

**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 1:06 p.m., Tuesday, June 9, 2009, in the Board Room at 3165 Pacific Highway, San Diego, California.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Chairman Cushman welcomed Commissioner Hall as the new Commissioner representing the City of Chula Vista. The Chairman also introduced Lee Burdick, and stated that her appointment, as the newest member of the Board of Port Commissioners, was approved by the San Diego City Council on June 8, 2009. The Chairman stated that Ms. Burdick would be joining the Commissioners at the dais during the July 7, 2009 Board meeting.

Commissioner Hall led the Pledge of Allegiance.

ROLL CALL

Agenda Item 2.

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

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

Absent: No Commissioners absent.

Excused: None.

APPROVAL OF MINUTES

Agenda Item 3. On motion of Commissioner Bixler, seconded by Commissioner Peters, the Board approved in a single vote, the minutes submitted for the special meetings of April 28, 2009, May 5, 2009 as well as the regular meeting of May 5, 2009 by the following vote: Yeas-Bixler, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PUBLIC COMMENTS

Agenda Item 4. Diane Takvorian, Environmental Health Coalition, addressed the Board regarding cold ironing at the Broadway Cruise Ship Terminal and at the Tenth Avenue Marine Terminal. She requested that the Board consider requesting staff to prepare a comprehensive report regarding the implementation of cold ironing and present the staff findings at the July 7, 2009 Board meeting.

Chairman Cushman thanked Ms. Takvorian for her request and explained that, while the Board is unable to take formal action on public communications, an item regarding cold ironing would be found on the docket for the July 7, 2009 meeting.

Lisa Cohen, Chief Executive Officer, Chula Vista Chamber of Commerce, addressed the Board. She read into the record a letter dated June 3, 2009 from the Chula Vista Chamber of Commerce. The letter cited a Chula Vista Chamber of Commerce resolution that requested a time extension to the negotiations regarding the District/Pacifica land swap. (A copy of the letter is on file in the Office of the District Clerk.)

CONSENT AGENDA

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

Agenda Item 19. **Ordinance Granting Amendment No. 1 to Lease with Cemex Pacific Coast Cement Corporation to delete preferential right to certain rail track and temporarily reduce minimum annual guarantee.**

Agenda Item 22. **Resolution Authorizing a Memorandum of Understanding between the District and the Cities of San Diego, Chula Vista and National City for the operation and administration of the San Diego Regional Enterprise Zone Program and granting indemnity to cities.**

Agenda Item 25. **Resolution Authorizing Agreement with Jacobs Engineering for Construction and Project Management Services for Demolition of the Former Teledyne Ryan Aeronautical Facility, San Diego, California in an amount not to exceed \$amount.**

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

Agenda Item 24. **Resolution Authorizing Amendment to Resolution No. 2008-154 Regarding Agreement with W.A.R.N., LLC for District-Wide Emergency Notification System to increase the subscription amount not to exceed \$60,000.**

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

Agenda Item 31AB. **North Embarcadero Visionary Plan Phase I Coastal Access Features Project: A) Conduct a Public Hearing and Adopt Resolution finding that the North Embarcadero Visionary Plan Phase I 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:

Agenda Item 37AB. **North Embarcadero Visionary Plan Phase I A) Resolution Approving Expenditure of \$12,900,000 for Construction of Phase I. B) Resolution Approving Amendments 1 and 2 to the Joint Exercise of Power Agreement between the District, the City of San Diego and Redevelopment Agency of the City of San Diego acting through Centre City Development Corporation.**

Prior to the vote, Commissioner Valderrama requested that Consent Agenda Item 9, **Resolution Authorizing an increase to FY09 Port Security Grant Program Project Funding Limit by \$611,217 to \$3,508,217**, be pulled for a clarification regarding the cash reserve policy and the use of cash reserves to fund the matching grant cited in the staff report. Chairman Cushman requested that John McIntyre, Homeland Security Program Manager, approach the dais. Jeff McEntee, CFO/Treasurer, addressed Commissioner Valderrama's inquiry. Mr. McEntee stated that following Board approval, and upon funding the item under consideration, the District would potentially be drawing-down the reserve to a level below the six-month reserve. Commissioner Valderrama requested clarification as to whether the six-month reserve level was set by Board policy.

Chairman Cushman stated the sum of the six-month reserve is not a Board policy but a procedure the Commissioners have followed since the 1960's.

Chairman Cushman stated that a request has been made to place an item for discussion on the docket at an upcoming meeting to consider creating a Board policy regarding the District's cash reserves.

In the future, when the Board considers an item that is funded with cash reserves, Commissioner Valderrama requested that the staff report include data regarding the impact to the six-month cash reserve levels. Commissioner Valderrama also requested clarification regarding the current six-month cash reserve level. Mr. McEntee stated that the six-month cash reserve was \$57 million dollars. In lieu of utilizing cash reserves, Mr. McEntee stated that staff has considered alternatives to secure the matching grant funds such as seeking funds from the State of California or declining the allocation.

Chairman Cushman also stated that each project would be presented to the Board for consideration and individual approval.

