

**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 1:08 p.m., Tuesday, May 5, 2009, in the Board Room at 3165 Pacific Highway, San Diego, California.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Agenda Item 2.

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

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

Absent: No Commissioners absent.

Excused: Commissioner Bixler and Commissioner Najera excused for personal business.

APPROVAL OF MINUTES

Agenda Item 3. On motion of Commissioner Valderrama, seconded by Commissioner Peters, the Board approved in a single vote, the minutes submitted for the special meetings of April 7, 2009, as well as the regular meeting of April 7, 2009 by the following vote: Yeas-Cushman, Peters, Spane, Valderrama; Nays-None; Excused-Bixler, Najera; Absent-None; Abstained-None.

PUBLIC COMMENTS

Agenda Item 4. Michael Webb and Vincent Tobarro addressed the Board regarding the parking regulations at Shelter Island.

Chairman Cushman thanked Mr. Webb and Mr. Tobarro for their comments and recommended that they meet with Harbor Police Chief Sanfilippo.

CONSENT AGENDA

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

Agenda Item 13. Resolution Selecting and Authorizing an Agreement with Service Bureau, a division of SANDAG, for a Port of San Diego Economic and Fiscal Impact Analysis in an amount not to exceed \$175,000.

Agenda Item 24. Resolution Adopting Plans and Specifications, Awarding Contract No. 2008-11 to (Company Name) for North Harbor Drive Realignment, San Diego, California, in the amount of \$xx,xxx.xx.

Agenda Item 25. Resolution Approving a 50 kW photo voltaic system for the General Services building for \$500,000 with funding from the Environmental Fund and \$97,258 in matching funds from the California Solar Initiative.

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

Agenda item 33. Resolution Authorizing Change Order No. 3 to Contract No. 2009-04 with Statewide Stripes, Inc. in the amount of \$14,150, for a total contract amount of \$43,060.

Chairman Cushman announced that the following Public Hearing/Action Agenda Item no longer required Board Action:

Agenda Item 27. Pier 32 National City Marina Project: Conduct Public Hearing and Adopt Resolution Authorizing Issuance of an Amendment to an Appealable Coastal Development Permit # CDP-2006-02.

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

Agenda Item 28. Broadway Pier Shore Power Project: A) Resolution Authorizing an Equipment Purchase Agreement with Cochran, Inc. for Shore Power Electrical Equipment for shore power electrical equipment for the Shore Power System at B Street and Broadway Piers for the amount of \$2,658,395.93, and Granting Indemnity to Escrow Agent. B) Resolution Authorizing Agreement with San Diego Gas and Electric for 12KV primary

electric service at B Street and Broadway Piers Shore Power Project in an amount not-to-exceed \$1,964,261 and agreeing to indemnify San Diego Gas and Electric for providing the electric service.

Agenda Item 32. Resolution Authorizing a Construction Phase Consultant Services Agreement with Cochran, Inc. in the amount of \$203,028, for the B Street Pier and Broadway Pier Shore Power Project.

CLOSED SESSION

Chairman Cushman announced the Board would enter closed session.

Duane Bennett, Port Attorney, announced the following item from the supplemental closed session agenda as follows:

Agenda Item 10.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Pacific Gateway, Ltd., dba San Diego Marriott Hotel & Marina
333 West Harbor Drive, San Diego

Negotiating Parties: Craig Mason, Pacific Gateway
Dirk Mathiasen, SDUPD

Under Negotiation: Price and Terms

Chairman Cushman reconvened the regular meeting at 1:20 p.m.

CONSENT AGENDA

Chairman Cushman announced that Board Action was no longer required regarding the following Consent Agenda Item:

Agenda Item 19. Ordinance Granting Amendment No. 1 to Option with Sunroad Harbor Island, Inc. to extend the term of the option by 18 months until June 2011.

Commissioner Valderrama requested, and Chairman Cushman confirmed with the Deputy District Clerk that no request to speak slips had been submitted regarding Consent Agenda Item 15.

On motion of Commissioner Peters, seconded by Commissioner Valderrama, the Board, with a single vote, adopted Consent Agenda items 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 20A, 20B, 20C, 20D, 20E, 21, 22, 23 and 33, (**Resolution 2009-77** through and including **Resolution 2009-86**; **Ordinance 2559** through and including **Ordinance 2560**; **Resolution 2009-87** through and including **Resolution 2009-91**; **Ordinance 2561**; **Resolution 2009-92** through and including **Resolution 2009-93**; and **Resolution 2009-96**) by the following vote: Yeas-Cushman, Peters, Spane, Valderrama; Nays-None; Excused-Bixler, Najera; Absent-None; Abstained-None.

Agenda Item 5. **Resolution 2009-77**, Granting Indemnity to Wells Fargo for Merchant Processing, was adopted as part of the consent agenda.

