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San Diego Unified Port District

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Office of the District Clerk

EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT ("Agreement") is made and entered into as of this 2nd day of October, 2017 by and between the **SAN DIEGO UNIFIED PORT DISTRICT**, a public corporation, hereinafter called "District" and **PROTEA WATERFRONT DEVELOPMENT, LLC**, a California limited liability company, hereinafter called "Developer" or "PWD" in the capacity as managing member of 1HWY1; and the District and Developer are collectively referred to herein as the "Parties" or individually at times referred to as a "Party".

WITNESSETH:

WHEREAS, on February 22, 2016, staff issued a Request for Proposals 16-04ME ("RFP") for 70 acres of land and water located within the District's Central Embarcadero, in the City of San Diego, California, generally shown on Exhibit "A" attached hereto and incorporated herein by reference, as such boundaries may be modified by the District following completion of a survey or plat map ("Property"); and

WHEREAS, on May 2, 2016, the District received eleven proposals and six were deemed complete; and

WHEREAS, the proposals from Gafcon, Inc. (on behalf of a yet to be formed entity 1HWY1 (as defined below)), Great Western Pacific, HKS, McWhinney, OliverMcMillan, Inc., and Ripley Entertainment, Inc. were deemed complete; and

WHEREAS, on July 13, 2016, the Board of Port Commissioners ("Board") directed staff to enter into exclusive discussions with the 1HWY1 team to further evaluate the "Seaport San Diego World Class Waterfront Development" dated May 2, 2016 ("Seaport Proposal"), while not making a final selection or eliminating the other five proposals/proposers; and

WHEREAS, the 1HWY1 core team is comprised of Developer, ThrillCorp, RCI Group, and OdySea, all of which will be the members of 1HWY1, a California or Delaware limited liability company ("1HWY1") when it is formed; and

WHEREAS, Developer will be the managing member of 1HWY1; and

WHEREAS, following the Board's direction staff conducted a preliminary due diligence phase and issued a supplemental information request to the 1HWY1 team and responses were provided between August 5 and September 19, 2016; and

WHEREAS, at its November 8, 2016 meeting, the Board selected 1HWY1 as the successful proposer, concluded the RFP process, eliminated the other five proposers, directed staff to continue due diligence excluding any hotel due diligence, and return to the Board at a future date to enter into a preliminary agreement with 1HWY1, and

WHEREAS, following the Board's direction, staff worked with the 1HWY1 team to prepare a due diligence schedule, which included the list of recommended due diligence items that were included in the draft resolution attached to the November 8, 2016 agenda sheet; and

WHEREAS, the due diligence schedule was sent to the 1HWY1 team on January 5, 2017 requiring an update on March 17, 2017; and

WHEREAS, the 1HWY1 team provided the update on March 16, 2017 and a supplemental update on April 6, 2017; and

WHEREAS, 1HWY1 is the proposed ground lessee and developer for the Property; and

WHEREAS, the 1HWY1 operating agreement and associated documents will identify the roles and level of financial commitment of each of Developer, ThrillCorp, RCI Group, and OdySea; and

WHEREAS, Developer will submit to the District a certified written statement describing the roles and level of financial commitment of all of the members of 1HWY1 as provided herein; and

WHEREAS, in the interim, as the proposed managing member of 1HWY1, Developer has been acting as the lead on the Seaport Proposal; and

WHEREAS, on May 16, 2017, pursuant to Resolution 2017-078, the Board directed staff to enter into a two-year Exclusive Negotiating Agreement ("ENA") with Developer that requires that (1) Developer form, or cause the formation of, 1HWY1 within ninety (90) days of entering into the ENA; (2) Developer assigns all of its rights and obligations under the ENA to 1HWY1 once the entity has been formed; (3) Developer, or 1HWY1

once it is formed and assumes the rights and obligations of Developer under the ENA, submits a project description within one year of Developer entering into the ENA; and (4) Developer, or 1HWY1 once it is formed and assumes the rights and obligations of Developer under the ENA, submits regular progress reports on the financial feasibility of the Proposed Development (as defined below) and access to equity and debt sources and if such progress reports are not submitted or acceptable to the District, the District would have the option to delay, pause or terminate the ENA; and

WHEREAS, under the ENA, staff will work with Developer, until 1HWY1 is formed and Developer assigns its rights and obligations under this Agreement to 1HWY1, to: (1) complete post-selection due diligence, (2) refine the Proposed Development (defined below) program; and (3) refine development cost estimates and pro forma financial analysis for the Proposed Development; and

WHEREAS, this Agreement is the ENA contemplated in Resolution 2017-078; and

WHEREAS, the District and Developer are willing to exclusively negotiate, for the period set forth herein, a disposition and development agreement or another form of binding agreement that will specify the rights and obligations of the Parties with respect to the lease, development and operation of the Proposed Development (as defined in Section 4 below) on the Property (referred to herein as the "Definitive Agreement"); and

WHEREAS, the Property is currently leased by the District to third parties, or operated by the District, and will be used during the term of this Agreement as a specialty retail center, parking and other current or future proposed uses as the District deems acceptable (collectively, the "Interim Uses"), and the District intends that such Interim Uses will continue until such time as execution by the Parties of a lease for the Property.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto mutually agree as follows:

1. **INCORPORATION OF RECITALS.** The Recitals set forth above are hereby incorporated by reference and deemed a part of this Agreement.
2. **AGREEMENT TO NEGOTIATE.**
 - a. **Period of Negotiations.** The negotiating period shall commence on October 2, 2017 ("Effective Date") and shall end on October 1, 2019 ("Negotiating Period").

- b. **Extensions.** Notwithstanding the foregoing, the Executive Director of the District or his/her designee, in his/her sole and absolute discretion, may extend the Negotiating Period and/or the deadlines for the delivery of the submittals described in Section 6 in writing by ninety (90)-day increments for a total Negotiating Period not to exceed five (5) years by delivering to Developer written notice of its election to exercise an extension no later than the expiration of the then existing Negotiating Period or submittal deadline under Section 6, upon which the Negotiating Period and/or the submittal deadline(s) shall be automatically extended to include such extensions. The District undertakes no commitment or obligation to the Developer to grant any extensions and shall incur no liability to Developer resulting from its election not to extend the Negotiating Period or submittal deadlines.
- c. **Agreement to Negotiate.** During the Negotiating Period, District and Developer agree to negotiate in good faith the terms of a Definitive Agreement to enable the leasing, development and operation of the Proposed Development on the Property. The Definitive Agreement may include, as exhibits, a lease or another form of binding agreement, design criteria and minimum construction requirements and such additional documents and/or security instruments as the District or Developer may reasonably require in connection with the lease, development, financing, and operation of the Property including, but not limited to those described in Section 6 herein. During the Negotiating Period, the District and Developer shall make qualified and authorized personnel available to actively participate in negotiations and each Party shall review and provide comments on materials provided by the other Party. Subject to the terms of Section 14, if the terms of a Definitive Agreement are agreed to by the District and Developer during the Negotiating Period, the Developer shall execute the Definitive Agreement and the Definitive Agreement shall be presented to the Board for approval prior to expiration of the Negotiating Period. The Parties understand and agree that the Board has, in its sole and absolute discretion, the right to approve, condition or not to approve the Definitive Agreement.
- d. **Exclusivity.** Except as permitted under Section 22, the District agrees during the Negotiating Period, to negotiate exclusively with the Developer regarding the leasing and development of the Property for the Proposed

Development and to not actively solicit any interest in the leasing or development of the Property. Developer agrees that the District is not precluded from negotiating with other parties for other developments on other District properties, including, but not limited to, those properties directly adjacent to the Property; provided, however, that nothing herein shall prohibit the District from using the Property as set forth in Section 22, including without limitation, for Interim Uses, or from soliciting, negotiating and entering into negotiations, leases, permits, licenses, operating agreements, management agreements, easements, parking agreements or other agreements for any current or future Interim Uses.

- e. **End of Negotiating Period.** If, at the end of the Negotiating Period (as may be extended by the District pursuant to Section 2.b. of this Agreement, if applicable), Developer and District have not entered into the Definitive Agreement, then this Agreement shall automatically and immediately terminate without further written notice. Upon such automatic termination and expiration of the Negotiating Period and this Agreement, except as set forth in Section 11(e), neither Party shall have any further rights, remedies or obligations to the other under this Agreement and the Parties shall each be relieved and discharged from all further responsibility or liability under this Agreement.

- 3. **RIGHTS TO TERMINATE.** Except as permitted under Section 13, if at any time a Party determines in its sole discretion that the Proposed Development is not feasible or financeable or that it does not otherwise desire to proceed with negotiations for any or no reason, such Party shall provide written notice to the other Party of such determination. Within ten (10) days of delivery of such notice, the Parties shall meet to discuss the termination, but without commitment to withhold, waive or reverse its termination request. On the date of the meeting, or within two (2) days following the meeting, the notifying Party shall confirm whether it still desires to terminate the Agreement and if the notifying party makes such an election, the Negotiating Period and this Agreement shall automatically terminate on the date of the meeting (if notice is delivered on such date) or by delivery of written notice to the other Party after the meeting and, except as set forth in Section 11(e), neither Party shall have any further rights, remedies or obligations to the other Party under the Agreement and the Parties shall each be relieved and discharged from all further responsibility or liability under this Agreement.

4. **PROPOSED DEVELOPMENT.** Except as permitted under Section 6.g., for the purposes of the Parties' negotiations, as set forth in the Agreement the proposed development shall be in substantial conformance with the development concept described in the Seaport Proposal for the development and construction of a mixed-use master development, which includes, without limitation, retail, restaurants, hotels, incidental offices to support water-dependent or water-related uses, attractions (i.e., an aquarium, and an observation tower), a Public Trust Doctrine compliant educational component, parking, water oriented facilities (recreational and commercial fishing), multi-purpose open space and public realm uses (each, a "Programmatic Component") on the Property, as modified by the supplemental information request dated April 6, 2017 to connect the subterranean parking structures to create a larger floor plate and remove the pedestrian bridge that connected North and South Embarcadero Marina Parks, a water cut at the foot of Kettner Boulevard and the Embarcadero Marina Park North, and the pedestrian bridge over the tide pools on the inboard side of the Embarcadero Marina Park North(collectively, the "Proposed Development").

5. **FORMATION OF 1HWY1.** Within ninety (90)-days of the Effective Date of this Agreement ("Formation Deadline"), the Developer shall cause the formation of 1HWY1, which shall be a California or Delaware limited liability company and include (a) PWD, as managing member; and (b) ThrillCorp, Inc., a Delaware corporation ("ThrillCorp"), RCI SD, LLC, a Florida limited liability company ("RCI"), and OdySea, San Diego, LLC, an Arizona limited liability company ("OdySea") as the remaining members, each as individual members of 1HWY1. Upon Developer's formation of 1HWY1, but prior to the Formation Deadline, the Developer shall deliver written notice to the District of the formation of 1HWY1, which notice shall include for District's review and approval, in its sole and absolute discretion, the following items which shall form the "Formation Package": (i) a certified copy of the formation documents of 1HWY1 and each of its members, the operating agreement of 1HWY1, and a written statement certified by the Developer describing the roles and financial commitments of all of the members of 1HWY1; (ii) an organizational chart for 1HWY1 identifying all of the members; and (iii) a form of assignment and assumption of this Agreement between Developer and 1HWY1 ("Assignment & Assumption"), under which Developer shall assign to 1HWY1, and 1HWY1 shall assume, all of Developer's rights and obligations under this Agreement. Developer shall be in default under Section 12 of this Agreement if: (a) Developer fails to form 1HWY1 on or before the Formation Deadline; (b) Developer fails to deliver to the District the Formation Package, in a form satisfactory to the District, on or before the Formation

Deadline; (c) PWD is not the managing member of 1HWY1; (d) ThrillCorp, RCI, and OdySea are not each a member of 1HWY1, or (e) the form of Assignment & Assumption is not acceptable to the District. Provided this Agreement has not been terminated, Developer and 1HWY1 shall execute the Assignment & Assumption and deliver a fully executed Assignment & Assumption to the District within five (5) business days of receipt of District's approval of the Formation Package, upon which 1HWY1 shall replace PWD as the "Developer" under this Agreement as of the effective date of the Assignment & Assumption without the need for further amendment of this Agreement and PWD, acting as the Developer only under this Agreement prior to the effective date of the Assignment and Assumption, shall be released from liability under this Agreement as to all actions on and after the effective date of the Assignment & Assumption only in its capacity as the "Developer". In no event shall the effective date of the Assignment & Assumption be before the District's approval of the Formation Package.

- 6. REQUIRED SUBMITTALS.** Submittal by Developer of the submittals listed below is necessary to further define the scope and evaluate the financial and market feasibility of the Proposed Development. Accordingly, Developer shall deliver the following submittals in accordance with the requirements and scheduled dates set forth below (as may be extended by the District pursuant to Section 2(b) of this Agreement). All submittals required by this Section 6 shall be complete and timely. Late or incomplete submittals shall result in a default under this Agreement.

a. Market Demand and Feasibility Studies. By no later than October 16, 2017, Developer shall submit to the District Market Demand and Feasibility Studies to:

i. Demonstrate support for each of the Programmatic Components listed below:

1. Restaurant and Retail
2. Office
3. Hotels
4. Attractions
 - a. Aquarium (marine attractions)
 - b. Observation Tower
5. Water Oriented Facilities
 - a. Commercial Fishing
 - b. Recreational Marina

ii. Validate the demand and revenue expense assumptions in the financial model.

b. Pre-Development and Feasibility Milestones. Within ten (10) business days after the dates listed in the Pre-Development and Feasibility Milestones Schedule outlined in Exhibit "B", attached hereto and incorporated herein by reference ("Schedule"), the Developer shall deliver a written report to the District detailing Developer's achievement of the respective milestone together with any supporting documentation described therein for the District's review and approval.

c. Project Description. By no later than the first anniversary of the Effective Date of this Agreement, Developer shall submit to the District a detailed project description for the Proposed Development. The project description shall be a concise written description of the Proposed Development with sufficient detail to understand the Proposed Development and related Programmatic Components and to commence environmental review in accordance with the California Environmental Quality Act (codified as California Public Resource Code §§ 21000 et seq.), the California Environmental Quality Act Guidelines (codified as 14 California Code of Regulations §§15000) and the District's California Environmental Quality Act Guidelines (collectively, "CEQA"); provided, however, additional information and data may be requested by the District, in the District's sole and absolute discretion, which shall be provided by Developer, to enable the District to conduct CEQA review. At a minimum, the project description shall include the following information for each of the Programmatic Components proposed to be developed on the Property: total site area, building(s) square footage, building heights, number of floors, areas devoted to specific uses, number of hotel rooms, materials to be used and type of construction. Additionally, the project description shall include: construction information, including without limitation the length and phasing of demolition, construction or development and anticipated import and export of dirt; number of parking spaces (above-grade and/or below-grade); and type and location of public amenities and any proposed infrastructure improvements (land and water). All proposed uses and improvements shall be in compliance with the Public Trust Doctrine and the California Coastal Act (codified as California Public Resource Code §§ 30000, et seq.) ("Coastal Act").

The project description shall be accompanied at a minimum by the conceptual drawings for the overall Proposed Development and shall also be accompanied by conceptual drawings for each Programmatic Component proposed. The Parties acknowledge that the preliminary design materials to be provided by Developer pursuant to this Section are conceptual in nature and may be subject to revision and refinement throughout the Negotiating Period in order to achieve a plan for the Proposed Development acceptable to each of the Parties, and through the environmental review pursuant to CEQA. The Parties recognize that changes may occur in Developer's Proposed Development as additional information is obtained during the Negotiating Period. Conceptual drawings shall be in sufficient detail to clearly illustrate the Proposed Development and at a minimum shall include the following:

i. **Site/Floor Plans.** The site plan shall illustrate a comprehensive overview with sufficient detail to understand the scope of the entire Proposed Development and shall at a minimum clearly identify locations and size of building footprints for each Programmatic Component, areas proposed for public space, parking area layouts with estimated parking space counts and vehicular and pedestrian access. The site plan should clearly distinguish area allocations among commercial uses, the Public Trust Doctrine compliant educational component, water side uses (recreational vs commercial fishing uses), service/parking, circulation, view corridors, and public areas. Site plan and floor plans for each Programmatic Component, as applicable, that includes all levels (do not duplicate identical floor plans), subterranean levels and roof plans. Detailed floor plans are not required; however, general outlines and perimeter information to collaborate illustrated elevations must be provided (locations of windows, doors, shear walls, etc.).

ii. **Elevations.** Colored architectural exterior elevations that provide a comprehensive view of the entire Proposed Development and illustrate proposed building massing, height, materials and colors, and related architectural elements. Elevations must match rendering on perspective drawings. Elevations for each building face and enlarged elevations for all building frontages shall be included. All elevations should identify base datum used in height

measurements, colors, and materials.

iii. **Context/Perspective Drawings.** Three to five colored renderings and drawings approximately thirty inches (30") by forty-two inches (42") and hard backed that provide a representative illustration of the Proposed Development, clearly showing massing and the relationship of the Proposed Development in context to its surrounding environment with the adjacent building masses roughed in. Context elements do not need to be photo realistic but must accurately convey the bulk, scale, and character of the surrounding area. The Developer shall provide a minimum of one nighttime rendering for the overall Proposed Development.

iv. **Digital Format.** All conceptual drawings described in this Section 6 shall also be submitted in high resolution digital format(s) in addition to or as an alternative to the format(s) described above.

v. **General Requirements.** All conceptual drawings, including site/floor plans, elevations, and sections must be legible, drawn to scale, and be fully labeled and dimensioned and shall include the date of plan preparation. Plans should typically orient north up, one plan, elevation or perspective per sheet (other than those floor plans noted as "typical").

vi. **Additional Drawings.** The District reserves the right to request additional and more detailed drawings as necessary to conduct CEQA and Coastal Act review for the Proposed Development, each Programmatic Component and to clearly identify any proposed changes to the Proposed Development during the term of this Agreement.

d. **Pro Forma.** By no later than the first anniversary of the Effective Date of this Agreement and concurrently with the submittal of the detailed project description mentioned above, the Developer shall submit to the District a cost estimate and pro forma financial analysis (collectively, "Project Pro Forma") for the Proposed Development, with the same level of detail that a developer of a similar project would use for a pro forma in this stage of development when seeking pre-development equity investors and without a public subsidy. The Project Pro Forma shall include, at a

minimum, the following components and clearly note and explain any updates to the pro forma delivered to the District dated September 2016:

- i. Estimated financing plan for the Proposed Development including: total project financing structure, anticipated equity and debt requirements, financing approach for each Programmatic Component, including infrastructure, and any letters of interest from potential financing partners which support the financing plan.
- ii. Sources and uses for each Programmatic Component and the total Proposed Development for pre-development, construction and stabilized periods.
- iii. Each Programmatic Component including, without limitation, for the hotel, office, retail, amenities, attractions and educational uses at a minimum the then projected: room count; food and beverage outlets; meeting space; spa, retail, office, recreational and ancillary facilities; building footprint; approximate net and gross building square feet enclosed by component; approximate net and gross leasable square feet for office and retail components; square footages for open air components such as terraces, pool decks, and other amenity areas; and surface and structured garage parking spaces expressed in number of spaces and square footage, slip mix and rental rates for recreational marina and commercial fishing components.
- iv. Cost estimate for all Programmatic Components of the Proposed Development (at a minimum, all items listed in Section 6.c above), including, without limitation, direct costs such as site improvements, site building costs for each distinct programmable space, tenant improvements, furniture/fixtures/equipment, amenities, and parking; indirect costs such as architecture/engineering, entitlement costs, public permits and fees, legal, accounting, taxes, insurance, marketing/lease-up, pre-opening budget of supplies and expense, and Developer overhead fee; and financing costs such as loan fees, interest during construction and lease-up, and operating reserve and any costs associated with equity financing. Site improvements and infrastructure shall be allocated to each Programmatic Component. Development costs shall include an estimate of any temporary facilities or transition spaces proposed.

- v. Assumed duration of pre-development and construction periods for each Programmatic Component. Assumptions and phasing plan for construction and associated assumptions for development and construction expenditures and matching funding sources and uses for such expenditures.
- vi. A breakdown of the estimated rent to be paid to the District for each Programmatic Component, including basis, calculation and any assumed minimum rent for pre-development and construction periods and at a minimum the first 10-years of operations, which shall indicate the anticipated year of stabilization; provided, however, the District may request that the Developer provide a long-term projection of rent (which could be up to 66-years) to be paid to the District for each Programmatic Component on an annual basis.
- vii. Estimated gross revenues, operating expenses and net operating income ("NOI") (net of District rent) for each Programmatic Component and the total Proposed Development along with detailed revenue, expense, occupancy, lease-up, and inflation assumptions for each for at a minimum the first 10-years of operations, which shall indicate the anticipated year of stabilization. The Project Pro Forma should include all revenues anticipated for the Proposed Development. The estimate of NOI should be reasonably consistent with the Market Demand and Feasibility Studies referenced in Section 6(a) above.
- viii. Projected capital reserve requirements and capital expenditures for each Programmatic Component and for the total Proposed Development.
- ix. Assumptions concerning valuation/sale for each Programmatic Component and calculation of proceeds from disposition net of any associated expenses.
- x. Estimated cash flow before debt service for each Programmatic Component and the total Proposed Development for the first 10-years of operations and calculation of unlevered Developer returns.

- xi. Projected debt service requirements (construction and permanent financing) for each Programmatic Component (as applicable) and the total Proposed Development, including financing assumptions and calculations of debt service.
- xii. Calculation of cash flows to equity for each Programmatic Component and the total Proposed Development and calculation of levered Developer returns.
- xiii. All calculated levered and unlevered returns to Developer, which may include internal rates of return, cash multiples, and/or return on investment/cost shall be accompanied by a clear statement regarding the Developer's profit/return requirements.
- xiv. Cost, market, and economic assumptions used by Developer to prepare such projections and the Project Pro Forma.
- xv. Cash flow projection shall clearly indicate estimates of the required equity investment by Developer; all debt service obligations for construction, bridge, and/or permanent financing; and the economic return to Developer in terms of internal rate of return, cash multiple, and/or return on investment/cost requested by Developer.
- xvi. Projection of the ground lease revenues payable to the District during construction and the initial ten (10)-year operating period.
- xvii. Rental, monetary, financing and other concessions or incentives that are requested by Developer in order to achieve the projected investment and returns requested by Developer.
- xviii. The Project Pro Forma shall be submitted in an editable Microsoft Excel format with all working formulas and assumptions. Cash flow projections shall be provided for pre-development and construction periods and the first ten (10)-years of operations. All cash flow values shall be based on Developer's assumptions provided in the Project Pro Forma and shall not make use of "hard-coded" values. The Project Pro Forma shall be presented and formatted in a manner that is reasonably acceptable to the District and readily enables the District to:

1. determine the feasibility of the Proposed Development;
2. verify the cost, market, and economic assumptions used by Developer; and
3. sensitivity test a range of alternative inputs.

The District reserves the right to request periodic updates to the Project Pro Forma after its submittal due to changes in the Proposed Development during the Negotiating Period. The District will provide reasonable time for Developer to obtain and submit to the District such updates.

e. Additional Submittals. In addition to the information described in Sections 6(a)-(d) above, Developer acknowledges and agrees that the District reserves the right at any time to reasonably request from Developer additional information, including data and financial documents to determine and/or confirm Developer's relevant experience with similar scale mixed use developments, its approach to financing and capability to construct, develop, and operate the Proposed Development. The District will provide reasonable time for Developer to obtain and submit to the District such additional information.

f. Periodic Financial Feasibility Updates. Every ninety (90) days during the Negotiating Period, without notice from the District, Developer shall deliver to the District a written progress report, in a form satisfactory to the District in its sole and absolute discretion, identifying the current status of the financing plan for the construction, development, financing and operation of the Proposed Development ("Financing Plan"). The written progress reports shall include without limitation, a description of the financing structure, funding responsibilities, and current equity and debt sources for the Proposed Development, updates to the last progress report, and copies of all valid letters of interest and/or financial commitment(s) related to funding for the Proposed Development. Prior to the District presenting the Board with the Definitive Agreement for their consideration, the Developer shall provide the District with a final progress report demonstrating that the Developer has an adequate Financing Plan to construct, develop, and operate the Proposed Development.

g. Changes to Proposed Development. The Parties acknowledge that the materials to be provided by the Developer pursuant to this Section 6 are conceptual in nature and the Parties recognize that changes may occur in Developer's Proposed Development as additional information is obtained by the Parties during the Negotiating Period and will be subject to revision, refinement throughout the Negotiating Period in order to achieve a plan for the Proposed Development acceptable to both of the Parties. As such, the Developer shall submit written documentation advising the District of any changes to the Proposed Development, including but not limited to, changes to Programmatic Components resulting from market demand and feasibility studies, development plan revisions, financial feasibility analyses, construction cost estimates, marketing studies, soils and hazardous materials investigations, test and reports, and other post-selection due diligence items and shall submit within a reasonable timeframe updates to the submittals previously delivered to the District under this Section 6 to clearly identify and reflect changes to the scope, scale or location of the Proposed Development for the District's consideration and approval.

h. Due Diligence and Ground Work. Upon written request from Developer, the District shall conduct environmental review pursuant to CEQA, and consider approval of necessary permits and entitlements, including without limitation Coastal Act permits or exclusions and one or more temporary District Right of Entry License Agreement ("ROE License") for those portions of the Property not subject to an agreement with a third party and under the immediate control of the District (collectively, "District Controlled Areas") permitting the Developer and its employees, contractors, subcontractors and agents to enter designated portions of the District Controlled Areas for the purposes of conducting soils tests and other due diligence tests, investigations and examinations in, on, under or about the District Controlled Areas (the "Work"), all at Developer's sole and absolute cost. In addition to other conditions that may be required through the CEQA, Coastal Act or other permitting processes, at a minimum, the following conditions shall apply to any ROE License authorizing Work requiring ground disturbance or consisting of any subsurface or invasive testing or investigations ("Ground Work"):

- i. Developer shall submit a Work plan to the District for Ground Work and obtain District approval thereof, which shall be granted or withheld in the District's sole and absolute discretion; and
 - ii. A District appointed monitor with the experience in the type of Ground Work proposed to be conducted ("Monitor") shall be present to observe the Ground Work. Ground Work shall not proceed without the Monitor being present unless such requirement is waived by the Executive Director or her designee in writing. In the event of any exacerbation of a pre-existing hazardous materials condition, the Monitor shall determine whether the Ground Work was carried out in accordance with the Work plan, in a non-negligent manner and in accordance with commonly accepted industry standards.
- a. Indemnity. Developer agrees, to the fullest extent provided by law, to defend, indemnify and hold the District, its agents, officers and employees, and the Property free from any and all liability as a result of the Work or the exercise of said ROE License, except to the extent arising out of:
- i. Developer's discovery of any pre-existing condition unless Developer:
 - (1) negligently exacerbates such condition; (2) performs the Work in a manner that is inconsistent with commonly accepted industry standards, or (3) performs the Ground Work in a manner inconsistent with the Work plan; or
 - ii. the District's sole negligence or willful misconduct.
- b. CEQA Review of ROE License. Developer acknowledges and agrees that the ROE License may be subject to review under CEQA, the cost of which shall be borne by Developer. Prior to entering any portion of the District Controlled Areas, Developer agrees to obtain insurance as specified in the ROE License, which insurance shall, among other things, be endorsed to read that all policies are primary policies and to name the District as an additional insured.
- c. Term of ROE License. The ROE License shall have a term reasonably necessary for Developer to conduct the Work, but in no event shall said term continue beyond the earlier of the termination of this Agreement or the expiration of the Negotiating Period.

7. DEVELOPER'S FINDINGS, STUDIES AND REPORTS.

a. Products. In connection with the Proposed Development, Developer shall be preparing or causing to be prepared design, architectural and engineering products, plans, reports, test, studies, cost estimates and investigations with respect to the Property and the Proposed Development, including, but not limited to, providing the District with development plan revisions, financial feasibility analyses, construction cost estimates, surveys, marketing studies, soils and hazardous materials investigations, tests and reports, engineering reports, geotechnical reports, plans and specifications, other due-diligence materials, material correspondence and work product documents (collectively, "Products"). Developer agrees to make written progress reports, in form satisfactory to the District, advising the District on all matters related to the Proposed Development and the Products. Developer shall provide the District copies of all final Products prepared or commissioned by Developer and/or obtained from third parties with respect to this Agreement and/or the Proposed Development. Developer further acknowledges that it may be necessary or desirable to share with the District drafts and progressions of the Products prepared or commissioned by Developer in order to meet the requirements of Sections 6 and 14, to permit the District to conduct is due diligence with respect to Developer and the Proposed Development and to carry out its planning and entitlement efforts with respect to the Proposed Development, and to otherwise further the purposes of this Agreement, and Developer agrees to cooperate with the District in making such drafts and document progressions available.

b. Transferable Products. "Transferable Products" shall mean all reports, plans, specifications, studies, estimates and other information or analysis generated by Developer and/or obtained by third parties pertaining to the physical condition of the Property, and shall include without limitation, the Products. Developer shall use commercially reasonable efforts to cause all contracts with its consultants and contractors for preparation of Transferable Products to require that such Transferable Products be prepared for the benefit of Developer and the District, and be transferable to and by the District in whole, and shall impose no restriction, cost or fee with respect to transfer of such Transferable Products to or by the District or use thereof by the District or

any person or entity to which the District transfers the Transferable Products. Upon termination of this Agreement without execution of a Definitive Agreement by the District and Developer, Developer shall be deemed to have transferred its interest in the Transferable Products to the District, without representation or warranty except as to the delivery of the most current form of the Transferable Product in whole to the District, such Transferable Products shall become the property of the District and shall be delivered to the District immediately if not delivered in whole previously, and the District shall have the right, in its sole discretion to use, grant, license or otherwise dispose of such Transferable Products to any person or entity for development of the Property or any other purpose at no cost or expense to the District provided that the Developer shall have no liability whatsoever to the District or any transferee of title to the Transferable Products regarding the accuracy or breadth of any information contained in the Transferable Products or the use of the Transferable Products (except as it relates to the transferability of the Transferable Products by the third party and the delivery of the Transferable Products to the District in whole). This Section 7 shall survive the expiration or earlier termination of this Agreement.

8. AGREEMENT TRANSFER. The expertise, experience and financial capability of (a) PWD as managing member of 1HWY1; and (b) ThrillCorp, RCI and OdySea as individual members of 1HWY1, to undertake development of the Property as contemplated by this Agreement are of significant importance to the selection by the District of 1HWY1 as the successful proposer pursuant to the RFP and the entry by the District into this Agreement. Any attempt to transfer or assign this Agreement or any rights or duties, or obligations hereunder (other than to 1HWY1 as expressly provided in this Agreement), whether by operation of law, through a pledge, hypothecation, or otherwise, shall be void and shall result in a default under this Agreement. In addition, during the Negotiating Period, if without the prior written consent of the District: (i) any assignment or transfer of any ownership interest in Developer prior to the date this Agreement is assigned to 1HWY1; (ii) PWD changes its form of entity from a California limited liability company; (iii) any assignment or transfer of any ownership interest in 1HWY1 after the Formation Package is delivered to the District; or (iv) if 1HWY1 changes its form of entity or place of incorporation, the transfer shall be void and Developer shall be in default under this Agreement. Notwithstanding the foregoing, after the effective date of the Assignment & Assumption approved by the District, but subject to the District's express right not to enter into a Definitive

Agreement with Developer, the District's consent for a direct or indirect transfer of membership interests in Developer or admission of new members into Developer shall not be required so long as after the transfer (i) PWD shall remain as the managing member of Developer with active and direct control and supervision of the operations of Developer, (ii) PWD, ThrillCorp, OdySea and RCI collectively hold at least 51% of the direct or indirect voting membership interests in Developer, (iii) the proposed transferee and its principals are reputable (meaning the absence of a reputation for dishonesty, criminal conduct, or association with criminal elements), provided that "reputable" does not mean "prestigious", nor does the determination of whether one is reputable involve consideration of personal taste or preference, (iv) if the proposed transferee or new member (or its principals) is a tenant of the District, such person or entity (or its principals) is then in good standing with the District under its agreements with the District, (v) there is no change in entity form of 1HWY1, (vi) Developer delivers to District prior written notice of such action listing the new member(s) and its principals, along with an updated organizational chart showing the new member(s), member (s) operating, partnership or other formation agreement and a certified copy of the formation documents for the new member(s), and (vii) any additional information on the new member(s) as is reasonably requested by District. In addition, at the request of the District from time to time, within thirty days (30) after a request from the District, the Developer shall provide to the District a detailed organizational chart and other information to determine the person(s) and entities holding a direct or indirect interest in Developer and who has control over Developer including information on beneficial ownership and voting rights to make such determination.

9. COSTS AND EXPENSES. Except as otherwise expressly set forth in this Agreement, each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with the performance of its obligations under this Agreement; provided, however, Developer, and not the District, shall be responsible for all fees associated with review and approval of a Proposed Development project as outlined in Board Policy No. 106 for Cost Recovery User Fee and all processing fees and costs associated with application for, and processing of, the environmental review set forth in Section 14 below, including, but not limited to, all of the District's costs of preparing any environmental studies as may be determined to be required by the District, in its sole and absolute discretion. Prior to assessing any fees under Board Policy No. 106, the District shall provide Developer with an estimate of the fees.

10. NOTICES. Notices given or to be given by the District or Developer to the other may be personally served upon the District or Developer or any person hereafter authorized by either in writing to receive such notice on its behalf or may be served by certified letter (return receipt requested) addressed to the appropriate address hereinafter set forth or to such other address as the District and Developer may hereafter designate by written notice, and shall be deemed delivered on the date of personal delivery, or if delivered by certified mail, upon the date shown for delivery in the returned receipt or three days after the deposit of the certified letter in the United States mail, whichever is earlier. All notices shall be in writing and shall be made as follows:

a. All notices to Developer shall be given or sent by certified mail to:

Protea Waterfront Development, LLC
Attention: Yehudi Gaffen
5960 Cornerstone Court West, Suite 100
San Diego, CA 92121

b. All notices to the District shall be given or sent by certified mail to:

Director, Real Estate
San Diego Unified Port District
3165 Pacific Highway
Post Office Box 120488
San Diego, CA 92112-0488

Any Party may designate a different address by giving written notice as set forth in this Section.

11.NEED FOR DEFINITIVE AGREEMENT.

a. **Purpose of Agreement.** The Parties acknowledge and agree that this Agreement is for the sole purpose of stating the intention of the Parties to negotiate and potentially enter into the Definitive Agreement. The Parties acknowledge that this Agreement establishes a process for the Parties to negotiate, exchange information and for the Developer to establish a project description for the Proposed Development to initiate the CEQA process and the Parties do not intend to be bound to carrying out the Proposed Development or any Programmatic Components thereof until

the Definitive Agreement is executed by both Parties. District's execution of this Agreement is merely an agreement to enter into the Negotiating Period, according to the terms presented herein, reserving full and final discretion and approval by the Board as to actions required, if any. This Agreement is not, and the Parties do not intend that this Agreement to be the Definitive Agreement. Subject to the obligations and rights expressed in this Agreement, unless and until a Definitive Agreement is approved as set forth in Section 11(c) and executed by both Parties, the Parties do not intend to be bound in any way to any other agreement. Each Party's acknowledgement of this Agreement is merely an agreement to enter into the Negotiating Period according to the terms presented herein, reserving final discretion and approval of any Definitive Agreement by the Board (or in the case of Developer, its principals) as to actions required, if any.

b. Framework of Negotiations. The District and Developer acknowledge that this Agreement is a framework for negotiation of essential terms in a Definitive Agreement, but that they have not agreed upon the essential terms or the material elements of a transaction, including, without limitation, the rent, the final legal description of the Property subject to the Definitive Agreement, the time or manner of and significant terms related to the Definitive Agreement, the conditions precedent to lease, if any (including without limitation, related to the design and entitlement of the Proposed Development) and the requirements related to development of the Proposed Development, each of which are an essential component of the transaction which shall be the subject matter of their further negotiations and shall be set forth, if at all, in a Definitive Agreement approved by the Board (or in the case of Developer, its principal(s)), in its sole an absolute discretion, and executed by authorized representatives of each of the District and Developer subject to said approval. Further, Developer acknowledges that the design of the Proposed Development, the identity, stability and financial capacity of Developer, 1HWY1 team and 1HWY1, and the terms and conditions of the lease of the Proposed Development, if any, will be of material concern to the District and comprise part of the essential terms that are not yet agreed upon by the Parties.

c. Not Binding Until Formally Approved. The Definitive Agreement shall not be approved or binding upon the Parties unless and until it is fully executed by Developer and the District, approved by counsel of each.

Party as to form and legality, and approved by the authorized representatives of Developer and by the Board and following compliance with all laws, including without limitation, CEQA. The concurrence of the Executive Director or her designee with the terms and provisions of the Definitive Agreement shall not be construed or interpreted as the District approving or accepting such terms and shall not be relied on by Developer. If the Board disapproves the CEQA analysis for the Definitive Agreement or Proposed Development, disapproves the Definitive Agreement or any other permit requiring Board approval during the Negotiating Period, this Agreement will automatically and immediately terminate; provided that if the Board requests modifications to any of the foregoing, the Parties may mutually agree to extend the Negotiating Period, if necessary, to address the Board requested modifications and to permit resubmittal of the CEQA analysis and/or a Definitive Agreement to the Board.

- d. **Outreach.** During the Negotiating Period, Developer shall participate with the District in public outreach efforts including stakeholder outreach and Board meetings and other outreach as necessary to promote the Proposed Development.

- e. **Termination and Survival Provisions.** Notwithstanding any other provision of this Agreement, this Agreement and its terms are binding on the Parties until this Agreement terminates and, further, the provisions of Section 7 (Developer's Findings, Studies and Reports), Section 9 (Costs and Expenses) (as it relates to the obligation of Developer to pay specified fees and costs incurred by the District), Section 13 (Remedies for Breach of Agreement), Section 15 (Attorneys' Fees), Section 30 (No Broker), Section 31 (No Agreements with Third Parties), and Section 33 (OFAC Compliance) shall survive the termination of this Agreement and the Parties shall each remain liable with respect to each of such surviving provisions, as set forth in this subsection 11(e) for all obligations, fees, costs and expenses thereunder incurred during or as a result of matters arising during the Negotiating Period.

This Section 11 shall survive the expiration or earlier termination of this Agreement.

12. DEFAULT. Failure by either Party (a) to negotiate in good faith, (b) to negotiate exclusively, as provided in Section 2(c), or (c) perform any other of its obligations as provided in this Agreement, including without limitation, the delivery of the submittals set forth in Section 6, shall constitute an event of default under this Agreement. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the action required to cure the default. If the default remains uncured for twenty (20) days after the date of such notice it shall be deemed an "Uncured Default", and the non-defaulting Party may terminate this Agreement as set forth in Section 13(a) of this Agreement.

13. REMEDIES FOR BREACH OF AGREEMENT.

a. Termination. In the event of an Uncured Default by the District, Developer's sole remedy shall be to terminate this Agreement. In the event of an Uncured Default by Developer, the District's sole remedy shall be to terminate this Agreement. Except as set forth in Section 11(e), after termination of this Agreement by either Party, neither Party shall have any further rights, remedies or obligations to the other Party under this Agreement and the Parties shall each be relieved and discharged from all further responsibility or liability under this Agreement.

b. Limitations on Remedies. Developer acknowledges that the District would not have entered into this Agreement if the District could become liable for damages or specific performance under or with respect to this Agreement, the Definitive Agreement or the Proposed Development. Consequently, without limiting any other terms of this Agreement and notwithstanding any actual or alleged default, including without limitation, any Uncured Default, by the District or Developer:

- i. the District shall have no liability for monetary damages or specific performance for the breach of this Agreement to Developer (except with respect to attorneys' fees awarded by a court pursuant to Section 15 herein) or any third party; and
- ii. except with respect to claims arising under the sections described in Section 11(e), including without limitation, those payable by Developer with respect to Section 9, Developer shall have no liability to the District for monetary damages or specific performance for the breach of this Agreement.

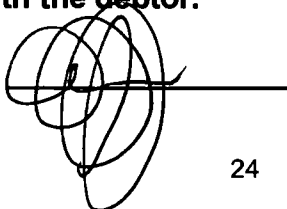
c. Release. Without limiting the generality of the foregoing, except as set forth in Section 13(b), each Party hereby expressly waives, releases and relinquishes the right to any and all damages and/or monetary relief (whether based in contract or in tort), including, without limitation, any right to claim direct, compensatory, reliance, special, indirect or consequential damages with respect to or arising out of this Agreement and any other rights or claims it may otherwise have at law or at equity. In addition, Developer further expressly waives and irrevocably releases the District with respect to:

- i. any right to specific performance for conveyance of, or to claim any right of title or interest in the Property or any portion thereof,
- ii. any right to record a lis pendens or to otherwise place a lien or restriction of any type upon or affecting the Property, and
- iii. any and all claims, damages, liabilities, costs, expenses that Developer may now or hereafter have or incur relating to or arising from:
 1. the terms of this Agreement including, without limitation, the information set forth herein or the termination hereof, and
 2. any action or inaction of the District in connection with this Agreement, including without limitation, the exercise by the District of its discretion, decision, judgment with respect to the foregoing or the failure of the District to enter into the Definitive Agreement.

With respect to all releases and waivers made by the Developer under or pursuant to this Agreement, the Developer hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the following provision of California Civil Code § 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

DEVELOPER:



14. CEQA, ENTITLEMENTS AND RESERVATION OF DISCRETION. This Section 14 shall apply notwithstanding any other provision of this Agreement. The Parties agree and acknowledge that compliance with CEQA is a legal precondition to the District's or Board's commitment or approval of any discretionary District action for a project that may result in a direct or indirect physical change to the environment, including, without limitation the Definitive Agreement, a Port Master Plan Amendment ("PMPA"), if required and a Coastal Development Permit ("CDP") for the Proposed Development ("Discretionary Actions"). No approval of the Discretionary Actions shall be approved or deemed to be approved by the District or the Board, until after the CEQA analysis for the same and the Proposed Development is considered and approved by the District or Board in accordance with the requirements of CEQA. The Parties also acknowledge and agree to the following terms and conditions:

- a. Preparation of a PMPA, CDP and CEQA analysis by a Consultant (defined below). If deemed necessary by the District, in its sole and absolute discretion, a PMPA and CDP under the Coastal Act for the Proposed Development may be required. CEQA analysis shall also be required. The District, in its sole and absolute discretion, may have the CEQA analysis, PMPA or CDP prepared by one or more private firms (collectively, "Consultant") under a three-party agreement executed by the District, Developer and the Consultant. If the District decides that such a three-party agreement is required, Developer shall enter into said agreement. The Parties intend that the three-party agreement include, at a minimum, the following provisions:
 - i. Developer agrees to pay for all of the District's Consultant cost, including, without limitation, the Consultant fees for preparing the CEQA analysis, PMPA, or a CDP and obtaining California Coastal Commission ("Coastal") approval of said entitlements, and any other required entitlements; and
 - ii. Developer will directly pay such costs as they are incurred within 30-days after Developer receives written request for payment from either the District or the Consultant. Developer shall fully and timely cooperate with the District and, if applicable, the Consultant, in furnishing information required for the District's consideration of its approval of the CEQA analysis, PMPA or CDP and the District's efforts to obtain approvals from the Coastal. Said cooperation shall

include, without limitation, submitting necessary and useful information at the request of the District or the Consultant and attending and presenting at community workshops or other public forums where issues relating to the CEQA analysis, PMPA, CDP or other entitlements are discussed. Developer shall have the right to review all costs including third party studies and documents and protest any unreasonable fees. Notwithstanding the above, if this Agreement is terminated, Developer shall have no liability to pay any future costs or expenses incurred pursuant to this Section 14(a) after the date of termination of the Agreement, but shall pay all costs and expenses up to the date of termination. Prior to incurring any fees, the District shall provide Developer with an estimate of the fees.

- b. Review and Approval of the CEQA Analysis, PMPA, CDP and Proposed Development. The Parties agree and acknowledge that an approval of a project under CEQA Guideline Sections 15352 and 15378 has not occurred by the District's approval of this Agreement. The CEQA analysis, Discretionary Actions and Proposed Development may be reviewed and considered by the Board, in its sole and absolute discretion and the Parties acknowledge and agree that this Agreement is not and does not guarantee approval of the CEQA analysis, required findings, including without limitation a Statement of Overriding Considerations, a Mitigation Monitoring Reporting Program ("MMRP") or any permits, entitlements (including, without limitation, the Discretionary Actions), improvements or other projects (collectively, "Required Approvals") for the Proposed Development or the Proposed Development itself as contemplated by this Agreement or otherwise. The Parties further agree and acknowledge that the Board and District retain sole and absolute discretion to, among other things:
 - i. prepare, adopt, or disapprove an exemption, a Mitigated Negative Declaration ("MND") or an Environmental Impact Report ("EIR"), pursuant to CEQA for the Proposed Development, Discretionary Actions and other required permits and entitlements required to carry out the Proposed Development or any other project proposed by Developer on the Property;

- ii. adopt, condition or disapprove any and all projects including, without limitation, any and all of the Required Approvals or the Proposed Development;
- iii. adopt any and all feasible mitigation measures to lessen potentially significant environmental impacts from any project, including the Proposed Development;
- iv. modify any project, including the Proposed Development, adopt any alternatives to the same, including the "no project" alternative, and adopt or refuse to adopt a Statement of Overriding Consideration, if applicable, in connection with the CEQA process.

Developer acknowledges that this Agreement shall not be construed as a direct or indirect commitment by the Board, the District or any other entity to take or to not take any action, whether under CEQA, the Coastal Act or otherwise, in connection with the Required Approvals or the Proposed Development or any other projects related to matters set forth in this Agreement or otherwise. Additionally, the Parties acknowledge and agree that the Discretionary Approvals and other permits, entitlements or project approvals shall not be presented to the District or Board for approval unless and until all environmental review under CEQA has been conducted and approved. Developer shall have no claim, cause of action, or right to compensation or reimbursement from District if the Proposed Development or Required Approvals are not adopted for any reason or an alternative, including the no project alternative is adopted, or if adopted, the item is subject to the performance of certain additional conditions or mitigation measures.

Developer fully assumes all the risk that the District, the Board or Coastal will not approve or adopt any or all of the Required Approvals or will impose conditions and mitigation measures to the Required Approvals or select an alternative, including the no project alternative. This Section 14 shall survive the expiration or earlier termination of this Agreement.

15. ATTORNEYS' FEES. In the event of any dispute between the Parties hereto involving the covenants or conditions contained in this Agreement or arising out of the subject matter of this Agreement, the prevailing Party shall be entitled to recover reasonable expenses, including attorneys' fees and costs.

16. ASSUMPTION OF RISK. The District and Developer each assume the risk that, notwithstanding this Agreement and good faith negotiations, the District and Developer may not enter into any Definitive Agreement due to their failure to

agree upon essential terms, the type of Definitive Agreement, the Definitive Agreement or any CEQA analysis required in connection with the foregoing and the Proposed Development. Accordingly, except as specifically set forth in this Agreement, neither Party will have any liability to the other in the event that the Parties are unable to agree upon the essential terms or to enter into any Definitive Agreement.

17. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding and agreement of the Parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

18. TIME IS OF THE ESSENCE. Time is of the essence with respect to all the express conditions contained herein.

19. THIRD PARTIES. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than Developer and the District and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provisions give any third persons any right of subrogation or action over or against any Party to this Agreement.

20. SECTION HEADINGS. The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

21. GOVERNING LAW. This Agreement and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of California.

22. DISTRICT'S RIGHT TO USE PROPERTY. Developer acknowledges that until such time as a lease is executed by the Parties, the District shall have the right, in its sole and absolute discretion and without consent of Developer, (a) to use, operate, manage or lease all or any portion of the Property itself or through a third party (which may include Developer, 1HWY1 or one of its affiliates) for any and all legal uses, including, without limitation, any Interim Uses, (b) to construct or to permit construction of infrastructure on the Property, including, without limitation, realignment of streets, and repaving and restriping of the parking, (c) to

demolish, or to permit demolition, of any improvements on the Property, (d) to construct, or to permit construction, on the Property, including, without limitation, tenant improvements, as may be needed, in the sole and absolute discretion of the District, to continue the operation of the Property after the expiration or earlier termination of any lease, permit, license, easement or other agreement with any third party or as required by any lease, permit, license, easement or other agreement with any third party, (e) to convey portions of the Property and/or grant easements in the Property to the City of San Diego or to any public or quasi-public entity or to any utility, as necessary or desirable for the development of the Property, (f) to issue temporary licenses or other grant of access rights to the Property to the City of San Diego and/or to any other third party, as necessary or desirable for the development of utilities and infrastructure on, above or under the Property; and/or (g) to amend, modify, or terminate any of the leases, permits, easements, licenses or other agreements related to the Property, and none of the foregoing shall be deemed a breach by the District of its obligations to negotiate set forth in Section 2. Notwithstanding the foregoing, the District shall, except with regard to any agreements related to or resulting from RFP 17-52ME (Waterfront Retail Opportunity):

- i. provide Developer with written notice if the District enters into a lease, temporary use and occupancy permit, or easement following the Effective Date of this Agreement granting rights to use or occupy some or all of those portions of the Property excluding the Fish Market and the Headquarters leaseholds ("Notice Property") in excess of 1 year but less than 3 years; and

- ii provide Developer with written notice ten (10) days' prior to entering into any lease, temporary use and occupancy permit, or easement granting rights to use or occupy some or all of the Notice Property in excess of three years to allow Developer to object to such lease, temporary use and occupancy permit, or easement within five (5) days of receiving District's notice and if Developer objects within the five (5) days, District shall reasonably consider Developer's objection prior to entering into such lease, temporary use and occupancy permit, or easement.

23. CONSENT/APPROVAL. Except as expressly provided elsewhere in this Agreement, wherever in this Agreement the consent or approval of the District, the Board, the Executive Director of the District, Developer or any of their designees is required, such consent or approval may be given or denied in the

sole and absolute discretion of the person or party to which such discretion is given.

24.COMPUTATION OF TIME PERIODS. If any date or time period specified in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, or on a day that the District is closed as part of an alternative work week, such date will automatically be extended until 5:00 p.m., Pacific Time, of the next District business day or of the next day which is not a Saturday, Sunday or federal, state or legal holiday.

25.NO WAIVER. The waiver or failure to enforce any provision of this Agreement by a Party will not operate as a waiver of such Party's right to enforce future defaults or breaches of any such provision or any other provision of this Agreement.

26.PARTIAL INVALIDITY. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion will be deemed severed from this Agreement and the remaining parts of this Agreement will remain in full force as fully as though the invalid, illegal, or unenforceable portion had never been part of this Agreement.

27.AMBIGUITIES NOT HELD AGAINST THE DRAFTER. This Agreement has been freely and voluntarily negotiated by all Parties and the Parties are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

28.CAPACITY OF PARTIES. Each signatory and Party to this Agreement warrants and represents to the other Party that it has the legal authority, capacity and direction from its principal(s) to enter into this Agreement and that all necessary resolutions, ordinances or other actions have been taken so as to enter into this Agreement.

29.AMENDMENT TO THIS AGREEMENT. Except as set forth in Section 2(b), the terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties and if applicable, approved by the District.

30. NO BROKER. Developer represents and warrants that it has not engaged any broker, agent, or finder in connection with this Agreement and Developer agrees to hold the District and its representatives harmless from any losses and liabilities arising from or in any way related to any claim by any broker, agent, or finder retained by Developer, regarding this Agreement, the Definitive Agreement or the lease or development of the Property.

31. NO AGREEMENTS WITH THIRD PARTIES. Developer acknowledges and agrees that this Agreement does not grant, convey, or provide Developer with any interest, including without limitation, a possessory interest, in any portion of the Property. Developer shall not enter into or cause or direct any person or entity to enter into, any agreement with any person or entity related to the Property or this Agreement that (i) binds, or has the effect of binding, the District or any portion of the Property; (ii) clouds, or has the effect of clouding, title to the Property, including without limitation, any encumbrances or liens; or (iii) continues beyond the expiration of the Negotiating Period or earlier termination of this Agreement. Developer agrees to provide District at its regular coordination meetings with District staff a list of the meetings Developer anticipates it or its representatives will have before the next scheduled coordination meeting with any government entity or agency (excluding the District), the San Diego Foundation and District tenant(s) regarding the Proposed Development; and District shall advise Developer or Developer's representative at such coordination meeting which meeting or meetings the District desires to attend in person or by phone at no cost to Developer; provided, however, the District shall have the right to recover costs permitted under Section 9 of this Agreement, Board of Port Commissioners Policy No. 106 and pursuant to any other fee agreement entered into with Developer. If District identifies any such meeting that it wishes to attend in person or by phone, then Developer and District shall reasonably coordinate schedules so that one or more District representatives may attend in person or by phone. For purposes of clarity, the Developer's requirement to provide advance notice to the District regarding meetings with governmental entities or agencies do not apply to (i) general information, record, data or file requests to governmental entities or agencies except for State Lands Commission, California Coastal Commission, and San Diego Regional Airport Authority, or (ii) general information, record, data, file reviews as part of the City of San Diego Development Review Process. Notwithstanding anything in Section 13 to the contrary, Developer shall indemnify the District for all costs and expenses, including without limitation, any and all damages and/or monetary relief (whether based in contract or in tort), including, without limitation, any right

to claim direct, compensatory, reliance, special, indirect or consequential damages with respect to or arising out of Developer's breach of this Section 31. This Section 31 shall survive the expiration or earlier termination of this Agreement.

32.NO RELATIONSHIP. Developer and any agent, employee, or contractor of Developer shall act in an independent capacity and not as agents, officers or employees of the District. The District assumes no liability for Developer's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by Developer. Developer shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Developer shall make clear to third parties that Developer is not an agent, employee, or independent contractor of the District. Nothing in this Agreement shall be deemed to create any form of business organization between the parties, including, without limitation, a joint venture or partnership.

