

# **CITY & COUNTY OF SAN FRANCISCO PORT COMMISSION**

## **MINUTES OF THE MEETING SEPTEMBER 11, 2007**

### **1. CALL TO ORDER / ROLL CALL**

Commission President Ann Lazarus called the meeting to order at 2:02 p.m. The following Commissioners were present: Ann Lazarus, Kimberly Brandon, Rodney Fong, Michael Hardeman and Stephanie Shakofsky.

### **2. ANNOUNCEMENT OF PROHIBITION OF SOUND PRODUCING DEVICES DURING THE MEETING**

Commissioner Lazarus deferred the announcement until the Commission reconvenes in open session.

### **3. APPROVAL OF MINUTES - August 14, 2007**

ACTION: Commissioner Brandon moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; the minutes of the August 14, 2007 meeting were adopted.

### **4. PUBLIC COMMENT ON EXECUTIVE SESSION**

### **5. EXECUTIVE SESSION**

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Hardeman moved approval; Commissioner Fong seconded the motion. All of the Commissioners were in favor.

At 2:05 p.m., the Port Commission withdrew to executive session to discuss the following:

#### **(1) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED AND EXISTING LITIGATION MATTERS (DISCUSSION & ACTION ITEMS).**

a. Discuss existing litigation matters pursuant to California Government Code Section 54956.9(a) and San Francisco Administrative Code sections 67.10(d) and 67.12:

- Platte River Insurance Company v. City and County of San Francisco acting through the San Francisco Port Commission; and related cross-complaint (San Francisco Superior Court Case No. CGC-05-446355):

Discussion and approval of proposed settlement of existing litigation upon terms which include Platte River's payment of \$750,000 to the Port and dismissal of its appeal, and both parties' mutual and final release of all claims related to the litigation. (Discussion and action item.)

- (2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

**This session is closed to any non-City/Port representative.\***

- a. Property: 360 Jefferson Street  
Person Negotiating: Port: Byron Rhett, Deputy Director, Planning & Development  
\*Firewood Cafe: Glenn Meyers
- b. Property: Piers 27-31  
Person Negotiating: Port: Byron Rhett, Deputy Director, Planning & Development  
\*SF Piers LLC: Tom Hart and Rocky Fried

## 6. RECONVENE IN OPEN SESSION

At 3:30 p.m., the Commission withdrew from executive and reconvened in open session.

ACTION: Commissioner Brandon moved approval to adjourn executive session and reconvene in open session; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Brandon moved approval to disclose that the Port Commission approved, by unanimous vote, the proposed Settlement Agreement with Platte River Insurance Company to resolve the litigation upon the material terms set forth in Agenda Item No. 5A(1) for this meeting and upon such further terms approved by the City Attorney's office and to not disclose any other information discussed in executive session; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor.

Commissioner Lazarus announced that the ringing of and use of cell phones, pagers, and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic device.

Commissioner Lazarus requested to adjourn the meeting in memory of those who lost their lives six years ago today.

## 7. EXECUTIVE

A. Executive Director's Report: Executive Director Monique Moyer reported the following:

- Announcement of 2007 Supplemental Homeland Security Grant: On August 16, 2007, the Department of Homeland Security announced a 2007 Supplemental Port Security Grant. The Ports of San Francisco, Oakland, Richmond and Stockton were

awarded a combined allocation of \$6.1 million out of \$100 million available for the entire United States. Of that amount 20% or \$1.2 million will be used to develop a Portwide risk management, mitigation and business recovery plan. Much like the State fire departments, we are looking to set up mutual aid among ports. The recovery plan will be regional in scope and includes all commercial port facilities which can be accessed by a vessel transiting through the Golden Gate. The remaining grant funds will be used to fund projects which close any security gaps at the individual ports. The \$6 million award comes on the heels of the award the Port of San Francisco received in May which was \$1.5 million for the initial 2007 Port Security Grant. She thanked Port staff who worked diligently on this: Sidonie Sansom, Nick Larocco, Daley Dunham, Jay Ach and many more.

- California Cultural Historic Endowment Grant Award for the Pier 70 Master Planning Effort: On August 23, 2007 the California Cultural Historic Endowment awarded a \$200,000 grant to the Port for the Pier 70 Master Planning effort. The Port has already committed over half a million dollars to this effort, the additional funds will be used to deepen our technical understanding of the site opportunities and constraints as we go forward in developing a master reuse and development plan. This statewide grant process was very competitive with 184 applications received asking for \$284 million. 41 grants were awarded for \$43 million. The Port of San Francisco is fortunate to have gotten \$200,000 of the \$300,000 we requested. The Port Commission authorized the application in March 2007. During the legislation season, this award was granted. She thanked all Port staff who worked on that project: David Beaupre, Daley Dunham, Carol Bach and many more.
- Final Presentation of the 2007 Piero N. Patri Fellow in Urban Design on Warm Water Cove – 5:45 p.m. on September 25, 2007 at Pier 1: Mike Ernst, SPUR's Piero Patri Fellow, will present his concepts for improvements to Warm Water Cover Park and the surrounding areas and a catalog of Southern Waterfront Open Spaces at a presentation at Pier 1. Wine and cheese will begin at 5:45 with the presentation beginning at 6:30 p.m. The Port has participated in the summer long Piero N. Patri Fellowship program. The Pier N. Patri Fellowship in Urban Design is a hands-on position for a graduate student/recent graduate in urban design, landscape architecture, architecture, or urban planning giving the Fellow a unique opportunity to gain firsthand experience working in the urban design and planning field on a project that will have a positive impact in the city of San Francisco or the bay area. This Fellowship was established by Piero Patri's family. We are pleased to be the first to be studied through the Fellowship program.
- BAE Lease Amendment: Moments ago, the parent company of BAE Systems approved the amendment to our lease in London. Our plan to expand the drydock to service Post-Panamax cruise ships and other vessels is now well on its way. We plan on having a huge signing ceremony which everybody is invited to. This represents the largest investment in our maritime infrastructure in a long while. It's a historic occasion for the Port. It will mean that San Francisco will provide the largest drydock facilities on the entire West Coast so that will help divert business back to California versus Asia. It will help us with our marketing efforts to cruises.

Congratulations to a large plethora of folks led by Peter Dailey, Kathleen Diohep, Byron Rhett and mostly the lawyers.

## 8. CONSENT

- A. Request approval of resolution clarifying and confirming August 30, 2007 as the effective and operable date for implementation of the 2007 Port Building Code. (Resolution No. 07-69)

ACTION: Commissioner Brandon moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; Resolution No. 07-69 was adopted.

- B. Request approval of Executive Director's nomination of members of the Port Building Code Review Board. (Resolution No. 07-70)

Ed Byrne, Chief Harbor Engineer, indicated that this item nominates the members to the Review Board. The modification is only to the resolution. After the last whereas clause, another whereas clause was added and a new resolved clause. It states:

“WHEREAS, Section 105.2.1 of the 2007 Port Building Code contained typographical errors that Port staff wish to correct in this resolution; now, therefore, be it

RESOLVED, that Section 105.2.1 of the 2007 Port Building Code is hereby clarified and revised to read as follows:

“Membership. The PBCRB will consist of five city staff members selected by Port Executive Director and approved by the Port Commission. Each member shall serve a maximum term of three years. The PBCRB will be composed of five members employed with the City and County of San Francisco. The members shall have technical skills and/or non-technical working experience related in construction. The technical members shall be a registered and/or licensed California structural engineer, architect, and utilities engineer, which may be an electrical, mechanical, or fire protection engineer or a certified building official. The non-technical members shall be a planner and another member selected from city staff. Three members, which include a minimum of 2 technical members, form a quorum. The Port Executive Director may appoint a replacement member for a single action to meet the minimum member requirement. Unless three or more members cast affirmative votes for the action, PBCRB may not take any action. The Port Director, in order to address membership absenteeism, may appoint a replacement member for a single action to meet the minimum three member requirement; and, be it further...”

ACTION: Commissioner Brandon moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; Resolution No. 07-70 was adopted.

## 9. PLANNING & DEVELOPMENT

- A. Request approval of the schematic concept plan for the P2 and P8 Mission Bay Parks adjacent to the Mission Creek Harbor Association (MCHA) lease area. (Resolution No. 07-71)

David Beaupre, Planning and Development, introduced Amy Neches and Catherine Reilly from the Redevelopment Agency who have been working with the Port on this project as well as Mark Lozovoy. Mission Bay covers 303 acres of land between San Francisco Bay and Interstate 280. The Board of Supervisors established the Mission Bay North and South Redevelopment Project Areas in November 1998. The maximum development program for Mission Bay includes:

- 6,000 housing units
- a new UCSF research campus containing 2.65 million sq. ft. of building space, 6 million sq. ft. of office, life science, technology and commercial space
- 500-room hotel
- 41 acres of public open space
- a new 500-student public school
- a new public library and a new fire and police stations

The schematic plan for the P2 and P8 Mission Creek shoreline parks requires Port Commission approval because under the procedures established through the owner participation agreement and the interagency cooperation agreement, the Port Commission requires approval of park concepts for open spaces within the Port's jurisdiction. He showed an exhibit that illustrates how the park falls within the Port's jurisdiction. They've overlaid the Port jurisdiction line over the proposed park design. Approximately half of the park falls within Port's jurisdiction. The total park size is approximately 7½ acres, 3.3 of which are within the Port's jurisdiction. Staff also did an overlay of the existing lease boundary for the Mission Creek Harbor Association (MCHA) lease. As a part of the design for the P2 and P8 park, we had to work with the existing tenants to develop a design that was consistent and agreeable to them but also reconciles the redevelopment area boundary with the MCHA's lease. The plans developed for the park were redeveloped working with the MCHA, the Redevelopment Agency, the Catellus Group and the Mission Bay CAC and Port staff. He showed an exhibit illustrating the conceptual schematic design. The MCHA leasehold is directly adjacent to it. Some of the issues that needed to be addressed as part of the design included retaining the character of the existing park development by the MCHA. Again, their leasehold is directly adjacent to this park area. They developed what was known as a Huffaker Park as a part of their original lease, as a condition of a permit. They've maintained that park over the years. They wanted to make certain that the new design of the park was consistent with the current park design. We also needed to retain the dedicated parking and storage areas for the MCHA which is a part of their leasehold area, maintain the community gardens that currently exists, maintain as much as the existing plant material that's on site and to provide some privacy for our tenants. Some of the issues that the Port, the Redevelopment Agency and Catellus wanted to address was the continuation and continuity of the existing open space system throughout Mission Bay including the P1 Park just to the north, consolidate and improve the MCHA storage area, remove the parking that currently exist and move to the edge of the park, and limit vehicular access into the park. Currently, the MCHA can drive up to their gangways and drop equipment off that helps them live their day-to-day lives but we wanted to make certain that a future park that is designed does not allow the easy access but still provide the amount of ease they need to do that and maintain the park at a higher

level that is being maintained today. He showed another slide illustrating the design feel for the park. An illustration showing the metal plantings which are designed as stormwater overflow areas that are designed in wave patterns, community plantings and gardens, the existing Huffaker Park, an illustration of how the pathways and casual seating areas might look, an image of the parking within the park, an image of some of the proposed perennial plantings. He showed a detailed drawing that illustrates the reconfiguration of the community gardens, which are central to the existing park and part of the planned future park. Part of the arrangement is that the MCHA would manage the expanded community gardens so that they would serve not only their community but all of the Mission Bay community as it develops. Consolidating and redesigning the storage units so that they are more efficient. Secure and dedicated parking so they would have access to their parking which would be secured and gated. Restricted vehicle access through the park to make it usable to all future users. He showed another exhibit of the eastern end of the park and it shows the stormwater overflow which is a requirement of the design, teaching gardens that the MCHA wanted to take the leadership in designing and maintaining, some of the trash enclosures within the parking area and use of the existing plant materials. The last exhibit illustrates how the circulation works within the park as a part of the Mission Bay Open Space Master Plan and how it designates the various areas of the park. There is a Class 1 bike path that runs off the street in the southern end of the park, the continuation of the bay trail, the area that will be dedicated as Huffaker Park which will be maintained by the MCHA to a standard established by the Mission Bay residents. The improvements to the park are at no cost to the Port. This is the final approval required by the Port Commission for the design of the P2 and P8 parks in Mission Bay. At this point in time, there is no schedule for the improvements to occur. All of the open space improvements within Mission Bay occur as it relates to the development that occurs. Initially, they were thinking that they will happen potentially in 2009 but depending on the market condition, they are not certain when this development will occur.

