

# “To Be Delivered” Material

For

## City of Sacramento

City Council  
Housing Authority  
Redevelopment Agency  
Economic Development Commission  
Sacramento City Financing Authority

### Agenda Packet

Submitted: September 22, 2005

**For the Meeting of: September 27, 2005 (afternoon)**

The attached materials were not available at the time the Agenda Packet was prepared.

**Subject:** Proposed Governance change at the Port of Sacramento



Approved By: Tom Zeidner

**Contact Information:**

Tom Zeidner, Sr. Project Manager – 808-1931

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**REPORT TO COUNCIL**  
**City of Sacramento**  
915 I Street, Sacramento, CA 95814-2604  
www.cityofsacramento.org

**STAFF REPORT**  
September 27, 2005

Honorable Mayor and  
Members of the City Council

**Subject:** Port of Sacramento Governance Modification

**Location/Council District:** Citywide

**Recommendation:**

Adopt a resolution authorizing execution of a Letter of Intent related to a proposed modification of governance for the Port of Sacramento.

**Contact:** Tom Zeidner, Senior Project Manager, (916) 808-1931  
**Presenters:** Tom Zeidner, Senior Project Manager  
**Department:** Economic Development  
**Division:** Citywide  
**Organization No:** 4451

**Summary:**

This report describes the results of recent negotiations concerning a proposed modification of the governance structure of the Sacramento-Yolo Port District Commission in favor of the City of West Sacramento.

**Committee/Commission Action:** None

**Background Information:**

The Port of Sacramento was created in 1947 by a vote of the citizens of Sacramento and Yolo Counties. The Port entity was subsequently authorized to construct and operate an inland deepwater port, ship channel and harbor for the purpose of expanding the economy of the Sacramento region. Voter-approved bond issues followed and the ship channel and port facilities were constructed between 1949 and 1963, when the facility opened for business.

The Port terminal occupies 150 acres of land in the geographic center of the City of West Sacramento, which incorporated around the Port property in 1987. The Port entity also owns several hundred acres of undeveloped land located directly across the deepwater channel from the Port Terminal. This undeveloped property is commonly referred to as "Southport".

The Sacramento-Yolo Port District Commission is the governing Board of the Port of Sacramento. As originally composed, the Commission consisted of five members, with two representing the City of Sacramento, two representing the County of Sacramento and one representing Yolo County. Following incorporation of the City of West Sacramento, the Commission was enlarged and its composition modified. This resulted in a seven-member Commission, with one each from City of West Sacramento and Yolo County, two each from the City of Sacramento and Sacramento County, and a single member jointly appointed by Sacramento City and County.

As has been discussed in earlier reports to Council, the Port is currently at a critical juncture. Cargo volumes and revenues are down and a serious cash deficit is in the offing. Against this backdrop, some in the community believe the Port is no longer viable and has outlived its usefulness, while others believe it could be an economic engine adding greater vitality to the region. While these issues have been under discussion for years, current circumstances add considerable urgency to the situation, prompting the Port and its appointing jurisdictions (City of West Sacramento, Yolo County, City of Sacramento and Sacramento County) to closely examine the Port's future.

To address the issue of long-term viability, the Port commissioned a Maritime Demand Analysis and Port Master Land Use Plan. The goal of these was to provide a fact-based analysis to assist policy makers in clearly defining the Port's future. In doing so, the scope of the effort was to include the following elements:

- Provide a detailed assessment of the market opportunities, competitiveness and cargo outlook for the Port;
- Characterize the Port's regional economic significance;
- Identify the Port's future facility and land requirements;
- Provide recommendations on a Port development strategy;
- Evaluate the potential for non-maritime activities on the Port's undeveloped lands;
- Evaluate land-use alternatives in the Port area;
- Identify traffic and air quality impacts associated with port activity; and
- Establish a land-use plan that protects and buffers Port and non-Port activities.

