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Attachment No. 1 – Executive Order No. 4

LEASING POLICY DIRECTIVES

Leasing Policy Directive No. 1
Leasing Policy Directive No. 2

PORT OF LOS ANGELES
REAL ESTATE LEASING POLICY

PORT OF LOS ANGELES
REAL ESTATE LEASING POLICY

1. Introduction

1.1. Purpose

The purpose of the Port of Los Angeles (Port) Real Estate Leasing Policy is to provide a framework governing leasing and rental decisions as they relate to tenant retention, selecting new tenants, development of new agreements and, as appropriate, modifications to existing agreements by amendments.

Leasing and rental decisions will be made in a transparent environment, while maintaining compliance with City, State and Federal laws. The Policy is primarily focused on: (1) appropriate use, optimal utilization and competitive allocation of real property assets under the jurisdiction of the Port; (2) ensuring rental rates, fees and compensation for the use of Port property are fair, reasonable and uniformly applied; (3) treating similar maritime tenants on an fair and equal basis; and (4) providing for periodic adjustment of market rental rates for long term leases.

1.2. Background

The Port is a proprietary department of the City of Los Angeles, independent of financial support from the City. The Port operates independently on its own revenues, and manages its property through a tidelands grant from the California State Legislature for the purposes of commerce, navigation, fisheries and recreation.

The Port operates as a landlord, leasing its property to private firms for the construction, development and operation of terminal, commercial and retail facilities. Major sources of revenue are shipping services (wharfage, dockage, and pilotage), land rentals and warehouse revenues. The Port currently serves over 86 shipping companies at 27 terminals.

1.3. Types of Leases

The Port administers more than 300 property leases throughout the Port's jurisdiction. These types of leases include Agreements, Concession Agreements, Leases, Orders, Permits and Revocable Permits (see Table 1 Leasing Authority Types).

Permits and Revocable Permits comprise approximately 80 percent of all leases, divided nearly equally between the two (see Figure 1, Lease Distribution by Type).

Approximately 45 percent of all leases covering 80 percent of the Port property are considered long-term, i.e., more than five years in length (see Figures 2 and 3). The remainder is either short-term (five years or less in length) or revocable.

Figure 1 Lease Distribution by Type

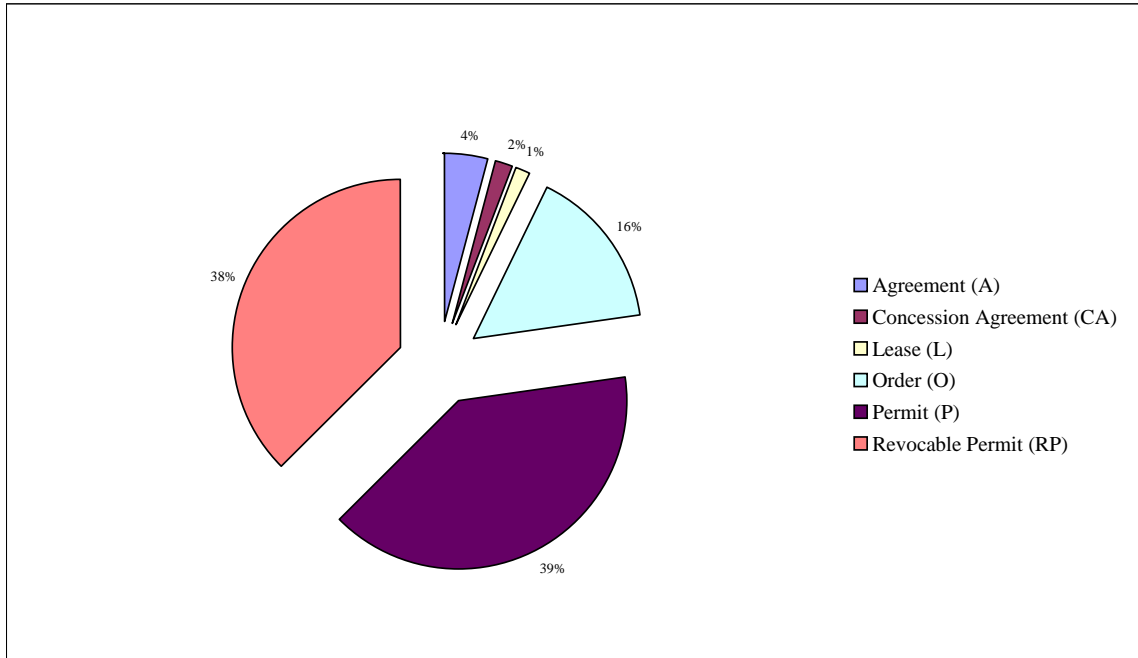


Table 1 Leasing Authority Types

Auth. Prefix	Authority Type	Description
A	Agreement	Port-related services provided on Port property.
CA	Concession Agreement	Commercial use of formerly Federal property (Fort MacArthur, Lower Reservation). Long-term agreements, typically 30+ years.
L	Lease	Long-term agreements, typically 30+ years. Form of agreement no longer used; replaced by Permits (P).
O	Order	Port infrastructure (streets, sewers, etc.) permits with public agencies.
P	Permit	Fixed term leases.
RP	Revocable Permit	Leases that may be revoked with 30-120 days notice. Typically of indeterminate length.

