

Findings of Fact and Statement of Overriding Considerations

Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project Final Environmental Impact Report

UPD No. EIR-2018-033; SCH No. 2019100658

October 2020

Prepared for:



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Introduction

The Board of Port Commissioners (Board) of the San Diego Unified Port District (District) hereby makes the following Findings and Statement of Overriding Considerations concerning the Final Environmental Impact Report (Final EIR) (UPD No. EIR-2018-033; SCH No. 2019100658) for the proposed Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project (project), pursuant to the California Environmental Quality Act (CEQA) (California Public Resources Code, Section 21000 et seq.) and its implementing regulations, the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000, et seq.).

The Final EIR prepared for the proposed project consists of an Errata summarizing corrections and revisions made to the Draft EIR, comments received on the Draft EIR and the District's responses to those comments, a Mitigation Monitoring and Reporting Program, and the revised Draft EIR.

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Section 1 Project Description

1.1 Project Overview

The project includes the demolition of the existing Lockheed Martin Marine Terminal Facilities (MTF), which include the landside Marine Terminal Building and waterside pier and marine railway structure, and remediation of the waterside sediment in the surrounding basin. The MTF are at 1160 Harbor Island Drive on land that is owned by the District and has been leased by various Lockheed Martin Corporation (Lockheed Martin) entities since 1966. Polychlorinated biphenyls, metals, and other pollutant wastes were discharged to San Diego Bay from the MTF throughout the years and have resulted in the accumulation of contaminants in marine sediments along the northern shore of central San Diego Bay. This accumulation has resulted in conditions identified by the San Diego Regional Water Quality Control Board (RWQCB) as potentially impacting beneficial uses (aquatic life, aquatic-dependent wildlife, and human health). The final cleanup and abatement order was issued for the site on April 4, 2017.

1.2 Project Location

The project proposes demolition of landside and waterside components of the existing MTF at 1160 Harbor Island Drive and remediation of the waterside sediment in the adjacent basin. The project site is in Port Master Plan Planning District 2 (Harbor Island/Lindbergh Field) in the East Harbor Island and East Basin Industrial Subareas.

1.3 Project Components

Project activities would be in three phases: (1) landside demolition; (2) waterside demolition, dredging, and sediment remediation; and (3) post-remediation activities. Phase 1 would include demolition of the existing building, Phase 2 would include demolition of the existing pier and marine railway and waterside remediation, and Phase 3 would include post-remediation activities (including continued compliance the California Eelgrass Mitigation Policy and Implementing Guidelines, if required), including demolition of paved areas.

Phase 1

Landside Demolition

The first phase would include the demolition of the landside structures, including the Marine Terminal Building and associated infrastructure. Existing utilities in the existing two-story, 5,500-square-foot building would be disconnected and removed. This would include removing power to the San Diego Gas & Electric transformer vault, removing the gas lines to the nearest valve box, capping the fire sprinkler lines 6 inches above grade, removing the sewage tank and associated

pipes, capping the outlets to the sewage tank, and removing the water to the backflow preventer on site. Then, the existing building would be demolished.

After building demolition, the foundation would be removed, and any resulting depressions would be filled with compactable, clean fill. The site would then be graded to match the existing elevation. The existing concrete and asphalt parking areas would remain and be used as part of the sediment management area (SMA) during the sediment remediation component. The SMA would be confined with an impermeable barrier (potentially an asphalt berm or K-rails sealed at the base with an impervious fabric) to prevent discharge into San Diego Bay or into underlying soils.

Phase 2

Waterside Demolition

Phase 2 would include the waterside component of the project, beginning with the waterside demolition. The project would include demolition of the in-water, 165-foot pier and the 328-foot-long marine railway structure and support structures extending into the bay. The piles from the pier would be removed using equipment staged on a barge or on the landside. The barge would be the storage area for the removed piles and debris. Outfall erosion protection would be constructed along the northern shoreline using 400 square feet of riprap and gravelly sand. Debris would be removed from the water by a heavy clamshell bucket. Removed piles and debris would be brought ashore and sorted according to their general classifications. The debris would then be transported for disposal by haul truck trips.

Dredging

Once the existing waterside facilities are demolished, waterside sediments with elevated contaminant levels would be dredged in an approximately 22,676-square-foot area. The sediments would be removed using mechanical dredging means, such as a barge-mounted derrick crane, an enclosed clamshell bucket, or a standard clamshell bucket.

Dredged material would then be placed in watertight scows, large, flat-bottomed boats with square ends used for transporting bulk materials, that would be transported to the upland SMA for processing. Before offloading sediments, dewatering would occur, where any ponded water would be pumped within the scow into a water treatment system. The on-site water treatment system would consist of a series of holding and weir tanks and would be sufficient to meet the discharge requirements into the City of San Diego's sewer system (through an Individual User Discharge Permit [IUDP]). Before discharge, water samples would be collected and analyzed in accordance with the IUDP. If the effluent contains analytical concentrations that exceed IUDP standards, the water would then be treated on site using options such as the addition of chemicals to reduce analytical concentrations to levels acceptable within IUDP standards or removal from the site by a licensed waste hauler and disposal in accordance with local, state, and federal requirements.

At the SMA, dredged sediment would be stabilized with Portland cement (as necessary to pass the paint filter test) to accelerate the drying process. The paint filter test is a test to determine the presence of free liquids in a representative sample of waste before the waste can be disposed of in a landfill. The dredged sediment would be tested based on the selected upland disposal landfill's profile requirements and then loaded into lined haul trucks and transported to an upland disposal location. Dredged materials would be disposed of at an approved Class II or Class III landfill, depending on the level of contamination. The nearest available landfill would be the Otay Landfill, which is designated as Class III, in Chula Vista, California.

Clean Sand Cover Placement

Once dredging is complete, the project would place clean sand cover on up to 92,170 square feet of the site. As time passes, the clean cover would mix into the underlying sediment through benthic interactions, such as organism burrowing. Equipment required for placement would be similar to the equipment used during dredging but would be supplemented with a conveyor. The clean sand would be transported to the project site by haul truck or barge. If the material arrives by truck, the material would be loaded onto barges and transported to the placement area.

Phase 3

After demolition, dredging, and remediation, the project site would be returned to an unoccupied, undeveloped site. Once the sediment has been dredged and disposed of, the existing asphalt and concrete paved areas that were used as the SMA would be demolished. The retaining wall above the shore protection would remain and allow the site to be graded so slopes would be shallow and allow stormwater to be absorbed and minimize erosion. The existing shoreline riprap and the existing concrete spillways would remain, and the site would be graded so that the excess water from storm events would be directed to those spillways.

The existing mature trees would be left undisturbed. Non-invasive, drought-tolerant vegetation would be planted, and an irrigation system would be installed. If necessary, the irrigation system would be connected to the existing backflow flow protector on site and would have manual valves due to the lack of on-site power. No further operations would occur following remediation activities.

1.4 Project Objectives

In accordance with Section 15124(b) of the CEQA Guidelines, the District has identified the following objectives for the project:

1. Remediate the project site through implementation and completion of the Draft Remedial Action Plan as required under the San Diego RWQCB Cleanup and Abatement Order No. R9-2017-0021.
2. Restore the project site by removing the installations and improvements from the MTF premises in accordance with the Lockheed Martin Marine Terminal Demolition Draft Work Plan (Exhibit D of the 2017 Settlement Agreement).

3. Prevent the further release or threatened release of hazardous substances from historical uses on the project site.
4. Fulfill and implement the end of the lease terms of the original lease agreement between the District and Lockheed Martin by remediating the project site, including the removal of the installations and improvements.
5. Reduce public safety hazards by eliminating risk of fire, personal injury to trespassers, vandalism, and crime associated with an abandoned facility.
6. Further the District's responsibility and fiduciary duty for administering its Public Trust lands consistent with the Public Trust and the Port Act, including promoting water-oriented uses that benefit the public.

Section 2 Environmental Procedures

2.1 Lead Agency

Pursuant to CEQA Guidelines, Section 15367, the District is the lead agency for preparing the environmental review required by CEQA. The environmental review prepared by the District will be used by the Board regarding its decisions to certify the EIR, approve the proposed project, and issue a Coastal Development Permit. The RWQCB and the U.S. Army Corps of Engineers, as CEQA responsible agencies, may also use the EIR to issue a Clean Water Act Section 401 Water Quality Certification and a Rivers and Harbors Act Section 10 Permit, respectively.

2.2 Environmental Impact Report

Pursuant to CEQA Guidelines, Section 15080 et seq., the District prepared an EIR to analyze the potential impacts of the proposed project on the environment. The Final EIR contains the information required by CEQA Guidelines, Section 15132, including the Draft EIR and the appendices to the Draft EIR.

2.3 Public Participation

Environmental review of the proposed project began on October 31, 2019, with the publication of the Notice of Preparation of the EIR and a minimum 30-day public review period. The District held a public scoping meeting on November 13, 2019. The Notice of Preparation public comment period ended on December 2, 2019. The Draft EIR was completed and a Notice of Availability for public review was posted on July 28, 2020. A 45-day public review period for the Draft EIR began on July 31, 2020, and ended on September 14, 2020. Five comment letters were received.

These comments and the District's responses to them are included in the Final EIR as required by CEQA Guidelines, Sections 15088 and 15132. The Final EIR, including an Errata and the District's responses to comments, was completed and made available for review on October 29, 2020. A public hearing concerning the certification of the Final EIR was held by the Board on November 10, 2020, at which time interested agencies, organizations, and individuals were given an opportunity to comment on the Final EIR and the proposed project.

2.4 Record of Proceedings

For the purposes of CEQA and the Findings, as follows, the administrative record of the District's decision concerning certification of the Final EIR for the proposed project includes the following:

- Draft EIR (July 2020)
- Final EIR, including the Errata (October 2020)
- Appendices to the Draft EIR and the Final EIR

- All documents and other materials listed as references or incorporated by reference in the Draft EIR and Final EIR, including but not limited to the materials identified in the Chapter 7, References, of the Draft EIR
- All reports, applications, memoranda, maps, letters, and other documents prepared by the District's staff and consultants for the proposed project, which are before the Board and are public records
- Mitigation Monitoring and Reporting Program for the project
- All documents or other materials submitted by interested people and public agencies in connection with the Draft EIR and the Final EIR
- Minutes, tape recordings, and verbatim transcripts, if any, of the public hearing held on November 10, 2020, concerning the Final EIR and the proposed project
- Matters of common knowledge to the Board and the District, including but not limited to the Port Master Plan
- All Findings and resolutions adopted by Board in connection with the project (including these Findings) and all documents cited or referred to therein
- Any documentary or other evidence submitted to the District at information sessions, public meetings, and public hearings concerning the Final EIR and the project
- Any other materials required to be in the record of proceedings by California Public Resources Code, Section 21167.6(e)

The District Clerk is the custodian of the documents and other materials composing the administrative record of the District's decision concerning certification of the Final EIR. The location of the administrative record is the District's office at 3165 Pacific Highway, San Diego, California 92101 (California Public Resources Code, Section 21081.6[a][2]).

The Board has relied on all of the documents listed above in reaching its decision on the proposed project, even if not every document was formally presented to the Board as part of the District files generated in connection with the project. Without exception, any documents set forth above not found in the project files fall into one of two categories. Many of them reflect prior planning or legislative decisions of which the District was aware in approving the project. Other documents influenced the expert advice provided to District staff or consultants, who then provided advice to the Board. For that reason, such documents form part of the underlying factual basis for the Board's decisions relating to the approval of the project.

Section 3 Findings Under CEQA

3.1 Purpose

California Public Resources Code, Section 21002, states that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” The same section states that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” Section 21002 also states that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects.”

California Public Resources Code, Section 21002, is implemented, in part, through the requirement that agencies adopt written Findings before approving projects (California Public Resources Code, Section 21081; CEQA Guidelines, Section 15091). Specifically, CEQA requires the District to make written Findings of fact for each significant environmental impact identified in the Final EIR (CEQA Guidelines, Sections 15091, 21081).

In accordance with CEQA, the purpose of the Findings is to systematically restate the significant effects of the proposed project on the environment and to determine the feasibility of mitigation measures and alternatives identified in the Final EIR that would avoid or substantially lessen the significant effects. If significant impacts remain after application of all feasible mitigation measures, the District must review the alternatives identified in the Final EIR and determine if they are feasible. These Findings set forth the reasons and the evidence in support of the District’s determinations.

3.2 Terminology

A “Finding” is a written statement made by the District that explains how the District dealt with each significant impact and alternative identified in the Final EIR. Each Finding contains a conclusion regarding each significant impact, substantial evidence supporting the conclusion, and an explanation of how the substantial evidence supports the conclusion.

For each significant effect identified in the Final EIR, the District is required by CEQA Guidelines, Section 15091(a), to make a written Finding reaching one or more of the following conclusions:

1. Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant effect identified in the EIR
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency

3. Specific legal, economic, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR

A mitigation measure or an alternative is considered “feasible” if it is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors (California Public Resources Code, Section 21061.1; CEQA Guidelines, Section 15364; see also *Citizens of Goleta Valley v. Board of Supervisors* [Goleta II] [1990] 52 Cal.3d 553, 565). The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project (*City of Del Mar v. City of San Diego* [1982] 133 Cal.App.3d 410, 417). “Feasibility under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors” (*City of Del Mar v. City of San Diego* [1982] 133 Cal.App.3d 410, 417; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* [1993] 23 Cal.App.4th 704, 715). Thus, “in the context of project approval, a public agency may find that an alternative is ‘infeasible’ if it determines, based upon the balancing of the statutory factors, that an alternative cannot meet project objectives or ‘is impractical or undesirable from a policy standpoint’” (*Los Angeles Conservancy v. City of West Hollywood* [2017] 18 Cal.App.5th 1031, 1041). Therefore, “broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives” (*California Native Plant Society v. City of Santa Cruz* [2009] 177 Cal.App.4th 957, 1000).

CEQA also requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that will otherwise occur. The CEQA Guidelines do not define the difference between “avoiding” a significant environmental effect and “substantially lessening” such an effect. Therefore, the District must glean the meaning of these terms from other contexts in which the terms are used. California Public Resources Code, Section 21081, on which CEQA Guidelines, Section 15091, is based, uses the term “mitigate” rather than “substantially lessen.” Therefore, the CEQA Guidelines equate “mitigating” with “substantially lessening.” Such an understanding of the statutory term is consistent with the policies underlying CEQA, which include the policy that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects” (California Public Resources Code, Section 21002). For the purposes of these Findings, the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level.

With respect to a project for which significant impacts are not avoided or substantially lessened either through the adoption of feasible mitigation measures or a feasible alternative, a public agency,

after adopting proper Findings, may nevertheless approve the project if the agency adopts a Statement of Overriding Considerations setting forth the specific reasons why the agency found that the project's benefits rendered its unavoidable adverse environmental effects acceptable (CEQA Guidelines, Sections 15093, 15043(b); California Public Resources Code, Section 21081[b]). The California Supreme Court has stated that "the wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced" (Citizens of Goleta Valley v. Board of Supervisors [1990] 52 Cal.3d 553, 576).

A Statement of Overriding Considerations is required for the approved project because, despite implementation of all feasible mitigation measures, the project as approved would have significant impacts on a historic resource that could not be avoided or reduced to a less than significant level.

3.3 Legal Effect

To the extent that these Findings conclude that mitigation measures identified in the Final EIR are feasible and have not been modified, superseded, or withdrawn, the District hereby binds itself and any other responsible parties, including Lockheed Martin, to implement these mitigation measures. These Findings are not merely informational but constitute a binding set of obligations for the District and responsible parties, which will take effect if and when the District adopts a resolution certifying the Final EIR and the District adopts resolutions approving the project.

3.4 Mitigation Monitoring and Reporting Program

In adopting these Findings, the District also adopts a Mitigation Monitoring and Reporting Program pursuant to California Public Resources Code, Section 21081.6, and CEQA Guidelines, Section 15097. This program is designed to ensure the project complies with the feasible mitigation measures identified below during implementation of the approved project. The program is set forth in the "Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project Mitigation Monitoring and Reporting Program," which is adopted by the District concurrently with these Findings and is incorporated herein by this reference (Attachment 1).

3.5 Certification of the Final EIR

Pursuant to CEQA Guidelines, Section 15090, the Board further finds and certifies the following:

1. The Final EIR has been completed in compliance with CEQA.
2. The Final EIR has been presented to the Board, which constitutes the decision-making body of the lead agency, and the Board has reviewed and considered the information contained in the Final EIR before approving the project.
3. The Final EIR reflects the District's independent judgment and analysis.

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Section 4 Findings Regarding Direct or Indirect Significant or Potentially Significant Effects

The proposed project would result in direct and indirect significant and potentially significant environmental effects regarding biological resources and cultural resources. These significant environmental effects and the mitigation measures identified to avoid or substantially lessen them are discussed in detail in the Draft EIR, Section 3.2, Biological Resources, and Section 3.3, Cultural Resources. A summary of significant impacts and mitigation measures for the project is in the Executive Summary in the Draft EIR.

Below are the Findings regarding the potential direct significant effects of the approved project. The Findings incorporate by reference the discussion of potentially significant impacts and mitigation measures in the Final EIR. The Final EIR, which includes the Draft EIR and appendices, is referred to in the Findings below as the “EIR.”