On motion of Commissioner Bixler, seconded by Commissioner Peters, the Board, with a single vote, adopted Consent Agenda items 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18A, 18B, 20, 21A, 21B, and 23 (**Resolution 2009-97** through and including **Resolution 2009-110**; **Ordinance 2562** through and including **Ordinance 2566**) by the following vote: Yeas-Bixler, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 5. **Resolution 2009-97**, Authorizing an Agreement with the City of Imperial Beach for Police, Fire, Emergency Medical, Lifeguard and Animal Control Services in an amount not to exceed \$8,705,334 for the period July 1, 2009 through June 30, 2012, was adopted as part of the consent agenda.

Agenda Item 6. **Resolution 2009-98**, Directing staff to continue funding Post Employment Benefits other than pensions on a-pay-as-you-go basis, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2009-99**, Authorizing a Purchase Agreement with Custom Marine Electronics for the acquisition of two (2) Thermal Imagers (new and unused goods) for an amount not to exceed \$144,702.50, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2009-100**, Authorizing Acceptance of Transportation Security Administration (TSA) Grant Award Modification No. 2 in the amount of \$157,500 for the Harbor Police Department's Explosives Detection Canine Team Program, per BPC Policy No. 109, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2009-101**, Authorizing an increase to FY09 Port Security Grant Program Project Funding Limit by \$611,217 to \$3,508,217, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2009-102**, Declaring Items of Equipment to be Surplus to the needs of the Port District and Authorizing their Sale or Disposal in accordance with BPC Policy No. 111, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2009-103**, Authorizing Third Amendment to Agreement with Dudek & Associates, Inc. to provide environmental review consulting services for the completion of the Chula Vista Bayfront Master Plan Environmental Impact Report for an additional \$400,000 and to extend term twelve (12) months, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2009-104**, Authorizing Amendment No. 1 to Agreement with the City of Imperial Beach for Tidelands Maintenance Services extending the expiration date from June 30, 2009 to September 30, 2009, and for an amount not to exceed \$200,900.00 for a revised agreement total not to exceed \$2,346,233.33, was adopted as part of the consent agenda.

Agenda Item 13AB. **Resolution 2009-105**, Authorizing Change Orders to Contract No. 2008-22, Kellogg Beach Sand Replacement, with Sim J. Harris, Inc. for A) Change Order No. 4 for 90 calendar day extension through August 26, 2009 to complete Sand Placement; and B) Change Order No. 5 for \$10,806 to install Safety Improvements at the outlet of the existing City of San Diego Storm Drain for a total contract amount of \$72,321.00, was adopted as part of the consent agenda.

Agenda Item 14. **Resolution 2009-106**, Adopting Plans and Specifications and Awarding Contract No. 2008-16 to 3-D Enterprises, Inc. for TAMT and NCMT Lighting Improvements in the amount of \$1,012,026, was adopted as part of the consent agenda.

Agenda Item 15. **Resolution 2009-107**, Granting Indemnity to Enterprise Rent A Car Company of Los Angeles dba Enterprise Fleet Management for vehicle leasing services, was adopted as part of the consent agenda.

Agenda Item 16. **Resolution 2009-108**, Authorizing Amendment No. 4 to Agreement with MJE Marketing Services, Inc. to Authorize Funding for period four, FY 09/10, for an amount not to exceed \$650,000 and to extend the term through June 30, 2010 for a total agreement amount of \$2,250,000, was adopted as part of the consent agenda.

Agenda Item 17. **Resolution 2009-109**, Authorizing First Amendment to Agreement with RBF Consulting, a California Corporation, for \$150,000 for a new total not to exceed amount of \$450,000, was adopted as part of the consent agenda.

Agenda Item 18A. **Resolution 2009-110**, Establishing Rent for BAE Systems San Diego Ship Repair, Inc. for the Period from December 1, 2007 through November 30, 2009, was adopted as part of the consent agenda.

Agenda Item 18B. **Ordinance 2562**, Granting Amendment No. 4 to Lease with BAE Systems San Diego Ship Repair, Inc. establishing rental adjustments for the balance of the lease term, was adopted as part of the consent agenda.

Agenda Item 19. **Item Continued to a future Board meeting.**

Agenda Item 20. **Ordinance 2563**, Granting Amendment No. 11 to Seaport Village Operating Co., LLC Option Agreement for redevelopment of the Old Police Headquarters to extend the option term for six-months through December 30, 2009, was adopted as part of the consent agenda.

Agenda Item 21A. **Ordinance 2564**, Granting Amendment No. 3 to Option Agreement with Lane Field San Diego Developers, LLC for development of Lane Field South to extend the option term for up to twenty-six months through January 7, 2012 with conditions, was adopted as part of the consent agenda.

Agenda Item 21B. **Ordinance 2565**, Granting Amendment No. 2 to Option Agreement with Lane Field San Diego Developers, LLC for development of Lane Field North to extend the option term for up to twenty-two months through January 7, 2012 with conditions, was adopted as part of the consent agenda.

Agenda Item 22. **Item Continued to a future Board meeting.**

Agenda Item 23. **Ordinance 2566**, Granting Amendment No. 1 to Sunroad Harbor Island, Inc. Option Agreement for restaurant development to extend the option term for six months through June 2010, was adopted as part of the consent agenda.