Commissioner Shakofsky inquired about the original proposal for a 41-acre park. Mr. Beaupre replied that throughout Mission Bay, the total proposal is 41 acres. The total on P2 & P8 is approximately 7.5 acres, 3.3 of which fall within Port's jurisdiction.

Francisco Da Costa indicated that when there are plans of this nature especially Mission Bay, he pointed out a few things that most people do not take the time to point out to the Commissioners. He used to attend the Port Commission meetings before on a regular basis. The first point he stated was that this land belongs to the first people, the Muwekma Ohlone. It is good to get the history and they have a website. Having said that, a lot of the land on Mission Bay was land fill, prone to liquefaction. If anyone understands a little bit about the history of Mission Bay, it belonged to Santa Fe which later became Catellus which is now Alexandria, the same snake but different head. If you go to Sacramento to a site operated by Santa Fe, a million tons of toxic soil were removed. If you go to Sacramento, 400,000 tons; if you go to Mission Bay, nothing. You need to ask how all this happened. You need to go to the Department of Toxics and Substances Control and find out what happened. You need to find out the role of the Regional Water Board. Having said that, there are many puzzles over there. He hopes that the Port Commission understand what is the Public Trust Act, what is the Burton Act. How these lands benefit the constituents of California, let alone San Francisco. We need to pay attention to the toxicity and we need to pay attention to what goes in the bay.

He knows that the Port has a good director that runs the Port. He knows that some of the Commissioners are fair minded. The Port needs to do the right thing.

Corinne Woods, chair of the Mission Bay Citizens Advisory Committee and member of the MCHA, indicated that this has been a long and collaborative process to make the best park they possibly could for Mission Bay. They are very pleased with the outcome.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 07-71 was adopted.

## 10. REAL ESTATE

- A. Request approval of Restatement of and Amendment to Lease No. L-11451 between the Port and Mission Creek Harbor Association regarding berthing facility for recreational vessels and floating homes located at Mission Creek. (Resolution No. 07-72)

Mark Lozovoy, Senior Property Manager, indicated that on March 24, 1989, the Port entered into Lease No. L-11451 with Mission Creek Harbor Association (MCHA), a California non-profit corporation, for premises located on Mission Creek at Wharf 60. The premises for this lease are comprised of approximately 61,000 sq. ft. land which includes Huffaker Park, the community gardens, storage and parking of the MCHA's subtenants and approximately 131,000 sq. ft. submerged land for marina berthing facilities. The current rent under this lease is approximately \$56,127 a year. The existing lease expires on March 16, 2019. On November 16, 2001, the Redevelopment Agency and the City, acting through the Port Commission, entered into a Master Ground Lease arrangement with respect to all property located within the jurisdiction of the Port to implement improvements related to public open space, parks and plazas. Under the master lease, the Agency is responsible for managing, and operating open space parcels. The Port, MCHA, the agency and Catellus Construction group have been jointly working together on the design for the park and its effects on MCHA's leasehold, and the desire of the various parties to appropriately reconfigure MCHA's leasehold to address the needs of the respective parties. MCHA's current leasehold is comprised of both land and water space. This proposed lease amendment would downsize the current MCHA-Port premises by removing all of the land area from the leasehold, leaving only the water-side marina berthing facility within the amended premises. The land area which is being removed from the MCHA-Port leasehold will in turn be leased to the Agency under the Master Lease in order to develop the P2 Mission Creek Park. This reconciliation of leasehold space logically redistributes responsibilities for the affected areas to the appropriate entities. MCHA's downsized premises reflect its responsibilities to manage and operate the marina berthing facility and the land area becomes the responsibility of the Agency to develop and operate as P2 Mission Creek Park. Additionally, MCHA has requested that the Port extend the term of the Lease from the current termination date of March 16, 2019 to March 16, 2055. According to MCHA, the extension is necessary in order to ensure stability for the marina community, provide a sufficient continuous term for banks and other financial institutions to provide financing for MCHA and its floating home subtenants. MCHA requires adequate lease term to finance ongoing capital improvements such as floating docks and ramps. The floating home owners require the additional term to finance the purchase, sale and improvements to floating homes. Lease L-11451 with MCHA is a maritime lease, which contributes to

the Port's maritime public trust mission. The Port and MCHA have negotiated an amendment to the MCHA Lease which would provide for an extension of the term of the lease to March 16, 2055, downsize of the premises from 192,400 sq. ft. to 131,221 sq. ft. to accommodate the development of the Park, and clarify and update the lease with the current City requirements and Port lease standards.

Commissioner Brandon indicated that she did not hear anything about the money. The current annual rent is \$56,127; how is it done now? Will it remain the same or will it increase? Mr. Lozovoy replied that the \$56,127 is the current rent. The rent structure under this lease is a very durable formula; it's adjusted by CPI or 3.33% of last year's gross revenues. In addition, the Port has the right to every three years, come in and reset the rates that the association charges its subtenants for berth space. The Port controls the first strings, the generation of revenue, every three years.

Commissioner Brandon asked if MCHA would still be responsible for \$56,127. Mr. Lozovoy replied that every year it will be adjusted. Commissioner Brandon thought that since the premises have decreased, they won't have to pay as much. Mr. Lozovoy indicated that the original rental rate of this lease was not based on square footage. It was based on the association's ability to generate revenue and put money back in. This is akin to a condominium association. It's a model that we've looked at to replicate other areas of the Port. It takes care of itself. There's no subsidy involved. They drive piles, they replace ramps and they replace floating docks. They are maritime tenants that do that internally through the revenue that is generated.

Commissioner Brandon indicated that she was not clear on what the rent is going to be. Mr. Lozovoy replied that currently, for the rest of the year, the rent is \$56,127 regardless of square footage.

Monique Moyer asked what portion of the \$56,127 is the base rent. Mr. Lozovoy indicated that is the base rent. So far, they have not gotten into percentages. Ms. Moyer reiterated Commissioner Brandon's question if that would be the same base rent for next year. Mr. Lozovoy replied that this base rent will be adjusted by CPI or the greater of 3.33% of gross revenues.

Commissioner Brandon indicated that we're extending the term for 36 years but the rent stays the same. She asked what types of improvements will be done. Mr. Lozovoy replied that improvements will be ongoing maintenance and repairs to the facilities. Commissioner Brandon indicated that those were already included in the existing lease.

Ms. Moyer asked Mr. Lozovoy to explain the revenue stream; how the MCHA makes money. Mr. Lozovoy indicated MCHA are in the business of berthing recreational boats and floating homes. Their subtenants pay on a linear footage for dock space. They bring that money in and they pay for all the improvements and capital improvements necessary to maintain the marina. Marinas are expensive to operate. When this lease was first done, it was clear that there was a lot of thought given to making sure that it would take care of itself through the years. It's a very durable rental formula.

Commissioner Fong clarified that the square footage is being reduced but the overall linear square footage, dock space that can be rented is not being reduced and therefore, revenues will stay the same.

Ms. Moyer clarified that the minimum revenues will stay the same. It is our expectation that the revenues will grow and the Port will participate in that.

Commissioner Brandon asked if the revenue will grow through CPI. Mr. Lozovoy replied that it will go through CPI increase no matter what. Ms. Moyer indicated that the base rent goes through a CPI increase no matter what. We can adjust berthing rates within this leasehold every three years for the new term. Said in a different way, we've locked in the floor at the existing floor but we anticipate growth as values of berthing spaces increase and as we set our own rates. In return, the maintenance and beautification still vest with the MCHA and the day-to-day operation vest with the MCHA.

Philip Andrade, President of the MCHA and chair of the Power Plant Task Force, commended staff in the negotiation of the Trans Bay Cable as to producing an excellent revenue stream for the city and for the Port and testified to the hard work of Port staff. In the matter before the Commission, he spoke on behalf of the tenants of the MCHA and he is grateful to the Port Commission, its staff, the Redevelopment Agency and MCHA for working out a cooperative use of this maritime space which benefits not only the Port, not only the Agency but the City and County of San Francisco as well as being quite a home to the Port tenants. He thanked the Port Commission, the Executive Director, Mark Lozovoy and Rona Sandler for all the hard work they put in to making this cooperative lease work to all of our benefits.

Bob Isaacs, member of the MCHA, pointed out that they are a community. People lived there for over 30 years. There are third generation active members of the harbor; 20 house boats and 35 other crafts. The Port is putting the legal stamp on that. He thanked the Commission and the staff for the hard work and good spirit they have shown in the negotiations.

Corinne Woods, MCHA, indicated that they live in a construction zone and they have been for ten years and will for another 20 years. They work very well with the Port, with Redevelopment and with their new neighbors. They are even getting their new neighbors to help plant the banks of the creek as part of the Habitat Improvement Program. They have great stewards in this area. They have been very engaged in the changes that go on and they intend to continue to be engaged with this community. They appreciate being here and they love being Port tenants. They love the creek. There's a coastal clean-up this Saturday, September 15, 2007. They are meeting at 6<sup>th</sup> Street and Channel and picking up trash.

**ACTION:** Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 07-72 was adopted.

- B. Informational presentation on the Pilot Street Performers Program for the Fisherman's Wharf area starting November 1, 2007.

Claudia Davison, Property Manager for Fisherman's Wharf, indicated that when she rotated to that area, it became apparent that there were a number of areas that needed correction. They have been working on developing and implementing a number of different programs. The Commission recently heard an informational presentation on the development of a street performer program. She will provide the Commission with an update of the meetings held and the measures taken to continue that development. We believe that live performances add vitality and interest to the wharf. The slides show a wide variety of daytime acts; they add a lot of color and interest to the population. The right to require a license for performers to sell merchandise is currently under review by the City Attorney's office. If the recent 9<sup>th</sup> Circuit Decision applies to the Port and the Commission decides to adopt a program, we will issue fewer licenses because unlicensed performers will be more likely to find an available and appropriate place at which to perform. Since the Last Commission heard this item, staff has had community workshops on August 6 and 16, 2007, held an enforcement meeting that included the SFPD and Fisherman's Wharf Community Benefit District (CBD) on August 21, 2007. They went around the wharf with a group of people conducting site and sound tests. Met numerous times with the community business district who requested a one-month delay to further explore the program. Port staff met with CBD this morning and they resolved all of their questions and have submitted a letter to the Port Commission. At last report, the SFPD also endorses the program. Beyond today, we anticipate to continue educating the community and with the Commission's blessings start a pilot program on November 1, 2007. Some of the changes made since the first presentation where 12 locations were identified, added a monthly license fee option: \$50 a month or \$500 a year; added flexibility for license performers to swap scheduled performance times during the selection term, remove the requirement to have the State Board of Equalization issue a seller's permit and/or a City business license because the Port is not their enforcement arm. We've reduced the restriction on sound equipment and props with proof of insurance because certain Port sites are more vulnerable than other sites for example, a wooden pier versus a concrete walkway. We've reduced certain loopholes in scheduling for fairness. Therefore, licenses will be issued to an individual or a group but not to every person in a group. The first amendment to the constitution protects the right to free speech on public property with the public agency being able to make very few restrictions; only time, place and manner. She made it clear that there are no barriers to performing at Fisherman's Wharf. It's public property, there are no additions and licenses are not required. Participation in obtaining a license on the Port's Street Performers Program is optional. It's up to the performer. There are a lot of different street performers: musicians, dancers, human statues, robot, clowns, mimes, jugglers and many others, There are lot of people interested and concerned about the well being of Fisherman's Wharf, street performers, merchants, restaurateurs, the maritime industry, the police, residents and 14 million visitors a year. We hope that this program will increase their enthusiasm and interest in coming to the wharf. This program is not about street artists. They already have a separate program and designated locations. Unauthorized vendors for merchandise, food sales, service providers. The pilot program embraces all performers that simply create performance locations for use by both licensed and unlicensed performers. It creates a set of guidelines and ground rules for the locations that are applicable to licensed and unlicensed performers. It's about managing that license and performance scheduling system. Licenses will be available in one-month or one-year term. Scheduling will be held monthly for performers to decide which days they want to perform, at which locations and at which times. The individuals or groups

that decide to get a license will be able to schedule their performance at the designated locations. The schedule will be posted at the locations. They have an option of a longer performance time. They may use amplified sound and they may sell performance-related merchandise. Unlicensed performers may also perform on a first-come, first-served basis at the unscheduled times at each location suitable for their location. They may use a performance program for up to 1½ hours if another performer is waiting. We now have 12 performer locations. Fisherman's Wharf is very densely occupied and very small. Not all the performance sites are equal. We did what we could to find as many as we could based upon the size of the performing group, the anticipated size of the audience, the sound volume and pedestrian access. There are four 3-hour time slots per location daily and one third of those are reserved for unlicensed performers. She showed a drawing of the eight old locations on Port property north of Jefferson Street between Powell and Hyde Streets. Once again, we tip our hat to the Port surveyor, Alan Nevling, for his wonderful illustrations. Every location has time available everyday for both licensed and unlicensed performers. The only restriction is that the performance be suitable to the location. For example, the new location #12 would be suitable for some circle acts but it's right next door to an insurance company office. During the day, it's restricted to low volume performers and in the evenings and weekends, it's available to others. That's the difference between what we have to deal with in San Francisco versus Santa Monica. The more locations we have, the more buffer zones there will be and this will facilitate enforcement against disturbances that affect businesses, other performers or pedestrian access.