4.1 Biological Resources

4.1.1 Threshold 1: Candidate, Sensitive, or Special-Status Species

Potentially Significant Impact: The EIR identifies a potentially significant impact to Biological Resources Threshold 1, Candidate, Sensitive, or Special-Status Species, associated with pile-removing and dredging activities that could result in impacts on foraging opportunities of the California least tern (*Sternula antillarum browni*). In addition, pile-removing activities could generate enough underwater noise to alter behavior (Level B Harassment) of both green sea turtles (*Chelonia mydas*) and marine mammals. This impact would be potentially significant. Detailed information and an analysis regarding this potentially significant impact are provided in Section 3.2 of the EIR.

Finding: Pursuant to CEQA Guidelines, Section 15091(a)(1), changes or alterations have been required or incorporated in the approved project that avoid or substantially lessen the significant environmental effect to Biological Resources Threshold 1 as identified in the EIR.

Facts in Support of Finding: The potentially significant impact of the proposed project on Biological Resources Threshold 1 (Candidate, Sensitive or Special-Status Species) is analyzed in Section 3.2 of the EIR. The impact would result from pile-removing and dredging activities that could impact foraging opportunities of the California least tern. In addition, pile-removing activities could generate enough underwater noise to alter behavior (Level B Harassment) of both green sea turtles and marine mammals.

The potentially significant impact on Biological Resources Threshold 1 would be mitigated to a less than significant level with implementation of Mitigation Measures BIO-1A, BIO-1B, BIO-1C, and BIO-1D. Mitigation Measures BIO-1A, BIO-1B, BIO-1C, and BIO-1D are set forth in

full in Table ES-3, Summary of Impacts of the Proposed Project, in the Executive Summary in the EIR. Mitigation Measure BIO-1A requires that, if demolition or construction activities are scheduled between the nesting season for California least tern (generally between April 1 and mid-September), a qualified biologist shall continually conduct monitoring of San Diego Bay waters within 500 feet of construction activities where foraging behaviors are demonstrated. If construction has begun, and adverse impacts would occur, construction shall cease until the biological monitor determines that no adverse impacts would occur or the California least tern has left the site for longer than 10 minutes. Mitigation Measure BIO-1B requires implementation of a marine mammal and green sea turtle monitoring program. Mitigation Measure BIO-1C requires construction vessel traffic not to exceed existing ambient speed limits for the marina. Mitigation Measure BIO-1D requires that, if demolition or construction activities are scheduled between February 15 and September 15, a qualified biologist shall conduct a focused nesting survey within 1 week before initiation of tree removal and construction activities and, if the survey confirms an active nest on any of the trees to be removed, tree removal shall not occur until the qualified biologist determines the nest is no longer active or the young have fledged. With implementation of Mitigation Measures BIO-1A, BIO-1B, BIO-1C, and BIO-1D, the impact on candidate, sensitive, or special-status species would be less than significant.

4.1.2 Threshold 2: Riparian Habitat or Other Sensitive Natural Communities

Potentially Significant Impact: The EIR identifies a potentially significant impact to Biological Resources Threshold 2, Riparian Habitat or Other Sensitive Natural Communities, associated with the direct physical disturbance to eelgrass beds, should they be identified in subsequent surveys, from dredging activities and from elevated turbidity levels from construction-related activities such as pile removing and dredging. Detailed information and an analysis regarding this potentially significant impact are provided in Section 3.2 of the EIR.

Finding: Pursuant to CEQA Guidelines, Section 15091(a)(1), changes or alterations have been required or incorporated in the approved project that avoid or substantially lessen the significant environmental effect to Biological Resources Threshold 2 as identified in the EIR.

Fact in Support of Finding: The potentially significant impact of the proposed project on Biological Resources Threshold 2 is analyzed in Section 3.2 of the EIR. This impact would result in the direct physical disturbance of eelgrass beds, if present, from dredging activities and from elevated turbidity levels from construction-related activities such as pile removing and dredging.

The potentially significant impact on Biological Resources Threshold 2 would be mitigated to a less than significant level with implementation of Mitigation Measures BIO-2A, BIO-2B, and BIO-2C. Mitigation Measures BIO-2A, BIO-2B, and BIO-2C are set forth in full in Table ES-3 in the Executive Summary in the EIR. Per the California Eelgrass Mitigation Policy 2014, Mitigation Measure BIO-2A requires a preconstruction eelgrass survey by a qualified marine biologist before

the start of any waterside construction activities. If eelgrass is found during the preconstruction survey, within 30 days of completion of in-water construction activities, a qualified marine biologist shall conduct a post-construction eelgrass survey to evaluate potential eelgrass impacts associated with construction. Mitigation Measure BIO-2B requires that, in the event that the post-construction survey identifies any impacts to eelgrass, a qualified marine biologist shall develop an Eelgrass Mitigation Plan specifying the required mitigation and monitoring requirements. Consistent with the California Eelgrass Mitigation Policy, any Eelgrass Mitigation Plan would require review and approval by the National Marine Fisheries Service. Mitigation Measure BIO-2C requires that, if eelgrass is found during the preconstruction survey, no anchoring (or other bottom-disturbing activities) shall occur in eelgrass beds, and propeller wash shall not be directed toward eelgrass beds. With implementation of Mitigation Measures BIO-2A, BIO-2B, and BIO-2C, the impact on riparian habitat or other sensitive natural communities would be less than significant.

4.2 Cultural Resources

4.2.1 Threshold 1: Historic Resources

Potentially Significant Impact: The EIR identifies a potentially significant impact to Cultural Resources Threshold 1, Historic Resources, associated with the demolition of the MTF, which include the Marine Terminal Building, waterside pier, and marine railway, that would result in a substantial adverse change to the historic resource pursuant to CEQA Guidelines, Section 21084. Detailed information and an analysis regarding the potentially significant impact are provided in Section 3.3 of the EIR.

Finding: Pursuant to CEQA Guidelines, Section 15091(a)(1), changes or alterations have been required or incorporated in the approved project that avoid or substantially lessen the significant environmental effect to cultural resources identified as an impact to Cultural Resources Threshold 1 in the EIR, and pursuant to CEQA Guidelines, Section 15091(a)(3), specific legal, economic, social, technological, or other considerations make other mitigation measures or project alternatives identified in the EIR infeasible.

Fact in Support of Finding: The potentially significant impact of the proposed project to Cultural Resources Threshold 1 is analyzed in Section 3.3 of the EIR. An impact to Cultural Resource Threshold 1 would occur because the project would result in demolition of the historic MTF, and therefore, the impact would be significant.

The significant impact to Cultural Resource Threshold 1 would be mitigated with implementation of Mitigation Measures CUL-1 and CUL-2, which are included in Table ES-3 in the Executive Summary in the EIR. Mitigation Measure CUL-1 would require the documentation of the Marine Terminal Building, marine railway, and pier to Historic American Buildings Survey Level 2 standards. Mitigation Measure CUL-2 requires the preparation of a permanent interpretive exhibit

that incorporates information from historical photographs, Historic American Buildings Survey documentation, or other materials in a location accessible to the public. Implementation of Mitigation Measures CUL-1 and CUL-2 would serve to document the historic resource; however, the proposed documentation and interpretive exhibit would not adequately replace the demolished structure and would not reasonably mitigate the impacts of the demolition to less than significant levels. Therefore, despite the incorporation of Mitigation Measures CUL-1 and CUL-2, the impact to Cultural Resources Threshold 1 is considered significant and unavoidable, and a Statement of Overriding Considerations pursuant to CEQA Guidelines, Section 15093, is required.

Section 5 Findings Regarding Cumulative Significant Effects

CEQA requires a lead agency to evaluate the cumulative impacts of a proposed project (CEQA Guidelines, Section 15130[a]). Cumulative impacts are those that are considered significant when viewed in connection with the impacts of other closely related past, present, and reasonably foreseeable future projects (CEQA Guidelines, Section 15355). Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

The EIR analyzes cumulative impacts by compiling a list of past, present, and reasonably anticipated future projects producing related or cumulative impacts, including projects outside the agency's jurisdiction (CEQA Guidelines, Section 15130[b][1][A]). The list of past, present, and reasonably anticipated future projects should include related projects that have already been constructed, are currently under construction, are approved but not yet under construction, and are not yet approved but are under environmental review at the time the Draft EIR is prepared (CEQA Guidelines, Section 15130). The list must include not only projects under review by the lead agency but also those under review by other relevant public agencies.

The EIR considered 12 past, present, and reasonably anticipated future projects within the vicinity of the project in evaluating potential cumulative impacts. A detailed description of these projects is provided in Table 3-1, Cumulative Projects, in Chapter 3, Environmental Analysis, in the EIR. The cumulative project analysis determined that no potential cumulative impacts would occur.

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Section 6 Findings Regarding Project Alternatives

In preparing and adopting Findings, a lead agency need not necessarily address the feasibility of both mitigation measures and environmentally superior alternatives when contemplating the approval of a project with significant environmental impacts. Where the significant impacts can be mitigated to a level below significance solely by the adoption of mitigation measures, the lead agency has no obligation in drafting its Findings to consider the feasibility of environmentally superior alternatives, even if their impacts would be less severe than those of the project as mitigated. Accordingly, in adopting the Findings concerning alternatives for the proposed project, the District considers only those significant environmental impacts that cannot be avoided or substantially lessened through mitigation.

Where a project will result in some unavoidable, significant environmental impacts, even after application of all feasible mitigation measures identified in an EIR, the lead agency must evaluate the project alternatives identified in the EIR. Under such circumstances, the lead agency must consider the feasibility of alternatives to the project that could avoid or substantially lessen the unavoidable, significant environmental impacts. “Feasible” means capable of being accomplished in a successful manner within a reasonable time, taking into account economic, environmental, legal, social, and technological factors (CEQA Guidelines, Section 15364).

If there are no feasible project alternatives, the lead agency must adopt a Statement of Overriding Considerations with regard to the project pursuant to CEQA Guidelines, Section 15093. If there is a feasible alternative to the project, the lead agency must decide whether it is environmentally superior to the proposed project. The lead agency must consider in detail only those alternatives that could feasibly attain most of the basic objectives of the project; however, the lead agency must consider alternatives capable of eliminating significant environmental impacts even if these alternatives would impede to some degree the attainment of project objectives (CEQA Guidelines, Section 15126.6[f]).

These Findings contrast and compare the alternatives where appropriate to demonstrate that the selection of a preferred alternative as the approved project has substantial environmental, planning, fiscal, and other benefits. In rejecting certain alternatives, the District has examined the project objectives and weighed the ability of the various alternatives to meet the objectives. The objectives considered by the District are set forth in Section 1.4, Project Objectives, in this document and in Section 2.4, Project Objectives, of the EIR.

The EIR examined a range of reasonable alternatives to determine whether they could meet the project objectives while avoiding or substantially lessening one or more of the proposed project’s unavoidable, significant impacts. These Findings also considered the feasibility of each alternative. In determining the feasibility of alternatives, the District considered whether the alternatives could

be accomplished in a successful manner within a reasonable period of time in light of economic, environmental, social, and technological factors (CEQA Guidelines, Sections 15126(d)(5)(A), 15364). “In the context of project approval, a public agency may find that an alternative is ‘infeasible’ if it determines, based upon the balancing of the statutory factors, that an alternative cannot meet project objectives or ‘is impractical or undesirable from a policy standpoint’” (Los Angeles Conservancy v. City of West Hollywood [2017] 18 Cal.App.5th 1031, 1041). Therefore, “broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives” (California Native Plant Society v. City of Santa Cruz [2009] 177 Cal.App.4th 957, 1000).

The EIR concluded that the proposed project would result in unavoidable, significant direct impacts on cultural resources because, even though these impacts could be reduced by the mitigation measures recommended in the EIR, the District cannot state with certainty that the impacts would be reduced below significance.

Accordingly, the EIR analyzed three alternatives to the proposed project: (1) the No Project/No Remediation, (2) Remediation of Waterside Portions of Project Site Only, and (3) Reuse of Marine Terminal Building. Detailed information and an analysis concerning these alternatives are in Chapter 5, Alternatives to the Proposed Project, of the EIR. The EIR also identified an Off-Site Relocation of Historic Structure Alternative but during the scoping process found it to be infeasible for the reasons outlined in the EIR. Thus, the Off-Site Relocation of Historic Structure Alternative was not evaluated as a feasible alternative in the EIR.

This section of the Findings summarizes these alternatives and their feasibility and effectiveness in avoiding or substantially lessening any of the unavoidable, significant impacts associated with the proposed project.

a. Alternative 1: No Project/No Remediation Alternative

The No Project/No Remediation Alternative is an alternative that is required to be evaluated by CEQA (CEQA Guidelines, Section 15126[d][2]). The No Project/No Remediation Alternative assumes that the proposed project would not be implemented and that existing land uses on the project site would remain unchanged and in their existing condition. The No Project/No Remediation Alternative serves as the alternative against which to evaluate the effects of the proposed project and other project alternatives.

Under the No Project/No Remediation Alternative, the proposed remediation of the MTF and completion of the Draft Remedial Action Plan as required under the San Diego RWQCB Cleanup and Abatement Order No. R9-2017-0021 would not be implemented. In addition, the end of the lease terms of the original lease agreement between the District and Lockheed Martin would not

be honored. The installations, including the significant historic structure, and associated improvements would remain on site.

The potential impacts of the No Project/No Remediation Alternative are discussed in detail in Section 5.5.1, Analysis of Alternative 1: No Project/No Remediation, in Chapter 5 in the EIR. Relative to the proposed project, the No Project/No Remediation Alternative would avoid impacts related to cultural resources. However, it would result in greater impacts on biological resources, hazards and hazardous materials, and hydrology and water quality.

Moreover, the No Project/No Remediation Alternative would not achieve any of the project objectives and would preclude obtaining the benefits described in Section 7, Statement of Overriding Considerations, of this document. The No Project/No Remediation Alternative would also fail to implement site remediation as required by the Regional Water Quality Control Board pursuant to its authority under the California Water Code.

The District finds that all the potentially significant environmental impacts of the proposed project, except the unavoidable, significant impact to cultural resources, would be mitigated by the design of the proposed project and the adoption of the mitigation measures set forth in the Mitigation Monitoring and Reporting Program. The District further finds that, although the No Project/No Remediation Alternative would avoid or substantially lessen the potentially significant impact to cultural resources, this alternative is infeasible because it would not attain any of the project objectives and would not provide the District and the region with any of the benefits described in the Statement of Overriding Considerations and, thus, would be undesirable from a policy standpoint. The No Project/No Remediation Alternative is also legally infeasible because it would obstruct compliance and implementation of the Regional Water Quality Control Board's cleanup and abatement order regarding the property. For the potentially significant impacts that cannot be avoided or mitigated to a level below significance, the District adopts the Statement of Overriding Considerations in Section 7 of this document pursuant to CEQA Guidelines, Section 15093.

b. Alternative 2: Remediation of Waterside Portions of Project Site Only

The Remediation of Waterside Portions of Project Site Only Alternative would be similar to the proposed project, but it would not include the Phase 1 landside demolition of the Marine Terminal Building and associated utilities or the Phase 3 post-remediation activities. This alternative would only proceed with Phase 2, the waterside demolition, dredging, and remediation activities required by the San Diego Regional Water Quality Control Board. This alternative would include the demolition of the pier and marine railway, dredging of waterside contaminated sediment, and placement of clean sand. The Marine Terminal Building would remain in its current state on the project site. The District would not undertake any remediation of the Marine Terminal Building related to existing hazardous materials or rehabilitation/improvements related to possible reuse of the building, although a future lessee, if found, could undertake required remediation or

rehabilitation to meet their needs. Any future remediation and rehabilitation, if done by a future lessee, would need to adhere to the Secretary of the Interior's Standards for the Treatment of Historic Properties and Standards for Rehabilitation, which impose limitations/requirements related to construction and modifications to historic resources.

The potential impacts of the Remediation of Waterside Portions of Project Site Only Alternative are discussed in detail in Section 5.5.2, Analysis of Alternative 2: Remediation of Waterside Portions of Project Site Only, in Chapter 5 in the EIR. Relative to the proposed project, the Remediation of Waterside Portions of Project Site Only Alternative would result in reduced impacts on cultural resources because the Marine Terminal Building would be retained. The significance of impacts on all other issue areas under this alternative would be equal to the proposed project.

The Remediation of Waterside Portions of Project Site Only Alternative would meet Project Objective 1 by remediating the waterside of the project site through implementation and completion of the Draft Remedial Action Plan. However, this alternative would not meet Project Objectives 2 and 3 because it would not remove all installations and improvements on the project site and would not prevent the further release or threatened release of hazardous substances on the project site. In addition, this alternative would not meet Project Objective 4 because it would not fulfill and implement the end of the lease terms of the original lease agreement between the District and Lockheed Martin, which require the site to be returned to its original state. This alternative would not meet Project Objective 5 because it would permit the existing Marine Terminal Building to remain vacant and unoccupied, which poses a potential public safety hazard due to the high potential for trespassing and vandalism (based on previous instances). Finally, a vacant building would not meet Project Objective 6 and the District's statutory and common law responsibilities with respect to the Public Trust.

