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San Diego Unified Port District:

It Should Change Certain Practices to Better Protect the Public's Interests in Port-Managed Resources

April 2002
2001-116

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CALIFORNIA STATE AUDITOR

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April 30, 2002 2001-116

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the San Diego Unified Port District (Port).

This report concludes that while many of the Port's actions we reviewed are in accordance with state law and Port policy, the Port can change some of its practices to better protect the public's interests in the San Diego Bay and the surrounding areas. Specifically, we found several notable exceptions to the Port's leasing and contracting policies, including offering below-market rent to one hotel that may lower Port revenues by more than $7 million over a period of 10 years and failing to seek competing proposals for three hotel development projects. We also found that the Port can do more to avoid conflicts of interest among its employees and is not completing disciplinary proceedings within its established timelines. The Port also needs to ensure that it properly notifies the public of the Board of Port Commissioners' closed session items at its public meetings and that the fees it charges for providing agendas do not exceed the costs of distributing them.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

CONTENTS

SUMMARY

Audit Highlights . . .

Although many San Diego Unified Port District (Port) actions we reviewed were in accordance with state law and Port policies, we noted the following exceptions:

- ☑ *The Port did not disclose that it offered below-market rental payments to one hotel potentially lowering the Port's revenue by $7.4 million over 10 years.*
- ☑ *For three major developments, the Port did not seek competition by issuing requests for proposals or qualifications.*
- ☑ *The Port's contracting practices sometimes do not ensure fair and open awards of its contracts and purchases.*
- ☑ *The Port lacks post-employment guidelines for its officials and often failed to meet its timelines for employee discipline appeals.*
- ☑ *The Port can improve its compliance with open meeting laws.*

RESULTS IN BRIEF

The San Diego Unified Port District (Port) oversees the land in and around San Diego Bay (bay). It manages the harbor, operates the San Diego International Airport, and administers the public tidelands, excluding those administered by the United States military. Additionally, the Port promotes commerce, navigation, fishing, and recreation on these public tidelands. The Port's jurisdiction includes land in the cities of San Diego, Chula Vista, Coronado, National City, and Imperial Beach, as well as any area within the County of San Diego that is economically linked to the development and use of the bay. The member cities appoint a seven-member Board of Port Commissioners (board) to govern the Port.

Although many Port actions we reviewed were in accordance with state law and Port policies, the Port can change some of its practices to better protect the public's interest in the bay and the surrounding areas. In particular, we discovered several notable exceptions to the Port's policies regarding leasing and development agreements that may affect the value the Port receives from its properties. In one case, the Port did not disclose or justify to its board that it had offered below-market rent to one hotel, which may lower Port revenues by $7.4 million over a 10-year period. The Port also did not consider rents paid on comparable properties when it established the rents for its marinas. This decision reduced the rent paid to the Port by approximately $600,000 over the last two fiscal years. Furthermore, when it pursued three major development projects, the Port did not seek competition by issuing requests for proposals or qualifications and therefore made itself vulnerable to claims that it has acted unfairly and not in the public's best interests.

The Port's contracting practices sometimes do not follow policies designed to ensure the fair and open award of its contracts and purchases. In two cases, the Port amended contracts instead of rebidding them, even though the scope of work had significantly changed. The Port also acted contrary to best practices by allowing consultants to bid on work they helped design in a prior contract. In addition, the purchasing department did not

follow Port policies to notify the board and obtain its approval of certain service purchase orders and amendments. As a result of these failures to follow its leasing and contracting policies, the Port has sometimes granted concessions unequally, cannot always guarantee that it receives the best value in its agreements, and has made itself vulnerable to charges that it conducts these aspects of its business unfairly.

To minimize potential concerns regarding conflicts of interest and to meet its commitment to its employees, the Port needs to adhere more closely to certain of its policies and may need to adopt additional guidelines. Although the Political Reform Act of 1974 requires that public officials complete a disclosure statement reporting interests in certain real properties, one commissioner failed to report his interest in one property. Also, because the Port's conflict-of-interest policy lacks postemployment guidelines similar to those in place at the state and federal levels, one former commissioner has represented clients on issues before the board within one year after leaving the board. As a result, the public may perceive that this former commissioner was able to exert unfair influence on the board's decisions. Furthermore, the Port's delays in completing disciplinary proceedings against its employees violate the time frames established in its personnel rules and regulations and may lead to frustration and confusion among employees desiring a timely resolution of these matters.

The Port has not always followed all the requirements of the State's open meeting laws. At a 1998 meeting, the board discussed an issue in closed session even though it had not appropriately notified the public that the issue was being continued from a prior meeting. At a 2001 meeting, the executive director briefed the board in a closed session on an issue that had not been included in the agenda. In addition, the Port has not recently reviewed its costs for providing agendas to the public and therefore cannot be sure that the fees it charges for doing so do not exceed its costs.

RECOMMENDATIONS

To ensure that it obtains the best value in its leases, development projects, and contracts, the Port should do the following:

- Fully disclose and provide appropriate justification to the board when offering below-market rates in its leases.

- When establishing marina rental rates, consider an appraisal methodology that combines both economic analysis and consideration of rates paid on comparable properties.

- Publicly solicit competitive proposals when developing major projects, unless there are compelling public interests not to do so.

- Competitively bid new contracts instead of amending existing contracts when the scope of work significantly changes.

- Adopt a policy that would prohibit contractors involved in developing specific requirements for a project from subsequently bidding on that project.

- Follow its policy concerning board involvement when entering into service contracts.

To minimize potential concerns regarding conflicts of interest and to meet its commitment to its employees, the Port needs to do the following:

- Encourage Port commissioners and employees who file disclosure statements to review their current and past statements for completeness and accuracy.

- Consider adopting postemployment guidelines similar to those in place at the state and federal levels.

- Ensure that personnel appeals are conducted according to Port procedures.

To improve its compliance with the State's open meeting laws, the Port should do the following:

- Ensure it properly notifies the public of all board discussions.

- Reevaluate the fees it charges for distributing agendas to ensure that the fees do not exceed the cost of distributing the agendas.

AGENCY COMMENTS

The Port reports that it has already adopted and implemented, or is in the process of adopting and implementing, most of our recommendations. It also provided responses to some of our findings. To provide clarity and perspective, our comments follow the Port's response. ■

