

PUBLIC ART PROGRAM

SECTION: Communications

POLICY NUMBER: AP 909

INITIAL DATE PREPARED: September 2003

LAST DATE REVISED:

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I. INTRODUCTION

Throughout history, the arts have been instrumental in creating unique public places that have yielded physical, social and economic benefits for a community. The purpose of this Administrative Policy and Procedure AP909 is to provide a process for selecting, commissioning, placing, maintaining and de-accessioning the works of art in the Port's Public Art Collection, per Port Ordinance No. 3694 dated May 7, 2002.

AP909 is in keeping with the Port's mission to devote its skills and the Port's resources to quality facilities and services for its airport, real estate, and seaport tenants and customers, so that through its activities it creates economic vitality, jobs and waterfront enjoyment for Oakland and the region, while generating earnings to reinvest in its activities.

II. VISION AND INTENT

As a vital partner to the region's economy, the Port of Oakland is committed to a public art program of high artistic excellence that supports, articulates and enhances the work of the Port, while providing enjoyment, education, access and a sense of the unique place that is the Bay Area.

It is the intent of the Public Art Program to provide the opportunity for the public to experience high quality art of enduring value that reflects the diversity of the region and its people. The Port is committed to commissioning a wide range of artistic styles, forms, media and disciplines that characterize the breadth of contributions an artist can make to the public arena.

III. PUBLIC ART ORDINANCE COMPLIANCE

A. Aviation

1. The Director of Aviation shall include in all estimates for necessary expenditures and all requests for authorization or appropriations for Port Development Projects and Public Facilities, excluding construction of roadways, utilities, airfield projects and non-Port funded tenant developments, an amount to be set aside and made a part of the Public Art Account and used for the selection, acquisition and display of works of art equal to at least one percent (1%) of the related Construction Costs.

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2. Funding set aside for Public Art as defined above shall be expended for Public Art within one year from the date of completion of the Development Project or Public Facility from which the funds were derived.
 3. For projects or programs that have been approved by the Board of Port Commissioners before the approval of this ordinance, but not yet completed, the Board shall determine on a case-by-case basis whether or not to apply this ordinance retroactively.
 4. If the rules or limitations governing a source of funding or appropriate law governing any particular project do not permit the expenditure of such funds on art or certain forms of art, the amount of funds so restricted shall be excluded from the Construction Cost, as defined herein, in making the aforesaid calculations.

B. Maritime

1. The Maritime Director shall include in all estimates for annual budget expenditures an annual budget allocation of not less than \$150,000 to be set aside and made a part of the Public Art Account and used for the commission, acquisition and performance of Public Art.
2. Funding set aside for Public Art as defined above shall be expended for Public Art in projects that include Public Amenities.

C. Commercial Real Estate (CRE)

The majority of CRE land was given in trust to the Port under the State Tidelands Trust. To uphold the public trust, the Port requires developers who buy tidelands or lease tidelands on a long-term basis to do the following:

1. The Developer shall provide and maintain public art in a publicly accessible place on or in the vicinity of the project site pursuant to this chapter. The cost of such Public Art shall be as follows:
 - a. For development projects with 50,000 square feet or more of new construction, the developer shall commit 0.5% of the building valuation up to \$150,000 toward the purchase or commission of Public Art for the project site.

In lieu of purchasing or commissioning public art for the project site, the developer may elect to pay 0.5% of the building valuation up to \$150,000 to the Public Art Account, as identified below.

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- b. For development projects with less than 50,000 square feet of new construction, the developer is required to commit 0.5% of the building valuation up to \$50,000 toward the purchase or commission of Public Art for the project site.

In lieu of purchasing or commissioning public art for the project site, the developer may elect to pay the amount required by this ordinance to the Commercial Real Estate Public Art Account, as identified below.