The Remediation of Waterside Portions of Project Site Only Alternative would vest ownership of and responsibility for the building and associated improvements with the District. The District finds that the alternative is infeasible from a policy perspective because (1) it would obstruct attainment of various regulatory requirements and policy goals of the District, (2) the District would be required to expend money and services related to the protection of the building for an unforeseen period (until potentially leased by a tenant), and (3) retention of the Marine Terminal Building would limit future uses and greatly restrain development potential by requiring tenants to retain the building and adhere to the Secretary of the Interior's Standards for the Treatment of Historic Properties and Standards for Rehabilitation, which likely has a negative impact on marketability of the project site to future tenants and may require a rent subsidy or other financial assistance to increase marketability, a cost that would be incurred by the District. The exact financial liabilities that may accrue to the District, should the Marine Terminal Building be retained, are currently unknown because such amounts are dependent upon the timeframe that the

building would remain vacant, the potential future uses of the project site and building, and additional costs that may be required of a future tenant related to historic resource rehabilitation requirements, which may trigger a rent subsidy or other credit.¹ Thus, Alternative 3 likely lowers the overall market value of the project site and creates risk of financial liabilities to the District. The District's charge as a steward and fiduciary of the Public Trust is to promote the use of land for public purposes consistent with the trust. To accomplish its responsibilities pursuant to the Public Trust, the District leases and permits the uses of District tidelands to tenants for uses that promote and are consistent with the Public Trust. The District, as a public entity that does not generate or rely on tax revenue, depends on revenue generated through these agreements to perform its statutory and public functions. Except for a few extremely limited circumstances relative to satisfying its operational needs, the District generally does not develop, redevelop, or use properties. The District is a public agency constrained by the Port Act, the Public Trust, and other statutory mandates and does not generally possess the capacity to handle responsibilities associated with property development, including substantial capital expenditure costs, logistical issues, and property owner maintenance responsibilities associated with long-term ownership of facilities (as opposed to land, which is developed by tenants pursuant to tenant plans). Through these leases, which establish Public Trust compliant uses and generate revenue for the District, the District implements its responsibilities under the Public Trust.

As discussed previously, any future user of the building would have to remediate (hazardous substances) and rehabilitate the property consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties and Standards for Rehabilitation, which (1) would impose additional costs on a future tenant and (2) would constrain options for future use by preventing potential lessees (tenants) from exploring opportunities for use that would require destruction or substantial modification of the building.² Thus, this alternative jeopardizes the District's ability to effectively negotiate with potential tenants. To date, the District has not been approached by any potential tenants regarding the use of the existing building or redeveloping the site while accommodating the existing building. It is unclear whether any potential tenants would be interested in the site, including undertaking remediation and rehabilitation, with the building remaining on site because it would significantly increase costs and limit future uses. Thus, it is

¹ In 2005, the District entered into an Option to Lease Agreement for the rehabilitation and adaptive reuse of the Old Police Headquarters for an entertainment-oriented specialty retail development consisting of approximately 75,000 to 100,000 square feet of building area. The development was required to adhere to the Secretary of the Interior's Standards for Rehabilitating Historic Buildings, which increased costs significantly and ultimately required a lease amendment that included a rent concession for 10 years of zero rent payments (for a 40-year lease term). Even though the relative size of the Old Police Headquarters building aided the reuse options, costs associated with the adaptive reuse were still high and required a long-term rent concession. Additionally, the prior use of the Marine Terminal Building, a maritime industrial use, may require renovations and costs that were not required for the Old Police Headquarters and/or would limit possible adaptive reuse options. It should also be noted that the Old Police Headquarters is located in downtown San Diego, a walkable area easily accessible to pedestrians and with substantial retail options, which made it a more appropriate candidate for adaptive reuses options. Here, the project site is located on the northern portion of East Harbor Island, which is largely comprised of historic industrial/non-pedestrian accessible uses. The project site is immediately adjacent to a surface parking lot and the existing Harbor Police Headquarters, for instance.

² The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings are available at <https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>.

unclear how long the property could sit vacant. Additionally, even assuming that the property could be marketed to a future potential tenant, the District would be forced to incur costs and staff time regarding ongoing maintenance and repair, security, and insurance, among other things (or divert existing District resources), during the interim period (an unknown duration) when not leased. Lockheed Martin currently pays the costs associated with the building, which is consistent with the terms of its lease with the District. If the building remains on site, Lockheed Martin's responsibility for costs under the lease would cease, and all costs and responsibilities would fall to the District. Incurring responsibility for these additional costs for an unforeseeable time would be inconsistent with the District's goals and would not be a prudent expenditure of public funds because it would, among other things, lessen the District's ability to serve the goals of the Public Trust and be an unforeseen outflow of funds for an unforeseeable period. As evidenced by recent staff presentations to the Board (Attachment 2), the COVID-19 pandemic has strained the District's financial well-being. The District is experiencing a significant revenue shortfall (from prior projections under normal circumstances), has been forced to dip into savings to address the shortfall, and entered into agreement with existing tenants for deferral or modification of rent structures. Moreover, a circumstance where a building remains on District tidelands property without use and incurring costs by the District would be inconsistent with and not serve the purposes of the Public Trust. Because of the uncertainty, risks, and significant costs associated with the Remediation of Waterside Portions of Project Site Only Alternative, the District finds the alternative infeasible.

It should also be noted that the Remediation of Waterside Portions of the Project Site Only Alternative would be inconsistent with/potentially obstruct implementation of the vision for the project site expressed in the proposed Port Master Plan Update (PMPU), which designates the project site as Recreation Open Space. Recreation Open Space areas shall support programming and a variety of recreational activities, with a wide range of affordability and price points to ensure all visitors are able and encouraged to experience the waterfront. The draft PMPU describes the Recreation Open Space designation as "Land areas primarily for visitor-serving, public open spaces that provide public access, public views, activating features, or access to coastal areas." Retention of the Marine Terminal Building, which occupies a substantial portion of the project site including the shoreline (lessening shoreline access), may preclude or limit public access and use of the site, especially if the building is not remediated and repurposed for a use that would serve the goals of the Recreation Open Space designation.

The District finds that all potentially significant environmental impacts of the proposed project, except the unavoidable, significant impact to cultural resources, would be mitigated by the design of the proposed project and the adoption of the mitigation measures set forth in the Mitigation Monitoring and Reporting Program. The District further finds that, although the Remediation of Waterside Portions of Project Site Only Alternative would avoid or substantially lessen the potentially significant impact on cultural resources, this alternative is infeasible because it would not

attain Project Objectives 2, 3, 4, 5, and 6 and, therefore, would not provide the District and the region with all of the benefits described in the Statement of Overriding Considerations and, thus, would be undesirable from a policy standpoint. For the potentially significant impacts that cannot be avoided or mitigated to a level below significance, the District adopts the Statement of Overriding Considerations in Section 7 of this document below pursuant to CEQA Guidelines, Section 15093.

c. Alternative 3: Reuse of Marine Terminal Building

The Reuse of Marine Terminal Building Alternative would be similar to the proposed project, except that it would not include the Phase 1 landside demolition of the Marine Terminal Building and associated utilities and the Phase 3 post-remediation activities. This alternative would include the waterside component of the proposed project, including the demolition of the pier and marine railway, dredging of waterside contaminated sediment, and placement of clean sand. Instead of demolishing the Marine Terminal Building, this alternative would restore and renovate the Marine Terminal Building to be available for use. Renovation activities would include the removal of asbestos-containing material, lead-containing surfaces, and other potentially hazardous building materials. It is assumed that renovation work would follow the Secretary of the Interior's Standards and that identified character-defining features of the Marine Terminal Building would be repaired and maintained to the highest degree feasible. Furthermore, work would be completed under the review of an architectural historian or historic architect who meets the Secretary of the Interior's Professional Qualifications Standards. Renovation activities would also be required to upgrade the building to make it consistent with applicable California Building Code standards.

The proposed use would have to be consistent with the Port Master Plan, or would require the approval of a Port Master Plan Amendment. The project site is in Port Master Plan Planning District 2 (Harbor Island/Lindbergh Field) and is designated as Industrial Business Park. Based on the current land use designation, a number of uses could be established, provided that the District is able to secure a tenant to use the space. The District has not been presented with any proposal for reuse of the Marine Terminal Building, and it would be speculative to assume a specific future use. As noted below, reuse of the building would result in operational features not present for the proposed project, including generating vehicle trips and air emissions and introducing noise-generating facilities.

The potential impacts of the Reuse of Marine Terminal Building Alternative are discussed in detail in Section 5.5.3, Analysis of Alternative 3: Reuse of Marine Terminal Building, in Chapter 5 in the EIR. Relative to the proposed project, this alternative would result in reduced impacts on cultural resources. However, it would result in increased impacts on air quality, greenhouse gas emissions, noise, and transportation that would not occur under the proposed project.

The Reuse of Marine Terminal Building Alternative would meet Project Objectives 1 and 3 by remediating the project site through implementation and completion of the Draft Remedial Action Plan and preventing the further release or threatened release of hazardous materials. This

alternative could meet Project Objective 5 if, after remediation by the District, a tenant leased the project site and occupied the remediated Marine Terminal Building. Occupancy by a lessee would reduce public safety hazards by eliminating risk of fire, personal injury to trespassers, vandalism, and crime associated with an abandoned facility. Because a future use is assumed to be consistent with the existing Port Master Plan designation, this alternative would also meet Project Objective 6 by promoting a water-oriented use that benefits the public consistent with current zoning, the Public Trust, and the Port Act. However, this alternative would not meet Project Objectives 2 and 4 because it would not remove all installations and improvements on the project site and would not fulfill and implement the end of the lease terms of the original lease agreement between the District and Lockheed Martin, which require the site to be returned to its original state.

It is anticipated that costs associated with the *remediation* of the Marine Terminal Building would be \$90,000–\$102,000 (Attachment 3). These costs are based on several cost estimates and are associated with asbestos, lead, and universal waste abatement only. The costs do not include indirect costs, such as insurance, staff time, and regulatory permitting; additional construction costs associated with public works projects; the competitive bid process or prevailing wage payment that may be required for the project; or design costs. These additional costs can significantly increase the project costs. In a recent building remediation project performed by the County of San Diego for a larger building with similar contaminants from a similar era, the budgeted cost for remediation of lead, asbestos, and universal waste abatement was \$125,000 based on an assumption that 80 percent of contaminants had already been abated through previous projects. However, the indirect and additional costs created a total project budget of \$333,974 (Attachment 4). In a second recent building remediation project performed by the County of San Diego for a similarly sized building with similar contaminants, the budgeted cost for remediation of lead, asbestos, and universal waste abatement was \$25,000 based on an assumption that 80 percent of contaminants had already been abated through previous projects. However, the indirect and additional costs created a total project budget of \$136,054 (Attachment 5). These projects included the demolition of structures with hazardous materials.³ However, they serve as a suitable indication of costs associated with remediation of hazards in the existing Marine Terminal Building, even if the building would remain pursuant to this alternative. Furthermore, the estimated costs associated with the remediation of the Marine Terminal Building do not include other likely *renovation* and *rehabilitation* costs, including structural, mechanical, or electrical costs, such as any updates or modifications required pursuant to the California Building Code or Americans with Disabilities Act, to make the space usable. In addition, the estimated costs do not include the costs associated with updating the building to make it attractive for potential users, while adhering to the Secretary of the Interior’s Standards for the Treatment of Historic Properties and Standards for

³ Lockheed Martin is responsible for these costs pursuant to the terms of the lease if the Marine Terminal Building is removed. However, if the building remains, the District will incur costs that would have been borne by Lockheed Martin.

Rehabilitation, or to protect it from further degradation while not occupied.⁴ As discussed previously under Alternative 2, the costs associated with rehabilitation and reuse would likely be highly cost prohibitive for the District, or may require a significant rent subsidy to a future user that undertakes rehabilitation and reuse (as discussed under Alternative 2). If the District were responsible for preservation and rehabilitation, it would be expected that the District could incur costs related to (1) securing the building from unauthorized entry, fire, and other health and safety issues; (2) shutting down systems and utilities to prevent damage and incurring costs for utilities as needed; and (3) actions to ensure no further degradation of the building, such as (a) ventilation of the interior, (b) correcting conditions that cause or permit deterioration, and (c) continuous monitoring and observation (inspections) to identify problems. The total expected costs associated with these requirements are currently uncertain but would be borne entirely by the District (currently, costs associated with the property are the responsibility of Lockheed Martin). The ultimate rehabilitation would require allocation of significant sums from within the District's budget, the timing of which is uncertain. Day-to-day costs required for preservation of the building until rehabilitation could occur may be substantial and continue to accrue for an indefinite period.⁵ Currently, the District is facing financial hardship and has lost and continues to lose significant revenue. The District does not collect tax revenues and relies on concession and rent revenue from hotels; restaurants; marine recreation, such as harbor tours and vessel charter operations; and parking and maritime operations. These revenue sources have dropped drastically since March 2020 due to the COVID-19 pandemic. For instance, the Board, acknowledging the hardship faced by many tenants, recently approved a tenant rent deferral program that delays some District revenue until a future date (Attachment 6). Furthermore, as noted by District staff in their public presentations to the Board (Attachment 2), the COVID-19 pandemic has created a fiscal emergency, and District staff estimates a significant loss in revenue across almost every major revenue category through 2021. A rehabilitation and reuse alternative would also require the District to undertake ongoing maintenance and safety responsibilities with respect to the building, including providing fire protection, security, and other costs. Because the District has no plans or

⁴ It should also be noted that the draft PMPU proposes to designate the project site as Recreation Open Space, which, if the PMPU is approved, would limit allowable uses of the project site to "visitor-serving, public open spaces that provide public access, public views, activating features, or access to coastal areas." Even if the building could be repurposed consistent with such a designation, the public uses promoted by the Recreation Open Space designation may require additional rehabilitation for the building (which was previously used for an industrial, marine use).

⁵ Many cities have adopted adaptive reuse programs that private landowners may use to support adaptive reuse projects. However, such projects are usually undertaken by private developers on private property. Thus, they do not require the respective city to incur costs or responsibilities with respect to the specific property. This is a significant difference regarding the Marine Terminal Building because the rehabilitation of it would be the responsibility of the District under Alternative 3. The City of Long Beach's Adaptive Reuse Incentive Program, which provides incentives for such projects within the City's jurisdiction, explains that "adaptive reuse projects can be rewarding and serve many useful purposes. These projects are not to be undertaken lightly, and require a higher level of expertise to be successful. When working with older structures that may not be built to today's modern building standards, inherent complications are to be expected." Again, this incentive program exists to provide private landowners with an option for adaptive reuse but does not obligate the City of Long Beach to incur costs or other responsibilities with respect to specific properties. In addition, costs associated with adaptive reuse projects are often lessened through federal and state tax credits. The District is not a tax-paying entity, and it is unclear whether such credits would be available to the District. As noted previously, in the case of Alternative 2, which does not assume the District rehabilitates the building, the District would still incur costs and liabilities regarding (1) ongoing maintenance and preservation costs and (2) possible reduced revenue associated with leasing a property that would be limited in future uses and building modifications.

need for occupancy of the building, the District may be forced to incur these additional costs on an ongoing and long-term basis. Even with such actions, public safety concerns, including vandalism and trespassing, all of which have occurred on the existing site, would persist.

As with Alternative 2, above, Alternative 3 and retention of the Marine Terminal Building may preclude or impact implementation of the District's vision for the project site, as outlined in the PMPU.

The District finds that all potentially significant environmental impacts of the proposed project, except the unavoidable, significant direct impact to cultural resources, would be mitigated by the design of the proposed project and the adoption of the mitigation measures set forth in the Mitigation Monitoring and Reporting Program. The District further finds that, although this alternative would avoid or substantially lessen the potentially significant impacts to cultural resources, it is infeasible because (1) it would not attain Project Objectives 2 and 4 and (2) would require the District to undertake significant responsibilities and incur liabilities that are inconsistent with the District's responsibilities under the Public Trust and are outside of the scope of expertise of the District. Therefore, this alternative would not provide the District and the region with the benefits described in the Statement of Overriding Considerations and, thus, would be undesirable from a policy standpoint. For the potentially significant impacts that cannot be avoided or mitigated to a level below significance, the District adopts the Statement of Overriding Considerations in Section 7 in this document pursuant to CEQA Guidelines, Section 15093.

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Section 7 Statement of Overriding Considerations

The proposed project would have a significant, unavoidable environmental impact on the following area, which is described in detail in Chapter 3, Environmental Analysis, in the EIR:

- Cultural Resources

The District has adopted all feasible mitigation measures regarding the significant, unavoidable environmental impact. Although in some instances the mitigation measures may substantially lessen the unavoidable environmental impact, adoption of the mitigation measures will not fully avoid the impact. In addition, the District has analyzed a reasonable range of alternatives to the proposed project. Based on this analysis, the District has determined that none of these alternatives meet the objectives of the proposed project or are feasible and environmentally preferable to the proposed project as approved.

Therefore, pursuant to CEQA Guidelines, Sections 15043 and 15093, the District must adopt a Statement of Overriding Considerations to approve the proposed project. A Statement of Overriding Considerations allows a lead agency to determine that specific economic, social, or other expected benefits of a project outweigh its potential unavoidable, significant environmental risks. The District has weighed the benefits of the proposed project against its potentially significant environmental risks in determining whether to approve the proposed project.

Pursuant to CEQA Guidelines, Section 15093, the District hereby finds that the proposed project would have the following benefits and that each of the following benefits is sufficient on its own to justify adoption of the project:

- The Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project would comply with the San Diego RWQCB Cleanup and Abatement Order No. R9-2017-002.
- The Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project would remediate the contaminated soils and prevent the further release or threatened release of hazardous materials into San Diego Bay.
- The Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project would remediate the contaminated soils to protect the benthic communities consistent with the sediment quality objectives for the East Basin of San Diego Bay outlined in the San Diego Region Basin Plan.
- The Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project would remove the installations and improvements from the MTF to restore the project site by allowing for the growth of eelgrass and the establishment of biological communities.
- The Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project would reduce public safety hazards by eliminating risk of fire, personal injury to trespassers, vandalism, and crime associated with an abandoned facility.