INTRODUCTION

BACKGROUND

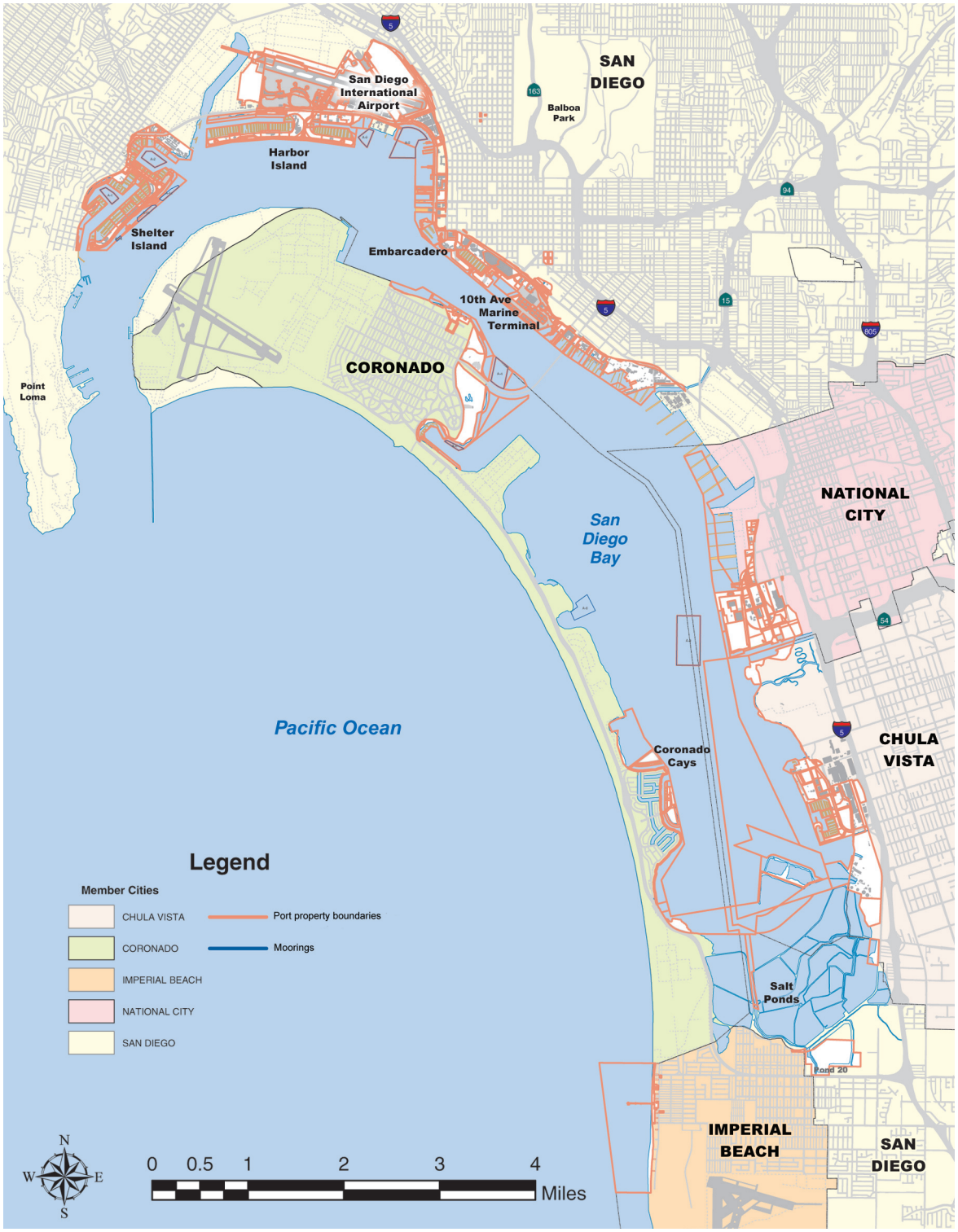
In 1962, the Legislature passed the San Diego Unified Port District Act (Port Act), creating the San Diego Unified Port District (Port). As shown in the map in Figure 1 on the following page, the Port includes land in the cities of San Diego, Chula Vista, Coronado, National City, and Imperial Beach, as well as any area within the County of San Diego that is economically linked to the development and use of the bay. The Port was established to manage the harbor, operate the San Diego International Airport (Lindbergh Field), and administer the public tidelands, excluding those administered by the United States military. Additionally, the Port promotes commerce, navigation, fishing, and recreation on these public tidelands.

A Board of Port Commissioners (board) governs the Port. The city councils of Chula Vista, Coronado, Imperial Beach, and National City each appoint one commissioner, and the San Diego City Council appoints three commissioners. These seven commissioners are appointed to four-year terms. The terms are currently staggered, with three ending in January 2003, three ending in January 2005, and one ending in January 2006. Proper notice must be given for board meetings, and they must be conducted in accordance with California's open meeting laws.

The Port has entered into agreements with each of its member cities. For example, in 1989, the San Diego Convention Center (convention center) opened on Port property. The Port entered into a 20-year agreement with the City of San Diego for the management of the convention center. The City of San Diego paid the Port $20 ($1 for each year) in consideration of the Port's investment in constructing the convention center and managing, operating, and maintaining the convention center's parking lot. The City of San Diego receives all income and bears all expenses for the convention center, while the Port receives all income and bears all expenses for the parking facility. Additionally, in 1994, the Port agreed to contribute up to $4.5 million per year for 20 years toward debt payments to finance the expansion of the convention center.

FIGURE 1

The Port's Property Boundaries and Its Member Cities



Source: Port

The Port has also entered into agreements with the cities of Coronado, Chula Vista, National City, and Imperial Beach. For each of the seven years beginning July 1, 1994, the Port has agreed to set aside $9 million to be used for specified projects in these cities. As of June 30, 2001, the Port had either set aside, expended, or committed to spend a total of $72.9 million on these projects. This figure reflects the original $63 million that was to be set aside, adjusted for inflation.

THE PORT'S THREE OPERATING DIVISIONS

As of February 2002, the Port had 752 employees. The Port includes three divisions that produce operating revenue: the airport, real estate, and marine operations. In fiscal year 2000–01, the Port generated $163.1 million in operating revenue, resulting in $12.6 million in net income from its operations.

Airport

The airport division employs 113 of the Port's employees. The Port reports that Lindbergh Field is the busiest single-runway commercial airport in the country, handling more than 200,000 flights and 15.1 million passengers in 2001. Fiscal year 2000–01 operating revenues from the airport came to $81.9 million (50.2 percent of the Port's total operating revenues). The airport also collected $21.6 million in passenger facility charges in fiscal year 2000–01. Passenger facility charges are federally approved fees collected from each paying passenger that are to be used for airport-related projects. In 1997, the Port entered into five-year operating agreements with each of the various airlines serving the airport for terminal rental and landing permits. Under these operating agreements, the Port determines the airlines' rent on a cost recovery basis. Car rental agencies also operate under licenses that establish one fee structure for all rental car businesses.

Assembly Bill 93 (AB 93), signed into law on October 14, 2001, establishes a San Diego County Regional Airport Authority (Authority). The Authority will have jurisdiction throughout San Diego County and is to adopt a comprehensive land use plan for the county and coordinate airport planning by public agencies. AB 93 requires that the Port transfer Lindbergh Field to the Authority by December 2, 2002. A nine-member board that includes members of the public and local elected officials will govern the Authority. When the governor signed this bill,

he requested that additional legislation be introduced to do the following:

- Provide the Authority with clear authority to plan and site a new international airport or expand Lindbergh Field.
- Require that the Port fund all operating expenses of the Authority until the effective date of the transfer of Lindbergh Field.
- Require a countywide public vote on the recommendation of the Authority to either expand Lindbergh Field or build a new international airport at another site. This vote would occur sometime during November 2004 through November 2006.

In February 2002, additional legislation was introduced that affects the Authority; however, as of April 2002, this legislation was still pending.

Real Estate

The real estate division consists of 48 employees. Its goal is to stimulate the development of Port properties to their highest and best use in accordance with the Port Act. The real estate division negotiates leases, conducts rent reviews, and manages over 350 tenant leases, including those for hotels, marinas, commercial shopping centers, and restaurants. It also organizes major development projects and property acquisitions, including the development of several hotels and the improvement of commercial and industrial areas. In fiscal year 2000–01, operating revenue from real estate operations was $64.4 million (39.5 percent of the Port's total operating revenue).

