

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Cushman at 1:03 p.m., Tuesday, July 7, 2009, in the Board Room at 3165 Pacific Highway, San Diego, California.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Agenda Item 2.

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

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

Absent: No Commissioners absent.

Excused: None.

SWEARING IN

Agenda Item 3. Chairman Cushman welcomed Commissioner Lee Burdick as the newest member of the Board of Port Commissioners. The Chairman stated that Commissioner Burdick was previously sworn-in, and that the Board was pleased to have San Diego City Council President Ben Hueso to ceremonially swear in Commissioner Burdick. Following the swearing-in ceremony, the Chairman invited the members of the public present to participate in a reception to honor the new Commissioner. Council President Hueso swore in Commissioner Burdick. Chairman Cushman announced a 10-minute recess at 1:05 p.m. The board meeting resumed at 1:15 p.m.

APPROVAL OF MINUTES

Agenda Item 4. On motion of Commissioner Hall, seconded by Commissioner Valderrama, the Board approved in a single vote, the minutes submitted for the special meetings of June 9, 2009 by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PUBLIC COMMENTS

Agenda Item 5. Sharon Cloward of the San Diego Port Tenants Association announced the annual Independence Day Big Bay Fireworks show was a success. Ms. Cloward stated that, due to the collaborative efforts of members of the Harbor Police, the District Environmental Staff and the Coast Guard, a marine permit was issued to increase the total number of vessels permitted to anchor in the La Playa anchorage during the fireworks display.

Katheryn Rhodes presented the Board with a printed copy of her formal complaint to the US Navy, the Centre City Development Corporation, and the City of San Diego re: committance of honor service fraud by denying the public the right to honor services. She continued her comments regarding the Navy Broadway Complex and the seismic studies in the area. (A copy of the document 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 and that items 14 and 15 had been referred to the Maritime Committee:

Agenda Item 14. **Resolution Waiving BPC Policy No. 360 and Authorizing Exclusive Negotiating Agreement with Cembra San Diego, LLC.**

Agenda Item 15. **Resolution Authorizing Exclusive Negotiating Agree-ent with Wallenius Wilhelmsen Logistics Americas, LLC.**

Agenda Item 19. **Resolution Selecting and Authorizing Agreement with Merkel & Associates, Inc. for professional environmental and civil design services on the Chula Vista Wildlife Reserve Restoration and Enhancement Project in an amount not to exceed {dollar amount}.**

Agenda Item 20. **Resolution Authorizing Amendment No. 3 to the Agreement with Marine Group Boat Works for Vessel Related Services increasing the agreement amount by \$140,000 for a new agreement total of \$680,000.**

Chairman Cushman announced that the following Action Agenda Item would be continued to a future meeting and had been referred to the Maritime Committee:

Agenda Item 32. **Tenth Avenue Marine Terminal Warehouse Site A) Preliminary Project Review for the Tenth Avenue Marine Terminal Warehouse Site Demolition and Heavy Paving, Office Relocation, and New Truck Scale. B) Direction to Staff to proceed with Environmental Review for the Tenth Avenue Marine Terminal Warehouse site Demolition and Paving, Office Relocation and New Truck Scale.**

On motion of Commissioner Peters, seconded by Commissioner Hall, the Board, with a single vote, adopted Consent Agenda items 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18A, 18B, and 18C (**Resolution 2009-118** through and including **Resolution 2009-121**; **Ordinance 2570** through and including **Ordinance 2571**; **Resolution 2009-122**, **Ordinance 2572**, **Resolution 2009-123** through and including **Resolution 2009-127**) by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 6. **Resolution 2009-118**, Selecting and Authorizing Agreement with Civtel, Inc. for Design of the Port-Wide Fiber Optic Connectivity Project for an amount not to exceed \$276,180, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2009-119**, Granting Indemnity to San Diego Gas and Electric for Net Energy Metering Interconnection for Administration Building Photovoltaic System, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2009-120**, Selecting and Authorizing Agreement with Mactec Engineering and Consulting, Inc., for as-needed Material Testing and Inspection Services for an aggregate amount not to exceed \$400,000 over a three (3)-year period, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2009-121**, Adopting Plans and Specifications for National City Pepper Park Comfort Station Relocation Project, Awarding Contract No. 2008-20 to Dick Miller, Inc. for National City Pepper Park Comfort Station Relocation Project, in the amount of \$399,405 and Authorizing the Allocation of Funds in the

amount of \$72,405 to the National City Comfort Station Relocation Project from the FY 09-13 Capital Development Program Contingency Fund, was adopted as part of the consent agenda.

Agenda Item 10. **Ordinance 2570**, Granting Amendment No. 7 to Lease with Dixieline Lumber Company reducing leased premises by 5.57 Acres, was adopted as part of the consent agenda.

Agenda Item 11. **Ordinance 2571**, Granting Amendment No. 6 to Lease with Seaport Village Operating Company, LLC to allow special events at Seaport Village, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2009-122**, Granting Concept Approval to CP Kelco U.S., Inc. for renovation of Warehouse Building H-10, was adopted as part of the consent agenda.

Agenda Item 13. **Ordinance 2572**, Granting a Twenty Year Utility Easement to San Diego Gas & Electric Company for Facilities at the Northwest Corner of Laurel Street and Pacific Highway, was adopted as part of the consent agenda.

Agenda Item 14. **Item Continued to a future Board meeting.**

Agenda Item 15. **Item Continued to a future Board meeting.**

Agenda Item 16. **Resolution 2009-123**, Authorizing the Annual Adoption of Amended Board Policy 115, Guidelines for Prudent Investments, was adopted as part of the consent agenda.

Agenda Item 17. **Resolution 2009-124**, Authorizing the Write-Off of Uncollectible Accounts Receivable totaling \$1,300.72 from the District's Financial Records, was adopted as part of the consent agenda.

Agenda Item 18A. **Resolution 2009-125**, Selecting and Authorizing an Agreement with Global Document Storage Systems, Inc. for the Purchase of Storage Area Network Equipment in the Amount of \$40,349.25, was adopted as part of the consent agenda.

Agenda Item 18B. **Resolution 2009-126**, Selecting and Authorizing an Agreement with Global Document Storage Systems, Inc. for The Acquisition and Installation of Storage Area Network Equipment, was adopted as part of the consent agenda.

Agenda Item 18C. Resolution 2009-127, Resolution Authorizing Property Schedule No. 2 to the Master Tax-Exempt Lease/Purchase Agreement Between the San Diego Unified Port District (District) and Key Government Finance (KGF), Inc. (Clerk's Document No. 55083) and Granting Indemnity To KGF for the Lease/Purchase Of Storage Area Network Equipment over a five-year period with Annual Payments not to exceed \$350,000.00 for the first year and \$99,730.16 for years two through five with an option for a \$1 purchase of the equipment upon lease completion for a total amount, including principal and interest, not to exceed \$748,921.64, was adopted as part of the consent agenda.

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

Agenda Item 20. Item Continued to a future Board meeting.

PRESENTATION AGENDA

PRESENTATION OF LIFE SAVING COMMENDATIONS AND MEDALS TO TWO HARBOR POLICE OFFICERS AND CIVILIAN DR. FRANK MOWRY (RETIRED).

Agenda Item 21. Chief Kirk Sanfilippo stated that on May 16, 2009, Harbor Police Officers Timothy Terry and Eugene Wheeldon responded to a call regarding a male subject in cardiac arrest aboard a vessel in San Diego Bay. The responding officers boarded the vessel, assessed the man's condition, and applied and activated the automated external defibrillator. Dr. Frank Mowry (retired physician) was on board the vessel and administered cardiopulmonary resuscitation until San Diego Fire Department paramedics took over care of the subject. The actions of the Harbor Police Officers ultimately contributed to the resuscitation of the subject. Chairman Cushman and President Charlie Wurster presented lifesaving commendations and medals to Harbor Police Officers Terry and Wheeldon; and a civilian lifesaving commendation to Dr. Frank Mowry.

PRESENTATION OF LIFE SAVING COMMENDATIONS AND MEDALS TO HARBOR POLICE SERGEANT SALVADOR COLIN, AND UNITED STATES NAVY GUNNER'S MATE SEAMAN APPRENTICES JENNIFER HENDRICKS AND VICTORIA SEIKE.

