

From: [aeboken](#)
To: [CSLC Commission Meetings](#); [Kunkel, Kristina](#); [REDACTED]
Subject: Written Submission for State Lands Commission Meeting October 17, 2024 Agenda Item II Public Comment
Date: Friday, October 11, 2024 11:36:13 AM

Attention: This email originated from outside of SLC and should be treated with extra caution.

TO: State Lands Commission

cc: Kristina Kunkel,
Deputy Controller for Environmental Policy

FROM: Eileen Boken,
State and Federal Legislative Liaison

Coalition for San Francisco Neighborhoods*

*For identification purposes only.

RE: Written Submission for State Lands Commission Meeting October 17, 2024 Agenda Item II Public Comment

SANDMINING LEASES

The Coalition for San Francisco Neighborhoods has been attending the meetings of the Bay Conservation and Development Commission (BCDC) Commissioners Sandmining Working Group.

Based on the expert testimony presented during these meetings, I am once again urging the State Lands Commission (SLC) to renew these leases for five years not ten years.

Climate change and sea level rise are creating dynamic environmental conditions that should be addressed in years not decades.

COASTAL ZONE MANAGEMENT ACT (NOAA) Sections 309 and 312

The BCDC is currently conducting surveys for NOAA section 309.

The Coastal Commission has closed public comment for NOAA section 312.

The Coastal Conservancy is also part of the NOAA process.

However, the SLC is not part of the NOAA Coastal Zone Management Act process.

I would urge the SLC to advocate for amendments to the process which would include SLC participation if only on an ex-officio basis.

SAN FRANCISCO'S OCEAN BEACH MASTER PLAN

San Francisco is the 2nd most densely populated city in the U.S. only behind New York City.

San Francisco's Ocean Beach Master Plan was released in 2012.

The 2010 - 2012 process was led by the pro- development think tank SPUR.

The Ocean Beach Master Plan did not include the best available science as it focused almost exclusively on wave action.

It didn't include sediment transport even though SPUR was aware of the USGS study on how sandmining in San Francisco Bay was a factor in erosion and accretion on San Francisco's Ocean Beach.

Also, the science used in the Ocean Beach Master Plan is now twelve years old.

I would urge the SLC to review the Ocean Beach Master Plan and its proposals to permanently close sections of the Upper Great Highway to vehicular traffic.

The Upper Great Highway is part of the San Francisco Department of Public Works Emergency Priority Routes Map.

The San Francisco Planning Department has confirmed that the Upper Great Highway could be used for evacuations.

Since San Francisco was destroyed in the 1906 earthquake and the San Andreas Fault is seven miles off San Francisco's Ocean Beach, keeping the Upper Great Highway open is a matter of public safety.

The Upper Great Highway is also a major route for residents of the Westside of San Francisco to access job opportunities on the Peninsula.

This contributes to the economic vitality of the City.

I would urge the SLC to investigate these issues.

OFFSHORE DESAL

I would urge the SCL to sponsor a demonstration project for offshore desalination (desal) off the coast of San Francisco's Oceanside [Wastewater] Treatment Facility.

And, to research offshore desal as a potential solution to mitigate erosion on south Ocean Beach.

LAKE MERCED HYDROLOGY

San Francisco's Lake Merced was originally a lagoon which flowed into the ocean in the area which is now Sloat Boulevard.

Surfers have stated that the currents off San Francisco's Ocean Beach are strongest in the vicinity off Sloat Boulevard.

I would urge the SLC to advocate for proposals to restore Lake Merced's hydrology to flow under Sloat Boulevard and into the Pacific Ocean as a potential strategy to address erosion on south Ocean Beach.

###

From: chartering@marfletmarine.com
To: [CSLC CommissionMeetings](#)
Cc: [REDACTED]
Subject: October 17 - Commission Meeting -MARFLET MARINE Comments
Date: Friday, October 11, 2024 8:51:22 AM
Attachments: [image001.png](#)

Attention: This email originated from outside of SLC and should be treated with extra caution.

Dear Commissioners of the California State Lands Commission,

We hope you find this email well.

Our comments are not on a specific item on the 17th October Commission Meeting Agenda, they are regarding to port operations of our vessel MT SANTIAGO I in VOPAK Terminal at Wilmington Port (California).

Please let us present our company, Marflet Marine SA is a private owned company dedicated to the management, operation and chartering of product and chemical tankers. Marflet Marine is one of the oldest private owned Spanish Shipping companies. We have been dedicated to the management, maintenance, operation and chartering in oil products, CPPs, LPGs, and chemical maritime transport since or origin in 1957.

Currently, we operate a fleet of five chemical MR size vessels (50,000 DWT) including the MT PANAGIA THALASSINI (built 2017) and her sister vessel MT SANTIAGO I (built 2022). We have been operating with the MT PANAGIA THALASSINI during the last 3 years discharging regularly in VOPAK Terminal at Wilmington Port and now we want to include in the same trade her sister vessel MT SANTIAGO I.

However, we have been informed that the MT SANTIAGO I is refused to operate in VOPAK Terminal and we need to know the motives.

We do not understand why the MT PANAGIA THALASSINI, sister vessel of the MT SANTIAGO I, can operate in VOPAK Terminal 187 at Wilmington CA and even a bigger vessel as the MT CIELO ROSSO.

Last time, while the MT PANAGIA THALASSINI was safely berthed in VOPAK Terminal 187 at Wilmington CA on 6th Oct, in the same berth was MT CIELO ROSSO with 75.000 metric tons of deadweight when our vessels have 50.000 metric tons DWT, MT CIELO ROSSO is 228 meters length when our vessels are 182,66 meters, and MT CIELO ROSSO has a beam of 36 meters when our vessels have only 32,2 meters. MT CIELO ROSSO is a LR2 transporting a Clean Petroleum Product (CPP) potentially explosive cargo, and our vessels transport only Caustic Soda (CSS).

	MT SANTIAGO I	MT PANAGIA THALASSINI	MT CIELO ROSSO
Length (meters)	182.66	182.66	228.0
Berth (meters)	32.2	32.2	36.0
Deadweight (metric tons)	49,999	49,999	74,903

Additionally, the MT SANTIAGO I also have the option of different DWT (49,901 MT; 44,999 MT, 39,999 MT) and we could remeasure and could change the load line if it is necessary.

We can give all the information or document necessary to support or position and we would appreciate if the California State Lands Commission could give us references on how to proceed to prove that the MT SANTIAGO I could operate in VOPAK Terminal in the same conditions as the MT PANAGIA THALASSINI.

Finally, we thank the Commissioner the opportunity to explain or concern in this issue.

Waiting for your kind response.

Thanks and best regards,

[Araceli de Hita](#)

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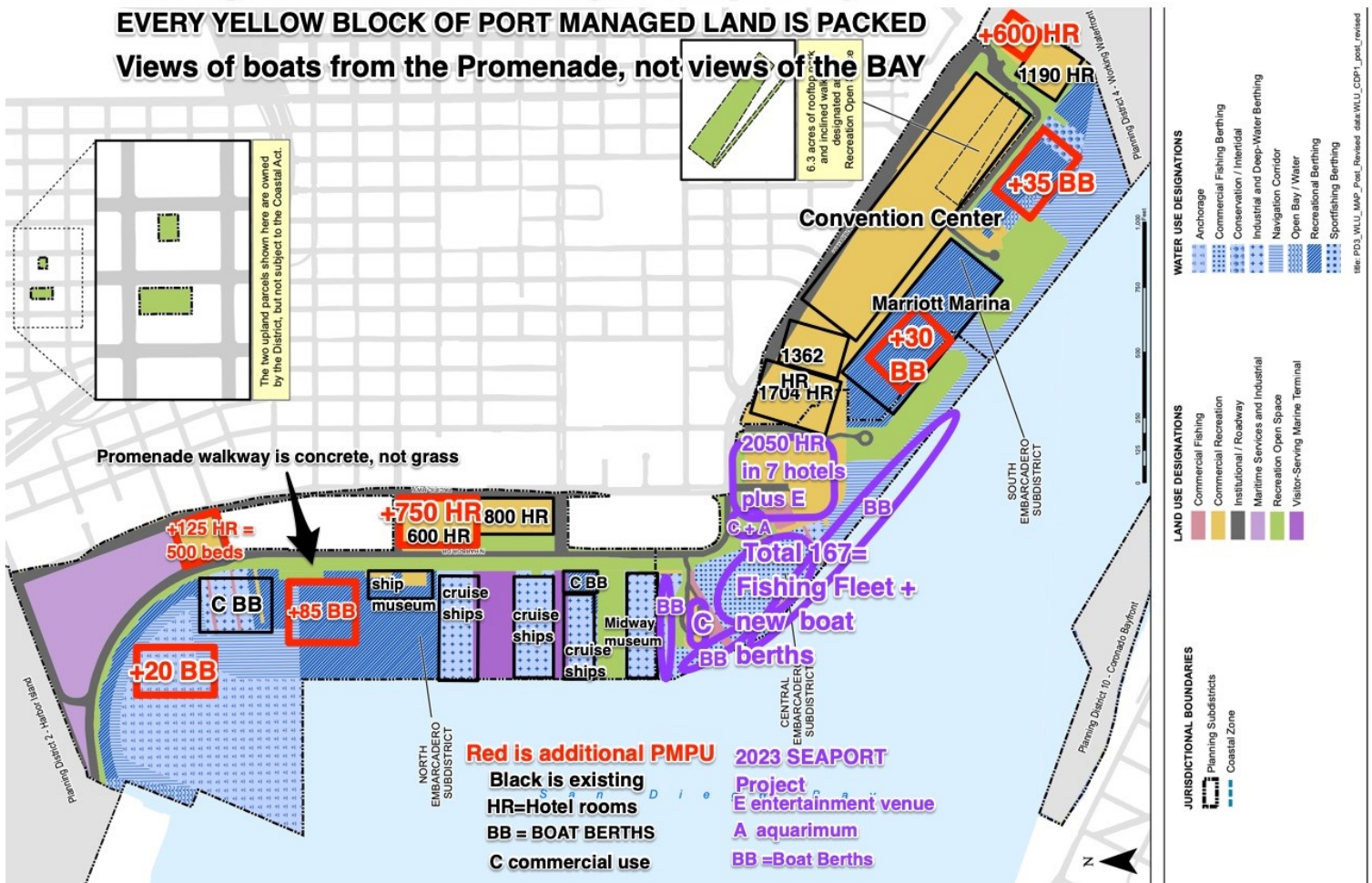
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Existing Embarcadero +PMPU Impact +Seaport Project

EVERY YELLOW BLOCK OF PORT MANAGED LAND IS PACKED
Views of boats from the Promenade, not views of the BAY





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September 19, 2024

Via email (Melody.Lasiter@coastal.ca.gov)

California Coastal Commission
Attn: Melody Lasiter
Coastal Program Analyst
7575 Metropolitan Drive #103
San Diego, CA 92108

Re: Comments on the Port of San Diego's Proposed Port Master Plan Update

Dear Ms. Lasiter:

On behalf of the Embarcadero Coalition, we provide the following comments on the Port of San Diego's ("the Port") proposed Port Master Plan Update ("PMPU" or "Project") for the California Coastal Commission's consideration.

The regulations governing Certification of Port Master Plans provide the following mandate:

The commission shall approve a port master plan only if the commission finds that sufficient information has been submitted to allow the commission to determine the adequacy and conformity of the proposed plan(s) with the applicable policies of the California Coastal Act of 1976, pursuant to the requirements of Public Resources Code, Section 30711 and of Section 13625 of these regulations, and that the master plan fulfills the requirements of Public Resources Code, Section 30714(a) and (b). Further, the commission shall make any findings required pursuant to the California Environmental Quality Act. Where a port master plan includes a wetland, estuary or existing recreation area pursuant to Section 13610(b)(1), the commission shall base its findings on adequacy and conformity with the policies of Chapter 3 of the California Coastal Act of 1976.

(14 CCR § 13632, subd. (d), emphasis added.)

As detailed below, the Embarcadero Coalition's main concern with the proposed PMPU and Environmental Impact Report ("EIR") centers on the PMPU and EIR's omission of large, planned projects and districts in the Port, as well as the lack of sufficient information for the

Coastal Commission to make its required determinations under the California Coastal Act and California Environmental Quality Act.

I. The PMPU Violates the California Coastal Act

A. The PMPU Omits Several Known Proposed Uses and Withholds Necessary Detail and Information in Violation of Section 30711

The California Coastal Act (the “Act”) requires that a Port Master Plan “shall include...the proposed uses of land and water areas, where known.” (Pub. Resources Code §30711, subd. (a)(1)). Yet, the PMPU omits a major known proposed use – the Seaport Village Redevelopment Project, also referred to as the “1HWY1 Project,” despite repeated requests from several community groups and the Coastal Commission for its inclusion. The Seaport Village Redevelopment Project has certainly been “known” to the Port, even before it released the proposed PMPU to the public in November 2021. The Port has taken steps over several years to pursue the Seaport Redevelopment project, as set forth in the following timeline:

- February 2016 – The Port of San Diego requests proposals for development of Central Embarcadero area.¹
- October 2016 – Board of Port Commissioners holds a meeting where it hears updates on the Central Embarcadero development and the Board adopts a resolution to obtain clarifying information on 1HWY1’s proposal on various topics, including its targeted retailers.²
- November 2016 – The Port of San Diego selects 1HWY1 as the developer for the project (See footnote n.1), with the following known proposed uses: 388,625 square feet Retail, 9,000 square feet Tower or “The Spire”, and 405,805 square feet Full-Service Hotel.³

¹ <https://www.portofsandiego.org/projects/central-embarcadero> (under “Project Timeline” section).

² <https://portofsandiego.legistar.com/MeetingDetail.aspx?ID=445238&GUID=57B6B317-234C-45D8-AE77-A75D7D175374&Options=&Search=>

³ <https://www.portofsandiego.org/sites/default/files/media/resources/2018/02/MC-CEWP-Gafcon-R-2016.pdf> (p. 22).

- October 2017 – The Port enters into Exclusive Negotiating Agreement (ENA) with Protea Waterfront Development, LLC., which is the managing member of 1HWY1. Rights and obligations assigned to 1HWY1.⁴
- December 2020 – ENA is amended to extend the negotiation period between the Port and 1HWY1 to October 1, 2024. (See footnote n.3.)
- November 2022 – The Board authorizes environmental review for the project. (See footnote n.1.) Our firm submitted a letter to the Board alerting it to the impropriety of omitting the 1HWY1 Project from the PMPU. (**Exhibit A**)
- September 2023 – The Port releases a Notice of Preparation of a Draft EIR.⁵

Additionally, the 1HWY1 Project was even initially included in the December 2019 Discussion Draft of the PMPU, **but has since been removed from the Port’s proposed PMPU.** (PMPU Discussion Draft, p. 170-77.)⁶

In the Port’s Master Responses to concerns about this omission, it claims the Seaport Village Redevelopment Project does not need to be included in the PMPU because “nothing under CEQA or the Coastal Act requires the District to include these other planning areas in the PMPU.” (Final EIR (Volume 1 of 4), p. 2-7.)

Yet, the purpose of the PMPU is to govern the use, design, and improvement of the Waterfront. (PMPU, p. 1.) As the PMPU describes the “vision” for the Port’s development, it must include proposed uses of land and water areas *where known* to the Port to comply with §30711, subd. (a)(1). The omission of the 1HWY1 Project prevents an accurate understanding of the PMPU’s impact, including its “vision.” The 1HWY1 Project is something the Port has been pursuing and planning since 2016. It will significantly impact how land and water areas of Central Embarcadero are used, especially the public’s access to the waterfront, parkland, and public trust lands. Replacing the pedestrian oriented, open-space area of Seaport Village that is currently welcoming to people of all socio-economic status, with a wall of luxury hotels, is a massive change that must be included in the Commission’s review of the PMPU. We are appreciative of the Commission’s prior comments to the Port about these concerns. (**Exhibit B.**)

⁴ https://pantheonstorage.blob.core.windows.net/waterfront-development/20221108_Port_Staff_Report_1HWY1_Proposal.pdf

⁵ <https://pantheonstorage.blob.core.windows.net/ceqa/Seaport-San-Diego-Redevelopment-Project-Notice-of-Preparation-NOP.pdf>

⁶ <https://pantheonstorage.blob.core.windows.net/waterfront-development/Port-Master-Plan-Update-Discussion-Draft-042419.2-Port-of-San-Diego.pdf>

Therefore, in order to comply with the Act, the Port must include the Project in the PMPU.

Section 30711(b) further requires that a Port Master Plan “contain information in sufficient detail to allow the commission to determine its adequacy and conformity with the applicable policies of this division.” (Pub. Resources Code §30711(b).)

The omission of the 1HWY1 Project prevents a full understanding of the sufficiency of the PMPU’s *port wide* policies and prevents the Commission from determining the adequacy and conformity of the PMPU with the rest of the Act and its policies.