Agenda Item 24. **Board Action No Longer Required.**

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

ACTION AGENDA

RESOLUTION ADOPTING PLANS AND SPECIFICATIONS FOR THE BROADWAY PIER CRUISE SHIP TERMINAL NO. 2008-27, REJECTING THE LOW BID FROM LEDCOR CONSTRUCTION AS NON-RESPONSIVE, AWARDING CONTRACT NO. 2008-27 TO JAYNES CORPORATION OF CALIFORNIA, FOR THE BROADWAY PIER CRUISE SHIP TERMINAL PROJECT IN THE AMOUNT OF \$17,444,003, AND AUTHORIZING THE ALLOCATION OF FUNDS IN THE AMOUNT OF \$1,829,003 TO THE BROADWAY PIER CRUISE SHIP TERMINAL PROJECT FROM THE FY 09-13 CAPITAL DEVELOPMENT PROJECT CONTINGENCY FUNDS.

Agenda Item 34. Chairman Cushman stated, for the record, that one of the bidders on the project has retained an attorney from Procopio, Cory, Hargreaves & Savitch LLP (Procopio). Chairman Cushman stated that his personal attorney is Brian Seltzer of the law firm Seltzer Caplan McMahon Vitek, and for many years his family has used the law firm of Procopio. He further stated that he did not personally know the attorney for Procopio, no one had called the Chairman from the law firm, and following a discussion with Port Attorney Duane Bennett, the Chairman saw no reason that he could not be fair when considering the matter before the Board. Chairman Cushman stated that following the staff report, the representatives from Jaynes Corporation of California (Jaynes) and Ledcor Construction (Ledcor) would each be allotted 10 minutes to address the Board with an organized presentation.

Brian Stup, Director of Engineering and Construction Support Team, addressed the Board with a staff report regarding the Broadway Pier Construction contract. Chairman Cushman left the dais at 1:22 p.m. and returned at 1:23 p.m.

Richard Cohen, Executive Vice President, Jaynes Corporation of California and P. Randolph Finch, Jr. of Marks, Golia & Finch, LLP, Attorneys at Law, addressed the Board regarding their bid submittal and the bid protest.

Mr. Cohen outlined Jaynes' qualifications. He stated that Jaynes was the lowest responsive bidder for the project, and listed in their bid one of the District's pre-approved gangway manufacturers called "TEAM". Mr. Cohen further stated that in his opinion the District's bid documents were very clear and that only qualified

subcontractors who had designed and fabricated a gangway within the past 5 years would meet the experience requirement. Mr. Cohen stated that based on his industry experience, on reading Ledcor's bid submission, and on Jaynes research, "that the companies proposed by Ledcor do not even come close to being of the caliber demanded by the Port in the bid documents for the passenger bridge." Mr. Cohen stated that "with respect to Ledcor's allegations that TEAM refused to provide Ledcor a bond for this project; that is contrary to TEAM's statements and representations to Jaynes. TEAM did not exclude bond requirements from its bid to Jaynes. And, its bid specifically referenced it would comply with the sub-bonding requirements in the addenda." Mr. Cohen also stated that, "since Ledcor raised this issue last Friday, (June 5, 2009) TEAM has confirmed it will meet all contract requirements including the bonding to which I have an email from them here today." Mr. Cohen indicated to a piece of paper, however it was not submitted to the District Clerk for inclusion into the record.

Attorney Randy Finch, representing Jaynes, addressed the Board. Mr. Finch stated that he believed that the District staff had reached the correct conclusion. He stated that the District published a set of bid documents that very clearly stated two named gangway passenger bridge providers, including TEAM. He stated that the bid documents included a very clear requirement that bidders submit the name of the passenger bridge provider and the provider's experience. Mr. Finch stated that "what Ledcor submitted with its bid on bid day did not show that. They listed in their subcontractor list a company named, Maritime, and then in their back up package they listed something about Maritime CMC." Mr. Finch further stated that "essentially what they've had on the face of it was an inexperienced provider that did not meet the bid documents and we raised that issue in our initial protest letter." Mr. Finch stated that "we received a response from the lawyers from Ledcor. And the lawyers took this argument of let's get away from responsiveness, because as a public agency you award a bid to the lowest responsive and responsible contractor." Mr. Finch continued, "responsive means, on its face, did you meet the requirement of the bid? I think that Ledcor recognized its very uphill battle and made this argument of responsibility." Mr. Finch continued his remarks and stated that Jayne's counsel had addressed Ledcor's legal arguments for the District staff and the Port Attorney's office. Mr. Finch stated that we believe the case law unequivocally supports the award to Jaynes and rejection of Ledcor's bid. Mr. Finch stated that it is not an issue of responsibility, but simply that the Ledcor bid was non-responsive as the staff has concluded. Mr. Finch summarized his remarks and reiterated that the District's "call for bids was also very clear in stating that the bidder or respective subcontractor shall have completed at least one mobile passenger gangway within the last five years and that you shall provide with submission of your bid reference contact for each." Mr. Finch stated that with respect to the final

issue that was raised by Ledcor regarding the submittal of payment and performance bonds, there was a claim by Ledcor's counsel that TEAM could not meet a District addenda requirement that specifically says that subcontractors who do more than \$250,000 work on this project have to provide payment and performance bonds. Mr. Finch stated that when he received the Ledcor attorney response on Friday, June 5, 2009 was the first that he had heard of that issue. Mr. Cohen said, "I have now seen in writing where the TEAM bid has confirmed that they will provide the bonds; that they can provide the bonds; and that they did not exclude the bonding requirement on bid-day. Mr. Finch stated they had also set forth in their legal writings response that the issue of providing bonds is a performance issue, however, the issue does not arise until the contract is awarded. Mr. Finch stated that "what routinely happens on public works projects is you award the project and then you get insurance certificates, you get bonds, and you get all of this information post award." Mr. Finch stated that "as we set forth there is absolutely no legal authority to find a bidder non-responsive based on speculation of whether a bidder can in fact meet a performance requirement down the road. Jaynes is fully committed to performing the project and providing all the necessary bonds with respect to the legal issue." Mr. Finch concluded his remarks and stated that, "if there is a legal challenge, Jaynes is fully prepared to protect its real party and interest position to assure that the project is promptly awarded and executed to the satisfaction of the Port Commissioners."