Marine Operations

The marine operations division is composed of 37 employees. In fiscal year 2000–01, this division generated $16.8 million (10.3 percent of the Port's total operating revenue). It manages the 10th Avenue and National City marine terminals, the B Street Cruise Ship Terminal, and several mooring areas and commercial piers around the bay. The marine operations division also provides waterfront services to ships passing through or stopping at the Port and administers various tariffs and Port regulations. The division charges for dockage, wharfage, storage, and the use of special facilities such as the 10th Avenue Cold Storage facility. One of the division's biggest shipping partners,

Pasha Services, has operated at the National City Marine Terminal since 1991. In May 2001, the Port entered into an agreement with the Dole Fresh Fruit Company for the Port's first major container operation. The Port estimates that the 20-year agreement will generate revenue of at least $2 million annually.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) conduct a performance audit of the Port, focusing on contracting, personnel policies and procedures, and public access to records and the decision-making process. Specifically, the audit committee requested that the bureau examine the Port's policies and procedures for awarding contracts and development agreements. The audit committee also requested that the bureau review the Port's grievance process, internal investigation policies and procedures, and procedures for handling sexual harassment complaints and preventing discrimination. In addition, the audit committee requested that the bureau examine the Port's compliance with applicable open meeting laws, evaluate the Port's policies and procedures for maintaining public records, and determine whether the Port complies with public records requests.

In a number of the areas we were asked to review, we found that the Port was generally following applicable law and its own policies. Please see the Appendix for our methodologies and related conclusions regarding these areas of testing.

To determine whether the Port was awarding leases that would provide it with the best long-term value, we reviewed 38 real estate leases that collect rent based on a percentage of certain tenant revenues. We determined whether the Port had charged market-rate rents or had properly justified decisions to offer below-market rents. To test development agreements, we selected several development projects the Port has attempted since 1997. For these projects, we determined whether the Port had issued a public request for proposals or qualifications. If the Port did not formally solicit proposals from developers, we analyzed its rationale for not doing so.

To determine whether the Port uses a competitive and public process and obtains appropriate approvals when contracting for services and purchasing supplies, we reviewed the Port's policies and procedures for awarding service contracts and making supply purchases. We also reviewed a sample of 25 contracts and purchases made since May 1998.

To determine whether the Port's policies and procedures adequately protect it from accusations of improper influence on government decisions, we examined the Port's conflict-of-interest policies and procedures to ensure that they met the requirements of the Political Reform Act of 1974. We also collected information related to several claims of potential conflict of interest.

To test employee appeals of personnel actions, we examined reported appeals of personnel evaluations to see whether the Port handled them according to its personnel rules and regulations. We also evaluated a sample of disciplinary appeals of actions taken between October 1998 and September 2001 to determine whether the Port had completed each step of the disciplinary appeals process in accordance with its established time frames.

To determine whether the Port complies with applicable open meeting laws when conducting public business, we selected a sample of board meetings and reviewed the notices of those meetings and the discussions and decisions that occurred in them. We obtained copies of the board's agendas, minutes, and closed-session reports and notes for these meetings and compared the board's actions with relevant law to determine whether proper public notice had been provided for all discussions and whether these discussions had been conducted appropriately. We also reviewed the Port's process for posting and distributing the agendas for board meetings. Finally, for a sample of the board's subcommittee meetings, we reviewed the agendas and reports to ensure that they also followed the requirements of the law.

We also interviewed current and past commissioners and employees to provide background and context and to follow up on information discovered during the audit. ■

AUDIT RESULTS

As described in the Scope and Methodology section of the Introduction, we were asked to review a wide range of issues at the San Diego Unified Port District (Port), including internal investigations, public records requests, and procedures for handling sexual harassment complaints. In many areas, we did not have concerns about the Port's practices because it has generally complied with applicable law and its own policies. The Appendix describes the results of our testing in these areas. The sections that follow address areas in which we believe the Port should change its practices.

Specifically, we found several notable exceptions to the Port's leasing and contracting policies, including allowing one hotel to pay lower than standard rent, which resulted in as much as $7.4 million in foregone revenues, and failing to issue requests for proposals on three hotel development projects. We also found that the Port can do more to avoid conflicts of interest among its employees and is not completing disciplinary proceedings within its established timelines. The Port also needs to ensure that it properly notifies the public of the Board of Port Commissioners' (board) closed session items at its meetings and that the fees it charges for providing agendas do not exceed the costs of distributing them.

THE PORT DOES NOT ALWAYS FOLLOW ITS OWN POLICIES DESIGNED TO HELP IT RECEIVE THE BEST LONG-TERM VALUE FOR THE PROPERTY IT MANAGES

Several notable exceptions to the Port's policies regarding leasing and contracting raise questions regarding the value of some of its lease agreements and contracts. Some of the Port's leases were awarded with more favorable terms than those granted in similar leases. Also, the Port entered into agreements on several of its largest development projects outside of the normal request for proposals process. Further, the Port's contracting practices do not always follow policies designed to ensure the fair and open award of its contracts. As a result, the Port has sometimes granted concessions unequally, cannot always guarantee that

it receives the best value in its agreements, and has made itself vulnerable to charges that it conducts these aspects of its business unfairly.

The Port Has Not Always Done Enough to Seek Fair Market Value in Its Leases

Although the Port's leasing policy specifies that it should generally seek fair market rent, it has not always done so. In one case, the Port failed to disclose that it offered below-market rent to one tenant that may result in the Port receiving $7.4 million less in rental payments over a 10-year period. In another instance, when setting the rents for its marinas, the Port relied on an appraisal that did not consider rental rates paid by comparable properties and thus resulted in lower rent revenues from the marinas.

The Port earns some of its revenue by leasing the property it manages around San Diego Bay (bay). For some leases, the Port bases the rent it charges on a percentage of the tenant's revenue from the property. The Port uses different percentages depending on the revenue source, such as vehicle parking fees, coin machine commissions, and food sales. The Port's leasing policy states that it will seek market value when leasing property. Rent discounts may be granted only after consideration of the value of the discount relative to the market value of the lease.

In its 1995 and 1998 lease agreements, the Port failed to raise several rent rates for the San Diego Marriott to the standard 7 percent rate.

In 1995, the Port charged its hotel tenants a 6 percent rate on their revenue for selected services: room rentals, banquet rooms and services, room service charges, and in-room movie charges. As indicated in its leases with several other hotels, the Port intended to increase the market rate for these services to 7 percent for all hotels on October 1, 1996. However, when the Port signed a new lease with the San Diego Marriott Hotel and Marina (San Diego Marriott) effective December 1995, the rates were set at 6 percent without a clause that would increase the rates in 1996. In addition, the terms of the lease do not allow the Port to conduct a rent review, which might justify an increase in the below-market rates, until December 2006. The Port also did not address the below-market rates when a change in the San Diego Marriott's ownership structure in December 1998 could have allowed the Port to increase its rents. As a result, the Port may not be able to address these below-market rates until December 2006.

As shown in Table 1, because of the Port's below-market rates for room rentals and related categories, the San Diego Marriott's rent from October 1996 to December 2001 was $3.9 million less than it would have been if the Port had charged market rates. If this trend continues until the next available rent review in December 2006, the Port's receipts from this hotel will be an additional $3.5 million lower than they could have been. Combined with the actual revenue reduction through 2001, we estimate the total effect of the lower rates to be $7.4 million for the 10 years.

TABLE 1

Below-Market Rent Rates Have Provided Millions in Benefits to the San Diego Marriott (In Thousands)

Year	Rent From Selected Services* at 6 Percent Rate	Rent From Selected Services* at 7 Percent Rate	Difference
1996 (partial)	$ 1,085	$ 1,266	$ 181
1997	4,063	4,740	677
1998	4,433	5,172	739
1999	4,589	5,354	765
2000	5,110	5,961	851
2001	4,275	4,988	713
Totals to date	**$ 23,555**	**$ 27,481**	**$ 3,926**

* Selected services include room rentals, banquet rooms and services, room service charges, and in-room movie charges.

