

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

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Cushman at 1:10 p.m., Tuesday, September 1, 2009, in the Board Room at 3165 Pacific Highway, San Diego, California.

**PLEDGE OF ALLEGIANCE**

Agenda Item 1. The Chairman requested that Commissioner Hall lead the Pledge of Allegiance.

**ROLL CALL**

Agenda Item 2.

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

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

Absent: No Commissioners absent.

Excused: None.

**APPROVAL OF MINUTES**

Agenda Item 3. On motion of Commissioner Valderrama, seconded by Commissioner Peters, the Board approved in a single vote, the minutes submitted for the regular and special meetings of August 4, 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 4. Michael Toney addressed the Board regarding tree trimming along the Bayfront. He further requested that the Board consider the implementation of accelerator collider energy in lieu of the current methods utilized to operate the Chula Vista Power Plant.

Bruce Reznik, San Diego Coast Keeper, addressed the Board with concerns regarding the impact of plastic bags on the environment and to marine wildlife. He further requested that the Board consider partnering with the City of San Diego and give consideration to funding an Environmental Impact Review (EIR) to study the impacts of plastic bags on San Diego Bay and the region.

Chairman Cushman stated that personally he was very supportive of Mr. Reznik's concerns regarding the impact of plastic bags. He stated further that while the Board could not make a recommendation on a public comment matter, he was aware that the Environmental Committee was planning at looking into the matter.

Greg Boeh, Pier 32 and Point Loma Marina, thanked the Board for their support of the AMEC Earth & Environmental Marina Trash Skimmer project as outlined in the staff report for Consent Agenda item 5.

## **CONSENT AGENDA**

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

**Agenda Item 8A. Resolution Consenting to Assignment of Lease from Cemex Pacific Coast Cement Corporation to CEMEX Construction Materials Pacific, LLC.**

**Agenda Item 8B. Ordinance Granting Amendment No. 1 to Lease with CEMEX Construction Materials Pacific, LLC to modify assignment/sublease language and to add Cemex, Inc. as additional guarantor.**

**Agenda Item 12. Ordinance Authorizing Amendment No. 1 to 1998 Convention Center Management Agreement with the City of San Diego.**

Chairman Cushman announced that Action Agenda Item 29 would be moved to the consent agenda.

**Agenda Item 29. Resolution Waiving Board Policy No. 110 and Authorize staff to enter into a Sole Source Purchase Agreement with Metalcraft Marine Inc. for the purchase of two Marine Firefighting/Harbor Patrol and Homeland Security Vessels utilizing California Maritime Port Security Grant Program (CMPSGP) funds for a total price not to exceed \$1,917,000.**

Chairman Cushman announced that Presentation/Action Agenda Items 25 and 27 would be continued to a future meeting.

Agenda Item 25. **Presentation Updating Status of 2009 Tenant Rent Deferral Program.**

Agenda Item 27. **Presentation Regarding Proposed Hotel and Phase 3 Convention Center Expansion and Direction to Staff.**

Chairman Cushman announced that Action Agenda Item 31 would be continued.

Agenda Item 31. **Discussion of State Legislation of interest to the Port of San Diego, Status Report and possible direction to Staff, if any.**

**RESOLUTION APPROVING FUNDING OF SIX ENVIRONMENTAL FUND PROJECTS FOR AN AMOUNT NOT TO EXCEED \$481,192.**

Agenda Item 5. Commissioner discussion ensued. Commissioner Valderrama requested clarification regarding consent agenda item 5 and the matching grant funds detailed in the staff report. Michelle White, Environmental Services, explained that each organization that accepted one of the District's Environmental Fund Grants was responsible for securing its own additional matching grant funds to implement the projects.

Regarding consent agenda item 5 Commissioner Peters offered two clarifications. First, he stated that the items presented were recommended by staff for the Board's consideration. Secondly, he stated that he was aware of some questions regarding funding for additional projects and there may be some additional requests brought forward for future consideration.

On motion of Commissioner Hall, seconded by Commissioner Peters, the Board, with a single vote, adopted Consent Agenda items 5, 6, 7, 9A, 9B, 10, 11, 13, 14, 15, 16, 17A, 17B, 18, 19, 20, 21, and 29 (**Resolution 2009-161** through and including **Resolution 2009-173**; **Ordinance 2577**; **Resolution 2009-174** through and including **Resolution 2009-176**; and **Resolution 2009-178**) by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 5. **Resolution 2009-161**, Approving funding of six Environmental Fund Projects for an amount not to exceed \$481,192, was adopted as part of the consent agenda.