Attorney David Kuhlman, Procopio, stated that he had never spoken with Chairman Cushman nor had he spoken to the Chairman in regard to the matter before the Board; and that while Michael Strangman, Ledcor Construction, submitted a "request to speak" form, he would not be speaking during the presentation, and he was available for comment regarding any specific questions. Mr. Kuhlman addressed the Board regarding the Ledcor Construction bid submittal and spoke in opposition to two of the staff recommendations which were 1) to reject the low bid from Ledcor Construction as non-responsive; and 2) to award Contract 2008-27 to Jaynes Corporation.

Mr. Kuhlman stated that Ledcor's bid was being rejected not as a result of any issues or concerns with Ledcor as a contractor. The only basis for the rejection of the bid was staff's perception that the gangway subcontractor listed by Ledcor, which is a joint venture of two companies, CMC Engineering and Maritime Hydraulic, has not completed an ADA compliant moveable gangway bridge in the last five years. Mr. Kuhlman stated that "California law draws a distinction between the responsiveness of a bid and the responsibility of the bidder. Time and again the California courts have confirmed that responsibility means the qualifications, experience, fitness, capacity of the contractor to perform the work. That is what is exactly what is being asserted here

as the problem with Ledcor's bid, that its subcontractor does not have the requisite experience." Mr. Kuhlman stated that "whenever you talk about responsibility, as opposed to responsiveness, that puts you into an entirely different arena of procedural requirements. The California Supreme Court has noted that whenever you talk about responsibility that kicks you into a subjective realm. You're talking about things that you really can't see on the face of the bid. Experience requires you, according to the Supreme Court, to sit down and exchange evidence. For the agency, the Port in this case, to actually present the evidence that it has, that does not believe that this joint venture is qualified, and for the bidder to have an opportunity to respond to that evidence." Mr. Kuhlman stated that we've received no such opportunity and that Ledcor received a one page letter, six working days ago from the District informing them that their subcontractor did not meet the experience requirement. Mr. Kuhlman continued his presentation and stated that the staff report indicated that there were limitations on the determination of the subcontractor's experience based on written materials, and that the exact scope of work from CMC Engineering for the Price Rupert project was not able to be determined. Mr. Kuhlman again asserted that California law requires that staff sit down and review the qualifications, and in this situation that Ledcor was asking for and expected such a review. Mr. Kuhlman stated that the second basis for their opposition to the recommendation was regarding the specific award to Jaynes. Mr. Kuhlman stated that Jaynes had listed a Spanish company called TEAM as their subcontractor. He stated that Ledcor spoke at length with TEAM about their interest in bidding the project. He stated that, "TEAM told Ledcor, not once, not twice, three times, we can't get the bonds." Mr. Kuhlman stated that they had filed exhibits with the District regarding written email correspondence from TEAM, and he read the following into the record: "We have an important question related to addendum 5, question 29, general condition 5.6.3 -- requires subcontractors performing work in excess of \$250,000 to furnish performance, labor, and material bonds to the general contractors. Can TEAM provide you with such bonds that are less than 100%? Looking forward to your company's solution." Mr. Kuhlman continued by reading Ledcor's response: "Good morning Martin. You're right there is a requirement for us to bond subcontractor's trades over \$250,000. I read this as a requirement after the bid. If we are the successful contractor can your company provide a 100% payment and performance bond after the bid?" Mr. Kuhlman continued reading the TEAM response, "Good morning Michael, (this is to Michael Strangman of Ledcor), as we are not an American company we are used to provide for projects here in Europe, bonds of 10%. Though we have had project experience in the USA, and have been able to provide 100% in the past, currently because of what is happening around the world, our banks in Spain are paralyzed; and will not provide 100% bonds. We suggest to pay the cost of part of the bond, and as it looks now we are able to provide for a 10% bond."

Mr. Kuhlman expressed his concern as to what Ledcor was to do regarding TEAM's response regarding the bond requirement. Mr. Kuhlman stated that "unlike Jaynes, they took that requirement seriously, and that is the reason they did not list TEAM." Mr. Kuhlman further stated that "had they known that the District would accept a listing of the subcontractor who cannot get bonding, of course Ledcor would have listed TEAM." Mr. Kuhlman stated that we are in a situation that if the award goes to Jaynes, and the District then waives the requirement, when TEAM is not able to provide the bonds, as they told us they would not be able to; then you have created an unfair competitive advantage for Jaynes. Mr. Kuhlman suggested the only way to protect the public and to make sure that the lowest responsible bidder gets this project was to award to Ledcor and allow Ledcor to use TEAM. Mr. Kuhlman stated that three of the top six bidders listed the same company as Ledcor. He also stated that Mr. Strangman telephoned TEAM again on bid day to clarify the matter regarding their inability to get the bonds. Mr. Kuhlman stated that the TEAM response was that they cannot get bonds. Mr. Kuhlman concluded his remarks and requested that the Commissioners award the project to Ledcor and allow it to use TEAM.