Each location features the performance schedule and rules. We will paint out the size of the designated performance space on each location and establish buffer zones to minimize noise, interference between a performer and adjacent business or another performer. We've developed three volume criteria. They are measured at 15 feet from the source of the sound. Level 1 – very quiet for location #1 where you can have a storyteller or a mime. Level 2, for example, an acoustic guitar. Level 3 an amplified group. She credited Katherine Arrow for developing the monthly schedule selection process. It is much more appealing to people who are hard working folks as opposed to a lottery. This allows people to be on a rotation schedule. As their name comes up for each week, they can pick the location appropriate to their performance, the date and time they prefer. That rotation will go through a few times. There will be a lot of time available for those who chose to be licensed. She showed a sample of a schedule that might develop after each selection process. Every location will have first-come, first-served time available every day. There are 12 locations, 4 time slots a day for 336 total time slots per week or for the licensed performers 224 three-hour time slots and for the unlicensed performers 224 1½ time slots.

The initial rate started out at \$600 a year which is the same as the San Francisco Peddler's Permit. We've started adopting it because of the seasonal nature of the work and the weather patterns, offering different rates for different time periods. Now, we are suggesting a one-month pass or a one-year license. Fees will be applied to the cost of materials and administration of the program. The Port Code allows the Port to issue licenses for various activities. The code already has penalties for violations. All we need to do to close the loop is adopt a program for Street Performers. Staff has asked the Port Commission to adopt the guidelines and rules pursuant to Section 2.1 of the Port Code. San Francisco Police and Port Security will receive the weekly schedule and spot check

the locations to make sure that the scheduled performer has possession of their scheduled location at their scheduled time. Due process exists for violations in the Port Code. Performers also need to regulate themselves. Next steps: Starting September 12, 2007, staff will:

- Identify options to reduce the Port's liability exposure
- Develop the supporting documentations such as the application forms, ID cards
- Order the bulletin boards for each site
- Word order for Maintenance to paint the sites
- Co-develop and train SF Police Department and Port Security
- Obtain the Port Commission's approval of the resolution to adopt the Pilot Program on October 9, 2007
- Begin processing applications, reviewing insurance and conduct the first schedule selection meeting. This will probably be done every two weeks while staff develop some familiarity with the mechanics of the program and give people a chance to get involve early rather than have to wait for the next monthly cycle.
- Commence the pilot program
- Conduct selection process
- Practice streamlining
- Investigate and identify a third party administrator
- Review data on the pilot program
- Continue to conduct the scheduling process each month
- Contract with a third party administrator subject to the Port Commission adoption of the program and
- Implement the final Street Performer Program on April 1, 2008

Commissioner Rodney Fong stated that page 3 of the staff report indicates that this four-month pilot phase will commence from November 1, 2007 through March 31, 2008. He asked if the pilot program will be for four or five months. Ms. Davison replied that staff will continue to work on this program through March 31, 2008 and it's a pilot program for four months instead of five.

Steven Dreyfuss, 20-year resident of San Francisco, has been working as open-air performer, as a musician for the past 17 years, mostly at Fisherman's Wharf. He voiced his support for the latest Street Performer draft plan. One of the accompanying documents on the website is a comparison of this draft plan with existing street performer programs in other destination cities. This comparison chart is evidentially a companion piece to a 9-city chart of performance programs in the 9 major cities requested by the San Francisco Board of Supervisors and drawn up by the office of legislative analysis two years ago. He mentioned it to bring to light that this has been an ongoing quest to get some sort of program for San Francisco for a number of years. He has been one of the main spokespersons or thorns in this authority. This draft is not perfect by any means. In fact, no one seems to like this draft in its entirety. This may well be the classic hallmark of a good compromise. We will; however, never know unless a pilot program has voted in to being on October 9 and implemented on November 1, 2007. He thanked Port staff who worked tirelessly on this issue: Claudia Davison, Katherine Arrow and many others.

Kenneth Kahn, Street Performer, voiced his support and thanked Katherine Arrow and Claudia Davison. Katherine and Claudia have both acknowledged that it won't be a perfect program but will try to get the wrinkles out as we move forward. He is a juggler and he has a circle show. He knows that some of the circle performers feel that there's some wrinkles that have to be taken care of. He thinks that it gives them a chance to get the musicians, the jugglers, glass walkers, everybody will have a chance to share the space. He thinks it's definitely a step forward in the right direction.

Onyx Ashanti indicated that he's happy that he's had a chance to have an input with Claudia and Katherine and try to get something moving forward that will actually be useful. There are a lot of wrinkles in the program; mainly, the fees. He still thinks that there should be some type of incentive of the program such as parking, lockers, etc. but that can come after they've gotten into the program and gotten it moving along. For him, the main thing is something that the Police said that they are behind it. If this program works, they are going to look at taking this program citywide. The things we are doing at the Wharf, not only will they apply to the city but they will end up applying for the next 30 years or until someone brings a constitutional challenge of some sort or one or the other or both. The things we do here will have long-term ramifications. He thinks that the pilot program is on the way but we need to make sure it goes forward next month so we can see how well it will work.

Fred Anderson, Comedy on the Square, indicated that he is a comedian and a juggler. He was unable to be at some of the staff meetings during August because he was in Scotland. He thinks it's a great thing that the Port is doing with this program but he has to echo Kenny and the other folks' comments that there are wrinkles. His suggestion would be to simplify what we are trying to do. Rather than come up with a system where people are doing street performing and they don't get in trouble with the police, it got a little ambitious. There are schedules and websites and permits. You end up with a situation where there's a \$500 fee plus insurance, it would cost them \$700 a year to exercise their First Amendment Free Speech Rights, which to him, sounds a little creepy. He doesn't think that Free Speech should be a revenue stream for the city. That being said, a lot of people have put in a lot of work into this. With a little refinement, it's a great plan.

Eric Cash, a stand-up comic and a professional street performer, indicated that he spoke at the last meeting and has spoken to Claudia and Katherine since then. As it stands, the document in front of the Commission has a seven-page ramble justifying its internal logic but its internal logic is inherently flawed. He wished that as much thought has gone into that logic as into the justification. He does not see anything good for the Port or for performers in the document other than a few select ones. It's inherently unconstitutional. It's motivated by greed, classicism and border line racism. The price is 1300% of any other permit in the country. 1600 when you factor in the insurance. That's out of control and it's wrong. He's been making the Port money for years. The circle shows which work on Pier 41 and have at other places in the past, not just including himself but a long string of people back in 1978 has been generating so much foot traffic and revenue at the wharf that it is unfathomable. He does not owe the Port anything. The Port owes him. If this is going in any direction, the whole program needs to be pulled back and looked at again. The circle acts attempted to negotiate with Claudia and Katherine. They were repeatedly given the same answer even when they said it is not acceptable; this is not

only good for artists but it's not good for the program or the Port. He does not see the program working as it stands. He sees it as taking the rights away from him that he already has and charging him on top of it. He's irate and he does not want to be. He has very high hopes for this program when it came through. Those hopes were not only smashed but his worst fears were realized. He asked the Port Commission to not let this program pass as it stands and to back it up for at least six months and to try and ensure that the voices that have been instituting their own self-policing systems, namely him, Chris Carney, Peter Edney and Cory Tabino who have been working on that corner for the last six years. They'd like to make sure that they're listened to this time around because it didn't happen before. If not, he has no other power; all he has is his mouth. All he can do is go to the press as well as the ACLU.

Bob MacIntosh, Pier 39 President and CEO, commented about the pilot program. They support the program; it's going to be good for the Fisherman's Wharf area. Two of the twelve locations are in Pier 43. Pier 43 is considered a private property and as part of the Pier 39 lease. As with all Pier 39 properties, they have the responsibilities to maintain and to provide security for the property at all times. As landlord for Pier 39 and Pier 43 and both their private properties, he requested that two locations indicated in the pilot street performers program be eliminated.

Taylor Safford, Blue & Gold Fleet President, applauded the Port's effort to tackle the difficult issues involved in securing appropriate performance locations for the wharf street performers. For too many years, the goals and needs of the performers, the public and the business community have been in conflict. As the Port endeavors to address this issue, it must put forth a plan to satisfy the needs of all stakeholders in a manner that is fair to all and detrimental to none. The current plan fails in this regard. The draft plan includes two performance locations on Pier 43 adjacent to Blue and Gold leasehold at Pier 41. He has worked at Pier 41 for the past 10 years. He can state unequivocally that amplified performances at Pier 43 will affect Blue & Gold's ability to safely and effectively conduct its business at Pier 41. Blue & Gold's boarding announcements and United States Coast Guard mandated safety announcements will be inaudible to some passengers when these messages compete against amplified performances, creating unsafe condition at Pier 41 that must be viewed as an unacceptable consequence for this program. They have met several times with the Port to find a compromise for this problem. So far, they found have none. He urged the Port to carefully consider the long-term impact of this program will have on Blue & Gold Fleet and the surrounding businesses if Pier 43 is approved for amplified performances.

Tom Creedon, Fisherman's Wharf CBD, read a letter from the CBD director, Karen Bell. It states: "It has been the pleasure of the Fisherman's Wharf Community to work with both Katharine Arrow and Claudia Davison in the development of the Fisherman's Wharf Street Performers Program. These two individuals have been continually receptive to addressing the concerns of our community leaders and merchants regarding this program. This morning, the Board of Directors of the FWCBD reviewed an informational presentation by Katharine Arrow on recent program changes, some of which were made directly on behalf of Wharf business owners. Katharine was very detailed in addressing additional questions and issues from our Directors. She brought in Officer Fred Crisp from SFPD's Central Station to respond to questions and concerns about the San Francisco Police Department's ability to enforce any violations of this

program. After a thorough discussion on the Street Performers Program in our District, I oversaw a vote on a motion for the FWCBD to support this program with its recent changes, which is being presented to the Port Commission this afternoon. The result of this vote was to support the Street Performers Program as it is being presented before the Port Commission today by Port staff. Again, the Fisherman's Wharf Community Benefit District applauds the efforts of the staff from the Real Estate division for making this program come to fruition." Mr. Creedon indicated that he is getting to be one of the oldest participants in both the wharf association and the CBD. He has seen many people take on the task of trying to organize the street performers. Claudia Davison did a stellar job in taking on this task by herself. He does not believe that she was hammered by anyone but it does you no good if you don't have the support of your supervisor. Katharine Arrow has been behind her all along. This is a job, the amazing part was that after all the years that he spent at Fisherman's Wharf, he never really had any contact with a street performer. He was extremely impressed with the professionalism and the behavior of the professional street performers. He heard people that are unhappy with details. This is a pilot program. He thinks that the Port is receptive to balancing these things out. We should give credit to Claudia for taking on the job that Al Baccari tried and failed at. He thinks that the Port should recognize the fact that Katharine Arrow took this and stood behind Claudia and many meetings made this program come this far.

