

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

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Bixler at 2:05 p.m., Tuesday, January 8, 2008, in Room 28D & E at the San Diego Convention Center, 111 West Harbor Drive, San Diego, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Bixler, Black, Cushman, Najera, Rios, Spane, and Valderrama;
OFFICERS Hollingsworth, Bennett, Heinrichs, Liner and McEntee.

Absent: None.

Excused: None

PLEDGE OF ALLEGIANCE

Agenda Item 1. Chairman Bixler led the Pledge of Allegiance.

APPROVAL OF MINUTES

Agenda Item 2. On motion of Commissioner Valderrama, seconded by Commissioner Cushman, the Board approved the minutes submitted for the special meeting of December 11, 2007, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None.

PUBLIC COMMENTS

Agenda Item 3. San Diego Mayor Jerry Sanders addressed the Board in support of Item 28, the Lane Field North and South Hotel Development Project.

CONSENT AGENDA

Chairman Bixler announced that consent agenda items 14, 15, 16, 21, 22, 23, 25 and 26 would be continued to a future Board meeting and consent agenda item 24 no longer required Board action.

Commissioner Valderrama requested that item 20, Proposition 1B Grant Fund, be pulled for a separate discussion and vote.

On motion of Commissioner Cushman, seconded by Commissioner Valderrama, the Board, with a single vote, adopted consent agenda items 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18, and 19 (Resolutions 2008-01 through and including 2008-08; Ordinance 2481; Resolutions 2008-09 and 2008-13) by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Cushman commented on action agenda item 27, the Presentation on the Draft Clean Air Program and requested staff provide a detailed framework for the proposed Clean Air Program and include specific information including the age, ownership and travel routes of the trucks and other vehicles being considered for inclusion in the staff proposal. Tony LoPresti of the Environmental Health Coalition addressed the Board and presented a letter regarding item 27, the Draft Clean Air Program. (A copy of the letter is on file in the Office of the District Clerk.)

Agenda Item 5. **Resolution 2008-01**, Consenting to Sublease from Port Coronado Associates, LLC dba Coronado Ferry Landing to Torrey Point, Inc. dba Pizza by the Bay, was adopted as part of the consent agenda.

Agenda Item 6. **Resolution 2008-02**, Consenting to Second Encumbrance of \$2,150,000 by Robert Bruce Kleege and Brenda F. Kleege, husband and wife, Don Beaumont and Lisa Beaumont, husband and wife, and Thomas Nielsen and Geri Nielsen, husband and wife dba Gold Coast Anchorage in Favor of Torrey Pines Bank, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2008-03**, Declaring Items of Equipment to be Surplus to the Needs of the Port District and Authorizing their Sale or Disposal in Accordance with BPC Policy No. 111, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2008-04**, Selecting and Authorizing a Service Agreement with Luzaich Striping, Inc. for as-needed pavement marking & striping for

an amount not to exceed \$180,000 for a two year period beginning February 1, 2008 to January 31, 2010, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2008-05**, Approving Internal Audit Plan for Fiscal Year 2007-2008, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2008-06**, Authorizing Execution of a Memorandum of Understanding (MOU) between the San Diego Unified Port District (SDUPD) and the City of San Diego (City) to grant mutual indemnity to participate in the Urban Area Security Initiative (UASI) Grant Program and authorize acceptance of any and all funds that may be awarded, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2008-07**, Accepting a Tenant Public Artwork Proposal from Chesapeake Fish, for fabrication and installation of a rolling gate between the pedestrian promenade and loading docks, and authorization of expenditures of a not to exceed \$20,000 matching funding from the Public Art Fund, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2008-08**, Approving the Design Proposal for "Penelope" by Artist Michael Stutz, in satisfaction of the purchase award established by the Port in 2006, was adopted as part of the consent agenda.

Agenda Item 13. **Ordinance 2481**, Granting a new 39-Year and 1-Month Subsurface Gas and Electrical Easement to San Diego Gas & Electric Company in National City, was adopted as part of the consent agenda.

Agenda Item 14. **Item Continued** – Ordinance Granting a new 39-Year and 1-Month Subsurface Water Easement to Sweetwater Authority in National City.

Agenda Item 15. **Item Continued** – Ordinance Granting a new 39-Year and 1-Month Subsurface Sewer Easement to the City of National City in National City.

Agenda Item 16. **Item Continued** – Granting a new 39-Year and 1-Month Subsurface Telecommunication Easement to Pacific Bell Telephone Company, dba AT&T California in National City.

Agenda Item 17. **Resolution 2008-09**, Adopting Plans and Specifications and Awarding Contract No 2007-13R to Bonsall Construction for the Embarcadero Marina Park North Viewing Platform and People Blocks Repair Project, San Diego, California, in the amount of \$209,055.20, was adopted as part of the consent agenda.

Agenda Item 18. **Resolution 2008-10**, Adopting Plans and Specifications and Awarding Contract No. 2007-15R to Romero General Construction Corporation for Administration Building Annex office improvements, San Diego, California in the amount of \$146,490.00, was adopted as part of the consent agenda.

Agenda Item 19. **Resolution 2008-11**, Granting Indemnity to the City of San Diego in an encroachment maintenance removal Agreement required to construct playground improvements over a City of San Diego Easement located within the District's Cesar Chavez Park, was adopted as part of the consent agenda.