The Port states that it did not write a rate increase into the 1995 lease agreement for the San Diego Marriott because it did not want to disrupt the hotel's refinancing, which was occurring at the time. Since the refinancing eliminated over $80 million of the tenant's debt on the property, the Port believed that it made the hotel project more financially viable over the long term. However, staff reports to the board regarding the lease changes in 1995 and 1998 show no discussion of the fact that the San Diego Marriott was being offered below-market rent rates. In addition, board minutes show that the board never publicly discussed the percentage rental rates when it approved this lease in 1995 or with the restructuring of ownership in 1998. Thus,

the Port's actions lowered the San Diego Marriott's rent by as much as $7.4 million than what it could have been without publicly justifying its decisions.

The Port may also be charging below-market rates to the marinas around the bay. When setting the percentage rental rates it charged marinas on their boat slip revenues, the Port selected an appraisal methodology that did not consider rents being paid by comparable properties. As a result, Port revenues for the two years between July 1999 and June 2001 were approximately $600,000 lower than they would have been had they used an alternative methodology.

During 1997 and 1998, the Port conducted a comprehensive review of the rent it charged marinas based on their boat slip revenues. Prior to this review, the Port had charged marina operators 20 percent of boat slip revenue for marinas in the northern section of the bay and 19 percent for marinas in the southern section. The Port wanted to address concerns expressed by the operators of the marinas that if the Port based the percentage it charges on the percentage charged by owners of other marina properties, price increases would occur every time a marina owner raised the rate. As part of its review, the Port hired an independent appraiser for $85,000 to estimate the market-value rental rate for recreational boat slip revenue at each of its marinas. The independent appraiser incorporated an analysis of the economic return on each marina with an analysis of the rates being charged by other property owners, including the City of San Diego's Mission Bay marinas. Based on this analysis, the independent appraiser suggested rates of 11 percent to 24 percent for the various marinas.

The Port did not accept the marina rent rates proposed by the independent appraiser it hired, a decision which resulted in reduced rental revenue.

Yet the Port did not apply the rates suggested by the independent appraiser it had hired. Instead, the Port conducted its own appraisal, based on an analysis of each marina's return on its investment in the property, that did not consider the rates being paid by marinas in other locations. The Port's appraisal suggested rates ranging from 7.5 percent to 22 percent. Although the Port's appraisal suggested higher rates than the independent appraisal for some marinas, the overall effect was to reduce the rates that the marinas paid.

TABLE 2

The Port's Rejection of Rates Suggested in an Independent Appraisal Reduced the Marina Rents the Port Earned

Marina Operator	Rates Suggested by the Independent Appraisal	Actual Rates Based on Port Appraisal	Impact on Fiscal Year 1999–2000 Rent Increase/(Decrease)	Impact on Fiscal Year 2000–01 Rent Increase/(Decrease)
San Diego Marriott Hotel and Marina	24.0%	20.0%	$(104,055)	$(114,313)
Chula Vista Marina	11.0	7.5	(57,279)	(63,471)
Sunroad Resort Marina	19.5	17.6	(55,443)	(67,373)
Harbor Island West Marina	19.5	17.6	(43,416)	(48,731)
Cabrillo Isle Marina	19.5	17.6	(37,448)	(41,114)
Marina Cortez	19.5	17.6	(33,367)	(35,703)
Sheraton Harbor Island Hotel and Marina	19.0	17.6	(4,410)	(4,881)
Red Sails Inn	14.5	13.7	(151)	(116)
California Yacht Marina	11.0	7.5	*	*
Shelter Cove Marina	20.5	21.0	3,950	4,098
Humphrey's Half Moon Inn	20.5	21.0	2,948	2,977
Gold Coast Anchorage	14.5	18.0	5,815	6,698
Bay Club Hotel and Marina	20.0	21.0	6,135	6,330
Sun Harbor Marina	15.5	17.6	6,960	*
Shelter Pointe Hotel and Marina	20.5	21.0	12,972	14,279
Island Palms Hotel and Marina	20.5	22.0	15,587	17,070
Totals			**$(281,202)**	**$(324,250)**
Two-Year Total				**$(605,452)**

* Tenant did not pay a percentage-based rent this fiscal year; instead it paid the minimum rent required by its lease.

As shown in Table 2, the Port's decision to adopt rates based on a methodology that did not also consider an examination of comparable properties resulted in reduced rental revenue of approximately $600,000 for the two years between July 1999 and June 2001. Although differences in appraisal methodologies are common, it would be prudent to use an appraisal methodology that combines an analysis of rates paid by comparable properties with an economic analysis. By doing so, the Port would be able to set its rates at a level that better reflects the market in the surrounding area. Port staff indicated

that they plan to include comparable properties in their assessment of fair market rates when conducting future rent reviews at the marinas.

The Port Pursued Some Major Development Projects Without Publicly Soliciting Proposals

The Port did not issue requests for proposals or qualifications on three major development projects and therefore may have missed opportunities to receive additional proposals from qualified developers. By not using a more open and competitive process for developing these projects, the Port has left itself vulnerable to claims that it has acted unfairly and not in the public's best interests.

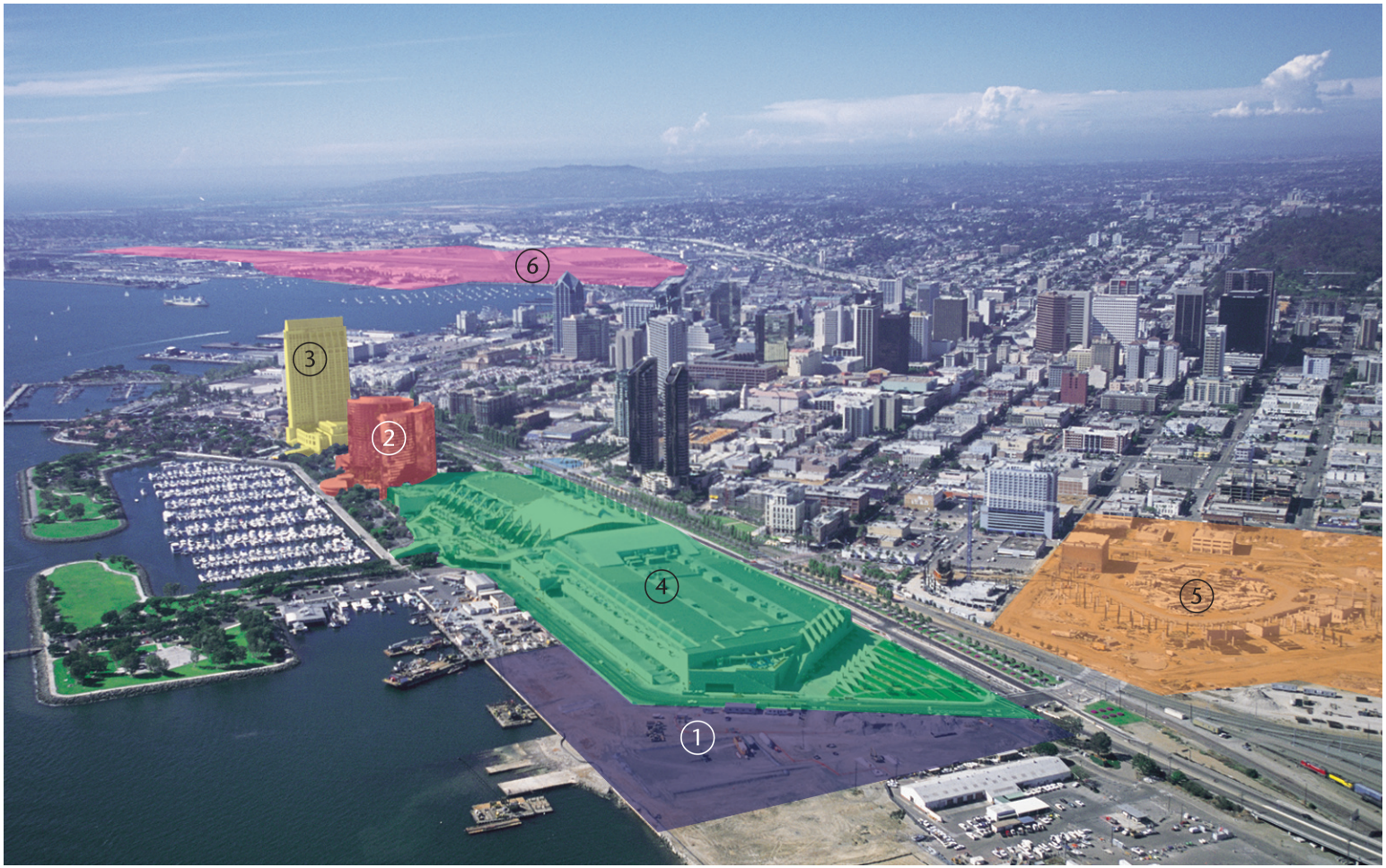
On three major development projects, the Port chose not to issue requests for proposals or qualifications.