Figure 2 Land Area Distribution by Term Length

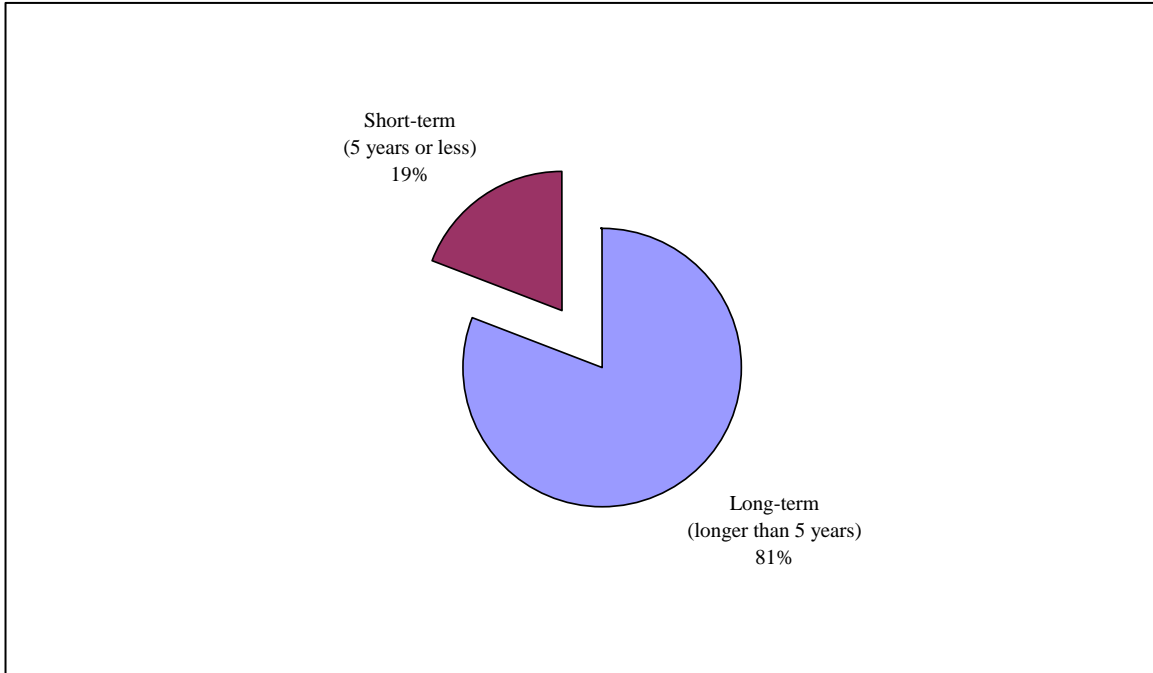
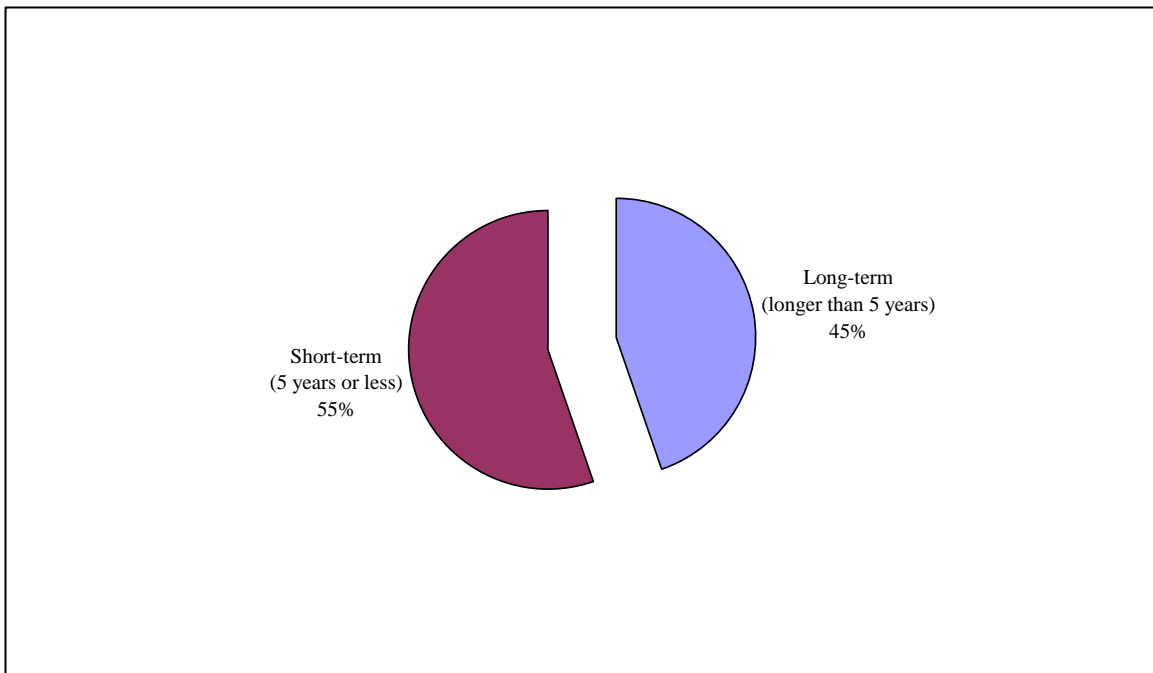


Figure 3 Lease Distribution by Term Length



2. Policies

2.1. Objectives

The objective of the Port's Real Estate Leasing Policy is to provide the following:

1. Recognize existing relationships with current tenants and their investment in the occupied terminal and premises;
2. Maintain fair and equitable methods for potential and existing tenants to conduct business with the Port;
3. Ensure that no one entity secures a competitive advantage by means of controlling a significant amount of Port property and/or berthing area;
4. Establish an approval process that is consistent with the Board of Harbor Commissioners (BHC) and City of Los Angeles applicable policies and procedures;
5. Specify guidelines for selecting Qualified Tenants to enter into leases for Available Property. Rate of return shall not be the only criteria for the basis of selection. Other factors shall include public benefit and job maximization shall also be included;
6. Establish a process for assembling, sharing, and maintaining information related to the proposed selection and negotiation processes in an open and transparent manner;
7. Optimize State Tideland Trust assets consistent with state requirements;
8. Ensure consistency with the Port's Master Plan and strategic objectives in leasing property;
9. Require provisions to prevent and minimize environmental impacts; and
10. Evaluate performance of leases annually based on financial viability, minimization of environmental impacts and maintenance of the facility.

2.2. Scope and Authority

The Real Estate Leasing Policy will govern the leasing of Port property. This Policy shall be periodically reviewed by the Executive Director, who will recommend changes to the Policy to the Board of Harbor Commissioners.

The Board of Harbor Commissioners, upon the recommendation of the Executive Director, may exempt certain available properties from the procedures set forth in this Policy should it be determined by the Board that it is in the best interest of the City. Such actions would be based on competitive, strategic or environmental considerations, and are defined in Section 6, Definitions, under Qualified Exemptions.

2.3. Key Guiding Principles

This Policy will follow guiding principles that are designed to serve as a bridge between the Port's purpose, goals, and regulatory environment and the Port's management and leasing actions.