33.OFAC COMPLIANCE. Developer represents and warrants to the District that (i) Developer and each person or entity owning an interest in Developer is not now, and shall not during the Negotiating Period become, a person or entity with whom District or any citizen of the United States is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and regulations promulgated pursuant thereto, or under any successor statutes or regulations, including, without limitation, persons and entities ("Prohibited Persons") named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list pursuant to any authorizing statute, executive order or regulation, nor a Person (also, a "Prohibited Person") with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Developer constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Person, (iii) no Prohibited Person has any interest of any nature whatsoever in Developer (whether directly or indirectly), (iv) none of the funds of Developer have been derived from any unlawful activity with the result that the investment in Developer is prohibited by law or that this Agreement is in violation of law, and (v) Developer has

implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and the year written below.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: 

Assistant Deputy

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: 

Tony Gordon,
Director,
Real Estate

Dated: 10/2/2017

**PROTEA WATERFRONT
DEVELOPMENT, LLC**, a California
limited liability company

By: 

Signature

PRINT NAME: Yehudi Gofen

PRINT TITLE: CEO

DATED: September 28, 2017

SDUPD Docs No. ~~1196134~~
1198108



Exhibit B

Central Embarcadero Pre-Development and Feasibility Milestones	
	Date
Market Demand and Feasibility Study (all programmatic components)	
Select Feasibility Consultant	07/14/17
Completion of Market Demand and Feasibility Study	10/16/17
Geotechnical Investigation	
Additional Testing for Final Report	10/25/17
Final Fault, Hazards Environmental and Soils Report	12/26/17
Final Structural Impact Analysis	02/20/18
Civil Investigation	
Base/Master Drawing of Existing Utilities	06/30/17
Additional Wet & Dry Utility Analysis	09/25/17
Document Review	10/13/17
General Contractor	
General Contractor Selection	
Workshops	06/30/17
GC selection	09/08/17
Selection of Master Architect	
Charrettes	07/31/17
Architect Selection	09/15/17
Master Architect Tasks - Start of DDP Phase 2	
Final Presentation w/ Project Description Detail	08/15/18
Final Project Cost Estimates	09/01/18
Final Project Financial Pro Forma	09/05/18
Final Project Description	09/11/18
Waterside	
Commercial Fishing Basins	
Validation Report	
Agreement	06/30/17
Final Draft	11/17/17
Potential Final Design Modifications	02/16/18
Recreational Marina / Beaches	
Final Design	03/02/18
Final Presentation	03/09/18
Final Cost estimates	04/16/18
Final Financial Pro Forma	05/14/18
Aquarium	
Vision Document	10/06/17
Program Document	12/26/17
Conceptual Design	01/12/18
Select Technical Team (Arch / Mech / Eng)	01/12/18
Final Presentation	04/06/18
Preliminary Pro Forma Development	05/28/18
Education Center	
Vision Document	10/20/17
Program Document	12/15/17
Final Presentation	02/09/18
Submission to Port / State Lands Commission	03/09/18
Preliminary Pro Forma Development	04/13/18

Observation Tower	
Vision	11/20/17
Define Program	12/18/18
Conceptual Design	02/06/18
Final Cost Estimates	03/23/18
Final Financial Pro Forma	05/01/18
Hospitality	
Vision	12/20/17
Operational Feasibility	03/12/18
Final Cost Estimates	04/30/18
Final Financial Pro Forma	05/21/18
Retail	
Vision	12/18/17
Conceptual design	03/09/18
Final Cost Estimates	03/12/18
Final Financial Pro Forma	05/14/18
Parking and Mobility	
Vision	11/27/17
Conceptual design	01/15/18
Operational Feasibility	02/12/18
Final Cost Estimates	04/09/18
Final Financial Pro Forma	04/18/18
Project Description Document with Final Pro-Forma	
First Draft	08/15/18
Review	08/21/18
Final Draft	09/05/18
Review	09/12/18
Submit to Port	09/20/18

RESOLUTION 2017-078

RESOLUTION DIRECTING STAFF TO ENTER INTO A TWO-YEAR EXCLUSIVE NEGOTIATING AGREEMENT (ENA) WITH PROTEA WATERFRONT DEVELOPMENT (PWD), THE PROPOSED MANAGING MEMBER OF THE SELECTED PROPOSER 1HWY1, AND REQUIRE IN THE ENA THAT (1) PWD FORM, OR CAUSE THE FORMATION OF, 1HWY1 WITHIN NINETY DAYS OF ENTERING INTO THE ENA, (2) PWD ASSIGNS ALL OF PWD'S RIGHTS AND OBLIGATIONS UNDER THE ENA TO 1HWY1 ONCE THE ENTITY HAS BEEN FORMED, (3) PWD, OR 1HWY1 ONCE IT IS FORMED AND ASSUMES THE RIGHTS AND OBLIGATIONS UNDER THE ENA, SUBMIT A PROJECT DESCRIPTION WITHIN 1 YEAR OF PWD ENTERING INTO THE ENA, AND (4) PWD, OR 1HWY1 ONCE IT IS FORMED AND ASSUMES THE RIGHTS AND OBLIGATIONS OF PWD UNDER THE ENA, SUBMITS REGULAR PROGRESS REPORTS ON THE PROPOSED DEVELOPMENT'S FINANCIAL FEASIBILITY AND ACCESS TO EQUITY AND DEBT SOURCES AND IF SUCH PROGRESS REPORTS ARE NOT SUBMITTED OR ACCEPTABLE TO THE DISTRICT, THE DISTRICT WOULD HAVE THE OPTION TO DELAY, PAUSE OR TERMINATE THE ENA

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 1, (Port Act); and

WHEREAS, on February 22, 2016, staff issued a Request for Proposals 16-04ME (RFP) for 70 acres of land and water situated between downtown and the Bay in the District's Central Embarcadero area (Redevelopment Site); and

WHEREAS, on May 2, 2016, the District received 11 proposals and six were deemed complete - Gafcon, Inc. (on behalf of 1HWY1), Great Western Pacific, HKS, McWhinney, Oliver McMillan, Inc., and Ripley Entertainment, Inc.; and

WHEREAS, on July 13, 2016, the Board of Port Commissioners (BPC) directed staff to enter into exclusive discussions with the 1HWY1 team to further

2017-078

evaluate the Seaport San Diego (Seaport) proposal, while not making a final selection or eliminating the other five proposals/proposers; and

WHEREAS, following the BPC's direction staff conducted a preliminary due diligence phase and issued a Supplemental Information Request to the 1HWY1 team and responses were provided between August 5 and September 19, 2016; and

WHEREAS, at its November 8, 2016 meeting, the BPC selected 1HWY1 as the successful proposer, concluded the RFP process, eliminated the other five proposers, directed staff to continue due diligence excluding any hotel due diligence and return to the BPC at a future date to enter into a preliminary agreement with 1HWY1; and

WHEREAS, following the BPC's direction, staff worked with the 1HWY1 team to prepare a due diligence schedule, which included the list of recommended due diligence items that were included in the draft resolution attached to the November 8, 2016 agenda sheet; and

WHEREAS, the due diligence schedule was sent to the 1HWY1 team on January 5, 2017 requiring an update on March 17, 2017 and 1HWY1 provided the update on March 16, 2017 and a supplemental update on April 6, 2017; and

WHEREAS, the 1HWY1 team consists of the following entities: Protea Waterfront Development (PWD) as the proposed managing member, Thrillcorp, RCI Group, and OdySea; and

WHEREAS, the BPC selected 1HWY1 as the successful respondent to the RFP and is the proposed ground lessee and developer for the Redevelopment Site; and

WHEREAS, the 1HWY1 operating agreement will identify the roles and level of financial commitment of each of the proposed members of 1HWY1 and will be provided to the District once the entity is formed; and

WHEREAS, in the interim, as the proposed managing member of 1HWY1 and a California limited liability company, PWD has been acting as the lead on the proposal; and

WHEREAS, staff recommends negotiating and entering into an Exclusive Negotiating Agreement (ENA) with PWD, and the ENA will require that PWD cause the formation of 1HWY1 within 90 days of entering into the ENA and that PWD assigns its rights and obligations under the ENA to 1HWY1 once the entity has been formed and 1HWY1 assumes such rights and obligations under the ENA; and

2017-078

WHEREAS, under the ENA, staff will work with PWD, until 1HWY1 is formed and PWD assigns its rights and obligations under the ENA to 1HWY1, to (1) complete post-selection due diligence; (2) refine the proposed development program; and (3) refine development cost estimates and pro forma financial analysis for the proposed development as described in detail in the corresponding agenda sheet; and

WHEREAS, at the May 16, 2017 BPC meeting, the BPC required that the ENA include a 2 year term, a requirement that a project description be submitted to the District within 1 year of PWD's execution of the ENA, and that regular progress reports be submitted on the proposed development's financial feasibility and access to equity and debt sources which, if not submitted or acceptable to the District, the District would have the option to delay, pause or terminate the ENA; and

WHEREAS, by the end of the ENA period, staff would return to the BPC with a preliminary project review and request direction to commence environmental review; and


WHEREAS, the requested BPC action does not constitute a "project" or an "approval" of a "project" under the definitions set forth in the California Environmental Act (CEQA) Guidelines Sections 15352 and 15378, nor does it allow for "development" or "new development" pursuant to the California Coastal Act and the District's Coastal Development Permit Regulations.

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

That the Executive Director or her designated representative is hereby authorized and directed on behalf of the San Diego Unified Port District to enter into a 2-year Exclusive Negotiating Agreement (ENA) with Protea Waterfront Development (PWD), the proposed managing member of the selected proposer, 1HWY1, and require in the ENA that (1) PWD form, or cause the formation of, 1HWY1 within 90 days of entering into the ENA; (2) PWD assigns all of PWD's rights and obligations under the ENA to 1HWY1 once the entity has been formed; (3) PWD, or 1HWY1 once it is formed and assumes the rights and obligations of PWD under the ENA, submit a project description within one year of PWD entering into the ENA; and (4) PWD, or 1HWY1 once it is formed and assumes the rights and obligations of PWD under the ENA, submits regular progress reports on the proposed development's financial feasibility and access to equity and debt sources and if such progress reports are not submitted or acceptable to the District, the District would have the option to delay, pause or terminate the ENA.

2017-078

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL


By: Assistant Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the
San Diego Unified Port District, this 16th day of May, 2017, by the following vote:

AYES: Castellanos, Malcolm, Merrifield, and Nelson

NAYS: None.

EXCUSED: Bonelli, Moore, and Valderrama

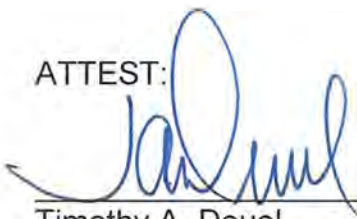
ABSENT: None.

ABSTAIN: None.



Robert Valderrama, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)

(3)

RESOLUTION 2016-177**RESOLUTION SELECTING A SUCCESSFUL
PROPOSER AND CONCLUDING THE REQUEST
FOR PROPOSALS SUBJECT TO THE DISTRICT'S
RESERVATION OF CERTAIN RIGHTS THEREIN**

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 1 (Port Act); and

WHEREAS, on February 22, 2016, District staff issued a Request for Proposals 16-04ME (RFP) for the 70 acres of land and water located within the District's Central Embarcadero; and

WHEREAS, the RFP gives the District broad discretion in how a proposal/prosper is selected, as well as reserves certain District rights including, without limitation, the District's ability to reject or move forward any or all proposals or parts thereof, issue subsequent requests for proposals, postpone opening for its own convenience, remedy technical errors in the process, approve or disapprove the use of a particular proposer's sub-service providers, negotiate with any, all or none of the proposers, solicit best and final offers, award agreements to one or more proposers and waive informalities and irregularities in proposals (collectively, Reservation of Rights); and

WHEREAS, on May 2, 2016, the District received 11 proposals, of which, six were deemed complete and moved forward for consideration; and

WHEREAS, on June 13 and 14, 2016, the District hosted an open house, which over 1,200 members of the public attended to preview the six proposals, meet the development teams and provide comments; and

WHEREAS, on July 13, 2016, the Board of Port Commissioners (BPC) after thoroughly considering all the proposers/proposals, directed staff to enter into exclusive discussions with the 1HWY1 team and to further evaluate the Seaport San Diego (Seaport) proposal, while not making a final selection or eliminating the other five proposals/proposers; and

WHEREAS, the factors that the BPC expressed in directing staff to enter into the exclusive discussions included, but are not limited to, 1HWY1: provided the most comprehensive approach to the overall project; included a variety of exciting and innovative programmatic components (as identified in the RFP); comprised of a development team that is best in class and is well-qualified;

2016-177

considered existing prioritized land uses on Tidelands; was heavily supported by stakeholders during public comment; and

WHEREAS, following the BPC's direction, staff immediately commenced a due diligence phase by forming a cross-functional team to develop questions regarding areas of the 1HWY1's proposal that staff believed needed clarification; and

WHEREAS, that supplemental information and analysis of the same has been presented to the BPC; and

WHEREAS, the BPC's action, including the selection of a successful proposer, does not bind the District to a definite course of action and the District retains the sole and absolute discretion to modify the proposal or any project arising therefrom, or to determine not to approve any project or entitlements for the same; and

WHEREAS, the BPC's action does not constitute an "approval" of a "project" under the California Environmental Quality Act and the BPC may, in its sole and absolute discretion, adopt (1) any and all feasible mitigation measures, (2) feasible alternatives to a project that may arise from the proposal, including a no project alternative, and/or (3) a statement of overriding consideration, if applicable; and

WHEREAS, the BPC has considered the entire record, including all proposals/proposers, the criteria in the RFP and how the proposals/proposers meet said criteria, and information provided to the BPC.

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

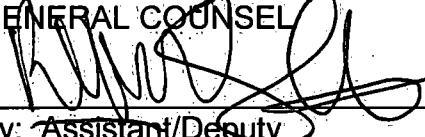
1HWY1 is the successful proposer of RFP 16-04ME, the RFP process is concluded, and the other five proposers are eliminate; provided, however, said selection is conditioned on the District's reservation of all its rights under the RFP 16-04ME and under applicable law, and 1HWY1 and the District shall not discuss, negotiate or enter into any agreements with 1HWY1 the logical consequence of which would provide for or facilitate a hotel development on the site until after the expiration date of a hotel restriction clause in that certain Exclusive Negotiating Agreement between the District and One Park Boulevard, LLC (District Document No. 58932).

BE IT FURTHER RESOLVED:

District staff continue the appropriate due diligence excluding any hotel due diligence and return to the Board at a future meeting to enter into a preliminary agreement with 1HWY1.

2016-177

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL


By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 8th day of November, 2016, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Nelson, and Valderrama.

NAYS: None.

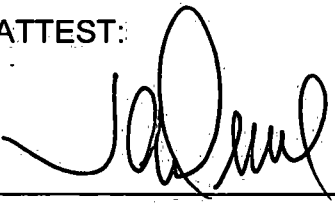
EXCUSED: Moore.

ABSENT: None.

ABSTAIN: None.


Marshall Merrifield, Chairman
Board of Port Commissioners

ATTEST:


Timothy A. Deuel
District Clerk

(Seal)



File #:2017-0155

DATE: May 16, 2017

SUBJECT:

PRESENTATION AND UPDATE ON THE REDEVELOPMENT OF THE CENTRAL EMBARCADERO AND DIRECTION TO STAFF WHICH MAY INCLUDE:

- A) RESOLUTION DIRECTING STAFF TO ENTER INTO AN EXCLUSIVE NEGOTIATING AGREEMENT WITH PROTEA WATERFRONT DEVELOPMENT, THE PROPOSED MANAGING MEMBER OF THE SELECTED PROPOSER, 1HWY1, AND REQUIRE IN THE ENA THAT PWD (1) FORM, OR CAUSE THE FORMATION OF, 1HWY1 WITHIN NINETY DAYS OF ENTERING INTO THE ENA AND (2) ASSIGN ALL OF PWD'S RIGHTS AND OBLIGATIONS UNDER THE ENA TO 1HWY1 ONCE THE ENTITY HAS BEEN FORMED
- B) RESOLUTION DIRECTING STAFF TO ENTER INTO AN ENA WITH 1HWY1, AS THE SELECTED PROPOSER, AT SUCH TIME AS 1HWY1 IS FORMED WITH THE MEMBERS SET FORTH IN THE SELECTED PROPOSAL
- C) DIRECTION TO STAFF TO CONTINUE THE POST-SELECTION DUE DILIGENCE EFFORTS WITH THE 1HWY1 TEAM, OR 1HWY1 ONCE IT IS FORMED, UNTIL THE END OF SEPTEMBER 2017 AND RETURN TO THE BOARD AT A FUTURE MEETING WITH AN UPDATE
- D) IF NECESSARY, OBTAIN FURTHER DIRECTION RELATED TO THE REDEVELOPMENT OF THE CENTRAL EMBARCADERO

EXECUTIVE SUMMARY:

On February 22, 2016, staff issued a Request for Proposals 16-04ME (RFP)¹ for the 70 acres of land and water situated between downtown and the Bay in the District's Central Embarcadero area (Redevelopment Site). The Redevelopment Site is bordered by the USS Midway Museum and Harbor Drive to the north, Manchester Grand Hyatt and Kettner Boulevard to the east, and San Diego Bay to the south and west. The Redevelopment Site also includes Embarcadero Marina Park North, Ruocco Park and Tuna Harbor. A location map is attached for reference (Attachment A). On May 2, 2016, the District received 11 proposals and six were deemed complete.

On July 13, 2016, the Board directed staff to enter into exclusive discussions with the 1HWY1 team and to further evaluate the Seaport San Diego (Seaport) proposal (Attachment B), while not making a final selection or eliminating the other five proposals/proposers. The 1HWY1 team consists of the following entities: Protea Waterfront Development (PWD) as the proposed managing member, ThrillCorp, RCI Group, and OdySea². A proposed organizational chart has been included in Exhibit A of Attachment F. Following the Board's direction staff conducted a preliminary due diligence phase and issued a Supplemental Information Request to the 1HWY1 team and responses were provided

File #:2017-0155

between August 5 and September 19, 2016. At its November 8, 2016 meeting, the Board selected 1HWY1 (Attachment C) as the successful proposer, concluded the RFP process, and eliminated the other five proposers. The Board also directed staff to continue due diligence excluding any hotel due diligence and return to the Board at a future meeting to enter into a preliminary agreement with 1HWY1.

Based upon the Board's direction, staff worked with the 1HWY1 team to prepare a due diligence schedule, which included the list of recommended due diligence items in the draft resolution attached to the November 8, 2016 agenda sheet. The due diligence schedule was sent to the 1HWY1 team on January 5, 2017 (Attachment D) with an update due to staff on March 17, 2017. The 1HWY1 team submitted an update on March 16, 2017 and provided a supplement on April 6, 2017 (Attachments E and F).

The following is a list of some of the items that the 1HWY1 team has completed or is in the process of completing:

- Physical Due Diligence (Geotechnical and Civil Engineering)
 - Selection of consultants to perform physical due diligence
 - Obtained access agreement to perform geotechnical testing
 - Obtained permits to perform Geotechnical Testing
- Formation of PWD, as a California limited liability company
- Research on the Obligations of the San Diego Foundation Related to Ruocco Park
- Refinement of Commercial Fishing Plan
- Meet with the District and State Lands Commission (SLC) to Discuss Marine-Focused Charter School and Consistency with the Public Trust Doctrine

The post-selection due diligence phase would continue through the end of September 2017, at which time the 1HWY1 team anticipates that the following items will be complete:

- Formation of the 1HWY1 Entity
- Refinement of the Development Program
- Market Demand and Feasibility Studies to support Programmatic Components
- Submittal of an Updated Financial Strategy

The 1HWY1 team anticipates the following items will be complete after September 2017:

- Seaport Village Tenant Retention/Relocation
- Identification of Debt and Equity Sources
- Revenue and Expenses Projections

Staff is seeking direction on a path forward which could include one of the three options listed below:

- Option One - Direct staff to enter into an Exclusive Negotiating Agreement (ENA) with PWD, the proposed managing member of the selected proposer, 1HWY1, and require in the ENA that PWD (1) form, or cause the formation of, 1HWY1 within 90 days of entering into the ENA

File #:2017-0155

and (2) assign all of PWD's rights and obligations under the ENA to 1HWY1 once the entity has been formed.

- Option Two - Direct staff to enter into an ENA with 1HWY1, as the selected proposer, at such time as 1HWY1 is formed with the members set forth in the selected proposal.
- Option Three - Direct staff to continue the post-selection due diligence efforts with the 1HWY1 team, or 1HWY1 once it is formed, until the end of September 2017 and return to the Board at a future meeting with an update.

Staff recommends entering into an ENA under Option One. If directed by the Board to proceed under this option, staff will negotiate and enter into an ENA with PWD, in which staff will work with PWD, until 1HWY1 is formed and PWD assigns its rights and obligations under the ENA to 1HWY1, to: (1) complete post-selection due diligence; (2) refine the proposed development program; and (3) refine development cost estimates and pro forma financial analysis for the proposed development. It is anticipated that at the end of the ENA period, staff would return to the Board with a preliminary project review and request direction to commence environmental review.

RECOMMENDATION:

Receive a presentation and update on the redevelopment of the Central Embarcadero, and direction to staff which may include:

- A) Adopt a Resolution Directing Staff to Enter into an Exclusive Negotiating Agreement with Protea Waterfront Development, the Proposed Managing Member of the Selected Proposer, 1HWY1, and Require in the Exclusive Negotiating Agreement that Protea Waterfront Development (1) Form, or Cause the Formation of, 1HWY1 within 90 days of Entering into the Exclusive Negotiating Agreement and (2) Assign all of Protea Waterfront Development's Rights and Obligations under the Exclusive Negotiating Agreement to 1HWY1 Once the Entity has Been Formed;
- B) Adopt a Resolution Directing Staff to Enter into an Exclusive Negotiating Agreement with 1HWY1, as the Selected Proposer, at Such Time as 1HWY1 is Formed with the Members Set Forth in the Selected Proposal;
- C) Direct Staff to Continue the Post-Selection Due Diligence Efforts with the 1HWY1 team, or 1HWY1 Once it is Formed, until the end of September 2017 and Return to the Board at a Future Meeting with an Update;
- D) If Necessary, Obtain Further Direction Related to the Redevelopment of the Central Embarcadero.

FISCAL IMPACT:

Receiving staff's presentation today will not have a direct fiscal impact as any ENA negotiated with PWD or 1HWY1 will require that the cost of entitlement processing be borne by PWD or 1HWY1. The rent structure initially proposed by the 1HWY1 team could result in minimum annual rent to the District of approximately \$22 million upon stabilization in year 10; however, this may change as the land use and development programs are further refined.

File #:2017-0155

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.

DISCUSSION:

RFP Process

On February 22, 2016, staff issued the RFP for the 70-acres of land and water situated between downtown and the San Diego Bay in the Redevelopment Site. The Redevelopment Site is bordered by the USS Midway Museum and Harbor Drive to the north, Manchester Grand Hyatt and Kettner Boulevard to the east, and San Diego Bay to the south and west. The Redevelopment Site also includes Embarcadero Marina Park North, Ruocco Park and Tuna Harbor. On May 2, 2016, the District received 11 proposals, of which, six met the criteria for consideration from:

- Gafcon, Inc. (on behalf of 1HWY1) - San Diego, CA
- Great Western Pacific - Seattle, WA
- HKS - New York, NY
- McWhinney - Denver, CO
- OliverMcMillan, Inc. - San Diego, CA
- Ripley Entertainment, Inc. - Orlando, FL

At its November 8, 2016 meeting, the Board selected 1HWY1 as the successful proposer and concluded the competitive process for the RFP. The Board directed staff to continue the appropriate due diligence excluding any hotel due diligence and return to the Board at a future meeting to enter into a preliminary agreement with 1HWY1.

Post-Selection Due Diligence

Following the Board's direction, staff worked with the 1HWY1 team to prepare a due diligence schedule, which included the list of recommended due diligence items that were included in the draft resolution attached to the November 8, 2016 agenda sheet. The due diligence schedule was sent to the 1HWY1 team on January 5, 2017 with a deadline to provide an update on all items due to staff from 1HWY1 by March 17, 2017. The 1HWY1 team submitted an update on March 16, 2017 and provided a supplement on April 6, 2017. Staff has reviewed the 1HWY1 update and has prepared a status matrix (Attachment G) and anticipated timeline for completion for each of the tasks outlined in the due diligence schedule.

A high-level summary of some of the key items that the 1HWY1 team has completed or is in the process of completing is outlined below:

File #:2017-0155

Completed

Formation of PWD: PWD is the anticipated managing member of the selected proposer, 1HWY1. Since the November Board meeting, the PWD entity has been formed as a California limited liability company and is comprised of the following members:

- Yehudi "Gaf" Gaffen, Managing Member
- Jeff Jacobs, Member
- Jeffrey Essakow, Member

Research of Obligations related to Ruocco Park: The 1HWY1 team met with the San Diego Foundation in January 2017. A letter dated March 13, 2017 has been submitted and included as Exhibit C of Attachment F. The letter provides a preliminary approval for the conceptual design of the area including and surrounding Ruocco Park.

In Progress

Physical Due Diligence: The 1HWY1 team hired Ninyo & Moore, a geotechnical and environmental sciences consultant, to conduct geotechnical testing on the Redevelopment Site. Staff worked with the 1HWY1 team and the existing tenant, Seaport Village Operating Company, LLC, to obtain the appropriate access agreements to perform its geotechnical testing. The 1HWY1 team has also stated they are in the process of completing a civil engineering analysis of the Redevelopment Site. The 1HWY1 team has advised staff that physical due diligence and the anticipated results of their on-site investigations will be complete and submitted to the District by the end of May 2017.

Refinement of Commercial Fishing Plan: The 1HWY1 team has committed to maintaining Tuna Harbor as a working waterfront. Since the November Board meeting, the 1HWY1 team has met with a steering committee, which includes representatives from the commercial fishing community, to develop a plan that would address commercial fishing, including a plan to consolidate Tuna Harbor with Driscoll's Wharf. It should be noted that Driscoll's Wharf is not within the redevelopment boundary of the Redevelopment Site and is currently under a long term lease that will expire in 2023. The 1HWY1 team presented four potential redevelopment options for Tuna Harbor in a public forum to the steering committee and settled on one option which includes a fishermen support facility, market, off-loading pier, and other elements needed to support commercial fishing. The plan also proposes to allow accessory sport fishing vessels when commercial fishing slips are not being used. An update on the commercial fishing plan and process has been included as Exhibit D to Attachment F. The 1HWY1 team has stated that they will continue to work with the commercial fishermen to refine the preferred option and anticipate that a concept design and final project description will be complete by July 2017.

The 1HYWY1 proposal initially included a combination of mega yacht slips, commercial fishing slips, and recreational boat slips. The commercial fishermen have expressed concerns with the mix of commercial fishing and recreational vessels operating in the same area. In order to offset the limited revenue potential associated with commercial fishing operations in Tuna Harbor, the 1HWY1 team has advised that they are exploring the potential to incorporate the recreational marina component in nearby open water areas within the Redevelopment Site. As the plan for Tuna Harbor gets further

File #:2017-0155

refined, the 1HWY1 team will need to provide further details related to this issue.

Consistency with the Public Trust Doctrine: On February 17, 2017, a meeting was held with representatives from SLC, District staff, members of the 1HWY1 team, and a representative from the Scripps Institute of Oceanography. The discussion was limited to the proposed educational component of the project and its consistency with the Public Trust Doctrine. The outcome of the meeting was that the 1HWY1 team would need to propose a program for the educational component for SLC and District staff to consider and make an initial determination as to whether the proposed use would be consistent with the Public Trust Doctrine. Even with an initial determination, Public Trust consistency for the proposed educational component would need to be revisited as the development program is refined.

Outstanding Due Diligence Items

1HWY1 is anticipated to complete the following due diligence items by the end of September 2017:

Formation of 1HWY1: The Board selected 1HWY1 as the successful respondent to the RFP and is the proposed ground lessee and developer for the Redevelopment Site. The 1HWY1 Operating Agreement is still being negotiated, but is anticipated to be executed by the end of May 2017. The Operating Agreement will identify the roles and level of financial commitment of each of the proposed members of 1HWY1 and will be provided to the District once the entity is formed. In the interim, PWD, as the proposed managing member of 1HWY1 has been acting as the lead on the proposal. A proposed organizational chart has been included as Exhibit A of Attachment F.

Refinement of Development Program: The 1HWY1 team has stated that they are in the process of refining the development program set forth in the 1HWY1 proposal and anticipate that project descriptions for the following components will be complete by the end September 2017:

- Retail/Restaurant
- Hotels
- Maritime Office
- Spire
- Aquarium
- Educational Component
- Parking/Mobility
- Water Oriented Facilities
- Multi-Purpose Open Space

Market Demand and Feasibility Studies: Market demand and feasibility studies are needed to: (1) demonstrate support for the proposed programmatic components and (2) validate revenue and expense assumptions. The 1HWY1 team is in the process of commissioning these studies and anticipates they could be complete by the end September, 2017.

Financial Strategy: In order to understand 1HWY1's financial strategy, 1HWY1 will need to update the District on progress made in securing debt and equity commitments as well as provide an update on a refined financial model. The 1HWY1 team has advised that they continue to pursue potential

File #:2017-0155

debt and equity sources and have not identified specific debt or equity commitments. The 1HWY1 team has advised staff that the financial model will evolve as the development program is refined and funding sources are identified. A refined financial model will be provided after completion of market demand and feasibility studies.

Seaport Village Tenant Retention and Relocation Plan: The 1HWY1 team has stated that discussions with the existing tenants have been ongoing, and are working towards the development of a plan which will be provided after completion of market demand and feasibility studies.

Potential Options and Next Steps

Staff is seeking direction on a path forward which could include one of the three options listed below:

- Option One - Direct staff to enter into an ENA with PWD, the proposed managing member of the selected proposer, 1HWY1, and require in the ENA that PWD (1) form, or cause the formation of, 1HWY1 within 90 days of entering into the ENA and (2) assign all of PWD's rights and obligations under the ENA to 1HWY1 once the entity has been formed.
- Option Two - Direct staff to enter into an ENA with 1HWY1, as the selected proposer, at such time as 1HWY1 is formed with the members set forth in the selected proposal.
- Option Three - Direct staff to continue the post-selection due diligence efforts with the 1HWY1 team, or 1HWY1 once it is formed, until the end of September 2017 and return to the Board at a future meeting with an update.

Staff recommends entering into an ENA under Option One. If directed by the Board to proceed under this option, staff will negotiate and enter into an ENA with PWD, in which staff will work with PWD, until 1HWY1 is formed and PWD assigns its rights and obligations under the ENA to 1HWY1, to: (1) complete post-selection due diligence; (2) refine the proposed development program; and (3) refine development cost estimates and pro forma financial analysis for the proposed development. It is anticipated that at the end of the ENA period, staff would return to the Board with a preliminary project review and request direction to commence environmental review.

It is important to note that, while it is anticipated that the 1HWY1 proposal will evolve during the ENA period, it is expected that certain key components such as: enhanced public realm spaces, mixed commercial, recreational and entertainment uses, preservation of prioritized land uses and a well-qualified development team, would be maintained as these were critical programmatic components that set the 1HWY1 proposal apart from the other proposals.

General Counsel's Comments:

The General Counsel's Office has reviewed the agenda sheet as presented to it and approves it as to form and legality.

Environmental Review:

File #:2017-0155

This presentation to the Board on the Redevelopment of the Central Embarcadero and direction to staff to commence exclusive negotiations, do not constitute a “project” or an “approval” of a “project” under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur, and the Board’s selection and direction to staff do not constitute a binding commitment to implement or approve any of the projects submitted as a result of the redevelopment information and direction to staff. Pursuant to Section 15378(b)(4) of the State CEQA Guidelines, a project does not include the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment. CEQA requires that the District adequately assess the environmental impacts of its projects. If a project is formulated and CEQA review is conducted, the Board reserves its discretion to adopt any and all feasible mitigation measures, alternatives to the project, including a no project alternative, a statement of overriding consideration, if applicable, and approve or disapprove the project and any permits or entitlements necessary for the same. Those decisions may be exercised in the sole and absolute discretion of the Board. Based on the totality of the circumstances and the entire record, the Board’s direction solely commits the District to discussions does not commit the District to a definite course of action prior to CEQA review being conducted. No further action under CEQA is required at this time.

In addition, the presentation and direction to staff allows for the District to administrate its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed presentation is consistent with the Public Trust Doctrine.

Finally, the presentation and direction to staff do not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a CDP or exclusion is not required. However, the District’s projects require processing under the District’s CDP Regulations. If the Board considers approval of future development projects formulated as a result of the presentation, and direction to staff, appropriate permitting under District’s CDP Regulations will be completed and considered by the Board, if necessary. The Board’s action and direction in no way limit the exercise of the District’s discretion under the District’s CDP Regulations.

Equal Opportunity Program:

If directed to enter into an ENA, a Small Business Enterprise (SBE) Participation Plan including SBE goals for design/construction and leasing/operations will be submitted.

PREPARED BY:

Lucy Contreras
Program Manager, Business Development
Real Estate Development

Adam Meyer
Department Manager, Redevelopment

File #:2017-0155

Real Estate Development

Attachment(s):

Attachment A: Location Maps
Attachment B: July 13, 2016 BPC Agenda Sheet No. 2016-0411³
Attachment C: November 8, 2016 BPC Agenda Sheet No. 2016-0607³
Attachment D: January 5, 2017 Due Diligence Schedule Letter
Attachment E: March 16, 2017 Seaport San Diego Project Update
Attachment F: April 6, 2017 Seaport San Diego Project Update
Attachment G: Status Matrix prepared by Staff

¹ Request for Proposals 16-04ME, District Clerk No. 65204.

² 1HWY1 has not been formed as of the publishing of this agenda sheet.

³ The complete July 13, 2016 and November 8, 2016, BPC agenda sheets, with all attachments, can be found in Granicus-Legistar on the District's website at: <https://www.portofsandiego.org/read-board-agendas.html>.







San Diego Unified Port District

Legislation Text

File #: 2016-0411, Version: 1

DATE: July 13, 2016

PRESENTATION AND UPDATE ON THE RESPONSES TO THE WORLD-CLASS WATERFRONT DEVELOPMENT OPPORTUNITY (CENTRAL EMBARCADERO) REQUEST FOR PROPOSALS AND DIRECTION TO STAFF REGARDING FURTHER ANALYSIS AND PROCESSING OF THE PROPOSALS

EXECUTIVE SUMMARY:

The World-Class Waterfront Development Opportunity Request for Proposals (RFP) (Attachment A) was issued on February 22, 2016. The RFP included 70 acres of land and water situated between downtown and the Bay in the District's Central Embarcadero area (Site). As shown on Attachment I, the Site is bordered by the USS Midway Museum and Harbor Drive to the north, Manchester Grand Hyatt and Kettner Boulevard to the east, and San Diego Bay to the south and west. The Site also includes Embarcadero Marina Park North, Ruocco Park and Tuna Harbor. This ideal location in the heart of the City of San Diego, presents the District with a unique opportunity to solicit proposals to develop the site into an internationally recognized waterfront destination.

The RFP stated that proposers should "present a well-conceived plan that establishes that the proposer understands and has the ability to achieve the District's visions and goals" including demonstrating how their proposed concepts align with the Vision and Guiding Principles and the Framework Report as established through the Integrated Planning effort. After conducting an international marketing and targeted outreach campaign that reached over two million people in 90 countries, and hosting a boat tour and information exchange meeting (drawing over 120 attendees), staff was pleased to receive eleven proposals on May 2, 2016. After analyzing the proposals, it was deemed that six proposals were complete and were submitted on planetbids from the following entities:

- Gafcon, Inc. - San Diego, CA (Attachment B)
- Great Western Pacific - Seattle, WA (Attachment C)
- HKS - New York, NY (Attachment D)
- McWhinney - Denver, CO (Attachment E)
- Oliver McMillan, Inc. - San Diego, CA (Attachment F)
- Ripley Entertainment, Inc. - Orlando, FL (Attachment G)

On June 13 & 14, 2016, staff hosted a public open house where the proposers were able to showcase their proposals to the 1,200 people in attendance and receive feedback from the public.

Staff has reviewed the proposals and conducted preliminary due diligence through site visits and

meetings with each of the teams. As discussed below, staff will provide the Board with a qualitative analysis of the proposals, including a summary of the public comments received at the open house. Following presentations by staff and the proposers, staff will seek direction on further analysis and processing of the proposals.

RECOMMENDATION:

Receive Presentation and Provide Direction to Staff Regarding Next Steps of the Request for Proposals process.

FISCAL IMPACT:

Receiving staff's presentation will not have a direct fiscal impact. It is assumed that the cost of entitlement processing will be borne by the development partner or partners, once selected. Selecting a development partner or partners is also expected to provide the District with additional future revenue.

COMPASS STRATEGIC GOALS:

As part of efforts to support a vibrant and active waterfront, the District initiated a public solicitation process for the redevelopment of 70 acres of land and water in the area known as the Central Embarcadero. Due to the high profile nature of this location and the end of several long-term leases, it was important to have a competitive process to ensure that the site's potential is maximized.

This agenda item supports the following Strategic Goals:

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.

DISCUSSION

On December 8, 2015, the Board directed staff to issue an RFP for the 70 acres of land and water located in the District's Central Embarcadero, where several long-term leases were coming to an end as detailed on Attachment I. Of the tenants with leases expiring, only Chesapeake Fish Company (Santa Monica Seafoods) responded to the RFP as part of the Great Western proposal. Terramar Retail Centers, which operates Seaport Village, did not respond to the RFP as a proposer or as a part of a proposing team, although they previously contemplated redeveloping the shopping center. American Tunaboat Association, Inc. also did not respond as a proposer or as a part of a proposing team, although several proposals contemplated commercial fishing uses.

On February 22, 2016, staff issued the RFP and launched an international multi-media marketing campaign that spanned 90 countries and reached over two million people, not including social or earned media. On March 21, 2016, there was a site tour by boat with 55 attendees followed by an information exchange with approximately 120 attendees. As a result of the marketing campaign, targeted developer outreach and information exchange, over 261 parties downloaded the RFP, which staff believes is the highest amount of downloads received for a real estate solicitation.

On May 2, 2016, the District received 11 proposals from across the country. Four proposals were deemed incomplete as they did not submit one or more of the required documents, such as: cover letter, lessee questionnaire or proposal documents outlined on pages 14-17 of the RFP. The responses deemed incomplete were submitted through planetbids by the following parties:

- American Youth Hostels, Inc. - San Diego, CA
- JCJ Architecture - San Diego, CA
- William DeLeeuw - LaJolla, CA
- RE/MAX Associates - LaJolla, CA

Santa Monica Seafoods - Rancho Dominguez, CA, withdrew its submittal as it was submitted in duplicate to its development partner, Great Western Pacific.

The remaining six proposals were deemed complete and were submitted through planetbids by the following parties:

- Gafcon, Inc. - San Diego, CA
- Great Western Pacific - Seattle, WA
- HKS - New York, NY
- McWhinney - Denver, CO
- Oliver McMillan, Inc. - San Diego, CA
- Ripley Entertainment, Inc. - Orlando, FL

On June 13 and 14, 2016 the District hosted an open house at the San Diego Convention Center. The open house provided an opportunity for the six respondents to showcase their proposals to the public and answer questions. The open house resulted in 1,200 people attending and almost 500 public comments being submitted. The comments ranged from being in favor of redevelopment of the site, opposing any changes to the site or neutral with the desire to obtain additional information.

General comments that were favorable included: overall excitement towards more activated public spaces, improved connections to the water, variety of retail and entertainment uses and improved integration of the site with existing waterfront destinations within close proximity. Some of the general public comments expressing concerns surrounded the potential elimination of Seaport Village and uncertainty of the commercial fishing industry. Other comments received included: questioning the demand for additional hotels, the need for entertainment venues, and additional retail and restaurant uses.

Qualitative Analysis of Proposals

The RFP required the proposers to include the following key components and content in their proposals (as outlined in pages 14-17):

Approach to Project:

Vision and Guiding Principles and Framework Report

As part of the Approach to Project, proposers were asked to “present a well-conceived plan that establishes that the Proposer understands and has the ability to achieve the District’s visions and goals.” This included demonstrating how their proposed concepts align with the Vision and Guiding Principles and the Framework Report as established through the Integrated Planning effort and outlined on pages 7 & 8 of the RFP.

The Integrated Planning effort is: *“The link of vision, priorities, people and the physical institution in a flexible system of evaluation, decision-making, and action.”* It is a multi-faceted and comprehensive approach to the District’s future. Integrated Planning includes various District initiatives, including, but not limited to, asset management, the Port as a business efforts (i.e., parking, advertising, etc.), a fiscal growth and sustainability framework, environmental initiatives, leasing policies, and land and water use planning and development Baywide. At this time, land and water use planning is anticipated to be developed over a multi-year process involving several phases (i.e., the Port Master Plan Update and larger site specific planning and development initiatives, like the Central Embarcadero) in the coming years.

One of the aspects of the Integrated Planning effort was the Board’s acceptance of the Assessment Report, Vision Statement and Guiding Principles, and the Framework Report. These two tools are intended to inform the District in all development on Tidelands, as well as other Integrated Planning efforts. For example, while not binding, the planning principles in the Vision Statement and Guiding Principles are filters by which the District strives to: achieve synergy among partnering agencies and stakeholders; promote clean air, healthy communities and environmental justice; ensure job creation, prudent economic policies and financial sustainability; preserves the working Port as a dynamic and thriving element of the region’s economy and cultural history; and incorporate state of the art sustainability practices. The Guiding Principles work in a similar manner. The Framework Report also specifies that it could be a tool to be used in site specific developments such as Central Embarcadero.

Because long-term leases are expiring, the District has solicited redevelopment proposals for the Central Embarcadero. As shown, these development proposals are detailed in nature. However, like all the Integrated Planning initiatives, the Vision Statement and Guiding Principles, and the Framework Report have been used as tools in evaluating each proposal.

As part of the Approach to Project analysis for each proposal below, a qualitative analysis of the proposal’s alignment with the Vision and Guiding Principles and Framework Report from staff’s perspective is included.

Proposer’s Relevant Experience and Capability to Perform

As part of its initial due diligence, staff visited one representative project provided by each of the proposers to better understand each proposer’s relevant experience and capability to perform, beyond just what was conveyed in their proposals. Staff met members of each development team to better understand how they developed their visions, their capacity to undertake the project, their experience with similar projects and entitlements, and their approach to financing. Highlights from staff’s meetings and visits are included as part of the analysis for each proposal below.

Revenue and Expense Projections.

Staff retained Jones Lang LaSalle to assist with a preliminary evaluation of the feasibility of the revenue and expense projections provided by the proposers in their proposals, as well as the programmatic components, which is attached as Attachment H. We expect to conduct a more detailed analysis of the economics as part of the next steps, as directed by the Board.

The four components and content listed above are the criteria on which staff has based its qualitative analysis of each proposal below. Please note that some of the square footage numbers were extrapolated from other data provided, for example: if a proposer said they would provide a one-acre park, we would indicate they are proposing 43,560 square feet of park. Also summarized are the qualitative public comments received from the open house that were specific to each proposal, rather than the general comments as summarized above.

Gafcon, Inc. - “Seaport San Diego” (Attachment B)

The “Seaport San Diego” proposal would be led by Protea Waterfront Development (Protea). Protea’s three principals are longtime San Diego residents Yehudi “Gaf” Gaffen, Jeff Jacobs and Jeff Essakow. Protea has also sought out specialty partners for its development team including:

- RCI, a waterfront developer based in Miami, FL;
- OdySea, who has experience in developing and operating aquariums; and,
- Thrill Corp, a developer and operator of observation attractions around the country.

Attachment B provides detailed information on all of the development team members, as well as their advisory board and consultant team (Section 3b and Appendix A4).

Approach to Project: The “Seaport San Diego” proposal is a multi-use master development plan bringing together educational, public, retail and leisure activities; highlighted by the Spire, a nearly 500 foot tall observation tower and an aquarium (detailed in Section 3a). A summary of the programmatic components proposed includes:

Retail	388,625 SF
The Spire	18,000 SF
Office	19,130 SF
Full-service Hotel	405,805 SF
Micro Hotel	117,450 SF
Hostel	122,381 SF
Education/School	65,150 SF
Aquarium	178,490 SF
Marina	10,670 LF
Parking	808,920 SF
Public Improvements	922,540 SF
Total Development	3,046,491 SF

Overall the programmatic elements proposed as part of this proposal are in alignment with the Vision and Guiding Principles and Framework Report outlined in Section IIB of the RFP as summarized below:

Vision and Guiding Principles

- **Honor the Water:** Inclusion of a comprehensive water plan (Attachment B, page 24) for 30 acres of water, which includes a variety of uses, such as: water taxis, expanded ferry services, kayak launch, kids paddle boats, improvements to fishing fleet and marina slips, the addition of mega-yacht berthing facilities and public piers for “dock & dine” use. The proposal also includes tidal pools and oyster beds, a public swimming facility in Tuna Harbor and beaches in the Embarcadero Marina Park North.
- **Guarantee the Public Realm:** Various land and water uses are intended for public use including a redesigned waterside esplanade, new plazas, public spaces throughout and new and improved water facilities.
- **Celebrate Nature and Ecology:** Inclusion of an aquarium and butterfly exhibit, which are intended to serve as an attraction and educational opportunity. The tidal pools with oyster beds in strategic locations along the water’s edge also allow visitors to learn and experience nature.
- **Create a Comprehensive Open Space Plan:** Creation of a 50-foot wide half-mile esplanade along the water’s edge, which connects a series of public spaces throughout the site, as well as through a pedestrian bridge to Embarcadero Marina Park South.
- **Provide Easy Mobility on Land and Water:** Inclusion of a water plan (Attachment B, page 24) and mobility plan (Attachment, page 25) that includes various transportation options linking to existing local and regional transportation systems and consideration of emerging transportation uses such as an aerial ropeway/skyway. The proposal includes two underground parking structures providing a total of 2,410 parking spaces. The mobility and parking strategy are further detailed in Attachment B, Appendix 9.

Framework Report

- **Increase or maximize public space:** 75 percent of the 40 acres of land area is dedicated to parks and public open space.
- **Extends streets to the water:** Kettner Blvd., Pacific Highway and California Street are extended to the water.
- **Preserve and enhance view corridors:** The extension of Kettner Blvd. and Pacific Highway will enhance views looking south.
- **Facilitates enjoyment of the Bay:** The proposal includes a variety of uses both on land and water that will be accessible to the public.

Proposer’s Relevant Experience: As noted above, the “Seaport San Diego” would be led by Protea, with RCI, Odysea and Thrill Corp rounding out the development team. The diverse experience of the team includes mixed-use public-private partnerships on leased land with complex entitlement processes, similar to the proposed project.

The team selected its Miami Beach Marina in South Beach, Florida as a representative project for staff to visit. On June 23, 2016, staff visited the site and met with members of the development team. RCI acquired a 50-year lease from the City in 1991 after the prior developer was foreclosed upon, following an RFP process, due to its inability to successfully obtain entitlements. RCI worked with the City to develop the property, which is featured on Attachment B, page 85, and includes: 65,000 square feet of commercial and residential development with an expansive waterside promenade and

active green spaces for the public to use. The 400 slip marina is one of the East coast's premier facilities for vessels traveling to and from the Bahamas, Florida Keys and the Caribbean. The facility hosts a variety of guests, ranging from recreational boaters that wish to dock and dine for a few hours to mega yachts visiting from the Mediterranean. The redevelopment of the marina has catalyzed development in the surrounding uplands areas, including RCI's development of two towers of residential condominiums (1,300 units) with two more currently under development.

Attachment B, Section 3b provides additional examples of similar projects and information regarding the team's relevant experience.

Capability to Perform: Protea has demonstrated its ability to successfully complete development projects as summarized above and in the proposal. The team has conveyed that they have developed a financing strategy for "Seaport San Diego" within which they intend to work with trusted partners with whom they have worked on financing for prior projects.

Revenue and Expense Projections: Gafcon proposed to invest approximately \$1.2 billion into "Seaport San Diego" and to pay the District ground rent of approximately \$22.5 million per year upon stabilization (year 9). Gafcon also noted that they would anticipate receipt of public financing to subsidize public improvement costs, which are part of the \$1.2 billion and are not reflected as a discount to the rent. The preliminary analysis of the proposal and its feasibility is provided on Attachment H, page 7.

Public Comments: A consistent theme of the public comments for proposals with an attraction is how "The Spire" would be unique to San Diego compared to similar attractions in other cities around the world. Another theme of the public comments for proposals with an aquarium is how it would be different from Sea World or the Birch Aquarium. Other comments included an appreciation for the comprehensive nature of the proposal, proposed activation of public space and consideration for both local residents and visitors. Favorable comments were also received regarding the variety of proposed uses at affordable price points. Another consistent theme included concerns regarding how new structures will affect views of the bay and the limited availability of parking to accommodate all of the new uses proposed for the area.

Great Western Pacific - "Tuna Harbor Pavilion" (Attachment C)

The "Tuna Harbor Pavilion" proposal would be led by Great Western Pacific, Inc. (Great Western). The Great Western team is comprised of three generations of the Griffith family, which owns and operates restaurant and attractions facilities along the west coast. Great Western has also sought out Santa Monica Seafood Company (Chesapeake Fish) as a partner for this commercial fishing-themed facility. Attachment C (pages 21-32) provides additional information on the development team.

Approach to Project: The Tuna Harbor Pavilion is proposed as an approximately three acre development, focusing on commercial fishing operations through a partnership with Santa Monica Seafood Company; highlighted by an observation wheel and other amusement rides (detailed in Attachment C, pages 21-27). A summary of the programmatic components proposed includes:

Parking Garage	55,200 SF
Great Wheel & Pier	16,900 SF
Tuna Harbor Pavilion	110,000 SF
Rides	23,407 SF
Food/Restaurants	31,614 SF
Retail	8,735 SF
Fish Market	3,227 SF
Food Processing	15,692 SF
Total Development	264,775 SF

Since the proposal only covers a smaller portion of the 70 acre site, some of the programmatic components proposed do not independently address the Vision and Guiding Principles and Framework Report as outlined in Section IIB of the RFP. If the “Tuna Harbor Pavilion” was just one portion of a comprehensive 70 acre master development, it could create the desired alignment with the Vision and Guiding Principles and Framework Report.

Vision and Guiding Principles

- **Honor the Water:** Emphasis placed on the commercial fishing industry and enhancement of an existing in-water facility. Enhances the existing public pier to walk and view the water’s edge for more than 500 feet into Tuna Harbor and San Diego Bay.
- **Guarantee the Public Realm:** Not addressed.
- **Celebrate Nature and Ecology:** Not addressed.
- **Create a Comprehensive Open Space Plan:** Not addressed.
- **Provide Easy Mobility on Land and Water:** Does not include new uses related to mobility on land or in water. The proposal includes 170 parking spaces in one level of subterranean parking.

Framework Report

- **Increase or Maximize Public Space:** Not addressed.
- **Extends Streets to the Water:** Not addressed.
- **Preserve and Enhance View Corridors:** Based on the level of drawings received at this preliminary phase, staff will need to further analyze the size of the proposed structures to determine if they preserve existing view corridors.
- **Facilitates Enjoyment of the Bay:** Includes a variety of uses that will be accessible to the public.

Proposer’s Relevant Experience: Great Western has experience with waterfront development projects and entitlement processing in both California and Washington.

The team selected Miner’s Landing (Pier 57) in Seattle, Washington as a representative project for staff to visit. On June 29, 2016, staff visited the site and met with members of the development team. In 1965, Great Western began leasing space from the Port of Seattle and, in the early 2000s, ultimately acquired Pier 57 for the redevelopment known as “Miner’s Landing.” The redevelopment repositioned the pier as a destination for locals and visitors to learn about and have experiences tied to the Alaskan Gold Rush, which landed a ton of gold on the Seattle waterfront in July 1897. The pier

features a variety of food and beverage options, ranging from a food court to sit down dining featuring local fresh catches. The pier is also home to a variety of entertainment options, including a carousel, the Seattle Great Wheel and an attraction opening soon, known as “Wings over Washington.” The Seattle Great Wheel is the centerpiece of the development and is a draw not as a ride, but as an experience of views that could not be seen from any other perspective. Guests can experience views of and over the water, of the skyline and enjoy a different perspective based on the time of day or year, as well as unique lighting. Miner’s Landing also works with local municipalities to activate the pier and promenade on holidays and for special events, such as summer concerts.

Additional details on the team’s relevant experience begins on Attachment C, page 28.

Capability to Perform: As noted in their cover letter, the Griffith family companies’ success has put them in “a strong financial position.” Coupled with established banking relationships, Great Western believes they have the ability to develop the project, as has been demonstrated by and through their other projects. They have also demonstrated their commitment to reinvesting in their facilities by adding new components and attractions, such as the new addition of the “Wings over Washington” attraction in Seattle.

Revenue and Expense Projections: Great Western proposed to invest approximately \$57 million into “Tuna Harbor Pavilion” and did not include proposed ground rent to be paid to the District upon stabilization. The preliminary analysis of the proposal and its feasibility is provided on Attachment H, Page 8.

Public Comments: One theme of the public comments was in regards to the proposed observation wheel and how this attraction would be unique to San Diego, as compared to observation wheels in other cities (like Chicago, Las Vegas, London, Orlando and Seattle). A consistent theme of the public comment was appreciation for the activation of Tuna Harbor as well as the smaller scale of the proposed development.

HKS - “Celebration Place” (Attachment D)

The “Celebration Place” proposal would be led by Manchester Financial Group (MFG). MFG is headquartered in San Diego and founded by longtime San Diego resident and developer Doug Manchester. Attachment D, Section 5 provides detailed information on all of the development team members.

Approach to Project: “Celebration Place” is proposed as a multi-use development and land use plan consisting of retail, hotel, public parks and amenities, highlighted by the Spinnaker, an observation wheel-type attraction (detailed in Section 3). A summary of the programmatic components includes:

Boutique Hotel	385,000 SF
Performing Arts Center	40,000 SF
San Diego Spinnaker	33,000 SF
Retail	200,000 SF
Existing Retail	50,000 SF
Blue Tech Office	10,000 SF
New Parking	650,000 SF
Public Improvements	1,132,560 SF
Total Development	2,450,560 SF

Overall, the programmatic elements proposed as part of this proposal are in alignment with the Vision and Guiding Principles and Framework Report outlined in Section IIB of the RFP as summarized below:

Vision and Guiding Principles

- **Honor the Water:** Creation of an entertainment harbor with transient boats, harbor tour boats, dinner cruises and a ferry landing. Addition of an over-water promenade encourages interaction with the water.
- **Guarantee the Public Realm:** Provides a variety of flexible public spaces including a redesigned and expanded Embarcadero Marina Park North.
- **Celebrate Nature and Ecology:** Provides an open mesh promenade over the water intended to allow the public to interact with the water. At this stage, this principle has not been clearly defined but the feature provides an opportunity for the integration of elements that could promote natural resources and ecology.
- **Create a Comprehensive Open Space Plan:** Includes a one-mile esplanade along the full length of the project site which is accessible from multiple pathways around the site linking the proposal's three main public spaces. Additional details on these spaces can be found in Attachment D, Section 3.
- **Provide Easy Mobility on Land and Water:** Includes various transportation options including bus, ferry, water taxi and light rail stop. The proposal includes one level of subterranean parking with 1,400 parking spaces and 200 surface parking spaces at The Fish Market Restaurant. Also proposes sharing 1,000 parking spaces with the proposed Manchester Pacific Gateway project (adjacent to Tidelands), which is anticipated to commence construction this year.

Framework Report

- **Increase or Maximize Public Space:** 60 percent (26 acres) of the project's land area is proposed to be public space.
- **Extends Streets to the Water:** Extends Kettner Blvd. and Pacific Highway to the water.
- **Preserve and Enhance View Corridors:** The extension of Kettner Blvd. and Pacific Highway are anticipated to enhance views looking south; however, based on the level of drawings received at this preliminary phase, staff will need to further analyze the size of proposed structures to determine if they preserve or enhance view corridors.
- **Facilitates Enjoyment of the Bay:** Includes a variety of uses both on land and water that will be accessible to the public.

Proposer's Relevant Experience: As noted above, the "Celebration Place" team would be led by MFG, who has development and entitlement experience on Tidelands and the region.

MFG selected its South Embarcadero complex, including the Manchester Grand Hyatt and the hotel now known as the Marriott Marquis San Diego Marina as a representative project for staff to visit. On July 6, 2016 staff visited the South Embarcadero and met with members of the development team. MFG credits the development of the South Embarcadero as "important symbols of San Diego's downtown revitalization." The development of these two hotels, along with the San Diego Convention Center, is credited with tremendous economic growth in the convention and tourism industry. The two hotels combined host almost 3,000 guest rooms and include 450 marina slips, a wide variety of meeting and public space, and food and beverage options ranging from grab and go to fine dining. MFG emphasized that its vision for the South Embarcadero included a great deal of public outreach and promoted an emphasis on connectivity, which they propose to bring to "Celebration Place."

Attachment D, Section 5 provides additional examples of similar projects and information regarding the team's relevant experience.

Capability to Perform: Over the years, MFG has established banking relationships that have allowed them to finance their projects as demonstrated through their completed projects. They have also expressed their willingness to use cash towards pre-development, while securing final financing, as a result of MFG's available equity.

Revenue and Expense Projections: MFG proposed to invest approximately \$1.2 billion into "Celebration Place" and did not include proposed ground rent to be paid to the District upon stabilization. The preliminary analysis of the proposal and its feasibility is provided on Attachment H, Page 9.

Public Comments: As with other proposals which included an attraction, public comments revolved around what would make the Spinnaker unique to San Diego. This proposal also includes an aquarium at the base of the Spinnaker and comments related to questions around the need for another aquarium in San Diego also apply. Another consistent theme included concerns regarding how new structures will affect views of the bay and the limited availability of parking to accommodate all of the new uses proposed for the area. Additionally, public comments included a positive response to the activation of Tuna Harbor, emphasis on maritime heritage, the variety of uses, proposed public space, and inclusion of a performing arts hall. Other comments expressed concern over the demand for a performing arts venue on the waterfront.

McWhinney - "SeaPort" (Attachment E)

The "SeaPort" proposal would be led by McWhinney, a private Denver-based real estate development, investment and management company with properties in the Rocky Mountain Region and West Coast. McWhinney has partnered with DJM Capital Partners (DJM), a development and asset management services firm that focuses on California coastal locations. Attachment E, Section I provides detailed information on the development team members, as well as their consultant team.

Approach to Project: The "Seaport" proposal is a multi-use redevelopment, including: hotel, office,

retail, entertainment and public-use space and amenities; highlighted by a wave park and performance venue with community meeting space (detailed in Attachment E, Section II.D.). A summary of the programmatic components proposed includes:

Hotel (Tower)	410,588 SF
Boutique Hotel	114,706 SF
Retail/Restaurant	280,000 SF
Performance Venue & Community Meeting Space	30,000 SF
Marina & Wave Park	223,000 SF
Office	250,000 SF
Total Non-Public	1,308,294 SF
Public Improvements	424,524 SF
Total Development	1,732,818 SF

Vision and Guiding Principles

- **Honor the Water:** Proposes to proactively work with the commercial fishing industry. Provides a recreational marina providing opportunities for a number of water based activities including swimming and kayaking. Proposal provides a series of water walkways and a floating dock for public use and interaction with the water.
- **Guarantee the Public Realm:** Provides a series of passive and active waterfront public spaces. Developed a set of key guiding principles that drove the proposal's vision, including "focus on the public realm" and "connect for accessibility."
- **Celebrate Nature and Ecology:** At this preliminary stage, this principle has not been clearly defined; however, the water walkways and floating dock provide potential opportunities for integration of elements that could promote natural resources and ecology.
- **Create a Comprehensive Open Space Plan:** Includes a waterfront promenade connecting to a variety of public spaces and the overall open space network. A connectivity and accessibility plan was provided on Attachment E, page 56.
- **Provide Easy Mobility on Land and Water:** Provides opportunities for dock and dine, ferry/water taxi, and connections to the existing street grid and transportation networks. The proposal includes parking in an above-grade parking structure and internal shared parking with parking capacity for up to 2,240.

