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Tariff Authority for Major Ports

G.No. 158 **New Delhi,** **12 April 2021**

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal from the Deendayal Port Trust for fixation of lease rent of Vadinar Land applicable for the period from 01 January 2015 to 31 December 2022 as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/53/2020-DPT

Deendayal Port Trust ----- Applicant

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Sunil Kumar Singh, Member (Economic)

O R D E R

(Passed on this 16th day of March 2021)

This case relates to the proposal received from the Deendayal Port Trust (DPT) for fixation of lease rent of Vadinar Land applicable for the period from 01 January 2015 to 31 December 2022.

2. This is the first proposal from the port for fixation of lease rent for port land at Offshore Oil Terminal (OOT), Vadinar.

3. The Ministry of Ports Shipping and Waterways(MOPSW) the then MOS vide its letter dated 17 July 2015 issued Amended Land Policy Guidelines of 2014. Subsequently, MOS vide its letter dated 29 April 2019, issued Clarification Circular (Land Management) No.1 of 2019-20 to ease the implementation of the Policy Guidelines dated 17 July 2015 [hereinafter termed as Policy Guidelines for Land Management 2015 (PGLM 2015)]. Subsequently, the MOPSW has issued clarification circular No.2 of 2019-20 dated 05 November 2019 and Clarification No.1 of 2020 dated 27 October 2020 to the Chairmen of all the Major Port Trusts.

4. Following the provisions of PGLM-2015, the DPT, vide its emails dated 27 October 2020 and 02 November 2020 has filed its proposal and made the submissions as summarized below:

(i). The DPT proposal is for fixation of Lease rent rates of Vadinar land (Category A, C1 & C2, E and Right of Way – ROW) applicable for the period from 01 January 2015 to 31 December 2022.

(ii). At OOT, Vadinar, except Crude Oil, no other cargo is being handled and except existing terminals and SPMs of M/s. Indian Oil Corporation Limited(IOCL) and M/s.Nayara, no other new projects have been developed due to many limitations i.e. limitation of back up land, mangroves restrictions from forest department as this area has been declared as National Marine Sanctuary, etc. Therefore, preparation of land use plan or valuation of land has not been done since the inception of Offshore Oil Terminal (OOT), Vadinar and after implementation of LPG, 2014.

(iii). During the year 2015-16, DPT entered into an agreement with M/s.Coviva Energy Terminals Ltd. (CETL) [Erstwhile Vadinar Liquid Terminals Ltd. (VLTL)] for development of additional marine liquid terminal facilities of 1 SBM and 2 Product jetties. As per the agreement, VLTL made payment of license fee for the 1st year at the rates as per agreement. Rate considered in the agreement was of 'E' category of Kandla land rates as no separate rates were available for OOT Vadinar land. Thereafter, M/s.CETL (Erstwhile VLTL) objected for the Kandla rate being too high compared to Vadinar as it is in remote location and there is no demand for land.

(iv). The matter was referred to Additional Solicitor General of India (ASG) for taking legal opinion in the matter. The ASG, in his legal opinion dated 17 August 2018, has opined that in view of the MPT Act, 1963 more particularly Section 49(1) & (3), a separate SOR for Vadinar land need to be approved and notified by the TAMP.

(v). Accordingly, the proposal to fix the land lease rates of Vadinar land from the year 2015 to 2018 i.e. from the year of signing of Concession Agreement with M/s.VLTL has been processed.

(vi). The total area of land available with OOT Department, Deendayal Port Trust, Vadinar is 271.04 acres.

(vii). The department has engaged M/s.KM Thacker & Associates, Government approved valuer for carrying out of “Categorization of Vadinar Land in line with Kandla Land” and “Valuation of Land”.

(viii). In the report, the valuer has divided the land into four categories and value of the land has been fixed location wise such as:

(a). Category A – Land having water front & upto half mile from the shore i.e. Vadinar Road.

(b). Category C1 & C2 – Plot abutting on main road (for residential colony of IOCL/DPT) and other plots.

(c). Category E – Land within the docks (water front all sides).

(d). Category ROW (Right of Way) - zone conveyance of pipeline, cables etc.

(ix). The highest market rate arrived by considering the factors mentioned in para 13 of Policy Guidelines of Land Management by Major Ports 2015 (updated with clarifications issued upto 31.03.2019) is as under:

[Rates per Sq.mtr per annum]

Description	2015	2016	2017	2018
Category A	2086.56	2268.00	2449.44	2645.39
Category C1 & C2	1974.10	2013.58	2053.85	2094.93
Category E	3389.67	3457.61	3526.61	3597.14
Category ROW	1794.13	1830.01	1866.61	1984.05

(a). The highest market rate mentioned for the year 2018 would bear 2% escalation every year upto 2022 or till further revision as provided in the Land Policy Guidelines.

(b). The Lease rent for Water area would be 50% of License Fee of abutting land.

(c). The annual lease rent would be 6% of the latest market value as per provision at Sr. no.13(b) of Land Policy Guidelines.

(x). (a). Land Allotment Committee (LAC), in its meeting held on 21 September 2019, recommended the categorization of land and the highest market rate submitted by valuer [as given in point (viii) and (ix) above].

(b). The minutes of the LAC dated 21 September 2019 further recommended the following:

(i). The highest market rate mentioned for the year 2018 would bear 2% escalation every year upto 2022 or till further revision as provided in the Land Policy Guidelines.
(ii). The Lease rent for Water area would be 50% of License Fee of abutting land.
(iii). The annual lease rent would be 6% of the latest market value as per provision at Sr. no. 13(b) of Land Policy Guidelines.

(xi). (a). The Board of Trustees of the port of Kandla in its meeting held on 06 December 2019 has observed that no SOR has been fixed for Vadinar so far and the rate for Kandla land will not apply for Vadinar land and opined that proposal needs some scientific analysis by taking the rates of Valuer, last transaction and Jantri rate before finalizing the value of the land. The Trustees, therefore, advised to re-examine the matter and place the proposal before the Board with full and proper justification.

(b). In view of above, the Board of Trustees in the said meeting dated 06 December 2019 deferred the item for re-examination on the ground that one transaction [i.e. rate of Concession agreement with M/s.CETL] should not be taken as a base rate but it should be on location and situation basis.

(xii). In continuation to the direction of the Board of Trustees of DPT in its meeting dated 06 December 2019, the LAC again met on 16 January 2020. The Minutes of the said subsequent LAC meeting dated 16 January 2020 records that the Offshore Oil Terminal (OOT) department of DPT has submitted the following points to the LAC:

(a). There is no vacant land available for future allotment and also the water front area under “Category E” and “Category A” are in very high eco-sensitive zone of National Marine Sanctuary. Hence, it would be very difficult to get clearance from Statutory Authority for any Development Works.

(b). The land under Category C1 & C2 is inside the port residential colony, hence the same cannot be utilized for port related activities. Also, land under category RoW is meant only for Right of Way Zone, Conveyance of Pipelines, Cables etc. The latest market value proposed for RoW is highest rate amongst the rates of Valuer, last transaction and Jantri Rates.

(c). Also as per the opinion of ASG, even if the rates notified by TAMP are lower than the agreed rate under concession agreement, DPT has to charge rate as per the concession agreement only.

Further, in case the SOR fixed by TAMP is higher than the rate agreed to between the parties by way of concession agreement, the SOR fixed by TAMP will have to be adopted.

(d). The purpose of considering other than highest rate is to see any probable bidder participates for Land/ Water Front allotment. Since no land is available for further allotment, there is no reason for acceptance of rates, other than as proposed.

(e). Therefore, the latest market value for Vadinar Land has been arrived by taking into account the highest factors mentioned in Para 13(a) of Policy guidelines for Land Management 2015.

(xiii). Based on the justification submitted by the Department, the Land Allotment Committee in its meeting held on 16 January 2020 has recommended the following:

(a). Categorisation of Land as per Land Use Plan:

(i).	(A):	Land having water front & upto half mile from the shore i.e. Vadinar Road
(ii).	(C1 & C2):	Plot abutting on main road [for residential colony of IOCL/DPT] and other plots.
(iii).	(E):	Land within the docks [Water front all sides]
(iv).	(Row) Right of Way:	Zone conveyance of pipelines, cables etc.

(b). <u>Highest market rate for the years from 2015 to 2018:</u>

(Rate per Sq.mtr per annum)

Description	2015	2016	2017	2018
Category A	2086.56	2268.00	2449.44	2645.39
Category C1 & C2	1974.10	2013.58	2053.85	2094.93
Category E	3389.67	3457.46	3526.61	3597.14
Category ROW	1794.13	1830.01	1866.61	1984.05

(c). The annual lease rent would be 6% of the latest market value as per provision at Sr. No.13(b) of Land Policy Guidelines.

(d). The highest market rate mentioned for the year 2018 would bear 2% escalation every year upto 2022 or till further revision as provided in the Land Policy Guidelines.

(e). The lease rent for water area would be 50% of license fee of abutting land.

(xiv). Accordingly, Board of Trustees of the Port of Kandla vide Board Resolution No.107 dated 29 January 2020 approved the categorisation of land as per land use plan and the highest market value for different categories of land at OOT, Vadinar as under:

(a). Categorisation of Land as per Land Use Plan:

(i).	(A):	Land having water front & upto half mile from the shore i.e. Vadinar Road
(ii).	(C1 & C2):	Plot abutting on main road [for residential colony of IOCL/DPT] and other plots.
(iii).	(E):	Land within the docks [Water front all sides]
(iv).	(Row) Right of Way:	Zone conveyance of pipelines, cables etc.

(b). <u>Highest market rate for the years from 2015 to 2018:</u>

(Rate per Sq.mtr per annum)

Description	2015	2016	2017	2018
Category A	2086.56	2268.00	2449.44	2645.39
Category C1 & C2	1974.10	2013.58	2053.85	2094.93
Category E	3389.67	3457.46	3526.61	3597.14
Category ROW	1794.13	1830.01	1866.61	1984.05

(c). The annual lease rent would be 6% of the latest market value as per provision at Sr. No.13(b) of Land Policy Guidelines.

(d). The highest market rate mentioned for the year 2018 would bear 2% escalation every year upto 2022 or till further revision as provided in the Land Policy Guidelines.

(e). The lease rent for water area would be 50% of license fee of abutting land.

(xv). <u>Accordingly, lease rent rates @ 6% of the market value of different categories of land as per para 13(b) of PGLM, 2015 is proposed as under</u>:

(**Rate per Sq.mtr per annum**)

Description	2015	2016	2017	2018
Category A	125.19	136.08	146.97	158.72
Category C1 & C2	118.45	120.81	123.23	125.70
Category E	203.38	207.45	211.60	215.83
Category ROW	107.65	109.80	112.00	119.04

(xvi). The DPT has requested to consider and approve the proposed lease rent of Vadinar Land (Category A, Category C1 & C2, Category E and Category ROW) applicable for the period from 01.01.2015 to 31.12.2022 as required under Section 49 of the Major Ports Trusts Act, 1963, so as to implement the rate from 01.01.2015.

5.1. The DPT has filed the current proposal alongwith copy of extract of report of legal opinion sought by DPT from ASG, Valuation Report, Minutes of LAC meeting, Board Resolution and the proposed SOR for fixation of lease rent for its Vadinar land following PGLM 2015.

5.2. The port has proposed year wise lease rent for the period from 01 January 2015 to 2018 and has proposed 2% annual escalation charge over the rate proposed for the year 2018 till 31 December 2022.

6. In accordance with the consultation process prescribed, a copy of the DPT proposal received vide email dated 02 November 2020 along with all the enclosures including Valuation Report was circulated vide our letter dated 11 November 2020 to the users/ user organisations forwarded by DPT vide its email dated 06 November 2020 seeking their comments. A copy of each of the comments received from the users/ user organisations were forwarded to the DPT as feedback information. The DPT vide its email dated 17 February 2021 has furnished its comments.

7. A joint hearing in this case was held on 18 December 2020 through Video Conferencing. The DPT made a power point presentation and has also furnished a copy of the presentation vide its email dated 18 December 2020. The DPT and the concerned users/ user organizations have made their submissions at the joint hearing.

8.1. Based on the preliminary scrutiny of the proposal, the DPT was requested vide our letter dated 13 January 2021 to furnish information/ clarifications on a few points by 20 January 2021. This was followed up by reminder dated 29 January 2021 to DPT. The DPT has furnished its reply on additional information/ clarification vide its email dated 20 February 2021. A summary of additional information/ clarification sought by us and reply furnished by the DPT thereon is tabulated below:

Sl. No.	Information/ Clarification sought by us	Reply furnished by the DPT
I .	**<u>General</u>**	
1.	(a). As per clause 13 (c) of the Land Policy Guidelines, 2014 as amended in July 2015, the Schedule of Rent is to be fixed once in every 5 years by TAMP. Accordingly, TAMP has been fixing Schedule of Rent once in 5 years for all Major Port Trusts (except Mumbai Port Trust) including Deendayal Port Trust (Schedule of Rent for Kandla Lands, Kandla Salt Land and Gandhidham Township of DPT) once in 5 years. This implies that the tariff cycle for Schedule of Rent is 5 years. However, the DPT proposal dated 27 October 2020 seeks approval for lease rent for a period of 8 years (01.01.2015 to 31.12.2022). Explain the reason for seeking approval for Lease Rent for 8 years in deviation to Clause 13(c) of the amended Land Policy Guidelines 2014. (b). Also, clarify why the Schedule of Rent should not be fixed for a tariff cycle of 5 years (01.01.2015 to 31.12.2019) for Vadinar Land. For the subsequent period, DPT may consider to file a separate proposal.	The main intended purpose of preparing Valuation Report is for fixing the rent for the period of 5 years w.e.f. 2018, accordingly Port appointed Govt. approved Valuer in July, 2018. In the meantime, the issue of applicability of lease rent for the project "Development of additional one SPM and two Product Jetty at Vadinar" by M/s. Coviva Energy Terminal Ltd. (M/s CETL - erstwhile known as M/s. VLTL) arose. The Concession agreement between DPT and M/s CETL was executed for the said project on 16th April 2015. In order to resolve the dispute of M/s CETL, as per the opinion Additional Solicitor General to GOI, the rent for the years 2015, 2016 and 2017 has been proposed additionally in the subject proposal. Therefore, it is requested to approve the rent for the period from 2015 to 2017 as an exceptional case and from the year 2018 with escalation of 2% for 5 years i.e. upto 2022.
2.	The DPT has stated in its proposal in reference that at OOT Vadinar except Crude Oil no other cargo is being handled and no other projects were developed due to many limitations. It also does not appear from the proposal in	Other than the project of SPM and Product Jetties, following are the cases, where DPT needs lease rent: (i). Port has allotted land to M/s IOCL for construction of residential colony in Port

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<td>reference that DPT is going to develop any projects at OOT Vadinar in future. The DPT needs only Schedule of lease rent for Category-E. Therefore, explain the reason for proposing lease rent for commercial (Category-A) industrial (ROW) and C1 & C2 (Residential) categories of land.</td>
<td>land in the Category C_1 & C_2 . The lease has expired and in order to renew the lease, the Port has proposed to fix the rent under Category C_1 & C_2. Also, Port has vacant land of approximately 50,000 sq. mtr., under the same category, in order to commercially utilize as per the directions of MOS, the Port has proposed to fix the rent.
(ii). M/s.IOCL and M/s.Nayara Energy Ltd., has laid crude/ water pipelines along the Port road upto jetty area in the Port land. Also, Port allotted 9000 sq. mtr. of land (RoW) for laying of crude pipelines in year 2018 at provisional rent subject to approval by TAMP. Therefore, Port has proposed to fix the rent under – Category ROW.
(iii). Port has proposed for development of Ship repair/ Dry Docking facility at Vadinar on PPP mode, for which Port has already appointed consultant for obtaining environmental/ statutory clearances and work is under progress at present. For development of the same, Port requires to allot land for construction of terminal workshop/ warehouses etc., in Category - E and Category – A. Also, a study is being conducted in consultation with GMB for commencing Ro Ro facility at Vadinar as per the direction of MOS. It also require land stacking and development of infrastructure, if any. Therefore, Port has proposed to fix the rent under – Category A & E.
As explained above, based on the utilization of land at present and considering the future development and also location of the land the categorization has been done as given in the proposal:</td>
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<td>3.</td>
<td>The DPT to confirm that the categorization of Vadinar Land into 4 Categories is as per Land use plan attached to the Valuation Report dated 15.09.2019.</td>
<td rowspan="2">The classification/ categorization of the Port Land as per the National Industrial Classification [NIC] 2008 is concerned, it is to state that the land use plan has been prepared is in line with the above said guidelines.
It is pertinent to mention here that the Land Use Plan was uploaded into DPT website and forwarded to Stake Holders vide this office letter no. OOT/ C-PS/Land/4020/120 dated 03/04/2020 for comments before carrying out the valuation of land.
The DPT has attached a copy of classification of land.
As explained at sl. no. 2 above, based on the utilization land at present and considering the future development and also location of the land the categorization has been done as below:</td>
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<td>4.</td>
<td>It may be clarified whether categorization of Vadinar Land has been done as per National Industrial Classification, 2008.</td>
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5.	The basis for determining Category-A and Category-E as “Commercial type of land” & Right of Way (ROW) Zone as “industrial type of land” may be explained.	Category-A and Category-E has been determined as Commercial type of land as the activities permissible in this lands are warehousing, cargo storages, import/export etc. which falls in commercial activities. Right of Way (ROW) Zone has been determined as “industrial type of land” as it is used for transportation of liquids which are used in refineries & refineries falls under industrial activities. Item of fluid mechanical & it is industrial activity.
II.	**<u>Determination of Market Value of Vadinar Lands</u>**	
1.	<u>Year wise Market Value</u>	
	Clause 13 of the Land Policy Guidelines, 2014 as amended in July 2015 does not require a Major Port Trust to determine Market Value for each of the year in a tariff cycle of 5 years. All the Major Port Trusts including DPT (for its Kandla Lands, Salt Lands and Gandhidham Township) determine Market Value for year 1 (Y1) and apply appropriate annual escalation over the base lease rent of Y1 for application of escalated lease rent to the subsequent years from Y2 to Y4 in tariff cycle of 5 years. Therefore, the reason for deviating the approach so far followed by DPT and determination of Market Value of Vadinar Land for each of 4 years (2015, 2016, 2017 and 2018) instead of determination of market value for 2015 (Y1) and proposing annual escalation of 2% over the lease rent of Y1 for application of escalated rent to the subsequent years Y2, Y3 and Y4 (2016, 2017 and 2018) may be clarified.	The main intended purpose of preparing Valuation Report is for fixing the rent for the period of 5 years w.e.f. 2018, accordingly Port appointed Govt. approved Valuer in July, 2018. In the meantime, the issue of applicability of lease rent for the project "Development of additional one SPM and two Product Jetty at Vadinar" by M/s.Coviva Energy Terminal Ltd. (M/s.CETL - erstwhile known as M/s. VLTL) arise. The Concession agreement between DPT and M/s.CETL executed for the said project on 16th April 2015. In order to resolve the dispute of M/s.CETL, as per the opinion Additional Solicitor General to GOI, the rent for the years 2015, 2016 and 2017 has been proposed additionally in the subject proposal. Therefore, it is requested to approve the rent for the period from 2015 to 2017 as an exceptional case and from the year 2018 with escalation of 2% for 5 years i.e. upto 2022.
2.	<u>Derivation of Market Value as of the year 2015-16 instead of determination as of the year 2015-16.</u>	
	(a). The proposal of DPT to fix the lease rent for Vadinar Land is from the year 2015-16 onwards. However, for determination of market value for Vadinar lands for Category-A, Category-C1 & C2 and Category-ROW, the market value for the year 2015-16 has been derived by applying 2% annual escalation over the market value as of the year 2011-12. The DPT is requested to confirm that the market value derived for the year 2015-16 taking market value of 2011-12 as the base, reflects the market values as of the year 2015-16. (b). Furnish the reason for not determining the fresh market value as of the year 2015-16.	The valuation report has been prepared based on the actual transaction in the nearby vicinity of Vadinar Village. However, due to non-availability of fresh transaction and the place being in remote place 2% annual escalation as per PGLM-2015 has been applied over the market value as of the year 2011-12. The rates derived for 2015-16 taking reference of 2011-12 are comparable.
3.	The valuer appointed by the DPT for valuation of Vadinar land has worked out the market value of Vadinar land for each of the categories viz., ‘A’, ‘C1&C2’, ‘E’ and ‘ROW’ for each of the year 2015-16, 2016-17, 2017-18 and 2018-19	(a). Annual escalation @ 8% is adopted as per Govt. of Gujarat G.R. valuation department which is read as under:- The main basis for evaluation is to calculate comparable sales within a radius of one to

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<tr><td></td><td>under four different methodologies viz., (i). State Government Ready Reckoner (ii). As per Sale Comparison (iii). Highest accepted tender-cum-auction rate in port land and (iv). Rate arrived by the valuer. The LAC has recommended the highest market value arrived at by the valuer for each of the category and the DPT Board has also approved the said market value and the lease rent @ 6% of market value for the above categories. With reference to the valuation of land by DPT, the following information/ clarification is sought:</td><td rowspan="3">one and a half kilometres around the “land in question” to make this sales comparable for the general situation, before reducing or increasing according to the following factors, each sale in developed areas should be doubled 15 percent, the other one and half times to 10% per Annum.
But, however lower increment of only @ 8% P.A. is adopted.
Since highest sale comparison transaction of BOPL is of the year 2016, for arriving at fair value from 2011 reduction factor @ 8% per year is applied for reverse calculation.

