

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.”²³

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.²⁴

All Meetings

List View

Search: All Years Environmental Advisory Committee notes closed captions

10 records

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

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

²⁴ <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, 1981.²⁵ 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.”²⁶

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

²⁵ 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.

²⁶ 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.²⁷
- 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, 2022.²⁸
- 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.

²⁷ 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.

²⁸ 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:

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

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