Terminals, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2008-255**, Establishing Proposed Rent for Bay Club Hotel and Marina for period January 1, 2009 to December 31, 2013, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2008-256**, Rescinding Board of Port Commissioners (BPC) Policy No. 720 – Site Preparation and Development of Bare Ground, was adopted as part of the consent agenda.

Agenda Item 13. **Ordinance 2532**, Granting an Easement to San Diego Gas and Electric Company for electrical improvements at Bay Marina Drive in National City for the period of January 1, 2009 to March 31, 2027, was adopted as part of the consent agenda

Agenda Item 14. **Ordinance 2533**, Granting Amendment No. 10 to Seaport Village Operating Co., LLC Option Agreement for redevelopment of the Old Police Headquarters extending term through June 30, 2009, was adopted as part of the consent agenda.

Agenda Item 15a. **Resolution 2008-257**, Consenting to Assignment of Lease from San Diego Seaport Village, Ltd. to Seaport Village Operating Co., LLC for the Seaport Village Property, was adopted as part of the consent agenda.

Agenda Item 16. **Resolution 2008-259**, Establishing Proposed Rent for WW San Diego Harbor Island, Inc. dba Hilton San Diego Airport-Harbor Island for the Period January 1, 2009 to December 31, 2013, was adopted as part of the consent agenda.

Agenda Item 17. **Ordinance 2534**, Granting Amendment No. 2 to Option Agreement with Lane Field San Diego Developers, LLC for development of Lane Field South, was adopted as part of the consent agenda.

Agenda Item 18. **Ordinance 2535**, Granting Amendment No. 1 to Option Agreement with Lane Field San Diego Developers, LLC for development of Lane Field North, was adopted as part of the consent agenda.

Agenda Item 19. **Ordinance 2536**, Granting Amendment No. 2 to Option Agreement with Atlas-Kona Kai, LLC dba Kona Kai Resort extending option term, was adopted as part of the consent agenda.

Agenda Item 20. **Resolution 2008-260**, Authorizing staff to proceed with implementation of an Urban Trees 6 exhibit for temporary placement along the North Embarcadero pedestrian promenade for a period of one year for budget not to exceed \$100,000, was adopted as part of the consent agenda.

Agenda Item 21. **Resolution 2008-261**, Authorizing Amendment No. 1 to Amended and Restated Cruise Ship Terminal Financing and Berthing Agreement with Carnival Corporation, was adopted as part of the consent agenda.

Agenda Item 22. **Resolution 2008-262**, Selecting and Authorizing an Agreement with Aon Risk Insurance Services West, Inc. for property/casualty insurance brokerage services for the period February 1, 2009 through January 31, 2012 in an amount not to exceed \$450,000, was adopted as part of the consent agenda.

Agenda Item 23. **Ordinance 2537**, Amending the FY 08/09 Operating Budget, was adopted as part of the consent agenda.

Agenda Item 24. **Ordinance 2538**, Amending Salary Ordinance 2519 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 25. **Resolution 2008-263**, to Amend Personnel Rule 11, was adopted as part of the consent agenda.

Agenda Item 27. **Resolution 2008-265**, Selecting and Authorizing a Service Agreement with Reliable Elevator, Inc. for elevator maintenance services for an amount not to exceed \$180,000, was adopted as part of the consent agenda.

Agenda Item 28. **Resolution 2008-266**, 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 29. **Resolution 2008-267**, Authorizing Amendment No. 2 to the Agreement with Marine Group Boat Works for vessel related services by changing the first year expenditure limit from \$180,000 to \$201,000, was adopted as part of the consent agenda.

Agenda Item 30. **Resolution 2008-268**, Authorizing staff to submit an application to the State Department of Boating and Waterways for a grant with the Department of Boating and Waterways for Shelter Island Boat Launching Facility Improvement Project, was adopted as part of the consent agenda.