2. For any project, the developer may request that the Board of Port Commissioners consider an alternate approach to Public Art if the terms of this ordinance pose unnecessary hardship to the ability of the development project to be realized.
3. If a development project is required to purchase or commission Public Art by both the Port of Oakland and the City of Oakland, the developer only will be required to participate in the City of Oakland public art program.
4. Applicability

The provisions of this ordinance shall apply only to public and private development projects for which a building permit has not been issued as of the effective date of this ordinance.

5. Public Art Standards
- a. The Public Art of a private developer subject to this ordinance is to be privately owned and maintained by the developer or his successor(s), including the future occupants or owners of the Development Project, and such private ownership and maintenance shall be adequately provided for by written agreement, or other appropriate provisions shall be made based on the characteristics of the Public Art.
- b. The Public Art may be used or viewed by or is freely accessible to the patrons, occupants and owners of the development project.
- c. The Public Art shall be in an area open and freely accessible to the general public during business hours at least eight (8) hours each day of at least five (5) days per week (to the extent there are five business days in each week), except for holidays, or public accessibility shall be otherwise provided in an equivalent manner based on the characteristics of the Public Art or its placement on the site.
- d. The Public Art shall be in substantial compliance with other policies.

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6. Ineligible Costs

- a. The architecture of the building or facility, or any portion thereof, including decorative, ornamental or functional elements, unless designed by an artist specifically commissioned for this design enhancement purpose.
- b. Landscape architecture and landscape gardening, except where these elements are designed by an artist specifically commissioned for this design enhancement purpose; or
- c. Costs for services or utilities necessary to operate or maintain the Public Art over time.

IV. DEDICATION AND DISBURSEMENT OF FUNDS

A. Public Art Account

A Public Art Account shall be established in the Capital Improvement Program (CIP) and shall continue from year to year unless specifically terminated by the Board of Port Commissioners. The Public Art Account shall consist of separate sub-accounts established by the Finance Division.

1. A separate sub-account for each of the three Port Revenue Divisions shall be established from which expenditures may be made for the creation, acquisition, presentation and performance of works of Public Art.
2. A separate Administration - Maintenance sub-account shall be established into which shall be deposited funds appropriated as provided pursuant to Section 5 of this Ordinance not to exceed 35% of the aggregate of the Revenue Division sub-accounts together with such other funds as the Board may appropriate, for Public Art Program staff costs and administrative costs that are associated with developing and implementing this Ordinance, including restoration and conservation of Public Art in the Port's collection.
3. A separate proceeds from Sales of Public Art sub-account shall be established and expended for future creation, acquisition, presentation and performance of works of Public Art.

B. Non-Capital Projects

For non-capital projects, funds may be moved out of Maritime and Commercial Real Estate from the CIP into the Port's operating budget for expenditures related to said projects.

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C. Use of Fees

The use of fees collected shall be as follows:

1. The Executive Director shall make recommendations to the Board of Port Commissioners for expenditures from the Public Art Account in accordance with Port budgetary procedures and adopted Public Art program policies and implementation procedures, which expenditures shall be exclusively for the commission, acquisition, installation, improvement, maintenance and insurance of works of Public Art, or for the restoration or preservation of existing Public Art, and for the administration of the Public Art Program.
2. The Executive Director shall provide an annual report to the Board of Port Commissioners on the provision of on-site art installations and arts services, programs, facilities and amenities, and the use of all funds collected and deposited in the Public Art Account, including identification of all income, expenditures and balances of each of the accounts in the fund during the prior fiscal year, and its recommendations for proposed expenditures for the subsequent fiscal year. Upon receipt of such report, the Board of Port Commissioners shall authorize expenditures from the Public Art Account.