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Section 8 Conclusion

The District has weighed the benefits of the project against the project's potential unavoidable, significant environmental risks in determining whether to approve the project. After balancing the specific economic, legal, social, technological, and other benefits of the project, the Board has determined that the specific benefits identified above outweigh the significant, unavoidable environmental impacts of the project. Each benefit, as well as the fulfillment of the objectives, of the approved project as stated herein is determined to be a separate and independent basis for overriding the unavoidable, significant environmental impacts identified previously. Therefore, for the above reasons, the District finds that the project's benefits outweigh the potentially significant, unavoidable environmental impacts described above.

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Attachment 1. Mitigation Monitoring and Reporting Program

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**Mitigation Monitoring and Reporting Program for the
Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project**

Mitigation Measure No.	Measure	Person(s) to Verify	Timing of Verification			Responsible Party	Completed		Completed
			Pre-Const.	During Const.	Post-Const.		Initials	Date	
Biological Resources									
BIO-1A	<p>Preconstruction California Least Tern Surveys. The project proponent shall schedule and complete all in-water construction activity outside of the nesting season for California least tern (generally between April 1 and mid-September). Should in-water construction occur during the California least tern nesting season, the following construction measures shall be implemented:</p> <p>1. Prior to the start of construction, the contractor, shall retain a qualified biologist approved by the District, that shall continually conduct monitoring of the San Diego Bay waters within 500 feet of construction activities to identify presence of terns displaying foraging behavior (e.g., searching and diving) and assess the potential for adverse impacts or adverse impacts, if any, on California least tern. If adverse impacts on terns occur (e.g., agitation or startling during foraging activities), construction may not commence, and in the event construction has commenced, construction shall cease until the biological monitor determines that no adverse impacts would occur or the California least tern has left the site for longer than 10 minutes.</p>	San Diego Unified Port District (District)	X	X		District, Qualified Biologist, Construction Contractor			

**Mitigation Monitoring and Reporting Program for the
Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project**

Mitigation Measure No.	Measure	Person(s) to Verify	Timing of Verification			Responsible Party	Completed		Completed
			Pre-Const.	During Const.	Post-Const.		Initials	Date	
BIO-1B	<p>Marine Mammal and Sea Turtle Construction Monitoring. Prior to construction activities involving in-water vibratory or impact hammer pile removal activities, the project proponent shall implement a marine mammal and sea turtle monitoring program. The monitoring program shall be approved by the San Diego Unified Port District and shall include the following components:</p> <ol style="list-style-type: none"> 1. For a period of 15 minutes prior to the start of in-water construction, a qualified biologist who meets the minimum requirements as defined by the National Oceanic Atmospheric Administration's Guidance for Developing a Marine Mammal Monitoring Plan shall be retained by the project proponent and approved by the San Diego Unified Port District and shall continuously monitor the applicable zones of influence of any vibratory pile removal (does not include pile jetting). The contractor shall halt in-water pile removal work if any marine mammals or green sea turtles are observed within the defined zone of influence for the species encountered. Work shall not recommence until it has been determined that the marine mammals and turtles have left the area or have not been seen on the surface within the zones of influence for a period of 15 minutes. 2. The construction contractor shall not start work if any observations of special-status 	District	X	X		District, Qualified Biologist, Construction Contractor			

**Mitigation Monitoring and Reporting Program for the
Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project**

Mitigation Measure No.	Measure	Person(s) to Verify	Timing of Verification			Responsible Party	Completed		Completed
			Pre-Const.	During Const.	Post-Const.		Initials	Date	
	<p>species are made prior to starting pile removal until marine mammals and turtle(s) have not been seen on the surface within the zones of influence for a period of 15 minutes.</p> <p>3. The qualified biologist shall continually monitor the zone of influence during pile removal activities to observe any marine mammals or sea turtles that approach or enter the zone of influence. The qualified biologist shall have authority to stop all work on site and shall do so if a marine mammal or green sea turtle enters the zone of influence or could otherwise be impacted by construction noise from vibratory or impact hammer pile removal operations.</p> <p>4. When performing vibratory pile removal, the contractor shall commence work with a few short pulses followed by a 1-minute period of no activity prior to commencing full pile removal activities. The purpose of this activity is to encourage the marine mammals and green sea turtles in the area to leave the project site prior to commencement of work. The contractor, under the direction of a qualified biologist, shall then commence monitoring as described to determine if marine mammals or turtles are in the area. This process should be repeated if pile removal ceases for a period of greater than an hour.</p>								

**Mitigation Monitoring and Reporting Program for the
Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project**

Mitigation Measure No.	Measure	Person(s) to Verify	Timing of Verification			Responsible Party	Completed		Completed
			Pre-Const.	During Const.	Post-Const.		Initials	Date	
BIO-1C	Construction Vessels. Construction vessel traffic shall not exceed existing ambient speed limits for the marina.	District		X		District, Construction Contractor			
BIO-1D	Preconstruction Raptor and General Avian Nest Surveys. If project demolition activities are scheduled to commence during the raptor nesting season (generally January 15 through August 31), preconstruction surveys for raptor nests shall be performed by a qualified biologist within 500 feet of project construction activities no more than 7 days prior to the initiation of construction. Demolition activities within 500 feet of an identified active raptor nest shall not commence during the breeding season until a qualified biologist determines that the nest is no longer active and any young birds in the area have adequately fledged and are no longer reliant on the nest. Trees with inactive nests can be removed outside the breeding season without causing an impact.	District	X	X		District, Qualified Biologist, Construction Contractor			
BIO-2A	Eelgrass Surveys. Prior to the start of any waterside construction activities, a qualified marine biologist who would be retained by the project proponent and approved by the San Diego Unified Port District shall conduct a preconstruction eelgrass survey per the California Eelgrass Mitigation Policy 2014. Surveys for eelgrass shall be conducted during the active eelgrass growing season	District	X	X		District, Qualified Biologist, Construction Contractor			

**Mitigation Monitoring and Reporting Program for the
Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project**

Mitigation Measure No.	Measure	Person(s) to Verify	Timing of Verification			Responsible Party	Completed		Completed
			Pre-Const.	During Const.	Post-Const.		Initials	Date	
	<p>(March–October), and results shall be valid for 60 days, unless completed in September or October; if completed in September or October, results shall be valid until resumption of the next growing season. The qualified marine biologist shall submit the results of the preconstruction survey to the San Diego Unified Port District and resource agencies within 30 days.</p> <p>If preconstruction eelgrass surveys identify eelgrass, the qualified marine biologist shall demarcate the distribution of eelgrass to allow tug and barge operators to maintain a safe distance to avoid impacts to eelgrass during construction.</p> <p>If eelgrass is found during the preconstruction survey, within 30 days of completion of in-water construction activities, a qualified marine biologist retained by the project proponent and approved by the San Diego Unified Port District shall conduct a post-construction eelgrass survey. The post-construction survey shall evaluate potential eelgrass impacts associated with construction.</p> <p>Upon completion of the post-construction survey, the qualified marine biologist shall submit the survey report to San Diego Unified Port District and resource agencies within 30 days.</p>								

**Mitigation Monitoring and Reporting Program for the
Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project**

Mitigation Measure No.	Measure	Person(s) to Verify	Timing of Verification			Responsible Party	Completed		Completed
			Pre-Const.	During Const.	Post-Const.		Initials	Date	
BIO-2B	<p>Eelgrass Mitigation. In the event that the post-construction survey identifies any impacts on eelgrass, the project proponent shall implement the following:</p> <ul style="list-style-type: none"> • A qualified marine biologist retained by the project proponent and approved by the San Diego Unified Port District shall develop a mitigation plan for in-kind mitigation. The qualified marine biologist shall submit the mitigation plan to the San Diego Unified Port District and resource agencies within 60 days following the post-construction survey. • The Eelgrass Mitigation Plan shall specify that the contractor/entity harvesting eelgrass to implement the required mitigation would need to obtain a scientific collecting permit for eelgrass harvest and a letter of authorization at least 30–60 days prior to implementation. • Mitigation for eelgrass impacts shall be at a ratio of no less than 1.2:1 as required by the California Eelgrass Mitigation Policy. Mitigation shall commence within 135 days of any noted impacts on eelgrass, such that mitigation commences within the same eelgrass growing season that impacts occur. • Upon completing mitigation, the qualified biologist shall conduct mitigation performance monitoring per the California Eelgrass Mitigation 	District			X	District, Qualified Biologist			

**Mitigation Monitoring and Reporting Program for the
Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project**

Mitigation Measure No.	Measure	Person(s) to Verify	Timing of Verification			Responsible Party	Completed		Completed
			Pre-Const.	During Const.	Post-Const.		Initials	Date	
	<p>Policy, at performance milestones of 0, 12, 24, 36, 48, and 60 months. The qualified biologist shall conduct all mitigation monitoring during the active eelgrass growing season and shall avoid the low growth season (November–February). Performance standards shall be in accordance with those prescribed in the California Eelgrass Mitigation Policy.</p> <ul style="list-style-type: none"> The qualified biologist shall submit the monitoring reports and spatial data to the San Diego Unified Port District and resource agencies within 30 days after the completion of each monitoring period. The monitoring reports shall include all the specific requirements identified in the California Eelgrass Mitigation Policy. 								
BIO-2C	<p>Avoidance of Eelgrass Due to Anchored Barges, Boat Navigation, and Propeller Wash. If eelgrass is found during the preconstruction survey, tug and barge operators shall ensure that anchored construction barges are outside of eelgrass beds. Additionally, tugboat operators shall be instructed that propeller wash can damage eelgrass. No anchoring (and other bottom-disturbing activities) shall occur within eelgrass beds, and propeller wash shall not be directed toward eelgrass beds.</p>	District	X	X		District, Construction Contractor			

**Mitigation Monitoring and Reporting Program for the
Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project**

Mitigation Measure No.	Measure	Person(s) to Verify	Timing of Verification			Responsible Party	Completed		Completed
			Pre-Const.	During Const.	Post-Const.		Initials	Date	
Cultural Resources									
CUL-1	Historic American Buildings Survey Level 2 Documentation. Prior to demolition, the Marine Terminal Building, marine railway, and pier shall be documented to Historic American Buildings Survey Level 2 standards, according to the outline format described in the Historic American Building Survey Guidelines for Preparing Written Historical Descriptive Data, and be approved by the District. Photographic documentation shall follow the Photographic Specification – Historic American Building Survey, including 10–20 archival quality, large-format photographs of the exterior and interior of the building and its architectural elements. Construction techniques and architectural details shall be documented, especially noting the measurements, hardware, and other features that tie architectural elements to a specific date. If feasible, views of the pier and/or railway and their association with the building should be documented from the water with views to the west. The original architectural plans shall be archivally reproduced following Historic American Buildings Survey standards. Three copies of the Historic American Buildings Survey documentation package, with one copy including original photograph negatives, shall be produced, and at least one of these copies shall be placed in an archive or history collection accessible to the general public.	District	X			District			

**Mitigation Monitoring and Reporting Program for the
Lockheed Martin Harbor Island Facilities Demolition and Sediment Remediation Project**

Mitigation Measure No.	Measure	Person(s) to Verify	Timing of Verification			Responsible Party	Completed		Completed
			Pre-Const.	During Const.	Post-Const.		Initials	Date	
CUL-2	Historical Interpretive Exhibit. An interpretative opportunity that would communicate the significance of the Lockheed Martin Marine Terminal Facilities to the San Diego community would be developed. This opportunity shall consist of a permanent interpretive exhibit that shall incorporate information from historic photographs, Historic American Buildings Survey documentation, or other materials in a location accessible to the public. The minimum size of the exhibit should be 2 feet by 3 feet and could be mounted on a pedestal at an angle or mounted vertically on a building or structure. The interpretive exhibit shall be developed by a qualified team, including a historian and graphic designer, and approved by the San Diego Unified Port District. If the exhibit could not be located at the current location, another appropriate venue on Harbor Island shall be considered by the San Diego Unified Port District during development and review of the interpretive exhibit.	District	X			District			

Notes: District = San Diego Unified Port District

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Attachment 2. District Revenue Presentation

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FY 2021 REFORECAST



**PORT of
SAN DIEGO**
Waterfront of Opportunity

September 10, 2020

- Opening Message
- Updated Revenue Projections
- Expense Reductions
- Reserves

Real Estate Revenue – Budget vs Reforecast

	FY21 Budget - Reforecast (08.25.2020)															
	Quarter 1			Quarter 2			Quarter 3			Quarter 4			Total			
	FY21 Budget	Reforecast	Variance (\$)	FY21 Budget	Reforecast	Variance (\$)	FY21 Budget	Reforecast	Variance (\$)	FY21 Budget	Reforecast	Variance (\$)	FY21 Budget	Reforecast	Variance (\$)	Variance (%)
Concession Revenue	11,962,040	13,218,646	1,256,606	12,889,045	12,439,595	(449,450)	16,677,644	12,536,008	(4,141,636)	18,372,871	12,839,460	(5,533,411)	59,901,600	51,033,709	(8,867,891)	-14.80%
Seaport Concession	1,105,002	334,312	(770,690)	900,372	223,578	(676,794)	982,224	212,200	(770,024)	1,105,002	212,340	(892,662)	4,092,600	982,431	(3,110,169)	-75.99%
Fixed Rent	4,929,542	4,929,542	-	5,254,363	5,254,363	-	4,954,337	5,338,667	384,330	4,916,758	5,301,704	384,946	20,055,000	20,824,276	769,276	3.84%
Seaport CAM	376,056	371,242	(4,814)	306,416	371,242	64,826	334,272	371,242	36,970	376,056	371,242	(4,814)	1,392,800	1,484,967	92,167	6.62%
Seaport Marketing	101,142	102,197	1,055	82,412	102,197	19,785	89,904	102,197	12,293	101,142	102,197	1,055	374,600	408,789	34,189	9.13%
Seaport Parking	381,159	182,199	(198,960)	310,574	134,437	(176,137)	338,808	205,000	(133,808)	381,159	322,255	(58,904)	1,411,700	843,891	(567,809)	-40.22%
ACH Parking	56,574	56,574	-	56,574	56,574	-	56,574	-	(56,574)	56,578	-	(56,578)	226,300	113,148	(113,152)	-50.00%
Advertising	22,401	17,495	(4,906)	22,401	17,495	(4,906)	22,401	17,495	(4,906)	22,797	17,804	(4,993)	90,000	70,290	(19,710)	-21.90%
Park Usage Fees	345,500	10,365	(335,135)	89,830	7,186	(82,644)	82,920	9,950	(72,970)	172,750	29,368	(143,383)	691,000	56,869	(634,131)	-91.77%
ReimbCst/Cost Recovery	30,000	30,000	-	30,000	30,000	-	30,000	30,000	-	30,000	30,000	-	120,000	120,000	-	0.00%
Waived Fees-TAP	(109,930)	(3,298)	106,632	(30,078)	(2,406)	27,672	(84,095)	(10,091)	74,004	(160,897)	(27,352)	133,545	(385,000)	(43,148)	341,852	-88.79%
Total Real Estate	19,199,486	19,249,275	49,789	19,911,909	18,634,262	(1,277,647)	23,484,989	18,812,668	(4,672,321)	25,374,216	19,199,017	(6,175,199)	87,970,600	75,895,222	(12,075,378)	-13.73%

Real Estate Concession Revenue Methodology

Original FY21 Budget - Concession Revenue Discount Recovery Rates																
	March	April	May	June	July	August	September	October	November	December	January	February	March	April	May	June
Convention Hotels	90%	100%	100%	90%	80%	65%	50%	35%	20%	15%	15%	15%	10%	10%	10%	10%
Other Hotels	85%	100%	100%	90%	80%	65%	50%	35%	20%	15%	15%	15%	10%	10%	10%	10%
Restaurants	75%	100%	100%	85%	75%	60%	45%	30%	15%	15%	15%	15%	10%	10%	10%	10%
Marinas	10%	10%	15%	15%	15%	15%	15%	15%	15%	10%	10%	10%	10%	10%	10%	10%
Retail	75%	100%	100%	85%	75%	60%	45%	30%	15%	15%	15%	15%	10%	10%	10%	10%
Sportfishing	85%	100%	100%	85%	75%	60%	45%	30%	15%	15%	15%	15%	10%	10%	10%	10%
Yacht Clubs	20%	25%	25%	25%	20%	20%	20%	20%	20%	15%	15%	15%	10%	10%	10%	10%
Tourism	95%	100%	100%	85%	75%	60%	45%	30%	15%	15%	15%	15%	10%	10%	10%	10%
Marine Sales & Service	20%	20%	30%	30%	25%	25%	20%	20%	20%	15%	15%	15%	10%	10%	10%	10%
Other	75%	100%	100%	85%	75%	60%	45%	30%	15%	15%	15%	15%	10%	10%	10%	10%
FY 20					FY21											
Base Case Bottom-Out																

Revised Expected - Concession Revenue Discount Recovery Rates																
	March	April	May	June	July	August	September	October	November	December	January	February	March	April	May	June
Convention Hotels	71%	94%	93%	95%	95%	85%	80%	75%	75%	70%	70%	65%	60%	55%	50%	50%
Other Hotels	50%	86%	80%	72%	64%	59%	54%	44%	39%	34%	29%	24%	24%	24%	24%	24%
Restaurants	54%	93%	85%	54%	50%	50%	50%	40%	40%	40%	30%	30%	30%	20%	20%	20%
Marinas	2%	10%	5%	-5%	0%	0%	0%	5%	5%	5%	5%	5%	10%	10%	10%	10%
Retail	54%	85%	44%	43%	40%	40%	35%	35%	30%	30%	30%	25%	25%	25%	20%	20%
Sportfishing	41%	92%	88%	4%	0%	0%	5%	5%	10%	10%	10%	10%	5%	5%	5%	5%
Yacht Clubs	22%	33%	28%	29%	30%	30%	30%	30%	30%	25%	25%	25%	20%	20%	20%	20%
Tourism	92%	100%	98%	100%	95%	85%	80%	75%	70%	70%	65%	55%	45%	35%	30%	30%
Marine Sales & Service	8%	22%	30%	5%	5%	5%	5%	10%	10%	10%	10%	10%	15%	15%	15%	15%
Other	-3%	77%	65%	61%	55%	50%	40%	35%	35%	35%	30%	30%	25%	25%	20%	20%
FY 20					FY21											
Base Case Bottom-Out																

Parking Revenue – Budget vs Reforecast

	BUDGET FY 2021	REFORECAST BUDGET FY 2021	\$ Change
<u>Parking</u>			
Structures/Lots			
Convention Center Garage	\$ 4,284,000	\$ 2,164,962	\$ (2,119,038)
Navy Pier	1,676,300	1,480,710	(195,590)
Bayfront Parking Garage	1,018,300	713,217	(305,083)
B Street Pier	388,800	268,863	(119,937)
Pac Hwy Lots	482,400	332,916	(149,484)
Harbor Island Lot	300,000	150,000	(150,000)
Meters	2,507,400	3,030,363	522,963
Citations	636,200	768,713	132,513
Fixed Rent	356,400	356,400	-
Total Parking Revenue	\$ 11,649,800	\$ 9,266,144	\$ (2,383,656)

This forecast results in a reduction of \$2.4M from the FY 2021 Budget. These numbers include July actuals where available and the updated assumptions below.