If an omission in the PMPU leads the Commission to conclude that it does not have sufficient detail to satisfy §30711(b) and other sections of the Act, it is well within its authority to not approve the update and offer explanations as to why or make suggestions on how the Port could comply with the Act. (*San Diego Unified Port Dist. V. California Coastal Com.* (2018) 27 Cal.App.5th 1111, 1142.)

The Act ensures that California’s state policies prevail over those of the local government and is meant to be construed liberally for the accomplishment of its goals. (*Id.* at 1130.) Accordingly, the Commission is the ultimate authority on conformance to the policies of the Act. (*Id.*) A master plan is suited to the Commission’s “input and expertise for enforcing and furthering coastal policies.” (*Id.* at 1139.) The exclusion of the 1HWY1 Project undermines the ability of the Commission to properly determine if the PMPU satisfied the Act. Such a substantial project needs to be included in the PMPU to adequately allow the Commission to exercise its supervisory duties under the Act.⁷

Further, the Port’s omission of the 1HWY1 Project is in direct contradiction to assurances it previously made to the Commission. In *San Diego United Port.*, the District submitted an amendment to the Port Master Plan (“PMPA”) that would allow for the development of multiple hotels. (*Id.* at 1120.) The Commission denied certification of the amendment because there was insufficient detail to provide for lower cost overnight accommodations and Section 30213 of the Act explicitly aims to provide lower cost visitor and recreational facilities. (*Id.* at 1120.) The superior court ordered the Commission to hold a new public hearing. (*Id.* at 1123.)⁸

⁷ The 2022-2023 San Diego County Grand Jury report acknowledges that the Commission is the only real check on the Port’s power. Given the Commission’s position as the Port’s sole oversight, a commitment by the Commission to the provisions and the goals of the Act would have the needed gravity to ensure that the Port does not go unchecked in its planning processes and omit crucial projects. (Exhibit C.)

⁸ The Commission ultimately appealed the superior court’s adverse ruling after holding the new hearing, and the Court of Appeal squarely rejected the Port’s claims, upholding the

At the public hearing on the PMPA in May 2017, a Port District representative promised that “the Port would include in its future master plan update a plan to address ‘lower cost facilities including overnight accommodations’”. (*Id.* at 1125.) Yet, the PMPU fails to provide what was previously promised by the Port.

The 1HWY1 project description includes plans for various hotels, including a 31-story full-service hotel, a 14-story micro-hotel and hostel, and a 14-story five-star hotel. (2022 Seaport San Diego Project Description, p. 39.)⁹ The exclusion of the Project not only encourages the Port’s mindset that it can circumvent an assurance previously made to the Commission, but also prevents a clear, Port-wide plan for low-cost accommodations that is required by the Act.

We are concerned that the Port seems to be taking a “divide and conquer” approach to obtaining the Commission’s approval of its desired various hotel projects, resulting in piecemeal review. Instead of seriously addressing the Commission’s concerns about the 1HWY1 Project, the Port voted to move forward with CEQA review. Meanwhile, the Port is attempting to secure final approval of its PMPU, which would also massively increase luxury hotels around the Port. Additionally, the PMPU omits the National City Bayfront and Chula Vista Bayfront Planning Districts. These omissions undermine the Commission’s ability to gauge a comprehensive and complete review of development in the Port District from the proposed PMPU.

The omission of the Seaport Village Redevelopment Project also prevents adequate detail to determine conformance with Section 30210 of the Act, undermining the Commission’s ability to enforce the State’s commitment to maximum access and recreational opportunities (as detailed in Section II(B) of this letter).

The denial of the PMPU on the grounds that it omits a project that significantly impacts coastal access and public trust uses comports with case law and allows the Commission to fulfill its oversight role, and fully understand which uses are being prioritized in accordance with Section 30711. The inclusion of the Seaport Village Redevelopment Project would ensure transparency, and allow the Commission to adequately ensure that public lands are not completely privatized to the degradation of the Act.

Commission’s authority to determine the scope and extent of coastal policy when reviewing a PMP Amendment/Update’s consistency with those policies.

⁹ https://pantheonstorage.blob.core.windows.net/waterfront-development/20221021_Seaport_San_Diego_Revised_Project_Description.pdf

B. The PMPU Improperly Combines Commercial Uses with Public Park Space Uses, Precluding Sufficient Detail in Violation of Section 30711 and the Public Trust Doctrine

Pursuant to Section 30210 of the Coastal Act, “recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.” (Pub. Resources Code § 30210).

The Public Trust Doctrine and Section 30210 work in tandem to create maximum recreational opportunities for the public. (*San Diego Unified Port Dist. V. California Coastal Com.* (2018) 27 Cal.App.5th 1111, 1129.)

The public trust doctrine, which is traceable to Roman law, rests on the concept “that the public rights of commerce, navigation, fishery, and recreation are so intrinsically important and vital to free citizens that their unfettered availability to all is essential in a democratic society.” (citation omitted.) (*Zack’s, Inc. v. City of Sausalito* (“*Zack’s*”) (2008) 165 Cal.App.4th 1163, 1175-1176.) At the heart of the Public Trust Doctrine is the understanding that “certain uses have a peculiarly public nature that make their adaption to private use inappropriate.” (*Id.* at 1176.)

Thus, a clear understanding of the proposed public trust uses, versus “incidental uses” in the PMPU is necessary to adhere to this principle.

The current PMP includes a “Commercial Recreation” use designation that includes hotels, restaurants, recreational vehicle parks, specialty shopping, pleasure craft marinas, and sportfishing (PMP, p. 26).¹⁰ The plan had separate designations for the following: Recreation/Open Space, Park, Promenade, Open Space, Golf Course, Open Bay, Public Fishing Pier, Public Access, and Vista Areas uses. (PMP, p. 36-38).¹¹

Now, the proposed PMPU combines the designations for Park/Plaza, Golf Course, and Open Space into a single “Recreation Open Space” (“ROS”) designation. (PEIR, p. 3-9.) Additionally, the PMPU proposes to allow inherently commercial uses such as restaurants and yacht clubs within the ROS designation as well. (PEIR, p. 4.12-50.)

The ROS land use designation is not in accordance with the Coastal Act or the Public Trust Doctrine because it eliminates specific designations that ensure public space and unfettered public access, and provides a way for commercial uses to dominate the entire Port jurisdiction.

¹⁰ https://voiceofsandiego.org/wp-content/uploads/2013/11/SDUPD-185541-v1-Port_Master_Plan_Dated_January_1980.pdf

¹¹ See fn. 9.

(PEIR, p. 4.12-50.) Under the PMPU’s newly proposed ROS designation, private, paid uses and free, open public parks are combined into the same type of land use. (See Table 3.1.5 of the proposed PMPU, p 4.12-50.)

The Court’s discussion of the Act in *Spencer v. City of Palos Verdes Estates* is instructive. Noting that case law has consistently confirmed that public access to the coast is a priority, the Court held that public access and recreational policies within the Act “should be broadly construed to encompass *all* impediments to access, whether direct or indirect, physical or nonphysical. (*Spencer v. City of Palos Verdes Estates* (2023) 88 Cal.App.5th 849, 864, emphasis added.) The court cited to *Surfrider Foundation v. California Coastal Com.*, which “concerning the installation of physical devices to collect parking fees; the devices did not themselves impede access, but the fact that one must deposit money into them indirectly did so.” (*Id.*) Thus, it is established that requiring payment can impact access to the coast and public trust lands.

The PMPU’s proposal to re-characterize commercial, paid uses as indistinguishable from publicly-open, free uses under one “Recreation Open Space” designation impedes coastal access in violation of the Act, and prevents the Coastal Commission from determining the PMPU’s conformance with the Act.

An example of incompatible land uses under the Recreation Open Space designation is the combination of a Park land use with a Golf Course use. The Port is processing a planned Top Golf project, which would qualify as “ROS” under the proposed PMPU. Yet, Top Golf charges up to **\$75/hour** per bay over the weekends, plus another \$5 member fee for new players.¹² This highlights why it is improper to integrate these two uses under one designation: patrons must pay to enter courses and experiences such as Top Golf, which serves a private, commercial function that is not open to the public, and not everyone can afford. In contrast, a public park is open and free for anyone to use.¹³

Likewise, the designation of Promenades versus Parks should be reported separately in the PMPU, given their different functions. Promenades are walkways that are usually concrete. While promenades are a good inclusion around the Port, they are not synonymous with public parks, where people can rest, sit down, and enjoy the public trust lands. The blending of the various categories into ROS is especially concerning, given the Port’s previous renegeing on promised parks. In 2009, the Port removed a proposal for a large, oval public park (79,200 square feet) in exchange for a smaller hardscape (16,000 square feet) that doubled as the driveway to the cruise-ship terminal at Broadway and North Harbor. As a Coastal Commission

¹² <https://topgolf.com/us/el-segundo/>

¹³ <https://www.nbcsandiego.com/news/local/top-golf-is-one-stroke-closer-to-coming-to-east-harbor-island/3373150/>

District Manager noted, “As you start to take them as a whole, you suddenly realize what is supposed to be a park area isn’t going to be a park anymore.”¹⁴

We had further identified concerns about several unmet obligations in our letter to the Port on the PMPU DEIR. For example, the PMPU fails to ensure a commitment to provide the 1.25-acre park for the Lane Field settlement. In response, the Port pointed to the fact that the PMPU designates “appropriate acreage” of ROS on Harbor Drive. (Final EIR, p. 2-349.) As we emphasized earlier, “ROS” is not a park. There should have been a park at this location that is specifically identified and required by the PMPU. Likewise, the PMPU should require preservation of Ruocco Park, or at a minimum sufficient mitigation for any impacts from the proposed 1HW1Y Project, in the form of designated additional park space to offset the loss.

The Port’s history warrants *more* explicit and separate land use designations for parks, plazas, versus promenades, along with percentage requirements for each in the PMPU. Instead, the PMPU combines all three, along with further uses, into an amorphous ROS designation that gives the Port far too much leeway to convert public spaces into paid commercial uses, under the guise of “Recreational Open Space.”

II. The PMPU and Final Environmental Impact Report Violate the California Environmental Quality Act

The Commission is required to make any necessary findings pursuant to the California Environmental Quality Act (“CEQA”). (14 CCR § 13632, subd. (d).) As we detailed in our comments to the Port on the PMPU Draft EIR, the PMPU and its Final EIR fail to comply with CEQA.

A. The PMPU and EIR Improperly Piecemeal and Omit Entire Planning Areas

The omission of the proposed Seaport Village Project constitutes piecemealing in violation of CEQA, which requires analysis of the “whole of an action.” (CEQA Guidelines Section 15378.) The PMPU describes the vision for development at the Port, sets development standards, directs the pattern, and provides guidance for conformance to the PMP. Exclusion of entire districts and projects that are currently in the planning process constitutes improper piecemealing. (p. 2-356.) Further, as mentioned earlier, the Coastal Act requires the PMP to include the “proposed uses of land and water areas, where known.” (Public Resources Code Section 30711 (a)(1).)

¹⁴ (<https://www.sandiegouniontribune.com/sdut-ln5water005636-oval-park-isnt-part-waterfront-plan-2009aug05-story.html>.)

Yet, the PMPU claims, “Seaport Village would remain as existing conditions,”¹⁵ and leaves out two other major planning districts – the National City Bayfront and Chula Vista Bayfront Planning Districts.

In response to our comments on the Draft EIR, the Port argues that piecemealing requires a showing that the allegedly piecemealed project is “a reasonably foreseeable consequence of the *initial project*.” The Port claims that the omitted projects are not a reasonably foreseeable consequence of the PMPU, and were therefore not improperly piecemealed.

The Port’s defense is untenable and its representation of the standard for piecemealing is inaccurate. The Supreme Court in *Laurel Heights I* said: “[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 396.)

The “Project” is a complete overhaul to the PMP that will apply baywide. Further, the proposed 1HWY1 Project will likely change the scope of the PMPU. The proposed PMPU is a comprehensive Port Master Plan Update. The Coastal Act requires the PMP to include *all proposed uses*, and study the entirety of the public trust lands in the Port’s jurisdiction. The PMPU facilitates development of the 1HWY1 Project, without disclosing the full impacts.

Omission of entire planning districts for the PMPU runs contrary to the Coastal Act’s principles for careful planning:

“[A] a core principle of the Act is to maximize public access to and along the coast as well as recreational opportunities in the coastal zone...The Legislature further “sought to ‘[a]ssure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.’”...“existing developed uses, and future developments *that are carefully*

¹⁵ The Port claims that the Final PEIR is intended to be a “program EIR” or “tiering EIR,” with subsequent environmental review to follow for site-specific projects. The Port suggests that the analysis of detailed, site-specific information is not feasible and can be deferred until later. Yet, the Port is not identifying the 1HWY1 Project in a Program EIR, and then promising to provide more detail later. Rather, it is completely omitting the project and claiming Seaport Village will remain the same. That is very different from tiering, where the programmatic EIR may designate an area for certain land uses and densities, and then require a site specific EIR later. Additionally, this is not a scenario where “site-specific information may not be feasible.” The details of the 1HWY1 project are sufficiently described as to allow for analysis now.

planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state”

(*San Diego Unified Port Dist. v. California Coastal Com.* (2018) 27 Cal.App.5th 1111, 1130, emphasis added.)

The proposed PMPU “establishes 19 water and land use designations *to ensure that a wide variety of uses are located throughout Tidelands* and that an appropriate amount of space is provided for each use.” (EIR, p. 3-8). The Project proposes new *baywide* policies that will apply across the entire Port, including in the omitted segments. The Port’s piecemealing prevents an accurate understanding of the project, whose land uses definitions will apply to the entire Port.

For example, during the Port Commissioner’s November 8, 2022 hearing, a Commissioner requested that the 1HWY1 Project ensure that the percentage of “ROS” in the Central Embarcadero remain the same. Yet, it is the PMPU that is proposing to alter the current Port Master Plan’s designations to eliminate the current land use designations and *create* the new ROS designation – which will in turn facilitate development of the 1HWY1 Project. Rather than having to maintain the same percentage of public parks, the proposed 1HWY1 project would only need to maintain the same level of ROS.

Additionally, as we discussed earlier, the PMPU was promised to the Coastal Commission as the method to address preservation of low-cost visitor accommodation. (*San Diego Unified Port Dist. v. California Coastal Com.* (2018) 27 Cal.App.5th 1111, 1125.)

The Port claims the Port Act and the Coastal Act authorize it to amend the PMP, and do not require an amendment or update of the PMP to address all planning districts at the same time. The Port misses the point. The Proposed Project completely overhauls the current Port Master Plan, proposes the Port-wide vision for the next thirty years, *and* will apply development standards baywide. Further, as we underscored earlier, this Port’s stance is in direct contravention of Section 30711 of the Coastal Act. The Coastal Commission’s comments on the PMPU draft further highlighted that the current certified Port Master Plan describes conditions in far better detail than the proposed PMPU.

In response to our comments on the PMPU draft EIR, the Port notes that both the PMPU and the EIR state that no specific future development projects are proposed for approval, no specific siting decisions have been made, and the location, timing, scale and design of site-specific uses are unknown at this time, thus it has not committed to a definite course of action regarding the location of potential conceptual projects. This is misleading, given that the site of the 1HWY1 Project is known, and well underway. The PMPU was able to include and address future hotel units and uses for other areas of the Port that have not yet been approved. Thus, the Port’s purported reasons for its inability to include the proposed redevelopment of Seaport Village is unconvincing.

Further, the Port's responses do not address the issue. The PMPU is supposed to study proposed uses in the port, "where known." The standard is whether the Port knew about the project, which it has known about since its solicitation for redevelopment proposals in 2016.

Finally, our firm had commented on the PMPU's omission of the North Embarcadero Alliance Visionary Plan ("NEAVP"). The Port claims that CEQA does not require an EIR to evaluate a proposed project's consistency with all plans, policies or regulations. The Port claims that an EIR must only consider whether a proposed project is inconsistent or in conflict with an applicable plan and, if so, whether the inconsistency would result in a physical impact on the environment. Yet, the NEAVP was included as an "amendment" to the PMP, and is thus part of the current PMP. Its revocation would certainly result in physical impacts on the environment. Therefore, the Coastal Commission should consider the PMPU's consistency with the NEAVP.

B. The PMPU Fails to Adequately Analyze and Mitigate GHG Impacts

Our firm commented on the PMPU's inadequate mitigation for significant impacts to greenhouse gas emissions, as well as inconsistencies with the Port's own Maritime Clean Air Strategy. The Attorney General's Office ("AGO") further commented with similar concerns:

The AGO respectfully submits these comments to recommend additional analysis of local emissions reductions plans expressly applicable to Port operations. Specifically, we recommend that the Port conduct additional analyses to evaluate the PMPU and DEIR 's consistency or inconsistency with the local community emissions reductions plan and the Port's Maritime Clean Air Strategy. We further recommend that the Port clarify how the PMPU and DEIR interact with regional planning documents for the National City and Chula Vista bayfronts. Finally, we urge the Port to adopt additional mitigation measures and project features as part of the PMPU and DEIR in order to more fully protect the Portside Communities.