Agenda Item 6. **Resolution 2009-78**, Adopting the FY 09/10 Preliminary Budget and setting the date for the Public Hearing on the budget as June 9, 2009, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2009-79**, Authorizing an Agreement with the City of Coronado for Police, Fire, and Emergency Medical Services in an amount not to exceed \$632,094 for Fiscal Year 2010, \$651,057 for Fiscal Year 2011, and \$670,589 for Fiscal Year 2012, for a total amount not to exceed \$1,953,740 for the three-year period July 1, 2009 To June 30, 2012, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2009-80**, Proclaiming Support of National Small Business Week, May 17 - 22, 2009, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2009-81**, Resolution Exercising 1st Option and Approving Funding for this option year of the Agreement with Katz & Associates in an amount not to exceed \$300,000, was adopted as part of the consent agenda.

Agenda Item 10. The Recommendation of Port Scholarship Advisory Committee to Award Three Scholarships Port totaling \$5,000 was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2009-82**, Proclamation Honoring the 150th Anniversary of the Opening of the Port of Yokohama, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2009-83**, Proclamation Recognizing Friday, May 15, 2009, as Bike to Work Day, was adopted as part of the consent agenda.

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

Agenda Item 14. **Resolution 2009-84**, Proclamation of the Board of Port Commissioners Supporting National Public Works Week, May 17-23, 2009, 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 2009-85**, Adopting Plans and Specifications and Awarding Contract No. 2007-03 to Hazard Construction Company for FY10 - Pavement Maintenance at TAMT, NCMT and National City, San Diego and National City, California, in the amount of \$993,902, was adopted as part of the consent agenda.

Agenda Item 16. **Resolution 2009-86**, Resolution Adopting Plans and Specifications and Awarding Contract No. 2008-03 to Davis & Adams Construction, Inc. for Administration Building Annex Restrooms Improvements in the amount of \$320,000, was adopted as part of the consent agenda.

Agenda Item 17. **Ordinance 2559**, Granting Amendment No. 1 to Lease with Pier 32 Marina Group, LLC deleting ability to add .08-acre "Parcel 3" to leased premises, was adopted as part of the consent agenda.

Agenda Item 18. **Ordinance 2560**, Granting Amendment No. 1 to Lease with Bartell Hotels, LP dba Hilton Garden Inn to change description of hotel expansion improvements, was adopted as part of the consent agenda.

Agenda Item 19. **Board Action No Longer Required.**

Agenda Item 20A. **Resolution 2009-87**, Consenting to Assignment of certain leasehold interests within Pacific Gateway Ltd. dba San Diego Marriott Hotel & Marina, was adopted as part of the consent agenda.

Agenda Item 20B. **Resolution 2009-88**, Consenting to Assignment of certain leasehold interests within Pacific Gateway Ltd.'s Sublessee, CCMH San Diego, L.L.C., was adopted as part of the consent agenda

Agenda Item 20C. **Resolution 2009-89**, Consenting to Second Amended and Restated Lease Agreement between Pacific Gateway, Ltd., Lessee and CCMH San Diego, L.L.C, Sublessee with conditions, was adopted as part of the consent agenda.

Agenda Item 20D. **Resolution 2009-90**, Consenting to Encumbrance of Pacific Gateway Ltd. Leasehold by a \$175 million trust deed in favor of Pacific Life Insurance Company, with conditions, was adopted as part of the consent agenda.

Agenda Item 20E. **Resolution 2009-91**, Consenting to Third Amended and Restated Management Agreement between Pacific Gateway Ltd. and Marriott International, Inc., with conditions, was adopted as part of the consent agenda.

Agenda Item 21. **Ordinance 2561**, Granting Amendment No. 5 to Reciprocal License Agreement with the United States of America acting through the Department of the Navy for Non-Exclusive Parking located at the Northwest Corner of Harbor Drive and Pacific Highway, extending term for one year, was adopted as part of the consent agenda.

Agenda Item 22. **Resolution 2009-92**, Authorizing Exclusive Negotiating Agreement with Eddie and Troy's Excellent Adventure, LLC dba Next Level Sailing, were adopted as part of the consent agenda.

Agenda Item 23. **Resolution 2009-93**, Authorizing Amendment No. 3 to Agreement with MJE Marketing Services, Inc. to authorize an additional \$200,000 funding for period three, FY 08/09, for an amount not to exceed \$1,600,000 over the three year period from January 1, 2007 through December 31, 2009 for Marketing and Advertising Services, Media Purchase and Placement and Tenant Support Program Development, were adopted as part of the consent agenda.