Port policy recommends, but does not require, the use of a request for proposals or qualifications to solicit development proposals. We reviewed nine attempts to develop six projects since 1997 and found problems in three of these attempts. For one hotel development project, the Port eventually chose to conduct a negotiating session over a holiday weekend, instead of issuing a request for proposals or qualifications. In another case, the Port received four unsolicited proposals to develop a hotel on Harbor Island but did not issue a request for proposals or qualifications to identify other interested parties. The Port also chose not to issue a request for proposals or qualifications for a third development project because it believed a tenant with a lease on an adjoining property would be best suited for the development. As a result, the Port left itself open to criticism that it did not do all it could to identify all interested parties for these developments and obtain the best long-term value.

In one development effort, the Port sought to develop another major convention center hotel, in addition to the existing San Diego Marriott and Hyatt Regency (Hyatt) hotels, on the site labeled "Campbell hotel site" as shown in Figure 2. The Port felt pressure to build a hotel there quickly because the City of San Diego's revenue projections for its downtown ballpark project included millions of dollars in anticipated hotel occupancy taxes from this site. In early 1999, as the Port entered into discussions with the tenant on the property, Campbell Industries, four developers expressed their interest in the project. In its desire to get the hotel project started quickly, the Port opted not to issue a request for proposals or qualifications to determine whether other parties would be interested. Instead, the Port elected to enter into discussions

FIGURE 2

Aerial View of Several Key Properties in San Diego



① Campbell hotel site
② San Diego Marriott
③ Hyatt
④ Convention Center
⑤ San Diego Padres ballpark site
⑥ Lindbergh Field

The Port's decision to conduct a Memorial Day weekend negotiation session reduced the number of developers that participated in the process.

with two of the developers and eventually attempted to meet with the four interested parties in a negotiating session over Memorial Day weekend 1999. Two of the four interested parties did not attend the negotiations because of the haste in which the session was called, and only one of the two developers that did attend the negotiations was willing to agree to develop the hotel without any Port financing.

The selected developer gave the Port a good faith deposit of $1 million and on June 1, 1999, the board publicly approved an agreement to negotiate with the developer. As negotiations progressed, several agencies, including the City of San Diego and the San Diego Convention Center Corporation, raised questions regarding the conceptual plans submitted by the developer. Negotiations between the Port and the developer faltered and, on October 5, 1999, the board voted in closed session to terminate its negotiations with the developer. On the next day, the Port refunded the developer's deposit plus approximately $20,000 in interest earned.

Nevertheless, on October 12, the board directed Port staff to continue negotiations with the same developer. The next day or soon thereafter, the Port's executive director and attorney signed a revised and amended agreement to negotiate with the developer and the developer again gave the Port a $1 million good faith deposit. Although the board had publicly approved the first agreement to negotiate with the developer, and despite a provision in the new agreement that it was subject to board approval, the board did not publicly approve this revised and amended agreement.

In addition, the new agreement added the possibility that, under certain circumstances, the Port could become involved in financing the project. Port financing was not part of the developer's proposal when it was selected for this project and during the Memorial Day weekend negotiating session the Port had rejected another developer's proposal that requested Port financing. The final agreement with the developer did not include the possibility of Port financing. However, if the Port had used a public and competitive approach by issuing a request for proposals or qualifications offering all options it was considering, it might have identified other interested parties willing to meet its requirements and therefore may have been able to negotiate a better development agreement for the property.

As it turned out, the selected developer never started construction on the hotel. In June 2001, the Port paid $3.5 million to terminate its agreement with the developer to build the hotel. The Port will also pay the developer, under certain conditions, an additional $1.5 million plus interest when construction eventually begins on a hotel on that property. The Port is making these payments in consideration of the developer's $1 million deposit plus any accrued interest, other costs the developer incurred, and for an agreement by the developer not to sue the Port over future development of the property, as long as certain conditions are met. The Port has now, two and a half years later, issued a request for qualifications to build the hotel and is discussing the project with four developers.

In a similar case, the Port did not originally issue a request for proposals or qualifications in its efforts to develop a hotel on the east side of Harbor Island. The Port had received four unsolicited development proposals for this property in 1997. Instead of publicly issuing a request for proposals or qualifications, in January 1998 the Port selected one of the four developers that had submitted proposals. As a result, the pool of proposals was likely smaller than it would have been had the Port advertised the project and solicited competing proposals. This failure to issue an open request for proposals left the Port open to criticism that the proposal it accepted was not the best value it could have received. In addition, the selected developer was not able to obtain sufficient financing to start the hotel, and subsequent attempts to solicit developers have not been successful.

In another case, the Port selected from four unsolicited proposals without determining if there were other interested developers.

The Port also chose not to solicit competitive proposals when it sought to develop additional hotel rooms next to the convention center's Hyatt. The Port negotiated a development agreement with the owner of the Hyatt in 1997 because it believed that expanding the Hyatt made the most sense for the project, in part because the new hotel would have to share the Hyatt's parking lot. Based on this rationale, the Port did not issue a request for proposals or qualifications to determine whether other developers had better proposals for that hotel development. Although construction is proceeding on the expansion, the Port cannot be sure that this expansion was the best development available for the property.

The Port's Contracting Practices Do Not Always Match Its Policies or Follow Best Practices

Some of the Port's actions in awarding contracts and making purchases have not been in line with best practices or its own policies. On two separate occasions, the Port amended contracts when significant changes in the scope of work would indicate that the projects should have been bid separately and issued as separate contracts. We also found that the Port did not follow prudent business practices when it allowed two vendors to bid on work after they had developed the requirements for the project as part of previous consulting engagements. Furthermore, the Port did not obtain board approval for certain service purchase orders and amendments and did not notify the board of other service purchase orders as required by Port policy.

The Port amended two contracts when it should have issued new contracts and sought competitive bids.

We found that the Port amended two separate information technology contracts even though the amendments resulted in significant changes in the contracts' scope of work. Typically, significant changes to the scope of work would lead to the development of a new project that an organization would competitively bid as a new contract. According to industry standards, the goal of managing the scope of an information technology project is to ensure that the project includes all the work required, and only the work required, to complete the project successfully. In January 1997, the Port contracted with a consultant for $151,800 to prepare an Information Systems and Data Communications Strategic Plan (strategic plan). Approximately one month after the consultant completed the strategic plan, the Port amended this contract to include new work—preparing a request for proposals for the provision of hardware, software, and services for the infrastructure detailed in the strategic plan and possibly assisting in the selection of the vendor. Because the additional work was not required for the completion of the initial project, it should have been bid as a separate contract.