Agenda Item 21. **Item Continued** - Resolution Authorizing Amendment No. 2 to Agreement with Kimley-Horn and Associates, Inc. for on call traffic services for an increase of \$150,000.00 for a period of 2 years.

Agenda Item 22. **Item Continued** - Resolution Selecting and Authorizing Agreement with Halcrow, Inc. to conduct a Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) Audit of the Oil Cargo Operations at the Tenth Avenue Marine Terminal (TAMT), San Diego, California in an amount not to exceed \$_____ for two years.

Agenda Item 23AB. **Item Continued** - Sun Harbor Marina: Ordinance Granting Easement Agreement to Sun Harbor Marina for Public Dock Area at 4960 North Harbor Drive. Ordinance Granting Amendment No. 1 to Lease with Sun Harbor Marina to Clarify Rent and Sublease Provisions.

Agenda Item 24. **Board Action No Longer Required** - Resolution Selecting and Authorizing an Agreement with _____ to implement eelgrass mitigation and monitoring at the former Campbell Shipyard in San Diego Bay, California in an amount not to exceed \$_____.

Agenda Item 25. **Item Continued** - Ordinance Amending San Diego Unified Port District Code Section 8.18 Relating to Camping and the Storage of Personal Property on Tidelands.

Agenda Item 26. **Item Continued** - Resolution Authorizing the Capital Development Project known as "Pepper Park Comfort Station Replacement" in the City of National City, California, in the amount of \$540,000.00.

PROPOSITION 1B GRANT FUNDING

Agenda Item 20A. Mayor Ron Morrison of the City of National City addressed the Board and stated his concerns regarding agenda item 20A, a Resolution Authorizing Application for State of California Proposition 1B, Trade Corridor Improvement Fund (TCIF) Grant Funding for Marine Terminal Freeway Access and Capacity Enhancement Projects, and the inadequacy of a single (one) left hand turn lane.

Commissioner Valderrama stated that he supported the item and also expressed his concerns regarding the level of staff follow up with the area stakeholders.

Dan Wilkens, Executive Vice President explained that staff had taken Mayor Morrison's concerns in consideration and would address the request for two left hand turn lanes as part of the future project, if funding is received.

On a motion by Commissioner Valderrama, seconded by Commissioner Najera the Board, in a single vote, approved **Resolution 2008-12** Authorizing Application for State of California Proposition 1B, Trade Corridor Improvement Fund (TCIF) Grant Funding for Marine Terminal Freeway Access and Capacity Enhancement Projects and **Resolution 2008-13** Advising the California Air Resources Board that the Port will provide a 1:1 match in support of its request for Proposition 1B Grant Funds was approved by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Mr. Wilkens also stated that staff would prepare the support documentation for item 27, the Proposed Clean Air Program, as requested by Commissioner Cushman.

PRESENTATION AGENDA

PRESENTATION ON THE DRAFT CLEAN AIR PROGRAM AND REQUEST DIRECTION TO STAFF.

Agenda Item 27. Chairman Bixler announced the item would be continued to a future Board meeting.

PUBLIC HEARING/ACTION AGENDA

LANE FIELD NORTH AND SOUTH HOTEL DEVELOPMENT PROJECT.

Agenda Item 28. John Helmer, Manager of Land Use Planning, addressed the Board with a presentation regarding the Lane Field North and South Hotel Development

Project. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

At 2:50 p.m. Chairman Bixler stated the Board would take a recess. Chairman Bixler resumed the meeting at 3:05 p.m. and opened the public hearing.

The following members of the public addressed the Board with varying viewpoints on the item:

Nancy Graham, President and Chief Operating Officer, CCDC, spoke in favor of the project and stated the project developer has worked cooperatively with CCDC and other parties in the North Embarcadero Visionary Plan and has responded to their concerns.

Cheryl Kendrick, Chair, San Diego Convention Center Corporation, thanked the Port District for its support of the Convention Center and explained the need for the development of more hotel rooms in San Diego to enable the Convention Center to remain competitive and attract business to San Diego. She urged the Port District to move forward with the project.

Julie Meier Wright, CEO, San Diego Regional Economic Development Corporation, spoke in favor of the project. She stated the North Embarcadero Visionary Plan is an important gateway to a city that hosts international conferences and companies and believes the project's commitment to build a Silver LEED Certified building will make an even stronger statement and help grow the economy by providing construction and permanent jobs.

Ian Trowbridge spoke against the project. He stated the Port District staff has distorted the facts and law in stating there have been no significant changes in the circumstances downtown since the 2000 Master Plan was approved, and the Board will be wrong if it takes the actions requested by staff. He read portions of a 2005 Helmer letter from the Port to CCDC commenting on the Master EIR for the Centre City Redevelopment project which states substantial changes have occurred. He also referred to changes in state laws on water supply, greenhouse gases and climate changes and stated the cumulative effects of the project are ignored.