Agenda Item 31. **Resolution 2008-269**, Waiving BPC Policy No. 110 and Increasing the Executive Director's Charge Order execution authority from 6.0% to 10.0% of the original contract award for the Palm Avenue Street End improvement project in Imperial Beach, was adopted as part of the consent agenda.

Agenda Item 32. **Resolution 2008-270**, Authorizing Change Order No. 5 to Contract No. 2007-24, fender pile replacement for FY 2008 and FY 2009 various locations, San Diego and National City, California, with R.E. Staite Engineering, Inc. for 74 calendar day extension through April 2, 2009, was adopted as part of the consent agenda.

Agenda Item 33. **Resolution 2008-271**, Authorizing Change Order No. 5 to Contract No. 2005-23 with Rock Electric, Inc. for 60 calendar day time extension through March 2, 2009, was adopted as part of the consent agenda.

Agenda Item 34. **Resolution 2008-272**, Adopting Plans and Specifications and Awarding Contract No. 2008-09 to Bergelectric Corporation for Landside Closed Circuit Television (CCTV) System with lighting and fixed arrays in the amount of \$1,352,732.00, was adopted as part of the consent agenda.

Agenda Item 35a. **Resolution 2008-273**, Adopting Revisions to the Board of Port Commissioners (BPC) Policy No. 018 – Board Advisory Committees, was adopted as part of the consent agenda.

Agenda Item 35b. **Resolution 2008-274**, Adopting Revisions to the Board of Port Commissioners (BPC) Policy No. 114 – Payment of Commissions for the Leasing of Tidelands, was adopted as part of the consent agenda.

Agenda Item 35c. **Resolution 2008-275**, Adopting Revisions to the Board of Port Commissioners (BPC) Policy No. 362 – Americans With Disabilities Act (ADA) Policy, was adopted as part of the consent agenda.

Agenda Item 35d. **Resolution 2008-276**, Adopting Revisions to the Board of Port Commissioners (BPC) Policy No. 453 – Use of the San Diego Unified Port District's (District) Sprung Structures, was adopted as part of the consent agenda.

Agenda Item 35e. **Resolution 2008-277**, Adopting Revisions to the Board of Port Commissioners (BPC) Policy No. 455 – Re-Routing of Harbor Drive Events due to Cruise Ship Activity, was adopted as part of the consent agenda.

Agenda Item 36. **Resolution 2008-278**, Authorizing Reallocation of Environmental Funds awarded to Pasha Automotive Services by reducing the number of hybrid vehicles while expanding the replacement of light fixtures, was adopted as part of the consent agenda.

Agenda Item 37. **Board Action No Longer Required**, Resolution Selecting and Authorizing a Service Agreement with _____ for graffiti removal services in an amount not to exceed \$405,000 for the period January 1, 2009 to December 31, 2011.

Agenda Item 38. **Continued to a future Board meeting**, Resolution Authorizing increase of \$_____ to the District's total project cost for the North Embarcadero Visionary Plan Phase 1 and authorize payments up to \$_____ to Centre City Development Corporation (CCDC) for District's Share of Amendment No. 1 to Agreement with Project Design Consultants for design services.

Agenda Item 39. Continued to a future Board meeting, Resolution Selecting and Authorizing Agreements with Dudek; ICF Jones and Stokes; and Helix Environmental Planning, Inc. for on-call, as-needed environmental review consulting services in an aggregate amount not to exceed \$_____ for two years with a one-year option to extend.

Agenda Item 53. Resolution 2008-284, Authorizing Amendment to BPC Policy No. 115, Guidelines For Prudent Investments, was adopted as part of the consent agenda.

Agenda Item 15b. On motion of Commissioner Rios, seconded by Commissioner Najera, the Board adopted **Resolution 2008-258**, Conditioned upon the Board's approval of consent agenda item 15A, Consenting to Encumbrance of Seaport Village Operating Co., LLC's Leasehold Estate in the amount of \$23.8 million in favor of Wells Fargo Bank with conditions, by the following vote: Yeas-Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-Bixler.

