

**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 1:10 p.m., Tuesday, April 7, 2009, in the Board Room at 3165 Pacific Highway, San Diego, California.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Agenda Item 2.

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

OFFICERS Bennett, Kirkpatrick, Liner, and Wurster.

Absent: No Commissioners absent.

Excused: Commissioner Black excused for personal business.

APPROVAL OF MINUTES

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

PUBLIC COMMENTS

Agenda Item 4. The following members of the public addressed the Board with concerns regarding idling trucks servicing a warehouse located near the Mercado Apartments in the Barrio Logan neighborhood: Maria Martinez; Lorena Gonzalez, San Diego/Imperial County Labor Council; Brian Whatley, ILWU Local 29; and Tony LoPresti, Environmental Health Coalition.

Chairman Cushman explained that the Board does not take formal action regarding public comments. He thanked the members of the public for their comments and proceeded to review a number of steps that staff had already taken during the past few weeks regarding the matter. Chairman Cushman also stated that the District would be implementing a 24-hour telephone hotline for residents to contact the District regarding this matter.

CONSENT AGENDA

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

Agenda Item 16. Resolution Authorizing Agreement with _____ for Compressed Natural Gas (CNG) Vehicle Leasing Services for District fleet for an amount not to exceed \$125,000

Chairman Cushman announced that the following Consent Agenda Items no longer needed Board action:

Agenda Item 17. Resolution Authorizing Agreement with (Name), for the Acquisition of eight (8) trucks (new and unused goods) for an amount not to exceed \$(amount)

Chairman Cushman announced that the following items would be added to the Consent Agenda:

Agenda item 29ABC. North Embarcadero Bay Tour Operators - Resolutions Authorizing Individual Exclusive Negotiating Agreements with: A) Eddie and Troy's Excellent Adventure dba Next Level Sailing B) Hornblower Yachts, Inc. dba Hornblower Cruises and Events C) Star & Crescent Boat Company dba San Diego Harbor Excursion

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

Agenda Item 29A. North Embarcadero Bay Tour Operators - Resolutions Authorizing Individual Exclusive Negotiating Agreements with: A) Eddie and Troy's Excellent Adventure dba Next Level Sailing

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

Agenda Item 18AB. North Embarcadero Visionary Plan Phase 1 Coastal Access Features Project: A) Conduct a Public Hearing and Adopt Resolution Finding that the NEVP Phase 1 Coastal Access Features Project is within the scope of the North Embarcadero Visionary Plan Master Environmental Impact Report. B) Conduct A Public Hearing and Adopt Resolution Authorizing Issuance of an Appealable Coastal Development Permit.

Chairman Cushman announced that the following Action Agenda Item would be continued to a future meeting per a request from Commissioner Black:

Agenda Item 24AB. Presentation of Proposed Strategies for providing New Marketing and Public Relations Opportunities and Temporary Financial Assistance to Port District Tenants and direction to staff on the following: A) Resolution Waiving BPC Policy No. 609 and authorizing transfer of \$150,000 from the Public Art Fund to the FY 08/09 District Operating Budget. B) Ordinance Amending the FY 08/09 District Operating Budget increasing it by \$150,000 for a total District Operating Budget of \$147,446,400

Chairman Cushman announced that the following Action Agenda Item would be continued to a future meeting to allow for review and recommendation by the Financial Assistance Committee:

Agenda Item 26. Resolution Amending Resolution 2008-65 Establishing FY08-09 Financial Assistance Program Funding and Waiving BPC Policy No. 025 to reallocate funds previously authorized for the Chula Vista Chamber of Commerce in the amount of \$30,000 to the Chula Vista Visitor Information Center

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

Agenda Item 27. Discussion of State Legislation of Interest to the Port of San Diego, Status Report and possible direction to staff if any.

On motion of Commissioner Peters, seconded by Commissioner Bixler, the Board, with a single vote, adopted Consent Agenda items 5, 6a, 6b, 7, 8, 9, 10, 11, 12, 13, 15, 29b, 29c, 30, 31 and 32, (**Resolution 2009-58** through and including **Resolution 2009-66**; **Ordinance 2556** through and including **Ordinance 2557**; **Resolution 2009-67**; **Resolution 2009-72** through and including **Resolution 2009-74**; **Resolution 2009-57**; and **Resolution 2009-75** through and including **Resolution 2009-76**) by the following vote: Yeas-Bixler, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

Agenda Item 5. **Resolution 2009-58**, Authorizing a Use Agreement with San Diego Metropolitan Transit System (MTS) for use of MTS existing data infrastructure (dark fiber optics and roof access at Mills Building) and granting indemnity to MTS, was adopted as part of the consent agenda.