The Maritime Demand Analysis was completed in September, 2004. Among its findings was a conclusion that, should the Port remain open, all anticipated cargo volumes could be handled on property north of the shipping channel. Thus, the bulk of the Port's vacant property in the Southport area was deemed to be surplus to current and future needs as projected in that study.

The Master Land Use Plan therefore proceeded to develop alternative scenarios for non-maritime use of these surplus Port lands. This was done through two public workshops in the latter half of 2004. The process resulted in five land use alternatives, ranging from an expansion of Port-related activities to Southport, to eliminating Port activities completely in favor of residential and commercial development.

The five alternative land-use scenarios were presented to the Port Commission and West Sacramento City Council in February 2005. Rather than providing recommendations regarding preferred alternative(s), both bodies recommended preparation of findings and principles on which to base formulation of a preferred conceptual land use plan. A joint meeting of the Port Commission and West Sacramento City Council was held on February 28, 2005, at which time the findings and principles were approved.

Prominent within both was the matter of Port governance and the City of West Sacramento's representation therein. As mentioned above, West Sacramento currently appoints only one of seven members to the Port Commission. Among the findings approved on February 28th was that "there is a fundamental imbalance in Port governance – the host city has inadequate representation on the Port Commission." Accordingly, a guiding principle concurrently approved was: "The appointing jurisdictions are committed to amending the governance structure of the Port District to provide the City of West Sacramento a greater voice on the Port Commission."

On June 7, 2005, following one of Staff's periodic updates on the Port, the City Council adopted an intent motion with respect to a potential shift in governance in favor of the City of West Sacramento. That motion specified four conditions to be satisfied in connection with any relinquishment of representation by the City and County of Sacramento on the Port Commission. Those conditions were:

1. There will be no liability or recourse back to the City and County and Sacramento due to actions on the part of the Port;
2. The Port Commission's powers, which include that of real property condemnation, will not be exercised in the City or County of Sacramento without specific prior authorization from those jurisdictions;
3. The Port's deepwater channel and terminal cannot be sold or dismantled without prior consent of the City and County of Sacramento; and
4. The City and County of Sacramento are to receive a fair return on their original investment in the Port of Sacramento.

The fourth condition relates to the City and County of Sacramento having funded more than 90 percent of the original costs associated with acquiring Port property and constructing its facilities. To assure that the City and County receive recompense for this investment in connection with relinquishing some or all representation on the Port

Commission, arrangements were to be considered to allow sharing of revenues that result from eventual development of the Southport property.

Staffs representing the various appointing jurisdictions have thus been in discussions concerning potential terms of an arrangement through which the City of West Sacramento would be given a greater voice in the Port's governance. Those discussions have resulted in a Letter of Intent (LOI), included as an attachment to this report. The LOI indicates the general agreement of the appointing jurisdictions to support legislation that will: 1) reduce the geographic boundaries of the Port District to coincide with Yolo County's first supervisorial district; and 2) reduce the Port Commission to five members, four of whom to be appointed by the City of West Sacramento, and one by the County of Yolo.

The LOI also signals the appointing jurisdictions' intent to execute a formal binding agreement directing the Port to "expeditiously market its Seaway real estate" (the surplus Southport property referred to above). Resulting transactions will generally require that property be sold for no less than 90 percent of either appraised value or offering price. The City and County of Sacramento will be given notice of pending sales or leases of Port property, as well as any request for proposals (RFP), appraisals, or offerings involving Port property. Following such notification, the City/County will have 30 days to express any objections to the terms of proposed sales, RFPs, appraisals or offerings. In event such objections cannot be resolved, the Port may refer the matter to arbitration.

The LOI intends that the subject property will be completely liquidated, or leased, within 10 years. The ten-year period may be extended upon agreement of all parties to the LOI. In the event any property is not liquidated or leased after ten years, and such period is not extended, remaining property will go to a third-party commercial real estate firm for liquidation.