Francisco Da Costa, Director Environmental Justice Advocacy, indicated that he is not a street performer but he did work for the Presidio National Park Service. Before he retired, he worked for the U.S. Park Police. He has some idea about street performers and special use permits. San Francisco is a very interesting city. Recently, he had the occasion to travel to Melbourne, Australia, which is our sister city. While he was there, he spoke to the street performers and he observed the freedom given to people who perform on the street. The arts and the way it is performed including the guy at Fisherman's Wharf who hides behind some branches and surprises you, are very interesting. He listened to the Port employee rigorously summarized the whole process. He has some experience with special uses. He thinks that what we should do is we should approach the City and we should approach certain foundations so that we help the performers. We need to maintain some standards. Those standards should be arrived at by the performers first. It's like a teacher, you don't just be strict with the students. You give the students an opportunity to set their own boundaries. That's the way we need to approach this. People come to San Francisco and they love our street performers. He can vouch for that. From time to time, he takes them around. We need to have them. He understands from some of the management that there will be some interference when it comes to electronic sound, interfering with some messages that are announced that may bring some hindrance from the Coast Guard. We can work that out. We don't need to impose permits, fees on our street performers.

Ernestine Weiss applauds the street performances. They add a wonderful flavor and color to the City. We need that because we are a city of tourist primarily. However, when he heard one of the speaker's comments about the amplified sound, a red flag went up. She does not appreciate anything that goes with amplified sound especially in this area. They don't appreciate that. They love music but it doesn't have to be amplified sound so you hear it all the way in China.

Linda Kutner, Sunshine the Clown, indicated that the Port of San Francisco, in a parallel universe, we wouldn't be having quite this discussion. We would be discussing how much to the street performers we are going to pay. We bring aliveness. They entertain the tourists. She likes to think of herself as a goodwill ambassador for the City of San Francisco. She is looking at the comparison chart. She's probably in the room that has performed 90% of the places on the lists. Many as an invited performer, many as a street performer. She was personally on the committee that formulated the ordinance in Santa Monica. She sees a lot of blanks. We get the information that we wanted to get; we didn't get all of it. She would be glad to fill those blanks in. She appreciates all the work Katherine and Claudia, in particular, have done on this. She appreciates their taking her phone calls and allowing input. She thinks that there's a long way to go. She gave a proposal last month of something that she knows works in reality. It's not a matter of what to do with the street performers; it's a matter of creating a program that will work for all parties concerned, the merchants as Mr. Fong, the Commissioners, the Port, the tourists. How do we take the best of what we got and make it work? In the current state, we were having conversation last week of whether she should make a balloon and do it rhyme as a show. If that balloon can be given to a child and if the tips will earn her handcuffs too, that's not ok. When you can have a produced audiotape in a studio and be allowed to sell it for a price, a reflection of your show such as the balloon that starts as a piece of latex and becomes a sculpture three feet high is also directly related to your performance. We are on the right track as far as doing something. We need to start somewhere. In the present form, it's not complete. She's very glad that we have another month to talk, to modify the program. She'd rather see modifications made now than spending the City's money and time in court later.

Lt. Robert Mosher, SFPD Central Station, representative of Captain James Dudley, indicated that the police department is in support of the pilot program. They believe that it is a step in the right direction. If approved, they hope that it will lead to the establishment of a long-term successful program.

Kenneth Negrón, an artist at Fisherman's Wharf, remembered six years ago when 911 happened, the cable cars were empty and the wharf was desolate. The only people who were there was himself, the reggae band and they did bring the wharf back together. They brought more foot traffic and they kept it more interesting. Some of them are being left out of the situation. He believes that some of the storeowners stayed late and worked with them. He believes that there are some people who have been there, like himself for 17 years. Some of them are getting left aside and told to go into the Street Artists Program, which does not work out too well. That's why he decided to draw for donation. He believes that some people have the same exact spots every single weekend; that's why a lot of them decided to work in the promenade area. He thinks that the crackdowns are getting a little bit too far. A lot of the tickets are dismissed; it's a waste of time. Hopefully, there's room for everybody involved in the new street artists program, especially the people who are there for at least 15 years like himself. He believes that he helped create a lot of the foot traffic. A lot of people saw him working there and said it looks fun. A lot of people want to work next to them.

Commissioner Hardeman commented that he hopes that street artists don't feel that the Port is doing this to punish anybody or that we don't appreciate them.

C. Informational presentation regarding the proposal by San Francisco Public Utilities Commission to construct a 150 MW combustion turbine peaker plant on 4 acres of the Western Pacific Property (SWL 355).

Mark Lozovoy, Senior Property Manager, indicated that the San Francisco electric reliability power project entails the installation of four natural gas fired electricity generators by the San Francisco Public Utilities Commission in or near the City of San Francisco. The purpose of today's presentation is to discuss the siting of three of those combustion turbines on Port property, more specifically four acres of the Western Pacific site. This is a presentation that the Port Commission has seen two times in different forms. The presentation is specifically geared toward this site. PUC staff will give a presentation and after that, he will discuss the three documents that need to be approved by the Commission in order for this project to move forward.

Karen Kubick, Project Manager for the Combustion Turbine Project from SFPUC Power Enterprise, introduced Emelina Sandoval who will shepherd this project through the construction process. The combustion turbine project (CT) also referred to as the SF Electric Reliability Project is part of the overall City plan to shut down the older, polluting unreliable In-City generation to improve air quality and make sure we have electric reliability work. We are a peninsula city surrounded by water and to be part of our city portfolio of electric generation. The PUC works on a number of different resources, not just CTs, they are working on renewables. She's had a couple of projects with the Port such as the Pier 96 solar project. We have a large demand response and energy efficiency program with the Port. All of these resources together are part of our comprehensive electric resource plan for the City of San Francisco. What they are doing with this project is they are following the California Independent System Operators (CAISO) who are the traffic cops for State of California for power. They have laid out a road map that will allow us to shut down the old In-City power plants. The plan requires transmission improvements by PG&E and requires the City to build turbines: 3 CTs in the City and one at San Francisco Airport. When the Jefferson Martin transmission line was constructed, Hunter's Point Power Plant was taken out of service in May 2006. Without the final transmission upgrade by PG&E and without the CTs being permitted, built and in operation as planned, Potrero Power Plant will have to continue to operate. We acquired four turbines from a settlement in 2002. We reached an agreement between the State and the City, got development funds and they were able to embark on siting power plants in San Francisco. Development is basically planning and siting power plant is something that you don't want to burden anyone with in San Francisco. Currently, PUC with the help of many people doing a lot of heavy lifting, are trying to finalize the agreements required to design, build, own, operate and ultimately transfer the power plants back to the City. It's a complex deal structure. We're in the midst of negotiations now. She showed a picture of the plant at the airport by the wastewater plant and aviation college, far from the terminal. It's a two acre site where the single turbine will go. The In-City site north of Maryland and 25<sup>th</sup> Street is 4 acres and it's adjacent or east of the Muni Metro East project which is almost completed. To the right of that is the area that is proposed for construction laydown, an 8.7 acre parcel. Shown also in the map are the linear or the buried utilities. The transmission line will go from the power plant site up Michigan, down 24<sup>th</sup>, up Illinois and tie into the substation. The orange section in the map is the gas line. They will also be treating waste water at this site and

using recycled water for processed water. Per Port requirements, they will be including a stormwater swale rather than putting any additional stormwater into the stormwater system. Once everything is up, it's essentially hidden behind Muni Metro East facilities. What are the air benefits? The slide lays out if we compare the CT project shown in green total emissions from the old Hunter's Point Plant now shut down and the Potrero Power Plant, it's much lower. It's also compared to some of the mobile sources of pollution. Ozone precursors are things that are emitted that cause smog, PM10 is basically particulate matter, black dust that is formed from combustion processes. It's greatly reduced. The reason is the fuel. It's a natural gas fueled process rather than diesel fuel that is used at Potrero Power Plant. One of the previous Commissioners at a prior presentation had asked if she were to compare each of the plants running to produce the same amount of power, how it would lay out. If you look at pounds per megawatt/hour and if we lay that out and each is running, producing the same amount, this is how the ratios would look, with the green ones being CT, Potrero emitting so much more in terms of ozone precursors causing smog and particulate matter. They put together some isotopes. The one on the left shows the current situation with Potrero Power Plant and if the CT program was up and running, where they would see higher concentrations of particulate matter settling and the situation after Potrero Power Plant is shut down, what the City could look like and the big improvement with just the CT program operating. It's very significant. You can see the hotspots at the top of Hunter's Point as well as the top of Potrero Hill.

Community benefits. As part of this process, they've gone through an extensive licensing process through the California Energy Commission (CEC) and environmental processes –\$1.1 million is going towards indoor health and asthma programs. It will be focused on the southeast community to help with education as to how asthma can be relieved. There's a lot of pediatric asthma issues in the neighborhood. They will be putting out an RFP to get a local firm to lead an effort. There will also be a tree planting program of 1600 trees by the San Francisco Department of the Environment which will focus on Dogpatch, Potrero Hill, and Bayview Hunter's Point. Mitigation programs include high efficiency street cleaning. This is something that's already done by the Department of Public Works. We would be expanding their program, getting a new vehicle and cleaning 9 miles a day on the side, center of the streets to remove 18 tons of particulate matter a year, mitigating for the smog and particulate matter that is generated. In addition, they will be doing a lot of work at the site, controlling dust, removing hazardous material from the 4 acre site to mitigate that, heavy metals, arsenic as well as removing and disposing of the Pacific Cement pile. They are looking at alternatives to be able to crush and potentially reuse that on site and building a stormwater swale to prevent any additional stormwater from going into the City combined system.

They've done a lot of community outreach. There's been lots of public meetings, workshops, tours. The state made special efforts to hold hearings on the licensing process in the neighborhood so it was accessible. They had their project team available to the community so they could come and talk to air folks and engineers to take a look at cuts of what turbines look like, find out about the community benefits. A lot of time was spent talking to neighbors and wonderful people that take their time to come to the meetings.

They are here to focus on the MOU. The Port has an approval role on that. Right now, things are rather dynamic at her office because they are trying to finalize the deal. They are trying to finalize this very unique structure. They are looking to come back to this body for an approval for use of the land for this project on October 9, 2007. The components of the MOU will include the purchase. They will be purchasing the land from Muni. They have worked very closely with Port staff. There is a great interest in Port staff not losing the opportunity to swap the State Lands trust which could have gone on the 4 acres because it is a value to the Port. They are working with Port staff to identify PUC property where a trust could be transferred on to it so the Port does not lose that value. Stormwater swale – PUC accepting the property in its as-is condition and all the other associated permits. They will be replacing tracks along Illinois which are part of Port property. A challenge that will lay ahead of them is to identify exactly what land the PUC has significant land resources. The Water Enterprise has large amount of landholdings and they have been preliminary looking at the bay lands which is above Menlo Park in San Mateo County. PUC staff will be working with Port staff and State Lands attorneys to be able to strike a deal and be able to move that forward. They hope to be at the Board of Supervisors by the end of October. She is optimistic about the schedules. She hopes that they will be able to be out of the Board and be able to get the Notice to Proceed with their contractor by the second half of November and be able to physically break ground at the 4-acre site in January. They will be starting out with design and being out there in January and to complete the project in about a year's time. They do own the turbines but some of the other items involved have a fairly long lead time.

Mark Lozovoy indicated that to move this project there will be three documents that the Port Commission will have to approve. The first one would be an MOU between PUC, MTA and the Port regarding the four acres that will be the site of the combustion turbine. The second would be an MOU for the utility runs that Karen Kubick mentioned, the water lines, a power cable and a gas line. The third one would be a license with the developer/contractor on the Western Pacific site, the 8.7 acres adjacent to the 4 acres for a construction laydown site.