Framework Report

- **Increase or maximize public space:** 26 acres of the project's land area is proposed to be public space.
- **Extends streets to the water:** As illustrated on the connectivity plan on Attachment E, page 56, McWhinney proposes to extend Pacific Highway and Kettner Blvd. to the water and provides enhanced pedestrian and bicycle access.
- **Preserve and enhance view corridors:** The extension of Kettner Blvd. and Pacific Highway are anticipated to enhance views looking south. However, based on the level of drawings received at this preliminary phase, staff will need to further analyze the size of proposed structures to determine if they preserve or enhance view corridors.

- **Facilitates Enjoyment of the Bay:** Includes a variety of uses both on land and water that will be accessible to the public. It is staff's understanding from McWhinney that the wave pool/water arena in Embarcadero Marina Park North will be programmed to allow for public use and will provide an opportunity for a wide variety of water based recreational activities, such as: swimming, kayaking, surf classes and pro-surfing competitions.

Proposer's Relevant Experience: As noted above, the "SeaPort" team would be led by McWhinney, who will partner with DJM. The diverse experience of the team includes mixed-use public-private partnerships on leased land with complex entitlement processes, similar to the proposed project.

The team selected its Dairy Block project in Denver, Colorado as a representative project for staff to visit. On June 27, 2016, staff visited the site and met with members of the development team. The \$190 million mixed-use project commenced construction in 2015 and will be completed later this year. The mixed-use project is a full city block that includes office, retail, restaurants and a hotel. A unique feature of the project is the inclusion of downtown Denver's first "activated alley" that will include a mix of specialty retail and restaurant uses. The project will also renovate and reuse a half-block of historic structures. McWhinney conveyed that they pride themselves on creating projects that curate unique uses and provide special experiences for locals and visitors alike. One way that they do this is by being "civic-minded" and designing their projects around their public spaces. In doing so, they create places that reflect the local community which, in turn, creates a draw for visitors.

Attachment E, pages 7-33, provides additional examples of similar projects and information regarding the team's relevant experience, including McWhinney's receipt of the 2015 ULI Global Award for Excellence on its Union Station project in Denver, Colorado.

Capability to Perform: McWhinney has an available portfolio of private investors, available to fund their project. They believe that by combining equity with investments from private investors, vs. institutional investors, they have more flexibility and a better ability to develop during fluctuating economic cycles. While meeting with the team in Denver, Colorado, we met Dick Monfort, co-owner of the Colorado Rockies, who has invested with McWhinney on projects in Denver and expressed a personal interest in investing with McWhinney if they are selected for the "SeaPort" project.

Revenue and Expense Projections: McWhinney proposed to invest approximately \$711 million into "SeaPort" and to pay the District ground rent of approximately \$10.4 million per year upon stabilization (year 7). The preliminary analysis of the proposal and its feasibility is provided on Attachment H, Page 10

Public Comments: One theme of the public comments was related to how the overall vision for the site responded to locals and visitors alike and the team being receptive to the public's comments. Comments related to the Kelly Slater Wave Pool were both favorable, as an attraction and celebration of California, mixed with concern with the wave pool and how it would be used by the public. Positive comments were received regarding the proposals emphasis on place-making, the variety of uses for all demographics and commitment to address the commercial fishing industry.

Oliver McMillan, Inc. - "Embarcadero District" (Attachment F)

The “Embarcadero District” proposal would be led by Oliver McMillan (OM). OM was founded by San Diego natives Dene Oliver and Jim McMillan in 1978 and is a leading mixed-use real estate developer. OM has also sought out specialty partners for its development team including:

- AEG, an international sports and entertainment operator based in Los Angeles, CA;
- Evans Hotels, a San Diego based hotel operator;
- Scripps Institution of Oceanography, a San Diego based ecological learning center operator; and,
- San Diego Symphony, an entertainment/cultural partner.

Attachment F, Section 3, provides detailed information on all of development team members, as well as their consultant team.

Approach to Project: The “Embarcadero District” is a multi-use redevelopment, including: hotel, office, retail, and public-use space and amenities; highlighted by a 15,000 to 18,000 seat entertainment arena and the Scripps Institution of Oceanography learning center and tide pools (detailed in Section IV). A summary of the programmatic components proposed includes:

Convention Hotel	850,000 SF
Boutique Hotel	300,000 SF
Select Service Hotel	250,000 SF
Seaport Pavilion	600,000 SF
San Diego Symphony	5,000 SF
Scripps Institution with Tide Pools	110,000 SF
Retail & Restaurant	250,000 SF
Market Hall	75,000 SF
Office	125,000 SF
Parking	1,100,000 SF
Public Improvements	1,045,440 SF
Total Development	4,710,440 SF

Overall, the programmatic elements proposed as part of this proposal are in alignment with the Vision and Guiding Principles and Framework Report outlined in Section IIB of the RFP as summarized below:

Vision and Guiding Principles

- **Honor the Water:** Provides a grid to the water’s edge with public spaces that tie into the existing open space network.
- **Guarantee the Public Realm:** Variety of public spaces including botanical gardens, beach areas with promenades, and plazas.
- **Celebrate Nature and Ecology:** The Scripps Institution of Oceanography Learning Center and Tide Pools are intended to be an environmental learning and observation destination with a focus on the bay ecology.

- **Create a Comprehensive Open Space Plan:** Provides access to parks, open space and pathways with strong connectivity between various public spaces.
- **Provide Easy Mobility on Land and Water:** Provides connectivity both to and from the site. Provides water taxi, boat hub and various subterranean parking garages with 2,430 parking spaces.

Framework Report

- **Increase or Maximize Public Space:** Provides 20-24 acres of public space in the form of public parks, plazas and open spaces.
- **Extends Streets to the Water:** Streets are not extended to the water.
- **Preserve and Enhance View Corridors:** Based on the level of drawings received at this preliminary phase, staff will need to further analyze the size of the entertainment arena known as Seaport Pavilion and the hotels to determine if they preserve view corridors.
- **Facilitates Enjoyment of the Bay:** The proposal includes a variety of uses both on land and water that will be accessible to the public.

Proposer's Relevant Experience: As noted above, the "Embarcadero District" would be led by OM, with AEG, Evans Hotels, Scripps Institution of Oceanography and San Diego Symphony rounding out the development team. The diverse experience of the team includes mixed-use public-private partnerships on leased land with complex entitlement processes, similar to the proposed project.

The team selected River Oaks District in Houston, Texas as a representative project for staff to visit. On June 24, 2016, staff visited the site and met with members of the development team. River Oaks District is a mixed-use destination that includes retail, restaurant, entertainment and residential components. The site opened in October 2015 and has sparked development of surrounding areas. A second phase is contemplated to include additional office, retail, residential and a hotel. OM was very proud of the unique public spaces it provided throughout the project, allowing the different users and members of the public to converge and enjoy the area as whole. OM explained the importance of creating a user experience and connecting the project back to the city. OM believes that by paying attention to the details, both inside and out, the result is the creation of places visitors want to go because the locals do.

Attachment F, Section 3 provides additional examples of similar projects and information regarding the team's relevant experience.

Capability to Perform: With nearly 40 years in operation, OM has developed over 8 million square feet of mixed-use and infill residential projects with a total project value exceeding \$3 billion. OM is currently developing several new projects with a completed value of approximately \$2 billion. OM has forged strong and lasting relationships with institutional investors, lenders and capital markets advisors whom they would expect to work with on the "Embarcadero District."

Revenue and Expense Projections: OM proposed to invest approximately \$1.3 - \$1.5 billion into the "Embarcadero District" and did not include proposed ground rent to be paid to the District upon stabilization. The preliminary analysis of the proposal and its feasibility is provided on Attachment H, Page 11.

Public Comments: Public comments on this proposal were mixed both in support and in opposition to the proposed arena. Favorable comments were received relative to the comprehensive nature of the proposal and the variety of uses. Comments were also received regarding the activation of public spaces, tide pools and the incorporation of the Scripps Institution of Oceanography. As with the other proposals concerns regarding new structures and their effect on views of the bay also applied to this proposal as did comments related to the availability of parking.

Ripley Entertainment, Inc. - “Ripley’s Aquarium of California” (Attachment G)

Ripley Entertainment, Inc. (Ripley’s) and its parent company, the Jim Pattison Group (JPG), have a history of developing large scale family attractions and aquariums internationally. In meeting with the Ripley’s team, they advised that they have yet to identify other key team members at this time but expect to hire consultants, if selected. Attachment G provides additional information on Ripley’s and JPG.

Approach to Project: The “Ripley’s Aquarium of California” proposal is a 110,000 square foot aquarium development on 4.26 acres. Ripley’s expressed a desire to be selected as one piece of a larger master planned redevelopment. Programming details on the aquarium are outlined beginning on page 27 of Attachment G, page 27.

Since the proposal covers only a smaller portion of the 70 acre site, some of the programmatic components proposed do not independently address the Vision and Guiding Principles and Framework Report as outlined in Section IIB of the RFP. If the aquarium was just one portion of a comprehensive 70 acre master development, it could create the desired alignment with the Vision and Guiding Principles and Framework Report.

Vision and Guiding Principles

- **Honor the Water:** Not addressed.
- **Guarantee the Public Realm:** Not addressed.
- **Celebrate Nature and Ecology:** The proposal for an aquarium is intended to promote bay ecology and marine life.
- **Create a Comprehensive Open Space Plan:** The proposal only includes the aquarium and provides minimal open space. The proposal does not provide any features that would allow integration with surrounding public spaces.
- **Provide Easy Mobility on Land and Water:** Not addressed.

Framework Report

- **Increase or Maximize Public Space:** Not addressed.
- **Extends Streets to the Water:** Not addressed.
- **Preserve and Enhance View Corridors:** Based on the level of drawings received at this preliminary phase, staff will need to further analyze the size and orientation of the proposed structure to determine if they preserve existing view corridors.
- **Facilitates Enjoyment of the Bay:** The proposal includes a variety of uses both on land and water that will be accessible to the public.

Proposer's Relevant Experience: Ripley's is the largest and fastest-growing international chain of museum and aquarium type attractions with over 95 attractions in 11 countries, including projects in Southern California.

Ripley's selected its Aquarium of Canada as a representative project for staff to visit. On June 22, 2016, staff visited the site and met with members of the development team. The project was the result of Ripley's successfully response to an RFP with the Canadian government to redevelop a brownfield site under a 99-year lease. The aquarium opened in October 2013 and features a 135,000 square foot attraction with more than 1.5 million gallons of water featuring 50 live exhibits with 16,000 animals and a 315 foot acrylic tunnel with a moving walkway that goes through the large tank. Ripley's says the project has been an overwhelming success, which it believes is the result of a great collaboration with the government and community.

Additional examples of similar projects and information regarding the team's relevant experience begin on page 15 of Attachment G.

Capability to Perform: Ripley's is a part of the Jim Pattison Group, Canada's second largest private company with over \$9.1 billion in sales, resulting in access to cash flow generated by its ongoing business. Ripley's also stated on Attachment G, pages 3 & 4, that they have access to lines of credit from institutional investors, but have not historically had to draw upon those. Through its liquid assets and its available credit, Ripley's believes they would be able to perform on this project, as they have with their other projects.

Revenue and Expense Projections: Ripley's proposed to invest approximately \$129 million into its aquarium and to pay the District ground rent of approximately \$2 million per year upon stabilization (year 3). Ripley's also noted that they would anticipate receipt of public financing to subsidize its construction costs. The preliminary analysis of the proposal and its feasibility is provided on Attachment H, page 12.

Public Comments: One theme of public comment regarding the proposed aquarium is how this would be different from the other aquariums that exist in San Diego and how it would be different from SeaWorld.

Potential Board Direction and Next Steps

After hearing the presentations and public comment, the Board may direct staff on how to further process the proposals and to conduct additional analysis of the same. For example, the Board could direct staff to conduct more analysis and gather additional information on all the proposals. Alternatively, the Board may create a short-list from the proposals, while not necessarily rejecting the other proposals, and direct staff to analyze the short-listed proposals. The Board may also reject all the proposals.

If the Board directs staff to conduct additional analysis of all or a short-list of proposals, it is anticipated that staff would return to the Board at a future date with the requested information and analysis. At that future Board meeting, the Board may choose to direct staff to obtain additional analysis, further short-list the proposals or make a final selection based on the factors listed in the RFP (e.g., the evaluation criteria scores, which in accordance with the RFP, does not guarantee selection, reference checks, negotiations, and further analysis). Alternatively, in accordance with the

RFP, the Board may at any time, reject or move forward any or all proposals or parts thereof, direct staff to issue a subsequent RFP, negotiate with any, all or none of the proposers or solicit best and final offers.

General Counsel's Comments:

The General Counsel's Office has reviewed the agenda sheet as presented to it and approves it as to form and legality. A preliminary legal analysis regarding Public Trust consistency is provided below. If the Board directs staff to further evaluate some or all the proposals, additional legal analysis regarding the proposals' consistency with the Port Act, the California Coastal Act and other federal, State and District laws, regulations and policies will be conducted.

Public Trust Consistency: Tidelands are sovereign in character and are held in trust for the people of the State for purposes of commerce, navigation and fisheries. As such, the law places certain limits on how such lands can be used.

"Uses of trust lands, whether granted to a local agency or administered by the State directed, are generally limited to those that are water dependent or related, and include commerce, fisheries and navigation, environmental preservation and recreation. Public trust uses include, among others, ports, marinas, docks and wharves, buoys, hunting, commercial and sport fishing, bathing, swimming, and boating. Public trust lands may also be kept in their natural state for habitat, wildlife refuges, scientific study, or open space. Ancillary or incidental uses, that is, uses that directly promote trust uses, are directly supportive and necessary for trust uses, or that accommodate the public's enjoyment of trust lands, are also permitted." (California State Lands Commission (SLC), *Public Trust Policy*, pp. 1-2.)

However, "[t]he public uses to which [T]idelands are subject are sufficiently flexible to encompass changing public needs." (*Marks v. Whitney*, 6 Cal. 3d 251, 259 (1971); SLC, *The Public Trust Doctrine*, p. 3.) This includes a variety of uses ranging from preservation of land in its natural state (*id.*) to convention centers (*Haggerty v. City of Oakland*, 161 Cal. App. 2d 407, 413 (1958)), to restaurants, hotels, and visitor-serving retail uses that promote public enjoyment of the waterfront (*Martin v. Smith*, 184 Cal. App. 2d 571 (1960)). Moreover, the administration of the Public Trust "is not burdened with an outmoded classification favoring one mode of utilization over another." (*Marks*, 6 Cal. 3d at 259-260.)

Consistency with the Public Trust Doctrine is often a fact based determination that takes into account several factors including whether a use impairs or interferes with the Trust's purposes (see e.g., *San Pedro, Los Angeles and Salt Lake Railroad Company v. Hamilton*, 161 Cal. 610, 620 (1911) (citing *Pacific Coast Steamship Co. v. Kimball*, 114 Cal. 414 (1896) (trustee could lease portions of Tidelands for a steamship company with a private wharf or "for any lawful purpose not injurious to the harbor or an inconvenience to commerce"); *Boone v. Kingsbury*, 206 Cal. 148, 183 (1929) (oil and gas extraction leases permitted because they would not "substantially impair the paramount public interest" in the trust lands)). Other factors include, without limitation: whether the use has a municipal or traditional local governmental function (see Cal. Public Res. Code Section 6009(d) (grantees of Tidelands must manage them without "benefits to the inclination of local or municipal affairs, initiatives, or excises.")); whether the design and/or characteristics of a development and its uses further the public's use of Tidelands or hinders it; and whether the uses are water-dependent, an incidental use or could easily be located uplands. (SLC, *The Public Trust Doctrine*, pp. 7-8.)

Conversely, at this time, some uses have been determined not to be Public Trust compliant, such as residential uses. (See *City of Berkeley v. Superior Court*, 26 Cal. 3d 515, 538 (1980) (Clark, J., dissenting) (“under the trust [T]idelands may be filled and used for commercial and recreational purposes but not residential purposes”).

While the California State Lands Commission and grantees, such as the District, are the primary arbitrator of whether a use or development is Public Trust compliant, ultimately, it is the responsibility of the California Legislature to determine how Public Trust lands should be used. (*City of Long Beach v. Mansell*, 3 Cal. 3d 462, 482 n.17 (1970) (“The administration of the trust by the state is committed to the Legislature.”); *Marks*, 6 Cal. 3d at 260-261; SLC, *The Public Trust Doctrine*, p. 13.). Legislation remains subject to review by the courts for compliance with the Public Trust Doctrine and constitutional provisions. (See, e.g., *Illinois Central R.R. Co. v. Illinois* (1892) 146 U.S. 387.).

Based on a preliminary Public Trust consistency analysis conducted by the General Counsel’s Office, the District needs further information, and will need to conduct further investigation and study for some of the proposed uses. This analysis is preliminary and not intended to be all-encompassing. As the process moves forward, additional Public Trust consistency issues and questions may arise. Moreover, obtaining the below information does not guarantee a consistency determination.

A school is a traditional municipal function and while it is the understanding of the General Counsel’s Office that a charter school has been located on Tidelands in the Port of Los Angeles, more information is needed on the context of that school and any proposed school, as well as their programming. Teaching maritime related trades may not be enough to make a school Public Trust compliant. Similarly, an enclosed/fenced dog or pet park that primarily serves surrounding residents may not be compliant due to its local/municipal serving nature. However, a dog park associated with a hotel, so that it primarily serves hotel guests and their pets, may be Public Trust compliant depending on the particulars of the facility.

Further details are also needed on the proposed “blue tech,” “blue economy,” “blue commerce” or other office space, such as the types of entities or companies that may lease this office space, the office spaces’ locations and size (top floor versus bottom floor (see SLC, *The Public Trust Doctrine*, pp. 9-10)), and how the use fits within overall development and use scheme (is it a large component or incidental in its size and nature, etc.).

More information is needed related to the proposed performance/event/entertainment centers, pavilions, halls and similar uses such as what type of activities will be conducted therein (conventions, sporting events, trade shows, concerts, etc.), the particulars of their design and their relationship with the Bay and surrounding public spaces. For example, the proposed Warriors’ basketball stadium on two piers in San Francisco required special State legislation (the facility was ultimately moved to a different location), but the AT&T baseball stadium did not require such legislation. Both facilities had the same primary “use” - housing a sporting team - but their design, location, programming and public amenities were very different.

The California State Lands Commission has found that a stand-alone enclosed gym - like a Gold’s Gym - is not compliant with the Public Trust Doctrine. (See SLC, Minute Item 47, pp. 9-10 (December 14, 2006) (“Gold’s Gym is not an appropriate public trust use, or one necessary and incidental in support of those uses”). However, the proposed gyms and/or spa facilities may be compliant, but more information is needed. For example, whether the facilities are associated with a hotel, open to

the public or charge membership fees.

Additional information is needed regarding retail and cinema programming because neighborhood-serving uses (as compared to visitor-serving uses) with no tie to the water are generally prohibited. (SLC, *The Public Trust Doctrine*, pp. 7-8.) Again, the programming, context and location are all factors that need investigation.

Environmental Review:

The item would provide direction to staff on the further processing and analysis of the proposals. The Board's direction does not constitute an "approval" of a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because it would not result in any direct or indirect physical changes to environment, including without limitation, physical changes to the environment. CEQA requires that the District adequately assess the environmental impacts of its projects. While the Board may give direction to staff, including without limitation, direction to that certain proposals or components thereof be further evaluated or alternatives analyzed, such direction to staff will not bind the District to a definite course of action prior to CEQA review. Moreover disapproval of a proposal would not be a project under CEQA. Full CEQA analysis will be completed prior to the District's commitment to a proposal(s) of components thereof, approval of any entitlements, concept approval, or agreements necessary for the implementation of a proposal(s), in whole or in part. Moreover, the Board reserves its discretion to adopt any and all feasible mitigation measures, alternatives to the project, including a no project alternative, a statement of overriding consideration, if applicable, and approve or disapprove the project and any permits or entitlements necessary for the same. Those decisions may be exercised in the sole and absolute discretion of the Board. Based on the totality of the circumstances and the entire record, the Board's direction and action do not commit the District to a definite course of action prior to CEQA review being conducted. Therefore, no further CEQA review is required.

In addition, the proposed Board direction and action allow for the District to administer its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, the proposed Board direction and/or action do not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a CDP or exclusion is not required. However, the District's projects require processing under the District's CDP Regulations. If a proposal or component thereof moves forward, the Board will consider the same after the appropriate documentation under District's CDP Regulations has been completed and authorized by the Board, if necessary. The Board's direction in no way limits the exercise of the District's discretion under the District's CDP Regulations.

Equal Opportunity Program:

There was no Small Business Enterprise (SBE) goal established for this phase of the development of this location. The selected firm(s) will ultimately be requested to submit an SBE plan.

File #: 2016-0411, Version: 1

PREPARED BY:

Lucy Contreras
Asset Manager, Business Development
Real Estate Development

Penny Maus
Department Manager, Business Development
Real Estate Development

Attachments:

Attachment A:	Waterfront Development Request for Proposals
Attachment B:	Gafcon Proposal
Attachment C:	Great Western Pacific Proposal
Attachment D:	HKS Proposal
Attachment E:	McWhinney Proposal
Attachment F:	Oliver McMillan Proposal
Attachment G:	Ripley's Proposal
Attachment H:	Jones Lang LaSalle - Central Embarcadero Preliminary Proposal Evaluation
Attachment I:	Location Maps



San Diego Unified Port District

Legislation Text

File #: 2016-0607, Version: 1

DATE: November 8, 2016

SUBJECT:

PRESENTATION AND UPDATE ON THE WORLD CLASS WATERFRONT DEVELOPMENT OPPORTUNITY (CENTRAL EMBARCADERO) REQUEST FOR PROPOSALS AND BOARD ACTION AND DIRECTION TO STAFF INCLUDING THE FOLLOWING OPTIONS:

- A) ADOPTION OF A RESOLUTION SELECTING A SUCCESSFUL PROPOSER AND CONCLUDING THE REQUEST FOR PROPOSALS RESERVING CERTAIN RIGHTS THEREUNDER;
- B) DIRECTION TO STAFF ON NEXT STEPS INCLUDING WITHOUT LIMITATION, FURTHER DUE DILIGENCE AND ADOPTION OF A RESOLUTION MEMORIALIZING DUE DILIGENCE AND INFORMATION GATHERING EFFORTS;
- C) DIRECTION TO RETURN TO THE BOARD WITH AN UPDATE AT A FUTURE BOARD MEETING, AND IF NECESSARY, OBTAIN FURTHER DIRECTION

EXECUTIVE SUMMARY:

On February 22, 2016, staff issued a Request for Proposals (RFP) for the 70 acres of land and water located within the District's Central Embarcadero (Attachment A). On May 2, 2016, the District received 11 proposals, of which, six were deemed complete and moved forward for consideration. On June 13 and 14, 2016, the District hosted an open house, which over 1,200 members of the public attended to preview the six proposals, meet the development teams and provide comments. On July 13, 2016, the Board directed staff to exclusively continue discussions regarding the proposal submitted by Gafcon on behalf of the 1HWY1 team and to further evaluate the Seaport San Diego (Seaport) proposal (Attachment B), while not making a final selection or eliminating the other five proposals. Commissioner comments made in support of the Seaport proposal and 1HWY1 team included:

- Provided the most comprehensive approach to the overall project;
- Included a variety of exciting and innovative programmatic components (as identified in the RFP);
- Development team is best in class with well-qualified teammates;
- Considered existing prioritized land uses on Tidelands; and
- Was heavily supported by stakeholders during public comment.

Following the Board's direction, staff immediately commenced a preliminary due diligence phase by forming a cross-functional team to develop questions regarding the 1HWY1 proposal. On July 28, 2016, staff issued a Supplemental Information Request (Supplement) (Attachment C) to 1HWY1 and

responses were provided between August 5 and September 19, 2016 (Attachment D). Staff reviewed 1HWY1's responses to the Supplement and prepared a qualitative analysis on 1HWY1's approach to project, relevant experience, capability to perform and revenue and expense projections and has provided a list of recommendations for the Board's consideration (Attachment E). Much work has been conducted over the last 120 days to provide the Board with as thorough an analysis of the proposal as possible.

On October 13, 2016, the Board was scheduled to receive an update from staff as directed by the Board at the July meeting. The Board continued the item and directed staff to reschedule as soon as reasonably possible, but no later than, the next regularly scheduled Board meeting, to ensure that the agenda was noticed and published to provide them with a broad range of options for potential next steps.

While the Board maintains the maximum discretion to take action and provide direction, staff has identified three potential options that it could pursue:

- Option One - Select 1HWY1 as the final proposer, conclude the RFP process, eliminate the other five proposers, direct staff to conduct additional due diligence and return to the Board at a future meeting seeking direction to enter into a preliminary agreement with 1HWY1.
- Option Two - Select 1HWY1 as the final proposer, conclude the RFP process, eliminate the other five proposers, direct staff to conduct additional due diligence and return to the Board at future meeting with an update, and if necessary obtain further direction.
- Option Three - Direct staff to continue exclusive discussions with 1HWY1 and conduct additional due diligence, while not eliminating the other five proposals and return to the Board at a future meeting with an update. At that time, the Board may discuss further steps, including a final selection or to enter into a preliminary agreement with 1HWY1.

If the Board selects 1HWY1 as the final proposer, this would conclude the RFP process; however, it is recommended that in making such a selection, the District retain all its rights under the RFP and as permitted under the law. Additionally, at this time, any District due diligence efforts or discussion with a successful proposer would exclude potential hotels on the site. If directed to proceed with the proposed additional due diligence, it is recommended that a resolution be adopted to memorialize the minimum due diligence and information gathering efforts as described above and as listed in Attachment E, as well as any other direction the Board sees fit. Staff anticipates the proposed additional due diligence and information gathering efforts would take approximately six to eight months, during which time 1HWY1 has indicated that they would also conduct on-site due diligence and work with staff.

RECOMMENDATION:

Receive a Presentation, Take Action and Provide Direction to Staff on One or More of the Following Options:

- A) Adopt a Resolution Selecting a Successful Proposer and Conclude the Request for Proposals, Reserving Certain Rights Thereunder;

- B) Direct Staff on Next Steps Including Without Limitation, Further Due Diligence and Adoption of a Resolution Memorializing Due Diligence and Information Gathering Efforts;
- C) Direct Staff to Return to the Board with an Update at a Future Board Meeting, if Necessary, to Obtain Further Direction.

FISCAL IMPACT:

Receiving staff's presentation will not have a direct fiscal impact. It is assumed that the cost of entitlement processing will be borne by the development partner or partners, once selected. Once completed, the project is expected to provide the District with additional future revenue.

COMPASS STRATEGIC GOALS:

As part of efforts to support a vibrant and active waterfront, the District initiated a public solicitation process for the redevelopment of 70 acres of land and water in the area known as the Central Embarcadero. Due to the high profile nature of this location and the end of several long-term leases, it was important to have a competitive process to ensure that the site's potential is maximized.

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.

DISCUSSION:

Background

On December 8, 2015, the Board directed staff to issue an RFP for the 70 acres of land and water located in the District's Central Embarcadero. Staff issued the RFP on February 22, 2016 and launched an international multi-media marketing campaign that spanned 90 countries and reached over two million people, not including social or earned media. On March 21, 2016, there was a site tour by boat with 55 attendees followed by an information exchange with approximately 120 attendees. As a result of the marketing campaign, targeted developer outreach and information exchange, over 261 parties downloaded the RFP, which staff believes is the highest amount of downloads received for a real estate solicitation.

On May 2, 2016, the District received 11 proposals from across the country. Four proposals were deemed incomplete as they did not submit one or more of the required documents, such as: cover letter, lessee questionnaire or proposal documents outlined on pages 14 - 17 of the RFP. The responses deemed incomplete were submitted through planetbids by the following parties:

- American Youth Hostels, Inc. - San Diego, CA
- JCJ Architecture - San Diego, CA
- William DeLeeuw - La Jolla, CA
- RE/MAX Associates - La Jolla, CA

Santa Monica Seafoods - Rancho Dominguez, CA, withdrew its submittal as it was submitted in duplicate to its development partner, Great Western Pacific.

The remaining six proposals were deemed complete and were submitted through planetbids by the following parties:

- Gafcon, Inc. - San Diego, CA
- Great Western Pacific - Seattle, WA
- HKS - New York, NY
- McWhinney - Denver, CO
- OliverMcMillan, Inc. - San Diego, CA
- Ripley Entertainment, Inc. - Orlando, FL

On June 13 and 14, 2016, the District hosted an open house at the San Diego Convention Center. The open house provided an opportunity for the six respondents to showcase their proposals to the public and answer questions. The open house resulted in 1,200 people attending and almost 500 public comments being submitted. The comments ranged from being in favor of redevelopment of the site, opposing any changes to the site or neutral with the desire to obtain additional information.

On July 13, 2016, staff provided the Board with a qualitative analysis of the six proposals and heard presentations from each of the six proposers. Overall, the Board made positive comments on all of the proposals presented and commented that they felt that the 1HWY1 proposal stood out above the others, and met the RFP requirements. Specifically, some of the comments expressed by the Board about the 1HWY1 Seaport proposal included that the proposal's approach to the overall project captured the essence of what was requested in the RFP, including but not limited to, the provision of a variety of uses, enhanced public realm spaces, and vibrant mixed commercial, recreational and entertainment elements. There were also Board comments that the proposal honored and enhanced existing prioritized land use elements on Tidelands. Comments were also made regarding the level of public support expressed for the proposal at the meeting during public comment. The Board did not make a final selection at that meeting, but ultimately directed staff to exclusively continue discussions with the 1HWY1 team to further evaluate their Seaport proposal, while not eliminating the other five proposals.

To conduct preliminary due diligence on the Seaport proposal and 1HWY1 team, a cross-functional team of staff developed a list of questions and issued a Supplement to 1HWY1 on July 28, 2016. The questions were based on the four evaluation criteria in the RFP: approach to project, proposer's relevant experience, capability to perform, and revenue and expense projections.

Qualitative Analysis of Supplemental Response

Seaport is proposed to be developed, operated and managed by 1HWY1. 1HWY1 is a proposed entity that has not yet been formed, but is intended to be comprised of:

- Protea Waterfront Development (PWD), a single purpose entity to be formed and comprised of longtime San Diego residents Yehudi "Gaf" Gaffen, Jeff Jacobs and Jeff Essakow as the three proposed members;

- RCI Marine Group (RCI), a waterfront developer based in Miami, Florida;
- OdySea, who has experience in developing and operating aquariums; and
- ThrillCorp, a developer and operator of observation attractions and thrill rides around the country.

Approach to Project

Staff reviewed 1HWY1's responses to the Supplement, which were provided between August 5 and September 19, 2016. After completing a review of the responses, staff prepared a qualitative analysis, which is summarized below, as well as a list of recommendations for the Board to consider.

Analysis:

Retail/Restaurant - The proposal includes approximately 390,000 square feet of retail space throughout the site at the street level and second story. This includes approximately 165,000 square feet of shopping, 141,000 square feet of restaurant, and 69,000 square feet of entertainment, specialty cinema and meeting spaces. A market demand study is recommended to validate the demand for the amount of retail proposed. Further analysis with the Public Trust will be required for uses such as the specialty cinema. Depending on the type of retail tenants, there may be additional Public Trust consistency analysis required; however, it would be premature to conduct this analysis at this time. Additional information regarding the targeted retail mix and space allocations will be important to ensure that it is feasible as proposed, including the extent to which existing Seaport Village tenants will either be relocated or accommodated in the new retail development during and after construction. 1HWY1's proposed relocation plan is noted in Appendix A7 and referenced as the answer to Question 40 on page 21 of the Supplement.

Hotel - The proposal includes over 1,000 hotel rooms within the following three hotel concepts:

- Virgin Hotel, a proposed 500-room full-service hotel with function space, a music venue and rooftop lounge;
- Yotel, a proposed 350-room micro hotel concept with "affordable luxury" rooms; and,
- Freehand, a proposed 225-room, 475 bed concept combining elements of a traditional hostel and lifestyle features.

The three proposed hotel brands have limited operating properties in the United States, but have hotels planned or in development across the United States.

- Virgin Hotel opened its first hotel in the United States in 2015, which is a 250-room hotel located in Chicago, Illinois.
- Yotel opened its first hotel in the United States in 2011, which is a 713-room hotel located in Manhattan, New York.
- Freehand opened its first hotel in the United States in 2013, which is an 86-room hotel located in Miami, Florida and subsequently opened a hotel in Chicago, Illinois.

At this time, it is recommended that the District not engage in any due diligence or negotiations regarding the hotels due to existing contractual obligations. Furthermore, the District is not proposing, at this time, to enter into any agreements with 1HWY1.

Office - The proposal includes approximately 19,000 square feet of third floor office space located above retail. As with the retail uses, there are restrictions on the types of office uses that can be leased on Tidelands. While the proposal states that the office space is planned for “marine related” office uses, further clarity on these uses will be needed to determine whether the amount and type of offices uses can be supported.

Aquarium - A 151,000 square-foot aquarium with exhibit space below grade is proposed on the site. The aquarium also includes a 16,000 square-foot butterfly exhibit and 12,000 square feet of retail space. To better understand the viability of the aquarium, a further study should explore attendance projections, revenue assumptions, and broader market forces including potential future impacts to attendance as has been experienced by other similar attractions.

SkySpire - A 480-foot tall observation tower, referred to as the SkySpire, is proposed to be located in the Ruocco Park area of the site. The SkySpire includes a 10,000 square-foot dining/lounge area, a 10,000 square-foot observation deck, 2,000 square feet of retail and 20,000 square feet of event space. The Seaport SkySpire is proposed to be the first installation of its kind in the country, although ThrillCorp is proposing to develop 30-50 SkySpires and PolerCoasters (a similar concept) across the United States. 1HWY1 believes that the Seaport SkySpire has been designed to be “architecturally and visually” unique to San Diego and has purported that it will not be replicated in any other location. Further study and evaluation could assist staff in determining whether the proposed attraction is unique enough to attract the proposed attendance. Additional information on the programming of the “event space” is also needed to determine whether such space is Public Trust compliant.

Charter School - The proposal includes a 65,000 square-foot marine and music-focused charter school for up to 600 students. Given that a school - charter or otherwise - is a traditional municipal use and function, which may not be appropriate for Tidelands pursuant to the Public Trust Doctrine and the Port Act, the proposed school may not be an allowable use on the site. Therefore, further study is required to determine if the proposed use and programming is consistent with the Public Trust. It is also recommended that 1HWY1 come up with an alternative use if the Charter School is found inconsistent with the Public Trust Doctrine.

Parking and Mobility - The original proposal included two subterranean parking garages with additional surface parking. As part of a value engineering exercise, the two garages were consolidated to create a larger floorplate. A total of 2,845 parking spaces (including existing surface parking spaces) are proposed. The numbers of parking spaces proposed were determined by using “currently accepted industry rules of thumb” and were not based on the District’s parking guidelines. The proposal does not provide sufficient parking to meet the demand for the proposed uses on the site which will require staff to work closely with the 1HWY1 team to either increase their parking count or find other mobility and transportation solutions to facilitate access to the site.

Water Oriented Facilities - The proposal includes 10,670 linear feet of marina dockage in Tuna Harbor; including, 24 mega yacht slips, 51 commercial fishing slips and 82 recreational boat slips.

The California Coastal Act includes commercial fishing as a priority water-dependent use. The 1HWY1 proposal acknowledges the need to address commercial fishing and includes a “vision” to address commercial fishing as noted in Appendix A3 of the proposal. 1HWY1 indicated that they

have had many meetings with the fishermen to coordinate their needs and state they have “strong support” for their approach. This was also reaffirmed verbally at the July 13, 2016 workshop. To better understand 1HWY1’s vision, staff recommends that a plan for addressing commercial fishing be provided.

The proposed mix of commercial fishing and recreational vessels operating in generally the same area may create conflicts with hours of commercial operations, aesthetics, ambient noise, smell, etc. It is also unclear as to whether there is ample demand to support the proposed slip mix specifically that of mega yachts based on data from the Superyacht Intelligence Agency’s 2015 Annual Report and the historical average of San Diego’s mega yacht market averaging only 35 vessels per year and as such, further study is warranted to assist staff in validating demand for this use.

Multi-Purpose Open Space and Public Realm - The proposal includes approximately 30 acres of public use and infrastructure space which includes nearly 21 acres of parks, open spaces and plazas, piers, walkways, shared streets and publically accessible rooftops. It is anticipated that public access will be provided at no-cost the majority of the time and there will be use of the public spaces for special events. An activation and programming plan will need to be developed to ensure there is an adequate balance between public and private uses.

Changes to Initially Submitted Proposal - As a result of a value engineering exercise undertaken by 1HWY1 the following changes have been made to the proposal:

- The pedestrian bridge that connected North and South Embarcadero Marina Parks has been removed;
- The subterranean parking structures have been connected to create a larger floor plate;
- A water cut at the foot of Kettner Boulevard and the Embarcadero Marina Park North has been removed; and,
- A pedestrian bridge over the tide pools on the inboard side of the Embarcadero Marina Park North has been removed.

1HWY1 has indicated that the changes were undertaken in an effort to reduce costs due to the need to absorb the approximately \$154 million of public infrastructure previously requested as a public subsidy that was not considered in their original financial model.

Integrated Planning Vision

As part of the RFP’s Approach to Project, proposers were asked to “present a well-conceived plan that establishes that the proposer understands and has the ability to achieve the District’s visions and goals.” This included demonstrating how their proposed concepts align with the Integrated Planning Vision, which includes the Assessment Report, Vision Statement and Guiding Principles, accepted by the Board in August 2014, and the Framework Report, accepted by the Board in November 2015, (collectively referred to as the “Integrated Planning Vision”) as established through the Integrated Planning effort and outlined on pages 7 and 8 of the RFP.

The Integrated Planning effort is: “The link of vision, priorities, people and the physical institution in a flexible system of evaluation, decision-making, and action.” It is a multi-faceted and comprehensive approach to the District’s future. Integrated Planning includes various District initiatives, including, but

not limited to, asset management, the “Port as a business” efforts (i.e., parking, advertising, etc.), a fiscal growth and sustainability framework, environmental initiatives, leasing policies, and land and water use planning and development Baywide. At this time, land and water use planning is anticipated to be developed over a multi-year process involving several phases (i.e., the Port Master Plan Update (PMPU) and larger site specific planning and development initiatives, like the Central Embarcadero) in the near future.

One of the aspects of the Integrated Planning effort was the Board’s acceptance of the Integrated Planning Vision. This tool is intended to inform the District in all development on Tidelands, as well as other Integrated Planning efforts. For example, while not binding, the Planning Principles are filters by which the District strives to: achieve synergy among partnering agencies and stakeholders; promote clean air, healthy communities and environmental justice; ensure job creation, prudent economic policies and financial sustainability; preserves the working Port as a dynamic and thriving element of the region’s economy and cultural history; and incorporate state of the art sustainability practices. The Framework Report works in a similar manner and also specifies that it could be a tool to be used in site specific planning and development efforts such as Central Embarcadero.

To date, Integrated Planning has led to the formation of the Integrated Planning Vision, which was developed as a result of an extensive public engagement process. The Integrated Planning Vision provides the basic foundation for establishing the goals, objectives and policies of the future PMPU. It also provides guidance in the review of development proposals that come forward during the PMPU process in accordance with the District’s Board Policy No. 752 Guidelines for Conducting Project Consistency Review Related to the Integrated Port Master Plan Update.

Port Master Plan Update Approach

One of the ongoing efforts as part of the Integrated Planning process involves drafting of the PMPU document, including the development of elements, goals and policies as presented in the proposed format and content outline endorsed by the Board at the July 22, 2015 Integrated Planning Study Session.

The proposed PMPU is anticipated to include new topical sections, or elements, that provide Baywide guidance related to Land Use, Water Use, Mobility, Public Access and Recreation, Natural Resources, Safety and Resilience, and Economic Development. As appropriate, in the coming months staff intends to advance specific policy issues related to these topics for the Board’s discussion and consideration.

In addition, the PMPU will provide policies and standards, as well as identify proposed appealable category projects for the ten Planning Districts. The Planning Districts will include redefined Sub-District areas intended to simplify the numerous planning sub-areas currently contained in the Port Master Plan. The use of Sub-Districts will allow staff to establish planning goals specific to certain geographic areas and will help to organize the Planning District text and project list. For example, Planning District 3 - Embarcadero is intended to be structured with three Sub-Districts: North Embarcadero, Central Embarcadero and South Embarcadero. This structure will allow us to establish focused planning policies specific to each area that appropriately guide redevelopment efforts being conducted on parallel tracks.

A key goal of the PMPU is to streamline and add certainty to the entitlement process by setting the

blueprint for sub-district redevelopment efforts, like the Central Embarcadero, through goals, objectives and policies specific to that area. Through diligent coordination, the PMPU work will provide timely direction to sub-district redevelopment projects and allow for future tiering from the PMPU Programmatic Environmental Impact Report, which will be completed prior to consideration or approval of any environmental review for Central Embarcadero. It is also contemplated that the PMPU would be certified by the California Coastal Commission prior to approval of any projects proposed by 1HWY1. The Central Embarcadero proposal and the PMPU are anticipated to provide a feedback loop as the PMPU effort moves forward. It should be noted that if the project is misaligned with the PMPU's policies, standards, and appealable project categories the project may either be altered to become in alignment with the PMPU or require a subsequent Port Master Plan Amendment (PMPA). Therefore, 1HWY1's understanding of the PMPU process and how sub-district redevelopment efforts fit into that larger process is essential. The PMPU team has met with 1HWY1 and explained this process in detail, and 1HWY1 was amenable to following the process by indicating a strong commitment to the process. Accordingly, the District and 1HWY1 are committed to following this process.

The Integrated Planning Vision has been used as tool in analyzing the Seaport proposal. Staff's analysis of the proposal's alignment with these tools has been included under the Approach to Project analysis below. This analysis has not changed substantively since presented in the July 13, 2016 BPC Agenda Sheet No. 2016-0411 (Attachment B); however, additional analysis resulting from 1HWY1's responses to the Supplement has been provided.

Analysis of Consistency with Integrated Planning:

Based on a review of 1HWY1's initial proposal and responses to the Supplement, below is staff's analysis of the key principles from the Integrated Planning Vision that should be considered as the proposal is refined to ensure consistency with the District's vision.

Also, it should be noted that based on 1HWY1's responses to the Supplement substantial work still needs to be completed to refine water uses, land uses, and programming for the proposal. Consequentially, there are numerous questions that will need to be answered, if 1HWY1 proceeds to the next stage. For example, until the uses, programming and list of appealable projects are more clearly defined, developing a holistic and cogent mobility plan for site will be partially inhibited.

Vision Statement and Guiding Principles

Honor the Water - A number of the Seaport's programmatic components strive to "honor the water" by providing a variety of water-based uses that will encourage activation and engagement with the water. The 30 acres of water at Seaport is proposed to bring mega-yacht berthing facilities; provide dock & dine public piers; and include a public swimming facility and publically accessible beaches. Recreational amenities proposed include rental and launch facilities for non-motorized water vehicles including kayaks and stand up paddleboards. The proposal offers to facilitate a public/private partnership to revitalize the fishing industry using the Commercial Fisheries Revitalization Plan as a reference. Also, the proposal will promote and provide water-borne transit with an expanded ferry service and water taxis linked to destinations throughout the Bay.

Given the variety of water uses proposed, it is staff's recommendation that Seaport's water mobility plan be a cornerstone of the project to ensure all water-related uses and activities function in a

mutually-beneficial way. It will be important to ensure that these uses and activities, which will all have different, use intensity, infrastructure needs, and visitors, are organized in a complementary manner. The water mobility plan should be developed in alignment with PMPU and further refined site specific objectives.

Moreover, given the Coastal Act's priority for commercial fishing (which aligns with the honoring the water guiding principle) and the Supplemental responses, additional details on how the public/private partnership will revitalize the fishing industry is needed.

Guarantee the Public Realm - The proposal provides for over 75 % of the 40 acres of land area as parks and public open space. Redesigned esplanades (designed to be wider than existing) along the water's edge provide public access for everyone to walk and provide the opportunity to stage public events. The variety of hotel options includes a youth hostel and an affordable rate hotel providing low-cost visitor accommodations. The variety of shopping, exercise, and recreation options are intended to be open for all users.

While the proposal includes a variety of land and water uses intended for public use, it is likely that elements of the proposal will be refined as this process progresses. Staff recommends that a strong commitment to providing 75 % of the site as public realm be necessary to ensure the amount of public space is maintained, even if components of the proposal are substantially revised, eliminated or replaced. It should be noted that in the response to Question 12, page 9, of the Supplement 1HWY1 states: "We are committed to maximizing public space and would commit to a maintaining at least 70 % of the space as public realm." Further review and consideration of the public realm portion of the proposal is still needed, including clarifying what constitutes public realm on land versus water. For example, it will need to be determined how the creation of open water areas adjacent to the beaches will be considered in the context of the public realm.

Furthermore, additional discussion is needed on the topic of public versus semi-public access. As indicated in the response to Question 8, page 7 of the Supplement, "The public access will be no-cost for most times of the day. We do envision using parts of the public space for paid activities. The precise times and areas will be determined at a later stage of the design and activation programming." To maintain the integrity of guaranteeing the public realm, performance standards (i.e., programming and operational requirements) that ensure the public spaces are maintained as no-cost should be considered.

Celebrate Nature and Ecology - Attraction and educational opportunities are included with the proposal. The tidal pools with oyster beds and floating wetlands in strategic locations along the water's edge also allow visitors to experience nature and understand the natural ecological cycle. Additional work will be needed to demonstrate the feasibility of these components.

Create a Comprehensive Open Space Plan - Creation of a 50-foot wide half-mile esplanade along the water's edge, which connects a series of public spaces throughout the site. The design provides large areas of open space, esplanade with strong linkages through pedestrian walkways and direct access to the Bay. The comprehensive open space plan is an important component of the proposal to ensure the development maintains significant elements that "guarantee the public realm" and strengthens the concept of the Green Necklace. However, per 1HWY1's response to question 47, page 22, of the Supplement, the pedestrian bridge connecting Embarcadero Marina Park North and South has been eliminated, as was the pedestrian bridge over the tide pools in Embarcadero Marina

Park North. These changes will need to be evaluated further.

Provide Ease of Mobility on Land and Water - The proposal includes a water and mobility plan that outlines a variety of transportation options that intend to link local and regional transportation systems. The existing esplanade along the water is proposed to be widened and activated with public event space. Recreational amenities proposed include rental and launch facilities for non-motorized water vehicles including kayaks and stand up paddleboards. As part of a water mobility plan, the proposal intends to promote and provide water-borne transit with an expanded ferry service and water taxis linked to destinations throughout the Bay. The preliminary mobility and parking strategy are further detailed in Appendix 9 of Attachment B.

There are multiple modes of transportation contemplated for the site, with significant attention given to driving foot traffic and pedestrian related experience. However, as previously outlined above, more work is needed to ensure development of cogent and holistic mobility plan for the site that addresses all multi-modal transportation on-site and how it will connect off-site.

Framework Report

Increase or maximize public space - The proposal provides a public access activation and programming plan, including the development of Public Realm zones. Examples are a Pacific Promenade for public access strolling with a fitness and wellness circuit, and curated food and kiosks; a Pacific Plaza for concerts and festivals; the Kettner Connection with an Activity Center for renting workout gear, renting bikes, and participating in recreational classes. It is important that as the proposal is refined the amount of public realm presented in parks and open spaces (75 % of 40 acres of land area) is maintained and not eroded.

Extends streets to the water - An extended California Street transitions into a new pedestrian Paseo. The proposal contains a new public pier at the foot of this Paseo for visiting boats and dock & dine opportunities, as well as a new gateway to the peninsula park. Kettner Boulevard and Pacific Highway become gateways and enhanced view corridors. The proposal should capitalize on the unique geometry and history of the area, by both celebrating this location as the southern origin of Highway 1, and maintaining its commitment to strengthen connection between the uplands to the waterfront.

Preserve and enhance view corridors - The proposed extension of Kettner Boulevard and Pacific Highway will enhance views looking south. A new Ruocco Park is proposed to turn into a rooftop park with views of the Bay and downtown skyline. It is acknowledged that more work is needed to demonstrate the feasibility and benefits of proposed view corridors.

Facilitates enjoyment of the Bay - The proposal includes a variety of uses both on land and water that will be accessible to the public. Expanded park and public space provide the opportunity to open up the waterfront to more people. Street shops and restaurants are proposed to provide a range of recreational and commercial opportunities for a range of socio-economic users. A proposed hospitality core will provide lodging for a wide range of visitors. Water sports, an outdoor gym, beach volleyball, boating, and swimming illustrate different parts of the plan intended make the waterfront accessible and enjoyable to users from all socio-economic groups. The plan also provides for activities such as picnic's and outdoor concerts. The hotel options include a Yotel with smaller rooms at affordable moderate rates.

Approach to Project - Recommendations for the Proposed Additional Due Diligence:

While the Board has indicated that they believe 1HWY1 and its proposal meet the RFP's requirements, and hence, they could be selected as the successful proposer, staff recommends the Board adopt a resolution to obtain the following information and clarifications on 1HWY1's proposal. If the Board does not want to adopt a resolution, it may direct staff to continue its due diligence efforts in accordance with the following or in some other manner:

1. 1HWY1 to identify the anticipated retail tenant mix, including targeted retailers.
2. A market and feasibility study should be commissioned by the District, at 1HWY1's expense, to demonstrate the following programs can be supported as proposed:
 - Restaurant and retail
 - Office
 - Attractions
 - Aquarium (marine attractions)
 - SkySpire (observation tower)
 - Water-oriented facilities
 - Commercial fishing
 - Recreational boats
 - Mega yachts
3. 1HWY1 should further define the proposed existing Seaport Village tenant retention and relocation program beyond the proposed construction phase.
4. 1HWY1 to provide clarity of the anticipated "marine related" office tenant mix, including targeted users, to ensure the proposed office program is consistent with the Public Trust.
5. Due to the proposed height and location of the SkySpire, 1HWY1 should obtain:
 - a determination of no hazard from the Federal Aviation Administration
 - a consistency determination from the San Diego Regional Airport; and,
 - a determination from the U.S. Navy to ensure feasibility.
6. A written guarantee should be provided by ThrillCorp that the Seaport SkySpire will not be replicated. This should also be a term of any future real estate agreement between the District and 1HWY1.
7. As a result of the impacts to Ruocco Park proposed under the Seaport proposal, 1HWY1 should submit a plan to the District to satisfy the obligations under the grant agreement with the San Diego Foundation.
8. 1HWY1 to provide clarity regarding the marine-focused charter school and evidence that the proposed use and programming is consistent with the Public Trust.

9. A parking study should be commissioned by the District, at 1HWY1's expense, using the District's parking guidelines to determine whether adequate parking has been proposed; at this time, the study should exclude any proposed hotel development.
10. The proposed mobility plan should be refined to reflect coordination with other existing mobility plans in the area, including, but not limited to: City of San Diego, Civic San Diego and the San Diego Association of Governments to identify proposed mobility strategies that could help alleviate any potential parking demand resulting from the proposed uses.
11. 1HWY1 to provide clarity as to its commitment to existing commercial fishing tenants of the G Street Mole during construction and upon completion.
12. Proposed dock and dine facilities, as a public amenity should be considered as a term of any future real estate agreement between the District and 1HWY1.
13. The proposed water mobility plan should be refined to meet site specific objectives and ensure alignment with the PMPU.
14. 1HWY1 to provide clarity regarding activation and programming and any applicable charges for the use of public spaces should be provided to ensure there is adequate public access.
15. 1HWY1 to provide clarity as to whether they are willing to commit 75 percent of the 40 acres of land to parks and open space.
16. 1HWY1 team to receive continued briefings from the PMPU team in order to ensure alignment with the Integrated Planning Vision and an understanding of how the proposal fits within and will tier-off the larger PMPU process.

Proposer's Relevant Experience

Analysis:

1HWY1 is proposed as the ground lessee and developer for Seaport. The 1HWY1 entity has not yet been formed but staff was advised that they anticipate forming a limited liability company (LLC) following a final selection. The proposed members and their roles are summarized below:

Member	Role
PWD	Managing Member
	Oversee bid and negotiation process
	Manage design, entitlement, construction
	Obtain necessary equity and debt
	Manage post-construction operations
RCI	Advise on water plan, marina and hospitality components
OdySea	Develop and operate aquarium component
ThrillCorp	Develop and operate SkySpire component

1HWY1 as a whole demonstrates the relevant experience requested in the RFP; however, the members as individuals have varying levels of experience, with RCI being the only member to have ground up experience as a mixed-use developer. OdySea has experience developing aquariums, the proposed members of PWD have experience with construction and project management and ThrillCorp has no development experience. A detailed example of each partner's development experience is listed on page 29 of Attachment D.

Proposer's Relevant Experience - Recommendations for the Proposed Additional Due Diligence:

In addition to the 16 items, listed above, staff recommends that the proposed Board resolution include the following or the Board direct that to obtain the following information:

17. With RCI being the only proposed member with ground up development experience, their role and level of commitment needs to be clarified.
18. 1HWY1 should form the proposed LLC to identify each of the member's roles and level of financial commitment.

Capability to Perform

Analysis:

Staff anticipates that the amount of financial commitment to be provided by each of the 1HWY1 members will be identified in the entity formation documents.

Pre-development Costs

It is proposed that PWD, as the anticipated managing member of 1HWY1, will self-finance the \$15 million in pre-development costs. At the time this report was drafted, PWD was not yet formed, but the members advised it was in the process of formation and a managing member had not yet been identified. To determine if PWD has sufficient financial resources to self-finance the pre-development costs, staff reviewed each of the proposed member's financial statements with the District's economic consultant, Jones Lang LaSalle (JLL). Collectively, the three proposed members of PWD possess the combined liquid assets necessary to fund the stated \$15 million in pre-development costs.

Capital Stack

As can be expected at this time in the process, the different layers of 1HWY1's financing sources for the Seaport proposal have not yet been identified but the team anticipates seeking \$501 million in personal and private equity contributions as well as \$752 million through debt financing, which will ultimately convert to a \$1.05 billion permanent loan. 1HWY1 has not identified specific debt or equity commitments, but it is premature at this time to have anything other than preliminary letters of interest. As such, the following letters of interest from potential debt and equity sources have been provided:

- Debt
 - PNC Bank - letter dated April 25, 2016 (Attachment B, page 114).
 - Pacific Southwest Realty Services - letter dated May 2, 2016 (Attachment B, page 115).
- Equity
 - Klaff Realty, Ltd. and Lupert Adler - letter dated September 12, 2016 (Attachment D, page 89).

Capability to Perform - Recommendations for the Proposed Additional Due Diligence:

Staff recommends the following also be memorialized in the proposed Board resolution or at a minimum staff be directed to obtain this information:

19. PWD, as the proposed managing member of 1HWY1, should form the proposed LLC to identify each of the member's roles, including identification of a managing member, and level of financial commitment.
20. As part of the recommendation that the 1HWY1 LLC be formed, the District should be provided with a copy of the agreement, including terms regarding the amount of equity each member will be responsible for capitalizing, and conditions upon which a member could exit the LLC.
21. 1HWY1 to obtain and provide to the District commitment letters from other potential equity providers given the scale of equity required to finance the proposal at an appropriate time during the pre-development phase.

Revenue and Expense Projections

Analysis:

1HWY1 expects development costs for Seaport to exceed \$1.2 billion with an expected annual rent to the District of \$22 million upon stabilization in year 10. This is a significant increase in rent over the approximately \$2.6 million paid to the District by Seaport Village in fiscal year 2015.

Based on the information currently available, staff and JLL evaluated the proposal's feasibility. A final copy of JLL's Seaport San Diego Economic Analysis Summary has been included as Attachment F. Please note that this information is not intended to be used for negotiations or any agreements for any proposed hotels. At this early stage, 1HWY1's projection of revenues, expenses and development costs are within a reasonable range for the proposal as a whole; however, some variances exist on a component by component basis. Below are some key findings for consideration:

- Demand for the Seaport project, which informs revenue and expense assumptions made in the financial model, will require additional study.
- 1HWY1 has absorbed the approximately \$154 million public subsidy. As a result, they are projecting a lower return. 1HWY1 should indicate whether these lower returns will still allow them to attract the necessary equity financing and whether lenders will underwrite the project

under these assumptions.

- Several of the proposed percentage rental rates are at the Board-adopted standard but others, such as food & beverage, retail, entertainment and ticket sales, are not. A comparison of ground lease percentage rates has been provided on page 8 of Attachment F.
- The financial model does not currently include costs associated with: 1) the relocation of existing Seaport Village retailers and associated temporary retail and parking facilities, 2) costs of equity financing and 3) costs associated with additional commercial fishing operations, if implemented as part of a future phase.
- The proposal could generate additional revenues to the District not currently captured in the financial model which could result in increases to the projected rent from: 1) retail lease percentage rents, 2) kiosk and signage rental and 3) Smithsonian media augmented and virtual reality offerings.
- Proposed rent payments to the District prior, and during, the construction of Seaport are predicated upon 1HWY1 assuming continued operation of some or all of the existing Seaport Village upon the lease expiration in September, 2018. 1HWY1 assumes that the District will allow them to collect rent from existing subtenants to help offset their ground lease payments to the District during construction. The District would need to understand the implications to the overall proposal if an understanding is not reached.
- The 1HWY1 financial model does not include a ground rent payment for the proposed charter school. It will be important for the District to understand the return potential associated with the operations of the charter school to 1HWY1. Conversely, it will be important for the District to understand the implications to the overall project if the proposed charter school or any other use is not allowed on Tidelands.