Agenda Item 6. **Resolution 2009-162**, Selecting and Authorizing a Three-Year Agreement with Raphael's Party Rentals, Inc. for temporary Tent Structures and other Equipment Rental Services to support Cruise Ship Operations in an amount not to exceed \$535,000, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2009-163**, Authorizing the Purchase of three Urban Trees Artworks from the "Urban Trees 5" Exhibit titled "My Bike" by Amos Robinson; "Sea and Sky" by Ken Smith; and "School of Blue Bottlenoses" by David Boyer for an amount not to exceed \$56,000, was adopted as part of the consent agenda.

Agenda Item 8A. **Item Continued.**

Agenda Item 8B. **Item Continued.**

Agenda Item 9A. **Resolution 2009-164**, to Authorize Delaying the Army Corps of Engineers Permit required in Option Agreement with San Diego Yacht Club, was adopted as part of the consent agenda.

Agenda Item 9B. **Resolution 2009-165**, Approving Proposed Public Art installation for San Diego Yacht Club, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2009-166**, Approving Proposed Public Art for Eichenlaub Marine, Inc. dba Eichenlaub Marine, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2009-167**, Authorizing Staff to Apply for a \$23 million American Recovery and Reinvestment Act of 2009, Transportation Investment Generating Economic Recovery, "Tiger Discretionary Grant" for infrastructure improvements at the Tenth Avenue and National City Marine Terminals, was adopted as part of the consent agenda.

Agenda Item 12. **Item Continued.**

Agenda Item 13. **Resolution 2009-168**, Selecting and Authorizing Agreement with Glenn A. Rick Engineering & Development Corporation dba Rick Engineering Company for Professional Engineering Services for the extension of H Street from Bay Boulevard to Marina Parkway, in Chula Vista, California in an amount not to exceed \$364,813, was adopted as part of the consent agenda.

Agenda Item 14. **Resolution 2009-169**, Adopting Plans and Specifications and Awarding Contract No. 2009-14 to R.E. Staite Engineering Inc. for Navy Pier North Berth Fender Pile Replacement in the amount of \$113,769, was adopted as part of the consent agenda.

Agenda Item 15. **Resolution 2009-170**, Authorizing a Thirty-Three Month Agreement with the City of Imperial Beach for Maintenance Services on Tidelands Properties for an amount not to exceed \$2,334,589.53, was adopted as part of the consent agenda.

Agenda Item 16. **Resolution 2009-171**, Selecting and Authorizing a Three Year (3) Agreement with Allied Waste Systems, Inc., dba Allied Waste Services of San Diego for monthly Dumpster Services for an amount not to exceed \$270,000, was adopted as part of the consent agenda.

Agenda Item 17A. **Resolution 2009-172**, Consenting to Assignment and Assumption of Agreement from Enterprise Rent-A-Car Company of Los Angeles, a Nevada Corporation, dba, Enterprise Fleet Services to Enterprise Rent-A-Car Company of Los Angeles, LLC, a Delaware Limited Liability Company dba, Enterprise Fleet Management, and Authorizing Amendment to Master Lease Agreement to pay additional sales taxes affected by the California Sales Tax Rate increase, and **Resolution 2009-173**, Authorizing Payment of Additional Sales Taxes on Purchase Agreement affected by the California State Sales Tax Rate increase, were adopted as part of the consent agenda.

Agenda Item 17B. **Resolution 2009-179**, Authorizing Payment of Additional Sales Taxes on Purchase Agreement affected by the California State Sales Tax Rate increase, was adopted as part of the consent agenda.

Agenda Item 18. **Ordinance 2577**, Establishing a Schedule of Compensation for all Officers and Employees of the San Diego Unified Port District, was adopted as part of the consent agenda.

Agenda Item 19. **Resolution 2009-174**, Authorizing an Agreement with the City of Chula Vista for Police, Fire, and Emergency Medical Services in an amount not to exceed \$2,275,600 for fiscal years July 1, 2009 through June 30, 2012, was adopted as part of the consent agenda.

