

CALENDAR ITEM

56

A 76, 79

10/16/08

G10-08

S 39

M. DeBernado

J. Lucchesi

**CONSIDERATION OF A RESOLUTION OPPOSING THE NOVEMBER 4, 2008
BALLOT MEASURE (THE PORT OF SAN DIEGO MARINE FREIGHT
PRESERVATION AND BAY FRONT REDEVELOPMENT INITIATIVE) THAT
ATTEMPTS TO ILLEGALLY AMEND THE PORT OF SAN DIEGO'S MASTER PLAN,
TENTH AVENUE MARINE TERMINAL, CITY OF SAN DIEGO, SAN DIEGO COUNTY**

INTRODUCTION

A private development company, San Diego Community Solutions, LLC, has obtained the requisite number of signatures to qualify the deceptively named Port of San Diego Marine Freight Preservation and Bay Front Redevelopment Initiative (Initiative) (Exhibit B) for the local San Diego County November 2008 ballot. This Initiative involves the Tenth Avenue Marine Terminal, located on State-owned tide and submerged lands held and managed in trust by the San Diego Unified Port District (Port District).

BACKGROUND

The Tenth Avenue Marine Terminal consists of approximately 100 acres located on San Diego Bay tidelands, which were granted in trust to the Port District pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended (Port Act). The Tenth Avenue Marine Terminal, located between the San Diego Convention Center and the Coronado Bridge, within the city of San Diego, is an important port facility as it is one of two marine cargo terminals in San Diego Bay. According to the Port, over the past five years, the Tenth Avenue Marine Terminal processed 12.6 million tons of maritime cargo, including fruit, cement, structural steel, fertilizer, industrial engines and other shipped products. According to the Save Our Working Waterfront group, in 2006, the economic impact of the maritime cargo activities in San Diego added \$1.6 billion to the region's economy, generated \$100 million in state and local taxes and supported 19,298 regional jobs. In addition, the Tenth Avenue Marine Terminal is one of 19 ports that is federally designated as a "Strategic Port Facility," which is actively utilized by the US Department of Defense for military cargo handling.

Despite the misleading title of the Initiative, this Initiative is not sponsored by the Port District. In fact, the Board of Port Commissioners (Board) formally and unanimously opposed this Initiative at its May 6, 2008 meeting. In addition, numerous environmental, labor, maritime industry, governmental, military and chamber of commerce groups expressed their opposition to this Initiative, including the San Diego-Imperial Counties Labor Council, the San Diego Port Tenants Association, the Pacific Merchant Shipping

CALENDAR ITEM NO. 56 (CONT'D)

Association and the California Trade Coalition. Most recently, the staff of the California Coastal Commission expressed their concerns “that allowing the development of public and commercial recreation uses at and above the Tenth Avenue Marine Terminal would have significant, unmitigatable, adverse impact on the existing coastal-dependent port facilities at the terminal ... which are the highest priority uses for the terminal under the Coastal Act.” Additionally, five members of Congress (Representatives Susan Davis, Darrell Issa, Duncan Hunter, Brian Bilbray and Bob Filner) have expressed their opposition to the Initiative. And finally, United States Senator Dianne Feinstein recently requested an analysis from the Department of Defense on the consequences of the proposed redevelopment of the Tenth Avenue Marine Terminal contemplated by the Initiative. These opposition documents are collectively attached as Exhibit C.

There have been previous attempts to allow non-maritime uses at the Tenth Avenue Marine Terminal. In July 2004, the Board adopted a policy that the Tenth Avenue Marine Terminal could only be used for maritime cargo purposes and operations. This policy position was in response to proposals to utilize all or a part of the Tenth Avenue Marine Terminal for the site of a sports stadium and other non-maritime uses. At that time, State Lands Commissioner, Lt. Governor Cruz Bustamante, actively supported the Board’s policy position to protect maritime commerce.

On August 5, 2008, the Board, as required by law, submitted the Initiative to the County Registrar of Voters for placement on the November 2008 general election ballot. Simultaneously, the Board voted unanimously to file a lawsuit (*San Diego Unified Port District v. Seiler, Liner*, Case #37-2008-00089123-CO-WM-CTL) to prevent the County Registrar and San Diego Unified Port District Clerk from placing the Initiative on the ballot. While the Port District is clearly opposed to this Initiative, it was mandated to submit the Initiative to the Registrar of Voters pursuant to its ministerial duty under the Elections Code and pay the election costs, which are estimated at \$435,000.

The Board’s lawsuit consisted of a petition for writ of mandate and complaint for injunctive and declaratory relief. The pleadings specifically requested a temporary restraining order, a preliminary injunction, and a permanent injunction to prevent the Initiative from being placed on the November ballot. Additionally, the lawsuit asked for the Initiative to be declared void as unlawful, invalid and unenforceable.

The State Lands Commission, along with the San Diego Port Tenant’s Association and the Pacific Merchant Shipping Association, filed *amicus curiae* briefs with the court. On September 4th, the court denied the Port’s pre-election challenge. The judge concluded that he was not prejudging the merits of the challenges, but that he did not find that the Port’s arguments met the very high standard to remove an initiative from the ballot. The court’s decision does not prohibit the Port or other parties from challenging the Initiative after the November election should the Initiative pass.

CALENDAR ITEM NO. 56 (CONT'D)

PUBLIC TRUST LANDS AND THE LOCAL INITIATIVE

The Initiative attempts to illegally amend the Port District's Master Plan to allow for non-maritime uses at the Tenth Avenue Marine Terminal. The Initiative requires that within 60 days of the passage of the Initiative, the Port District must enter into an "Exclusive Negotiating Agreement" with a private development partner. The Initiative states that it would establish maritime freight as the "priority" use on the site while simultaneously allowing for a redevelopment of the Tenth Avenue Marine Terminal to create new recreational and visitor-serving facilities. The Initiative language is not specific about the uses generally described as recreational and visitor-serving; however, the Initiative does suggest a concept of "double-decking" the Tenth Avenue Marine Terminal, which involves building a deck 40 feet above the terminal. The lower deck of this project would ostensibly be maintained for maritime uses, while the top deck would be used for non-water dependent uses including hotels, a sports stadium/arena complex, restaurants, specialty retail shopping establishments and other amenities. The top deck construction would involve development of approximately 96-acres of "air rights "

As stated previously, the California State Legislature granted, in trust, its sovereign tide and submerged lands within San Diego Bay to the San Diego Unified Port District pursuant to the Port Act. Specifically, Section 87(a) of the Port Act begins:

"The tide and submerged lands conveyed to the district by any city included in the district shall be held by the district and its successors in trust and may be used for purposes in which there is a general statewide purpose."

While the day-to-day management of these public trust lands were granted to the Port District, the State, through the State Lands Commission, retains trustee and oversight authority over the Port District's administration of these lands, pursuant to Public Resources Code Sections 6301, *et seq.*

California courts have ruled that such grants of sovereign property are to be held in trust by the local trustee on behalf of the people of the State. The terms and conditions of these statutory trusts are subject to modification only by the State Legislature. The usual granting language utilized by the Legislature has the effect of conveying the State's legal fee title to the described tide and submerged lands in trust subject to certain conditions and limitations. The grantee, (i.e. the Port District) is a legal trustee, both as to the lands themselves and as to the proceeds derived therefrom. *City of Long Beach v. Morse* (1947) 31 Cal. 2d 254, 257. The trust is for the benefit of all of the people of the entire State. *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 209. The effect of the legislative grant is, therefore, to create a trust in which the grantee local government is the trustee, the State is the trustor, and the people of the State are the beneficiaries of the trust. The legal consequence of this relationship is that the proper use of the tidelands and tideland revenues is a statewide affair. *Mallon* at 209.

CALENDAR ITEM NO. 56 (CONT'D)

The State Legislature, pursuant to the Port Act, has designated the Board of Port Commissioners as the policy-making body with exclusive and sole responsibility for managing these lands and determining what land uses are appropriate for the Tenth Avenue Marine Terminal, as well as the remainder of the state-owned land granted to the Port District. The land use decisions that the Board makes concerning these public trust lands is a statewide affair and cannot be affected by the local initiative process.

Further, an issue as important as the attempt by this particular Initiative to illegally amend the Port's Master Plan, is the general legal precedent setting issue involving the ability of local voters to direct or veto state policy and statutory provisions regarding management of public trust lands. There is an inherent conflict of interest in allowing a limited group of local citizens to use a local initiative to decide and direct the management of assets held in trust for the benefit of the statewide public. Such authority would allow local voters to shut down legitimate public trust activities being conducted on public trust lands throughout the State. For instance, the import and export of billions of dollars of cargo at the Port of Los Angeles, which is the busiest port in the country and the 5th busiest port in the world, could be commandeered by a relatively small amount of local voters.

In addition, allowing the local initiative to be used to direct the management of public trust lands would subvert the Commission's exercise of California's retained interest in its sovereign lands that have been granted, in trust, to local governments by interfering with the Commission's responsibility to compel compliance by its trustees with the terms of their legislative grants and the common law Public Trust Doctrine. Commission staff monitors, on a daily basis, the use of both public trust funds and lands by the State's trustees. For example, Commission staff reviews planning documents, such as Port Master Plans, to determine consistency with the common law Public Trust Doctrine and the terms of a particular statutory trust. The relationship between the Commission and its trustees would be destroyed if local initiatives could amend such planning documents. Further, the Commission would be unable to exercise its oversight role over the uses of State sovereign public trust lands in an efficient and effective manner because there would be no board or governing body that the Commission could look to for accountability.

CONCLUSION AND RECOMMENDATION

In conclusion, the Port District's authority involving the management of public trust lands cannot be affected by local initiative because the Port District acts pursuant to authority that the State Legislature delegated exclusively to the Board to implement state policy on matters of statewide concern. Commission staff believes the Port of San Diego Marine Freight Preservation and Bay Front Redevelopment Initiative presents a clear case of an attempt by local voters to interfere with matters of a statewide, if not national and international, concern, as well as a matter involving state property. As such, staff recommends that the Commission adopt the attached Resolution opposing the Initiative.