- Parking at Convention Center and Bayfront reduced to reflect Conventions not starting until January 2021. Prior to January, Parking revenue at these locations is limited to employee parking inclusive of BAE agreement.
- Navy Pier & B St. Pier have recovery timeframe pushed out appropriately to be consistent with July results
- Harbor Island Lot assumes new lease with airport (in Real Estate revenues) beginning in January
- Meters & Citations reflect updated meter occupancy levels from what we observed in July and early August

Maritime Revenue – Budget vs Reforecast

Maritime- FY21 Budget Reforecast (08.25.2020)												
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Concession	56%	51%	43%	37%	24%	51%	22%	22%	36%	35%	40%	51%
Cruise	100%	100%	100%	100%	100%	100%	100%	21%	23%	22%	18%	8%
Pasha	50%	50%	50%	50%	50%	50%	30%	30%	30%	30%	30%	30%

ASSUMPTIONS	ORIG. Budget FY 21	BASE Budget FY 21	Previous WORST FY 21	Reforecast WORST FY 21 (8.25.20)
CRUISE: Activity Months	SEP-JUN	DEC-JUN	JAN-JUN	FEB-JUN
Vessel Calls	137	82	72	63
Passengers	450,000	270,273	181,148	126,540
Cruise Revenues	\$5,905,300	\$3,543,400	\$2,716,800	\$2,153,800
PASHA: Tariff Charges	\$10,740,000	\$7,518,000	\$7,395,300	\$6,459,100
Variance from ORIG. Budget		-30%	-30%	-50% JUL-DEC -30% JAN-JUN
NEW: Dole Storage Space Rental	\$0	\$0	\$0	\$206,500

Concession Revenue is revised to primarily based on monthly minimum rents.

Cruise activities are assumed to commence in Feb instead of Jan with fewer cruise calls and reduced vessel occupancy to 60%.

Pasha autos are assumed to reduce from 30% to 50% in Jul-Dec 2020 in case of additional OEM plant shut down and logistics delay due to COVID-19.

TAMT revenue has remained consistent and commercial team is actively seeking additional spot cargo opportunities.

Operating Revenue Reductions

• FY 2021 Operating Revenue Budget	\$152,903,500
• Reductions	
• Real Estate Reduction	(\$8,523,756)
• Seaport Reduction	(\$3,551,622)
• Parking Reduction	(\$2,383,656)
• Maritime Reduction	(\$2,315,400)
• Aquaculture Increase	\$150,000
Reductions Total	(\$16,624,434)
• Adjusted FY 2021 Operating Revenue Budget	\$136,279,066

Personnel Expense Reductions

• FY 2021 Personnel Budget	\$101,681,100
• Reductions	
• Vacancies Since Budget Approval (17)	(\$1,905,500)
• Hiring Freeze Additional Vacancies	(\$1,581,250)
• Current Recruitments	\$755,000
• Group Health Savings	(\$900,000)
Reductions Total	(\$3,631,750)
• Adjusted FY 2021 Personnel Budget	\$98,049,350

Non-Personnel Expense Reductions

• FY 2021 Non-Personnel Budget	\$45,652,200
• Reductions	
• Parking Management Fees	(\$700,000)
• PASHA Management Fees	(\$264,725)
• Cruise Security	(\$170,000)
• Operational Savings	(\$360,000)
• Seaport Activation	(\$275,000)
• Travel Savings	(\$174,500)
Reductions Total	(\$1,944,225)
• Adjusted FY 2021 Non-Personnel Budget	\$43,707,975

Capital Expenditure Reductions

- **FY 2021 Other Sources & Uses of Funds and Reserves Budget** **(\$8,525,100)**

- **Capital Expenditure Reductions**
 - **Equipment Outlay Deferrals** **(\$1,000,000)**
 - **TMP Savings**
 - Replacing Switches **(\$250,000)**
 - **Major Maintenance Savings**
 - Roof Replacement HPD **(\$300,000)**
 - Electrical Improvements at TAMT **(\$450,000)**
 - Structural Repairs at NCMT Berth 24-3 **(\$100,000)**
 - Vertical Pile Repairs to Navy Pier **(\$100,000)**
- Reductions Total** **(\$2,200,000)**

- **Adjusted FY 2021 Other Sources & Uses of Funds and Reserves Budget** **(\$6,325,100)**

Updated Budget in Brief

Attachment B to Agenda File No. 2020-0360

	BUDGET FY 2021	% Change	REFORECAST BUDGET FY 2021	\$ Change	% Change
<u>Operating Revenue</u>					
Real Estate Development- Portfolio Management	\$ 87,970,600	-24.3%	\$ 75,895,222	\$ (12,075,378)	-13.7%
Port as a Service	11,649,800	-28.4%	9,266,144	(2,383,656)	-20.5%
Maritime	33,415,200	-16.8%	31,099,800	(2,315,400)	-6.9%
Harbor Police Department	16,659,600	0.2%	16,659,600	-	0.0%
Aquaculture & Blue Technology	-	0.0%	150,000	150,000	0.0%
Miscellaneous	3,208,300	-6.5%	3,208,300	-	0.0%
Total Operating Revenue	\$ 152,903,500	-20.7%	\$ 136,279,066	\$ (16,624,434)	-10.9%
<u>Non-Operating Revenue</u>					
Grants - Capital Project Reimbursement	\$ 6,047,500	-59.9%	\$ 6,047,500	\$ -	0.0%
Grant Revenue - Other	1,737,000	43.2%	1,737,000	-	0.0%
Investment Revenue	800,000	-52.9%	400,000	(400,000)	-50.0%
Other	4,176,000	-0.6%	5,176,000	1,000,000	23.9%
Total Non-Operating Revenue	\$ 12,760,500	-42.5%	\$ 13,360,500	\$ 600,000	4.7%
Total Revenue	\$ 165,664,000	-22.9%	\$ 149,639,566	\$ (16,024,434)	-9.7%
<u>Expenses</u>					
Salaries & Wages	\$ 60,411,400	-4.8%	\$ 58,635,762	\$ (1,775,638)	-2.9%
Burden	41,269,700	3.4%	39,413,588	(1,856,113)	-4.5%
Non-Personnel Expense (NPE)	45,652,200	-27.9%	43,707,975	(1,944,225)	-4.3%
Municipal Service Agreements (MSA)	8,329,800	2.3%	8,329,800	-	0.0%
Major Maintenance - Expense	510,000	-21.5%	510,000	-	0.0%
Non-Operating NPE	3,315,800	-12.1%	3,315,800	-	0.0%
Capitalized Labor	(2,350,000)	-41.1%	(2,350,000)	-	0.0%
Total Expense	\$ 157,138,900	-10.3%	\$ 151,562,925	\$ (5,575,975)	-3.5%
Earnings Before Depreciation	\$ 8,525,100	-78.5%	\$ (1,923,359)	\$ (10,448,459)	-122.6%
Percent to Total Revenue	5.1%		-1.3%	-6.4%	
Other Sources & Uses of Funds and Reserves	\$ (8,525,100)	-77.4%	\$ (6,325,100)	\$ 2,200,000	-25.8%
Unrestricted Sources Over Uses of Funds	\$ 0	-100.0%	\$ (8,248,459)	\$ (8,248,459)	0.0%

Reserves Balance

Attachment B to Agenda File No. 2020-0360

Description	Cumulative		
	Unrestricted	Operating	Total
Reserves	\$ 16.1	\$ 68.1	\$ 84.2
Reduction in Operating Reserve From Reduction of FY 2021 Expenses	6.3	(6.3)	
Total Reserves Available	\$ 22.4	\$ 61.8	\$ 84.2
Seaport Village Tenant Improvements Funding Rolled Forward	2.8		2.8
Coast Guard Build Out Rolled Forward	2.0		2.0
Major Maintenance Program Carry Over (not used in FY 2020)	0.8		0.8
Subtotal	\$ 28.0	\$ 61.8	\$ 89.8
FY 2020 Preliminary Results	\$ (9.9)		\$ (9.9)
Reserves Balance FY 2020	\$ 18.1	\$ 61.8	\$ 79.9
FY 2021 Requirements:			
Operating Deficit	\$ (9.9)		(9.9)
Seaport Village Activation and Enhancements	(0.6)		(0.6)
Seaport Village Tenant Improvements	(2.8)		(2.8)
Chula Vista Development Set Aside	(2.0)		(2.0)
Major Maintenance Program Carry Over	(0.8)		(0.8)
Coast Guard Build Out	(2.0)	(0.2)	(2.2)
Anticipated Additional FY 2021 Shortfall	-	(8.2)	(8.2)
Total FY 2021 Requirements	\$ (18.1)	\$ (8.4)	\$ (26.5)
Total Reserves Required FY 2020 and FY 2021	\$ (28.0)	\$ (8.4)	\$ (36.4)
Total Projected Cumulative and Operating Reserves Balances FY 2021	\$ -	\$ 53.4	\$ 53.4



Next Steps

Attachment 3. Abatement Estimate Summary

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October 8, 2020
Project No. 108781004

Mr. Ryan Binns
Director, Environmental Planning & Compliance
Harris & Associates, Inc.
600 B Street, Suite 2000
San Diego, California 92101

Subject: Abatement Cost Estimate
Port of San Diego – Lockheed Martin Marine Terminal
Demolition and Offshore Remediation Project
1160 Harbor Island Drive
San Diego, California 92101

Harris Project No. 1700249.002
Amendment No. 1

Reference: Ninyo & Moore, 2019, Hazardous Building Materials Survey, Port of San Diego, Lockheed Martin Site, 1160 Harbor Island Drive, San Diego, California 92101; dated December 16.

Dear Mr. Binns:

In accordance with your authorization and Subconsultant Agreement Amendment No. 1, Ninyo & Moore has solicited estimated abatement costs from licensed abatement contractors to remove identified hazardous building materials (Ninyo & Moore, 2019) for the former Lockheed Martin Marine Terminal Building (subject building). The subject building has identified asbestos-containing materials (ACM), lead-containing surfaces (LCS), and other hazardous building materials. These cost estimates are only for informational purposes and may not reflect the actual cost of abatement when the project proceeds. It is our understanding that the subject building is slated for demolition and/or renovation and the site is then slated for remediation.

CONTRACTOR ABATEMENT ESTIMATES

On September 23, 2020, Ninyo & Moore reached out, via email, to six licensed abatement contractors in the greater San Diego and Southern California region. Contractors are licensed with the California State License Board (CSLB), with asbestos certification, and registered with the California Department of Industrial Relations (DIR) Asbestos Contractor's Registration Unit (ACRU-DOSH). The correspondence included the hazardous building materials survey (Ninyo & Moore, 2019) and requested project costs be broken down by each material identified. Contractor information, and if a response was received, are outlined below:

- Watkins Environmental, Inc. – Estimate **Received** – **\$102,450**
 - Address: 8291 Aero Place, Suite 160, San Diego, CA 92123
 - Phone: 858-268-1500
 - Contact: Pierce Barone, pierce@watkinsenviro.com
 - CSLB No.: 966461
 - ACRU-DOSH No.: 1037
- Clauss Construction – Estimate **Received** – **\$122,606** (original \$89,712)
 - Address: 9911 Maine Avenue, Lakeside, CA 92040
 - Phone: 619-390-4940
 - Contact: Mac Lee, mac@claussconstruction.com
 - CSLB No.: 630564
 - ACRU-DOSH No.: 433
- NorthStar Contracting Group, Inc. – Estimate **Received** – **\$125,800**
 - Address: 5780 Chesapeake Court, Suite 1, San Diego, CA 92123
 - Phone: 858-495-0649
 - Contact: Reed Haberer, rhaberer@northstar.com
 - CSLB No.: 518740
 - ACRU-DOSH No.: 061
- American Technologies, Inc. (ATI) – Estimate **Not Received**
 - Address: 8444 Miralani Drive, San Diego, CA 92126
 - Phone: 858-530-2400
 - Contact: Charles Will, charles.will@atirestoration.com
 - CSLB No.: 571784
 - ACRU-DOSH No.: 213
- Nexon Corporation – Estimate **Not Received**
 - Address: 5450 Complex Street, Suite 301, San Diego, CA 92123
 - Phone: 858-571-9100
 - Contact: William Stamper, wstamper@nexonco.com
 - CSLB No.: 897099
 - ACRU-DOSH No.: 916
- Precision Contracting, Inc. – Estimate **Not Received**
 - Address: 1818 North Orangethorpe Park, Anaheim, CA 92801
 - Phone: 949-642-6664
 - Contact: David Heath, dheath@precision-ca.com
 - CSLB No.: 701357
 - ACRU-DOSH No.: 1020

As indicated previously, three cost estimates were received, which are attached to this summary letter in the order in which they were received (Attachments 1, 2, 3, and 4). The estimates provided should be reviewed in regard to inclusions and exclusions. A brief discussion of considerations is conducted below.

COST CONSIDERATIONS

There are many aspects of this cost solicitation that should be considered as the cost estimates are reviewed and scrutinized. All estimates have been prepared without a site walk and are based on limited email correspondence, which did not indicate that estimates should be competitive. No plans were provided for the site, such as if the subject building would remain or be demolished. Additionally, no specifications regarding project execution were provided.

Details of the estimates vary in some important ways and contribute to the \$36,000 variance between the original estimates. Potentially most consequential in relation to eventual cost is the consideration of prevailing wage requirements. Both the Watkins Environmental and NorthStar Contracting original estimates factor in prevailing wage costs, while the Clauss estimate did not. A revised Clauss estimate does factor in prevailing wage considerations and reflects their importance, reducing the cost range to \$23,350. Neither of those estimates provide schedule or workforce estimates, which the Clauss estimate does. The Clauss estimate factors in a 6-person team and 22 working days, both of which seem typical for abatement projects of this size. While not explicitly stated in the NorthStar estimate, all costs are assumed to be based on a single mobilization

Another important consideration is the abatement/treatment of LCS. The Watkins Environmental estimate does not consider LCS abatement due to the noted condition of LCS materials. Intact LCS can be repainted/encapsulated or demolished in place. If demolished, waste stream characterization testing would be required, which is not included in the Watkins Environmental estimate.

These costs should be considered point-in-time estimates only. Scheduling demand and workforce availability can impact project costs. Changes in regulatory requirements, both in terms of labor compliance and standard of care, may also impact eventual cost.

ADDITIONAL CONSIDERATIONS

Based on the identification of ACM, LCS, and other hazardous building materials, abatement and appropriate removal will be necessary for building demolition and/or renovation. The subject building's location near San Diego Bay could require California Coastal Commission involvement and permitting, especially for demolition activities.

If the building was renovated, as opposed to demolished, material removal would need to be performed based only on planned renovations and current conditions. In that case, all identified

materials may not have to be abated. Undisturbed/out-of-scope materials could remain in the subject building if a management plan is developed and implemented to maintain site safety. Site conditions at the time of survey activities were not assumed to pose a risk to human health based on observed material conditions – reevaluation should be performed to assess if conditions remain as observed.

LIMITATIONS

Ninyo & Moore has not developed any of the estimates presented in this summary letter and attached below. The estimates were provided by third-party, independent contractors with which Ninyo & Moore has no legal affiliation. Contractors contacted were limited to those that Ninyo & Moore has recently worked with on other project sites involving similar work.

Our opinions and the presented considerations are provided in accordance with current practice and the standard of care exercised by consultants performing similar tasks in the project area. No warranty, expressed or implied, is made regarding our opinions and conclusions.

Ninyo & Moore appreciates the opportunity to provide services on this project.

