

**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 Cushman at 1:03 p.m., Tuesday, February 3, 2009, in the Board Room at 3165 Pacific Highway, San Diego, California.

**PLEDGE OF ALLEGIANCE**

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

**ROLL CALL**

Agenda Item 2.

Present: COMMISSIONERS Bixler, Black, Cushman, Najera, Peters, Spane, and Valderrama.

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

Absent: No Commissioners absent.

Excused: No Commissioners excused.

**APPROVAL OF MINUTES**

Agenda Item 3. On motion of Commissioner Valderrama, seconded by Commissioner Najera, the Board approved, in a single vote, the minutes submitted for the special meetings of January 5, 2009 and January 6, 2009, as well as the regular meeting of January 6, 2009, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

**COMMISSIONER COMMENTS**

Agenda Item 35. Chairman Cushman reported that the Board held a retreat on January 5 and January 6, 2009. To further the District's positive impact on the economy, Chairman Cushman explained that the Board adopted a shared vision and agreed to focus on five key projects in 2009. He announced the following projects: 1) build the cruise business and cruise ship terminal; 2) adopt a plan for the Chula Vista Bayfront; 3) increase maritime revenue; 4) realign the National City Marine Terminal to

further growth; and 5) review all of the projects along San Diego's Embarcadero to ensure coordination and cooperation. Chairman Cushman also stated that he supported the enacting of the Green Port projects and working to implement the energy-reducing programs suggested by SDG&E as a result of the District's MOU and partnership. Commissioner Cushman stated that, in order to judge the success of the shared vision, periodic report cards to measure the progress will be forthcoming. Commissioner Cushman stated that copies of the shared vision, priority projects, Green Port projects and the SDG&E MOU were available from staff.

Commissioner Cushman stated that he had requested an ad-hoc committee of the Board be formed regarding infrastructure and had requested that Commissioner Black chair this committee. Commissioner Black explained that the draft mission statement for the ad-hoc infrastructure committee was developed in collaboration with the Board and staff. She stated that the draft mission statement included the following: oversight of the development and monitoring the progress of key port infrastructure projects, while still addressing the environmental needs of the Port of San Diego; initiating policies that ensure a creation of world-class infrastructure that delivers services matching international standards; and developing structures that maximize the role of public-private partnerships in the field of infrastructure.

## **PUBLIC COMMENTS**

Agenda Item 4. George Palermo, San Diego Harbor Excursion, addressed the Board in support of **Public Hearing/Action Agenda item 25** regarding the **Broadway Cruise Ship Terminal**.

The following members of the public addressed the Board regarding the formation of the United Clean and Safe Ports Coalition and they discussed their platform: Diane Takvorian, Environmental Health Coalition; Brian Whatley, ILWU Union 29; Jose Medina; Melissa Stephens, American Lung Association; Lorena Gonzales, San Diego/Imperial County Labor Council; and Maria Martinez. Chairman Cushman acknowledged the speakers and thanked them for their efforts on behalf of the District regarding the defeat of Proposition B. Chairman Cushman announced that Commissioner Peters would be chairing the 2009 Environmental Committee and that the District is continuing work toward the implementation of cold ironing.

John Pasha, Working Waterfront Group, addressed the Board and submitted a letter in support of California state legislation that would require future ballot initiatives, regarding land uses on state lands, be placed on a state-wide ballot for consideration by the electorate. Ed Plant, Working Waterfront Group, addressed the Board regarding the

Maritime Business Plan and urged the timely implementation of the plan. (Copies of the letters submitted are on file in the Office of the District Clerk.)

## **PRESENTATION AGENDA**

### **RESOLUTION APPOINTING SYLVIA C. RIOS AS COMMISSIONER EMERITUS**

Agenda Item 21. Chairman Cushman introduced former Commissioner Sylvia Rios and thanked her for her service to the District. Chairman Cushman stated that Commissioner Rios was eligible for appointment as a Commissioner Emeritus.

## **CONSENT AGENDA**

Chairman Cushman announced that the following Consent Agenda Items would be continued to a future meeting:

Agenda Item 6. **Recommendation to Approve efforts furthering the development of new non-copper based antifouling paints or antifouling strategies.**

Agenda Item 16. **Continental Maritime of San Diego, Inc. A) Resolution Authorizing Proposed Rent for January 1, 2008 through December 31, 2009. B) Ordinance Granting Lease Amendment No. 4 to establish rental adjustments for the balance of the lease term.**

Agenda Item 18. **Resolution Selecting and Authorizing Agreement with XXXX for HVAC Maintenance Services in an amount not to exceed \$ \_\_\_\_\_ for three years.**

Agenda Item 19. **Resolution Authorizing Change Order No. 8 to Contract No. 2007-31, Palm Avenue Street End Improvement Project with Reyes Construction in the amount of \$1xx,xxx and increase budget by \$xx,xxx for a total of \$4,1xx,xxx.**

Chairman Cushman announced that the following Consent Agenda Item no longer required Board action:

Agenda Item 20. **Resolution Consenting to Assignment and Assumption of Agreement from Boyle Engineering Corporation to Aecom USA, Inc.**

Chairman Cushman announced that the following Presentation Agenda Item no longer required Board action:

**Agenda Item 22. Presentation Recognizing Dan Wilkens, Outgoing Executive Vice President, for Service to the District.**

Chairman Cushman announced that the following Action Agenda Item would be continued to a future meeting:

**Agenda Item 27. Broadway Piers Shore Power Project A) Resolution Authorizing an Equipment Purchase Agreement with Cochran, Inc. in the amount of \$2,633,897; and B) Resolution Authorizing a Construction Phase Consultant Services Agreement with Cochran, Inc. in the amount of \$203,028, for the B Street and Broadway Piers Shore Power Project.**

Chairman Cushman announced that the following Action Agenda Item no longer required Board action:

**Agenda Item 30. State Legislation A) Discussion of State Legislation of Interest to the Port of San Diego, Status Report and possible direction to staff if any. B) Resolution Authorizing State Legislation Amending the Port Act to require future initiatives regarding land uses on State Lands be a State-Wide Ballot Vote.**

Chairman Cushman announced that it was recommended that the following Action Agenda Items be moved to the Consent Agenda:

**Agenda Item 26. Resolution Authorizing the Implementation of a Voluntary Vessel Speed Reduction Program for the San Diego Unified Port District.**

**Agenda Item 28. Resolution Adopting Plans and Specifications, consenting to withdrawal of bid of J.R Daley Construction, and Awarding Contract No. 2008-17R to Gordon-Prill San Diego, Inc. for Harbor Police Administration Facility improvements in the amount of \$817,458.**

Chairman Cushman announced that it was recommended that the following Presentation Agenda Item be moved to the Consent Agenda:

**Agenda Item 21. Resolution 2009-36 appointing Sylvia C. Rios as Commissioner Emeritus.**

On motion of Commissioner Valderrama, seconded by Commissioner Peters, the Board, with a single vote, adopted Consent Agenda items 5a, 5b, 7, 8, 9, 10, 11, 12, 13a, 13b, 14a, 14b, 15, 17, 21, 26, 28, (**Resolutions 2009-26** through and including **2009-32**; **Ordinances 2547** through and including **2549**; **Resolution 2009-33**; **Ordinance 2550**; **Resolution 2009-34** through and including **Resolution 2009-35**; **Ordinance 2551**; **Resolution 2009-36**; **Ordinance 2552**; **Resolutions 2009-37** through and including **2009-39**); by the following vote: Yeas-Bixler, Black, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 5a. **Resolution 2009-26**, Authorizing Amendment No. 2 to Agreement for Police, Fire, Emergency Medical, Lifeguard and Animal Control Services with the City of Imperial Beach, increasing the agreement amount for FY 2009 by \$144,000 to allow the purchase of four (4) new lifeguard towers and the refurbishment of two (2) lifeguard towers for a FY 2009 total amount under this agreement not to exceed \$2,902,960, was adopted as part of the consent agenda.

Agenda Item 5b. **Resolution 2009-27**, Adoption conditioned upon the Board's Approval of item 5a: Resolution Waiving BPC Policy No. 110 and Authorizing a Sole Source Negotiation with Industrial Design Research for procurement of four (4) new pre-fabricated lifeguard towers for the City of Imperial Beach for an amount not to exceed \$152,000, was adopted as part of the consent agenda.

Agenda Item 6. Item Continued.

Agenda Item 7. **Resolution 2009-28**, Adopting Plans and Specifications, finding International Pavement Solutions, Inc. bid is non-responsive, and Awarding Contract No. 2008-29 to Abdelrahman Jahshan, Sole Owner, dba Pal General Engineering for tidelands, various locations, preventative pavement maintenance FY 2009, San Diego, California, in the amount of \$189,462, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2009-29**, Authorizing Change Order No. 9 to Contract No. 2006-05 with R. E. Staite Engineering, Inc. for the Pepper Park Boat Launching Facility Improvements for 60 calendar day no cost time extension through April 1, 2009, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2009-30**, Authorizing Change Order No. 4 to Contract No. 2007-02 with Remedial Civil Constructor, Inc. DBA RCC for the Tuna Boat Basin Seawall and Revetment Repairs in an amount not to exceed \$274,810.96 and a contract time extension of 120 calendar days, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2009-31**, Authorizing Change Order No. 4 to Contract No. 2007-18, Tidelands Park Picnic Table Replacement Coronado California, with Robert L. Fox, sole owner dba Fox Construction for 58 calendar day no cost extension through March 14, 2009, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2009-32**, Adopting Revision to Board of Port Commissioners (BPC) Policy No. 713 - Tenant Landscaping Improvements and Maintenance, was adopted as part of the consent agenda.

Agenda Item 12. **Ordinance 2547**, Granting a 66-Year Non-Exclusive Easement for a water line at Harbor Drive with conditions, was adopted as part of the consent agenda.