Revenue and Expense Projections - Recommendations for the Proposed Additional Due Diligence:

Staff recommends the following requested information and refinements be obtained as part of the proposed Board resolution or alternatively, as Board direction:

22. As previously detailed in the Approach to Project recommendations, market and feasibility studies, excluding, at this time, hotels, should be commissioned by the District, at 1HWY1's expense, to further validate demand and the revenue and expense assumptions made in the 1HWY1 financial model.
23. The financial model should be refined to include, at a minimum:
 - a) An allocation of public improvement costs at the programmatic component level,
 - b) A sources and uses projection at the programmatic component level, and
 - c) Inclusion of additional costs and revenue sources.
24. 1HWY1 to provide clarification on its proposed percentage rents, excluding, at this time, hotels, to determine if 1HWY1 is requesting to pay percentage rents(s) that is/are below District standards, or if they are requesting rent concessions.

25. 1HWY1 to conduct an evaluation and provide clarification of 1HWY1's potential returns associated with the school should be conducted, given the proposed lack of District rent payment for this programmatic component.
26. If certain uses are not permitted on Tidelands (i.e. charter school and cinema), 1HWY1 will conduct an evaluation of potential programmatic component alternatives and submit evaluation to the District.

Potential Options and Next Steps

After receiving a presentation and update from staff, the Board has the maximum discretion to take action and provide direction to staff. Staff has identified three potential options for the Board's consideration, which are summarized below:

- Option One - Select 1HWY1 as the final proposer, conclude the RFP process, eliminate the other five proposers, direct staff to conduct additional due diligence and return to the Board at a future meeting seeking direction to enter into a preliminary agreement with 1HWY1.
- Option Two - Select 1HWY1 as the final proposer, conclude the RFP process, eliminate the other five proposers, direct staff to conduct additional due diligence and return to the Board at future meeting with an update, and if necessary obtain further direction.
- Option Three - Direct staff to continue exclusive discussions with 1HWY1 and conduct additional due diligence, while not eliminating the other five proposals and return to the Board at a future meeting with an update. At that time, the Board may discuss further steps, including a final selection or to enter into a preliminary agreement with 1HWY1.

If the Board selects 1HWY1 as the final proposer, this would conclude the RFP process; however, it is recommended that in making such a selection, the District retain all its rights under the RFP and as permitted under the law. Additionally, at this time, any District due diligence efforts or discussion with a successful proposer would exclude potential hotels on the site. If directed to proceed with proposed additional due diligence, it is recommended that a resolution be adopted to memorialize the proposed minimum due diligence recommendations as described above and as listed in Attachment E, as well as any other direction the Board sees fit. Alternatively, the Board may direct staff to conduct due diligence. Since the recommendations include commissioning studies, staff anticipates the proposed additional due diligence and information gathering efforts would take six to eight months. During this time, 1HWY1 has also advised they would conduct their own on-site due diligence, which may include: geotechnical studies, existing conditions evaluations (wet & dry utilities), in-water studies, etc. During this time, 1HWY1 and staff would also work together.

General Counsel's Comments:

The General Counsel's Office has reviewed the agenda sheet as presented to it and approves it as to form and legality.

The General Counsel's Office continues to have questions about the programming of the specialty

cinema; as such programming may assist in determining its Public Trust consistency. Furthermore, information on the proposed Public Charter School is crucial to determine whether it is an allowed Public Trust use. Such information was requested in the Supplement but further clarification is needed. Moreover, it appears that 1HWY1 is proposing no rent for the proposed school, which may present legal issues such as gifts of public funds. The General Counsel's Office recommends that alternative uses be identified by 1HWY1 for these two program components.

Please note that the information gathering and due diligence items contained in this agenda sheet, the proposed Board resolution and in Attachment E are not intended to be an all-exclusive list and as the process moves forward, additional information gathering may be required and may be requested of the successful proposer at any time. In no way, are informational and due diligence items intended to limit the District's discretion or bind the District to a definite course of action. Additionally, the District's selection of a proposer/proposal is expressly conditioned on a reservation of the District's rights in the RFP, as well as any and all legal rights of the District.

The General Counsel's Office agrees with the legality of PMPU and CEQA tiering approach as stated in this agenda sheet and endorsed by the Board and staff, but other entitlement and CEQA processes are legally available to the District.

Environmental Review:

The item would provide direction to staff on the further processing and analysis of the Central Embarcadero proposals, and the potential final selection of a proposer. The Board's direction and selection does not constitute an "approval" of a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because it would not result in any direct or indirect physical changes to environment, including without limitation, physical changes to the environment. A selection of a proposer does not constitute a binding commitment to proceed with the proposal or any project and the District retains the absolute sole discretion to modify the proposal as may be necessary to comply with CEQA, including the discretion to determine not to proceed with any project at all. Additionally, no agreements or terms sheets are proposed at this time that would bind the District to a definite course of action.

CEQA requires that the District adequately assess the environmental impacts of its projects. While the Board may give direction to staff, including without limitation, direction to that certain proposals or components thereof be further evaluated through due diligence or alternatives analyzed, such direction to staff constitutes information gathering and will not bind the District to a definite course of action prior to CEQA review. Moreover, disapproval of a proposer or proposal would not be a project under CEQA. As required by law, CEQA analysis will be completed prior to the District's commitment to a proposal(s) of components thereof, approval of any entitlements, concept approval, or agreements necessary for the implementation of a proposal(s), in whole or in part. Moreover, the Board reserves its discretion to adopt any and all feasible mitigation measures, alternatives to the project, including a no project alternative, a statement of overriding consideration, if applicable, and approve or disapprove the project and any permits or entitlements necessary for the same. Those decisions may be exercised in the sole and absolute discretion of the Board. Based on the totality of the circumstances and the entire record, the Board's direction does not commit the District to a definite course of action prior to CEQA review being conducted. Therefore, no further CEQA review is required.

In addition, the proposed Board presentation and potential selection of a proposer/proposal allows for the District to implement its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. While certain components of the proposals may need further analysis to determine whether they are consistent with the Public Trust Doctrine and Pot Act, the final selection does not commit the District to approve said components. Consequently, the proposed Board presentation is consistent with the Public Trust Doctrine.

Finally, the proposed Board presentation does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a CDP or exclusion is not required. However, the District’s projects require processing under the District’s CDP Regulations. If a proposal or component thereof moves forward, the Board will consider the same after the appropriate documentation under District’s CDP Regulations has been completed and authorized by the Board, if necessary. The Board’s direction in no way limits the exercise of the District’s discretion under the District’s CDP Regulations.

Equal Opportunity Program:

There was no Small Business Enterprise (SBE) goal established for this phase of the development of this location. The selected firm(s) will ultimately be requested to submit an SBE plan.

PREPARED BY:

Lucy Contreras
Asset Manager, Business Development
Real Estate Development

Penny Maus
Department Manager, Business Development
Real Estate Development

Attachment(s):

Attachment A:	Location Maps
Attachment B:	July 13, 2016 BPC Agenda Sheet No. 2016-0411 ¹
Attachment C:	July 28, 2016 Supplemental Information Request
Attachment D:	September 19, 2016 Response to Supplemental Information Request from 1HWY1
Attachment E:	Comprehensive List of Recommendations
Attachment F:	Jones Lang LaSalle Seaport San Diego Economic Analysis Summary

¹ The complete July 13, 2016 BPC workshop agenda sheet, with all attachments, can be found in Granicus-Legistar on the District’s website at: <https://www.portofsandiego.org/read-board-agendas.html>.

January 5, 2017

Via E-Mail & US Mail

Yehudi "Gaf" Gaffen
1HWY1
5960 Cornerstone Court West, Suite 100
San Diego, CA 92121

Dear Mr. Gaffen:

Subject: 1HWY1 Due Diligence Schedule

At its November 8, 2016 meeting, the Board of Port Commissioners (Board) directed staff to work with the 1HWY1 team and the District's Executive Director to determine the best approach for conducting additional due diligence over the next several months.

Shortly after the Board meeting, staff met with you and provided some recommendations on how to develop your work plan. We have prepared a due diligence schedule based off of the draft work plan you submitted on December 5, 2016 and the Draft Resolution (Attachment A) attached to the November 8, 2016 agenda sheet, which listed the recommended additional due diligence.

The due diligence schedule is summarized below and outlines the various tasks¹ that:

- are complete or in progress;
- will need to be completed prior to returning to the Board for additional direction (tentatively May 16, 2017); or,
- will be deferred until after the Board meeting.

Complete or Pending

The tasks listed below are those that you have indicated in your work plan are complete or in process. Expected completion dates for these tasks are not listed in the work plan, however, you may provide status updates and expected completion dates for each of these tasks during the bi-weekly team meetings:

5. Due to the proposed height and location of the SkySpire, obtain:

- Determination of no hazard from the Federal Aviation Administration,
- Consistency determination from the San Diego Regional Airport Authority,
- Determination from the U.S. Navy to ensure feasibility.

¹ Please note the numbers for the various tasks listed in this due diligence schedule correspond to the numbers listed in Draft Board Resolution No. 2016-0607B.

6. A written guarantee that the Seaport SkySpire will not be replicated.
7. Research the San Diego Foundation obligations related to Ruocco Park.
8. Refine the program for the marine-focused charter school to ensure consistency with the Public Trust.
10. Review existing mobility plans in the area, including, but not limited to: City of San Diego, Civic San Diego and San Diego Association of Governments to identify potential mobility strategies that could help alleviate any potential parking demand resulting from the proposed use. The mobility plan will be developed after the May Board meeting on a parallel track to the parking study as part of the project description and shall be consistent with the future Port Master Plan Update (PMPU).
12. Analyze current space allocations and potential locations for Dock and Dine facilities.
13. Refine the proposed water mobility plan to meet site specific objectives and ensure alignment with the PMPU.
14. Provide clarity on the proposed programming of public spaces and a list of spaces and proposed activities.
15. Provide map identifying the percentage of land proposed to be committed to parks and open space.
16. Attend January Board meeting regarding the PMPU and attend briefing with the PMPU team as needed.
19. Form Protea Waterfront Development (PWD), LLC (**Complete**).
26. Schedule a meeting in coordination with the District and State Lands Commission to ensure proposed uses (i.e. charter school and cinema), are permitted on Tidelands.

Complete Prior to the May Board Meeting

The tasks below shall be completed and submitted to staff no later than close of business on March 17, 2017:

1. Provide a written update on the status of 1HWY1's anticipated retail tenant mix.
3. Provide a written update on the status of on-going discussions and/or meetings with the Seaport Village tenants.

January 5, 2017

Subject: 1HWY1 Due Diligence Schedule

4. Provide clarity and anticipated "marine-related" office tenant mix, including targeted uses, to ensure consistency with the Public Trust.
11. Provide a written update on 1HWY1's progress on its plans for addressing the commercial fishing tenants of the G Street Mole during construction and after completion.
17. Provide a written update on clarification of RCI's role and level of commitment.
18. Form the 1HWY1, LLC and identify each of the member's roles and level of financial commitment.
20. Provide a copy of the operating agreement for the 1HWY1, LLC, including terms and conditions upon which a member could exit the LLC.
21. Provide a written update on 1HWY1's progress in obtaining additional commitment letters from potential debt and equity providers.
23. Provide a written update on the refined financial model to include, at a minimum:
 - An allocation of public improvement costs at the programmatic level,
 - A sources and uses projection at the programmatic component level, and
 - Inclusion of additional costs and revenue sources.
24. Provide a written update on 1HWY1's proposed percentage rents (excluding hotels) and provide an update on whether 1HWY1 will be requesting rent concessions.
25. Provide a written update on 1HWY1's evaluation of potential returns associated with the proposed charter school.

Deferred Tasks

The tasks listed below are those that are recommended to be completed following additional direction from the Board in May:

2. Completion of a market and feasibility study to demonstrate support for the proposed programmatic components.
9. Completion of a parking study to demonstrate whether adequate parking has been proposed. As stated, in task no. 10 on page 2, the mobility plan will be completed in parallel with the parking study.
22. Completion of market and feasibility study to validate demand and revenue and expense assumptions.

Page 4 of 4
January 5, 2017
Subject: 1HWY1 Due Diligence Schedule

We look forward to meeting with your team again on January 9, 2017. During that meeting, we can discuss any questions you may have regarding next steps. Should you have any questions in the meantime, please feel free to contact Adam Meyer at (619) 400-4766 or Lucy Contreras at (619) 686-8160.

Sincerely,



Anthony Gordon
Principal
Real Estate Development

Attachment A – Draft Resolution 2016-0607B

cc: Jeffrey Essakow, 1HWY1
Jeff Jacobs, 1HWY1
Kip Howard, Allegis Development
R. Coniglio, SDUPD
T. S. Edwards, SDUPD
S. Sumner, SDUPD
A. Meyer, SDUPD
L. Contreras, SDUPD

DRAFT

RESOLUTION 20xx-xxx

**RESOLUTION MEMORIALIZING DUE DILIGENCE
AND INFORMATION GATHERING EFFORTS**

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 1 (Port Act); and

WHEREAS, on February 22, 2016, District staff issued a Request for Proposals 16-04ME (RFP) for the 70 acres of land and water located within the District's Central Embarcadero; and

WHEREAS, the RFP gives the District broad discretion in how a proposal/prosper is selected, as well as reserves certain District rights including, without limitation, the District's ability to reject or move forward any or all proposals or parts thereof, issue subsequent requests for proposals, postpone opening for its own convenience, remedy technical errors in the process, approve or disapprove the use of a particular proposer's sub-service providers, negotiate with any, all or none of the proposers, solicit best and final offers, award agreements to one or more proposers and waive informalities and irregularities in proposals (collectively, Reservation of Rights); and

WHEREAS, on May 2, 2016, the District received 11 proposals, of which, six were deemed complete and moved forward for consideration; and

WHEREAS, on June 13 and 14, 2016, the District hosted an open house, which over 1,200 members of the public attended to preview the six proposals, meet the development teams and provide comments; and

WHEREAS, on July 13, 2016, the Board of Port Commissioners (BPC) after thoroughly considering all the proposers/proposals, directed staff to enter into exclusive discussions with the 1HWY1 team and to further evaluate the Seaport San Diego (Seaport) proposal, while not making a final selection or eliminating the other five proposals/proposers; and

WHEREAS, the factors that the BPC expressed in directing staff to enter into the exclusive discussions included, but are not limited to, 1HWY1: provided the most comprehensive approach to the overall project; included a variety of exciting and innovative programmatic components (as identified in the RFP); comprised of a development team that is best in class and is well-qualified; considered existing prioritized land uses on Tidelands; was heavily supported by stakeholders during public comment; and

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WHEREAS, following the BPC's direction, staff immediately commenced a due diligence phase by forming a cross-functional team to develop questions regarding areas of the 1HWY1's proposal that staff believed needed clarification; and

WHEREAS, that supplemental information and analysis of the same has been presented to the BPC; and

WHEREAS, after the BPC considered the entire record, including all proposals/proposers, the criteria in the RFP and how the proposals/proposers meet said criteria, and information provided to the BPC, on November 8, 2016, the BPC adopted Resolution No. _____, selecting _____, as the successful proposer/proposal, concluding the RFP process and reserving certain rights under the RFP and law, as more particularly described in said Resolution; and

WHEREAS, additional due diligence and information is needed by the District related to the 1HWY1 proposal and team; and

WHEREAS, the BPC's action, including due diligence and information gathering efforts, does not bind the District to a definite course of action and the District retains the sole and absolute discretion to modify the proposal or any project arising therefrom, or to determine not to approve any project or entitlements for the same; and

WHEREAS, the BPC's action does not constitute an "approval" of a "project" under the California Environmental Quality Act and the BPC may, in its sole and absolute discretion, adopt (1) any and all feasible mitigation measures, (2) feasible alternatives to a project that may arise from the proposal, including a no project alternative, and/or (3) a statement of overriding consideration, if applicable.

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

District staff is directed to conduct the following due diligence and gather additional information, which shall exclude, at this time, any District due diligence, information and negotiations on hotel development; provided, however, said due diligence and information gathered is not an all-exclusive list and the District reserves the right to require additional due diligence and information-gathering:

Approach to Project

1. HWY1 shall identify the anticipated retail tenant mix, including targeted retailers.

Agenda File No. 2016-0607B

20xx-xxx

2. A market and feasibility study shall be commissioned by the District, at 1HWY1's expense, to demonstrate the following programs can be supported as proposed:
 - a. Restaurant and retail
 - b. Office
 - c. Attractions, including the aquarium (marine attractions), the SkySpire (observation tower)
 - d. Water-oriented facilities, including commercial fishing, recreational boats and mega yachts
3. 1HWY1 shall further define the proposed existing Seaport Village tenant retention and relocation program beyond the proposed construction phase.
4. 1HWY1 shall provide clarity regarding the anticipated "marine related" office tenant mix, including targeted users, to ensure the proposed office program is consistent with the Public Trust.
5. Due to the proposed height and location of the SkySpire, 1HWY1 shall obtain:
 - a. a determination of no hazard from the Federal Aviation Administration;
 - b. a consistency determination from the San Diego Regional Airport; and,
 - c. a determination from the U.S. Navy to ensure feasibility.
6. A written guarantee shall be provided by ThrillCorp that the Seaport SkySpire shall not be replicated. This shall also be a term of any future real estate agreement between the District and 1HWY1.
7. As a result of the impacts to Ruocco Park proposed under the Seaport proposal, 1HWY1 shall submit a plan to the District to satisfy the obligations under the grant agreement with the San Diego Foundation.
8. 1HWY1 shall provide clarity regarding the marine-focused charter school and evidence that the proposed use and programming is consistent with the Public Trust.
9. A parking study shall be commissioned by the District, at 1HWY1's expense, using the District's parking guidelines to determine whether adequate parking has been proposed; at this time, the study shall exclude any proposed hotel development.
10. The proposed mobility plan shall be refined to reflect coordination with other existing mobility plans in the area, including, but not limited to: City of San Diego, Civic San Diego and the San Diego Association of Governments to identify proposed mobility strategies that could help alleviate any potential parking demand resulting from the proposed uses.
11. 1HWY1 shall provide clarity as to its commitment to existing commercial fishing tenants of the G Street Mole during construction and upon completion.
12. Proposed dock and dine facilities as a public amenity shall be considered as a term of any future real estate agreement between the District and 1HWY1.

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13. The proposed water mobility plan shall be refined to meet site specific objectives and ensure alignment with the Port Master Plan Update (PMPU).
14. 1HWY1 shall provide clarity regarding activation and programming and any applicable charges for the use of public spaces shall be provided to ensure there is adequate public access.
15. 1HWY1 shall confirm whether they will commit 75 percent of the 40 acres of land to parks and open space.
16. 1HWY1 team shall participate in briefings from the PMPU team in order to ensure continued alignment of the proposal with the Integrated Planning Vision and an understanding of how their proposal fits within and will tier-off the larger PMPU process.

Proposer's Relevant Experience

17. With RCI Marine Group (RCI) being the only proposed member with ground up development experience, their role and level of commitment shall be clarified.
18. 1HWY1 shall form the proposed LLC and identify each of the member's roles and level of financial commitment.

Capability to Perform

19. Protea Waterfront Development (PWD), as the proposed managing member of 1HWY1, shall form the proposed LLC and identify each of the member's roles, including identification of a managing member, and level of financial commitment.
20. As part of the requirement that the 1HWY1 LLC be formed, the District shall be provided with a copy of the operating agreement, including terms regarding the amount of equity each member shall be responsible for capitalizing, and conditions upon which a member could exit the LLC.
21. 1HWY1 shall obtain and provide to the District commitment letters from all potential equity providers given the scale of equity required to finance the proposal at a time to be designated by the District during the pre-development phase.

Revenue and Expense

22. As previously detailed in the Approach to Project, market and feasibility studies, excluding, at this time, hotels, shall be commissioned by the District, at 1HWY1's expense, to further validate demand and the revenue and expense assumptions made in the 1HWY1 financial model.
23. The financial model shall be refined to include, at a minimum:
 - a. An allocation of public improvement costs at the programmatic component level,
 - b. A sources and uses projection at the programmatic component

Agenda File No. 2016-0607B

20xx-xxx

level, and

c. Inclusion of additional costs and revenue sources.

24. 1HWY1 shall provide clarification on its proposed percentage rents, excluding, at this time, hotels, to confirm whether 1HWY1 is requesting rent concessions and will pay percentage rents(s) that is/are within District standards.
25. 1HWY1 shall conduct an evaluation and provide clarification of 1HWY1's potential returns associated with the charter school, given the proposed lack of District rent payment for this programmatic component.
26. If certain uses are not permitted on Tidelands (i.e. charter school and cinema), 1HWY1 shall conduct an evaluation of potential programmatic component alternatives and submit such evaluation to the District.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 8th day of November, 2016, by the following vote:

Memo

To: Lucy Contreras
From: Gaf
Date: March 16th, 2017
RE: Seaport San Diego Project Update

EXECUTIVE SUMMARY

1HWY1 has made significant strides in its continued work on the Seaport San Diego project. This document is an update on our current efforts, as well as the Port's 26 additional information requests that were issued on November 8th, 2016. During the time between November 8th, 2016 and March 17th, 2017, the 1HWY1 team has advanced a number of initiatives in addition to the Port's requested items. Over the last five months there have been 56 separate individuals working on the project for a total work effort of over five full-time equivalents (FTEs), equaling approximately 3,600 hours.

SUMMARY OF ONGOING WORK EFFORTS

1. Filling Out the Team

Since the November 8th Board Meeting, 1HWY1 has been formalizing the team that will complete the Due Diligence tasks, as well as other key efforts. The current team members are:

- | | |
|---|--|
| <ul style="list-style-type: none"> ▪ Allegis Development Services, Kip Howard
Design Manager & Owner's Representative ▪ Gafcon
Program / Project Management ▪ Gensler Architects
Urban Branding ▪ Ninyo & Moore
Geotechnical Engineering ▪ Project Design Consultants
Civil Engineering ▪ Katz & Associates, Sarah Katz & Irene McCormack
Community Outreach ▪ Offices of Julie Dubick
Community Outreach | <ul style="list-style-type: none"> ▪ Collaborative Land Solutions, Allison Rolfe
Community Outreach ▪ Hall Aquatic, Eric Hall
Aquarium Technical Assistance ▪ BIG Architecture
Aquarium Design ▪ Studio Fink, Peter Fink
Lighting Designer ▪ Glottman – Simpson
Structural Engineer ▪ Moffatt & Nichol
Marine Engineering ▪ AVRP
Architect ▪ Teel Roeper
Legal Services ▪ CARS
Public Space Activation |
|---|--|

Additional scope includes development for additional legal services, technical studies and demand/feasibility studies.

2. Physical Due Diligence

- **Geotechnical Analysis of the existing Seaport site, both land and water**
 - Through an RFP process, we shortlisted and interviewed the top firms. We selected Ninyo & Moore, along with two sub-consultant Subject Matter Experts.
 - As part of the investigation, Ninyo & Moore will drill eight borings and perform 120 Cone Penetration Tests.
 - Ninyo & Moore will provide an impact assessment to the proposed project.
- **Civil Engineering Analysis of the existing Seaport site, both land and water**
 - Through an RFP process, we shortlisted and interviewed the top firms and selected Project Design Consultants.
 - Project Design Consultants will provide an impact assessment for the proposed project.
- **Multiple Access Agreements to obtain access to the site to perform Geotechnical Testing**
- **Permitting to obtain approval to perform Geotechnical Testing**

3. Urban Branding

The goal of the Urban Branding is to Identify and evolve the fundamental experience and brand narrative of Seaport San Diego. This unique point of view will facilitate the creation of distinctive and unifying platforms that bring strategic clarity to Seaport's brand positioning and messaging, visual identity systems and physical environments. The intent is to bring the ideas articulated in the competition proposal to life, to invigorate the brand, and help to articulate and actualize the design vision so it can be used as a framework and roadmap for further development of the plan.

We have been conducting interviews with the managing partners, stakeholders and collecting data from an online survey. The initial workshops and precedent workshops have been completed, as well as some preliminary visitor experience studies and overall visions. We are completing the final workshops and expect to have the draft Strategy Documentation and Report in April.

4. Community Engagement

In January, 1HWY1 formed a community engagement team to communicate with the variety of businesses, government agencies, associations, groups, and environmental organizations that have a direct or indirect interest in this project.

The team has identified 35 early stakeholders that require varying levels of communication and engagement. These include:

- | | |
|--------------------------------------|--|
| ▪ Port Tenants Association | ▪ San Diego Regional Chamber of Commerce |
| ▪ Seaport Village Tenants | ▪ San Diego Board of Supervisors |
| ▪ San Diego City Council | ▪ San Diego Convention Center Board |
| ▪ Downtown Residents Groups | ▪ San Diego Tourism Authority |
| ▪ Downtown Planning Groups | ▪ Coastal Commission and Staff |
| ▪ Working Waterfront groups | ▪ Sierra Club |
| ▪ Coronado City Council | ▪ Sustainable Food Coalition |
| ▪ The Navy | ▪ USS Midway Museum |
| ▪ Mayor Kevin Faulkner and his staff | ▪ San Diego Coastkeeper |
| ▪ Downtown San Diego Partnership | |

- State Lands Commission
- The Hyatt, Hilton, and Marriott
- The San Diego County Taxpayers Association
- Downtown East Village Planning Group
- Barrio Logan Community Group
- Commercial Fishermen

5. Commercial Fishing

From the date of award, the 1HWY1 team has continued its work with the Commercial Fishing stakeholders. A Steering Committee has been formed in order to define a consensus vision for Tuna Harbor and Driscoll Wharf, with a goal of having this vision incorporated into the Port Master Plan Update that is currently underway.

- This steering committee has met ten times to work to provide options for Tuna Harbor. Key areas of focus:
 - Offloading and Processing Considerations
 - Truck Access
 - Parking
 - Wave Attenuation
 - Economic Viability
 - Cranes, Pumps, Ice
 - Inclusion of the existing Dockside Market
 - Secondary uses compatible to commercial fishermen
- 14 key stakeholder groups have been identified that need to be engaged. These groups will help verify the Port Master Plan Update process includes the variety of uses proposed. These enhanced fishing uses would allow future aspirational options for Tuna Harbor and Driscoll's Wharf to be considered without an Amendment to the Port Master Plan.
 - Commercial Fishermen
 - Processing
 - Sustainable Seafood
 - Scripps and NOAA (SIO)
 - Tug Boats
 - Sport Fishing
 - Legacy Tuna Fishermen
 - NOAA
 - Aquaculture
 - Ferries and Taxis
 - Blue Tech
 - Whale Watching
 - Other Tourist Serving Excursions
 - The Navy

6. Development Program Component Refinement

Concurrently, with the efforts above and the response to the Port items, 1HWY1 has been refining and defining the development program components of the Project. These include:

- A. The Aquarium** is developing through a detailed multi-step process. Nationwide benchmarking visits have been conducted and workshops on programing and operations have been scheduled. Further refinement is scheduled with site visits and workshops with BIG Architecture followed by an intensive program and design development process with the design, operations, and ownership teams. Additionally, we have retained an aquarium consultant to assist in the program development and technical design of the aquarium. We are working with these partners to refine programmatic and operational strategies. Once these strategies are set, conceptual design, cost estimating and operational feasibility studies will be completed.

- B. The Maritime Educational Institute** Program development has made progress with discussions with SIO as the operator. The round table discussions with the Port, partners and State Lands have further refined and defined the Marine Institute program. We are continuing to work with these partners to refine the program and operational strategies. Once these strategies are set, conceptual design, cost estimating and operational feasibility studies will be completed.
- C. The Spire** Program development has made progress with discussions with key partners. Further round table discussions with programming partners are commencing to define the vision of the Spire and refine programmatic and operational strategies. Once these strategies are set, conceptual design, cost estimating and operational feasibility studies will be completed.
- D. The Hospitality** components of the project's development are making progress through discussions with partners and the retention of Demand and Feasibility consultants. With the results of the Demand and Feasibility studies, Due Diligence technical studies, Urban Branding and partner direction, we will further solidify the program. We are working with these entities to refine programmatic and operational strategies. Once these strategies are set, conceptual design, cost estimating and operational feasibility studies will be completed.
- E. The Retail** components of the project's development are making progress through discussions with partners and the retention of Demand and Feasibility consultants. With the results of the Demand and Feasibility studies, Due Diligence technical studies, Urban Branding and partner direction, we will further solidify the program. We are working with these entities to refine programmatic and operational strategies. Once these strategies are set, conceptual design, cost estimating and operational feasibility studies will be completed.
- F. The Parking** component of the project's development is making progress through discussions with partners and the retention of Demand and Feasibility consultants. With the results of the Demand and Feasibility studies, Due Diligence technical studies, Urban Branding and partner direction we will further solidify the program. We are working with these entities to refine programmatic and operational strategies. Once these strategies are set, conceptual design, cost estimating and operational feasibility studies will be completed.
- G. Waterside Improvements.** We are working with Moffatt & Nicol to further define the different waterside elements:
 - 1. Commercial Fishing Harbor (Tuna Harbor)
 - 2. Recreational Marina
 - 3. Water's edge amenities
 - a. Beaches
 - b. Water quality

7. Inclusion and Diversity Program

The 1HYW1 partners' vision for the Seaport Project is to be a catalyst for Economic Development of historically underutilized groups. We are developing an initiative with definitive goals to hire small business, veterans, minorities, and women for the project. We are in the process of formalizing the goals and objectives of the initiative and conducting informal meetings with other organizations to study their approach and results. This will be an owner-driven model that will allow the flexibility to produce optimal results over customary approaches.

8. Responses to Port Questions

The response to the Port's comments follows the the numbering of the items from the Board "Resolution Memorizing Due Diligence and Information Gathering Efforts" issued on November 8th, 2016.

1. Provide a written update on the status of 1HWY1's anticipated retail tenant mix.

1HWY1 previously submitted a letter of support from CBRE documenting the viability of the retail component of the project. During this Due Diligence Phase, 1HWY1 has met with the California State Lands Commissioner, Betty Yee, to discuss uses on State Tidelands. As this is an ongoing conversation and process, so too will the anticipated retail tenant mix at Seaport San Diego.

2. Completion of a market and feasibility study to demonstrate support for the proposed programmatic components.

1HWY1 has reached out to numerous local and international consulting firms for market, feasibility and program proposals. The consultants have been evaluated based upon their scope of work, competence and reputation. At this time, 1HWY1 has short listed the core group of consultants and anticipates to make a final selection within the coming weeks. The market and feasibility studies will start immediately after that and will last 10-12 weeks.

3. Provide a written update on the status of on-going discussions and/or meetings with the Seaport Village tenants.

We have and will continue to meet regularly with representatives of the existing Seaport Village tenant group to facilitate their retention in the project.

4. Provide clarity and anticipated "marine-related" office tenant mix, including targeted uses, to ensure consistency with the Public Trust.

We have met with State Lands on other more pressing issues and address this one in the future.

5. Due to the proposed height and location of the SkySpire, obtain:

- Determination of no hazard from the Federal Aviation Administration,
- Consistency determination from the San Diego Regional Airport Authority,
- Determination from the U.S. Navy to ensure feasibility.

On Friday March 3rd, 1HWY1 applied for a notice of non-hazard in alignment with FAA regulations. We have received and responded to follow-up questions. Given the design of the spire is under 500 ft, the expectation remains that this will not be an issue. We are awaiting final response from the FAA, but as of March 9th, our application was "in progress/under review".

6. A written guarantee that the Seaport SkySpire will not be replicated.

The Seaport SkySpire will not be replicated. Within 1HWY1's operating agreement, and ancillary documents there is to be a commitment from ThrillCorp regarding the same.

7. Research the San Diego Foundation obligations related to Ruocco Park.

In January of 2017, 1HWY1 approached the San Diego Foundation and the board members of the Ruocco Fund for initial approval of conceptual design. On March 13th, 2017, the San Diego Foundation responded with a letter of support (*Exhibit A*).

8. Refine the program for the marine-focused charter school to ensure consistency with the Public Trust.

On February 17th, 2017 representatives of 1HWY1, Scripps Institute of Oceanography and the Port met with representatives of the State Lands Commission to discuss the vision for an Maritime education institute to determine if this was consistent with the Public Trust Doctrine. Although the details need further development, there appeared to be consensus that the vision was aligned with the doctrine.

9. Completion of a parking study to demonstrate whether adequate parking has been proposed. As stated, in task no. 10 on page 2, the mobility plan will be completed in parallel with the parking study.

1HWY1 has reached out to numerous local and international consulting firms for a market, feasibility, and shared parking proposals. During the analysis of the proposals, 1HW1 decided that ACE Parking is the optimal partner for long term operations due to their track record and familiarity with other District projects. Negotiations with ACE Parking are currently taking place. PWD anticipates ACE Parking will assist in the current analysis

10. Review existing mobility plans in the area, including, but not limited to: City of San Diego, Civic San Diego and San Diego Association of Governments to identify potential mobility strategies that could help alleviate any potential parking demand resulting from the proposed use. The mobility plan will be developed after the May Board meeting on a parallel track to the parking study as part of the project description and shall be consistent with the future Port Master Plan Update(PMPU).

1HWY1 has reviewed the City of San Diego's, SANDAG's, and Civic San Diego's proposed mobility plans. On January 25th, 2017, 1HWY1 met with Gary Gallegos of SANDAG, Paul Jablonski of MTS, and Supervisor, Ron Roberts, to discuss the proposed extension of the proposed 6th Avenue suspended cable-way system. SANDAG agreed to further study the Harbor Drive/PCH/Airport option discussed in our original proposal. We will begin to frame a mobility plan once the Due Diligence phase is complete. We will also continue to engage the PMPU team to review the mobility options.

11. Provide a written update on 1HWY1's progress on its plans for addressing the commercial fishing tenants of the G Street Mole during construction and after completion.

We are committed to maintaining Tuna Harbor as a working waterfront. 1HWY1, Gafcon, Moffatt & Nichol, Allegis Development, ABBA PM, and AVRP have engaged the commercial fishermen that berth their vessels in the harbor, and use the G Street Mole for parking, loading and offloading. As stated in our introductory letter, we have helped to form a steering committee to shape this vision early. If the Port is willing, 1HWY1 would like to assume control

of Tuna Harbor to implement the necessary upgrades to make this a first-class commercial fishing marina.

12. Analyze current space allocations and potential locations for Dock and Dine facilities.

We understand that proposed dock and dine facilities as a public amenity will be considered a term of the future real estate agreement between the District and the Port.

13. Refine the proposed water mobility plan to meet site specific objectives and ensure alignment with the PMPU.

The 1HWY1 team met with Hornblower on February 21st and Flagship on January 30th in order to explore increasing ferry landings and provide a streamlined water mobility plan to visitors of Seaport. We will continue these conversations. The conceptual plan will be completed during the due diligence phase of work.

14. Provide clarity on the proposed programming of public spaces and a list of spaces and proposed activities.

On March 14th, 1HWY1 convened a workshop under the leadership of a specialized consultant, (CARS, Community Arts Resources, Inc.), to continue to define what Seaport San Diego's public spaces will look like, and how they will work. Please refer to *Exhibit B* (CARS PowerPoint)

15. Provide map identifying the percentage of land proposed to be committed to parks and open space.

Changes to the layout may occur as a result of Due Diligence findings, but 1HWY1 remains committed to keeping this close (over 70%) to what was shown in the proposal.

16. Attend January Board meeting regarding the PMPU and attend briefing with the PMPU team as needed.

We reviewed the audio and PowerPoint presentation of the January Board meeting. We continue to have bi-weekly meetings with the Port to ensure we are aligned with the Master Plan Update.

17. Provide a written update on clarification of RCI's role and level of commitment.

RCI, as a valued member of our team, continues to bring their experience and expertise to bear on all aspects of the development process.

18. Form the 1HWY1, LLC and identify each of the member's roles and level of financial commitment.

The 1HWY1 teaming agreement outlines the 1HWY1, LLC members and percentage of ownership. The role of each member was identified in the supplemental information package submitted on September 13, 2016. As of March 17, 2017, these roles have not changed, and the additional financial commitments of the respective members will be documented and submitted as part of the ultimate operating agreement.

19. Form Protea Waterfront Development (PWD), LLC.

Protea Waterfront Development (“PWD”) has formed a Limited Liability Company with Yehudi “Gaf” Gaffen as the CEO. The LLC was formed on May 12, 2015, evidence of which was previously submitted to the Port.

20. Provide a copy of the operating agreement for the 1HWY1, LLC, including terms and conditions upon which a member could exit the LLC.

PWD has prepared a detailed term sheet outlining the terms and provisions of the 1HWY1 operating agreement and presented the same to all 1HWY1 members. These term sheets are presently being revised and clarified among the members. Once all term sheets have been signed, the operating agreement will be negotiated and finalized between the members and presented to the Port.

21. Provide a written update on 1HWY1’s progress in obtaining additional commitment letters from potential debt and equity providers.

1HWY1 continues to work with potential equity sources for the project.

22. Completion of market and feasibility study to validate demand and revenue and expense assumptions.

PWD has reached out to numerous local and international consulting firms for market, feasibility, and demand proposals. The consultants have been evaluated based upon their scope of work, competence, and reputation. At this time, PWD has shortlisted the core group of consultants and anticipates to make a final selection within the coming weeks. The market and feasibility studies will start immediately after and will last 10-12 weeks.

23. Provide a written update on the refined financial model to include, at a minimum:

- An allocation or public improvement costs at the programmatic level,
- A sources and uses projection at the programmatic component level, and
- Inclusion of additional costs and revenue sources.

PWD has finished the initial RFP model and is now working on further debt and equity scenarios to analyze variations of the capital stack, including but not limited to, private capital, institutional capital, EB-5, and L-1. This will be an ongoing process throughout the entirety of the life cycle of the project. PWD’s next steps will be to transition the financial analysis into a monthly model in the Argus software platform.

24. Provide a written update on 1HWY1’s proposed percentage rents (excluding hotels) and provide an update on whether 1HWY1 will be requesting rent concessions.

Nothing further at this time.

25. Provide a written update on 1HWY1’s evaluation of potential returns associated with the proposed charter school.

Concept under development.

26. Schedule a meeting in coordination with the District and State Lands Commission to ensure proposed uses (i.e. charter school and cinema), are permitted on Tidelands.

1HWY1 met with Jennifer Luchessi on February 17, 2017, and presented the intended uses proposed for the project.

Attachments:

Exhibit A: Ruocco letter

Exhibit B: CARS PowerPoint

Memo

To: Lucy Contreras
From: Yehudi Gaffen
Date: April 6, 2017
RE: Seaport San Diego Project Update

EXECUTIVE SUMMARY

1HWY1 has made significant strides on the Seaport San Diego project. The attached document is an update on our current efforts as of April 6, 2017, and includes updates to the District's 26 additional information requests that were issued on November 8, 2016. During the time between November 8, 2016 and April 6, 2017, the 1HWY1 team has moved forward on a number of initiatives, many included in the District's requested items. There have been 56 separate individuals working on the project. This equates to over five full-time equivalents (FTEs), equaling approximately 3,900 hours to date. The Seaport team continues to meet every two weeks with the Port's real estate team to update them on various topics including due diligence, communications, and the Port Master Plan Update. In addition to the significant investment made in the completion process, the 1HWY1 partners are scheduled to invest over \$4 million during the course of the in process "initial Due Diligence Phase", which started in November 2016, and is currently scheduled to continue through September 2017.

SUMMARY OF ONGOING WORK EFFORTS

1. Filling Out the Team

Since the November 8 Board Meeting, where the Commissioners voted unanimously to select the Seaport San Diego team and conclude the RFP process, 1HWY1 has been formalizing the team that will complete the Due Diligence tasks and other key efforts. These currently include the following:

- **Allegis Development Services, Kip Howard**
Design Manager & Owner's Representative
- **Gafcon**
Program / Project Management
- **Gensler Architects**
Urban Branding
- **Ninyo & Moore**
Geotechnical Engineering
- **Project Design Consultants**
Civil Engineering
- **Katz & Associates, Sara Katz & Irene McCormack**
Community Outreach & Public Relations
- **Offices of Julie Dubick**
Community Outreach
- **Collaborative Land Solutions, Allison Rolfe**
Community Outreach
- **Hall Aquatic, Eric Hall**
Aquarium Technical Assistance
- **BIG Architecture**
Aquarium Design
- **Studio Fink, Peter Fink**
Lighting Designer

- **Glotman – Simpson**
Structural Engineer
- **Moffatt & Nichol**
Marine Engineering
- **AVRP**
Architect
- **Teel Roeper**
Legal Services
- **CARS**
Public Space Activation

1HWY1 will continue to build the team and is looking for consultants to perform additional legal services, technical studies and demand/feasibility studies.

Please refer to Exhibit A

Gafcon and the 1HWY1 partners have reached out to 10 General Contractors to help validate the schedule, budget, and design. We are finishing the RFP process, will commence interviews in late April, and will make an official selection over the summer. The teams we have reached out to are as follows:

Our Master Schedule provides additional clarity to our process. *Please refer to Exhibit E*

2. Physical Due Diligence

1HWY1 is committed to a “Best in Class” team. We have and will continue to find firms and companies that demonstrate relevant experience with award-winning results. From our Geotechnical and Civil Engineers, down to their sub-consultants, 1HWY1 and their ownership representatives, Allegis Development and Gafcon, have laid the foundation for the creation of a world-class project.

- **Geotechnical Analysis of the existing Seaport site, both land and water**
 - Through an RFP process, we shortlisted and interviewed the top firms. After performing a Cost Analysis, and a review with our on-call engineer, we selected Ninyo & Moore.
 - Ninyo & Moore, Geotechnical and Environmental Sciences Consultants, is an ENR Top 500 Design Firm. Since the firm’s inception, they have provided geotechnical, environmental, and materials testing and inspection services on more than 350 projects for the Port of San Diego, more than 700 projects for the City of San Diego, and on 60 projects for Civic San Diego.
 - Additionally, 1HWY1 has retained two Geotechnical/ Seismic experts to assist and advise on potential impacts of the report.
 - Dr. Thomas Rockwell is a nationally - and internationally - renowned paleo seismologist and structural geologist. He has served as Geology Group Leader for the Southern California Earthquake Center, and is recognized as an expert in tectonics and earthquake hazards of Southern California and Baja California. Dr. Rockwell conducted extensive trenching programs to date earthquakes on faults in the western U.S., South and Central America, the Middle East and Asia, and routinely uses soil stratigraphy and geomorphology combined with various radiometric dating techniques to assess rates of fault activity, determine recency of faulting, and date past earthquakes.
 - Walter F. Crampton is the founding Principal of TerraCosta Consulting Group. He has been an engineer of record for hundreds of coastal projects, and has specific expertise in the approval of coastal development projects in Southern California.

- As part of the investigation, Ninyo & Moore is in the process of drilling eight borings and over 120 Cone Penetration Tests (CPT's).
- Ninyo & Moore will provide an impact assessment to the proposed project. We expect to have this assessment by late May 2017.
- **Civil Engineering Analysis of the existing Seaport site, both land and water**
 - Through an RFP process we selected Project Design Consultants (PDC) as our Civil Engineer
 - PDC has extensive experience working with the Port of San Diego, Civic San Diego, and the City of San Diego. Their recent project experience includes:
 - Old Police Station Headquarters Retail Center
 - Manchester Grand Hyatt Hotel
 - North Embarcadero Visionary Plan Phase 1
 - Manchester Pacific Gateway
 - San Diego Convention Center Expansion
 - Broadway Pier Cruise Ship Terminal
 - Seaport Village ALTA Survey and Due Diligence
 - Multiple Port of San Diego As-Needed Survey Contracts
 - Lane Field Hotels and Park
 - 5th Avenue Landing Hotel
 - PDC will perform:
 - Aerial Topographic Mapping
 - Boundary Survey
 - Encumbrance Title Review
 - Wet Utility Research
 - Dry Utility Research
 - Base/Master Drawing
 - Document Review and Conceptual Design Review
 - Water and Sewer Review
 - Dry Utility Evaluation
 - An as-built survey of existing Street Improvements
 - PDC will provide an overall impact assessment for the proposed project.
 - PDC will also provide a site constraints map at the end of April.
- **Multiple Access Agreements to obtain access to the site to perform Geotechnical Testing**
 - To perform this investigation, Gafcon had to facilitate a complicated Right of Entry agreement between Ninyo & Moore, Terramar, and the Port of San Diego. After 3 weeks of negotiations including Allegis Development, Gafcon's Sr. Project Manager, Teel & Roeper, Port Staff, the Port Attorney, Ninyo & Moore, and their respective insurers these access agreements were signed on March 17th. The work is expected to be completed on April 30th.
- **Permitting to obtain approval to perform Geotechnical Testing**

3. Urban Branding

1HWY1 retained Gensler for this process. Gensler is widely recognized as one of the world's leading Architectural firms.

The goal of this Urban Branding effort is to identify and evolve the fundamental experience and brand narrative of Seaport San Diego. This unique point of view will facilitate the creation of distinctive and unifying platforms that bring strategic clarity to Seaport's brand positioning and messaging, visual identity systems and physical environments. The intent is to bring the ideas articulated in the competition proposal to life, to invigorate the brand, and help to articulate and actualize the design vision so it can be used as a framework and roadmap by the design team for further development of the plan.

We have been conducting interviews with the managing partners, key stakeholders, researching surrounding current and future demographics and user types, as well as collecting data from an online survey. The initial workshops and precedent workshops have been completed, as well as some preliminary visitor experience studies and overall visions. We are completing the final workshops and expect to have the draft Strategy Documentation and Report complete in April.

We are planning on sharing our draft document around June 2017.

4. Community Engagement

In January, 1HWY1 formed a community engagement team to communicate with the variety of businesses, government agencies, associations, groups, and environmental organizations that have a direct or indirect interest in this project.

The team has identified 35 early stakeholders that require varying levels of communication and engagement. These include:

- | | |
|--|--|
| ▪ San Diego Port Tenants Association | ▪ San Diego Tourism Authority |
| ▪ Seaport Village Tenants | ▪ Coastal Commission and Staff |
| ▪ San Diego City Council | ▪ Sierra Club |
| ▪ Downtown Residents Groups | ▪ Sustainable Food Coalition |
| ▪ Downtown Planning Groups | ▪ USS Midway Museum |
| ▪ Working Waterfront Group | ▪ San Diego Coastkeeper |
| ▪ Coronado City Council/Mayor | ▪ State Lands Commission |
| ▪ The Navy | ▪ The Hyatt, Hilton, and Marriott |
| ▪ Mayor Kevin Faulkner and his staff | ▪ The San Diego County Taxpayers Association |
| ▪ Downtown San Diego Partnership | ▪ Downtown East Village Planning Group |
| ▪ San Diego Regional Chamber of Commerce | ▪ Barrio Logan Community Group |
| ▪ San Diego Board of Supervisors | ▪ Commercial Fishermen |
| ▪ San Diego Convention Center Board | |

5. Commercial Fishing

From the date of award, November 8, the 1HWY1 team has continued working with the Commercial Fishing stakeholders. A Steering Committee was formed to define a consensus vision for Tuna Harbor and Driscoll's Wharf, with the goal of having this vision incorporated into the integrated Port Master Plan Update that is currently underway. A District representative has attended each meeting.

As of April 6th, this steering committee has met eleven times to work to provide options for Tuna Harbor. Key areas of focus:

- Offloading and Processing Considerations
 - Truck Access
 - Parking
 - Wave Attenuation
 - Economic Viability
 - Cranes, Pumps, Ice
 - Pier Realignment
 - Inclusion of the existing Dockside Market
 - Aquaculture
 - Secondary uses compatible to commercial fishermen
- Fourteen (14) key user groups have been identified that need to be engaged. These groups will help verify the integrated Port Master Plan Update process that includes the variety of uses proposed. These enhanced fishing uses would allow future aspirational options for Tuna Harbor and Driscoll's Wharf to be considered without a subsequent Port Master Plan Amendment after the integrated PMPU.
 - Commercial Fishermen
 - Longliners
 - Smaller Vessels
 - Processing
 - Sustainable Seafood
 - Scripps and NOAA (SIO)
 - Tug Boats
 - Sport Fishing
 - Legacy Tuna Fishermen
 - NOAA
 - Aquaculture
 - Ferries and Taxis
 - Blue Tech
 - Whale Watching
 - Other Tourist Serving Excursions
 - The Navy

Integrating these groups into the project represents the value of developing this historically significant site. The partners want Tuna Harbor to embrace the past of the legacy of the Tuna Fishermen, maintain and increase the viability of the present commercial fisheries, and provide a window into the future with Blue Tech and Aquaculture. The Seaport team has met with all the groups mentioned above, created a dynamic and evolving plan that incorporates these aspects. We presented 4 options in an open house forum to the commercial fishermen, processors, Scripps and NOAA, the sports fishermen, Blue Tech representatives from The Maritime Alliance, and aquaculture representatives. The consensus was a modified version of option 4 (*Exhibit D*). The partners will commission an update to the 2010 Lisa Wise Consulting report, "Commercial Fisheries Revitalization" by June to help validate our design. The RFP for this report will go out in May.

The 1HWY1 partners continue to work with Moffatt & Nichol in these efforts. Moffatt & Nichol is a global infrastructure advisory firm of approximately 650 employees in 34 offices and seven countries. They provide practical solutions to clients in the marine terminal, transportation, energy, environmental, federal, and urban development markets around the world. Moffatt & Nichol is a

multidiscipline professional services firm with specialized expertise in structural, coastal, and civil engineering; environmental sciences; economics analysis; inspection & rehabilitation; and program management solutions. In 2016, this team was awarded the Project of the Year in two separate categories from the American Society of Civil Engineers (ASCE). Since November and 1HWY1's official selection, Moffatt & Nichol has contributed significant time and effort.

For more information regarding our comprehensive commercial fishing plan and process please refer to *Exhibit D*.

6. Development Program Component Refinement

Concurrently, with the efforts above and the response to the Port items, 1HWY1 has been refining and defining the development program components of the Project. These include:

- A. The Aquarium** The project is developing through a detailed multi-step process that has included six Nationwide benchmarking visits, and workshops on programing and operations. Further refinement is scheduled with visioning workshops, the potential for additional team members, and site visits with BIG Architecture followed by an intensive program and design development process with the design, operations, and ownership teams. Additionally, we have retained an aquarium consultant, Hall Aquatic, to assist in the program development and technical design of the aquarium. We are working with these partners to refine programmatic and operational strategies. Once these strategies are set, conceptual design, cost estimating, and operational feasibility studies will be completed. In conjunction with our Partner, Odysea, we are in discussions with San Diego Zoo Global and Scripps Birch Aquarium to explore opportunities for collaboration.
- B. The Maritime Educational Institute** Program development has made progress with discussions with Scripps Institution of Oceanography as the operator. The round table discussions with the Port, partners and State Lands Commission staff have been further refined and define the Marine Institute program. We are continuing to work with these partners to refine the program and operational strategies. Once these strategies are set, conceptual design, cost estimating and operational feasibility studies will be completed.
- C. The Spire** remains as originally proposed awaiting the results of the Geotechnical Engineering analysis in order to confirm location.
- D. The Hospitality, the Retail, and the Parking** components of the project's development are making progress through discussions with partners and the retention of Demand and Feasibility consultants. With the results of the Demand and Feasibility studies, Due Diligence technical studies, Urban Branding and partner direction, we will further refine the program. We are working with these entities to refine programmatic and operational strategies. Once these strategies are set, conceptual design, cost estimating and operational feasibility studies will be completed.
- E. Waterside Improvements.** We are working with Moffatt & Nicol to further define the different waterside elements:
 1. Commercial Fishing Harbor (Tuna Harbor)
 2. Recreational Marina
 3. Water's edge amenities

- a. Beaches
- b. Water quality

The specific programmatic elements for these waterside improvements can be extrapolated from the Master Schedule (*Exhibit E*).

7. Inclusion and Diversity Program

The 1HWY1 partners' vision for the Seaport Project is to be a catalyst for economic development for historically underrepresented groups. We are developing an initiative with definitive goals to hire small businesses, veterans, and minorities for the project. We are in the process of formalizing the goals and objectives of the initiative and conducting informal meetings with other organizations to study their approach, results, and adopt their best practices. This will be an owner-driven model that will allow the flexibility to produce optimal results over customary approaches.

8. Responses to Port Questions

The response to the Port's comments follows the request of the Port to respond to the items in three separate categories: (1) Ongoing, (2) To Be Updated by March 17 and (3) Deferred. The numbering of the response corresponds to the item in the Board "Resolution Memorializing Due Diligence and Information Gathering Efforts" issued on November 8, 2016. This memo is updated through April 6, 2017 in order to show the detailed levels of effort by the partners.

1. Provide a written update on the status of 1HWY1's anticipated retail tenant mix.

1HWY1 previously submitted a letter of support from CBRE (*Exhibit F*) documenting the viability of the retail component of the project. During this Due Diligence Phase, 1HWY1 has met with the California State Lands Commissioner Betty Yee to discuss uses on State Tidelands. As this is an ongoing conversation and process, so too will the anticipated retail tenant mix at Seaport San Diego.

2. Completion of a market and feasibility study to demonstrate support for the proposed programmatic components.

1HWY1 has reached out to numerous local and international consulting firms for market, feasibility and program proposals. The consultants have been evaluated based upon their scope of work, competence and reputation. At this time, 1HWY1 has short listed the core group of consultants and anticipates making a final selection within the coming weeks. The market and feasibility studies will start immediately after that and will last ten to twelve weeks. The master schedule will help clarify our process.

3. Provide a written update on the status of on-going discussions and/or meetings with the Seaport Village tenants.

We have and will continue to meet regularly with representatives of the existing Seaport Village tenant group to facilitate their retention in the project. In our meetings with Gensler's urban branding team and CARS, the Seaport team is planning dynamic interim activation for the current Seaport Village tenants, and have kept them apprised of our work. In order to provide

a smooth transition with the Seaport Village tenants, we would like to request that 1HWY1 take over the lease for Seaport Village in September 2018.

4. Provide clarity and anticipated “marine-related” office tenant mix, including targeted uses, to ensure consistency with the Public Trust.

1HWY1 met with Jennifer Luchessi on February 17, 2017, and presented the intended uses proposed for the project. We have taken the information from the meeting with State Lands and will incorporate this into our programming of the site.

5. Due to the proposed height and location of the SkySpire, obtain:

- Determination of no hazard from the Federal Aviation Administration,
- Consistency determination from the San Diego Regional Airport Authority,
- Determination from the U.S. Navy to ensure feasibility.

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7. Research the San Diego Foundation obligations related to Ruocco Park.

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On February 17th, 2017 representatives of 1HWY1, Scripps Institute of Oceanography and the Port met with representatives of the State Lands Commission to discuss the vision for a Maritime education institute to determine if this was consistent with the Public Trust Doctrine. Although the details need further development, there appeared to be consensus that the vision was aligned with the doctrine. We have four upcoming workshops with local educators and schools. The schedule for the Marine Institute program development is further defined in the Master Schedule.

9. Completion of a parking study to demonstrate whether adequate parking has been proposed. As stated, in task no. 10 on page 2, the mobility plan will be completed in parallel with the parking study.

1HWY1 has reached out to numerous local and international consulting firms for a market, feasibility, and shared parking proposals. During the analysis of the proposals, 1HWY1 worked with ACE Parking for parking operations strategy. Negotiations to formalize this relationship are in process.

10. Review existing mobility plans in the area, including, but not limited to: City of San Diego, Civic San Diego and San Diego Association of Governments to identify potential mobility strategies that could help alleviate any potential parking demand resulting from the proposed use. The mobility plan will be developed after the May Board meeting on a parallel track to the parking study as part of the project description and shall be consistent with the future Port Master Plan Update(PMPU).

1HWY1 has reviewed the City of San Diego's, SANDAG's, and Civic San Diego's proposed mobility plans. On January 25, 2017, 1HWY1 met with Gary Gallegos of SANDAG, Paul Jablonski of MTS, and Supervisor Ron Roberts to discuss the proposed 6th Avenue suspended cable-way system. SANDAG agreed to further study the Harbor Drive/PCH/Airport option discussed in our original proposal. We will begin to frame a mobility plan once the Due Diligence phase is complete in October. We will also continue to engage the PMPU team to review the mobility options.

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If the Port is willing, 1HWY1 would like to assume control of Tuna Harbor to implement the necessary upgrades to make this a first-class commercial fishing marina.

Once the PMPU goes through its environmental review, we would like to engage the Port District in discussions to make this a reality.

12. Analyze current space allocations and potential locations for Dock and Dine facilities.

We understand that proposed dock and dine facilities as a public amenity will be considered a term of the future real estate agreement between the District and the Port.

13. Refine the proposed water mobility plan to meet site specific objectives and ensure alignment with the PMPU.

The 1HWY1 team met with Hornblower on February 21 and Flagship on January 30 in order to explore increasing ferry landings and provide a streamlined water mobility plan to visitors of Seaport. We will continue these conversations. The conceptual plan incorporating a third ferry landing location will be completed during the Due Diligence Phase of work.