CALENDAR ITEM NO. 56 (CONT'D)

EXHIBITS:

- A. Resolution Opposing the November 4, 2008 Ballot Measure that Attempts to Illegally Amend the Port of San Diego's Master Plan (the Port of San Diego Marine Freight Preservation and Bay Front Redevelopment Initiative)
- B. Copy of the Port of San Diego Marine Freight Preservation and Bay Front Redevelopment Initiative
- C. Copies of various letters/press releases expressing opposition to and concerns about the Initiative
- D. Copy of the State Lands Commission *amicus curiae* brief filed on August 26, 2008

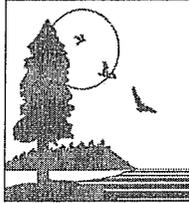
RECOMMENDED ACTION

IT IS RECOMMENDED THAT:

1. FIND THAT THESE ACTIVITIES ARE EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO 14 CAL CODE REGS. 15060(c)(3) BECAUSE THESE ACTIVITIES ARE NOT PROJECTS AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND 14 CAL CODE REGS. 15378.
2. THE COMMISSION ADOPT THE RESOLUTION OPPOSING THE NOVEMBER 4, 2008 BALLOT MEASURE (THE PORT OF SAN DIEGO MARINE FREIGHT PRESERVATION AND BAY FRONT REDEVELOPMENT INITIATIVE) THAT ATTEMPTS TO ILLEGALLY AMEND THE PORT OF SAN DIEGO'S MASTER PLAN.

**CALIFORNIA STATE
LANDS COMMISSION**

JOHN GARAMENDI, *Lieutenant Governor*
JOHN CHIANG, *Controller*
MICHAEL C. GENEST, *Director of Finance*



EXECUTIVE OFFICE
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

PAUL D. THAYER, *Executive Officer*
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
Voice Phone 1-800-735-2922

As drafted by staff

**RESOLUTION BY THE CALIFORNIA STATE LANDS COMMISSION OPPOSING
PROPOSITION B, WHICH IS A NOVEMBER 4, 2008 BALLOT MEASURE THAT WOULD
AMEND THE PORT OF SAN DIEGO'S MASTER PLAN REGARDING DEVELOPMENT AT
THE TENTH AVENUE MARINE TERMINAL**

WHEREAS, private developers have obtained the requisite number of signatures from the San Diego Unified Port District voters to place Proposition B on the November 4, 2008 ballot; and

WHEREAS, the intent of Proposition B, which is misleadingly titled "the Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative," is to amend the Port Master Plan and allow for the development of approximately 96 acres of air rights above the Tenth Avenue Marine Terminal; and

WHEREAS, the proposed development includes the construction of a concrete deck 40 feet above the Tenth Avenue Marine Terminal, supported by an estimated 1,000 support beams, to facilitate the creation of parking lots, restaurants, hotels, retail shopping establishments, and a convertible sports stadium/arena complex; and

WHEREAS, if passed and implemented, Proposition B would create significant economic, security, and legal problems for port activities at the Terminal; and

WHEREAS, specifically, the economic and security problems would occur because the Proposition B development would harmfully interfere with the Port's vehicle movement patterns, rail service, the storage of large breakbulk products, and other port related activities; and

WHEREAS, currently, the San Diego Unified Port District has two operating marine cargo facilities, the Tenth Avenue Marine Terminal in San Diego and the National City Marine Terminal in National City, both of which provide great economic and security benefits to the local, state, and nation communities; and

WHEREAS, combined, these two marine terminals have an annual economic impact estimated between \$1.7 and \$1.8 billion; and

WHEREAS, there are 19,298 jobs associated with the two marine terminals; and

WHEREAS, in 2007, 6.5 million tons of cargo went through these two marine terminals; and

WHEREAS, in the past four years, cargo operations have increased by more than 50% at the marine terminals; and

WHEREAS, the Port of San Diego is designated as a Strategic Commercial Seaport by the United States Department of Defense, and either of the two marine terminal at the Port may be used at any time to support military activities; and

WHEREAS, the Port of San Diego is part of the State of California's Goods Movement Action Plan, which seeks to improve and expand the State's goods movement industry and infrastructure as a means for generating more and higher paying jobs, increase mobility and relieve traffic congestion, improve air quality and protect public health, enhance public and port safety, and improve California's overall quality of life; and

WHEREAS, the tenants at the Tenth Avenue Marine Terminal in San Diego primarily handle containerized and breakbulk fruit, dry bulk cargos including sand and cement, petroleum products, and various breakbulk and project cargos; and

WHEREAS, the Tenth Avenue Marine Terminal includes a 300,000 square foot, state-of-the-art on-dock "Cold Storage Facility" that stores a wide variety of fresh produce and perishables; and

WHEREAS, the Tenth Avenue Marine Terminal is the location where IMC Chemical, Inc. operates a state-of-the-art bulk loader that is reportedly one of the world's most efficient at 2,000 tons per hour; and

WHEREAS, according to the San Diego Institute for Policy Research, the trade and security activities at the Tenth Avenue Marine Terminal are "almost assuredly incompatible" with the development proposed in Proposition B; and

WHEREAS, enactment of Proposition B would illegally circumvent the State Legislature's grant of tidelands to the Port of San Diego; and

WHEREAS, specifically, in 1962, the State Legislature created the San Diego Unified Port District and granted to it in trust certain public trust lands that consisted of sovereign tide and submerged lands, both filled and unfilled, within the cities of San Diego, Chula Vista, Coronado, National City, and Imperial Beach; and

WHEREAS, public trust lands are subject to the Public Trust Doctrine, a Common Law precept that requires that these lands be protected for the benefit of the statewide public for purposes and uses related to maritime commerce, navigation, fisheries and other water-dependent or water-oriented activities; and

WHEREAS, this legislative grant created an additional statutory trust in which the Port District is the trustee, the State is the trustor, the trust lands and the revenue generated from them are the property assets of the trust, and the people of the State of California are the beneficiaries; and

WHEREAS, the State Legislature specifically delegated to the Port District's Board of Port Commissioners the exclusive right to develop a master plan for the use of all of the Port District's public trust lands; and

WHEREAS, the California State Lands Commission retains oversight authority to ensure that the Port District and all other statutory trustees comply with the Public Trust Doctrine and the terms of their legislative grants; and

WHEREAS, the legal consequence of the legislative grant and delegation of power is that the proper use of the State's trust property is that the Port Board has exclusive jurisdiction over the granted trust lands; and

WHEREAS, the Port Board has voted to oppose the initiative because of, as outlined in its litigation to stop it, "the insurmountable obstacles to marine cargo operations posed by the proposed platform, the introduction of commercial and recreational uses at the [Terminal] and the incursion of such non-marine industrial uses into the [Terminal] site threatens to shut down that facility as a vital marine industrial center;" and

WHEREAS, as stated in the August 26, 2008 California State Lands Commission's amicus brief regarding the legality of Proposition B, the "power of [local] initiative does not exist to amend the Port Master Plan;" and

WHEREAS, the Port Board is composed of appointees from each of the five constituent cities to assure that local concerns and needs can be met in the administration of the Port District; now, therefore be it

RESOLVED BY THE CALIFORNIA STATE LANDS COMMISSION that it opposes Proposition B, misleadingly titled "the Port of San Diego Marine Freight Preservation and Bay Front Redevelopment Initiative," which will appear on the November 4, 2008 ballot in the San Diego Unified Port District; and be it further

RESOLVED, that Proposition B is illegal because it usurps the San Diego Unified Port District's authority established by the Legislature in the grant of state tidelands for local management; and be it further

RESOLVED, that the Commission's Executive Officer transmit copies of this resolution to San Diego Community Solutions, LLC, the San Diego Unified Port District, and all the State's legislative trustees of granted sovereign lands.

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

To the Honorable Board of Commissioners of the San Diego Unified Port District:

We, the undersigned and qualified voters of the San Diego Unified Port District, hereby propose an initiative measure as set forth below to amend the Port Master Plan and to provide for the redevelopment of the Tenth Avenue Marine Terminal and surrounding area. We request that the proposed measure immediately be adopted by the Board of Port Commissioners without change, or that it be submitted to the voters of the San Diego Unified Port District at the earliest regular or special election for which this petition qualifies pursuant to the California Elections Code and other applicable laws.

The text of the proposed measure is set forth below and on subsequent pages.

THE PORT OF SAN DIEGO MARINE FREIGHT PRESERVATION AND BAYFRONT REDEVELOPMENT INITIATIVE

The People of the San Diego Unified Port District do ordain as follows:

Section 1. Title

This initiative shall be known and may be cited as "The Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative."

Section 2. Findings and Purposes

The People of the San Diego Unified Port District find and declare:

A. **Summary of Measure.** The San Diego Bay tidelands under the jurisdiction of the San Diego Unified Port District constitute a unique and valuable resource for the citizens of our community. The approximately 100-acre Tenth Avenue Marine Terminal and the surrounding area are currently aging and underutilized, threatening the long-term survival of maritime freight activities. In order to preserve the marine freight facilities and related employment opportunities, as well as to maximize the commercial, recreational, environmental, and financial benefits of this property for residents, businesses, and visitors, this initiative amends the Port Master Plan to establish maritime freight as a priority use on the site, permits other uses that support marine freight activities, and establishes a framework for the redevelopment of this area through a cooperative partnership of public and private entities affected by the project.

B. **No New Taxes.** This initiative prohibits the use of any existing general tax revenues and the imposition of any new taxes upon the general public.

C. **Increase Public Access.** This initiative will significantly increase public access to the Port and to the San Diego bayfront for residents and visitors.

D. **Protect Environmental Quality, Promote Sustainable Design.** This initiative requires that redevelopment of the Tenth Avenue Marine Terminal will incorporate renewable and sustainable designs, will provide environmental safeguards, and will protect air and water quality.

E. **Create New Jobs and Tax Revenues.** The redevelopment project will create thousands of new jobs and generate millions of dollars in new tax revenues. The measure will encourage new investment in the modernization of marine freight facilities and the development of new marine freight business, and will provide new recreational and visitor-serving activities that will transform this underutilized site into a commercial and public attraction.

F. **Increase Parking and Improve Traffic Circulation.** The redevelopment project will add acres of new parking and will include improvements to the existing road and highway infrastructure, easing traffic congestion in the area. It will provide parking for the new activities at the Tenth Avenue Marine Terminal and provide additional parking for nearby activity centers such as the San Diego Convention Center.

G. Permit New Recreational and Cultural Attractions. Uses supportive of the priority marine freight operations may include, but would not be limited to, recreational and visitor-serving facilities. Supported uses under the measure could include an aquarium, a cruise ship terminal, parks and other open-space facilities -- including bike paths and pedestrian walkways -- an amphitheater or arena for large meetings, concerts and sports events, and other entertainment and visitor-serving accommodations such as hotels, restaurants, and specialty shopping areas.

H. Advance Port Safety and Security. The safety and security of the Port and its users will be a paramount consideration in the redevelopment of the Tenth Avenue Marine Terminal. The initiative mandates that the project be designed in consultation with federal, state, and local law enforcement authorities and that it comply with all applicable maritime security requirements.