Agenda Item 13a. **Ordinance 2548**, Granting Access and Maintenance Agreement among Sun Harbor Marina; Point Loma Marina, LLC; and District for Maintenance and Operation of Dock Area at 4960 North Harbor Drive, was adopted as part of the consent agenda.

Agenda Item 13b. **Ordinance 2549**, Granting Amendment No. 2 to Lease with Sun Harbor Marina to provide default remedies for access and maintenance agreement and to update lease provisions, was adopted as part of the consent agenda.

Agenda Item 14a. **Resolution 2009-33**, Authorizing Proposed Rent for The Marine Group, LLC retroactive to April 1, 2007 and establishing annual rent adjustments thereafter, was adopted as part of the consent agenda.

Agenda Item 14b. **Ordinance 2550**, Authorizing Amended, Restated and Combined Lease Agreement with The Marine Group, LLC for property located at 997 G Street, Chula Vista, California, was adopted as part of the consent agenda.

Agenda Item 15. **Resolution 2009-34**, Consenting to Amendment No. 2 to Sublease from Port Coronado Associates, LLC to Cheese Wine Desserts, LLC dba Candelas on the Bay to extend the term, was adopted as part of the consent agenda.

Agenda Item 17a. **Resolution 2009-35**, Authorizing Proposed Rent commencing January 1, 2008, was adopted as part of the consent agenda.

Agenda Item 17b. **Ordinance 2551**, Granting Lease Amendment No. 6, was adopted as part of the consent agenda.

Agenda Item 20. Board Action No Longer Required.

## **PRESENTATION AGENDA**

### **PRESENTATION RECOGNIZING DAN WILKENS, OUTGOING EXECUTIVE VICE PRESIDENT, FOR SERVICE TO THE DISTRICT.**

Agenda Item 22. Board Action No Longer Required.

## **UPDATE ON GREEN PORT PROGRAM**

Agenda Item 23. Michelle White, Senior Environmental Specialist, Environmental Services, addressed the Board with an update regarding the District's Green Port Program. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Valderrama left the dais at 1:40 p.m. and returned at 1:41 p.m.

Commissioner discussion ensued. Commissioner Peters stated that he looked forward to working with staff and the Environmental Committee to support the Green Port Program objectives and that there are a number of opportunities for grants and partnerships.

Commissioner Black acknowledged the efforts of staff for their work on the Green Port Program, and she thanked Commissioner Spane for his efforts in guiding the Environmental Committee. She thanked the Environmental Committee for their efforts to not only focus on projects that go above and beyond mitigation, but for the various sustainability program projects that are moving forward within a number of the District's departments.

Chairman Cushman announced that he visited the new Marina Green project that is LEED (Leadership in Energy and Environmental Design) certified and encouraged visiting the project to more fully understand the benefits of sustainable building.

## **PUBLIC HEARING/ACTION AGENDA**

### **CONDUCT A PUBLIC HEARING AND ADOPT AN ORDINANCE ADDING SECTION 8.09 TO THE SAN DIEGO UNIFIED PORT DISTRICT CODE REGULATING THE PARKING OF VEHICLES, OVERSIZE VEHICLES AND TRAILERS UPON SHELTER ISLAND DRIVE FROM THE 1400 BLOCK THEREOF TO ANCHORAGE LANE AND IN SHORELINE PARK**

Agenda Item 24. Lt. Ken Franke, San Diego Harbor Police, addressed the Board and presented the staff report regarding the agenda item. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Peters left the dais at 1:53 p.m. and returned at 1:54 p.m.

Commissioner discussion ensued. Commissioner Bixler requested clarification regarding the recommended time frame for no parking between 3 a.m. to 4:30 a.m. Lt. Franke explained that the time was determined based upon input gathered via outreach efforts, and the recommendation of local business owners and marina owners. Lt. Franke further explained that the majority of workers in the area operate passenger vehicles and they would not be subject to utilizing the designated parking locations; however, oversize vehicles would be required to utilize one of 26 locations specifically designated for oversize vehicle parking.

Chairman Cushman opened the public hearing. The following members of the public addressed the Board with varying viewpoints regarding the matter: Kevin Faulconer, City of San Diego Council Member; Andre Zeehandelaar, Sandy Eulitt, Sharon Cloward, San Diego Port Tenants Association; Susie Baumann, Larry Baumann, Howard P. Turrentine, and Richard Michalski, Outboard Boating Club.

No other members of the public wished to speak and Chairman Cushman closed the public hearing.

Commissioner discussion ensued. Commissioner Valderrama requested additional clarification regarding the thirty foot (30') vehicle size limitation recommended by staff. Lt. Franke introduced Rio Lupisan from Walker Parking Consultants, who explained that the maximum length recommendation was determined based on the parking lot traffic flow and operation. Mr. Lupisan explained that when configuring the parking lot for designated oversize vehicle parking stalls, the maximum oversize vehicle length was determined utilizing AutoTurn, a computer software that simulates vehicle maneuvers and calculates turning maneuverability of various types of vehicles of various lengths.