SELECTING AND AUTHORIZING A SERVICE AGREEMENT WITH MAGIC BRITE JANITORIAL FOR JANITORIAL SERVICES FOR AN AMOUNT NOT TO EXCEED \$1,320,000

Agenda Item 26. Paul Lee, Grace Building Maintenance Company Inc., addressed the Board regarding his opposition to the staff recommendation.

Commissioner discussion ensued. Commissioner Cushman expressed his concern that none of the responding bidders offered health benefits to their workers performing the janitorial services. Commissioner Cushman requested that, in the near future, the Board discuss and consider adopting a policy that includes as a bid criteria provision, requirement that the selected provider(s) offer employee health benefits. Commissioner Cushman made a motion that the Board authorize awarding the contract to Magic Brite for one year and in addition, that during the January 2009 Board retreat, the Board consider a policy regarding revising the bid criteria to include health benefits.

Commissioner Rios requested and received confirmation from Commissioner Cushman that the expenditure for the first year of the contract was in the sum of \$346,635.00.

Commissioner Spane expressed his concern regarding the complexity of legislating business requirements.

Commissioner Valderrama requested that Commissioner Cushman restate his motion.

Bruce Hollingsworth, Executive Director, reiterated the term of the agreement.

Duane Bennett, Port Attorney, stated that the Board may vote to award the agreement for one year and provide additional direction to staff.

Commissioner Najera stated that he concurred with Commissioners Cushman and Spane. He encouraged the Board to consider the current state of the economy when discussing the matter.

Chairman Bixler recommended that Commissioner Cushman amend his motion to award the agreement to Magic Brite Janitorial for one year, and to review the matter of employee health benefits at the January 2009 Board retreat, and pursuant to that discussion staff, would receive direction and, subsequently, confer with the selected bidder.

Mr. Hollingsworth expressed his concern that the original request for bid did not include benefits and that if in the future benefits were to be required, he would suggest re-bidding the project. Mr. Hollingsworth suggested that the Board may grant a one-year agreement with a two-year option at the Board's discretion and following further discussion, staff would take direction to either move forward with granting the option or re-bid if benefits were to be required. Mr. Hollingsworth further stated that the matter would not have to come back to the Board unless staff was directed to re-bid or re-award.

Robert Gomez, owner, Magic Brite Janitorial, addressed the Board regarding his bid and clarified that his company pays up to 50% of health benefits for full-time workers.

Mr. Hollingsworth reiterated the staff recommendation: 1) grant the first year based on the contract amount; 2) grant a two-year option period, 3) move forward with the discussion regarding the Board's philosophy related to health benefits and awarding future agreements; 4) the District has the ability and flexibility in the two-year option period to make adjustments to the agreement and, during the negotiations, if the successful bidder was able to come forward with an employee health benefit program that was satisfactory to the Board, additional options could be granted; however, if the employee health benefit program was not acceptable, staff may re-bid.

Commissioner Cushman acknowledged Mr. Gomez's comments during public testimony regarding employee healthcare costs. Commissioner Cushman requested and received confirmation from Mr. Gomez that he, if selected as the successful bidder, had informed District staff of his intention to offer all of the present employees of the current service provider a position with Magic Brite, if acceptable to the District. Commissioner Cushman reiterated the need for further Commissioner discussion regarding healthcare benefits.

On motion of Commissioner Cushman, seconded by Commissioner Najera, the Board, adopted **Resolution 2008-264**, Selecting and Authorizing a Service Agreement with Magic Brite Janitorial for janitorial services for an amount not to exceed \$346,635, and that the District has the option to renew said Agreement with Magic Brite Janitorial for Two (2) additional One (1) year options, by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

ACTION AGENDA

ENVIRONMENTAL COMMITTEE APPROVED RESTORATION PROJECTS

Agenda Item 45ab. Eileen Maher, Assistant Director, Environmental Services Department addressed the Board with a presentation regarding the Environmental Committee Approved Restoration Projects. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Valderrama requested and received clarification from Ms. Maher that the matching funds required for the grant would be funded through the existing Environmental Fund.