Remco Buis, Carnival Corporation, addressed the Board in support of the project, thanked the Board for their efforts to support the cruise industry in San Diego, and encouraged the timely completion of the Cruise Ship Terminal project.

Commissioner discussion ensued. Commissioner Peters requested and received clarification from Port Attorney Duane Bennett about Mr. Kuhlman's statement regarding the need for any follow-up obligation requirements by the District prior to awarding the contract regarding whether a subcontractor is both responsible and responsive. Regarding Mr. Kuhlman's remarks on behalf of Ledcor, Mr. Bennett responded to Commissioner Peter's inquiry. Mr. Bennett explained that in his opinion, and in this particular case, he disagreed with Ledcor's interpretation of responsiveness and responsibility. He offered further that the issue of "responsiveness" and "responsibility" were different matters and in the particular case under discussion, there were parameters set out in bid documents that specified the experience of the subcontractor relative to building the gangway within an allotted time frame. Mr. Bennett stated that the staff was not indicating that the subcontractor had to demonstrate certain experience or was inexperienced; the staff determination was that Ledcor did not meet the bidding requirements and thus was found non-responsive. Mr. Bennett stated that a non-responsive finding does not trigger a due process requirement or any phase of investigation in that regard. Commissioner Peters stated that in his view the bid requests were fairly specific and it seemed Ledcor did not meet those specifications. Commissioner Peters also requested that Mr. Bennett address Mr. Kuhlman's comment regarding an alleged defect with the Jaynes' application which

had to do with the ability of a Jaynes' subcontractor to secure the required bonds, and whether the allegation went to performance. Commissioner Peters requested further guidance from the Port Attorney as to whether the Board should have looked further into the performance matter at that point in their consideration.

Mr. Bennett offered that the bonding matter was a performance issue and noted that the Board heard differing scenarios from the two presenters, and he suggested that staff may have some additional information regarding the issue of performance.

Commissioner Peters sought the counsel of Mr. Bennett as to whether currently it was an appropriate time for the Commissioners to weigh a credibility issue as the Jaynes' bid was deemed responsible. Mr. Bennett offered that the Board may make the assessment regarding credibility during the current discussion. Commissioner Peters requested clarification regarding any additional information from Jaynes that they may have provided to staff related to the concerns raised by Mr. Kuhlman about the listed subcontractor's ability or inability to provide the necessary bonds.

Chief Engineer Steve Kirkpatrick explained that the bid documents required that subcontractors building the cruise ship terminal project, whose cost being in excess of \$250,000, bond to the general contractor a performance and payment bond, and at this point in time staff would not expect to see the bonds. Mr. Kirkpatrick stated that staff was informed that TEAM would be able to provide the bond. Those bonds would be due to the District for review 21 days after the award of the contract, thus the ability to provide the necessary bonds was not an issue that staff had utilized to judge a bidder as non-responsive. Mr. Kirkpatrick also confirmed Commissioner Peters' statement that as of today, and in the record before the Board, the bond was not an issue and it would not affect whether the Board could accept the bid or not. Commissioner Peters requested and received clarification from Mr. Kirkpatrick regarding the procedure if the District did not receive the bond in 21 days. Mr. Kirkpatrick stated that if no bonding was received in 21 days then the general contractor would request a substitution of its stated subcontractor, and also state the reasons for that substitution in writing. Commissioner Peters requested and received confirmation from Mr. Kirkpatrick that the bid documents submitted by Jaynes include a description of their subcontractor experience that met the bid documents issued by staff. Commissioner Peters stated that he was satisfied with respect to the following items in the staff recommendation that it would be appropriate to reject the low bid from Ledcor and to award the contract to Jaynes. Commissioner Peters requested and received confirmation from Mr. Kirkpatrick that the plans for the cruise ship terminal include the implementation of cold ironing. Commissioner Peters stated that following the comments and questions of his

colleagues, but assuming that his understanding was the same, he would offer a motion at an appropriate time.

Commissioner Hall stated that his questions were addressed during the discussion with Commissioner Peters.

Commissioner Valderrama stated that he was in full support of the staff recommendation.

Commissioner Spane requested and received clarification from Mr. Kirkpatrick regarding the procedure if a subcontractor was unable to meet the bonding requirement. Mr. Kirkpatrick reviewed the procedure to be utilized if there was a problem with any of the subcontractors' ability to perform as specified and the general contractor requested a substitution. Mr. Kirkpatrick also stated that in the event of a substitution, the bid price would remain the same. Commissioner Spane requested clarification as to whether another entity, other than the subcontractor, may put up the bond. Mr. Kirkpatrick explained that the bid documents were clear, that the subcontractor shall bond to the general contractor and concurred with Commissioner Spane's query that no one else could put up the bond. Mr. Kirkpatrick further clarified that he had received verbal confirmation from Jaynes Corporation that the subcontractor, TEAM, would be putting up the bond. Mr. Kirkpatrick stated that the District was not in receipt of an official bid from their organization, and he had not personally spoken with representatives from TEAM. If the bonding requirement was not fulfilled within the allotted 21-day window, Commissioner Spane further queried as to whether there was any mechanism to award the contract, by default, to Ledcor. Mr. Bennett stated that in consideration of Commissioner Spane's query, he was not aware of any way to re-award the contract.