Agenda Item 22. Chief Kirk Sanfilippo stated that on November 30, 2008, Harbor Police Sergeant Salvador Colin and two service members from the United States Navy, Gunner's Mate Seaman Apprentices (GMSA) Jennifer Hendricks and Victoria Seike, saw a vehicle lose control, strike a traffic light at the center median, and roll over several

times before coming to rest on its passenger side. The vehicle was on fire, they rushed to render aid to the trapped driver. Sergeant Colin, with assistance from GMSA Hendricks and GMSA Seike, dislodged and freed the trapped driver through the vehicle's rear window, and moved him to a safe area. The bravery and prompt actions of Sergeant Colin, GMSA Hendricks and GMSA Seike saved the life of the driver. The Chief stated further that on May 21, 2009, GMSA Hendricks and GMSA Seike were awarded the Burn Institute's 2009 Spirit of Courage Award and Sergeant Colin was awarded the Burn Institute's 2009 Exceptional Service Award. Chairman Cushman and President Charlie Wurster presented lifesaving commendations and medals to Harbor Police Sergeant Salvador Colin, and Navy Gunner's Mate Seaman Apprentices Jennifer Hendricks and Victoria Seike.

PROCLAMATION HONORING THE SOUTH COUNTY ECONOMIC DEVELOPMENT COUNCIL ON ITS 20TH YEAR ANNIVERSARY.

Agenda Item 23. Commissioner Valderrama announced that the South County Economic Development Council (SCEDC) observes its 20th anniversary on July 23, 2009. He presented a proclamation to the non-profit organization recognizing the SCEDC for its efforts in promoting development in the region and the South San Diego Bay waterfront while enhancing communication between business and governmental agencies.

Ms. Cindy Gompper-Graves, SCEDC CEO, addressed the Board and thanked the Commissioners for their support throughout the years and for their investment and involvement in the SCEDC.

UPDATE ON MARINE TERMINAL FREEWAY ACCESS IMPROVEMENT PROJECTS.

Agenda Item 24. Paul Brown, Maritime Program Manager, Real Estate, introduced Mario Orso of CalTrans; he provided the Board with an update on the marine terminal freeway access improvement projects. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Cushman reminded the Board of the District's commitment to the \$132 million dollar match requirements for the projects.

Irene McCormack, Assistant Vice President Government Relations and Communications, addressed the Board regarding the various funding strategies staff

had considered to fulfill the District's matching grant portion of the Marine Terminal Freeway Access Improvement projects.

Chairman Cushman stated that he has requested President Charlie Wurster direct staff to prepare a memo detailing the project timeline, the funding requirements, and potential resources for matching grants.

Commissioner Valderrama stated that the projects were very worthwhile and encouraged the Board to move forward with securing funding to complete the projects.

PUBLIC HEARING/ACTION AGENDA

NORTH EMBARCADERO VISIONARY PLAN PHASE 1 COASTAL ACCESS FEATURES PROJECT

Agenda Item 25A. Linda Scott, Capital Project Manager, Engineering and Construction, addressed the Board regarding the North Embarcadero Visionary Plan (NEVP). Ms. Scott reviewed the progress on the NEVP and outlined the plans for the first phase called the Coastal Access Features Project. Ms. Scott explained that Phase 1A included West Broadway from Harbor Drive to the railroad tracks that would provide a link to the city and a backbone to future civic plazas where private developers would build. She also described the trees and lighting planned for the area. She stated that Phase 1B included relocating Harbor Drive to the east from the B Street Pier to the former Navy pier with transitions to the north and south. She also stated that the strip between the street and the water's edge, called the esplanade, would be over 100-feet wide. She further stated that the existing ticket buildings would be removed from the water's edge and replaced with colored glass kiosks under the pavilions, and a continuous water quality dam would treat urban water run-off before it flowed into the Bay. Ms. Scott added that minor modifications to enhance traffic movements on Harbor Drive and Grape Street would be incorporated into the plan. She stated that the landscaping and irrigation systems would be a low-water-use design and would accept reclaimed water when it would become available. Aspects of the NEVP Parking Management Plan that would be implemented include: transit and shuttle stops, way-finding signage, bike storage, and passenger loading to serve as a transportation hub. Ms. Scott stated that the design of the project has been a continual balance of enhancing the natural beauty of the Bay, maintaining the functions of the working waterfront, and accommodating a large number of local and traveling visitors. She stated that many aspects of the design were refined through a series of technical studies and stakeholder meetings, and that the NEVP design team worked with numerous individuals and groups to understand issues and achieve the best balance

possible to meet stakeholders' needs. She narrated an animated video rendering of the proposed design, which was a walking tour down West Broadway that continued north along the waterfront. She made note of the cruise ship terminal on the pier, the signature paving along the promenade, the pavilion and service kiosks and restrooms behind the formal garden. She also stated that the project under consideration would deliver the public access features of the NEVP. She further stated that the District's funding for the project was expected to come from the Lane Field hotel lease revenues. She also explained that those revenues had been delayed; however, with the cooperation of the Centre City Development Corporation (CCDC), District staff developed a funding solution that would be reviewed during the staff presentation regarding action agenda item 26. Ms. Scott stated that moving the project forward at this time would put redevelopment dollars into the local economy and would set the stage for future redevelopment. She introduced Matt Valerio, Senior Redevelopment Planner, Land Use Planning, who addressed the Board with a staff report regarding items 25AB.

Mr. Valerio requested that the Board conduct two public hearings. The first public hearing was regarding the North Embarcadero Visionary Plan Phase 1 Coastal Access Features Project, and he requested that the Board find that the project fell within the scope of the Master Environmental Impact Report (MEIR) based on consideration of an initial study and addendum to the MEIR prepared for the project in accordance with the California Environmental Quality Act (CEQA).

He stated that the second action (item 25B) was to conduct a public hearing and authorize the issuance of an appealable Coastal Development Permit for those components of the project within the District's jurisdiction. Mr. Valerio reviewed a slide that clarified the differences in the geographic areas addressed by the CEQA evaluation as compared to those areas covered by the appealable Coastal Development Permit. He explained that the segment between West Broadway and the railroad right-of-way fell under the city of San Diego's jurisdiction. He stated that staff recommended conducting two public hearings due to the fact that there was a difference in the areas evaluated for CEQA purposes as compared to those areas covered by the appealable Coastal Development Permit.

Mr. Valerio stated that the initial study addressed whether the project was within the scope of the NEVP MEIR, and evaluated whether any additional significant effect on the environment would result which was not previously examined in the certified MEIR. He stated that the MEIR was originally certified by the Board in April 2000. He stated that in August 2006 the Board reviewed the MEIR and determined that no substantial changes occurred with respect to the circumstances under which the MEIR was

certified. He stated that the addendum and initial study were bound together and made available for a 45-day public review period that ended on March 23, 2009. Mr. Valerio reported that six communications were received providing comment on the initial study and addendum, and that the comments and staff responses were provided to the Board. He stated that since receiving the comments, staff had coordinated with the California Coastal Commission staff and further engaged community stakeholders regarding issues raised. He explained that staff had met with stakeholders and described the benefits of the project and believed that the stakeholders left with an understanding of the project's benefits. He further explained that staff recommended that the Board find that the project would be beneficial and consistent with the Port Master Plan. He pointed out that staff followed the process set out in the CEQA guidelines section 15.1.77 for projects within the scope of a MEIR. He stated that during the initial study process, staff determined that no additional significant environmental effects would result from the proposal that were not previously examined in the NEVP MEIR, no new additional mitigation measures or alternatives were required, and that the project was within the scope of the NEVP MEIR. Based on these findings, staff recommended that the Board conduct a public hearing and adopt a resolution finding that the NEVP Phase 1 Coastal Access Features Project was within the scope of the NEVP MEIR.

He explained that the appealable Coastal Development Permit would authorize all the project components except those improvements to West Broadway between Pacific Highway and the railroad tracks, as that area was within the jurisdiction of the City of San Diego. Notice of the public hearing and the appealable Coastal Development Permit was provided to all interested parties, adjacent property owners, and advertised in the San Diego Daily Transcript and San Diego Union Tribune on June 22, 2009.

Mr. Valerio stated that on Thursday, July 2, 2009 the District received one comment letter regarding the appealable Coastal Development Permit; it was from the California Coastal Commission staff. The Coastal Commission letter had two principal components: 1) Coastal Commission stated that an amendment to the Port Master Plan should have been done once the design for the NEVP improvements became discernibly different from that identified in the NEVP itself, and different than that graphically represented in the Port Master Plan, and 2) the letter provides requests for new conditions and alterations to existing conditions of the appealable Coastal Development Permit for the project. He further stated that the letter also requested some clarification points, it acknowledged District staff's efforts, and the ongoing correspondence and meetings with District staff and the Coastal Commission staff.