Commissioner Spane acknowledged the efforts of staff for their initiative to secure the \$1 million grant.

On a motion by Commissioner Spane, seconded by Commissioner Najera, the Board adopted, with a single vote, **Resolution 2008-281**, Authorizing Acceptance of Environmental Protection Agency's Grant in an amount not to exceed \$1 million, and **Resolution 2008-282**, Approving Restoration and Enhancement of Emory Cove and the Chula Vista Wildlife Reserve for \$1.3 million with matching funds from the Environmental Protection Agency, by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

Commissioner Spane thanked and acknowledged Chairman Bixler for his efforts on behalf of the District. Commissioner Spane left the dais at 2:10 p.m.

PRESENTATION AGENDA

PRESENTATION OF DISTRICT'S EMPLOYEE OF THE 3RD QUARTER, 2008

Agenda Item 40. Bruce Hollingsworth, Executive Director, and Chairman Bixler announced that Sal Ochoa, Assistant Manager (Architectural and Mapping Services), Real Estate Department, was chosen as the District's Employee of the Quarter for the third quarter of 2008. Mr. Ochoa was recognized for his commitment to the District's core values and contributions to constructive culture.

The following nominees were also recognized in the staff report: Karen Emison, Financial Services; James Jordan, Harbor Police; Sharalynne Nichols, General Services; Harry Jones, Maritime Operations; Darren Correia, Maritime Operations and Richard Ybarra, Procurement Services

PRESENTATION OF DISTRICT'S EQUAL OPPORTUNITY PROGRAM (FY 2008) ANNUAL REPORT

Agenda Item 41. Shirley Grothen, Director, Equal Opportunity Management (EOM), addressed the Board and presented the District's EOM Annual Report. Ms. Grothen announced, for the record, that the Board was provided with copies of recent revisions to the Equal Opportunity Program (FY 2008) Annual Report regarding the under-reported number of minorities in the managers job category of District work force and those revisions have corrected the data. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Valderrama acknowledged the work force diversity results presented in the staff report which showed an overall increase in the number of minorities and women employed at the District. Additionally he praised the staff for their efforts in continuing to address the concerns of the region's stakeholders. Commissioner Valderrama also expressed concern in the decrease of minorities in the officials and managers category.

Chairman Bixler requested and received clarification from Ms. Grothen regarding the types of educational information and tools that were being requested to assist potential bidders with the submittal of successful, competitive bids. Chairman Bixler requested and received confirmation from Mr. Hollingsworth that staff will track the

areas for improvement within business operations at the District, as they relate to the Equal Opportunity Program.

Commissioner Najera stated that in addition to having a successful bid, it is also important that small business owners have a successful project that runs efficiently and is profitable. Commissioner Najera stated that there are similar concerns for all small business enterprises including: bonding, lines of credits and insurance requirements. Commissioner Najera recommended that staff also investigate the programs being implemented at the San Diego County Regional Airport Authority that are designed to address the specific concerns of small businesses. Ms. Grothen stated that the District contracts with the San Diego Contracting Center that provides a number of classes to address the various needs of small business owners.

ACTION AGENDA

PRESENTATION OF NORTH EMBARCADERO HARBOR EXCURSION FACILITIES UPGRADES AND DIRECTION TO ISSUE AN RFP FOR SELECTION OF A DEVELOPER FOR GRAPE STREET PIERS 1 AND 2 AND THE NAVY LAGOON DOCK.

Agenda Item 43. Chairman Bixler announced that the item had been pulled and would be continued to a future meeting. Chairman Bixler confirmed that the members of the public who submitted request-to-speak forms did not wish to address the Board at that time. George Palermo, San Diego Harbor Excursion and Jim Unger, Hornblower declined to speak.