In June 2001, the Port also amended a subsequent $1.6 million contract with the same consultant to provide services not in the contract's original scope of work. This amendment, not to exceed $299,052, was to provide additional professional services for the selection of a new financial management information system, services that went beyond the management and technical services described in the original contract to implement the 11 major information technology projects described in the strategic plan. Both amendments to the

contracts required work beyond the original plan of work and therefore, based on best practices, should have been opened up to the competitive bidding process. Because it did not do so, the Port denied other consultants the opportunity to compete for these projects and has no assurance that it obtained the services at the best possible price and terms.

The Port allowed two consultants to bid on a project after they had helped design it.

In addition, we found that the Port did not apply best practices in awarding the $1.6 million implementation contract because it allowed the consultants that had helped develop the requirements for the project to also bid on that project. The Port awarded this implementation contract to the same consultant that had recommended this project in the strategic plan. The Port also allowed a second consultant that had helped prepare a request for proposals for this project to later bid on it. The second consultant was one of the top three finalists in the vendor selection process but was not awarded the implementation contract. Although the sections of the State's contracting code that apply to ports do not specifically prohibit these practices, best practices would not allow consultants to bid on projects for which they had developed the requirements because it leaves the Port open to claims of favoritism and unfair competition.

The Port has also failed to follow its policies for awarding other service contracts. Of the 17 service contracts we tested, we found the purchasing department did not obtain board approval for a service purchase order for $74,962 and for an amendment to another service purchase order that, as a result of the amendment, reached a total cost of $53,453, even though Port policy required this approval.

The Port's contracting policy that was in effect between July 1998 and November 2001 required board approval for service contracts over $50,000, such as garbage collection, and for purchases of supplies and equipment over $75,000, such as furniture purchases. However, based on informal discussions with the Port attorney's office, the purchasing department had treated service contracts awarded through purchase orders as supply purchases and, therefore, did not obtain board approval of at least two service purchase orders for amounts between $50,000 and $75,000. As a result, these service purchase orders, and potentially other service purchase orders in this dollar range awarded at the time, did not receive the public notification and board attention that Port policy required. November 2001 changes to the Port's contracting policy raised board approval

The purchasing department erroneously treated service contracts like supply purchases and therefore did not obtain board approval of those contracts or related amendments.

thresholds to $100,000 for both service contracts and supply purchases and therefore removed the difference that contributed to the purchasing department's failure to seek approval.

Because the purchasing department treated service contracts according to the approval rules for supply purchases, it was also failing to notify the board of other service contracts. Until November 2001, Port policy required that the board be notified of service contracts between $25,000 and $50,000. Without these notifications to the board, commissioners missed the opportunity to provide some oversight of these contracts or to request additional information when they had questions. The November 2001 changes to the contracting policy raise the board notification range to between $50,000 and $100,000 but do not remove the notification requirement. In order to follow Port policy, the purchasing department will need to begin notifying the board of service contracts that fall between $50,000 and $100,000.

THE PORT'S PERSONNEL ACTIVITIES NEED SOME ADJUSTMENT TO PROTECT THE INTERESTS OF THE PUBLIC AND THE PORT'S EMPLOYEES

In order to avoid potential concerns regarding conflicts of interest and to meet its commitment to its employees, the Port needs to better adhere to some of its policies and may need to adopt additional guidelines. Although state law requires that public officials report certain real properties in a disclosure statement, one commissioner failed to report one property he owned. In addition, because the Port does not have postemployment guidelines similar to those in place at the state and federal levels, it has left itself open to activities by a former commissioner that may be viewed as an improper influence on board decisions. Also, the Port's delays in completing disciplinary proceedings violate the time frames established in its personnel rules and regulations.

One Commissioner Failed to Disclose All of His Financial Interests

The Political Reform Act of 1974 requires that public officials disclose personal interests that might be affected while performing their duties and also requires that they disqualify themselves from any governmental decisions that would

affect their financial interests. We found that the Port's conflict-of-interest policy reflected the Political Reform Act of 1974 requirements for disclosure and disqualification. We also pursued an allegation that a commissioner had failed to report real estate on his disclosure statement, as required by law.

The law requires that certain officials report all real estate holdings within two miles of their agency's jurisdiction. Although the real estate in question was within two miles of Lindbergh Field, which is under the Port's jurisdiction, the commissioner did not include it in his disclosure statements. The commissioner indicated that the omission was an oversight and he corrected the error in his disclosure statement for 2001. Our discussions with the Fair Political Practices Commission, the state agency that administers the Political Reform Act of 1974, indicated that in most cases the corrective action in similar cases would be to amend prior disclosure statements. Based on the discovery of this omission, we believe that the Port's commissioners and employees required to file disclosure statements should reexamine their statements to ensure that they are complete and accurate. In January and March 2002, the Port's attorney provided additional guidance to individuals who filed these statements, encouraging them to reexamine their disclosure statements.

The Port Lacks a Policy That Limits the Postemployment Activities of Its Officials

The Political Reform Act of 1974 contains restrictions on the postemployment activities of state officials that prevent them from influencing their former agencies for compensation. The federal code also contains similar restrictions on the postemployment activities of federal officials. However, the Port's conflict-of-interest policy lacks any postemployment guidance for its officials. As a result, the Port has left itself open to claims that the actions of exiting and former Port officials could constitute an improper influence on Port decisions.

A former commissioner represented several clients before the board less than a year after leaving the board, which could lead to concerns of favoritism.

In particular, a former commissioner represented several clients in actions before the board less than a year after he left the board. Although state and federal laws set forth a one-year period during which former officials cannot represent clients before the decision-making body that they were part of, these laws do not apply to local entities, such as the Port. Therefore, the actions of the former commissioner did not violate the law or Port policy. However, his appearance before the board so soon

after leaving it could lead to concerns that the board considered this former commissioner's clients more favorably than clients not represented by a recent commissioner.

The Port Has Not Always Followed Its Policies and Procedures for Appeals of Personnel Actions

The Port does not always conduct appeals of personnel actions as required in its rules and regulations. For example, one employee stated that she was denied a personnel evaluation appeal because she was a probationary employee, even though the Port's personnel rules and regulations state that any employee may appeal a performance evaluation. Furthermore, based on our review of employees' appeals of disciplinary actions, we found that the Port almost always exceeds the time frames established in its appeal procedures. Because these procedures cause the Port's employees to have certain expectations about how the Port will act on disciplinary appeals, it is important for the Port's practices to match its policies.

The Port's disciplinary appeals procedures are based in part on what are known as Skelly rights—job-related rights conferred upon public sector employees as the result of a California Supreme Court decision. Skelly rights provide that a public employee cannot be suspended or terminated from a job before a conference with a designated agency official is held. The Port's disciplinary appeals process specifies time frames by which certain actions must occur for removals, demotions, or reductions in pay of classified employees.

Terms Associated With Disciplinary Appeals

Skelly conference—A required meeting between the employee and a Port official that allows the employee an opportunity to respond to the charges before the effective date of the proposed discipline.

Personnel advisory board hearing—A hearing at which classified employees can appeal any disciplinary action, removal, or demotion except when specifically precluded by Port rules and regulations or otherwise provided by law.

Unclassified employees—Includes Port officers, upper management, and those employees with access to highly sensitive information. Unclassified employees are at-will employees and may be removed without notice, progressive discipline, or disciplinary appeals.

Classified employees—All positions not specifically included in the unclassified service. Classified employees are entitled to disciplinary appeals and progressive discipline.

We tested a sample of 10 disciplinary appeals of actions taken between October 1998 and September 2001 where the Port had documentation of the process and found that the Port frequently exceeded the timelines it had established for itself. For example, Port policy states that a Skelly conference with an officer of the Port must occur within 10 days after an employee receives a notice describing the proposed disciplinary action. We found that in 9 of the appeals we tested, the Port exceeded this requirement, taking between 17 and 30 days. Port policy also states that it must deliver, within 10 days of the conference, a

written decision to the employee that either confirms, amends, or dismisses the proposed disciplinary action. We found that in 8 of the 10 cases the Port exceeded this requirement, taking between 12 and 28 days.