Brad Benson, Special Projects Manager, indicated that pages 4 and 5 of the staff report describes the terms of the 2001 MOU between the Port and Muni. This is when the Port entered into an agreement with MUNI for 17 acres of the Western Pacific Parcel. We received a fee simple payment of approximately \$30 million for that site. Muni obtained the perpetual use of that site for premises related to the light rail vehicle storage operations and maintenance facility. That facility is about 90% complete. It occupies the 13 acres adjacent to Illinois Street of the Western Pacific site. The Port had the right under the MOU to swap the public trust onto those 17 acres within a 7-year window after that agreement was executed. Port staff have not initiated the trust swap. We don't know whether the Muni use is a trust consistent use. There are certain triggers in the MOU if State Lands or the Attorney General finds that the use is not consistent with the trust if title would transfer automatically to Muni. The trust swap was conditioned on it being a trust consistent use and the swapping of the trust onto the site not inhibiting Muni's use of the site. PUC's proposed use of the 4 acres that Muni is not using for Muni Metro East was not a use that was contemplated under that original MOU which is why this proposal would be coming forward for the Port Commission's consideration. The basic terms Port staff have been discussing with PUC relating to the 4 acres would

be PUC would pay Muni fair market value for those 4 acres. They've conducted an appraisal. The value of the land was about \$50 per square foot. \$8.85 million payment from PUC to Muni. They would obtain title to the property. They would control the property and that triggers a Board of Supervisor's approval of this transaction. The Port would consent to the power generation use proposed by the PUC. The PUC, as Karen discussed, would identify best use efforts to identify other property under its jurisdiction not currently impressed by the public trust of equal or greater value that the Port could swap the public trust on to. We've discussed with PUC staff and the City Attorney's office including Noreen Ambrose who is now the General Counsel for PUC. This property is promising. It needs further investigation. It's in the title area but it's not traditional tidelands under state law. It looks like it might be a good candidate site. An area where we don't have agreement yet is what happens if PUC builds these peaker plants, they run their useful life and who would have the option to use or to purchase the property in the future. Both Muni and the Port have an interest. This is a good expansion area for Pier 80. Likewise, it's a good expansion area for Muni's Metro East facility. We are both negotiating to obtain a first option to purchase the site if PUC does not need it for power plant purposes in the future.

Commissioner Brandon asked if the Port has right of first offer. Mr. Benson replied that we don't have an agreement at this point yet. We are negotiating for the right of first offer because it would be a good location to expand Pier 80 but we don't have an agreement. It's a three agency agreement.

Mark Lozovoy indicated that was the first of the three agreements that would have to be approved by the Port Commission. The second would be the MOU between the Port and PUC for the utilities. The development of the In-City project will require a number of utility connections that will be installed under streets owned by the Port. The Port plans to charge PUC a one-time use fee based on the fair market land rate in the area. This fee will be determined as soon as an accurate measurement of the use area is completed. As soon as we have appropriate measurements for all the areas and actual figures, staff will bring it to the Port Commission as part of the deal. Additionally, this MOU will include terms and conditions under which PUC shall develop and maintain a green stormwater drainage swale. The swale is necessary to provide adequate stormwater run-off from the project site and is proposed to be located within the current 125 foot BCDC shoreline band. The swale area would be free of rental charge to the PUC because it is an unleaseable property and it would be a mutually beneficial improvement to the shoreline band. The Port and PUC are in discussions regarding the possibility of developing the swale area into a future park; however, no agreement has yet been reached.

The final document would be a license agreement with the developer and contractor for the actual peaker project. It would be for 8.7 acres of Seawall Lot 356 which is directly adjacent to the 4 acres where the peaker plants are going. That would lease at a land rate of \$0.25 per square foot which is the parameter rate for that area which would equal about \$95,000 a month for a period of approximately two years. The use would be typical construction laydown yard.

This is a fairly dynamic project. Staff intends to come back to the Commission for approval, as indicated in the staff report, on September 25 but that has now changed to October 9. Pending visits to SWAC with this presentation and to CWAG over the next

couple of weeks, staff hopes to be back to the Commission on October 9, 2007 for approval.

Mr. Benson raised an additional idea that staff has been discussing with respect to the construction laydown area. That area is currently covered with fresh concrete. It's actually been an area that the Port has discussed with some of the auto importers as being an expansion area for Pier 80 that we could realize in the short term. One concept that we are discussing is to the extent that the PUC as a design/build contract with J. Power which would include grading work and other similar types of work in the area that we may incorporate an alternate in PUC's contract with J. Power to lay base material down that may come from the Specialty pile, pave this area and put appropriate drainage so that it too flows into that stormwater management swale. Staff is looking at those types of ideas and will bring more details at a future meeting.

Commissioner Brandon commented that she strongly hopes that since PUC continues to look at Port property for all of their type of uses, they will be more than willing to work with the Port to create benefits more than paved lands, more than materials. If we are getting turbine units, we should have a park.

Joseph Bryant, community education organizer for the A. Philip Randolph Institute (APRI), indicated that over the past several months, they have been working in the area where they are planning to put the CT power plants in the Potrero Hill area. In just talking to the people in that area, there are many concerns and confusion on this project. Some people have no clue of what it is and other people are very confused about the environmental effects and operational effects that will be going on. APRI is in favor of closing the Potrero Hill Power Plant but it makes no sense to take down one and replace it with four others. They have questions such as why can't they all be moved to the airport. They also have questions of why can't the SFPUC look into solar options which may be more efficient and less pollutant. Also, they don't understand why the southeastern section of the city is continuously being given these projects and these plans that are absolutely negligent as far as what they do to the environment. Is it that they pay less tax than the rest of the city? Is it that they bring less to the city? He does not think that is the case but they continuously are given toxic polluting projects in that portion of the city. He asked the Commission to hold on to this vote and talk to the people that are in the community. Talk to the people that live across the street. If you turn the picture around that was shown earlier, you will see a bunch of houses behind it. Talk to those people. Bring those people to the table and see if they feel it's ok to bring this to their community. The whole City of San Francisco is benefiting from it but the only people who are taking the negative effects are the people who live in the area. Let's bring them to the table; let's hold more meetings and let's see how they truly feel about these projects.

Leesha Langlois, APRI, and resident of District 10, indicated that the most affected by the SFPUC dirty CT peaker plant are minorities. Her community has to suffer the toxics for the city. Look at who lives in a two-mile radius where the SFPUC wants to build the dirty power plants. 48% are African Americans, 24.4% are Asian Americans and 16.7% are Latinos. Close to 25% live below the poverty line according to the census. These are the folks you need to think about and when you vote to support the SFPUC's dirty power plant. She asked the Commission not to let them build a dirty power plant on Port land.

Dedria Smith, APRI, indicated that she does not understand how building dirty CT peaker plants on Port property is consistent with the public trust. The California Energy Commissioners stated that the SFPUC peaker power plants will emit nitro oxide organic compounds, sulfur compounds, mono oxide and other bad stuff. The local emission offsets do not help the community breathe cleaner. The Port should have a policy of clean, green and renewable only for Port property. She asked the Commissioners not to let the SFPUC build dirty power plants in her community. We need to close Potrero with a green option not the SFPUC dirty option.

Corinne Woods, Blue Greenway Neighborhood Parks Council, echoed Commissioner Brandon's thought. This property is immediately adjacent to Warm Water Cove Park which is a park that is in desperate need of help and the park that is not going to be included in the GO bond for next year. Appropriate location on the 4 acre site of these peaker plants and a public benefit mitigation to help improve Warm Water Cove Park to make it more accessible and usable are important aspects that should be included in the negotiations for this presentation for this proposal on the waterfront. We need Warm Water Cove. They are looking at tripling the density of residential development in the central waterfront with the eastern neighborhood rezoning. There is no other open space out there. We know we need parks on the waterfront. It's a very important piece and we shouldn't lose the opportunity.

James Bryant, SEIU 1021, gave the Commission a piece of thought that someone didn't think about. There is a facility that is called Muni East. Those facilities are going to have a lot of employees that do things like take care of maintenance for the busses, clean the busses and all types of outdoor type of activities. Those employees have not been consulted. He represents SEIU 1021 and since he hasn't heard about it, he knows that the other workers have not heard about it either. He hopes that PUC would think about the question of not only the minorities and the low income citizens are going to be impacted by this but also think about their own city co-workers that are going to be directly affected by the peaker plants. Think about sitting under a peaker plant all day long; that's their job. It's a brand new facility. If you are interested in bringing in these trucks that clean up the space, the removable truck that is going to go around and pick up all these dust particles; if you are worried about it throughout the area, what do you think those workers are sucking in there? You need to think about the peaker plants. He thinks that what is articulated is that this community stood tall, stood before you. One of his favorite Commissioners who has now passed was here today and said there was a great thing that happened, the Bayview Hunter's Point community had gotten together and close down Hunter's Point Power Plant. We are now in the midst of dismantling the Hunter's Point Power Plant. Why would we turn around and put three other peaker plants in a one-mile, two miles down the road. It does not make any sense. The Port Commission has an opportunity to make PUC understand that profit is not going to be the determining factor for the health of a community that is already on record as the most polluted and the worst health condition part of San Francisco.

Francisco Da Costa, Director of Environmental Justice Advocacy, indicated that he has qualified experience with power plants, looking into them since 1988. This great city has a precautionary principle. The precautionary principle states, leave aside the science and all that stuff. It states if any harm comes to any living being including human beings, we

need to look into that and we need to put a stop. The city has this precautionary principle; it's an ordinance. You saw maps and looking at the colors, you take it for granted that those colors before and after are really factual. That's not true. On Illinois Street, millions and millions of vehicles would be flying, spewing diesel, creating clouds. If you go to the raw sewage treatment plant right now, the SFPUC spews pathogens and particulates and flares into the air. That was not represented in that map. You've heard and you'll hear that we did the power plants or the CT, we don't need them. There are very old technology sitting in Texas and the City pays a quarter million dollars every year for these lousy turbines that will spew particulates and they are going to use treated sewage that will spew pathogens into the air. That is nonsense in the year 2007. The Port knows that we will have the transbay cable; we will have in excess of 400 MW of power that we can use. PG&E and Mirant, SFPUC and the City should learn to work together. What has been happening is Sophie Maxwell and a few others create a power task force and tried to sue Mirant, create bad blood, tried to sue PG&E, create bad blood and waste millions of taxpayer's money. We don't need to get involved in this. SFPUC can manage on their own. This port authority should not mess with SFPUC. Let them be alone. They are a bad partner to work with. They have waste millions of taxpayer's money. Point in case, the conduits. Check the conduits. They spent millions of dollars on those conduits. We got no returns. Who was instrumental in planning those conduits? SFPUC. Who was instrumental in polluting our bay with half treated sewage? SFPUC. We don't need any pollution in our area.

Joshua Arce, Executive Director and staff attorney at Brightline Defense Project, a nonprofit civil rights legal aid organization, indicated that they've spent, most of this year, in the southeast portion of San Francisco working on environmental justice issues. In particular, responding to complaints of residents in regards to what seems to be three main issues. There's a lot of folks unhappy about issues involved with the work being done at the shipyard, the former Hunter's Point shipyard. There's also a lot of complaints about an old waste water treatment plant that handles most of the city's raw sewage and the third is the CT plant. From their point of view, as attorneys, there are several problems, the first of which is the siting. You've heard folks from the community talking about they don't want pollution. He's heard from Karen Kubick that this plan will present less pollution than the existing Potrero Power Plant. The community is entitled to no pollution. Everyone across the board wants the Potrero Power Plant gone. The community is entitled to have that power plant dismantled, shut down, not to be replaced by new polluting body such as the CT plan which will produce carbon oxides, nitrogen oxides. You've heard the statistics of over 20% of families are living at the poverty level; 70% of residents are people of color. This proposal is disproportionately impacting this community. In addition, there is an issue that has come up with the EPA. EPA issued a Title V air permitting in connection with the CT plant. A lot of folks around the country, legal organizations, have been implementing the U.S. Supreme Court decision in Massachusetts versus EPA which demanded that EPA figure out how it's going to analyze green house emissions. That was not done in connection with this proposed CT plant. There are folks petitioning the EPA to take a step back and implement the Supreme Court's directive in analyzing the green house gas effect. In addition, there is a Title VI civil rights complaint which was accepted by EPA by an organization based in Bayview Hunter's Point called Californians for Renewable Energy. It's time to slow it down. The Port has a chance to do that and let these issues play themselves out and work for no pollution.

Ernestine Weiss agreed with all the previous speakers who testified against the peaker plants. Why are we considering replacing Mirant and PG&E? We are finally getting rid of them. Why are we thinking of putting peaker plants out there? This is the 21<sup>st</sup> century. We are going toward clean and green and global warming. We've got to do something. It's up to us; the younger generation is supposed to carry the ball and make the world better. The Bible says, if you save one life, it's like saving the world. Do not think of replacing PG&E, the bad boys, with another group of bad boys. These people have suffered enough. She's very sympathetic with their problems. They are poor and trampled on and they are the people with the least rights and it's not fair. They should be given the consideration. Furthermore, their medical costs will go through the roof. All of us will pay for it. Do not put the peaker plants through. It would be the worst possible thing the Port could do.