1. The Port shall foster a spirit of partnership with its tenants in the application of this leasing policy, while fulfilling its duties as steward of vital public enterprises, assets, and resources.
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2. The Port shall make Port properties available on fair and reasonable terms without unjust discrimination.
3. The Port shall retain effective management controls over the use of Port property assets and will structure management controls in all leases and rental agreements in order:
 - a) To achieve optimal use of Port property assets;
 - b) To ensure that additional terminal capacity is not constructed prematurely, yet can be built when it is needed; and
 - c) To foster open and competitive access for new entrant and incumbent Port tenants.
4. The Port shall establish and maintain a level and structure of rents, fees, and charges that are fair and equalable for all tenants, and which are based on current market land values.
5. The Port shall establish minimum operational and maintenance standards for users of Port property in order to promote safety, maintain appropriate levels and quality of service, and promote the orderly development of Port properties.
6. The Port shall establish environmental provisions for user of Port property to implement the Board's environmental policies and requirements and to achieve required reductions in environmental impact.
7. The Port shall actively monitor compliance with provisions of lease agreements, shall give timely notice of non-compliance, shall employ available remedies to enforce compliance when reasonable cure periods have lapsed, and shall terminate agreements when appropriate in accordance with good business practices.
8. The Port, in its role as a tidelands trustee, must take into account more than just the maximum revenue that can be generated by a new lease. The Port will also consider what is in the best interest of the state of California, including the essential role all commodities play in maintaining economic growth and job creation, and the need to maintain a diversified mix of water dependent uses.
9. The Port shall be open and transparent in its selection of new tenants and in lease negotiations. The Executive Director will appoint a lead negotiator who will maintain notes and records of all meetings and negotiation sessions. These notes will be maintained in the lease files for review by all interested parties.

2.4 Visitor-Serving and Public-Use Areas

This policy will seek to maximize visitor-serving and public-use areas and value to the community when analyzing land use consistent with the Port Master Plan. The Port will look to maximize jobs, community needs, and recreational opportunities when analyzing alternative use of available property.

Consistent with the State Tidelands Trust and the Port Master Plan, the Board may make Port property available for public and community purposes at less than fully allocated costs or fair market value when such community uses 1) derive a stated public trust benefit and 2) do not compromise Port development plans or financial objectives.

2.5 Applicability and Delegation of Authority

The Executive Director is authorized to formulate, implement, and amend directives to implement this Policy. The first two Directives are attached, and will be approved upon the approval of the Leasing Policy by the BHC. Directives which may substantively impact Port tenants shall be prepared in consultation with such tenants. The Executive Director shall designate specific individuals within the Port who may act on behalf of the Executive Director with regard to particular matters.

The Executive Director shall formulate and recommend for approval by the Board lease provisions that are consistent with the Policy, which will be included in new leases, lease extensions, and lease modifications.

The Policy addresses all types of agreements involving the use and occupancy of properties within the Port for the lease of land, buildings, and improvements.

At the time a lease is submitted to the Board, the Executive Director shall submit a written report (1) disclosing any proposed deviations from the Policy, (2) explaining the rationale for any such deviations, and (3) offering recommendations as to whether such deviations should be accepted. If the Board approves a lease or other agreement with any deviations whatsoever from this Policy, the Board's action shall constitute an amendment or exception to the Policy for the narrow and limited purpose of approving said lease.

The Policy is intended to provide a framework governing leasing and rental decisions as they relate to (1) continuing leases with existing tenants; (2) development of new agreements and (3) amendments to existing agreements.

Nothing within this Policy shall be construed as conferring upon, nor shall it constitute the granting to any party (1) third party beneficiary rights, (2) a right of private enforcement, or (3) a private right of action. This Policy shall not grant any tenant or any user of any Port property the right to enforce the terms and conditions of this Policy.

Nothing within this Policy shall be construed as overriding the terms and conditions of an existing lease between the Port and a tenant.

The Policy shall remain in effect until changed by subsequent Board action.

2.6 Compliance

The Director of Real Estate Director shall monitor compliance with lease provisions. The premises of each lease shall be subject to periodic physical inspections coupled with lease compliance evaluations. The premises inspections and lease compliance evaluations should be conducted, as appropriate, with reasonable advance notification.

Failure to comply with lease provisions after being notified by the Executive Director, with tenant having been given appropriate time to correct the non-compliance, will place the tenant in default of their lease. The Port will proceed against the non-complying tenant by following the default section contained in the tenant's lease to the point of terminating tenant's occupancy of the property. This would include non-compliance with all lease provisions, including environmental mitigations, maintenance of the facility and non-payment of rent.

2.7 General Provisions

The provisions of this section are applicable to leasing and rental actions for all classes of properties. However, certain classes of properties warrant additional provisions as elaborated in subsequent sections of this Policy.

1. No Unauthorized Use. All uses of Port properties shall be specifically authorized pursuant to a lease in accordance with this Policy, or by license, permit, or other formal agreement with the Port. Provided that applicable rents, charges, or revenue formulas have been established by the Board, the Executive Director, without Board approval, may:
 - a) Execute leases, licenses, permits, or other formal agreements using standard forms in substantially the form approved by the Board by resolution, except when Board and City Council consideration is required.
 - b) Issue a temporary or special use permit that allows an entity to engage in specific activities, in designated areas, and only for a specified period of time not to exceed 30 consecutive days.
 - c) Issue a permit or other form of license or agreement authorizing an entity to engage in a commercial activity at the Port.
2. Qualified Users. All prospective industrial, commercial and retail users of Port property shall meet, and adhere to, minimum standards with respect to financial capability and responsibility, management qualifications and experience, general reputation to conduct authorized uses, and such other factors as the Executive Director deems appropriate. The Executive Director, in consultation with the CFO, is authorized to establish and periodically modify such standards and to permit exceptions to such standards. Additionally, all users shall be obliged to comply with applicable laws, rules, and regulations.

In selecting a Qualified User, the Policy and Procedures will ensure that no one entity secures a competitive advantage by means of controlling a significant amount of Port property and/or berthing areas. This will be achieved by analyzing proposals from current tenants for vacant land to determine that their occupancy would result in the maximum use of the property, maintain the Port's diversification of cargo and whether it would bring new customers to the Port.