Agenda Item 6a. **Resolution 2009-59**, Selecting and Authorizing an Agreement with Nexus IS, Inc. to provide Voice and Data Infrastructure Upgrade Services for a period of time commencing May 15, 2009, and terminating July 15, 2014, was adopted as part of the consent agenda.

Agenda Item 6b. **Resolution 2009-60**, Authorizing a Master Tax-Exempt Lease/Purchase Agreement with Key Government Finance, Inc. for the lease-purchase of phone and computer network equipment for a period of time commencing April 15, 2009, and terminating July 15, 2013, was adopted as part of the consent agenda.

An amount not to exceed Two Million Nine Hundred Sixty Three Thousand Eight Hundred Thirty Seven Dollars and Fifty Cents (\$2,963,837.50), including principal and interest, was authorized as payment for both Nexus IS, Inc. and Key Government Finance, Inc.

Agenda Item 7. **Resolution 2009-61**, Waiving BPC Policy No. 110 III.(A)(3) and Authorizing a Purchase Agreement for the period July 1, 2009 to June 30, 2010 with the SoCo Group Inc., to purchase regular gasoline and diesel in an amount not to exceed \$353,900.00 including all taxes and freight, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2009-62**, Authorizing Change Order No. 4 to Contract No. 2007-26 with Randall Construction, Inc. for Tidelands Comfort Station Refurbishment at Various Locations; Chula Vista, Coronado, Imperial Beach, National City and San Diego, California in an amount not to exceed \$108,488.02 and 69 calendar day extension through January 5, 2010, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2009-63**, Authorizing Change Order No. 5 to Contract No. 2007-02 with Remedial Civil Constructor, Inc. dba RCC for the Tuna Boat Basin Seawall and Revetment Repairs in the amount not to exceed \$81,000, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2009-64**, Selecting and Authorizing Agreement with EHM Architecture, Inc. for as-needed Americans with Disabilities Act (ADA) and Architectural Design Services for an aggregate amount not to exceed \$240,000 over a three-year period, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2009-65**, Authorizing First Amendment to Agreement with URS Corporation, a Nevada Corporation doing business in California as URS Corporation Americas, for \$150,000 for a new total not to exceed amount of \$450,000, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2009-66**, Adopting Revisions to Board of Port Commissioners (BPC) Policy No. 380 – Sportfishing, was adopted as part of the consent agenda.

Agenda Item 13. **Ordinance 2556**, Granting Amendment No. 1 to Option Agreement with Bartell Hotels, LP, dba Holiday Inn Bayside extending option term by 18-Months to November 30, 2010, was adopted as part of the consent agenda.

Agenda Item 14. **Ordinance 2557**, Granting Amendment No. 2 to Weyerhaeuser Company Lease for property located in National City, adjusting the written notice requirement for Lessee's Option to extend term of lease, was adopted as part of the consent agenda.

Agenda Item 15. **Resolution 2009-67**, Authorizing a Purchase Agreement with Theodore Robbins Ford for the acquisition of ten (10) police sedans (new and unused goods) for an amount not to exceed \$ 245,340.39, was adopted as part of the consent agenda.

Agenda Item 16. Item Continued.

Agenda Item 17. Board Action No Longer Required.

Agenda Item 29A. Item Continued.

Agenda Item 29B. **Resolution 2009-72** Authorizing Individual Exclusive Negotiating Agreements with North Embarcadero Bay Tour Operator: Hornblower Yachts, Inc. dba Hornblower Cruises and Events, was adopted as part of the consent agenda.

Agenda Item 29C. **Resolution 2009-73** Authorizing Individual Exclusive Negotiating Agreements with North Embarcadero Bay Tour Operator: Star & Crescent Boat Company dba San Diego Harbor Excursion, was adopted as part of the consent agenda.

Agenda Item 30. **Resolution 2009-74**, Selecting and Authorizing an Agreement with Engineering Partners, Inc. for Professional Civil and Electrical Design Services for the Shore Power System at B Street and Broadway Pier for an amount not to exceed \$252,000, was adopted as part of the consent agenda.

Agenda Item 31. **Resolution 2009-57**, Directing Staff to proceed with completing a Programmatic Environmental Impact Report for the Chula Vista Bayfront Master Plan, was adopted as part of the consent agenda.