14. Provide clarity on the proposed programming of public spaces and a list of spaces and proposed activities.

On March 14th, 1HWY1 convened a workshop under the leadership of a specialized consultant, (CARS, Community Arts Resources, Inc.), to continue to define what Seaport San Diego's public

spaces will look like, and how they will work. Based in Los Angeles, CARS' work is centered on urban planning, event planning and production, public engagement and marketing. They partner with neighborhoods, nonprofits, foundations, cities, cultural institutions, developers and designers to create public programs and events that highlight the unique character and untapped potential of a particular place. With more than a quarter of a century of experience in activating the urban realm, CARS creates unique experiences where arts, culture, community and civic life collide.

CARS founders Katie Bergin and Aaron Paley created, produced and promoted some of Los Angeles' most innovative cultural programs and events in public spaces, including CicLAvia, Chinatown Summer Nights, the Santa Monica Festival, Pop-Up Broadway, GLOW and the Getty Museum Family Festivals. CARS has also been instrumental in planning, designing and programming some of Los Angeles' most popular cultural and community spaces, including Grand Park, California Plaza, Greystone Mansion and La Plaza de Cultura y Artes. CARS calls upon their years of experience as event producers to develop plans that are flexible and attractive to a varied audience. Please refer to *Exhibit B* (CARS PowerPoint)

15. Provide map identifying the percentage of land proposed to be committed to parks and open space.

Changes to the layout may occur as a result of Due Diligence findings, but 1HWY1 remains committed to keeping this close (over 70%) to what was shown in the proposal.

Currently 30.07 acres is dedicated to public space, or 75.8% of land acreage. Changes may occur as a result of Due Diligence findings, but 1HWY1 remains committed to keeping this promise with the public.

16. Attend January Board meeting regarding the PMPU and attend briefing with the PMPU team as needed.

We reviewed the audio and PowerPoint presentation of the January Board meeting. We continue to have bi-weekly meetings with the Port to ensure we are aligned with the Master Plan Update. In addition, the Seaport team attended the PMPU March 9 workshop, and the Port's PMPU open house attend all future workshops including the April 27 workshop. The 1HWY1 partners recognize the importance of this process especially as it relates to our own project.

17. Provide a written update on clarification of RCI's role and level of commitment.

RCI is not the only member of 1HWY1 with ground up development experience. On September 13, 2016, we provided the Port with responses to supplemental questions where we documented 16 "ground up" developments within the past 10 years, performed by 7 different partners. (Question 76)

RCI is a valued member of our team, and they plan to bring their experience and expertise to bear on all aspects of the development process. They are a founding member of the 1HWY1 entity, a contributor to the equity requirements, and are committed to be a part of the long-term management of the project. RCI is one of the largest marina operators on the East Coast, and they will bring their experience and network to Seaport San Diego. This will be the premier waterfront destination on the West Coast.

18. Form the 1HWY1, LLC and identify each of the member's roles and level of financial commitment.

The formation of the 1HWY1 Operating Agreement is in process (Detailed Term Sheet has been prepared and is under final negotiation) and should be in place in near future.

19. Form Protea Waterfront Development (PWD), LLC.

Protea Waterfront Development ("PWD") has formed a Limited Liability Company which has been provided to the Port

20. Provide a copy of the operating agreement for the 1HWY1, LLC, including terms and conditions upon which a member could exit the LLC.

See #18 above

21. Provide a written update on 1HWY1's progress in obtaining additional commitment letters from potential debt and equity providers.

1HWY1 continues to vet and confer with potential equity sources for the project. 1HWY1 will work with the District to produce confidential Letters of Interest from potential equity partners in Seaport San Diego when requested during the pre-development phase. The Letters of Interest will correspond to the progress of the project at time in which the Letters of Interest are requested. Letters of Interest are non-binding and subject to change.

22. Completion of market and feasibility study to validate demand and revenue and expense assumptions.

1HWY1 has reached out to numerous local and international consulting firms for market, feasibility, and demand proposals. The consultants have been evaluated based upon their scope of work, competence, and reputation. At this time, PWD has shortlisted the core group of consultants and anticipates to make a final selection within the coming weeks. The market and feasibility studies will start immediately after and will last 10-12 weeks.

Please Refer to the Master Schedule in Exhibit E.

23. Provide a written update on the refined financial model to include, at a minimum:

- An allocation or public improvement costs at the programmatic level,
- A sources and uses projection at the programmatic component level, and
- Inclusion of additional costs and revenue sources.

1HWY1 has finished the initial RFP model and is now working on further debt and equity scenarios to analyze variations of the capital stack, including but not limited to, private capital, institutional capital, EB-5, and L-1. This will be an ongoing process throughout the entirety of the life cycle of the project. PWD's next steps will be to transition the financial analysis into a monthly model in the Argus software platform. The assumptions will be updated with the results of the feasibility studies.

24. Provide a written update on 1HWY1's proposed percentage rents (excluding hotels) and provide an update on whether 1HWY1 will be requesting rent concessions.

At this time, under the scope of the original proposed public infrastructure improvements and barring no unforeseen critical changes to the infrastructure plan, 1HWY1 intends to conform to the percentage rents of the District, with the exception of ticket sales for the proposed Aquarium and Spire attractions as there are no clear District standards for these types of attractions. As such, 1HWY1 has modeled and presented a ticket sale percentage rent based upon the rent that SeaWorld San Diego pays to the City of San Diego, as that is the most relevant local comparable rent. The percentage rents will be further modeled after the completion of the market and feasibility studies and refinement of the financial model (see number 2 and 23).

25. Provide a written update on 1HWY1's evaluation of potential returns associated with the proposed charter school.

1HWY1 has met with met with Jennifer Luchessi on February 17, 2017, and presented the intended uses to discuss uses on State Tidelands. Per the discussions, a marine institute fits with the Tidelands Trust Act. As this is an ongoing conversation and process, so too will the evaluation of rent for the school or marine institute uses at Seaport San Diego.

The 1HWY1 partners remain steadfast and devoted to bringing a word-class waterfront project for all San Diegans!

Attachments:

Exhibit A: Organizational Chart

Exhibit B: CARS PowerPoint

Exhibit C: Ruocco letter

Exhibit D: Comprehensive Commercial Fishing Plan and Process for Tuna Harbor

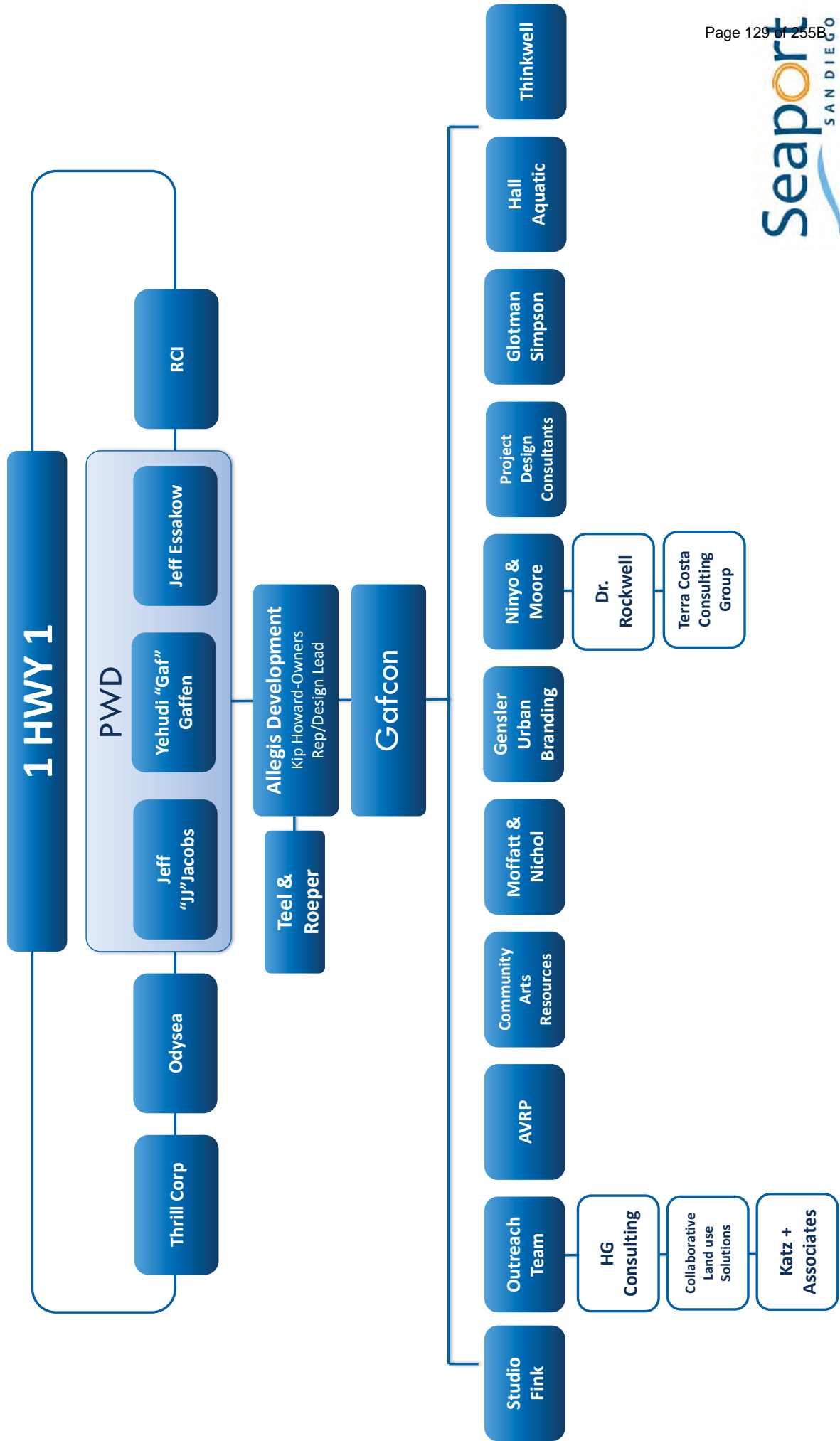
Exhibit E: Master Schedule

Exhibit F: Letter of Support from CBRE

Exhibit G: Bi-Weekly Port Agendas and Meeting Minutes

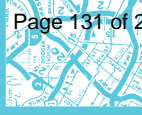
TABLE OF CONTENTS

EXHIBIT A	
ORGANIZATIONAL CHART	3
EXHIBIT B	
COMMUNITY ARTS RESOURCES-POWERPOINT	5-17
EXHIBIT C	
RUOCCO PARK LETTER	19-20
EXHIBIT D	
COMPREHENSIVE COMMERCIAL FISHING PLAN & PROCESS FOR TUNA HARBOR	22-91
EXHIBIT E	
MASTER SCHEDULE	93-94
EXHIBIT F	
LETTER OF SUPPORT FROM CBRE	96-97
EXHIBIT G	
BI-WEEKLY PORT AGENDAS AND MEETING MINUTES	99-123





SAN DIEGO SEAPORT PROGRAMMING + ACTIVATION VISIONING



Community Arts Resources
March 14, 2017

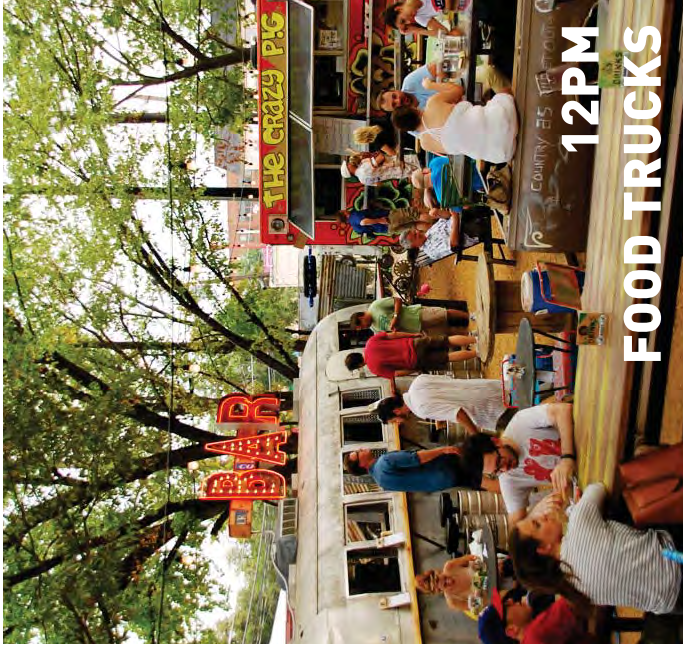
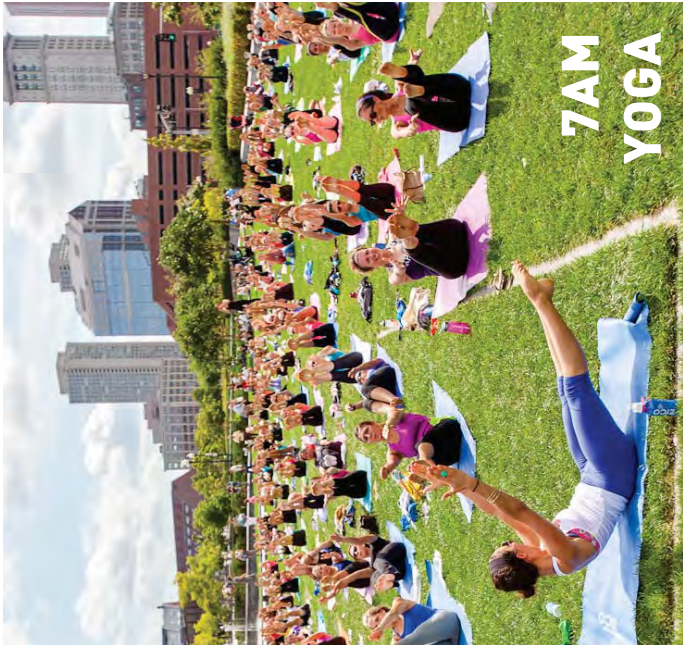
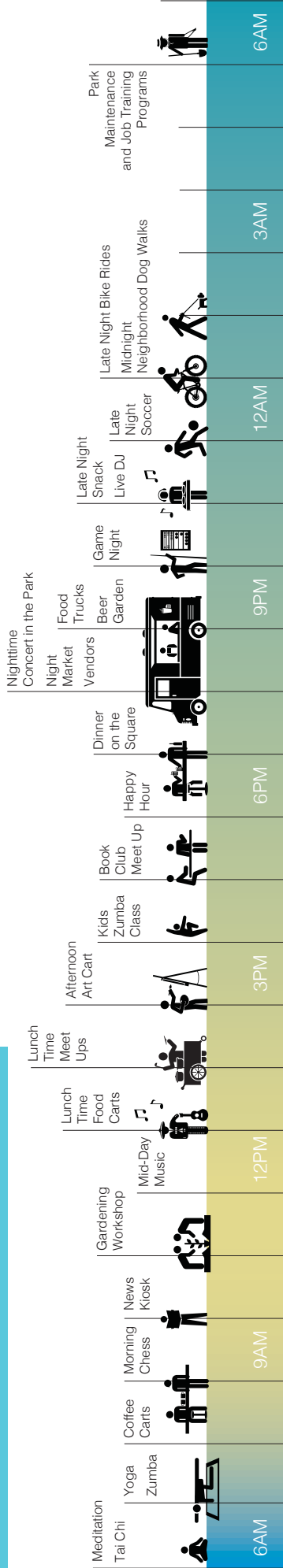
C A R S

Page 131 of 255B

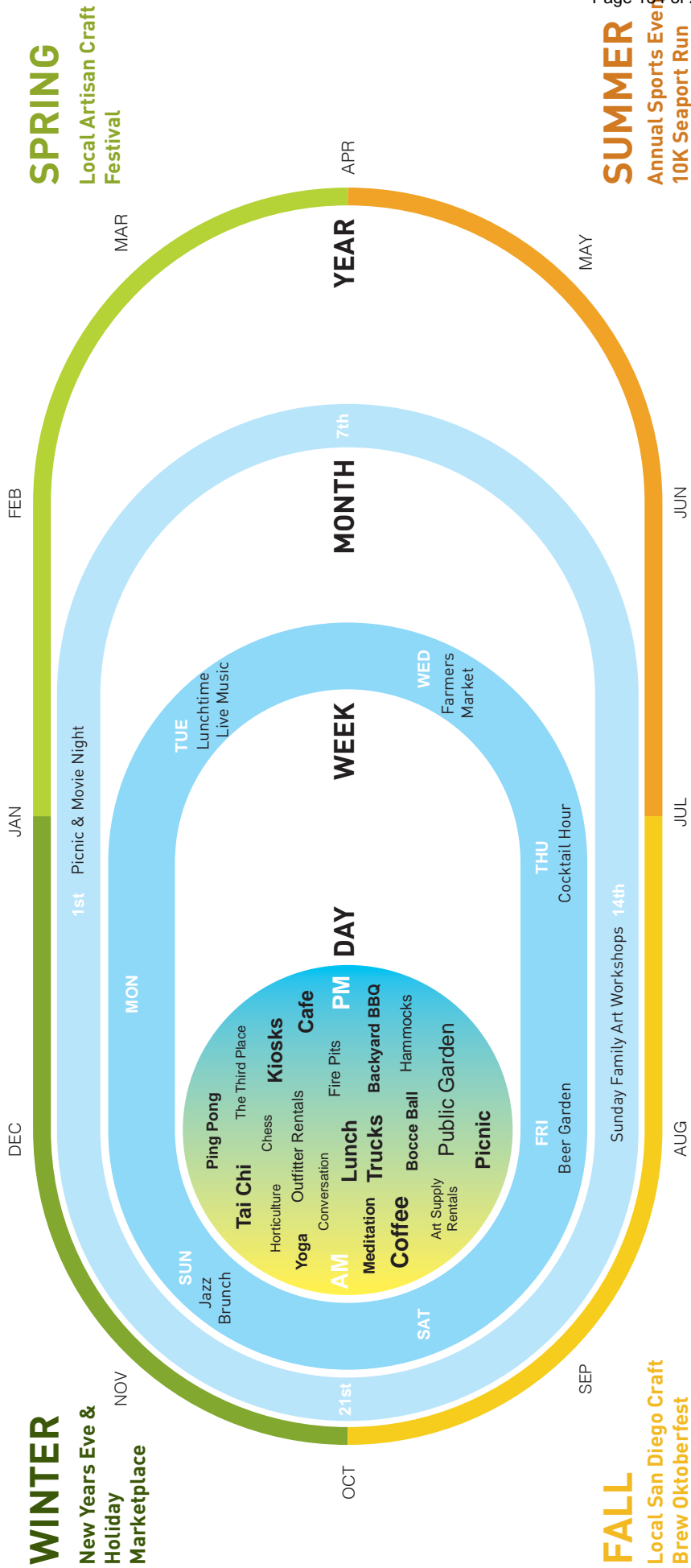
WHAT MAKES A SUCCESSFUL PUBLIC SPACE?



A 24/7 PLACE



A CONSTELLATION OF ACTIVATIONS: DAILY, WEEKLY, MONTHLY, SEASONAL, ANNUAL



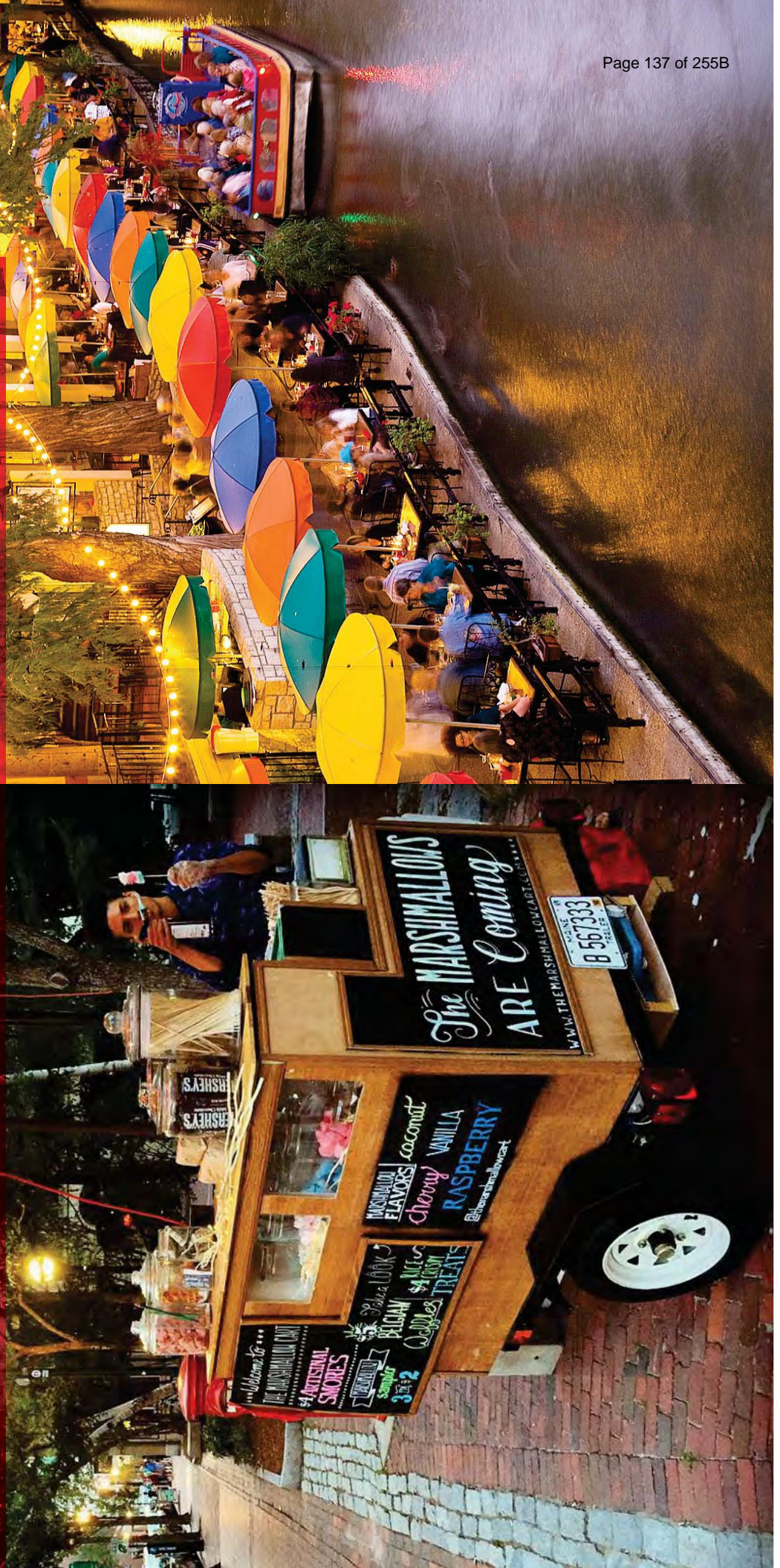
DIFFERENT SCALES OF SPACES: ENABLE DIVERSE AND VARIED EXPERIENCES



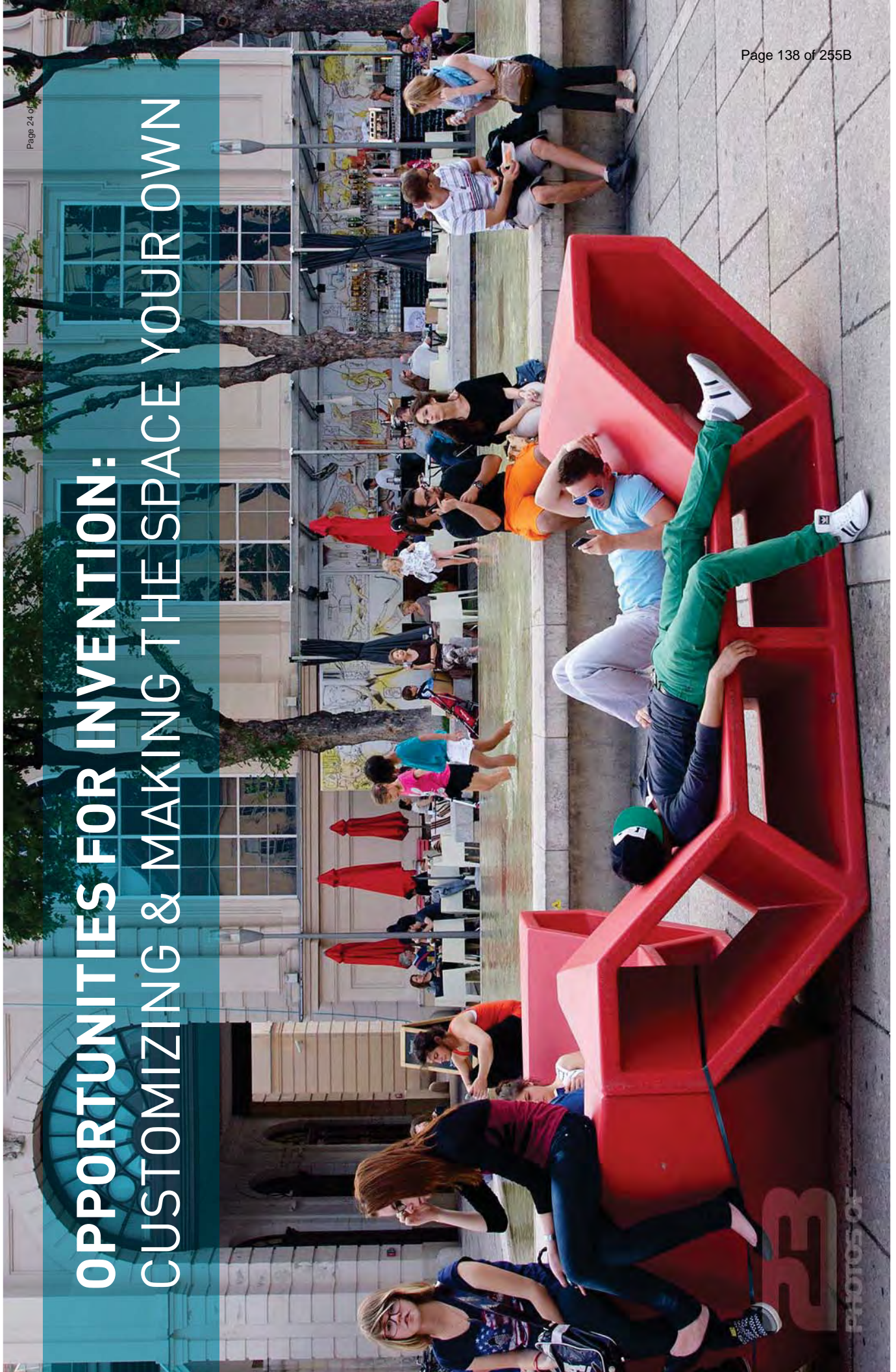
PLANNED “MESSINESS”: ENABLE DIVERSE PROGRAMMING ADJACENCIES



FORMAL & INFORMAL COMMERCE: PATIO DINING, STREET VENDORS, KIOSKS



OPPORTUNITIES FOR INVENTION: CUSTOMIZING & MAKING THE SPACE YOUR OWN



INCLUSIVE: A PLACE WHERE ALL WALKS OF LIFE FEEL AT HOME AND WELCOME



CONNECTS TO THE LOCAL ENVIRONMENT: FOSTERS HEALTH & WELLNESS



GOVERNANCE & FUNDING STRATEGIES



THE PUBLIC / PRIVATE SPACE SPECTRUM



GRAND PARK, LA

- **Publicly** owned land
- **Publicly** funded, managed, operated, and programmed



**CAFE PINOT +
LIBRARY PARK, LA**

- **Publicly** owned land
- **Publicly** funded, managed, operated, and programmed
- **Private** restaurant inhabiting space within park



BATTERY PARK, NYC

- **Publicly** owned land
- **Publicly & Privately** funded
- **Non-Profit** established to manage, operate, and program space



**HORTON PLAZA
PARK, SD**

- **Publicly** owned land
- **Privately** funded, managed, operated, and programmed



THE GROVE, LA

- **Privately** owned land
- **Privately** funded, managed, operated, and programmed

PUBLIC

PRIVATE

CASE STUDY: GRAND PARK, LOS ANGELES



SIZE: 12 AC

(For reference, Ruocco Park = 3.3 AC)

PROGRAMMING:

- Lunchtime Yoga, Food Trucks & Concerts
- Art Installations
- Musical Performances
- Downtown Bookfest
- Renegade Craft Fair
- 4th of July Celebration
- New Years Eve Celebration (~50,000 pp)

GOVERNANCE:

- Funded by LA County
- Managed, Operated, Programmed & Marketed by The LA County Music Center

2016 ANNUAL OPERATING BUDGET:

Expenses: \$5,435,000

Revenue (rentals, parking lot, etc.): \$1,387,000



The San Diego
Foundation
Growing a Vibrant Region

2508 Historic Decatur Rd., Ste. 200
San Diego, CA 92106
SDFoundation.org
(619) 235-2300

BOARD of GOVERNORS

March 13, 2017

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Mr. Yehudi Gaffen

VICE CHAIR, SECRETARY

Kay Chandler, CFA

Protea Development

5960 Cornerstone Court West, Ste. 100

TREASURER

Elisabeth Eisner Forbes, Esq.

San Diego, CA 92121

VICE CHAIR

Benjamin Haddad, Esq.

Dear Mr. Gaffen,

VICE CHAIR

Kevin Harris

This letter is intended to confirm the discussions between Protea Waterfront Development, LLC (hereinafter "Protea") and The San Diego Foundation (hereinafter "The Foundation") concerning the 1HWY1 Seaport San Diego project, a proposed redevelopment of the Central Embarcadero including Ruocco Park (hereinafter "the Project" and depicted in Exhibit A).

VICE CHAIR

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Garry Ridge

Donna Marie Robinson

Barbara Sawrey, PhD

Nancy Spector, Esq.

In consideration of the following:

1. The Unified Port of San Diego built Ruocco Park in accordance with an Agreement between itself and The Foundation (Exhibit B).

2. The Foundation has a continuing interest in preserving Ruocco Park "as an interactive public space that integrates the use of hardscape, ornamental horticulture and art for the benefit of the public to gather, view, and enjoy the waterfront and skyline of San Diego".

3. Protea is currently in an exclusive "due diligence" phase with the Unified Port of San Diego, and anticipates entering into an exclusive negotiation agreement (ENA) and ultimately a lease which will incorporate the Ruocco Park area described herein.

PRESIDENT & CEO

B. Kathryn Mead

4. Protea approached The Foundation in January 2017 to obtain The Foundation's initial approval for the conceptual design of the area including and surrounding Ruocco Park (Exhibit C).

Based on the above, The Foundation provides preliminary approval for the conceptual design referenced above based on:

1. Review and approval rights of the design as it progresses, and at a minimum at the completion of the Schematic, Design Development, and Construction Document Phases of the design process.
2. Conformance with the concept design described and depicted in Exhibit C.
3. Your attention is called to Section 16 of the Foundation agreement with the Port of San Diego regarding Park relocation and the Exhibit C of the Foundation agreement with the Port of San Diego regarding frequency of public and private events at the Park.

All other terms of the Foundation Agreement (Exhibit B) shall remain in place.

Sincerely,



B. Kathlyn Mead
President & CEO

CC: Adrienne D. Vargas, Vice President
Jeff Conyers, Bruce Blakley, Pete Martinez, Ruocco Fund Advisors

EXHIBIT A



San Diego Unified Port District
Document No. **54151**
Filed **NOV 10 2008**
Office of the District Clerk

**DONATION AGREEMENT
FOR THE DEVELOPMENT OF
RUOCCO PARK
BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
AND
THE SAN DIEGO FOUNDATION**

TABLE OF CONTENTS

Paragraph/Exhibit	Page Number
RECITALS	
1. DEFINITIONS	2
2. SITE	3
3. TERM	4
4. PARK NAME	4
5. PARK USE	4
6. GRANT FUNDS	4
7. PARK DESIGN CONSULTANT	6
8. PARK IMPROVEMENT PLANS	7
9. PIERWALK PROPERTY	10
10. SITE PREPARATION WORK	10
11. CONSTRUCTION PHASE	10
12. OWNERSHIP OF PARK IMPROVEMENTS	13
13. DEDICATION CEREMONY	13
14. MAINTENANCE, REPAIR AND REPLACEMENT OF PARK IMPROVEMENTS	13
15. UTILITIES	14
16. PARK RELOCATION	14
17. APPROVALS AND NON-LIABILITY	14
18. HAZARDOUS MATERIALS	15
19. PARK OPERATIONS INDEMNITY	15
20. NOTICES AND COMMUNICATIONS	16
21. THIRD PARTY BENEFICIARY	16
22. WAIVER	17
23. SUCCESSORS AND ASSIGNEES	17
24. INTERPRETATION	17
25. INTEGRATION, MODIFICATIONS, AMENDMENT AND RELIANCE	17
26. CONSTRUCTION OF AGREEMENT	17
27. DISPUTE RESOLUTION	17
28. ATTORNEY FEES	18
29. APPLICABLE LAW	18
30. RIGHTS OF THE U.S. GOVERNMENT	18
31. REQUISITE AUTHORITY	18
32. SIGNATURES REQUIRED	19
EXHIBIT A: Plat	
EXHIBIT B: Legal Description	
EXHIBIT C: Park Use Guidelines	
EXHIBIT D: Site Preparation Work	

**DONATION AGREEMENT
FOR THE DEVELOPMENT OF
RUOCCO PARK**

This Donation Agreement for the Development of Ruocco Park (this "Agreement"), made NOV 10, 2008, is by and between The San Diego Foundation, a California nonprofit corporation ("Foundation"), and the San Diego Unified Port District, a public corporation ("District").

RECITALS

- A. On February 7, 2006, the District amended its Port Master Plan with the Old Police Headquarters & Park Project Port Master Plan Amendment (the "2006 PMPA"). The 2006 PMPA contemplates the future demolition of the Harbor Seafood Mart building, located in the Tuna Harbor planning subarea of the Centre City Embarcadero, and the construction of a new public park on the waterfront consisting of approximately 3.3 acres on the north end of the site (the "Park"). The 2006 PMPA was certified by the California Coastal Commission on August 10, 2006.
- B. The District desires to commence the design and construction of the public park described in the 2006 PMPA as soon as reasonably practicable.
- C. The Foundation has expressed its desire to donate the total of The Lloyd and Ilse Ruocco Fund "B", which, as of the date hereof, is estimated to be Three Million Five Hundred Thousand Dollars (\$3,500,000), (the "Ruocco Fund"), and as further defined in section 1.6, to enhance the design, construction and maintenance of the public park to be constructed by the District. The Foundation is charged with the responsibility of using the funds for the purpose of establishing an urban park that is an example of outstanding urban design.
- D. The District and the Foundation desire to work together to develop the improvement plans for the park, each of them enjoying the right to review and approve the design of the Park. The major elements of the Park will include landscape and aesthetic improvements such as a water feature, lawns, benches, enhanced paving, varieties of plant materials and outdoor sculpture. Both parties agree that the Park would be a valuable aesthetic improvement of the District's Tidelands, would be consistent with the tidelands trust upon which such lands are administered by the District and the State of California, and would provide significant long-term benefits to the community at large.

In consideration of the recitals and the mutual obligations of the parties as herein expressed, District and Foundation agree as follows:

1. **DEFINITIONS:** The following definitions apply unless they are inconsistent with the context of this Agreement:
 - 1.1. **"Board"** means the San Diego Unified Port District's Board of Port Commissioners.
 - 1.2. **"Park Use Guidelines"** are defined in Exhibit C.
 - 1.3. **"Special Event Policy"** means the San Diego Unified Port District's Board of Port Commissioner Policy No. 452.
 - 1.4. **"Basic Park"** means a park consisting of grass, plants and trees, sprinkler system, plain concrete walkways, standard benches and standard lighting fixtures. A Basic Park does not include restrooms, water features or playground equipment.
 - 1.5. **"Park Enhancements"** means any and all improvements to the Park that are over and above the improvements associated with a Basic Park, including all public artwork submitted at any time during the Term of the Agreement by the Foundation that is installed or constructed on the Park.
 - 1.6. **"Ruocco Fund"** means the total of The Lloyd and Ilse Ruocco Fund "B", which, as of the date hereof, is estimated to be Three Million Five Hundred Thousand Dollars (\$3,500,000), including all earnings and net of administrative and charitable fees, to be donated towards the design and construction of the Park Enhancements and used to maintain, repair and replace the Park Enhancements.
 - 1.7. **"Retained Funds"** means the undisbursed portion of the Ruocco Fund not used towards the design and construction of the Park Enhancements to be placed in a fund established with the Foundation, where the Retained Funds and net earnings, less administrative and charitable fees, on the Retained Funds over the Term of this Agreement are paid by the Foundation towards the maintenance, repair and replacement of the Park Enhancements. The distribution of the Retained Funds will be used for the maintenance, repair and replacement of the Park Enhancements based on an annual maintenance budget for the duration of the term of this Agreement after the initial design of the Park and the construction of Park Enhancements.
 - 1.8. **"Site Preparation Work"** is defined in Exhibit D.
 - 1.9. **"Park Improvements"** means any and all improvements to the Site, including, but not limited to, the Site Preparation Work, the construction

of the Basic Park, Park Enhancements and any public artwork installed on the Site for the Term of this Agreement.

- 1.10. **"Park Improvement Plans"** means the plans prepared by the Consultant for the Park Improvements, including, but not limited to, the conceptual development plans, preliminary development plans and working drawings.
 - 1.11. **"Park Construction Work"** means any and all improvements made to the Site after completion of the Site Preparation Work to complete the Park in accordance with the Park Improvement Plans.
 - 1.12. **"Consultant"** refers to architect Dennis Otsuji of ONA Associates, Inc., located at 966 Business Park Ave., Suite 103, San Diego, CA, 92131, or any other design and/or development professional(s) designated by the Foundation to design the Park.
 - 1.13. **"District Representative"** means the individual appointed by the District for the purposes of administering the Park design process and handling project management responsibilities for the design and construction of Ruocco Park.
 - 1.14. **"Foundation Representative"** means the individual appointed by the Foundation for the purposes of representing the Foundation in the Park design process.
 - 1.15. **"Conceptual Development Plans"** means the conceptual plans prepared by the Consultant and further defined in section 8.1 of this Agreement.
 - 1.16. **"Preliminary Development Plans"** means the preliminary plans prepared by the Consultant, including, but not limited to, schematic design, and further defined in section 8.2 of this Agreement.
 - 1.17. **"Working Drawings"** are defined in section 8.3 of this Agreement.
 - 1.18. **"Relocation Site"** means the relocated or replacement park comparable in size and location to the Park and further defined in section 16 of this Agreement.
2. **SITE:** The Park will be that certain real property located within the District's Planning District 3, Centre City Embarcadero, between the waterfront and Pacific Highway and along the southern edge of Harbor Drive, as depicted on the attached Exhibit A and as legally described on the attached Exhibit B, which is incorporated herein by this reference (the "Site").

3. **TERM:** The term ("Term") of this Agreement is sixty-six (66) years, unless sooner terminated as herein provided, commencing from the date this Agreement is fully executed.
4. **PARK NAME:** The Park will be named "Ruocco Park" for the Term of this Agreement and the name of the Park will appear on the Site on a "Monument Sign" conforming to the approved Construction Bid Documents. The Monument Sign shall be consistent with Board of Port Commissioner Policy 610, "Monuments, Memorials and Plaques."
5. **PARK USE:** The Site will be used exclusively as public park during the Term, subject to (i) the Park Use Guidelines in the attached Exhibit C; (ii) the District's property use program as outlined in the Board of Port Commissioner Policy No. 452, "Permit Fees for the Use of the District Public Parks for Special Events" as applied to all Tidelands parks (Special Event Policy); and (iii) Section 8.02 of the San Diego Unified Port District Code titled "Park Areas Regulated", as either or all are amended from time to time. In the event of any inconsistency between the Park Use Guidelines and the Special Event Policy, the terms of the Park Use Guidelines shall control.
6. **GRANT FUNDS:** Subject to the terms and conditions set forth herein, the Foundation agrees to donate to the District the Ruocco Fund, which is currently estimated to be Three Million Five Hundred Thousand Dollars (\$3,500,000), towards the design and construction of Park Enhancements and the maintenance, repair and replacement of the Park Enhancements. As of the date hereof, it is estimated that approximately Two Million Five Hundred Thousand Dollars (\$2,500,000) of the Foundation's donation will be used for the initial design and construction of the Park Enhancements and approximately One Million Dollars (\$1,000,000) of the Foundation's donation will be placed in the Retained Funds and disbursed in annual installments by the Foundation for the maintenance, repair and replacement of the Park Enhancements for the duration of the Term of this Agreement. The Foundation and the District shall use their best efforts to ensure that the amount of funds expended from the Ruocco Fund towards the design and construction of the Park Enhancements shall be such that the remaining balance of the Retained Funds can adequately maintain the Park Enhancements for the duration of the Term of this Agreement, as described in section 8.1. In the event that the total amount expended for the initial design and construction of the Park Enhancements is less than Two Million Five Hundred Thousand Dollars (\$2,500,000), the excess of the funds shall be applied to the maintenance, repair and replacement of the Park Enhancements. Any additional funds that accrue in the Ruocco Fund will be applied to the maintenance, repair and replacement of the Park Enhancements.

- 6.1. Timing and Disbursement of Initial Park Development Funds: The amount and timing of the disbursement of the funds by the Foundation shall proceed as follows: (i) One Hundred Twenty-Five Thousand Dollars (\$125,000) shall be delivered to the District upon execution of the District's contract with the Consultant; (ii) Two Hundred Fifty Thousand Dollars (\$250,000) upon the award of the general contract for construction of the Park based upon the Construction Bid Documents; (iii) Five Hundred Thousand Dollars (\$500,000) upon the commencement of the Park Construction Work; (iv) Forty percent (40%) of the remaining balance of the Park Enhancement design and construction budget as agreed to by The Foundation and the District upon the receipt by the Foundation of written notice from the Consultant that the Park Construction Work has reached the midpoint in construction; and (v) The balance of the Park Enhancement design and construction budget as agreed to by the Foundation and the District upon receipt by the Foundation of written notice from the Consultant that all Park Construction Work is completed and the Park is opened to the public. Notwithstanding the foregoing, the Foundation may modify the amount and timing of the disbursements of such funds with the approval of the District.
- 6.2. Disbursement of Maintenance Funds: After completion of the Park Construction Work and the Park is opened for public use, the Foundation is required to make annual grants from the Retained Funds for the Term of this Agreement, or until the Retained Funds have been entirely depleted, whichever occurs first, to the District for the maintenance, repair and replacement of the Park Enhancements. Reimbursable costs will include, but not be limited to, compensation to be paid to District employees for the maintenance, repair and replacement of the Park Enhancements, plus the District's related overhead charges, cleaning and maintenance supplies, special maintenance equipment for the Park Enhancements and contracted-for repairs and maintenance services. During the design process, but no later than the commencement of the Site Preparation Work, the District and Foundation, in consultation with the Consultant, will agree on the allocation of maintenance requirements and an annual maintenance budget for the Park with the intent that, for the Term of this Agreement, the Foundation be responsible for the costs to maintain, repair and replace the Park Enhancements and the District be responsible for the costs to maintain and repair a Basic Park. Prior to the beginning of the District's fiscal year, the District will submit to Foundation an annual maintenance budget for review and concurrence. Within ninety (90) days from the end of the District's fiscal year, the Foundation is required to make annual grants from the Retained Funds for the maintenance, repair and replacement of the Park Enhancements in accordance with the annual maintenance budget.

6.3. Public Art: The Park shall incorporate a public art plan in its design submittals and provide public artwork(s) equal to one (1%) percent of the Park's total proposed development budget. The Foundation shall submit to the District proposals for public art to be constructed or installed on the Site before completion of the Park Construction Work, which will be reviewed by the District's Public Art Committee, whose recommendation will be submitted to the Board for approval consistent with BPC Policy No. 609 titled "Port Public Art Program," as amended from time-to-time. Upon Board approval, proposed artwork shall be included in the construction documents for Park Improvements. Construction of the initial public art will not be submitted for bid, unless necessary pursuant to the laws of the State of California regarding Public Works projects, but the District will enter into a direct contract with the artist and the form of the agreement shall be subject to the prior reasonable approval of the District and the Foundation. After completion of Park Construction Work and the initial public art has been approved by the Board and installed on the Site, all subsequent public art proposals submitted by the Foundation, or by any other means, are subject to BPC Policy No. 609 and the Foundation for review and consistency to maintain the purpose of the Ruocco Fund and the donor's intent.

7. **PARK DESIGN CONSULTANT:** The District shall retain Consultant to prepare the design of the Park, including, but not limited to, the Site Preparation Work and Park Improvement Plans, for the Park Improvements subject to the District's standard public works contracting policies, procedures and contracts. District shall be solely responsible for administering the contract with the Consultant. If District is unable to reach contractual agreement with Consultant, District will so notify the Foundation and Foundation will, designate in writing within thirty (30) days of receipt of such notice a new proposed Consultant. If the District is unable to reach agreement with the new Consultant proposed by the Foundation, within ninety (90) days after the District's receipt of the name of the proposed Consultant, then the Foundation may terminate this agreement.

7.1. Designation of Representatives: The District and the Foundation will respectively appoint one individual as their representatives for purposes of administering the Park design process as described in section 8 below. The District Representative and the Foundation Representative shall be selected concurrently with the approval of the Consultant. Unless replaced upon written notice, the Executive Director of the District or his/her designee and the Foundation's Representative shall have full authority and responsibility to act on behalf of the District and the Foundation, respectively, with regard to planning, design and budgeting decisions, but shall have no right to modify this Agreement or waive any material right of his or her principal under this Agreement. The

Foundation, at its election, shall have the right to consult advisers with regard to the plans, specifications and cost estimates prepared by the Consultant and the District's comments thereto. The Foundation's advisers may attend design and budget meetings with the District to discuss plans and cost estimates.

- 7.2. Foundation and District Review of Development Plans: Foundation and District agree to collaborate and cooperate with each other on the Park design. The major design elements of the Park shall include landscape and aesthetic improvement enhancements such as, but not limited to, a water feature, enhanced benches, enriched paving, varieties of plant and lawn materials, specimen trees, outdoor sculpture(s) and/or other artworks. The final design of the Park is subject to the South Embarcadero Phase I Urban Design and Signage Guidelines and BPC Policy No. 454 titled "Tidelands Forestry Management Policy." Foundation and District each have the right to propose design modifications to the Park Improvement Plans to keep design and development costs within budget, or to improve the design of the Park Improvements. Foundation agrees to either timely approve in writing the Park Improvement Plans, or provide in writing to District the modifications that must be made to obtain Foundation's approval of the Park Improvement Plans. Foundation's written response to District shall be within twenty (20) calendar days following receipt of a copy of the Conceptual Development Plans, within twenty (20) calendar days following receipt of a copy of the Preliminary Development Plans, and within twenty (20) calendar days following receipt of a copy of the Working Drawings, which plans and drawings are described in section 8 below. If the District does not agree with the modifications requested by Foundation, District and Foundation will meet to discuss and agree upon the proposed modification(s) of the Park Improvement Plans. If resolution is not obtained within thirty (30) calendar days following the date the District notifies Foundation that it does not agree with one or more of the modifications requested by Foundation, then the parties shall attempt to resolve the dispute(s) informally as set forth in section 27.

8. PARK IMPROVEMENT PLANS: Foundation and District agree: (i) that Consultant shall prepare the Park Improvement Plans: (ii) that title to the Park Improvement Plans shall vest in the District, and (iii) that District shall be solely responsible for administering the Consultant's contract.

- 8.1. Conceptual Development Plans: Consultant shall be directed by District to first prepare Conceptual Development Plans consisting of renderings and drawings definitively showing a scaled site layout of the Park, preliminary landscape and hardscape materials, preliminary sign concept

(including the Ruocco Park Monument Sign), preliminary public art concept, the location of the preliminary public art concept, water feature, benches, and other features necessary for Foundation and District to understand precisely the proposed construction of the Park. Consultant also shall be required to identify the design and improvement Park Enhancement features included in the Conceptual Development Plans and provide an estimate of the approximate costs for all the Park Improvements, plus a separate estimate of the approximate costs for the design and improvement Park Enhancement features desired by Foundation. The Foundation and the District shall use their best efforts to ensure that the amount of funds expended from the Ruocco Fund towards the initial design and construction of the Park Enhancements shall be such that the remaining balance of the Retained Funds to be used for maintenance of the Park Enhancements can adequately maintain the Park Enhancements for the duration of the Term of this Agreement. The Board must approve the Conceptual Development Plans and, when appropriate, District will notify Consultant in writing that the Conceptual Development Plans have either been unconditionally approved by both Foundation and District or that they have been approved by Foundation and District subject to certain modifications to the plans being made.

- 8.2. Preliminary Development Plans: Following written notification to Consultant that the Conceptual Development Plans have been approved by Foundation and District (which approval may be subject to Foundation and/or District-required modifications being made to the Conceptual Development Plans), Consultant shall be directed by District to prepare Preliminary Development Plans consisting of a detailed dimensional site plan drawn to scale showing all Park Improvements planned to be constructed on the Site. This plan shall include the location of all existing and proposed easements and how they will be accommodated, locations of all existing and proposed utilities, site drainage and stormwater plans, site grading plan, grade elevations of all structures, proposed site work, and site horizontal (coordinate) and vertical control drawings with a benchmark reference. The Preliminary Development Plans shall also include preliminary precise horticulture palette; preliminary hardscape plans with proposed materials identified; a sign program (including the Ruocco Park Monument Sign) indicating sign type, location, area, letter styles and heights, colors and materials to be used; preliminary artwork location plans for such items as sculptures, art objects, mosaics, fountains, etc.; complete outline specifications to cover all phases of the work; and a detailed preliminary cost estimate of all Park Improvements, with indirect costs separately identified, plus a separate cost estimate for the design and improvement Park Enhancement features desired by Foundation. Consultant shall also be directed by District to prepare an assessment of the life cycle and costs

to maintain, repair and replace the major design elements of the Park. When appropriate, District will notify Consultant in writing that the Preliminary Development Plans have either been unconditionally approved by both Foundation and District or that they have been approved by Foundation and District subject to certain modifications to the plans being made.

- 8.3. Working Drawings: Following written notification to Consultant that the Preliminary Development Plans have been approved by Foundation and District (which approval may be subject to Foundation and/or District-required modifications being made to the Preliminary Development Plans), Consultant shall be directed by District to prepare Working Drawings consisting of complete architectural, civil, structural, mechanical, electrical, plumbing, utility layout, landscaping, irrigation, stormwater, signs (including the Ruocco Park Monument Sign), and public artwork plans (including artwork locations); site horizontal (coordinate) drawings and vertical control plans included in the civil drawings; complete specifications, materials and color list, and engineering calculations for all Park Improvements, construction contract form, construction schedule; and a detail final construction cost estimate of all Park Improvements with indirect costs separately identified, plus a separate cost estimate for the design and improvement Park Enhancement features desired by Foundation. The Working Drawings shall be prepared as one project in the form approved by the Foundation and the District. When appropriate, District will notify Consultant in writing that the Working Drawings have either been unconditionally approved by both Foundation and District or that they have been approved by Foundation and District subject to certain modifications to the plans being made.
- 8.4. Construction Budget and District Costs: Within sixty (60) calendar days following approval by Foundation and District of Conceptual Development Plans and construction cost estimates prepared by Consultant, the District will prepare a total budget for design and construction of the Park Improvements in accordance with the Conceptual Development Plans. Foundation and District will determine the portion of the budget that will be for the development of the Basic Park to be funded by the District and the portion of the budget that will be for Park Enhancements to be funded by the Ruocco Fund. It is understood that the District's total budget for design, construction, and administration shall not exceed Two Million, Five Hundred Fifty Thousand Dollars (\$2,550,000.00) for the Basic Park, including applicable District employee compensation and related overhead charges, unless the Board, in its sole and absolute discretion, authorizes the expenditure of additional District funds.

9. **PIERWALK PROPERTY:** The District is currently negotiating the redevelopment of the Pierwalk Property. The District understands and agrees that, to fulfill the Foundation's mandate to design a Park that is an example of outstanding urban design, the District will keep the Foundation and the Consultant informed regarding the progress of the design of the Pierwalk Property and give the Foundation and the Consultant the opportunity to offer feedback.
10. **SITE PREPARATION WORK:** The District shall be responsible, at its sole cost and expense, for causing termination of all existing tenancies on the Site and for completing the Site Preparation Work in accordance with Exhibit D, hereto. In the event of any conflict between the body of this Agreement and Exhibit D, Exhibit D shall control. The Site Preparation Work shall also be constructed in accordance with the design and plans and specifications to be prepared by the Consultant. The Site Preparation Work shall be of a construction type, quality of materials, and workmanship similar to first class projects on the District's Tidelands. If the California Coastal Commission requires its approval to any demolition permit issued by the District in connection with the Site Preparation Work, the District agrees to diligently pursue the certification of the California Coastal Commission. The District shall pay for all costs incurred in completing the Site Preparation Work without exception.
11. **CONSTRUCTION PHASE:**
 - 11.1. **Construction Timeframes:** The District shall have commenced the Site Preparation Work within twenty-four (24) months of the execution of this Agreement and shall diligently work towards the completion of the Site Preparation Work and the Park Construction Work. The District has the right to extend the timeframe for the commencement of the Site Preparation Work one time for a period of twelve (12) months by giving Foundation written notice prior to the expiration of the above twenty-four (24) month period. If, after the above-mentioned timeframe and extension have been exhausted, the Site Preparation Work has not commenced, the Foundation may terminate this Agreement upon written notice to District. Within thirty (30) days after the District's receipt of the Foundation's notice of termination, the District will refund to the Foundation any funds that have been donated pursuant to this Agreement.
 - 11.2. **Construction Bid Documents:** Following written approval of the Working Drawings by both Foundation and District and Consultant's incorporation into the Working Drawings of Foundation and/or District-required modifications, District shall prepare the Construction Bid Documents. The Construction Bid Documents shall conform to the California Public Works Contract Code requirements for bidding public works projects. The advertising and issuance of the Construction Bid Documents shall be

pursuant to BPC Policy No. 11O titled "Procedures for the Administration of Contracts and the Purchasing of Supplies, Materials, and Equipment," as amended from time-to-time. The Construction Bid Documents will not be advertised and issued until authorized by the Board. To the extent practical, construction of the Park Enhancements shall be defined separately in the Construction Bid Documents and shall be bid as separate items; however, Foundation and District agree that it may not be practical to have some Park Enhancements separately bid (e.g. upgrades of basic features). Within fifteen (15) working days following receipt of a copy of the Construction Bid Documents, Foundation agrees to either approve them in writing or provide in writing to District the modifications that need to be made to obtain Foundation's approval. If the District does not agree with the modifications requested by Foundation, Foundation and District will meet to discuss and agree upon the proposed modification(s) of the Construction Bid Documents. If resolution is not obtained within fifteen (15) working days of the date the District notifies Foundation that it does not agree with the modifications requested by Foundation, the District and the Foundation shall attempt to resolve the dispute(s) informally as set forth in section 27.

- 11.3. District Is Construction Manager: The administration of all construction, including inspection of the work, supervision, and determination of final acceptance, shall be the sole responsibility of the District. The Foundation shall designate a field representative to attend regular meetings with the construction contractor or project manager and approve any change orders.
- 11.4. Award of Construction Contract: Following (i) Foundation approving the Construction Bid Documents, and (ii) authorization from the Board, the District will advertise for competitive bids for the construction of the Park Improvements. When the bids have been received, District will award a contract to the lowest responsive responsible bidder. District will provide Foundation with a summary of the successful bidders' qualifications and their bids, including their separate/additive bids for the Park Enhancements for which separate/additive bids were requested. Foundation shall also have the right to review the entire construction bid submittals in the District's offices during the District's regular business hours. Within fifteen (15) working days of receipt of said bid summary, Consultant shall notify District in writing (i) which additive bid items for the Park Enhancements are acceptable to Foundation and (ii) of Consultant's good-faith estimates of the Park Enhancement design cost, the Park Enhancement construction cost, and the maintenance fund amount that should be used for the Foundation's grants to District pursuant to section 6 above. If District does not agree to one or more of

the Consultant's good-faith estimates, District shall so notify Foundation and Foundation and District shall meet and confer, within fifteen (15) working days following Foundation's receipt of the District's notice, for the purpose of reaching agreement on the amounts to be used for the Foundation's grants to District pursuant to section 6 above. In the event Foundation and District cannot reach agreement on said amounts, Foundation will be requested in writing to accept the District's amounts. If the District's amounts are not accepted by Foundation within fifteen (15) working days of receiving the District's request, District and Foundation shall, first attempt to resolve the dispute(s) informally as set forth in section 27 or accept the grant amounts proposed by Foundation. Following resolution of the Foundation's grant amounts pursuant to section 6 of this Agreement, the Board will be requested to award the construction contract.