Don Wood, Bayfront Complex Coalition, described his group's goals and stated it filed comments with Port staff regarding issues not adequately addressed in the original project Initial Study. These issues included the legal effect of granting a developer a long-term lease under the public trust doctrine, the Port's decision to sign a contract

with Carnival Cruise Line for a new cruise ship terminal, and substantial changes that make it untenable to exempt the project from further review because it was addressed in the 2000 NEVP Master EIR. He also stated staff has negotiated additional changes with the developer that have not yet been made public and said the Board should take time to vet these issues and new modifications in a whole project EIR.

Diane Coombs, Citizens Coordinate for Century 3, asked the Port to prepare a project specific environmental impact report for the project. She also stated C3 supports informed public involvement and has a well-defined process for planning and environmental review.

John McNab stated the Port District was set up to be a custodian of the public trust, there is much talk about money but we never see where it actually benefits the general public. He also said the Port District would put hotels in front of the Taj Mahal, Golden Gate Bridge and Mount Rushmore that would block views for everybody.

Lorena Gonzalez, Labor Council, stated the project would be hard on low wage earners because the jobs it created would be poverty level jobs. She also stated the 80,000 square feet of retail space in the project cannot be used for residential-serving retail and urged the Board to require the developer to identify the actual uses that will go into the retail space and to ensure it is consistent with the public trust.

Graham Forbes, Research Analyst, UNITE-HERE Local 30, stated that he represented over 4,000 tourism and hospitality workers in San Diego County. His members want the project to create quality jobs that provide affordable health care and to be a smart growth project that is environmentally sound. He stated the environmental document relied on is seven years old and raises serious questions regarding negative impacts on air quality, water supply, fire and police services, traffic and other issues, such as the increased threat of terrorism and levels of DDT on the project site that pose a risk to human health and marine life. He also stated the project will create unmitigated environmental impacts and the mitigation measures are inadequate. He asked that his written comments on the CEQA review and Coastal Act issues be carefully considered, even if it means postponing a decision on the project.

Suma Peesapati, with the law firm Adams Broadwell Joseph & Cordozo on behalf of UNITE-HERE Local 30, spoke against the project. She stated the Port District cannot find the project conforms to the Port Master Plan because it will have substantial adverse environmental impacts, it violates the minimum setback requirements in the Port Master Plan and NEVP, it contemplates a luxury hotel that is a prohibited exclusory use of tidelands, the project's retail uses do not conform to the Port Master Plan and

the public trust doctrine, and the soil on the project site is contaminated, which poses a substantial threat to water quality and marine life in San Diego Bay. She also stated there are significant new adverse impacts in the areas of air quality, traffic, public services, climate change and water supply that were not addressed in the 2000 Master EIR or the more recent Addendum for the project.

Scott Andrews stated that the North Embarcadero is a beautiful natural feature which is being walled off, the waterfront will have no parks, no public space, no culture and no parking. He also stated the Port District is adding the Midway, the Navy Broadway project, hotels and cruise ship terminals without studying whether they could be located somewhere else on the bay.

Ramona Klitz, downtown resident, spoke against the project and expressed concern about environmental risks associated with the project that may impact residents' and workers' health and safety, coastal resources, air quality, water supply, fire and police services. She stated there is uncertainty about contaminated soils, inadequate police and fire protection due to the City of San Diego's financial problems. She asked that a more specific and thorough environmental review be conducted so that impacts can be reduced before allowing the project to move forward.

Sherman Harmer, downtown resident and Chairman, Downtown Builders and Marketing Alliance, spoke in support of the project as a catalyst for development under the NEVP. He said a poll of downtown residents showed they considered the waterfront, walkability and restaurants as the most attractive elements of downtown and the project would create the mixed uses that are necessary and the building surge in residences is nearly over.

Todd Voorhees, Downtown San Diego Partnership, spoke in favor of the project and said it is consistent with his organization's guiding principles for comprehensive planning for the waterfront, achieving appropriate balance of development intensity and public access space, view corridors and other factors. He also submitted a letter from Barbara Warden, president of Downtown San Diego Partnership.

Sal Giamatta, San Diego Convention and Visitors Bureau, spoke in favor of the project. He stated that tourism is a vital part of the local economy, the waterfront continues to play an important role in the success of San Diego's tourism industry, and the project will be a welcome addition to the ongoing renaissance of the North Embarcadero.

Howard Greenstein, City of San Diego Planning & Community Investment Department, Urban Form Division, stated his department strongly favored the project because it minimized service and vehicle interruptions, created active commercial facades, provided public access, and other desirable architectural and design features.

Gary Smith, President, San Diego Downtown Residents Group, spoke in favor of the project and said it is consistent with the NEVP, impacts were previously taken into account, and it provides the equivalent of over 20 city blocks of angled parking.

Angelica Villagrana, San Diego Regional Chamber of Commerce, spoke in favor of the project and stated it will provide revenue needed to fund the first phase of public improvements along Harbor Drive and will provide much needed funds for local government from TOT and property taxes. She also said the project will provide new business opportunities and jobs for the City. She submitted a letter from Ruben Borales, President of the San Diego Regional Chamber of Commerce.

Michael Burton, Grubb & Ellis, spoke in favor of the project and stated the project provides many public access opportunities, including the opening of C Street, the widening and beautification of Broadway, the creation of public plazas and public art and access throughout the proposed buildings. He also stated the NEVP is the greatest park conceived but is at a standstill, and the project will enable it to move forward and is a drastic improvement on the current site.