Agenda Item 32. **Resolutions 2009-75 and 2009-76**, Accepting the recommendation from the Environmental Advisory Committee to Authorize the submission of a Grant Application under the American Recovery and Reinvestment Act Funding for the National Clean Diesel Funding Assistance Program for the Installation of Shore Power Infrastructure at the Tenth Avenue Marine Terminal while still pursuing Shore Power at the Cruise Ship Terminal, were adopted as part of the consent agenda.

Clerk's Note: Prior to the Board meeting, a staff memorandum submitting a proposed change to the staff recommendation was delivered to the Board. Due to insufficient public notice and with no official announcement to accept staff's recommendation at the Board meeting, the Board voted on the original recommendation as stated above.

PUBLIC HEARING/ACTION AGENDA

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

Agenda Item 18AB. Item continued.

SAN DIEGO CONVENTION CENTER PUBLIC PARKING FACILITY: A) CONDUCT PUBLIC HEARING ON PROPOSED MODIFICATION OF PARKING RATES AT SAN DIEGO CONVENTION CENTER PUBLIC PARKING FACILITY. B) ORDINANCE ESTABLISHING PROPOSED MODIFIED PARKING RATES AT SAN DIEGO CONVENTION CENTER PUBLIC PARKING FACILITY.

Agenda Item 19AB. Nicholas Markos, Asset Manager, Real Estate addressed the Board with a presentation regarding the proposed modifications to the San Diego Convention Center Public Parking Facility. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Chairman Cushman opened the public hearing. No members of the public requested to speak, and on a motion by Commissioner Valderrama, seconded by Commissioner Bixler, the Board approved closing the public hearing by the following vote: Yeas-Bixler, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

Commissioner discussion ensued. Commissioner Bixler requested and received clarification regarding the length of time that the Convention Center employee rate had been in place, and the reasoning behind the staff recommendation to maintain the Convention Center employee rate. Mr. Markos stated that the Convention Center employee rate was adopted in June of 2002. Mr. Markos explained that District staff surveys the parking rates annually and determined that the daily rate was under market. Paul Fanfera, Assistant Vice President, Real Estate, further explained that the employee rate was applicable when the garage was not at capacity. He went on to state that on occasions when the garage was full, the Convention Center employees did not park in the facility.

Chairman Cushman requested and received clarification from Mr. Fanfera that the daily and monthly employee rates at comparable structures in downtown had not been surveyed. Mr. Fanfera stated that the transient rates had been surveyed. Chairman Cushman stated that the Commissioners would consider the staff recommendation regarding the Convention Center daily rate and special event rate and he requested that staff conduct an additional survey and return with a recommendation regarding the employee rate.

On motion of Commissioner Peters, seconded by Commissioner Bixler, the Board adopted **Ordinance 2558**, Establishing Proposed Modified Parking Rates at San Diego Convention Center Public Parking Facility by the following vote: Yeas-Bixler, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

SAN DIEGO SYMPHONY

Agenda Item 20AB. Jim Hutzelman, Assistant Director, Communications and governmental Affairs, addressed the Board and gave a presentation regarding the proposed Tidelands Use and Occupancy Permit for San Diego Symphony Concerts. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Chairman Cushman opened the public hearing. The following member of the public addressed the Board in support of the staff recommendation: Ward Gill, San Diego Symphony. As there were no other members of the public that requested to speak, and on a motion by Commissioner Spane, seconded by Commissioner Bixler, the Board approved closing the public hearing by the following vote: Yeas-Bixler, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

Commissioner discussion ensued. Commissioner Bixler requested and received clarification regarding the implementation of shuttles to transport patrons to and from the parking structures in the area. Kristine Love, Asset Manager, Real Estate, stated that staff has discussed the matter with Ace Parking and the Symphony and that during the upcoming season, the rear entrance to the Convention Center garage will be opened for easier access to the concert venue for the Summer Pops patrons.

Commissioner Cushman requested and received confirmation from Ms. Love that the Convention Center was not opposed to the arrangements regarding the Summer Pops patrons accessing the Convention Center garage through the back entrance.

In response to Commissioner Bixler's queries regarding the shuttle services, Ms. Love introduced Dennis Legg, San Diego Symphony Operations Manager. Mr. Legg explained in greater detail the type of shuttle or tram system that is utilized by the Summer Pops patrons and stated that the frequency of service has been increased to transport approximately 200 patrons per fifteen minutes. Mr. Legg stated that the transportation plan budget is approximately \$50,000.