Mr. Lupisan stated that thirty feet (30') was determined to be the size that would not impact the drive aisles in a lot that was initially designed to accommodate standard passenger vehicles. Commissioner Valderrama requested and received clarification from Mr. Lupisan regarding the ability of a thirty-three foot (33') vehicle to maneuver out of a parking space. Mr. Lupisan explained that while it currently may be possible to do so, upon the reconfiguring of the lot, the designated oversize vehicle stalls may be adjacent to or across from a passenger vehicle stall and make maneuvering a vehicle in excess of thirty feet (30') more difficult.

Commissioner Valderrama requested clarification regarding the hours that oversize vehicles may park on Shelter Island. Lt. Franke explained that oversize vehicles must vacate the lot between 10:30 p.m. and 6 a.m.; oversize vehicles and may not park on the street between 3 a.m. and 4:30 a.m.

On motion of Commissioner Peters, seconded by Commissioner Black, the Board adopted **Ordinance 2552** adding Section 8.09 to the San Diego Unified Port District Code Regulating the Parking of Vehicles, Oversize Vehicles and Trailers upon Shelter Island Drive from the 1400 block thereof to Anchorage Lane and in Shoreline Park; by the following vote: Yeas-Bixler, Black, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Black left the dais at 2:08 p.m. and returned at 2:09 p.m. Commissioner Najera left the dais at 2:08 p.m. and returned at 2:16 p.m.

**BROADWAY CRUISE SHIP TERMINAL: CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION APPROVING A DE MINIMIS PORT MASTER PLAN AMENDMENT FOR CENTRE CITY EMBARCADERO PLANNING DISTRICT 3 AND DIRECT FILING WITH THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION**

Agenda Item 25. John Helmer, Director, Land Use Planning, addressed the Board and presented the staff report regarding the agenda item.

Mr. Helmer stated that the item had been re-noticed in the newspaper and to interested parties, and posted to the website. He explained that staff had received correspondence regarding the staff recommendation and received additional letters that had been forwarded electronically to the Commissioners. Mr. Helmer stated that some of the letters referenced the cruise ship terminal, and he reminded those members of the public, who wished to testify, that the item before the Board was regarding the language shown in the staff presentation. He stated that the language was additional

text to the Planning District 3 Project List, which clarified and memorialized some of the other design and development standards for a cruise ship terminal on the Broadway Pier. Mr. Helmer further stated that the item before the Board neither entitled nor approved a cruise ship terminal building and concluded the presentation. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Chairman Cushman formally read the title of the item into the record, announced the staff report had concluded, and opened the public hearing.

Don Wood addressed the Board with the following comments: there are some procedural problems that need to be addressed before this project moves forward and he believes that the proposed action would violate California Environmental Quality Act (CEQA); an Environmental Impact Report (EIR) of a permanent cruise ship terminal on Broadway Pier was not part of the previous North Embarcadero Visionary Plan (NEVP) EIR; the process that staff had conducted so far did not include any discussion of the project alternatives as provided for by CEQA, alternative sites for a cruise ship terminal should be considered; a building would block views, block public access, would create additional environmental problems and must be discussed and mitigated in a project EIR; while there was mention of providing limited public access to the west end of the pier on non-cruise ship days or days when cruise ships would not be berthed at the pier, staff to date has been very vague on how many days a year it expects cruise ships to be using the pier and the proposed cruise ship terminal; and a major mitigation element of the original master EIR, which was the east west corridor along Broadway with a plaza over the waterfront, over the water at the foot of Broadway is going to be significantly degraded by putting a building on that site.

Diane Coombs representing Citizens for Century 3 addressed the Board with the following comments: we are very concerned that actions such as this are going to adversely impact the North Embarcadero; we are very concerned with this project moving forward and we question whether it truly is a de minimis amendment to the Port Master Plan; there was never any intention for a permanent cruise ship terminal on Broadway Pier in the beginning, after a temporary facility was basically denied, look at alternatives for either a temporary or a permanent facility at the 10<sup>th</sup> Avenue Marine Terminal; we are very concerned about traffic impacts; that much of the visions of the NEVP, which we supported, is being lost piece by piece; we want to reaffirm our opposition, not only to the de minimis amendment but, to the entire project itself.

Ray Ashley, President of the Maritime Museum, addressed the Board with the following comments: along with my fellow members of the Port Tenant's Association I would love to speak today in favor of the measure; I am presuming that the proposed

structure is necessary for the Port to be able to operate cruise ships at that facility to a meaningful degree; I would also like to speak in favor of waterfronts in general and that it is in the best public interest that the highest aesthetic attributes be achieved in any contemplated development on the waterfront, but I don't believe that it really is in the public's interest including the residents and property owners if the Bay just becomes an architectural water feature; what makes a waterfront interesting and vibrant is the degree of maritime activity that we have; the city has an enormous diversity of uses on our bay, probably incomparable to any where else in the world, and I think what makes it magic, what makes it work is the interplay of all of those uses and that also I think addresses the widest spectrum of constituencies among the public that it is your obligation to represent.