(Final EIR, p. 2-133.)

Additionally, due to the Port's omission of the Seaport Village Project, the PMPU further fails to properly analyze and mitigate GHG impacts. The Port contends that the Seaport Village Project did not have an accurate project description until 2022, so the District made reasonable assumptions about the general parameters of the Seaport San Diego proposal. (See PEIR, Table 2-2, pp. 2-21 - 2-22.) If the 1HWY1 Project is included as a cumulative project, it should be included in the GHG analysis. Further, it appears that the two other Planning Districts (National City Bayfront and Chula Vista Bayfront Planning Districts) were omitted from this analysis. While the Port included 1HWY1 as a listed cumulative project, it is unclear whether the project was included in the projections and quantitative analysis.

The Commission must require accurate quantification of GHG emissions, and require adequate mitigation. In addition to CEQA's requirements for mitigation, the Coastal Act's Section 30253 requires new development to minimize energy consumption and vehicle miles traveled, and to meet air pollution control requirements.

III. Approval of the PMPU Would Result in Violations of the Public Trust

The PMPU's lopsided focus on luxury hotels and privatization fails to align with the Port's own stated policies and violates the Public Trust Doctrine. In responding to comments on the PMPU EIR, the Port rejected these arguments, claiming that the Port Act specifies the uses for land and water within the District's jurisdiction and neither the Port Act, Coastal Act, nor the Public Trust Doctrine requires the District to devote more or less acreage to one permitted use than to another.

The Port further asserts that while the tidelands in the District were originally controlled by the state, they were transferred to the District in 1962 with the creation of the San Diego Unified Port District Act, which the Port claims allows for a much broader scope, including "for all commercial and industrial uses and purposes."

The ultimate jurisdiction for Public Trust uses lies with the Coastal Commission and State Lands Commission. (Pub. Res. Code § 30519(b); Pub. Res. Code § 6301.) The Coastal Commission and State Lands Commission have ultimate authority to determine Public Trust conformance, which cannot be superseded by the Port Act. (See *San Diego Unified Port Dist. v. California Coastal Com.* (2018) 27 Cal.App.5th 1111, 1130 [analogously, noting the Commission has ultimate authority to ensure coastal development conforms to the policies embodied in the state's Coastal Act, to ensure "that state policies prevail over the concerns of local government"]; *ibid* [finding against the Port District argument that "California Legislature put the Port District—not Commission—in charge of figuring out how to achieve the Port Act's mission and advance the policies of the Coastal Act."].)

As one Court explained, "[I]t ultimately remains *Commission's* primary role and responsibility as the statewide supervisory agency to implement the Act and ensure a port master plan furthers the Act's policies." (*Ibid*; citing *City of Chula Vista*, *supra*, 133 Cal.App.3d at p. 481; *Charles A. Pratt Construction Co., Inc. v. California Coastal Com.*, *supra*, 162 Cal.App.4th at pp. 1075–1076)].)

Thus, the Court of Appeal has already rejected the Port's broad assertions about its total discretion in relation to the Port Act. The Port also ultimately claims that the proposed PMPU is consistent with the Public Trust Doctrine. While the Port has the ability to *balance* between trust uses, this does not support wholesale privatization of the Port's public trust lands.

IV. CONCLUSION

The proposed PMPU will apply *baywide*, and proposes new land uses, definitions, standards, and policies that represent a complete overhaul to the current Port Master Plan. The PMPU will govern the Port for years to come. The Port itself describes the PMPU as “a comprehensive and inclusive Integrated Planning initiative to update our Port Master Plan, which is similar to what is known as a General Plan in a city or county.”

Therefore, it is imperative that the PMPU be comprehensive, and remedy the aforementioned concerns. Certification of the Port’s proposed Master Plan in part would not remedy the aforementioned violations. Therefore, the Commission should reject the PMPU in whole.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'JCB', with a stylized flourish extending from the bottom right.

Josh Chatten-Brown
Kathryn Pettit

EXHIBIT A



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November 8, 2022

San Diego Unified Port District, Board of Port Commissioners
Chairman Dan Malcolm (dmalcolm@portofsandiego.org)
Vice Chairman Rafael Castellanos (rcastellanos@portofsandiego.org)
Commissioner Sandy Naranjo (snaranjo@portofsandiego.org)
Commissioner Ann Moore (amoore@portofsandiego.org)
Commissioner Danielle Moore (dmoore@portofsandiego.org)
Commissioner Frank Urtasun (furtasun@portofsandiego.org)
Commissioner Michael Zucchet (mzucchet@portofsandiego.org)

**Re: Comment on Proposed Seaport Redevelopment - Seaport San Diego
Project, Action Agenda #13, File Number 2022-0334**

Dear Chair Malcolm and Commissioners:

On behalf of Waterfront Coalition, we submit these comments and urge the Board to deny the resolution that would authorize commencement of environmental review of the 1HWY1 Project under the California Environmental Quality Act and the National Environmental Policy Act. The Board is being asked today to green-light the 1HWY1 Project to proceed to environmental review, despite the fact it will drastically wall off the public waterfront in violation of the California Coastal Act and still includes uses that violate the Public Trust Doctrine.

Approval of 1HWY1 for environmental review will result in a tremendous amount of staff time and resources. The Revised Project Description has not addressed the concerns previously raised by the Coastal Commission, the Waterfront Coalition, Board members,¹ and the public. The 1HWY1 Project will strip San Diegans and those who visit our waterfront of a unique, cherished, pedestrian-oriented shorefront destination—currently accessible to all—and replace it with an enormous development that includes 200- to 500-foot-tall skyscrapers.

¹ “Port of San Diego Commissioners question size and overall feasibility of 1HWY1’s \$3.5 billion plan to redo the Central Embarcadero” Available at:

<https://www.sandiegouniontribune.com/business/story/2022-03-09/seaport-san-diego-project>.

[“If you look at the current status of Seaport Village compared to the 2016 concept, compared to 2021 concept, I think it’s a bit of a spin to say (the project) has evolved. It has exploded. . . The number of hotel keys has almost doubled. The event space has been astronomically increased.”]

At a minimum, the Board should continue this Agenda Item. On Friday, November 4, 2022, the Port released the 242-page Revised Project Description and a 47-page “Modification” to its 2017 Exclusive Negotiating Agreement (ENA) with the Applicant — only two working days before the meeting today. The Project Description is dated as October 21, 2022. It is unclear why the Port waited over two weeks to provide these plans to the public, but then provides the public with an inadequate amount of time to review these materials. Further, the Applicant has failed to provide several pieces of information about the Project that the Port’s ENA requires.

On behalf of Waterfront Coalition, we ask the Board to not advance 1HYW1 to costly environmental review. Doing so would move forward a project that is non-compliant with both the Coastal Act and Public Trust Doctrine. At the minimum, we request the Board at least continue the Item to ensure enough time for the public to review the Agenda materials and for the developer to provide the necessary information to the Port pursuant to its Exclusive Negotiating Agreement.

The Waterfront Coalition also requests that the Port require a public workshop to better educate interested parties and the public on changes that have been made to the original project description from the prior version that was rejected by the Port. The Waterfront Coalition previously made this request in a letter to the Port back in July 2022 and now reiterates its request.

Despite the minimal time provided to the public, the Waterfront Coalition was able to conduct a cursory review of the Revised Project Description and provides the following comments.

I. It Is Premature to Green-Light Environmental Review for a Project That Violates the California Coastal Act and the Public Trust Doctrine.

The Board should not begin the environmental review process until the Project complies with the California Coastal Act and Public Trust Doctrine. The Staff Report notes, “As part of this *preliminary* project review, the Board may provide feedback on the October 2022 Draft Project Description, including without limitation, relating to the architecture, public realm components, connectivity, scale and any other considerations concerning the Board’s vision for the Project.” However, the Report also goes on, “staff will also be seeking authorization from the Board to commence California Environmental Quality Act (CEQA) environmental review for the Project.” This will begin a two-year, costly process. The Board should be clear on what project it clears for environmental review. It does not make sense to advance a project to environmental review that is simultaneously seeking “preliminary” review.

The Coastal Commission recently submitted a comment letter detailing the Project's violations of the Coastal Act and need for substantial changes. (Commission Letter, p. 3 ["The bulk and scale of the proposed development is in conflict with the public access and recreation policies of the Coastal Act," including Sections 30213, 30210, 30211, and 30604].) The Port will require the Coastal Commission's approval and should address these major concerns now, before devoting costly time and resources to environmental review, for a project that the Commission might deny.

II. The Port Is Improperly Piecemealing the 1HYW1 Project.

The Waterfront Coalition commented earlier this year on the ongoing Port Master Plan Update (PMPU) and its failure to include this major project. The PMPU Environmental Impact Report (EIR) even went so far as to claim, "The remainder of the Subdistrict, which is mostly made up of Seaport Village, would remain as existing conditions with the exception of maintenance . . . and tenant improvements to the existing structures, and the addition of activating uses like live music, outdoor dining." (EIR, p. 3-69.) The Port's claim that Seaport Village would remain as existing conditions is a material misstatement that the Port is aware is false.

The Port's approach piecemeals *both* 1HYW1's impacts and the PMPU's impacts. It also obstructs consistency in review and terminology. For example, 1HWY1 and Stantec utilize the "public realm," ostensibly to indicate spaces *for* the public, such as parks or open space. The 1HYW1 Revised Project Description's use of the phrase "public realm" encompasses uses far beyond what is typically considered "public space," defining it as "the exterior space around and between structures and facilities that are publicly accessible," including areas "*within a developed site* or leasehold assigned with other use designations, *such as Commercial Recreation*," as well as even streets and sidewalks. (RPD, p. 131.) The current Port Master Plan does not include the overly broad "public realm" term.

Notably, "Attachment D" to today's Agenda File reports various percentage breakdowns of projected uses under the Revised Project. This includes the obscure, overly broad "Public Realm." It includes 18 further categories, yet not one lists the acreage of parks or recreational open space. Setting this aside, the broadly defined "public realm" category has only seen a 2% increase from the 2016 Proposal responding to the Port's RFP, to the most recent submission. Yet, the amount of hotel units and observatory tower still remain doubled that of the 2016 Proposal. The Blue Tech uses are also still 11 times expanded, and the Event Center 5 times that of the RFP proposal.

III. The Revised Project Still Violates the Public Trust Doctrine.

The Port holds its land in trust for the public and owes fiduciary duties to manage it for the public's benefit. The Public Trust Doctrine limits the uses of sovereign lands to waterborne commerce, navigation, fisheries, open space, water-oriented recreation, ecological habitat protection, and recognized public trust purposes. "[T]he public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust." (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 441).

The public trust doctrine is incorporated into the California Constitution and the California Coastal Act, which mandates that the Commission require that "maximum access" and "recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." (Cal. Pub. Resources Code § 30210).

The Revised Project Description still walls off the waterfront and replaces the pedestrian-oriented Seaport Village with uses that violate the Public Trust Doctrine, including office uses, the event center, and gym and fitness studios. 1HYW1 will pave over the existing Ruocco Park with a new giant office building.

The California Coastal Commission highlighted that some of these uses may violate the Public Trust Doctrine, and further stated, "these are not visitor-serving uses that complement a waterfront site that should be available and attractive to the general public."

The Project proposes large office buildings and retail sales on public tidelands that in their current form are accessible by all visitors to the waterfront. The Board should not vote to begin CEQA review, which requires a significant amount of staff time and resources, for a Project that violates the Public Trust Doctrine.

We also note that the Project Description reports inaccurate existing uses. In Table 2.1-1: Existing Building Area Calculations, the 1HYW1 Description claims that the existing Ruocco Park currently contains 8,000 feet of office buildings and 17,000 feet of commercial space:

Table 2.1-1: Existing Building Area Calculations

Area	Retail (sq ft)	Food (sq ft)	Office (sq ft)	Comm- ercial (sq ft)	Entertain- ment/ Recrea- tion (sq ft)	Total Building Area (sq ft)	Total Area Demolish- ed (sq ft)	Total Area Relocated (sq ft)
G Street Mole	0	0	3,100	0	400	3,000	3,000	0
Ruocco Park	0	0	8,000	17,000	400	25,000	25,000	0
Seaport Village	40,511	41,155	11,303	0	1,500	94,469	92,969	1,500
Kettner Mole Park	0	0	0	0	2,600	2,600	2,600	0
TOTALS	40,511	41,115	22,412	17,000	4,900	125,978	124,479	1,500

Yet, the existing Ruocco Park is dedicated tidelands park space and recreational open space and contains no office buildings or commercial structures. The Port’s PMPU states, “Ruocco Park is a small waterfront park that features green lawn, public art, and benches.” (EIR, 4.1-17.) We request clarification on this discrepancy.

The Project now also seeks a half-billion dollars in public financing to deliver the promised public infrastructure and public amenities, which includes the proposed promenade and green belt, piers and breakwater, Midway Cove Marina, beaches, and wetlands. Not only is the public now being asked to pay for public trust resources that it already has access to, this also raises questions about the Project’s financial feasibility.

IV. The Project Would Violate the Port’s Current Contractual Obligations and Mitigation Requirements.

“Replacement” of the bayfront Ruocco Park with a smaller, disconnected, more remote inland park on the existing peninsula for North Embarcadero Marina Park would violate the terms of the contract the Port signed with the Ruocco Fund and the San Diego Foundation. The Port accepted funds from both organizations to construct the existing Ruocco Park. The donation agreement requires that if there is a relocation, it must be a “*comparable* site in size and downtown location oriented to the waterfront.” Further, the “relocation site shall be subject to the written approval of the Foundation.” For any relocation, the Port District “shall have the sole obligation to pay the cost of the initial design and construction of the park on the Relocation site in an amount not less than the amount previously expended,” and the Port and the Foundation “shall agree on the plans and specifications for the design of the Park on the Relocation site.”

If a replacement park is ever approved by all the parties, it must be fully constructed before the demolition of the existing Ruocco Park. Violation of these terms creates financial and legal liability for the Port. The currently proposed “relocation” reduces existing public open space, and is not “comparable” to the existing Ruocco Park.

The Port should provide information regarding whether the Ruocco Fund Foundation and San Diego Foundation have provided input into the proposed “relocation.”

Further, both the original North Embarcadero Marina Park and the existing Ruocco Park were built as mitigation for environmental impacts of nearby development projects, including the Convention Center and the Manchester Hyatt Hotel. Subdividing the Marina Park and moving the “replacement” Ruocco Park there would jeopardize their role as mitigation projects and potentially double count the same park space that was developed as mitigation for multiple previous Port waterfront projects. Indeed, there is already park space on the site for the proposed “replacement” Ruocco Park.



(Proposed Project and “Relocation” (p. 39) versus Current Setting (Google Maps Image)

V. Conclusion.

The Waterfront Coalition respectfully requests the Board not advance the 1HYW1 Project to CEQA review. It makes little sense to push forward a project that violates the Coastal Act and Public Trust Doctrine, as well as existing contractual obligations and mitigation requirements. Doing so wastes the public’s time and resources on a Project that ultimately still runs afoul of the Coastal Act and Public Trust Doctrine.

Sincerely,

Katie Pettit

Josh Chatten-Brown

Attorneys for Waterfront Coalition

cc

Port District Clerk (PublicRecords@portofsandiego.org)

EXHIBIT B

SAN DIEGO UNIFIED PORT DISTRICT

MEMORANDUM

Date: November 4, 2022

To: Board of Port Commissioners

Via: Shaun D. Sumner
Vice President, Business Operations
ssumner@portofsandiego.org

From: Wileen C. Manaois
Director, Development Services
wmanaois@portofsandiego.org

Subject: Agenda-Related Materials – Coastal Commission Comments on Seaport San Diego Project (November 8, 2022 BPC Agenda Item #13, File 2022-0334)

California Coastal Commission staff has requested that their October 31, 2022 comment letter on the Seaport San Diego project (attached) be included in the Agenda materials for the November 8, 2022 Board meeting.

If you have any questions or need further information, please contact Wileen Manaois at (619) 346-0858 or via email at wmanaois@portofsandiego.org, or Shaun Sumner at (619) 602-2869 or via email at ssumner@portofsandiego.org.