(b). Also as per income tax guidelines 18% to 24% p.a. is recommended which is read as under: -
Time-gap: Generally the price of land increases with passage of time. To ascertain the price rise more accurately, sale instances of the dates prior to and after the date of valuation should be selected and should be brought at par with property under valuation by applying all other factors of adjustment except for time gap. The difference in rate so arrived divided by the time gap will give the rate of price increase around the valuation date. Addition of this price rise to the rate of past sale will give the land rate on valuation date. If no such sale instances are available then the price rise should be considered 18 to 24% p.a. Earlier trend may also be seen.

(c). As per the Indexation rate of revenue department of Gandhinagar, increment upto 10% on market value of land can be applied. Port valuer has applied 8% and arrived the rate for the factor under clause no. 13 (iv) of PGLM-2015 i.e. “rate arrived at by an approved valuer appointed for the purpose by the Port”.

The detailed note on applicable indexation in the lease rent proposed in SOR for Vadinar Land is submitted as separate Appendix.

Proposed Scale of Rate is also attached at Annexure-I.</td></tr>
<tr><td></td><td><u>Method-2 As per Sale Comparison:</u></td></tr>
<tr><td></td><td>As regards Category A, the valuation of land recommended is reportedly based on the highest rate received as per Sale comparison/ transaction. The valuer appointed by the DPT has considered the market value of land for category ‘A’ based on the land allotted to Bharat Oman Refinery Ltd. @ ₹3600 per sq. mtr. in the year 2016. For the year 2015, the reduction @ 8% is seen to be applied on 2016 rate and for the period from 2017-18 till 2018-19 the market value of land is arrived after applying 8% increment, as per indexation rate of Revenue Department of Gandhinagar, over the previous year market value of land for category ‘A’. Thus, for Category ‘A’ the DPT has applied 8% cost indexation on market value of land for the year 2015 onwards till 2018 and consequential 8% annual escalation in lease rent on the lease rent for the year 2015 till the year 2018.

The DPT Board vide resolution dated 29 January 2020 has approved the market value for category ‘A’ as worked out by the valuer and recommended by the LAC for the period from 2015 till 2018 and has also approved the annual lease rent for the said period @ 6% of the market value in compliance to provision at Sr.no.13(b) of Land Policy Guidelines. Further, the DPT Board has approved 2% escalation every year on 2018 rates upto the year 2022 or till further revision as provided in the PGLM 2015.

In this context and in view of above, the DPT is requested to confirm that the lease rent from the year 2015 onwards till the year 2018 would bear 8% annual escalation factor and for the 5th year i.e.2019 lease rent would bear 2% escalation factor on the applicable lease rent for the year 2018. If so, the DPT is requested to incorporate the note on applicable annual indexation in the lease rent in its proposed SOR for Vadinar land for the years 2016 to 2019 and furnish copy of the same.</td></tr>
<tr><td>4.</td><td><u>Determination of Market Value for Category-E land [Land within Docks (Water front all sides)]</u></td><td></td></tr>
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<tr><td></td><td>In the calculation of basic rates for commercial area for land within docks, the valuer has considered a rate of ₹203.38 for the year 2015-16 and applied 2% annual escalation for subsequent years upto the year 2018-19. The rate of ₹203.38 is stated to be the rate considered for land allotment as of January-2015 to the VLTL at OOT Vadinar. In this regard, Annexure-17 of the valuation report may be referred. In this context, the DPT is requested to clarify the following:</td><td rowspan="6">The Concession agreement between DPT and M/s. CETL for “Development of marine liquid terminal facilities consisting of SPM & Two Product Jetties in DPT waters at OOT, Vadinar, on captive use basis”. The relevant Article 9.1 (A) of the Concession Agreement is reproduced below:
9.1 (A) License Fee:
(a) The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port’s Assets, made available in accordance with Article 2.4, pay to the Concessioning Authority the sum of Rs.10.08 Crores [Rupees Ten Crores and Eight Lakhs Only] [Rs.6.56 Crores (Rupees Six Crores and Fifty Six Lakhs) as License fee for Land Area of 322743 sq.m. at Rs.203.38/m^2/annum as of January 2015 as per Chapter VI, Category E of Scale of Rates of KPT + Rs.3.52 Crores [Rupees Three Crores and Fifty Two lakhs] as License Fee for Water Area 346099 sq.m. at Rs.101.69/m^2/annum of January 2015 as 50% of the aforesaid rate for land area as per Chapter VI, Category E of Scale of Rates of KPT] [the “License Fee”] subject to yearly escalation as per the Land Policy Guidelines for Major Port, 2014. Such amount shall be paid by the Concessionaire annually in advance. The amount for the License Fee for land and water front shall be calculated as per the prevailing Scale of Rates from time to time. The Concessionaire shall pay such License Fee in advance every year till the end of license period as per Schedule of Rates prevailing from time to time and first of such payments to be made upon entering into the Concession Agreement. The Concessionaire shall also pay the differential amount of the license fee due to the revision of the Scale of Rates from the effective date of revision of scale of rates, if any.
Thus, the highest agreed rate of ₹203.38/m2/annum of concession agreement executed for Vadinar Land has been considered in the Valuation Report for Category-E.
For remaining Category of lands, there is no agreed/ tender-cum-auction rate available for Vadinar land. Therefore, rate under method-3 for other categories is not considered.</td></tr>
<tr><td></td><td>(i). The basis for the rate of ₹203.38 per sq. mtr./ per annum and the source wherefrom it is considered.</td></tr>
<tr><td></td><td>(ii). The valuation for this land within Docks is reported to have been done under Method-3 (Highest accepted Tender-Cum-Auction rate in port lands). The DPT is requested to confirm / clarify the following:</td></tr>
<tr><td></td><td>(a). Whether the Market Value derived for the year 2015-16 based on the lease rent of ₹203.38 per sq. mtr. / per annum is highest accepted Tender-Cum-Auction rate. If so, please clarify whether, Tender-Cum-Auction was conducted for Kandla Land.</td></tr>
<tr><td></td><td>(b). Confirm the lease rent of ₹203.38 per sq. mtr / per annum adopted by DPT is a market discovery rate by Tender-Cum-Auction for Kandla Land. If so, consideration of the same rate for valuation of Category-E of Vadinar Land which is at different location of a distance more than 250 kms from Kandla Port may be justified.</td></tr>
<tr><td></td><td>(c). Please clarify, whether, the rate of ₹203.38 per sq. mtr. / per annum considered for Category-E of Vadinar Land is for similar transactions at Kandla.</td></tr>
<tr><td></td><td>(d). When Annexure - 17 of the valuation report for valuation of land within docks and the proposal dated 27 October 2020 are read together, the valuer has considered the land allotment rate of ₹203.38 per sq. mtr./ per annum for valuation under highest accepted Tender-Cum-Auction rate. This rate of ₹203.38 per sq. mtr./ per annum is not only the rate at which land was allotted to VLTL in January, 2015 as per Annexure – 17; but, also was the rate considered in an Agreement entered with VLTL applicable for E-Category of Kandla Land. The valuer has not considered any of the Kandla Land rates for valuation of Category-A land, Category-C1 and C2 land and Category-ROW of Vadinar Lands. The reason for considering Kandla rate only for E-Category of Vadinar Land under Method-3 may be clarified.</td><td></td></tr>
<tr><td>III.</td><td><u>Determination of Schedule of Rent (SOR) for Vadinar Lands:</u></td><td></td></tr>
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1.	For determination of Schedule of Rent (SOR), clause 13 (b) of the Land Policy Guidelines, 2014 as amended in July 2015 stipulates minimum 6% of market value to arrive at the lease rent and the lease rent so arrived will bear an annual escalation of minimum 2% as stipulated in clause 13 (C). The Major Port Trusts including DPT used to determine market value of land for Year 1 (Y1) and propose lease rent at 6% of market value of land for Y1 and annual escalation of 2% over the lease rent of Y1 for application of lease rent for subsequent 4 years beginning from Y2 to Y5. The DPT had also followed this methodology for proposing lease rent for Kandla Lands, Salt Lands and Gandhidham Township in the past. In this context, in the proposal dated 27 October 2020, DPT has determined market value for 4 categories of Vadinar lands for each of the 4 years from 2015 to 2018 and proposed lease rent at 6% of the market value of each of the year. The methodology followed by DPT of determination of market value for each of the 4 years and proposing lease rent at 6% of the market value of each of the 4 years is not found to be in line with the mechanism of determination of Schedule of Rent prescribed in the Land Policy Guidelines, 2014 and uniformly followed by all the Major Port Trusts including DPT. Therefore, DPT is requested to review the methodology followed by it in determination of SOR.	The DPT has reiterated its response given on Sr. No.I 1(a) above and hence not reiterated.
2.	It may be clarified why the Schedule of Rent for Vadinar Lands should not be fixed for a tariff cycle of 5 years (01.01.2015 to 31.12.2019) for Vadinar Lands at 6% of the base Market Value as of 2015 with annual escalation at 2% for the subsequent 4 years beginning from 01.01.2016 to 01.01.2019.	

8.2. While furnishing comments on the clarification sought by us, the DPT vide its email dated 20 February 2021 has also submitted the following points for fixation of rent for the period 2015, 2016 & 2017 as a special case:

(i). Agreement executed between Kandla Port Trust (Deendayal Port Trust) and M/s.Essar Oil Ltd. [name changed to M/s.Vadinar Oil Terminal Limited and subsequently to M/s.Nayara Energy Limited] on 8 August 1997 for development of one SPM and two Product Jetty at Vadinar" with License Fee (LF) applicable at Kandla rate and till date the License Fee is being remitted by the party.

(ii). Further, as per request of M/s.Nayara Energy Limited concession agreement was executed between Deendayal Port Trust and M/s.Vadinar Liquid Terminal Limited [name changed to M/s.Coviva Energy Terminal Limited] for development of additional one SPM and two Product Jetty at Vadinar.

(iii). While signing the agreement between DPT and M/s. CETL, the Kandla land rate as per SOR 2011, was considered. The relevant Article 9.1(A) of the Concession Agreement is reproduced below:

9.1 (A) License Fee:

(a) *The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port's Assets, made available in accordance with Article 2.4, pay to the Concessioning Authority the sum of Rs.10.08 Crores [Rupees Ten Crores and Eight Lakhs Only] [Rs.6.56 Crores (Rupees Six Crores and Fifty Six Lakhs) as License fee for Land Area of 322743 sq.m. at Rs.203.38*/m^2/annum *as of January 2015 as per Chapter VI, Category E of Scale of Rates of KPT + Rs.3.52 Crores [Rupees Three Crores and Fifty Two lakhs] as License Fee for Water Area 346099 sq.m. at Rs.101.69*/m^2/annum *of January 2015 as 50% of the aforesaid rate for land area as per Chapter VI, Category E of Scale of Rates of KPT] [the "License Fee"] subject to yearly escalation as per the Land Policy Guidelines for Major Port, 2014. Such amount shall be paid by the Concessionaire annually in advance. The amount for the License Fee for land and water front shall be calculated as per the prevailing Scale of Rates from time to time. The Concessionaire shall pay such License Fee in advance every year till the end of license period as per Schedule of Rates prevailing from time to time and first of such payments to be made upon entering into the Concession Agreement. The Concessionaire shall also pay the differential amount of the license fee due to the revision of the Scale of Rates from the effective date of revision of scale of rates, if any.*

(iv). Accordingly, M/s.CETL released advance payment of License Fee (LP) in the year 2015.

(v). As per the provisions of signed CA, Article 9.1 (A) i.e. "*The concessionaire shall also pay the differential amount of the license fee due to the revision of the scale of Rates from the effective date of revision of Scale of rates, if any*". DPT also issued demand to M/s. CETL dated 11/01/2016 for payment of differential amount of LF due to revision of LF rate [₹357.16/m^2/annum by adding 2% escalation on Rs.350.16/m^2/annum revised w.e.f.01/01/2014].

(vi). However, M/s.CETL submitted their representation dated 27/01/2016 and 18/04/2016 and have shown their disagreement towards the said revision of LF rate by stating main reason that the said LF rates are of Kandla Land and also with reclamation & infrastructure, whereas earlier rate is on as is where is basis.

(vii). The ASG in opinion given dated 17/08/2018 has stated that, in the CA entered into between the Concessioning Authority and the concessionaire on 16/04/2015, the term "Scale of rates" has been defined to mean "the scale of rates along with the statement of conditions with respect thereto framed from time to time and notified by TAMP or such other competent authority under the provisions of MPT Act, as applicable".

The Agreement thus envisaged fixing of the scale of rates by TAMP or any other competent authority under the Major Port Trust Act, 1963.

Further, the ASG has also mentioned that DPT applied SOR of Kandla Land for the Vadinar Land. This exercise could have been entered into if both the lands were identical in nature, with no distinction what so ever. In the said opinion, the ASG has also stated that [Para 39 & 40] as under:

"Querist [DPT] must approach TAMP and get the SOR fixed. Thereafter once the same is done, if the rate as agreed to in the Agreement stands higher than the rates fixed by TAMP then in this scenario of the matter, the DPT can in its discretion as provided under section 49 (3) of the MPT Act, 1963 always choose to levy the higher SoR than what was fixed by the TAMP.

However, in case the SoR fixed by TAMP is higher the rate agreed to between the parties by way of the Concession Agreement, the SoR fixed by TAMP will have to be adopted".

(viii). In view of above, DPT requests TAMP to approve the rent proposed for the year 2015, 2016 and 2017, in order to resolve the issue as per the opinion of ASG as an exceptional case and from the year 2018 with escalation of 2% for 5 years i.e. upto 2022.

9. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website http://tariffauthority.gov.in.

10. With reference to the totality of the information collected during the processing of this case, the following position emerges:

(i). The Deendayal Port Trust (DPT) has filed for the first time the proposal for fixation of lease rent for port land at Offshore Oil Terminal (OOT), Vadinar for the period from 01 January 2015 to 2018 and has proposed 2% annual escalation charge over the rent proposed for the year 2018 till 31 December 2022.

(ii). According to DPT, except existing terminals and SPMs of M/s.Indian Oil Corporation Ltd. (IOCL) and M/s.Nayara, no other new projects have been developed at OOT Vadinar due to limitation of back up land, mangroves restrictions from forest department in view of declaration of OOT area as National Marine Sanctuary, etc. and hence preparation of land use plan or valuation of land was not done by the DPT since the inception of OOT, Vadinar and after implementation of Land Policy Guidelines of 2014.

The DPT has stated that the Port appointed Govt. approved Valuer in July, 2018 with the intended purpose of preparing Valuation Report to fix the lease rent for Vadinar land for the period of 5 years w.e.f. 2018. However, in the mean time dispute arose between the DPT and M/s.Coviva Energy Terminals Ltd. (CETL) and now M/s.Nayara Energy Limited (NEL) as regards the license fee levied by the DPT for the project awarded to NEL for Development of additional one SPM and two Product Jetties at Vadinar under Concession Agreement signed between the DPT and M/s.Coviva Energy Terminals Ltd. (CETL) i.e. now NEL in the year 2015-16. The matter of dispute between the DPT and NEL arose since there was no approved lease rent for Vadinar land. NEL contended that the DPT cannot charge the license fee mentioned in Agreement unless it is approved by TAMP. That being so, to resolve the dispute between them and based on the legal opinion obtained by the DPT from ASG who opined to have a separate SOR for Vadinar land approved and notified by the TAMP, the DPT has filed the current proposal for fixation of lease rent for Vadinar Land from 01 January 2015 to 2018 and thereafter 2% annual escalation over the rent proposed for the year 2018 till 31 December 2022.

(iii). The current proposal of DPT is for fixation of Lease rent for the following four categories of land at Offshore Oil Terminal (OOT), Vadinar as per the recommendations by the Land Allotment Committee constituted by DPT Board and approved by the Board of Trustees of DPT based on report of the approved valuer.

(A):	Land having water front & upto half mile from the shore i.e. Vadinar Road
(C1 & C2):	Plot abutting on main road [for residential colony of IOCL/DPT] and other plots.
(E):	Land within the docks [Water front all sides]

(Row) Right of Way: Zone conveyance of pipelines, cables etc.

Categorisation of land completely falls under the domain of the concerned Port. Hence, this Authority goes with the proposal of the Port seeking approval of lease rent for four categories proposed by the port since it is approved by the Board of Trustees of the DPT.

(iv). (a). Clause 13 of the Policy Guidelines for Land Management 2015 lays down the procedure and the methodology to be adopted for determining the market value and the latest Scale of Rates of the port lands.

(b). The DPT has constituted the LAC under the Chairmanship of Dy. Conservator & other members viz., Chief Engineer, FA&CAO, COM(OOT) & Traffic Manager(I/c).

(c). The DPT has engaged M/s.K. M. Thacker & Associates, a Government approved land valuer for assessing the market value of the port land at OOT, Vadinar as per Clause 13(a)(iv) of PGLM 2015 including categorization of Vadinar land to M/s.K M Thacker & Associates.

The LAC after going through the recommendations of the approved valuer and after considering the methodology prescribed under Clause 13(a) (i) to (v) of PGLM 2015 has recommended the market value and reserve price of the Vadinar Land for the period from 01 January 2015 to 31 December 2022. Further, the proposal for fixing market value of land and reserve price in terms of annual lease rent for Vadinar land for the said period has also been approved by the Board of Trustees of DPT in its Board meeting held on 29 January 2020 based on the recommendation of the LAC.

Thus, the proposal filed by the DPT which is supported with the copy of the Valuation Report of the approved valuer approved by the LAC constituted by the port recommending the market value of land and Reserve Price in terms of annual lease rent and which also has the approval of the DPT Board is found to be in compliance with the provisions of PGLM 2015 for fixation of scale of rates of port land and, therefore, considered for disposing of this case.

It is relevant here to mention that Clause 13(c) of Policy Guidelines for Land Management of 2015(PGLM 2015) stipulates that the SOR will be revised every five years. However, the DPT has proposed fixation of lease rent for the period from 01 January 2015 to 31 December 2022. The DPT has furnished detailed justification for fixation of lease rent for Vadinar land for the period from 01 January 2015 to 31 December 2022 which is explained in subsequent paras.

(v). (a). Para 13 (a) of the PGLM 2015 prescribes the methodology for determination of market value of the land based on the five factors prescribed therein. As per the said para, the LAC may normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards), updated with an appropriate annual escalation rate to be approved by the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as is identified by the Port. Clause 13(a) of PGLM 2015 also stipulates that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded in writing.

(b). The valuation report of the approved valuer states that the valuation team visited the sites several times in order to come up with reliable value which required group study, time and market surveys, data collection and data analysis to assess the market value of land to arrive at market value of Vadinar land based on five factors prescribed in the Land Policy Guidelines.

(c). The DPT proposal dated 27 October 2020 shows that the LAC has considered the market value of land assessed by the approved valuer under the four out of five methods prescribed in the Land Policy Guidelines 2015 in respect of each categories of land.

Category-A and Category-E has been determined as Commercial type of land on the ground that the activities permissible in this lands are warehousing, cargo storages, import/export etc. which falls in commercial activities.

Category C1 and C2, is the plot abutting the main road for residential colony of IOCL / DPT and other plots which is determined based on residential type of land.