Regarding point 1 of the letter, Mr. Valerio stated that District staff concluded that the discernible differences were minor discrepancies in detail compared to the NEVP and do not change land uses or the text of the Port Master Plan. The graphical representation in the Port Master Plan was an illustrative depiction of land uses, and as the land uses were not affected, a change in graphic was not necessary. Regarding point 2, he stated that staff had amended the Coastal Development Permit to wholly accommodate seven of the eight requests and partially accommodate the remaining request. He stated that staff had prepared a response to the Coastal Commission letter, and had also provided those responses to the Board prior to the presentation.

Mr. Valerio stated that staff had determined that the project was consistent with the adopted Port Master Plan because it improves public access to the coast, includes specific portions of the Port Master Plan (including a list of projects), and results in no land use changes. He requested that, based on staff's findings, the Board conduct a public hearing and authorize issuance of an appealable Coastal Development Permit. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Spane left the dais at 2:13 p.m. and returned at 2:18 p.m.

Chairman Cushman opened the Public Hearing for item 25A. For the record, the Chairman clarified that Ian Trowbridge had submitted a request to speak form for item 26, and Mr. Trowbridge stated that he would like to speak regarding item 25.

Members of the public addressed the Board with their concerns regarding the North Embarcadero Visionary Plan Phase 1 Coastal Access features project.

Ian Trowbridge stated that while he had not intended to offer any testimony on the item, he was exhausting his administrative remedies before he would file an appeal with the Coastal Commission should the Board vote in favor of staff's recommendation. Mr. Trowbridge also requested that all of the documents associated with Lane Field and with the Broadway Terminal, for the past two years, be included in the hearing as part of the administrative record.

In response to Mr. Trowbridge's request, Port Attorney Duane Bennett stated that a reply to the request was a determination that staff should make in due course, and he further stated that he would not recommend agreeing to the request at that time.

Mr. Trowbridge re-stated his request regarding the documentation and that he expected staff would be informing him of their decision. He continued his remarks in

relation to the letter from the Coastal Commission and stated that, in his opinion, he thought that District staff was misleading regarding the California Coastal Commission staff's position. He also stated that he was obviously opposed to the project as it stands, he agreed with every comment in the Coastal Commission report, and all of the comments that were part of the previous public hearing by a variety of individuals.

Chairman Cushman announced that Katheryn Rhodes would be the next speaker; however she was not present to speak.

Scott Andrews addressed the Board in opposition to staff's position. He expressed his concern regarding what he characterized as a potential conflict of interest by the Mayor of the City of San Diego and the former President of the Centre City Development Corporation (CCDC) regarding development design and leasing of the Navy Broadway Complex parcel portion of the NEVP. He further expressed his concerns regarding District staff's responses to the Coastal Commission letter regarding the proposed park; and also expressed his concerns regarding the cruise ship terminal and its impact on the NEVP. He stated that all mitigation efforts should take place at the impacted site. In concluding his remarks, he expressed his concerns about the impact of the proposed trees and buildings on the view of San Diego Bay and the tourism industry.

Don Wood stated that while he is active with the Broadway Complex Coalition and Citizens Coordinate for Century 3 (C3), his comments to the Board were his own. Mr. Wood expressed his concern regarding the public hearing process and specific changes to what he stated were key elements in the original NEVP. He continued his testimony expressing his concern regarding an oval shaped public Broadway Landing Park and the cruise ship terminal planned for the Broadway Pier. He concluded his remarks and referenced the Coastal Commission staff's comments regarding the Port Master Plan. Mr. Wood expressed his concern that approval of the items was inconsistent with the California Public Tidelands Trust Doctrine.

Chairman Cushman stated that there were no additional members of the public to speak on item 25A and he closed the public hearing.

Commissioner discussion ensued. Commissioner Peters stated that it was his observation that the scope of the first public hearing was regarding the conformity of the project with the original EIR. He stated the public testimony during the hearing was not regarding that matter. He stated that: Mr. Trowbridge did not identify what his objections were; Mr. Andrews' comments did not reference the EIR, and he thought that Mr. Wood's comments were more related to the upcoming hearing. Commissioner

Peters stated that he did not hear any testimony that would contradict the conclusion of staff as to the consistency with the original EIR. He stated on that basis he supported staff's conclusion and made a motion to accept staff's recommendation, and their finding that the NEVP Phase 1 Coastal Access Features Project was within the scope of the NEVP MEIR.

Regarding the recommendation in the Coastal Commission's letter related to bicycle traffic on the new Embarcadero promenade, Commissioner Bixler expressed his concern about possible public safety issues and requested staff's clarification. Ms. Scott stated that the design team reviewed the matter of separate bicycle and pedestrian ways at some length. She stated that it was determined that a combination path allowed for a wider shared-width versus two narrower paths that would have been designated for a single use. She also stated that staff was concerned that a designated bike-only path may encourage high-speed bicycle traffic that may have created additional safety concerns. She stated that she thought the Coastal Commission was seeking a means to ensure that in the future the District continued to serve bicyclists and pedestrians. Commissioner Bixler requested and received clarification from Ms. Scott as to whether the plan was to create a separate bicycle path from the pedestrian esplanade area. She replied that there was no plan for a separate area for the uses in question. Commissioner Bixler then requested clarification as to how staff intended to manage the mixed-use of pedestrian and bicycle traffic. Ms. Scott responded that commuters traveling by bicycle would likely use the designated bike lanes on Pacific Highway. Commissioner Bixler stated that he was not in favor of allowing bicycle traffic on the promenade; also allowing such traffic was not in concert with the proposed atmosphere that encouraged traveling on foot. Commissioner Bixler requested the Chairman's opinion regarding this matter.

Commissioner Cushman stated that in his experience as a jogger on the path from Coronado to Imperial Beach, it has a line delineating the bicyclist from the runner and has not been a cause for concern. Commissioner Cushman requested that staff look at the model implemented in Coronado as the project moves forward.

Regarding comments during the public hearing, Commissioner Burdick requested further information regarding why, during the NEVP planning process, there was a shift away from the proposed oval park at the foot of the Broadway Pier. Land Use Planning Director John Helmer explained that the NEVP Planning Document had an illustration of an oval shaped park at the foot of Broadway and Harbor Drive. He stated that one corner of the park was on the Lane Field property, one corner was on the Navy Broadway property, and two corners extended over the water; in 2000 staff sent correspondence to the Coastal Commission outlining the fact that there may be some

issues with building the oval. He further stated that staff explained the park would require an over-the-water structure with fill, additional studies, environmental documents and regulatory processes. He explained that staff also noted that in order to accommodate the oval park, Harbor Drive would need to curve again through the Navy Broadway property and through the Lane Field property. He stated that the Navy was no longer participating in the NEVP alliance and staff could not secure that property. He further noted that last year the California Coastal Commission approved the Lane Field development project that would preempt the oval from happening because of the approved hotel plaza in that area. According to Mr. Helmer, staff believes that approximately the same amount of open space and public access can be accommodated with a more rectangular design, rather than an oval design.

Commissioner Burdick requested and received confirmation from Mr. Helmer that District staff has found that the NEVP falls within the uses that are designated for the parcel and are consistent with the Port Master Plan Coastal Commission letter. He pointed out that the NEVP project is described in some detail in the Port Master Plan and believes it is consistent with the Port Master Plan.

Commissioner Burdick requested clarification regarding staff's interpretation of the Coastal Commission's remarks regarding any inconsistencies with the Port Master Plan. Mr. Helmer cited the example of text in the Port Master Plan which referred to figure 5.3, that was included in the 1998 NEVP planning document, regarding the esplanade. He explained that figure 5.3 was a very illustrative preliminary drawing of a cross section of the esplanade that had elements including a walking trail, a bicycle trail, and landscaping; however, it does not look exactly like a cross section of the current plan. He further stated that the Coastal Commission has taken a very literal interpretation regarding the Port Master Plan and the document he described as a very illustrative preliminary drawing. He pointed out that District Staff has a fundamental disagreement regarding the purpose of the Port Master Plan, and that District staff believes the Port Master Plan is a planning document to provide guidance for the Board and a development standard for developers. Commissioner Burdick requested and received clarification from Mr. Helmer that the Master EIR was the environmental document before the Port Master Plan, and the MEIR was approved by the Board in 2001, and certified by the California Coastal Commission in 2001, and that the Port Master Plan was that based on the MEIR. Commissioner Burdick received confirmation that upon finding the NEVP consistent with the Port Master Plan it would also be consistent with the Master EIR.

Commissioner discussion concluded.