Section 3. Amendment of Port Master Plan

The Unified Port of San Diego Port Master Plan is hereby amended as described below. Added language is underscored; deleted language is in strikeout; no changes are made to language that is in regular typeface or is not set forth in the text below.

1. Amendments to Section III, Master Plan Interpretation

a. Table 4, titled "Port Master Plan Land and Water Use Allocation Summary," found on page 12 of the Port Master Plan, is amended to add "Multi-Use Maritime District" as a distinct "Industrial" land use classification and to make the corresponding acreage adjustments in the land use allocation summary, as shown in the amended Table 4 attached hereto as Exhibit 1.

b. The "Master Plan Interpretation" subsection of the "Commercial Uses" section, found on page 17 of the Port Master Plan, is amended to read as follows:

Commercial areas, occupying approximately 360 acres of land and 415 acres of water, have been designated in the Land and Water Use Master Plan Map in a total of seven major land and water use classifications. These classifications and map delineations include land area for airport oriented commercial activities; land area for commercial fishery operations along with commercial fishing fleet berthing in water areas; land based commercial-recreation areas; water areas for sportfishing berthing and recreational marinas including boat repair facilities. Existing and proposed commercial areas are delineated on the Map to define the general location of commercial areas. More definitive delineations of the exact limits of commercial areas are provided on Planning District maps. Although not formally designated and delineated as a commercial area, the Tenth Avenue Marine Terminal Multi-Use Maritime District also permits and encourages commercial-recreational activities as supportive uses to the priority marine related industrial uses authorized for that area.

c. The "Master Plan Interpretation" subsection of the "Industrial Uses" section, found on page 23 of the Port Master Plan, is amended to read as follows:

Industrial areas have been designated on the overall Master Plan Land and Water Use Element Map in four classifications; land area for Marine Related Industry, and corresponding water areas for Specialized Berthing; land areas for Aviation Related Industrial activities; and land area for Industrial-Business Park development. Marine Terminals, as a distinct use classification, have been delineated in the Precise Plans; however, in the overall plan, terminals are grouped into the Marine Related Industry category. Similarly, the Tenth Avenue Marine Terminal Multi-Use Maritime District has been delineated as a distinct use classification in the Precise Plan for Planning District 4, but is included within the Marine Related Industry category in the overall plan. The Land and Water Use Element Map illustrates the allocation of industrial areas consisting of approximately 186 acres of water and 1,181 acres of land.

d. The "Marine Related Industry" subsection of the "Industrial Uses" section, found on pages 23-24 of the Port Master Plan, is amended to read as follows:

Marine Related Industry requires sites within close proximity to water bodies due to functional dependencies on the industrial activity for direct access or for linkages to waterborne products, processes, raw materials or large volumes of water. Prime waterfront industrial sites are in relatively short supply and it is the intent of this Plan to reserve these sites for Marine Related Industry.

The primary users of marine related industrial areas are dependent upon large ships, deep water and

specialized loading and unloading facilities, typically associated with shipbuilding and repair, processing plants and marine terminal operations. Industries linked to these primary industrial activities can be clustered together to capitalize on the benefits of reduced material handling costs, reduced onsite storage requirements, faster deliveries, and a reduction of industrial traffic on public roads.

Existing, established marine-oriented industrial areas that have been devoted to transportation, commerce, industry and manufacturing are encouraged to modernize and to construct necessary facilities within these established areas in order to minimize or eliminate the necessity for future dredging and filling in new areas. However, expansion into new areas can be accommodated if existing sites are pre-empted by other uses, alternative locations are infeasible, and a curtailment of the project would adversely affect the public welfare.

Activities suitable for the marine related industrial area include, but are not limited to, marine terminals; passenger terminals; railroad switching and spur tracks; cargo handling equipment such as bulkloader and container crane; berthing facilities; warehouses, silos, fueling facilities; bulk liquid storage tanks and pipelines; shipping offices and custom facilities; power generation plants; ship building, repair and conversion yards; marine rails, lifts and graving docks; steel fabrication and foundry; storage, repair and maintenance of marine machinery and construction equipment; kelp and seafood processing, canning and packaging; aquaculture; and marine related support and transportation facilities.

Although commercial mariculture uses relating to seafood production are not presently established on the bay, research and experimentation, which has been conducted in the region as well as on the bay, indicates that warm water stimulates the growth rate of certain marine organisms, such as shrimp and lobster. Assuming that economic viability of mariculture will be achieved, future sites for mariculture activities could be located within close proximity to the existing thermal discharge areas of power generation plants to take advantage of the available warm water. There seems to be some likelihood that future-aquaculture activities could be conducted in man-made tanks located in enclosed buildings and in converted salt ponds. Areas of the bay designated on the Master Plan Map as Estuary and Salt Ponds also include aquaculture and resource-dependent uses.

Due to the fact that public access to the bay is necessarily limited in established industrial sectors, it is the intent of this Plan that, whenever feasible, industrial land and water users are encouraged to invite the public to view their operations and to share with the public that shoreline area not actually used for industrial purposes by permitting visual access to the bay. The development and redevelopment of marine related industrial areas requires careful consideration involving a balancing of the peculiar needs of the development with the concurrent need for shoreline access.

The Tenth Avenue Marine Terminal Multi-Use Maritime District is included within the Marine Related Industry use classification in order to reflect the priority that must be given within that district to the preservation, modernization and expansion of marine-related industrial uses, including the existing marine freight and storage activities at and around the Tenth Avenue Marine Terminal. All uses that would otherwise be permitted in the Marine Related Industry land area classification are likewise permitted in the Multi-Use Maritime District. In addition, by authorizing the development of the air rights over the marine terminal facility and the adjacent grounds, the Multi-Use Maritime District also permits and supports a variety of public and commercial recreational uses that are compatible with the priority marine-related industrial activities. The Multi-Use Maritime District further contemplates the incorporation of an off-street parking facility to serve the existing marine terminal, any new public and commercial recreational activities, and other visitor-serving attractions in the area. The specific uses that are permitted and contemplated in the Tenth Avenue Marine Terminal Multi-Use Maritime District are detailed in the Precise Plan for Planning District 4.

e. The "Master Plan Interpretation" subsection of the "Public Recreation Uses" section, found on page 27 of the Port Master Plan, is amended to read as follows:

A growing population, greater discretionary incomes and more leisure time all contribute significantly to the increasing demand for both active and passive outdoor recreational opportunities. The public recreation opportunities developed on tidelands by the Port District along with the commercial recreation opportunities developed by private investment provide a balanced recreation resource for San Diego Bay. When thoughtfully planned, both public recreational developments and commercial recreational developments benefit from each other as off-site improvements, although as a matter of planning policy, commercial activities within public recreation areas will be limited. Recreational areas must be of the

appropriate type and size to be efficiently developed, administered and maintained by the Port District at a reasonable cost. This Plan places primary emphasis on the development of public facilities for marine oriented recreational activities for the purposes of fishing, boating, beach use, walking and driving for pleasure, nature observation, picnicking, children's playing, bicycling and viewing.

Recreation Area/Open Space is a category illustrated on the Land and Water Use Element Map to portray a wide array of active and passive recreational areas allocated around the bay. In addition to those areas specifically allocated and delineated for Public Recreation, public recreational uses are also permitted and encouraged in the Tenth Avenue Marine Terminal Multi-Use Maritime District. More specific information on public recreational areas is provided at the Planning District level under the following use categories.

2. Amendments to Section IV, Precise Plans

a. The Precise Plan for the Tenth Avenue Marine Terminal: Planning District 4, found in Section IV, pages 70-75, of the Port Master Plan, is amended to read as follows. Table 12 and Figures 13 and 14 therein are also amended to reflect the reclassification of the Tenth Avenue Marine Terminal and the adjacent grounds as the Tenth Avenue Multi-Use Maritime District, the renaming and redrawing of the planning district subarea boundaries, and the corresponding acreage adjustments that have been made in the land use allocation summary, as shown in the attached Exhibits 2, 3, and 4. No amendments are made to the subsections of the Precise Plan addressing the Belt Street Industrial and Harbor Drive Industrial Planning District Subareas.

TENTH AVENUE MARINE TERMINAL: Planning District 4

Introduction

The Tenth Avenue Marine Terminal Planning District is a developed, marine-related industrial area of great importance to the region's economic base. ~~Currently over 50,000 jobs are provided on the tidelands and uplands of this industrial area. More important,~~ This is the only area in the entire San Diego region providing established waterfront industrial sites with railroad service, close freeway access, commercial port-related support functions, and deep water berthing. With a water depth alongside the berths ranging from 30 to 42 feet of 40 feet near the marine terminal and 35 feet in the industrial area, the Tenth Avenue Marine Terminal can accommodate a wide array of maritime vessels all standard cargo ships. Such deep water berthing cannot easily be created or replaced, so the value of this waterfront industrial land is inestimable.

In 2008, the voters enacted the Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative, adopting a comprehensive plan to create a multi-use maritime district that includes both modernized and improved industrial marine freight facilities and new commercial and public recreational opportunities at the Tenth Avenue Marine Terminal. The most important element of the redevelopment plan is its incorporation of a creative architectural and engineering design for the Tenth Avenue Marine Terminal that allows for the development of approximately 96 acres of air rights above the marine terminal and the adjacent grounds in order to accommodate port-related industrial and commercial uses, while simultaneously permitting new public recreational, cultural, and visitor-serving commercial uses.

~~Policies of the nearby Barrio Logan Community Plan and L.C.P. threaten the port-related tideland uses with encroachment of residential, public park and commercial uses in an area almost totally industrial. The basic incompatibility of these uses places more of a burden on the industrial uses to reduce potential environmental impacts. The Port Master Plan seeks to preserve and protect this unique coastal resource by limiting uses to strictly marine-oriented industrial ones.~~

Precise Plan Concept

The area adjacent to the Port tidelands has been zoned for manufacturing since the 1930's and older industrial activities now dominate. On the tidelands, the identifiable land use problems stem from a critical shortage of space into which existing port-related industries can expand and new marine-related industries can be accommodated, a need for more automobile parking areas, demands by upland residents for replacing port-related industrial sites with park use, and complications arising from efforts to clear and redevelop incompatible uses.

The Precise Plan, as modified by the Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative, continues the existing marine-oriented industrial uses and supports the development of available vacant lands with similar uses, in order to provide a homogeneous industrial climate with an assured, reasonable long-term growth potential creates new open space, recreational, cultural, and waterfront-related commercial opportunities. Preservation of the existing marine freight activities remains the highest priority for this Planning District through the implementation of policies that expand and improve marine freight facilities both to handle existing tenants and to attract additional activities and tenants, including new and expanded cruise ship activities. The Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative is also intended to be in compliance with the Goods Movement Action Plan, an initiative of the Schwarzenegger Administration to improve and expand California's goods movement industry and infrastructure in a manner that will generate jobs, increase mobility and relieve traffic congestion, improve air quality and protect public health, enhance public and port safety, and improve California's quality of life.