Right of Way (ROW) Zone has been determined as "industrial type of land" on the ground that it is used for transportation of liquids which are used in refineries & refineries fall under industrial activities.

The valuation of Vadinar land for all the four categories viz., Category-A (Commercial), Category-C1&C2 (Residential), Category-E (Commercial) and Category-ROW (Industrial) recommended by the Valuer and considered by the LAC under the first four methods prescribed in the Land Policy Guidelines is briefly explained hereunder:

(i). State Government ready reckoner rate for similar classification / activities:
Under the first option, the valuer has followed the following approach:

(a). Considered the State Government ready reckoner rate (i.e. Jantri rate) for each of the three types viz., Residential, Commercial and Industrial land for the year 2011-12 as the base.

(b). Applied multiplication factor as per Cost Inflation Index notified by Income Tax Department on the 2011-12 valuation and assessed the value of land from 2011-12 to 2018-19.

(c). Further, on such indexed land valuation, following Adjustments are done by the valuer as per the report:
For Category-A, the valuer has applied 20% increment factor on the ground that this category of land is nearby Vadinar dock and hence it fetches higher rate.
For Category-E, the valuer has applied 25% increment factor on the indexed rate citing the reason that Category-E is within Vadinar Dock and hence fetches higher rate @ 25%.
For Categories C1&C2 and ROW, the valuer, citing that the land is opposite to / nearby Vadinar village, stated that no

factor of adjustment is applicable. An example is tabulated below for ease of understanding:

Valuation of Land for Category 'A' as per highest stamp duty value of land at Vadinar (commercial rate) of Government of Gujarat.

Sr. No.	Year	Rate (₹)	Multiplication factor as per cost inflation index	Valuation per Sq. meter after applying cost inflation index	Valuation after increment factor of 20%
1	2011-12	1038.00	1.00	1038.00	1245.60
2	2012-13	1038.00	1.09	1128.26	1353.91
3	2013-14	1128.26	1.10	1241.09	1489.30
4	2014-15	1241.09	1.09	1353.91	1624.70
5	2015-16	1353.91	1.06	1432.89	1719.47
6	2016-17	1432.89	1.04	1489.30	1787.17
7	2017-18	1489.30	1.03	1534.43	1841.32
8	2018-19	1534.43	1.03	1579.57	1895.48

(ii). Highest rate of actual transactions registered in last 3 years in the Port's vicinity with an appropriate annual escalation rate:

Under this option, the valuer has calculated the basic rate for commercial area as per the highest actual sale transaction rate received for the commercial land allotted to Bharat Oman Refinery Ltd. (BORL) @ ₹3600 per sqm in the year 2016. This is arrived by the DPT as per the actual sale transaction to Bharat Oman in Vadinar at price of ₹1,45,68,682/- for an area of 4047 sqmt. So the per sq.mt. rate is 1,45,68,682/ 4047 = 3599.87 say ₹3600/- per sq. mt.

To arrive at the basic land rate for Commercial area for the year 2015, the valuer has taken the actual transaction rate of ₹3600 per sqm in the year 2016 as the base and applied reduction factor @ 8% per annum (reverse calculation) for the year 2011-12 to 2015-16 and 8% increment for the years 2017-18 and 2018-19. And then, further reduced it by 30% for size factor. The port has clarified that since land area of Vadinar is very large in size compared to land allotted to BORL, 30% reduction factor is applied as per Govt. of Gujarat valuation guideline dated 23/09/2002 to arrive at the justified valuation. Thus, the rate for the year 2015 is arrived at ₹2318.40 per sq mtr after applying 8% reduction on ₹3600/- and on resultant valuation another 30% reduction factor as explained above. Thus, the basic rate for Commercial type of land as of 2015 under this method is worked out at ₹2318.40.

For Residential land, the valuer has applied further 30% reduction factor on the Commercial land rate and for Industrial land, the valuer has applied 10% reduction factor citing that the Commercial rate is higher than industrial rate.

To explain with the same example, for the year 2015 for Residential land, the rate is worked out at ₹1622.88(2318.40-0.30*2318.40) and for Industrial land, the value of land for the year 2015, is arrived at 2086.50(2318.40-0.10*2318.40).

For the year 2017 and 2018, the valuer has applied 8% annual incremental factor on the rate as of 2016 and 2017 respectively as explained earlier.

Further, for land under Category-A and Category-E 20% and 25% incremental factor is applied as done under the first method and further adjustment is done to convert the freehold land rate to leasehold land rate under this method, by applying 25% reduction factor.

The above methodology is followed to arrive at the final value of land for each category for each of the years from 2015 to 2018.

An example is tabulated below for ease of understanding.

Valuation for category 'A'

Valuation of Land as per highest rate of actual transactions registered in last 3 years in the Port's vicinity with an appropriate annual escalation.

Sr. no.	Year	Rate (₹)	Percentage increment as per Revenue Department of Gandhi Nagar	Valuation per Sq. meter (in ₹)	Valuation per Sq. meter after reduction of size factor at 30% (in ₹)	Valuation after increment factor of 20%	Valuation after converting from freehold land rate to leasehold land rate after adjustment factor of 25%
1	2011-12	2579.01	-8.00	2372.69	1660.89	1993.06	1494.79
2	2012-13	2803.28	-8.00	2579.01	1805.31	2166.37	1624.77
3	2013-14	3047.04	-8.00	2803.28	1962.29	2354.75	1766.06
4	2014-15	3312.00	-8.00	3047.04	2132.93	2559.51	1919.63
5	2015-16	3600.00	-8.00	3312.00	2318.40	2782.08	2086.56
6	2016-17 (Year of allotment)	3600.00	0.00	3600.00	2520.00	3024.00	2268.00
7	2017-18 Assuming	3600.00	+8.00	3888.00	2721.60	3265.92	2449.44
8	2018-19	3888.00	+8.00	4199.04	2939.33	3527.19	2645.40

(iii). Highest accepted tender cum auction rate of port land:

Under this option, the LAC has considered the land allotment rate of ₹ 203.38 per sqmt as of January 2015 done to M/s Vadinar Liquid Terminals Ltd.(VLTL) to develop two product jetties and one SPM at OOT, Vadinar. The market rate of commercial land for the year 2015 is arrived at 3389.67/ per sq mtrs by reverse calculation (i.e. 203.38*100/6). From the years 2016 till 2018, the valuer has applied 2% annual escalation over the market value/ lease rent. This is as per one of the methods arrived for the valuation of land under Category E.

The methodology adopted is tabulated below:

Sr. no.	Year	Rate of Auction (Lease rent) (INR)	Increment as per DPT norms (in %)	Lease rent per sqmt p/a (INR)	Gross valuation of open land (INR)
		A	B	C	(Cx100/6)
1	2015-16	203.38	0.00	203.38	3,389.67
2	2016-17	203.38	2.00	207.45	3,457.46
3	2017-18	207.45	2.00	211.60	3,526.61
4	2018-19	211.60	2.00	215.83	3,597.14

(iv). Rate arrived at by Approved valuer:

Under this option, the valuer has arrived at the market rate considering the market rate derived for valuation of land for undeveloped land on as and where basis done in the year 2012 by M/s. K.M.Thacker & Associates for Categories C1&C2, ROW, A &

E at Vadinar as the base and for the subsequent years till the year 2018, the valuer has applied 2% annual escalation as per DPT norms.

The methodology adopted is tabulated below for Category A land:

Sr. no.	Year	Rate (INR)	Increment as per DPT norms (in %)	Valuation per sqmt (INR)
1	2011-12	1,463.00	2.00	1,492.26
2	2012-13	1,492.26	2.00	1,522.11
3	2013-14	1,522.11	2.00	1,552.55
4	2014-15	1,552.55	2.00	1,583.60
5	2015-16	1,583.60	2.00	1,615.27
6	2016-17	1,615.27	2.00	1,647.58
7	2017-18	1,647.58	2.00	1,680.53
8	2018-19	1,680.53	2.00	1,714.14

(v). Any other factor identified by the port:
The port has not considered valuation of Vadinar land under this factor.

(vi). The LAC, after detailed discussion in its meeting held on 21 September 2019 and 16 January 2020 has recommended the market value of land and reserve price at 6% of the market value of land based on the highest market value assessed under all the factors for the four categories as proposed by the approved valuer.

(vii). The DPT has furnished a statement showing details of market value of land as per five factors mentioned at Para 13 (a) of the PGLM-2015 and the rate recommended by the LAC.

A copy of statement of market value of land under the five factors and highest market value of land recommended by the LAC is attached as **Annex-I**.

After detailed discussions and deliberations, the LAC in its meeting dated 16 January 2020 has recommended the highest of the factors as the market value of land for four categories in OOT, Vadinar.

(viii). The Board of Trustees of the DPT has approved the market value of OOT, Vadinar land as well as the reserve price in terms of annual lease rent applying 6% on the market value of land in its meeting dated 29 January 2020. The proposal of the DPT seeks approval of the market value of land and the reserve price in terms of annual lease rent. Clause 13 (c) of the Land Policy Guidelines 2015 stipulates that the port shall file a proposal to this Authority for fixation of reserve price in terms of annual lease rent at the rate not less than 6% of the market value of land proposed by the port.

The proposal of the DPT is based on the recommendation of the LAC and is approved by the Board of Trustees of the DPT and thus complies with the provision of the Policy Guidelines for Land Management, 2015. That being so and in terms of Clause 13 (c) of the Land Policy Guidelines 2015, this Authority is inclined to approve the annual lease rent as proposed by the DPT for four categories of land at OOT, Vadinar.

As per the Land Policy Guidelines of 2015, this Authority is only required to approve the latest SOR and not the market value of land. That being so, the Schedule approved by this Authority shall be of lease rent.

(ix). The market value of land and the reserve price in terms of annual lease rent as on 01 January 2015, 01 January 2016, 01 January 2017 and 01 January 2018 as proposed by the DPT and the proposed lease rent approved by this Authority is tabulated below:

SR. No	Category	Proposed Market value of land Per sq metre				Proposed lease rent @6% of Market value Per sq meter per annum			
		01 January 2015	01 January 2016	01 January 2017	01 January 2018	01 January 2015	01 January 2016	01 January 2017	01 January 2018
1	2	3	4	5	6	7	8	9	10
1	Category A	2086.56	2268.00	2449.44	2645.39	125.19	136.08	146.97	158.72
2	Category C1 & C2)	1974.10	2013.58	2053.85	2094.93	118.45	120.81	123.23	125.70
3	Category E	3389.67	3457.46	3526.61	3597.14	203.38	207.45	211.60	215.83
4	Category ROW	1794.13	1830.01	1866.61	1984.05	107.65	109.80	112.00	119.04

(a). The highest market rate mentioned for the year 2018 would bear 2% escalation every year from the year 2019 upto 2022 or till further revision as provided in the Land Policy Guidelines.

(b). The lease rent for water area would be 50% of License fee of abutting land.

As can be seen from the above table, the percentage increase in lease rent for Category-A as on 01 January 2016, 01 January 2017 and 01 January 2018 over the lease rent as on 31 December 2015, 31 December 2016, 31 December 2017 respectively is around 8% and for subsequent years i.e. from 2018 till 2022 the Board has approved 2% annual escalation. For the other three categories viz., Category-C1&C2, Category-E and Category-ROW the DPT Board has approved 2% annual escalation from the year 2016 onwards till the year 2022.

As regards the annual escalation @ 8% for category-A is concerned, the DPT has clarified that the annual escalation @ 8% is adopted as per Government of Gujarat Guideline Rate of valuation department which allows the increase or decrease in the range of 10 to 15% to calculate comparable sales. The highest sale comparison transaction of Bharat Oman Refinery Limited (BORL) is of the year 2016. It is the conscious decision taken by the LAC and the Board of Trustees of DPT to propose the increase in lease rent higher than 2% for Category-A for the said years. Para 13(c) of Policy Guidelines for Land Management 2015 stipulates that the Port Trust Board will fix a rate of annual escalation which would not be less than 2%. Thus, the guidelines give flexibility to the Port Trust Board to fix the rate of annual escalation higher than 2%. Since the market value of land and proposed lease rent for all the above categories of the land is based on the recommendation of the LAC and approved by the Board of Trustees of DPT, this Authority approves the proposal of the port.

(x). The Indian Oil Corporation Limited(IOCL), Nayara Energy Limited(NEL) and Gandhidham Chamber of Commerce and Industry(GCCI) have pointed out that the classification/ categorization is not as per National Industrial Classification (NIC) 2008 as per the clarification issued by the MOPSW on the land Policy Guidelines. The users have failed to point out as to how the classification of land done by DPT is not as per the NIC 2008. The DPT has categorically stated that the land use plan has been prepared in line with the NIC 2008 and the classification / categorisation of the port land has been covered in the Land Use Plan report. This was uploaded into DPT website and forwarded to Stake Holders in April 2019 for comments before carrying out the valuation of land. As stated earlier, categorisation of land completely falls under the domain of the port. The Categorisation of land is done by an approved valuer who is an expert in that area and is also approved by the Board of Trustees of the DPT.

(xi). The main objection by NEL on the proposal of the DPT are on the following grounds:

(a). As per the Concession Agreement entered between the DPT and CETL presently NEL, NEL is required to pay license fee at ₹203.38 per square metre per annum for land at Vadinar. The rate of ₹203.38 per square metre per annum is stated to be based on the then applicable lease rent for

Category 'E' for Kandla land as no lease rent was prescribed for Vadinar. The lease rent proposed by the DPT in the current proposal for Vadinar land for Category E for the year 2015 is at ₹203.38 per sq metre per annum which is based on the highest accepted Tender-Cum-Auction rate.

The NEL has contended that it is incorrect to approve lease rent for E category of land at Vadinar based on the rate of license fee agreed in the Concession Agreement as it was based on the then applicable lease rent for category 'E' of Kandla land.

In the year 2015, the license fee for Vadinar land was prefixed when NEL bid for the project. There was no price discovery at that time. The rate considered is not from auction. Hence, the market value of land under sale transaction cannot be considered to arrive at lease rent for E category.

(b). Kandla Port is a fully developed port with multiple users. Whereas, there is no infrastructure development or existence of any reclamation area in Vadinar, unlike Kandla land. Thus, applying Kandla rate for Vadinar Land is not justified.

(c). Project land at A is near water. The market value and lease rent for category A must have higher rate as it is near the water. But, in proposal, market value of land for category 'E' which is stated to be surrounded by water all the sides is higher than category A.

(d). The Valuation Report also fails to highlight the reason for application of different percentage of indexation for land in Category A and Category E. Application of additional percentage on the highest land value at Vadinar has caused the rates to be increased substantially and would accordingly cause charging of exorbitant rates on the Vadinar Land, thereby effecting Nayara.

(e). The NEL has independently got the valuation of Vadinar land done from a government approved valuer and has arrived at proposed lease rent as per which the lease rent for Category E works out to ₹108.18 per sq. mtr per annum and requests to consider the same as proposed by the independent valuer

(f). The rates of BORL is not to be considered as the benchmark for deciding the rates of Vadinar land.

(xii). As regards (xi) (a), the DPT has justified that the valuation of Vadinar land has been assessed under 4 methods out of five methods prescribed in the Land Policy Guidelines and the highest value of land amongst all the 4 methods for each category is adopted which is in general practice by Valuer.

As regards Category E, of the four methods considered for valuation of land, Highest accepted tender-cum-auction rate is one to the five methods for assessing the market value of land prescribed in clause 13(a) of the Land Policy Guidelines. The DPT has contended that once the rate of ₹203.38 per sq metre per annum is accepted in the tender-cum-auction by party, irrespective of its reference to it, will become highest accepted rate of particular land. As per the above LPG clause, the accepted rate either tender or on auction basis can be considered for evaluation purpose.

In the present case, the DPT has clarified that the highest rate accepted by NEL through duly signed agreement dated 16th April, 2015 has been considered. When DPT was requested by us to justify consideration of the same rate for valuation of Category-E of Vadinar Land which is at different location of a distance more than 250 kms. from Kandla Port, the port has referred to the Article 9.1.(A) of the

Concession agreement between DPT and M/s. CETL for development of marine liquid terminal facilities consisting of SPM & Two Product Jetties in DPT waters at OOT, Vadinar, on captive use basis wherein it is stipulated that, the Concessionaire shall pay License fee. at ₹203.38/m^2/annum as of January 2015 as per Chapter VI, Category E of Scale of Rates of KPT and License Fee for Water Area at ₹101.69/m^2/annum of January 2015 i.e. 50% of the aforesaid rate for land area as per the Land Policy Guidelines for Major Port, 2014. The final lease rent proposed by the DPT for Vadinar land for Category E is after valuation of land under the four methods and highest lease rent from the four factors is considered as per the Land Policy Guidelines 2015. The DPT has categorically stated that the highest rate so arrived for the Category E is in order. As such there is no deviation from the LPG.

There was no objection raised by NEL during tendering stage and execution of agreement. The objection was raised by the NEL when the DPT applied revised lease rent of ₹357.16 per sq.mtr. per annum for category 'E' as per the revised lease rent approved by this Authority for Kandla land vide Order No.TAMP/24/2014-KPT dated 13 November 2014 effective from 1 January 2014.

It is relevant to state that the lease rent mentioned in the agreement entered between the DPT and CETL (presently NEL) dated 16 April 2015 for Vadinar land is adoption by the DPT of the then lease rent approved by this Authority vide Order No.TAMP/21/2010- DPT dated 25 March 2011 at ₹180.30 per sq metre per annum w.e.f. 1 January 2009 after applying applicable annual escalation applicable for Category E land. Subsequent to that, this Authority has vide Order No.TAMP/24/2014-KPT dated 13 November 2014 approved revised lease rent for Kandla land effective from 1 January 2014 wherein the lease rent for category E land is ₹357.16 per sq metre i.e. ₹357.16 per sq. metre in the year 2015.

As against the lease rent for Kandla Land for E category at ₹357.16 per square metre per annum applicable as on 1 January 2015, the port has in the current proposal proposed lease rent for category E land at ₹203.38 per sq metre per annum which is lower than the existing rent levied at ₹ 357.16/Sq. Mtr./annum. The Port has categorically stated that the proposed rates are reasonable and may be approved.

As regards, the point made by NEL that no auction was conducted by the DPT for development of Vadinar land, the port has clarified that under one of the options of LPG guidelines for determination of market value of land i.e. Highest accepted tender-cum-auction rate of port land for similar transactions, the accepted tender rate either tender or on auction basis can be considered for evaluation purpose. Accordingly, port has considered the rate accepted by NEL by signing the agreement with DPT and hence there is no deviation from LPG and the rate thus arrived for Category-E is in order.

It is relevant here to mention that Clause 13(c) of PGLM 2015 prescribes the methodology for determination of market value of land. As brought out by the DPT, one of the five factors to be considered for determination of market value of land at para 13(a)(iii) is 'Highest accepted tender-cum-auction rate of port land for similar transactions' and the DPT has considered the accepted tender rate of CETL(now NEL) for determination of market value of land for Category-E of Vadinar land at DPT.

It is seen from the proposal of the DPT that DPT has engaged an approved valuer for undertaking the valuation of Vadinar land following the LPG 2015. Based on the valuation report, the LAC has recommended the highest market value of land which is as per clause 13(a) of the LPG 2015. The Board of Trustees of the DPT has vide resolution dated 29 January 2020 approved the highest market value for different categories of land at OOT, Vadinar and has approved annual lease rent @ 6% of the approved market value of the land for each category and for each of the years 2015 to 2018 and, thereafter, to bear annual escalation @ 2% till the year 2022.

The port has categorically stated that the procedure adopted for arriving at highest market rate for Vadinar land is correct & justified and is as per Land Policy Guidelines.

In view of the above position, and since the proposal of the DPT is in compliance with the LPG 2015, this Authority has no grounds to deny approval to the proposal of the DPT for revision of lease rent for Vadinar land including lease rent for category E.

(xiii). As regards (xi) (b) above, the DPT has clarified that Category – E land is existing reclaimed & developed land already in operation for import/ export activity hence approachable.

(xiv). As regards (xi) (c) above, the contention arises from the description of land of category A and E by the DPT in its proposal which is as follows:

(a). Category A – Land having water front & upto half mile from the shore i.e. Vadinar Road.

(b). Category E – Land within the docks (water front all sides).