On motion of Commissioner Peters, seconded by Commissioner Valderrama, the Board, adopted **Resolution 2009-130**, finding that the North Embarcadero Visionary Plan Phase 1 Coastal Access Features Project is within the scope of the North Embarcadero Visionary Plan Master Environmental Impact Report, by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

NORTH EMBARCADERO VISIONARY PLAN PHASE 1 COASTAL ACCESS FEATURES PROJECT

Agenda Item 25B. Chairman Cushman announced the Board would move onto item 25B. He clarified that there was no additional staff presentation and confirmed there was no additional Commissioner comment at that time. Chairman Cushman opened the public hearing regarding the North Embarcadero Visionary Plan Phase 1 Coastal Access Features Project and the Board's consideration of the adoption of a Resolution Authorizing Issuance of an Appealable Coastal Development Permit.

Chairman Cushman announced that Ian Trowbridge had submitted a request-to-speak form however, he did not address the Board regarding item 25B.

Katheryn Rhodes provided additional comment regarding the email she had sent to the Board about the Coastal Commission's letter regarding the NEVP. She addressed the parking requirements for the Navy Broadway complex. She also addressed the Board regarding the need for earthquake fault investigations in the area and encouraged the Board to continue to develop Ruocco Park.

Scott Andrews addressed the Board with concerns regarding issuing a coastal development permit for the North Embarcadero Plan. He stated the following concerns: the elimination of the 10-acre park, elimination of an open Broadway pier to public access, the embarcadero design with buildings and trees that block the view, eliminating parking along the waterfront, and the cruise industry. Mr. Andrews stated that he supports the city encouraging tourism and providing a downtown attraction such as a park or weekend festivals that encourage the public to visit, linger, spend and return. He, however, expressed concern regarding development along the waterfront and the public documents regarding the project. He concluded his remarks stating his concern regarding the public's access to and their view of the natural bay.

Chairman Cushman called Don Wood. Mr. Wood stated that he had no further comment.

Chairman Cushman stated that there were no additional public speaking slips submitted and he closed the public hearing.

Commissioner discussion ensued. Regarding the letter from the Coastal Commission dated July 2, 2009 that suggested the Coastal Commission staff did not agree that the NEVP project proposed was totally consistent with the Coastal Commission's approval in 2001, Commissioner Peters requested clarification regarding the process. Regarding the eight items of concern, of which staff addressed seven, Commissioner Peters requested clarification regarding item eight that was partially accommodated.

John Helmer stated that one of the conditions of approval requested that all of the landscaping be native and drought resistant landscaping and that it be irrigated with reclaimed water, when available. Mr. Helmer stated that irrigating with reclaimed water, when available, has been implemented. However, the planting palette that staff developed includes Jacarandas and palms and other plantings, which District staff believed to be consistent with other landscaping in the area, but is non-native landscaping. Commissioner Peters requested and received clarification from Mr. Helmer regarding the Coastal Commission appeal process. Commissioner Peters requested and received confirmation that staff believed they were consistent with the prior approvals. Commissioner Peters acknowledged that staff has responded to the Coastal Commission in a reasonable way. He expressed his concern regarding the Coastal Commission involving itself in parking pricing and suggested that parking rates are a local issue.

Commissioner discussion concluded.

On motion of Commissioner Peters, seconded by Commissioner Valderrama, the Board, adopted **Resolution 2009-131**, Authorizing Issuance of an Appealable Coastal Development Permit, by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

ACTION AGENDA

NORTH EMBARCADERO VISIONARY PLAN PHASE 1

Agenda Item 26ABCD. Commissioner Cushman requested clarification from Linda Scott, Capital Project Manager, Engineering and Construction, as to whether a formal staff report was necessary. Ms. Scott explained that a staff report was ready for presentation, but, if the Chair preferred, she was prepared to simply answer any

Commissioner questions. Ms. Scott did not deliver a formal presentation. (A copy of the staff report is on file in the Office of the District Clerk.)

Chairman Cushman called for any public testimony. Don Wood addressed the Board and stated that the only clarification he wanted to make was that the Centre City Development Corporation (CCDC) commitment to the NEVP was for improvements on Broadway and improvement around the esplanade, and that none of those dollars committed by CCDC, according to the CCDC Chairman and staff, could be used on the Broadway Pier.

Scott Andrews addressed the Board and stated for the record that the public understands the distinction between parks and esplanades. He expressed his concerns regarding buildings and trees along a city's waterfront and the impact to views, the elimination of parking spaces and the impact to public access, the planning process documentation, public access to the embarcadero, and the vehicles that service the cruise ship industry.

Katheryn Rhodes' and Ian Trowbridge's names were announced by the Chairman; however, they did not speak.

Commissioner discussion ensued. Commissioner Peters expressed his confusion regarding some of the seemingly conflicting public comments regarding the NEVP. He acknowledged Chairman Cushman for serving on the task force and staff for their work regarding the NEVP to develop a place for San Diegans to enjoy. He further acknowledged District staff and the representatives from CCDC for their assistance with project financing. Commissioner Peters stated that he was in support of staff's recommendation.

Chairman Cushman acknowledged the representatives from CCDC and thanked them for their assistance with financing the project and providing the District with a loan to begin the project.

Referencing the public comments regarding Jacaranda trees blocking the view to the bay, Commissioner Bixler stated, for the record, that during a significant period of time during the year the tree is bare with some relatively small and delicate limbs that are attractive against the winter sky. Commissioner Bixler expressed his concern regarding the financing of the project and the proposed interest rate that CCDC has offered.

Commissioner Bixler stated that his concern with the item at this time was regarding the ability to finance the District's share of the project or approximately \$14,705,000. He stated that CCDC had agreed to forward fund for the District's use approximately \$4.3 million, which represented their fair contribution to the maintenance of the project over the next 30 years. He then requested and received clarification regarding the 4.77% interest rate on the CCDC loan as compared to a ten-year Treasury Note with a current interest rate of 3.5%. Jeff McEntee, CFO/Treasurer, explained that the 4.77% rate was the cost of CCDC's debt. He further explained that rate was the total interest cost on the debt that CCDC issued, and negative arbitrage to CCDC would result if the District was to pay any interest rate less than that 4.77%. Commissioner Bixler also expressed his concern regarding the present value calculation on the 30 years of maintenance expenses for the project. He expressed his concerns regarding the ability to finance the NEVP and other stakeholder projects in light of the present state of the economy. He stated that while he was in support of the project he had concerns regarding the loan and the impact to the Capital Development Program and the reserve fund; thus, he preferred to delay the project until such time as the Lane Field development financing was secured. He stated that under Robert's Rules of Order he offered a motion to table the discussion regarding borrowing the funds and not moving forward on items 26A, 26B, and 26C. He supported moving forward with item D, authorizing the addition of Broadway Pier surface improvement project in the amount of \$1 million to the 2009-2013 Capital Development Program to continue forward with the Broadway pier development.

Chairman Cushman requested and received confirmation from Commissioner Bixler that his motion was to table. Commissioner Spane seconded the motion.

Chairman Cushman stated that under Robert's Rules of Order there was a motion to table and required an immediate vote. Commissioner Spane requested to speak before the vote. Chairman Cushman denied the request.

Port Attorney Duane Bennett offered a point of clarification and stated that Commissioner Peters had a motion on the floor; however, it did not receive a second. Thus, Commissioner Bixler was appropriate in making a substitute motion that was seconded by Commissioner Spane. Mr. Bennett requested that Commissioner Bixler clarify his motion. Commissioner Bixler stated that he made a motion to table item 26ABC, except 26D, until such time as the Lane Field project receives funding.

Chairman Cushman requested clarification from Mr. Bennett regarding the motion to table and the appropriate procedure under Robert's Rules of Order.

Mr. Bennett stated he believed that the Board may have some brief discussion on Commissioner Bixler's motion.

Commissioner discussion ensued.

Commissioner Spane expressed that he also had similar concerns regarding the economy and the potential District expenditures under consideration, including cold ironing, Chula Vista projects, and the freeway projects. He stated that he preferred to address the CDP projects in a workshop setting. He advocated for building the Lane Field Hotel, cruise terminal, and the North Embarcadero roadway in a logical and progressive order to maximize an efficient use of resources. Commissioner Spane suggested that the Board review the District's investment strategy as a whole.

Commissioner Hall stated that his understanding from Commissioner Bixler's comments was that the Board could probably go forward with A, C and D even if item B was tabled, and he requested clarification regarding the motion. Commissioner Bixler stated that it was his understanding that if the Board were to approve item 26A the rest of the items were essentially ministerial. Commissioner Hall stated that the evolution of the NEVP to the current design state was laudable. In reference to Commissioner Spane's statement, Commissioner Hall requested clarification from staff regarding the impact of delaying the NEVP, until project funding becomes available, and as to whether there would be any impact to completing the development in a proper sequence. Ms. Scott stated that the NEVP project and the Lane Field does not overlap and will not require any reconstruction. She further stated that staff has felt that it would be desirable to move forward with the NEVP in the matter of assisting Lane Field with funding and it would make the development of the Lane Field project much more attractive if the visionary plan improvements were committed to and construction had begun.