The LOI is specific in the disposition of funds from the Port's sale or lease of the surplus property. The first \$50 million will be retained by the Port for its payment of obligations including: 1) payment of outstanding debt; 2) operations liabilities, to include pension fund payments and other liabilities; 3) addressing deferred maintenance at the Port terminal facilities; and 4) costs related to transition to a "landlord" Port.

The parties to the LOI further agree that, once this \$50 million accrues to the Port, the next \$23 million in proceeds will be paid into a Riverfront Enhancement Fund, to be controlled by the City and County of Sacramento. The next and subsequent \$27 million resulting from the sale of Port property will be shared equally between the Port and the Enhancement Fund. To the extent that there are sales proceeds exceeding \$100 million, 60 percent of these will accrue to the Enhancement Fund, with the remaining 40 percent accruing to the Port.

The intent of the Riverfront Enhancement Fund will be to finance projects of regional benefit along the Sacramento and American Rivers, within Sacramento and Yolo

Counties. Proposed projects are to be described in summary form to the Port District by the City and County of Sacramento. The District and its Commission will have 30 days to reject proposed projects. In the event such objections are not resolved, the disputed matter may be referred to arbitration.

To address other conditions contained in the intent motion adopted by the City Council on June 7th, the LOI indicates the parties' intent to prohibit exercise of the Port's powers within the City and County of Sacramento without specific authorization from those entities. The Port's deepwater channel and terminal are also agreed to not to be sold or dismantled without the prior consent of the City and County of Sacramento and the County of Yolo.

Upon approval of the LOI by the appointing jurisdictions, the terms contained therein will be incorporated into a formal binding agreement, to be presented to the City Council at a later date. Other provisions of that agreement will be interim modifications to the composition of the Port Commission such that: 1) the City and County of Sacramento will each retain one of their seats on the Commission; 2) the County of Yolo will retain its one seat; and 3) the City of West Sacramento will have four seats on the Port Commission. In increasing West Sacramento's interim representation on the Commission, the City and County of Sacramento will: 1) reaffirm the Mayor of West Sacramento is their joint appointment; and 2) each appoint members of the West Sacramento City Council as their second seats on the Commission. This interim modification to the Commission will remain in effect until legislation is adopted at the state level, permanently modifying the Commission to four appointees from the City of West Sacramento and one from the County of Yolo.

**Financial Considerations:**

Approval and execution of the Letter of Intent will have no direct financial impact on the City of Sacramento. Any projects approved pursuant to the Riverfront Enhancement Fund described herein will be funded solely by that Fund, unless otherwise approved specifically by the City Council

**Environmental Considerations:**

Projects funded through the Riverfront Enhancement Fund will be subject to specific environmental review, as required.

**Policy Considerations:**

The actions described in this report are consistent with the City's Strategic Plan goals to expand economic development throughout the City and achieve sustainability and livability.

**Emerging Small Business Development (ESBD):**

No goods or services are being purchased in connection with the recommended action.

Respectfully Submitted By: LF Saubey  
for Wendy S. Saunders  
Economic Development Director

Recommendation Approved:

DRB A  
for ROBERT P. THOMAS  
City Manager

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**RESOLUTION NO. 2005-XXXX**

Adopted by the Sacramento City Council

(Date)

**APPROVING A LETTER OF INTENT  
TO MODIFY THE GOVERNANCE STRUCTURE  
OF THE SACRAMENTO-YOLO PORT DISTRICT COMMISSION  
AND RELATED ACTIONS**

**BACKGROUND**

- A. On June 7, 2005, Council adopted an intent motion indicating conditions under which the City of Sacramento would support diminishing its role in the governance of the Sacramento-Yolo Port District Commission (Port Commission) in favor of the City of West Sacramento.
- B. A Letter of Intent (LOI) has since been negotiated amongst the appointing jurisdictions of the Port Commission indicating the general terms under which they will proceed in modifying the governance structure of the Port Commission.
- C. The terms specified in the LOI are consistent with the intent motion adopted on June 7, 2005.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL  
RESOLVES AS FOLLOWS:**

- Section 1. The terms of the LOI presented at this meeting of the Council are hereby approved.
- Section 2. Mayor Fargo, Councilmember Waters and the City Manager are authorized to execute the LOI on behalf of the City of Sacramento.

