



## THE CITY OF SAN DIEGO

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### OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** August 25, 2023

**IBA Report Number:** 23-22

**Economic Development & Intergovernmental Relations Meeting Date:** September 6, 2023

**Item Number:** TBD

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# Proposed Response to Grand Jury Report “Governance of San Diego Bay and Its Tidal Lands and Regions”

On June 7, 2023, the San Diego County Grand Jury filed a report, titled “Governance of San Diego Bay and Its Tidal Lands and Regions”. This report focuses on the duties, powers, and governance structure of the Port District as well as public participation and representation surrounding Port District activities, such as proposed projects and its planning process.

The Grand Jury reports numerous findings and recommendations, some of which are directed to the City Council. The proposed Council response – see Attachment 1 – addresses 15 findings and the four recommendations directed to City Council.

Per the Grand Jury report, the Council is required to provide comments to the Presiding Judge of the San Diego Superior Court on the applicable findings and recommendations within 90 days. However, the Council President’s office requested and received an extension for the response to November 10, 2023.


In responding to each Grand Jury finding, the City Council is required to either (1) agree with the finding or (2) disagree wholly or partially with the finding. Responses to Grand Jury recommendations must indicate that the recommendation (1) has been implemented; (2) has not yet been implemented, but will be implemented in the future; (3) requires further analysis; or (4) will not be implemented because it is not warranted or is not reasonable. Explanations for responses are requested when applicable.

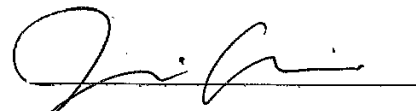
#### OFFICE OF THE INDEPENDENT BUDGET ANALYST

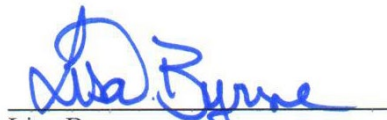
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For this Grand Jury report various departments assisted the IBA in the development of certain aspects of the proposed Council response including City Planning and the City Attorney’s Office. For background and context, we also spoke with several Council offices, the Government Affairs Department, the former Director of Legislative Affairs, a City-appointed Port Commissioner, and the Port District. We request that the Economic Development and Intergovernmental Relations Committee provide feedback and forward its approved proposed response to the full City Council.

  
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Attachments:

1. Proposed City Response to San Diego County Grand Jury Report titled “Governance of San Diego Bay and Its Tidal Lands and Regions”
2. San Diego County Grand Jury Report titled “Governance of San Diego Bay and Its Tidal Lands and Regions”

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Pursuant to California Penal Code section 933(c), the San Diego City Council provides the following responses for the findings and recommendations to the City Council that are included in the above referenced Grand Jury Report.

**FINDINGS 01 THROUGH 15**

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

**Response: The City Council disagrees with the Grand Jury’s finding.**

As outlined in San Diego Unified Port District Act (Port Act), each Port City Council shall appoint the Port Commissioner(s) to which it is entitled “to represent that particular city on the board.” The Port Act does not further specify that Port Commissioners represent the perspectives or interests of the Port City appointing them to the Board. However, pursuant to the Public Trust Doctrine, the Port District is legally mandated to manage the tidelands and submerged lands for the benefit of California residents, not only for Port Cities.

As stated in the [draft Port Master Plan Update](#), “The Public Trust Doctrine dates to Roman law and has evolved into a common-law principle whereby a sovereign entity owns all its navigable waterways and the lands lying beneath them as trustee for the benefit of the people.” The Public Trust Doctrine protects the tidelands in San Diego Bay described in the Grand Jury report, for the benefit of the California public. These lands are referred to as “Public Trust” lands and were acquired by the State when it joined the Union in 1850. The lands are held in trust by the State but belong to the public. While local residents are a part of the California public, the lands described in this report belong to the entire California public.