The port has, during the processing of the case, clarified that as far as Category A is concerned, the half mile limit is specified looking to the tidal zone and utilization of land for development of infrastructure. As regard Category E is concerned, the mention of water front all side is indicative only; it does not specify the categorization of land. It is mentioned only to give clear idea of Category E land [i.e. land inside custom bond area] is surrounded by water.

Category E land is existing reclaimed & developed land already in operation for import / export activity hence approachable. On the other hand Category – A land is already submerged in water and hence to develop that land for use / port related activity, addition expenses up to 25% to 30% & additional 15% for infrastructure is to be done. That being so, there is difference of 40% i.e. lower value of land for category A in comparison to value of land at category E which is justified. The clarification of the DPT is explicit and hence relied upon.

(xv). As regards (xi) (d) above, it is seen from the valuation report that valuer has done adjustments for various factors for arriving at the market value of land which is already explained in the earlier paragraphs and hence not reiterated for the sake of brevity. The Report of the Valuer explains the reasons for applying the adjustments for valuation of land. Hence the contention of the NEL that report of valuer does not explain the reasons for application of different percentages is not found to be factually correct.

(xvi). As regards (xi) (e) above, the contention of the NEL to consider the proposed lease rent of NEL arrived based on the land valuation done by an Independent valuer, it is to state that the suggestion made by NEL is not in line with the clause 13(c) of the LPG 2015. As per clause 13 (c) the Port Trust would make a proposal as outlined in para 13(a) to TAMP for fixing the latest SoR of the land and the TAMP would notify the latest SoR of the land after following due process of consultation with stake holders. Para 13 (a) stipulates and specifies that the approved valuer has to be appointed by the port. Therefore, the question of consideration of Valuation Report of any other valuer does not arise.

It is seen that the DPT has appointed the government approved valuer and followed the procedure prescribed in the LPG 2015 for assessing the market value of the Land at Vadinar. The LAC has deliberated the valuation report and made recommendation of the highest market value of land under each of the category of land. The Board of Trustees has approved the market value of land and the lease rent @ 6% of the market value of land for each of the years 2015 to 2018 and from 2019 to 2022, approved 2% annual escalation in lease rent. The DPT and this Authority are bound to follow the LPG 2015 issued by the MOPSW.

(xvii). As regards (xi) (f) above, the point made by the NEL that the Rates of Bharat Oman Refineries Limited (BORL) should not be taken for calculation for the rate of Vadinar land, the DPT has clarified that the BORL land is situated in Vadinar village itself and the rate so proposed by the Port is also situated in the same village. BORL has purchased land @ ₹3,600/- which is having proof as registered document and it is one of the method for sale comparison.

Hence, the Port has taken the BORL rate as the base rate considering that it is "in the Port's vicinity" as per the LPG clause no. 13 (a) (ii). The BORL has procured the land for setting up of tank farms, which is Industrial activity and in the present proposal the land is also meant for Industrial purpose viz. Import/Export of Crude Oil/Product. The port has considered sale transaction of Bharat Oman as one of the methods and has done suitable adjustment for arriving at market value of land under different categories. The approach adopted by the DPT of considering the actual sale transaction of BORL is found to be line with one of the methods for market valuation of land prescribed in the LPG 2015.

(xviii). As regards the objection raised by IOCL and NEL regarding applicability and basis of multiple inflation factors like 9%, 10%, 6%, etc. considered by the port on the Gujarat Government stamp duty rate from the year 2011 onwards, the DPT has clarified that the Cost Inflation Index notified by the Income Tax Department is applied and it is applicable to all sectors including land to arrive at present value. The port has further clarified that all the escalations/reductions are as per Gujarat Government guiding principles for valuation of government lands and lands that are in the interest of government and the guidelines for valuation of immovable properties issued by Income Tax department.

(xix). With respect to the concession in lease rent sought by IOCL, as rightly stated by the DPT, the consideration of concession, if any, to any core activities as per clause 11.2(h) of LPG is within the power and decision of the DPT Board. The issue of granting concession and the quantum may be decided by the Port Trust Board, after recording the reasons in writing.

(xx). (a). Clause 13 (c) of the PGLM 2015 gives flexibility to Ports to fix rate of annual escalation which should not be less than 2% with the approval of the Port Trust Board.

The port has proposed a note that the rates shall be escalated by 2% from the year 2018 onwards. Since the annual escalation in lease rent at 2% is approved by the Board and is found to be in line with the Policy Guidelines for Land Management 2015, the proposed note is approved as proposed by the DPT. The annual escalation @ 2% will be effective from 1 January 2019 on the lease rent as on 31 December 2018 approved by this Authority in this Order.

(b). The note in Schedule of rent of Other Major Port Trusts including DPT for Kandla land and Gandhidham land states that all the conditions governing the lease rental shall be as per the Policy Guidelines for Land Management 2015 read with Clarification/ Circulars issued / to be issued by the MoPSW from time to time. This note is incorporated in the Schedule of lease rent for Vadinar land as well.

(c). The proposed note that lease rent for water area shall be 50% of licence fee of abutting land is in line with the LPG 2015 and hence is prescribed.

(d). The note proposed by the DPT that lease rent would be 6% of latest market value of land need not be prescribed as proposed lease rent itself is prescribed in the Schedule of rent.

(xxi). (a). Para 13(c) of Land Policy Guidelines 2015, *inter alia*, stipulates that the TAMP would notify the latest SOR of the land after following due process of consultation and that SOR would be refixed once in every 5 years by TAMP.

As stated earlier, the DPT has filed the proposal for fixation of lease rent for Vadinar Land of the port for the first time. The proposal of the DPT seeks approval of market value of land and reserve price in terms of annual lease rent @ 6% of market value of land with retrospective effect from 01 January 2015 till 31 December 2018 and from 2019, 2% annual escalation upto 31 December 2022 is proposed by the port.

The IOCL has objected the retrospective revision proposed by the DPT stating that it is not open for the DPT and this Authority to fix lease rent for a retrospective period from 01 January 2015 and hence the proposal of DPT is not be accepted. IOCL has further stated that the Hon'ble High Court of Gujarat in Special Civil Application No.13409 of 2014 and allied matters, in the context of challenge to TAMP Order of the year 2011, has held that such a retrospective determination is not permissible.

In this regard, the DPT has reiterated that the main intended purpose of preparing Valuation Report is for fixing the rent for the period of 5 years w.e.f. 2018 and accordingly port appointed Govt. approved Valuer in July, 2018. However, in order to resolve the dispute of M/s.CETL, as per the opinion Additional Solicitor General to GoI, the DPT has proposed rent for the years 2015, 2016 and 2017 in addition to the period from the year 2018 to 2022. The DPT has, clarified that the, proposal to apply the rate with retrospective effect from the year 2015 shall apply only where applicable as per the agreement executed between DPT and the party.

On being sought from DPT as to why the Schedule of Rent for Vadinar Lands should not be fixed for a tariff cycle of 5 years (01.01.2015 to 31.12.2019) for Vadinar Lands at 6% of the base Market Value as of 2015 with annual escalation at 2% for the subsequent 4 years beginning from 01.01.2016 to 01.01.2019, the DPT has reiterated that the main intended purpose of preparing Valuation Report is for fixing the rent for the period of 5 years w.e.f. 2018, accordingly Port appointed Govt. approved Valuer in July, 2018.

In the meantime, the issue of applicability of lease rent for the project of development of additional one SPM and two Product Jetty at Vadinar by M/s.CETL i.e. presently NEL arose. In order to resolve the dispute and, as per the opinion Additional Solicitor General to GoI obtained by the DPT, the port has sought approval of lease rent for the years 2015, 2016 and 2017 while seeking approval of lease rent for the 5 years from 2018 to 2022.

Therefore, the DPT has requested to approve the lease rent for the period from 2015 to 2017 as an exceptional case and from the year 2018 with escalation of 2% for 5 years i.e. upto 2022.

Section 49 of the Major Port Trusts Act, 1963 calls for fixation of rates from time to time. In view the submissions made by the DPT for seeking fixation of lease rent for Vadinar land for the years from 2015 to 2017 and for the years 2018 to 2022, this Authority approves the proposal of DPT which is based on the approval of the Board of Trustees of the DPT.

Incidentally, in the case of VPT where it sought approval of lease rent for the first time, this Authority has vide Order No.TAMP/37/2009-VPT dated 29 November 2010 approved the lease rentals of VPT lands for the first time for the quinquennium 1998-2003 and 2003-2008 as proposed by the port.

(b). The annual lease rent for Vadinar Land approved by this Authority with retrospective effect from 01 January 2015 will be made applicable in case of the existing lessees / licensees subject to provision for periodic revision of rates agreed in the surviving lease agreements and in those cases of renewal/ allotment only if the respective lease agreement or letter of allotment, if no lease deed is still executed, explicitly provides for revision of lease rentals during the currency of the lease period.

(xxii). Para 13 (c) of PGLM 2015, *inter alia*, stipulates that the SOR would be refixed once in every 5 years by TAMP. The DPT has already explained the reasons for proposing lease rent for the years 2015, 2016 and 2017 along with the proposed lease rent for the five years from 2018 to 2022 which is approved for the reasons stated by the port.

Hence, the Lease rent for Vadinar land at DPT is prescribed in two schedules i.e. (a) Lease rent for the years 2015 to 2017 and (b) Lease rent from the year 2018 i.e. from 1.1.2018 to 31.12.2018 with 2% annual escalation from 1.1.2019 till 31.12.2022 as proposed by the DPT. Hence a note is prescribed that the lease rent approved in the second schedule which is effective fro, 1.1.2018 shall be valid for five years i.e. till 31.12.2022.

11.1. In the result, and for the reasons given above, and based on collective application of mind, the schedule of lease rentals for land at OOT, Vadinar at DPT alongwith the conditionalities attached as **Annex - II** is approved.

11.2. The lease rent approved shall be effective from 01 January 2015 as proposed by the DPT and shall remain valid till 31 December 2022.

(T.S. Balasubramanian)
Member (Finance)

Annex-I

Comparative Statement of Market Rate arrived under four factors

[**Per sq. mtr**.]

Sr. No.	Description of Factors	Year	(A) Land having water front & upto half mile from the shore i.e. Vadinar Road	(C1 & C2) Plot abutting on main road (for residential colony of IOCL / DPT) and other plots	(E) Land within the Docks (Water front all sides)	(ROW) Right of Way : zone conveyance of pipeline
1.	State Government's Ready Reckoner of land values in the area, if available for similar classification activities	2015	1719.47	1225.83	1791.11	1573.70
		2016	1787.17	1274.09	1861.63	1635.65
		2017	1841.32	1312.70	1918.04	1685.22
		2018	1895.48	1351.30	1974.46	1734.78
2.	Highest rate of actual relevant transactions registered in last three years in the Port's vicinity (The vicinity of the Port is to be decided by respective Port Trust Board), with an appropriate annual escalation rate to be approved by the Port Trust Board	2015	**2086.56**	1217.16	2173.50	1564.92
		2016	**2268.00**	1323.00	2362.50	1701.00
		2017	**2449.44**	1428.84	2551.50	1837.08
		2018	**2645.39**	1543.14	2755.62	**1984.05**
3.	Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board	2015	-	-	**3389.67**	-
		2016	-	-	**3457.46**	-
		2017	-	-	**3526.61**	-
		2018	-	-	**3597.14**	-
4.	Rate arrived at by an approved valuer appointed for the purpose by the Port (by M/s. KM Thacker & Associates)	2015	1615.27	**1974.10**	1435.31	**1794.13**
		2016	1647.58	**2013.58**	1464.01	**1830.01**
		2017	1680.53	**2053.85**	1493.29	**1866.61**
		2018	1714.14	**2094.93**	1523.16	**1903.95**
5.	Any other relevant factors as may be identified by the Port	**NIL**				

The highest Market Rate of Vadinar land submitted by the valuer is as below from the year 2015 to 2018

Description (Rates are per sq. mtr. Per annum)	(A) Land having water front & upto half mile from the shore i.e. Vadinar Road	(C1 & C2) Plot abutting on main road (for residential colony of IOCL / DPT) and other plots	(E) Land within the Docks (Water front all sides)	(ROW) Right of Way : zone conveyance of pipeline
2015	2086.56	1974.10	3389.67	1794.13
2016	2268.00	2013.58	3457.46	1830.01
2017	2449.44	2053.85	3526.61	1866.61
2018	2645.39	2094.93	3597.14	1984.05
As per clause no. 13 (b) annual lease rent @6% of the highest rate				
2015	125.19	118.45	203.38	107.65
2016	136.08	120.81	207.45	109.80
2017	146.97	123.23	211.60	112.00
2018	158.72	125.70	215.83	119.04

<u>Annex-II</u>

Schedule of Lease Rent for the Land at Offshore Oil Terminal (OOT) Vadinar

A. Schedule of Lease rent for the years 2015, 2016 and 2017

Sr. No.	Description	Lease rentals per sq. mtr. per annum as on 01.01.2015 (In ₹)	Lease rentals per sq. mtr. per annum as on 01.01.2016 (In ₹)	Lease rentals per sq. mtr. per annum as on 01.01.2017 (In ₹)
1	Category A	125.19	136.08	146.97
2	Category C1 & C2)	118.45	120.81	123.23
3	Category E	203.38	207.45	211.60
4	Category ROW	107.65	109.80	112.00

B. Schedule of Lease rent for the year 2018

Sr. No.	Description	Lease rentals per Sq. Mtr. per annum as on 01.01.2018 (In ₹)
1	Category A	158.72
2	Category C1 & C2)	125.70
3	Category E	215.83
4	Category ROW	119.04

Notes:

(i). The annual lease rent prescribed in Schedule A are for the years 2015, 2016 and 2017.

(ii). The annual lease rent prescribed in Schedule B is for the period from 1 January 2018 and shall remain valid till 31 December 2022 subject to annual escalation prescribed in note (iii) below.

(iii). The lease rent prescribed in schedule B would bear 2% escalation every year from the year 2019 upto 31 December 2022 or till further revision as provided in the Land Policy Guidelines. The first annual escalation shall be on 01 January 2019.

(iv). The lease rent for water area would be 50% of License fee of abutting land.

(v). The other conditions governing the lease rental / license fee shall be as per the Policy Guidelines for Land Management, 2015 read with Clarification/ Circulars issued/ to be issued by the Ministry of Ports, Shipping and Waterways from time to time.

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SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS/ ORGANISATION BODIES/PRIVATE TERMINALS / BOT OPERATORS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F.No. TAMP/53/2020-DPT- **Proposal from the Deendayal Port Trust for fixation of lease rent of Vadinar Land applicable for the period from 01 January 2015 to 31 December 2022**

1. A summary of comments received from users/ user organisaitons and reply of DPT thereon is tabulated below:

<table>
<tr><th>Sl. No.</th><th>Comments of the users/ user organisations</th><th>Reply of DPT</th></tr>
<tr><td>1.</td><td>Indian Oil Corporation Limited (IOCL)</td><td></td></tr>
<tr><td>(i).</td><td>The market rate of ₹2094.93 for the year 2018 has been arrived at considering the land of residential colony under C-1 and C-2 category.

On perusal of the Valuation report prepared by the Valuer, some factual error committed by the valuer has been observed which is detailed below –
(a). The valuer has enumerated the market rates as per various parameters. For residential land, the valuer has given details thereof in Annexures 1, 2, 3, 7, 11, 14, 20 and 24. For ready reference, the same are brought out hereunder :-
<table>
<tr><th>Annexure</th><th>Market Rate (₹)</th></tr>
<tr><td>1</td><td>1600/-</td></tr>
<tr><td>2</td><td>888/-</td></tr>
<tr><td>3</td><td>1351/-</td></tr>
<tr><td>7</td><td>1351/-</td></tr>
<tr><td>14</td><td>2057/-
(derived from Annexure 11 which in fact, relates to Industrial / Commercial land)</td></tr>
<tr><td>Summarized rate of residential colony land as per Summary Method 2 (Page 92 of Final document)</td><td>1543/-</td></tr>
<tr><td>20</td><td>2094.93/-
(Based on Annexure 1A (page no. 97 of final document)</td></tr>
<tr><td>24</td><td>2094.93/-
(Based on Annexure-20)</td></tr>
</table>

While arriving at the figure of ₹2057/- in Annexure 14, the Valuer has derived the same from Annexure 11 which in fact relates to market value of land for industrial / commercial purposes. The</td><td>(a). The base rate has been taken from the valuation report prepared by the Port earlier, which is attached as Appendix in the Valuation Report to arrive at the highest market rate of Rs.2094.93 for category C1 & C2.

The base rates have been referred from the Gujarat Government Guidelines value [stamp duty rates] and the rate at which Government sold land to Indian Coast Guard for the Development of Residential Complex [behind the Port Colony]. The rate of Rs.2094.93 has been arrived from the above mentioned reference rates after applying escalation. Therefore the highest rate approved for the category C1 & C2 is in line with the stipulated guidelines and is in order and there in no deviation or error in the rates.

(b). In case of rate of Rs.2057/-, the valuer have used sale instance of Bharat Oman vide allotment letter no. 3220/16 dated 10/08/2018 r.s. no. 98 paiki 1, value derived as under:

Allotment price = 1,45,68,682/-
area = 4047 sqmt
Rate per sq.mt. = 1,45,68,682/- = 3599.87 Say 3600/- per sq. mt.

Since land is very large in size, reduction factor is applied as per Govt. of Gujarat valuation guideline no. mulyankant/paripatra/5114 dated 23/09/2002 [Annexure-I]. Hence reduction factor @ 30% is applied to arrive at the justified valuation.

Reduction factor @ 25% is applied to convert Freehold land rates to Leasehold land rates which is as per “CBDT” valuation guidelines – 2009 Pg. No. 49, sub head no. (h) land tenure</td></tr>
</table>

	Valuer himself thereafter in the Summary has arrived at the figure of ₹1543/- giving 25% discount. The basis of this discount is not known. Thus, the very basis for arriving at the said figure of ₹1543/- is incorrect.	
(ii).	Clarification dated 29.4.2019 have been issued by the Ministry of Shipping. In respect to paragraph relating to arriving at the market value of the land, the Ministry has clarified as under :- "**Issue 13 (c)(i)** :- It has been brought to the notice of the Ministry that the present classification of the port lands and the fixation of SoR thereof is not uniform within and across the major ports leading to complications and disputes. This impacts the realization of revenue for the ports. How does the Port Land need to be classified / categorized? **Clarification 13(c)(i)** :- For the lease, classification /categorization of Port Land needs to be done as per National Industrial Classification (NIC), 2008."	As far as the classification/ categorization of the Port Land as per the National Industrial Classification [NIC] 2008 is concerned, it is to state that the land use plan has been prepared is in line with the above said guidelines. The classification/categorization of the Port Land has been covered in the land use plan report, therefore the same has not been included in the valuation report. It is pertinent to mention here that the Land Use Plan was uploaded into DPT website and forwarded to Stake Holders vide this office letter no. OOT/ C-PS/Land/4020/120 dated 03/04/2019 for comments before carrying out the valuation of land. [DPT has furnished copy of classification of land.]
(iii).	The rate of ₹888 has been arrived at as per Gujarat Government Guideline Value (Highest stamp duty rates) w.e.f. 2011. Multiple inflation factors like 9%, 10%, 6% etc. have been applied on the base rate as notified by Gujarat Government. Whether such inflation is applicable on the land rates notified by State govt.? What is the basis of the % inflation considered in Annexure 3?	Cost inflation chart notified under Section 48, Explanation(V), as per Notification No.So 3266(E) [No. 63/2019 (F.No. 370142/ 11/2019-TPL)] dated 12-9-2019 & it is applicable on all sectors including land to arrive at present value; capital gain valuation - long term / short term is done by this method & is acceptable. Also as per International Valuation Standards – 2017 pg. no. 79 suggest for indexation to convert historical price / value into present value. [DPT has furnished copy of cost Inflation notification]
(iv).	The classification / categorization were required to be done as per National Industrial Classification (NIC) 2008. The Valuation Report which has been accepted by the DPT is not at all in consonance with NIC 2008. Thus, Ministry's decision has been violated by DPT in this proposal.	Classification/ categorisation has been done as per NIC – 2008.
(v).	The evaluation done for Land under Category-A (Land having water front & upto half mile from the shore i.e Vadinar Road) and Land under Category-E (Land within docks - water front all sides) appears to be incorrect. The land under Category E cannot be costlier than land under Category A because under any circumstance, the land under category A will always be more useful than land under category E.	As far as Category A is concerned, the half mile limit is specified looking to the inter-tidal zone and utilization of land for development of infrastructure. Hence, to develop that land for use / port related activity, additional expenses up to 25% to 30% & additional 15% for infrastructure is to be incurred by user and hence 40% difference of valuation is justified. With regard to Category E is concerned, the mention of water front all side is indicative only. It does not specify the categorization of land. It is mentioned only to give clear idea of Category E land i.e. [land inside custom bond area] is surrounded by water.
(vi).	No concession has been offered to the Public Sector Undertakings as per Clause 11.2(h) of the Clarifications dated 17.7.2015 on the Policy Guidelines of Land Management 2015(PGLM	The proposal is for fixation of License fee for the land at Vadinar. Further, consideration of the concession, if any, to any core activities as per clause 11.2 (h) of Land Policy Guidelines is within

<table>
<tr><td></td><td>2015) read with further clarifications of the Ministry dated 29.4.2019.
[IOCL has reproduced Clause 11.2(h) of PGLM 2015.]</td><td>the power and decision of Board of Deendayal Port Trust. The same will be examined on case to case basis.</td></tr>
<tr><td>2.</td><td>M/s. Indian Oil Corporation Limited (IOCL)</td><td></td></tr>
<tr><td>(i).</td><td>A perusal of the DPT’s proposal would go to show that it has made a reference to the TAMP for fixation of lease rent of Vadinar land “applicable for the period from 01/01/2015 to 31/12/2022”. The DPT has given such proposal dated 27/10/2020. At the outset, it is most respectfully submitted that it is not open for the DPT or the TAMP to fix lease rent for a retrospective period from 01/01/2015 and on this ground alone, the proposal of DPT may kindly not be accepted. It is humbly submitted that the Hon’ble High Court of Gujarat in Special Civil Application No. 13409 of 2014 and allied matters, in the context of challenge to TAMP 2011 has been pleased to hold that such a retrospective determination is not permissible.</td><td rowspan="3">(a). The main intended purpose of preparing Valuation Report is for fixing the rent for the period of 5 years w.e.f. 2018, accordingly Port appointed Govt. approved Valuer in July, 2018.