V. ELIGIBLE COSTS FOR ACQUISITION OF ARTWORK

Subject to restrictions on expenditures of revenues, the Public Art Project appropriation may be expended for, but is not limited to, the following:

- A. Artist's fee for professional design, execution and installation or performance of the artwork.
- B. Fees for performers, fabricators and other labor.
- C. Supplies and materials.
- D. Equipment rental.
- E. Project related travel.
- F. Transportation of the artwork or stage materials to the site.
- G. City, county and coastal permits, as required.
- H. Taxes, where applicable.
- I. Frames, matts, pedestals, containment and other devices necessary for the security, preservation and display of the artwork.
- J. Temporary stages, arenas and other devices for performance.
- K. Site modifications necessary for the installation or performance of the artwork.
- L. Fire retardant treatments, when necessary.
- M. Insurance, as required.

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- N. Waterworks, electrical and mechanical devices, lighting or other equipment that is an integral part of the artwork or performance.
 - O. Slides and other documentation.
 - P. Purchase of existing artworks.

VI. INELIGIBLE COSTS FOR ACQUISITION OF ARTWORK

In general, the Public Art Program appropriation may not be expended for the following:

- A. Reproductions of original visual artworks. However, limited editions signed by the artist of artwork, such as original prints, cast sculpture and photographs, may be included.
- B. Decorative, ornamental or functional elements that are designed by the project architects, landscape architects or their consultants, unless designed in collaboration with and executed by an artist.
- C. Art objects that are mass-produced of standard design, such as playground equipment or fountains.
- D. Directional elements such as signs, maps or color coding, unless designed and executed by an artist.
- E. Project architects' and landscape architects' fees.
- F. Expenses related to the ongoing operation of the artwork, such as utility costs and electrical, water or mechanical service required to activate the artwork.

VII. ARTIST AND ARTWORK SELECTION PROCEDURE

Implementation of the Public Art Ordinance is the responsibility of the Communications Division. The Director of Communications is responsible for overseeing all functions of the Public Art Program, including facilitation of the Artist and Artwork Selection Procedure. The Director of Communications works with division directors in the development of public art goals and with private developers to include public art in private projects located on Port property.

A. Public Art Committee (PAC)

The PAC is a standing committee appointed by the Port to advise the Port on the Public Art Program. The PAC meets once a month or on an as-needed basis.

1. The PAC is responsible for advising and implementing the Port's Public Art Program. The PAC makes recommendations to the Director of Communications, who in turn reports to the Board of Port Commissioners (Board) on the following:

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- a. Artist selection
 - b. Selection of panelists for Artist Selection Panel
 - c. Inventory and placement of artwork
 - d. Public art programming
 - e. Donations of artwork to the Port's public art collection
 - f. De-accessioning of artwork from the Port's public art collection

2. Membership

Appointments to the PAC are nominated by the Executive Director and approved by the Board. Members' reasonable expenses are reimbursed at a rate consistent with Port Policy. One of the appointed Port representatives serves as the Chair of the PAC. Membership includes no more than:

- a. Three Revenue Division representatives from the Port.
- b. One non-Revenue Division representative from the Port.
- c. One Port Commissioner.
- d. Five arts representatives, including at least one who serves on the board of the Oakland Arts Commission or its Public Art Advisory Committee, and at least three who are practicing artists.

These representatives are professionals in the fields of art, architecture, landscape architecture, dance, theatre, film, video or literary art, or other individuals with considerable knowledge of contemporary visual art, dance, theatre, literary or media arts. Each individual must be a recognized authority in his or her field.

B. Annual Public Art Plan: Identification Of Public Art Projects

The PAC annually prepares a Public Art Plan in concert with each Revenue Division. The plan will include, but not be limited to, a prioritized list of public art projects to be commenced during the current fiscal year and a budget for each project.

1. On an annual basis, the Project Administrator meets with division representatives to identify potential public art projects. The PAC reviews each proposed project together with the division representatives to consider the following:
 - a. Project goals
 - b. Public art budget
 - c. Scope of artists' involvement
 - d. Design and construction schedule
 - e. Artist Selection Panel members
 - f. Artist election process options
 - g. Appropriate sites for artwork

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C. Artist Selection Panel

An Artist Selection Panel is appointed by the PAC, on a project-by-project basis, to recommend appropriate artists and artwork according to the criteria and procedures set forth in these guidelines. The Artist Selection Panel functions in an advisory capacity to the PAC. The PAC reviews recommendations by the Artist Selection Panel, making further recommendations to the Board of Port Commissioners (Board). All final decisions and approvals concerning the acquisition of artwork rest with the Board.