- 11.5. Administration of Construction Contract and Change Orders: The District shall, at its sole cost and expense, administer the construction contract with the selected contractor to ensure that the Park Improvements are constructed in substantial compliance with the approved Working Drawings. The parties agree that if a change order to the construction contract is being considered that will result in a cost increase or a cost reduction that is less than Five Thousand Dollars (\$5,000.00), with an aggregate limit up to One Hundred Thousand Dollars (\$100,000), and the change order is in regards to a Park Enhancement, District, in its sole and absolute discretion, may approve or not approve such change order. In the event a change order is being considered that will result in a cost increase or cost reduction that is Five Thousand Dollars (\$5,000.00) or more, and the change order is in regards to a Park Enhancement, the Foundation and the District shall promptly meet and confer to determine if the change order should be issued. In the event of a dispute between the parties regarding a change order, the parties agree to meet and confer in good faith for the purpose of resolving the dispute. In the event Foundation and District cannot reach agreement on the change order within fifteen (15) working days of the first meeting, the District and the Foundation shall attempt to resolve the dispute(s) informally as set forth in section 27 unless such procedure will delay construction of the Park, in which case the District, in its sole and absolute discretion, may issue or deny the change order. When a change order results in an increase in the construction cost of the Park Enhancements, the Foundation shall pay one hundred percent (100%) of the increase in cost. When a change order results in a decrease in the construction cost of the Park Enhancements, Foundation shall be credited with one hundred percent (100%) of the reduction in cost. With the exception of change orders in the amount of Five Thousand Dollars (\$5,000.00) or more, the administration of all construction, including inspection of the work,

supervision, and determination of completion and final acceptance of the Park Improvements, shall be the sole responsibility of the District.

11.6. Ownership of Construction Documents: Title to all plans, specifications and other construction documents shall be vested in the District.

11.7. Approvals: District agrees to use reasonable efforts to obtain any permits and approvals required of any other authority as soon as reasonably practicable. All such approvals and permits shall be procured at the sole cost and expense of District.

12. **OWNERSHIP OF PARK IMPROVEMENTS:** All improvements to the Site, whether made from the District's funds or the Foundation's funds, will be the property of the District.

13. **DEDICATION CEREMONY:** Upon completion of the Park Construction Work, District representatives will schedule and organize a public dedication ceremony to announce the opening and name of the Park. District will coordinate such public announcement and ceremony with the Foundation and will provide Foundation with at least sixty (60) days prior written notice of the ceremony and public announcement. District will obtain the Foundation's prior approval of all promotional publicity and media/news releases regarding the ceremony. The District will be responsible for making all necessary and appropriate arrangements for promotional publicity and media/news releases regarding the ceremony.

14. **MAINTENANCE, REPAIR AND REPLACEMENT OF PARK IMPROVEMENTS:** Once the Park Construction Work has been completed, the Park will be officially opened for public use. The District will be solely responsible to manage and control the maintenance of the Park. The District will maintain the Park in a clean and functionally operative manner (which shall not be less than the District's highest then-existing standard for landscape maintenance), consistent with the Working Drawings and construction change orders. Such maintenance will include, but is not limited to, routine work such as planting, fertilizing, mowing, trimming, pruning, cleaning, sweeping, pest control, tree and shrub replacement, trash removal, sign maintenance, waterscape maintenance and other Park Improvement maintenance. If at any time during the Term of this Agreement, the Foundation determines that the District is not complying with the routine maintenance standards of this section 14 the Foundation will notify the District in writing. Upon receipt of such notice from the Foundation, the District will use commercially-reasonable efforts to remedy the alleged maintenance deficiency within thirty (30) calendar days. In the event of a dispute between the parties as to the proper maintenance of the Park, the parties agree to meet and confer in good faith for the purpose of resolving the dispute. In the event Foundation and District cannot reach agreement on the

proper maintenance of the Park within thirty (30) calendar days of the first meeting, the District and the Foundation shall attempt to resolve the dispute(s) informally as set forth in section 27.

15. **UTILITIES:** The District shall provide, and be responsible for the payment of, all water, gas, electricity and other utilities necessary for the operation of the Park consistent with the terms and conditions of this Agreement. The District shall make application for, arrange for, pay for (directly to such utility) and be solely responsible for all charges for utility services for the Park, including any connection charges or development fees relating to the development or use of utilities at the Park.
16. **PARK RELOCATION:** Should it be necessary to relocate or replace the Park during the Term, the District will relocate the Park with a comparable site in size and downtown location oriented to the waterfront and retain "Ruocco Park" as the Park name. The Relocation Site shall be subject to the written approval of the Foundation, which approval or disapproval shall be made within thirty (30) days after the District's written request. If the Relocation Site is approved by the Foundation, then the Relocation Site shall be developed consistent with the terms and conditions of this Agreement; provided (i) the District shall have the sole obligation to pay the cost of the initial design and construction of the Park on the Relocation Site in an amount not less than the amount previously expended by the Foundation and the District for the costs associated with the construction of a Basic Park and Park Enhancements, (ii) the District and the Foundation shall agree upon the plans and specifications for the design of the Park on the Relocation Site, and (iii) the Foundation's grants for maintenance shall only continue for the remaining number of years in the original Term. If the Foundation does not approve of the Relocation Site, future grants payable by the Foundation hereunder may be discontinued (including, without limitation, grants for park design, construction and maintenance) upon the delivery of such notice to District. Within thirty (30) days after the District's receipt of the Foundation's notice of disapproval, the District will refund to the Foundation any monies that have been donated hereunder to the park for the costs associated with the construction of Park Enhancements.
17. **APPROVALS AND NON-LIABILITY:** Any approval or consent given by the Foundation under the terms of this Agreement may be subject to such reasonable conditions as the Foundation deems appropriate (including, without limitation, dates by which the construction of improvements approved by Foundation must be commenced (if no such date is otherwise specified in this Agreement) and dates on which approvals or consents will expire). The Foundation shall not be liable in damages or otherwise to anyone submitting documents (including, without limitation, plans or specifications or cost estimates) to it for approval, or to any other person, by reason of mistake in judgment, negligence or nonfeasance, or for any other reason, arising out of or

in connection with the approval or disapproval or failure to approve or disapprove any such documents. Without limitation, the Foundation and the Foundation advisers shall not be liable for (a) any defect in, the inadequate design of, the lack of quality of, the inadequacy or unsuitability of materials used in, or the noncompliance with laws of any improvement constructed pursuant to such document, (b) documents which are inadequate or inaccurate or (c) documents which do not comply with the law. Any review of documents by the Foundation is solely for the benefit of the Foundation and shall not be relied upon by the District or any other person.

18. **HAZARDOUS MATERIALS:**

18.1 **Definitions:** "Hazardous Materials" means (a) any "hazardous substance" as defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time [42 U.S.C. §§ 9601 *et seq.*]; (b) petroleum and petroleum products (including, without limitation, crude oil, natural gas, natural gas liquids, liquefied natural gas and synthetic gas); (c) polychlorinated biphenyls (PCBs); (d) asbestos; (e) urea formaldehyde; (f) radon gas; and (g) any additional substances, materials or waste which are classified or considered to be hazardous or toxic under federal, state or local law or regulation.

18.2 **Indemnification:** District shall indemnify, defend (with counsel selected by District and reasonably acceptable to the Foundation) and hold harmless the Foundation or the Foundation Representative, the Foundation advisers, along with the Foundation's officers, directors, employees and agents (collectively, the "Foundation Parties") from any and all claims, losses or damage incurred by the Foundation or the Foundation Parties resulting directly or indirectly from the presence or release of Hazardous Materials on or under the Site. District shall be responsible at its sole cost for remediation or cleaning up any Hazardous Materials located on or under any portion of the Site to the extent (i) required by any governmental authority with jurisdiction over the Site or (ii) which interferes with the use of the Site as a public park.

19. **PARK OPERATIONS INDEMNITY:** District shall indemnify, defend and hold harmless the Foundation and the Foundation Parties from and against any and all claims, demands, liabilities, actions, damages, costs and expenses, including, without limitation, reasonable attorney's fees, arising out of any negligent act or omission of the District or its employees, agents, contractors or consultants for any personal injury or property damage that occurs on or about the Site. The District's obligations under this section shall survive the termination of this Agreement.

20. **NOTICES AND COMMUNICATION:** Any notice, communications, reports, applications, requests or other information made or given under this Agreement must be in writing and delivered to the person shown at the respective address listed below. All written notices required by this Agreement will be deemed delivered: (i) personally, if served upon the person stated below, or (ii) by certified letter or overnight courier addressed to the address stated below. Delivery will be considered completed: when delivered, if made personally; forty-eight (48) hours after deposit in the U.S. Mail, if by certified letter; or on the specified day of delivery, if made by private courier. All such notices should be sent as follows:

If to District, to:

Executive Director
San Diego Unified Port District
3165 Pacific Highway, San Diego, California 92101
or P.O. Box 120488, San Diego, California 92112-0488
telephone: (619) 686-6414
fax: (619) 686-6374

With a copy to:

Port Attorney
San Diego Unified Port District
3165 Pacific Highway, San Diego, California 92101
or P.O. Box 120488, San Diego, California 92112-0488
telephone: (619) 686-6219
fax: (619) 686-6444

If to Foundation, to:

Ms. Deborah Hoffman
The San Diego Foundation
2508 Historic Decatur Road, Suite 200
San Diego, CA 92106
telephone: (619) 235-2300
fax: (619) 235-1710

21. **THIRD PARTY BENEFICIARY:** This Agreement is made and entered into for the benefit of the District and Foundation only, and is not intended for the benefit of any other entity, party or person, and no other entity, party or person shall be or become a beneficiary to this Agreement or otherwise enjoy or acquire any rights under this Agreement.

22. **WAIVER:** Any waiver by either party of any breach by the other party of any one or more of the terms, covenants or conditions of this Agreement shall not be, nor shall such be construed to be, a waiver of any subsequent or other breach of the same or any other term, covenant or condition of this Agreement. Any failure on the part of either party to require or exact full and complete compliance by the other party with any of the terms, covenants or conditions of this Agreement, shall not be, nor shall such be construed to be, in any manner, a change in the terms of this Agreement or prevent the parties from enforcing the full provisions hereof.
23. **SUCCESSORS AND ASSIGNEES:** This Agreement may not be assigned and the beneficial rights hereunder may not be transferred in whole or in part by either party.
24. **INTERPRETATION:** Capitalized terms shall have such meaning as expressly stated herein, if there should be an irreconcilable conflict between this Agreement and any other writing or understanding, the expressly stated definitions of this Agreement shall supersede. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporations, partnerships, or other legal entities when the context so requires. The singular number includes the plural whenever the context so requires.
25. **INTEGRATION, MODIFICATIONS, AMENDMENT AND RELIANCE:** It is expressly understood and agreed that this Agreement constitutes the final and entire agreement between Foundation and District and supersedes all prior negotiations, written or oral. In no event will Foundation or the District be entitled to receive any consideration, benefits, reimbursements or ancillary services other than as expressly provided in this Agreement, as such may be properly modified or amended. No modification or amendment of this Agreement will be valid or binding unless duly authorized, reduced to writing and signed by both parties.
26. **CONSTRUCTION OF AGREEMENT:** Both District and Foundation have had the opportunity to consult legal counsel. Accordingly, it is expressly agreed that the provisions of this Agreement were freely negotiated and their meaning shall not be construed against one party as the drafter thereof.
27. **DISPUTE RESOLUTION:** All disputes or disagreements between or among parties arising out of or relating to the terms, conditions, interpretation, performance, default or any other aspect of this Agreement, such parties shall first attempt to resolve the dispute informally. In the event that the dispute is not resolved informally, prior to and as a precondition to the initiation of any legal action or proceeding, the parties shall refer the dispute to mediation before a retired State or Federal judge mutually selected by the parties. The dispute

shall be mediated through informal, nonbinding joint conferences or separate caucuses with an impartial third party mediator who will seek to guide the parties to a consensual resolution of the dispute. The mediation proceeding shall be conducted within thirty (30) days (or any mutually agreed longer period) after referral, and shall continue until any party involved concluded, in good faith, that there is no reasonable possibility of resolving the dispute without resort to a legal action or proceeding. All costs of the mediation shall be shared equally by the parties involved. Each party shall bear its own attorneys' fees and other costs incurred in connection with the mediation. In the event the parties are unable to resolve the dispute through mediation, in addition to any other right or remedies, any party may institute a legal action.

28. **ATTORNEY FEES:** If either party shall commence an action, whether litigation or arbitration, against the other party for breach of this Agreement or damages arising out of this Agreement, the party adjudged by a court of competent jurisdiction to be the prevailing party, shall be entitled to recover all reasonable costs of suit, including but not limited to: costs and attorney's fees (including actual costs and hourly wage expenses incurred for either party's in-house legal staff) incurred by or imposed upon the prevailing party in connection with such action.
29. **APPLICABLE LAW:** This Agreement and any Exhibits and Amendments hereto, will be construed and enforced in accordance with the laws of the State of California.
30. **RIGHTS OF THE U.S. GOVERNMENT:** This Agreement will be subordinate to the provisions and requirements of any existing or future obligations of the District under the San Diego Unified Port District Act and in or to the State of California or the United States of America, with respect to the use of District property.
31. **REQUISITE AUTHORITY:** Each of the entities, parties or persons executing this Agreement represents and warrants that it/he/she/they has or have the requisite authority to enter into this Agreement and so bind and obligate the party for whom it/he/she/they acts hereunder, and will produce, upon request by the other party, written evidence of such facts.

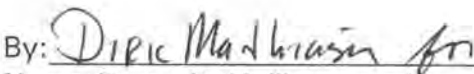
32. **SIGNATURES REQUIRED:** This Agreement will not be complete nor effective until duly approved by the District's Board of Port Commissioners and signed by the Executive Director on behalf of the District.

Now, therefore, in consideration of all the conditions and agreements between the parties hereto, the District and Foundation hereby enter into this Agreement. SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (the "District"):

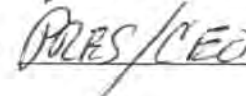
Port Attorney

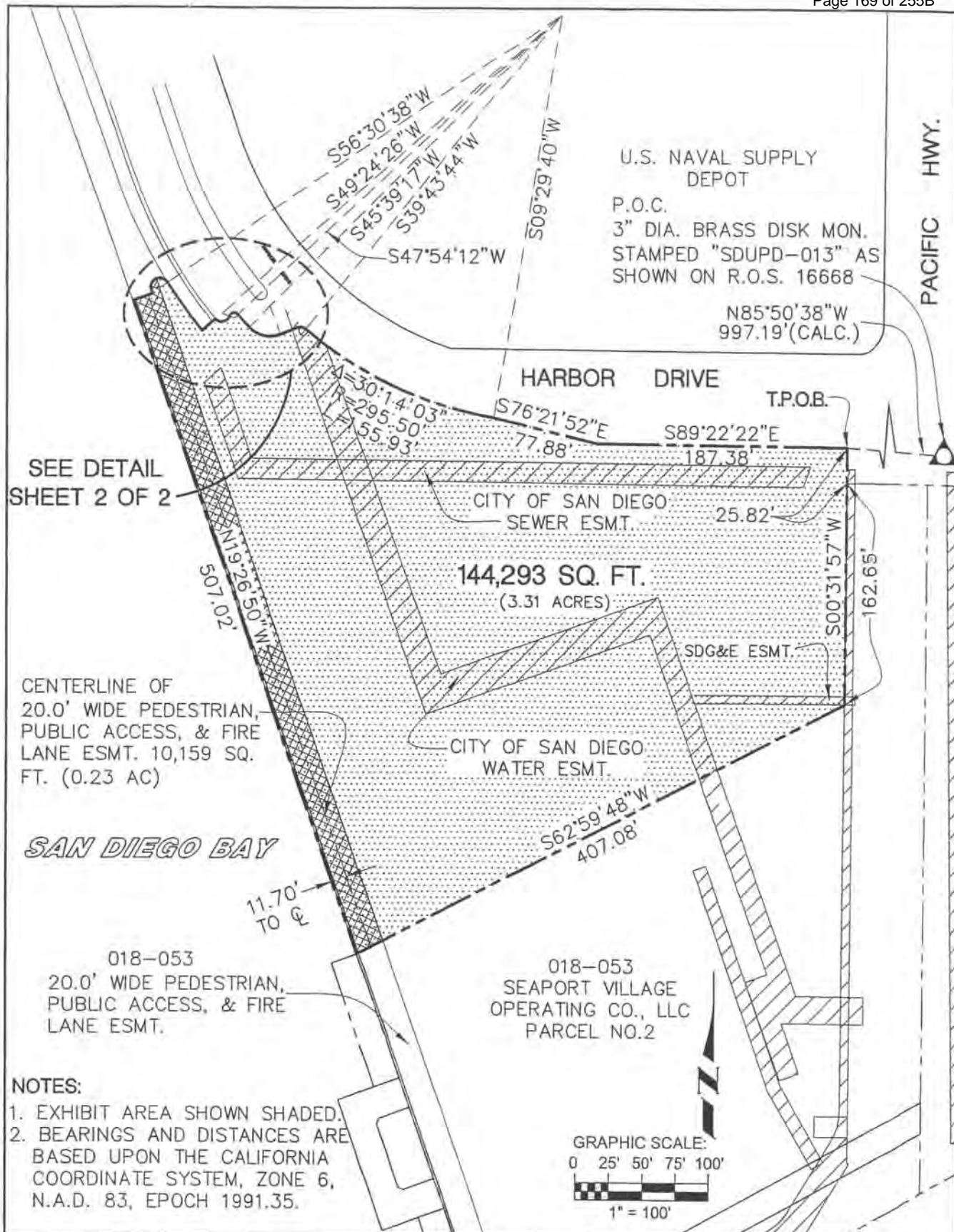
SAN DIEGO UNIFIED PORT DISTRICT

By: 
DEPUTY PORT ATTORNEY

By: 
Name: Bruce B. Hollingsworth
Title: Executive Director

THE SAN DIEGO FOUNDATION, a
California nonprofit corporation

By: 
Name: 
Title: 



DRAWN AS NOR SANTONIL
CHECKED
REVIEWED *T. MARSHALL*
APPROVED
Charles J. Stephens
LAND SURVEYOR, SDUPD.

SAN DIEGO UNIFIED PORT DISTRICT

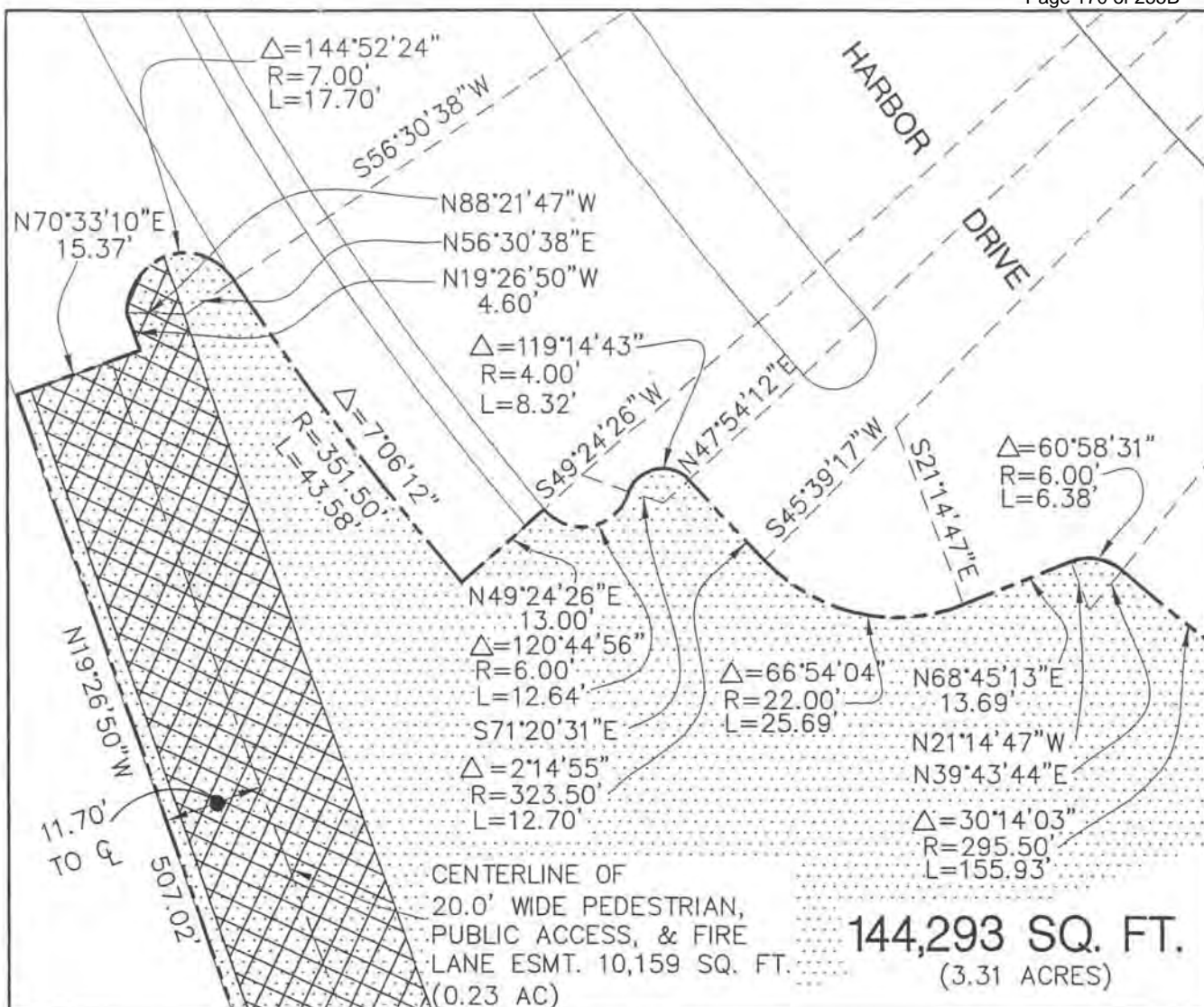
WITHIN CORPORATE LIMITS OF SAN DIEGO
THE SAN DIEGO FOUNDATION
AGREEMENT

DATE SEPT. 23, 2008
SCALE 1"=100'
REF. FIELD SURVEY

DRAWING NO.
SHEET 1 OF 2
018-102

EXHIBIT "A"

DEVSERV\REMI\ET18\018-102



DETAIL
SCALE: 1"=20'

NOTES:

1. EXHIBIT AREA SHOWN SHADED.
2. BEARINGS AND DISTANCES ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE 6, N.A.D. 83, EPOCH 1991.35.



DRAWN AS NOR SANTONIL
CHECKED
REVIEWED T. MARSHALL
APPROVED
Charles J. L. / h
LAND SURVEYOR, S.D.U.P.D.

SAN DIEGO UNIFIED PORT DISTRICT

WITHIN CORPORATE LIMITS OF SAN DIEGO
THE SAN DIEGO FOUNDATION
AGREEMENT

DATE SEPT. 23, 2008
SCALE 1"=20'
REF. FIELD SURVEY

DRAWING NO.
SHEET 2 OF 2
018-102

**Legal Description for
THE SAN DIEGO FOUNDATION AGREEMENT
Parcel / Drawing No 018-102
Within Corporate Limits of San Diego**

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

Commencing at a 3" diameter brass disk monument marked "SDUPD - 013" as shown on Record Of Survey Map No. 16668, filed in the Office of the San Diego County Recorder on July 25, 2000; thence along a tie line North 85°50'38" West a distance of 997.19 feet (calculated) to the TRUE POINT OF BEGINNING; thence South 00°31'57" West a distance of 25.82 feet to a point on the boundary line of an area now leased to the Seaport Village Operating Co., LLC; thence along said Seaport Village Operating Co., LLC boundary line South 00°31'57" West a distance of 162.65 feet; thence South 62°59'48" West a distance of 407.08 feet; thence leaving said boundary line of the Seaport Village Operating Co., LLC leasehold North 19°26'50" West a distance of 507.02 feet; thence North 70°33'10" East a distance of 15.37 feet; thence North 19°26'50" West a distance of 4.60 feet to the beginning of a non-tangent 7.00 foot radius curve, concave southeasterly, a radial to said points bears North 88°21'47" West from the center of said curve; thence northeasterly along the arc of said curve through a central angle of 144°52'24" an arc distance of 17.70 feet to a point which bears North 56°30'38" East from the center of said curve, said point also being the beginning of a 351.50 foot radius reverse curve, concave northeasterly, a radial to said point bears South 56°30'38" West; thence southeasterly along the arc of said curve through a central angle of 7°06'12" an arc distance of 43.58 feet to a point which bears South 49°24'26" West from the center of said curve; thence North 49°24'26" East a distance of 13.00 feet to the beginning of a non-tangent 6.00 foot radius curve, concave northerly, a radial to said points bears South 49°24'26" West; thence southeasterly along the arc of said curve through a central angle of 120°44'56" an arc distance of 12.64 feet to the beginning of a 4.00 foot radius reverse curve, concave southerly, a radial to said point bears North 71°20'31" West; thence easterly along the arc of said curve through a central angle of 119°14'43" an arc distance of 8.32 feet to the beginning of a 323.50 foot radius reverse curve, concave northeasterly, a radial to said point bears South 47°54'12" West; thence southeasterly along the arc of said curve through a central angle of 2°14'55" an arc distance of 12.70 feet to the beginning of a 22.00 foot radius

compound curve, concave northerly, a radial to said point bears South 45°39'17" West; thence southeasterly along the arc of said curve through a central angle of 66°54'04" an arc distance of 25.69 feet; thence North 68°45'13" East a distance of 13.69 feet to the beginning of a 6.00 foot radius curve, concave southerly; thence easterly along the arc of said curve through a central angle of 60°58'31", an arc distance of 6.38 feet to the beginning of a 295.50 foot radius reverse curve, concave northeasterly, a radial to said point bears South 39°43'44" West; thence southeasterly along the arc of said curve through a central angle of 30°14'03", an arc distance of 155.93 feet to a non-tangent point which bears South 09°29'40" West from the center of said curve; thence South 76°21'52" East a distance of 77.88; thence South 89°22'22" East a distance of 187.38 to the TRUE POINT OF BEGINNING, containing 144,293 square feet or 3.31 acres of tidelands area.

ALSO: Reserving therefrom a 20.0 foot wide easement for pedestrian, public access and fire lane purposes, the centerline of said easement being located parallel to and 11.70 feet easterly of the most westerly line of the above described property containing a total of 10,159 square feet or 0.23 acre of tidelands area.

The above described tidelands area is delineated on the San Diego Unified Port District Drawing No. 018-102, dated September 23, 2008 and made a part of this agreement.

All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.

 9-23-08
Charles J. Sefkow Date
L.S. 7876 Expires 31 Dec. 2008
Land Surveyor
San Diego Unified Port District



Exhibit "C"
Park Use Guidelines

1. **Public Access.** Ruocco Park (the "Park") is for the use and enjoyment of the public. Public access to a portion of the Park shall be maintained at all times.
2. **Private Events.** "Private Events" are events held at the Park in which a portion of the Park is used exclusively by a licensee, after proper application to the District in accordance with Board of Port Commissioner Policy No. 452. There shall be no more than two hundred and fifty (250) people in attendance at any Private Event, unless otherwise agreed upon by authorized representatives of the Foundation and the District. During Private Events, there shall be public access to areas of the Park that are not designated as Private Event areas. There shall be no more than two (2) Private Events whose attendance exceeds seventy-five (75) people each calendar month. Each Private Event shall have a duration of no more than seventy-two (72) hours. The only Private Events permitted at the Park shall be weddings, birthday parties, family gatherings, and other events as agreed upon by authorized representatives of the Foundation and the District.
3. **Public Events.** "Public Events" are those events that are open to the public. Permissible Public Events include art shows, musical performances, public announcements, and other events as agreed upon by authorized representatives of the Foundation and the District. There shall be no more than two (2) Public Events each calendar month and each Public Event shall have a duration of no more than seventy-two (72) hours. The Foundation and the District shall develop a list of art shows and demonstrations at the Park each calendar year. In addition, the District may host each calendar year at the Park musical performances by students from local schools, universities and colleges. The commercial fishing business located on the Pierwalk Property may also perform public education or demonstrations on subjects relating to the fishing industry near the waterfront area, provided such demonstrations take place no more than once per month.
4. **Special Events.** "Special Events" are events held at the Park that are sponsored by the District to accommodate large-scale regional events providing an economic or social benefit to San Diego County. Permissible Special Events may include, but are not limited to, political conventions, national sporting events taking place in San Diego County, maritime festivals, air shows, etc. There shall be no more than six (6) Special Events in any calendar year and each Special Event shall be subject to Board of Port Commissioners Policy No. 452.
5. **Blackout Clause.** Park events, designated as all the above-referenced events, that are scheduled for weekend use shall only be allowed to take place for a

maximum of three (3) consecutive weekends. If Park events take place three (3) consecutive weekends, no events will be allowed on the fourth weekend in succession.

6. **Park Use Guidelines.** The Foundation and the District agree that this Exhibit "C", Park Use Guidelines, may be updated from time to time by mutual agreement of both parties with the approval of the Executive Director of the District and the Authorized Representative of the Foundation.

Exhibit "D"
Site Preparation Work

- A. **Site Preparation Work.** All rough and final site grading, leveling, filling, drainage improvements, compaction of fill, excavation and removal of dirt necessary for the construction of the Park, and related improvements to be located on the Site and/or to provide proper drainage for the Site. All such grading work required or referenced herein shall have been compacted to within ninety percent (90%) and graded to within one-tenth (1/10th) of a foot of the finished pad grade as specified in the Construction Bid Documents and otherwise completed in accordance with the soils investigation report recommendation of the District's soils or geotechnical engineer, and certified as such by said soils or geotechnical engineer and the District's civil engineer, and as specified below. In addition, all trees, shrubbery, buildings, structures, debris, storage material and other things located within the Site shall be removed.
- B. **Utility Work.** All operational utilities necessary for the operation of the Park (sanitary sewer, water, telephone, storm drainage, gas and electric) (the "**Operational Utilities**") shall be installed underground. All such Operational Utilities shall be stubbed and available for use (the exact location of which shall be coordinated with the Consultant), all in accordance with the utility plan or specifications attached or referenced below. As provided in this Exhibit D, District shall pay any so called "hook up", "tap-in", connection charges or other development fees related to the utilities serving the Site.
- C. **Remediation.** During the Site Preparation Work, and as otherwise provided in the Agreement, the District shall be responsible at its sole cost for remediation or cleaning up of any Hazardous Material on or under any portion of the Site to the extent (i) required by law, or (ii) such Hazardous Materials may interfere with the use of the Site as a public park.

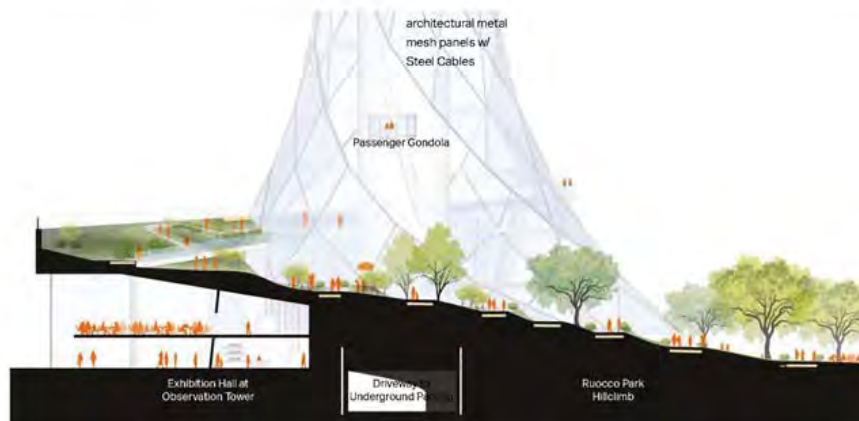
EXHIBIT C



Ruocco Park

Moving south along the Esplanade, one encounters a dramatically expanded Ruocco Park. While the artwork and some of the flat lawn of the original park remain, the park is nearly doubled in size by sloping it up and around the Observation Tower to a promontory viewpoint over an exhibition hall containing the relocated Looff Carousel from Seaport Village.

The new park will offer stunning views and a hillside amphitheater for movies and performances in the park, as well as a plaza along the Esplanade for pop-up markets and special events.





avrp STUDIOS
SKYPORT
AECOM
THRILL CORP Protea Waterfront Development

seaport
SAN DIEGO

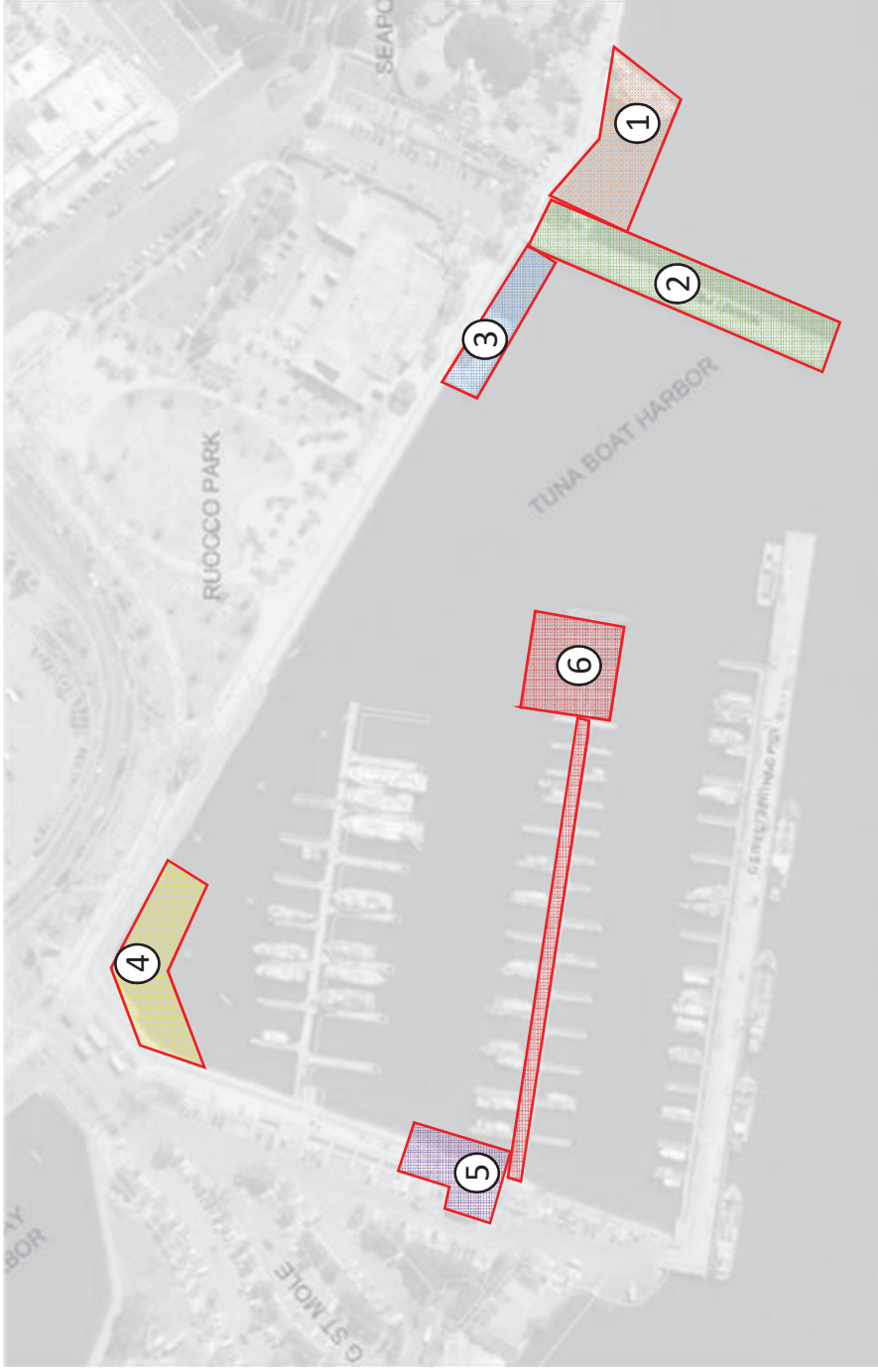
Elements of an Operational Fishing Harbor

- Association for fishermen slip holders
- Floating slips dedicated to commercial fishing vessels
- Crane to offload fish
- Pier with access to trucks for fish offloading
- Live tanks
- Fishermen's dockside market space
- Fish market for direct sales to the public
- Signage
- Squid pump
- Ice machine in close proximity to offloading pier
- Refrigerated space
- Freezer space
- Dry storage
- Wet floor for cutting fish
- Bathrooms
- Meeting room
- Waste oil discharge pump out area
- Oil waste collectors
- Net sheds for storage of nets
- Staging area and trap storage
- Net mending and trap repair area
- Parking areas
- Security
- Fisheries museum (Japanese, Chinese, Portuguese, Italian historical societies)



Tuna Harbor Planning

Step 1 – Select Space for Expanded Commercial Fishing Facilities



1. Expand Wharf to Restaurant
2. Widen Market Pier
3. Expand Existing Offloading Wharf
4. Fixed of Floating Space at Base of G St. Mole
5. Expand Wharf & Building on G St. Mole
6. Fixed or Floating Space in Tuna Harbor

Tuna Harbor Planning

Step 2 – Harbor Layout Based on Expanded Commercial Fishing Space and Other Uses

Harbor layout & configuration to best suit anticipated mix of commercial vessels in harbor.

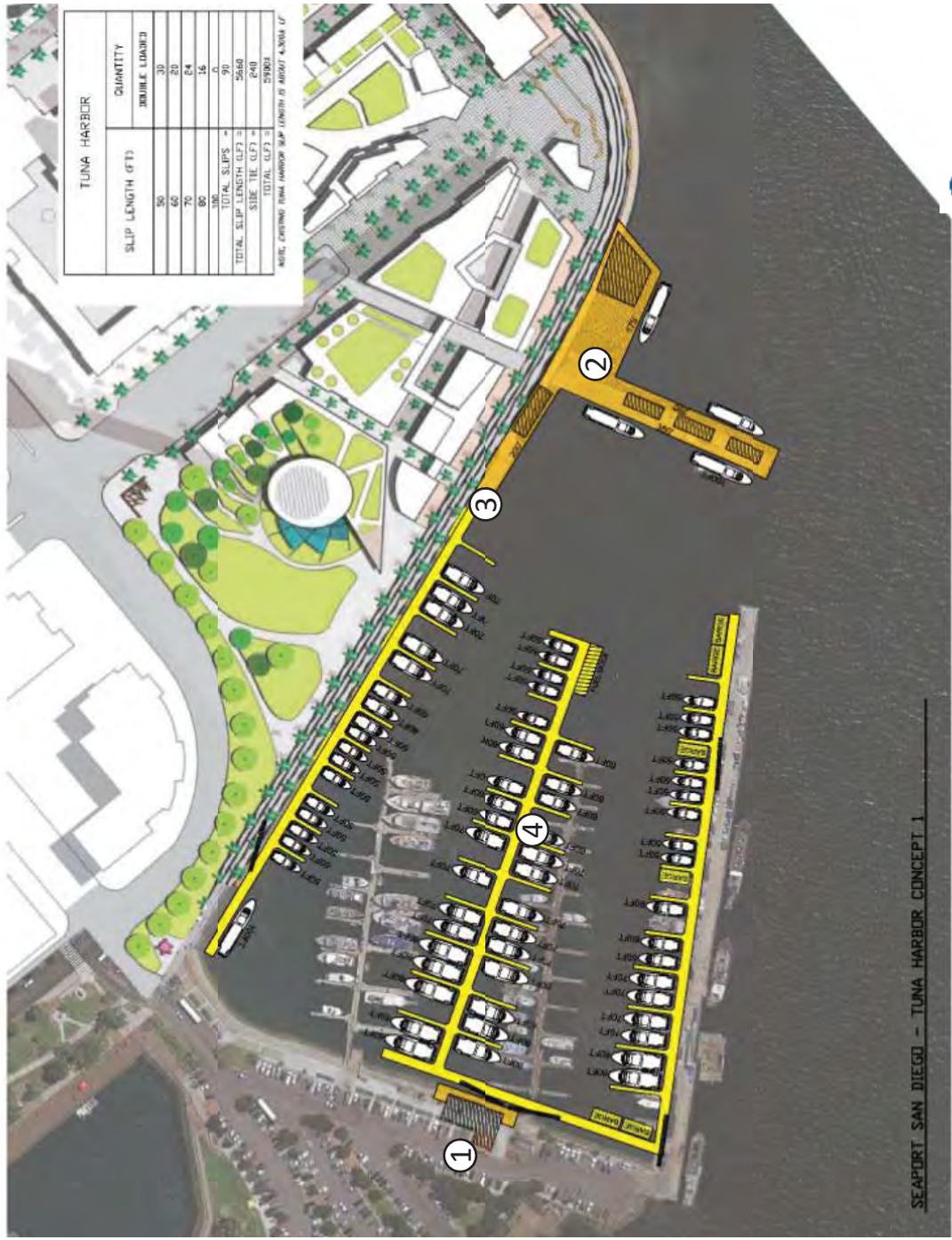
Uses include:

- Commercial Fishing
- Pacific Tug
- Blue Tech/ Aquaculture
- Research (NOAA/Scripps)
- Ferry/Water Taxi
- Tours/Charters
- Sport fishing



Tuna Harbor

Option 1 – Expanded Wharf at Market Pier



- 1. Fishermen Support Facility**
 - Association for fisherman slip holders
 - Meeting room
 - Bathrooms/showers/locker room
 - Waste oil pump out
 - Oil waste collectors
 - Parking area
 - Security
 - Museum
 - 2. Fishermen's Market**
 - Dockside market
 - Direct sales to public
 - Refrigerated space
 - Freezer space
 - Dry storage
 - Wet floor for cutting fish
 - 3. Offloading Pier**
 - Cranes
 - Truck access
 - Ice machine
 - 4. Other Elements**
 - Floating slips
 - Barges for nets, traps & gear
 - Live tanks
 - Portable squid pump (G St)
 - Portable crane (G St)
 - Fuel dock



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SKYPORT
SCHEME 1
FEBRUARY 28, 2017

Seaport
SAN DIEGO

Tuna Harbor

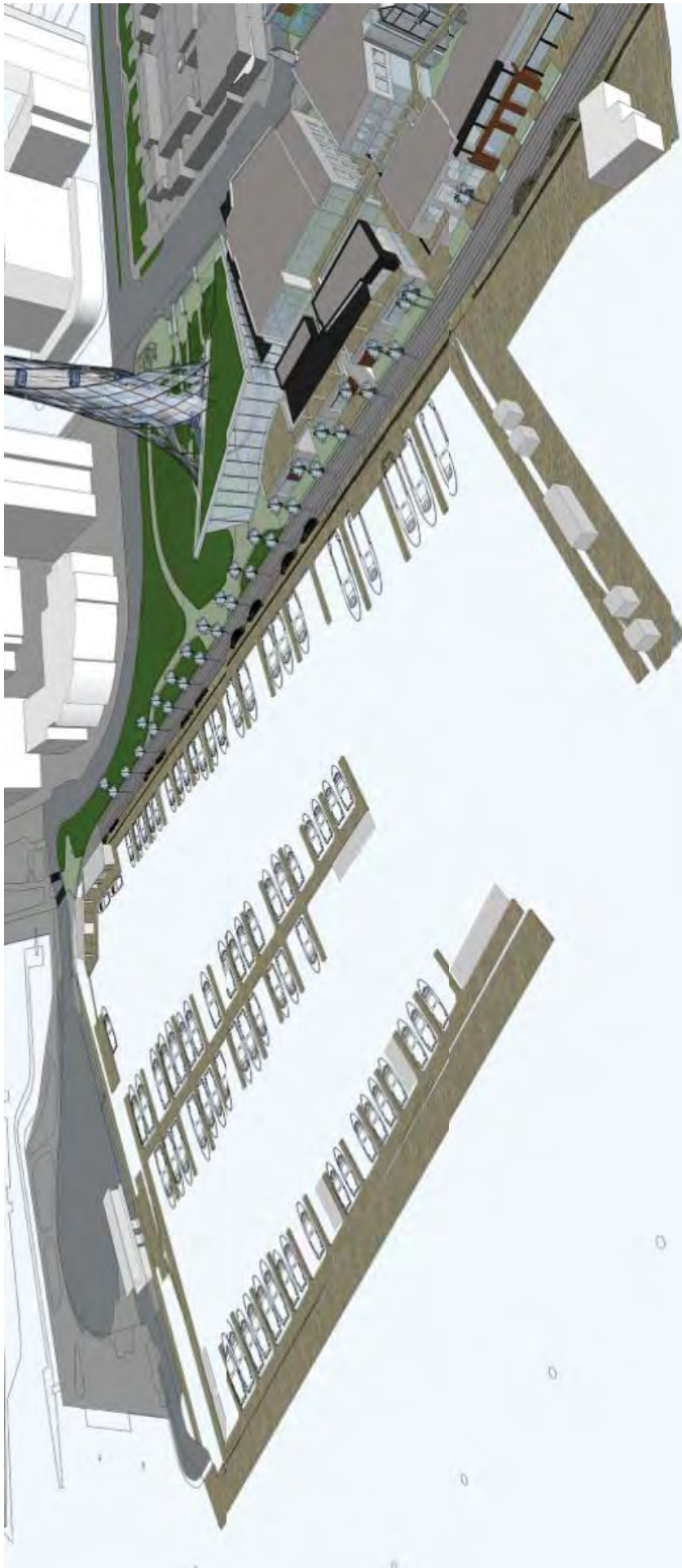
Option 2 – Expanded Facilities at G St. Mole

- 1. Fishermen Support Facility**
 - Association for fisherman slip holders
 - Meeting room
 - Bathrooms/showers/locker room
 - Waste oil pump out
 - Oil waste collectors
 - Parking area
 - Security
 - Museum
- 2. Fishermen's Market**
 - Dockside market
 - Direct sales to public
 - Refrigerated space
 - Freezer space
 - Dry storage
 - Wet floor for cutting fish
- 3. Offloading Pier**
 - Cranes
 - Truck access
 - Ice machine
- 4. Other Elements**
 - Floating slips
 - Barges for nets, traps & gear
 - Live tanks
 - Portable squid pump (G St)
 - Portable crane (G St)
 - Fuel dock



SEAPORT SAN DIEGO - TUNA HARBOR CONCEPT LAYOUT (V09)

DATE: 11/20/2017 10:34 AM BY: HOLLOWAY, AARON, JENNY 11/20/2017 10:34 PM BY: HOLLOWAY, AARON, JENNY



avrp STUDIOS
SKYPORT
SCHEME 2
FEBRUARY 28, 2017

Seaport
SAN DIEGO

Tuna Harbor

Option 3 – Fish Market Pier Added in Tuna Harbor

1. Fisherman Support Facility

- Association for fisherman slip holders
- Meeting room
- Bathrooms/showers/locker room
- Waste oil pump out
- Oil waste collectors
- Parking area
- Security
- Museum

2. Fishermen's Market

- Dockside market
- Direct sales to public
- Refrigerated space
- Freezer space
- Dry storage
- Wet floor for cutting fish

3. Offloading Pier

- Cranes
- Truck access
- Ice machine

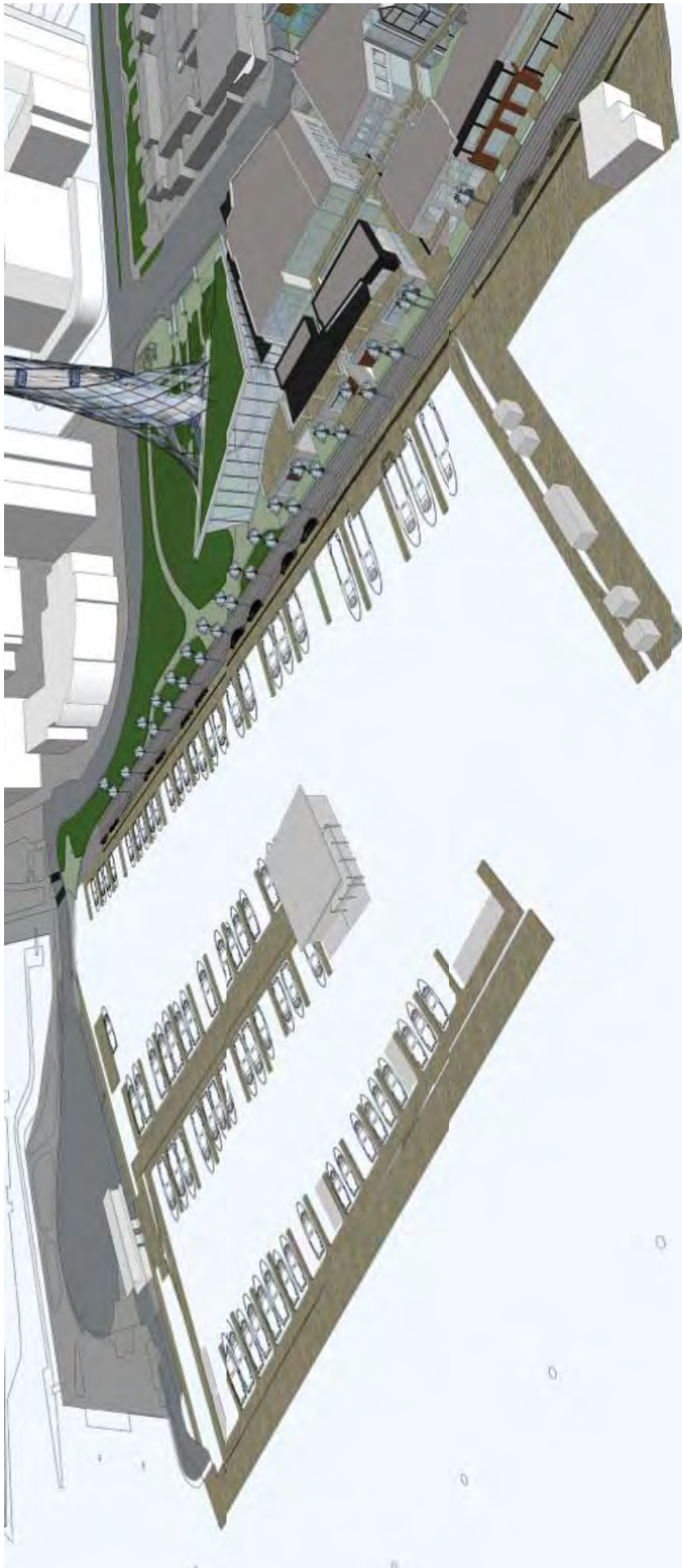
4. Other Elements

- Floating slips
- Barges for nets, traps & gear
- Live tanks
- Portable squid pump (G St)
- Portable crane (G St)
- Fuel dock



SEAPORT SAN DIEGO - TUNA HARBOR CONCEPT 3

LOPSONAL-3-20-15; Revised: 2/25/2017 12:43 PM BY: HOLLAND; 44306; Sheet: 2/25/2017 12:00 PM BY: HOLLAND



avrp STUDIOS
SKYPORT
SCHEME 3
FEBRUARY 28, 2017

Seaport
SAN DIEGO

Tuna Harbor

Option 4 – Fish Market along Promenade and Pier Added in Tuna Harbor

1. Fisherman Support Facility

- Association for fisherman slip holders
- Meeting room
- Bathrooms/showers/locker room
- Waste oil pump out
- Oil waste collectors
- Parking area
- Security
- Museum

2. Fishermen's Market

- Dockside market
- Direct sales to public
- Refrigerated space
- Freezer space
- Dry storage
- Wet floor for cutting fish

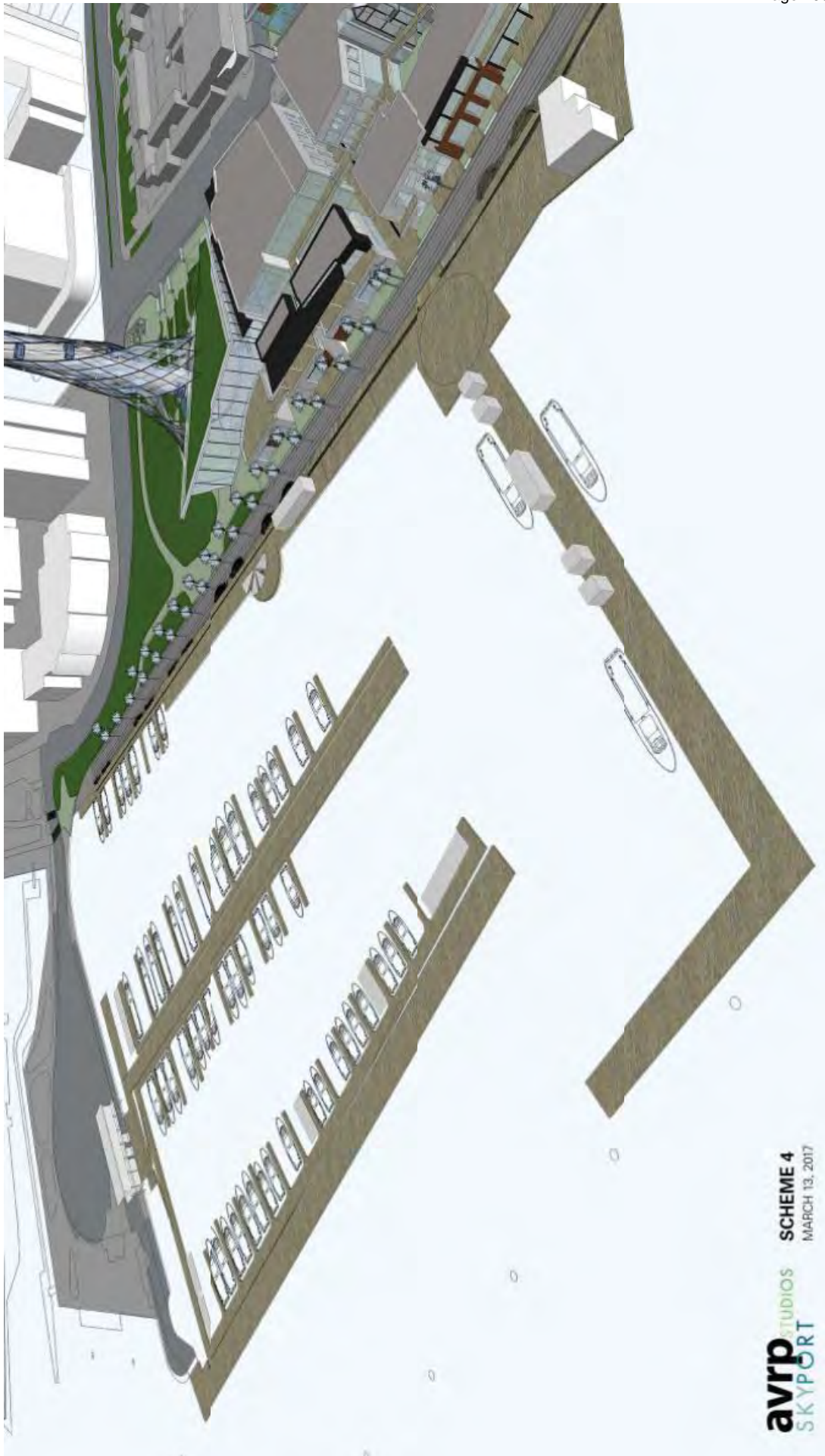
3. Offloading Pier

- Cranes
- Truck access
- Ice machine

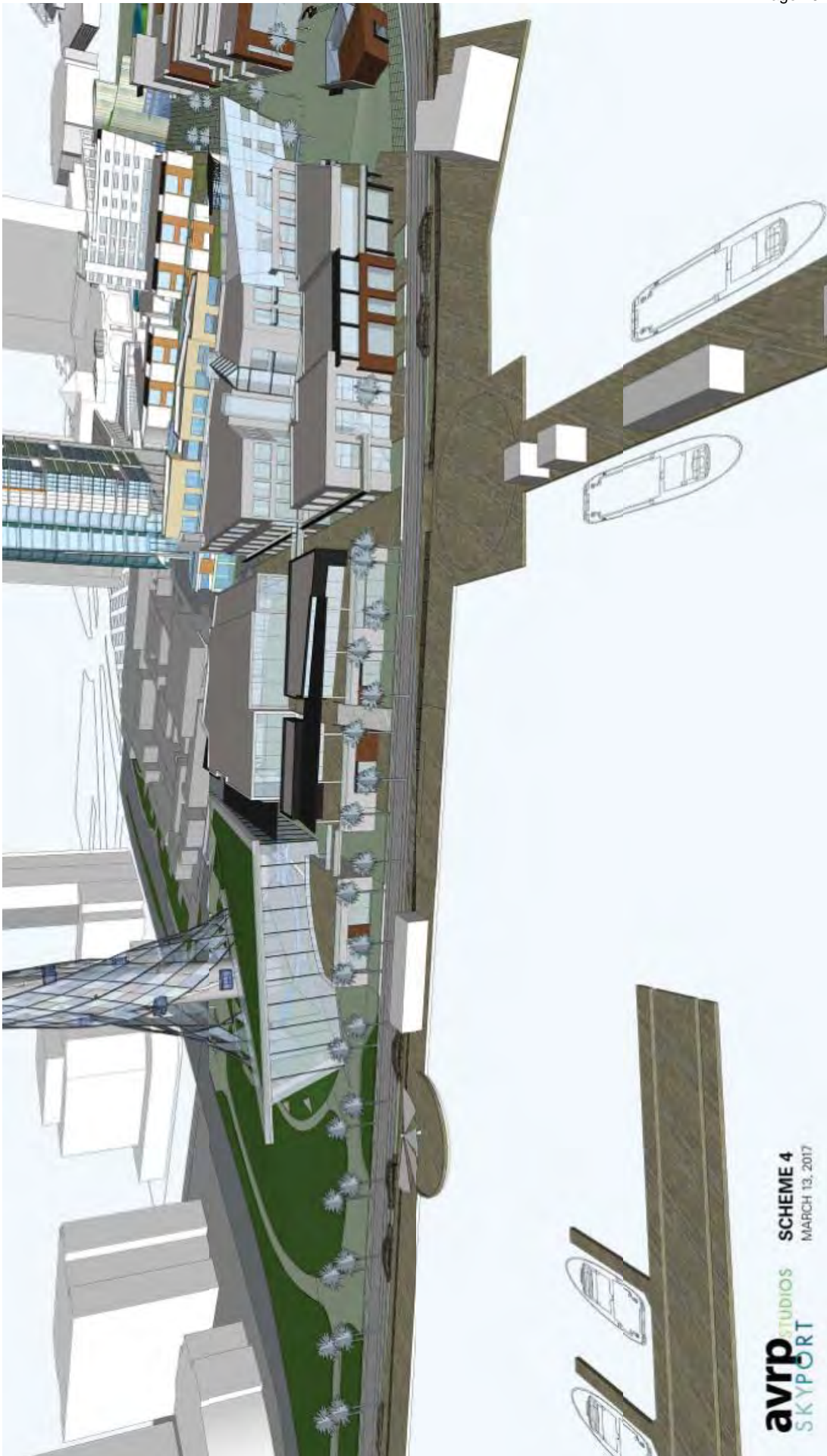
4. Other Elements

- Floating slips
- Barges for nets, traps & gear
- Live tanks
- Portable squid pump (G St)
- Portable crane (G St)
- Fuel dock

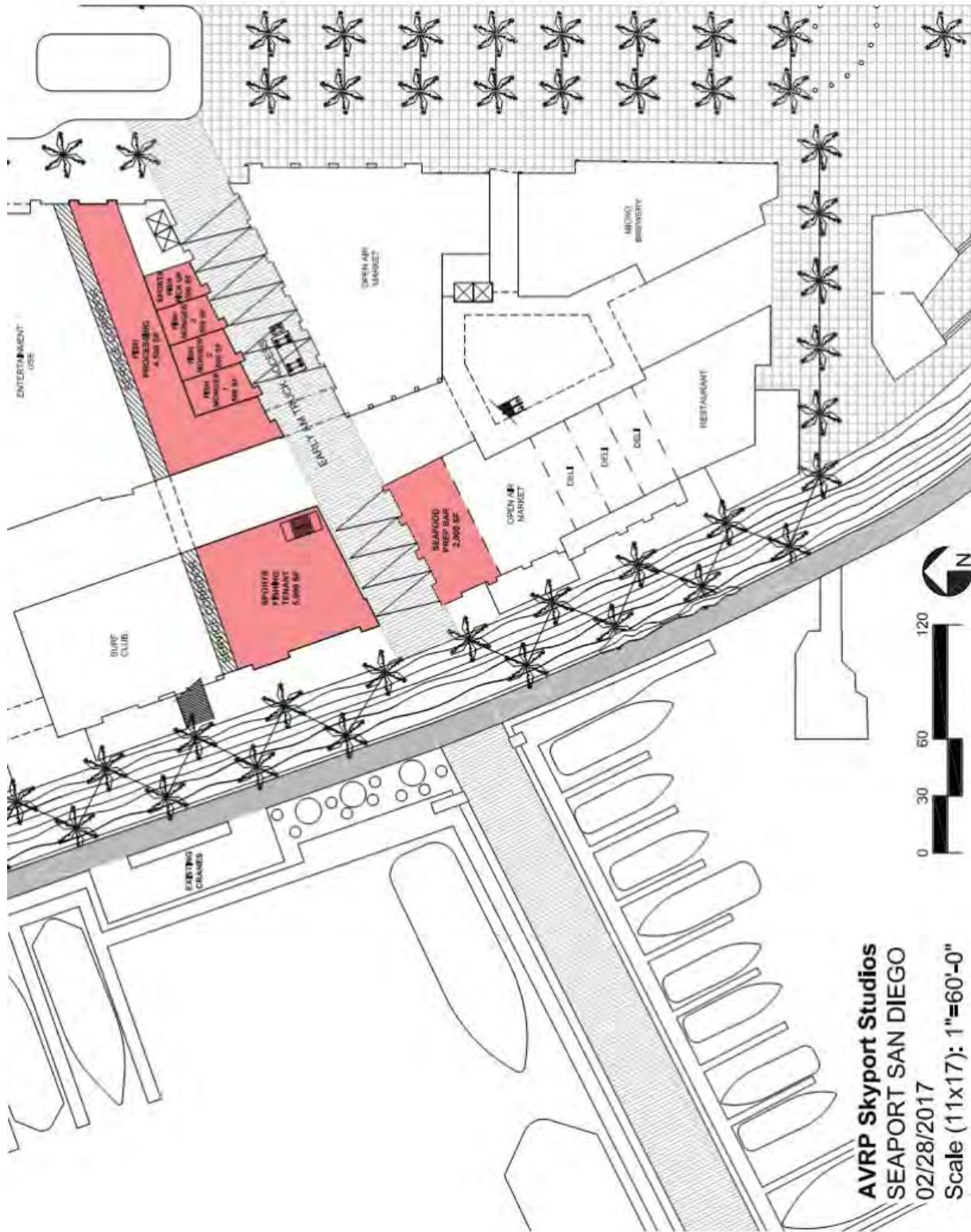


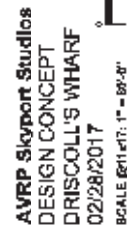


avrp STUDIOS
SKYPORT
SCHEME 4
MARCH 13, 2017



avrp STUDIOS **SKYPORT** **SCHEME 4**
MARCH 13, 2017





Tuna Harbor Planning

Date:



Harbor Layout Based on Expanded Commercial Fishing Space and Other Uses
Please rank the options: 1=Best, 2nd, 3rd, 4th=Least

☐

Option 1:

Expanded Wharf at Market Pier

☐

Option 2:

Expanded Facilities at G Street Mole

☐

Option 3:

Fish Market Pier Added in Tuna Harbor

☒

Option 4:

Fish Market Along Promenade and Pier Added in Tuna Harbor

Comments: *Long term
some Net storage could be off site*

For more information, please visit our website:

www.seaportsandiegoca.com

Page 80 of 140 F
Page 194 of 255B

Please provide your contact information so we can keep you informed!