RESOLUTION WAIVING BPC POLICY NO. 110 AND AUTHORIZING AWARD OF A SOLE SOURCE AGREEMENT TO COCHRAN ELECTRIC COMPANY, INC. FOR DESIGN CONSULTATION AND COORDINATION SERVICES FOR SHORE POWER INFRASTRUCTURE AT B STREET AND BROADWAY PIERS FOR AN AMOUNT NOT TO EXCEED \$152,000

Agenda Item 44. Mark McIntire, Capital Project Manager, Engineering/Construction, presented the staff report regarding the Resolution Waiving BPC Policy No. 110 and Authorizing Award of a Sole Source Agreement to Cochran Electric Company, Inc. for design consultation and coordination services for shore power infrastructure at B Street and Broadway Piers. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Valderrama made a motion to accept the staff recommendation. He also requested and received confirmation from Commissioner Cushman that the Capital Development Program funding for shore power would be addressed at a future meeting.

Commissioner Cushman stated for the record, that while he has concerns with sole-sourcing, in this instance, there seemed to be no other alternative for the required service, thus, he would support the staff recommendation.

On a motion by Commissioner Valderrama, seconded by Commissioner Najera, the Board adopted **Resolution 2008-280**, Waiving BPC Policy No. 110 and Authorizing Award of a Sole Source Agreement to Cochran Electric Company, Inc. for design consultation and coordination services for shore power infrastructure at B Street and Broadway Piers for an amount not to exceed \$152,000, by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Valderrama; Nays-None; Excused-Black, Spane; Absent-None; Abstained-None.

PROCLAMATION CELEBRATING R.E. STAITE ENGINEERING INC.'S 70TH YEAR ANNIVERSARY

Agenda Item 52. Chairman Bixler acknowledged Ray Carpenter, Katha Carpenter and his family business, R.E. Staite Engineering, for their contribution to the projects developed along San Diego Bay.

Mr. Carpenter thanked the Board, acknowledged the District staff, and accepted the proclamation on behalf of his family and the employees of R.E. Staite Engineering.

Commissioner Cushman acknowledged Mr. Carpenter for his personal efforts to defeat Proposition B.

Chairman Bixler announced for the record that action agenda items 43, 49 and 50 would be continued to a future staff meeting at the staff's request.

PRELIMINARY PROJECT APPROVAL OF THE NATIONAL CITY MARINE TERMINAL CAPACITY ENHANCEMENT PROJECTS, WHARF EXTENSION AND VEHICLE PROCESSING FACILITY AND DIRECTION TO BEGIN DESIGN AND ENVIRONMENTAL PROCESSES AND AUTHORIZING \$2,000,000 FROM THE 2009-2013 CAPITAL DEVELOPMENT PROGRAM.

Agenda Item 49. Item continued.

PRELIMINARY PROJECT APPROVAL OF BOUNDARY ADJUSTMENTS, STREET CLOSURES; AND RESTORATION AND PAVING OF THE FORMER SDG&E TANK FARM SITE AT THE NATIONAL CITY MARINE TERMINAL.

Agenda Item 50. Item continued.

RESOLUTION AUTHORIZING STAFF TO PROCEED WITH A PROGRAM TO PROVIDE INSCRIPTIONS OF QUOTATIONS IN THE CONCRETE WALKWAYS ALONG THE BOARDWALK AND VICINITY OF THE MILITARY HERITAGE ARTWORKS AT TUNA HARBOR PARK ON THE G STREET MOLE

Agenda Item 46. Commissioner discussion ensued. Chairman Bixler requested clarification regarding the method to be used to create the inscriptions. Catherine Sass, Director, Public Art, addressed the Board regarding the project. She explained that the inscriptions would be etched into the walkways with sand blasting, and that the depth of the etching will not impede the pedestrian's use of the walkways. Chairman Bixler announced that the District's Public Art Department's Urban Trees project was recently acknowledged with an Alonzo award by the Partners for Livable Cities.

On a motion by Commissioner Valderrama, seconded by Commissioner Najera, the Board adopted **Resolution 2008-283**, Authorizing staff to proceed with a program to provide inscriptions of quotations in the concrete walkways along the boardwalk and vicinity of the Military Heritage Artworks at Tuna Harbor Park on the G Street Mole, by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Valderrama; Nays-None; Excused-Black, Spane; Absent-None; Abstained-None.