As there were no additional speakers, Chairman Cushman closed the public hearing.

Commissioner discussion ensued. For the record, Commissioner Bixler requested that Rita Vandergaw, Director of Marketing, respond to a series of short questions. Commissioner Bixler asked Ms. Vandergaw when the original Broadway Pier was built.

Ms. Vandergaw stated that the original pier was built in 1918, added to in 1933, and since its inception had been used to support deep-water maritime activity. Commissioner Bixler stated that in support of deep-water maritime activity, the pier had a structure on it almost from the beginning. Ms. Vandergaw stated that the Broadway Pier had a warehouse that covered most of the pier up until the 1970's when the structure was removed and replaced. Ms. Vandergaw stated that in the 1930's a warehouse covered the entire pier.

Commissioner Bixler asked whether any ships that called at the Broadway Pier were ever an inner-coastal kind of vessel coming from places like Los Angeles or San Francisco. Ms. Vandergaw stated that many vessels had calls there, in fact in the 1960's and 1970's there were cruise ships that served Hawaii as a mode of transportation and there were also had ferry vessels, cargo vessels, and naval vessels. Ms. Vandergaw stated that it has been in constant use. Commissioner Bixler stated that at least until some point in the 1970's there were passenger ships and/or passengers from sea-going ships using the Broadway Pier as a point of embarkation. Ms. Vandergaw explained that in the early 1980's, when the District entered into the cruise business, the first pier that was utilized was the Broadway Pier and the platform that was built there was built as an embarkation platform, specifically for Princess Cruises, that served cruise ships in and out of San Diego in 1983. Commissioner Bixler queried whether it was a reasonable assumption that for the construction of that platform, to serve the cruise business at

the time identified as Princess, there was some sort of building permit issued by the City of San Diego before the District built the platform. Ms. Vandergaw concurred with Commissioner Bixler, and she stated that in the Port Master Plan the Broadway Pier has always been a mixed/multi-use pier. She further stated that it has been there to support the maritime industry and the public and that is what the District has continued to do with the new design for the facility on Broadway Pier.

Commissioner Bixler requested clarification if anyone on the staff was aware of, at any time, that the San Diego Unified Port District, ever declared that it was not its intent to continue using Broadway Pier as a cruise ship destination, loading and unloading, etc. Ms. Vandergaw replied, "No, and if I may speak to my tenure, as a Port staff person, I have been involved with the North Embarcadero Visionary Plan since its very inception and from the very beginning at the public meetings, which I would say we had well over 50, maybe 60 or 70 over the years, we have always stated our intent to keep both Broadway and B Street in use supporting the cruise industry and other maritime uses."

Commissioner Bixler stated that over the course of time, whatever agency or City of San Diego department that may have had jurisdiction over the pier, the fact remained that Broadway Pier had been in consistent use since 1918 and no break in service had occurred. Ms. Vandergaw stated that the Commissioner's statement was correct and a working group was formed that included the District, the City of San Diego, Centre City Development Corporation (CCDC), the United States Navy, and the County of San Diego that ultimately developed the current North Embarcadero Visionary Plan program. Ms. Vandergaw stated that the North Embarcadero Visionary Plan actually ends at the foot of Broadway and all of the water area, all of the piers and all of the in-water work and development in those areas is under the Port's jurisdiction. She stated that it was never the intent, under the NEVP, for those piers to be incorporated into the design of the NEVP plan. Ms. Vandergaw stated that at one point in the process there was a concept drawing, which she had acknowledged in many public meetings, created by one of the architects that showed a pier with what were, at that point, actual gangways. Ms. Vandergaw stated that the drawing was actually a depiction of a roadway ramp and gangways that some members of the public may have interpreted as an open space, when actually that area was a means of connecting to have cruise service on the pier.

Ms. Vandergaw confirmed Commissioner Bixler's statement that later, after the warehouse was torn down, the District received permission and built that outdoor loading structure specifically for cruise ship use, and to some degree that may have been an acceptable solution today but due to Homeland Security considerations a

physical structure was required. Ms. Vandergaw also confirmed that in the past the District had utilized temporary structures to fulfill the cruise industry's seasonal needs but that, due to regulations from the Federal government and the City of San Diego's Fire Department, permanent structures were required. Commissioner Bixler concluded his remarks and stated, "It's been a cruise ship landing the way these things are, since 1918; the way these things are handled in the year 2006 – 2008 now requires a structure. We've never given up our intent to use it in that way and I think those are the facts, I think it is important to have those facts in the record for those who have, perhaps made some other assumptions that this agency has never made or declared. Thank you."