(b). In the meantime, the issue of applicability of lease rent for the project "Development of additional one SPM and two Product Jetty at Vadinar" by M/s. Coviva Energy Terminal Ltd. (M/s CETL - erstwhile known as M/s. VLTL) arise. The Concession agreement between DPT and M/s CETL executed for the said project on 16th April 2015. In order to resolve the dispute of M/s CETL, as per the opinion Additional Solicitor General to GoI, the rent for the years 2015, 2016 and 2017 has been proposed additionally in the subject proposal.

(c). Therefore, it is requested to approve the rent for the period from 2015 to 2017 as an exceptional case and from the year 2018 with escalation of 2% for 5 years i.e. upto 2022.

(d). Further, Court opined [Page No. 247 & 248] that, the rates cannot be revised giving retrospective effect in absence of any specific provision either under the Act or the Rules or the Land Policies.
[The DPT has furnished copy of extract of Court Order]

(e). In view of above, DPT has proposed the rates from 2015 to apply the rate with retrospective effect only where applicable as per the agreement executed between DPT and the party.

(f). So far as concession on rate is concerned, it is to submit here that, the proposal is for fixation of lease rent for the land at Vadinar. Further, consideration of the concession, if any, to any core activities as per clause 11 (h) of Land Policy Guidelines is within the power and decision of Board of Deendayal Port Trust. The same will be examined on case to case basis.</td></tr>
<tr><td>(ii).</td><td>The present objection are filed without prejudice to our rights and contentions to challenge the said proposal on the ground that the same is not in conformity with the provisions of Section 49 of the Major Port Trusts Act, 1963 (‘the Act’ for short) as also on the ground that the said request / proposal made by DPT is in fragrant violation of the clarification dated 08/07/2015 on policy guidelines for land management issued by the Ministry of Shipping. The said proposal is also fallacious and untenable since it does not take into account COVID-19 factor.</td></tr>
<tr><td>(iii).</td><td>At this stage, it is also significant to submit that DPT has not provided any special infrastructure and in fact, even the Jetty owned by DPT is in a precarious situation. The DPT thus is not incurring any substantial expenditure so as to claim any exorbitant increase towards lease rent.</td></tr>
<tr><td>(iv).</td><td>It is stated land has been taken on lease by IOCL and lease / way- leave charges are being paid to DPT as per the following details:
(i) Way leave charges for old 2 Nos. 42” Crude Oil Pipeline
(ii) Way leave charges for new 2 nos. 42” Crude Oil Pipeline
(iii) Way leave charges for 8” Narmada Water Pipeline</td><td>From the statement submitted by IOCL it is very much clear that the rate of Rs.1.80, Rs.8.50 and Rs.4.50 has been fixed in the year 1978, 1990 and 1982 respectively, which cannot be compared with the present rate as many factors involved related to land rates.</td></tr>
</table>

<table>
<tr>
<td></td>
<td>(iv) Way leave charges for 4” KPT water pipeline in IOC colony.
(v) Ground rent for IOCL colony at Vadinar.

Since the date of lease agreement with DPT, lease rent at following rates are being paid by IOCL to DPT:
<table>
<tr><th>Sr. No.</th><th>Description</th><th>Lease execution year</th><th>Area [in m2]</th><th>Rate [₹ /m2]</th><th>Amount [₹]</th></tr>
<tr><td>1.</td><td>Way leave charges for old 2 Nos. 42” Crude Oil Pipeline</td><td>1978</td><td>12600</td><td>1.80</td><td>22680</td></tr>
<tr><td>2.</td><td>Way leave charges for new 2 nos. 42” Crude Oil Pipeline</td><td>2018</td><td>9000</td><td>1.80</td><td>16200</td></tr>
<tr><td>3.</td><td>Way leave charges for 8” Narmada Water Pipeline</td><td>2016</td><td>528.32</td><td>8.50</td><td>4490</td></tr>
<tr><td>4.</td><td>Way leave charges for 4” KPT water pipeline in IOC colony</td><td>1990</td><td>533</td><td>8.50</td><td>4530</td></tr>
<tr><td>5.</td><td>Ground rent for IOCL colony at Vadinar</td><td>1982</td><td>36205</td><td>4.50</td><td>162936</td></tr>
</table>
</td>
<td rowspan="2">No revision of rate has been carried out since allotment of such land to M/s. IOCL from the year 1978 onwards i.e. since 40 years. .

The present rates has been arrived as per the Land Policy Guidelines, 2015 and therefore is in order please.</td>
</tr>
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<td>(v).</td>
<td>The revised rates as demanded by DPT, are tabulated below, which they have proposed to TAMP for revision w.e.f. 01/01/2015:
<table>
<tr><th>Sr. No.</th><th>Description</th><th>Old rate [₹ /m²]</th><th>New Rate [₹ /m²]</th></tr>
<tr><td>1.</td><td>Way leave charges for old 2 Nos. 42” Crude Oil Pipeline</td><td>1.80</td><td>153.66</td></tr>
<tr><td>2.</td><td>Way leave charges for new 2 nos. 42” Crude Oil Pipeline</td><td>1.80</td><td>153.66</td></tr>
<tr><td>3.</td><td>Way leave charges for 8” Narmada Water Pipeline</td><td>8.50</td><td>132.90</td></tr>
<tr><td>4.</td><td>Way leave charges for 4” KPT water pipeline in IOC colony</td><td>8.50</td><td>132.90</td></tr>
<tr><td>5.</td><td>Ground rent for IOCL colony at Vadinar</td><td>4.50</td><td>130.77</td></tr>
</table>
Astronomical increase in way leave changes/rent has been observed in the proposal for new rates.</td>
</tr>
</table>

	The proposed increase comes out to be 3.760% wr.r.t. previous rates. In the above context IOCL has addressed communications dated 10/07/2020 and 27/07/2020 to DPT, copies of which are enclosed herewith. The contentions stated in the said submissions may also be treated as objections to the proposal of DPT.	
(vi).	Attention of the learned authority is invited to the clarification dated 08/07/2015 issued by the Ministry of Shipping. Copy of which is enclosed herewith. Under the said clarification dated 08/07/2015 issued by the Ministry of Shipping, it has been clarified that out of the five factors enumerated in arriving at the market value, it is not mandatory to take highest of the five factors. Paragraphs 4.1 to 6 being relevant are reproduced hereunder: "4.1. Para 18 of the Land Policy Guidelines stipulates that the State Govt's ready reckoner should be considered only if available for similar classification activities it is therefore essential that the Land Allotment Committee or the Board satisfies itself that only the appropriate ready reckoner rate for similar activity is taken. 4.2 Highest rate of actual relevant transactions registered in the last 3 years in the Port's vicinity is another factor which has been mentioned for determining the latest market value of Port land. Here actual relevant transactions means transactions for equivalent size land parcels and for similar usage of land. 4.3. Similarly highest accepted tender cum auction of Port land for similar transactions means that tender-cum-auction done for land of similar sizes, and similar use. 5. Hence it is important that while choosing the market value as per para 18 of the Land Policy Guidelines 2018, due care is taken to choose the relevant factor which captures the realistic market value of the land. Mechanical and inappropriate application of the Land Policy Guidelines may lead to inflated and unrealistic market value which results in very poor response to tender cum auctions and subsequently loss of business to the Port." 6. I shall be grateful if you could look into the issue and ensure that proper proposals in line with the letter and spirit of the Land Policy Guidelines are sent by the Ports to TAMP.	No Comments furnished by the DPT.
(vii).	A perusal of the proposal of the DPT would go to show that it has completely ignored these clarifications and has taken the highest value.	No comments furnished by the DPT.
(viii).	As against the above, IOCL has independently appointed a Government approved valuer who has submitted valuation report dated 15/01/2021, a copy of which is enclosed. As per the valuation report dated 15/01/2021, the land rates are given below:	(a). The classification / categorization of the Port Land has been done is as per the National Industrial Classification [NIC] 2008. It is pertinent to mention here that the Land Use Plan was uploaded into DPT website and

Sr. No.	Description	Category	As per market value [₹/m^2]	As per Govt. Jantri rate [₹/m2]	As per average registration value since last 3 years [₹/m2]
1.	Way leave charges for old 2 Nos. 42" Crude Oil Pipeline	Commercial	1453	888	1200
2.	Way leave charges for new 2 nos. 42" Crude Oil Pipeline				
3.	Way leave charges for 8" Narmada Water Pipeline				
4.	Way leave charges for 4" KPT water pipeline in IOC colony				
5.	Ground rent for IOCL colony at Vadinar	Residential	2000	675	800

As per 'Land Policy for Major Ports, 2015', the lease rate shall be @6% of the land rates. Hence, the lease rates as per the valuation of independent government approved evaluator read with Ministry's above clarification comes out to be:

Sr. No.	Description	Category	As per market value [₹/m^2]	As per Govt. Jantri rate [₹/m2]	As per average registration value since last 3 years [₹/m2]
1.	Way leave charges for old 2 Nos.	Commercial	87.18	53.28	72.00

forwarded to Stake Holders vide this office letter no. OOT/ C-PS/Land/4020/120 dated 03/04/2019 for comments before carrying out the valuation of land.

(b). As far as Category A is concerned, the half mile limit is specified looking to the inter-tidal zone and utilization of land for development of infrastructure., hence to develop that land for use / port related activity, addition expenses up to 25% to 30% & additional 15% for infrastructure hence 40% difference of valuation is justified.

(c). With regard to Category E is concerned, the mentioning of water front all side is indicatively only, it does not specify the categorization of land. It is mentioned only to give clear idea of Category E land i.e. [land inside custom bond area] is surrounded by water.

(d). For more clarity you may refer to Categorization of land of Kandla i.e. "Land within the docs", similar to it the Vadinar Land i.e., Category E is also land within docks.

(e). All the escalations/reductions are as per guiding principles for arriving at the value of lands that are of government & are in the interest of government & as per guide lines for valuation of immovable properties valuation cell income tax department – 2009 which is read as under.

(f). Valuation report has been prepared by deriving rates by 4 methods.

1. Method – 1 is with reference to government's ready reckoner of land values.

2. Method – 2 with reference to sale comparison.

3. Method – 3 as per highest tender cum auction rates in port land.

4. Method – 4 as per rates arrived by valuer.

All the above methods adopted as per international valuation standards - 2017.

(g). After deriving rates by above mentioned 4 methods, highest rates are adopted from all the 4 methods for each category which is adopted in general practice by Valuers. Also for example if tendering for allotment of land is carried out, the lessor will allot land to the one who has quoted the highest rates.

(h). Reduction factor of 30% is applied as per guiding principles for shaping the value of lands that are of government & are in the interest of

<table>
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<tr><td></td><td>42” Crude Oil Pipeline</td><td></td><td></td><td></td><td></td></tr>
<tr><td>2.</td><td>Way leave charges for new 2 nos. 42” Crude Oil Pipeline</td><td></td><td></td><td></td><td></td></tr>
<tr><td>3.</td><td>Way leave charges for 8” Narmada Water Pipeline</td><td></td><td></td><td></td><td></td></tr>
<tr><td>4.</td><td>Way leave charges for 4” KPT water pipeline in IOC colony</td><td></td><td></td><td></td><td></td></tr>
<tr><td>5.</td><td>Ground rent for IOCL colony at Vadinar</td><td>Residential</td><td>120.00</td><td>40.50</td><td>48.00</td></tr>
</table>
</td>
<td rowspan="4">government point no. 1 which is read as under: - The area of the questioned/ interrogated land and the land for sale having area 1500 Sq.m. Or less than that should be treated as a small plot. Therefore, all land with more area should be considered as large lands. Keeping this in mind, in order to determine the price of a small plot, it has to be increased by 30%to make it comparable.

(i). Reduction factor @ 25% for leasehold land is applied as per guide lines for valuation of immovable properties valuation cell income tax department – 2009 which is read as under:-

The leasehold land fetch less price as compared to free hold land due to the number of restrictions imposed in lease deed. An adjustment fact + / - 25% is to be applied for working out the land rate of free hold plot from the sale instance of lease hold plot and vice-versa.

(j). The Govt. approved Land Valuer appointed by DPT has prepared the Land Use Plan and Valuation of Land for Vadinar Land considering all the relevant rules incorporated under National Industrial Classification [NIC] 2008 and Land Policy Guidelines 2015.

(k). The proposal is for fixation of LF for the land at Vadinar. Further, so far as area calculation is concerned, it is to submit here that, as per provision of LPG 2015, “Annexure sr. no. 3”, since IOCL has constructed bund above the underground pipeline, the surface area has been treated as in physical position with IOCL only. Accordingly, the area has been calculated by DPT is in order.

Further, this is not the platform to discuss the issue related to area of land allotment or concession of rate. The subject proposal is purely for fixation of LF for Vadinar Land.</td>
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<td>(ix).</td>
<td>As per above Ministry’s letter dated 08/07/2015, since realistic value as per Jantri is available, the same is required to be accepted. From the valuation of the independent government approved evaluator [Shri Pankaj Tank] it is therefore observed that the new rates demanded by DPT are much higher.</td>
</tr>
<tr>
<td>(x).</td>
<td>Thus, in any view of the matter, the way leave changes cannot exceed Rs.53.28 per sq. mtrs. as against Rs.153.66 proposed by the DPT and the colony ground rent cannot exceed Rs.40.50 per sq. mtrs. as against Rs.130.77.</td>
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<tr>
<td>(xi).</td>
<td>At this stage, we also record that the pipelines as aforesaid are underground and permission to lay the pipelines has been granted on right of way basis with there being no permanent allotment on acquisition of land. The area occupied by these pipelines, therefore, be taken as per the pipeline policy which mandates that in respect of underground pipelines, 50% of the area occupied by the pipe is to be considered. Apart from these, IOCL has reiterated some of its earlier comments.</td>
</tr>
<tr>
<td>2.</td>
<td>M/s. Nayara Energy Limited (NEL)</td>
<td></td>
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<tr>
<td>(i).</td>
<td>As per Clause 9.1 (A) of the Concession Agreement, Coviva (now NEL) is required to pay License Fee based on INR 203.38 per square per annum for Vadinar land, whereas the rate actually was for Kandla.</td>
<td rowspan="3">As per the provisions of Land Policy Guidelines reference of accepted rate of tender-cum-auction in the past 5 years could be considered for fixing land rate.

As such once the rate of Rs.203.38 accepted in the tender-cum-auction by party, irrespective of its reference to it, will become highest accepted rate of particular land.
Therefore, in the present case the highest accepted tender-cum-auction rate has been considered for fixing the rate for category E land is in order.</td>
</tr>
<tr>
<td>(ii).</td>
<td>Coviva (now NEL) submitted representation to DPT that application of Kandla Land Tariff on Vadinar Land was unjustified since locations at Vadinar and Kandla are fundamentally different. This is because Vadinar Land is in a remote location and the demand factors for Kandla land and Vadinar Land are not comparable.</td>
</tr>
<tr>
<td>(iii).</td>
<td>(a). DPT recognizes the issues that: (i) Kandla Port is a fully developed port with multiple users;</td>
</tr>
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<td></td>
<td>(ii) there is no infrastructure development or existence of any reclamation area in Vadinar, unlike Kandla and (iii) the Vadinar Land also faces issues such as limitation of backup land, restrictions on development due to existence of mangroves etc. and have themselves stated in the subject proposal that except for M/s Nayara and M/s IOCL no other cargo is being handled at the Vadinar Port. Thus, there is no basis for treating Kandla and Vadinar Land on the same basis and fixing the same rates of land tariff.

(b). Since there was no rate approved by TAMP for Vadinar, Coviva stated to DPT that the rate written in Agreement cannot be charged unless it is approved by TAMP and raised this as a dispute between Coviva and DPT.</td>
<td rowspan="4">As far as the classification/categorization of the Port Land as per the National Industrial Classification [NIC] 2008 is concerned, it is to state that the land use plan has been prepared in line with the above said guidelines. The classification/categorization of the Port Land has been covered in the land use plan report, therefore the same has not been included in the valuation report.

It is pertinent to mention here that the Land Use Plan was uploaded into DPT website and forwarded to Stake Holders vide this office letter no. OOT/C-PS/Land/4020/120 dated 03/04/2019 for comments before valuation.

A copy of classification of land is attached as Annexure-II for reference.

As far as Category A is concerned, the half mile limit is specified looking to the tidal zone and utilization of land for development of infrastructure., hence to develop that land for use / port related activity, addition expenses up to 25% to 30% & additional 15% for infrastructure hence 40% difference of valuation is justified.

With regard to Category E is concerned, the mentioning of water front all side is indicatively only, it does not specify the categorization of land. It is mentioned only to give clear idea of Category E land i.e. [land inside custom bond area] is surrounded by water.

For more clarity you may refer to Categorization of land of Kandla i.e. “Land within the docs”, similar to it the Vadinar Land i.e. Category E is also land within docks.</td>
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<tr>
<td>(iv).</td>
<td>DPT approached the Additional Solicitor General of India (ASG) on August 17, 2018 to seek a legal opinion on various matters related to the Concession Agreement signed with Coviva. The ASG as a legal advisor, is understood to have recommended that DPT to formulate a separate Scale of Rates (SoR) for the Vadinar Land and get the same approved by the TAMP.</td>
</tr>
<tr>
<td>(v).</td>
<td>(a). Based on the land rates set out in the Valuation Report, the land allotment committee of DPT accepted the categorization of land and valuation of the rates and recommended to the Board of Trustees of Deendayal Port Trust to adopt the same.

(b). No efforts have been made in the Valuation Report to ascertain the real market value of the Vadinar Land-Category E independently and the highest rate is adopted on the basis of the Concession Agreement rates.</td>
</tr>
<tr>
<td>(vi).</td>
<td>(a). The DPT Board initially opined that the Land Tariff provided under the Concession Agreement should not be taken as a base and the rate should be based on location and situation basis and requested for re-examination. However, the Land Allotment Committee reiterated the Proposed SoR as mentioned in the Valuation Report pursuant to which the Board approved the highest market rate for different categories of Vadinar Land (including the Category E land).