On motion of Commissioner Peters, seconded by Commissioner Hall, the Board adopted **Resolution 2009-116**, adopting Plans and Specifications for the Broadway Pier Cruise Ship Terminal, District Construction Contract No. 2008-27. The Board found that Jaynes Corporation of California was the lowest responsible and reliable bidder to perform said Contract and accepted the bid of Jaynes Corporation of California in an amount not to exceed Seventeen Million Four Hundred Forty Four Thousand Three Dollars (\$17,444,003.00), based upon prices set forth in the bid proposal, and authorized the execution of Contract 2008-27 for the performance of said work. The Board further rejected the bid of Ledcor Construction, Inc. as non-responsive. The Board also authorized the allocation of funds from the Contingency Fund Account of the Fiscal Year 2009-13 Capital Development Program to be used for Contract 2008-27, by

the following vote: Yeas-Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Bixler.

Commissioner Peters left the dais at 2:04 p.m. and returned at 2:06 p.m. Commissioner Hall left the dais at 2:07 p.m. and returned at 2:11 p.m.

Chairman Cushman announced that Deputy Attorney Ellen Gross Miles would be seated at the dais during the balance of the meeting. The Chairman also recognized Ellen Corey Born and offered congratulations on her recent promotion to Executive Vice President.

PRESENTATION AGENDA

PRESENTATION OF THE DISTRICT'S EMPLOYEE OF THE FIRST (1ST) QUARTER 2009.

Agenda Item 26. Chairman Cushman and Executive Director Charlie Wurster presented Lieutenant James Jordan of the Harbor Police Department with the District's Employee of the Quarter award and certificate for the first (1st) quarter of 2009. Mr. Wurster announced that the following individuals were also nominated for the District's Employee of the First Quarter: Diane Caminite, Audit & Risk Management Services; Allison Gutierrez, Environmental Services; and Eunice Oliver, Office of the District Clerk.

Chief Kirk Sanfilippo also announced the Harbor Police Officer of the Year award was being presented to Corporal Mike Rich for his outstanding service to the Harbor Police Department, the District, and the San Diego community as a member of the U.S. Customs and Border Protection Marine Interdiction Task Force.

Mr. Wurster recognized the members of District staff that assisted with facilitating the many additional ship calls due to the recent Swine Flu outbreak. Chairman Cushman thanked staff for their efforts and requested that those present in the Boardroom wish Mr. Wurster a happy birthday.

PRESENTATION TO RECIPIENTS OF SCHOOL YEAR 2009/2010 PORT WITH NO BORDERS SCHOLARSHIPS.

Agenda Item 27. Irene McCormack, Assistant Vice President Communications and Government Affairs, introduced the three recipients of the 2009/2010 Port with No Borders Scholarships. Ms. McCormack, Kristin Peters of the San Diego Port Tenants

Association, and Chairman Cushman presented checks to Caroline J. Bargo, Gabriela R. Aligada, and Alejandro A. Gaona.

PROCLAMATION HONORING SUSIE BAUMANN, PRESIDENT OF THE FAMILY-OWNED AND OPERATED BALI HAI AND TOM HAM'S LIGHTHOUSE RESTAURANTS.

Agenda Item 28. Chairman Cushman announced that the District was honoring Susie Bauman with a proclamation recognizing her leadership and accomplishments in the restaurant industry, as well as her efforts on giving back to the San Diego community and supporting the region's visitor-serving industry.

Ms. Bauman addressed the Board and thanked the Commissioners for their support throughout the years.

UPDATE ON IMPLEMENTATION OF COURT SETTLEMENT WITH HOMEOWNERS OF 501 AND 505 FIRST STREET, CORONADO.

Agenda Item 29. Leslie FitzGerald, Deputy Port Attorney, addressed the Board with a presentation and an update regarding the status of the court settlement with the homeowners of 501 and 505 First Street, Coronado. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Spane expressed his concern regarding the delays in moving forward with the removal of the seawall footing and the restoration of the rip-rap. Commissioner Spane noted that the Army Corps of Engineers' District Commander was visiting the region in July, and he requested that staff include the matter on Colonel Magness' agenda. Charlie Wurster, Executive Director, acknowledged Commissioner Spane's request.

ACTION AGENDA CONTINUED

CORONADO YACHT CLUB

Agenda Item 32 ABCD. Commissioner Bixler left the dais at 2:38 p.m. Chairman Cushman announced that Commissioner Bixler was a member of the Coronado Yacht Club and would recuse himself from the discussion and vote.

Nick Markos, Asset Manager, Real Estate addressed the Board with a staff report regarding the item. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Spane acknowledged the partnership with the City of Coronado and the positive economic impact the project will have on the District.

On motion of Commissioner Spane, seconded by Commissioner Valderrama, the Board, with a single vote, directed the to staff to proceed with an Environmental Review for Coronado Yacht Club's proposed Redevelopment and Expansion Project; adopted **Resolution 2009-112** Selecting ICF Jones & Stokes and Authorizing a Three-Party Agreement with Coronado Yacht Club, ICF Jones & Stokes, and the District for Environmental Review Consulting Services for a period of 12 months and for a fee not to exceed \$175,325; and **Ordinance 2569** granting an Option Agreement to Coronado Yacht Club for a new 40-Year Lease, by the following vote: Yeas-Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-Bixler.

Chairman Cushman acknowledged the members of the Coronado Yacht Club in attendance and thanked them for their efforts. Commissioner Bixler returned to the dais at 1:45 p.m.