Based upon studying the average attendance at the concerts, Commissioner Bixler requested that staff review as to whether increasing the level of transportation services and/or making patron transportation easier would increase attendance at the Summer Pops. Chairman Cushman requested that staff follow up on Commissioner Bixler's inquiry.

Commissioner Spane requested and received confirmation from Mr. Hutzelman that the 27 Summer Pops concerts will adhere to the maximum db level and the sound mitigation requirements implemented during the 2008 concert season. Commissioner Spane requested clarification from Mr. Hutzelman regarding the District's contribution to the Summer Pops program. Mr. Hutzelman stated that the District provides approximately \$100,000 worth of services. Commissioner Spane requested and received confirmation from Mr. Hutzelman that the Symphony is responsible for the costs to set up and construct the venue.

On motion of Commissioner Spane, seconded by Commissioner Najera, the Board, adopted **Resolution 2009-68**, finding that the 2009 Symphony Summer Pops Embarcadero Marina Park South Tidelands Use and Occupancy Permit is in Substantial Conformance with the Final Subsequent Mitigated Negative Declaration Adopted by the board on March 13, 2007, by the following vote: Yeas-Bixler, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION AMENDING BOARD OF PORT COMMISSIONERS (BPC) POLICY NO. 452, PERMIT FEES FOR THE USE OF THE DISTRICT'S PUBLIC PARKS, CHANGING THE FEES FOR SPECIAL EVENTS PERMITS

Agenda Item 21. Jim Hutzelman, Assistant Director, Communications and Governmental Affairs, addressed the Board and gave a presentation regarding amending Board of Port Commissioners (BPC) Policy No. 452, Permit Fees for the use of the District's Public Parks, and changing the fees for special events permits. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Cushman requested and received clarification from Mr. Hutzelman that the time to process deposit refunds is 30 days. Chairman Cushman requested and received confirmation from Mr. Hutzelman that the communications staff would work with the financial services department to decrease the payment processing time and endeavor to return deposits as quickly as possible. Mr. Hutzelman stated that a season-long deposit program for catering companies was being considered, as well as bank letters of credit to be utilized in lieu of a check deposit.

Commissioner Najera left the dais at 1:54 p.m. and returned at 1:57 p.m.

Chairman Cushman opened the public hearing. The following member of the public addressed the Board in support of the staff recommendation: George Palermo, San Diego Port Tenants Association. Mr. Palermo addressed the Board and requested their support of implementing a new program called the Port Economic Stimulus Option (PESO). The PESO program proposed to lower the per-person fee by one dollar for a twelve-month period. Mr. Palermo stated that the individuals present were also in support of the PESO program and waived their request to speak in lieu of their names being read into the record.

Chairman Cushman recognized the following individuals who submitted request to speak forms in favor of the staff recommendation and the PESO program: Rick Mitrovich, Manchester Grand Hyatt, San Diego; William VanErt, the Meeting Manager; Claudia Wehrman, PRA Destination Management; Paul Hirschberg, San Diego Marriott Marina; Ana Reilly, Destination Concepts, Inc.; Jennifer Miller, Access Destination Services; and Jesse Williams, Picnic People. As there were no other members of the public that requested to speak, and on a motion by Commissioner Valderrama, seconded by Commissioner Peters, the Board approved closing the public hearing by the following vote: Yeas-Bixler, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

Commissioner discussion ensued. Commissioner Valderrama requested clarification from Mr. Palermo regarding the implementation date of the proposed PESO or economic stimulus program as outlined in the staff report. Mr. Palermo stated that the Port Tenants Association supported implementing the program as soon as possible following the Board action. Commissioner Valderrama requested and received clarification from Mr. Hutzelman regarding the economic impact that the proposed PESO package would have on the District. Mr. Hutzelman stated that staff estimated the impact to the District would be approximately \$42,000.

Commissioner Peters made a motion to approve the staff recommendation.

Commissioner Valderrama requested and received clarification from Commissioner Peters that his motion included the economic stimulus program that included a reduction of the per-person fee for twelve months.

Commissioner Bixler requested clarification regarding the length of the economic stimulus program. Chairman Cushman requested and received clarification from Mr. Palermo that the proposal was to run for a twelve month period that would commence with the effective date of the new fee schedule.