**Attachment 1**

**Letter of Intent**

Made and Entered Into by

**the Sacramento Yolo Port District (Port), the County of Sacramento, the County of Yolo,  
the City of Sacramento, and the City of West Sacramento (collectively the "Parties")  
regarding the Governance of the Port**

Whereas, the Port faces significant financial distress prompting the several recent studies, including a maritime demand analysis, master land use plan and financial and operational analysis and a workout plan; and

Whereas, those studies stimulated renewed discussions regarding possible changes to the structure of governance of the Port; and

Whereas, at the most recent joint meeting of the Port Commission and the City of West Sacramento, the bodies endorsed guiding principles regarding the future of the Port including the need to modify the governance of the Port to increase representation from West Sacramento; and

Whereas, the Port Commission requested that administrative executives from the appointing jurisdictions examine the issues surrounding a change in governance and recommend a course of action; and

Whereas, the administrative executives developed a set of recommendations for presentation to the Port and the appointing jurisdictions of the Port Commission; and

Whereas, in accordance with the 2004 Port of Sacramento Maritime Demand Analysis, real estate owned by the Port with the exception of the north terminal property could be sold to satisfy existing obligations and recognize previous investments; and

Whereas, in the event of a closure, liquidation or other legal action resulting in closure or liquidation, under current law the City of West Sacramento would be the beneficiary of all Port assets, net of liabilities, as a result of the governance change contemplated herein; and

Whereas, Sacramento City and Sacramento County have established the following four conditions for modifying the governance of the Port to increase representation from West Sacramento:

1. There be no liability or recourse back to the City and County due to actions of the Port;
2. The Port Commission's powers cannot be exercised in the City or County of Sacramento without the specific authorization of those jurisdictions;

3. The Port's deepwater channel and terminal will not be sold or dismantled without prior consent of the City and County of Sacramento; and
4. The City and County receive a fair return on their original investment in the Port.

Whereas, the Parties seek to recognize investments in the Port by directing revenues not required by the Port to projects of mutual benefit to the Parties such as projects or programs on the Sacramento and American riverfronts; and

Whereas, the pressing nature of the Port's financial situation requires immediate action to maintain control, preserve options and achieve the best outcome; and

Whereas, the content of this letter of intent, once adopted, will be converted into a binding agreement which will be presented to the Port Commission, the County of Sacramento, the County of Yolo, the City of Sacramento and the City of West Sacramento.

Now therefore the Parties express their Intent as follows:

1. To promote state legislation that would modify the Port District by:
  - a. Contracting the size of the District so that the boundaries would coincide with the first supervisorial district of the County of Yolo as of the date of this letter of intent.
  - b. Changing the governing board to five members as follows:
    - (1) Four (4) members appointed by the City of West Sacramento, which will be residents of the City of West Sacramento.
    - (2) One (1) member appointed by the County of Yolo, which will be a resident of the City of West Sacramento.
  - b. Legislation shall include provisions to clarify the use of funds deposited in the Riverfront Enhancement Fund.
2. To adopt a formal binding agreement between the Parties to:
  - a. In accordance with the September 2004 Port of Sacramento Maritime Demand Analysis, permit the Port to expeditiously market its Seaway real estate that is not required for the on-going operation of a landlord port (Exhibit "A") and in consultation with the original appointing jurisdictions permit the Port to sell its real estate in a manner consistent with securing favorable prices.