Agenda Item 20. Resolution 2009-175, Selecting and Authorizing Agreements with LBL Technology Partners a Division of Lurie Besikof Lapidus & Co., LLP and KPMG, LLP for as-needed Information Technology Auditing and Consulting Service for an amount not to exceed \$225,000 for the period September 1, 2009 to June 30, 2012, was adopted as part of the consent agenda.

Agenda Item 21. Resolution 2009-176, Establishing the Board of Port Commissioners Meeting Dates for the Calendar Year 2010, was adopted as part of the consent agenda.

Agenda Item 29. Resolution 2009-178, Waiving Board Policy No. 110 and Authorize staff to enter into a Sole Source Purchase Agreement with Metalcraft Marine Inc. for the purchase of two Marine Firefighting/Harbor Patrol and Homeland Security Vessels utilizing California Maritime Port Security Grant Program (CMPSGP) funds for a total price not to exceed \$1,917,000, was adopted as part of the consent agenda.

## **PRESENTATION /ACTION AGENDA**

### **PRESENTATION OF DISTRICT EMPLOYEE OF SECOND (2<sup>ND</sup>) QUARTER, 2009.**

Agenda Item 22. Charlie Wurster, President/CEO addressed the Board and announced that Allison Gutierrez, Associate Environmental Specialist, Environmental Services Department, was chosen as the District's Employee of the Quarter for the second quarter of 2009. Ms. Gutierrez was recognized for displaying the District's core values in all aspects of her work at the District. Mr. Wurster explained that she has established supportive working relationships with staff in other departments and with the tenants and those relationships ensure that development or improvement projects follow environmental guidelines. He further stated that Ms. Gutierrez took the initiative to become a Leadership in Energy & Environmental Design Accredited Professional (LEED) and she is extremely knowledgeable on LEED-certified projects.

Mr. Wurster also acknowledged the other nominees for the District's Employee of the Quarter for the second quarter: Barbara Moreno, Communications & Governmental Affairs; Marguerite Elicone, Communications & Governmental Affairs; Mahmoud Akhavain, Engineering/Construction; George Miranda, General Services; Bruce Cummings, Maritime Operations & Properties; Tim Deuel, Office of the District Clerk; and Kristine Love, Real Estate.

**KICK-OFF OF GREEN PORT MONTH AND PRESENTATION OF 2009 EMPLOYEE ENVIRONMENTAL AWARDS.**

Agenda Item 23. Michelle White, Environmental Services, addressed the Board and presented the staff report regarding the Green Port Month initiative. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Environmental Services Director David Merk addressed the Board regarding awards presented to District Employees and Port Tenants to acknowledge their efforts to encourage environmental stewardship. Chairman Cushman stated that Park Permit Coordinator, Sofia Bayardo of Communications & Governmental Affairs, and Maintenance Supervisor, Pete Buddhu of the General Services Department were the recipients of the 2009 Employee Environmental Awards. The Chairman further recognized Pete Unger of Horn Blower Cruises for the partnership with the District in providing a vessel to test non-copper based alternative bottom hull paints, and implementing their green tour that provides information regarding the multitude of green initiatives implemented around San Diego Bay.

**PRESENTATION FROM THE SAN DIEGO SUPERYACHT ASSOCIATION ON THEIR ORGANIZATION'S ORIGIN, OBJECTIVES, AND EFFORTS.**

Agenda Item 24. Paul Daubner and Kate Pearson representing the San Diego Superyacht Association addressed the Board with a report regarding the organization's mission, recent accomplishments, and future goals. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Burdick expressed interest in participating in any future ad hoc committees that may be formed regarding the superyacht industry. Commissioner Peters thanked Mr. Dobner and Ms. Pearson for their informative presentation and encouraged them to maintain communication with District staff regarding their organization's needs. On behalf of the Board, Chairman Cushman thanked the presenters for their updates.

**PRESENTATION UPDATING STATUS OF 2009 TENANT RENT DEFERRAL PROGRAM.**

Agenda Item 25. Item continued.

**DISCUSSION AND DIRECTION TO STAFF CONCERNING CALCULATION OF PORT'S ANNUAL REQUIRED CONTRIBUTION.**

Agenda Item 26. Jeff McEntee, CFO/Treasurer introduced Loong Kong, Partner, Sunlin Consulting (Sunlin), who presented the Board with a report regarding the District FY09 actuarial valuation and recommended changes to the asset valuation methodology. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Peters left the dais at 1:52 p.m. and returned at 1:53 p.m.