On motion of Commissioner Peters, seconded by Commissioner Valderrama, the Board adopted **Resolution 2009-69**, Amending Board of Port Commissioners (BPC) Policy No. 452, Permit Fees for the use of the District's Public Parks, changing the fees for special events permits, by the following vote: Yeas-Bixler, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

DISCUSSION OF ADMINISTRATION OF DISTRICT'S RETIREMENT SYSTEM AND DIRECTION TO STAFF

Agenda Item 22. Commissioner Peters stated that he is eligible for a pension from the City of San Diego, which is also administered by San Diego City Employee Retirement System (SDCERS) and would recuse himself from participating in the discussion. Commissioner Peters left the dais at 2:02 p.m.

Michelle Corbin, Benefits Manager, Human Resources, addressed the Board and gave an update presentation regarding the administration of the District's Retirement System and requested direction to staff. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Bixler expressed his concern regarding the market losses over the past six months, the impact of market conditions on the District's retirement fund, and the potential increase in the District's pension contribution. Commissioner Bixler requested and received clarification from David Wescoe, Administrator/CEO, SDCERS, regarding his organization's sell strategy in an adverse environment. Mr. Wescoe explained that for the past twenty years SDCERS has utilized a focused and disciplined asset allocation strategy that spreads the risk and SDCERS believes, at its core, in being fully invested at all times. He also stated that the SDCERS' Board retains money managers, who in accordance with the SDCERS' Board asset allocation strategy, are tasked to manage the allocations in their particular

specialty. Commissioner Bixler requested that Mr. Wescoe report back to the Board of Port Commissioners with information regarding the sell strategy utilized by the asset managers that are accountable for managing the majority of the District's funds. Commissioner Bixler requested clarification from Mr. Wescoe as to whether the SDCERS' asset managers write covered calls. Mr. Wescoe stated that he would look into the question and report back.

Commissioner Spane thanked the District staff and Mr. Wescoe for their assistance with the work on the retirement program.

On motion of Commissioner Valderrama, seconded by Commissioner Spane, the Board directed staff to continue with the services provided by SDCERS and to cease work on the exploration and development of a stand-alone retirement plan, by the following vote: Yeas-Bixler, Cushman, Najera, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-Peters.

Commissioner Spane left the dais at 2:31 p.m. and returned at 2:32 p.m. Commissioner Peters returned to the dais at 2:32 p.m.

PRESENTATION AND DIRECTION TO STAFF CONCERNING CONTRACTOR HEALTH CARE BENEFITS

Agenda Item 23. Karen Porteous, Assistant Vice President, Administrative Services, addressed the Board with a staff presentation regarding the options as related to health care benefits for employees of District contractors. Dave Thompson, Director, Procurement Services reviewed the three options that staff determined to reward those service providers who provide health care to employees and have service agreements where the scope of work is performed by unskilled labor. Ms. Porteous requested Board direction. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Peters stated that he supported the staff recommendation to implement Option 2 for a one year trial period. He thanked staff for their work and made a motion to accept the staff recommendation.

Commissioner Spane stated that in consideration of such a sensitive matter he was in support of Option 1, and he also supported a one year trial period. He concluded his remarks by stating that he was hesitant to take a position on the matter from the Port Commission dais.

Commissioner Najera stated that he supported the staff recommendation to implement Option 2 for a one year trial period.

Commissioner Bixler stated that he was not opposed to encouraging businesses to provide health care benefits; however, he expressed his concerns regarding the likely increase of service agreement costs to the District. Commissioner Bixler also expressed concern that it would be difficult to make like-for-like comparisons in the variety of employee benefit packages offered by firms responding to solicitations for service agreements. Commissioner Bixler queried as to whether the Board should make a recommendation regarding the minimum benefit package that potential service providers should offer to their employees.

Chairman Cushman commended staff for their efforts to provide three options for what proved to be a complex matter. He further stated that the Board must consider a balance of what may be a social good with the cost of services, and whether the District has a responsibility or role to play related to the matter of contractor health benefits. Chairman Cushman stated that all responding contractors have an opportunity for the award regardless of whether they provide health benefits. He stated that he was in support of the staff recommendation to implement Option 2, for a one year period, which would award bonus points to the responding contractors who provide employee health benefits. Chairman Cushman stated that he was in support of Commissioner Peters' motion.

Commissioner Spane expressed concern that the firms offering health care benefits may not ultimately be the most qualified to be awarded a contract with the District.

Chairman Cushman stated that his expectation of staff was to first consider contractors based on their ability to perform the best service. Ms. Porteous stated that service quality was staff's first consideration.