Respectfully submitted,

NINYO & MOORE



Nicholas Marinello, CAC No. 17-6117
Project Environmental Scientist



C. Wood Hays
Principal Environmental Manager

NSM/CWH

Attachments: (1) Watkins Environmental, Inc. Estimate
(2) Revised Clauss Construction Estimate
(3) Original Clauss Construction Estimate
(4) NorthStar Contracting Group, Inc. Estimate

Distribution: (1) Addressee (via email)



ATTACHMENTS



September 23, 2020

Quote #Q-6333PB

Mr. Nicholas Marinello
Ninyo & Moore
5710 Ruffin Road
San Diego, CA 92123

Phone: (858) 576-1000
E-mail: nmarinello@ninyoandmoore.com

Project: Lockheed Martin Site - 1160 Harbor Island Dr.
Subject: Hazardous Materials Abatement

Dear Mr. Marinello,

Watkins Environmental is pleased to provide you with the following quote for work on your project. Our quote is based on the following Work to be Performed, Items Included in Quote, Items Excluded from Quote, and General Conditions of Quote.

Work to be Performed

Remove and dispose of the asbestos and universal waste (A/C units to remain, freon removal only) as identified and quantified in the Hazardous Building Materials Survey prepared by *Ninyo & Moore* dated December 16, 2019. Price is budgetary and contingent upon a site visit.

Asbestos: \$97,800.00

Lead: N/A - All lead was determined to be in "intact" condition

Universal Waste: \$4,650.00

Our Price for this Work
As Above

This quote is valid for 30 days from the date of the quote. If you do not notify Watkins Environmental, Inc. with a notice of intent to award or issue a contract within the 30-day period, we retain the right to revise our price and re-submit. This quote is subject to any regulatory cost changes and industry cost increases that would require a modification to the quote. All work will be performed in strict compliance with all Federal, State and Local regulations.

We appreciate the opportunity to quote on your project. If I can be of any further assistance, please do not hesitate to call me at (858) 268-1500.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Barone', with a stylized flourish at the end.

Pierce Barone

**Inclusions, Exclusions, and General Conditions
of Quote Q-6333PB, dated September 23, 2020**

Items Included in Quote:

- Only the specific scope of work identified under Work to be Performed.
- Prevailing wages.
- All required hazardous material notifications to proper agencies prior to our start of work.
- This price is based on one mobilization. Additional mobilizations will be billed to Owner/Client.

Items Excluded from Quote:

- GENERAL EXCLUSIONS: Any work not specifically identified under Work to be Performed, including, but not limited to: providing water or power, shoring/bracing, toilets, fencing, traffic control, security, scaffolding, work outside of normal business hours, payment or performance bonds, retention, de-nailing, weather protection, mark out, disconnecting, cutting, capping, redirecting, or removal of any utilities, commencement of any extra work without a mutually agreed upon lump sum price, permits of any kind, prevailing wages, removal of more than one layer of material, SWPPP requirements of any kind, removal of any items to be salvaged, saved, or stored, removal or the moving of any furniture, equipment, or other items required to access Watkins' work areas, layout of any kind, preparation of any kind for any new work, repair or replacement of any items or surfaces removed or damaged by a result of our work, including damaged paint, walls, doors, surfaces, ceilings, blinds, wallpaper, scratches to surfaces, scrapes, holes, chips, or discoloration, any third party air clearances, reports, inspections, air monitoring/sampling, wipe sampling, or bulk sampling, infectious control, responsibility of any new items not adhering to surfaces as a result of any materials, chemicals, or means and methods used by Watkins to complete their work.

- ASBESTOS EXCLUSIONS: Unless otherwise stated, the removal of any in-wall or inaccessible asbestos materials, removal of any non-visible asbestos containing materials, removal of any drywall that is not taped and/or textured, all friable/non-friable asbestos waste being transported and disposed of to any landfill not chosen by Watkins, and any items identified as "assumed" to be asbestos in the survey are excluded.

- LEAD-BASED PAINT EXCLUSIONS: Unless otherwise stated, the complete removal of lead-based paint from surfaces other than scraping of the loose and flaky, any lead painted surfaces identified as intact and/or in good condition, any lead removal or cleanup of any surrounding exterior surfaces or soils, and demolition debris being disposed of as anything other than construction debris are excluded. Watkins will not provide any demolition debris waste pile sampling/profiling as required for any demolition disposal by other trades. (Client/Owner acknowledges that exterior painted surfaces will have wear, tear, and damage over the years that will collect in surrounding soils and is considered a pre-existing condition.)

General Conditions of Quote:

- GENERAL TERMS AND CONDITIONS: All required parking for Watkins employees and work vehicles shall be provided by Owner/Client. Watkins will not accept any back charges for damages as a result of their work. Owner/Client hereby acknowledges that the nature of the work being performed may require destructive means and methods. Owner/Client acknowledges damage to surfaces and items left behind may occur. Owner/Client acknowledges they have been advised that all furniture and furnishings shall be completely removed from the work area by Owner/Client prior to Watkins arrival and will not hold Watkins responsible for any damage to any items left in the work area. Access to work areas shall be provided as described at time of bid. Watkins shall retain all rights to any salvage materials/items relating to its work. In the event Owner/Client has Watkins proceed with work in any manner without a mutually signed contract, Owner/Client hereby agrees that this Quote shall be a binding contract.

ROM

Oct 8, 2020

Revision -1

Attn: Nicholas Marinello

RE: 1160 Harbor Island Drive, Asbestos, Lead, Universal Waste. Work is based on the Ninyo & Moore Hazardous survey dated Dec 16, 2019. No site visit was done for this proposal. Schedule is based on a six-man crew, time frame will shorten with a larger crew. Revised to prevailing wage rates.

Asbestos Abatement	\$113,750.00
19 Days	
Lead Abatement	\$4,920.00
2 Days	
Universal Waste	\$3,936.00
1 Days	
Total	

Inclusions

- 1 Mobilization, Supervision, Labor & Materials
- Construct containment, establish negative pressure
- Abatement of Asbestos, Lead & Universal Waste
- Remove lights and ballast for disposal
- Proper disposal of all waste

Exclusions

- Third Party Monitoring
- All utilizes will be disconnected by others
- Building must be clear of all debris
- Temp Facilities water, electrical, toilets

Note: This proposal was based on non-prevailing wage

Malcolm Lee
Estimator

ROM

September 24, 2020

Attn: Nicholas Marinello

RE: 1160 Harbor Island Drive, Asbestos, Lead, Universal Waste. Work is based on the Ninyo & Moore Hazardous survey dated Dec 16, 2019. No site visit was done for this proposal. Schedule is based on a six-man crew, time frame will shorten with a larger crew.

Asbestos Abatement	\$83,232.00
19 Days	
Lead Abatement	\$3,600.00
2 Days	
Universal Waste	\$2,880.00
1 Days	
Total	

Inclusions

- 1 Mobilization, Supervision, Labor & Materials
- Construct containment, establish negative pressure
- Abatement of Asbestos, Lead & Universal Waste
- Remove lights and ballast for disposal
- Proper disposal of all waste

Exclusions

- Third Party Monitoring
- All utilities will be disconnected by others
- Building must be clear of all debris
- Temp Facilities water, electrical, toilets

Note: This proposal was based on non-prevailing wage

Malcolm Lee
Estimator

Nicholas Marinello

From: Haberer, Reed <RHABERER@NorthStar.com>
Sent: Friday, September 25, 2020 1:34 PM
To: Nicholas Marinello
Subject: RE: Rough Cost Estimate Request - 1160 Harbor Island Dr. - NorthStar

Thanks Nic,

\$125,800 (Union / prevailing wage scale)

ACM

\$3,750 Window caulk 150 lf

\$55,000 Drywall 15,000 sf

\$9,900 FT 3,300

\$9,900 Mastic 3,300

\$2,800 Lino / mastic 175 sf

\$22,250 Epoxy Floor 2,225 sf

\$250 Pipe 5 lf

\$50 Elbow 1 ea

Pb.

\$4,750 Striping 50 Sf

\$200 Sinks 2 ea

Will scrap as metal salvage unless they want paint stripped then T&M Metal bean 40 lf

\$3,250 Lights 105 ea

\$2,000 Bulbs 200 ea

\$1,400 Sodium lights 28 ea

\$400 Mercury switches 4 ea

\$7,000 AC units 5 ea

\$200 Fire hoses 2 ea

\$200 Winch 1

\$1,000 Hoist 1

\$1,500 Compressors 2 ea

Reed Haberer

Estimating and Project Manager-San Diego

NorthStar Contracting Group, Inc. | 5780 Chesapeake Court Suite 1 | San Diego, CA 92123

Mobile: 619-954-8416 Office: 858-495-0649 x 5703 | Email: rhhaberer@northstar.com

24 HOUR EMERGENCY RESPONSE: 800.283.2933 | www.northstar.com

Formerly known as TEG/LVI Environmental Services, Inc. and Structural Protection Service Systems

License # 518740

Signatory to local 12 / 89 / 300 San Diego



Asbestos Removal

Demolition Interior / Structural

Infection Control

Dust Containments for Clean Demolition and Construction

Lead and Haz Mat Abatement/ Mold Remediation
Fire / Water Restoration / Recovery

"The mission of NorthStar is dedication to the highest quality of customer service delivered with a sense of environmental responsibility, pride, company spirit and a never ending commitment to a safe and healthy workplace."

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From: Nicholas Marinello [mailto:nmarinello@ninyoandmoore.com]
Sent: Wednesday, September 23, 2020 2:42 PM
To: Haberer, Reed <RHABERER@NorthStar.com>
Subject: [X-TRN] Rough Cost Estimate Request - 1160 Harbor Island Dr. - NorthStar

Hey Reed,

We were asked by Harris to provide a rough estimate for abatement of the materials identified in the attached survey report. Could you provide me with a time and cost estimate for abatement of asbestos, lead, and other hazardous materials, preferably lined out per material? I know a lot will factor into a formal, final cost, but this is just for preliminary budget projections. Please give me a call if you have any questions.

Thank you in advance,

Nick



Nicholas Marinello

Senior Staff Environmental Scientist

CAC No. 17-6117 | Lead I/A No. LRC-00003568

Ninyo & Moore | Geotechnical & Environmental Sciences Consultants

5710 Ruffin Road | San Diego, CA 92123

858.576.1000 (x11288) | 858.752.4640 (Cell)

35 Years of Quality Service | ninyoandmoore.com



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Attachment 4. County Cost Estimate (4588 Market Street)

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Attachment B to Agenda File No. 2020-0360

ROM Demolition Cost Estimate

V. 09-17-20

Health Center

45XX A Street, San Diego

22,080 SF

Year built: 1964

CPN 0120

B001

Estimated Project Cost: \$868,739

Includes Contractor OH&P

Estimated Duration: 16 weeks

ITEM	UNIT	QUANTITY	UNIT COST	EXTENDED	SUBTOTAL 1	SUBTOTAL 2
Pre-demolition						
DEH hazmat survey	EA	1	\$ 20,000	\$ 20,000		
Demolition						
DIRECT						
Fencing (confirmed on site)	LF	1,000	\$ 4.75	\$ 4,750		
Security (fence rental, 1,000 linear feet)	DAY	112	\$ 85.00	\$ 9,520		
Abatement (lead and asbestos, universal waste)	EA	1	\$ 125,000.00	\$ 125,000		
					\$ 139,270	
INDIRECT						
Bonds	Ea.	1	\$ 64,000.00	\$ 64,000		
Insurance	Ea.	1	\$ 50,000.00	\$ 50,000		
Regulatory and permits (e.g. APCD)	Ea.	1	\$ 7,500.00	\$ 7,500		
					\$ 121,500	
PROJECT MANAGEMENT						
DPC (RFB, contract award and admin.)	Ea.	1	\$ 9,000.00	\$ 9,000		
DGS PM	Hr.	140	\$ 155.00	\$ 21,700		
DGS inspector(s)	Hr.	48	\$ 125.00	\$ 6,000		
DEH (abatement monitoring and sign-off)	HR	60	\$ 135.00	\$ 8,100.00		
CM consultant	Hr.	100	\$ 125.00	\$ 12,500		
					\$ 57,300	\$ 318,070
GENERAL MARKUPS						
Design contingency 10%				\$ -	\$ 31,807	
Escalation to midpoint (Feb. 2021) 1.67%				\$ -	\$ 5,089	
Project reserve (unforeseen conditions) 5%				\$ -	\$ 15,904	\$ 15,904
TOTAL						\$ 333,974

Developer assumes site responsibility

Assume 80% already abated via previous projects

DEH may sub out to Aurora Environmental

CM support with inspections, labor compliance, payment applications, change orders, etc.

Attachment 5. County Cost Estimate (5202 University Avenue)

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ROM Demolition Cost Estimate

v.09-17-20

Public Health

XXXX A Ave San Diego

CPN xxxx

4,618 SF

Building 3,082 Wood frame and block

Storage 96

Modular 1,440

Estimated duration: 12 weeks

Estimated project cost: \$290,054

Includes Contractor OH&P

Includes modular and storage units

ITEM	UNIT	QUANTITY	UNIT COST	EXTENDED	SUBTOTAL 1	SUBTOTAL 2
Pre-demolition						
DEH hazmat survey	EA	1	\$ 5,000		\$ 5,000	
Demolition						
DIRECT						
Security (fence rental, 1,000 linear feet)	DAY	84	\$ 85	\$ 7,140		
Abatement (lead and asbestos, universal waste)	EA	1	\$ 25,000	\$ 25,000		
					\$ 25,085	
INDIRECT						
Bonds	Ea.	1	\$ 18,000.00	\$ 18,000		
Insurance	Ea.	1	\$ 25,000.00	\$ 25,000		
Regulatory and permits (e.g. APCD)	Ea.	1	\$ 3,500.00	\$ 3,500		
					\$ 46,500	
PROJECT MANAGEMENT						
DPC (RFB, contract award and admin.)	Ea.	1	\$ 9,000.00	\$ 9,000		
DGS PM	Hr.	140	\$ 155.00	\$ 21,700		
DGS inspector(s)	Hr.	48	\$ 125.00	\$ 6,000		
DEH (abatement monitoring and sign-off)	HR	40	\$ 135.00	\$ 5,400.00		
CM consultant	Hr.	40	\$ 125.00	\$ 5,000		
					\$ 47,100	\$ 123,685
GENERAL MARKUPS						
Design contingency 10%				\$ -	\$ 12,369	
Escalation to midpoint (Feb. 2022) 1.67%				\$ -	\$ 1,979	
Project reserve (unforeseen conditions) 10%				\$ -	\$ 12,369	\$ 12,369
TOTAL						\$ 136,054

Developer assumes site responsibility

Assume 80% already abated via previous projects

DEH may sub out to Aurora Environmental

CM support with inspections, labor compliance, payment applications, change orders, etc.

Attachment 6. Rent Deferral Resolutions

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RESOLUTION 2020-034**RESOLUTION ESTABLISHING TEMPORARY RENT DEFERRAL PROGRAM FOR QUALIFYING CONCESSION TENANTS ALLOWING A TEMPORARY SUSPENSION OF MINIMUM RENTAL PAYMENTS AND DIRECTION TO STAFF, AS NECESSARY**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, as a result of the COVID-19 pandemic, many District tenants are experiencing a decline in their businesses or have been required to temporarily close their businesses, in whole or in part, to comply with (a) executive orders, including Executive Order N-33-20, (b) public health orders from the County of San Diego Public Health Officer, including prohibiting gatherings of 10 or more people and strongly discouraging non-essential gatherings of any size, and (c) all other applicable orders and directives associated with COVID-19; and

WHEREAS, the effects of the COVID-19 pandemic on the global economy and supply chains are impacting local companies due to a drastic reduction in tourism and COVID-19 is causing, and is expected to continue to cause, serious negative impacts on the local economy and serious financial impacts to local businesses, including substantial loss of income due to the loss of compensable work hours or wages, layoffs, and business closures; and

WHEREAS, due to the severity of the impacts to tenant businesses, and in response to a formal request by the San Diego Port Tenants Association (SDPTA) for rent relief in a letter dated March 20, 2020, staff has benchmarked and analyzed several approaches to provide rent relief to District tenants, while also ensuring that the District is able to meet its fiduciary and legal duties and its ability to be a self-sustaining agency; and

WHEREAS, through its research and analysis, staff has developed a temporary rent deferral program to assist tenants in sustaining economic viability through the COVID-19 public health crisis, which in turn will help the District continue to operate effectively and continuously during and after this pandemic; and

WHEREAS, the proposed program includes a three-month deferral of minimum rent for all concession tenants, including Seaport Village tenants and those tenants that report their gross sales to the District each month, to be paid

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back over a six-month period beginning in January 2021 with no interest or late charges; and

WHEREAS, for the three months (March, April, May), tenants would pay the percentage rent payments only on April 20, 2020, May 20, 2020, and June 20, 2020, with minimum rent deferred; and

WHEREAS, Seaport Village tenants would have the option to move the deferral back one month to February to help with immediate cash flow issues and would pay the percentage rent payments only on March 20, 2020, April 20, 2020, and May 20, 2020; and

WHEREAS, if no percentage rent is generated due to closures, no percentage rent would be paid that month; and

WHEREAS, the full amount of minimum rent for the three months would be deferred; and

WHEREAS, due to the ramp up time needed to implement the program, late fees would be waived for a period of up to 60 days for any tenant that qualifies; and

WHEREAS, tenants who may have already paid their March rent would not be refunded that payment; and

WHEREAS, repayment begins in January 2021 and would be divided evenly over the following six months; and

WHEREAS, no interest or late fees would be applied to the deferred amounts if they are paid in full during the six-month period; and

WHEREAS, the District reserves its right to pursue any and all remedies for any failure to pay rent pursuant to this program, including any rights that the District would have had at the commencement of the rent deferral program should the tenant not have qualified for the program; and