Chairman Cushman requested and received a recommendation from Mr. McEntee regarding the item. Mr. McEntee stated that in his opinion the consideration of making a change was based on the premise that the recent downturn in the financial market was an aberration. He stated that on that premise he agreed with Mr. Kong in terms of his recommendations and that modifying the calculation for the fiscal year 2009 investment results only would be appropriate and any associated risk would be relatively minor.

Following the presentation, Mr. McEntee requested direction, comments or recommendations, if any, that the Board would like provided to SDCERS (San Diego City Employees' Retirement System) concerning the calculation of the District's annual required contribution.

Commissioner discussion ensued. Commissioner Peters stated that the information presented would be helpful to the SDCERS Board as it considered further actions. He made a motion directing staff to send a letter to SDCERS recommending 30-year amortization and allowing negative amortization. The action also directed staff to forward the Sunlin letter, an attachment to the staff report, to the SDCERS Board for their decision making consideration. Commissioner Valderrama seconded the motion.

Commissioner Bixler prefaced his comments by saying they pertained to the discussion, not the motion on the floor. Commissioner Bixler requested and received clarification from Mr. Kong regarding the definition of negative amortization. Commissioner Bixler further requested Mr. Kong to address his recommendations regarding the permitting or not permitting of negative amortization. Regarding Commissioner Bixler's request and utilizing an example of a \$1 million dollar loan repaid over a 30-year time period, with at 7.75 percent interest rate, and factoring a 4.5 percent overall salary increase, Mr. Kong reviewed three examples depicting 1) level amortization, 2) negative amortization, 3) no negative amortization.

In response to Commissioner Bixler's queries regarding negative amortization, Commissioner Hall explained that based on the example shown, the net overall pay-back over the 30-year time period was the same in examples 1 and 2.

Commissioner Peters stated that regardless of the average overall salary increase of 4.5 percent, if example 2 (negative amortization) was utilized the borrower would be obligated to pay additional interest over the life of the loan. Commissioner Peters requested and received clarification from Mr. Kong that a system or organization might use a system of internal borrowing to smooth their payments, which would be consistent with generally accepted accounting principles.

Commissioner Spane requested clarification as to whether the District had any option other than adopting the course of action that the SDCERS Board would eventually determine to follow. Mr. McEntee stated that SDCERS had requested input from all of the plan sponsors and ultimately the District will utilize the recommendation adopted by the SDCERS Board. Mr. McEntee also stated that currently the City of San Diego is on a different amortization schedule than the District, and that he had consulted with SDCERS regarding the possibility of having different amortization schedules for each of the plan sponsors.

Commissioner Burdick requested clarification regarding which of the organizations/systems cited in the presentation utilized negative amortization to compute their annual contributions. Mr. Kong stated that he did not have that information. Regarding Mr. McEntee's recommendation, Commissioner Burdick requested clarification as to where, in the Sunlin letter, he stated that the recommendation would only apply to the FY2009 market anomalies. Mr. Kong stated that he did not necessarily recall referring to that specific time frame in his letter. He further stated that the SDCERS Cheiron presentation had mentioned that one of the possibilities was that the modification would only apply to FY2009.

Commissioner Peters clarified his motion. He stated that his motion was to forward the letter, with a cover letter stating that the attached letter was the actuarial input received by the District from Sunlin.

Commissioner Burdick requested and received an affirmative response from Commissioner Peters regarding his motion that no additional recommendation would be made to the SDCERS Board. Commissioner Burdick stated that she was opposed to the motion and she did not feel it was appropriate that the District make even what may be suggested as an implied endorsement of negative amortization. She expressed concern that sending the Sunlin letter as the District's actuarial response accompanied by a

neutral cover letter created an implied endorsement of negative amortization. Commissioner Burdick stated that she was in support of a conservative middle ground that would allow for a longer amortization but she did not want to suggest that negative amortization would be acceptable to the District. She concluded her remarks stating that she was in support of scenario 4 as referred to in the Sunlin letter and was not in support of scenario 16 cited in the same correspondence. Mr. Kong confirmed that scenario 4 did not allow for negative amortization.

Upon consideration of Commissioner Burdick's comments regarding her support of scenario 4 and also in opposition to negative amortization, Commissioner Valderrama requested clarification from Mr. McEntee regarding the staff recommendation. As recommended by Commissioner Burdick, Mr. McEntee stated that he was also in support of a more conservative approach and was in support of scenario 4 cited in the Sunlin letter.