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

**Response: The City Council agrees with the Grand Jury’s finding.**

For context, the State of California acquired lands under navigable waters upon its admission to the Union. The Port Act was enacted by the State of California and approved by voters, and transferred ownership of the tidelands within San Diego Bay (or Public Trust lands) that were previously granted to local Port Cities, to the Port District. Therefore, local city or county governments do not have jurisdiction to provide direct oversight. Instead, State statute provides the State Lands Commission oversight authority over Public Trust lands granted to local entities, including the Port District.<sup>1</sup> However, a Commissioner may be removed from the Port Board of Commissioners by a majority vote of the city council

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<sup>1</sup> California Public Resources Code section 6009

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which appointed the Commissioner. Decisions by the board are not subject to approval, veto, or appeal by the city council.

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

**Response: The City Council disagrees with the Grand Jury’s finding.**

There are opportunities for the interests and priorities of the public to be heard by the Board of Port Commissioners at Port District Board public meetings as well as committee meetings. These meetings are open to the general public and allow the public to comment on items before the Board, subject to the requirements of the Brown Act.

The duty of each Port Commissioner is to represent the city or the county from which they were appointed and to carry out the purpose of the district which is generally to promote and protect the tidelands and submerged lands of the San Diego Bay. However, the Port District is legally mandated to manage these lands for the benefit of all California residents, not only for Port cities and the County of San Diego, consistent with the Tidelands Trust Doctrine<sup>2</sup> (which is the Public Trust Doctrine implemented in California).

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

**Response: The City Council agrees with the Grand Jury’s finding.**

While increasing public briefings and reporting to the San Diego City Council increases transparency and opportunities for public participation, it is uncertain the extent to which this would increase the level of public participation in Port District activities.

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

**Response: The City Council partially disagrees with the Grand Jury’s finding.**

Section 17 of the Port Act states that the term of each Commissioner is four years, though it does not impose a limit on the number of terms that can be served, which is left to the discretion of Port Cities. City Council Policy 700-20, *San Diego Port Policy*, states that

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<sup>2</sup> California Public Trust Doctrine: <https://pantheonstorage.blob.core.windows.net/administration/California-Public-Trust-Doctrine.pdf>

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the City shall appoint Port Commissioners as provided in Council Policy 000-13 which relates to term limits for boards and commissions created under the City Charter. Since the Port District was created under State law, the Port Act has ultimate control over Port Commissioner appointments.

Council Policy 000-13 states: “Unless otherwise provided, the maximum length of service of appointees shall be limited to two full consecutive terms per Charter section 41, or eight consecutive years in office per Charter section 43; with one term or four years, whichever is longer, intervening before they become eligible for reappointment.” The City Attorney has opined<sup>3</sup> that although Commissioner reappointments to a third term are not precluded by State law “... to be consistent with past practices, the City Council must waive the two-consecutive term limit provisions of Council Policy 000-13.” Though it is best practice to waive the two-consecutive term limit, if not waived, the Port Act still applies, and a reappointment can occur. Therefore, the Council has the discretion as to whether it adheres to the two consecutive term limit in Council Policy 000-13, as it sees appropriate.

Although term limits would allow opportunities for more, and different, individuals to serve, there are benefits to individuals serving more than two terms such as institutional knowledge and expertise. Lack of knowledge can lead to Commissioners being overly reliant on Port District staff and limited in their ability to be critical of staff recommendations, if appropriate, which could negatively impact public trust.

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

**Response: The City Council disagrees with the Grand Jury’s finding.**

Though the Port Act does not describe the basis for allocating the City of San Diego three of the seven Board of Port Commissioner appointments (43%), certain characteristics of the City make this allocation reasonable. First, the City is the largest of the Port cities as shown in the table on the next page. The City of San Diego had 84% of Port city residents in the 1960 Census, just before the Port Act was signed in 1962, and 79% of port city residents in the 2020 Census. Further, the City of San Diego contributed 68% of the non-submerged tidelands to the Port District upon its creation in 1962. For these reasons, it is reasonable that the City of San Diego has larger, though not majority, representation on the Board.

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<sup>3</sup> <https://docs.sandiego.gov/memooflaw/ML-2007-2.pdf>

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Port City	1960 Census	Percentage of 1960 Port City Population	2020 Census	Percentage of 2020 Port City Population
City of San Diego	573,224	84%	1,386,932	79%
City of Chula Vista	42,034	6%	275,487	16%
National City	32,771	5%	56,173	3%
Coronado city	18,039	3%	20,192	1%
Imperial Beach city	17,773	3%	26,137	1%

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

The City is unable to speak to the extent to which the Port District is incentivized to maximize revenue to fund its operations and how this incentive may impact decisions made by the Port Commission, so a direct response is not provided.