Agenda Item 24. **Item Continued to a future Board meeting.**

Agenda Item 25. **Item Continued to a future Board meeting.**

Agenda Item 33. **Resolution 2009-96**, Authorizing Change Order No. 3 to Contract No. 2009-04 with Statewide Stripes, Inc. in the amount of \$14,150, for a total contract amount of \$43,060, was adopted as part of the consent agenda.

PRESENTATION/ACTION AGENDA

PRESENTATION OF SERVICE AWARDS TO EMPLOYEES WITH 15 OR MORE YEARS OF SERVICE.

Agenda Item 26. Chairman Cushman and Executive Director Charlie Wurster presented Employee Service Awards to three employees for their longevity in service to the District: Stanley Baczynski, Construction Inspector, Engineering and Construction, was recognized for 25 years of service. Victoria Diaz, Executive Assistant I, General Services and Mario Garcia, Lead Maintenance Worker, General Services were each recognized for 15 years of service.

PUBLIC HEARING/ACTION AGENDA

PIER 32 NATIONAL CITY MARINA PROJECT: CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION AUTHORIZING ISSUANCE OF AN AMENDMENT TO AN APPEALABLE COASTAL DEVELOPMENT PERMIT #CDP-2006-02

Agenda Item 27. Board Action No Longer Required.

ACTION AGENDA

BROADWAY SHORE POWER PROJECT

- A) Resolution Authorizing an Equipment Purchase Agreement with Cochran, Inc. for Shore Power Electrical Equipment for shore power electrical equipment for the Shore Power System at B Street and Broadway Piers for the amount of \$2,658,395.93, and Granting Indemnity to Escrow Agent.
- B) Resolution Authorizing Agreement with San Diego Gas and Electric for 12KV primary electric service at B Street and Broadway Piers Shore Power Project in an amount not-to-exceed \$1,964,261 and agreeing to indemnify San Diego Gas and Electric for providing the electric service.

Agenda Item 28AB. Items Continued.

RESOLUTION ADOPTING THE FINANCIAL ASSISTANCE ADVISORY COMMITTEE'S RECOMMENDATIONS FOR FUNDING THE PORT OF SAN DIEGO FINANCIAL ASSISTANCE PROGRAM FOR FISCAL YEAR 2009-2010 IN AN AMOUNT NOT TO EXCEED \$212,297

Agenda Item 29. Commissioner discussion ensued. Chairman Cushman congratulated Commissioner Bixler for his efforts to reduce the Financial Assistance Program allocation by over \$100,000. In light of the current economic times, Chairman Cushman thanked the members of the Financial Assistance Committee and staff for their efforts.

Commissioner Valderrama echoed Chairman Cushman's remarks and congratulated the Committee, Commissioner Spane, and Commissioner Bixler for their efforts to reduce the Financial Assistance Program allocation.

On motion of Commissioner Spane, seconded by Commissioner Valderrama, the Board adopted **Resolution 2009-94**, adopting the Financial Assistance Advisory Committee's Recommendations for funding the Port of San Diego Financial Assistance Program for Fiscal Year 2009-2010 in an amount not to exceed \$212,297, by the following vote: Yeas-Cushman, Peters, Spane, Valderrama; Nays-None; Excused-Bixler, Najera; Absent-None; Abstained-None.

Chairman Cushman stated that the Board continues to work very hard to manage expenditures while maintaining the District's level of service.

STATE LEGISLATION OF INTEREST AND RESOLUTION TO SUPPORT SENATE BILL 346 BY SENATOR KEHOE, D-SAN DIEGO, IN ORDER TO REGULATE CHEMICALS OF CONCERN, INCLUDING COPPER, FOUND IN BRAKE PADS BECAUSE OF THE DELETERIOUS EFFECT IN STORMWATER RUNOFF

Agenda Item 30. Irene McCormack, Assistant Vice President, Communications and Inter-Governmental Relations, introduced Jonathan Clay, Carpi and Clay, who addressed the Board with a report regarding Senate Bill 346. (A copy of the staff report is on file in the Office of the District Clerk.)

Chairman Cushman stated that he supported the legislation.

Commissioner Peters stated that he was in support of the staff recommendation. He also stated that in the future the Board may explore the following issues impacting the Bay: the regulation of trash by the Waste Management Board, the appropriate care of pesticides, and perhaps regulating airborne particulates that end up in the Bay.

Commissioner Peters requested that staff convey the Board's support to Senator Kehoe in a letter and include that the District is actively trying to support off-bay efforts that help to comply with the State of California's environmental regulations. Commissioner Peters further requested that staff send a copy of the letter to John Robertus, Executive Officer at the Regional Water Quality Control Board, as a means to inform him of the District's proactive work to address the standards set forth in the Total Maximum Daily Load (TMDL) program and management of copper levels in the Bay.