Philip Andrade, Chair of the Power Plant Task Force which for the last six years, has been appointed by the Board of Supervisors to study the question of peaker plants in the Potrero neighborhood. They studied this plan for six years and at their last task force meeting, they voted to support the installation of the peaker plants at the foot of Potrero Hill. They did not do it because they produced pollutants and because they will negatively affect our community. On the contrary, they are most concerned with shutting down the most polluting power plant in the community i.e. the Potrero Power Plant. They have been given to understand by the California Independent Systems Operator who is the controlling body in the question of shutting down power plants that unless and until where reliability and other purposes, the peakers are brought and we have In-City generation, they will not approve the removal of run-must-run status for the Potrero Power Plant. They are most interested in shutting down the most polluting power plant and protecting our community. He encouraged the Port to do everything it can to enable the installation of these systems and at the same time, take advantage of any opportunity to provide parks for the community and better uses for Port land and to force the SFPUC to give as much land and as much money as we can to improve the surroundings of the community and the parks that are mitigated against the negative effects of siting this power plant.

Espanola Jackson, Bayview Hunter's Point, asked why you would want a park some place where there will be CTs. The committee that the young man served on met downtown. She only attended one meeting because she heard about it just recently. The meetings that the young lady spoke about, she's been attending those meetings but it was not dealing with the CTs. It was dealing with Transbay Cable where the community supports but not the CTs. If she would tell the truth, the PUC Commission itself approved the transbay cable. With all the meetings she's gone through in Sacramento and San Jose, she hasn't seen any PUC staff at those meetings. They're going to ask the Port to give them more land for three digesters. She went on the tour and told them no. Those digesters should not go on Port land. It should go where the property is and remove the old digester and put the new digesters in. What makes PUC think that they can come and tell their people that if they have backhoes that are three years old, they cannot get a contract to do work but yet the CTs are old. They are older than three years and they are obsolete. She asked the Commission to table this item because Sophie Maxwell tried to pass this through a month ago. She attended the meeting and asked them to pull it because the item never came to the community. The community have

never discussed the CTs. The only people that have discussed CTs are PUC, Sophie Maxwell and the people who live in Potrero Hill. If you turn that map around, when the wind blows, everything blows into the Bayview Hunter's Point area. Those are close and right at their line. Sophie Maxwell says it's the invisible line. It's not invisible; they get everything there. She asked the Commission to help them in Bayview Hunter's Point to not allow this to happen and table this item until Sophie Maxwell has a hearing about the CTs in the community.

Commissioner Brandon asked what the responses were from the community outreach. She asked if there was an overwhelming support for the project. Ms. Kubick replied that Francisco Da Costa and Espanola Jackson have always been active and attend the Commission meetings and share information with them. They get a lot of positive feedback because the concept of replacing four turbines at the Potrero Power Plant. The gentleman indicated that PUC is replacing four units with one unit with three small turbines with four large turbines that are at the Potrero Power Plant that are quite old. Once they are able to lay out facts and explain the reason why, because there are no other alternatives to closing the Potrero Power Plant and that is the desire of the project. One of the complications is we are on a peninsula. Transmission doesn't do it. Wires do not do it. Wires don't give us the reliability needed for the State to shut down the Potrero Power Plant. That's why the City is continuing to move the project forward. It's going to be the will of the policy makers. They will have to be back to PUC Commission with the deal structure and back to the Port and MTA. This is the only solution they have from CAISO in partnership with PG&E who's conducted their transmission lines. There's no other solution to be able to shut down. They do renewable projects. They are building them as many as they can in southeast San Francisco. They are producing power for about 4 hours a day. It's not the emergency type of generation, the reliable type of generation that they are looking for. They see regulations changing in the future where the City may be required to have such generation when our interconnection agreement with PG&E expires. So it's been mixed.

Commissioner Brandon asked what the responses have been from the community groups. We heard from the Power Plant Task Force member but are their groups out there that are supporting this project. She keeps hearing Ms. Kubick referenced it to Potrero but how is this going to close Potrero. She asked once these are set in place and working, will the Potrero Power plant close? Ms. Kubick replied that once the CTs are set in place and that final transmission project is completed by PG&E, CAISO removes a status which is very economically beneficial as Mr. Andrade stated, the reliability must run. Those power plants at Potrero are no longer needed for reliability. The City has blocked their water permit for the future so that they will effectively be unable to operate starting in the year 2009. Most recently, they were at the Southeast Community Center Commission and subcommittees and they were pleasant. Ms. Espanola Jackson was there and she brought up many of the issues, but not as many as today. They've gone to EQAC, SWAC and she's had a lot of favorable input from the Power Plant Task Force, Dogpatch Potrero Neighborhood Association both have been very favorable and held large expansive public community meetings. Phil Andrade's group also has held public meetings in the neighborhood, widely advertised to attract more people to be able to come and speak up. Their making the decision to support the project was a big decision and a hard decision. There were a lot of people at that meeting commenting on the project. There are many that do not want the City to have control of its own power plant,

to own power plant They would prefer a private company to continue to have a power plant in the city instead.

Commissioner Brandon asked if the Potrero Power Plant will close down as soon as the CTs start generating. Ms. Kubick replied that they told CAISO they want to make sure that everything is going to work and be reliable. There's a process they go through with CAISO where they lift the reliability must run and what they did with Hunter's Point was they did that quite early. They did it in June, after the Jefferson Martin line started up. They were able to release that. What they would like to have is a written agreement that they could hold up but what they have is the action plan, which is remarkable.

Commissioner Brandon indicated that with Hunter's Point, PG&E was working with the Port. She hasn't heard that Mirant is working with the Port and they are going to stop generating once the CTs are in place. She has not heard that commitment from Mirant. Ms. Kubick mentioned that the Mayor's office is leading the charge with Mirant to get them to agree that they are shuttering the plant. The Mayor's office has been pushing that charge. PUC's belief is that the Mayor's office is going to be successful if the project gets built, they will be successful.

Commissioner Brandon asked if MTA is selling the acres to PUC, why the Port would have to approve the permitted use. Mr. Benson replied that the original 2001 MOU left the title with the Port of San Francisco. It granted the use in perpetuity to Muni for purposes related to the Muni Metro East facility. A power plant, power generation, these were not uses that were contemplated under that original MOU and the title rested with the Port. Under this new proposal, the title will transfer to another City department, to SFPUC, and the Port Commission would have to approve the use. The original MOU in 2001 provided that if the use contemplated was not described in the original MOU that the Port Commission had approval rights.

Commissioner Brandon asked if the Commission is approving and then transferring the title. We are not transferring and not approving. Mr. Benson replied that there could be that under the 2001 MOU if the Port Commission amended that MOU to transfer whether the need to approve the use still exists.

Commissioner Brandon inquired about the trust when we originally sold the land to Muni, we were going to swap the trust on it so that when they stop using it for that use, it would come back to the Port. Mr. Benson concurred. Commissioner Brandon indicated that if we do this with PUC and put the trust on that portion when this use is gone, does that land automatically come back to the Port. Mr. Benson replied that if we were to initiate a trust swap onto the 4 acres pursuant to the original MOU, we would have to go to State Lands and they would have to find that a peaker plant project like this was consistent with the public trust. There have been arguments that might be true. The plants that these are closing down are bay water cooled plants and they discharge warm water to the bay that has negative impacts on aquatic life but those arguments have never been tested at the State level under public trust law. Neither the Attorney General nor the State Lands Commission has weighed in as to whether or not a power plant project like this is trust consistent. It's a wild card about whether or not they would approve it. If they did and PUC stopped using the property for those purposes, this property would

remain in the Port jurisdiction and we have the first right of refusal and that is our argument to our sister agencies.

Commissioner Brandon asked what the site is going to look like. Ms. Kubick replied that the site will look quite industrial. There will be a switch yard which looks like a whole bunch of electrical things that you see on Illinois. There will be some stacks and basically tanks and modular style structures. The stacks are about 65 feet high and there's a single story structure that will enclose air compressors, gas compressors and water treatments and office space. The facility will be unmanned. It will be manned from the airport location. It will be a fenced in, 4 acre site, very tight site.

Commissioner Brandon asked if there will be any beautification. Ms. Kubick replied that the Port has been extremely clear in its desire about trees and parks and she will bring that suggestion back to their general manager.

Commissioner Brandon indicated that on page 3, paragraph 3, last sentence states that "the city has already obtained the option to purchase local emission offsets for the projects." She asked what that pertained to. Ms. Kubick replied that is basically Cal Pine had operated previously in the city and had a license to emit a certain amount of pollutants. PUC bought that block from their license so those can never ever be emitted in San Francisco again. It was an authority to emit a certain block. PUC bought that; it will never be something that can go to any one in San Francisco. Those have been already purchased at this point.

Commissioner Brandon indicated that they see the pictures, what it looks like now and how clear it is. How is it clear when we are producing these? Ms. Kubick replied that it's much less. We still have to burn fuel to produce power. There's nothing we can do to get around that. We can take fuel from the waste water plant and clean it up but the combustion process produces particulate matter. Why it's so much with Potrero is the source of fuel is diesel. You get a much larger amount being put out. Those plants are 30+ years old. They've been operating that long and have had problems with failed starts, etc. The new plants are new turbines; they haven't been run. They are sitting in Houston, Texas. They are sitting there so that we can be able to have an operating warranty when we get them here; otherwise, they will be sitting in San Francisco. They will be serviced, upgraded and shipped to San Francisco. Natural gas is a much cleaner, burning fuel than diesel fuel.

Commissioner Brandon asked about the CTs useful life. Ms. Kubick replied 30 years but have been told by people they can go as many as 40. Susan Leal, PUC General Manager, is trying to commit that In-City plants will run no more than 13 years.

Commissioner Brandon indicated that after 13 years, they will remove them. Ms. Kubick replied that is the current discussion.

Commissioner Brandon indicated that there is the final mitigated negative declaration for the airport; she asked if one was done for this site. Ms. Kubick replied that this site has had a much more complex environmental process through the California Energy Commission (CEC) including testimony and hearings. In Sacramento, in San Francisco, out at the neighborhood community centers, there was a lot of air monitoring. It was the most intense environmental process she's ever been through. It took about 2 ½ years

because of the siting issues, heights, modeling, investigations and lots of soil work. The CEC in Sacramento issues their findings and they have conditions on pre-construction, construction and operation. Every regulatory agency got a whack, every person got a whack. We have hundreds of compliance requirements from the CEC. From our CEQA, we have about six. The In-City plant is highly restricted and regulated. How many times you can start, what you can do, how many hours you can run, how much dust; in every which way it's regulated and controlled. The negative declaration was issued a year ago. It was traumatic and long.

Commissioner Brandon asked if the Port has seen it. Ms. Kubick replied that it's out there. Port staff came to some of the workshops. She can send the final decision to Port staff and it's also posted on the energy website. Mr. Benson indicated that staff will report on the CEQA approvals when staff comes back to the Commission.

Commissioner Brandon reiterated her comments about beautification for the project. Something has come to come along with this besides a fenced in, 4 acres, polluting the air project. That cannot be an option and the issue with the trust swap needs to be worked out.

Mr. Benson replied that staff will come back to the Commission with proposals about how to beautify the area and on the trust swap, we are encouraging SFPUC to engage trust experts who can help them further analyze the potential for that site.

Commissioner Brandon indicated that we want to do that prior to the MOU because we don't want to find ourselves in the same position that we are now with Muni. Mr. Benson replied that the amount of lands that we're talking about for this trust swap require actual state legislation. There's no way that we can complete a trust swap but we can initiate the process and we can try to give the Commission a level of confidence that the receiver site at the SFPUC that is identified is a good candidate site.

Commissioner Shakofsky asked about the CEQA process. Ms. Kubick replied that there are two locations: in the City it's three turbines and 150 MW. Anything above a threshold of 50 MW has to go through a State licensing and permitting process which is the CEC process which serves as our permit and CEQA analysis. They look at biology, paleontology, geology, air and environmental justice.