Commissioner Spane stated that he was not opposed to Commissioner Burdick's suggestion; however, he was also in support of Mr. Kong's earlier example 1 (level amortization). He cautioned against deficit spending by being bullish on the future.

Commissioner Bixler stated that he concurred with Commissioner Burdick; however, he also expressed concern regarding optimism in sustaining the short-term economic recovery and encouraged support of the pay-as-you-go method the District had utilized in the past. He stated that he was in favor of following example 1 that illustrated level amortization.

Commissioner Burdick, responded to Commissioner Bixler's comments regarding the adoption of the most certain and conservative approach to the problem. She stated she understood that example 1 (level amortization) clearly attempted over time to take into account long-term fluctuations in the market place. She stated that one reason why, in this case, she was willing to deviate on the contribution computation, as recommended by Mr. McEntee and Mr. Kong, and support example 3 (no negative amortization) was because of the one-year limitation to accommodate the extraordinary market anomaly of 2009.

Commissioner Peters stated that given the discussion, he felt it wise to modify his motion to reflect in the cover letter that the District supported Cheiron's scenario 4, but also include the Sunlin letter. Commissioner Peters reminded the Board that the SDCERS annual contribution figure was the minimum expense and if, in any budget year, the Commissioners found that paying the pension was a priority, they could increase the payment. He stated that while he understood the importance of funding

the pension, he preferred to have flexibility as there were other interests requiring organizational support. He concluded by stating that he was willing to agree with Ms. Burdick.

To Commissioner Peter's point, Chairman Cushman explained that in the recent past the Board had increased the contribution beyond the SDCERS minimum.

Commissioner Burdick requested that in light of Mr. Kong's clarification the Sunlin letter did not specifically state a recommended time frame of only 2009, she requested that the motion include the one-year time frame in the District's cover letter.

Chairman Cushman restated his understanding of Commissioner Burdick's request and that it was to direct staff to send the Sunlin letter, that the cover letter limit the change in amortization to the anomaly in 2009 and state that the Board supported example 3 (no negative amortization).

Commissioner Spane stated that he was in support of example 1 (level amortization) and to take any other course of action seemed to be an action and risk that the Board need not take.

Chairman Cushman stated that he was comfortable with example 3 (no negative amortization) and more comfortable with example 1 (level amortization).

Commissioner Valderrama stated that he was in favor of example 1 (level amortization) and he did not support the restated motion proposed by Commissioner Peters and he withdrew his second.

Commissioner Peters withdrew his original and restated motions.

Commissioner Burdick offered a motion that the District forward to SDCERS a copy of Mr. Kong's Sunlin letter with a cover letter stating that the District supports Mr. Kong's recommendation with respect to the Cheiron scenario 4, which includes a 30-year amortization and no negative amortization, with a clarification that the recommendation covers the market anomalies in 2009 and the methodology will be reconsidered in future years.

Commissioner Spane seconded the motion.

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

Commissioner Valderrama made a motion to adopt example 1 (level amortization). Chairman Cushman requested and received an affirmative response that Commissioner Valderrama's motion also included the comments from Commissioner Burdick regarding the District's cover letter outlining a one-year time frame and no negative amortization, as well as that the Sunlin letter being included as an attachment.

Mr. Kong clarified that example 1 (level amortization) was simply an example and not on the table for the SDCERS Board consideration.

Commissioner Valderrama restated his motion that staff should inform the SDCERS Board that the District did not recommend any change to the actual plan of action in place.

Commissioner Bixler seconded the motion and stated that he supported maintaining the 15-year schedule.

On motion of Commissioner Valderrama, seconded by Commissioner Bixler, the Board directed staff to send a cover letter to the SDCERS Board that reflected their desire to maintain the current calculation of the Port's annual contribution at status quo; include a copy of the letter from Sunlin Consultants; indicate that the Board did not support negative amortization; and to remain at a 15-year level by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Following the vote, Mr. McEntee requested clarification regarding the Board's direction, and he received confirmation from Chairman Cushman that staff was to send a letter to SDCERS stating that the Board's preference was to leave the calculation of the Port's annual required contribution at status quo.

Commissioner Peters clarified for the record that he inadvertently selected the "no" button on the voting panel; however, he was in favor of the motion and requested that his vote be corrected with the Clerk. The District Clerk acknowledged the request and amended the vote record.