Attachment(s):

Attachment A: Letter from California Coastal Commission Staff to Board of Port Commissioners, dated October 31, 2022

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



October 31, 2022

Board of Port Commissioners
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

Re: Coastal Commission Comments on Seaport Village Redevelopment

Dear Chair Malcom and Commissioners:

Thank you for the opportunity to comment on the Seaport Village Redevelopment Project which includes redevelopment of Seaport Village, Embarcadero Marina Park South, Ruocco Park, G Street Mole, and Tuna Harbor. Since 2018, Coastal Commission (Commission) staff have met four times with staff from 1HWY1 (developer) and the San Diego Unified Port District (Port) to discuss the proposed project and provide verbal comments and suggestions. Staff have not previously provided written comments, as we understand that the project is still in the conceptual stage and undergoing revisions. However, we believe that enough of the project elements have been consistent that our comments are now timely. We greatly appreciate Port staff's coordination efforts as well as various project design modifications that have been made over the last several years in response to our input. However, there are larger, more fundamental concerns with the overall concept that will need to be addressed before the project could be found consistent with the Coastal Act and we therefore recommend that the project be redesigned to retain the existing mix of lower cost visitor and recreational facilities at Seaport Village and substantially reduce the bulk and scale of the overall proposal.

Since it opened in 1980, Seaport Village has consistently been a favorite San Diego shorefront destination. It houses more than 60 shops and eateries, art galleries, and a century old carousel. There are views of the water from throughout the development. It is within easy walking distance of the cruise ship terminal, the convention center, the Gaslamp District, hotels, residential complexes, and several mass transit facilities, making it an ideal destination for both visitors and residents. Recent initiatives by the Port have energized Seaport Village with programs for live music and other entertainment. Any given day or evening throughout the year sees a lively mix of people exploring the stores, dining, enjoying free live entertainment, and strolling along the waterfront boardwalk. The popular Saturday open-air seafood market provides an opportunity for local fishers to sell their catch directly to the public. In a recent staff report, Port staff identified that the village has hosted nine million visitors

since 2018 and concluded that "...the District has successfully transformed Seaport Village into a vibrant and prosperous waterfront destination with new and exciting offerings for locals and visitors."¹

By any measure, Seaport Village is a thriving, successful operation. Some key components to the success of Seaport Village are the large number and mix of different retail and food opportunities provided in small, ground-level, pedestrian-scale buildings intermixed with passive space, seating areas, landscaping, a mix of sunny and shaded areas, and human-scale walkways that wind throughout the village. These characteristics allow and encourage the public to wander around the site and enjoy being adjacent to the San Diego Bay for little or no cost or take advantage of options from casual walk-up window food service to higher end bay view dining. Public reviews of Seaport Village on Google and Tripadvisor consistently mention walking and taking in the beautiful bay views.

The proposed redevelopment would completely transform the project site, including Seaport Village. Four large "blocks" of development would replace the village and include skyscrapers varying in height from 200- to 500-ft. tall, effectively changing the existing village into a large-scale urban development center. The site, which now consists almost entirely of low- or no- cost visitor serving development, would or may include an office campus, educational facilities, event center, observation tower, concert venue, and gyms and fitness studios in addition to restaurants, retail, and approximately 2,000 hotel rooms spread across seven buildings. The conversion of lower-cost visitor serving facilities to high-cost facilities is a barrier to access for those with limited income and contributes to increased coastal inequality, an important factor when considering environmental justice. The size and scale of the proposed development would transform the character of the area from a unique, lively space that includes small shops with eclectic designs, water features, winding passageways, and multiple views of the water to several large building masses, uses which cater to specific user groups instead of the broader public, fewer public walkways, skyscrapers that would cast shadows on these otherwise sunny locations, and a reduced visual and physical connection to the bay.

It is useful to note the differences in public use and engagement in the area between Seaport Village and the Hilton San Diego Bayfront. Commission staff have made multiple visits to the South Embarcadero boardwalk, including on weekends during major conventions, and the South Embarcadero promenade is highly underutilized compared to the Seaport Village area, because the inland uses abutting the promenade consist largely of "back of house" uses adjacent to hotel towers and the convention center. The walkways adjacent to Sally's restaurant and the Marriott hotel provide passageways to the promenade from

¹October 11, 2022, Port Board Meeting: staff report for agenda item no. 21.

Harbor Drive, but receive little pedestrian traffic, as they are bordered by tall hotels and have no commercial or other activating uses. The Marina Terrace located between the promenade and the Marriott hotel was approved as a space to “enhance and activate public access in the South Embarcadero” with modular furniture such as public benches, tables, and outside shade structures, with vertical pedestrian linkages between the terrace and promenade, but has now been fenced off from public use and is an empty plaza without any public amenities. South of the Marriott, the inland side of the promenade consists of parking lots not available to the public, and restrooms open only to marina users. There are no benches, shade trees or public or commercial recreational facilities. There are a limited number of benches provided on the portion of the promenade adjacent to the back of the convention center parking lots, as well as a harbor excursion building and a public restroom. However, the existing ground level waterfront grassy park behind the convention center is an amenity that is typically completely unused by the public because it has no shade trees, paths, benches, tables, or other facilities.

Urban areas depend on human-scale buildings, paths, pedestrian amenities, and a range of visitor-serving uses to draw people to the waterfront, and the proposed “mega-project” with 200 - 500 foot high buildings including hotel towers, offices, an event center, yacht club, is unlikely to provide these conditions. The bulk and scale of the proposed development is in conflict with the public access and recreation policies of the Coastal Act and should be substantially reduced to a scale similar to the existing development in order to be found consistent with the Coastal Act. Specifically, Coastal Act Section 30213 requires lower cost visitor and recreational facilities to be protected, encouraged, and, where feasible, provided. Section 30210 requires maximum access to be provided and Section 30211 prohibits development from interfering with the public’s right to access the sea. Finally, Section 30604 and the Commission’s Environmental Justice Policy allows the Commission to consider environmental justice in its decisions. In this case, staff believe that any redesign of the area should mirror and recreate the village design of the existing Seaport Village by retaining the current mix of lower cost visitor and recreational facilities and dramatically reducing the bulk and scale of the proposed development.

Additional comments on specific aspects of the proposed development are provided below.

Ruocco Park. The current design also proposes to “relocate” the existing grassy Ruocco Park to the site of the existing Embarcadero Marina Park North. This is something of a misnomer, as there is already a grassy park in this location. We understand that some believe Ruocco Park does not attract the level of public use that was intended when it was installed. The original design for Ruocco Park included a mix of plaza and grass with winding trails and benches. However, Ruocco Park was eventually constructed as an open grassy space without shade

trees or benches so as to be suitable for activities and events; at that, it appears to be very successful, hosting a regular Saturday market, food festivals, movies, public agency events, and music festivals. It also provides the last view of the bay from South Harbor Drive until past the Convention Center. Removal of this free recreational space and visual access point and replacement with a 320 ft. tall “Blue Tech Innovation Center” would adversely impact public access, recreation, and views.

Recreational Open Space Accounting. While the staff report for the July 21 Special Port Board meeting on the subject project indicates that recreational open space has increased from 14.8 acres to 16 acres, it is unclear whether this area has been calculated correctly. For example, the most recent presentation provided to our office on June 6, 2022, identified a boating pier with a restaurant as recreational open space; however, neither development is consistent with our understanding of that land use category. In addition, streets should not be included in the recreation open space calculations.

Visual Resources. The proposed conversion of open bay to marinas places new obstacles within important open water views. Reduction to these marina areas should be evaluated to maintain open water views. The height of the Spire building and other tall skyscrapers are also incompatible with the existing character at the village, block views of the bay, and should be reconsidered. We have requested information from Port staff to better understand how existing views would change including identifying how raising the site to address the threat of sea level rise would impact views from inland locations.

Sea Level Rise. A detailed sea level rise analysis should be conducted, and the developer should identify how the project has been designed to address sea level rise over a 75-year economic life horizon based on that analysis.

Cantilevering Promenade. The project proposes to expand the promenade by cantilevering it over the shoreline riprap. Staff cannot support extending the promenade over the shoreline in this context to increase the adjacent development footprint. While as proposed, the cantilever would initially cover existing riprap, as sea levels rise, it will eventually be located over the water, and the cantilevered promenade could shade potential eelgrass habitat and reduce foraging base for shorebirds. In addition, sea level rise is likely to result in an increased risk of flooding of shoreline structures, and potentially the need for additional armoring. Instead of putting the public amenities at first risk, new development should be designed to allow room for public amenities to move inland as needed over time.

Seismic Fault Zone. Additional information is needed to support the setback variance of 25-ft. from the fault zone, especially given the proposed fill to raise site, as it does not appear that the entire site was included in the fault investigation and some of the assumptions used to make the argument for the

reduced setback are unclear. We have raised these technical issues with Port staff previously and would be happy to discuss in further detail. In addition to fault rupture, evaluation of ground shaking and liquefaction should also be evaluated.

Cut and Fill. Section 30233 of the Coastal Act permits the diking, filling, and dredging of coastal waters where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects. The Section further limits dredging and fill to only to certain permitted uses including new or expanded port, and coastal-dependent industrial facilities, vessel berthing and mooring areas, and boat launching ramps; new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities; and similar resource dependent activities. The proposed project includes several components in possible conflict with this requirement. Specifically, the proposed beach and overlook would require dredging and fill of bay waters, which raises questions as to consistency with uses allowed under Section 30233. In addition, while new public recreational piers are permitted, they do have environmental impacts, and under the Coastal Act, cannot be constructed just for the purpose of supporting a commercial recreational use, such as a restaurant. Restaurants are a visitor-serving use, but they can and must be accommodated without the impacts associated with fill. It is also unclear if the proposed wetland would directly impact existing habitat such as eelgrass or include non-native species that could indirectly impact nearby biological resources.

Protection of Commercial Fishing. Section 30234 of the Coastal Act requires commercial fishing industries “to be protected and, where feasible, upgraded. Existing commercial fishing harbor space shall not be reduced unless the demand for those facilities no longer exist or adequate substitute space has been provided. Recreational boating facilities shall be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.” The current proposal would drastically increase foot, car, and boat traffic at and around Tuna Harbor which could interfere with commercial fishing operations. Since access to and from G St. Mole is already constrained, the ability of fishers to easily access the site should not be further obstructed by allowing a variety of uses or intensifying the mole beyond its current operations. It is also unclear how commercial fishing acreage has been calculated and why the entire 5.4 acres identified in the certified PMP is not proposed to be provided. The proposed elevated platform fisherman’s market would significantly block existing water views, and does not appear to be a feasible way to accommodate both commercial retail and commercial fishing requirements.

Public Trust. Several of the uses proposed seem to be inconsistent with the Public Trust Doctrine including office and some blue tech uses such as fashion and art, education center, and gym and fitness studios. In addition, as described

above, these are not visitor-serving uses that complement a waterfront site that should be available and attractive to the general public.

Inclusion in the Port Master Plan Update. Implementation of the proposed project would require a Port Master Plan Amendment (PMPA) to modify the land and water uses, text, and project list to include the proposed redevelopment plans. However, the proposed Seaport Village redevelopment is no longer included in the draft comprehensive Port Master Plan Update (PMPU). This project is of broad interest to the public and Commission staff and would have significant impacts to the adjacent Embarcadero and downtown areas if implemented. As such, it is unclear how the PMPU will be able to adequately address planning in this area without the inclusion of policies that address this future project. To avoid piecemealing, we recommend that this project be reincorporated into the PMPU.

Thank you again for the opportunity to review and comment on the proposed project. We know the Port District is committed to protecting and creating active, public waterfront spaces. We hope that examining both the successful and the less-successful developments on the Embarcadero will be helpful to the Board and result in a project that maintains the vitality of Seaport Village.

Please note that these comments have been submitted on the part of staff and the Commission itself would be the ultimate decision-making body. These comments are based on the information that has been presented to us thus far and are not binding; the Commission and staff may have further comments or identify additional issues over time. We look forward to continuing our coordination with Port staff on this project. If you have any questions or require further clarification, please do not hesitate to contact me at Melody.Lasiter@coastal.ca.gov.

Sincerely,



Melody Lasiter
Coastal Program Analyst
California Coastal Commission

CC (via email):

Jack Ainsworth, California Coastal Commission
Karl Schwing, California Coastal Commission
Diana Lilly, California Coastal Commission
Kanani Leslie, California Coastal Commission

October 31, 2022
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Lesley Nishihira, San Diego Unified Port District
Anna Buzaitis, San Diego Unified Port District

EXHIBIT C

GOVERNANCE OF SAN DIEGO BAY AND ITS TIDAL LANDS AND REGIONS

SUMMARY

The 2022/2023 Grand Jury (Grand Jury) undertook an investigation of the San Diego Unified Port District (Port District), the County of San Diego and the five Port Cities of Chula Vista, Imperial Beach, Coronado, San Diego and National City to assess how these organizations interact around the governance of San Diego Bay tidal lands and resources. This assessment was undertaken in response to a perception that the Port of San Diego and its unelected seven-member Board of Commissioners is not accountable to either the elected officials or the electorate of its five member cities or the County of San Diego, especially in the planning, development and implementation of projects in those cities. The Port District is an independent governmental agency created by the State of California and approved by voters in Chula Vista, Coronado,¹ Imperial Beach, National City and San Diego in 1962 to manage the tidelands and submerged lands of San Diego Bay.

This report will briefly review previous Grand Jury reports on the Port District and look at its creation, governance, relation to State agencies, and funding. The Grand Jury will also investigate conflicts and issues surrounding the Port District's operations in regard to the equitable representation of residents of the five Port Cities and their governing bodies, as well as the residents of the County of San Diego and its residents. Finally, the Grand Jury will also discuss the Port District's planning process and how its proposed projects have affected the five Port Cities, the County of San Diego and residents of these regions.

The report's recommendations include increasing the Port District's public participation and transparency by:

- Scheduling regular updates and presentations at publicly noticed open meetings of the city councils of its member cities;
- Simplification of the Port Master Plans around the Port District Planning Districts falling within each of the Port City's jurisdictional boundaries and three of the County's supervisorial districts;
- Submitting the Port Master Plan, and all future updates and amendments, to the relevant city council and County Supervisor for discussion and ratification;
- Lobbying the California State Legislature to introduce legislation enabling the County of San Diego to assume oversight of the activities of the San Diego Unified Port District and decisions of the Board of Port Commissioners, and share in the Port District's duty as guardian of the public trust in the tidal and submerged lands of San Diego Bay;
- Depending on the outcome of the legislation recommended above, exploring an alternate form of governance for the Port District, with participation from the County Board of Supervisors and elected officials of the five member cities;
- Encourage a limit of two four-year terms that a Port Commissioner can serve;
- Include staff from each of the five cities on each of the Port District's advisory committees; and
- Post meeting minutes and agendas of each of the Port District's advisory committees on-line.

¹ While the 1962 vote to approve creation of the Port involved tallying the combined votes of the five port cities, voters in the City of Coronado voted against Proposition D by a margin of 3 to 1.

INTRODUCTION

“We can do whatever we want, right?”² The words were spoken – and repeated several times-- by a commissioner of the San Diego Unified Port District during a public meeting of the Board of Port Commissioners. A Commissioner went on to describe what was believed to be “the absolute sovereignty of this board to make any decision that we want from this dais at any time.”³ The comment was made during a discussion of the changes proposed for the Port District’s policy on Capital Improvement Projects, and while made in the specific context of achieving greater flexibility for capital project funding, inadvertently characterized the broad authority and perceived nature of this organization – led by a seven-member unelected board of commissioners, largely autonomous, self-governing, self-funded and independent of oversight by local elected officials.

The 2022-23 San Diego County Grand Jury (Grand Jury) is not alone in its concern over the lack of oversight, transparency and accountability of an organization with such far reaching power and jurisdiction. Over the last several decades, two separate San Diego County Grand Juries have reached similar conclusions, the earliest being the 1986-87 Grand Jury and more recently the 1997-98 Grand Jury.

The 1986-87 Grand Jury Report concluded, “An enterprise of the scope and importance of the Port District must include a strong concern for community relations, public input and accountability ... yet, in the public’s mind, it conducts itself as does a private company, responsible only to its stockholders. The fact is that it is a public corporation, guarding a public trust and spending public money.”⁴ Similarly, the synopsis of the 1997-98 Grand Jury report concluded that the seven commissioners of the Port District “are viewed as operating with almost unlimited discretion regarding how they spend money with minimal accountability. Commissioners are not required to gain approval for their actions from the voting public or even from the city councils which appoint them.”⁵

In practice, the Port District requires a fiduciary oath of its commissioners to act in the best interests of the Port District, and in its role as guardian of the public trust, to the benefit of the residents of California. As appointees of one of five Port District cities, each commissioner must also represent the perspectives of the city appointing them as commissioner.

In representing the *interests* of the Port District but only the *perspectives* of the port cities appointing them, a dichotomy is created. The dichotomy allows port commissioners to manage the valuable resources of San Diego Bay in a unified, comprehensive manner but limits elected governments of the Port Cities and their constituents in making their views known or in determining the actions that are in their best interests. As a result, this dichotomy leads not only to voter disenfranchisement, but to a disconnection between elected municipal governments and their constituents, who must subordinate and subject their interests to the interpretations of the unelected Board of Port Commissioners.