DISCUSSION OF STATE LEGISLATION OF INTEREST TO THE PORT OF SAN DIEGO, STATUS REPORT AND POSSIBLE DIRECTION TO STAFF

Agenda Item 47. Irene McCormack, Assistant Vice President, Communications & Governmental Affairs, introduced Jonathan Clay of Carpi and Clay. They addressed the Board with an update regarding legislation of interest to the District. Ms. McCormack proceeded to review the draft clarification legislation that proposes to amend the Port Act and the California Public Resources Code sections that are applicable to the management of state-owned lands. Ms. McCormack requested direction to move forward with the submission of the proposed draft legislation. (A copy of the staff report is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Valderrama stated that he was in support of the proposed action. He requested and received clarification as to the

selection of sponsors for the bill. Mr. Clay stated that at the present time the District had not approached a specific individual to be an official sponsor of the legislation. Mr. Clay explained that prior to taking the item to an author and starting the legislative process, staff had been working with various stakeholders to review the proposed language and address any areas of concern. Commissioner Valderrama requested and received clarification regarding the timeline for moving the process forward. Mr. Clay explained the official legislative submittal process and that staff has until February 27, 2009 to introduce a bill; however, staff was looking forward to moving the item forward well in advance of the deadline.

Chairman Bixler requested and received clarification regarding the status of any direct conversations with stakeholders from the other California ports that may be impacted by the proposed legislation. Ms. McCormack explained that staff had made preliminary contacts via conference calls with the members of the California Association of Port Authorities. Bruce Hollingsworth, Executive Director, also explained that staff was having discussions with the other ports to determine their position regarding the matter.

On a motion by Commissioner Valderrama, seconded by Commissioner Cushman, the Board directed staff to move forward with the draft clarification legislation that proposes to amend the Port Act and the California Public Resources Code sections that are applicable to the management of state-owned lands, by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Valderrama; Nays-None; Excused-Black, Spane; Absent-None; Abstained-None.

On the occasion of his retirement, Ben Clay of Carpi and Clay addressed the Board and thanked the Commissioners as well as the District staff for their assistance during the past 13 years.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR MEETING OF JANUARY 6, 2009

Agenda Item 48. Commissioner Valderrama requested that an update presentation by the Mayor of National City be added to the agenda. Bruce Hollingsworth, Executive Director, acknowledged the request.

On motion of Commissioner Rios, seconded by Commissioner Valderrama, the Board approved the placement of the proposed agenda of January 6, 2009, by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Valderrama; Nays-None; Excused-Black, Spane; Absent-None; Abstained-None.

PRELIMINARY PROJECT APPROVAL OF THE NATIONAL CITY MARINE TERMINAL CAPACITY ENHANCEMENT PROJECTS, WHARF EXTENSION AND VEHICLE PROCESSING FACILITY AND DIRECTION TO BEGIN DESIGN AND ENVIRONMENTAL PROCESSES AND AUTHORIZING \$2,000,000 FROM THE 2009-2013 CAPITAL DEVELOPMENT PROGRAM

Agenda Item 49. Item Continued.

PRELIMINARY PROJECT APPROVAL OF BOUNDARY ADJUSTMENTS, STREET CLOSURES; AND RESTORATION AND PAVING OF THE FORMER SDG&E TANK FARM SITE AT THE NATIONAL CITY MARINE TERMINAL

Agenda Item 50. Item Continued.

NOTIFICATION OF SETTLEMENT

Agenda Item 51. San Diego Unified Port District v. San Diego Gas Electric (SDG&E); Dynegey South Bay, LLC, et al

Duane Bennett, Port Attorney, announced that the matter had been settled.