## **PRESENTATION AGENDA**

### **UPDATE ON THE PORT'S OPERATING RESERVES.**

Agenda Item 32. Jeff McEntee, CFO/Treasurer, addressed the Board with an update regarding the District's Operating Reserves, BPC Policy 117, cash flow forecast, and plan for replenishment of the operating reserves. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner Burdick left the dais at 2:41 p.m. and returned at 2:45 p.m.

Commissioner discussion ensued. Chairman Cushman stated that he looked forward to a report incorporating more current cash flow projections to be presented at the October 6, 2009 Board meeting.

Commissioner Bixler recommended that the immediate development of a 5-to-7 year contingency plan, for funding improvements at the 10<sup>th</sup> Avenue Marine Terminal, was in order; that the Maritime Division present more definitive projections regarding new business opportunities; and, in the event that the securing of federal funding was unsuccessful, he requested that staff consider a national bank loan as a funding alternative.

Chairman Cushman acknowledged Commissioner Bixler's request and stated that we are prepared to do that.

### **PRESENTATION/ACTION AGENDA CONTINUED**

### **PRESENTATION REGARDING PROPOSED HOTEL AND PHASE 3 CONVENTION CENTER EXPANSION AND DIRECTION TO STAFF.**

Agenda Item 27. Item continued.

Commissioner Hall announced that a member of his immediate family was employed at the Bali Hai restaurant and, while it did not constitute a conflict of interest, to avoid any indication of prejudice he would recuse himself from the discussion regarding agenda item 28. Commissioner Hall left the dais at 2:29 p.m.

## **ACTION AGENDA**

### **SHELTER ISLAND, INC. DBA BALI HAI**

Agenda Item 28AB. Senior Asset Manager Tony Gordon in the Real Estate department presented a staff report regarding the Bali Hai Restaurant and requested that the Board consider approval of the proposed restaurant renovation and grant an option agreement for a new 30-year lease, with a 10-year option. Mr. Gordon introduced Graham Downes of Graham Downes Architecture who presented the proposed renovation. Susie Baumann, President of Shelter Island, Inc. dba Bali Hai, addressed the Board and presented an overview of the business plan for repositioning the restaurant in the marketplace and re-branding the Bali Hai as a fine dining alternative. Mr. Gordon concluded the staff presentation and he requested that the Board consider the proposed renovation and option agreement. (A copy of the staff report and the presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. In addition to the drought-tolerant landscaping and the water conservation measures, Commissioner Burdick requested and received clarification from Mr. Downes regarding the adoption of any other green or sustainable building techniques. Mr. Downes stated that they had included such techniques. He cited several examples including: the retention of the existing structure; utilizing local and sustainable building materials such as bamboo flooring; incorporating energy savings with the installation of a new heating, ventilation and air conditioning system; energy efficient lighting systems; and the installation of awnings providing a necessary shade element. Commissioner Burdick requested and received confirmation from Mr. Gordon that the proposed lease term was consistent with BPC Policy No. 355.

Chairman Cushman requested that Vice Chair Valderrama conduct the meeting as he preferred to make the motion to approve the staff recommendation. He acknowledged Ms. Baumann and her family for their commitment to the community as well as their significant investment in the Bali Hai restaurant renovation.

Commissioner Bixler also acknowledged the commitment by the tenant to their other tideland properties and stated that he applauded and supported their vision.

On motion of Chairman Cushman, seconded by Commissioner Bixler, the Board, adopted with a single vote **Resolution 2009-177**, Granting Concept Approval to Shelter Island, Inc. dba Bali Hai for proposed restaurant renovation, and **Ordinance 2578**, Granting an Option Agreement with Shelter Island, Inc. dba Bali Hai for a new 30-year lease, with a 10-year option, by the following vote: Yeas-Bixler, Burdick, Cushman, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained by recusal-Hall.

Commissioner Hall returned to the dais at 3:05 p.m.

### **REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR MEETING OF OCTOBER 6, 2009.**

Agenda Item 30. On motion of Commissioner Valderrama, seconded by Commissioner Hall, the Board approved the proposed Board Agenda for the Meeting of October 6, 2009 by the following vote: Yeas-Bixler, Burdick, Cushman, Hall, Peters, Spane, Valderrama; Nays-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 31. Item continued.