First Name:

Fritz

Last Name:

Ahern

Phone No.:

858 2459360

Company Name or Organization:

SARO Inc

Email:

Fritzahern@gmail.com

Street Address:

5632 Stresemann St

City:

San Diego

State:

CA

Zip:

92122-3126

Tuna Harbor Planning

Date:



Harbor Layout Based on Expanded Commercial Fishing Space and Other Uses
Please rank the options: 1=Best, 2nd, 3rd, 4th=Least

☐

Option 1:

Expanded Wharf at Market Pier

☐

Option 2:

Expanded Facilities at G Street Mole

☐

Option 3:

Fish Market Pier Added in Tuna Harbor

☒

Option 4:

Fish Market Along Promenade and Pier Added in Tuna Harbor

Comments:

For more information, please visit our website:

www.seaportsandiegoca.com

Please provide your contact information so we can keep you informed!

First Name:

Antonio

Last Name:

Estrada

Phone No.:

619-4058551

Company Name or Organization:

Email:

Auefish72@gmail

Street Address:

41236 Milton St.

City:

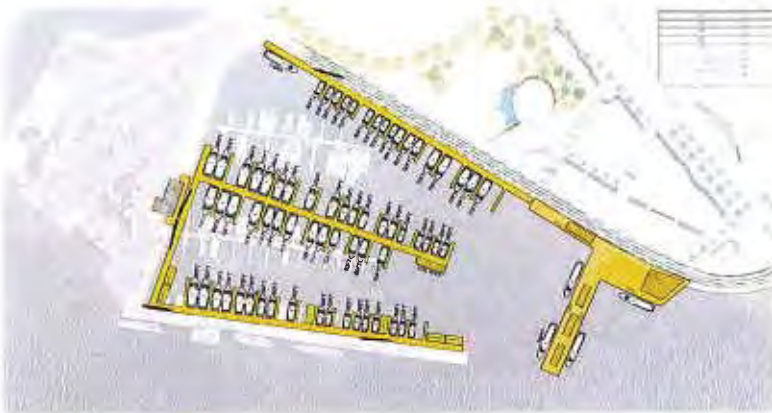
San Diego

State:

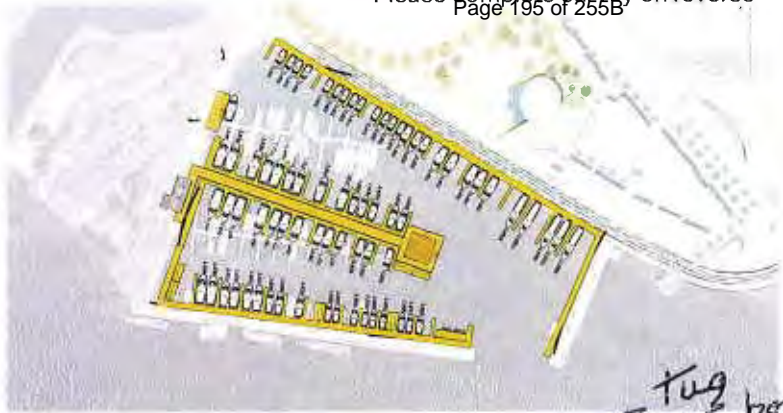
CA

Zip:

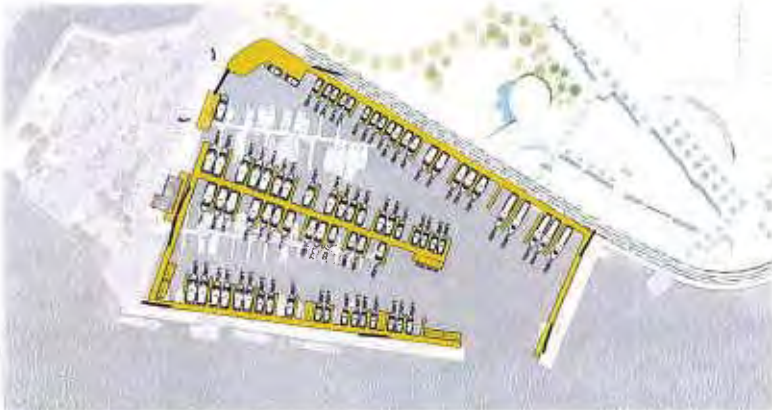
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Option 1: Expanded Wharf at Market Pier



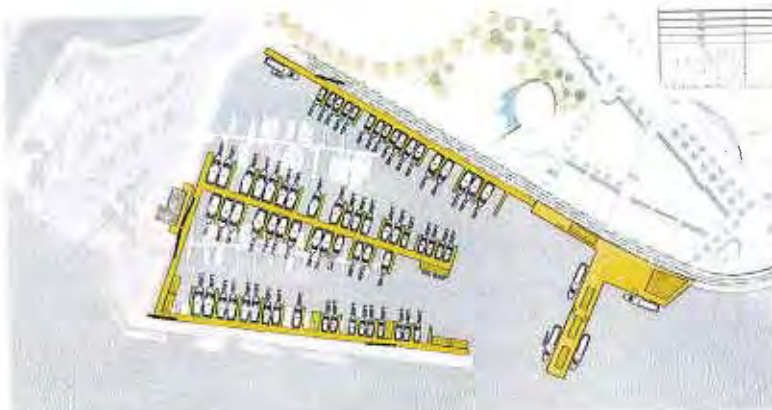
Option 3: Fish Market Pier Added in Tuna Harbor



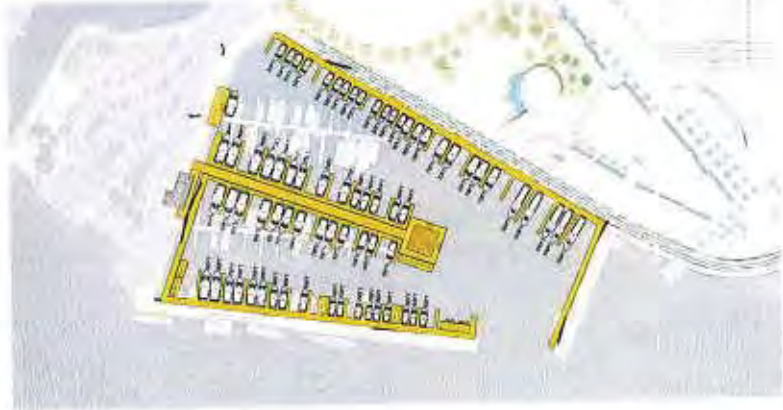
Option 2: Expanded Facilities at G Street Mole



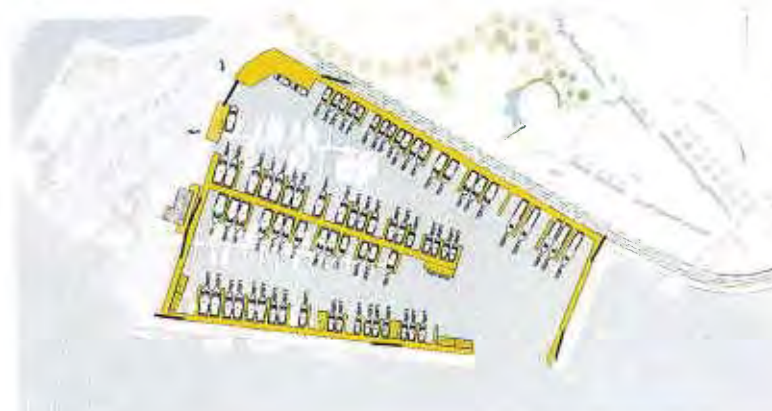
Option 4: Fish Market Along Promenade and Pier Added in Tuna Harbor



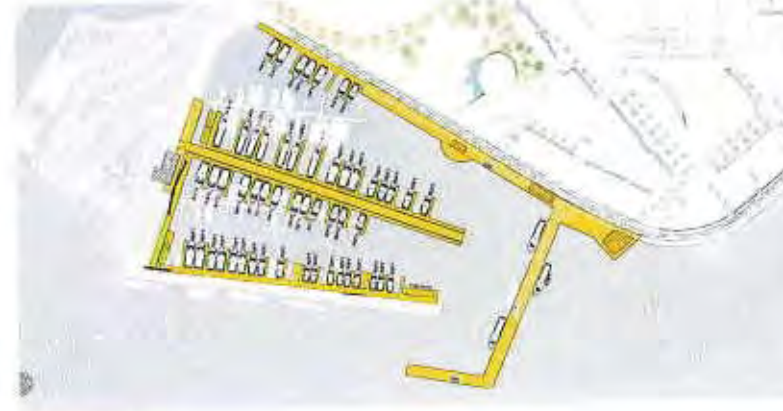
Option 1: Expanded Wharf at Market Pier



Option 3: Fish Market Pier Added in Tuna Harbor



Option 2: Expanded Facilities at G Street Mole



Option 4: Fish Market Along Promenade and Pier Added in Tuna Harbor

Tuna Harbor Planning

Date:



Harbor Layout Based on Expanded Commercial Fishing Space and Other Uses
Please rank the options: 1=Best, 2nd, 3rd, 4th=Least

☐

Option 1:

Expanded Wharf at Market Pier

☐

Option 2:

Expanded Facilities at G Street Mole

☐

Option 3:

Fish Market Pier Added in Tuna Harbor

☒

Option 4:

Fish Market Along Promenade and Pier Added in Tuna Harbor

Comments:

Add Crane in SW corner
for off loading option for Big
Tuna Boats

For more information, please visit our website: www.seaportsandiegoca.com

Please provide your contact
information so we can keep
you informed!

First Name:

DAVE

Last Name:

RODRIGUEZ

Phone No.:

619-572-2738

Company Name or Organization:

CATALINA OFFSHORE

Email:

dave@catalinamarine.com

Street Address:

5202 Lavelock St.

City:

SD

State:

9210

Zip:

Tuna Harbor Planning

Date:



Harbor Layout Based on Expanded Commercial Fishing Space and Other Uses
Please rank the options: 1=Best, 2nd, 3rd, 4th=Least

☐

Option 1:

Expanded Wharf at Market Pier

☐

Option 2:

Expanded Facilities at G Street Mole

☐

Option 3:

Fish Market Pier Added in Tuna Harbor

☒

Option 4:

Fish Market Along Promenade and Pier Added in Tuna Harbor

Comments:

Add more

For more information, please visit our website: www.seaportsandiegoca.com

Please provide your contact
information so we can keep
you informed!

First Name:

Last Name:

Phone No.:

Company Name or Organization:

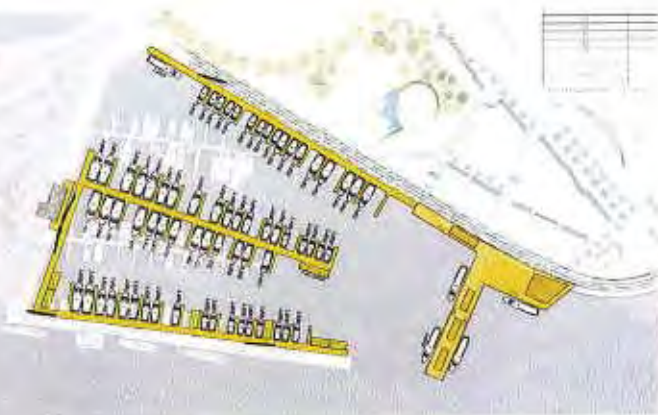
Email:

Street Address:

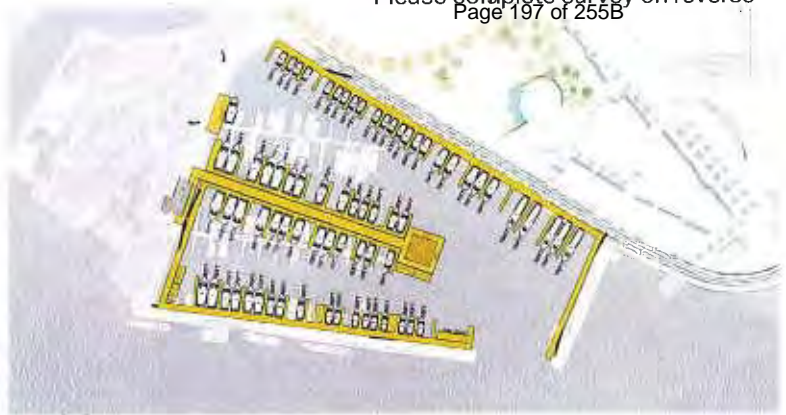
City:

State:

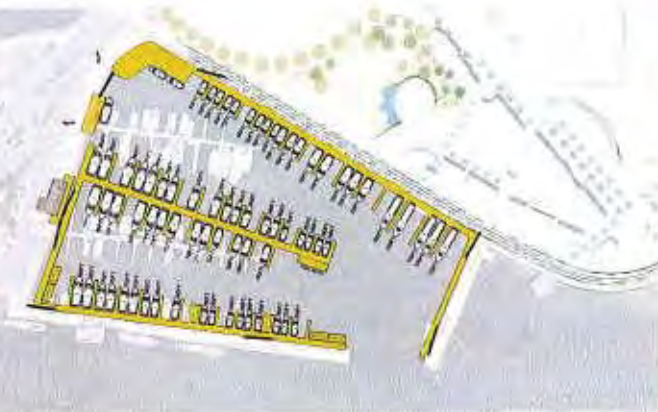
Zip:



Option 1: Expanded Wharf at Market Pier



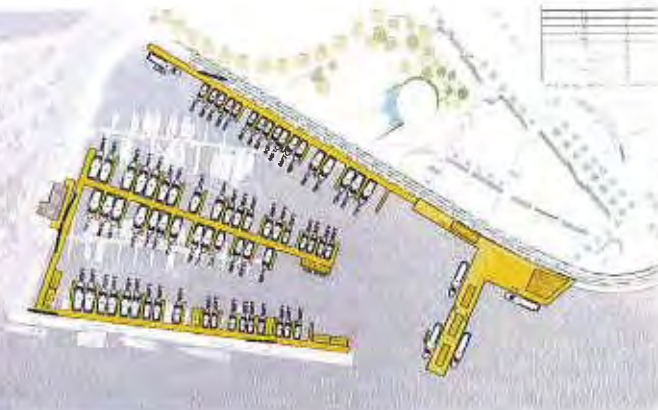
Option 3: Fish Market Pier Added in Tuna Harbor



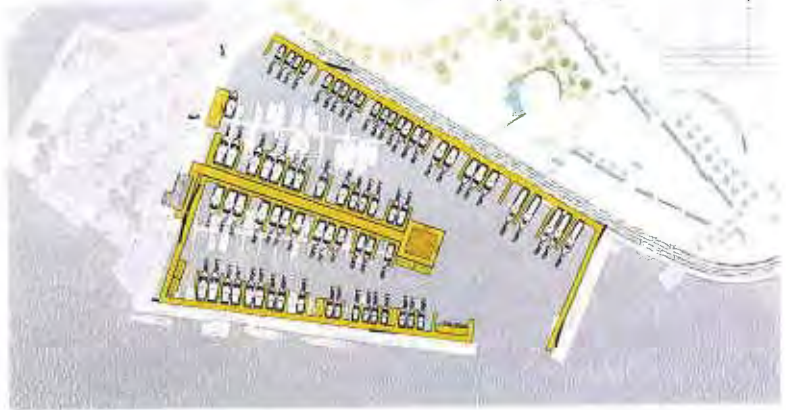
Option 2: Expanded Facilities at G Street Mole



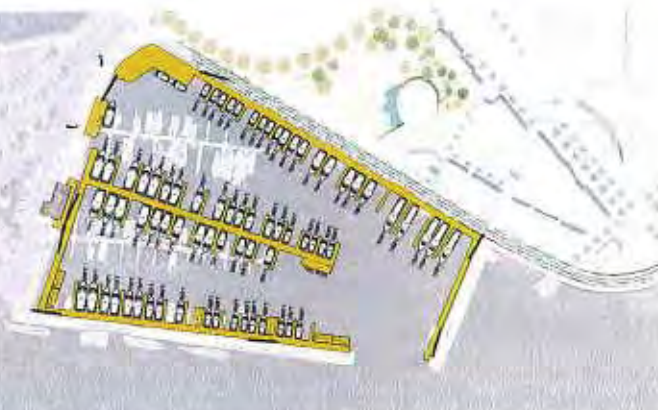
Option 4: Fish Market Along Promenade and Pier Added in Tuna Harbor



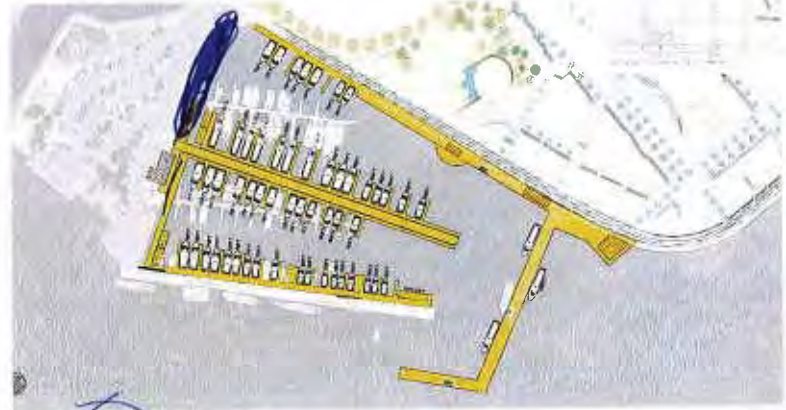
Option 1: Expanded Wharf at Market Pier



Option 3: Fish Market Pier Added in Tuna Harbor



Option 2: Expanded Facilities at G Street Mole



Option 4: Fish Market Along Promenade and Pier Added in Tuna Harbor

Tuna Harbor Planning

Date:



Harbor Layout Based on Expanded Commercial Fishing Space and Other Uses
Please rank the options: 1=Best, 2nd, 3rd, 4th=Least

2

Option 1:

Expanded Wharf at Market Pier

3

Option 2:

Expanded Facilities at G Street Mole

4

Option 3:

Fish Market Pier Added in Tuna Harbor

1

Option 4:

Fish Market Along Promenade and Pier Added in Tuna Harbor

Comments:

For more information, please visit our website:

www.seaportsandiegoca.com

Please provide your contact information so we can keep you informed!

First Name:

PETER H.

Last Name:

FLOURNOY

Phone No.:

619-203-5349

Company Name or Organization:

AMERICAN TUNA BOAT ASSOC. WESTERN FISH-BOAT OWNERS ASSOC. AM. FISHERMEN'S

Research Foundation
TUNA HARBOR DOCKSIDE MARKET

Street Address:

740 N. HARBOR DR.

City: SAN DIEGO, CA 92101

State: 619 203 5349

Zip:

Tuna Harbor Planning

Date:



Harbor Layout Based on Expanded Commercial Fishing Space and Other Uses
Please rank the options: 1=Best, 2nd, 3rd, 4th=Least

☐

Option 1:

Expanded Wharf at Market Pier

☐

Option 2:

Expanded Facilities at G Street Mole

☐

Option 3:

Fish Market Pier Added in Tuna Harbor

☒

Option 4:

Fish Market Along Promenade and Pier Added in Tuna Harbor

Comments:

WE NEED A DESIGNATED GILLNET repair & storage area.

For more information, please visit our website:

www.seaportsandiegoca.com

Please provide your contact information so we can keep you informed!

First Name:

TIM

Last Name:

MULCAHY

Phone No.:

805 689 4552

Company Name or Organization:

F/V CALOGERA

Email:

FV CALOGERA@yahoo.com

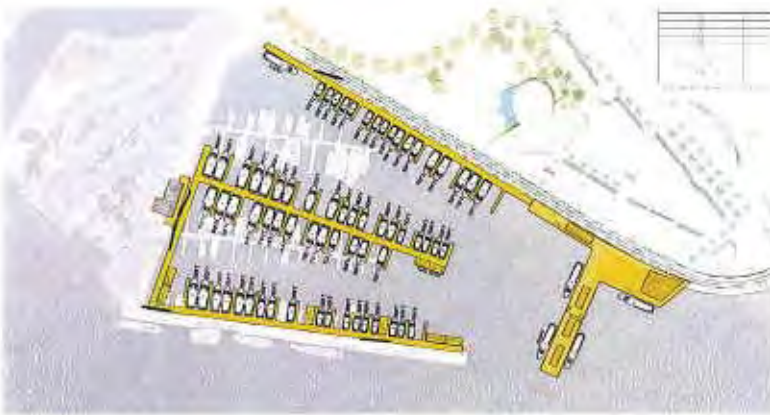
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1990 Azure Way

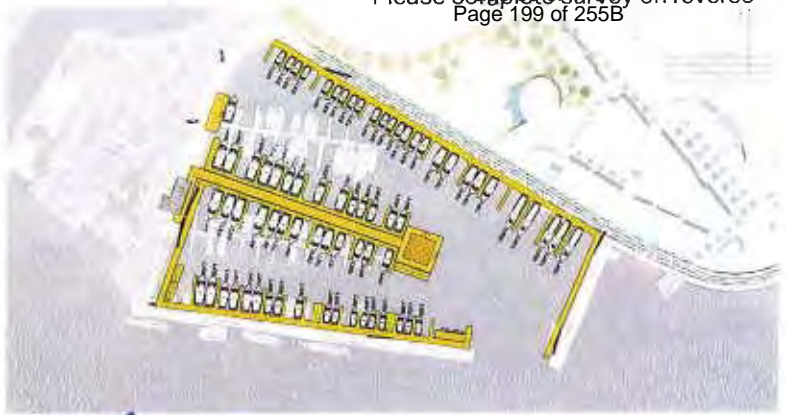
City: ENCINITAS

State:

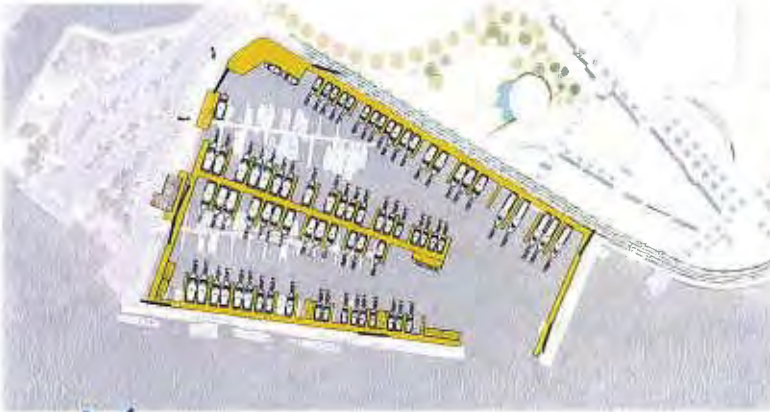
Zip: 92024



Option 1: Expanded Wharf at Market Pier



Option 2: Fish Market Pier Added in Tuna Harbor



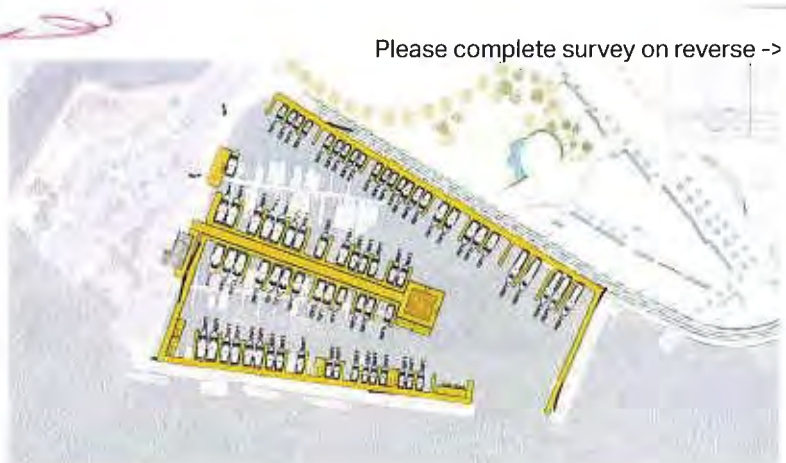
Option 3: Expanded Facilities at G Street Mole



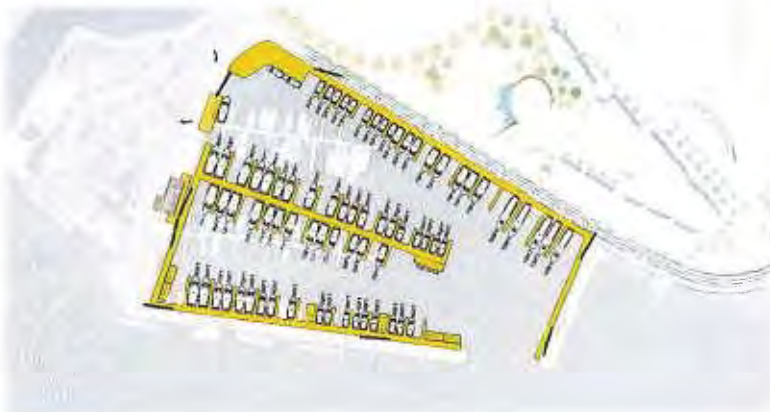
Option 4: Fish Market Along Promenade and Pier Added in Tuna Harbor



Option 1: Expanded Wharf at Market Pier



Option 3: Fish Market Pier Added in Tuna Harbor



Option 2: Expanded Facilities at G Street Mole



Option 4: Fish Market Along Promenade and Pier Added in Tuna Harbor

Tuna Harbor Planning

Date: 9/3/14/17 Seaport
SAN DIEGO

Harbor Layout Based on Expanded Commercial Fishing Space and Other Uses
Please rank the options: 1=Best, 2nd, 3rd, 4th=Least

- ☐ Option 1:
Expanded Wharf at Market Pier
- ☐ Option 2:
Expanded Facilities at G Street Mole
- ☐ Option 3:
Fish Market Pier Added in Tuna Harbor
- ☒ Option 4:
Fish Market Along Promenade and Pier Added in Tuna Harbor

Pete's comment
* = put offload,
ice/refrigerator
(smaller market?)
bait storage

11

Comments:

See amendments, also
"t" on fish market pier, + pier
extension to north in front of ATAS
2 or dock n
dine...
Pete said
ok

For more information, please visit our website:

www.seaportsandiegoca.com

Please provide your contact
information so we can keep
you informed!

First Name: Theresa

Last Name: Tallen

Phone No.:

858-200-6975

Company Name or Organization:

Email:

Street Address:

City:

State:

Zip:

Tuna Harbor Planning

Date: Seaport
SAN DIEGO

Harbor Layout Based on Expanded Commercial Fishing Space and Other Uses
Please rank the options: 1=Best, 2nd, 3rd, 4th=Least

- Option 1:
Expanded Wharf at Market Pier
- Option 2:
Expanded Facilities at G Street Mole
- Option 3:
Fish Market Pier Added in Tuna Harbor
- Option 4:
Fish Market Along Promenade and Pier Added in Tuna Harbor

Comments:

I like a mixture of 3 and 4. The sportfishing
boats need to be visible from the office.

For more information, please visit our website:

www.seaportsandiegoca.com

Please provide your contact
information so we can keep
you informed!

First Name: DREW

Last Name: CARO

Phone No.:

714-780-973

Company Name or Organization:

PACIFIC QUEEN SPORTFISHING

Email:

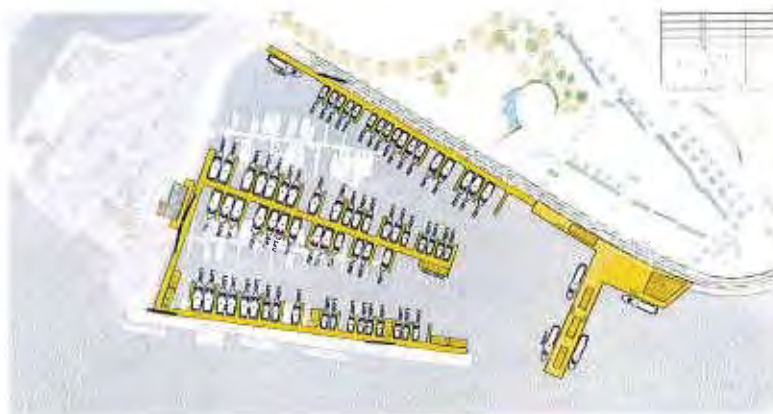
INFO@PACIFIC-QUEEN.COM

Street Address:

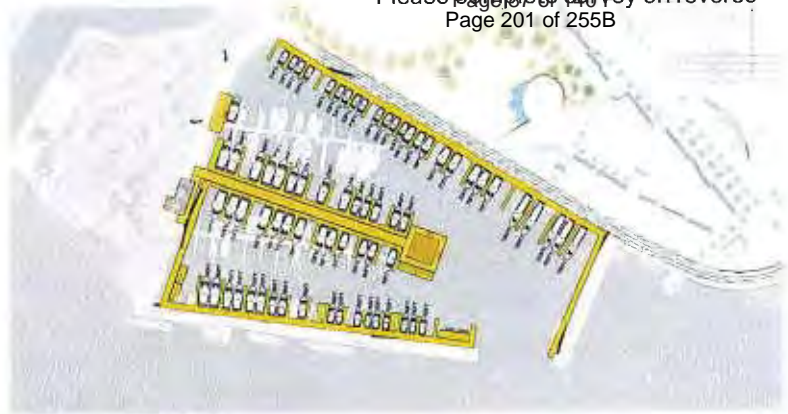
City:

State:

Zip:



Option 1: Expanded Wharf at Market Pier



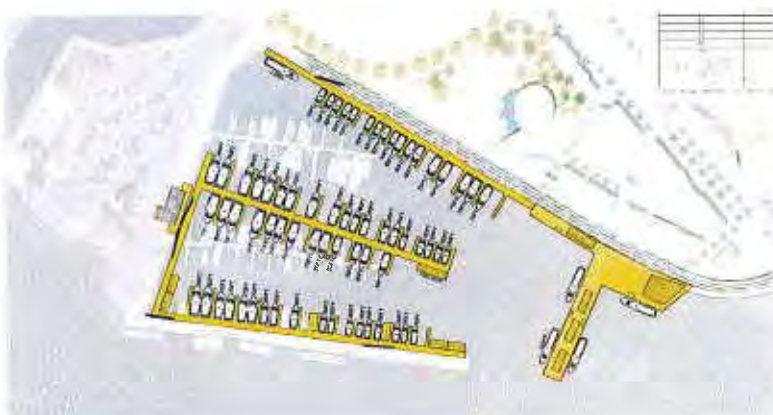
Option 3: Fish Market Pier Added in Tuna Harbor



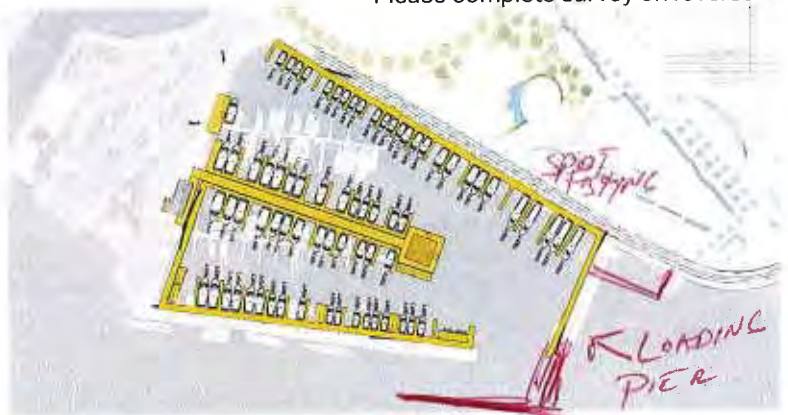
Option 2: Expanded Facilities at G Street Mole



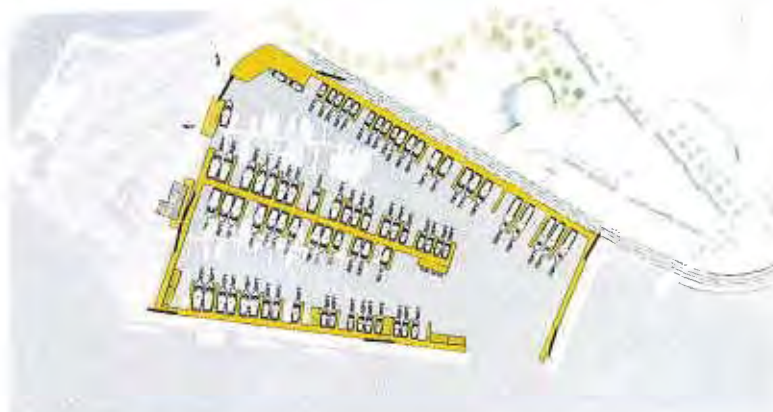
Option 4: Fish Market Along Promenade and Pier Added in Tuna Harbor



Option 1: Expanded Wharf at Market Pier



Option 3: Fish Market Pier Added in Tuna Harbor



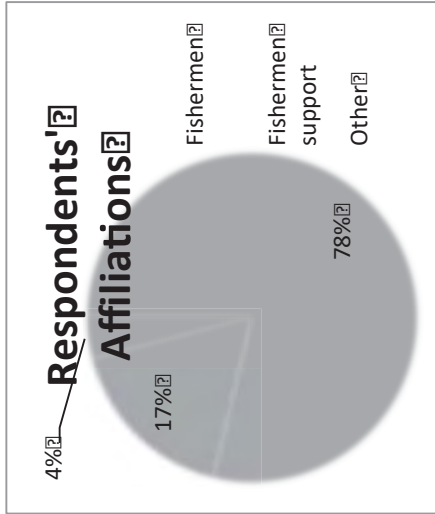
Option 2: Expanded Facilities at G Street Mole



Option 4: Fish Market Along Promenade and Pier Added in Tuna Harbor

Results of stakeholder input on the redevelopment of Tuna Harbor and Driscoll's Wharf, August 30-Sept 6, 2016

Email list (no. people)	70
Total responses:	23
Fishermen	78%
Fishermen support	17%
Other	4%



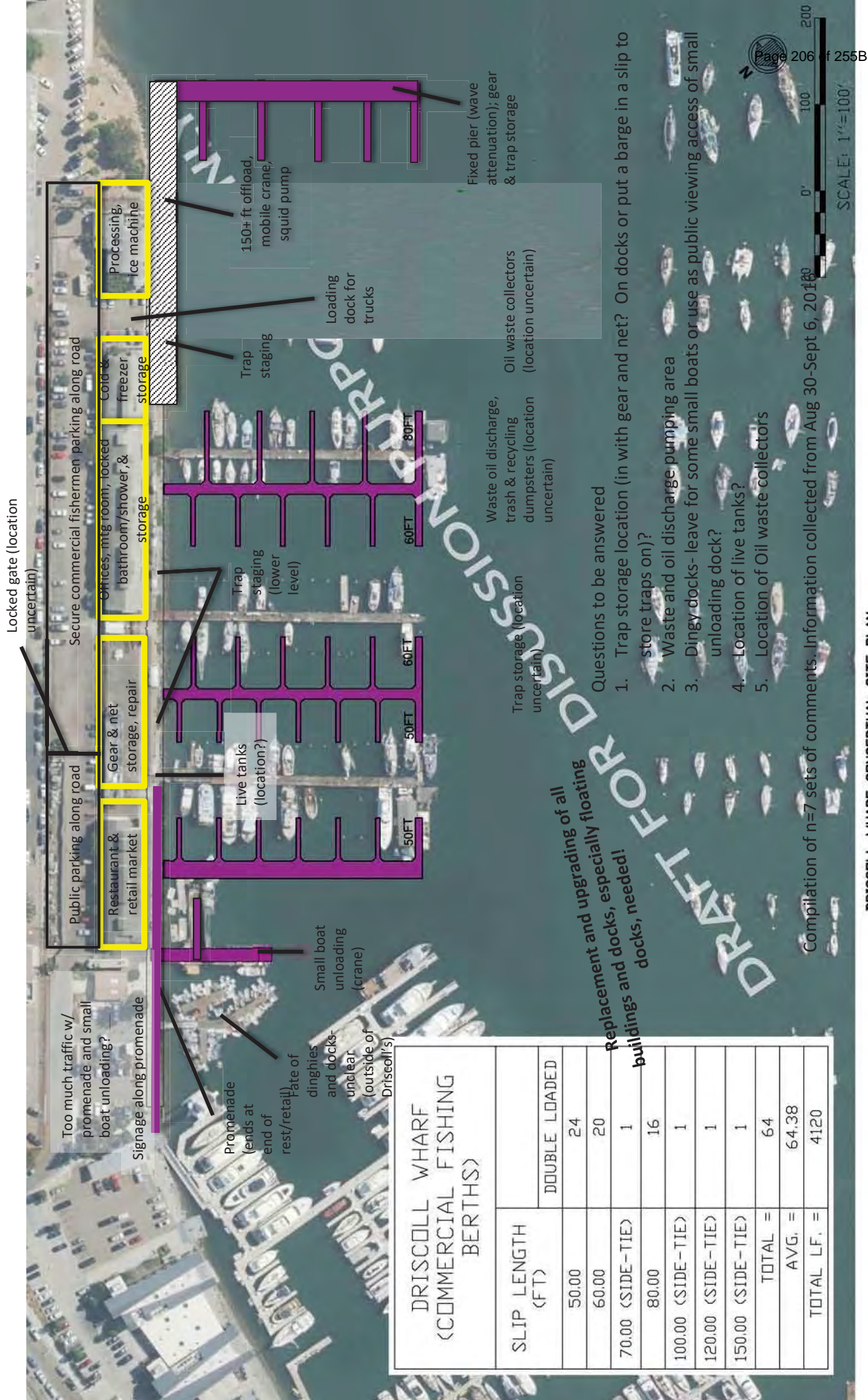
Comments on TH	21
Comments on DW	8

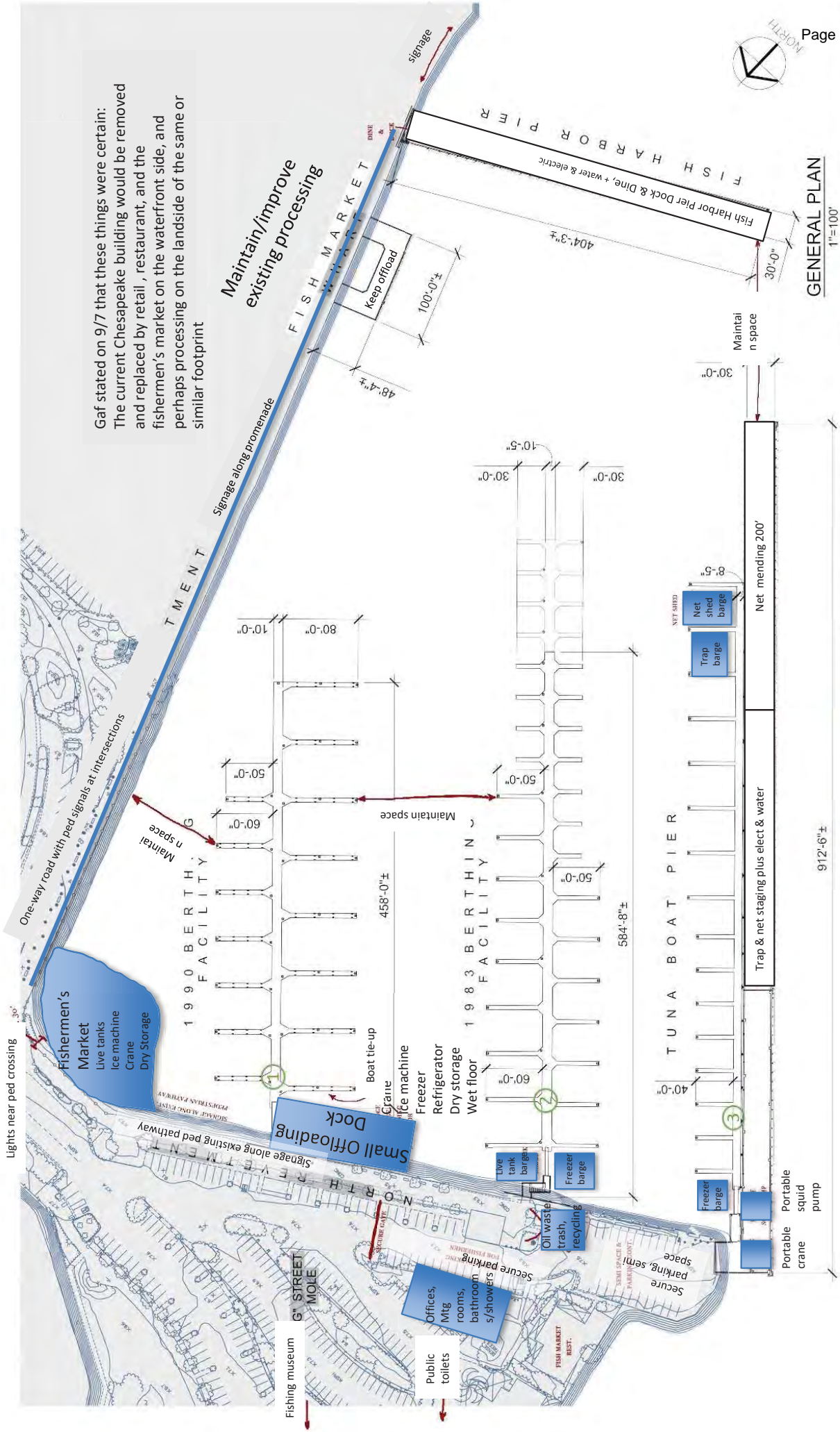
Uses	TH	DW
Commercial fishing & other commercial maritime uses; tugs, aquaculture)	100%	100%

Recurring notable specific needs
Everything from existing working harbor elements was listed multiple times
Solutions to traffic
Maintenance of space between berths
Maintenance or increase in numbers of slips, larger slips
Wave attenuation
No recreational boating (conflicting use)
Add tugboats to TH
Add 10 ft/Vs from sportsman's (TH)
Add aquaculture to WH and in middle pier, TH / add portable bilge pump for boats

Elements of an operational fishing harbor

- Association for fishermen slip holders
- Floating slips dedicated to commercial fishing vessels
- Crane to offload fish
- Pier with access to trucks for fish offloading
- Live tanks
- Fishermen's dockside market space
- Fish market for direct sales to the public
- Signage
- Squid pump
- Ice machine in close proximity to offloading pier
- Refrigerated space
- Freezer space
- Dry storage
- Wet floor for cutting fish
- Bathrooms
- Meeting room
- Waste oil discharge pump out area
- Oil waste collectors
- Net sheds for storage of nets
- Staging area and trap storage
- Net mending and trap repair area
- Parking areas
- Security
- Fisheries museum (Japanese, Chinese, Portuguese, Italian historical societies)





Gaf stated on 9/7 that these things were certain: The current Chesapeake building would be removed and replaced by retail, restaurant, and the fishermen's market on the waterfront side, and perhaps processing on the landside of the same or similar footprint

Maintain/improve existing processing

GENERAL PLAN

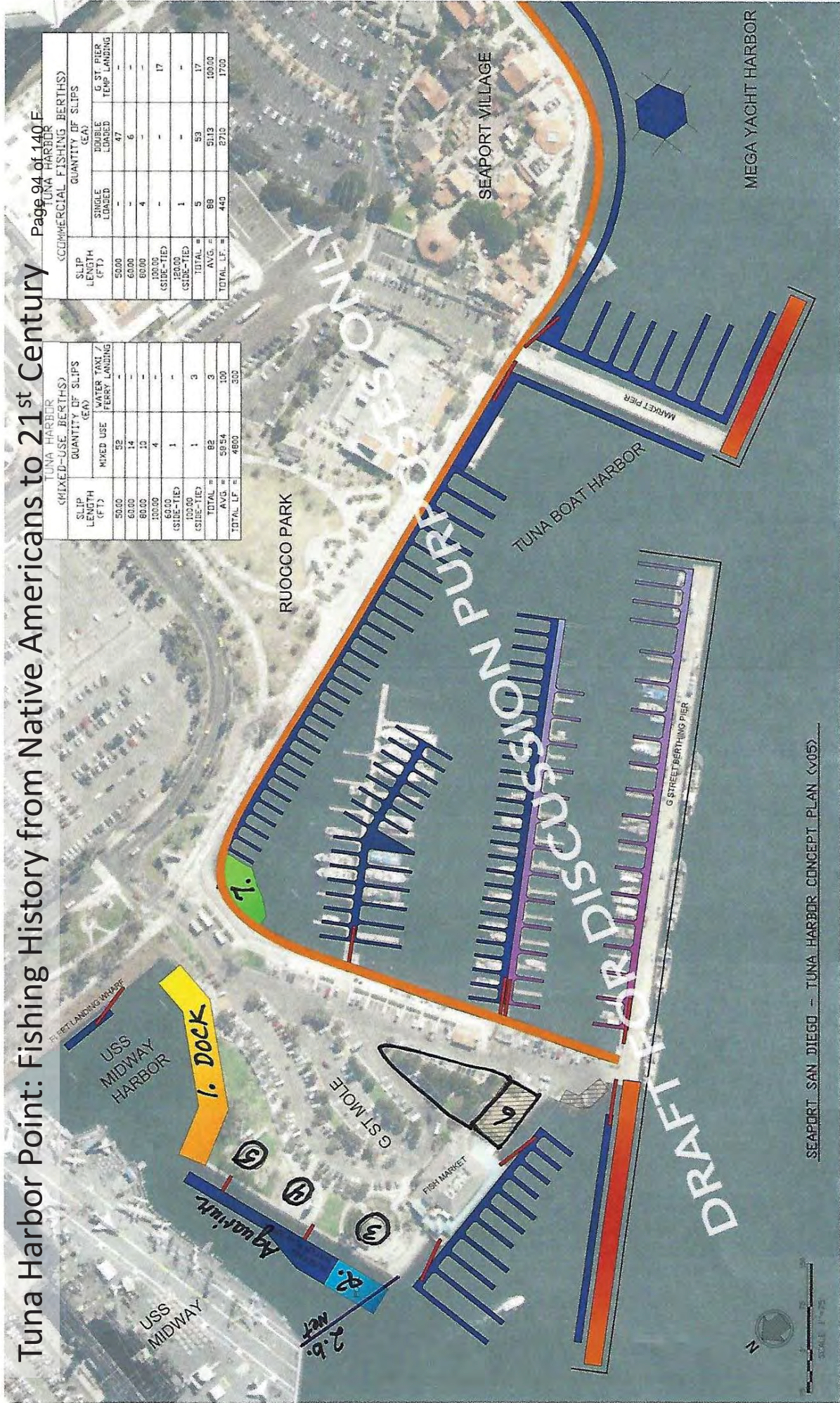
1"=100'

	DATE	GRAPHIC SCALE 0 50 100 200 FT 1"=100'	S A N D I E G O B A Y Coastal Conservancy Unified Port of San Diego	WATERFRONT FACILITIES INSPECTION G STREET MOLE / TUNA HARBOR UNIFIED PORT OF SAN DIEGO
				G STREET MOLE / TUNA HARBOR GENERAL PLAN

Possible additions: 80 tugboats, 10 boats from Sportsman's, Port hosted Aquaculture
Features based 21 comments received between 30 August – 06 September 2016.

Tuna Harbor Point: Fishing History from Native Americans to 21st Century

TUNA HARBOR (MIXED-USE, BERTHS)		TUNA HARBOR (COMMERCIAL FISHING BERTHS)	
SLIP LENGTH (FT)	QUANTITY OF SLIPS	SLIP LENGTH (FT)	QUANTITY OF SLIPS
50.00	52	50.00	47
60.00	14	60.00	6
80.00	10	80.00	4
100.00	4	100.00	-
120.00	1	120.00	-
140.00	1	140.00	17
160.00	1	160.00	-
180.00	3	180.00	5
200.00	3	200.00	89
TOTAL	92	TOTAL	440
AVG	58.54	AVG	2710
TOTAL LF	4800	TOTAL LF	1700



1. Docking for a demonstration Purse Seiner or NOAA vessel, or smaller fishing vessel afloat (functional and educational
2. Multi-level Aquarium: top level is introductory (above water); below water is a visual experience (species, habitats, robotics)
- 2.b. Small (removable) net/racks for habitat, research, viewing (crossing narrowest width).
3. fishing history -kids' size model **Native American's Tule canoes**,
4. Fishing history- a model of a **Chinese Junk**, or fun fishing or harbor creatures – tuna, sea urchin, harbor seals.
5. Fishing history- model of **Tuna Purse Seiner** (or something simpler like a Monterey fishing boat).
6. An extension to the Fishmarket Restaurant : outside eating area (takeout orders), and view point.
7. Off-loading Dock and Fishermen's market.