However, as described in Section 4 of the Port Act, the Port District was established for the promotion of several priorities including commerce, navigation, fisheries, and recreation in addition to being granted the power and authority to protect, preserve, and enhance physical access to the bay, the natural resources of the bay, and the water quality of the bay. By definition of the Port’s creation, the Port District has competing priorities. The Port District is not mandated to maximize revenue generation as a goal in and of itself, rather it was created to balance the varied priorities, including commerce, as described in the Port Act.

***Finding 8:*** *Success in the development of the Chula Vista Hotel and Convention Center has been obtained because of a close collaboration and alignment of interests between the Port District and the City of Chula Vista.*

This finding applies to the City of Chula Vista. As such a response is not provided.

***Finding 9:*** *The Port Commissioners decision to move short-haul truck staging for local deliveries of Dole Fruit products relocated a source of pollution from the Barrio Logan community to communities in National City.*

This finding applies to a decision made by the Port Commissioners. As such a response is not provided.

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

This finding applies to a decision made by the Port Commissioners. As such a response is not provided.

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

**Response: The City Council disagrees with the Grand Jury’s finding.**

It would be speculative to predict that a more equitable balance between economic and health concerns would have been achieved earlier in the project’s evaluation process had it received oversight from the City.

It is also unclear what level of oversight by the City of San Diego is contemplated in this finding. Section 30715 of the State Public Resources Code (California Coastal Act) provides the Port District authority to grant permits for development and that approvals for certain categories of development may be appealed to the Coastal Commission. Switching permit authority to the City of San Diego would require a change to State law. Even if implemented, it remains unclear whether the outcome of the project would have been different if this project was subject to the City’s permitting process.

However, if more proposals with anticipated future impacts on City residents are brought by City-appointed Port Commissioners and discussed in Council and committee meetings, as discussed in Recommendation 23-91, there would be greater opportunity for Councilmembers to share the perspectives and interests of their constituents and advocate for their district.

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

This finding applies to the City of Coronado. As such a response is not provided.

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

**Response: The City Council partially disagrees with the Grand Jury’s finding.**

The City of San Diego values transparency in government and deliberation of City issues in regularly scheduled public meetings. Council Policy 700-20, *San Diego Port Policy*, requires that City-appointed Port Commissioners present a report on the Port District’s annual work plan to the City Council at the beginning of every year and that, at a minimum, they report out semi-annually to the appropriate Council Committee. Given that City-appointed Port Commissioners did not report to the City Council at a regularly scheduled public meeting in FY 2023 and only reported once to the Economic Development and Intergovernmental Relations Committee, there is room for increased transparency and more opportunities for public engagement on Port activities through formal updates provided at City Council and committee meetings.

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

**Response: The City Council partially disagrees with the Grand Jury’s finding.**

Clear documentation and non-technical explanations of policies that guide future municipal and special district land use and development increase the opportunity for informed public engagement. We note that governmental planning documents are inherently complex. Given the nature of these documents, it is unclear whether the Port District’s planning documents are overly complex in comparison to other governmental planning documents. However, there could be an opportunity to be more intentional about increasing public access to understanding how land is to be used and developed in the Port District, as well as in other public entities, by reducing complexity in planning documents.

It should be noted the information contained in the Port Master Plan must align with the Coastal Act, Public Trust Doctrine, and the Port Act. State law requires certain contents be included in the Port Master Plan. For example, the Port Act sets out the Public Trust uses allowed for tidelands. Further, the Coastal Act requires the plan to include specific items such as:

- Proposed uses of land and water areas
- Projected design and location of port land areas, water areas, berthing, and navigation ways and systems intended to serve commercial traffic within the port jurisdiction



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- An estimate of the effect of development on habitat areas and marine environment, a review of existing water quality, habitat areas, and proposals to mitigate any substantial adverse impact, among other things
- Proposed projects listed as appealable to the California Coastal Commission
- Provisions for adequate public hearings and public participation in port planning and development decisions.