1. Each Artist Selection Panel:
 - a. Reports to the PAC.
 - b. Serves through the completion of one or more public art projects, as assigned by the PAC.

2. Core Membership
 - a. The PAC designates Artist Selection Panel members from a pool of names developed, maintained and continually updated by the Director of Communications for this purpose. Members' reasonable expenses are reimbursed at a rate consistent with Port Policy.
 - b. Each Artist Selection Panel is comprised of no less than three and no more than five professionals selected based on his or her expertise relative to the specific goals and objectives of each project.
 - c. Members of an Artist Selection Panel may represent the fields of art, architecture, landscape architecture, dance, theatre, film, video or literary art, or other individuals with considerable knowledge of contemporary visual art, dance, theatre, literary or media arts. Each individual must be a recognized authority in his or her field.

3. Optional Panel Augmentation

The composition of each Artist Selection Panel depends on the nature of the artwork project and the location of the site. Each individual will be designated by the PAC as either a voting member or non-voting advisor. For certain projects, the PAC may expand the Artist Selection Panel to include the following:

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- a. Project architect, landscape architect and engineer or his or her representative.
 - b. Representative of the participating Port revenue division.
 - c. Residents of the community in or near where the artwork will be located.
 - d. Members of the PAC.
 - e. Consultants who may be called on to provide additional expertise to the Artist Selection Panel.
4. Artist Selection Panel Reference List

In conjunction with PAC recommendations, the Director of Communications will maintain a list of potential representatives who may be considered for appointment to an Artist Selection Panel. The list will include the resume and professional qualifications of each potential representative.

Individuals wishing inclusion in the Reference List may submit a resume to the Director of Communications for consideration by the PAC.

5. Project Orientation

The Director of Communications holds an orientation for each Artist Selection Panel to review program guidelines, orient members to the specific project and review any goals already established by the participating division and the Port.

The Artist Selection Panel reserves the right to reopen the competition or propose other methods of selection if no artist or proposal meets the established criteria.

D. CONFLICT OF INTEREST

1. No artist sitting on the Board or PAC may submit for public art projects (1) over which the Port Commission has approval authority or administrative responsibility, (2) proposed on Port-owned property, or (3) within the jurisdiction of the Port during his or her tenure.
2. No Port staff member or member of his or her household may submit for public art projects for which the Port has approval authority or administrative responsibility.
3. No member of the project architect's or landscape architect's firms is eligible for consideration as an artist on a project being designed by that firm for location on Port-owned property or other property within the jurisdiction of the Port.
4. No artist sitting on an Artist Selection Panel may submit for the project for which the panel was formed.

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E. ELIGIBILITY OF ARTWORK AND ARTISTS

1. For the purposes of these guidelines, all forms of original creations of artwork are eligible for acquisition through the Public Art Program, including visual, performing, media, literary and temporary works.
2. As a general policy, artists from the nine Bay Area Counties will be encouraged to participate in the Public Art Program. However, the Port is not restricted to the exclusive use of local artists. For the purposes of these guidelines, the Bay Area is described as the Alameda, Contra Costa, San Francisco, Santa Clara, Solano, Sonoma, Marin, San Mateo and Napa counties.
 - a. Specific eligibility requirements for each project are established at the onset of each project.
 - b. Artists are selected on the basis of their qualifications, as demonstrated by past work, appropriateness of the proposal to the particular project, and its probability of successful completion, as determined by the PAC and its authorized Artist Selection Panel.
 - c. The Director of Communications deals directly with the artist; some aspects of a project may be delegated by the artist to his or her agent or representative if the artist so authorizes.
 - d. All relationships and financial arrangements between artists and their agents, representatives and galleries must be undertaken by them alone. The Port assumes no responsibility for payment of fees and commissions, nor will it adjudicate differences between the parties. The payment of commissions or fees is the sole responsibility of the artist.
3. Criteria for Selecting Artists and Artwork
 - a. **Quality** - The consideration of highest priority is the inherent quality of the artwork. Acquisitions will be, in the judgment of recognized art experts, of exceptional quality and enduring value.
 - b. **Context** - Consideration is given to the architectural, historical, geographical and socio-cultural context of the site.