Daniel Fitzgerald, downtown resident and real estate broker, spoke in favor of the project. He stated the project will provide retail, restaurant and public space that is desperately needed on the west side and will attract national retailers to the downtown area.

Tom Sullivan, The Irvine Company, spoke in support of the project. He stated his company has worked collaboratively with the project proponents on street patterns, trees and lighting on Broadway and the project, along with his company's project nearby, serve as important catalysts for the advancement of the NEVP.

Rob Lankford, Lane Field San Diego Developers, LLC, stated he and his partners are enthusiastic about the public-private partnership that will bring tremendous economic benefits to the San Diego economy and the project will provide critical funding for the public improvements that are part of the community's vision for a world class environment. In response to a question from Commissioner Black, Mr. Lankford stated the project will equal or exceed the requirements for Silver LEED certification.

Sharon Cloward, San Diego Port Tenants Association, spoke in favor of the project and said the Port District now provides 16 parks for the five Port cities and the project will provide over four acres of public space for the public to enjoy.

Commissioner discussion ensued. Commissioner Black stated that she had an extensive staff briefing regarding the Lane Field Development and requested information specifically from Mr. Lankford. Commissioner Black requested a commitment from Mr. Lankford, as a developer on the project, and she stated that "in light of potentially superseding the MEIR (Master Environmental Impact Report), I read your attorney's letter very carefully, are you committed to creating the kind of project, not the building but all of that, into potentially qualifying for a silver LEED (Leadership In Energy and Environmental Design) certification?" Commissioner Black also stated that the project would be only the second hotel in the state of California that could have that (certification). Commissioner Black stated that if the developer committed to a silver level of LEED certification, then this kind of certified project would exceed the requirements of any EIR. Mr. Lankford stated, "Chairman, sir, Commissioner Black, the answer is yes, and you saw the list of commitments we're making on the PowerPoint. That equals or exceeds the Silver LEED certification, so yes." Commissioner Black concluded her comments by stating, "that is all I wanted to know" and thanked Mr. Lankford.

Chairman Bixler stated the public testimony had concluded and on a motion by Commissioner Cushman, seconded by Commissioner Rios, the Board approved closing the public hearing by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner discussion ensued. Commissioner Bixler requested that Ralph Hicks, Director of Land Use Planning, step to the podium as the Commissioner discussion commenced. Mr. Hicks stated that staff would provide the Board brief responses to the concerns noted in the letter from Adams Broadwell Joseph & Cardozo. Mr. Hicks requested that the letter received earlier in the afternoon from the State Lands Commission also be entered into the administrative record. (Copies of both documents are on file in the Office of the District Clerk.)

Chairman Bixler stated that, prior to hearing the staff responses, the Board would be recessing for approximately 30 minutes to take the opportunity to review the letter and accompanying documentation submitted by Adams Broadwell Joseph & Cardozo dated January 7, 2008.

Duane Bennett, Port Attorney, stated for the record, that following the Board members' review of the letter and the attached documentation, Mr. Hicks would return to the podium and endeavor to summarize and respond to some of the comments to assist in expediting the understanding of the material under review. Chairman Bixler stated there would be no Board action taken or discussion of any kind during the recess and that the Board members would simply read and review the documentation.

At 4:03 p.m. Chairman Bixler stated the Board would take a recess. Chairman Bixler resumed the meeting and called it back to order at 4:42 p.m.

Chairman Bixler stated for the record that the Commissioners individually reviewed the letter from Adams Broadwell Joseph & Cardozo dated January 7, 2008 and the Board was ready to proceed with the hearing. Ralph Hicks, Director of Land Use Planning, addressed the Board regarding the State Lands Commission letter. Mr. Hicks continued by addressing several of the points stated in the letters dated December 20, 2007/January 8, 2008 from the State Lands Commission and January 7, 2008 from Adams Broadwell Joseph & Cardozo. (The documents are on file in the Office of the District Clerk.)

Mr. Hicks explained that he would address the State Lands Commission letter dated December 18, 2007, and he also stated that staff was in receipt of a copy of the State Lands Commission letter addressed to HERE Local 30, and the date stamp on that copy indicated that it appeared to have been received on December 27, 2007, prior to the letter's submission to the Port District

Mr. Hicks explained that the first page of the letter and a portion of the second page focused on the public trust doctrine. He continued by stating that he was concentrating his response on the second to the last paragraph of the letter and whether or not this project was consistent with that public trust doctrine and whether, as trustees, the Board would enforce the critical elements of the public trust doctrine, specifically whether the retail and restaurant environments of the project would comport to the public trust doctrine. Mr. Hicks stated that the lease that the applicant will execute provides that the project will in fact adhere to all elements of the public trust doctrine and the retail components of the project will be visitor serving. He continued by stating that staff had discussed the matter specifically with the applicant and the applicant had concurred. Mr. Hicks stated that the hotel itself was widely recognized as consistent with the public trust doctrine as are most, if not the majority of, incidental uses contained in the modern day hotel. The spa was cited as an example of a non-exclusive use in compliance with the public trust doctrine because the services may be used by the public, as well as hotel guests. Mr. Hicks concluded his

points of record regarding the letter and stated that staff appreciated the State Lands Commission's input into the process.