OFFICER'S REPORT

Agenda Item 54. In accordance with BPC Policy 110, the following change orders, executed by the Executive Director, were reported:

- a) Change Order No. 2 for Reallocated \$750.00 from Bid Item No. 18 to Re-Stripe One (1) ADA Stall at Descanso Avenue and 0 Calendar Days to Contract No. 2007-48 with Frank & Son Paving, Inc. for Pavement Maintenance at Various Locations, Imperial Beach and San Diego, California.
- b) Change Order No. 2 for \$1,973.03 and 0 Calendar Days to Contract No. 2008-01 with Kaveh Engineering and Construction, Inc. for TAMT "Dole" Stacker Pads Repair, San Diego, California.
- c) Change Order No. 3 for \$18,741.60 and 0 Calendar Days to Contract No. 2005-23 with Rock Electric, Inc. for Port Wide Access Control System San Diego and National City, California.

PRESIDENT'S REPORT

Agenda Item 55. The President thanked the Board and stated that it had been his pleasure to work with them in leading the District.

BOARD COMMITTEE REPORTS

Agenda Item 56. None.

COMMISSIONER COMMENTS

Agenda Item 57. Regarding the impending retirement of Bruce Hollingsworth, Executive Director; Dan Wilkens, Executive Vice President; and Chris Anderson, Vice President Operations/COO; Chairman Bixler thanked each of them for their respective efforts on behalf of the District.

Commissioner Rios acknowledged the efforts of Mr. Hollingsworth, Mr. Wilkens, and Ms. Anderson for their efforts on behalf of the District. Commissioner Rios stated that she enjoyed her service as a Commissioner and acknowledged the work of her fellow Board members, the District staff, the members of the Port Tenants' Association, and the support of Tony Rios.

Chairman Bixler thanked his fellow Commissioners and the staff for their assistance during his term as Chairman of the Board.

Commissioner Cushman acknowledged the efforts of Ben Clay, Mr. Wilkens, and Mr. Hollingsworth. He further acknowledged Commissioner Rios for her dedication and service as a Commissioner. He acknowledged Chairman Bixler for his service as Chairman of the Board.

Commissioner Valderrama thanked and acknowledged Commissioner Rios and Chairman Bixler for their service. Commissioner Valderrama thanked the senior staff and Mr. Hollingsworth for their organizational leadership.

Commissioner Najera thanked Mr. Hollingsworth and Mr. Wilkens for their leadership on behalf of the District. He expressed his appreciation for Commissioner Rios' accomplishments and her service as a role model for young women.

Chairman Bixler noted that there were no additional items on the open session agenda for discussion; whereupon, he announced the Board would reconvene to closed session to discuss remaining closed session items.

CLOSED SESSION

Agenda Item 3.

CONFERENCE WITH LEGAL 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; Executive Director; Port Attorney.

Agenda Item 4.

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

Alan Hirschfield and Nicole Hirschfield, et al. vs. SDUPD, Clyde Williams, et al.
United States District Court, Southern District of California,
Case No. 08 CV 2103 BTM (NLS)

Agenda Item 5.

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 6.

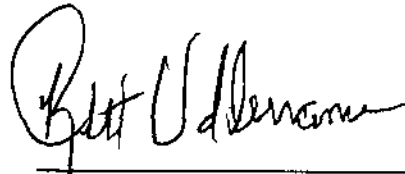
PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR
DISCIPLINE: EXECUTIVE DIRECTOR AND PORT ATTORNEY

Government Code Section 54957.6

There was no formal or reportable action as to item 3-5, pursuant to Government Code Section 54950 et seq to report from the closed session.

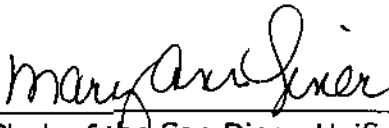
As to agenda item 6, the Board on a 5-0 vote (Commissioners Spane and Black were excused) authorized a Third Amendment to Employment Agreement and \$35,000 salary stipend for the Port Attorney. The Board on a 5-0 vote (Commissioners Spane and Black were excused) authorized a \$50,000 salary stipend for the Executive Director.

At the conclusion of the Closed Session Chairman Bixler adjourned the meeting.



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District