On motion of Commissioner Peters, seconded by Commissioner Spane, the Board approved submitting a letter of support to Senator Christine Kehoe, and adopted **Resolution 2009-95**, resolving that the District supports Senate Bill 346, as it is currently drafted, by the following vote: Yeas-Cushman, Peters, Spane, Valderrama; Nays-None; Excused-Bixler, Najera; Absent-None; Abstained-None.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR MEETING OF JUNE 9, 2009

Agenda Item 31. Chairman Cushman stated that based on the earlier workshop, the Board was directing staff to include a resolution affirming the direction to staff at the May 5, 2009 Governmental Accounting Standards Board (GASB) 45 workshop, to continue to fund post-employment benefits other than pensions on a pay-as-you-go basis.

Commissioner Spane requested that an update regarding the seawall constructed at 501 and 505 First Street, Coronado, be presented to the Board.

On motion of Commissioner Valderrama, seconded by Commissioner Spane, the Board approved the proposed Board Agenda for the Meeting of June 9, 2009 by the following vote: Yeas-Cushman, Peters, Spane, Valderrama; Nays-None; Excused-Bixler, Najera; Absent-None; Abstained-None.

RESOLUTION AUTHORIZING A CONSTRUCTION PHASE CONSULTANT SERVICES AGREEMENT WITH COCHRAN, INC. IN THE AMOUNT OF \$203,028, FOR THE B STREET PIER AND BROADWAY PIER SHORE POWER PROJECT

Agenda Item 32. Item continued.

OFFICER'S REPORT

Agenda Item 34. In accordance with BPC Policy 110, the following change orders, executed by the Executive Director, were reported:

- A) Change Order No. 6 for \$13,496.00 with 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.
- B) Change Order No. 1 for \$0.00 with 45 Calendar Days to Contract No. 2008-22 with Sim J. Harris, Inc. for Kellogg Beach Sand Replacement, San Diego, California.
- C) Change Order No. 2 for \$1,483.27 with 0 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. 1 for \$4,872.55 with 0 Calendar Days to Contract No. 2008-29 with PAL General Engineering for Tidelands, Various Locations, Preventative Pavement Maintenance FY2009, San Diego, California.
- E) Change Order No. 1 for \$14,142.00 with 10 Calendar Days to Contract No. 2008-17R with Gordon-Prill San Diego, Inc. for Harbor Police Administration Facility Improvements, San Diego, California.

PRESIDENT'S REPORT

Agenda Item 35. Charlie Wurster, Executive Director, announced the District had received two awards. Chairman Cushman accepted The San Diego and Imperial Counties Labor Council 2009 Spirit of Cooperation Award on April 18, 2009 on behalf of the District. The Spirit of Cooperation Award recognized and cited the District's efforts to protect quality waterfront jobs. The San Diego Chapter of the Construction Management Association of America awarded an honorable mention to the District that recognized the excellent results achieved on public works projects for the Palm Avenue Street End Project that was completed in January 2009. Mr. Wurster acknowledged the efforts of the members of the Engineering and Construction Department staff.

BOARD COMMITTEE REPORTS

Agenda Item 35. None.

COMMISSIONER COMMENTS

Agenda Item 36. None.

CLOSED SESSION

The Board reconvened in closed session to discuss the remaining closed session items.

Agenda Item 10.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Pacific Gateway, Ltd., dba San Diego Marriott Hotel & Marina
333 West Harbor Drive, San Diego

Negotiating Parties: Craig Mason, Pacific Gateway
Dirk Mathiasen, SDUPD

Under Negotiation: Price and Terms

Agenda Item 4.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS
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 LEGAL COUNSEL - ANTICIPATED LITIGATION

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

One Case

Agenda Item 6.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

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

SDUPD v. Landmark Insurance Company

San Diego Superior Court Case No. 37-2008-00079072-CU-BC-CTL

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Government Code Section 54956.8

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

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

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

Negotiating Parties: Ashok Israni, President, Pacifica Companies
Paul Fanfera, SDUPD

Under Negotiation: Price and Terms

Agenda Item 8.

CONFERENCE WITH LABOR NEGOTIATOR
Government Code Section 54957.6

District Negotiator: Executive Director

Employee Organizations: California Teamsters, Public Professional & Medical
Employees Union Local 911

Agenda Item 9.

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

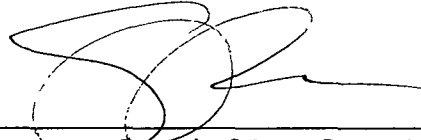
Government Code Section 54957.6

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.

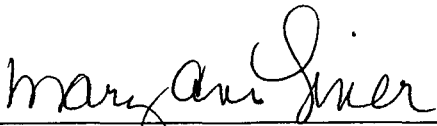
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Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:



Clerk of the San Diego Unified Port District