Commissioner Valderrama stated that he concurred with Commissioner Spane's remarks regarding the assessment of the CDP projects in light of the delayed time line for the Lane Field project. He expressed concern regarding moving forward on item 26D without further analysis and a better understanding of the process to be utilized to get to a resolution of the total issue.

Chairman Cushman stated that he would vote against tabling. The Chairman stated that he has been involved in the NEVP project for the past 10 years, and CCDC, Fred Maas, and Kevin Faulconer of the City of San Diego had been tremendous partners. He stated that the project is open space, and it is for San Diegans as well as visitors. Chairman Cushman stated that according to the law CCDC must go out of

business in a few years and staff worked to solve the issue of future maintenance expenses. The Chairman acknowledged CCDC for their loan of the funds. The Chairman stated that items 27, 28 and 29 will be addressed in sequence to address Commissioner Spane's concern regarding reallocation of the CDP and a discussion regarding the District's reserve policy as the Board considers the District's vision. The Chairman stated that he encouraged the Board to not vote in favor of the tabling motion and move forward on North Embarcadero.

With Commissioner Bixler's acceptance, Commissioner Valderrama requested the Board consider items 28, 29 and 30 and then return to the discussion of items 26ABCD regarding the NEVP.

Regarding Commissioner Valderrama's suggestion, Chairman Cushman requested guidance from Port Attorney Duane Bennett. Mr. Bennett explained that if the maker of the motion and if the Board were to concur, it was possible to simply trail the vote until the other matters were heard. He stated that as there was a motion and second on the floor, a vote would be required; however, there was no obligation to take the vote at that time. He recommended that the maker of the motion withdraw the motion, and, if the second concurred, the Board could continue with their discussion of items 28, 29 and 30 and then return to the vote regarding item 26.

Commissioner Bixler stated that he was willing to withdraw his motion for the time being if the Board felt that it would be more productive. He stated that he would ask for the opportunity to bring up the motion again.

Commissioner Cushman stated that following the staff presentations, the Commissioner's discussion, and any action regarding items 27, 28, 29 and 30; the floor would open again to item 26, and at that juncture in time he would ask for a motion.

Commissioner Bixler stated that in the cooperative spirit of the Board he was withdrawing his motion. Commissioner Spane concurred and withdrew his second.

Chairman Cushman stated that the Board would take a brief recess and return at 3:30 p.m. to discuss items 27, 28 and 29, followed closely by item 30.

The Board meeting was in recess at 3:22 p.m. and the meeting resumed at 3:30 p.m.

Chairman Cushman requested that Mr. Bennett review for the record Robert's Rules of Order regarding tabling motions. Mr. Bennett stated that Roberts Rules of Order indicate that regarding a traditional motion to table an item, no debate is

allowed. Mr. Bennett stated that Commissioner Bixler's motion was interpreted in a different manner and was not a traditional motion to table.

Chairman Cushman explained that the Board would hear staff reports regarding agenda items 27, 28, 29 and 30 because the items were interrelated. Public comment and the Commissioner discussion would follow all of the presentations and action, if any, would be considered on each item sequentially. He stated that following the discussions, the Commissioners would return to item 26 and consider Commissioner Bixler's motion.

RESOLUTION ADOPTING BOARD OF PORT COMMISSIONERS (BPC) POLICY REGARDING OPERATING RESERVES

Agenda Item 27. Jeff McEntee, CFO/Treasurer, addressed the Board with the presentation and staff report for consideration of adoption of a Board Policy regarding the operating reserves and requested Board direction. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Cushman left the dais at 3:41 p.m. and returned at 3:45 p.m.

CAPITAL DEVELOPMENT PROGRAM FUNDING UPDATE AND DIRECTION TO STAFF

Agenda Item 28. Engineering and Construction Director Brian Stup addressed the Board regarding the Capital Development Program (CDP) funding update, provided the status of the current CDP funding, and reviewed the three categories under which the CDP projects had been categorized. Following the presentation he requested direction from the Board. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

CRUISE SHIP TERMINALS SHORE POWER PROJECT

Agenda Item 29ABCD. Engineering and Construction Manager, Mahmoud Akhavain addressed the Board with a staff report regarding the Cruise Ship Terminal Shore Power Project. He requested the Board to authorize the allocation of funds, and to enter into three agreements for the implementation of the project. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Cushman requested clarification regarding the status of the Carl Moyer funds in relation to the proposed completion schedule for the project.

Executive Director, Charlie Wurster addressed the Board regarding the status of the Carl Moyer grant funding. He stated that several months ago staff had requested an extension from the local and State Air Quality Control Board, and staff had renewed that request with the local Air Quality Control Board the week before the Board meeting.

He stated that staff had learned that they are receptive to granting an extension.

Assistant Vice President Government Relations and Communications Irene McCormack stated that staff was informed earlier in the day that in the event that the District's work was almost completed by the grant deadlines of May and June, and operational by December 2010, they would consider accepting the extension. Chairman Cushman requested further clarification regarding Ms. McCormack's statement. She stated that they said they would agree to the extension; however, the District would have to document all of the steps taken to complete the project. Chairman Cushman requested and received an affirmative response from Chief Engineer Steve Kirkpatrick that the District could meet the 2010 deadline.

Chairman Cushman stated that he would move on to public comment regarding the staff reports on items 27, 28 and 29. Diane Takvorian, Environmental Health Coalition (EHC), addressed the Board and stated that she was in support of the Board's consideration to adopt a policy to allow flexibility in borrowing from the reserve fund. She stated EHC was in support of reallocation of reserve funds when clear opportunities to leverage funds and maximize the District's resources were presented. She stated that they support the use of reserves for regulatory compliance issues; however, they were not supportive of the blanket use of reserves for capital improvements. She stated that EHC encouraged the Board to look at the CDP first for funding from any of the projects in the pending projects category that were not moving forward. She also stated that EHC was in support of comprehensive shore powering projects that would include the Tenth Avenue Marine Terminal and the cruise ship terminals, and she urged the Board to move forward on the project and protect the grant funding that had been awarded. She requested that the Board not consider making an allocation from the Environmental Fund until the Environmental Committee had met to discuss the matter and provide their recommendations. Ms. Takvorian concluded her remarks by suggesting that following shore power implementation the District may qualify for a refund from SDG&E.

Commissioner discussion ensued regarding item 27. Commissioner Peters requested and received clarification from Mr. McEntee regarding the proposed reserve policy in relationship to a potential upgrade of the District's bond rating and the economic impact on the District. Mr. McEntee stated that the bond rating would affect

the District in the future and it does not have any effect on the existing debt. Commissioner Peters requested clarification as to whether the District had any plans to seek bonds in the future. He further stated that the original intent was that the District would bond against the Lane Field hotel revenue to fund the NEVP and help fund the B Street Pier infrastructures. Mr. McEntee also confirmed that he was not provided with specific information regarding the bond interest rate levels in comparison to the reserve level. Commissioner Peters stated that he was in support of the \$20 million catastrophe reserve. He requested and received confirmation that \$17.2 million of the reserve fund was designated for Capital Major Maintenance of the B Street Pier. As the District ranked in the top one or two of all of the comparable agencies in the level of reserves that were carried, Commissioner Peters questioned as to whether the District's reserve fund should remain at its current level, and stated that it was his strong preference to have a lower amount of reserves and he suggested that the level be set at 40% of budgeted operating and maintenance expenses. Commissioner Peters proposed that the \$17.2 million in Capital Major Maintenance be taken out of the reserve to alleviate any public impression or mixed message that those funds may be undesignated, and that the \$20 million catastrophe fund also be shown under a separate designation. He also stated that he did not think it was appropriate to carry a 50% reserve, also shown as a 6 month operating reserve, when there were a number of pending projects, that supported the District's mission, that required funding. Commissioner Peters requested and received clarification from Mr. McEntee as to the method that would be used to replenish the operating reserve fund. Mr. McEntee stated that many factors would be considered and staff would work to re-build the reserve to the target level as rapidly as possible, with analysis regarding the amount of time required to re-build the reserve. Commissioner Peters summarized his comments as follows: that given these times, the reserve policy was too conservative for the organization; the reserve level was a little misaligned with District priorities; he favored a lower reserve level; he appreciated the flexibility to borrow from the reserve; and, based on the pending projects, he was not comfortable with the current reserve level.

Chairman Cushman requested and received clarification from Mr. McEntee regarding the level of the reserve fund. Mr. McEntee stated that the reserve fund was based on 50% of the total operating budget of the given fiscal year, which was currently \$60 million. Chairman Cushman explained that a portion of the current \$60 million reserve was currently committed to several specific projects.