Employees may appeal a final notice of disciplinary action to a personnel advisory board. Port policy states that a personnel advisory board hearing (hearing) should be scheduled within 30 calendar days after an appeal is filed. For all eight employees in our sample who requested a hearing, the Port exceeded its 30-day requirement, taking 47 to 140 days. Although Port policy stipulates that the 30-day period may be extended by mutual agreement between the employee and the individual hearing officer assigned, the Port could provide no documentation to indicate that the delays had occurred to accommodate the schedules of employees and their representatives.

Finally, Port policy states that a written decision by the personnel advisory board must be given to the employee within 10 days of the decision. We found that in the six cases for which the personnel advisory board had rendered a decision before the end of our fieldwork, the Port exceeded the 10-day notification requirement one time, taking 60 days, as shown in Table 3. In order to better serve its employees' interests by avoiding potential confusion and frustration with this process, the Port should meet the timelines for disciplinary appeals established in Port policy.

TABLE 3

The Port Almost Always Exceeded Its Disciplinary Appeal Timelines

Procedure	Established Period	Range of Days the Port Actually Took	Frequency That the Port Exceeded the Established Period
Schedule Skelly conference after notice of intent delivered to employee	10 days	8–30 days	9 of 10
Provide employee with notice of Skelly officer decision	10 days	9–28 days	8 of 10
Schedule personnel advisory board hearing after the appeal is received	30 days	47–140 days	8 of 8
Provide employee with notice of personnel advisory board decision	10 days	0–60 days	1 of 6

THE PORT CAN IMPROVE ITS COMPLIANCE WITH OPEN MEETING LAWS

Although the Port generally followed California's open meeting laws, several cases indicate that the Port needs to exercise more caution to fully comply with these laws. In one instance, the board discussed an issue in closed session even though it had not given appropriate public notice that the issue was being continued from a prior meeting. In another case, the executive director briefed the board in a closed session on an issue that had not been included on the agenda. Also, the Port has not reexamined the fees it charges for distributing agendas, even though it now faxes most agendas instead of mailing them. As evidenced by the fact that some members of the public have expressed concerns about the Port's actions regarding open meetings, the Port needs to ensure that it consistently complies with all requirements of these laws.

The Ralph M. Brown Act (Brown Act) in California's Government Code states that local legislative bodies, including boards and commissions, exist to aid in the conduct of the public's business and that their actions and deliberations should be conducted openly. The Brown Act requires that these bodies post an agenda describing their planned business 72 hours before their regular meetings. The Brown Act also states that a local legislative body may not take action or discuss any item that has not been publicly identified in the agenda or added by a vote of the body. The Port's attorney assists the board when questions of compliance with the Brown Act arise.

In several cases, the public was not properly notified of board discussions held in closed session.

In our review of 10 board meetings, we found several cases in which the Port did not properly notify the public of certain closed-session discussions. In an October 1998 meeting, the board had scheduled a closed-session discussion for real estate negotiations regarding a Navy property. However, when the board continued some items to its next meeting, it failed to notify the public that negotiations on the property were also going to be continued to the next meeting. In another case, during a January 2001 closed session, the executive director briefed the board on an issue not listed on the agenda. In both cases, these actions violated the requirements of the Brown Act. However, the impact on the public's access to the decision-making process was mitigated by the fact that the board did not act on these issues at these meetings.

We also found three instances in which the Port's agenda descriptions for closed-session personnel discussions failed to provide sufficient information to meet the Brown Act requirements. These agenda items indicated that the board would discuss a personnel action and provided the individual's job title but failed to disclose whether the action related to an appointment to a position, a performance evaluation, or employee discipline, as required by the Brown Act. This additional information regarding the personnel action provides the public the opportunity to find out what types of personnel activities are occurring at the Port. Since the time we raised this issue with Port staff, the Port has modified its agenda descriptions of closed-session personnel issues to meet the Brown Act requirements.

The Port has not recently examined the fee it charges for providing agendas to interested parties.

The Brown Act also allows local legislative bodies to recover their costs for providing agendas to individuals or groups that request an agenda be sent to them before each meeting. However, the Brown Act indicates that the fee charged cannot exceed the costs of providing the service. The Port currently charges approximately 20 individuals or groups $14 for a year's subscription to its agenda service. Yet the Port has not analyzed its costs for providing this service in over 10 years, even though it now faxes most agendas instead of mailing them. Without this analysis, the Port cannot ensure that the fees it charges for providing this service do not exceed the costs it incurs.

RECOMMENDATIONS

To ensure that it obtains the best value in its leases, development projects, and contracts, the Port should do the following:

- Obtain market-value rent when awarding leases or disclose and provide appropriate justification for offering below-market rent when the board considers approval of the lease. The Port should also consider adopting an appraisal methodology for its marinas that combines economic analysis with a review of rents paid on comparable properties to obtain the best estimates of the market rent.

- Solicit competition through requests for proposals or qualifications when developing major projects, unless there are compelling public interests not to do so.

- Competitively bid new contracts instead of amending existing contracts when the scope of work changes significantly.

- Adopt a policy that would prohibit contractors that have developed specific requirements for a project from subsequently bidding on that project.

- Follow Port policy requiring board notification and approval of certain service contracts.

To minimize potential concerns regarding conflicts of interest and to meet its commitment to its employees, the Port needs to do the following:

- Encourage Port commissioners and employees that file disclosure statements to review their current and past statements for completeness and accuracy.

- Consider adopting postemployment guidelines similar to those in place at the state and federal levels.

- Ensure that personnel appeals are conducted according to Port procedures.

To improve its compliance with the State's open meeting laws, the Port should do the following:

- Ensure it properly notifies the public of all board discussions, as required by state law.

- Reevaluate the fees it charges for distributing agendas to ensure that the fees do not exceed the cost of distributing the agendas.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

Date: April 30, 2002

Staff: Ann K. Campbell, CFE, Audit Principal
Nathan Checketts, CIA
Suzi Ishikawa
Michelle Tabarracci, CISA

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APPENDIX

As stated in the Scope and Methodology section of the Introduction, we had no concerns regarding a number of the areas we were asked to review. In this Appendix, we describe our methodologies and related conclusions for those areas of testing. Specifically, the areas described below include public project contracts, property acquisitions, several personnel issues, and public records.

To test how the San Diego Unified Port District (Port) awards public project contracts, we reviewed a sample of nine public project contracts executed since June 1999 to see if they had been advertised and awarded according to the Public Contract Code and Port policy. Public projects are construction projects or projects involving major renovation or repair of public facilities. We found that, without exception, the Port had advertised all public projects we tested according to law and had awarded them to the lowest responsible bidder.

To test the Port's property acquisitions, we selected several recent property acquisitions and found that in each case the Port had received the appropriate approval from the State Lands Commission, as required by the San Diego Unified Port District Act.

To test the Port's personnel practices, we obtained lists of grievances, investigations, sexual harassment complaints, and discrimination complaints from the Port and tested them as described in the following paragraphs. We also surveyed a sample of 100 Port employees to gain assurance that the lists provided were complete. When an employee responded that he or she had attempted to access some appeal, grievance, or complaint process, we pursued the issues raised to the extent possible.

To determine whether the Port has an adequate grievance process for employees, we reviewed the Port's formal grievance procedures. We found that no formal grievances were filed between July 1998 and November 2001. We also reviewed eight lawsuits filed against the Port between July 1998 and October 2000. None of the lawsuits was based on poor implementation of disciplinary appeals policies and procedures.