Commissioner Black stated that she supported the staff recommendation. She stated that she had also been very involved in the North Embarcadero Visionary Plan, and in 1998 worked very hard with the Port, CCDC, the Navy and the County, and they considered Broadway Pier not to be included in the North Embarcadero Plan. She further stated that in approximately November 1998 they discussed utilizing the Broadway Pier as a celebrational opening. Commissioner Black stated that there was never going to be a terminal on Broadway Pier, it was always going to be at B Street and the Broadway Pier was going to be walkable. Commissioner Black stated in August of 2007, she voted 6-1 because although she supported the Port's need to continue our cruise industry, and she was concerned about how the building looked. She reiterated her support for the staff recommendation, although she does not agree with the process by which this happened, it was disjointed, it wasn't always honest, at least from her perspective. In the 19 months that she has been there, the process has been open and transparent. Commissioner Black stated she believed there were enough workshops, it is a LEED certified building, it has green pedestrian areas, 30 or 40 ships at the most that will be dropping by. Commissioner Black stated that this is an opportunity to create something beautiful, where you could have parties and generate revenue. She further stated that in August it was a hard vote to take, but she is supporting it now because it needs to be done, we need to support our cruise ship industry and it is a compromise. Commissioner Black stated that, in her opinion, there was an understanding, maybe not amongst the Port Commissioners at that time, but there was an understanding of downtown businesses that there was going to be open space.

Ms. Vandergaw stated that Commissioner Black was correct from the perspective that the foot of Broadway was to be ceremonial. Ms. Vandergaw stated that the District incorporated up to a 2.0 floor area ratio (FAR) into the master EIR taken to the Coastal Commission and it is not accurate to say that a building was not contemplated for Broadway Pier. She stated that it is fair to say we never showed a design, we never

took one forward to the public, but we did incorporate a building into our master EIR and it was part of the process we took forward to the Coastal Commission. She stated that another issue had been raised regarding traffic and the extent of usage, or the proposed usage, at the terminal. Ms. Vandergaw stated that staff included in the master EIR a terminal much larger than the one at B Street. Staff included a one-day operation study from the ship on which the traffic and circulation was much more extensive than what we have at the current operation today. She stated, "I think we need to get all the facts out and that is what we studied, that is what was authorized, while there was no building shown, it definitely was incorporated into our master EIR."

Commissioner Peters requested clarification regarding the issue raised by Mr. Wood during public comment regarding the need for review of the building under CEQA. Duane Bennett, Port Attorney, stated that Mr. Helmer or Deputy Port Attorney Leslie FitzGerald could address that issue. Mr. Bennett stated that for purposes of the matter before the Board, the Port Attorney concurred with the staff analysis that this was a de minimis Master Plan Amendment that is exempt from CEQA. Mr. Bennett stated that in light of the prior conversation regarding the terms of the contemplated project his opinion was that the appropriate parameters relative to the CEQA have been complied with.

Regarding Commissioner Peters' request, Mr. Helmer stated, as a matter of clarification, that when the Board heard the item in 2007 there was in fact an Addendum to the Master EIR and Initial Study, which looked at all those issues, parking, traffic, etc... to determine if there were any additional new impacts that were not covered in the 2001 EIR. The Addendum and Initial Study were out for a 45-day review period and the Board conducted a public hearing. Staff received no written or verbal comments on the matter and believe they complied with CEQA in 2007 regarding the issuance of the Coastal Development Permit for the building. Mr. Helmer restated that the language changes under consideration were de minimis and because there was no physical change, staff determined the request to be exempt from CEQA. Commissioner Peters requested and received confirmation from Mr. Helmer that the building and the view impacts were analyzed under CEQA. Commissioner Peters stated that he appreciated that there was considerable process that went into this, and even though today as we are just taking a de minimis action, it is going to be one step that leads to the approval of this building. Commissioner Peters stated that he respected Commissioner Black for calling the matter to a little bit of a halt at one point, making it go through a process that did cover CEQA.

Commissioner Valderrama stated that in consideration of the public comments being addressed, staff providing the input, and with the Port Attorney providing his

analysis of what's transpired, he made a motion for approval of a de minimis Port Master Plan Amendment for the Centre City Embarcadero Planning District 3 and to direct filing with the California Coastal Commission for certification. Commissioner Peters seconded the motion and Chairman Cushman requested the Commissioners' vote. The Deputy District Clerk announced that the motion was adopted unanimously.

On motion of Commissioner Valderrama, seconded by Commissioner Black, the Board, adopted **Resolution 2009-37**, Broadway Cruise Ship Terminal: approving a de minimis Port Master Plan Amendment for Centre City Embarcadero Planning District 3 and directing filing with the California Coastal Commission for certification, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

## **ACTION AGENDA**

### **REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR MEETING OF MARCH 3, 2009**

Agenda Item 31. Charlie Wurster, President/CEO, stated that item 20 on the proposed agenda for the March 3, 2009 Board meeting, a Presentation of life saving commendations and medals to two Harbor Police Officers, would be continued to a future meeting.