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- c. **Project Goals** - Each artist and artwork will be judged on the ability to meet the goals established by the participating Port revenue division.
- d. **Media** - All art forms are eligible, including disciplines and media that are of specific duration and exist only through documentation once the lifetime of the artwork has ended, such as performances, screenings, readings and temporary visual art.
- e. **Durability** - Due consideration will be given to the structural and surface soundness and to inherent resistance to theft, vandalism, weathering, and excessive maintenance and repair costs.
- f. **Public Safety** - Each artwork will be evaluated to ensure that it does not present a hazard for public safety.
- g. **Range** - The overall program strives for a range of style, scale, media and artists. There will be encouragement of exploratory types of artwork, as well as established forms in the visual, performing, media and literary arts.
- h. **Feasibility** - Each artwork will be examined for its feasibility and convincing evidence of the artist's ability to successfully complete the work as proposed. Factors to be considered include, but are not limited to, project budget, timeline, artist's experience, soundness of materials, and applicable city and coastal zoning, construction and design guidelines.
- i. **Design Team Projects** - Additional criteria to be considered for selecting artists for design team participation include, but are not limited to:
- Proven ability to work effectively in collaborative situations.
 - Experience in architecture or landscape-based projects.
 - For visual artists, experience working with design professionals and integrating artistic concepts into construction documents.
4. Duplication

To assure that the artwork is unique and will not be duplicated, the artist will be required to warrant that the work is an edition of one or part of a limited edition.

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F. CRITERIA FOR CONSIDERATION OF ARTWORK PLACEMENT

Prior to selecting a site for any artwork, whether for purchase, commission or performance, the PAC will consider the following, where applicable:

1. Visibility
2. Public Safety
3. Interior and exterior traffic patterns
4. Relationship of proposed artwork to existing or future architectural features and to natural features
5. Function of the facility
6. Facility users and interaction of users with proposed artwork
7. Future development plans for the area
8. Overall program goal or concept
9. Landscape design
10. Relationship of proposed artwork to existing artworks within the site vicinity
11. Environmental impact
12. Public accessibility to the artwork
13. Social context of the artwork; intended use of the artwork, if any
14. Regulatory permits required, as applicable

G. METHODS OF ACQUISITION

Artwork may be acquired by commissioning new work specifically for the site or by purchasing existing work. Selections are made in accordance with the criteria set forth in these guidelines.

The manner of selection will be appropriate to the project needs. Based on feasibility, budget allocation, timeline, project complexity, location and function of the facility, one or a combination of the following alternatives will be pursued for each project.

1. Direct Selection

Direct selection may be for purchase or commission purposes. The selection is based on one or more of the following criteria:

- a. Review of slides, recordings and videos of existing artwork
- b. Visits to galleries and performing arts venues
- c. Artist studio visits
- d. Viewing, screening and listening to actual artwork (purchase)
- e. Viewing, screening and listening to previous artwork (commission)

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2. Direct Purchase

An existing, completed artwork is selected contingent on viewing the actual artwork by members of the Artist Selection Panel.

3. Direct Commission

In a very limited number of cases, the Artist Selection Panel may decide to request a proposal from only one artist. This would only happen in a situation where there is a particularly strong desire on the part of a large section of the community to work with a particular artist, and the Artist Selection Panel concurs as to the artist's professional ability and the appropriateness of his or her work for the site.