To assess whether the Port's internal investigation policies and procedures are adequate and whether the Port is following them, we reviewed the Port's internal investigations guide and compared it to the practices of four outside investigators. We reviewed 18 internal and external investigations based on complaints filed from May 1998 through October 2001 and found that they were conducted according to best practices.

To evaluate the Port's policies and procedures for preventing and identifying discrimination against and harassment of employees, and to determine whether the Port complies with relevant laws, we reviewed the Port's sexual harassment policy as well as its discrimination prevention policy. We found both policies to be consistent with applicable law. To review the Port's handling of complaints regarding sexual harassment and the use of obscene language, we included in our testing of internal investigations mentioned above investigations that were based on complaints of harassment, sexual harassment, or inappropriate behavior. All investigations, including investigations of harassment, sexual harassment, and inappropriate behavior, were conducted according to best practices. We found that the Port's discrimination prevention policies and procedures comply with applicable law. We also found that, without exception, the Port had responded to all complaints filed with its equal opportunity management office between October 1999 and December 2001 according to its policies and procedures. Finally, we reviewed the Port's handling of all complaints filed with the federal Equal Employment Opportunity Commission and the California Department of Fair Employment and Housing between July 1998 and November 2001. In all instances, the Port responded appropriately by providing requested information or taking other appropriate action.

To evaluate records retention practices, we interviewed eight department officials because the Port does not have a records retention policy. We found that in the absence of a records retention policy, the retention of all records is encouraged. In addition, the retention of records related to airport operations is governed primarily by Federal Aviation Administration guidelines. As of January 2002, the Port was in the process of creating a records retention policy for the whole organization.

To determine the timeliness and completeness of the Port's response to public records requests, we tested a sample of 25 public records requests made between July 1998 and November 2001. We compared the Port's response time to

statutory guidelines for timeliness. We found only one instance in which the Port did not respond in accordance with statutory timeliness requirements. We reviewed the requests and the responses and in some cases spoke with the requestor to verify the completeness of the Port's responses. As a further test of the completeness of the information provided, we expanded our original sample and reviewed an additional 8 public records requests. Out of the total of 33 public records requests tested, we found only one instance in which the Port withheld information as privileged without proper statutory support. Finally, we reviewed charges for public records requests to ensure that they were reasonable and compared them with costs charged by other public agencies. The fees for public records requests charged by the Port are reasonable as compared with the fees charged by other public agencies.

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Agency's comments provided as text only.

Port of San Diego
and Lindbergh Field Air Terminal
P. O. Box 120488
San Diego, California 92112-0488

April 15, 2002

Elaine Howle*
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

SUBJECT: PORT OF SAN DIEGO RESPONSE AND COMMENTS

Dear Ms. Howle:

Staff from the State Auditor's office has completed its audit of the Port of San Diego (Port). Two state auditors worked onsite from late August 2001, through February 2002, conducting the field-work for this audit. The Port expended hundreds of staff hours, and provided thousands of documents for review, to be cooperative and thorough in assisting the auditors. The audit is a detailed and complete report and covers many of the Port's actions and most important processes and procedures viewed over the past six-year period.

As a public agency, the Port embraces constructive review and comment on how it can do a better job in carrying out its responsibilities. We understand that the State of California should have a clear understanding of its trustees and their conduct in discharging the responsibilities delegated to them. While we do have responses to some of the findings, as follows, we believe this report represents an overall validation that the Port has generally conducted itself in a satisfactory manner and any issues raised are relatively minor in nature. We note that the report did not find any violations of law or other federal, state, or local regulations. Moreover, most of the recommendations contained in the audit have already been adopted and implemented, or are in the process of being adopted and implemented at this writing. (1) (2)

P. 13-14†/GENERAL RESPONSE REGARDING RFP PROCESS:

The Port concurs with the observations that the Request for Proposal (RFP) process may have been the better procedure to follow. In fact, in fall 2001, the Port issued a Request for Qualifications (RFQ) for development of the Convention Center Hotel and currently has four developer proposals. Generally, and in accordance with Board policy, the Port agrees that the RFP process is

* California State Auditor's comments begin on page 37.

† These page numbers refer to an earlier draft of the report.

preferable; however, on a case by case basis, there may be instances where unique concerns would justify an exception to this policy to achieve the greatest benefit of the project to the Port District and to the region in general.

An example of such an exception would be the development of the Hyatt Expansion. The existing hotel, combined with an adjacent parcel, provided a unique opportunity to combine and share facilities, including the parking garage, "back of house" operations, ingress, egress, and other facilities. The lease for this expansion is a market-rate lease and fully comports with the Port's rental policies. By combining the two adjoining parcels for the hotel expansion, greater density of development was achieved, which translated into greater lease revenue potential.

P.16†/POLITICAL REFORM ACT:

In January 2002, the Port retained Robert M. Stern of the Center for Governmental Studies to develop a comprehensive Ethics Policy for the Port. It is anticipated that this Policy, due for public review next month, will include restrictions on post-employment activities of its employees and officials.

P.17†/DELAYS REGARDING PERSONNEL HEARINGS:

(3) In all instances cited in the report, each hearing was held in compliance with the Port's procedures. Mutual consent for hearing dates was obtained. In all cases, appropriate hearings were held and no complaints were received. The Port has modified its procedures and will endeavor in the future to retain better documentation of the extension of hearing dates through mutual agreement among the parties involved.

P. 18†/BROWN ACT:

As a result of internal review, as well as issues raised during the audit, the Port District has implemented additional measures to ensure stricter compliance with the Brown Act.

It is hoped that you will find these comments responsive to the audit of the Port, and we look forward to providing any additional information that you may require.

Sincerely,

(Signed by: Bruce B. Hollingsworth)

Bruce B. Hollingsworth
Executive Director

COMMENTS

California State Auditor's Comments on the Response From the San Diego Unified Port District

To provide clarity and perspective, we are commenting on the San Diego Unified Port District's (Port) response to our audit report. The numbers correspond with the numbers we have placed in the Port's response.

(1) Although the Port writes off the issues raised in the report by characterizing them as "relatively minor," our analysis of the Port's actions raises some serious concerns about its operations. In particular, we note in the report that several decisions regarding leases resulted in Port revenues being millions of dollars lower than what they could have been had they charged market-rate rent to some of its tenants. We also reported a number of issues, including the use of development agreements and certain contracting and personnel actions, where the Port's current practices leave it open to criticism that it is not doing enough to protect the public's interests.

(2) The Port misstates what we have reported. As stated on page 9 of the Introduction, we found the Port generally complied with relevant law in a number of areas we tested. However, in the report, we discuss several cases where the Port was not in compliance with the law. As described in the open meeting section on pages 26 and 27, two discussions by the Board of Port Commissioners and several agenda postings did not meet the requirements of the law. In addition, we report on page 22 that, contrary to the Political Reform Act of 1974, one commissioner did not disclose a real estate holding in 2001. Further, as described in the Appendix on page 33, one public records request was not completed in a timely manner as required by law.

(3) While the first statement is factually incorrect, the second is misleading. Although our testing found that the Port held all Skelly conferences and personnel advisory board hearings as required for the items tested, it frequently exceeded the timelines established in its personnel rules and regulations and therefore was not in compliance with its own policies and procedures. As we discuss on page 25, the Port provided no

documentation to support its claim that delays in scheduling personnel advisory board hearings were the result of agreements between the employees and the hearing officers assigned. Additionally, other time frames in the disciplinary appeals process cannot be extended by mutual consent and our testing on pages 24 and 25 shows that the Port consistently exceeded its established time frames.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press