² San Diego Unified Port District Port Commissioners Meeting, September 13, 2022, video recording @ 1:14:25. [Board of Port Commissioners on 2022-09-13 1:00 PM \(granicus.com\)](#)

³ San Diego Unified Port District Port Commissioners Meeting, September 13, 2022, video recording @ 1:15:50. [Board of Port Commissioners on 2022-09-13 1:00 PM \(granicus.com\)](#)

⁴ 1986-87 San Diego County Grand Jury, The County of San Diego and The San Diego Unified Port District Report No. 15, June 30, 1987, page 5-6.

⁵ 1997-98 San Diego County Grand Jury, The San Diego Unified Port District: It’s Time for Taxpayers and Citizens to Have a Direct Say, Final Report, June 30, 1998, page 103.

Severe as these assessments are, they are rooted in the San Diego Unified Port District Act (Port Act)⁶, enacted by the California Legislature in 1962, through which the State of California delegates the power and responsibility for management of the tidelands and submerged lands of San Diego Bay. The Port Act delegates these powers to the Port District from the California State Lands Commission (SLC) as guardian of these tidelands and submerged lands through the public trust doctrine. This doctrine “provides that tide and submerged lands and the beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California.”⁷ The Port District acts in this capacity as an independent governmental special district without direct oversight of its seven commissioners by other local city or county agencies. The unsalaried commissioners are appointed to four-year terms by city councils of each of the five cities that border San Diego Bay, (San Diego, Chula Vista, Coronado, Imperial Beach, and National City). While the commissioners must reside in the city that appointed them, they can serve an unlimited number of four-year terms, except in the City of Coronado which limits its port commissioners to two terms. Port commissioners may be recalled by majority vote of the city council which appointed them. Other than these limitations, no oversight by local governmental bodies is authorized by the Port Act, and decisions by the Board of Port Commissioners are not subject to approval, veto or appeal by city councils or voters of the five Port Cities or the county.^{8,9}

Democratic theory equates responsible government with popular participation in and control over policy formulation, political equality for the individual, deciding divisions of opinion by majority rule with complete freedom of discussion, and periodically holding free and meaningful elections.¹⁰ Yet by virtue of the legislation that created the San Diego Unified Port District, values such as these that citizens have come to expect in our governmental legislative, regulatory and judicial institutions have not been embraced.

METHODOLOGY

The Grand Jury conducted interviews and requested information from municipal and county governmental organizations affected by the Port Act.

The Grand Jury researched and reviewed these documents:

- California Harbors and Navigation Code, Appendix I, also known as the San Diego Unified Port District Act (Port Act)
- The 1986-1987 Grand Jury report: “The County of San Diego and the San Diego Unified Port District, Report No. 15” and responses
- The 1997-1998 Grand Jury report: “The San Diego Unified Port District: It’s Time for Taxpayers and Citizens to Have a Direct Say” and responses from the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City
- Meeting Minutes and Agendas from the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City as well as the San Diego Unified Port District
- Historical records and articles relating to formation of the Port District (per footnotes)
- Grand Jury Reports on Ports in other California Counties

⁶ California Harbors and Navigation Code, Appendix 1, San Diego Port District Act, Document no. 70987, filed March 3, 2020, Office of the District Clerk.

⁷ <https://www.slc.ca.gov/public-engagement/>

⁸ California Harbors and Navigation Code, Appendix 1, San Diego Port District Act

⁹ The City of Coronado limits the number of terms served by Port Commissioners to two terms

¹⁰ Bachrach, Peter. The Theory of Democratic Elitism (Chicago, 1962), p. 94.

- San Diego Unified Port District Website: www.portofsandiego.org
- Detailed electronic maps showing specific boundaries and areas within the San Diego Unified Port District

DISCUSSION

Creation of the San Diego Unified Port District

When California became a state in 1850, it acquired title to navigable waterways as trustee for the protection of public lands, streams, lakes, marshlands, and tidelands. This is referred to as common law public trust doctrine. Per the State of California State Lands Commission (SLC), “The public’s right to use California’s waterways for navigation, fishing, boating, natural habitat protection and other water-oriented activities is protected by the Common Law doctrine of the Public Trust.” Historically, the Public Trust has referred to the basic right of the public to use its waterways to engage in “commerce, navigation, and fisheries.” The SLC further states that the “Public Trust provides that tide and submerged lands and the beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California.”¹¹

San Diego Unified Port District: Unique Among California Ports

The San Diego Unified Port District is unique among California’s 12 ports in its establishment by state law. According to the Port Act, this was necessary because of the geography and other special characteristics of the locale:

It is hereby declared to be the policy of the State of California to develop the harbors and ports of this State for multiple purpose use for the benefit of the people. A necessity exists within San Diego County for such development. Because of the several separate cities and unincorporated populated areas in the area hereinafter described, only a specially created district can operate effectively in developing the harbors and port facilities. Because of the unique problems presented by this area, and the facts and circumstance relative to the development of harbor and port facilities, the adoption of a special act and the creation of a special district is required.¹²

With passage of the enabling Proposition D in November 1962, the SLC granted regulation and control of the tidelands and submerged lands of San Diego Bay to the newly created Port District. Following passage of San Diego County’s Proposition D, the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City were to transfer the management of state tidal and submerged lands in San Diego Bay to the jurisdiction of a newly formed San Diego Unified Port District.

Proposition D Controversy

Passage of Proposition D was not obtained without controversy. Prior to the election, the city councils of Coronado, Imperial Beach and Chula Vista opposed formation of the Port District. Supporters of the proposition focused on the economic benefits made possible by the combined efforts of Port Cities on such projects as construction of South Bay channel and the resulting job growth from expansion of industrial development and maritime activities. Opponents of the proposition focused primarily on the potential control wielded by an unelected board of port commissioners who would have the power to

¹¹ <https://www.slc.ca.gov/public-engagement/>

¹² California Harbors and Navigation Code, Appendix 1, San Diego Port District Act, §2, pg 7.

<https://pantheonstorage.blob.core.windows.net/administration/San-Diego-Unified-Port-District-Act.pdf>, March 3, 2020.

issue bonds, levy taxes and develop local tideland resources without input from individual Port Cities. Another concern was the unequal number of commissioners allocated to each of the Port Cities; the City of San Diego would get three commissioners while each of the remaining four Port Cities would get one commissioner each, potentially allowing San Diego to exert dominance over Port Commission resources and priorities.¹³

A study commissioned by the Coronado Chamber of Commerce three months prior to the 1962 election suggested that instead of the simple majority required by the Port Act to constitute a quorum for Commissioners to conduct business, the act be amended to require a quorum of at least two commissioners from the four Port Cities of Coronado, Imperial Beach, Chula Vista and National City. An additional change in the make-up of the port commission was also suggested to include only two San Diego Commissioners, one commissioner from San Diego County, and one each from the four other Port Cities, allowing appointment of a commissioner representing interests of unincorporated bay front areas of the county.¹⁴

While Proposition D was approved by a majority of voters in the cities of San Diego, Chula Vista, Imperial Beach and National City, the proposition was defeated in Coronado by a 3 to 1 margin. An unsuccessful lawsuit filed by Coronado, Imperial Beach and Chula Vista attempted to make acceptance of membership in the Port District optional, resulting in a temporary delay, but formation of the Port District was completed on December 18, 1963, following certification of the votes cast for Proposition D in the November 6, 1962 election.¹⁵

Port District Funding of Operations

Port District operations are financed primarily through leases and fees generated through its real estate operations, parking, harbor police and other services or fees provided to public or commercial customers of the Port District. As a landlord, the Port District generates most of its revenue from tenants and subtenants who pay rent or fees to conduct business on tidelands. The list includes hotels, restaurants, retail shops, marinas, landings, yacht clubs, shipyards, cargo operators, aerospace firms and cruise ships. While allowed by the Port Act to do so, the Port District does not collect taxes. Various provisions of the Port Act also allow the Port District to issue general obligation, revenue bonds or levy property or other forms of taxation.

In the Fiscal Year ending June 30, 2022, over \$90 million, or 55% of the Port District's operating revenue were generated by leases and other Real Estate revenue, while parking, maritime and other fees provided another \$77 million in operating revenue, or approximately 45% of operating revenues.

Like commercial business entities that are dependent on revenue streams to remain viable, economic activities that support the Port District's operations have also represented a significant source of economic risk. Recently, impacts of the COVID-19 pandemic on Port District operations severely limited most revenue generating Port District activities, resulting in a \$19.3 million loss in the fiscal year ending June 2021 and prompting one Port Commissioner to consider the need to "analyze and

¹³ San Diego County Registrar of Voters, Arguments for and Against Proposition D, San Diego County General Election, November 7, 1962.

¹⁴ The Wyatt Report: Here's Text of Advisory on United Port, San Diego Evening Tribune, August 22, 1962, A14-A15.

¹⁵ Ibid.

understand options for potential taxation.”¹⁶ However, the Port District qualified for \$29 million in stimulus fund assistance in the following year, leading to the generation of a \$68.3 million income in the fiscal year ending June 2022.¹⁷

While these tidelands-associated revenue streams allow the Port District to operate free of budget constraints typical of other state or local government agencies, the need to generate such revenue can lead to a significant source of bias in the deliberations of Port Commissioners and obscure motives and objectives of staff at all levels of the organization. In a recent informal briefing by the Port District, a sizeable, expected return on investment from a proposed project was praised as a justification for the large public investment of tax dollars needed to fund the project, with less emphasis placed on the project’s other characteristics.

Balanced Interests?

The Grand Jury investigation revealed many concerns by the Port District’s stakeholders. Smaller Port Cities reported a lack of follow through or investment in their cities proportional to the revenue generated for the Port District by tidelands activities occurring in their municipal boundaries. Others cite a lack of prioritization for projects not associated with lucrative leasing contracts or other significant revenue sources. The Grand Jury acknowledges such views, and sees the dilemma faced by the Port District in balancing the many diverse and potentially competing municipal, state and public interests it must manage as both nuanced and complex in ways less understood by the public in general, and in some cases by the city and county governments it serves.

How does a port commissioner balance or prioritize the needs or interests of separate communities, neighborhoods or municipalities against one another or against the interests of the Port District itself? As the adage goes, actions speak louder than words; perhaps recent activities by the Port District and votes by the Board of Port Commissioners can help to answer such questions.

Chula Vista Hotel and Convention Center

The key piece of the Chula Vista Bayfront Master Plan is the Gaylord Pacific Resort and Convention Center, a \$1.1 billion project that broke ground in 2022 for a 1,600-room hotel alongside a 275,000 square foot convention center on a 36.5-acre site. In 2012, after almost a decade of planning, the City of Chula Vista and the Port District received approval from the California Coastal Commission for this project allowing for the conversion of 535 acres of vacant and industrial property into a Resort Hotel and Convention Center, RV Park, and parking structure. An existing motel, also part of the project sits on land adjacent to Port District boundaries.

The project is important because both the City of Chula Vista and the Port District collaborated on the Master Plan and were involved in seeking its approval, and both parties consider the development project a great success. The Grand Jury investigation revealed an alignment of interests of both parties centered on the regional economic benefits from development of these underused and undervalued tideland assets. Both parties were fully engaged, fully committed and enjoyed the support of the community during all phases of the project, from the initial master plan approval to selection of the

¹⁶ Jennifer Van Grove, San Diego’s Bayfront is Controlled by a Little-understood Agency With Power That Will Be Tested in The New Year, February 5, 2021, page 13; [San Diego’s bayfront is controlled by a little-understood agency with power that will be tested in new year - The San Diego Union-Tribune \(sandiegouniontribune.com\)](https://www.sandiegouniontribune.com/story/news/politics/2021/02/05/san-diego-bayfront-controlled-little-understood-agency-power/7048114002/)

¹⁷ San Diego Unified Port District, Annual Comprehensive Financial Report, Fiscal Years Ended June 30 2022 and 2021. Page 48, [CAFR-2022 \(window https://pantheonstorage.blob.core.windows.net/administration/2022-ACFR-final.pdf\)](https://pantheonstorage.blob.core.windows.net/administration/2022-ACFR-final.pdf)

operator and developer, as well as the formation of multiple financing agreements. Both parties are to share in the public infrastructure costs expected to approach \$370 million, but also retain shares of excess revenues.

Dole Fruit Company Contract

First signed in 2002, this agreement leased portions of San Diego's 10th Avenue terminal to Dole Fruit Company for imports of fruit into the U.S. west coast market. Primary operations centered on long-haul trucking operations delivering fruit to many sites in the Southern California region, as well as short-haul trucking operations to sites in San Diego County. The short-haul local operations involved many more trips by smaller-sized trucks and were perceived to create a more significant source of air pollution than long-haul operations which involved larger loads and fewer trips on semi-trailer trucks.

Following negotiation for a 25-year lease extension through 2036, terms were not released until three days prior to the proposal's approval by the Board of Port Commissioners on August 14, 2012. The agreement not only extended Dole's lease, but also moved its short-haul trucking operation out of San Diego's Barrio Logan neighborhood. This move was perceived to reduce pollution in an area already affected by significant pollution from the nearby freeway and industrial maritime and manufacturing activities. However, the short-haul trucking operation was only relocated to a location in the neighboring city of National City, thereby increasing pollution that potentially affected the health and well-being of nearby residents of that city.

The actions taken by the Port District in approving the Dole Fruit Company lease, reduced potential health hazards for residents of San Diego's Barrio Logan neighborhood at the expense of the health of National City residents.

Mitsubishi Cement Factory

The Port District recently considered an application by Mitsubishi Cement Corporation (Mitsubishi) for a Coastal Development Permit (CDP) that would allow Mitsubishi to construct and operate a cement import, storage, loading and distribution facility within the Tenth Avenue Marine Terminal.¹⁸

Beginning in 2015, Mitsubishi had been negotiating with the Port District to ship cement-making materials to the Port-operated Tenth Avenue Marine Terminal warehouse for storage and shipment to Southern California construction sites. Nearby residents perceived the project would have introduced a new significant source of pollution to surrounding neighborhoods already experiencing pollution from maritime and industrial activities and freeways in the area.

While the Port District has approved a Maritime Clean Air Strategy (MCAS) to replace diesel fuel burning trucks with electric vehicles by 2030, the technology supporting zero emission electric power for vehicles the size of cement trucks was not yet available, and the Port District announced in a press release that negotiations with Mitsubishi "were not moving forward," but expressed a willingness to re-consider the proposal, "should the day come when they want to re-open negotiations."¹⁹

¹⁸ San Diego Unified Port District, Ordinance 2936, February 25, 2019, <https://pantheonstorage.blob.core.windows.net/administration/Ordinance-No-2936.pdf>

¹⁹ San Diego Unified Port District, Port of San Diego Issues Statement on Mitsubishi Cement Proposal, General Press Release, February 1, 2023, <https://www.portofsandiego.org/press-releases/general-press-releases/port-san-diego-issues-statement-mitsubishi-cement-proposal>

The process for evaluation of such projects by the Port District is well established and logical in its progression from the proposal, preliminary approval, planning, development, environmental and coastal commission review phases. Yet consideration of the project by a local elected governmental entity might have given greater priority to the health concerns of community members and resulted in a more equitable balance between economic and health concerns earlier in the project's evaluation process.

Coronado Cottages at the Cays

Recent decisions by the Port District surrounding the proposed Cottages at the Cays Project on Coronado's North Grand Caribe Isle exemplify the disconnection and disenfranchisement of the voting public and elected governmental bodies resulting from the Port District's independence from local governmental oversight. The Port District had considered a development application from a lessee of property on Coronado's North Grand Caribe Island to build 41 two-bedroom short stay units limited to six guests per unit. In a letter addressed to the Board of Port Commissioners dated December 23, 2022, the Mayor of Coronado expressed strong opposition to the project, stating, "this project does not reflect the will of the community or the Coronado City Council." Specific objections to the project cited in the letter included:²⁰

- A unanimous vote by the Coronado City Council in opposition to the proposed project.
- Opposition from community groups such as the Coronado Cays Homeowner's Association and community members who provided petitions in opposition.
- Reversal of the Port District policy refined in the 2021 Port Master Plan Update (PMPU) to "expressly disallow the development of more hotel rooms and to convert the land use designation to Recreational Open Space, which preserves the area for environmental preservation and complete public access."
- The project would create "preferential access to those that can afford what will most likely be costly room rates similar to other hotel rates in the area."
- The project contravenes the PMPU commitment for the "protection and management of natural resources that best reflect environmental stewardship for present and future generations", on property expected to be highly vulnerable to sea level rise in the decades to come.
- The project would "create a hotel use which is not compatible with the surrounding residential area...", posing significant traffic impacts and safety concerns on the community of approximately 1,200 homes which can only be accessed through a single entrance.