Commissioner Valderrama explained that in his industry it was imperative to support contractors that offer health and welfare to their employees. He stated that he supported the staff recommendation to implement Option 2 for a one year trial period.

Commissioner Bixler requested that Commissioner Peters re-state his motion. In light of Commissioner Bixler's comments, Commissioner Peters requested that staff provide more information regarding the structure of the bonus-point system. Ms. Porteous explained that staff would award points based on like-for-like criteria, such as the number of days before an employee was eligible for benefits or the percentage

of employer paid health benefit costs. Ms. Porteous stated that due to the complexity of available health benefit packages, staff determined it would not be feasible to set specific package, coverage, or providers; however, as the trial period progressed staff would observe the impacts of the pilot program and may return to the Board with modified recommendations in the future.

Commissioner Peters re-stated his motion to adopt Option 2, per staff's recommendation as further clarified in the staff report and during the subsequent staff presentation, for a one year trial period.

On motion of Commissioner Peters, seconded by Commissioner Najera, the Board adopted the staff recommendation regarding Option 2 for a one year trial period, by the following vote: Yeas-Bixler, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

ACTION AGENDA

PRESENTATION OF PROPOSED STRATEGIES FOR PROVIDING NEW MARKETING AND PUBLIC RELATIONS OPPORTUNITIES AND TEMPORARY FINANCIAL ASSISTANCE TO PORT DISTRICT TENANTS AND DIRECTION TO STAFF

Agenda Item 24abc. Chairman Cushman stated that the Board would continue items 24a and 24b; however, he requested that Rita Vandergaw, Marketing Director, deliver the staff report. Ms. Vandergaw presented the staff report regarding new marketing and public relations opportunities designed to drive additional business to the Port District tenants. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Peters requested and received clarification from Ms. Vandergaw regarding the coordination of efforts with the San Diego Convention and Visitors Bureau (ConVis). Ms. Vandergaw stated that the District has been a partner with ConVis for many years. Ms. Vandergaw explained that staff meets with ConVis to map out a plan of work for the year to determine specific areas of emphasis. Ms. Vandergaw stated that ConVis focuses on creating the brand destination for San Diego with the broader focus of bringing in visitors and conventions to the City; the District's marketing efforts are more focused on targeting drive markets that impact the local community, the Big Bay, and the waterfront tenants.

Dirk Mathiasen, Vice President, Operations addressed the Board and presented the staff report regarding establishment of a temporary financial relief program, allowing deferral of certain lease required rental payments, for qualifying tenants. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Cushman requested and received clarification from Mr. Mathiasen regarding the time period of the program. Mr. Mathiasen reviewed the terms for the proposed deferral programs for the flat rate and percentage rate tenants. Mr. Mathiasen stated that for percentage rate tenants, the program would apply one-year forward of their lease reconciliation date. He also stated that each tenant had varying renewal dates for their leases and that the purpose of the program was to implement rent relief to the tenants as quickly as possible. Chairman Cushman stated that he supported moving forward with the staff concept for the rent relief program. Paul Fanfera, Assistant Vice President of Operations, stated that twelve tenants would qualify for the program.

Richard Bartell, San Diego Port Tenants Association (SDPTA) addressed the Board in support of the staff recommendation and requested that the rent deferral be retroactive to January 2009. Mr. Bartell requested that the Board also consider reviewing some tenants' need on a case-by-case basis. Mr. Bartell stated that the SDPTA requested a modification to their request regarding reallocation of Public Art funds. Mr. Bartell stated that the SDPTA was withdrawing their recommendation to divert Public Art funds to the marketing program, and the association would remain neutral regarding the funding source for the enhanced marketing efforts outlined in Ms. Vandergaw's presentation.

Jim Unger, Hornblower Cruises, requested that the Board direct staff to move as quickly as possible to develop the Big Bay brand for all of the member cities and implement the marketing strategies outlined by Ms. Vandergaw.

Commissioner Spane requested clarification regarding the term of the program. Mr. Mathiasen explained that while staff had originally planned for an eight-month program, and they were recommending a twelve-month program. Mr. Mathiasen further stated that the rent payments would be deferred, not expensed off.

Commissioner Najera stated that, in light of the current economic situation, he was in full support of the staff recommendation.

Commissioner Valderrama stated that he was in support of the staff recommendations to assist the tenants with the rent deferrals retroactively.

Commissioner Peters stated that he was in support of the staff recommendation to assist the tenants.