Infrastructure improvements are called for to facilitate the movement of vehicles entering and exiting the Terminal and to increase parking. Renewable and sustainable design measures will be implemented to reduce air, noise, and water pollution impacts at or related to the Terminal.

At the same time, the Marine Freight Preservation and Bayfront Redevelopment Initiative proposes to revitalize the Planning District by supporting substantial new public access opportunities and waterfront-dependent recreational and commercial uses for this area by authorizing the development of the air rights above the existing marine terminal facility and its adjacent grounds. A new public promenade will extend public access to the San Diego Bay. Other specific project components could include open-space and designated commercial recreational activities, new restaurants, lodging and retail shopping establishments, and cultural and entertainment facilities, such as a downtown aquarium or professional sports venue. Additional parking and transportation improvements will both facilitate access to the new commercial and recreational activities, as well as provide relief for other nearby activity centers, including the San Diego Convention Center.

Land and Water Use Allocations

The Planning District consists of approximately 250 257 acres of land and 114 acres of submerged land for an overall total of 364 371 acres. The thrust of the use allocations is to retain and continue marine related, water dependent industrial uses as the priority use for this Planning District, while simultaneously creating new supportive public access and commercial recreational opportunities in the Tenth Avenue Marine Terminal Multi-Use Maritime District planning subarea. Use allocations are listed in Table 12, graphically shown on the Precise Plan Map (Figure 13), and discussed in the text. The acreage allocations are approximate, and the figures are for illustrative purposes only and are subject to change. The land area acreage totals and allocations listed in Table 12 also do not include the additional acreage that is effectively created in the Multi-Use Maritime District by authorizing the development of the air rights over the Tenth Avenue Marine Terminal and adjacent grounds.

Tenth Avenue Marine Terminal Planning District Subareas

To facilitate description of the existing and proposed uses, the Planning District has been divided into planning subareas (see Figure 14).

Railroad Yard

This small planning subarea, to the north and east of the Tenth Avenue Multi-Use Maritime District and adjacent to the existing marine terminal facility, is restricted to marine-related industrial uses that are supportive of the Port's activities. The principal uses of this subarea are predominately heavy-rail related. For example, Burlington Northern Santa Fe Railway (BNSF) utilizes this area for passenger and freight car marshalling, storage, and right-of-way activities for freight trains serving the Port's two marine terminals.

Tenth Avenue Marine Terminal Multi-Use Maritime District

This subarea contains the various industries that relate to the marine terminal. As described in the April 2007 San Diego Unified Port District Maritime Business Plan Update submitted by TEC, Inc., the Tenth Avenue Marine Terminal ("TAMT") is an approximately 96-acre maritime cargo complex located near downtown San Diego, south of the Convention Center and north of the San Diego-Coronado Bay Bridge. Tenants at the TAMT, which opened in 1958, handle containerized and breakbulk fruit, dry bulk cargos including sand and cement, petroleum products, and various breakbulk and project cargos. TAMT presently has 8 operating berths totaling some 4,620 feet on three separate water fronts.

The Tenth Avenue Marine Terminal has roughly one million total square feet (sf) of warehouse space and transit sheds, which includes nearly 300,000 sf of refrigeration and cold storage facilities. The covered storage is used for newsprint, dry bulk cement, and breakbulk cargos requiring covered storage. The terminal offers dry bulk storage in a 32,900 metric ton storage complex consisting of 12 concrete silos and two large steel 'Butler' tanks. An open storage area, of roughly 1.3 acres, adjacent to the storage complex is used to store dry bulk sand. Additionally, dry bulk cargos were once stored in rail cars and the terminal has 8,536 linear feet (lf) of track (space for roughly 196 railcars) for this purpose.

The largest open storage area at TAMT is a 20.5 acre container facility for Dole Fresh Fruit Company. There are roughly 10 to 12 additional acres available at TAMT for open-air storage, most of which are fully occupied at one time or another. Open storage areas at TAMT are also used for temporary lay-down of cargo that is offloaded but not stored at the terminal.

There are two separate liquid bulk storage facilities on the terminal, one active and one inactive. The total storage capacity of the operating tanks is between 161,000 and 211,000 barrels (bbls). The tanks are used for storing jet fuel, diesel fuel, and fuel oil. The tanks on the inactive tank farm site are no longer useful, and Searles Valley Minerals Operations, Inc., which holds the lease on the storage complex, has an option to lease the land currently occupied by this inactive tank farm.

In accordance with the Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative, a modernized and expanded Tenth Avenue Marine Terminal facility will be the central component of the new Multi-Use Maritime District created by the Initiative, as shown on Figure 13. Redevelopment of the Tenth Avenue Marine Terminal shall give priority to the following marine-related industrial uses: preserving existing marine freight activities and employment; attracting new marine freight by modernizing or constructing new marine freight and storage facilities; developing a new cruise ship terminal to replace or supplement existing facilities; and implementing infrastructure improvements to ameliorate access to the terminal and the waterfront.

Priority shall also be given to the following uses in the Multi-Use Maritime District: creation of a new off-street parking facility to serve the marine terminal, the cruise ship terminal, and the nearby Convention Center; and establishing additional public recreational facilities, including pedestrian walkways, bicycle paths, parks and other open space adjacent to the waterfront.

In order to provide the revenues to support the implementation of these priority uses, as well as to allow the public to take full advantage of the waterfront and its benefits, the Multi-Use Maritime District also permits and encourages the development of the air rights above the marine terminal and its adjacent grounds for various visitor-serving commercial recreational supportive uses that are compatible with the priority uses designated for this area. Among the supportive uses contemplated for the Multi-Use Maritime District are: a downtown aquarium; an amphitheater, arena, or other venue for large meetings, concerts and sports events; hotels, restaurants, and specialty retail establishments to accommodate convention visitors and cruise ship passengers; and other entertainment, community, and commercial activities consistent with the maritime character of the area.

The intent of the redevelopment plan for the Multi-Use Maritime District is to retain flexibility for consideration of a wide array of development options consistent with the above principles. Although it is anticipated that the new public and commercial recreational supportive uses, as well as the additional parking facility, will be located primarily in the new development that is authorized for the air rights above the marine terminal facility and its adjacent grounds, the grade-level acreage need not be used exclusively for the existing marine related industrial activities, as long as those activities are still given priority in the overall design and allocation of acreage in the redeveloped district. The specific priority

and supportive uses selected for inclusion in the redevelopment project, and their respective locations, will be determined through a collaborative and consultative process that includes participation by public and private entities affected by redevelopment of the Tenth Avenue Marine Terminal, including existing and prospective port tenants, labor organizations, environmental and local community groups, business representatives, and visitor or convention groups.

It also is the location of a large amount of transportation-related uses such as streets and railroad switching yards. The Master Plan calls for continuing the marine-oriented industrial activities, including railroads. The Harbor Services maintenance yard will be removed and the remaining acreage in Planning District 4 will revert to Marine-Related Industrial Use.

The Tenth Avenue Marine Terminal, completed in 1958, is a paved landfill with concrete bulkheads and rubber or timber fenders along each berth face. There are 4,348 feet of lighted usable berthing space at the terminal, 387,528 square feet of cargo space in two transit sheds, and 475,000 square feet of storage space in one warehouse and ancillary sheds. Access to the terminal is from Harbor Drive onto a newly constructed entry road called Crosby Road. Railroad tracks provide access on Berths 3 through 8, all transit sheds, and the warehouses. Stevedore equipment is available as needed.

Berths 1 and 2, located on the north side of the complex, contain 1,118 feet of usable berthing space alongside a water depth of 30 feet MLLW. Fuel, water, and electricity are available. These berths are used not only for general trade items but also for cargoes of fish, molasses (in steel storage tanks having a 2,468,000-gallon capacity), and the receipt of petroleum products. Oil handling and oil bunkering storage tanks have a capacity of 165,000 barrels.

Berths 3, 4, 4A, 5 and 6, located on the west side of the terminal, provide 2,580 feet of usable berthing space at an alongside water depth of 36 feet MLLW. These berths are used for general cargo. A chemical fertilizer bulk storage and bagging plant occupies the north section shed adjacent to Berth 3.

Berths 7 and 8, located on the south side of the terminal, provide 650 feet of usable berthing space with an alongside water depth in some areas of 36 feet MLLW. Berths 7 and 8 are used primarily for the loading of bulk export cargoes utilizing the Port's bulkloader. This elevated conveyor system extends from a rail car unloading building which houses rail car bottom dump and rotary dump facilities. Also connected to the bulkloader is a 15,000 short ton bulk storage silo complex, completely automated, for the storage and handling of either grains or chemicals. It is provided with an inert gas explosion protection system. A bagging plant equipped with an under-track railroad car pit and two bagging machines is used for bagging chemicals and other commodities. In this vicinity, a second privately owned molasses handling and storage facility is located close to Berths 7 and 8.

Rail facilities serving the Tenth Avenue Marine Terminal will be expanded to meet current operation needs. The Santa Fe rail storage yard adjacent to the terminal is capable of storing a total of 285 rail cars, adequate to service the loading and unloading of shipments up to 18,000 tons per vessel. Depending on operational considerations, the Santa Fe Railroad utilizes storage yards in other locations to handle shipments up to at least 30,000 tons per vessel. The rail car capacities of these yards are: Carlsbad (100), Oceanside (120), Sorrento Valley (80), and National City (189). All transit sheds and warehouses at the Tenth Avenue Marine Terminal are served by rail spurs.

The present bulk loading facility was constructed in 1962. It consists of a rail car unloading building, 42-inch wide belt conveyors, a shiploader alongside the southeast face of the terminal, a rail car marshalling yard, and miscellaneous ancillary structures and equipment. Use of the bulkloader is still increasing. Waterfront cargo equipment such as this has a high maintenance factor; also, it appears likely that periodic modifications must be made to comply with changing air quality regulations.

Bulk cargo, particularly fertilizer and other chemicals, constitutes the largest export item of the Port of San Diego. In recent years, increasingly larger bulk vessels with drafts greater than 36 feet have made appearances at the port and there is every indication that the trend toward greater capacity in bulk vessels will continue. Similarly, greater depth will become necessary at some of the general cargo berths.

The Master Plan foresees continuation and intensification of the cargo operations at the Tenth Avenue Marine Terminal. Expansion of land area is not considered imminent but may be accommodated in the future by utilizing nearby leased parcels. Physical improvements to the terminal are detailed in the Project List.