Mr. Hicks explained that he would move on to the letter and support documents from Adams Broadwell Joseph & Cardozo that the Commissioners had reviewed during their recess. Mr. Hicks explained that he would address the letter to ensure the understanding of the content of letter and to assure that staff had adequate responses for the Board and in the administrative record. Mr. Hicks noted that a majority of components in the letter dated December 20, 2007 from Adams Broadwell et al., were included in the Commissioner's packets, and those points were also included in the firm's January 7, 2008 letter. Mr. Hicks explained that within the packet, the Board had material regarding staff and the District's expert's response to the letter dated December 20, 2007. Mr. Hicks stated that it was his belief that the Board had substantial evidence and staff could demonstrate that the majority of the comments were addressed.

Mr. Hicks addressed the concerns regarding the parking garage because it was addressed a number of times in the letter regarding CEQA and the Coastal Development Permit. Mr. Hicks stated that the San Diego Tidelands have had a history of a variety of industrial area uses and studies have found varying levels of contamination. The District follows the Regional Water Quality Control Board guidance, and in extreme cases implements clean up and abatement orders, and in other cases, based on the regulatory limits the District handles the contamination according to those laws and the District would follow those standards in this case. Mr. Hicks explained that the underground storage garage was actually less of an impact than the original entitlement of an above ground storage garage which would have added a big bulk scale and visual blockage. Mr. Hicks explained that the letter had linked the parking garage to the contamination issues. Mr. Hicks stated the contamination issues were addressed in a Phase 2 investigation that was completed in 2006 by Klienfelder and that investigation was included, by reference, in the administrative proceeding. Mr. Hicks explained that in the Phase 2 investigation some trace levels of contaminants were found, and some contaminants were also found at a "little bit at the regulatory standard." Mr. Hicks further explained that what staff meant by a "little bit at the regulatory standard," was that those levels trigger implementing a regulatory process, either between the Regional Water Quality Control Board or the Department of Health Services. He explained further that the garage would be excavated and further testing would be completed as a requirement for the Coastal Development Permit and, following the excavation, if levels continued to show at a regulatory level, then all appropriate regulations to dispose of or incinerate the DDT soils would be employed. Mr. Hicks stated that the study indicated that in a worse case scenario no more than 15 cubic

yards of DDT were found. Mr. Hicks stated staff saw no evidence that there has been a pathway created from the site to San Diego Bay, and the levels of contamination would really argue against any pathways to the marine environment.

Mr. Hicks continued his comments, stating the first few pages of the letter were much like the State Lands Commission letter, in that the first preambles were a recitation of law. Mr. Hicks explained that while the information was helpful, District staff was familiar with the language of the Coastal Act and the California Environmental Quality Act (CEQA). Mr. Hicks explained that the first bullet point on page 4 of the January 7, 2008 letter, which discussed the contaminated soil, was also addressed on pages 12-14 of the December 20th letter and that the argument had been responded to. Mr. Hicks continued his comments, referencing the December 20th letter, and explained that while the letter might have highlighted DDT, District staff had described its nature and form at the site through the Phase 2 investigation and reminded the Board that there were substantial conditions in the Coastal Development Permit that also ensure no damage to the environment. Regarding the remarks about impacts of DDT on the marine environment shown on page 5 of the letter, Mr. Hicks again explained that the remarks provided general information and District staff had found that there was no scientific basis showing the level of contamination and a pathway to San Diego Bay.

Regarding the discussion points in page 8 through page 10, Mr. Hicks stated that staff's conclusions from the Phase 2 investigation were quite to the contrary. Regarding page 11 of the January 7, 2008 letter, Mr. Hicks explained similar content was found on pages 15, 16 and 17 of the December 20th letter. Mr. Hicks addressed the emissions discussion of PM2.5 (particulate matter), stating that the most common was dust. Mr. Hicks stated that the letter argued that the standards had changed since the adoption of the final Master Environmental Impact Report. Mr. Hicks stated that staff performed an extensive analysis for changed circumstances and conditions to the EIR that the Board reviewed, deliberated on and voted on in 2006 and the Board did the same thing in a similar context in August 2007. Mr. Hicks explained that the Master EIR was not a new document, nor was the project new and he stated that the administrative record is very clear from 1997 to the present.

Mr. Hicks noted that on page 14 of the letter, which argued that the traffic generated by the project would have substantial impacts, was also argued using some of the same words and phraseology found on page 20 from the December 20th letter. Mr. Hicks stated that the issue had been addressed and the Board had deliberated on and reviewed the matter. Mr. Hicks continued on to page 15, regarding the water supply and public services, and noted that the same discussion was found on page 11

of the December 20th letter, and that staff responses were included in the Board packet provided.

Mr. Hicks explained that on page 17, Coastal issues were discussed and those issues were different than what the Board had previously seen. Mr. Hicks stated that the first issue was related to the consistency of set backs and step backs. Mr. Hicks stated that one example was the elevator core shown in the staff presentation. He continued and explained that the letter argued that the public, from the podium of the hotel, would have access to the upper floors of the hotel, thus one does not have to go through the lobby. Mr. Hicks stated that it is a little bit disingenuous to say on one hand you are intruding in a public promenade and therefore you're intruding and blocking public access. Mr. Hicks stated that while there was a minor infraction into the promenade set back area with one elevator core, under the broad North Embarcadero Visionary Plan guidelines there is a 10% allowance, and the project was within that 10%. Mr. Hicks explained that staff architects have reviewed the matter and found that it is consistent with the Port Master Plan.