RESOLUTIONS GRANTING CONCEPT APPROVAL, WITH CONDITIONS, FOR REDEVELOPMENT PROJECTS PROPOSED BY: A) FISHERMAN'S LANDING CORPORATION; B) POINT LOMA SPORTFISHING, INC., C) UNITED SPORTFISHERS OF SAN DIEGO, INC., DBA H&M LANDING

Agenda Item 33ABC. Kristine Zortman, Senior Asset Manager, Real Estate addressed the Board with a staff report regarding the item. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Cushman stated that there were no speaker slips submitted. Chairman Cushman stated that he was in support of the item and his only concern was regarding the parking mitigation. Ms. Zortman explained that the Board was being asked to consider approval of the concept only and, in the future, staff would be returning to the Board with a long-term agreement regarding parking in the area.

On motion of Commissioner Peters, seconded by Commissioner Hall, the Board adopted, with a single vote, **Resolution 2009-113**, **Resolution 2009-114** and **Resolution 2009-115** by the following vote: Yeas-Bixler, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Spane requested and received clarification from Ms. Zortman that the item did not include Point Loma Seafood and that the matter would be considered at another time.

Chairman Cushman requested and received clarification from Ms. Zortman regarding additional master planning of the area. Ms. Zortman stated that staff is working toward bringing the comprehensive master parking plan to the Board by the end of the summer of 2009.

Commissioner Bixler stated that he was hopeful that staff would return with a status report on the master plan for the area.

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

Agenda Item 35. Commissioner Peters requested and received confirmation from Chairman Cushman that, based on information from the Environmental Protection Agency, staff was hoping to have a discussion regarding cold ironing and that the item would be included on the July 7, 2009 docket.

On motion of Commissioner Peters, seconded by Commissioner Hall, the Board approved the proposed Board Agenda for the Meeting of July 7, 2009 by the following vote: Yeas-Bixler, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PUBLIC HEARING/ACTION AGENDA

FY 09/10 FINAL BUDGET

Agenda Item 30ABC. Jeff McEntee, CFO/Treasurer, addressed the Board with the staff presentation regarding the FY 09/10 Final Budget. (A copy of the staff report and presentation are on file in the Office of the District Clerk.) Mr. McEntee stated that the Office of the District Clerk had not received any public comment relative to the draft FY 09/10 Budget.

Chairman Cushman left the dais at 2:48 p.m. and returned at 2:57 p.m.

Commissioner discussion ensued. Commissioner Peters stated that a discussion of the CIP was being considered in the future that may result in amendments to the budget, and that he was looking forward to a discussion regarding the reserve policy at

the July Board meeting. Commissioner Peters requested that Mr. McEntee benchmark any other similar Port programs.

Commissioner Hall stated for the record that Mr. McEntee and staff have answered questions regarding the budget for all of the Commissioners and was encouraged by the amount of diligence applied by staff to reduce the departmental budgets. Commissioner Hall requested that staff prepare a memo for the record to address three items: 1) Funding for the H Street Extension Projects, 2) Account for the adequacy of funds available for the Chula Vista EIR, and 3) How is the construction of the H Street Extension Project programmed into the budget. Mr. McEntee acknowledged the Commissioner's request.

Chairman Cushman stated that regarding item 2 of Commissioner Hall's comments about the programmatic EIR detailed in consent agenda item 11; the Commissioner had agreed to work with staff regarding the discussion of sharing of costs between the City of Chula Vista and Pacifica to help move the project forward.

Commissioner Spane requested and received clarification regarding the District's annual set-a-side for earthquake insurance, the Environmental Fund, and the Public Art Program. Commissioner Spane urged staff to seek out stimulus monies from the Federal government and requested that a memo be prepared for the Board's review.

Commissioner Bixler requested and received clarification from Mr. McEntee regarding the Convention Center note repayment program. Commissioner Bixler requested that next year a workshop to discuss small projects be scheduled prior to the budget process.

Chairman Cushman opened the public hearing. There were no members of the public who requested to speak; whereupon, Chairman Cushman requested a motion to close the public hearing.

On a motion by Commissioner Peters, seconded by Commissioner Hall, the Board approved the closing of the Public Hearing, by the following vote: Yeas-Bixler, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

On a motion by Commissioner Peters, seconded by Commissioner Hall, the Board adopted **ORDINANCE 2568**, amending Salary Ordinance 2519, by the following vote: Yeas-Bixler, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

On a motion by Commissioner Hall, seconded by Commissioner Valderrama, the Board adopted **RESOLUTION 2009-111**, establishing the San Diego Unified Port District Directory of Class Specifications for Fiscal Year 2009-2010, by the following vote: Yeas-Bixler, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

On a motion by Commissioner Peters, seconded by Commissioner Hall, the Board adopted **ORDINANCE 2567**, adopting FY 09/10 Final Budget, by the following vote: Yeas-Bixler, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

NORTH EMBARCADERO VISIONARY PLAN PHASE 1 COASTAL ACCESS FEATURES PROJECT:

- A) Conduct a Public Hearing and Adopt Resolution finding that the North Embarcadero Visionary Plan Phase I 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 31AB. **Item continued to a future Board meeting.**

RESOLUTION ELECTING THE SECRETARY TO THE BOARD OF PORT COMMISSIONERS FOR A TERM BEGINNING JUNE 9, 2009 AND ENDING DECEMBER 31, 2009

Agenda Item 36. Commissioner Valderrama made a motion that the Board appoint Commissioner Peters to serve the remaining term as Secretary of the Board of Port Commissioners.