3. Consistency with Port Master Plan. Proposed uses of Port property shall comply with the Port Master Plan in terms of appropriate land use and permitted activities.
 4. Rents, Fees, and Charges. Rents, fees, and charges for the use and occupancy of Port properties shall reflect fair market value. Unless otherwise stated, rents shall reflect triple-net terms (see Section 5 – Definitions). Subject to approval by the Board, the Executive Director shall determine the methods to be used for establishing rates. Such methods shall produce rates that are uniform for each category of land use.
 5. Appraisal Process and Fair Market Rents. For those leases subject to fair market rents, such rents shall be determined and periodically redetermined by appraisal. Appraisers shall be California State certified appraisers credentialed as Member, Appraisal Institute (MAI) with experience directly applicable to the appraisal assignment.
 - a) Timing of appraisals. Appraisals shall occur every year, or as deemed necessary by market trends.
 1. Appraisal segmentation. Similarly situated leaseholds or facilities at the Port shall be appraised concurrently to develop applicable rental rates.
 2. Rate of return. The BHC will adopt a Rate of Return (ROR) that will be applied to the market land value to establish a market rental rate. The adopted ROR will remain in place until a significant change is identified by a market survey conducted annually by the Director of Real Estate. The BHC will then be asked to adopt the new ROR by the Executive Director.
 6. Categories of Compensation. Compensation in a Port lease is set under one of the following categories: (1) Fixed Rent, (2) Percentage of Gross Revenue vs. Fixed Minimum Rent, or (3) Revenue Sharing Agreement.
 - a) Fixed rent. Fixed Rent is the required revenue calculated by applying the Board's established rate of return to the fair market value of land and water. Fair market rent for Port owned improvements is determined by a market rental analysis provided via an appraisal.

Fixed rents are determined as the product of square-footage, value per square foot and target rate of return. This product is further adjusted, as appropriate and as determined by the Board, to reflect such things as nonexclusive use, nonprofit enterprises, services provided for port operations, and other economic considerations.
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- b) Percentage of Gross Revenue vs. Fixed Minimum Rent. Retail tenants, including marina operators, typically pay rent based on a percentage of their gross revenues versus a fixed minimum rent whichever is greater.

Fixed minimum rent in percentage leases is 100 percent of the Board's ROR applied to the basic land value. The percentage of gross revenues varies according to the type of activity. The percentage rent schedule will be updated annually based on Real Estate benchmark appraisals of comparable properties.

- c) Revenue Sharing Agreements. Required revenue is to be calculated by applying the Board's established rate of return to the fair market value of land and water, together with the replacement cost new of the improvements, adjusted for depreciation (age of remaining life, functional efficiency, and contractor phasing).

A minimum annual guarantee (MAG) will be fixed for each revenue sharing agreement, whereby the tenant will pay full or 100% rent until the revenues received meet the Port's return on land, water and improvements. Once the MAG has been reached, revenue sharing breakpoints (breakpoints) will be set or structured in such a manner as to provide an increasing share of the incremental revenue to the tenant.

The breakpoint(s), TEU rate or tariff rate and minimum guarantee are to be expressed in dollars.

A provision will be included in all agreements that will provide for adjustments in the minimum annual guarantee, breakpoint, TEU rate or tariff rate as appropriate tariff items are adjusted during the term of the agreement.

Creditworthiness and past performance will be considered in establishing the minimum annual guarantee.

7. Maintenance and Environmental Responsibilities. Except as provided in lease agreements, tenants shall be responsible for maintaining improvements and compliance with applicable building codes and all applicable environmental laws, ordinances, regulations and standards.
8. Term. The term of a lease shall be determined by taking into account (1) the operational needs and capital investment in leasehold improvements by the tenant and (2) the ability of the Port to manage capacity and long-term Port development. Lease terms shall not exceed five years, unless substantial tenant investment in leasehold improvements warrants a longer-term lease. In no case shall the term of any lease exceed 30 years unless, based upon a written recommendation of the Executive Director, the Board finds appropriate public benefits.
9. Succeeding Leases for Existing Tenants: The Port shall consider succeeding leases, of similar length or term, for existing tenants, subject to the following conditions: (1) the tenant has made substantial investment in leasehold capital
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improvements to the premises; (2) the tenant has a consistent record of good standing; (3) permitted uses in the proposed lease are consistent with applicable land use plans; (4) all parts of the premises proposed to be leased are or will be developed or used for the permitted uses; (5) the tenant agrees to pay the fair market rent for the property as determined by an MAI appraiser; and (6) the tenant agrees to comply with the Port environmental measures and criteria for operating a terminal or facility. Succeeding leases shall comply with applicable lease policies, minimum standards, and Board directives. Negotiation of a succeeding lease shall commence no later than twelve months before the lease expiration date.

10. Selection of Prospective Tenants. Except for succeeding leases with existing tenants, the Port shall award lease rights based on competitive bid, competitive proposal, or sole source negotiation.
 - a) Competitive bids shall be used when, in the judgment of the Executive Director, financial return is the only relevant criteria for selecting among prospective tenants.
 - b) Competitive proposals shall be used when, in the judgment of the Executive Director, criteria other than financial return to the Port are relevant to selecting a prospective tenant.
 - c) Sole source negotiations shall be used only in those instances where, in the judgment of the Executive Director, a prospective tenant offers services that are unique, patented, or otherwise demonstrated to be available only from a single source.
11. Assignment and Subleasing. Except for assignments for security purposes and subleases, there shall be no assignment, transfer, gift, hypothecation or grant of control, or any encumbrance of the lease agreement.
12. Participation in Sublease Rent and Use Fees. If the requested subleasing or use of leased premises is not specifically contemplated and authorized under the terms of a lease, the Port shall be under no obligation to approve such subleasing or use. If the Executive Director grants such approval, the approval of such sublease and use shall be conditioned on the Port's negotiated participation in the economic consideration represented by the sublease or use, as well as the Port's environmental policies.

If a proposed sublease would lead or has led to the development or use of facilities not contemplated in the lease, then the Executive Director may condition consent to the sublease on (1) a negotiated joint Port-tenant development arrangement and (2) a negotiated portion of the compensation produced by use of the subleased premises.

- a) Penalties for Noncompliance. The Port may establish monetary penalties in a lease in addition to other remedies for noncompliance with lease terms.
- b) Encumbrances. A tenant shall not mortgage, pledge, assign as collateral, encumber, or in any manner transfer, convey, or dispose of its leased premises or improvements or any interest therein for any purpose or intent without the prior written consent of the Board, which consent or otherwise shall be provided in a timely manner. The encumbrance of land is prohibited.
- c) Standard Terms. As standard terms and conditions of leases are modified from time to time, the Port shall make available the modified versions to interested parties upon request.