Mr. Hicks explained that page 18 of the letter includes encroachment arguments regarding the proposed spa and other larger components of the project. Mr. Hicks explained that staff architects with extensive training and experience had reviewed the schematic plans, which are part of the record, and determined that there was no encroachment inconsistent with the North Embarcadero Visionary Plan or the Port Master Plan. Mr. Hicks stated that in light of the appealable nature of the Coastal Development Permit, staff undertook a very exhaustive analysis of the orientation and all other components of the hotel, and reached the same conclusion that there is no encroachment inconsistent with the North Embarcadero Visionary Plan or the Port Master Plan. Mr. Hicks explained that much like the State Lands Commission, Adams Broadwell et al. stated the hotel is not consistent with the public trust doctrine, because it is an exclusive use, and not eligible for a Coastal Development Permit. Mr. Hicks responded that the statements in the letter were simply not a sound articulation of the current public trust doctrine. Mr. Hicks noted he addressed similar concerns when reviewing the letter from the State Lands Commission and stated that a project can, in fact, have incidental uses such as bars, spas and restaurants for approved trust purposes. Mr. Hicks continued by stating that the retail component would have to be visitor serving and the Board had taken that action by incorporating the requirement into the lease agreement. Mr. Hicks concluded his comments assuring the Board that the project is consistent with the Public Trust Doctrine. Mr. Hicks thanked the Board for their patience during the staff presentation and acknowledged their individual review of the letter(s). Mr. Hicks stated that his remarks and the Notice of Board Action for the Coastal Development Permit would be a part of the administrative record.

Chairman Bixler referenced page 13 from the January 7, 2008 letter and requested that Mr. Hicks clarify if regulations are currently in place related to the reference that "AB32 mandates that greenhouse gas emissions be reduced to 1990 CARB levels ... through a regulatory program to be adopted and carried out by CARB." Mr. Hicks explained that the regulations are in place in terms of AB32, but there are no CEQA guidelines and there is no CEQA requirement as to greenhouse gas emissions. Commissioner Bixler expressed his concern regarding complying with a standard that has no written regulations. Mr. Hicks continued by explaining that CEQA has its own statutory premises, and that AB32 was not part of the statutory scheme; and the matter had been sent to the Office of Planning and Research to develop guidelines. Mr. Hicks explained that there are multiple opinions on how to approach the matter, and what most agencies across the state had attempted to do was to develop their own standards until standards are legislated. Mr. Hicks explained that California's Title 24 was the most stringent standard across the nation. Mr. Hicks stated that because the developer has committed to the Silver Level of LEED certification, the project will exceed California Title 24 standards.

Commissioner Bixler requested and received confirmation from Mr. Hicks that given the current situation with regard to the matter of AB32, and relying on the testimony developed by Commissioner Black and the applicant, the project exceeds current standards as to greenhouse gas emissions for purposes of CEQA analysis.

Commissioner Bixler called for any further Commissioner comment and did not receive any further comments or questions for staff.

Commissioner Cushman made a motion that the CEQA documentation is consistent with the final Master Environmental Impact Report and further moved for the staff recommendation that the Lane Field Hotel Project is consistent with the findings incorporated in the Final Addendum of the Master Environmental Impact Report and Initial Study and he referenced UPD No. 83356-EIR-35: SCH No. 99031037. Commissioner Rios seconded the motion.

Commissioner Valderrama requested and received clarification regarding the numbers incorporated into Commissioner Cushman's motion. Chairman Bixler clarified that the numbers referenced were from the Board's agenda packet and would be incorporated into the record. Mr. Hicks clarified that the Board was incorporating into the record all the comments received, all the responses received and the Port number for the Final Addendum, and that Commissioner Cushman had referenced the State Clearinghouse number for the Final Addendum.

Commissioner Black requested clarification if the commitment from the developer (Mr. Lankford) to develop a Silver LEED certified building, which was stated earlier at the Board Meeting during the course of the hearing, would be incorporated into the record. Mr. Hicks stated that it was his understanding the commitment made to the Board by the developer would be part of the administrative record and that staff would enforce that commitment both through the lease and the Coastal Development Permit. Commissioner Black concluded her comments stating that when we find a balance between profit and social responsibility everyone comes out ahead.

On a motion by Commissioner Cushman, Seconded by Commissioner Rios, the Board adopted **Resolution 2008-14**, Finding that the Lane Field Hotel Development Project is within the scope of the North Embarcadero Visionary Plan Master Environmental Impact Report, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None.

Chairman Bixler opened the public hearing regarding the Adoption of a Resolution Authorizing the Issuance of an Appealable Coastal Development Permit. Commissioner Bixler requested that the record reflect that there were no speaker slips and no members of the public came forward requesting to speak. On a motion by Commission Cushman, seconded by Commissioner Valderrama, the Board approved closing the public hearing by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None.