- (1) The Port will provide the City/County 30 days notice of the terms of a pending sale or lease of subject Port property, including any RFP, appraisal or offering.
- (2) Sales will require the administrative approval of the City and County except as provided in 2.a.(6) below.
- (3) Administrative approval shall be based solely upon "fair return" for the property.
- (4) Administrative denial must cite in writing reasons for denial and changes that would make the transaction acceptable.
- (5) The City/County have 30 calendar days to voice objections to the terms of sale or lease, RFP, appraisal or offering. If no objection is put forth in this period, the sale or a lease, RFP, appraisal or offering document is deemed approved.
- (6) No administrative approval shall be required if any of the following conditions are met :
  - (a) The project is 10 acres or less in size; (however, administrative approval will be required for any more than one sale of property, 10 acres or less in size, to the same buyer within a two-year period) or
  - (b) If the property has been offered for at least 180 days and the sales or capitalized lease price is at least 90% of the offering price; or
  - (c) If an M.A.I. appraisal has been prepared for the property, the City and County of Sacramento have been given 30 days written notice and a copy of the appraisal, and the sales or capitalized lease price is at least 90% of the appraised value;or
  - (d) If the Port solicits proposals for the property, and receives at least three proposals and selects a proposal that is at least 90% of the highest proposal
  - (e) If the project is contained within the Sacramento Riverfront Master Plan
- (7) In the event that City/County objects to a proposed sale or lease, and the Port rejects such objection, the Port may ask for the matter to be referred to arbitration with the parties splitting costs of arbitration.
- (8) All Seaway property (as depicted in Exhibit A) will be liquidated or leased within 10 years; however the 10 year period may be extended upon agreement of all parties. The parties agree that the approval of the extension of time will not be unreasonably withheld.
- (9) If the 10-year period is not extended by mutual agreement, all remaining Seaway property will go to a third party commercial real estate firm for liquidation

- b. Distribute proceeds from the sale of Seaway properties such that:
- (1) the first \$50 million would be retained by Port to
    - (a) Pay existing and contingent obligations, including but not limited to:
      - a. The payment of outstanding debt
      - b. The payment of operations liabilities
        - i. Pension fund
        - ii. Accounts Payable
        - iii. Other operations liabilities
      - c. The payoff of obsolete equipment leases
      - d. Environmental cleanup
      - e. The creation of working capital
      - f. The creation of a reserve fund
    - (b) Putting the north terminal dockside facilities in a state of good repair and
    - (c) Funding the transition costs to a landlord Port
  - (2) Revenues from the sale of the Port's real estate beyond the initial \$50 million would accrue to the Enhancement Fund for programs and projects of mutual benefit to the Parties exclusive of the Port until \$23 million had been so delivered.
  - (3) The next \$27 million in revenues from the sale of the Port's Seaway real estate between the Port and the Enhancement Fund be equally shared
  - (4) Any revenues from the sale of Port's real estate beyond the initial \$100 million, 40% will accruing to the Port and 60% will accrue to the Enhancement Fund.
- c. Establish a Riverfront Enhancement Fund to receive the proceeds from the sale of the Port's real estate that is not dedicated to the Port for on-going operations. The Riverfront Enhancement Fund will be controlled by the County and City of Sacramento. Once a project is agreed upon, a summary of the project and anticipated costs will be sent to the Sacramento-Yolo Port District for review. The District and its Commission shall have 30 days (including holidays and weekends) to reject the proposal. Administrative approval shall not be unreasonably withheld. Administrative denial must cite in writing reasons for denial and changes that would make the transaction acceptable. If no written response occurs within the 30-day review period, the expenditure will be deemed approved and deemed to conform to District purposes. In the event that City/County of Sacramento and the Port District can not come to a resolution, either party may ask for the matter to be referred to arbitration with the parties splitting costs of arbitration. Funds will be expended on projects related to the Sacramento and American Rivers, including distributaries and fluvial features, encompassed within the Counties of Sacramento and Yolo. Projects may include, but are not limited to, those of regional significance; capital improvements on riverfronts; maintenance

and operations of river fronts, water ways, and park ways; conservation and environmental studies and projects all of which are designed to improve commerce within the District.