Crosby Street Corridor

To provide for public access to the waterfront, the development concept proposes to redivide a 5.4-acre site to facilitate the construction of a 3.2-acre public recreational area adjacent to the bay and a 2.2-acre deepwater channel related industrial facility.

The public area will offer active and passive recreational opportunities in a landscaped setting. Proposed facilities may include a kiosk, entry arbor, restrooms, concession stand, benches, picnic tables and barbecues, lawn expanse, and a recreational pier. On-site parking for the area is proposed. The public area will be shielded from the adjacent industrial site by landscaping and a masonry wall, and from the street by landscaping and fencing.

The marine related industrial portion of the site will be preserved to take advantage of adjacent deepwater access for a multi-purpose facility for repair, servicing, berthing, and cargo handling of fishing, commercial and military vessels. It is advantageous, for Navy security reasons, that this facility is north of the San Diego Coronado Bay Bridge; that it is available to the majority of deep draft vessels using the Bay's main channel; that the site has superior truck and rail access; and that it is well located with respect to a multitude of industrial and commercial support facilities in the near vicinity.

Among the facilities which may be provided for at the marine industrial site may be a pier to allow maritime servicing and repair. The pier may have boat fenders, fresh water, and security lighting. No marine railways or other devices to lift boats from the water are planned. Remedial dredging to minus 30 feet MLLW will allow adequate water depth for the above variety of uses, including ship repair.

Ship refitting and repair work will be performed while the boats are tied to the pier and all exterior work will be performed above the water line in accordance with the air and water quality standards. Support activities and on-site parking will be located on the land portion of the site. Space for storage of construction materials and equipment is provided in some buildings and on the land. Specific implementation proposals will be evaluated by the San Diego Air Pollution Control District, the San Diego Water Quality Control Board, and the San Diego Noise Abatement Office for compliance with all applicable regulations.

Section 4. Coastal Commission Certification

Upon the adoption of this measure, the amendment of the Unified Port of San Diego Port Master Plan set forth in Section 3 shall be submitted to the California Coastal Commission for certification in accordance with Chapter 8 of Division 20 of the California Public Resources Code (commencing with Section 30700). The Board of Port Commissioners is authorized and directed to take all actions necessary to secure the certification of the Port Master Plan amendment by the Coastal Commission, including making any revisions or alterations to the Port Master Plan amendment that may be required by the Coastal Commission in order to obtain certification, provided that any such revision or alteration must be consistent with the purposes and intent of this measure.

Section 5. Redevelopment Project for Tenth Avenue Marine Terminal

In order to implement the policies adopted in Section 3 of this measure, the Board of Port Commissioners of the San Diego Unified Port District, no later than 60 days after the effective date of this measure, shall enter into an Exclusive Negotiating Agreement (ENA) with a private development entity for the purpose of negotiating the terms and conditions of a comprehensive Master Cooperative Development Agreement for the redevelopment of the Tenth Avenue Marine Terminal Multi-Use Maritime District in accordance with the priority and supportive policies and uses set forth in the Port Master Plan, as amended by this measure. The ENA shall require that within 180 days of the execution of the ENA, unless that time period is further extended by the mutual agreement of both the Port District and the selected private development entity, the Port District and the selected private development entity shall prepare a redevelopment plan for the Tenth Avenue Marine Terminal Multi-Use Maritime District, including design themes, building footprints, elevations, location of parking facilities, vehicular and pedestrian access ways, and other factors fully descriptive of the proposed redevelopment project. The purpose of the ENA is to allow the Port District to work with the selected private development entity to finalize the terms of a Master Cooperative Development Agreement, conditional upon the Coastal Commission's certification of the Port Master Plan's amendment, that addresses, among other matters: (1) a specific site design and plan for the redevelopment of the Tenth Avenue Marine Terminal Multi-Use Maritime District, (2) the preparation and processing of the environmental documentation necessary for the redevelopment project, (3) a financing mechanism for the redevelopment project, and (4) the terms and conditions of an option and lease agreement with the selected private

development entity for redevelopment of the site.

A. Participation By Cooperative Agreements and Joint Development Agreements. In order to ensure that the concerns of marine freight tenants and employees are incorporated into the redevelopment plan and its implementation, the development entity selected by the Port District for the ENA and Master Cooperative Development Agreement shall have entered into cooperative agreements, joint development agreements, non-disclosure and non-circumvention agreements, or similar agreements with existing tenants of the Tenth Avenue Marine Terminal and with a labor organization or organizations representing a majority of the employees handling marine freight on the site. Prior to its entry into the ENA or Master Cooperative Development Agreement with the Port District, the development entity selected by the Port District shall also have offered to enter into cooperative agreements or joint development agreements with representatives of the other major tenants or establishments proposed for inclusion in the redevelopment plan.

B. Consultation and Public Participation. In addition to establishing cooperative agreements and joint development agreements as set forth above, in order to ensure, to the maximum extent feasible, that the concerns of entities affected by the redevelopment of the Tenth Avenue Marine Terminal have been incorporated into the proposed redevelopment plan, the private development entity selected by the Port District for the ENA and Master Cooperative Development Agreement shall demonstrate that it has consulted with and encouraged participation in the planning process by public and private entities affected by the proposed redevelopment plan, including but not limited to labor and environmental organizations, interested community groups and individuals, waterfront-related businesses and community-improvement organizations, and the San Diego Convention Center and the San Diego Sports Arena.

C. Preserving Maritime Security. In order to ensure the safety and security of the Port and its users, in preparing the redevelopment plan for the Tenth Avenue Marine Terminal Multi-Use Maritime District, the selected private development entity shall consult with the United States Coast Guard and other law enforcement agencies with jurisdiction over the facility. The Master Cooperative Development Agreement shall provide that the final redevelopment project must incorporate necessary and appropriate security measures and must comply with all applicable maritime security requirements.

D. Prohibition on Use of Existing General Fund Revenues. The Master Cooperative Development Agreement shall provide that redevelopment of the Tenth Avenue Marine Terminal shall be privately financed, without the use of any existing general fund or tax revenues of the Port or of any of the constituent Port Cities. However, any new incremental tax revenues generated by the implementation of the redevelopment activities may be dedicated to the implementation of the master plan.

Section 6. Effective Date

In accordance with California Elections Code section 9320, this initiative shall be considered as adopted upon the date that the vote is declared by the Board of Port Commissioners, and it shall go into effect ten (10) days thereafter. Upon the effective date of this initiative, the amendments made in Section Three are hereby inserted into the Unified Port of San Diego Port Master Plan, and all actions of the Board of Port Commissioners shall be consistent with the policies and provisions of this initiative.

Section 7. Interim Amendments to Port Master Plan

The Unified Port of San Diego Port Master Plan in effect at the time the Notice of Intention to propose this initiative measure was filed with the Port of San Diego constitutes an integrated, internally consistent and compatible statement of policies and implementation provisions for the Port of San Diego. In order to ensure that the Port Master Plan, as amended by the provisions of this initiative, remains an integrated, internally consistent, and compatible statement of policies and implementation provisions for the Port, the provisions adopted by this initiative shall prevail over any conflicting revisions to the Port Master Plan that may have been adopted or implemented between the date of the Notice of Intention and the date the amendments adopted by this initiative measure are inserted into the Port Master Plan. To this end, any conflicting revisions to the Port Master Plan adopted between the date of the Notice of Intention and the date the amendments adopted by this initiative measure are inserted into the Port Master Plan shall be null and void in their entirety and without any legal effect.

Section 8. Construction

To the maximum extent authorized by law, this initiative shall be interpreted in a manner consistent with the right of initiative reserved to the people by the California Constitution. Without limiting the generality of the foregoing, nothing in this initiative is intended to diminish or otherwise alter applicable requirements of any state or federal law.

Section 9. Severability

This initiative shall be liberally and broadly construed to achieve the purposes stated in the initiative. If any provision or portion of this initiative is for any reason declared to be invalid by a court, the remaining provisions and portions shall be deemed severable and shall nonetheless remain in full force and be given full effect to the extent that they can be made applicable, and the People hereby direct and authorize the court to correct, interpret, and add words to this initiative as necessary to effectuate the intent of the remaining provisions or portions of this initiative.

Section 10. Enforcement

A. This initiative is intended to impose a mandatory duty upon the Board of Port Commissioners of the San Diego Unified Port District to redevelop the Tenth Avenue Marine Terminal Multi-Use Maritime District in accordance with the terms and conditions of this initiative and applicable state law. To that end, the duties imposed upon the Board of Port Commissioners pursuant to Sections 4 and 5 herein shall be enforceable by an action for writ of mandate filed in the Superior Court of the County of San Diego by any qualified elector of the Port District or by any other aggrieved party.

B. Time is of the essence in the implementation of this initiative. Unless specifically enjoined from proceeding with the implementation of this initiative by a court of competent jurisdiction, the Board of Port Commissioners shall comply with the terms and conditions of this initiative notwithstanding any threatened or existing legal challenge to the validity of this initiative or to any portion thereof.

Section 11. Conflict with Other Measures

If a conflict exists between this initiative and any other measure approved by the voters at the same election, the provisions of this initiative shall take effect except to the extent that they are in direct conflict with the provisions of such other measure and the other measure receives a greater number of affirmative votes.

Section 12. Corrections and Implementing Actions

The Board of Port Commissioners of the Unified Port of San Diego is hereby directed to reprint the Port Master Plan and all corresponding figures and tables to reflect the adoption of this initiative. The Board is hereby authorized and directed to make any corrections in the language, pagination, paragraph numbering, tables, maps, figures and other aspects of the Port Master Plan as may be necessary to ensure that the Port Master Plan, as amended by this initiative, accurately and completely reflects the amendments adopted by this initiative. The Board is further authorized and directed to take any and all actions that may be deemed necessary to implement and give effect to the amendments of the Port Master Plan adopted by this initiative, including such actions as may be necessary to provide consistency between these amendments and other Port planning documents. Notwithstanding Section 13 of this initiative, the Board of Port Commissioners is specifically authorized to amend the Port Master Plan by updating the Project List for the Tenth Avenue Marine Terminal Planning District 4 (Table 13) to incorporate therein the specific redevelopment projects selected for the Tenth Avenue Marine Terminal Multi-Use Maritime District and to make any other Port Master Plan amendments necessary to implement the Master Cooperative Development Agreement adopted pursuant to Section 5 of this initiative.

Section 13. Amendment

Except as provided in Section 12 herein, this initiative may be amended only by a vote of the people at a regular or special election held in accordance with the requirements of the California Elections Code.