Commissioner Shakofsky asked if a full CEQA process has been done on this project. Ms. Kubick replied that it's worse; it's much more intense. Traffic counts, every single aspect is studied and reported on. What's different is that you have to bring in your experts and consultants that have done the work and they are subject to questioning by the CEC and they are subject to what's called questioning by interveners. People objecting to the project come and provide testimony, provide their expert witness and it's like a case. It's almost like a lawsuit. This is for the In-City 4 acres, 3 turbines project. The San Francisco Airport single turbine project, because it's less than a 50 MW threshold, was able to go through City Planning and CEQA analysis.

Commissioner Shakofsky asked if there is an alternative analysis for the CEC process. Ms. Kubick replied that there is a very large alternative section. Commissioner Shakofsky asked if all three turbines are water-cooled units. Ms. Kubick replied no.

They don't use bay water like Mirant does. They will be using recycled water. Water that's come down from Hetch Hetchy, has been used once and is heading out to the bay. They are going to clean that water up and use that for process water.

Commissioner Shakofsky reiterated that they are picking up tertiary treated water of the plant. Ms. Kubick replied affirmatively; rather than using drinking water or additional Hetch Hetchy water. Commissioner Shakofsky asked if there isn't a need to be on the bay. Ms. Kubick replied negatively. One of the big issues in siting is available land, location, proximity to gas line, proximity to substation and they have to be north of the San Francisco boundary, which was a requirement by CAISO. They have to have 150 MW of generation in San Francisco proper.

Commissioner Shakofsky asked if the San Francisco site was not large enough. Ms. Kubick replied that one turbine was actually relocated from the In-City project. The In-City project was originally going to be all four turbines and one would be relocated to the airport. They were able to come up with a benefit so that the San Francisco airport would allow PUC to site one turbine. That benefit is to be able to provide them back-up power in the event that the electric grid goes down.

Commissioner Shakofsky asked about the internal discussions that these plants only be operational for 13 years. There's some notion that within 13 years, we're going to have the renewable energy and these can be taken off line. Ms. Kubick replied that the particular consideration was for the In-City plant to minimize the number of years that In-City facility has to operate. It's to look at ways that we can be able to not depend on that in the future. It may be other alternatives. Renewables can only do so much but PUC General Manager is committed to reducing the number of years that the In-City plant would have to operate.

Commissioner Brandon asked if it's still CAISO requirement to have an In-City plant. Ms. Kubick replied that it's quite likely that they're going to want, at least in the near term, to have In-City generation for extended amount of time. They don't qualify things like renewables or demand management where you are shifting loads off or energy efficiency. The number of choices they have to be able to meet their requirements are minimal.

Commissioner Shakofsky asked if the CEC has been approved. Ms. Kubick replied that the California Energy Commission approved what they call their final decision, like a CEQA document. The final decision was approved in October last year.

## **11. FINANCE & ADMINISTRATION**

- A. Informational presentation on the Port's Parks and Open Space Projects to be included in the City's Proposed Neighborhood Parks and Waterfront Open Space General Obligation Bond Measure for the February 5, 2008 Ballot.

Dan Hodapp, Planning and Development, indicated that the City is proposing a General Obligation Bond for \$185 million to fund park and recreation improvements in the Port teaming with the Park & Recreation Department. It is proposed to be a \$185 million bond; \$150 million would go to Rec & park Department and \$35 million will go to the

Port of San Francisco for our open space improvements. This would be on the Presidential Primary Ballot on February 5, 2008. The City has established a working group to refine the list of projects. The working group consists of Supervisor Sean Elsbernd and representatives from the Mayor's Office. Of the \$35 million, about \$9.5 million will go to the Pier 43 Promenade Project; \$3 million to the Brannan Street Wharf Project and \$21.8 million to Blue Greenway Projects, which are open space projects south of China Basin. Through this working group, the Port has agreed to a couple of cuts. \$1 million less would go to the Pier 43 Promenade project and \$1 million less to the Blue Greenway Projects. Those are the revisions from the staff report.

The Board of Supervisors Finance Committee will be introducing a resolution on September 12, 2007 to begin the process. On September 26, 2007, the ordinance will move through as a whole. On October 3, 2007, the Finance Committee votes on the ordinance and it goes to the full board. There are two major pieces of the bond: neighborhood basis and this applies to the Rec & Park Department and safe, clean, green. This comes from multiple community meetings working with a citizen working group and also public polls. A lot of repair of seismic problems, repair of hazardous conditions including waterfront conditions, clean restrooms, creating healthy parks with good lawns, repaired irrigations, repaired playing fields. The other portion of this bond is responding to the growing needs of the City to meet our changing population and to develop the waterfront parks system.

Ten years ago, the Port Commission adopted the Waterfront Land Use Plan which laid out policies for how the Port's open space system develops. That called for developing a continuous waterfront walkway that was punctuated with significant open spaces at 5-7 minute walking intervals. Throughout the past ten years, we've gone through and implemented a variety of these. The plaza in front of the Ferry Building, Pier 14 which opened last year, Rincon Park which opened 3-4 years ago, improvements to Islais Creek. We have been able to tack on these projects to other development and other public improvements. We've done the easy project; now, we're looking for ways to fund the ones that are more difficult to come up with funding and the General Obligation Bond could be an excellent opportunity for the Port of San Francisco. The proposed projects are Pier 43 Promenade in Fisherman's Wharf, Brannan Street Wharf and a list of projects that go further south. All of these projects would involve opening up areas that are currently fenced off, severely deteriorated and unsafe at the edge. San Franciscans where they cannot reach the bay edge, these spaces would be improved with public access. The criteria used in selecting these projects were: (1) to repair seismically deteriorated facilities; (2) to look at geographic equity along the waterfront putting projects from the north to the south; and (3) projects that don't have alternative funding source. The Pier 43 Promenade project would extend from Powell to Taylor Streets, put a public edge onto a very popular portion of the Waterfront. The Brannan Street Wharf project which is going through an extensive process where a design has been developed, it has a failing wharf, it is fenced off with a chain link. This fall, we will begin the process to hire a consultant team to examine the currently accepted design and begin engineering analysis of that design. This would inform, with greater certainty, what could be constructed with either the \$17 million in the budget that currently exist to build this facility or what could be constructed with an additional \$3 million from the Parks Bond, bringing the total to \$20 million. Whichever of these budget scenarios moves forward, this would be the upper commitment and may necessitate modifications.

Either in this design or its size, having a project design that can confidently accomplish within the budget would allow the Port to move forward with the environmental review of historic structures at this site which would be required prior to the demolition of Pier 36 and is a necessary step in building a project. This is starting to move forward. The bond brings it closer to the design that was accepted by the community and by the Port Commission.

There are three projects included in the Blue Greenway Projects: Heron's Head Park entrance, Pier 70 Crane Cove Park and Bayfront Park. For the Bayfront Park, it will improve a dangerous shoreline condition and work with the Redevelopment Agency to construct a 7-acre park. The Port has responsibilities for the deteriorated edge condition. This would be a very significant park in the Mission Bay area and also serve the Potrero Hill neighborhood. Pier 70 Crane Cove Park is a very significant park in that neighborhood and one of the most interesting new parks to be added in the City in some time, taking advantage of its location adjacent to the drydock and to the historic structures in that area. The funding from the bond would not completely construct that facility but it would give it a very substantial start and be able to open such a facility. Heron's Head Park which was developed about 10 years ago by the Port would get a new entrance that makes it more noticeable and accessible to the public.

The bond is in process. It is not a done deal. It has to move through the Board of Supervisors. We are working with the public, the Rec & Park department. Port staff will be holding a meeting before the next Port Commission meeting with all the citizens' advisory committees jointly to get more public input and thereafter, present a resolution to the Commission to get an endorsement.

Commissioner Brandon asked about the change in the breakdown of money. Mr. Hodapp replied that through the recommendation of the working group involving Supervisor Elsbernd and the Mayors' Office, \$2 million have been deleted from Port property. We hope to be able to offset the \$2 million by applying for other grants. We have several projects which may qualify strongly for bay trail money. The reductions are \$1 million from Pier 43 Promenade Project, taking it from \$9.5 million to \$8.5 million and \$1 million off the Blue Greenway Project, which brings it down to \$20.8 million.

Commissioner Brandon asked about the breakdown of the Blue Greenway Projects. Mr. Hodapp replied that staff anticipates \$3 million for Bayfront Park and \$500,000 for the entry area to Heron's Head Park. All the cost estimates in the Blue Greenway Projects are conceptual. The remainder of the funds would go to the Crane Cove Park.

Commissioner Brandon asked what happened to Islais Creek. Mr. Hodapp replied that with regard to the Islais Creek Master Plan, the neighborhood groups recommended not to fund that as part of the bond because that master plan should not be a general obligation bond item. Instead we hope to use operating fund budgets during the next year. There is a number of improvements to be done around Islais Creek. We feel that many of these could come from adjacent development and projects. The bond is being focused on projects that we do not find alternative sources of funding. Islais Creek Improvements, we believe, could have alternative sources. We understand the importance but the thinking amongst staff is to do the master plan and look for the alternative sources or adjacent sources to fund some of those improvements.

Commissioner Brandon asked if we have a master plan for Pier 70. Mr. Hodapp replied that there is a community planning process currently taking place that is doing a concept design for the open space.

Commissioner Brandon indicated that she was confused why we have to fund the master plan in order to fund Islais Creek but we can fund Pier 70 without a master development plan. Mr. Hodapp replied that Pier 70 currently has a community planning process.

Commissioner Brandon indicated that the backlands including 1399 Marin is undergoing community planning process. Mr. Beaupre replied that as a part of the GO Bond, what was being proposed was to spend \$100,000 on developing a master plan for open space components along Islais Creek. Working with the working group and hearing from the community, it isn't viewed favorably to spend GO bond capital money on planning projects. If they are going to pay into a tax to pay for the GO bond, they want to see hard improvements go in place so that's why staff decided to remove the planning process project from the GO bond proposal.

Commissioner Brandon indicated that we have to go through a planning process for Pier 70 but that's already funded. Mr. Beaupre replied that is funded out of the Port's current operating budget but not the actual capital improvements to the Crane Cove Park. Commissioner Brandon asked if we can't make capital improvements to Islais Creek. Mr. Beaupre replied that, at this point and time, there are no projects that have gone through a planning process that identify other than one very small segment of improvements on Islais Creek. That one project we looked at, it was a connection from Third Street over to Tennessee Street to connect to the PUC Promenade but that project alone is in excess of \$1.5 million. We didn't think that one small project would poll very well with that little return. As we began to strategize on where the funding should go, of the \$33 million, we looked at a planning process for the open spaces around Islais Creek including potentially along Cargo Way. It was the sense of the community and the working group that this capital plan shouldn't go towards the planning process.

Commissioner Brandon indicated that she too does not think it should go to the planning process but it should go towards capital improvements. She thought that one of the needs with this bond were the places that didn't have open access. This is one of the major spots. She does not want to change anything now because staff is so far along the way. Ms. Moyer replied that we are not far along the way. To give the Commission an overall concept, the sense of the broader city is that this is a Park and Rec bond to which we have invited ourselves. Park & Rec has a \$1.7 billion capital plan need. In the very heated debates about what of Rec & Park projects goes into the bond because \$150 million is very diminimous against that need. There have been tremendous pressure towards making sure that those projects are ready now. The Port has been pushed back. If this were a Port only bond, we would no doubt use different criteria for determining the relevance and the importance of our projects. No decisions have been made that's one of the reasons we want this meeting with the Commissioners.

Commissioner Brandon asked if we got pushed back from saying that we want open space in the southern waterfront. Ms. Moyer replied that there is a tremendous debate

going on whether it is more important to maintain current existing parks than to create new ones.

Commissioner Shakofsky asked if polling has been done on the park bond and what were those numbers. Mr. Hodapp replied that there has been polling done on the park bond. Rec & Park has done a poll. The Port has also done a poll. We've looked at a variety of things, what types of facilities polled well. Seismic improvements polled very well, restrooms polled very well. The list of projects and the types of improvements are shaped by the polls. Safe, clean, green polled very well that's why the projects listed throughout Rec & Park are about repairing and rebuilding facilities.