Sport Fishing Info Collection

Attendees: Mike Conroy, William Morrison, Alex Buggy, Drew Card

1. Needs

- a. Minimum: Shore Power and Fresh water
- b. Basic: Small ticket office/ tackle shop
- c. To make it relevant: Storage and Freezer Units
- d. No special dock requirements for offload. Need to account for distribution of catch upon return to Port. Over at the big 3 (Fishermen's Landing, Point Loma Sportfishing and H&M Landing) there is a sidewalk which provides space and opportunity for boat crews to hand out their client's fish. If you get a chance – it would be beneficial to see how it is done at either of those places. We can help arrange that
- e. Parking and drop off issues very similar to Comm Fishermen

2. Expectations

- a. We can probably bring in 10 regular boats, ranging in size from small 6 Pax boats (40 feet) to state of the art long range sportfishing vessels- 130 feet)
- b. The largest boat only draws 9 FT, so these boats can be docked at flexible locations
- c. Additionally, 5 -10 transient boats might come down to run trips during the summer season. This would typically coincide with departure of albacore fleet (early to mid June)
- d. Different trip lengths
 - i. Longest: 15-18 day trips (Parking for clients and Fishermen needs to be a consideration)
 - ii. Mid: 3- 5 day trips
 - iii. Short: Full day, ½ day, and ¾ day trips
 - iv. Ecotourism trips possible (bird watching/whale watching/etc)
- e. 200 days of fishing is a good year

3. Ideas

- a. Make the end of an outer finger a Fuel dock
 - i. This could be very profitable (might be able to attract Hornblower in addition to Comm and Sport Fishermen). Very foreseeable that private vessels will patronize this as well.
 - ii. Suggestion: between 2-4 pumps
 - iii. Environmental Impact? Port Master Plan?
 - iv. Depending on desired market – capacity could be an issue. Underwater storage v above ground storage of holding tanks.
 - v. Ancillary services could include sewage pumps, used oil disposal, etc.
- b. Manned Gate vs. metered parking.
- c. Self-Governance of the sportfishing operation out of Tuna Harbor
 - i. This would be a huge draw, and the best reason for the Sport Fishermen to leave their current locations

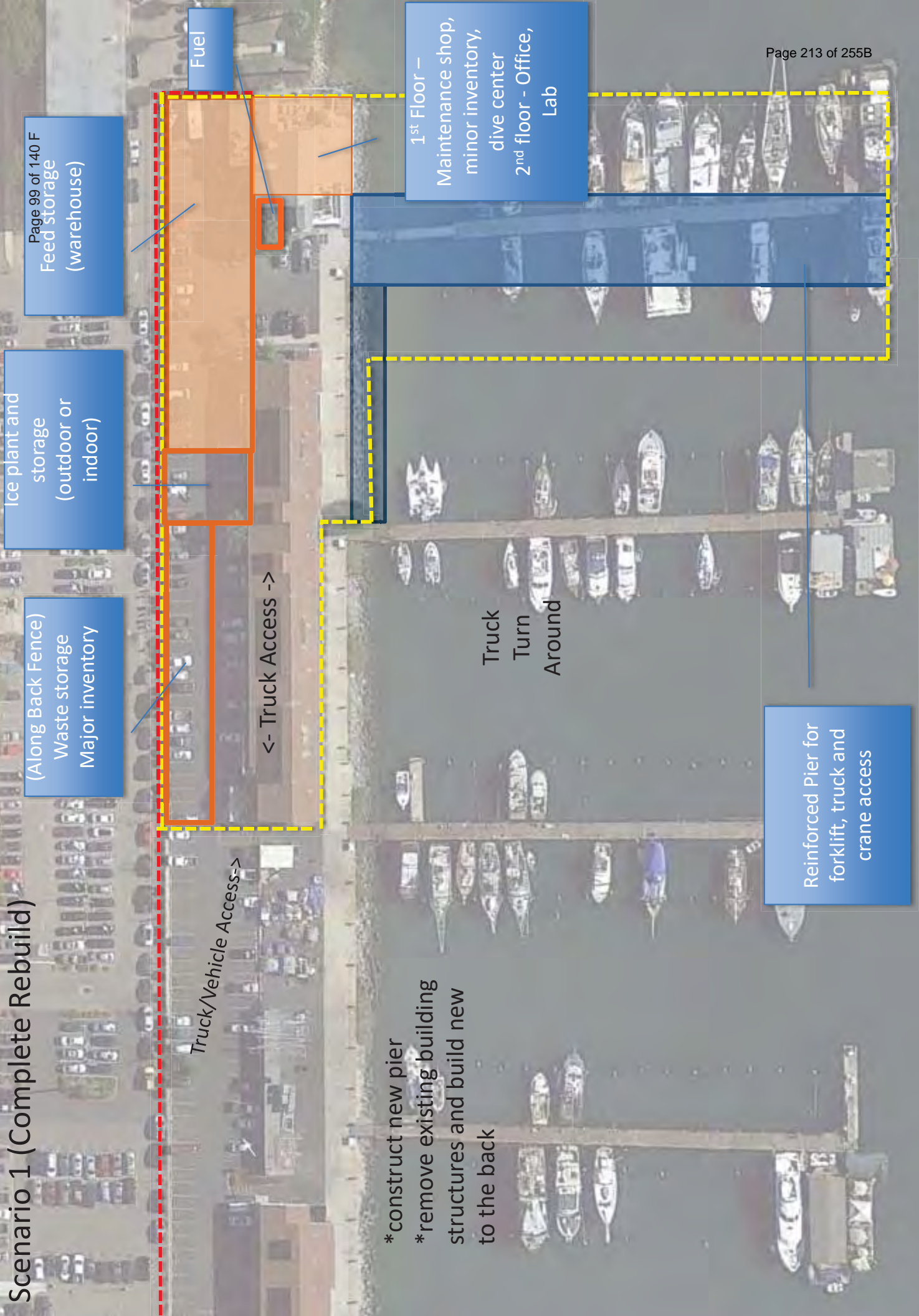
- ii. As of now, no apparent issues between Sport Fishing and Commercial Fishing would block a formation of an entity to govern these docks. While this is true – and both user groups should have a presence on the Board governing Tuna Harbor – I would recommend/suggest there be two distinct subcommittees (Commercial and Sport) which are charged with decision-making or providing recommendations to the larger Board. While no issues now; we cant assume that to always be the case – for example, if management measures were adopted by fishery managers which call for allocations amongst commercial and recreation fishermen.
- d. Different fingers for Comm Fishermen and Sport. The docks at the big 3 have gates on them – which were required after 9/11. You will notice the docks at Tuna Harbor are already equipped with similar set-ups.
- e. Ancillary services – rentals for watercraft. For example, stand-up paddleboards, sea doos, something akin to the Freedom Boat Club that operates nationally.

Open Ocean Farm Shore Facilities

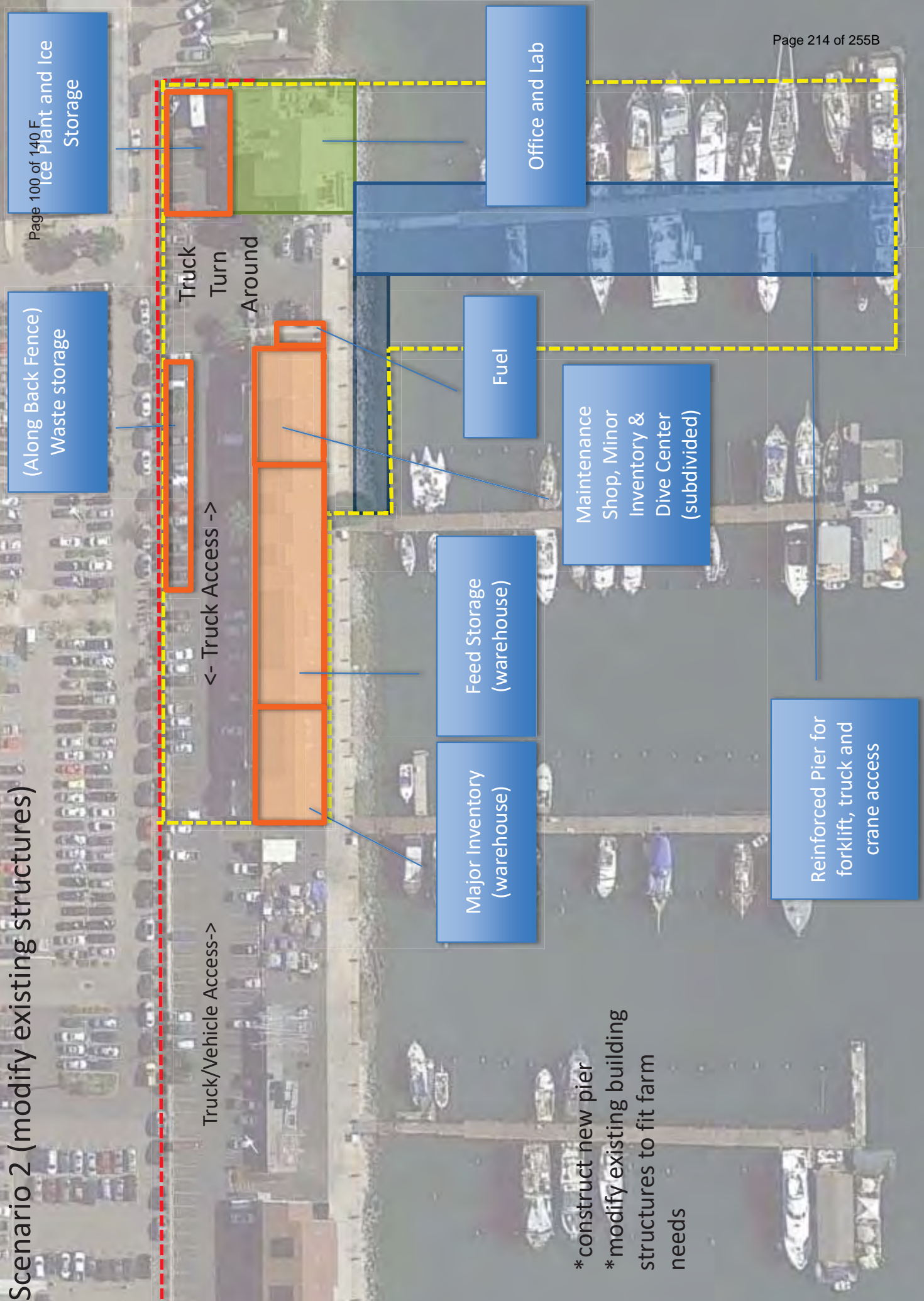
March 13, 2017



Scenario 1 (Complete Rebuild)



Scenario 2 (modify existing structures)



- *construct new pier
- *modify existing building structures to fit farm needs

San Diego Open Ocean Farm Shore Base Facilities Requirements

Office

- General office
- Fish health laboratory
- Sensitive Repair area for Electronic, sensors, robotics camera, computer and fine tools

Maintenance Shop

- Large door for forklift access
- Reinforced concrete floor for forklift access
- Adequate power for machinery
- Minor inventory storage (Indoor)
 - Climate controlled (AC)
 - Large access door for forklift
 - Reinforced floor for forklift and shelving

Dive center

- Indoor
 - Climate controlled
 - Dive maintenance and repair area
 - Adequate power for dive compressors (x2)
- Outdoor (adjacent to indoor space)
 - Secure area, well ventilated, under roof for wet dive gear and tank storage

Major Inventory/Waste Material storage

- Materials Storage
 - Secure, fenced area
 - Reinforced concrete or gravel floor for forklift
 - Ideally under covered roof
 - Lighting
 - Ropes, anchors, chains, bins, etc.
 - Hydrogen peroxide, and other chemical considerations
- Waste storage
 - Solid waste/trash
 - Mortality freezer or ensiling system
 - Blood water from harvest
 - Motor oil
 - Used ropes and nets

Feed storage building

- Large warehouse, minimum 7500 sf
- Dry and well ventilated
- Reinforced floor to install racks

- Large door access and ramp for forklifts
- Basic power for lighting and ventilation fans

Open dock space

- Reinforced concrete for truck, forklift and crane movements
- Minimum space TBD
- Fresh water, power and lighting
- Fuel storage (>5,000 gallons of diesel)

Ice Plant and Ice Storage

- Indoor or outdoor
- Significant power requirements
- Water filtration systems
- Ice storage in silos or in bins?

FISHERMEN & TUNA HARBOR

Participants

- Gaf
- Kip Howard
- William Morrison
- Alex Buggy
- Paul Ghorini
- Peter Flournoy, fisherman + environmental lawyer + representative for fishing industry on west coast
- Mike Conroy, ex-fisherman + Chair of the Port of San Diego Redevelopment Commercial Fishing Steering Committee + Board of the California Trap and Lobster Fishermen's Association
- Theresa Talley, Scripps + California Sea Grant Extension
- Elizabeth Brink, Gensler
- Genevieve Will, Gensler

Fishing & Tuna Harbor Dreams/Goals

- Water as main attraction to Seaport
 - Connection to ecosystems
 - "Working fish harbor"
- Revitalize Tuna Harbor – What could Tuna Harbor become?
 - "Vibrant theater" > The role of the fishmonger as ringmaster
 - Tugboats
 - Sport fishing trips
- Symbiotic cycle: fishermen sell fish to restaurants > chefs give/sell heads and waste back to fishermen for bait
- Become part of/integrate with 'Made in San Diego' brand
- Celebrate heritage
 - "We've been fishing on this coast for 7,000 years"
 - San Diego used to be the tuna fishing capital of the entire world until the canneries left in the 1970's
- Education
 - Know where your food comes from
 - Learn about new species, they're delicious, how to prepare
 - Aquaculture as food: oysters, mussels, seaweed, abalone
 - Farming isn't all bad
 - Diversity of fish species (mirrors diversity of people, cultures in SD)
 - Counter-education, protect against NGOs
 -
- Generate more income for fishermen by selling direct to consumers and restaurants, not processors
- Specialty space needs
 - A 'pump' facility to give access for "wet catch" fishermen
 - Processing – filet fish onsite, etc.
 - Storage
- Definition of artisan: "Fishing for themselves and for their neighbors"

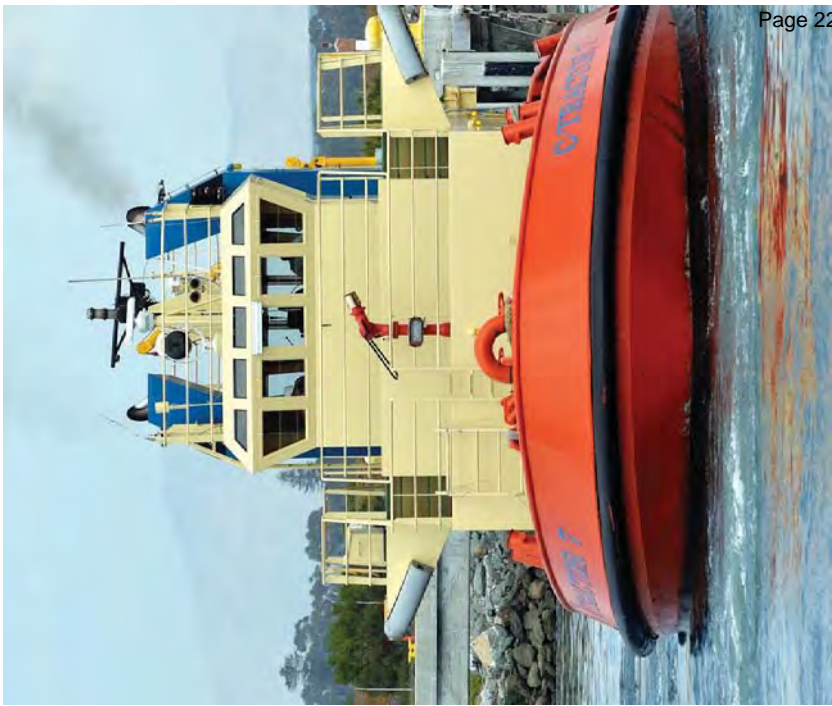
Check Out

- [Example](#) of cross-disciplinary conversations/initiatives
- [Pacific to Plate](#) legislation
- https://www.nytimes.com/2015/06/14/opinion/three-simple-rules-for-eating-seafood.html?_r=0
- <http://eattheinvaders.org/>

Celebrate: Heritage + History



Celebrate: Glory of the Open Sea



Educate: Aquaculture



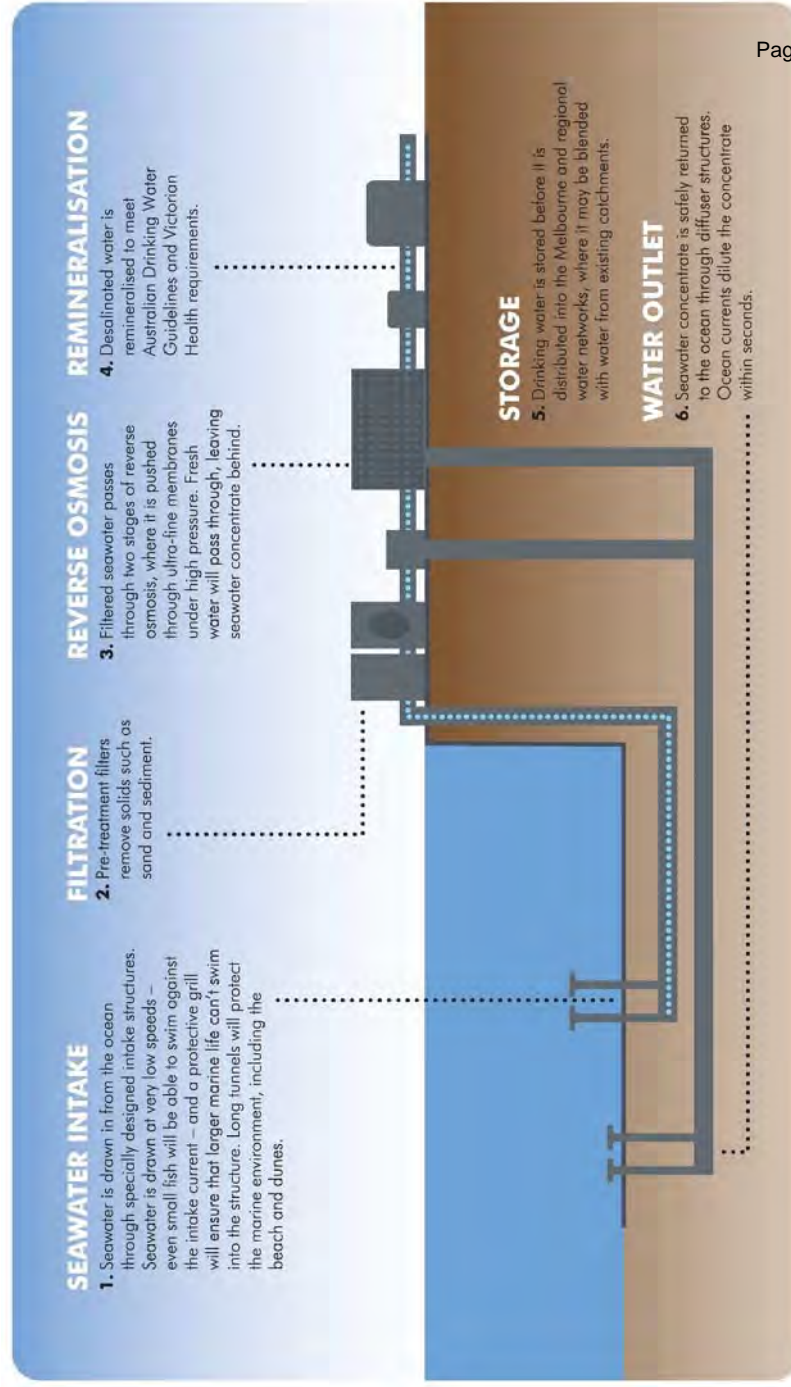
Educate: Aquaculture

Page 108 of 140 F




Page 222 of 255B

Educate: BlueTech



Educate: Delicious New Species



WAKAME
Undaria pinnatifida Native range: Japan Sea Invasive range: Southern California, San Francisco Bay, New Zealand, Australia, Europe, Argentina Habitat: Opportunistic seaweed, can be found on hard substrates including rocky reefs, pylons, buoys, boat hulls, and abalone and bivalve shells. Description: Golden brown seaweed, growing up to nine feet. Forms thick canopy. Reproductive sporophyll in [...]

EAT ME!



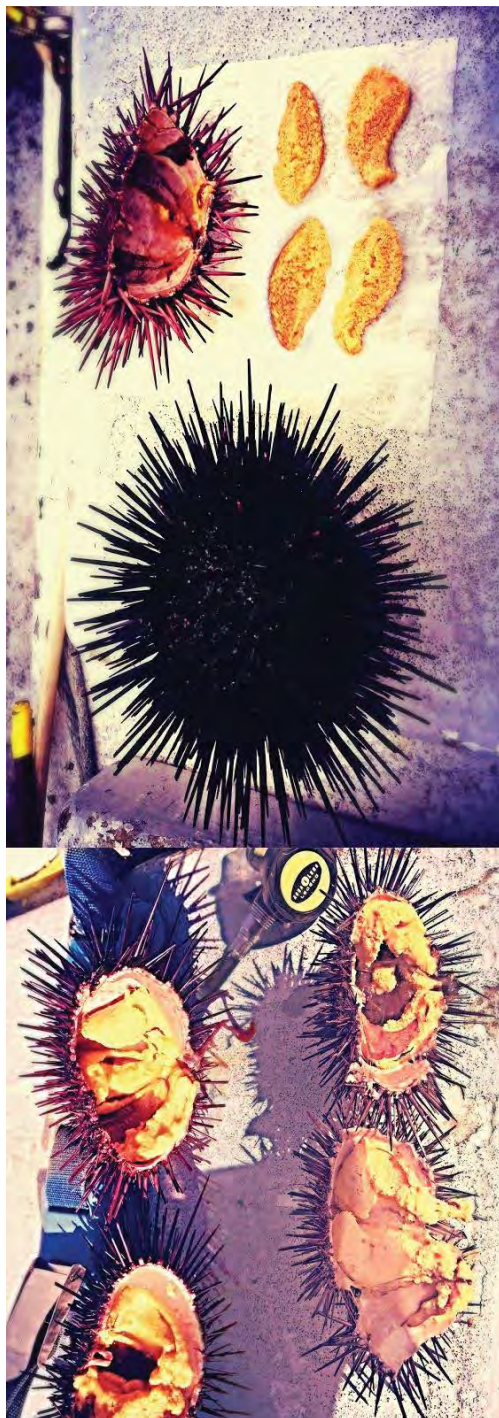
ASIAN SHORE CRAB
The first sighting of the Asian shore crab in the United States was at Townsend Inlet, Cape May County, New Jersey, in 1988. Though the source is unknown ...

EAT ME!



GREEN CRAB
Since the green crab was first recorded off southern Massachusetts in 1817, it has been hard to ignore. A few minutes of rock-flipping in Maine can turn up dozens of them. Brandishing their claws as they retreat...

EAT ME!



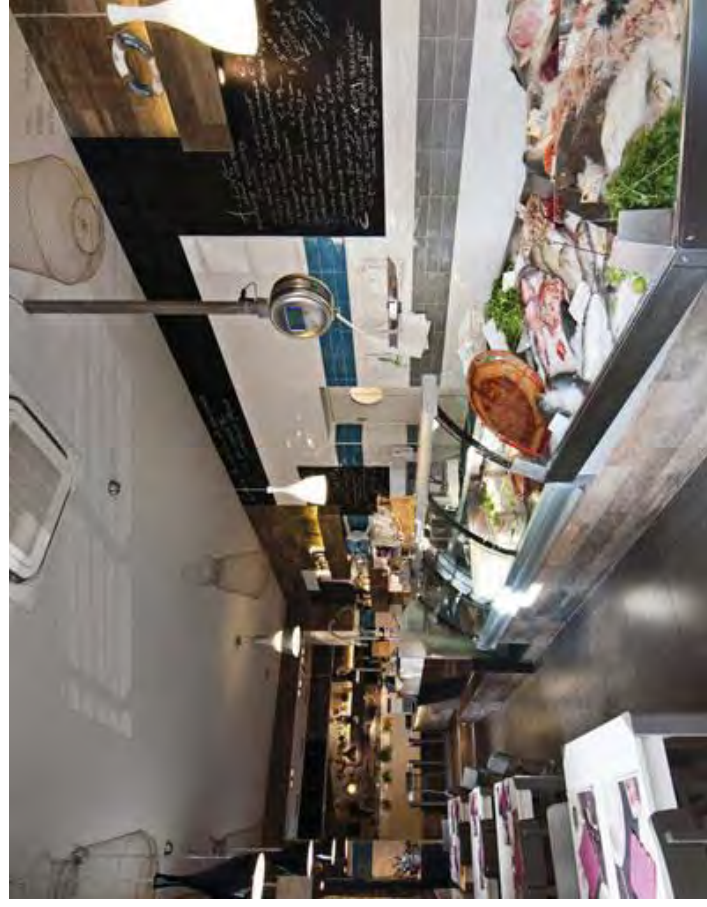
Market: Bolster Fishing Economy

Page 111 of 140 F



Page 225 of 255B

Market: Bolster Fishing Economy



Explore: Working Waterfront



Explore: Working Waterfront

Page 114 of 140 F



INTRODUCTION

The redevelopment of the Seaport site presents an unique opportunity to provide a recognizable center for San Diego, a central rendezvous at which the entire community - and its visitors - can gather around shared experiences.

DRAFT

THE SAN DIEGO CONTEXT

- » San Diego is a growing, **youthful** city that is seeking its center.
- » Participating in the **outdoors** and **healthy living** is at the heart of the San Diego experience.
- » San Diego perfectly blends **comfort and sophistication**.
- » The San Diego experience is **diverse**—balancing work, play, and culture and mixing an eclectic vibe with its casual atmosphere.
- » San Diego is shaped by **rich roots in history**, cultural influences, the military, and the water.



DRAFT

ICONIC & INTIMATE

Seaport blends distinctive, iconic, wow moments with a personal, intimate, and human-scale experience.

- Funky luxury
- Cool, unique and different
- Personal, human scale
- Intimate, comfortable
- Memorable
- Iconic, wow moments
- Unique
- Interplay of contemporary and historic
- Talking point

SEAPORT VISION



DRAFT

MULTI-DIMENSIONAL

The Seaport experience is multi-dimensional and diverse, hosting a variety of activity and textures.

- Mix of materials
- Color (bright, hand painted, natural materials, glass, stone)
- Variety of form and options of circulation
- Multidimensional – not single purpose
- Filled with textures and things happening
- Areas with a certain personality
- Tied together

SEAPORT VISION



DRAFT

LOCAL

Seaport is a local experience, celebrating San Diego and the waterfront in a way that is natural and not contrived.

- Great outdoor spaces
- Local character
- A natural place
- Interaction between Promenade and water
- Natural
- Strongly connected to the waterfront and ocean ecosystem
- Health and wellness

SEAPORT VISION



DRAFT

INCLUSIVE

Seaport is inviting and welcoming, with something for everyone.

- A place for everyone
- Fun and family friendly but with sophistication
- Beacon for the outside in
- Casual
- Transparent
- Inviting
- Brings together different cultures, ages, interests

SEAPORT VISION



DRAFT

AUTHENTIC

Seaport will evolve over time and be a timeless, enduring destination.

- Strong sense of place
- Practical
- Sophisticated
- Contemporary
- Evolving over time
- Attractive
- Patina
- Quality of place
- Quality of experience

SEAPORT VISION



DRAFT

DYNAMIC

Seaport celebrates discovery, interaction, and engagement – offering experiences you can enjoy again and again.

- Use technology to engage
- Interaction with nature and people
- Transition from day to night
- Contradictory, capturing attention
- Movement and dimension; non-linear
- Social and active
- Unexpected and playful
- Focus on exploration and discovery
- Experiential
- A place to escape

SEAPORT
VISION

Before I die...



DRAFT

STAKEHOLDER VISIONING

FISHING & TUNA HARBOR

PROJECT GOALS

- » Water as main attraction & working fish harbor
- » Revitalize Tuna Harbor
- » Symbiotic relationship between fishermen and tenants
- » Local focus
- » Celebrate history & heritage
- » Educate visitors - fish species, cultural food preparation, environmental stewardship, science & aquaculture

ATTENDEES

- Gaf
- Kip Howard
- William Morrison
- Alex Buggy
- Paul Ghorini
- Peter Flournoy
- Mike Conroy
- Theresa Talley
- Elizabeth Brink, Gensler
- Genevieve Will, Gensler

STRATEGIES FOR REALIZING PROJECT GOALS

- » Connection to ecosystems
- » Vibrant theater > role of fishmonger
- » Bring in tugboats
- » Sports fishing
- » Integrate with 'Made in San Diego' brand
- » Fun information: where does your food come from? What diverse species are available? What food comes from aquaculture? When is fish farming good?
- » Supply adequate specialty spaces: pump facility for wet fishing, processing, storage - without alienating visitors with the smell

DRAFT

Sustainable Seafood and SIO's info collection for Tuna Harbor

Attendees: Cindy Quinonez, Alex Buggy

1. Most of the requirements and needs have been pushed alongside the Fisherman's input
2. The biggest need is a storage structure the size of the current Chesapeake building
 - a. G street mole is an acceptable location
 - b. 2 level structure with the second deck for the UCSD internship program
3. Ancillary need: Signage for the past, present, and future of Tuna Harbor, Commercial Fishing, and Sustainable Seafood (labeling)

Below is an email from Cindy:

Part of the work the food system folks are doing to help the fishermen falls under "capacity building." it includes a focus beyond physical elements needed, specifically:

Business structure for joint holdings and operations

Sources of investment / other funding

New / ancillary revenue streams

Regulatory changes

Marketing / public awareness

The attached is one example of ideas we are exploring with them, a bit out of the box. I thought it might be helpful for you to see before our meeting.

We expect requested grant funding will soon be forthcoming for the fishermen to hire expert staff / secure professional services enabling them to move ahead with the above.

Below is a document that details a larger vision:

San Diego fishermen have tasked themselves to identify key features and infrastructure needed in and along G-Street Pier/Tuna Harbor and Driscoll's Wharf, to support their industry for the foreseeable future (~60 years). In this effort consideration has been given to the likely need for a joint business structure of some kind, perhaps one of the following:

- Joint venture (multiple fishing business entities interconnected by legal agreement)
- Non-profit 501c3, or other legal entity with a 501c3 designated to act as its fiscal agent
- New or existing fishermen's association or cooperative

As consideration continues, there may be an additional business structure worth some thought: a **Real Estate Investment Trust (REIT)**. I have only general knowledge and it's dated, from when I was working with parking operators who were exploring REITs for their business purposes (~2002 at the tail-end of my banking career, before heading into the kitchen). As far as I know, a REIT can be either a public or private company, is owned by shareholders who collectively want to buy, sell and/or operate one or more properties. I think of it like a mutual fund, but one that provides for shared ownership of real estate investments. My understanding is that 75% of gross income must come from real estate-related assets, 75% of assets must be real estate-related and there must typically be over 100 shareholders, and no fewer than 5 shareholders may own more than 50% of the company.

The idea of a fishermen's REIT came to mind in thinking about the current lack of a **seafood storage facility** (a parking garage of sorts) for loads of fish, during the limited time between offloading and sale to whoever, when the seafood heads to the buyer's facility (processing plant, restaurant, market, etc.).

I'm thinking such a seafood storage facility could be a profit center, with revenue that includes:

- Fishermen paying fees for as much or as little storage space as needed until their catch is sold, and offloading/other service fees (if the crane, ice machine, etc., are extensions of the facility)
- Processors leasing or renting square-footage within or adjoining the facility
- Retailers (e.g., fish market, restaurant) leasing square-footage within or adjoining the facility
- Tourists paying fees to tour the facility
- UCSD paying fees to offer apprenticeship instruction within or over the facility (on a 2nd floor)

Just like sports facilities such as Petco Park, Qualcomm Stadium, etc., perhaps the seafood storage facility could also generate revenue from the **sale of naming rights**. The selling of naming rights could provide the early influx of capital needed to build the facility, beyond amounts invested by the fishermen.

A profitable seafood storage facility held by a fishermen's REIT, would allow the fishermen to raise money from investors using a combination of debt and equity to acquire or expand the facility, plus operate and improve it over time, and maybe even sell it at some point.

With fishermen as the primary REIT holders, they'd collectively own the facility (together with other investors) and retain the revenue it generates. An individual fisherman's earnings would be in proportion to his shares in the REIT.

By distributing 90% of taxable income as dividends, the REIT would pay no corporate income taxes. It would also never save up a huge amount of cash on its balance sheet; thus it would fund any needed or desired expansion of operations by raising more debt and equity and/or selling its property.

For us to pursue this idea, someone will need to figure out a development cost for the facility and any related infrastructure, to include:

- Hard Costs -- building of walls, floors, ceilings, doors, and so on.
- Soft Costs -- legal advice, help from architects, other professional services.
- Land Acquisition -- in this case, securing rights from the Port?
- Furniture, Fixtures & Equipment (FF&E)

- Tenant Improvements (i.e., things required by processors, retailers, educators, others wanting to operate within or adjacent to the facility)

Any of this cost beyond the fishermen's means (plus any naming rights income?) would need to come from 3rd parties as either debt or equity (other investors contributing to get a percentage of the facility). The total investment would need to cover not only the above development costs but capitalized interest plus any expected operating deficit (i.e. how much the facility might lose before starting to turn a profit).

To calculating the operating deficit, someone will need to estimate the time required for different phases:

- Pre-Construction Phase -- when you'd need money enough to acquire rights and pay soft costs such as legal fees, permits, etc., due before construction (e.g., for REIT set-up).
- Construction Phase -- when you'd need money enough to pay the hard costs of facility development (including some FF&E and TIs toward the end), plus soft costs for REIT management
- Post-Construction Phase -- when additional ongoing FF&E and TI expenses would come in, as well as soft costs for on-going REIT management and operation of the facility

Beyond a rough sketch of these costs over time (detailed by month), someone will need to estimate monthly income and expense:

- Revenue such as average rate for storage space X average occupancy, plus add-on service fees (loading, chilling, etc.)
- Facility operating expenses such as maintenance, insurance, utilities, etc., REIT management expenses/overhead, plus any property tax and/or depreciation expense

These numbers are needed to estimate Net Operating Income (NOI - similar to EBITDA for normal companies), and then the Capitalization Rate, also known as Cap Rate: $\text{Cap Rate} = \text{NOI} / \text{Property Value}$. I believe cap rates between 5% and 10% are pretty typical. The lower the cap rate, the better. Example: for a facility generating \$6 million in annual net operating income, with a value is expected to reach \$100 million, the cap rate will be 6%. The higher the cap rate, the lower the property value. A 10% cap rate corresponds to a 10x multiple, but a 5% cap rate corresponds to a 20x multiple.

Big banks typically can help with REITs through their corporate and investment banking groups, for example Bank of America Merrill Lynch (BAML). There are also companies like Sovereign Capital Management Group here in San Diego. If this idea seems at all worth pursuing, we'll need to get help from an expert source – again, my knowledge is far too limited, and likely outdated.

Meeting Notes for November 28 Commercial Fishing Steering Group meeting

Attendees:

CFSG Members:

David Haworth – Seine, longline, trap Fisherman, Tuna Harbor
Phil Harris – Groundfish Fisherman, Driscolls
Peter Halmay – Tuna Harbor and the dockside market
Norm Abell – Mariculture
Greg Murphy – The Maritime Alliance
Jason Dunn – Seine/Bait Fisherman, Tuna Harbor
Marcus Dunn – Seine/Bait Fisherman, Tuna Harbor
Shevis Shima – Santa Monica Seafoods/Chesapeake
Dave Rudie – Catalina Offshore
Dave Stephens – Swordfish, lobster Fisherman, Driscolls
Mike Conroy – West Coast Fisheries Consultants – Chair
Theresa Talley – California Sea Grant

Public:

Paula Sylvia – Port of San Diego
Cynthia Quinonez – San Diego Food Systems Alliance
Fritz Ahern – F/V Saratoga
Fritz Ahern Jr – F/V Saratoga
Joey Principato – Santa Monica Seafoods/Chesapeake
John Gibbs – Longline Fisherman, Driscolls
Elly Brown – San Diego Food Systems Alliance
Reynaldo Ochoa – Processor/Buyer
Jesse Gipe – San Diego EDC
Jack Webster – AAFA/Tuna Harbor Fisherman
Alex Buggy – Gafcon/ABBA
William Morrison – Gafcon
Kip Howard – Allegis Development
Matt Sanford – San Diego EDC
Randy Robbins – AVRP Skyport Studios

I. Welcome, brief introductions

II. Follow-up from last meeting – Port's Commercial Fisheries Revitalization Plan

- Henry Pontarelli from Lisa Wise Consulting (LWC) participated via conference line.
- Much discussion was had centered upon the initial Seaport San Diego, Commercial Fishing and the Working Waterfront Strategic Plan Draft Understanding, Approach and Table of Content prepared by Henry on behalf of LWC. Hard copies of this were available at the meeting.
- Is there any thought that the findings/results of this Plan update will be utilized by the Port in reviewing the Port Master Plan? Is there a plan in place to amend the Port Master Plan with this redevelopment project.
- Driscolls has to be made a part of the conversation and its inclusion in this Plan update is necessary.

- There is a tight timeline attached to this project therefore LWC recommended breaking this down into a number of phases. Initial deliverables expected to be completed within 4 months.
- Phase 1 of this project will involve the following elements:
 1. A narrative which tells the story
Some questioned the need for a narrative; but the overall feeling was that so long as the narrative supported the goals of the update (internally to the Group and externally) it would prove beneficial. It will be incumbent upon Group members and the SD fishing community to be active participants in this.
 2. Outreach
To this Group; to individual fishermen; to buyers; to seafood consumers; to restaurateurs; if time permits – fuel docks; mechanics; and other supporting businesses. Leveraging members of the CFSG could speed this process and reduce redundancies.
 3. Demand
Expand upon the statement that demand is not the issue; but rather a lack of supply
 4. Supply
The one item on this list which we (the CFSG) have no direct control over. Regulatory measures, seasonal closures, etc all have an impact on supply. Lack of adequate infrastructure also hampers supply (long line vessels unable to unload in SD due to inadequate water depth, etc).
 5. Economics
What economic benefit is derived from commercial fishing in the SD area?
It will be relatively easy to come up with a dollar value for the items requested/deemed necessary by the CFSG (the cost side); but we need to project/estimate a revenue number (the benefit side).
- It was suggested we create a “clean” version of this document to circulate amongst the CFSG and meeting attendees. This suggestion was delayed pending delivery of an updated Draft document from LWC.

Needs identified by scientists and food system representatives for the Central Embarcadero Region of San Diego Bay. December 2016-January 2017.

Compiled by: Theresa S. Talley, California Sea Grant, Scripps Institution of Oceanography
Email: tstalley@ucsd.edu

Reponses:

- 6 scientists, all associated with SIO/NMFS- fisheries, who specialize in aquaculture, ecology and conservation of coastal ecosystems, microalgal culture
- 4 food system reps, associated with SD Food System Alliance, plus conclusions for “A Place at the Table Event” held in San Diego in October 2016.

SCIENTISTS

On the docks/in the harbor

- Small boat and research vessel facilities for launching vessels over 18 ft
- Slip for a large NOAA R/V
- Small, dry storage area (movable dock) for gear, supplies related to the small boats (e.g., PFDs, plankton nets)

Adjacent land

- Offices and meeting rooms for fishermen, scientists, other associated groups .
 - Offices for staff (instructors, resident and visiting scientists, blue job trainees and SIO students, other collaborators)
 - Meeting rooms/classrooms- with AV equipment (for classes or meetings are held at the facility; Can be rented to outside groups)
 - Auditorium / Large ballroom / Large presentation space for large public or professional lectures and/or dinners events for donors, public, stakeholders, public renters (similar to SIO Forum lecture room)
- Dedicated lab space for faculty, students, other researchers and collaborators (e.g., fishermen) with access and proximity to the commercial and recreational fisheries
 - Wet lab including benches, proper ventilation, chemical and biosafety cabinets- for experimental research, sample processing
 - Aquarium room with small to large tanks for growth and study of all sizes of commercially important species (including control of water chemistry and temperature to evaluate the effects of ocean acidification and climate on organisms).
 - Dry lab/work space (e.g., microscopes, drying oven, combustion oven, balance, countertop work space and lab supply/small field gear storage cabinets and drawers, chemical and biosafety cabinets, meters) for sample processing and analyses, lab meetings
 - Computer lab- state of the art computer equipment and software
- Training facilities
 - Aquaculture facility- indoor and/or outdoor for larger scale research and rearing trials, and public outreach (including a set-up where groups, such as non-profits, schools, others can rent/adopt a pool to raise particular species. Seaweed, spot prawn and native bivalves are of particular interest and hold much promise.) Lots of windows around indoor facilities so that the public can see.

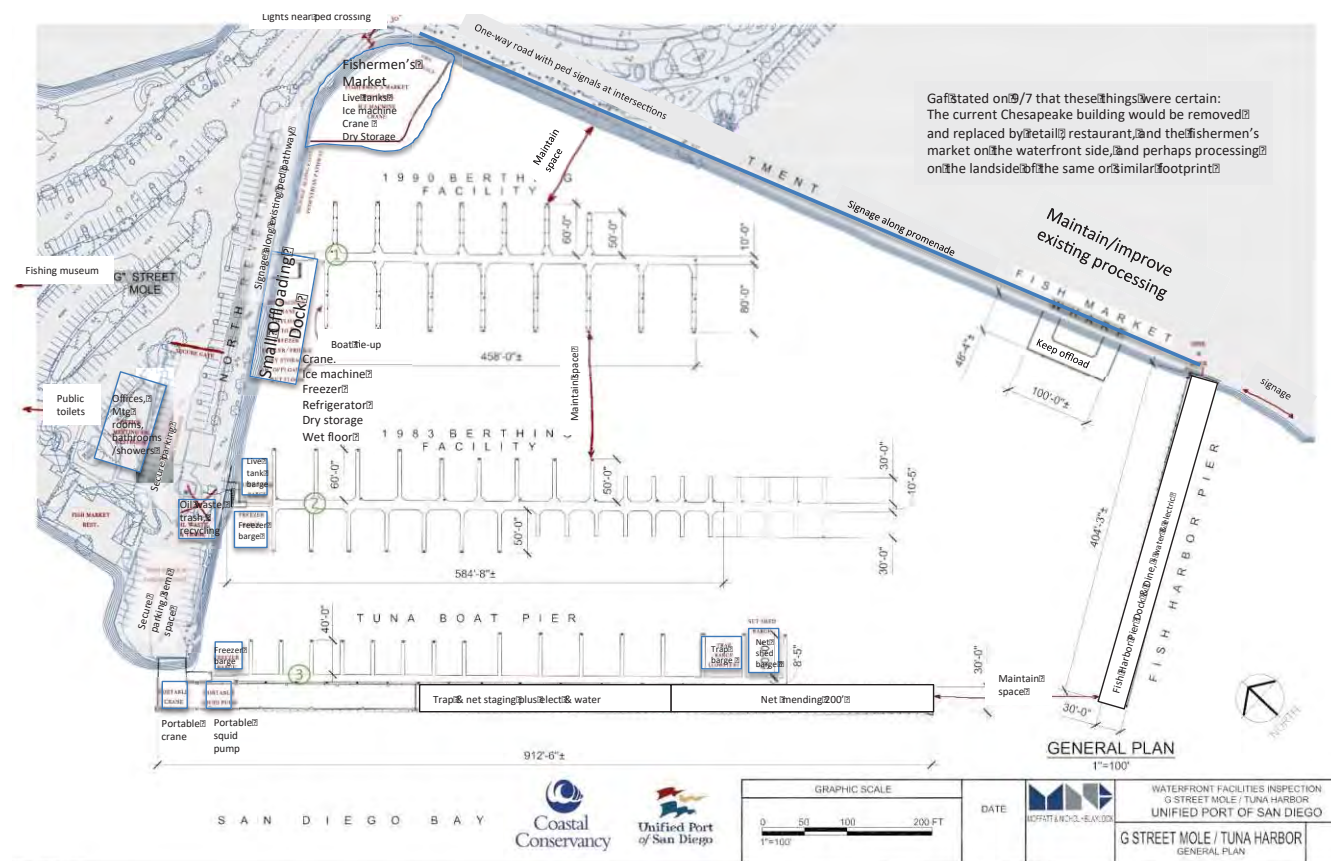
- Model fishing vessel with demonstration gear- for training program and public education/outreach. Boats are in the harbor nearby but may not always be available for lessons/outreach due to availability and insurance restrictions.
- Computer lab- state of the art computer equipment and software (could be same as listed above)
- Outreach and education facilities
 - Atrium- for social/donor events, meetings/poster presentations, public outreach. (displays can focus on maritime or fishing history of San Diego including current status (e.g., meet your fishermen) and visions for a sustainable future with displays of how to achieve sustainable seafood, other materials (e.g., medicines) and energy from the ocean. This can include interactive displays to highlight sustainable fishing techniques (e.g., hook and line, deep set buoy gear) and/or historic fishing gear like some of the Italian and Portugese traps and nets.
 - Outdoor touch tanks or tide pools with a “Meet Your Meal” &/or “Meet the Residents of San Diego Bay ” themes. May overlap with aquaculture facility.
 - Community kitchen (DEH approved), for use with outreach events involving Chefs preparing local seafood, seafood safety and cooking demonstration classes, renting for community events. Can model it after SDGE’s professional kitchen with high efficiency appliances and/or talk to chefs.
 - Harbor Viewing deck- with informational signage of the harbor highlighting features of a working harbor (people, infrastructure, ecology), and showing what that same view looked like historically and what it could look like in the future.
 - Outdoor education area
 - A colleague who consulted with the Maritime Museum for many years, Neva Sullaway, drafted some ideas for a fishing museum on the G St mole or other location. (i.e., these suggestions would add fishing history to the maritime history, and naval history of the area and be set in the present day fishing harbor). Fishing history displays could cover the area’s fishing history from 7,000 yrs ago to now including an interactive Native American tule canoe, a model Chinese junk, a donated NOAA research vessel or a purse seiner to use as a museum.
 - A robotic display letting people control the ROV to explore the underwater bay environment.

FOOD SYSTEM

On the docks/in the harbor

- Meeting Fishermen's needs is top priority for food system
 - List of 24 items from the working fishing harbor list (Table 1)
 - Accompanying pdf of Tuna Harbor (Fig. 1)
 - Association of fishermen (e.g., community fishing association, HOA type of arrangement, whatever helps fishermen organize and work together)
- Local seafood hub
 - Seafood processing facility
 - Seafood storage facility
 - Seafood distribution center
 - Multi-use outreach and education center (may overlap with outreach and education facilities from scientists, e.g., community kitchen, meeting rooms, large meeting room and atrium)
 - Waterfront access by public
 - Marketing and administration center
 - Base of outreach efforts and events, such as fish of the month, CSG, SD Fish Fest, School visits and field trips, Fresh fish alert (text alerts)
- Centrally located dockside market (as a way to provide direct access to local seafood, local fishermen, and to increase profile of local fisheries/aquaculture and San Diego's heritage)
 - Scaling up Tuna Harbor Dockside Market to a daily open air market, supported with concentrated marketing efforts.

Fig. 1 Diagram of Tuna Harbor showing infrastructure needed for a working, fishing harbor as identified by fisherman in Sept. 2016.



Possible additions: 180 tugboats, 10 boats from Sportsman's Port, hosted Aquaculture
Features based 21 comments received between 30 August - 06 September 2016.

Table 1. List of features needed for a working, fishing harbor identified by local fishermen in early 2016.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Association for fishermen slip holders 2. Floating slips dedicated to commercial fishing vessels 3. Crane to offload fish 4. Pier with access to trucks for fish offloading 5. Live tanks 6. Fishermen's dockside market space 7. Fish market for direct sales to the public 8. Signage 9. Squid pump 10. Ice machine in close proximity to offloading pier 11. Refrigerated space 12. Freezer space | <ol style="list-style-type: none"> 13. Dry storage 14. Wet floor for cutting fish 15. Bathrooms 16. Meeting room 17. Waste oil discharge pump out area 18. Oil waste collectors 19. Net sheds for storage of nets 20. Staging area and trap storage 21. Net mending and trap repair area 22. Parking areas 23. Security 24. Fisheries museum (Japanese, Chinese, Portuguese, Italian historical societies) |
|--|--|

Agenda for Commercial Fishing Steering Group meeting

Meeting Date: December 12, 2016

Meeting time: 4PM

Location – Harbour House Café in Seaport Village

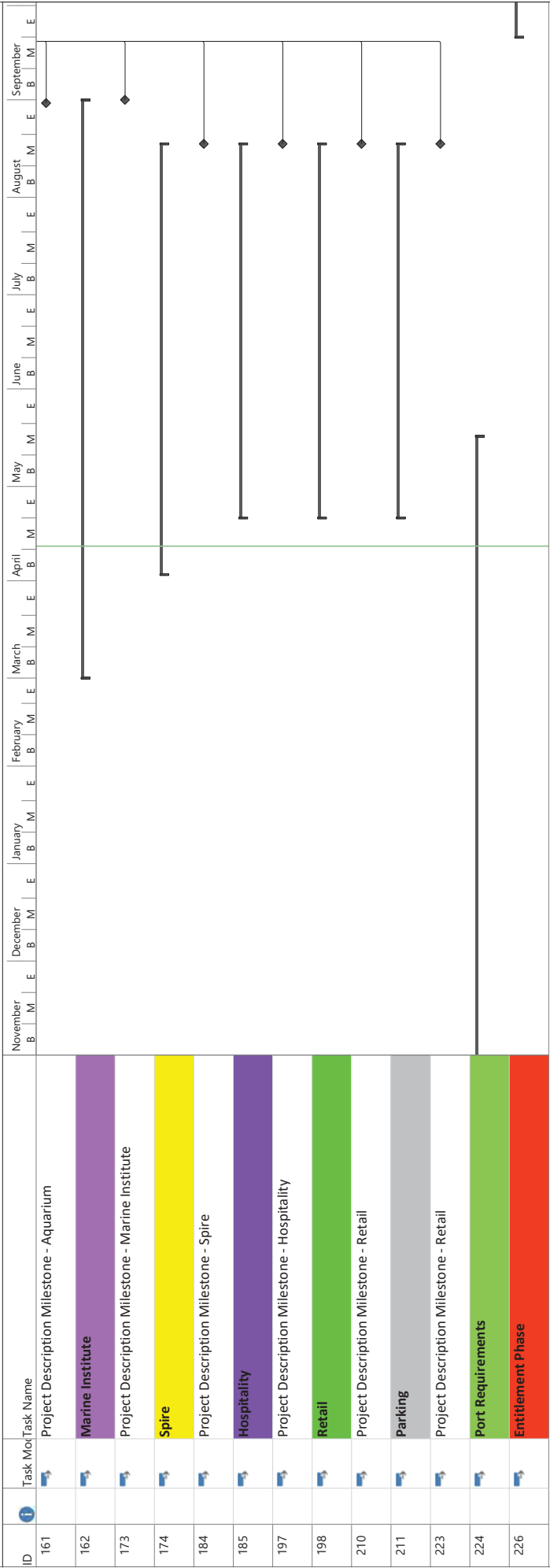
- I. Welcome, brief introductions
- II. Developer's update – if any.
 - a. I added this simply as a placeholder for future Agendas. I envision this will provide Gaf, etc an opportunity to update us on any activities which could impact the Group. For example – any updates on Driscolls, etc.
- III. Brief discussion on the role of this Group
- IV. Follow-up from last meeting – Port's Commercial Fisheries Revitalization Plan
 - a. Re the proposal to update the Plan – (1) What are the goals? (2) Who will be the client?
 - b. See attached Draft Scope of Work prepared by Lisa Wise Consulting
- V. Open Forum
 - a. Future Agenda Items

Schedule of Port of San Diego Required Tasks by 1HWY1

Task	Duration	Start	Finish
1. Anticipated Tenant Matrix	5 months	4/24/2017	9/20/2017
2. Market and Feasibility Study - Program	3 months	4/24/2017	6/9/2017
3. Tenant Retention	Ongoing		
4. Marine Related Office	4 months	4/28/2017	8/31/2017
5. SkySpire FAA	Awaiting FAA response		
6. Replication of SkySpire	5 months	1/25/2017	5/31/2017
7. Ruocco Park, San Diego Foundation	Complete		
8. Marine-focused Charter School	4 months	4/28/2017	8/31/2017
9. Parking Study	3 months	4/24/2017	6/9/2017
10. Mobility Plan	5 months	5/16/2017	9/30/2017
11. G Street Mole Tenants	Complete		
12. Dock and Dine Facilities	3 months	3/16/2017	6/19/2017
13. Water Mobility Plan	Continued Alignment with PMPU ongoing		
14. Programming and Public Spaces	3 months	4/24/2017	6/9/2017
15. 75% Open Space	Complete		
16. Continued Alignment with PMPU	Ongoing		
17. RCI Level of Commitment	4 months	1/25/2017	5/31/2017
18. 1HWY1 LLC Split	4 months	1/25/2017	5/31/2017
19. PWD LLC	Complete		
20. 1HWY1 LLC OA	4 months	1/25/2017	5/31/2017
21. Commitment Letters on Equity	ENA will provide clarity		
22. Market and Feasibility Study - Demand	3 months	4/24/2017	6/9/2017
23. Refined Financial Model	5 months	4/19/2017	9/30/2017
24. Rent Concessions	Ongoing		
25. Rent on School	4 months	4/28/2017	8/31/2017
26. Tidelands Program Validation	Ongoing		

ID	Task MoC	Task Name
1		FORMATION
2		Administration
7		Program Management Plan
10		Due Diligence Phase 1
11		General Contractor
12		General Contractor Selection
26		Master Architect
27		Master Architect RFQ
41		Architect Tasks
55		Final Project Description
56		Geotechnical Investigation
71		Civil Investigation
87		Branding
106		Waterside
107		Commercial Fishing Basins
108		Concept Design
117		Validation Report
124		Project Description Milestone - Final Commercial Fishing
125		Recreational Marina / Beaches
135		Project Description Milestone Recreational Marinas/ Piers / Beaches
136		Aquarium

Seaport DD Schedule-040717-rev



Carrie Bobb
Lic #01382015
Vice President
Brokerage Services
Retail Properties



Lic #00409987
4365 Executive Drive, Suite 900
San Diego, CA 92121-2127

T 858 404.7210
F 858 546 4630

carrie.bobb@cbre.com
www.cbre.com

August 5, 2016

Mr. Yehudi Gaffen
PROTEA WATERFRONT DEVELOPMENT
5960 Cornerstone Court West, Suite 100
San Diego, CA 92121

RE: SEAPORT RETAIL

Dear Gaf:

Per your request, we have studied the Protea Waterfront Development plan, compared it to other like-kind waterfront developments across the country, and are using local market data to support our retail economic positions.

Below is a breakdown of retail categories based on percentage of GLA. The rate ranges shown beside each category vary based on specific retailers, size of tenant and location within the project. These rates are based on an assumption of \$12 NNN charges. This also does not take into account percentage rent – typically 6% over a natural sales breakpoint.

Full Service Restaurants: 18% (\$42-\$65)
Fast Casual Restaurants: 22% (\$48-\$66)
Specialty Retail: 18% (\$48-\$60)
General Retail: 20% (\$48-\$60)
Service: 12% (\$48-\$50)
Market/Food Hall: 5% (\$24-\$30)
Entertainment: 5% (\$36)

Based upon our analysis of other high quality waterfront developments, both national and international, as well as the demand for a concentration of quality retail in downtown San Diego, we believe the redevelopment of Seaport Village could support 250,000 sf of retail or more if the uses were broader allowing for a true urban mixed use experience.

Retail comps in the heart of the Gaslamp are ranging in 2,000-12,000 sf are \$42-\$60 NNN. In a similar mixed-use waterfront development in Boston, restaurants were

Mr. Yehudi Gaffen
August 5, 2016
Page 2

paying \$65-\$75 psf NNN. The landlord contribution towards tenant improvements were \$100-\$150 psf.

Additionally, there are a collection of contemporary retail brands that you will want to consider to be part of the project. Some tenants in this category have landed in the UTC market and may consider a second location. Others are still looking for their first to market location. They are looking for a curated tenant mix, waterfront spaces, urban environments and a unique sense of place. These types of tenants are only in specialty retail or urban-influenced projects in the county and we have supporting comps in the \$60-\$75 psf NNN range.

These proposed rates should be attainable for the majority of the existing retailers at Seaport Village. A healthy occupancy cost, or base rent as a percentage of sales, is 9-12%. It would be helpful to understand the sales volumes of the existing tenants and better understand those retailers who are healthy.

You and your team have put together a compelling plan. Should you have any questions, I am happy to meet in person and discuss in more detail.

Sincerely,

CBRE, Inc.



Carrie Bobb
Vice President
858.404.7210

Attachment G to Agenda File No. 2017-0155

1HWY1 Due Diligence Status Matrix			
Task Per Draft Resolution	1HWY1 Proposed Action	Status	Estimated Date of Completion
Anticipated Retail Tenant Mix	Clarity on Retail Tenant Mix	In Progress	09/20/17
Market Demand and Feasibility Studies - Program	Initiation of Market Demand and Feasibility Studies	Outstanding	06/09/17
Seaport Village Tenant Retention/Relocation	Seaport Village Retention & Relocation Plan	In Progress	Not Specified - After Market and Feasibility Studies
Marine Related Office	Clarity on office tenant mix	Outstanding	08/31/17
SkySpire FAA	Submittal and Determination of No Hazard from FAA	In Progress	Dependent upon response from FAA
SkySpire Replication	Written Guarantee SkySpire will not be replicated	Outstanding	05/31/17
Ruocco Park Obligations	Research SD Foundation Obligations	Complete	Complete
Marine Focused Educational Component	Refine Program/Project Description	In Progress	08/31/17
Parking Study	Completion of Parking Study	Outstanding	06/09/17
Mobility Plan	Completion of Mobility Plan	Outstanding	09/30/17
Commercial Fishing	Refine Commercial Fishing Plan/Project Description	In Progress	07/01/17
Dock and Dine Facilities	Provide Space Allocations for Dock and Dine	Outstanding	06/19/17
Water Mobility Plan	Completion of Water Mobility Plan	In Progress	09/30/17
Public Space Programming	Public Space Programming Plan	In Progress	06/09/17
Open Space Percentage	Provide Map Showing Open Space Percentages	Outstanding	09/30/17
PMPU Coordination	Attend PMPU Meetings and Coordination Meetings	In Progress	On-Going
Clarification on RCJ's Role and Commitment	1HWY1 Operating Agreement and Formation of 1HWY1	In Progress	05/31/17
1HWY1 LLC	Formation of 1HWY1 LLC	In Progress	05/31/17
Protea Waterfront Development LLC	Formation of Protea Waterfront Development LLC	Complete	Complete
1HWY1 LLC Operating Agreement	Provide Copy of 1HWY1 Operating Agreement	Outstanding	05/31/17
Debt & Equity Sources	Provide new letters of debt and equity funding sources	Outstanding	Not Specified - After Market and Feasibility Studies
Market Demand & Feasibility - Revenue/Expense	Initiation of Market Demand and Feasibility Studies	Outstanding	06/09/17
Financial Model	Submittal of Revised Financial Model	Outstanding	09/30/17
Revenue and Expense Projections	Clarity on percentage rents or any rent concessions	Outstanding	Not Specified - After Market and Feasibility Studies
Educational Component Revenues	Clarity on returns on educational component	Outstanding	08/31/17

As of 4/17/17, dates subject to change