2.8 Environmental Provisions

All lease negotiations shall be consistent with the intent of the Port's Environmental Policy to be protective of human and natural resources in and around the Port. Leases shall specifically include or incorporate by reference applicable environmental requirements as identified in Leasing Policy Directive No. 2. The Director of Environmental Management shall review all leases prior to approval to ensure compliance with the Port's environmental requirements.

**PROCEDURES TO IMPLEMENT
THE
REAL ESTATE LEASING POLICY**

3. Procedures to Implement the Real Estate Leasing Policy – Long Term Leases

Property leases extending beyond five years, and having an annual rent in excess of the Executive Director's signature authority, are subject to the following long-term leasing procedures.

3.1. Property Availability

1. The Director of Real Estate shall maintain and make public a revolving 12-month log of all agreements showing their expiration and renegotiation dates.
2. The Director of Real Estate is responsible for preparing a quarterly report based on the annual log showing which long-term leases will be expiring and those that are due for compensation adjustments. The goal of the annual log and quarterly report is to minimize properties under lease holdovers and ensure that compensation is reset in a timely manner.
3. The Director of Real Estate shall notify the Executive Director when unleased property becomes available.
4. When a vacant unleased property becomes available, the Director of Real Estate, in consultation with the Director of Environmental Management, Marketing, Planning and Research, and Financial Management shall recommend several alternate uses for the property. The analysis of alternate uses will include an analysis of job creation and economic impact for the property. Each alternative will then have its own cost, revenue and environmental comparisons, as well as the number of jobs that will be created/retained with a recommended alternative that will be presented to the Department's Project Review Committee (PRC).
 - a. Staff shall ensure that the planned use conforms to the land use designation contained in the Port Master Plan (PMP) as certified by the State of California Coastal Commission.
 - b. Should the vacant unleased property be identified as better suited for a use inconsistent with the PMP, the Executive Director shall recommend to the BHC amendments to the PMP and set forth the basis for the proposed recommendation.

3.2. Tenant Retention

1. It is the goal of the Real Estate Leasing Policy to maintain long-term business relationships with existing Port tenants. To achieve this goal, lease renewals will be initiated with current tenants, if they have been a tenant in good standing as described in Section 2.7, Paragraph 9 of the Real Estate Leasing Policy.
 2. If it is determined that the tenant is in good standing, and agrees (1) to pay fair market rent for the leased property; (2) to comply with Port environmental measures, policies and criteria in operating the terminal or facility; (3) to maintain the terminal or facility to industry standards; and (4) to submit annual environmental mitigation reports to the Port, then negotiations for a successor lease will be initiated with the current tenant. Negotiations will follow the criteria set out in Section 3.4 Negotiations.
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3.3. Tenant Solicitation and Selection

If the property is vacant or the existing tenant does not wish to continue their occupancy or an impasse is reached in negotiating a succeeding lease with an existing tenant, then the following procedures will be implemented to select a new tenant for the property.

1. The Executive Director will appoint a Tenant Selection Committee which will include the CFO, Director of Real Estate, and others as appropriate. The Committee will prepare a Request for Proposals (RFP), notify Qualified Tenants regarding the availability of the property and solicit further interest by advertising in trade publications, local newspapers, and, when appropriate, national and international publications. All RFP's shall state the Port's objective regarding the use of available property. Evaluation criteria shall be determined on a case by case basis but will include these factors: (1) operating requirements, such as terminal design, throughput volume, vessel calls, berth utilization and other terminal operating programs such as off-peak hours; (2) environmental requirements, such as identification and observance of environmental policies and procedures relating to terminal construction and operations, including how the proposal intends to meet the policy of preventing pollution or controlling it to the maximum extent feasible; (3) financial requirements, such as minimum annual guarantees, other revenues to the Port and the financial strength of the proposer; (4) terminal maintenance requirements; and (5) the number of jobs that will be created/retained; (6) general requirements as required by the Port and City, such as insurance, indemnification, etc; and (7) the need to accommodate a diversified waterborne cargo mix. The Port reserves the right to determine the commercial viability and validity of all proposals.
 2. The Committee will review, assess and analyze all proposals. Their review of the offers will be based on uniform criteria to be established and made public at the time of the RFP's preparation. The criteria will be based on the objectives contained in the RFP and the requested information. The Committee's analysis and recommendation will be made public.
 3. The Director of Real Estate shall report the Committee's findings including the offers received, evaluation process utilized, a financial analyses summary, the selection method, recommendation for a Most Qualified Tenant to the Executive Director for recommendation to the BHC.
 4. Once the BHC has made its decision, the BHC shall instruct the Executive Director to begin exclusive negotiations with the Most Qualified Tenant. At the discretion of the BHC, instructions to the negotiator may be provided.
 5. If the Committee's determines it is necessary, a second or "back-up" Qualified Tenant will be identified in the Committee's recommendations to the BHC.
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3.4. Negotiations

1. Lease Negotiation Team

The Lease Negotiation Team (LNT) and the lead negotiator will be selected by the Executive Director to lead the negotiation effort on behalf of the Port. The members of the LNT shall include representatives from Real Estate, Environmental Management, and Marketing Divisions, and as appropriate, Engineering and Wharfingers. The LNT shall negotiate with the existing tenant or Most Qualified Tenant(s), as instructed by the BHC. Should negotiations reach an impasse with the existing tenant or Most Qualified Tenant, the Executive Director will recommend to the BHC, and it may or may not determine, that negotiations be terminated with the Most Qualified Tenant and commence negotiations with the second or “back-up” qualified Tenant. An impasse in negotiations shall be determined by means of a recommendation from the LNT and concurred with by the Executive Director for consideration by the BHC. Should an impasse be reached with an existing tenant, the Executive Director will have the opportunity to resolve the impasse, or recommend to the BHC that a new tenant be selected through the RFP process.