Commissioner Shakofsky asked if out of the \$150 million most are capital improvements to existing parks. Mr. Hodapp replied that most of it is for capital improvements. Ms. Moyer indicated that the State Constitution guides what GO bond proceeds can be spent on. They have to be spent on real property improvements because it's a real property tax. Landscaping does not qualify as real property improvements, shrubs, flowers, etc. Part of the reason that Rec & Park portion of the bond is structure intense is because that is what the GO bond requires. It's not saying it's more important than trees, shrubs, or landscaping, it's what's allowed.

Commissioner Shakofsky indicated that she understands the constitutional constraints and thinks that it sells better. She does not need a poll to tell you what people in her community say about the parks. They don't need new parks; they need parks that are functioning. She's asked about the polling numbers and what the Port is committed to in terms of trying to sell this.

Mr. Hodapp replied that the Port's poll numbers are: cleaning up environmental contamination at the waterfront polled very well as restrooms did; seismic strengthening of the seawall polled well. As far as uses, running and biking and hiking trails polled very high and playgrounds in particular polled very well. Park & Rec facility – modernizing, upgrading restrooms and parks and recreation centers, renovating playgrounds, improving and increasing accessibility for the disabled, making seismic upgrades polled well; planting more trees at 73%. This bond would take 67% to pass as any general obligation bond. It has to do very well. Improving athletic fields 66%. These are the projects that are at or above the two third thresholds.

Commissioner Shakofsky assumed that we looked at if the Port could do its own bond. Mr. Hodapp replied that we have looked at that as well and we polled extremely well. Commissioner Shakofsky asked why we are marrying ourselves with Rec & Park. Mr. Hodapp replied that we have become part of the City effort at this point. This would be the first opportunity the Port has ever had to be part of the general obligation bond.

Ms. Moyer stated that as part of the city's newfound capital planning project which is when all the city departments did capital improvement plans, it was determined by the Mayor's Office and the Board of Supervisors and the City Administrator that they would take the existing tax levy for GO bonds and as existing debt rolls off, fill it with new debt and that would be the amount of debt they are willing to issue every year. They created a formula for which the city's capital needs would roll into those capacities that accrue every year. The Port was totally left out of that conversation. We have pushed

hard to invite ourselves back in to that conversation on the park side with Rec & Park. We are pushing the city to issue more debt than the debt service that's rolling off would allow. That's how we got to this point and time. We then subsequently did polling which show that it's confusing to voters to be married and there's other things but the policy maker around how to manage the GO bond capacity and manage the capital needs of the city are not enamored with the thought of the Port going its own way. Nothing has yet decided. We could not go on our own in February because we've missed the statutory timelines. Theoretically, we could go on our own in June. The reason as a city family thought we were going in June and the Mayor raised the fact that for the November ballot, the San Francisco General Hospital project is slated as well as a tax assessment for teacher's salaries which combined equals about \$1 billion in assessed taxes. Under the statutory requirements, those items will be heard going through the hearing process in late May, early June of 2008. The Mayor thought it would have a very negative effect on this bond. He also felt strongly that February afforded a great opportunity.

Commissioner Shakofsky asked if this would be the only bond in the February 2008 ballot. Ms. Moyer replied that it's her understanding with the capital planning folks which include Supervisor Elsbernd and the Mayor's Office as well as the City Administrator that if the bond does not pass in February, Rec & Park does not get another chance until 2013. Under the capital plan, they plan to move forward different projects every year. If those projects don't pass in the year on the ballot, they don't go back. Commissioner Shakofsky asked if that's an internal policy that can be changed; it's not statute. Ms. Moyer replied that it's the first time the City has had a plan of any sort for how to address its needs on a scheduled basis. At the moment, the creators of that are very possessive but it could be changed.

Commissioner Shakofsky asked if the Commissioners were involved in these discussions. Commissioner Lazarus replied that the Commission has not met with our counterparts at the Rec & Parks Department. Ms. Moyer replied that Commissioners, Brandon, Fong, and Lazarus have attended different stakeholders meeting. The Neighborhood Parks Council held their meeting last week. There's been different meetings and we've tried to invite all the Commissioners to attend. Mr. Hodapp added that we presented to the Commission this spring the proposal of the potential for the bond to occur. Ms. Moyer added that we've had our capital plan for a year that these projects could be funded by a GO bond.

Commissioner Brandon asked if we are going to spend \$17 million on Warm Water Cove. Mr. Hodapp clarified that the Crane Cove Park would have approximately that although the numbers for the Blue Greenway Projects are not described completely as we are still bringing in cost estimates to firm those up. Commissioner Brandon asked if we are building a new park. Mr. Hodapp replied affirmatively that there will be a new park in the Pier 70 area adjacent to the historic structures around it and some of the potential development sites.

Commissioner Brandon indicated that in the staff report, Illinois Street and Islais Creek are included. Mr. Hodapp indicated that the earlier portion of the staff report lists the full spectrum of projects that are to be considered in that area. Further down in the staff report, it lists the projects that are recommended by staff to be included in funding for this and are being recommended based on those three criteria he described earlier about

geographic distribution, projects that are difficult to fund in other ways where we don't see alternate funding sources and facilities that are currently closed off and need seismic repairs.

Commissioner Brandon asked who is going to fund Illinois Street. Mr. Hodapp replied that Illinois Street would be an excellent candidate for transportation improvement project. We have been successful in gathering transportation money for several projects in the past to improve pedestrian and bicycle access on Illinois Street. Once we firm up a plan, Illinois Street may qualify well for that. Commissioner asked about the funding for Islais Creek. Mr. Beaupre replied that possibly for the planning funding, using Port capital funds to do the planning but for the improvements, we think that there's an opportunity with the PUC and several of their projects to do improvements along Islais Creek because of the PUC's plans as it relates to the wastewater master plan have a direct impact on Islais Creek and it's an obvious mitigation for some of those improvements. They have already done some improvements along Islais Creek. That's one of the sources we're looking for. No matter whatever comes out of the backlands planning process or 1399 Marin or some of the gateway projects as well as the southern waterfront beautification policy would provide some funding sources for Islais Creek.

Commissioner Shakofsky asked if the campaign for the bonds would run through the Friends of Rec & Park. Mr. Hodapp replied that it would not run through the Friends of Rec & Park but they would likely be involved. City staff can work on formation of the bond up until the time it becomes approved by the board and can no longer do that. We do expect the campaign to occur and there is a group that is working on that based on Rec & Park. Commissioner Shakofsky assumed that the Port is expected to participate in ensuring its passage. Mr. Hodapp replied that the citizens who are concerned about the Port, we would hope will participate in such an effort.

Commissioner Shakofsky indicated that she's hoping that we're not missing or have not missed an opportunity for the Port to go out for significant bond issue for all the needs that we have. She's not sure whether this current effort diminishes that in the future. It's something that we ought to consider as a Commission and as agency to look at our own needs. We have a lot of public and community support to push our own bond at a significant level and meet some of our real needs. Mr. Hodapp replied that we can certainly take that message forward.

Corinne Woods, Blue Greenway Neighborhood Parks Council, indicated that NPC has not yet taken a position on the bond but they are pleased to support the three important projects along the Blue Greenway in the Central Waterfront that are being recommended to the Commission. The Bayfront Park at Mission Bay is a very important segment that completes the shoreside edge that can't be done within the Redevelopment Plan area of the P22 Park. The Crane Cove Park is, as they have done in the last five years, working on a master planning for Pier 70. They have discovered there's not enough money in development or even adaptive reuse of the historic structures to pay for the environmental remediation and creation of a park and give a developer enough return so he's willing to go forward. If we have a public funded park, it will create interest in the development, it becomes an economic attraction to develop Pier 70 and if we can only afford a portion of the park, then we have a developer to help us out. The Heron's Head Park gateway is an important piece of the Blue Greenway because people don't see it

now. It's behind a parking lot and it's not going to be that expensive. MTC also supports the inclusion of the Brannan Street Wharf project at this time because this is something that even though the cruise terminal isn't going to be at Pier 30/32, the neighbors have been counting on Brannan Street Wharf for a long time. NPC does have reservations about the Pier 43 Promenade Project which would complete a major gap in the bay trail on the northern waterfront, not because it won't be used by San Francisco residents who want to take advantage of this area but that it may not be able to garner enough support from residents and voters who don't feel that the wharf is part of a neighborhood park system. This all has to be addressed as not only seismic improvement which is desperately needed for but also as a destination not only for visitors but for residents. It's important that the wharf community help address that issue and make it more viable as a neighborhood attraction to make it more saleable. NPC will seriously consider support for that project in the context with the rest of the Park Bond project.

Marty Coressel, resident and homeowner on Seawall 330 Watermark Homeowners Association, voiced his support for the Commission's endorsement for the Brannan Street Wharf project and other projects. The Brannan Street Wharf project has been in the works for a long time. Is a seismic type upgrade project and it's a very unique project and it has a lot of land use, public trust surrounding issues. He asked for the Commission's endorsement on the inclusion of that project. On September 25, 2007, he hopes that the cruise terminal advisory panel as they address the Port Commission also mentions some interdependencies with the Brannan Street Wharf. He hopes that they encourage that we start to move forward on some public type of hearings and community support planning to get the Brannan Street Wharf project moving. We need some parks in the South Beach community with the increasing density within the Rincon Point Area. It's time for us to put some park and recreation in that community that it currently lacks. On behalf of the Watermark Homeowners Association, they look forward to a long and lasting relationship with the Port.

Ernestine Weiss indicated that she attended the Rec & Park meeting last Thursday where this bond was discussed. They worked on the Brannan Street Wharf project for so long and so hard. This is one of the projects that should go forward immediately on this bond. She asked the Port Commission, Executive Director, the public to take this money and don't wait for the Port's own bond to go through. This is a terrific opportunity and the Port should not miss it. The Port stands to benefit on a lot of projects that the Port has been hankering to do but couldn't do for lack of funding.

Jim Haas, longest serving member of the Rincon Point South Beach CAC, indicated that the Brannan Street Wharf is part of the BCDC requirements under the master plan. It was part of the cruise terminal There was 3-4 years of planning. It is something that the community strongly favored for a long time. They've participated for a long time in all these processes. She was a bit taken aback when he read in the paper that the NPC has taken a negative attitude towards it. He's pleased to hear from Ms. Woods that they've changed their minds because there are now 3,000-4,000 people living in that area and there will be even more when Rincon Hill is developed. There is a wonderful park next to the harbor but it's not enough. The Brannan Street Wharf not only is needed but it's a BCDC requirement. He hopes that the Commission and staff make a very strong case that it should be included in the bond issue. He hopes that money will put the matter over the top. The CACs meet next Monday and would be eager to get the Commission's

support. A number of them have been fulminating for some time as to why things haven't happen sooner.

Ms. Moyer indicated that we didn't disclose in the staff report what the Board of Supervisors approval process is because we don't know but the Board of Supervisors will be hearing at their Finance Committee whatever they introduce as an amendment. So what projects are in the bond will go forward at the Board of Supervisors at their finance committee meeting on September 26, 2007 at 1 p.m. She welcomes support at that meeting. There is a second meeting calendared for the Finance Committee on October 3 and by statute, the full board has to have two hearings. The key meeting of where the Board of Supervisors will make their decision is September 26, 2007.

## **12. NEW BUSINESS / AGENDA SETTING**

Ms. Moyer indicated that the Cruise Terminal Advisory Panel will be making their presentation at the next Commission meeting as to what their recommendations are. We will be asking the Port Commission to accept their report and then we'll be proposing that we work with our stakeholders on their recommendations and bring back their recommendations to the full Commission at a later date. They will present their work and will ask the Commission to accept it. Based on the conversation today, the item requesting award to contract for crushing concrete might be delayed. The request for approval of amendment to the MOU with MTA for the installation of the peakers has slipped to October 9, if not longer. The Illinois Street Bridge project will be heard on September 25 because staff has concluded their negotiations. The report of the Port Commission committee regarding SWL 337 will presented on October 23 and we expect to be done with the planning process. We will ask at that point and time for Commission's approval to issue an RFP/Q for that property.

## **13. PUBLIC COMMENT**

## **14. COMMUNICATIONS**

## **15. ADJOURNMENT**

**ACTION:** Commissioner Brandon moved approval to adjourn the meeting; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor.

Commission President Lazarus adjourned the meeting in memory of those who lost their lives six years ago.

Commission President Ann Lazarus adjourned the meeting at 6:40 p.m.