### **OFFICER'S REPORT**

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

- A) Order No. 1 for \$39,100.00 and 7 Calendar Days to Contract No. 2007-03 with Hazard Construction Company, Inc. for FY10 Pavement Maintenance TAMT, NCMT, & National City, San Diego and National City, California.
- B) Change Order No. 1 for \$0.00 and 30 Calendar Days to Contract No. 2008-12 with Sullivan Solar Power for Administration Building Annex Photovoltaic System, San Diego, California.
- C) Change Order No. 2 for \$0.00 and 14 Calendar Days to Contract No. 2008-12 with Sullivan Solar Power for Administration Building Annex Photovoltaic System, San Diego, California.
- D) Change Order No. 2 for \$1,620.00 and 0 Calendar Days to Contract No. 2008-17R with Gordon-Prill San Diego, Inc. for Harbor Police Administration Facility Improvements, San Diego, California.

- E) Change Order No. 3 for \$5,448.00 and 0 Calendar Days to Contract No. 2008-17R with Gordon-Prill San Diego, Inc. for Harbor Police Administration Facility Improvements, San Diego, California.
- F) Change Order No. 4 for \$2,792.00 and 0 Calendar Days to Contract No. 2008-17R with Gordon-Prill San Diego, Inc. for Harbor Police Administration Facility Improvements, San Diego, California.
- G) Change Order No. 5 for \$4,175.00 and 0 Calendar Days to Contract No. 2008-17R with Gordon-Prill San Diego, Inc. for Harbor Police Administration Facility Improvements, San Diego, California.
- H) Change Order No. 6 for \$8,590.00 and 14 Calendar Days to Contract No. 2008-17R with Gordon-Prill San Diego, Inc. for Harbor Police Administration Facility Improvements, San Diego, California.
- I) Change Order No. 7 for \$0.00 and 30 Calendar Days to Contract No. 2008-17R with Gordon-Prill San Diego, Inc. for Harbor Police Administration Facility Improvements, San Diego, California.
- J) Change Order No. 1 for \$100,000.00 and 0 Calendar Days to Contract No. 2008-27 with Jaynes Corporation of California for Broadway Pier Cruise Ship Terminal, San Diego, California.

## **PRESIDENT'S REPORT**

Agenda Item 34. Executive Director Charlie Wurster requested that Director of Communications and Community Services Ron Powell present a report regarding the community outreach efforts implemented by the Communications Department. His report focused on the bay tours and the new "Ask the Port" segments on the District website. Mr. Powell presented a staff report that featured several video information segments that had been implemented as a new communication and outreach tool on the District website.

## **BOARD COMMITTEE REPORTS**

Agenda Item 35. None.

## **COMMISSIONER COMMENTS**

Agenda Item 36. None.

**CLOSED SESSION**

Duane Bennett, Port Attorney, announced the closed session agenda as follows:

Agenda Item 3.

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

Government Code Section 54957.6

Agenda Item 4.

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 Street, and North of F Street 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

Commissioner Burdick disclosed what she characterized as a potential conflict by stating that her law firm had undertaken to represent a division of Pacifica Companies with regard to real estate matters other than those in Chula Vista and San Diego County. She further stated that the representation was being managed by another

partner, she does not do any work for Pacifica, nor does she receive any compensation with respect to the work her firm performs for Pacifica. She stated that she believed there could be an appearance of a conflict of interest and explained that it was with an abundance of caution that she was recusing herself from the closed session discussion regarding the matter.

Chairman Cushman requested and received confirmation from Commissioner Burdick that she would not attend the Pacifica Companies closed session.

Agenda Item 5.

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 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR  
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; Ellen Corey Born, Dirk Mathiasen, Randa Coniglio, Annette Dahl, Tony Gordon, SDUPD

Under Negotiation: Price and Terms

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR  
Government Code Section 54956.8

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

Negotiating Parties: Jack and John Christianson – Principal Owners, Mrs. Kelly's, Inc., dba Point Loma Seafoods, Kristine A. Zortman, Ellen Corey Born, Annette Dahl, Randa Coniglio, Dirk Mathiasen, SDUPD

Under Negotiation: Price and Terms

Agenda Item 8.

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

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.



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Secretary, Board of Port Commissioners  
San Diego Unified Port District

ATTEST:



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Clerk of the San Diego Unified Port District