On motion of Commissioner Spane, seconded by Commissioner Peters, the Board approved the placement of the proposed agenda of March 3, 2009, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

### **BROADWAY PIERS SHORE POWER PROJECT**

- A) RESOLUTION AUTHORIZING AN EQUIPMENT PURCHASE AGREEMENT WITH COCHRAN, INC. IN THE AMOUNT OF \$2,633,897; AND**
- B) RESOLUTION AUTHORIZING A CONSTRUCTION PHASE CONSULTANT SERVICES AGREEMENT WITH COCHRAN, INC. IN THE AMOUNT OF \$203,028, FOR THE B STREET AND BROADWAY PIERS SHORE POWER PROJECT.**

Agenda Item 27ab. Items Continued.

## **DISCUSSION OF DROP INTEREST RATE AND DIRECTION TO STAFF**

Agenda Item 29. Michelle Corbin, Benefits Manager, addressed the Board with a report regarding the Deferred Retirement Option Plan (DROP) Interest Rate and requested Board direction regarding any suggestions/recommendations they would like to provide to the San Diego City Employees' Retirement System (SDCERS). (A copy of the presentation and staff report is on file in the Office of the District Clerk.)

Commissioner Black left the dais at 2:41 p.m. and returned at 2:43 p.m. Commissioner Cushman left the dais at 2:44 p.m. and returned at 2:45 p.m.

Commissioner discussion ensued. Commissioner Peters stated that for some time the interest rate has been artificially high for the accounts. Commissioner Peters requested and received clarification from Ms. Corbin that there was no meet and confer obligation required. Commissioner Peters stated that he supported a ceiling of the current interest rate of 7.75% down to 0% and that the District should take steps to ensure that what DROP pays is equivalent to actual earnings. Commissioner Peters supported SDCERS continued management of the fund as long as the return was fixed at a rate equivalent to what was actually earned.

Commissioner Peters stated that the City of San Diego suggested fixing the DROP interest rate year-by-year and that the San Diego County Regional Airport Authority requested that the DROP interest rate float with actual returns. Commissioner Peters stated that he preferred that the interest rate float with the actual returns. He asked Jeff McEntee, CFO/Treasurer, to address both alternatives. Mr. McEntee explained that SDCERS could select either option, and if interest rates are adjusted more frequently, it would more closely approximate what was actually being earned. Regarding setting the rate annually, Mr. McEntee stated that it may be easier to manage from an administrative standpoint. Commissioner Peters made a motion to adopt a ceiling of 7.75%, and a floor of 0%, and to keep the fund management within the SDCERS system. Commissioner Bixler seconded the motion.

Chairman Cushman requested and received clarification regarding the staff recommendation to outsource the DROP fund management. Mr. McEntee explained that outsourcing the management would potentially be the cleanest way to handle the fund to avoid any concerns in terms of the actual earnings on the invested assets. Mr. McEntee also stated that a second viable option was that SDCERS manage a pool of funds separate from the other SDCERS assets. Chairman Cushman stated that having SDCERS manage the funds would be more cost effective.

Commissioner Peters re-stated that his motion would include separate management of the DROP fund pool by SDCERS.

Commissioner Bixler requested clarification from Commissioner Peters, for the record, if he was or had been a DROP participant during his tenure with the City of San Diego. Commissioner Peters responded that he is not a participant in DROP with the District or with the City of San Diego. Commissioner Bixler requested confirmation regarding the motion, and that the DROP program would be managed within the existing SDCERS pension program. Commissioner Peters confirmed that a separately accounted for fund, managed by SDCERS, was proposed and part of his motion. Commissioner Bixler also requested clarification from Mr. McEntee regarding the time period or kind of cycle to be utilized for attributing an interest rate to these DROP participants, and whether the attribution was to be done in arrears. Commissioner Bixler stated for example that if it were to be done 4 times a year, the first credit would be done as of April 1 for the preceding calendar quarter. Mr. McEntee replied that attributing an interest rate could be done in two ways; however, if the Board wished to more closely match actual earnings on the portfolio, the rate set would be based on the time period determined and that rate would be retroactive. Mr. McEntee stated that, alternatively, the rate could be established based on past history and be utilized on a go forward basis.

Commissioner Spane requested clarification from Mr. McEntee regarding the reasoning behind SDCERS' request for participant direction regarding this matter. Mr. McEntee stated that while he did not have specific reasons, he surmised that the current market and economic conditions may have precipitated their request.

Chairman Cushman requested that Commissioner Peters re-state his motion. Commissioner Peters stated that his motion was to provide input to SDCERS on their decision regarding the DROP program, to suggest that the rate of return on DROP reflect actual returns adjusted as frequently as feasible between 0% and the assumed rate of return, currently 7.75%, and that those funds be managed within the SDCERS system but be accounted for separately.

Commissioner Bixler recommended that the motion be amended to state that SDCERS adjust the actual rate of return on a calendar quarter basis and in arrears.

Commissioner Peters amended his motion that the rates would be quarterly and in arrears.