WHEREAS, a "concession tenant" is a tenant that pays the greater of minimum annual rent or percentage rent and reports their gross sales to the District each month; and

WHEREAS, the proposed program does not include a rent deferral for fixed rent tenants as currently proposed; and

WHEREAS, if every eligible tenant participates, the total impact in Fiscal Year 2020 could be up to approximately \$6.15 million in deferred rent to the District with approximately \$4.92 million attributed to concession tenants and an additional \$1.23 million attributed specifically to Seaport Village tenants; and

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WHEREAS, under the rent deferral program, these amounts should be paid back to the District by the end of Fiscal Year 2021; and

WHEREAS, the total impact to the District for rent deferred over Fiscal Year 2020 and Fiscal Year 2021 is approximately Two Hundred and Forty Thousand Dollars (\$240,0000), due to some anticipated vacancies at Seaport Village; and

WHEREAS, the balance of the deferral will be repaid under the rent deferral program and give the District tenants the temporary lifeline they need to navigate the public health crisis caused by COVID-19; and

WHEREAS, additionally, and as qualification for the program, tenants must be considered a tenant in good standing under Board of Port Commissioners (Board) Policy No. 355, at the time they apply and during the length of the program, and must apply for – and if received, accept – at least one federal or state aid program for which tenant qualifies established to mitigate the economic impacts of COVID-19; and

WHEREAS, supporting the financial stability of District tenants during this time of economic uncertainty is critical to the continued stability of the District itself, as the District depends on rents from the tenants to operate; and

WHEREAS, staff recommends that the Board authorize a resolution establishing a temporary rent deferral program for qualifying concession tenants allowing deferral of minimum rental payments based on the criteria set forth herein and give the Executive Director, or her designated representative, the authority to adopt administrative policies reasonably necessary to implement the rent deferral program, including without limitation, adopting definitions of “financial hardship” and developing any necessary procedures to review and process applications.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners (Board) of the San Diego Unified Port District (District), as follows:

The Executive Director, or her designated representative, is hereby authorized to establish and implement a temporary rent deferral program for qualifying concession tenants, including Seaport Village tenants and those tenants that report their gross sales to the District each month, allowing deferral of minimum rental payments (including Common Area Maintenance and marketing fees for Seaport Village tenants only) for a period of three months based on the minimum criteria set forth below and any administrative policies adopted by the Executive Director, or her designated representative:

Minimum Conditions Applicable to All Concession Tenants, Including Seaport Village Tenants and Those Tenants that Report their Gross Sales to the District Each Month, Seeking Rent Deferral

2020-034

To qualify for the proposed rent deferral program, the tenant shall meet all of the following minimum conditions:

- (1) Be considered a tenant in good standing pursuant to Board Policy No. 355 and remain a tenant in good standing throughout the program
 - a. Late fees to be waived for a period of 60 days from the date that rent was due to address non-payment of February rent. This would ensure that tenants who missed the February rental payment have an opportunity to address the missed payment without penalty and are still considered a tenant in good standing;
- (2) Provide evidence of financial hardship satisfactory to Executive Director in accordance with such procedures as the Executive Director may require;
- (3) Apply and provide proof of application for state and federal aid programs for which the tenant qualifies (unless the tenant does not qualify, in which case, a certified statement that the tenant does not qualify for the available programs);
- (4) Diligently pursue applications for state and federal aid, with acceptance into the rent deferral program contingent on tenant providing notice of determination;
- (5) Comply with any worker rehire policy adopted by the Board;
- (6) Acceptance into the rent deferral program would be contingent on tenant accepting state aid, federal aid, or both if offered; and,
- (7) All deferred rent must be repaid in full on or before July 20, 2021.

A "concession tenant" is a tenant that pays the greater of minimum annual rent or percentage rent and reports their gross sales to the District each month.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant/Deputy

2020-034

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 8th day of April 2020, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Valderrama, and Zucchet

NAYS: None.

EXCUSED: None.

ABSENT: None.

ABSTAIN: None.

Chair Ann Moore

Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:

Donna Morales

Donna Morales
District Clerk



RESOLUTION 2020-051**RESOLUTION ADOPTING BOARD OF PORT
COMMISSIONERS POLICY NO. 779: TEMPORARY
RENT DEFERRAL PROGRAM REHIRE POLICY**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, on April 8, 2020, the Board of Port Commissioners (Board) adopted Resolution No. 2020-034, Resolution Establishing Temporary Rent Deferral Program for Qualifying Concession Tenants Allowing a Temporary Suspension of Minimum Rental Payments; and

WHEREAS, as part of that Resolution, to qualify for rent deferral, among other requirements, a tenant must “[c]omply with any worker rehire policy adopted by the Board.”; and

WHEREAS, this agenda recommends the Board adopt Policy No. 779: Temporary Rent Deferral Program Rehire Policy as the “worker rehire policy” to which Resolution No. 2020-034 refers; and

WHEREAS, the recommended Policy seeks to balance the goals of protecting employees and allowing flexibility of District tenants to recover by setting forth an orderly, efficient, and fair process by which such employees may return to work and allow tenants to resume operations quickly and generate rent for the District to fulfill its Public Trust mission.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District hereby adopts Board of Port Commissioners Policy No. 779: Temporary Rent Deferral Program Rehire Policy, a copy of which is on file with the Office of the District Clerk.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

Simon Kahn

By: Assistant/Deputy

2020-051

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 19th day of May 2020, by the following vote:

AYES: Bonelli, Castellanos, Merrifield, and Zucchet

NAYS: Malcolm, and Valderrama

EXCUSED: Moore

ABSENT: None.

ABSTAIN: None.

Ann Moore

Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:

Donna Morales

Donna Morales
District Clerk



RESOLUTION 2020-052**RESOLUTION ESTABLISHING TEMPORARY RENT DEFERRAL PROGRAM FOR QUALIFYING FIXED RENT TENANTS AND TARIFF FEE PAYING TENANTS/CUSTOMERS ALLOWING A TEMPORARY SUSPENSION OF CERTAIN RENTAL AND TARIFF PAYMENTS WITH CONDITIONS AND DIRECTION TO STAFF, AS NECESSARY**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, at the April 8, 2020 Special Meeting of the Board of Port Commissioners (BPC), the BPC adopted a Resolution establishing a temporary rent deferral program for qualifying concession rent paying tenants, tenants that report their gross sales to the District each month, and Seaport Village tenants (collectively, Concession Tenants) to assist them in sustaining economic viability through the COVID-19 public health crisis (Concession Tenant Rent Deferral Program); and

WHEREAS, staff has worked in partnership with the San Diego Port Tenants Association (SDPTA) to develop another program that would offer a temporary rent deferral for qualifying fixed rent tenants and tariff fee paying tenants/customers experiencing financial hardship due to the public health crisis; and

WHEREAS, the proposed program allows for up to a three-month deferral of 50% of the fixed monthly rent for all fixed rent tenants, including those that pay both concession and fixed rent but excluding the San Diego International Airport, to be paid back over a six-month period beginning in January 2021 with no interest or late charges; and

WHEREAS, unlike the deferral offered to the Concession Tenants, the deferral period would be for up to three consecutive rental payment months between June and December 2020 (i.e., rental months of May through November); and

WHEREAS, a “fixed rent tenant” is a tenant that pays a fixed amount of rent to the District each month, which may be in the form of improvement rent or predetermined monthly amount of rent, and also includes some of the Concession Tenants who may pay a hybrid of concession rent and improvement rent for the rental of District owned improvements; and

WHEREAS, examples of fixed rent tenants are boatyards, easement holders (e.g., existing tenants, utilities, and other third parties), landscape tenants, marine tenants, pier tenants, rental car tenants, tenant parking, and maritime tenants, but does not include the San Diego International Airport; and

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WHEREAS, the economic impact of the proposed program to the District is expected to be felt mostly in late Fiscal Year 2020 (through June 30, 2020) and the first six months of Fiscal Year 2021, with all deferred amounts anticipated to be repaid by the end of Fiscal Year 2021; and

WHEREAS, if every eligible fixed rent tenant participates, the total impact in Fiscal Year 2020 could be up to approximately \$1,021,433 and an additional \$2,042,867 in deferred rent to the District in Fiscal Year 2021, for a total maximum deferral of \$3,064,300 to be repaid in Fiscal Year 2021; and

WHEREAS, to qualify for the deferral program, tenants must be considered a tenant in good standing under BPC Policy No. 355 (BPC 355) and must apply for – and if received, accept – state and federal aid under one or more programs established to mitigate the economic impacts of COVID-19; and

WHEREAS, even though most of the larger fixed rent tenants continue to operate at full capacity, and may not have endured financial hardship, staff wanted to make the option available to even the larger tenants, which as staff has seen with hotel tenants under the Concession Tenant Rent Deferral Program, may still be affected by the pandemic; and

WHEREAS, the proposed program would also offer qualifying tariff fee paying tenants/customers the ability to pay tariff fees up to 30 days late with no interest or late fees during each of the tariff paying months of May through January for tariffs incurred during the months of April through December; and

WHEREAS, tariff fee paying tenants/customers would include commercial fisherman who pay for marina slips at Tuna Harbor via tariff fees; and

WHEREAS, the District receives approximately \$1.18 million in tariff fees every month, which would be the monthly exposure to the District if all of the tariff fee paying tenants/customers requested a deferral each month; and

WHEREAS, to qualify for this program, tariff fee paying tenants/customers must be considered a tenant in good standing under BPC 355 and show evidence of delayed payment from manufacturers or suppliers or other evidence of financial hardship; and

WHEREAS, the estimated total impact for Fiscal Year 2020 and Fiscal Year 2021 is revenue neutral to the District, since the proposed program is a deferral of rent or tariffs only which would require that the rent or tariff be paid back in Fiscal Year 2020 or 2021; and

WHEREAS, supporting the financial stability of District tenants during this time of economic uncertainty is critical to the continued stability of the District itself, as the District depends on rents from the tenants to operate as a self-sustaining agency; and

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WHEREAS, if the BPC approves this temporary rent deferral program, the Executive Director would have full authority to implement it and no further BPC action would be required; and

WHEREAS, staff recommends that the BPC adopt a resolution establishing a temporary rent and tariff deferral program for qualifying fixed rent tenants and tariff fee paying tenants/customers allowing deferral of minimum rent payments, in the case of qualifying fixed rent tenants, and deferral of tariffs in the case of tariff fee paying tenants/customers, based on the criteria set forth herein and give the Executive Director, or her designated representative, the authority to adopt administrative policies reasonably necessary to implement the temporary rent deferral program, including without limitation, adopting definitions of "financial hardship" and developing any necessary procedures to review and process applications.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners (BPC) of the San Diego Unified Port District, as follows:

- (A) The Executive Director, or her designated representative, is hereby authorized to establish and implement a temporary rent deferral program for qualifying fixed rent tenants to allow a deferral of 50% of fixed monthly rent for up to three consecutive rental paying months between June through December 2020 to be paid back over a ten-month period beginning in January 2021 with no interest or late fees based on the minimum criteria set forth below and any administrative policies adopted by the Executive Director, or her designated representative:

Minimum Conditions Applicable to All Fixed Rent Tenants Seeking Rent Deferral:

To qualify for the proposed rent deferral program, the tenant shall meet all of the following minimum conditions:

- (1) Be a fixed rent tenant, which means a tenant that pays fixed rent only, fixed rent and improvement rent, or a hybrid situation in which the tenant pays concession rent and improvement rent; and
- (2) Be considered a tenant in good standing pursuant to BPC Policy No. 355 and remain a tenant in good standing throughout the program; and
- (3) Provide evidence of financial hardship satisfactory to Executive Director, or her designated representative, in accordance with such procedures as the Executive Director, or her designated representative, may require, which could include evidence of delays from suppliers or manufacturers, full or partial shutdown, or decline in gross revenues; and
- (4) Apply and provide proof (or if proof is not available, a certification) of application for state and federal aid programs for which the tenant qualifies (unless the tenant does not qualify, in which case, a certified statement that the tenant does not qualify for the available programs); and
- (5) Diligently pursue applications for state and federal aid, with acceptance into the rent deferral program contingent on tenant providing notice of determination; and

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- (6) Acceptance into the rent deferral program would be contingent on tenant accepting state aid, federal aid, or both if offered; and
- (7) Provide evidence that tenant is passing down the rent deferral benefit to its subtenants on a pro rata basis; provided, however, tenant shall not be required to apply the rent deferral to any amount of rent that tenant receives from the subtenants that is in excess of the amount that the tenant pays the District. To illustrate, if tenant charges its subtenants \$20,000 collectively, but pays the District \$10,000 in fixed rent, the tenant shall only be required to apply the rent deferral to the \$10,000 in subtenant rent on a pro rata basis; and
- (8) All deferred rent must be repaid in full on or before October 20, 2021.

(B) The Executive Director, or her designated representative, is hereby authorized to establish and implement a temporary rent deferral program for qualifying tariff fee paying tenants/customers for a 30-day deferral period to submit monthly tariff payment with no late fees or interest for each of the tariff paying months of May 2020 through January 2021 based on the minimum criteria set forth below and any administrative policies adopted by the Executive Director, or her designated representative:

Minimum Conditions Applicable to All Tariff Fee Paying Tenants/Customers Seeking Rent Deferral:

To qualify for the proposed rent deferral program, the tenant/customer shall meet all of the following minimum conditions:

- (1) Be a tariff fee paying tenant/customer, which means that the tenant/customer pays a tariff to the District under an agreement, ordinance, or policy with the District; and
- (2) Be considered a tenant/customer in good standing pursuant to BPC Policy No. 355 and remain a tenant/customer in good standing throughout the program; and
- (3) Provide evidence of financial hardship satisfactory to Executive Director, or her designated representative, in accordance with such procedures as the Executive Director, or her designated representative, may require, which could include evidence of delays from suppliers or manufacturers, full or partial shutdown, or decline in gross revenues; and
- (4) All deferred tariffs must be repaid within the 30 day deferral period.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant/Deputy

2020-052

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 19th day of May, 2020, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Valderrama, and Zucchet

NAYS: None.

EXCUSED: Moore

ABSENT: None.

ABSTAIN: None.

Ann Moore

Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:

Donna Morales

Donna Morales
District Clerk



RESOLUTION 2020-062**RESOLUTION COMBINING AND MODIFYING THE
TEMPORARY RENT DEFERRAL PROGRAM FOR
QUALIFYING CONCESSION RENT TENANTS AND FIXED
RENT TENANTS INTO THE EXTENDED AND COMBINED
RENT DEFERRAL PROGRAM AND DIRECTION TO
STAFF, AS NECESSARY**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, at the April 8, 2020 Special Meeting of the Board of Port Commissioners (BPC), the BPC adopted a Resolution establishing a temporary rent deferral program for qualifying concession rent paying tenants, tenants that report their gross sales to the District each month, and Seaport Village tenants (collectively, Concession Tenants) to assist them in sustaining economic viability through the COVID-19 public health crisis (Concession Tenant Rent Deferral Program); and

WHEREAS, as of June 13, 2020, 29 Concession Tenants have applied for the Concession Tenant Rent Deferral Program and 41 Concession Tenants have informed staff that they decline to participate; and

WHEREAS, Concession Tenants not participating in the program include marinas, yacht clubs, sportfishing landings and convention hotels, as many of these tenants have already met their minimum annual rent (MAR) for the year and therefore have no rent to defer, while others did not want to comply with the requirements to accept state and/or federal aid or they did not want to comply with the worker rehire policy; and

WHEREAS, at the May 19, 2020 BPC meeting, the BPC adopted a Resolution establishing a temporary rent deferral program for qualifying fixed rent paying tenants (Fixed Rent Tenants) and tariff fee paying tenants/customers similarly impacted by the effects of COVID-19 (Fixed Rent Tenant Rent Deferral Program); and

WHEREAS, as of June 13, 2020, only four Fixed Rent Tenants have applied for the Fixed Rent Tenant Rent Deferral Program; and

WHEREAS, low participation in the Fixed Rent Tenant Rent Deferral Program may be due to the fact that Fixed Rent Tenants depend less on group and convention type business and tourism for their revenues and have therefore not been as impacted by the COVID-19 pandemic as the Concession Tenants, while others did not have a clear understanding of, or had concerns with, the requirement to pass along the deferral to subtenants; and

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WHEREAS, staff recommends the District continue to partner with its tenants to assist with their economic recovery as we move out of the closure phase of the pandemic and into the reopening phase; and

WHEREAS, to assist with reopening and to take some of the repayment pressure off the tenants, staff has met with tenants and the San Diego Port Tenants Association (SDPTA) to develop a recommendation that will promote economic recovery; and

WHEREAS, staff continues to monitor macroeconomic forecasts and trends as well as relying on industry publications for the latest information; and

WHEREAS, staff is also continuing to observe how similarly situated public agencies are responding to the pandemic and monitoring the types of aid that such public agencies are providing; and

WHEREAS, based on information gathered directly from tenants since March, as well as meetings with the SDPTA and staff's research, staff recommends several modifications to the original rent deferral programs in order to provide immediate and continuing relief to the District's tenants as well as assist them with the new costs associated with reopening during the various phases of the State and County orders; and

WHEREAS, staff proposes to amend the Concession Tenant Rent Deferral Program and Fixed Rent Tenant Rent Deferral Program, and combine the two programs, collectively referred to as, the "Extended and Combined Rent Deferral Program"; and