Mr. Hicks announced that all previous remarks would be incorporated by reference into this action. Commissioner Cushman made a motion to support the staff's recommendation for the issuance of an Appealable Coastal Development Permit for the Lane Field Hotel Project. The motion was seconded by Commissioner Rios.

On a motion by Commissioner Cushman, seconded by Commissioner Rios, the Board adopted **Resolution 2008-15**, the issuance of an Appealable Coastal Development Permit for the Lane Field Hotel Project, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None.

ACTION AGENDA

BROADWAY PIER CRUISE SHIP TERMINAL

Agenda Item 29. Rita Vandergaw, Director of Marketing, addressed the Board and presented the staff recommendation regarding the Broadway Pier Cruise Ship

Terminal. Charlene Dennis, Capital Project Manager, addressed the Board regarding the estimated costs for each of the designs under consideration. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

The following members of the public addressed the Board regarding the project: Allan J. Rappoport and Stacey Lankford Pennington.

Commissioner discussion ensued. Chairman Bixler explained the Commissioners had been presented a draft letter requesting assistance for the project to be addressed to the Mayor of San Diego and to the Centre City Development Corporation (CCDC). (A copy of the letter is on file in the Office of the District Clerk.) Chairman Bixler requested Vice-Chairman Cushman chair the meeting during this item.

Commissioner Spane explained that while requesting participation from civic partners was a matter for consideration, he further suggested that the Board consider funding the project.

Commissioner Black supported Commissioner Spane's comments that the District consider funding the project. Commissioner Black explained that her first preference was for an open space and she did not support the tent or pre-fabricated building concepts; however to benefit the economy of the region, she supported the re-designed terminal. She concluded her comments stating that she did not support leveraging the relationship with CCDC or the funding partnership for North Embarcadero Visionary Plan project as financial resource for the new terminal.

Commissioner Rios explained that the region's economy benefits greatly from the cruise ship industry. She continued her comments by explaining further that based on her discussion with Nancy Graham, CCDC would not outright contribute; however, they would be willing to consider some financial participation in the project by absorbing a portion of the District's North Embarcadero Visionary Plan financial commitment. Commissioner Rios also supported pursuing a request for participation for funding from the City of San Diego.

Commissioner Valderrama stated that, based on the cruise industry impact to the local economy, the Board should look at other alternative funding sources and explore opportunities to work with CCDC. Commissioner Valderrama stated he supported staff recommendation "D" and would defer any further comment following Chairman Bixler's remarks.

Commissioner Najera explained that he supported having a first class cruise ship terminal and supported approaching the City of San Diego and CCDC for funding support.

On a motion by Chairman Bixer, seconded by Commissioner Valderrama the Board adopted **Resolution 2008-16**, authorizing Amendment No. 2 to the Agreement with Bermello Ajamil and Partners, Inc. for additional professional design services for Broadway Pier Cruise Ship Terminal Improvements in the amount of \$1,000,000 for a new total of \$2,262,507 and to extend the term by six months to December 31, 2009, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None.

Commissioner Bixler made a motion to release the draft letter to Mayor Jerry Sanders of the City of San Diego and CCDC as a means of facilitating the discussion regarding partnering for funding the additional costs of the project.

Commissioner Spane requested clarification regarding the next steps if additional funding from the City of San Diego and/or CCDC is not received. Chairman Bixler explained that during discussions with the City and CCDC they had indicated some acquiescence to participate and the District would continue negotiations.

Commissioner Black requested and received further clarification regarding the discussions referenced by Chairman Bixler. Bruce Hollingsworth, Executive Director, explained that he had spoken with Nancy Graham earlier in the day and she indicated precisely what was mentioned, that CCDC would consider a discussion of some type of offset funding. Mr. Hollingsworth explained that Bill Anderson said the City of San Diego would consider the matter in light of their other funding requests. Mr. Hollingsworth concluded his remarks by stating that, in his opinion, some discussion would probably bear fruit or at least be worthy of consideration.

On a motion by Chairman Bixer, seconded by Commissioner Rios the Board approved the release of the letter to Mayor Jerry Sanders representing the City of San Diego and to CCDC, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None.

Chairman Bixler resumed chairing the meeting.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR MEETING OF FEBRUARY 12, 2008

Agenda Item 30. Bruce Hollingsworth, Executive Director requested that staff add one additional agenda title: Ordinance Amending San Diego Unified Port District Code, Article IV, Section 438, Regulating Vessels in the La Playa, A5 Glorietta Bay and A9 the Cruiser Anchorages to the February 12, 2008 agenda.

On motion of Commissioner Cushman, seconded by Commissioner Bixler, the Board approved the placement of the proposed agenda of February 12, 2008, by the following vote: Yeas-Bixler, Black, Cushman, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

SHELTER ISLAND MARINE SALES AND SERVICES SITE

Agenda Item 31AB. Chairman Bixler announced the item would be continued to a future Board meeting.

RESOLUTION ADOPTING BPC POLICY NO. 725 – TRANSITION ZONE POLICY

Agenda Item 32. Chairman Bixler announced that Commissioner Cushman and Commissioner Valderrama requested the item would be continued to a future Board meeting.

Chairman Bixler announced that closed session agenda item 35 would not be heard.