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

**Response: The City Council partially disagrees with the Grand Jury’s finding.**

There is no authority provided in the Port Act for the San Diego City Council to ratify Port planning documents. This would require amendments to State law. The Port Act requires the Port District to submit to the State Lands Commission a trust lands use plan describing any proposed development, preservation, or other use of the trust lands. The Port District is required to submit the plan to the State Lands Commission for its approval, and only the State Lands Commission can determine whether the Port Master Plan fulfills the requirements of the trust lands use plan. Additionally, the California Coastal Commission has the authority to certify changes or updates to an existing Port Master Plan to ensure consistency with the Coastal Act.

Although the City does not have the authority to ratify the Port Master Plan or subsequent changes, it can still be engaged in the planning process through public channels. The Port District conducts its own review of development within the Port’s jurisdiction and prepares the associated documents. All cities, including San Diego, and members of the public have the ability to provide comments during the public review of any draft environmental document prepared by the Port to facilitate cooperative relationships.

Additionally, several City community plans<sup>4</sup> include tidelands that are within the jurisdiction of the Port District as they are described as “an integral part of the community.” The City Planning Department indicates that it works closely with the Port District when City community plans are updated to make sure they align with the Port Master Plan and also work with the Port District when it updates or amends the Port Master Plan. Both the Port Master Plan and the City's pertinent community plans express the need and desire to increase inter-jurisdiction collaboration.

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<sup>4</sup> Midway Pacific Highway Community Plan, Peninsula Community Plan, Downtown Community Plan, Barrio Logan Community Plan, and Otay Mesa – Nestor Community Plan

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**RECOMMENDATIONS 23-90 THROUGH 23-93**

***Recommendation 23-90:** Enact ordinances or policies placing a two-term limit on the number of terms that a Port Commissioner can serve (as already enacted for the City of Coronado).*

**Response: The recommendation will not be implemented because it is not warranted.**

As discussed in the response to Finding 05, the City’s Council Policy 700-20, *San Diego Port Policy*, states that the City shall appoint Port Commissioners as provided in Council Policy 000-13 which relates to term limits for boards and commissions created under the City Charter. Council Policy 000-13 contains a two-consecutive term limit but allows a subsequent reappointment after an intervening term lapses. However, since the Port District was created under State law, and the Port Act does not impose term limits on Port Commissioners, Council Policy 000-13 does not have to apply. Although the City Attorney has opined that it is best practice to waive the two-consecutive term limit contained in the Council Policy, if not waived, the Port Act still applies, and the reappointment can occur if the City Council so chooses. Therefore, the Council has the discretion as to whether it adheres to the two consecutive term limit in Council Policy 000-13, as it sees appropriate. Any new ordinance setting limits on the number of terms served by Port Commissioners could similarly be waived. Ultimately, term limits will not be binding unless they are established through State legislation.

Additionally, we note that if the City Council is unsatisfied with any appointment, pursuant to section 17 of the Port Act, a Commissioner may be removed from the board (without cause) by a majority vote of the City Council.

Finally, the City Council will consider directing staff to include in the report to Council for future Port appointments the number of terms (if any) nominees have previously served on the Port Board to enhance transparency when a candidate has already served two terms prior to making a reappointment.

***Recommendation 23-91:** Institute ordinances or formal policies requiring the appointed Commissioners from each city be required to give at a minimum, quarterly updates to the City Councils at officially scheduled city council meetings open to the public.*

**Response: The recommendation will not be implemented because it is not warranted.**

City Council Policy 700-20, *San Diego Port Policy*, requires that City-appointed Port Commissioners report out, at a minimum, semi-annually to the appropriate Council Committee and report on the Port District’s annual work plan to the City Council at the beginning of every year. In fiscal year 2023, City-appointed Port Commissioners only reported to the City’s Economic Development and Intergovernmental Relations Committee once, instead of semi-annually, and did not report to the City Council at all.

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The City Council believes it is reasonable to work with the Port District to implement the requirements in the current Council Policy and will increase updates from City-appointed Port Commissioners as appropriate. The intention is to increase the opportunity for the public to engage City-appointed Port Commissioners on the Port Master Plan and future projects with potentially large neighborhood impacts.