2. Prior to Negotiations

The lead negotiator will prepare a Term Sheet describing the parameters of the agreement’s terms and conditions that will be recommended for negotiations. The Term Sheet is to be prepared and submitted to the Executive Director, senior management team and City Attorney for review before negotiations begin. Prior to completing the Term Sheet, the lead negotiator shall:

- a) Discuss the proposed lease terms and conditions with relevant disciplines among Port staff to gain their input. Such matters as a historical analysis of Tenant’s performance, environmental impacts, possible legal issues, and financial considerations shall be taken into consideration.
 - b) Review similar leases and agreements and attempt to achieve a level of uniformity between these various agreements.
 - c) Request the following reports for the LNT:
 - 1) A preliminary financial analysis from the Chief Financial Officer (CFO). The financial analysis should include a rate of return analysis for each of the stated scenarios. It may also include analysis of any aspect of the negotiation affecting the finances of the Port, including, but not limited to: credit analysis of the Qualified Tenant; impact of the lease on the quality and magnitude of the Port's cash flow and profitability; any impact on the Port's financing plans; possible impact of the proposed lease on other agreements in the Port, and analysis of deviation from the Port's rate of return policy.
 - 2) A preliminary environmental report from the Director of Environmental Management as to the current occupier’s compliance
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with the Port's objectives of minimizing pollution and controlling it to the fullest extent feasible.

- 3) An Engineering Report from the Chief Harbor Engineer or Director of Engineering Development which contains construction schedules and development budgets for any on-site development requested by the Qualified Tenant. This report will also include a report on any significant maintenance issues on the terminal or in the facility, and how they were addressed by the tenant.
- d) It is the responsibility of the LNT to present the Term Sheet, the referenced reports and their recommendation to the Executive Director. To the extent that it is appropriate, the recommendations in a report should contain alternatives, on a diminishing scale, which would constitute acceptable "fall back" positions during negotiations. The above referenced reports are to be attached to the Term Sheet and all subsequent Board reports, for confidential review by the BHC.

3. Initiation of Negotiations

The Executive Director shall authorize the lead negotiator to initiate negotiations, or, when called for by these procedures, discuss the recommendations with the Board consistent with the Brown Act and ensure consistency with City's ethics regulations relating to Board members, that they do not actively participate in lease negotiations.

Upon the determination by the Executive Director that the proposed lease agreement, amendment or periodic compensation adjustment is consistent with current Board policy, the Executive Director may authorize the lead negotiator to negotiate in accordance with the Term Sheet and any instructions to negotiations from the Board.

4. During Negotiations

- a) At the outset of negotiations, every effort will be made to agree on a reasonable period of time for the completion of negotiations. The Most Qualified Tenant is to be informed that other alternatives, including other potential Qualified Tenants, will be considered if negotiations cannot be concluded within a reasonable period of time. The current tenant will also be advised that the facility will be put out for RFP if negotiations cannot be concluded in a reasonable time.
 - b) It is anticipated that during negotiations certain deviations from the Term Sheet may have to be made, and it will be the responsibility of the lead negotiator to determine whether additional authority needs to be obtained from the Executive Director. In the same manner, it will be the responsibility of the Executive Director to determine whether additional instructions should be obtained from the Board.
 - c) Whenever counteroffers are made that affect compensation, the lead negotiator shall request a revised financial analysis from the Chief Financial Officer.
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- d) At the time negotiations have completed, the lead negotiator shall request a final financial analysis (the “CFO Analysis”). This analysis shall provide the final assumptions, findings, and recommendation by the Chief Financial Officer. The CFO Analysis will be submitted directly to the lead negotiator, the Executive Director, and the BHC.

5. *Negotiated Agreement/Document Preparation*

Before the final draft document is submitted to a Qualified Tenant or the current Tenant for execution, it is to be reviewed and approved by the Executive Director or designee.

- a) Once the lease, agreement, or amendment adjustment has been negotiated, it will be submitted with a proposed Board report, and the CFO Analysis to the BHC for approval and submittal to the Mayor and CAO for review as required under Executive Directive No. 4 (Attachment No. 1). Following such review, the report will be submitted to the Board for approval (and to the City Council and Federal Maritime Commission if required). If the proposed lease, agreement, amendment or periodic compensation adjustment is not consistent with current Board policies, a report with staff recommendations to modify or exempt this particular process from those policies will be submitted to the Board for consideration in executive session.

6. *After Negotiations*

- a) At annual intervals following the effective date of the agreement, the Director of Real Estate will request the CFO perform a comparison of projected and actual revenue, cargo volume, and actual costs. The report shall be transmitted to the Executive Director and senior managers.
 - b) At annual intervals, following the effective date of the agreement, the Director of Real Estate will request that the tenant prepare an annual environmental status report. This report would highlight environmental accomplishments, and list any significant issues. The Environmental Management Staff would be available to assist the tenant in preparing this report.
 - c) At annual intervals, the Director of Real Estate shall obtain from the Chief Harbor Engineer a report detailing the status of expenditures and schedule associated with the on-site developments requested by the tenant. This report would then be forwarded to the Executive Director, senior managers and the Board of Harbor Commissioners.
 - d) At annual intervals, the Director of Real Estate will initiate a physical inspection of the property to ensure that it is being maintained to the standards outlined in the lease and that there are no deferred maintenance items.
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4. Procedures to Implement the Real Estate Leasing Policy - Short-Term Leases

Property leases up to five years, and/or having an annual rent up to the Executive Director's signature authority, are subject to the following short-term leasing procedures. Such leases are approved following the process outlined below.

4.1 Property Availability

1. The Director of Real Estate shall maintain and make public a revolving 12-month log of all agreements showing their expiration and renegotiation dates;
2. The Director of Real Estate is responsible for preparing a quarterly report based on the annual log showing which short-term leases will be expiring and those that are due for compensation adjustments. The goal of the annual log and quarterly reports is to minimize properties under lease holdovers and ensure that compensation is reset in a timely manner.
3. The Director of Real Estate shall notify the Executive Director in writing when property is available.