Commissioner Peters thanked his colleagues for their support and stated that he looked forward to the opportunity.

On motion of Commissioner Valderrama, seconded by Commissioner Bixler, the Board adopted, with a single vote, **Resolution 2009-117** by the following vote: Yeas-Bixler, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Spane requested clarification, for the record, on the projected rotation of Chair of the Board of Port Commissioners. Chairman Cushman stated for the

record that the rotation for Chair that was typical for the Board of Port Commissioners is as follows: San Diego, National City, San Diego, Chula Vista, Coronado, San Diego, and Imperial Beach. The Chairman further stated that this rotation, as described, is the rotation that has been in place since 1994.

NORTH EMBARCADERO VISIONARY PLAN PHASE I

Agenda Item 37AB. **Item continued to a future Board Meeting.**

OFFICER'S REPORT

Agenda Item 38. In accordance with BPC Policy 110, the following change orders, executed by the Executive Director, were reported:

- a) Change Order No. 1 for \$1,100.00 with 0 Calendar Days to Contract No. 2009-04 with Statewide Stripes, Inc. for Shelter Island Oversized Vehicle Parking Stalls and Signage Installation, San Diego, California.
- b) Change Order No. 2 for \$0.00 with 30 Calendar Days to Contract No. 2009-04 with Statewide Stripes, Inc. for Shelter Island Oversized Vehicle Parking Stalls and Signage Installation, San Diego, California.
- c) Change Order No. 2 for \$1,335.00 with 1 Calendar Day to Contract No. 2007-30 with 3-D Enterprises, Inc. for North Gate Improvements Tenth Avenue Marine Terminal San Diego, California.
- d) Change Order No. 3 for \$6,010.00 with 6 Calendar Days to Contract No. 2007-30 with 3-D Enterprises, Inc. for North Gate Improvements Tenth Avenue Marine Terminal San Diego, California.
- e) Change Order No. 1 for \$0.00 with 45 Calendar Days to Contract No. 2008-34 with C&C Glass for Administration Building Annex Exterior Doors Replacement, San Diego, California.
- f) Change Order No. 2 for \$1,865.00 with 0 Calendar Days to Contract No. 2008-22 with Sim J. Harris, Inc. for Kellogg Beach Sand Replacement, San Diego, California.
- g) Change Order No. 3 for \$0.00 with 15 Calendar Days to Contract No. 2008-22 with Sim J. Harris, Inc. for Kellogg Beach Sand Replacement, San Diego, California.
- h) Change Order No. 2 for (\$124,430.06) with 0 Calendar Days to Contract No. 2008-04 with Fibwrap Construction, Inc. for Chula Vista Bayside Park Pier Repair, Chula Vista, California.
- i) Change Order No. 2 for \$3,530.73 with 0 Calendar Days to Contract No. 2008-29 with PAL General Engineering for Tidelands, Various Locations, Preventative Pavement Maintenance FY2009, San Diego, California.

PRESIDENT'S REPORT

Agenda Item 39. Charlie Wurster, Executive Director, announced that Commissioner Valderrama accepted an award on behalf of the District at the Baja by the Sea event on May 30, 2009. The event, designed to promote tourism in Baja California, was sponsored by the Governor of Baja California, Mexico and the mayors of the cities of Tijuana, Mexicali, Rosarito, Ensenada, and Tecate.

BOARD COMMITTEE REPORTS

Agenda Item 40. None.

COMMISSIONER COMMENTS

Agenda Item 41. Chairman Cushman introduced Ron Powell as the new Director of Communications and Community Relations for the District.

Commissioner Bixler acknowledged the members of the District's Wellness Committee for their creative efforts to encourage fitness among the District workforce. The Commissioner also announced that members of the Harbor Police Officers Running Team participated in the annual Baker to Vegas Relay and extended his congratulations to the team members and Chief Kirk Sanfilippo.

CLOSED SESSION

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

Agenda Item 3.

Property: Approximately 221,000 square feet of tideland area leased to Fifth Avenue Landing, LLC; approximately 68,000 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, Karen Weymann, Shahriar Afshar, SDUPD

Under Negotiation: Price and Terms

Agenda Item 4.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Government Code Section 54956.8

Property: Approximately 259,090 square feet of tideland area and
approximately 1,056,263 square feet of water area leased
to Sunroad Marina Partners, LP, located at 955 Harbor
Island Drive, San Diego

Negotiating Parties: Uri Feldman, Vice President, Sunroad Enterprises;
Dirk Mathiasen, Randa Coniglio, Tony Gordon, SDUPD

Under Negotiation: Price and Terms

Agenda Item 5.

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 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. 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;
Dirk Mathiasen, Paul Fanfera, Chris Hargett,
SDUPD

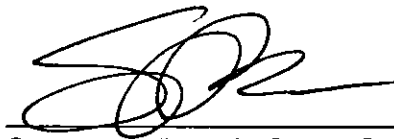
Under Negotiation: Price and Terms

Agenda Item 6.

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

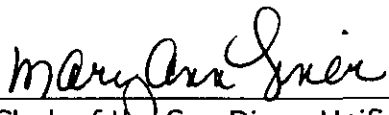
Government Code Section 54957.6

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