EXHIBIT 1

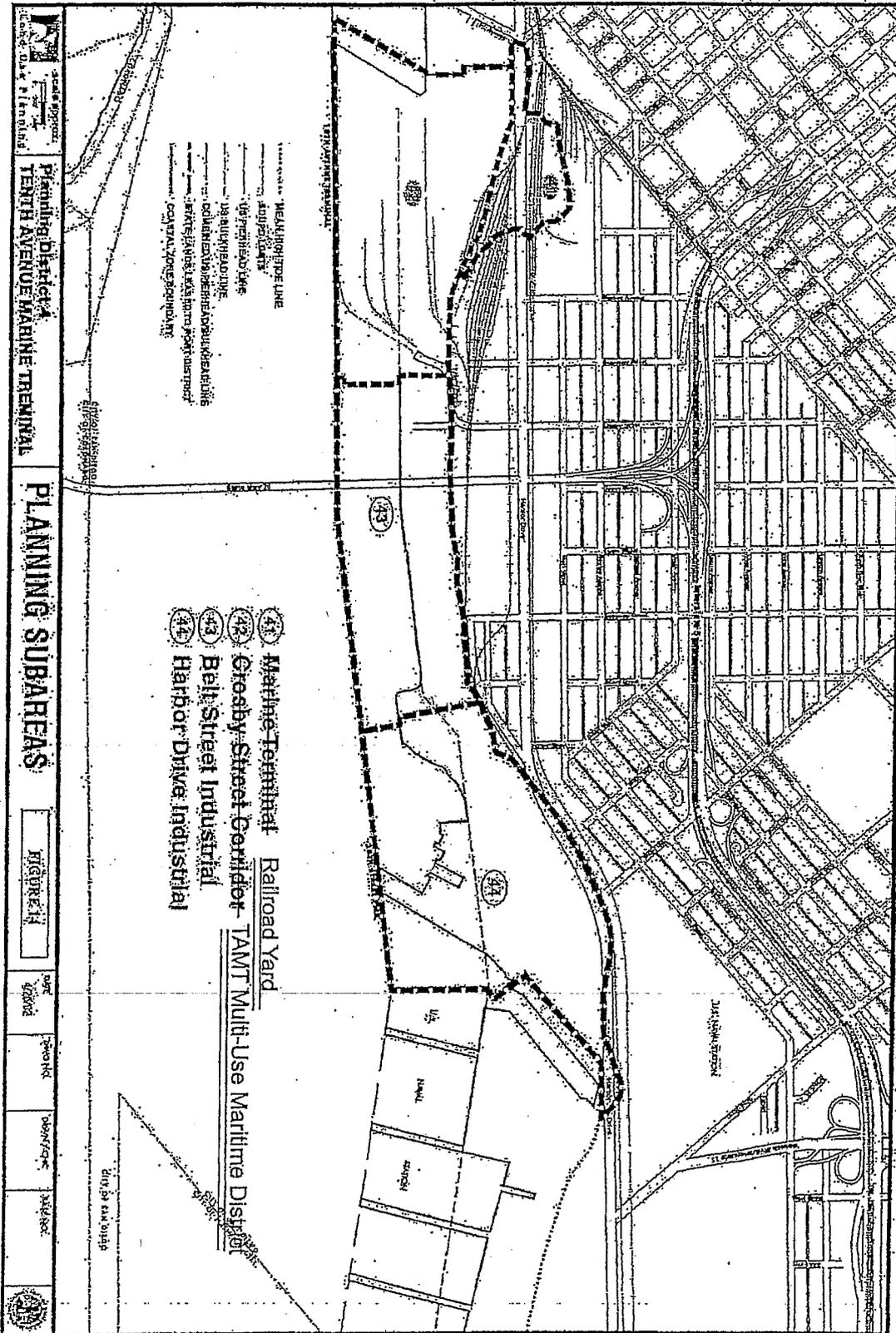
TABLE 4: Port Master Plan Land and Water Use Allocation Summary

LAND USE	ACRES	WATER USE	ACRES	TOTAL ACRES	% of TOTAL
COMMERCIAL	373.5	COMMERCIAL	383.0	756.5	14%
Marine Sales and Services.....	18.8	Marine Services Berthing.....	17.7		
Airport Related Commercial.....	88.0				
Commercial Fishing.....	8.3	Comm Fishing Berthing.....	18.8		
Commercial Recreation.....	304.1	Reg Boat Berthing.....	335.4		
Sportfishing.....	4.3	Sportfishing Berthing.....	11.1		
INDUSTRIAL	1206.4	INDUSTRIAL	217.7	1424.1	26%
Aviation Related Industrial.....	152.9	Specialized Berthing.....	170.5		
Industrial Business Park.....	113.7	Terminal Berthing.....	47.2		
Marine Related Industrial.....	822.4 284.8				
Marine Terminal.....	449.6				
Multi-Use Maritime District.....	96.0 90.9				
International Airport.....	488.1				
PUBLIC RECREATION	280.5	PUBLIC RECREATION	681.0	961.5	18%
Open Space.....	19.0	Open Bay/Water.....	681.0		
Park/Plaza.....	146.4				
Golf Course.....	97.8				
Promenade.....	17.3				
CONSERVATION	399.2	CONSERVATION	1058.8	1457.8	27%
Wetlands.....	304.9	Estuary.....	1058.8		
Habitat Replacement.....	94.3				
PUBLIC FACILITIES	222.9	PUBLIC FACILITIES	394.3	617.2	12%
Harbor Services.....	2.7	Harbor Services.....	10.5		
City Pump Station.....	0.4	Boat Navigation Corridor.....	284.6		
Streets.....	219.8	Boat Anchorage.....	25.0		
		Ship Navigation Corridor.....	50.0		
		Ship Anchorage.....	24.2		
MILITARY	25.9	MILITARY	125.6	151.5	3%
Navy Fleet School.....	25.9	Navy Small Craft Berthing.....	6.2		
		Navy Ship Berthing.....	119.4		
TOTAL LAND AREA	2508.4	TOTAL WATER AREA	2860.2		
MASTER PLAN LAND AND WATER ACREAGE TOTAL				5368.6	100%

EXHIBIT 2

TABLE 12: Precise Plan Land and Water Use Allocation
TENTH AVENUE MARINE TERMINAL - PLANNING DISTRICT 4

LAND USE	ACRES	WATER USE	ACRES	TOTAL ACRES	% of TOTAL
INDUSTRIAL.....	228.7	INDUSTRIAL.....	113.9	342.6	94%
Marine Terminal.....	58.7	Terminal Berthing.....	15.3		
Marine Related Industrial.....	132.7	Specialized Berthing.....	98.6		
<u>Multi-Use Maritime District.....</u>	<u>68.0</u>				
PUBLIC RECREATION.....	3.5			3.5	1%
Park/Plaza.....	3.5				
PUBLIC FACILITIES.....	17.6			17.6	5%
Streets.....	17.6				
TOTAL LAND AREA.....	249.8	TOTAL WATER AREA	113.9		
PRECISE PLAN LAND AND WATER ACREAGE TOTAL.....				363.7	100%



CALIFORNIA COASTAL COMMISSION

EXHIBIT C

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



September 8, 2008

San Diego Unified Port District Board of Port Commissioners
c/o Michael B. Bixler, Chair
Port of San Diego
P.O. Box 120488
San Diego, CA 92112-0488

Re: The Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative

Dear Chairman Bixler and Commissioners:

Our office would like to take this opportunity to provide initial comments on the "Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative" ballot measure scheduled to be on the November 2008 ballot. As you know, the initiative proposes making numerous changes to the Port Master Plan by adding new land use designations and new text to allow for the development of new public and commercial recreational, cultural, and visitor-serving uses on the 96-acre "air rights" over the existing Tenth Avenue Marine Terminal. We understand that the Port has filed a lawsuit challenging the validity of the initiative. The Port asserts, among other arguments, that the Port Master Plan may not be amended through the initiative process, as this power was delegated by the Legislature solely to the Board of Port Commissioners. While the Commission takes no position regarding the legality of whether the Port Master Plan can be amended through the initiative process, it is clear that even if an initiative amendment is legal, it cannot go into effect unless and until submitted to, reviewed and approved by the Coastal Commission. This letter focuses primarily on the Commission's concerns should the initiative be approved by the voters in November. This letter does not support, either explicitly or implicitly, the idea that the initiative is valid or that it may be used to effect an amendment of the Port Master Plan.

If the initiative is approved by voters in November, the changes to the Port Master Plan effected by the initiative would require a PMP amendment (PMPA) approved by the Coastal Commission before it could become effective. We agree with the reservations regarding the potential development that have been expressed by the Board of Port Commissioners, and we feel it is important that the potential inconsistencies of the changes proposed by the initiative with both the Coastal Act and the marine related uses and resource protection requirements of the existing Port Master Plan be understood at this time. We want to make clear at the outset that Commission staff received no inquiries from proponents of the initiative regarding consistency of the proposal with the California Coastal Act prior to the initiative being placed on the ballot.

Coastal Planning Issues Raised by the Initiative

The standard of review for the PMPA would be both the Chapter 8 and Chapter 3 policies of the California Coastal Act of 1976. Relevant sections include Section 30708(c) which gives the highest priority to the use of existing land space within harbors for port purposes, such as navigational facilities, shipping industries, and necessary support and access facilities. Section 30708(d) provides for other beneficial uses consistent with the public trust, including recreation and wildlife habitat uses, to the extent feasible. All port-related development must minimize significant adverse effects on the environment. Chapter 3 policies such as Section 30255 give coastal-dependent developments priority over other uses on or near the shoreline and promote siting coastal-related developments in proximity to the coastal-dependent uses they support. Other Chapter 3 policies specifically require any harmful effects to coastal and marine resources be avoided or, if unavoidable, minimized. Thus, planning must always ensure that adequate existing land area is protected and reserved for high-priority port related purposes, such as that provided at the Tenth Avenue Marine Terminal, so as to avoid the need for additional fill of coastal waters to accommodate future demand for such facilities.

Staff is very concerned that allowing the development of public and commercial recreation uses at and above the Tenth Avenue Marine Terminal would have a significant, unmitigatable, adverse impact on the existing coastal-dependent port facilities at the terminal, which, as stated above, are the highest priority uses for the terminal under the Coastal Act. Industrial uses are generally not compatible with the type of high-density, active recreational uses that would be allowed under the potential PMPA. Noise, heavy equipment transport, safety and security regulations for industrial port uses, and pollutants associated with heavy industry would limit or make prohibitively difficult full use and enjoyment of adjacent recreational uses. Traffic congestion from the recreational and commercial uses could impact access to the existing industrial uses, or vice versa.