4.2 Tenant Evaluation

1. The existing tenant will be maintained on the property as long as they agree to pay the property's fair market rent as determined by an appraisal and meet the Port's environmental requirements as determined by the BHC.
 2. Should the existing tenant decide not to accept these conditions, or choose to voluntarily cease their operations on the property, or the property is vacant, the Director of Real Estate, in consultation with the Directors of Environmental Management, Marketing, Planning and Research and Financial Management shall recommend several alternative uses for the property. The analysis of alternate uses will include an analysis of job creation and economic impact for the property. Each alternative will then have its own cost, revenue and environmental comparisons, as well as the number of jobs that will be created/retained with a recommended alternative that will be presented to the Department's Project Review Committee (PRC).
 - a) Staff shall ensure that the planned use conforms to the land use designation contained in the Port Master Plan (PMP) as certified by the State of California Coastal Commission.
 - b) Should the vacant unleased property be identified as better suited for use inconsistent with the PMP, the Executive Director shall recommend to the BHC amendments to the PMP and set forth the basis for the proposed recommendation.
 3. Once the Executive Director and the Project Review Committee have approved the lease recommendation, the Executive Director shall select a Lease Negotiation Team to begin negotiations with the tenant.
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4.3 *Negotiations*

1. *Prior to Negotiations*

The Director of Real Estate will prepare a Term Sheet describing the parameters of the agreement or amendment that are being recommended and proposed for negotiations. The Term Sheet is to be prepared and submitted to the Executive Director for review before negotiations begin. Prior to completing the Term Sheet, the Director of Real Estate shall:

- a) Discuss the proposed lease terms and conditions with relevant disciplines among Port staff to gain their input. Such matters as a historical analysis of Tenant's performance, appropriate operational use of property for long range planning purposes, environmental and safety requirements, possible legal issues, engineering considerations and possible alternative uses of the property in question shall be taken into consideration.
- b) Consider the matter of other similar leases and agreements and achieve a level of uniformity between similar types of leases.

2. *During Negotiations*

- a) At the outset of negotiations, every effort will be made to agree on a reasonable period of time for the completion of negotiations. The tenant is to be informed that other alternatives, including other potential tenants, will be considered if negotiations cannot be concluded within a reasonable period of time.
- b) It is anticipated that during negotiations certain compromises may have to be made, and it will be the responsibility of the lead negotiator to determine whether additional authority needs to be obtained from the Director of Real Estate. In the same manner, it will be the responsibility of the Director of Real Estate to determine whether additional instructions should be obtained from the Executive Director or the BHC.

3. *Approval of Negotiated Agreement*

- a) Before the final draft document is submitted to either the existing or other Qualified Tenant for execution, it is to be reviewed and approved by the Executive Director or designee.
 - b) Once the lease, agreement, amendment or compensation adjustment has been negotiated, it will be submitted to the Executive Director and, as necessary, Board of Harbor Commissioners for approval and execution. The Executive Director is authorized to approve and execute leases up to 5 years in length AND up to his signature authority for annual rent. The Board of Harbor Commissioners must approve leases that exceed 5 years in length OR exceed the Executive Director's signature authority for annual rent.
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5. Administration of Lease Documents

The following procedures will be initiated for both long-term and short-term leases to ensure that negotiated agreements are properly prepared, notes, files, and related documents are filed properly; and appropriate Department staff advised of the agreement's terms and conditions. These procedures are as follows:

5.1. Documentation Preparation

1. All initial requests to the City Attorney for document preparation shall be made by the Director of Real Estate and shall be made in writing. It is the responsibility of the City Attorney to record all changes in successive drafts of documents prepared by that Office. Preferably, those changes should be noted by preparing strike out/underline drafts highlighting the changes.

It is the responsibility of the lead negotiator to circulate the first draft prepared by the City Attorney to the Wharfinger and Accounting divisions for review and subsequent discussion with the Negotiating Team as to billing and collection procedures. Subsequent drafts containing substantive compensation changes must be similarly circulated and reviewed.

5.2. After Negotiations

Immediately following the approval and execution of the lease, agreement, amendment or periodic compensation adjustment, the Director of Real Estate will prepare a memorandum for signature by the Executive Director to be sent to all relevant divisions and sections setting forth responsibility for implementation and ongoing administration of the agreement. The purpose of the memorandum is to highlight unusual provisions and deviations from standard practices and to provide special instructions as needed. If there are no deviations or unusual provisions, the memorandum should so state.

5.3. Administration

All files, records, and materials compiled, generated, or assembled during the leasing process shall be centrally filed and administered by the Director of Real Estate.

6. Definitions

6.1 General

Qualified Property -	Property managed by the Port and held within the State Tidelands Trust, excluding properties considered for Qualified Exemption.
Qualified Exemptions -	<p>The BHC may choose to exempt the following properties from the procedures set forth within the Leasing Policy:</p> <ol style="list-style-type: none"> a. Property occupied under Space Assignment b. Property occupied under a Berth Assignment c. Property occupied by other municipalities, state agencies, or other governmental authorities d. Relocation sites for existing tenants whose relocation is required by the Port e. Pipeline rights-of-way f. Property used for National Homeland Security purposes g. Property used for the commercial fishing industry. h. The Board of Harbor Commissioners reserves the right to exempt property based on strategic, environmental or competitive factors when it determines it is in the best interest of the City. Such determinations are to be formally adopted by the Board with reasons supporting such an action. i. All properties are exempt during times of natural disaster, acts of God, time of war, following terrorist attack when such acts severely impact Port operations, force major events or as otherwise indicated by law. <p>Property determined Qualified Exempt shall be leased according to contracting and lease requirements of the Port and City, including BHC approval, CAO review, and City Council approval, when required.</p>
Qualified Tenant -	Potential or existing Tenant providing a relative financial, operational, economic, environmental, and safety benefit to the Port, as described in the Project Report and/or Request for Proposal (RFP).
Most Qualified Tenant -	Potential or existing Tenant providing the greatest relative financial, operational, economic, environmental, and safety benefit to the Port.
Available -	<p>Qualified Property is considered Available when:</p> <ul style="list-style-type: none"> Site is not leased, or Site is occupied and permit/lease shall expire within one year, or Site is occupied by Qualified Tenant scheduled to be relocated to alternative site within the foreseeable future.