***Recommendation 23-92:** Institute ordinances or formal policies that require ratification of the Port Master Plans, proposed Port Master Plan Updates or amendments to the Port Master Plan for Port District planning districts within each city’s boundaries.*

**Response: The recommendation will not be implemented because it is not warranted.**

As discussed in the response to Finding 15, the City of San Diego does not have the authority to require ratification of the Port Master Plan or related updates and amendments. Section 19 of the Port Act requires the Board of Commissioners to “draft a master plan for harbor and port improvement and for the use of all of the tidelands and submerged lands” and requires “a two-thirds vote of the board” for ratification and amendment. Following Board approval, the Port Master Plan is submitted to the State Lands Commission and California Coastal Commission. Therefore, local Port cities do not have jurisdiction over Port District activities and do not have the authority to change the procedures related to the Port Master Plan. Establishing this authority would require changes to State law.

We note that prior to establishing the San Diego Unified Port District, Public Trust lands were administered separately by local Port cities, but still had to adhere to the Public Trust Doctrine. The enactment of the Port Act, and approval by voters, reflected a shift towards a more unified and regional approach to development and administration of the tidelands. Section 2 of the Port Act states that “Because of the several separate cities and unincorporated populated areas...only a specially created district can operate effectively in development the harbors and port facilities.” Requiring Port City ratification of Port planning documents may conflict with the intent of the Port Act.

Though the City of San Diego does not have the authority to ratify a new, or changes to the Port Master Plan, the City works cooperatively with the Port District to ensure City community plans align with the Port Master Plan. Additionally, the City has the ability to provide comments during the public review of any draft environmental document prepared by the Port. Because a cooperative relationship is maintained and discussions are held in public forums, the need to change the ratification process is not warranted.

However, with an anticipated increase in reporting by City-appointed Port Commissioners as discussed in the City’s response to Recommendation 23-91, the City Council would receive more frequent updates on future Port projects with potentially large neighborhood impacts. This would provide additional opportunities to solicit feedback from the public as well as opportunities for Councilmembers to provide feedback to City-appointed Port Commissioners on proposed projects.

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***Recommendation 23-93:** In consultation with the San Diego County Board of Supervisors, explore and implement an alternate form of governance for the Port District allowing for participation in, and oversight of Port District activities and decision by the San Diego County Board of Supervisors and the elected city councils of the five Port Cities.*

**Response: The recommendation will not be implemented because it is not warranted.**

Neither the City of San Diego nor County have jurisdiction to implement an alternative form of governance for the Port District. Any change in governance structure and related authorities would require changes to State law.

The Port District tidelands are Public Trust lands which means that they are owned by the public and held in trust for the people of California. Additionally, the State Lands Commission administers Public Trust lands pursuant to statute and the Public Trust Doctrine. The State delegated administration of these lands to the Port District, which is an independent special district established by Section 4 of the Port Act and remains subject to the oversight authority of the State Lands Commission. Therefore, the City of San Diego and the County do not have the authority to change the governance structure of the Port District.

Additionally, according to the Public Trust Doctrine, “Because public trust lands are held in trust for all citizens of California, they must be used to serve statewide, as opposed to purely local, public purposes.” The current governance structure exists to balance the mission of using these resources for the benefit of all citizens of California while maintaining input from local Port cities.

# ***GOVERNANCE OF SAN DIEGO BAY AND ITS TIDAL LANDS AND REGIONS***

## ***SUMMARY***

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

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

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

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

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

## ***INTRODUCTION***

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

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

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

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

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

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

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

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

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

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

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

## ***METHODOLOGY***

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

The Grand Jury researched and reviewed these documents:

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

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

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

<sup>8</sup> California Harbors and Navigation Code, Appendix 1, San Diego Port District Act

<sup>9</sup> The City of Coronado limits the number of terms served by Port Commissioners to two terms

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

- San Diego Unified Port District Website: [www.portofsandiego.org](http://www.portofsandiego.org)
- Detailed electronic maps showing specific boundaries and areas within the San Diego Unified Port District

## ***DISCUSSION***

### ***Creation of the San Diego Unified Port District***

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

### ***San Diego Unified Port District: Unique Among California Ports***

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

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

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

### ***Proposition D Controversy***

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

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

<sup>12</sup> California Harbors and Navigation Code, Appendix 1, San Diego Port District Act, §2, pg 7. <https://pantheonstorage.blob.core.windows.net/administration/San-Diego-Unified-Port-District-Act.pdf>, March 3, 2020.