At the very least, staff believes that development of new recreational and commercial uses that could not be effectively utilized by the public would be misguided. However, staff has greater concerns that the impacts to the proposed new uses from the existing marine terminal uses would lead to pressure to eliminate the high-priority Port uses in favor of the lower-priority recreational uses. The **Planning Policies for Site Selection** section of the existing certified Port Master Plan states that "Water Dependent Uses," including marine terminals are to be given the highest priority in leasing decisions. Allowing recreational and commercial uses to encroach on the Tenth Avenue Marine Terminal would be inconsistent with this policy, which was designed to protect these priority uses from competing uses as required by the Coastal Act.

The amount of waterfront suitable for port activities is limited in the San Diego Unified Port District. As noted above, when existing industrial land is converted to other uses, it can lead to pressure to fill coastal waters to accommodate the on-going demand for such facilities, resulting in adverse impacts to water quality, and marine and biological resources protected by the Coastal Act. As such, staff feels the PMPA proposed through

the initiative would be inconsistent with the policies of both the certified Port Master Plan and the Coastal Act if it is approved by the voters.

Port Master Plan Amendment Process

The initiative proposes a number of changes to the Port's currently certified Port Master Plan. Generally, within local jurisdictions, an initiative adopted by the voters has the same legal status as a plan or ordinance adopted by a City Council or County Board of Supervisors. If the initiative amends a certified Local Coastal Program or affects land use in the coastal zone, the measure must be submitted to the Coastal Commission for review and certification as a Local Coastal Program (LCP) amendment, prior to becoming effective. Therefore, if the court determines the Port Master Plan may be amended through the initiative process, and the voters pass the initiative, the process that applies to local governments and LCPs would also apply to the Port District and the Port Master Plan. Therefore, the Port must submit the revisions proposed in the ballot measure to the Coastal Commission for review and certification as a Port Master Plan amendment, prior to it becoming effective. Regulations for amendments to certified Port Master Plans are generally outlined in Title 14, Subchapter 6, of the California Code of Regulations, although, as discussed in the following paragraphs, the process would be somewhat different for a PMPA that may be proposed through the initiative process.

Unlike plan amendments proposed by local governments, amendments proposed by the passage of an initiative are submitted directly to the Coastal Commission by the local government after certification of the election results. Thus the usual local public hearings, CEQA review and public notices associated with the preparation of a plan amendment are not required. However, we understand that the Board of Port Commissioners did have at least one hearing devoted to the implications of the initiative. Thus, the submittal should include mailing lists, notices, copies of correspondence, staff reports and the like from that meeting as well as any other such meetings of the Board.

It will also be necessary to submit the following:

(1) A clear, reproducible copy of adopted amendments:

- For additional text, an indication of where it fits into the previously certified document (e.g., "insert as p. 20a between pp. 20 and 21 as policy #").
- For a revision to certified text, indicate the new text either with strikeouts and underlines or with indication of what policies, paragraphs or page(s) it replaces.
- For a map change, a new (replacement) map or a supplemental map with direction that the previously adopted map is to be superseded by the supplement for the specific geographic area indicated.

(2) The declaration of the vote, pursuant to Election Code Section 9122.

(3) Supporting factual data necessary for the Coastal Commission to review the adequacy of the plan to carry out the policies of the California Coastal Act. In this case, that would include, at a minimum:

- An analysis of how the existing priority uses and public access at and around the Tenth Avenue Marine Terminal would be affected by and interact with the new uses allowed by the proposed amendment, including an analysis of traffic generation and parking demand from the proposed uses and the ability of heavy equipment such as large cranes to operate at the marine terminal;
- Analysis of impacts from noise (specifically, how noise from the existing marine terminal might impact the proposed recreational uses);
- Analysis of biological impacts, effects on water quality, and impacts to existing public views of the bay from major coastal access routes and public recreational areas;
- A recent analysis of the growth potential and demand projections for high-priority marine-related industrial Port uses and the availability of Port land for such uses.

Following submittal of such a PMPA, the Commission would set the item for a public hearing and prepare a staff report on the proposal. The Commission hearing would be noticed as required by the regulations and the staff recommendation would be available for public review prior to the hearing. The Commission would have full discretion to approve or deny the proposed PMPA based on its consistency with the Coastal Act.

On a technical note, staff notes that the initiative does not include any changes or additions to the Tenth Avenue Marine Terminal Planning District 4 project list. The purpose of the project list in the Port Master Plan is to identify upcoming projects that have received plan-level Commission review and approval as consistent in concept with the Coastal Act. Coastal permit review is still required to implement particular projects. All future projects must be included on this list, with the exception of minor alterations to existing structures or on-going operations consistent with the Master Plan. Because none of the envisioned public and commercial recreation uses at the Marine Terminal would be added to the project list through the proposed initiative/PMPA, it is staff's position that additional PMPAs would be required prior to approval of any coastal development permits for new projects at the Terminal not currently on the project list.

In closing, we would like to reiterate the critical importance of evaluating the changes proposed by the initiative as they relate to the priority uses currently existing at the Tenth Avenue Marine Terminal. For reasons similar to those raised by the Board of Port Commissioners and the State Lands Commission, questioning the legality of the proposal and its consistency with the laws governing use of State tidelands, it is not likely Commission staff would support the amendment as proposed by initiative in its current form. The proposal would allow new recreational and commercial uses that could negatively affect existing highest priority, coastal-dependent Port uses, and could lead to

future development impacting wetlands and other sensitive land and water areas which is inconsistent with Chapter 3 and Chapter 8 policies of the Coastal Act.

Thank you for your consideration of these comments. As always, we remain available to answer any questions and to assist with any Port Master Plan amendment(s) or related coastal permits that may result from the initiative process.

Sincerely,



SHERILYN SARB

Deputy Director, San Diego District

cc: Nancy Chase
Richard Chase
Frank Gallagher
Sharon Cloward (Port Tenants Assn.)
Mayor Jerry Sanders (City of San Diego)
Mayor Ron Morrisison (City of National City)
Paul Thayer (State Lands Commission)

Congress of the United States
Washington, DC 20515

September 5, 2008

Mr. Michael B. Bixler
Chairman
Unified Port of San Diego
3165 Pacific Highway
San Diego, CA 92101

Dear Chairman Bixler:

As members of the San Diego Congressional Delegation we wish to express our strong opposition to the proposed redevelopment of the 10th Avenue Marine Terminal along San Diego Bay.

We understand the importance of the 10th Avenue Marine Terminal to San Diego's economy. It has created thousands of good paying jobs that help sustain our community's middle class and provides nearly \$2 billion in economic impact to our region. The terminal is an invaluable part of our working waterfront and risking the ongoing success of this economic and jobs engine would not be a wise choice for San Diego.

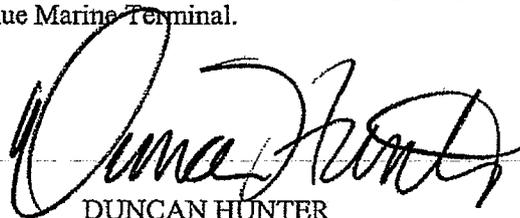
The 10th Avenue Marine Terminal also plays an important role in our nation's defense. This facility has been designated by our military as a strategic port that may serve our Navy in times of crisis. Additionally it is a critical component of our region's shipbuilding and ship repair industry which sustain our nation's naval forces. The proposed redevelopment of this site would compromise both of these important functions and is clearly not acceptable.

In sum, we do not believe that taking the 10th Avenue Marine Terminal and redeveloping it for recreational and tourist uses is in the best interest of San Diego. We stand together to oppose this proposal and urge others to join us in protecting our region's economy, good-paying jobs, and our military by preserving the 10th Avenue Marine Terminal.

Sincerely,



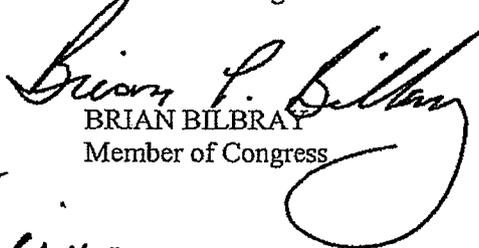
SUSAN A. DAVIS
Member of Congress



DUNCAN HUNTER
Member of Congress



DARRELL ISSA
Member of Congress



BRIAN BILBRAY
Member of Congress



BOB FILNER
Member of Congress

DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND
ADMINISTRATION—CHAIRMAN
SELECT COMMITTEE ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

September 4, 2008

The Honorable Robert Gates
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

2008 SEP -9 PM 1:41
OFFICE OF SENATOR FEINSTEIN

Dear Secretary Gates:

I am writing to request an analysis from the Department of Defense on the proposed redevelopment of the Tenth Avenue Marine Terminal along the San Diego Bay.

As you may be aware, there is a proposed initiative called "The Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative," on the November ballot which would require the Port of San Diego to permit the construction of a second deck above the Tenth Avenue Marine Terminal for commercial development. I understand this terminal is currently used by the United States Navy for ship repair, military equipment loading and unloading during national emergencies, and serves as one of the Department of Defense's nineteen "strategic ports" around the country. I am told that the Tenth Avenue Marine Terminal is especially unique because it is the only deep water strategic port in California, and one of only four strategic ports along the West coast.

Being that the Tenth Avenue Marine Terminal is currently utilized by the Department of Defense, I would appreciate your response to the following questions:

- Would the redevelopment plan proposed conflict with Department of Defense activities at the Tenth Avenue Marine Terminal;
- I understand the House of Representatives Armed Services Committee has requested a report from the Department of Defense by late November with the Department's plan to optimize use of strategic seaports and delineate their appropriate uses. Would the commercial construction proposed in

OSD 11743-08

FRESNO OFFICE:
2500 TULARE STREET
SUITE 4290
FRESNO, CA 93721
(559) 485-7430

LOS ANGELES OFFICE:
11111 SANTA MONICA BOULEVARD
SUITE 815
LOS ANGELES, CA 90025
(213) 814-7300

SAN DIEGO OFFICE:
750 B STREET
SUITE 1030
SAN DIEGO, CA 92101
(619) 231-9712

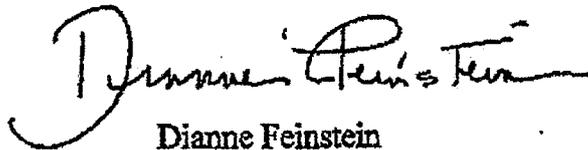
SAN FRANCISCO OFFICE:
ONE POST STREET
SUITE 2450
SAN FRANCISCO, CA 94104
(415) 393-0707

**"The Port of San Diego Marine Freight Preservation and Bayfront
Redevelopment Initiative" conflict with any of the report's findings thus far;**

- **Could the types of materials moved through the terminal be limited due to the hazards of having civilians in close proximity on the upper deck?**

Thank you for your time and consideration of my requests. I look forward to your response.