Due to policies governing the rights of lessees, The Port District was obligated to present this development proposal for a vote to the Board of Port Commissioners. In addition, the Port District viewed the land use designation of Recreational Open Space for the parcel reflected in the 2021 Port Master Plan Update as being unbinding and preliminary, pending approval by the California Coastal Commission. Had it been approved, this land use would have represented a land use inconsistent with the Coronado Cays development proposal which required a Commercial Open Space designation currently in place for the property. On February 14, 2023, the Board of Port Commissioners approved the Cottages at the Cays Project by a vote of 4-3 in favor of initiating a California Environmental Quality Act (CEQA) review, followed by consideration of a Port Master Plan Amendment to add the project to the Port Master Plan, prior to application by the developer for a coastal development permit.

²⁰ Mayor Richard Bailey, Letter of Opposition to Cottages at the Cays Development Project Proposal, December 23, 2022.

Who Watches the Watchers? California Coastal Commission and State Lands Commission

In response to the Grand Jury's concern that the Port District is largely autonomous, self-governing, self-funded and independent of oversight by local elected officials, the Port District views the oversight of its decisions and activities provided by the California State Lands Commission (SLC) and the California Coastal Commission as more than adequate.

The SLC oversight is to ensure Port District activities are consistent with the public trust doctrine. In this role the Port District consults with the SLC on an as needed basis, to seek clarification, advice and guidance in matters affecting the Port District's role as guardian of the public trust for San Diego Bay. If determined to be inconsistent with this doctrine, the SLC could direct the Port District to stop, discuss and resolve the issues causing such concern.

In addition to the State Lands Commission and California Coastal Commission approvals, the CEQA requires that "state and local agencies consider environmental protection in regulating public and private activities and should not approve projects for which there exist feasible and environmentally superior mitigation measures or alternatives." In the absence of any documented exemptions provided for in the act, CEQA requires the publication of detailed Environmental Impact Reports for projects approved by the Port District for public review and comment.²¹

Requirements of the California Coastal Commission and CEQA also affect Port District activities relating to the approval of the Port Master Plan, Master Plan Updates or Amendments. In addition, Port District approved projects often require a coastal development permit from the California Coastal Commission.

While members of port city councils or San Diego County Supervisors have no direct oversight of Port District activities or ability to appeal decisions of the Board of Port Commissioners, the Port District indicated the existence of multiple venues to make their views known, and commissioners as a whole place a very high value on the desires of member cities. In addition, the public has access to most of the public meetings of the SLC, California Coastal Commission and also to regular meetings of the Board of Port Commissioners, as well as access to the public websites of these organizations. Also, decisions of the three-member California Coastal Commission can be appealed with the agreement of two of three commissioners to first hear the appeal and then vote to reverse their decision.

Public Participation and the Port District of San Diego

The Grand Jury noted meetings of the Board of Commissioners are posted on the Port District's website and that public participation is allowed. Meeting agendas are posted, and minutes are made available. In addition, the Board of Port Commissioner meetings are recorded, and recordings are available for public viewing. The Port District's policy regarding public participation is spelled out in Board of Port Commissioners Policy 060 which was adopted June 10, 2008.²²

The Board of Port Commissioners also formed several subcommittees, forums, or working groups to solicit public input in the Board's decision-making process. "In setting policies for our dynamic waterfront, the Port District of San Diego seeks to make decisions that are in the public interest. To that end, the Board of Port Commissioners has formed various committees, forums and working

²¹ California Environmental Quality Act, Chapter 1: Policy (archive.org)

²² BPC-Policy-No-060-Public-Participation-in-Board-of-Port-Commissioners-Board-Meetings.pdf.
<https://pantheonstorage.blob.core.windows.net/administration/>

groups to discuss current issues. These meetings are an important tool for gathering information, exploring ideas, and obtaining feedback for use in decision making by the Board.”²³

These groups include the Accessibility Advisory Committee; Arts, Culture, and Design Committee; Audit Oversight Committee; Bayfront Cultural and Design Committee Chula Vista; Chula Vista Bayfront Facilities Financing Authority; Environmental Advisory Committee; Maritime Forum; San Diego Harbor Safety Committee; Wildlife Advisory Group; and World Trade Center San Diego.

Researching information available on the Port District’s website, the Grand Jury notes that agendas and meeting minutes for some but not all the advisory committees are available. The screenshot below documenting the information concerning the Port’s Environmental Advisory Committee for all years available.²⁴

All Meetings

List View **Calendar View**

Search: All Years Environmental Advisory Committee ☐ notes ☐ closed captions

10 records

Name	Meeting Date	Meeting Time	Meeting Location	Meeting Details	Agenda	Accessible Agenda	Agenda Packet	Minutes	Accessible Minutes	Video	eComment
Environmental Advisory Committee	9/14/2022	9:30 AM	Virtual Meeting REVISED AGENDA	Meeting details	Agenda	Accessible Agenda	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	6/8/2022	9:30 AM	Virtual Meeting	Meeting details	Agenda	Accessible Agenda	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	3/16/2022	9:00 AM	Virtual Meeting	Meeting details	Agenda	Accessible Agenda	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	12/1/2021	9:30 AM	Virtual Meeting	Meeting details	Agenda	Accessible Agenda	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	9/22/2021	9:30 AM	Virtual Meeting	Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	6/2/2021	9:30 AM	Virtual Meeting	Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	3/17/2021	9:30 AM	Virtual Meeting	Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	12/2/2020	9:30 AM	Virtual Meeting	Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	9/16/2020	9:30 AM	Virtual Meeting	Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	6/3/2020	9:30 AM	Virtual Meeting	Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available

The Grand Jury notes that only four of the eight meetings had “accessible” agendas, while none of the meetings had minutes posted online. According to the last posted agenda for the Environmental Advisory Committee, the agenda included a discussion with respect to the National City Balanced Plan portion of the proposed updated Master Plan. However, in reviewing the posted membership of the Environmental Advisory Committee there are no staff members listed from National City (nor any of the other Port Cities). This points to a lack of transparency with regards to the coordination of the Port District with the member cities.

²³ <https://www.portofsandiego.org/people/other-public-meetings>

²⁴ <https://portofsandiego.legistar.com/Calendar.aspx>

Master Plan Documents and Updates

Under Section 19 of the Port Act, the Port District was to “draft a master plan for harbor and port improvement and for the use of all of the tidelands and submerged lands which shall be conveyed to the district pursuant to the provisions of this act.” This Port Master Plan was approved by the Board of Port Commissioners in 1980 and later certified by the California Coastal Commission on January 21, 1981.²⁵ Subsequently the Port District approved 41 amendments to the 1980 Master Plan.

In 2019, SB 507 §5.7 was incorporated into the Port Act requiring Port District to “submit to the State Lands Commission a trust lands use plan for trust lands ...describing any proposed development, preservation, or other use of the trust lands.” Section 5.7 goes on to state that the “State Lands Commission, in its sole discretion, may consider whether the submission of the Port Master Plan...meets the requirements of ...a trust lands use plan.”²⁶

Particular confusion exists among Port Cities leaders and residents regarding the provisions Port Master Plan that is periodically updated by the Port District. Much of the confusion is associated with the size and complexity of the Master Plan document itself—the most recent but-still-unapproved-update (2021) is well over 400 pages in length when including appendices, while the public comments alone comprise another 800 pages. As an indicator of the complexity of information contained in the Plan comments alone, the format for the comments received for the 2021 Master Plan Update was an electronic PDF flat file format comprising comments from 10 agencies, 19 organizations, 10 businesses or Port Tenants and individuals from all 10 planning districts. Questioned about how the Port District responded to comments, how the comments were used or acted upon, the Port District asserted that copies of the document were provided for public review and comment and multiple public workshops were held and questionnaires provided to collect public comments.

The plan is categorized into 10 geographical Port planning districts. Despite the fact that these planning districts could be organized around each of the Port Cities within which the smaller planning districts exist, this approach has not been used in the past. However, such an approach could foster greater understanding of these plans by residents and leaders alike while greatly simplifying the review and approval process for each Port city’s Master Plan.

While the Port Act identifies requirements for development of Port Master Plans and Trust Use Plans, the Grand Jury concluded that the Port Act does not preclude the Port Cities or the County of San Diego from requiring ratification by Port Cities or the county of such plans prior to submission to the appropriate state agency for approval. Further, such ratification by each Port City Council or the County Board of Supervisors would allow elected officials to ensure that these plans are in the best interest of their constituents and aligned with plans and objectives of these government bodies.

To that end, the Grand Jury will recommend that Port Cities and County Supervisors of supervisorial districts fronting San Diego Bay be required to ratify all port master plans, master plan updates, master plan amendments or trust use plans for Port District activities occurring within their boundaries; further, that such ratification be required prior to Port District proceeding with submission of such plans for approval by the California Coastal Commission, State Lands Commission or approval of

²⁵ California Harbors and Navigation Code, Appendix 1, San Diego Port District Act §19, San Diego Unified Port District, Document 70987, March 3, 2020, page 15.

²⁶ California Harbors and Navigation Code, Appendix 1, San Diego Port District Act §19, San Diego Unified Port District, Document 70987, March 3, 2020, page 10.

coastal development permits. Finally, once ratified by a Port City or County agency, each Port City's master plan update would become the current Port Master Plan for project planning purposes.

Options: Where to go from here? Port Commissioner Status Reports to City Councils

The recommendations of the 1997-1998 Grand Jury report were directed to the city councils of the five cities affected by the Port District and to the County Board of Supervisors. Recommendation 98-50 to the five city councils were to "create and implement formal policies requiring their port commissioner representatives to report regularly to their respective city councils in a formal manner." The City of San Diego responded to these recommendations saying that policies were already in place governing qualifications for port commissioners as well as formal reporting to the city council. The cities of Coronado and Imperial Beach reported that briefings from their Port Commissioners concerning Port District activities were scheduled as part of each regularly scheduled city council meeting. The City of Chula Vista reported the city council meets with their port commissioner "quarterly, or as often as needed," while National City reported receiving periodic reports from their Port Commissioner on an informal basis.

The current Grand Jury investigated the current practices of the Port Cities in pursuing regular updates in regularly scheduled public forums such as City Council meetings. Communication with Port Commissioners was reported to occur regularly on an informal basis, but confirmation of such informal meetings proved impractical, and such informal meetings do not allow for transparent communications or public comment. As a result, the Grand Jury reviewed readily available public meeting agendas and minutes of the Port City councils during 2022. We discovered the following:

- San Diego: The Grand Jury could not find any minutes or agenda items recognizing that any of its Port Commissioners made presentations regarding Port District activities in public City Council meetings. However, an annual report to the committee on economic development and intergovernmental relations is required by San Diego City Council policy. The most recent report occurred on March 8, 2023.
- Chula Vista: on August 23, 2022, Port Commissioner Moore gave an update of the Chula Vista Bayfront development project at a special City Council meeting.²⁷
- Coronado: According to reviewed minutes and agenda items, a single update from the city's commissioner occurred on April 19, 2022.
- Imperial Beach: According to reviewed minutes and agenda items, only one update took place on January 19, 2022.²⁸
- National City: An agenda item for reports from their commissioner is created for each City Council meeting. The Grand Jury was unable to learn if that was the result of a published council policy.

In view of the information provided through testimony and surveys of public records regarding Port Commissioner reports and briefings to their city councils on the activities of the Port District, the Grand Jury concluded that such reporting in publicly accessible venues such as city council meetings does not take place on a frequent or regular basis. Combined with a preference for informal channels of communication with their appointed representatives, these tendencies call into question whether Port Commissioners and Port City Councils maintain open and transparent relationships.

²⁷ Additional appearance by Port Commissioner Moore occurred on January 11, 2022, for reappointment as Port Commissioner, and on June 7, 2022 to receive a proclamation of Port Commissioner Ann Moore Day.

²⁸ City of Imperial Beach, City Council, Regular Meeting Minutes, January 19, 2022, 6:00 p.m., Virtual Meeting

Re-engagement of Port Cities and County of San Diego

The Grand Jury has concluded that because of the Port District's independence and autonomy from local governmental review or approval of its decisions, voters and elected representatives in the Port Cities and County of San Diego have become disenfranchised. Elected representatives cannot prevent or appeal Port District decisions that adversely affect their constituents, and as a result, voters cannot depend on their elected representatives to act in their best interests. As a result of such shortcomings, accountability of representatives to their constituents is limited when the normal expected prerogatives of elected office holders have been supplanted instead by an unelected entity such as the Port District.

Balancing the rights and interests of diverse coastal cities, communities and neighborhoods throughout the San Diego County region is a significant challenge, even for an elected governing body not motivated by economic incentives. Attempting this task through a largely independent and autonomous organization such as the Port District that is dependent on revenue from development projects and leasing activity may be too much to ask of the organization, especially without the guidance of deliberative elected city councils, county supervisors or other elected government bodies. The Grand Jury concludes that only with the re-engagement of the elected government bodies affected by Port District activities and lands within their jurisdictional boundaries can the interests of residents be equitably balanced with competing Port District goals and objectives.

FACTS AND FINDINGS

Duties, Responsibilities and Powers

Fact: The public trust doctrine provides that tidal and submerged lands, beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California.

Fact: The Port District Act delegates the power and responsibility for management of the tidelands and submerged lands of San Diego Bay from the State of California to the San Diego Unified Port District.

Fact: Many elected officials of Port Cities believe Port Commissioners are to act in the best interest of the cities appointing them.

Fact: The Port Act limits the ability of elected officials to represent the interests of the voters who elect them.

Fact: It is the duty of each Port Commissioner to act as a guardian of the public trust for tidal and submerged lands of San Diego Bay in the interests of all California residents.

Fact: Port Commissioners take a fiduciary oath to act in the best interests of the Port District.

Finding 01: Port Commissioners are only required to represent the perspectives, not the interests of the Port City appointing them to the Board of Port Commissioners.

Finding 02: The Port District acts as an independent special district without direct oversight from local city or county governments.

Fact: The oversight provided by the State Lands Commission and California Coastal Commission of Port District activities is viewed by the Port District as more than sufficient.

Fact: Port Commissioners must live in the Port City appointing them.

Fact: Port Commissioners may be recalled by a majority vote of the city council appointing them.

Fact: Port Commissioners can serve an unlimited number of four-year terms, except in the City of Coronado in which Commissioners can serve a maximum of two terms.

Finding 03: Because the interests of residents of Port Cities and the County of San Diego are subject to the interpretations of the unelected Board of Port Commissioners, their interests may not be heard, prioritized or represented accurately.

Finding 04: Briefings by Port Commissioners to Port City Councils in noticed public meetings regarding issues affecting their jurisdictions, will increase the level of public participation and knowledge regarding Port District activities, Port Master Plans, Master Plan Updates, Port Master Plan amendments or additions.

Finding 05: Currently, the Board of Port Commissioners does not have term limits. Considering term limits would foster democratic principles by providing more opportunities for diverse and talented individuals to serve, prevent the accumulation of influence, and uphold the public trust by keeping the Board representative responsive to its community.

Initial Opposition to Port District Formation

Fact: The City Councils of the cities of Coronado, Imperial Beach and Chula Vista initially opposed formation of the Port District in 1962.

Fact: Formation of the Port District in 1962 occurred despite concerns that an unelected board of Port Commissioners would have the power to issue bonds, levy taxes and develop local tideland resources without input or approval of individual Port Cities.

Fact: Opposition to the formation of the Port District in 1962 involved the unequal number of commissioners allocated to each of the Port Cities; the City of San Diego would get three commissioners while each of the remaining four Port Cities would get one commissioner each, potentially allowing San Diego to exert dominance over the resources, priorities and decisions of the Port District.

Finding 06: With three of seven port commissioners appointed to the Board of Port Commissioners by the City of San Diego, the potential exists for the City of San Diego to exert dominance over the priorities, resources and decisions of the Port District.

Port District Potential Source of Bias

Fact: Port District operations are financed primarily through leases and fees generated through its real estate operations, parking, harbor police and other fees provided by customers of the Port District.

Finding 07: The Port District is incentivized to maximize revenue to fund its operations, a goal that may create conflicts of interest in the priorities, allocation of resources and other decisions made by the Port Commission.

Chula Vista Convention Center and Hotel

Fact: The \$1.1 billion Chula Vista Hotel and Convention Center broke ground in 2022.

Finding 08: Success in the development of the Chula Vista Hotel and Convention Center has been obtained because of a close collaboration and alignment of interests between the Port District and the City of Chula Vista.

Dole Fruit Company Proposal

Fact: A 2012 approval of the Board of Port Commissioners for a lease of warehouse space on the Port District's Tenth Avenue Terminal to Dole Fruit Company also moved a staging area for short-haul trucking to the National City area.

Finding 09: The Port Commissioners decision to move short-haul truck staging for local deliveries of Dole Fruit products relocated a source of pollution from the Barrio Logan community to communities in National City.

Mitsubishi Cement Corporation Proposal

Fact: Mitsubishi Cement Corporation's proposal for storage and shipment by truck of cement products to construction sites in the region generated controversy and negative publicity among residents of nearby neighborhoods affected by potential health risks.

Fact: Consideration of the Mitsubishi Cement Corporation project was terminated by mutual agreement of the Port District and Mitsubishi Cement Corporation.