Artist selection will be confirmed after an interview with the artist and viewing of his or her previous artwork. Final approval of the artwork selection will be contingent upon the satisfactory presentation of a model and sketch for which the artist will be paid a design fee.

4. Limited Competition

The Artist Selection Panel discusses ideas for the type of art that best suits the project and the best possible sites.

- a. From the Artist Directory and other resources, staff provides a slide presentation of artists considered particularly appropriate for the site.
- b. Panelists are invited to present additional artists for consideration.

The panel's task is to select three to five artists for each commission who are invited to develop a proposal and receive a design fee. The panel reserves the option to invite a lesser number of finalists to compete.

- a. An artist site orientation is held that includes a tour of the site, a discussion of project goals, and a review of proposal requirements.
- b. The Artist Selection Panel meets to review the artists' proposals.
- c. Each artist is required to present a rendering of the proposed artwork (model or drawings), a written description of the proposed artwork, a budget and samples of the proposed materials.

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5. Invitational

The Artist Selection Panel recommends a limited number of artists on the basis of review of current artwork. The selected artists are invited to prepare proposals for the project and are paid according to the scope of the work. The Artist Selection Panel then reviews the proposals and recommends acquisitions.

One or more artists are invited to submit proposals. The review procedure continues as defined in the Limited Competition.

6. Open Competition

Any artist may apply in an open competition, subject to limitations established by the Artist Selection Panel.

- a. A public announcement is prepared and distributed to artists in the registry, other mailing lists of artists, arts groups and the art press.
- b. The Artist Selection Panel reviews proposals submitted by artists and recommends (1) artists for acquisition or (2) a limited number of artists who are paid to develop detailed proposals.
- c. The Artist Selection Panel reviews these developed proposals and recommends acquisitions.

The formal requirements of a proposal are defined on an individual project basis. The artist may be asked to submit slides of previous artwork of a similar nature and a description of the proposed artwork that may include slides, drawings or models, and a cost estimate or a line-item budget for the artwork.

While open competitions entail a great deal of additional administrative work, they also offer increased visibility for the program and are considered to be a democratic way to select artists for public commissions. However, this method does not appeal to all artists. Many are unwilling to spend time developing proposals if they are unpaid and uncertain of obtaining a commission.

H. FINAL APPROVAL

Each commission and acquisition must be accepted by the PAC. Prior to PAC review of a proposed acquisition, technical feasibility and maintenance acceptability are investigated by staff in consultation with the division responsible for the site and with the assistance of technical consultants, as needed.

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1. Decisions by the Artist Selection Panel cannot be reversed on aesthetic grounds, but on technical grounds or on the basis of other non-aesthetic, financial and business concerns expressed by the PAC.
2. PAC decisions about the selection, acquisition, setting, maintenance, disbursement or funds will be recommended to the Board for final consideration.

VIII. CONTRACTUAL PROCEDURES AND PAYMENTS

- A. A method and schedule of payment to the artist will be provided by contractual agreement with the Port. The artist's fee is due and payable by the Port when the public art is installed and accepted or performed and accepted by the Port.
- B. The Port will make progress payments to the artist against the fee to assist the artist with financing the fabrication, installation and performance rehearsals of the work of public art. These payments will be made at regular intervals as described in the contract and will be scaled to the artist's documented need.
- C. Progress payments may be contingent on receipt of a progress report, certificates of liability insurance, requests for payment, and Director of Communications review and approval of stages of completion.

IX. ARTIST RESOURCE DIRECTORY

- A. The Port may be presented with the need of selecting an artist to participate on Port-related public art projects within short time constraints. To address this need, the Port will develop a pool of pre-qualified artists that may be considered for public art commissions that will be updated periodically.
- B. The Director of Communications solicits the names and credentials of artists interested in being listed and invites them to submit a resume, letter of interest, and annotated slides, audio and videotapes of work of public art, as appropriate.
- C. A sub-committee of the PAC convenes to pre-qualify those artists who meet the criteria for inclusion in the Artist Resource Directory.