(b). The DPT has now approached TAMP to approve the tariff rates provided in the Valuation Report for Vadinar Land and apply them (retrospectively) from January 1, 2015 to December 31, 2022.</td>
</tr>
<tr>
<td>(vii).</td>
<td>In view of the above facts, set out below are the objections to the DPTs proposal for fixing the tariff for Vadinar land:
(A) <u>Improper classification / categorization of Vadinar Land and proposal to choose the highest SoR</u>:</td>
<td></td>
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</table>

<table>
<tr><td></td><td>(a). KM Thacker prepared the Valuation Report and categorized the Vadinar Land into Category A, Category C1 and C2, Category E and Category ROW. As per the clarification issued by Ministry of Shipping vide letter No. PD-13017/2/2014-PD.IV Dtd April 29, 2019 on Policy Guidelines for Land Management, all categorization / classifications for lease of port lands are required to be done as per the National Industrial Classification, 2008 (“NIC”), which has not been followed in this case.</td><td>(a) As stated above the categorization has been done as per NIC-2008.

As far as Category A is concerned, the half mile limit is specified looking to the inter-tidal zone and utilization of land for development of infrastructure., hence to develop that land for use / port related activity, addition expenses up to 25% to 30% & additional 15% for infrastructure hence 40% difference of valuation is justified.

With regard to Category E is concerned, the mentioning of water front all side is indicatively only, it does not specify the categorization of land. It is mentioned only to give clear idea of Category E land i.e. [land inside custom bond area] is surrounded by water.

For more clarity you may refer to Categorization of land of Kandla i.e. “Land within the docs”, similar to it the Vadinar Land i.e., Category E is also land within docks.</td></tr>
<tr><td></td><td>(b). From the Valuation Report, it is evident that the rates for the purpose of deriving the value of the Vadinar Land have been taken as per the highest stamp duty rates set out by the Gujarat government. In this regard, it is important to note that over and above these rates, KM Thacker has considered additional percentage on each category of the Vadinar Land (for instance 20% Category A and 25% for Category E). However, the Valuation Report fails to specify the reason for such additional percentage or the reasons why the extent of such additional escalation percentages are justified for Vadinar Land. The valuation report also applies multiple annual escalation rate due to inflation. It is not clear whether these rates are for Land also.</td><td rowspan="2">(b).&(c).
(i) All the escalations/reductions are as per guiding principles for arriving at the value of lands that are of government & are in the interest of government & as per guide lines for valuation of immovable properties valuation cell income tax department – 2009 which is read as under.

It is not correct because Category – E land is existing reclaimed & developed land already in operation for import / export activity hence approachable. On the other hand Category – A land is already submerged & hence to develop that land for use / port related activity, addition expenses up to 25% to 30% & additional 15% for infrastructure hence 40% difference of valuation is justified.

(ii). Valuation report has been prepared by deriving rates by 4 methods.
1. Method – 1 is with reference to government’s ready reckoner of land values.
2. Method – 2 with reference to sale comparison.
3. Method – 3 as per highest tender cum auction rates in port land.
4. Method – 4 as per rates arrived by valuer.

All the above methods adopted as per international valuation standards - 2017.

(iii). After deriving rates by above mentioned 4 methods, highest rates are adopted from all the 4 methods for each category which is adopted in general practice by Valuers. Also for example if tendering for allotment of land is carried out, the lessor will allot land to the one who has quoted the highest rates.</td></tr>
<tr><td></td><td>(c). Accordingly, it is clear that the percentage applied by KM Thacker in the Valuation Report is arbitrary, improper and unjustified. There is no reasonable foundation pursuant to which the application of higher percentage is justified. Further, the Valuation Report also fails to highlight the reason for application of different percentage on Category A and Category E. Application of additional percentage on the highest land value at Vadinar has caused the rates to be increased substantially and would accordingly cause charging of exorbitant rates on the Vadinar Land, thereby effecting Nayara.</td></tr>
</table>

		(iv). Reduction factor of 30% is applied as per guiding principles for shaping the value of lands that are of government & are in the interest of government point no. 1 which is read as under: - The area of the questioned/ interrogated land and the land for sale having area 1500 Sq.m. Or less than that should be treated as a small plot. Therefore, all land with more area should be considered as large lands. Keeping this in mind, in order to determine the price of a small plot, it has to be increased by 30%to make it comparable. (v). Reduction factor @ 25% for leasehold land is applied as per guide lines for valuation of immovable properties valuation cell income tax department – 2009 which is read as under:- vi). The leasehold land fetch less price as compared to free hold land due to the number of restrictions imposed in lease deed. An adjustment fact + / - 25% is to be applied for working out the land rate of free hold plot from the sale instance of lease hold plot and vice-versa.
	Our specific objections in relation to Category E Land are raised in Section (B) below.	
	(B) <u>Objections to the categorisation of Category E Land and the rates fixed thereof</u>	
	(i). At the outset, *first*, it is our contention that the classification of lands as set out in the Valuation Report are arbitrary and unjustified in the first place. There is no proper reason as to why there are only Category A, Category C1 and C2, Category E and Category ROW, neither are the descriptions provided for each of those categories detailed or based in sound logic. As an example, Category A has been described as land having water front and upto half mile from the shore.	
	(ii). The Valuation Report does not explain the rationale behind specifying half mile limit from the shore, it could well be 100 meters or a mile, as a matter of fact.	
	(iii). In our opinion, all the categorizations have been made without any reasoning and are thus arbitrary. It is pertinent that the categorization to be made under a strong basis, as the Vadinar Land will be classified under one of those categorized lands and a rate considered under the category would become applicable.	
	(iv). Any error in classification would directly affect Nayara both fundamentally and financially. It is to be noted that Category E is not in line with the classifications provided under the NIC since the NIC does not provide for a separate classification for land with 'water front on all sides'. Second, even if such categorisation is correct (not admitted), it appears that there have been no efforts made in the Valuation Report to ascertain	

	the real market value of the Vadinar Land and have been taken as per the highest stamp duty rates set out by the Gujarat government. In this regard, NEL noted from the Valuation Report that the over and above these rates an escalation percentage of 25% has been applied for category E. The Valuation Report fails to specify the reason for such additional percentage to be imposed or the rationale for the extent of such additional percentage; Thus, it is to be noted the Valuation Report is incomplete, biased, lacks transparency and unjustified. Given the above, it is submitted that the valuation itself has not been properly undertaken and therefore on this basis alone, the TAMP should dismiss the present proposal submitted by the DPT for not having completed the valuation exercise prior to approaching the TAMP and advise them to submit a revised proposal.	
	(v). Our objections to the rates fixed for the Category E Land are set out below:	
	(1) Mechanical Application of the Land Policy Guidelines:	
	(i). As per Paragraph 13 of the Land Policy for Major Ports, 2014 (as amended) ("Land Policy"), the land allotment committee may take into account the five factors prescribed in the guidelines to determine the latest value of the port land.	
	(ii). However, as per the clarifications issued by Ministry of Shipping in this regard on July 15, 2015, it has been specifically highlighted by Ministry of Shipping that "*it is not mandatory for the land allotment committee to necessarily take the highest of the 5 factors mentioned above and can choose another factor with proper justification"*. The Ministry of Shipping has also explained how the above factors are to be determined. Set out below are the relevant extracts: *"4.1. Para 18 of the Land Policy Guidelines stipulates that the State Govt's ready reckoner should be considered only if available for similar classification activities it is therefore essential that the Land Allotment Committee or the Board satisfies itself that only the appropriate ready reckoner rate for similar activity is taken* *4.2 Highest rate of actual relevant transactions registered in the last 3 years in the Port's vicinity is another factor which has been mentioned for determining the latest market value of Port land. Here actual relevant transactions means transactions for equivalent size land parcels and for similar usage of land.* *4.3. Similarly highest accepted tender cum auction of Port land for similar transactions means that tender-cum auction done for land of similar sizes, and similar use.*	

	5. Hence it is important that while choosing the market value as per para 18 of the Land Policy Guidelines 2018, due care is taken to choose the relevant factor which captures the realistic market value of the land. Mechanical and inappropriate application of the Land Policy Guidelines may lead to inflated and unrealistic market value which results in very poor response to tender cum auctions and subsequently loss of business to the Port."	
	(iii). Further, with respect to the factor of "*Highest accepted tender-cum-auction rate of port land for similar transactions, updated on the basis of the annual escalation rate approved by the port trust Board*", it may kindly be noted that in case of Nayara it was not the highest tender-cum- auction rate as the rate was actually imposed upon by DPT on Nayara, without getting the same approved by TAMP. Therefore, a clear case of mechanical and inappropriate application can be established. Accordingly, it is humbly submitted that a proper evaluation of the Category E land rates (*which cannot be higher than the Category A land rates, for the reasons explained)* should be carried out.	
	(iv). Even assuming (but not admitting) that the valuation requirements for the Category E land have been fulfilled by DPT, it is submitted that the valuation exercise that has been carried out is improper and the TAMP, therefore, must not consider the rates proposed by DPT for the following reasons: [(a). Commercially speaking, project land that is adjacent to water front hold more value in terms of utility and demand than a project that is setup within the sea covered by water on all four sides. However, as per the Valuation Report and DPT's proposal, the Category E Land (i.e., land surrounded by water on all four sides) is priced at a rate higher than that of a land which has an adjacent water front (i.e., the Category A land). Therefore, Nayara contends that the SoR for Category E cannot definitely be higher than that of a land that is adjacent to a water front (i.e. Category A), which is how it has been valued in the present case. (b). Further, under the Valuation Report, Category A has been prepared to include land having water front and upto half mile from the shore whereas Category E includes land within the docks (water front on all sides). It is to be noted that Vadinar does not have any land which is covered with water on all sides. There are SPMs anchored by chains installed. However, such area where the SPM is installed and the anchor chains are established are only water, which is substantiated by the order no. GNo. 40 Dtd 29th Jan 2015 with respect to Veera Project, wherein	

	honourable TAMP was pleased to hold SPM as water. <u>Thus, Category E basically relates only to water. In any case, the rates applicable for Category E have to be relatively lesser than Category A because, as established, Category E lies in water and has lesser market value</u>. Please note that NEL do not concede that the Category A Land rates can be charged for the Category E Land, but rather that this is the worst case. (c) In light of the above, it is established that the Proposed Highest SoR for Category E land is arbitrary in nature and does not conform to the guidelines and clarifications issued by the Ministry of Shipping. In the event the Proposed Highest SoR is approved by TAMP, it would cause tremendous loss to Nayara since the Proposed Highest SoR amount is extremely large, arbitrary, unjustified and will directly impact the financial status of Nayara	
	(C) <u>Undue Reliance placed on the opinion provided by the Additional Solicitor General</u>	
	I. No Consideration should be paid to the ASG's opinion	
	(i). As stated above in Paragraph (2) of this response, the DPT approached the ASG to seek his opinion on the rates applicable on the Vadinar Land. As per paragraph 39 of the ASG's opinion *"The querist must approach TAMP and get the SoR fixed. Thereafter once the same is done, if the rate agreed in the Agreement stands to be higher that the rates fixed by TAMP, then in this scenario of the matter, the Querist can in its discretion as provided under Section 49 (3) of the MPT Act can always choose to levy the higher SoR than what was fixed by the TAMP".* The ASG is of the opinion that DPT can chose to levy a rate that was agreed by the parties if the rate approved by TAMP is lower than what is agreed as per Section 49(3) which allows the board to fix higher rates.	
	(ii). At the outset, it is humbly submitted that the TAMP should not place any reliance on an opinion given by the ASG or offer it any force to decide the petition placed before it. Whilst the ASG may be a senior officer of Courts, it is to be kept in mind that the ASG is ultimately a legal advisor to DPT and nothing more insofar as the present matter is concerned. Thus, as an initial matter, it is not for DPT to place on record a privileged communication that has been provided to it by its legal advisor. Further, it is a well settled principle of law that any expert opinion or opinion evidence cannot form the basis for any decision of adjudicating bodies or courts. The DPT being a statutory authority also cannot place blind reliance on the opinion of the ASG and should exercise its powers, functions and responsibilities in accordance with the statutes.	

	The Supreme Court has in the case of *Madan Gopal Kakkad v. Naval Dubey and Anr. ((1992) SCC 284)* held that an expert opinion cannot be binding on the court as it is only of an advisory nature and that the court has to form its own opinion considering the material, data and the technical aspects rendered by the expert. It was also noted in the case of *Maghan Bihari Lal v. State of Punjab ((1997) 2 SCC 210)*, that an opinion evidence by its very nature is weak and infirm and cannot of itself become the sole basis for deciding a case. It is humbly submitted that the only reason for attaching the ASG's opinion by DPT is to bolster its submissions and for the purposes of deciding this proposal. Nayara therefore accordingly prays to the TAMP that it should expunge the opinion of the ASG from the case records. Even if the TAMP does not expunge the opinion of the ASG, it is humbly submitted that the opinion of the ASG does not have any binding force and should not be considered by TAMP while fixing tariff for the Vadinar Land for the reasons set out in the following paragraph.	
	(iii). In relation to the opinion issued by the ASG on DPT fixing a higher tariff than what is fixed by TAMP on the basis of market value, even assuming (but not admitting) that the ASG's opinion is correct, NEL submits that: (a) such powers of fixing a higher tariff than what is being fixed by TAMP has no relevance to the present matter before the TAMP; and (b) in any case, the powers of fixing higher tariff does not entail DPT to blindly incorporate the Concession Agreement rates by completely ignoring the market value of the land. This is explained in Sub-section (II) and (III) below respectively.	
	II No Relevance to Power of Fixing Higher Tariff:	
	(i). It would be very important to keep in mind TAMP as an authority was constituted under the MPT Act under Section 47(A), bestowing on it the role of prescribing the rates for services provided and facilities extended by them and also rates for lease of port trust properties and notify the same in the official gazette as provided under Chapter VI of the MPT Act. There are no other powers that the TAMP has when determining the Land Tariff and the TAMP cannot adjudge the effectiveness of enforcing tariff rates agreed under the concession agreements by parties or adjudicate the enforcement of the Concession Agreement itself. Accordingly, the limited role that TAMP plays when adjudicating tariff fixation matters (i.e., when adjudicating Land Tariff) is to assess whether the tariff adopted by the boards (as defined under MPT Act) follows the principles prescribed under the MPT Act and the related guidelines. Thus, by mere virtue of concession agreements mentioning a particular tariff to be paid for the land, it is strongly urged that the TAMP cannot exercise its powers and impose	

	stipulations of concession agreements on either concessionaires or any boards. The right of the boards to fix higher rates than the market value is essentially a separate matter between the Board and concessionaires and any dispute on the same should be adjudicated by way of appropriate writ proceedings.	
	III. When can Higher Tariffs be Fixed:	
	(i). Even assuming but not admitting that higher tariff than the value fixed by the TAMP can be fixed by the Board,NEL submit that this power is not an absolute unfettered power on the Board to fix any rates that it considers appropriate. In this regard, Section 49(3) of MPT Act states that *"Notwithstanding anything contained in subsection (1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub-section (1)".* In essence, this provision allows the fixation of a higher rate by boards, than what is fixed by TAMP. However, it would be fallacious to assume that the right given under this provision is directly related to the rate agreed by the parties under concession agreements. The letter and spirit of the provision intends to allow boards an opportunity to fix a higher rate notwithstanding the rate as notified by TAMP by way of competitive auctions for establishing the real market value and not just adopt the rate specified in concession agreements. Therefore, NEL strongly urge that this power can be exercised only if there is a prima facie case for the Board to believe that the market value of the land is higher than the rates fixed by TAMP. In this case, the TAMP is yet to fix the land tariff for Vadinar Land and therefore the question of the Board fixing a higher tariff than what has been prescribed by the TAMP simply does not arise. DPT can only chose to levy a rate higher, when it has a rate that is applicable for Vadinar Land as approved and notified by TAMP.	
	(ii). Further, in the present case, the ASG's opinion has interpreted Section 49(3) of the MPT Act to mean that the Board has the right to enforce the rate agreed in the Concession Agreement, in the eventuality that the rate approved by TAMP is lower than what is agreed, which would be an abuse of the power granted under the provision. Going by that assumption, there lies a complete and arbitrary discretion with the Board to decide the rates irrespective of what is notified by TAMP. NEL submit that the intent of the legislature is not the same, it is only to allow the board to fix a higher rate (to reflect the actual market value of the land) and not enforce a rate agreed by the parties under the Concession Agreement.	
3.	**M/s. Nayara Energy Limited (NEL)**	
	(a). No auction was conducted by the DPT for development of Vadinar land	

<table>
<tr><td>(i).</td><td>NEL would like to bring to the notice of the Authority that on September 23, 2014, the board of trustees of DPT by way of an expression of interest invited applicants from competent parties under the captive use policy of the government to develop the land at Vadinar (“EOI”). In response to the EOI, Consortium of Nayara Energy Limited (“Nayara”) and Vadinar Oil Limited, with Nayara as lead member submitted its application on October 15, 2014. It is to be noted that the DPT received only Nayara’s bid against the EOI.</td><td rowspan="4">The Land Policy Guidelines clause no. 13 (a) (iii) reads as "Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board."

As per the above LPG clause, the accepted rate either tender or on auction basis can be considered for evaluation purpose.

In the present case the highest rate accepted by M/s. Nayara Energy through duly signed agreement dated 16th April, 2015 [Annexure-III] has been considered, as such there is no deviation from the LPG and the highest rate so arrived for the Category E is in order.

It is pertinent to mention that M/s. Nayara Energy had not objected for the rate proposed and fixed by the Port during tendering stage and execution of agreement. They have also paid 1st land lease payment without any objections.

M/s. Nayara only raised objection for the revised rate based on the Kandla Land i.e. of Rs.357.16 per sq.mtr. per annum stating that the Kandla rate should not be applied for the Vadinar land as the project is being executed at Vadinar.

In order to resolve the issue, Port has proposed to fix the Land rate at Vadinar separately, which has approved by the Board.</td></tr>
<tr><td>(ii).</td><td>Accordingly the DPT awarded the contract to Nayara and the same was communicated to Nayara by DPT vide the letter of intent for award of concession dated January 29, 2015. The Agreement was signed between DPT and Coviva Energy Terminals Ltd (Erstwhile Vadinar Liquid Terminals Ltd), a special purpose company created as per condition of the EOI.</td></tr>
<tr><td>(iii).</td><td>In view of the above facts, we would like to categorically state that there was no auction undertaken for development of the Vadinar land and neither was the license fee for the Vadinar land fixed after bidding. It would be imperative to note that the bid was in fact for the development of the project at Vadinar land and there was no specific auction that was conducted by the DPT. In addition, please note that no price discovery for the project land was undertaken by DPT and we would like to highlight that the EOI had pre-fixed all the rates to be paid. Please note that this pre – fixed rate was in fact the rate of the DPT land in Kandla (which is at the north side of Gulf of Kutch), which is extremely far from Vadinar and is also a far more developed port as compared to Vadinar (which is at the southern side). The differences between the Kandla land and Vadinar land are highlighted in paragraph 12 of this response.</td></tr>
<tr><td>(iv).</td><td>Further, as per paragraph 9 of the EOI, we note that the DPT had pre - fixed the license fee for the Vadinar land for the water front area as well as the allotted land area. As stated above in paragraph 4 of this application, the rate was pre-determined when Nayara was desirous of developing the project in Vadinar land and not a rate that was negotiated or determined by way of an auction. Set out below is the relevant extract:
“9. Other payments to KPT

(i). License fee for the land allotted and water front will be payable as determined under the New Land Policy Guidelines 2014 of the Ministry of Shipping. The charges will be as per the rates approved by the competent authority as provided in the MPT Act, 1963.
<table>
<tr><th>License Fee</th><th>Rate in INR/Sqm/Year</th></tr>
<tr><td>For Land Area</td><td>180.60 (as per prevailing SoR and as revised from time to time)</td></tr>
<tr><td>Water Area*</td><td>90.30</td></tr>
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<tr><td></td><td><table><tr><td>License Fee</td><td>Rate in INR/Sqm/Year</td></tr><tr><td colspan="2">Note: Above rates are tentative and further refinement regarding rated may get incorporated in the final Concession Agreement to be signed with successful bidder.
*As per the New Land Policy for Major Ports, 2014, 50% of land rate.</td></tr></table>
(ii). Way leave charges as applicable will be charged by the Port.
(iii). Other charges as applicable will be charged by the Port.”</td><td rowspan="3"></td></tr>
<tr><td>(v).</td><td>Additionally and as mentioned in the Objections, the license fee has been disputed time and again by Nayara. Whilst Nayara has paid the license fee whenever it was due as per Nayara, it has consistently expressed its disagreement with the rate as applied to the land and paid the fee under protest to DPT. It is important to note that the reason behind the protest was because the rates were not approved by the Authority. It is the bounden duty of DPT to have a separate Scale of Rate (“SoR”) for Vadinar land approved by the Authority before it imposes the same.</td></tr>
<tr><td>(vi).</td><td>Accordingly, the contention of DPT (as stated in their submissions) that a proper auction was done for the Vadinar land is incorrect and should be duly rejected. Further the prices specified, since they were arbitrary and a mandatory term of the concession, cannot be considered as a benchmark.</td></tr>
<tr><td></td><td>(b) Rates of Bharat Oman Refineries Limited taken for calculation for the rate of Vadinar land is incorrect</td><td></td></tr>
<tr><td>(vii).</td><td>NEL note that the power point presentation prepared and shared by the DPT at the time of Hearing stated that the rate of Bharat Oman Refineries Limited (“BORL”) were taken as a benchmark to arrive at a rate for Vadinar land.</td><td rowspan="3">(a). BORL is within Vadinar and has purchased land @ ₹3,600/- which is having proof as registered document, it is one of the method for sale comparison.