OFFICER'S REPORT

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

- a) Change Order No. 22 for \$50,000.00 to Contract No. 2004-21 with Traylor Bros., Inc. dba Traylor Pacific for Sediment Remediation and Aquatic Enhancement, Former Campbell Shipyard Site, San Diego, CA.
- b) Change Order No. 23 for 2 Calendar Days to Contract No. 2004-21 with Traylor Bros., Inc. dba Traylor Pacific for Sediment Remediation and Aquatic Enhancement, Former Campbell Shipyard Site, San Diego, CA.
- c) Change Order No. 26 for \$33,255.00 and 14 Calendar Days to Contract No. 2005-20 with Reyes Construction, Inc. for Former Navy Pier Rehabilitation, San Diego, CA.

- d) Change Order No. 27 for \$135,456.00 to Contract No. 2005-20 with Reyes Construction, Inc. for Former Navy Pier Rehabilitation, San Diego, CA.
- e) Change Order No. 28 for \$4,653.00 to Contract No. 2005-20 with Reyes Construction, Inc. for Former Navy Pier Rehabilitation, San Diego, CA.
- f) Change Order No. 29 for \$64,808.00 to Contract No. 2005-20 with Reyes Construction, Inc. for Former Navy Pier Rehabilitation, San Diego, CA.
- g) Change Order No. 1 for \$10,124.00 to Contract No. 2006-13 and 7 Calendar Days with 3D Enterprises, Inc. for Cannery Worker Tribute, San Diego, CA
- h) Change Order No. 2 for \$7,038.07 to Contract No. 2006-13 and 23 Calendar Days with 3D Enterprises, Inc. for Cannery Worker Tribute, San Diego, CA

PRESIDENT'S REPORT

Agenda Item 36. Bruce Hollingsworth, Executive Director, announced that, due to recent storm damage, approximately 150 feet of sewer pipe was lost on the Imperial Beach Pier. Mr. Hollingsworth explained that Duane Bennett, Port Attorney, would address the staff request. Mr. Bennett explained that, under Government Code §54954.2B(1) and (2), the Brown Act affords the Board the ability to add an item to the agenda where an emergency exists, or where the need to take action on an item arose after the preparation of the agenda, and on this occasion there was an immediate need. Mr. Bennett further explained that, in the particular case under consideration, a sewer line required emergency repair, and the Public Contract Code requires a four-fifths vote of the Board to waive the provisions of the regular bid procedure to expedite the emergency repair. Mr. Bennett read the recommended item's title, "Notification of Emergency Regarding Imperial Beach Sewer Failure and Intent to Implement Emergency Actions Authorized by Resolution 2000-03 by a Construction Contract for an Amount Not to Exceed \$75,000" and he requested that the Commissioners vote to accept the recommendation to add it to the agenda.

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

Commissioner discussion ensued. Commissioner Cushman requested and received confirmation from Tony Heinrichs, Senior Director, Facilities/Chief Engineer, that the prior repairs were done in conformance with the design and that the bell and spicket piping was installed correctly and in accordance with the manufacturer's instructions. Mr. Heinrichs stated that staff had requested a cost for the emergency repair proposal from the same contractor and that contractor had investigated the site and provided staff with an approximate cost in the range of \$50,000 to \$75,000.

Mr. Hollingsworth suggested that staff go forward with the action and research whether or not there was some negligence or inappropriateness in the installation.

Commissioner Valderrama asked if the Port would respond similarly to a damaged pier in National City. Christine Anderson, Vice President of Operations, indicated that if the situation was similar in that the District owned the improvements and the repairs were of an emergency nature the District would respond in a similar manner. Ms. Anderson also stated that, in the case under consideration, the emergency repairs were being requested due to the impact on the tenant at the end of the pier, and the need to make the restrooms serviceable.

On a motion by Commissioner Cushman, seconded by Commissioner Najera, the Board voted to adopt **Resolution 2008-17**, Notification of Emergency Regarding Imperial Beach Sewer Line Failure and Intent to Implement Emergency Actions Authorized By Resolution 2000-03 By A Construction Contract For An Amount Not To Exceed \$75,000, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None.

BOARD COMMITTEE REPORTS

Agenda Item 37. None.

COMMISSIONER COMMENTS

Agenda Item 38. None.

Chairman Bixler thanked Commissioner Rios for her service as Chair during 2007. Chairman Bixler announced the Board would recess and continue the meeting in closed session. Duane Bennett, Port Attorney, read Closed Session Agenda item 34 into the record. Mr. Bennett did not read Closed Session Agenda item 35, Conference with Real Property Negotiator, Old Police Headquarters located at the southeast corner of Pacific Highway and Harbor Drive, and Seaport Village, 849 W. Harbor Drive, San Diego, because the item would not go forward.

CLOSED SESSION

Agenda Item 34.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: Approximately 30 Acres West of Marina Parkway and South of G Street, Chula Vista

Negotiating Parties: Bennett Westbrook, Gaylord Entertainment
Randa Coniglio, SDUPD

Under Negotiation: Price and Terms

The Board gave direction. There was no formal or reportable action, pursuant to Government Code Section 54950 et seq. to report.

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

January 8, 2008

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JULIE VALDEERRAMA

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

Margaret J. Smith

Clerk of the San Diego Unified Port District