On motion of Commissioner Peters, seconded by Commissioner Valderrama, the Board adopted **Resolution 2009-70**, Establishing Temporary Financial Relief Program for Qualifying Tenants allowing deferral of certain Lease Required Rental Payments, by the following vote: Yeas-Bixler, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

Following the vote, Commissioner Bixler requested and received clarification from Mr. Mathiasen as to whether the rent deferral program would primarily benefit the master tenant and/or would the master tenant pass the rent deferral benefit to their sub-tenants. Mr. Mathiasen explained that a number of the District's master tenants were offering concessions to assist their sub-tenants. Chairman Cushman stated that Sharon Cloward, Port Tenants Association, was indicating agreement with Mr. Mathiasen's comments.

RESOLUTION AMENDING MEMORANDUM OF AGREEMENT WITH THE SAN DIEGO AIR POLLUTION CONTROL DISTRICT TO ALLOW FUNDING THE DISTRICT'S CLEAN TRUCK PROGRAM WITHOUT MATCHING FUNDS FROM THE STATE OF CALIFORNIA PROPOSITION 1B, GOODS MOVEMENT EMISSION REDUCTION PROGRAM

Agenda Item 25. On motion of Commissioner Valderrama, seconded by Commissioner Peters, the Board adopted **Resolution 2009-71**, amending Memorandum of Agreement with the San Diego Air Pollution Control District to allow funding the District's Clean Truck Program without matching funds from the State of California Proposition 1B, Goods Movement Emission Reduction Program, by the following vote: Yeas-Bixler, Cushman, Najera, Peters, Spane, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

RESOLUTION AMENDING RESOLUTION 2008-65 ESTABLISHING FY08-09 FINANCIAL ASSISTANCE PROGRAM FUNDING AND WAIVING BPC POLICY NO. 025 TO REALLOCATE FUNDS PREVIOUSLY AUTHORIZED FOR THE CHULA VISTA CHAMBER OF COMMERCE IN THE AMOUNT OF \$30,000 TO THE CHULA VISTA VISITOR INFORMATION CENTER

Agenda Item 26. Item continued.

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

Agenda Item 27. None.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR MEETING OF MAY 5, 2009

Agenda Item 28. On motion of Commissioner Valderrama, seconded by Commissioner Najera, the Board approved the Proposed Board Agenda for the Meeting of May 5, 2009 by the following vote: Yeas-Bixler, Cushman, Najera, Spane, Peters, Valderrama; Nays-None; Excused-Black; Absent-None; Abstained-None.

Chairman Cushman announced that just prior to the meeting, the Board was made aware of a request to staff from the Maritime Museum of San Diego to prepare a letter of support to be delivered to the region's federal legislators regarding a request for stimulus funding for the building of Juan Cabrillo's flagship, *San Salvador*. Chairman Cushman explained that Duane Bennett, Port Attorney, would address the staff request. Mr. Bennett explained that under Government Code §54954.2B (2), the Brown Act affords the Board the ability to add an item to the agenda where an immediate need exists, or where the need to take action on an item arose after the preparation of the agenda. Mr. Bennett explained that such was the case on this occasion. Mr. Bennett further explained that in the particular case under consideration, the request from the Maritime Museum was received by staff just prior to the meeting, and requires that the letter be delivered by Monday, April 13. Mr. Bennett read the recommended item's title, "Approval of a letter in support of the *San Salvador* Project Maritime Museum of San Diego." Thus, he indicated that a motion to add the agenda item to the Board agenda would be in order.

On a motion by Commissioner Najera, seconded by Commissioner Spane, the Board voted to add the item to the agenda by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-Black; Absent-None.

Irene McCormack, Assistant Vice President, Communications and Inter-Governmental Affairs, addressed the Board with a staff report regarding the request. (A copy of the request is on file in the Office of the District Clerk.)

On a motion by Commissioner Peters, seconded by Commissioner Spane, the Board approved a letter in support of the *San Salvador* Project Maritime Museum of San Diego, by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-Black; Absent-None.