(b). Since the BORL land is situated in Vadinar village itself and the rate so proposed by the Port is also situated in the same village Port has considered the BORL rate as base rate considering it as "in the Port's vicinity" as per the LPG clause no. 13 (a) (ii). The BORL has procured the land for setting up of tank farms, which is Industrial activity and in the present proposal the land is also meant for Industrial purpose [Import/Export of Crude Oil/Product].
In line with LPG, valuer has considered the Bharat-Oman Refinery Ltd. (BORL’s) rates, as it is for industrial use. For sale comparison, first priority to be given considering the location of both the land in the same vicinity.

(c). Similarly of land-use is same for BORL and Nayara say commercial-cum-industrial. BORL is in the same village. Jantry rates of all surveyors are almost same as enclosed by M/s. Nayara in its comments.</td></tr>
<tr><td>(viii).</td><td>In this regard, it is pertinent to note that the valuation report prepared by M/s KM Thacker dated September 15, 2019 (“Valuation Report”) does not stipulate the reasons as to why the rates of BORL have been taken to calculate the rate for Vadinar land. Additionally, the Valuation Report, under “Valuation done by Town Planning and Valuation Department from Government of Gujarat – Annexure 1 Sr. No. 14” specifies that the BORL land located at 98 paiki 1 has a rate applicable of INR 3,600 (Indian Rupees three thousand six hundred) per square metre. It identifies the land to be having an industrial purpose.</td></tr>
<tr><td>(ix).</td><td>In view of the above, we would like to state that considering BORL as a benchmark rate to determine the Vadinar land tariff would be ineffective and lead to a fallacious calculation since the BORL land from Vadinar port is located approximately at a distance of 6.5 kilometres when calculated aerially, however it is</td></tr>
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<td>approximately 12-13 kilometres by road (pictorial representation is attached as Annexure B) and is nearer to Highway compared to Vadinar Land.</td>
<td rowspan="4">(d). BORL land on the contrary, not on main road approaching to the jetty road, land situated on DPT's road shall fetch more value, as the jetty area including approach road of 30 m wide without any hindrance are developed admist the sea-shore having 3 side front is having as much as viability of export/import business.

(e). The procedure adopted for arriving at highest market rate for Vadinar land is correct & Justified and is as per Land Policy Guidelines.</td>
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<td>(x).</td>
<td>Accordingly, please note that the distance in this case becomes very important to note because the demand for the land is directly proportional to the location of the land. Accordingly, the location of land at BORL and at Vadinar is not comparable and hence rates of BORL land cannot be relied upon while deciding the land rates for Vadinar land.</td>
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<td>(xi).</td>
<td>Further to the above and as already stated in our Objections and also pointed out by us during the Hearing, the land at Vadinar is far less commercially viable than the Kandla land since (i) Kandla Port is a fully developed port with multiple users; (ii) there is no infrastructure development or existence of any reclamation area in Vadinar, unlike Kandla; and (iii) the Vadinar Land also faces issues such as limitation of backup land, restrictions on development by the forest department due to existence of mangroves trees and general lack of demand.</td>
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<td>(xii).</td>
<td>Therefore and in light of the abovementioned facts, it would be inaccurate, incorrect and unsuitable to calculate the rate of Vadinar land while taking the BORL rates as a basis for fixing the rates of the Vadinar Land.</td>
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<td>(c). The Valuation Report prepared by M/s KM Thacker ("Valuer") does not reflect the correct rates for valuation of the land</td>
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<td>(xiii).</td>
<td>Based on our review of the Valuation Report, we note that the Valuation Report adopts four different methods to value the land which are: (i) as per state government's ready reckoner of land values; (ii) as per sale comparison; (iii) as per highest accepted tender – cum auction rate in port land; and (iv) rate arrived by Valuer in 2013 to arrive at the value of the land for the different categories.</td>
<td rowspan="2">(a). The DPT has reiterated that the Valuation report has been prepared by DPT valuer by deriving rates considering all the 4 methods mentioned hereunder of Land Policy Guidelines:
1. Method – 1 is with reference to government's ready reckoner of land values.
2. Method – 2 with reference to sale comparison.
3. Method – 3 as per highest tender cum auction rates in port land.
4. Method – 4 as per rates arrived by valuer.

(b). In view of above, at the time of preparing of Valuation Report from the year 2015, the highest rate amongst the above 4 methods, considering the realistic transactions in the nearby vicinity has been taken into account. Realistic approach has been adopted as per the valuation guidelines.

(c). The detailed justification has been given by DPT on similar earlier comments of users. The highest rate for category A and Category E has been arrived considering its location, usage for shipping operation and the infrastructure developed by the Port including its approach.

The rates proposed by the Port is reasonable and is as per the Land Policy Guidelines.</td>
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<td>(xiv).</td>
<td>In this regard, it is important to note that the same Valuer, basis the method mentioned in (iv) of paragraph 14 of this response, has recommended a rate of INR 1,300 per square metre (lease rent – 6% of INR 1300 – INR 78 (without taking into account the 2% DPT increment)) for Category E land for 2011 -12 period. Similarly, for the 2015 – 16 period, the same Valuer has recommended a value of INR 1,407 in 2015-16 (lease rent – 6% of INR 1407 – INR 84.42 (without taking into account the 2% DPT increment)) for the Category E land. However, as per method (iii), the Valuer has recommended a rate of as INR 3,389.67 (lease rent – 6% of INR 3389.67 – INR 203.38) for the year 2015-16. In this regard, it is to be noted that there has not been any significant development in the Vadinar land to correlate the fixation of such a high land rate for the Vadinar land. Further, the calculation rate mentioned in (iii) of paragraph 14 of this response has been defined as 'highest</td>
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	accepted tender cum auction rate' which is an incorrect interpretation since no auction was conducted by the DPT for the Vadinar land (please refer to point (a) of this response for details). Further in the report of 2011-12 rate of Category E land is mentioned as lowest amongst other categories, whereas the same valuer in this report derives the land of Category E land to be highest	
(xv).	Therefore, NEL would like to bring to our attention that the rate of INR 203.38, by virtue of being the highest rate in all the methods stated in paragraph 14 is being adopted to mechanically apply the rate as agreed in the Concession Agreement, for the Vadinar land. The Valuation Report does not state any reason for recording such abnormal increase in the value of the land under Category E. We note that the value of INR 203.38 through calculation method mentioned in (iii) of paragraph 14 has been deliberately fixed in order to match the rate specified in the Concession Agreement.	
(xvi).	In arguendo, had the DPT approached the TAMP in 2015-2016, the rates for the Vadinar land would have been approved at INR 84.42 instead of the rate that is being considered as of date, INR 203.38.	
(xvii).	Further, the Ministry of Shipping vide their letter dated July, 8 2015 bearing reference no. PD-13017/2/2014-PDIV under paragraph 5 states as follows: *"5. Hence it is important that while choosing the market value as per para 18 of the Land Policy Guidelines, 2014, due care is taken to choose the relevant factor which captures the realistic market value of the land. Mechanical and inappropriate application of the Land Policy Guidelines may lead to inflated and unrealistic market value which results in poor response to tender cum auctions and subsequently loss of business of the Port."*	
(xviii).	In view of the above statement by the Ministry of Shipping, it is clear that in order to fix the rates for any land, due care must be taken by choosing the relevant factors through which the realistic market value of the land can be assessed. In this regard, we wish to humbly submit that the DPT did not take into account the relevant factors and conditions of the Vadinar land which the DPT have themselves vide their proposal dated October 27, 2020 admitted and highlighted that there are only limited users such as IOCL and Nayara which are present at the Vadinar land. Further, please note that the Vadinar land is in a remote location, there is less demand for land and it is located in an eco – sensitive zone of National Marine Sanctuary. In this view, not only the rates proposed by DPT (if adopted) will be contrary to the conditions stipulated in the above mentioned letter of Ministry of Shipping but also make the project of Nayara unviable. Additionally, it will also deter the other operators from participating in any future project	

	at the Vadinar land and shall cause loss to the DPT.	
(xix).	Further DPT in their board meeting held on December 6, 2019 while deliberating for the first time, the issue of fixing the rate for Vadinar land opined in point no. 4.5 of the minutes of meeting the following: "*The Trustees opined that one transaction should not be taken as a base rate but it should be on location and situation basis. It was observed that when highest rate is taken, then there is no meaning of the Committee to recommend. It was further added that no SOR has been fixed for Vadinar so far and the rate of Kandla land will not apply to for Vadinar land and opined that proposal needs some scientific analysis by taking the rates of Valuer, last transaction and Jantri rate before finalising the value of the land. Trustees therefore advised to re-examine and the proposal should be placed with before Board with full and proper justification*."	
(xx).	On account of the above instructions by the board of trustees of DPT, the land allotment committee of DPT recorded the justification for considering the Kandla land rates for Vadinar. Set out below is a summary of the major justifications: (a copy of minutes of meeting is enclosed with this response for your ready reference): (i). Out of the total area admeasuring 271.04 acres, the area under Category E land is only 20.90 acres and other than this land, there is no vacant land available with DPT for allotment to private parties for development of port related activities. (ii). The water front area under Category E and area under Category A are located at very high eco-sensitive zone and it would be difficult to get approval from statutory authority for any development works. (iii). The ASG in its opinion suggested to get rate approved by TAMP first and even if the TAMP approved rate is lower than rate mentioned in Concession Agreement, DPT has to charge rate of the Concession Agreement.	
(xxi).	In response to the above, NEL would like to submit that the above justifications as recorded are not fair because of the following reasons: (a). With regards to the justification mentioned in (xx)(i) above, please note that the land allotment committee has failed to recognize that even for development of marine facilities within water, the DPT considers part of water area as land for the purpose of charging the license fee. Accordingly, the DPT cannot state that there is no land since the area under water is also considered as land by the DPT. Thus, the DPT has the water area available which can be allotted to private parties for port related activities and in view of this, the	The Land under category A is an inter tidal zone and not a complete submerged area. Further, the area is having approach road and away from eco-sensitive zone and having potential of further development.

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<td>statement by the DPT that no land is available for further allotment is incorrect. Further, as per the land policy, the rate of water area is to be considered as half of the rate of abutting land and in case higher rate is fixed for land, it would increase the rate for water area and in turn impact on the marine facilities development in water.

(b). With regards to the justification mentioned in (xx) (ii) above, please note that under the Concession Agreement, the responsibility for obtaining the environment clearances is normally on concessionaire and not on DPT. It is to surprise of Nayara, that even though the DPT is completely well versed with the fact that the Vadinar land is in an eco – sensitive zone of National Marine Sanctuary and the constrains that a concessionaire has to face for obtaining the environment clearances, it has still proposed such high SoR for the same land. On the contrary, in such difficult areas, the rates should be lower so that a prospective developer can easily undertake its work. In this regard, if a high SoR is fixed for the Vadinar land despite the challenges of obtaining the environment clearances, it would create tremendous burden on Nayara or any other prospective developer.

(c). With regards to the justification mentioned in (iii) above, please see our detailed response in point (A) of our Objections.</td>
<td rowspan="2">In fact it is to mention here that all the projects being executed have got statutory clearances subject to complying the condition. For the recent project of "Development of Coast Guard Jetty" including reclamation of land in the sea area all the statutory clearances has been received from the respective authorities without any hindrances.

It is also to mention that M/s. Nayara also got Environment clearance for development of Jetties in 2020. Therefore, the statement of M/s. Nayara that it is very difficult the Environmental Clearance is not true.</td>
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<tr>
<td>(xxii).</td>
<td>Therefore, the rates as arrived at in the Valuation Report do not reflect the real market value and should not be considered by DPT and consequently TAMP should not consider these rates which have been recorded to mechanically tally with the rates as agreed in the Concession Agreement.</td>
</tr>
<tr>
<td>(xxiii).</td>
<td>Additionally, please note that for the purpose of discovering the right price of the DPT port land, we had independently approached Mr. Chetan S Valera, a government approved valuer for deriving the rates for the land within the DPT port area (“Independent Valuer”). Based on the review by the Independent Valuer, we have been informed that the actual highest lease rent rates for the DPT port land should be INR 1,802.94 (lease rent – 6% of INR 1,802.94 – INR 108.18) per sq. meter / year in 2015 – 16 as against the rates set out in the Valuation Report. Set out below is the table depicting rates of the DPT port land in the report prepared by the Independent Valuer:
<table>
<tr><th>Sr. No</th><th>Years</th><th>Rate as per Government</th><th>Rate of land Considered As per Jantri of Govt.</th><th>Rate of Land considered as</th><th>Rate of Land considered Market Value</th><th>Average of Ready Reckoner</th><th>Land rate by the Valuer through perso</th></tr>
</table></td>
<td>Valuer Shri Valera of M/s Nayara Energy Ltd., has considered only the Jantry value of Vadinar village. This ready reference was last revised in 2011, also the valuer has suggested 10% increase for a particular year & thereafter he suggested 2% increase as per the LPG. There are no guidelines submitted by the valuer to increase @ 10%. That is the only suggestion. As per the Government of Gujarat’s valuation guidelines as well as income-tax department, an increase of 10 to 15% is suggested respectively. On the contrary, Port valuer K M Thacker adopted scientific approach by applying cost inflation index. Valuer himself suggests 10% increase every year then Valuation will still increase.</td>
</tr>
</table>

		Ready Reckoner in Vadinar Village	of Gujarat. Industrial Rate in Vadinar Village	per District level Price Committee (DLPC) for Vadinar Village from time to time	as per Selling Advertisement in the local news paper for the nearby villages.	and Jantri Rate of Govt. of Gujarat.	nal experience and knowledge, local inquiry etc. by adding 10 % in the value of Table G
A	B	C	D	E	F	G	H
1	2011-12	₹1,297.50	₹1,140.00			₹1218.75	₹1,401.63 Rs.1,340.63
2	2012-13	₹1,410.33	₹1,140.00			₹1275.16	₹1,402.68
3	2013-14	₹1,551.36	₹1,239.13			₹1395.24	₹1534.77
4	2014-15	₹1,692.39	₹1,363.04	₹1,495.00	₹2,150.00	₹1527.71	₹1680.49
5	2015-16	₹1,791.11	₹.1,486.96		₹2,150.00	₹1639.03	₹**1802.94**
6	2016-17	₹.1,861.63	₹1,573.70			₹1717.66	₹1889.43
7	2017-18	₹ 1,918.04	₹1,635.65	₹1,600.00		₹1776.84	₹1954.53
8	2018-19	₹1,974.46	₹1,685.22			₹1829.84	₹2,012.82

(xxiv).	In this regard, kindly refer the rates mentioned in column E in the above table which are the rates approved by District level Price Committee (“DLPC”) for the government land in Vadinar village (near sea) for Indian Coast Guard and hence are most relevant to the DPT port land. It can be seen that the final rate derived by the Valuer is comparatively higher than the rate approved by DLPC because the DPT Land is more developed compared to the Indian Coast	The highest market rate of Rs.2094.93 for category C1 & C2, the base rate has been from the valuation report prepared by the Port earlier, which is attached as Appendix in the Valuation Report. The base rates have been referred from the Gujarat Government Guidelines value [stamp duty rates] and the rate at which Government sold land to Indian Coast Guard for the Development of

	Guard land and thereby reasonable. The report by the Independent Valuer is attached with this response as Annexure D for your ready reference.	Residential Complex [behind the Port Colony]. The rate of Rs.2094.93 has been arrived from the above mentioned reference rates after applying escalation. Therefore the highest rate approved for the category C1 & C2 is in line with the stipulated guidelines and is in order and there in no deviation or error in the rates.
(xxv).	Therefore, it is clear that the rates mentioned in the Valuation Report are incorrect, baseless and are without any justification. Accordingly, we request the TAMP to fix the highest lease rates of INR 108.18 per sq. meter as proposed by the Independent Valuer in its report for the Vadinar land.	
	(d). Vadinar land does not have Category E land	
(xxvi).	In addition to our explanation at paragraph D of our Objections, we would like to reiterate that the categorization of land as Category A, Category C1 and C2, Category E and Category ROW do not have any justification and sound logic. With specific emphasis to Category E, which is described as land with water on all sides, we would like to state that Vadinar land does not have any piece of land that is surrounded by water on all four sides, except a Single Point Mooring ("SPM") on the sea bed and anchor chains installed (i.e., the Category E land, as per the Valuation Report). However, such area where the SPM is installed and the anchor chains are established are only within the bounds of water and does not require any land.	The classification/ categorization of the Port Land as per the National Industrial Classification [NIC] 2008 is concerned, it is to state that the land use plan has been prepared is in line with the above said guidelines. It is pertinent to mention here that the Land Use Plan was uploaded into DPT website and forwarded to Stake Holders vide this office letter no. OOT/ C-PS/Land/4020/120 dated 03/04/2019 for comments before carrying out the valuation of land. With regard to Category E is concerned, the mentioning of water front all side is indicatively only, it does not specify the categorization of land. It is mentioned only to give clear idea of Category E land i.e. [land inside custom bond area] is surrounded by water. For more clarity NEL may refer to Categorization of land of Kandla i.e. "Land within the docs", similar to it the Vadinar Land i.e Category E is also land within docks.
(xxvii).	In that sense, considering the SPM to be as land and identifying such a development as land covered with water front on all sides (Category E) would be incorrect. Consequently, applying the rates as identified for Category E to such a development does not reflect the actual market value.	
(xxviii).	As per the clarification issued by Ministry of Shipping vide letter no. PD-13017/2/2014-PD.IV Dtd April 29, 2019 on Policy Guidelines for Land Management, all categorization / classifications for lease of port lands are required to be done as per the National Industrial Classification, 2008 ("NIC"). It is to be noted that Category E is not in line with the classifications provided under the NIC since the NIC does not provide for a separate classification for land with 'water front on all sides'.	
	(e). Approval of the rate by TAMP as opined by the Additional Solicitor General ("ASG")	
(xxix).	Without admitting to the opinion of the ASG in full and in furtherance to our iteration at paragraph A of our Objections, we would like to state that even the ASG in his opinion has categorically stated that the rates for the Vadinar land should be approved by TAMP. In his opinion he has stated that DPT should approach TAMP to get a separate SoR approved by TAMP for the Vadinar land. In this regard, set out below are the relevant extracts of the ASG's opinion: "39. The Querist must approach TAMP to get the SOR fixed."	The Valuation report prepared based on the LPG considering the highest rate of the realistic transaction and data available in the vicinity of Vadinar Land. The rate accepted by M/s. Nayara Energy through duly signed agreement dated 16th April, 2015 for Vadinar Project has been considered for valuation of Category E land, being highest accepted rate.