On motion of Commissioner Peters, seconded by Commissioner Bixler, the Board directed staff to provide input to SDCERS on their decision regarding the DROP interest rate, suggest that DROP interest rate reflect actual returns between 0% and 7.75%; to be adjusted quarterly in arrears; and that those funds be managed within the SDCERS system, but be accounted for separately, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

## **RESOLUTION STATE LEGISLATION**

### **DISCUSSION OF STATE LEGISLATION OF INTEREST TO THE PORT OF SAN DIEGO, STATUS REPORT AND POSSIBLE DIRECTION TO STAFF IF ANY.**

### **RESOLUTION AUTHORIZING STATE LEGISLATION AMENDING THE PORT ACT TO REQUIRE FUTURE INITIATIVES REGARDING LAND USES ON STATE LANDS BE A STATE-WIDE BALLOT VOTE**

Agenda Item 30ab. Item continued.

## **OFFICER'S REPORT**

Agenda Item 32. In accordance with BPC Policy 110, the following change orders, executed by the Executive Director, were reported:

- A) Change Order No. 2 for \$0.00 with 2 Calendar Days & Change Order No. 3 for \$47,395.52 with 36 Calendar Days to Contract No. 2007-02 with Remedial Civil Constructors, Inc. (RCC) for Tuna Boat Basin Seawall and Revetment, San Diego, California.
- B) Change Order No. 2 for \$0.00 and 0 Calendar Days to Contract No. 2007-14 with Alpha Mechanical Heating and Air Conditioning, Inc. for Administration Building Boiler and Chiller Repair, San Diego, California.
- C) Change Order No. 4 for \$41,371.72 with 0 Calendar Days & Change Order No. 5 for \$0.00 with 60 Calendar Days to Contract No. 2005-23 with Rock Electric, Inc. for Port Wide Access Control System San Diego and National City, California.
- D) Change Order No. 1 for \$11,074.00 with 60 Calendar Days to Contract No. 2007-34 with Ensley Electric, Inc. for 10th Avenue Marine Terminal Security Lighting Phase III, San Diego, California.

- E) Change Order No. 4 for (\$22.24) and 0 Calendar Days to Contract No. 2007-24 with R.E. Staite Engineering, Inc. for Fender Pile Replacement for FY08 and FY09, Various Locations, San Diego and National City, California.
- F) Change Order No. 1 for \$2,572.00 with 0 Calendar Days to Contract No. 2007-31 with Reyes Construction, Inc. for Palm Avenue Street End Improvements, San Diego, California.
- G) Change Order No. 5 for \$7,211.00 with 0 Calendar Days, Change Order No. 6 for \$48,319.00 with 0 Calendar Days, & Change Order No. 7 for \$38,452.00 with 50 Calendar Days to Contract No. 2007-31 with Reyes Construction, Inc. for Palm Avenue Street End Improvements, San Diego, California.
- H) Change Order No. 1 for \$1,187.03 with 0 Calendar Days & Change Order No. 2 for \$25,081.00 with 14 Calendar Days to Contract No. 2007-26 with Randall Construction, Inc. for Tideland Comfort Station Refurbishment Various Locations: Chula Vista, Coronado, Imperial Beach, National City and San Diego, California.
- I) Change Order No. 4 for (\$57,052.24) 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.
- J) Change Order No. 3 for (\$12,786.00) and 0 Calendar Days to Contract No. 2007-35 with Ace Restoration and Waterproofing, Inc. for Tuna Boat Pier and Fleet Landing Repairs North Embarcadero, San Diego, California.

## **PRESIDENT'S REPORT**

Agenda Item 33. Charlie Wurster, Executive Director, thanked the Chairman and all of the Commissioners, as well as the staff, for their warm welcome since reporting aboard.

## **BOARD COMMITTEE REPORTS**

Agenda Item 34. None.

**CLOSED SESSION**

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

Agenda Item 3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

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

SDUPD vs. Argonaut Insurance Company, et al.  
San Diego Superior Court No. GIC 874394

Agenda Item 4.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: SDUPD - Approximately 12.42 Acres of Property located on the Southern Portion of the Former LNG Site, South of Interstate 5 and Bay Boulevard, Chula Vista

SDG&E - Approximately 17 Acres of Property occupied by SDG&E under an Easement in perpetuity for an Electric Substation and Adjacent Non-Exclusive Easement for Transmission and Distribution Facilities, both of which are located South of Interstate 5 and Bay Boulevard in Chula Vista

Negotiating Parties: Eugene Mitchell, Regional Vice President,  
External Affairs, SDG&E  
Chris Hargett, SDUPD

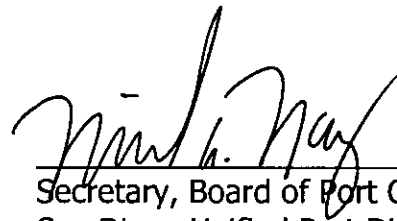
Under Negotiation: Price and Terms

Agenda Item 5.

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

Government Code Section 54957.6

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



Secretary, Board of Port Commissioners  
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District