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D. Each Artist Selection Panel or CRE developer may consult the Artist Directory prior to making artist and public art selections. However, no requirement is made that the artists selected to participate in the public art program must be represented in the Artist Directory.

X. PUBLIC INFORMATION AND EDUCATION

The Port recognizes that works of public arts often significantly alter public places, becoming a major new presence in the environment. The Communications Division endeavors to broaden community awareness of issues involved in contemporary art and its historical context, and to encourage informed discussion among all segments of the community.

XI. OWNERSHIP

The title to all visual works of public arts commissioned or purchased by the Port will be transferred to the Port.

XII. PROJECT DOCUMENTATION

A. The Port will develop and maintain in its archives and records documentation of each project to include, but not be limited to, the following when applicable:

1. Photographic, audio or video documentation provided by the artist.
2. Technical description of each work of public art provided by the artist.
3. Recommended care and maintenance summary provided by the artist.
4. Appraisal of each work of public art, if available.
5. Identification of location of the each work of public art, including date of installation or performance.
6. Record of all billings made within the project.
7. The original public art proposal, contract and Port actions relative to the project.
8. Final project report, including documentation, such as selection procedure used and fees paid.
9. All project correspondence and other documentation.

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XIII. MAINTENANCE AND MANAGEMENT OF PUBLIC ART

- A. It is the responsibility of the Director of Communications to oversee maintenance and conservation of all works of public art in the Port's public art collection in accordance with Public Art Ordinance, Article I. Funds for maintenance are provided through the Public Art Account.
1. The Director of Communications maintains a computer database inventory of works of public arts owned by the Port.
 2. A professional art conservator or persons trained by a conservator may be consulted or hired to provide maintenance and conservation work for the Port's public art collection.
 3. Participating divisions must notify the Director of Communications immediately if a work of public art is either damaged or stolen, or if the participating division plans to move the work of public art or in any way alter its site.

XIV. CALIFORNIA ART PRESERVATION ACT

This legislation provides artists with protection against anyone intentionally committing or authorizing "any physical defacement, mutilation, alteration or destruction of a work of fine art."

XV. RELOCATION OF WORKS OF PUBLIC ARTS

- A. Any proposed relocation, temporary or permanent, of a work of public art on Port-owned property or located in the jurisdiction of the Port must first have the approval of the PAC. The PAC may consider relocating a work of public art for one or more of the following reasons:
1. The condition or security of the work of public art can no longer be reasonably guaranteed at its current site.
 2. The work of public art has become a danger to public safety in its current site.
 3. The site has changed so that the work of public art is no longer compatible in its current location.
- B. If the PAC determines that an a work of public art meets one or more of the above criteria, the following process is initiated:

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1. The Director of Communications makes a good faith attempt to discuss relocation of the work of public art with the artist to determine the artist's disposition toward the proposed relocation.
 2. If the artist agrees to the proposed relocation, the Director of Communications reports this information to the PAC for action.
 3. If the artist does not agree to the proposed relocation, the artist will have the right to prevent the use of his or her name as the author of the work of public art.

XVI. GIFTS OF ART

In the event a work of art is proposed for donation to the Port, each case will be referred to the PAC for consideration in accordance with the Public Art Ordinance, Article II.

XVII. DE-ASSESSION OF WORKS OF PUBLIC ART

In the event a work of art is proposed for de-accessioning, each case will be referred to the PAC for consideration in accordance with the Public Art Ordinance, Article III.

XVIII. SALES

In the event of a future sale, the Port agrees to abide by the contract and the California Resale Royalties Act with respect to notification and payment of the artist.

Artist's Resale Royalties Act (California Civil Code Section 986) stipulates that when a fine artwork, once sold, is resold by the owner for a price of more than \$1,000, five percent (5%) of the "gross sales price" must be paid to the artist. If the seller is unsuccessful in locating the artist, the royalty must be deposited with the California Arts Council.