- d. Proceeds from the lease or sale of north terminal properties or any other properties of the Port not previously described herein will accrue to the port for operation and maintenance while the port is in operation.
- e. If the Port is closed and liquidated within ten (10) years, net proceeds will accrue to the Riverfront Enhancement Fund, less funds already transmitted and any liquidation costs. If the port is closed and liquidated after 10 years from the date of this agreement and prior to 20 years, net proceeds from the liquidation will be distributed to the Riverfront Enhancement Fund less 10 percent for each year after the initial ten (10) year period. For example if such liquidation occurs during year eleven, 90 percent will accrue to the "Fund" and 10 percent will accrue to the host jurisdiction; if the liquidation occurs in year 12, 80 percent will accrue to the fund and 20 percent will accrue to the host jurisdiction, and so on until year 20 in which 100 percent of the net proceeds will accrue to the host jurisdiction. Net proceeds are defined for the purposes of this letter of intent as the amount of money received for the Port's remaining assets less funds already transmitted and any liquidation costs, including retirement of Port liabilities and environmental remediation and less reimbursement to the City of West Sacramento for any investment the city has made in the Port of Sacramento, infrastructure required for the Port and on port property, and infrastructure required to market Port property.
- f. Prohibiting the exercise of the Port's powers in the County of Sacramento, the City of Sacramento and the County of Yolo (excepting the City of West Sacramento), without the specific authorization respectively from the County of Sacramento, the City of Sacramento or the County of Yolo, and in the City of West Sacramento if West Sacramento has fewer than 2/3 of the appointments to the Port Commission.
- g. The Port's deepwater channel and terminal will not be sold or dismantled without prior consent of the City and County of Sacramento and the County of Yolo
- h. After the adoption of a binding agreement between the Port Commission, County of Sacramento, County of Yolo, City of Sacramento and the City of West Sacramento containing the items enclosed in this letter of intent, and until such time that a permanent legislative change is made to the composition of the Port Commission, the following modifications will be

made to the composition of the Port Commission for an indefinite period of time:

1. The City of Sacramento shall retain one(1) of its seats on the Port Commission
  2. The County of Sacramento shall retain one(1) of its seats on the Port Commission
  3. The County of Yolo shall retain one(1) seat on the Port Commission
  4. The City of West Sacramento shall have four seats on the Commission as follows:
    - a. The City and County of Sacramento shall reaffirm that the Mayor of the City of West Sacramento represents their joint appointment to the Port Commission
    - b. The County of Sacramento shall appoint a member of the West Sacramento City Council as its second seat on the Port Commission as submitted by the West Sacramento City Council.
    - c. The City of Sacramento shall appoint a member of the West Sacramento City Council as its second seat on the Port Commission as submitted by the West Sacramento City Council.
    - d. The City of West Sacramento shall retain is own appointment to the Port Commission
- m. The reconstituted Port Commission shall comply with all provisions of the letter of intent and subsequently adopted binding agreement.
- n. The Port of Sacramento will continue to work with the current appointing jurisdictions of the Sacramento-Yolo Port District on the location of future sub-zones of the Port of Sacramento Free Trade Zone to be potentially located within Sacramento and Yolo Counties. Existing sub-zones in the City and County of Sacramento shall remain in place unless the jurisdiction in which they are located request that they be terminated.

Adopted by each of the current appointing jurisdictions of the Sacramento-Yolo Port District.

Mike McGowan, Chair Sacramento Yolo Port District	Date of Adoption
Roger Dickinson, Chair, Board of Supervisors County of Sacramento	Date of Adoption
Helen Thomson, Chair, Board of Supervisors County of Yolo	Date of Adoption

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Heather Fargo, Mayor  
City of Sacramento

Date of Adoption

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Christopher M. Cabaldon, Mayor  
City of West Sacramento

Date of Adoption

Attest:

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Clerk  
Port Commission

Date

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Clerk of the Board of Supervisors  
County of Sacramento

Date

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Clerk of the Board of Supervisors  
County of Yolo

Date

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City Clerk  
City of Sacramento

Date

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City Clerk  
City of West Sacramento

Date

Exhibit A  
Port of Sacramento Seaway Property