Regarding Commissioner Spane's inquiry, Mr. McEntee stated that the District had paid \$7.2 million into the pension fund in June. Commissioner Spane expressed concern that in the future there may be larger-than-planned-for-payments to the pension fund and having a 6-month reserve may assist with that type of unplanned

expense. Commissioner Spane stated that when utilizing the reserves for projects it was a one-time opportunity and expressed concerns as to how those funds would be recovered to re-build the fund. He also stated that he agreed with Commissioner Peters' remarks regarding moving funds that have been obligated to capital projects out of the reserve fund total. He concluded his remarks stating that he would be concerned about having a lower reserve.

In regard to the California Cities White Paper referenced in the staff report and presentation, Commissioner Burdick requested clarification as to whether there were any California cities that had a reserve between 26% and 50%. Financial Services Director Janice Erickson stated that while unusual in a sample size such as the one cited the data shown was how it was presented in the white paper. Commissioner Burdick stated that she agreed with Commissioner Peters' suggestion of moving funds from reserves when those funds are allocated for specific projects and highly encouraged staff to do so. She stated that she concurred with the staff recommendation of having a \$20 million minimum at all times in case of an emergency. Commissioner Burdick stated that she was in favor of utilizing reserve funds to leverage other monies and also in the case of regulatory compliance.

Chairman Cushman requested and received confirmation from Mr. McEntee that \$28 million had been authorized against the \$60 million reserve fund in 2013. Regarding borrowing from the reserve fund, Chairman Cushman suggested that language requiring replenishment at the earliest opportunity be included in the policy. Chairman Cushman also reminded the Board that based on current market results a larger payment into the retirement fund would likely be required in the coming year.

Commissioner Hall requested that through the end of FY10 any obligations against the reserve fund should be designated to adjust the reserve total to \$31.7 million.

Commissioner Valderrama stated that he would not be in favor of dropping the reserve level below the current levels. He explained that he concurred with Commissioner Burdick and would only support utilizing the reserve, when required do so to comply with regulatory obligations. He advocated for living within one's means and not utilizing reserves for operating expenses to maintain the District's economic sustainability.

Regarding the cold ironing projects Commissioner Bixler requested that Mr. McEntee provide a total cumulative shortfall, less the Carl Moyer grant funds. Mr. McEntee stated that when staff prepared the cash flow projections, they assumed

that cold ironing was a must-do project, and the entire cost to complete the cold ironing at the cruise ship terminal and the Tenth Avenue Marine Terminal was included within the cash flow forecast. Commissioner Bixler stated that he was looking for a fuller understanding of the capital shortfall in a 3 to 5-year horizon. Mr. McEntee stated that of the \$31.7 million reserve shown, \$20 million was designated for earthquake/disaster relief and there were no additional obligations that required the remaining balance.

Commissioner Peters left the dais at 4:35 p.m. and returned at 4:37 p.m.

Chairman Cushman stated that he supported a six-month reserve. He also stated that in the future, when staff requests Board approval to utilize the cash reserve, his motion would include a requirement for replenishment at the earliest possible opportunity. He also concurred with Commissioner Burdick's remarks regarding allocating reserves to comply with regulatory requirements in the event that no other funds were available.

Commissioner Spane made a motion to adopt a policy of maintaining a six-month operating reserve. Commissioner Valderrama seconded the motion.

Commissioner Hall requested that the motion be amended to show that the reserve total shall reflect the sub-designations for planned expenditure projections, including the ones currently shown (FY08-09 shortfall, FY09-10 shortfall, and major maintenance shortfall) against the reserves and be designated until the funds can be allocated from another source.

Chairman Cushman stated that while he understood Commissioner Hall's request, he respectfully requested that the Board adopt a streamlined policy per Commissioner Spane's motion and, in the event that in future the Board authorized the utilization of reserves for those projects, a replenishment requirement would be implemented.

Commissioner Hall withdrew his recommendation to amend the motion.

On motion of Commissioner Spane, seconded by Commissioner Valderrama, the Board, adopted **Resolution 2009-128**, Board of Port Commissioners (BPC) Policy No. 117, Operating Reserve Policy, by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Spane, Valderrama; Nays-Peters; Excused-None; Absent-None; Abstained-None.

Chairman Cushman welcomed San Diego City Councilmember Kevin Faulconer, who addressed the Board regarding item 26, the North Embarcadero Visionary Plan (NEVP) Phase 1. The Councilmember stated that the NEVP enjoys strong support and urged the Board to move forward. He further stated that the partnership with the City

of San Diego, the Centre City Development Corporation and the District represents a strong commitment to the project that would spur additional economic activity in the region.

Commissioner Peters requested that staff consider how the unallocated reserves were currently shown in the budget figures, and make a recommendation to the Board regarding a means to label those funds to avoid any misinterpretation by the stakeholders who may be assessing the District's reserve fund level.

Chairman Cushman requested, now that a reserve fund policy had been adopted, that staff return at a future meeting and review how a six-month reserve fund would be replenished.

Commissioner Bixler left the dais at 4:44 p.m. and returned at 4:45 p.m.

Chairman Cushman announced that Commissioners' discussion regarding agenda item 28, Capital Development Program (CDP) Funding Update, would commence.

Commissioner Spane requested and received clarification as to whether there were any new CDP projects added since the Board CDP Workshop in 2008. Chief Engineer Steve Kirkpatrick stated that while no new projects had been added since the workshop, additional funds had been allocated to specific projects such as cold ironing. Commissioner Spane requested that staff prepare a memo detailing such projects. He also requested clarification regarding the process that member cities would utilize when requesting funds for capital development projects. Chairman Cushman stated that staff would return with the information Commissioner Spane had requested. Commissioner Spane advocated for another CDP workshop.

In consideration of several CDP items that could be deferred or postponed, Commissioner Hall recommended that the Board consider reallocating funds from the three sources to fully fund the \$7.5 million shortfall for the Cruise Ship Terminal Project and the Tenth Avenue Marine Terminal Project. The three CDP sources were detailed in the staff report and listed as: reference no. 4, Potential Maritime Property Acquisition - \$4 million; reference no. 14, Marina Parkway Utilities Relocation - \$432,000; and CDP 5-Year Contingency \$3,205,000 for a total reallocation of \$7,637,000.

Commissioner Burdick requested an analysis and report regarding the status of each of the CDP projects, with a qualification or weighting factor. Chairman Cushman stated that staff had prepared such a report and her request would be fulfilled with a staff briefing.

Commissioner Valderrama stated that he concurred with Commissioner Hall's analysis and made a motion that the Board re-designate the funds from the following three sources: reference no. 4, Potential Maritime Property Acquisition - \$4 million; reference no. 14, Marina Parkway Utilities Relocation - \$432,000; and CDP 5-Year Contingency \$3,205,000 for a total reallocation of \$7,637,000, and designate them to fully fund the \$7.5 million shortfall on the Cruise Ship Terminal Project and the Tenth Avenue Marine Terminal Project.

On a motion by Commissioner Valderrama, seconded by Commissioner Hall, the Board voted to allocate funding from three (3) sources to fully fund the estimated \$7,500,000 shortfall on the Cruise Ship Terminal Project and the Tenth Avenue Marine Terminal Project. The motion identified three (3) sources, totaling \$7,637,000. This total included \$3,205,000 from the CDP 5-Year Contingency, by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Board discussion ensued regarding agenda item 29, Cruise Ship Terminals Shore Power Project. Commissioner Peters stated that, pending a written commitment from the Carl Moyer Fund confirming the extension of the grant funding, he was in support of the staff recommendation. Chairman Cushman requested that Commissioner Peters amend his motion to accept the staff recommendation for parts 29A, 29B and 29D of item 29 allowing for a separate discussion of part 29C. Commissioner Peters agreed to the request.

Commissioner Spane requested and received clarification from Chief Engineer Steve Kirkpatrick that the \$1.7 million, from the Environmental Fund, that was referenced in the staff report would no longer be required as the Board had earlier approved the re-allocation of CDP project funds. Commissioner Valderrama concurred with Mr. Kirkpatrick's assessment that the Environmental Fund would not be utilized for the Cruise Ship Terminals Shore Power Project or the Tenth Avenue Marine Terminal Shore Power Project.

In light of the Board's prior action regarding the CDP re-allocation, Commissioner Burdick stated that item 29A did not require consideration. Port Attorney Duane Bennett stated that he concurred that item 29A was not necessary based upon the Board's previous motion to allocate the necessary funds for the shore power projects. Commissioner Peters concurred and amended his motion to approve the staff recommendation for only items 29B and 29D.