OFFICER'S REPORT

Agenda Item 33. In accordance with BPC Policy 110, the following change orders, executed by the Executive Director, were reported:

- A) Change Order No. 3 for \$0.00 with 0 Calendar Days to Contract No. 2007-48 with Frank & Son Paving, Inc. for Pavement Maintenance at Various Locations, Imperial Beach and San Diego, CA.
- B) Change Order No. 3 for \$92,262.02 with 46 Calendar Days to Contract No. 2007-26 with Randall Construction, Inc. for Tideland Comfort Station Refurbishment Various Location: Chula Vista, Coronado, Imperial Beach, National City and San Diego, California.
- C) Change Order No. 1 for \$0.00 with 14 Calendar Days to Contract No. 2008-25 with Koch-Armstrong General Engineering, Inc. for Harbor Island Driveway Repairs, San Diego, California.
- D) Change Order No. 10 for \$0.00 with 0 Calendar Days to Contract No. 2006-05 with R.E. Staite Engineering, Inc. for Pepper Park Boat Launching Facility Improvements, National City, California.
- E) Change Order No. 6 for (\$15,978.83) with 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.
- F) Change Order No. 1 for \$5,517.00 with 4 Calendar Days to Contract No. 2007-30 with 3-D Enterprises, Inc. for North Gate Improvements Tenth Avenue Marine Terminal San Diego, California.

PRESIDENT'S REPORT

Agenda Item 34. None.

BOARD COMMITTEE REPORTS

Agenda Item 35. None.

COMMISSIONER COMMENTS

Agenda Item 36. 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

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

Unite-Here Local 30 v. SDUPD, et al.;
Lane Field San Diego Developers, LLC,
Intercontinental Hotels Group, PLC, and
Woodfin Suites Hotels, LLC,
Real Parties in Interest
San Diego Superior Court No. 37-2008-00077646-CU-MC-CTL

Agenda Item 4.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: Approximately 221,000 square feet of tideland area leased to Fifth Avenue Landing, LLC; approximately 86,000 square feet of land comprising the northerly portion of the tideland area leased to One Park Boulevard, LLC; and the adjacent District-owned roadway, all bayward of the San Diego Convention Center.

Negotiating Parties: Carol Wallace, CEO San Diego Convention Center Corporation; Raymond Carpenter and Arthur Engel, Managing Members, Fifth Avenue Landing LLC; President, Hilton Hotels Corporation, One Park Boulevard; Dirk Mathiasen, SDUPD

Under Negotiation: Price and Terms

Agenda Item 5.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 53,144 square feet of land located at 4975 North Harbor Drive, San Diego

Negotiating Parties: John Grimstad, Point Loma Marina, LLC
Annette Dahl, Kristine A. Zortman SDUPD

Under Negotiation: Price and Terms

Agenda Item 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 11,882 square feet of land located in America's Cup Harbor at 2805 Emerson Street, San Diego

Negotiating Parties: Jack and John Christianson - Principal Owners, Mrs. Kelly's, Inc., dba Point Loma Seafoods
Kristine A. Zortman, SDUPD

Under Negotiation: Price and Terms

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: District Property: Approximately 35 acres of property located within the Harbor District of the Chula Vista Bayfront. Located West of I-5, South of H St., and North of J St. in Chula Vista, California.

Pacifica Companies
Property: Approximately 97 acres located within the Sweetwater District of the Chula Vista Bayfront. Located West of I-5, South of E St., and North of F St. in Chula Vista, California.

Negotiating Parties: Ashok Israni, President, Pacifica Companies
Michael Kennedy, SDUPD

Under Negotiation: Price and Terms

Agenda Item 8.

CONFERENCE WITH LABOR NEGOTIATOR
Government Code Section 54957.6

District Negotiator: Executive Director

Employee Organization:
Harbor Police Officers Association and Unrepresented Harbor Police Employees

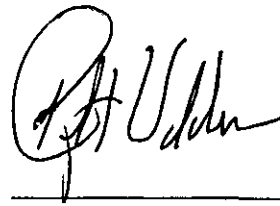
Agenda Item 9.

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

Government Code Section 54957.6

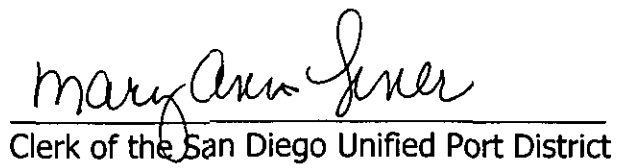
There was no other formal or reportable action, pursuant to Government Code Section 54950 et seq to report from the closed session; whereupon, Chairman Cushman adjourned the meeting.

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

A handwritten signature in black ink, appearing to read "P. H. Udden", written over a horizontal line.

Vice Chair, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in black ink, appearing to read "Mary Ann Jener", written over a horizontal line.

Clerk of the San Diego Unified Port District