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

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

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

### ***Port District Funding of Operations***

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

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

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

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

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

<sup>15</sup> Ibid.

understand options for potential taxation.”<sup>16</sup> However, the Port District qualified for \$29 million in stimulus fund assistance in the following year, leading to the generation of a \$68.3 million income in the fiscal year ending June 2022.<sup>17</sup>

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

### ***Balanced Interests?***

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

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

### ***Chula Vista Hotel and Convention Center***

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

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

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

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

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

### ***Dole Fruit Company Contract***

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

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

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

### ***Mitsubishi Cement Factory***

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

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

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

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

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

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

### ***Coronado Cottages at the Cays***

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

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

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

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

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

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

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

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

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

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

### ***Public Participation and the Port District of San Diego***

The Grand Jury noted meetings of the Board of Commissioners are posted on the Port District's website and that public participation is allowed. Meeting agendas are posted, and minutes are made available. In addition, the Board of Port Commissioner meetings are recorded, and recordings are available for public viewing. The Port District's policy regarding public participation is spelled out in Board of Port Commissioners Policy 060 which was adopted June 10, 2008.<sup>22</sup>

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

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<sup>21</sup> California Environmental Quality Act, Chapter 1: Policy (archive.org)

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

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

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

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

**All Meetings**

List View **Calendar View**

Search:  All Years  Environmental Advisory Committee  notes  closed captions

Search Calendar  Help

10 records  Group  Export

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

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

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

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

### ***Master Plan Documents and Updates***

Under Section 19 of the Port Act, the Port District was to “draft a master plan for harbor and port improvement and for the use of all of the tidelands and submerged lands which shall be conveyed to the district pursuant to the provisions of this act.” This Port Master Plan was approved by the Board of Port Commissioners in 1980 and later certified by the California Coastal Commission on January 21, 1981.<sup>25</sup> Subsequently the Port District approved 41 amendments to the 1980 Master Plan.

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

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

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

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

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

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

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

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

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

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

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

- San Diego: The Grand Jury could not find any minutes or agenda items recognizing that any of its Port Commissioners made presentations regarding Port District activities in public City Council meetings. However, an annual report to the committee on economic development and intergovernmental relations is required by San Diego City Council policy. The most recent report occurred on March 8, 2023.
- Chula Vista: on August 23, 2022, Port Commissioner Moore gave an update of the Chula Vista Bayfront development project at a special City Council meeting.<sup>27</sup>
- Coronado: According to reviewed minutes and agenda items, a single update from the city’s commissioner occurred on April 19, 2022.
- Imperial Beach: According to reviewed minutes and agenda items, only one update took place on January 19, 2022.<sup>28</sup>
- National City: An agenda item for reports from their commissioner is created for each City Council meeting. The Grand Jury was unable to learn if that was the result of a published council policy.

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

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

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



### ***Re-engagement of Port Cities and County of San Diego***

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

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

### ***FACTS AND FINDINGS***

#### **Duties, Responsibilities and Powers**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Initial Opposition to Port District Formation**

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

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

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

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

#### **Port District Potential Source of Bias**

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

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

#### **Chula Vista Convention Center and Hotel**

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

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

#### **Dole Fruit Company Proposal**

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

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

#### **Mitsubishi Cement Corporation Proposal**

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

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

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

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

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

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

#### **Coronado Cottages at the Cays Proposal**

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

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

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

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

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

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

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

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

### ***Public Participation***

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

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

### ***Master Plan Documents and Updates***

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

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

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

### ***RECOMMENDATIONS***

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

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

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

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

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

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

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

### ***REQUIREMENTS AND INSTRUCTIONS***

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

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

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

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

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

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

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