	"42. ….In fact, approaching TAMP for fixation of the SOR for the Vadinar land is the proper course of action which the Querist should undertake."	
(xxx).	By stating so, it is clear that the ASG had referred to the market rate which is to be approved by the TAMP should be identified as appropriate for the Vadinar land and accordingly the DPT must not insist on getting the rate as agreed in the Concession Agreement to be approved by TAMP.	
(xxxi).	In view of the above, it would be incorrect to pursue TAMP to approve a rate that was agreed in the Concession Agreement on account of the following:: (a). Firstly, because Nayara was not made aware at the time of signing the Concession Agreement, that there did not exist a separate SoR for Vadinar land and the rate mentioned in EOI was for Kandla land as already mentioned in paragraph (4) of this response; and (b). Secondly, as stated in paragraph 6 of this response, Nayara has constantly disagreed with the rates since the time NEL were made aware of the fact that TAMP has not approved a separate rate for Vadinar land. Although, Nayara has duly paid, on due dates considered by Nayara as per Concession Agreement all its dues and they have been paid under protest which has been duly addressed by Nayara to DPT while making such payments.	
(xxxii).	Accordingly, it is humbly noted that it is the duty of DPT to have sought the approval of TAMP for the Vadinar land prior to the signing of the Concession Agreement.	
	(f). The Chairman of DPT admits that the rates for Kandla land cannot be taken for the Vadinar land	
(xxxiii).	In addition to the above objections, we would like to highlight that during the Hearing, the Chairman of the DPT himself pointed out and admitted that the rates of Kandla land should not be applicable to Vadinar land simply because of the stark difference in the demand the land attracts.	It is to clarify that the Chairman, DPT has stated in the context of revised rate of Kandla i.e. Rs.357.16 proposed to be charged for the concession agreement executed in the year 2015. Whereas, in order to resolve the issue of applicability of rate looking to the vicinity, Port has proposed to notify the fresh rate of Vadinar Land as per the Land Policy Guidelines.
(xxxiv).	Further, for the avoidance of doubt, it is clarified that there has been a mechanical application of the rates of Kandla land of INR 203.38 (as mentioned in the Concession Agreement) since the Valuer has also proposed the rate of 203.38 in the Valuation Report to equate the same with the Concession Agreement rates. The DPT and the Valuer have very conveniently attempted to apply the Concession Agreement rates by putting the same rate in the Valuation Report without any proper justification and appropriate reason.	
(xxxv).	In this regard, we would like to state that we have also emphasized that the Kandla land rates should not be applied to the Vadinar land and the same has been well pointed out by us in point (G) of our Objections, where we provided details	

	regarding the differences between the Kandla land and the Vadinar land and how the rates as mentioned in Concession Agreement cannot be applied for the Vadinar lands. It is to be further noted that the DPT itself has observed and admitted the difference between the Kandla land and the Vadinar land vide its proposal dated October 27, 2020 and the same has also been highlighted by us to DPT vide our letter dated January 21, 2017.	
(xxxvi).	In view of the above facts and objections, it is clear that applying Kandla rates to Vadinar land would lead to an inaccurate conclusion.	
(xxxvii)	Therefore, in addition to the prayers made under the Objections, NEL would like to humbly pray that: (a). The rates of BORL not be considered as the benchmark for deciding the rates of Vadinar land; (b). The existing rate not be approved, as it is disputed and was pre-determined by DPT at the time of issuance of the EOI; (c) The rates as identified in the Valuation Report (submitted by DPT) to not be considered final for approving the rates for Vadinar land; and (d) The rates proposed by the Independent Valuer (submitted by Nayara) in its report be approved by TAMP.	Valuation of Land at Vadinar has been done as per Land Policy Guidelines, which is attractive and not on higher side. Valuation at Vadinar is done in the interest of Port Users only.
(xxxviii).	Nothing contained in this application by reference shall be deemed to be an acceptance or rejection of any fact by them. These submissions are without prejudice to Nayara's rights under law or any other contract, and NEL hereby expressly reserve our rights to proceed in any manner available to us in relation thereto.	
4.	**Gandhidham Chamber of Commerce and Industry (GCCI)**	

(i).	(a). In the valuation report prepared by M/s. KM Thacker & Associates, they have categorized the Vadinar Land into following categories: A : Category A – Land having water front & upto half mile from the shore i.e. Vadinar Road. B: Category C1 & C2 – Plot abutting the main Road (the residential colony of IOCL/DPT) and other plots. C: Category E – Land within docks (water front all sides). D: Category ROW (Right of way) zone conveyance of pipeline, cables etc.	(a). No Comments furnished by DPT
	(b) As per Ministry of Shipping Circular categorization has to be done as per National Industrial Classification(NIC) 2008, GCCI could not find evidence whether that has been done in this case. The categorization do not clearly depict the area and demarcation, hence will lead to dispute in future. It should clearly demarcated in the drawing.	(b). As far as the classification/categorization of the Port Land as per the National Industrial Classification [NIC] 2008 is concerned, it is to state that the land use plan has been prepared in line with the above said guidelines. The classification/categorization of the Port Land has been covered in the land use plan report therefore, the same has not been included in the valuation report. It is pertinent to mention here that the Land Use Plan was uploaded into DPT website and forwarded to Stake Holders vide this office letter no. OOT/C-PS/Land/4020/120 dated 03/04/2019 for comments before valuation. A copy of classification of land is attached as Annexure-I for reference.
	(c). Category A and E looks similar. Category A is water front & up to Half mile from the Shore, whereas Category E is water front from all sides. Even if they are different, how can a land with water from all side be costlier than water front from one side?	(c). No Comments furnished by DPT
	(d). ROW category has been defined separately, whereas the Pipe line or cables will pass through one of the category. So the rate of that area with suitable reduction be made because only ROW can be applied.	(d). As far as ROW is concerned, it is to state that the adjacent area of 30 m wide road corridor of 10 km in length from colony to jetty has been considered for laying of pipeline or cables etc. looking to the smaller patch of area and since major portion of road is not passing through any of the category of land, therefore a separate rate has been arrived for ROW.
(ii).	(a). Valuer in their report has considered 20-25% addition on the highest land rate in the vicinity. These are arbitrary in nature and does not have a reasonable basis. The rates of all category of land should be lesser than the land in developed colony area because port is farther from Road and other than specific related Industry, nobody else can come there for any commercial activity.	(a).(i) The classification/ categorization of Port land has been done as per guidelines of NIC and rate has been arrived as per provisions laid down in Land Policy Guidelines. (ii). Reduction factor of 30% is applied as per guiding principles for arriving the value of lands that are of government & are in the interest of government point no. 1 which is read as under: The area of the questioned/ interrogated land and the land for sale having area 1500 Sq.m. Or less than that should be treated as a small plot. Therefore, all land with more area should be considered as large lands. Keeping this in mind,

	(b). These area can only be used by Industries. Industrial land rate should have been used not the commercial. DPT themselves have mentioned that the Vadinar Land also faces issues such as limitation of backup land, restrictions on development due to existence of mangroves etc. Majority of area comes under Marine Sanctuary, Marine National Park and Eco Sensitive Zone and to get Environment Clearance is very difficult. Therefore Land rate cannot be more than nearby areas.	in order to determine the price of a small plot, it has to be increased by 30% to make it comparable. (iii). Reduction factor @ 25% for leasehold land is applied as per guide lines for valuation of immovable properties valuation cell income tax department – 2009 which is read as under:- (iv).The leasehold land fetch less price as compared to free hold land due to the number of restrictions imposed in lease deed. An adjustment fact + / - 25% is to be applied for working out the land rate of free hold plot from the sale instance of lease hold plot and vice-versa. (b). It's true that rates of developed land fetch higher than un-developed land. But since land is divided in various categories like industrial, commercial, residential & ROW, Land used for commercial purpose as well as industrial purposes is more expensive than residential land as it's use is productive/income fetching. Therefore, if the land in question is to be used for commercial or industrial purposes or is located in such an area, the valuation determined by the sale of the residential sales will have to be increased by 30 to 40 percent and it will reduce in the opposite situation. If the sales also are of commercial area then there is no need to increase or decrease
(iii).	(a). Vide D.O.No. PD-13017/2/2014-PD.IV dated 8 July 2015, Ministry of Shipping has directed that it is not mandatory that the Land Allotment Committee has to necessarily take the highest of the 5 factors given in the Land Policy Guidelines and can choose another factor with proper justification. Accordingly, while choosing the market value as per para 18 of Land Policy Guidelines 2014 due care is to be taken to choose the relevant factor which captures the realistic market value of the land. Mechanical and inappropriate application may lead to inflated and unrealistic market value which results in poor response to tender cum auction and subsequently loss of business to the port. (b). For Category E, DPT has considered rate based on Agreement signed with Coviva Energy Terminals Ltd. (CETL), being the highest although NEL have tried to derive market rate, which is much lower. GCCI understands that CETL has already disputed this rate, because it has not been approved by TAMP for Vadinar. So how a disputed rate can be made SOR for the land.	(i) As per the provisions of Land Policy Guidelines reference of accepted rate of tender-cum-auction in the past 5 years could considered for fixing land rate. (ii) As such once the rate of Rs.203.38 accepted in the tender-cum-auction by party irrespective of its reference to it will become highest rate of particular land. Therefore, in the present case the highest accepted tender-cum-auction rate has been considered for fixing the rate for category E land is in order. (iii) As stated earlier, the categorization has been done as per NIC-2008. (iv). As far as Category A is concerned, the half mile limit is specified looking to the tidal zone and utilization of land for development of infrastructure., hence to develop that land for use / port related activity, addition expenses up to 25% to 30% & additional 15% for infrastructure hence 40% difference of valuation is justified. (v). With regard to Category E is concerned, the mentioning of water front all side is indicative only; it does not specify the categorization of land. It is mentioned only to give clear idea of Category E

		land i.e. [land inside custom bond area] is an "island" having water surrounding it. For more clarity Categorization of land of Kandla i.e. "Land within the docks", similar to it the Vadinar Land i.e Category E is also land within docks may be referred.
(iv).	Opinion from AG has been referred in the proposal, ASG has said following points in this regard: (a). DPT has to get the rate for Vadinar Land fixed by TAMP first as per MPT Act. (b). In case rate fixed by TAMP is lower, rate agreed between the parties can be adopted and DPT can approve that as per MPT Act provision. (c). In case the rate fixed by TAMP is higher, DPT can charge rate fixed by TAMP as per the Agreement. This opinion is with reference to an Agreement signed with CETL. The opinion does not say that rate be fixed equal to one written in the Agreement, which DPT is trying to do in this case. Hence not justified.	----
(v).	GCCI requests TAMP to issue the directives to the DPT to withdraw the proposed hike of lease rent on Vadinar Port Land.	----
5.	**Gandhidham Chamber of Commerce and Industry (GCCI)**	
(i).	Earlier DPT has considered the rates of base year, which was all time high, it is not fair and justifiable for DPT to take. It should have pegged on the year where the rates were moderate.	(i).&(ii). The DPT has reiterated its earlier comments that the Valuation report prepared by deriving rates under 4 methods all which are as per international valuation standards - 2017. After deriving rates by 4 methods, highest rates of all the 4 methods for each category which is adopted in general practice by Valuers. Also, for example if tendering for allotment of land is carried out, the lessor will allot land to the one who has quoted the highest rates.
(ii).	The Valuer Report seems to be completely faulty. Valuer has not considered some basic facts. May be their consideration on panel would have been on merits but, the formula they have adopted seems to suggest hike in lease rent has not been considered in port land. GCCI object that proposal has been worked with biased nature and this proposal cannot be worked.	
(iii).	In the opinion of GCCI, the Port Trust cannot behave like a Land Developer where profit on land is their sole consideration. The Ports are considered as facilitator and they should have only interest in ROI [Return on Investment]. While on hearing, it was surprising / astonishing to all stakeholders that the valuer has explained / justified the hike by saying that "DPT should have profit margins on land, which they are not". This statement of valuer seems completely biased while working on proposal. As mentioned, DPT is not into LAND BUSINESS. LAND must be in support to port operations. DPT must follow the Principles of Trusteeship.	(iii) Port never thought of any profit margins on land and never considered the same in the Valuation of Land at Vadinar.
(iv).	The hike in lease rent may turn counter-productive where users may start vacating the land, which is GCCI's primary concern. If users are occupying land, then surely port and its amenities will be in	Valuation of Land at Vadinar has been done as per Land Policy Guidelines, which is attractive and not on higher side. Valuation at Vadinar is done in the interest of Port Users only.

	use. But, hiking lease rental may be akin to pushing the port developed facility to a stop.	
(v).	Take recent live example of SIPC Kandla, where investments have not been attracted due to high lease rent. If DPT is proposing hike in lease rent on current projects, then GCCI foresee they will turn non-viable. Even the new investments may divert elsewhere.	
(vi).	DPT should consider the allotment of huge tract of unused land for better development of Port instead of hiking lease rent. GCCI strongly suggests that instead of hiking lease rent if DPT lowers it by few percentage, some new investment may get attracted resulting in employment generation.	
(vii).	GCCI strongly object to any hike in lease rental at present scenario. GCCI have raised genuine concern with a request to decline the said proposal of DPT to hike the lease rent of Vadinar Land in the best interest of the port as well as Nation.	

2. A joint hearing in this case was held on 18 December 2020 through Video Conferencing. The DPT made a power point presentation and has also furnished a copy of the presentation vide its email dated 18 December 2020. The DPT and the concerned users / user organizations have made the following submissions at the joint hearing:

<u>Deendayal Port Trust (DPT)</u>

(i). Land admeasuring 271.04 acres was acquired from Government of Gujarat for development of Offshore Oil Terminal Department between 1974 to 1976.

(ii). In order to streamline the land issues and to regularize the lease agreements, the port has filed the proposal to fix the License Fee of Vadinar Land.

(iii). Port engaged M/s.KM Thacker & Associates, Government Approved Valuer.

(iv). The land has been divided into the four categories by the valuer, which is in line with the categorization done for the Kandla Land and as per the National Industrial Classification-2008 Guidelines and as per the Land use plan of the port.

(v). The government approved valuer has arrived at the land value following the Land Policy Guidelines, 2015.

(vi). Valuer has taken State Government Ready Reckoner rate of 2011 and given cost indexation factor from 2011 to 2018 adopting the methodology followed by Income Tax and Central Board of Direct Taxes.

(vii). We have also considered sale transaction of Bharat Oman as one of the methods and done suitable adjustment i.e. 55% reduction for the size of plot and free hold versus lease hold land for arriving at market value of land.

(viii). Under the method of highest accepted tender cum auction rate, the highest auction rate of land allotted by the DPT in 2015 at the rate of ₹3389 to M/s.Nayara Energy Limited is considered and adjusted for cost indexation factor.

(ix). Highest factor is taken under each category.

(x). The Land Allotment Committee in its meeting held on 21/09/2019 has recommended the categorization of land.

(xi). Based on justification submitted by the port, the Land Allotment Committee in its meeting held on 16/01/2020 has recommended the highest market value of land arrived by the approved valuer.

(xii). Board of Trustees of Deendayal Port Trust has approved the highest market rate for different categories of land at Vadinar and accordingly, lease rent is proposed at 6% of market value of land.

(xiii). Annual escalation factor proposed is 2%.

Indian Oil Corporation Ltd.

(i). Bharat Oman is Joint Venture with IOCL and it is not a Public Sector Undertaking.

(ii). We seek clarification as to why the lease rent is proposed by the port from the year 2015?
[DPT: Lease rent from 2015 is proposed to settle some past issues.]

(iii). Area of pipeline calculated by DPT is 2 x Diameter x length. As per LPG, it should be 50%.
[DPT: This point is not related to the present proposal.]

(iv). We have filed Civil Application before the High Court. One hearing has taken place. Matter is pending before the Court.
[DPT: We have not received the said Civil Application.]

(v). As per LPG 2015, 50% concession should be given.
[Member (Finance), TAMP: The proposal is for fixation of lease rent for land at Vadinar. As regards concession in the lease rent, it is for the DPT Board to look into the matter and decide as per the LPG 2015.]
[DPT: As regards concession in the lease rent, the matter has to be decided by DPT Board]

(vi). The proposed rate leads to 55915% increase for land allotted to us.
[DPT: The base rate of ₹1.08/- considered by the IOCL is of the year 1978 and has no basis. At that time, the Vadinar land was remote and there was no development. Vadinar is now a developed land. The proposed lease rent is arrived at based on current market value of land. IOCL cannot compare the proposed lease rent with 1978 rate.]

(vii). What is the basis of cost indexation?
[DPT: Cost indexation factor of Income Tax is used. This indexation is universally used and even accepted internationally to arrive at realistic valuation of land.]

[DPT: Jantri Rates is of 2011 year. That is the base. We cannot go below that. Jantri Rate has been indexed applying the cost indexation factor of the Income Tax. We have referred authentic sale deed of Bharat Oman also.]

(viii). Valuation is done by only one valuer. It should be done by atleast 3 valuers. Rates are astronomically higher.

[DPT: Volume is not the criteria. Methodology of valuation is important. All prescribed factors for arriving at the market value of the land as per the LPG are considered. Market value of land under all the factors are coming comparable. We have to follow Land Policy Guidelines. There is no need to get valuation done from different valuers. We have not considered any profit margin. As per Land Policy Guidelines, 6%of the market value of land is considered to arrive at the proposed lease rent]

[Member (Finance), TAMP: Valuation by 3 valuer is not required as per LPG, 2015. It is for the Board of the concerned Port to decide about appointment of approved valuer.]

M/s. Nayara Energy Limited
[P.K. Srivastava and Shri Deepto Roy]

(i). We support the views of IOCL that proposed rates are high and do not support the market value of land at Vadinar.

(ii). Port itself in proposal has recognized that development at Vadinar has not happened.

(iii). Categorisation of land is arbitrary and erroneous. Categorisation for land ‘E’ is not as per NIC. In our view, there is no equivalent category in NIC.

(iv). Bharat Oman is 50:50 Joint Venture between Oman Refineries and BPCL. Bharat Oman is not relevant.

(v). Different percentage of hike like 20% for A and 25% for B is added. No basis.

(vi). Valuer has not considered realistic market value of land. We do not feel that market value of land is realistic.

(vii). Ministry of Shipping in their letter dated July 15, 2015 has specifically highlighted that it is not mandatory for the land allotment committee to necessarily take the highest of the 5 factors. LAC can choose another factor with proper justification. Hence it is important that while choosing the market value as per the Land Policy Guidelines 2018, due care is taken to choose the relevant factor which captures the realistic market value of the land. Mechanical and inappropriate application of the Land Policy Guidelines may lead to inflated and unrealistic market value which results in very poor response to tender cum auctions and subsequently loss of business to the Port.

(viii). Project land at A is near water. This must have higher rate as it is near the water. But, in proposal, market value of land for E category is higher than category A.

(ix). In the year 2015, price of land was prefixed when we bid the project. There was no price discovery at that time. The rate considered is not from auction. Hence, the market value of land considered under this method cannot be taken as the factor for arriving at lease rent.

(x). It may be appropriate to apply industrial value of land for Vadinar land instead of commercial value of land considered by the port.

(xi). The DPT has attached a copy of the opinion of Additional Solicitor General (ASG) obtained by the port along with its proposal. It is a well settled principle of law that any expert opinion or opinion evidence cannot form the basis for any decision of adjudicating bodies or courts. The AG opinion should not be taken on record. It has no bearing on mandate of TAMP under Section 49 of MPT Act.

(xii). We have given detailed written submissions.

(xiii). Proposed rate do not represent current market value of land.

(xiv). Firstly, the rate was not discovered. Secondly, that rate is disputed. Then how that can be the basis for the proposed rate.

(xv). We pray proposal of DPT for revision of lease rent for Vadinar should not be approved.

(xvi). We seek permission to make our further submission.

Gandhidham Chamber of Commerce and Industry

(i). We have given our written submissions.

(ii). Higher rate when the land of Vadinar was in demand cannot be the basis for arriving at the lease rent.

(iii). Valuation report is completely faulty.

(iv). DPT is not a developer. It is facilitator and eligible for ROI only.

(v). We will send some more points in writing on the arguments made by DPT today which may be considered.

Deendayal Port Trust (DPT)
[Chairman]

(i). This has been long standing issue not resolved for many years.

(ii). We were charging Kandla rates as pointed out by both IOCL and M/s. Nayara Energy Limited for land allotted at Vadinar, which is higher.

(iii). There was lot of debate. It was then decided to have separate tariff for Vadinar land.

(iv). Kandla rate which was applied for Vadinar is ₹350/-. The rate now proposed for Vadinar land is ₹204/-. Thus, at the proposed separate lease rent for Vadinar, there is reduction from the existing rate. It was expected that Vadinar users will appreciate.

(v). Proposed Rates are quite reasonable compared to what is being presently levied. There was lot of resistance for the proposed reduction in the port. We thought that the trade should be helped. Trade should accept and welcome the proposed rate.

(vi). Port has proposed reasonable lease rent for Vadinar land. We request TAMP to approve the proposed rates.

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