WHEREAS, for any tenant/customer who qualified under the current rent deferral programs, but does not qualify for, or elects not participate in, the Extended and Combined Rent Deferral Program, the tenant/customer would still be able to abide by the terms of its letter agreement with the District, as if the old rent deferral programs still existed; and

WHEREAS, tariff fee paying tenants/customers would still be able to apply for the Fixed Rent Tenant Rent Deferral Program; and

WHEREAS, the Extended and Combined Rent Deferral Program would allow up to six consecutive months of rents to be deferred, minimum rent for Concession Tenants and 50% for Fixed Rent Tenants, while the current programs only allow for three consecutive months; and

WHEREAS, for qualifying Concession Tenants, the Extended and Combined Rent Deferral Program would allow for the deferral of MAR for up to six months for the rent paying months of March to August 2020, for rent due on April 20, May 20, June 20, July 20, August 20, and September 20, 2020; and

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WHEREAS, Concession Tenants who participated in the Concession Tenant Rent Deferral Program would be allowed to defer rents for the additional rent paying months of June, July and August 2020; and

WHEREAS, Concession Tenants who did not participate in the Concession Tenant Rent Deferral Program would receive an up to six month deferral of rent retroactive to March 2020; and

WHEREAS, for March, April, and May 2020 rents already paid by a Concession Tenant, the Concession Tenant would receive a rent credit for those months that would be applied to payment of rent starting the first month after the end of the deferral; and

WHEREAS, to demonstrate financial hardship under the Extended and Combined Rent Deferral Program, new applicants would need to show financial hardship in their operations for at least one month between March 2020 to August 2020; and

WHEREAS, for qualifying Fixed Rent Tenants, the Extended and Combined Rent Deferral Program would allow the deferral of fifty percent (50%) of the monthly rent for any six consecutive months for the rent paying months of June to December 2020, for rent due on June 1, July 1, August 1, September 1, October 1, November 1, December 1, 2020; and

WHEREAS, Fixed Rent Tenants who participated in the Fixed Rent Tenant Rent Deferral Program would be allowed to defer rents for three additional consecutive months from those selected previously by tenant provided such new three months do not go beyond December 31, 2020; and

WHEREAS, the additional months could be retroactive provided they are consecutive and not before June 1, 2020; and

WHEREAS, Fixed Rent Tenants who did not participate in the Fixed Rent Tenant Rent Deferral Program, and paid rent for June, would receive a rent credit for the month of June and be able to defer a total of six consecutive months starting in June; and

WHEREAS, the June rent credit would be applied to next payment of rent after the deferral period ends; and

WHEREAS, the Extended and Combined Rent Deferral Program would extend repayment period for qualifying Concession Tenants by four months for a total of up to 10 months, consistent with the repayment period for the Fixed Rent Tenant Rent Deferral Program; and

WHEREAS, for qualifying Concession Tenants, the Extended and Combined Rent Deferral Program requires equal monthly installment repayments of the deferred MAR to commence by October 20, 2021 and conclude by July 20, 2022; and

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WHEREAS, for qualifying Fixed Rent Tenants, the Extended and Combined Rent Deferral Program requires equal monthly installment repayments of the fixed rent and/or improvement rent to commence by September 1, 2021 and conclude by June 1, 2022; and

WHEREAS, the Extended and Combined Rent Deferral Program would clarify that a subtenant is a business operating under a short or long-term sublease with the master tenant that is consented to, or deemed consented to, or that the District was not required to consent to, and does not include telecommunications subtenants; and

WHEREAS, the change to clarify the definition of subtenant would only apply for new months granted to the tenants under the Extended and Combined Rent Deferral Program; and

WHEREAS, the Extended and Combined Rent Deferral Program would modify the requirement to pass down rent deferral benefits to the subtenants pro rata; and

WHEREAS, under the Extended and Combined Rent Deferral Program, the master tenant would be given the opportunity to determine how and if the rent deferral benefits should be passed down to its subtenants, including whether a subtenant would receive more of the benefit, less of the benefit, or none of the benefit, and in which of the rent deferred months such benefits would be received; and

WHEREAS, the master tenant would be required to provide staff with an economic justification for such changes, and the Executive Director, or her designated representative, would have the authority to determine compliance by the master tenant; and

WHEREAS, the changes to the subtenant requirement under the Extended and Combined Rent Deferral Program would only apply for new months granted to the tenants under the Extended and Combined Rent Deferral Program; and

WHEREAS, tenants who have been accepted into and approved for the existing rent deferral programs, would not be required to resubmit a new application (which includes evidence of financial hardship and evidence of pursuit of state and federal aid) to receive the extended benefits of the Extended and Combined Rent Deferral Program; and

WHEREAS, tenants will only be required to notify staff of their request for the additional benefits so an amendment to their existing agreement can be processed to modify the rent deferral period, repayment term, and subtenant requirement; and

WHEREAS, Concession Tenants and Fixed Rent Tenants who chose not to apply, have not yet applied, or applied but did not complete the application process for the original programs will be invited to apply for the Extended and Combined Rent Deferral Program; and

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WHEREAS, applications for tenants that are not already participating in one of the existing rent deferral programs will be accepted through August 31, 2020 for Concession Tenants and December 31, 2020 for Fixed Rent Tenants and tenants will not be admitted into the Extended and Combined Rent Deferral Program after that time without future BPC action; and

WHEREAS, except as modified herein, all other qualifications and requirements of the Concession Tenant Rent Deferral Program and Fixed Rent Tenant Rent Deferral Program would remain in effect; and

WHEREAS, the proposed modifications to the current rent deferral programs would likely not benefit most Seaport Village tenants because most of the Seaport Village agreements are short term (5 years and less) and do not typically have the necessary remaining term for the tenant to repay under the rent deferral programs or permit the tenant enough time to properly recover from the economic impacts associated with the pandemic; and

WHEREAS, staff will address each Seaport Village lease individually, but may use the rent deferral programs adopted by the BPC as guidance in restructuring some of the leases; and

WHEREAS, because most of the Seaport Village tenants are on short-term leases of five years or less, staff has the ability to administratively modify the agreements as needed, and would only return to the BPC for approval of amendments and new leases if those agreements have a term greater than five (5) years; and

WHEREAS, the economic impact of the Extended and Combined Rent Deferral Program to the District, including six months of deferred rent for Concession Tenants and Fixed Rent Tenants, is expected to be felt mostly in late Fiscal Year 2020 (through June 30, 2020) and into Fiscal Year 2021, with all deferred amounts anticipated to be repaid by the end of Fiscal Year 2022; and

WHEREAS, if every eligible tenant participates (which is unlikely based on participation in the current programs), the total impact in Fiscal Year 2020 could be up to approximately \$6.3 million and an additional \$7.8 million in deferred rent to the District in Fiscal Year 2021, for a total maximum deferral of \$14.1 million to be repaid in Fiscal Year 2022; and

WHEREAS, based on the limited participation in the deferral programs to date, the actual amount of deferred rent is likely to be significantly less than \$14.1 million; and

WHEREAS, supporting the financial stability of District tenants during this time of economic uncertainty is critical to the continued stability of the District itself, as the District depends on rents from the tenants to operate as a self-sustaining agency; and

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WHEREAS, the Extended and Combined Rent Deferral Program would provide immediate rent relief to the tenants while delaying repayment until after summer 2021, typically the busy season for many tenants; and

WHEREAS, the proposed Extended and Combined Rent Deferral Program would allow tenants extended rent relief on favorable repayment terms to allow them to focus their capital today on reopening under the new operation requirements of the State and County orders and provide an economic buffer before repayment would begin; and

WHEREAS, in parallel, staff would continue to gather data as businesses begin to reopen and begin to target those tenants that may require more relief than the Extended and Combined Rent Deferral Program can offer to remain economically viable; and

WHEREAS, if the BPC approves the Extended and Combined Rent Deferral Program, the Executive Director would have full authority to implement it and no further BPC action would be required; and

WHEREAS, staff recommends that the BPC adopt a Resolution combining and modifying the Concession Tenant Rent Deferral Program and the Fixed Rent Tenant Rent Deferral Program into the Extended and Combined Rent Deferral Program to allow up to six months of rent deferral of certain rental payments, an extension of the repayment period, and clarifications to the requirement to pass down the deferral benefits to subtenants; and

WHEREAS, staff recommends that the BPC authorize the Executive Director, or her designated representative, to adopt any administrative policies deemed necessary to implement the Extended and Combined Rent Deferral Program.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners (BPC) of the San Diego Unified Port District, as follows:

The Executive Director, or her designated representative, is hereby authorized to combine the temporary rent deferral program for qualifying Concession Tenants adopted by the BPC on April 8, 2020 as Resolution 2020-034 (Concession Tenant Rent Deferral Program), and the temporary rent deferral program for Fixed Rent Tenants and tariff fee paying tenants/customers adopted by the BPC on May 19, 2020 as Resolution 2020-052 (Fixed Rent Tenant Rent Deferral Program) with the following modifications, which combined and modified program shall be known as the "Extended and Combined Rent Deferral Program":

- **Rent Deferral Months – Up to Six Consecutive Months**
 - For qualifying Concession Tenants, defer minimum annual rent (MAR) for up to six months for the rent paying months of March to August 2020, for rent due on April 20, May 20, June 20, July 20, August 20, and September 20, 2020.

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- Concession Tenants who participated in the Concession Tenant Rent Deferral Program would be allowed to defer rents for the rent paying months of June, July and August 2020.
 - Concession Tenants who did not participate in the Concession Tenant Rent Deferral Program would receive an up to six month deferral of rent retroactive to March 2020. For March, April, and May rents already paid by a Concession Tenant, the Concession Tenant would receive a rent credit for those months that would be applied to payment of rent starting the first month after the end of the deferral.
 - To demonstrate financial hardship under the Extended and Combined Rent Deferral Program, new applicants would need to show financial hardship in their operations for at least one month between March 2020 to August 2020.
 - Applications for Concession Tenants must be received before August 31, 2020 to qualify for the deferral.
- For qualifying Fixed Rent Tenants, defer fifty percent (50%) of monthly rent for any six consecutive months for the rent paying months of June to December 2020, for rent due on June 1, July 1, August 1, September 1, October 1, November 1, December 1, 2020.
 - Fixed Rent Tenants who participated in the Fixed Rent Tenant Rent Deferral Program would be allowed to defer rents for three additional consecutive months from those selected previously by tenant provided such new three months do not go beyond December 31, 2020. The additional months could be retroactive provided they are consecutive and not before June 1, 2020.
 - Fixed Rent Tenants who did not participate in the Fixed Rent Tenant Rent Deferral Program, and paid rent for June, would receive a rent credit for the month of June and be able to defer a total of six consecutive months starting in June. The June rent credit would be applied to next payment of rent after the deferral period ends.
 - Applications for Fixed Rent Tenants must be received by December 31, 2020 to qualify for the deferral.
- **Repayment Period – Extension of Commencement and End Dates**
 - For qualifying Concession Tenants, equal monthly installment repayments of the deferred MAR must commence by October 20, 2021 and conclude by July 20, 2022.
 - For qualifying Fixed Rent Tenants, equal monthly installment repayments of the fixed rent and/or improvement rent must commence by September 1, 2021 and conclude by June 1, 2022.
 - No interest or late fees would be applied to the deferred rent amount if the deferred rent amount is paid in full during the repayment period.

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- **Subtenant Requirement**

- For Concession Tenants and Fixed Rent Tenants who are participating in the Concession Tenant Rent Deferral Program and/or Fixed Rent Tenant Rent Deferral programs, and do not participate in the Extended and Combined Rent Deferral Program, the modified subtenant requirement would not apply.
- Clarify that a subtenant is a business operating under a sublease (short term or long-term) with the master tenant that was consented to, or deemed consented to, or that the District was not required to consent to, and does not include telecommunications subtenants.
 - The changes to the subtenant requirement would only apply for new months granted to the tenants under the Extended and Combined Rent Deferral Program.
- Modify the requirement to pass down rent deferral benefits to the subtenants pro rata.
 - Under the Extended and Combined Rent Deferral Program, master tenant would be given the opportunity to determine how and if the rent deferral benefits should be passed down to its subtenants, including whether a subtenant would receive more of the benefit, less of the benefit, or none of the benefit, and in which of the rent deferred months such benefits would be received. However, master tenant would be required to provide the Executive Director, or her designated representative, with an economic justification for such changes, and the Executive Director, or her designated representative, shall have the authority to determine compliance by the master tenant.
 - The changes to the subtenant requirement would only apply for new months granted to the tenants under the Extended and Combined Rent Deferral Program.

Any Concession Tenant that applies to the Extended and Combined Rent Deferral Program must still meet the requirements in the applicable Concession Tenant Rent Deferral Program that are not modified herein.

Any Fixed Rent Tenant that applies to the Extended and Combined Rent Deferral Program must still meet the requirements in the applicable Fixed Rent Tenant Rent Deferral Program that are not modified herein.

The Executive Director, or her designated representative, is hereby authorized to establish and implement the Extended and Combined Rent Deferral Program and adopt any administrative policies determined by the Executive Director, or her designated representative, to be necessary to implement the Extended and Combined Rent Deferral Program.

The Executive Director, or her designated representative, is hereby authorized to reconcile any conflicts that should arise between the Concession Tenant Rent Deferral

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Program and the Fixed Rent Tenant Rent Deferral Program, on the one hand, and the Extended and Combined Rent Deferral Program, on the other hand, as may be necessary to implement the Extended and Combined Rent Deferral Program, without any further action of the BPC.

For purposes of the Extended and Combined Rent Deferral Program, a "Concession Tenant" is defined as a tenant that pays the greater of minimum annual rent or percentage rent or reports their gross sales to the District each month, but excludes Seaport Village tenants.

For purposes of the Extended and Combined Rent Deferral Program, a "Fixed Rent Tenant" is defined as a tenant that pays fixed rent only, fixed rent and improvement rent, or a hybrid situation in which the tenant pays concession rent and improvement rent.

Applications for tenants that are not already participating in the Concession Tenant Rent Deferral Program or Fixed Rent Tenant Rent Deferral Program will be accepted through August 31, 2020 for Concession Tenants and December 31, 2020 for Fixed Rent Tenants. Tenants will not be admitted into the Extended and Combined Rent Deferral Program after that time without future BPC action.

For any tenant/customer who qualified under the Concession Tenant Rent Deferral Program and/or the Fixed Rent Tenant Rent Deferral Program, but does not qualify for, or elects not to participate in, the Extended and Combined Rent Deferral Program, the tenant/customer would still be able to abide by the terms of its letter agreement with the District, as if the old rent deferral programs still existed.

Tariff fee paying tenants/customers may still apply for the Fixed Rent Tenant Rent Deferral Program in accordance with Resolution 2020-052.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant/Deputy

2020-062

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 23rd day of June, 2020, by the following vote:

AYES: Bonelli, Merrifield, Moore, Valderrama, and Zucchet

NAYS: None.

EXCUSED: Castellanos, and Malcolm

ABSENT: None.

ABSTAIN: None.

Ann Moore

Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:

Donna Morales

Donna Morales
District Clerk



Certificate Of Completion

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Signer Events

Signer Events	Signature	Timestamp
Elizabeth Alonso ealonso@portofsandiego.org Deputy General Counsel Security Level: Email, Account Authentication (None)	 Signature Adoption: Drawn on Device Using IP Address: 207.215.153.162	Sent: 7/17/2020 10:08:36 AM Viewed: 7/20/2020 9:37:38 AM Signed: 7/20/2020 10:07:09 AM


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Accepted: 4/23/2020 2:21:12 PM
ID: 280d898a-123d-485f-b6d3-602391308b0a

Ann Moore amoore@nmalawfirm.com Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 68.101.176.8	Sent: 7/20/2020 10:07:13 AM Viewed: 7/20/2020 11:29:52 AM Signed: 7/20/2020 11:30:07 AM
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Electronic Record and Signature Disclosure:

Accepted: 7/20/2020 11:29:52 AM
ID: 7b30acbb-d3c2-4f1c-a06c-7021d33f529b

Donna Morales dmorales@portofsandiego.org District Clerk San Diego Unified Port District Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 70.95.190.9	Sent: 7/20/2020 11:30:10 AM Viewed: 7/20/2020 12:45:15 PM Signed: 7/20/2020 12:46:00 PM
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Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Gabby Livingston glivingston@portofsandiego.org Document Management Associate-ODC Port of San Diego Security Level: Email, Account Authentication (None)	 Using IP Address: 207.215.153.162	Sent: 7/20/2020 12:46:03 PM Viewed: 7/20/2020 2:10:00 PM Signed: 7/20/2020 2:10:35 PM
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Electronic Record and Signature Disclosure:

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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Margaret Hernandez mhernandez@portofsandiego.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 7/20/2020 10:07:12 AM Viewed: 7/20/2020 10:11:18 AM
Sally Raney sraney@portofsandiego.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 7/20/2020 2:10:39 PM
Janet Graham jgraham@portofsandiego.org Administrative Assistant II-ODC Port of San Diego Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 7/20/2020 2:10:40 PM
Cody Thomas cothomas@portofsandiego.org Administrative Assistant II San Diego Unified Port District Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 7/20/2020 2:10:41 PM
Patrick Miller pmiller@portofsandiego.org Document Management Assistant-ODC Port of San Diego Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 7/20/2020 2:10:43 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/20/2020 2:10:43 PM
Certified Delivered	Security Checked	7/20/2020 2:10:43 PM
Signing Complete	Security Checked	7/20/2020 2:10:43 PM

Envelope Summary Events	Status	Timestamps
Completed	Security Checked	7/20/2020 2:10:43 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