Space Assignment -	Per Tariff No. 4 (Item 800), space assignments are assignments of property for the assembly and storage of merchandise or for other purposes for a thirty (30) day period. If circumstance warrant, one or more renewals for an additional thirty (30) days or longer or shorter period may be granted.
Berth Assignment -	Per Tariff No. 4 (Item 1000), berth assignments are a preferential right granted to a person to use a certain berth, wharf or facility, including such improvement and areas as are designated in the assignment. Berth assignments shall include only the right to dock vessels at the assigned berth, to embark and disembark passengers and their baggage, and to assemble and distribute the cargoes of such vessels over, through or upon the assigned area. The ED may make temporary assignments of said berth, or any part thereof, and may be revoked with thirty (30) days notice at any time upon written notice to the assignee.
Project Review Committee	Committee comprised of managers from each division involved in development decisions. The Committee is responsible for ensuring department-wide coordination of all projects.
Request for Proposal (RFP) -	<p>RFP will be used to solicit interest from potential Tenants for Qualified Property. The Lease and Evaluation Team will review any and all proposals transmitted by potential Tenants in conformance with the RFP to determine the Qualified Tenants. The RFP shall provide the following information, instructions, and requests, in addition to other sections deemed appropriate by the Lease Evaluation Team:</p> <ul style="list-style-type: none"> • Description of Site • Objective regarding use of site • Term or life of potential lease/agreement • Operating Requirements, including, but not limited to, terminal operations and environmental policies/procedures. • Proposal Requirements • Proposal Selection Criteria • Proposal Evaluation Process and Timing • Notification • Other requirements and conditions
Triple-Net Lease	Unless specified otherwise in the lease, tenant to pay all property taxes, insurance and utilities related to occupying the property.

6.2 *Negotiating Team*

1) *Tenant Selection Committee*

The Tenant Selection Committee (Committee) shall be selected by the Executive Director from the following disciplines, (1) Real Estate; (2) Planning; (3) Environmental; (4) Engineering; (5) Marketing; (6) Wharfingers; and (7) Finance. The City Attorney will act as legal advisor to the Committee.

The Executive Director, or authorized designee, shall direct the Committee. The Committee shall administer the proposal evaluation process to determine the Most Qualified Tenant and report their findings and recommendations to the Board of Harbor Commissioners and Executive Director. The City Attorney shall be the legal advisor to the Committee and will not be a participant in the selection process.

A written report shall be prepared which summarizes the findings and recommendations of the Committee. All information gathered and assembled to produce the written report shall be collected and retained in the Real Estate Division.

2) *Lease Negotiating Team (LNT)*

The LNT will consist of a minimum of three persons; Director of Real Estate, Director of Financial Management and Director of Environmental Management. The City Attorney shall participate as the legal advisor to the LNT. The Executive Director will appoint a lead negotiator, and make other additions to the LNT as deemed appropriate.

The LNT will conduct negotiations consistent with directives provided by the Executive Director.

The LNT shall negotiate with the parties authorized by the BHC.

The team will draw on the expertise of the Department's resource people throughout the negotiation process. The lead negotiator will determine if resource people will participate in negotiations or be asked to provide backup and resource information outside of the negotiations.

It will be the responsibility of the lead negotiator to keep the senior managers and Executive Director informed of the negotiations throughout the process, keep accurate notes and records of all negotiation meetings, and prepare the written reports. The lead negotiator is also responsible for ensuring all notes, records and correspondences relating to the negotiations be collected and retained in the Real Estate Division.

While the lead negotiator may assign a person reporting to him or her to assist in the negotiations, the lead negotiator will maintain a high degree of familiarity with the negotiations to be able to discuss the status of negotiations with the Executive Director and the Board of Harbor Commissioners at any time.

LEASING POLICY DIRECTIVES



Leasing Policy Directive No. 1

Establishing Land Values for Determining Land and Water Rental Rates

To determine land and water rental rates for industrial, commercial and retail properties, the adopted Rate of Return will be applied to the appraised land and water values. This will produce the appropriate rental rate.

The Director of Real Estate will ensure that a benchmark appraisal to establish land and water values will be conducted every year, or as deemed necessary by market trends. This will ensure that land values reflect the current market. Due to the uniqueness and size of Port tenant's leasehold interest, the benchmark appraisal will be of a hypothetical 150-acre waterfront and backland properties, with a hypothetical corresponding 5-acre water area. Also, appraised will be a 50-acre vacant industrial site removed from the waterfront, but within the Harbor District.

Once the appraised values are determined, the Executive Director, with the Board of Harbor Commissioner's approval, will adopt these land values. The Board's adopted Rate of Return for land and water rents will be applied to the land values to determine land and water rental rates.

The Rate of Return will be determined by surveying Ports on the West Coast, as well as major land owners in the Southern California area such as the Watson Land Company, and major financial institutions to determine their established rate of return for land rent. Based on the survey, the Director of Real Estate will recommend to the Executive Director a rate of return that will be presented to the BHC for approval. Rate of Return surveys will be conducted every year by the Director of Real Estate and presented to the Board for approval if any significant changes are identified.

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Leasing Policy Directive No. 2

Leases must also include applicable Port environmental requirements including but not limited to:

1. Air emission controls
2. Water, stormwater and sediment quality
3. Trash management and recycling
4. Lighting and noise control and facility appearance
5. Hazardous material management requirements
6. Facility restoration and decommissioning requirements
7. CEQA mitigation measures and reporting requirements

Additionally, the lease must include the following provisions:

1. Tenant requirement to develop an Environmental Facilities Plan and environmental training requirements;
2. Tenant requirement to keep up-to-date records at the leasehold of all pertinent environmental permits and regulatory requirements;
3. Tenant requirement to inform the Port of environmental/regulatory issues at the leasehold and copy the Port on all environmental/regulatory notices and correspondence;
4. Right of Port to enter the leased facility and conduct environmental compliance audits;
5. Right of Port to review and adjust tenant's environmental performance and requirements during periodic lease adjustments/rate negotiations;
6. Right of Port to require bonding, if appropriate, for specific environmental liability, and to conduct site remediation, at the tenant's expense, if tenant fails to meet remediation requirements within a reasonable time frame.

The Director of Environmental Management shall review all leases prior to approval to ensure compliance with the Port's environmental requirements.

Lease Environmental Requirements

To lessen the air quality impacts of the tenant's operations, each lease will contain provisions that will address these impacts. Among these will be:

1. Compliance with the vessel speed reduction program;
 2. Where appropriate, AMPing vessels while in Port;
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3. Use of low sulfur fuel in main and auxiliary engines in the South Coast Air Basin;
4. Alternate fuel in all new yard tractors;
5. The use of clean “low emission” trucks and locomotives to service the terminal, as required to reduce health risks.

These measures may be phased in over time. Tenant may propose substitution alternative measures as long as they meet the equivalent emission reductions.

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