Fact: In its public statement, the Port District expressed a willingness to re-open negotiations related to this proposal with Mitsubishi Cement Corporation in the future.

Fact: The Mitsubishi Cement Corporation project was terminated due to technical concerns around the availability of zero emission trucks capable of the loads required for cement deliveries.

Finding 10: The controversy surrounding the Mitsubishi Cement Corporation Project's potential health effects on the Barrio Logan neighborhood and other nearby residents damaged the Port District's community relations with these communities and contributed to the decision to discontinue the project.

Finding 11: Oversight of the Mitsubishi Cement Corporation project by the City of San Diego or San Diego County governments might have given greater priority to the health concerns of community members and resulted in a more equitable balance between economic and health concerns earlier in the project's evaluation process.

Coronado Cottages at the Cays Proposal

Fact: The Cottages at the Cays development proposal met with significant opposition not only from the Coronado mayor and city council, but also from residents and members of the Coronado Cays Homeowner's Association representing the community of 1,200 homes.

Fact: Maintaining free access by California residents to San Diego Bay for recreational use is often cited as an obligation of the public trust by the Port District.

Fact: Three of seven Port Commissioners voted to oppose the Cottages at the Cays development proposal, including the City of Coronado's Port Commissioner, the National City Port Commissioner as well as one of three San Diego Port Commissioners.

Fact: The Cottages at the Cays development proposal was consistent with the property's designation in the Port Master Plan as commercial recreation space as approved by the California Coastal Commission.

Fact: The Cottages at the Cays development proposal was not consistent with the property's designation as recreational open space in the more recent California Coastal Commission-unapproved Port Master Plan Update.

Fact: Without the approval of the California Coastal Commission, the Port District viewed the Coronado Cays Port Master Plan Update land use designation of recreational open space as non-binding and preliminary.

Fact: The Coronado Mayor, City Council members and residents of Coronado affected by the Cottages at the Cays development proposal relied on the property use designation for recreational open space adopted most recently in the Port Master Plan Update document, believing this document should control use of property proposed for the Cottages at the Cays development.

Finding 12: The Port's decision to approve the Cottages at the Cays development proposal could negatively impact access to San Diego Bay and approving the plan favors those willing or able to pay costly hotel rates typical of the Coronado area.

Public Participation

Fact: Port Commissioner reports and briefings to their city councils on the activities of the Port District, in publicly accessible venues such as city council meetings do not take place on a frequent or regular basis.

Finding 13: Given a preference for informal channels of communication by Port City councils and mayors with their appointed Port District representatives, neither Port Commissioners nor Port City Councils maintain completely open and transparent relationships allowing for public involvement or awareness of Port District activities.

Master Plan Documents and Updates

Fact: Ratification of Port Master Plans, Master Plan Updates or Master Plan Amendments by Port Cities or County of San Diego for planning districts with their jurisdiction is not prohibited by the Port Act.

Finding 14: In its current form, the Port Master Plan and Master Plan Update documents published by the Port District are overly complex, difficult to understand and too broad in scope to foster meaningful comprehension by Port City residents, elected municipal or county officials.

Finding 15: Ratification of Port Master Plans, Master Plan Updates or Master Plan Amendments would allow residents of Port City Planning districts and San Diego County to acknowledge and confirm their understanding of Port District development plans and projects within their municipal and county boundaries and provide reliable documents for communities to plan for the future.

RECOMMENDATIONS

The 2022/2023 San Diego County Grand Jury recommends that the City Councils of the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City:

- 23-90:** Enact ordinances or policies placing a two-term limit on the number of terms that a Port Commissioner can serve (as already enacted for the City of Coronado).
- 23-91:** Institute ordinances or formal policies requiring the appointed Commissioners from each city be required to give at a minimum, quarterly updates to the City Councils at officially scheduled city council meetings open to the public.
- 23-92:** Institute ordinances or formal policies that require ratification of the Port Master Plans, proposed Port Master Plan Updates or amendments to the Port Master Plan for Port District planning districts within each city's boundaries.
- 23-93:** In consultation with the San Diego County Board of Supervisors, explore and implement an alternate form of governance for the Port District allowing for participation in, and oversight of Port District activities and decision by the San Diego County Board of Supervisors and the elected city councils of the five Port Cities.

The 2022/2023 San Diego County Grand Jury recommends that the County of San Diego Board of Supervisors:

- 23-94:** Institute ordinances or formal policies that require ratification of the Port Master Plans, proposed Port Master Plan Updates or amendments to the Port Master Plan by each of three county supervisors for Port District planning districts within each of three county supervisorial district boundaries.
- 23-95:** Direct the County Office of Intergovernmental Relations to lobby California State legislators to introduce legislation enabling the County of San Diego to assume oversight of the activities of the San Diego Unified Port District or decisions of the Board of Port Commissioners and share in the Port District's duty as guardian of the public trust in the tidal and submerged lands of San Diego Bay.
- 23-96:** Depending on the outcome of Recommendation (23-XX, above), consider exploring and implementing an alternate form of governance for the Port

District allowing for participation in, and oversight by the San Diego County Board of Supervisors and the elected city councils of the five port cities.

The 2022/2023 San Diego County Grand Jury recommends that San Diego Unified Port District Board of Commissioners:

- 23-97: Institute formal policies or procedures allowing for appeal of any action taken by the Board of Port Commissioners, including decisions, ordinances, or project approvals.**
- 23-98: Institute formal policies to enable Port Cities and County of San Diego to ratify the Port Master Plans, proposed Port Master Plan Updates or amendments to the Port Master Plan for Port District planning districts within each city's and county boundaries.**
- 23-99: Directly inform each of the five City Councils at officially scheduled City Council meetings open to the public how the proposed updated Port Master Plan affects areas within their jurisdictional boundaries.**
- 23-100: To increase the coordination of Port District activities with the Port Cities and their staffs, institute a policy of including staff from each of the five Port Cities and County of San Diego on each of the Port District's advisory committees.**
- 23-101: Post meeting minutes and agendas of each of the Port District's advisory committees.**
- 23-102: In consultation with the City Councils of San Diego, Chula Vista, Coronado, Imperial Beach and National City, consider placing a two-term limit on the number of terms that a Port Commissioner can serve (as already enacted for the City of Coronado).**
- 23-103: Institute ordinances or formal policies requiring the appointed Commissioners from each city be required to give at a minimum, quarterly updates to the City Councils at officially scheduled city council meetings open to the public.**
- 23-104: In consultation with the San Diego County Board of Supervisors, explore an alternate form of governance for the Port District allowing for participation in, and oversight of Port District activities and decision by the San Diego County Board of Supervisors and the elected city councils of the five Port Cities.**

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court

on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding; in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

Responding Agency	Recommendations	Date
City of San Diego, City Council	23-90 through 23-93	8/28/2023
City of Chula Vista, City Council	23-90 through 23-93	8/28/2023
City of Imperial Beach, City Council	23-90 through 23-93	8/28/2023
City of Coronado, City Council	23-90 through 23-93	8/28/2023

City of National City, City Council	23-90 through 23-93	8/28/2023
County of San Diego, Board of Supervisors	23-94 through 23-96	8/28/2023
San Diego Unified Port District, Board of Port Commissioners	23-97 through 23-104	8/28/2023

Embarcadero Coalition Scavenger Hunt

Downtown San Diego

1. Map of current development plus PMPU and Seaport Project Additions

2 South Embarcadero

3 Central Embarcadero

4 North Embarcadero

5 Information on Portside Pier permit

We believe Scenic Views should provide a full 120 degree water view
View Corridors should show water for their full width not just a thin sliver of water
Public Access is free and readily accessible to everyone
including people with disabilities and low-income individuals

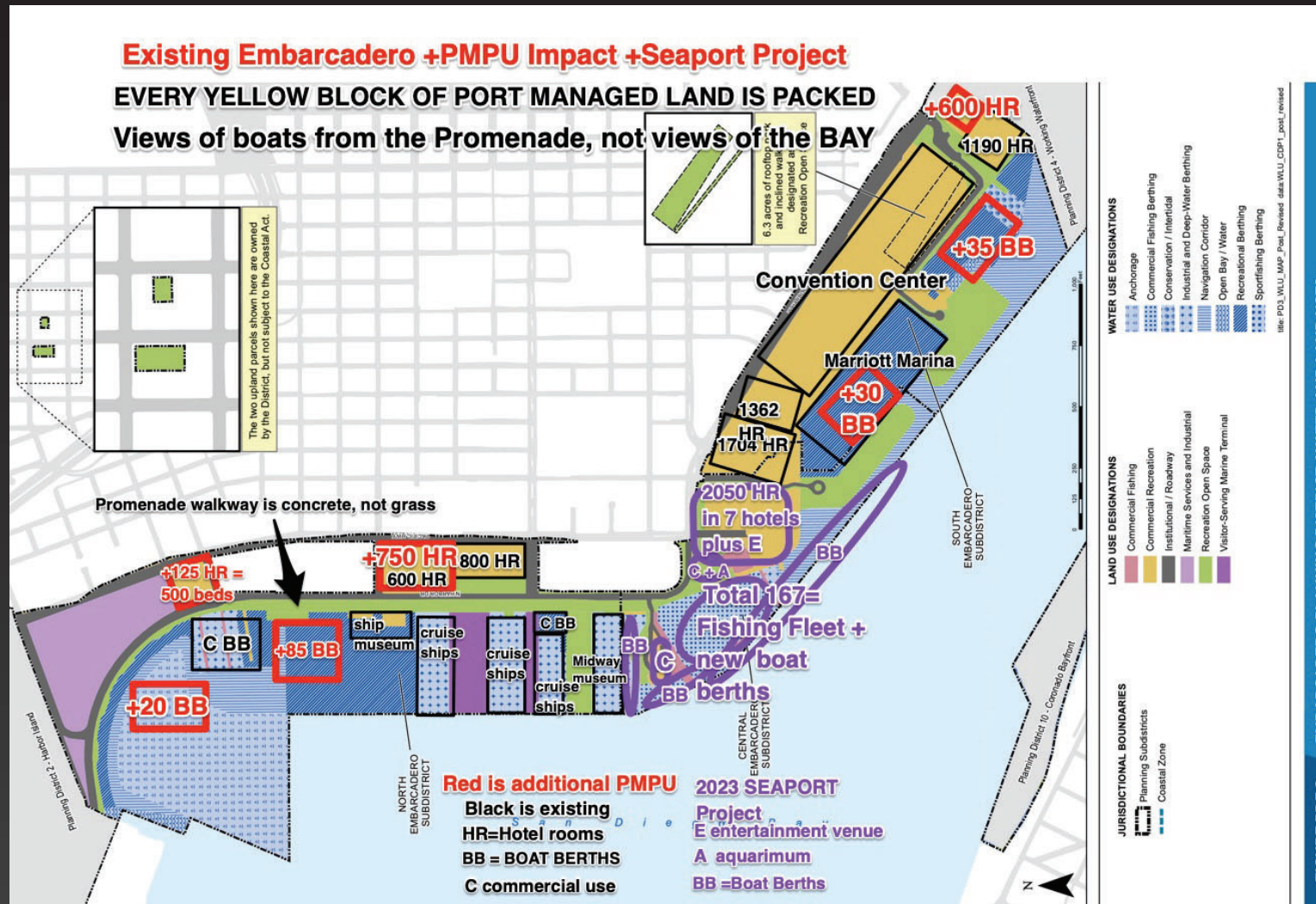
Please submit your pictures and responses to EmbarcaderoCoalition@gmail.com
Contact us with questions. We are happy to join you in your HUNT

Janet Rogers, Co-Chair

As you investigate each sub-district, please note all the current development and all the additional development planned.

Is this your vision of maximizing public access?

Is this your vision of a World-Class Waterfront?



Scavenger Hunt South Embarcadero -Find the views

Locations: SV-Scenic View, VC-View Corridor

1 Start -Gaslamp Trolley station -Take a picture of the convention center from the station-
Where is the waterfront?

2 SV: Picture of the RADY SHELL from here. Why is an expensive event space
classified as public recreation?

3 SV: Picture-include barrier to small pier- What happens when 35 large
luxury ships are added?

4 VC: Try for picture from Harbor Drive, adjacent to the Hilton Bayfront, of view
corridor showing the water: Is the water view the full width the street?

5 SV: rooftop- take different SV pictures from here. Are there 5
unique SVs? Why are elevated spaces now included in ROS?

6 SV: Try to take an unobstructed picture of SV between the two peninsulas?
What happens when 30 additional berths are added?

7 Check out the hotel rooms and boat berths in this area.

Is this your idea of maximizing public access?

**Big Question: Do you consider what is here today or what is
planned to create a World-Class Waterfront for the people?**

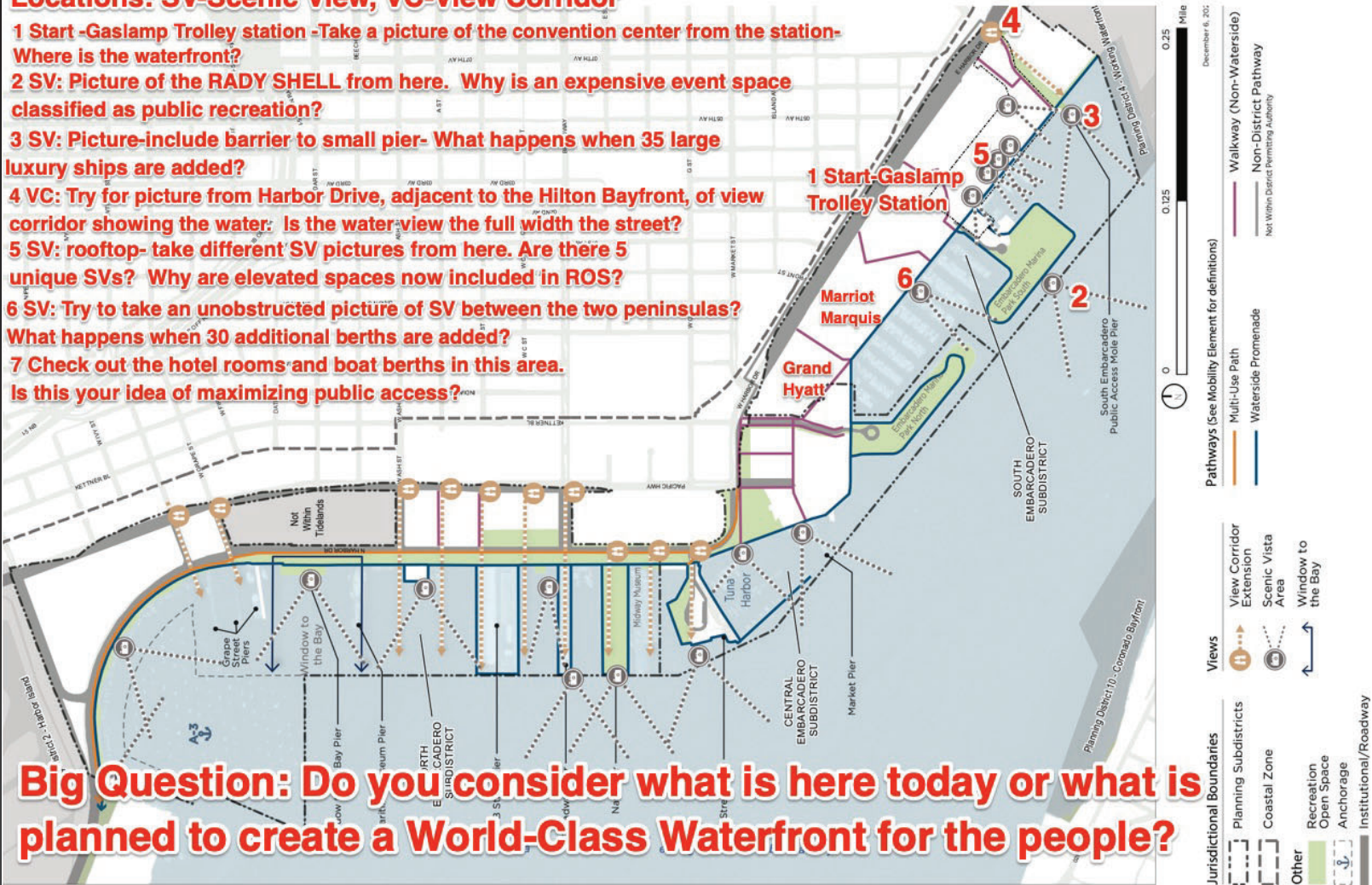


FIGURE PD3.4 EMBARCADERO PLANNING DISTRICT - COASTAL ACCESS: VIEWS AND PATHWAYS

Scavenger Hunt- Central Embarcadero-this central section of the Embarcadero is not staying the same despite what the PMPU says. Find the Views

Locations: SV-Scenic View, VC-View Corridor

1 Start at the Seaport Village trolley station. Cross the street toward Seaport Village. Walk down Kettner Blvd. Take a picture when you see the water.