On a motion by Commissioner Valderrama, seconded by Commissioner Hall, the Board, in a single vote, adopted **Resolution 2009-129**, Authorizing an Equipment Purchase Agreement with Cochran, Inc. in the not to exceed amount of \$2,658,395.93, and Granting Indemnity to Escrow Agent, and **Resolution 2009-136**, Authorizing a three-year Maintenance Services Agreement with Cochran, Inc. in the not to exceed amount of \$757,945, by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner discussion ensued regarding item 29C, Cruise Ship Terminals Shore Power Project: Resolution Authorizing a Construction Phase Consulting Services Agreement with Cochran, Inc. in the not to exceed amount of \$203,028.

Commissioner Valderrama expressed his concern regarding the item and requested additional information regarding the need to grant a separate construction phase consultant agreement, valued in excess of \$200,000 to Cochran, Inc., in addition to the equipment purchase and maintenance agreement that was previously approved.

Chief Engineer Steve Kirkpatrick explained the nature of the construction phase consultant agreement and that staff had divided the agreement into the three separate components.

Chairman Cushman expressed his concern regarding the construction phase consultant agreement and stated that he would not support the staff recommendation to approve the agreement. Chairman Cushman suggested that staff return to Cochran, Inc. and continue negotiations.

Commissioner Peters stated that he was in support of the shore power project and made a motion to approve the staff recommendation for agenda item 29C.

Commissioner Hall requested and received clarification from Mr. Kirkpatrick that the purpose of the consultant agreement was to facilitate the successful synchronization of shore power with each of the cruise ships during the first year of operation. Commissioner Hall stated that, in his opinion, the matter under consideration was a legitimate expense over and above the acquisition of the equipment. The motion was seconded by Commissioner Hall.

In light of the nature of the sole-source agreement for the shore power equipment, Commissioner Valderrama stated that he was opposed to the approval of item 29C and recommended that staff return to the vendor and re-open negotiations.

Commissioner Bixler stated that he was not in support of approving the staff recommendation and recommended that staff consult with Carnival Cruise Lines regarding their need for such support.

Chairman Cushman stated that Carnival Cruise Lines had requested the specific shore power equipment. He then requested and received confirmation from Mr. Kirkpatrick that Cochran, Inc. was the only supplier of the type of equipment under discussion.

Executive Director Charles Wurster stated that staff had participated in extensive negotiations with Cochran, Inc. and the agreement under consideration was a standard industry practice in order to integrate a very complicated piece of equipment into the basic electric system on the pier and to ensure that it would function properly when utilized the first time.

The motion failed for lack of a majority by the following vote: Yeas-Burdick, Hall, Peters; Nays-Bixler, Cushman, Spane, Valderrama; Excused-None; Absent-None; Abstained-None.

TENTH AVENUE MARINE TERMINAL SHORE POWER PROJECT IMPLEMENTATION UPDATE AND DIRECTION TO STAFF; TO PROCEED WITH THE DESIGN AND CEQA PROCESSING

Agenda Item 30. A copy of the staff report is on file in the Office of the District Clerk.

Commissioner discussion ensued. Commissioner Valderrama stated that he was in favor of staff's recommendation.

Commissioner Burdick stated that she was in support of the staff recommendation and requested clarification as to whether the Board should take any additional action at the time.

Chairman Cushman stated that staff would return to the Board with next steps to move forward with the project. He also noted that as a result of the Board's authorizing the shore power project implementation funds there may also be a positive impact to the retaining of the Proposition 1B funds.

Commissioner Burdick requested and received confirmation from Assistant Vice President Government Relations and Communications Irene McCormack regarding the

positive impact that funding cold ironing would likely have on the acquisition of clean diesel funds.

The following members of the public addressed the Board regarding the item: Tony LoPresti, Environmental Health Coalition and Barrio Logan resident Maria Martinez. In an effort to alleviate any possible reallocation of funds, Mr. LoPresti urged the Board and staff to communicate to the California Air Resources Board the action that was taken regarding shore power. Ms. Martinez addressed the Board in Spanish and her remarks were translated into English by her personal translator. Ms. Martinez thanked the Board for their approval of the shore power project.

On a motion by Commissioner Valderrama, seconded by Commissioner Hall, the Board, directed staff to proceed with the design and CEQA processing for the Tenth Avenue Marine Terminal Shore Power Project, by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Chairman Cushman stated at 5:25 p.m. that the Board would take a 5-minute recess. The Board meeting resumed at 5:30 p.m.

NORTH EMBARCADERO VISIONARY PLAN PHASE 1 (CONTINUED)

Discussion resumed regarding agenda item 26. Linda Scott addressed the Board and reviewed the following five items as the Board considered moving forward with the NEVP Phase 1 project: 1) an important step to trigger the redevelopment of Lane Field; 2) a window of opportunity with CCDC to share capital and maintenance dollars; 3) putting public money into the local economy; 4) taking advantage of a very favorable bidding environment in the current economy; and 5) it delivers a wonderful project that many people have been looking forward to.

Commissioner discussion ensued.

Commissioner Bixler made a motion to table agenda items 26A, 26B and 26C until such time as the Lane Field Hotel project has financing. Commissioner Spane seconded the motion.

The motion failed for lack of a majority by the following vote: Yeas-Bixler, Spane; Nays-Burdick, Cushman, Hall, Peters, Valderrama; Excused-None; Absent-None; Abstained-None.

Commissioner Burdick stated that she voted against the motion to table because of the uncertainty with the timing of the Lane Field funding and commended staff for their outstanding job negotiating an extension to the option. She stated that it was important to move forward with the NEVP as proposed, and she acknowledged Chairman Cushman for his work with the Joint Powers Authority to secure a funding solution irrespective of the Lane Field development. She strongly urged her colleagues to vote in favor of the staff recommendation and to allow the project to move forward at the earliest opportunity.

Commissioner Peters made a motion to move forward with the staff recommendation for items 26ABCD. Chairman Cushman seconded the motion.

On motion of Commissioner Peters, seconded by Chairman Cushman, the Board approved in a single vote, the North Embarcadero Visionary Plan Phase 1 Resolution **2009-132** Authorizing First Amendment 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; **Resolution 2009-133** Authorizing Acceptance of Capital Contribution of approximately \$5,723,862 from the Redevelopment Agency of the City of San Diego acting through Centre City Development Corporation, Resolution **2009-134** Authorizing the Allocation of Funds in the Amount of \$14,705,450 to the FY 09-13 Capital Development Program for the Construction of the Phase One Project, and **Resolution 2009-135** Authorizing addition of Broadway Pier Surface Improvement Project in the amount of \$1,000,000 to the FY 09-13 Capital Development Program, by the following vote: Yeas-Burdick, Cushman, Hall, Peters, Valderrama; Nays-Bixler and Spane; Excused-None; Absent-None; Abstained-None.

Chairman Cushman stated that Sharon Cloward had submitted a request-to-speak slip regarding item 26 but was unable to stay and personally address the Board. The Chairman stated that Ms. Cloward requested that her comment regarding the San Diego Port Tenants Association support of North Embarcadero Visionary Plan moving forward be read into the record.

RESOLUTION ADOPTING PLANS AND SPECIFICATIONS AND AWARDING CONTRACT NO. 2008-11 TO SIERRA PACIFIC WEST, INC. FOR NORTH HARBOR DRIVE REALIGNMENT, SAN DIEGO, CALIFORNIA, IN THE AMOUNT OF \$2,314,069.68

Agenda Item 31. Commissioner Peters stated that the District had been in discussion with the City of San Diego regarding the item under consideration. He stated

that he was in disagreement with the City of San Diego, and did not support the District providing the City of San Diego with any monetary compensation for the easement. He stated that in light of the favorable bid received by the District he moved for approval of the staff recommendation, subject to approval by the City of San Diego, without any additional compensation other than the property exchange. The motion was seconded by Commissioner Valderrama.

On motion of Commissioner Peters, seconded by Commissioner Valderrama, the Board, adopted **Resolution 2009-137**, Adopting Plans and Specifications and Awarding Contract No. 2008-11 to Sierra Pacific West, Inc. for North Harbor Drive Realignment, San Diego, California, in the amount of \$2,314,069.68, in the event the City of San Diego and the District execute the necessary documents, and no additional compensation is required to be paid on behalf of the District, by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

TENTH AVENUE MARINE TERMINAL WAREHOUSE SITE

Agenda Item 32AB. Item continued.