2 Walk to top the peninsula Marina Park North- take a picture. Notice there are no SV or VC on the map in this section. Why? . Take a picture back at Seaport Village. Where will they put 10 buildings most of them between 300-500 ft high. Compare to the Seaport map

3 Market Pier SV: Picture of the pier

4 Tuna Harbor SV. Picture the Harbor- Location's 3 and 4 will get 167 boat berths. What happens to these scenic views?

5 G Street Mole VC: Picture of the water for the full width of the street from Harbor Drive. CAN you see the water straight ahead? The public parking will go underground to make room for a new fish processing plant.

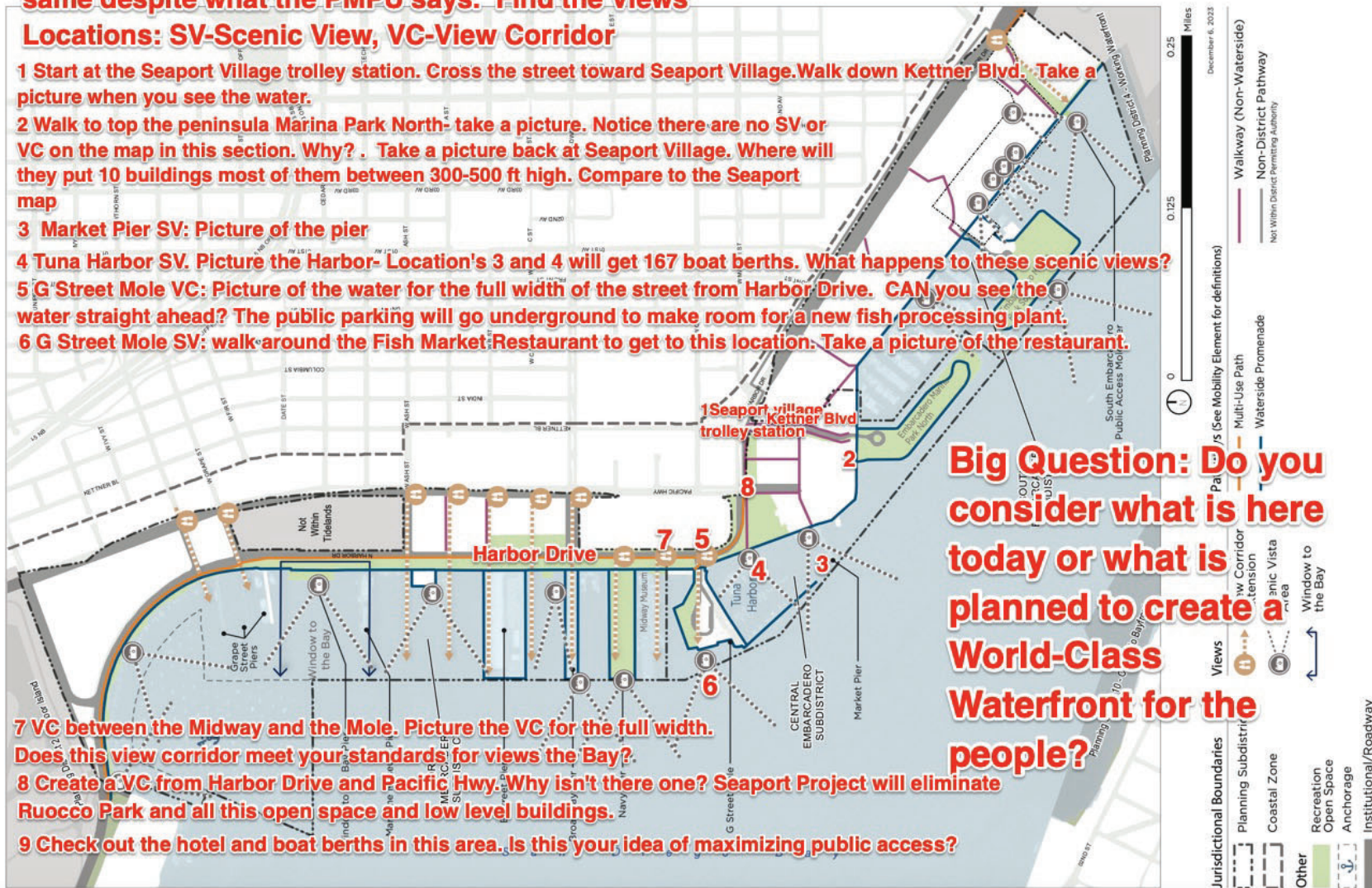
6 G Street Mole SV: walk around the Fish Market Restaurant to get to this location. Take a picture of the restaurant.

7 VC between the Midway and the Mole. Picture the VC for the full width.

Does this view corridor meet your standards for views the Bay?

8 Create a VC from Harbor Drive and Pacific Hwy. Why isn't there one? Seaport Project will eliminate Ruocco Park and all this open space and low level buildings.

9 Check out the hotel and boat berths in this area. Is this your idea of maximizing public access?



Big Question: Do you consider what is here today or what is planned to create a World-Class Waterfront for the people?

Scavenger Hunt-North Embarcadero-Find the views and public access

Locations: SV-Scenic View, VC-View Corridor PA: Public Access

- 1 start at Santa Fe Depot trolley stop-Take a picture toward the water. Where is the water?
- 2 Broadway VC: Picture of water for the full width the corridor. What is blocking the view?
- 3 Bayfront Ct VC: Picture of water for the full width for he corridor. What is blocking he View?
- 4 Grand Ct (B street extension) VC: Picture of water for the full width of the corridor. What is blocking the view?
- 5 A St VC: Picture of water for the full width the corridor. What is blocking the view?
- 6 Ash St VC: Picture of water for the full width of the corridor. What is the difficulty of taking this picture?
- 7 Grape St VC: Picture of water for the full width of the corridor. is there a problem taking this picture?
- 8 Hawthorn VC: Picture of water for the full width of the corridor. is there a problem taking this picture?
- 9 VC in front of County building: What happens when 85 transient boat slips are added and the Window to the Bay Pier?
- 10 SV and PA: See additional sheet for the Portside Pier. SV and PA are upstairs on the south side. Try to take a picture of the 108 public access seats in the permit and walk around the whole top level-unobstructed? Take various pictures showing the SV and PA
- 11 VC: Take a picture of the B street pier to see what is blocking the VC to the water. Why is this labeled a VC?
- 12 SV between B street and Broadway Piers: Picture. What happens when cruise ships are in?
- 13 Broadway VC: picture of Broadway Pier to see what is blocking the VC to the water. Way is this labeled VC?
- 14 SV Picture at end of Broadway Pier if its unlocked. Why is it often locked?
- 15 Navy Pier VC: Picture of water for the full width of the corridor, is there a problem?
- 16 Navy Pier SV (Freedom Park): Picture of SV: Do we have to walk to the end to get a proper view? How is the View impacted with ships? Are you wedged between ships until the end of the pier?
- 17 Check out the hotel rooms and boat berths in this area. Is this your idea of maximizing public access?

Big Question: Do you consider what is here or what is planned to create a World-class Waterfront for the people?

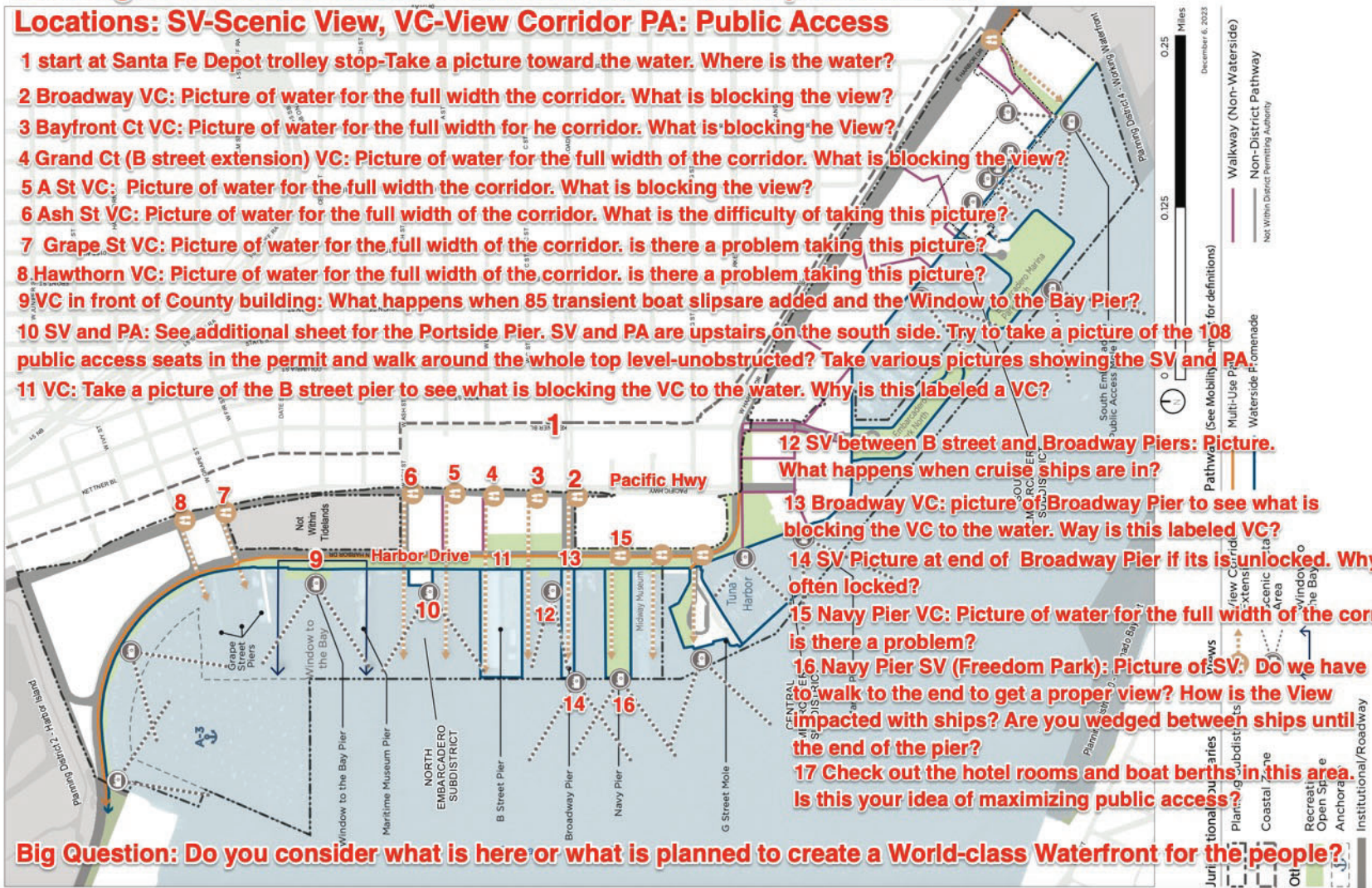


FIGURE PD3.4

EMBARCADERO PLANNING DISTRICT - COASTAL ACCESS: VIEWS AND PATHWAYS

On the upper deck of the Portside Pier

1. Find the 3,711 square feet deck for Public Access (the yellow the coastal diagram permit) . What's there instead?
2. Ask to be seated in the public access area. Take pictures. What happened to the 108 seats permitted?
3. Walk all the around the upper deck (the public walkway is in yellow) . Is it unobstructed? Take pictures.

On the lower deck

4. What is in the Glass dome? Is it permitted?
5. Are you ok with the Port allowing the lessee to make these changes?

Portside Pier

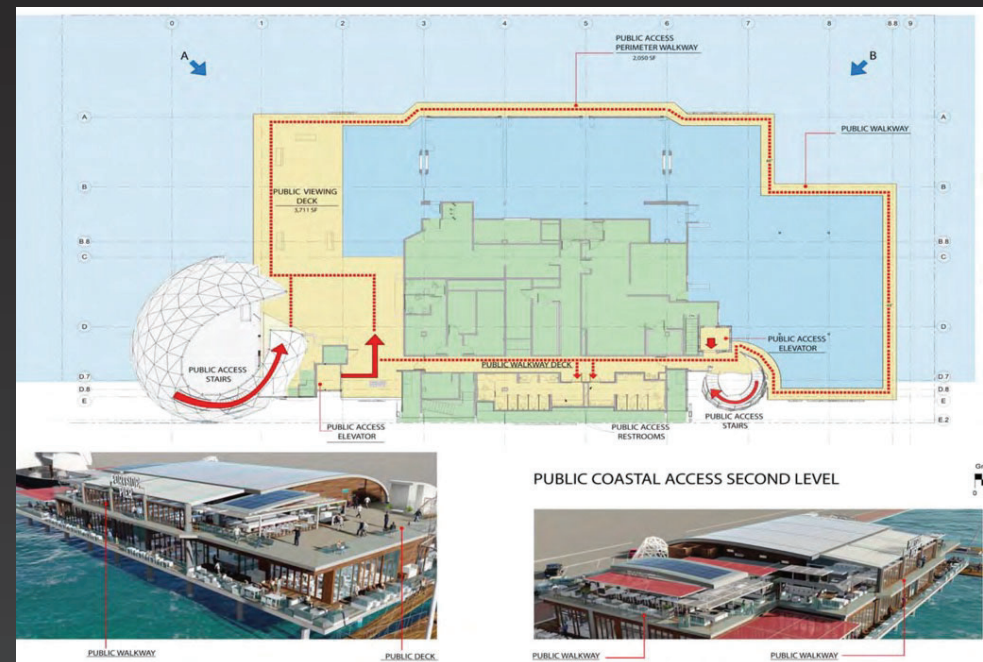
Table 1: Previous Structure and Proposed Project Features Comparison

Project Component	Previous	Proposed	Change
Building Floor Area ¹	24,855 square feet	34,069 square feet	9,214 square feet
Building Gross Water Coverage*	23,285 square feet	24,960 square feet	1,675 square feet
Public Dock Area* ²	565 square feet ¹	3,370 square feet	2,805 square feet
Second Floor Public Access Walkway	819 square feet (Ground Floor)	2,050 square feet	1,231 square feet
Total Water Coverage*	23,850 square feet	28,330 square feet	4,480 square feet
Total Land Coverage (Promenade Improvement Area)	8,067 square feet	8,067 square feet	0 square feet
Restaurant Seats	536	1,000	464
Boat Slips	2	12	10
Public Viewing Deck Seats	0	108	108
Second Floor Public Deck ¹	0 square feet	3,711 square feet	3,711 square feet
Building Height	27 feet	34 feet	7 feet
Employees (daily)	60	90	30
On-site Parking	0	0	0
Visitors per day (estimated average)	1,100	2,220	1,120

*Indicates over-water components

¹The change in floor area and public deck area from the Draft MND to the Final MND was achieved by rearranging the layout of the building and expanding the kitchen and deck into previously unutilized space. The overall building footprint and water coverage did not change.

²The existing boat dock was destroyed by storm and wave activity in January 2016 and has not been replaced because of the prospective redevelopment.



Thank you for participating in our Embarcadero Coalition Scavenger Hunt

Please submit pictures and answers to
EmbarcaderoCoalition@gmail.com

From: [Aurora Rugerio](#)
To: [CSLC CommissionMeetings](#)
Subject: 10/17/2024: Comment on Ormond Beach Generating Station Lease 4196 Amendment
Date: Tuesday, October 15, 2024 4:47:27 PM

Attention: This email originated from outside of SLC and should be treated with extra caution.

Good Afternoon Commissioners,

My name is Aurora. I am an Oxnard resident, and I am representing CAUSE and the Regenerate California Coalition. Our goal is to retire our state's polluting gas-fired power plants, with priority in environmental justice communities. I am urging you to reject the lease amendment extending the lease term of Lease 4196 for seawater intake and discharge conduits at the Ormond Beach Generating Station and asking the Commission to conduct a full environmental justice analysis before considering any lease amendments.

Living in Oxnard I have witnessed the lack of coastal accessibility due to heavy industry located by our coast. It is disheartening that residents live less than a mile away from Ormond beach yet don't frequent the beach often because of the industry near it. Additionally the off-putting energy the power plant emanates makes Ormond Beach less accessible. The Ormond Beach Generating Station is located in one of the most populated communities of color in a census tract considered to experience more pollution burden than 94% of other communities in the state. South Oxnard families have the right to clean air and coastal access and shouldn't continue to face the brunt end of keeping an unreliable power plant in our backyard.

Ormond Beach is unique in many ways, one of them being that it is one of the few remaining wetlands in Southern California and home to endangered bird species like Least Tern and Snowy Plover. Ormond Beach Generating Station not only released air pollution 13x worse than normal during the 2022 heat wave but it poses a threat to marine ecosystems as it is a once-through cooling power plant.

Again, it is critical that you reject the lease amendment and conduct a full environmental justice analysis because our communities cannot continue to be a sacrifice zone. The State Lands Commission has the power and responsibility to stop the environmental injustices ongoing in our state and for the health of both our people and our planet.