RESOLUTION AUTHORIZING FUNDING IN AN AMOUNT NOT TO EXCEED \$733,000 AND ESTIMATED DISTRICT SERVICES IN THE AMOUNT OF \$641,420 FOR FISCAL YEAR 2009/2010 MARKETING SPONSORSHIP AND FEE FOR SERVICE SPONSORSHIP PROGRAM AND WAIVING BPC POLICY NO. 110 WITH RESPECT TO THE SELECTION PROCESS FOR THOSE AGREEMENTS EXCEEDING \$75,000

Agenda Item 33. Chairman Cushman stated that the Marketing Committee had developed a matrix to assess the applications and implemented the objective matrix to make their recommendations. Marketing Director, Rita Vandergaw addressed the Board with a staff report regarding the newly implemented screening matrix evaluation process and the Marketing Committee and Public Relation's recommendation for fiscal year 2009/2010. (A copy of the presentation and staff report are on file in the Office of the District Clerk.)

The following members of the public addressed the Board in opposition to staff's recommendations and each speaker requested a reconsideration of their organization's application: Cathy Andersen, San Diego Film Commission; Peter Oliver, Bon Temps Social Club; Catherine Miller, The San Diego Sportfishing Council; and Clara Carter, Multicultural Convention Services Network.

Commissioner discussion ensued. Commissioner Burdick commended the staff and committee for their efforts to decrease the program's budget and the implementation of the objective matrix. In light of the work by the San Diego Film Commission and based on the newly implemented matrix, Commissioner Burdick spoke in favor of restoring full funding for the San Diego Film Commission and stated that she would make a motion at the appropriate time.

Commissioner Bixler noted that funding was allocated to four of the area Chamber of Commerce organizations and he requested clarification from Ms. Vandergaw regarding any contract or piece of business that may have resulted in a return on the District's investment. Ms. Vandergaw stated those organizations can be tied to specific outreach efforts that assisted the District's Trade Development staff; however, she was not able to quantify a specific piece of business or direct revenue linked to those outreach efforts. Commissioner Bixler requested that the Board consider decreasing the revenue to the San Diego County Hispanic Chamber of Commerce, the San Diego Regional Chamber of Commerce, the San Diego Regional Chamber of Commerce Mexico Business Center and The San Diego Regional Economic Development Center by \$5,000 each. Commissioner Bixler seconded Commissioner Burdick's motion to fully fund the \$80,000 request of the San Diego Film Commission

Ms. Vandergaw stated that the San Diego Film Commission was requesting a year-over-year increase in funding of an additional \$10,000. She also noted that the funding allocated to the San Diego Regional Economic Development Center was not to support a trade mission but to support participation in a maritime study. Commissioner Bixler stated that it was his feeling that if one applicant's funding was to be increased, another applicant's funding would need to be decreased and that he was looking at the performance of the various applicants under consideration.

Commissioner Spane stated that staff and the committee members had worked really hard and cautioned his fellow Commissioners about considering amending the committee's recommendations. He stated that he would only support an increase to the San Diego Film Commission if there was a decrease in another allocation.

Commissioner Peters requested and received clarification from Ms. Vandergaw regarding the development and implementation of the matrix. Ms. Vandergaw explained that the matrix was presented to the Committee for their review and implementation. Commissioner Peters stated that he was in support of the process and was more inclined to add funding to the program and was opposed to de-funding an applicant that had fairly participated in the program.

Commissioner Valderrama stated that he had not personally reviewed the applications and would not question the recommendations of the committee. He further stated that he would not support a change to the recommendation as presented, and advocated returning the matter to the committee for additional review, if required.

Chairman Cushman reviewed the membership of the Marketing and Public Relations Committee and acknowledged their cumulative experience. He expressed his concern about the Board's discussion to revise the committee recommendation. He further stated that he was in favor of cutting \$100,000 from the fund; however, if the Board increased the program funding he recommended that the matter be returned to the committee's for consideration and reallocation.

Commissioner Spane offered a motion to accept staff's recommendation. Chairman Cushman stated that while he appreciated Commissioner Spane's motion, Commissioner Burdick had stated that she would make a motion at the appropriate time. Commissioner Burdick stated that she had considered the Commissioner discussion and made a motion to adopt the staff recommendation with an amendment to increase the budget to \$750,000 for the fee-for-service program and to \$641,420 for District Services with the difference between the allocation being an additional \$20,000 that would be awarded to the San Diego Film Commission for a total award of \$70,000.

On motion of Commissioner Burdick, seconded by Commissioner Hall, the Board, adopted **Resolution 2009-138**, Authorizing Funding in an amount not to exceed \$753,000 and estimated District Services in the amount of \$641,420 for Fiscal Year 2009/2010 Marketing Sponsorship and Fee For Service Sponsorship Program and Waiving BPC Policy No. 110 with respect to the selection process for those Agreements exceeding \$75,000, by the following vote: Yeas-Burdick, Bixler, Hall, Peters; Nays-Cushman, Spane and Valderrama; None; Excused-None; Absent-None; Abstained-None.

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

Agenda Item 34. Assistant Vice President Government Relations and Communications Irene McCormack addressed the Board with an update regarding the status of Assembly Bill 694 regarding the tidelands and submerged land.

Commissioner discussion ensued. Commissioner Bixler expressed his concern regarding Assembly Bill 694 and stated that the District should not be an arbiter in a matter in which it has no interest.

Chairman Cushman requested that the District Clerk restate the vote for item action item 33. Deputy Clerk Laura Nicholson stated that the motion passed by the following vote: Burdick, Bixler, Hall, Peters voted yes and Cushman, Spane and Valderrama voted no, thus the motion passed 4 to 3.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR MEETING OF AUGUST 4, 2009

Agenda Item 35. On motion of Commissioner Valderrama, seconded by Commissioner Hall, the Board approved the proposed Board Agenda for the Meeting of August 4, 2009 by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

OFFICER'S REPORT

Agenda Item 36. In accordance with BPC Policy 110, the following change orders, executed by the Executive Director, were reported:

- A) Change Order No. 5 for (\$412.75) to Contract No. 2007-26 with Randall Construction, Inc. for Tideland Comfort Station Refurbishment Various Locations: Chula Vista, Coronado, Imperial Beach, National City and San Diego, California.
- B) Change Order No. 4 for \$2,452.00 with 3 Calendar Days to Contract No. 2007-30 with 3-D Enterprises, Inc. for North Gate Improvements Tenth Avenue Marine Terminal San Diego, California.
- C) Change Order No. 1 for \$29,619.00 with 19 Calendar Days to Contract No. 2008-09 with Bergelectric Corporation for Landside Closed Circuit Television (CCTV) System with Lighting and Fixed Arrays (CCTV) System San Diego and National City, California.
- D) Change Order No. 3 for \$6,826.84 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 (\$991.00) and Change Order No. 2 for \$3,535.00 to Contract No. 2008-30 with George A. Dominguez for B Street Pier CST Modular Restroom Installation, San Diego, California.
- F) Change Order No. 1 for 31 Calendar Days to Contract No. 2009-07 with One Source Coatings for Convention Center Seawall Painting, San Diego, California.

PRESIDENT'S REPORT

Agenda Item 37. None.

BOARD COMMITTEE REPORTS

Agenda Item 38. None.

COMMISSIONER COMMENTS

Agenda Item 39. None.

CLOSED SESSION

Chairman Cushman stated that the Board would reconvene in closed session to discuss the remaining closed session items.

Agenda Item 3.

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;
Ellen Corey Born, Dirk Mathiasen, Paul Fanfera,
Chris Hargett, SDUPD; Charles E. Black, CB Urban
Development

Under Negotiation: Price and Terms

Regarding item 3 of the Closed Session agenda, Mr. Bennett stated that by a 7-0 vote, the Board of Port Commissioners authorized a basic framework with Pacifica Companies relative to a land exchange agreement with conditions and performance measures. The Board of Port Commissioners provided further direction to staff. The Board of Port Commissioners authorized a 90-day time period for further negotiations. The Board of Port Commissioners will closely monitor the negotiations and require a report every 30 days to ensure adequate and timely progress during this period.

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; 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; Ellen Corey Born, Karen Weymann, Shahriar Afshar, SDUPD

Under Negotiation: Price and Terms

Agenda Item 5.

CONFERENCE WITH LABOR NEGOTIATOR
Government Code Section 54957.6

District Negotiator: Executive Director, Ellen Corey Born, Wayne Darbeau, Karen Porteous, Michelle Corbin

Employee Organization: Harbor Police Officers Association and Unrepresented Employees

Agenda Item 6.

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

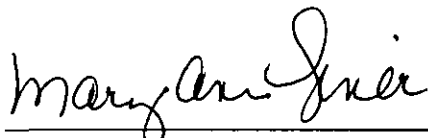
Government Code Section 54957.6

As to items 4-6, there was no 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