Sincerely,



**Dianne Feinstein
United States Senator**



The California Trade Coalition

A Coalition Working to Keep California Competitive in a Global Economy

July 28, 2008.

American Chemistry
Council

APL Ltd.

Associated General
Contractors of California

California Association
of Port Authorities

California Business
Properties Association

California Business
Roundtable

California Chamber
of Commerce

California Manufacturers
& Technology Association

California Nevada
Cement
Promotion Council

California Railroad Industry

California Retailers
Association

Consumer Electronics
Association

Grocery Manufacturers
Association

Industrial Environmental
Association

International Council
of Cruise Lines

International Council
of Shopping Centers

Matson Navigation
Company

Maersk Inc.

Pacific Merchant
Shipping Association

Retail Industry Leaders
Association

Society of the
Plastics Industry

SSA Marine

Western Home
Furnishings Association

Western States
Petroleum Association

The Honorable Michael B. Bixler
Chairman
Board of Port Commissioners
Unified Port of San Diego
3165 Pacific Highway
San Diego CA 92101

RE: Marine Freight Preservation and Bayfront Redevelopment Initiative

Dear Mr. Chairman:

On behalf of the California Trade Coalition (CalTrade), which is comprised of trade-related businesses and organizations operating in California, we write to inform you of our strong opposition to the Marine Freight Preservation and Bayfront Redevelopment Initiative.

Our coalition is comprised of port users and businesses that are dependant upon adequate goods movement facilities and efficient port operations in California. We have reviewed the proposed measure, which we understand will appear on the local November ballot, and find it extremely objectionable.

San Diego's maritime-related industrial base is important to the international trade community and an important source of local employment. Were the incompatible, non-maritime uses envisioned in the initiative implemented, the working waterfront in San Diego would be jeopardized. The proposal contradicts long-held tideland trust law and raises serious questions regarding the proper management of state-wide public trust assets.

California is a critical trade gateway and the Port of San Diego plays an important role in the success of international trade in the state. The proposed construction of a concrete deck over the 10th Avenue Marine Terminal is not only incompatible with existing trade and maritime uses, but the proposal raises serious safety, security, feasibility, cost and legal issues.

The California Trade Coalition is strongly opposed to – and stands ready to assist in defeating – this ill-conceived proposal.

Sincerely,

The California Trade Coalition

Press release:

Contact: Anthony Saavedra
(619) 228-8101
(619) 850-9697 (cell)
asaavedra@unionyes.org

FOR IMMEDIATE RELEASE

Labor Votes to Oppose Developer's Initiative of 10th Avenue

Initiative will Destroy Good Jobs on the Working Waterfront

SAN DIEGO – July 24, 2008 – The membership of the San Diego and Imperial Counties Labor Council, AFL-CIO, last night unanimously voted to oppose a ballot initiative that would destroy maritime industry at the 10th Avenue Marine Terminal.

The campaign to defeat the measure will be one of the Labor Council's top priorities in this fall's elections, according to Labor Council Secretary-Treasurer Lorena Gonzalez.

"These are some of the last good, blue-collar, middle-class jobs left in our region," said Gonzalez. "The 120,000 working families of the Labor Council are outraged that a private developer is pushing a misleading plan that is destructive to the region's working waterfront."

San Diego Bay's working waterfront provides the region with 42,000 jobs and adds an economic impact of \$7.6 billion annually to the region.

The initiative, which will be placed on the Nov. 4 ballots of residents in San Diego, Chula Vista, National City, Imperial Beach and Coronado, would change the Port's master plan to allow for the redevelopment of the 10th Avenue Terminal for private use.

The plan would allow for private building on a deck constructed on top of the terminal, and would reduce the region's ability ensure both business growth and port security.

"This isn't under-utilized land in desperate need of redevelopment," said Gonzalez. "It is a valuable part of our economy. From the banana you eat for breakfast to the cement used to make the sidewalk below you, there is a good chance that every day you use a product that came through the 10th Avenue Terminal."

###

EXHIBIT D

1 EDMUND G. BROWN JR.
 Attorney General of the State of California
 2 CHRISTIANA TIEDEMANN
 Acting Senior Assistant Attorney General
 3 JOSEPH C. RUSCONI
 Deputy Attorney General
 4 State Bar No. 78814
 1515 Clay Street, Suite 2000
 5 Oakland, CA 94612-1413
 Telephone: (510) 622-2150
 6 Fax: (510) 622-2270
 Attorneys for Amicus Curiae State of California
 7 Acting By and Through the State Lands Commission

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN DIEGO

**SAN DIEGO UNIFIED PORT DISTRICT, a
 California Special District,,**
 Petitioner and Plaintiff,
 v.
**DEBORAH SEILER, in her official capacity as San
 Diego County Registrar of Voters; MARY ANN
 LINER, in her official capacity as Clerk of the San
 Diego Unified Port District; and DOES 1 through
 100, inclusive,,**
 Respondents and Defendants,

37-2008-00089123-CO-WM-CTL
**APPLICATION TO FILE
 AMICUS CURIAE BRIEF
 AND AMICUS CURIAE
 BRIEF OF THE STATE OF
 CALIFORNIA ACTING BY
 AND THROUGH THE STATE
 LANDS COMMISSION**
 Date: September 4, 2008
 Time: 2:00 p.m.
 Dept: 62
 Judge: Honorable Ronald Styn

**SAN DIEGO COMMUNITY SOLUTIONS, LLC, a
 California Limited Liability Company; and ROES 1
 through 100, inclusive,,**
 Real Party in Interest.

1
2 **APPLICATION OF THE STATE OF CALIFORNIA ACTING BY AND THROUGH THE**
3 **STATE LANDS COMMISSION TO FILE AMICUS CURIAE BRIEF.**

4 The State of California acting by and through the State Lands Commission hereby respectfully
5 applies to this Court for leave to file the enclosed amicus curiae brief in this action. As is explained
6 in more detail below, the amicus submits that the Legislature has delegated to San Diego Unified
7 Port District the exclusive legislative power over matters regarding lands administered by the Port,
8 such as the Tenth Avenue Marine Terminal. To allow legislation through initiative would disregard
9 that exclusive delegation and interfere with the State Lands Commission's legislatively mandated
10 oversight of the Port's operations.

11 **INTEREST OF AMICUS CURIAE STATE OF CALIFORNIA ACTING BY AND**
12 **THROUGH THE STATE LANDS COMMISSION**

13 The issue before this Court is of major importance to the State of California acting by and
14 through the State Lands Commission ("SLC"). The SLC is the agency of the State of California
15 charged with monitoring State sovereign lands granted by the Legislature to cities, counties and
16 special districts to ensure that grantees fulfill the duties and obligations specified in the grants of
17 state-owned land. The SLC is also charged with ensuring that the State's lands are being used for
18 water-oriented purposes consistent with the public trust for commerce, navigation, and fisheries.
19 The SLC currently supervises over 80 Legislative grants of State-owned land. While all grants
20 contain unique provisions regarding allowable land uses, the granted lands are all held by the
21 municipal trustees subject to the public trust for commerce, navigation, and fisheries, and all money
22 generated from those lands must only be spent for purposes consistent with that public trust. Thus,
23 the actual use to be made of the lands granted by California to its municipal trustee is a matter of
24 statewide importance and one that directly impacts the SLC's jurisdiction.

25 Here, the lands at issue have been granted to a specific entity—the San Diego Unified Port
26 District ("Port District")—for management by a specific legislative body—the Board of
27 Commissioners of the San Diego Unified Port District ("Port Board"). The Legislature has
28 specifically charged the Port Board with planning the development of the Port District lands through

1 its adoption of a Port Master Plan. It is to the Port District through its Port Board that the SLC looks
2 to ensure compliance with the terms of the legislative grant. "The Port of San Diego Marine Freight
3 Preservation and Bayfront Redevelopment Initiative ("Initiative"), which is the subject of this
4 litigation, would amend the Port Master Plan for the Tenth Avenue Marine Terminal ("TAMT") to
5 allow uses inconsistent with the Port Master Plan's current provisions which provide for use of the
6 property as a marine freight terminal and for secure naval uses.^{1/}

7 An initiative that attempts to usurp the Port Board's planning role regarding the TAMT
8 conflicts with the Legislature's exclusive delegation of planning power to the Port Board. Further,
9 a Port Master Plan adopted by initiative interferes with the SLC's ability to fulfill its legislatively-
10 mandated supervisory function because, unlike with a Port Master Plan that is adopted by the Port
11 Board, there is no board or governing body to which the SLC can look for accountability. Because
12 the initiative overrides the Legislature's specific delegation of planning and management authority
13 over Port District property to the Port Board and because it frustrates the SLC's supervisory function
14 over State sovereign lands, this is one of the rare instances where the people do not have the power
15 to legislate through an initiative. That legislative power has already been given exclusively to the
16 Port Board.

17 **FACTUAL CIRCUMSTANCES**

18 The SLC hereby adopts the discussion of the Initiative and surrounding factual circumstances
19 outlined at pages 5 through 9 of the Port District's Memorandum of Points and Authorities in Support
20 of Petition for Writ of Mandate and Complaint for Declaratory and Injunctive relief filed in this
21 action.

22 ///

23 ///

24 ///

25 ///

26 ///

27

28 1. The legality of the amendments made by the Initiative to the Port Master Plan is not addressed further in this brief.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARGUMENT

I.

IF ENACTED THE INITIATIVE WOULD INTERFERE WITH THE SLC'S EXERCISE OF CALIFORNIA'S RETAINED INTEREST IN ITS SOVEREIGN LANDS AND SLC'S RESPONSIBILITY TO COMPEL COMPLIANCE BY GRANTEES WITH THE TERMS OF LEGISLATIVE GRANTS AND THE PUBLIC TRUST.

Upon admission to the United States, and as an incident of its sovereignty, California received title to the tidelands, submerged lands, and beds of navigable lakes and rivers within its borders to be held subject to the public trust for commerce, navigation, fisheries and other recognized uses. (*Borax, Ltd. v. Los Angeles* (1935) 296 U.S. 10, 15-16; *People v. California Fish Co.* (1913) 166 Cal. 567, 584.) Lands held subject to the public trust are of a unique character, different from that of lands held by California in a proprietary capacity. (*Illinois Central R.R. Co. v. Illinois* (1892) 146 U.S. 387, 452-453.) With its roots in Roman Law, the public trust doctrine establishes that California holds its "sovereign lands" in trust for public purposes, traditionally delineated in terms of commerce, navigation and fisheries but more recently found to be broader, including the right to hunt, bathe or swim, and the right to preserve these lands in their natural state. (*City of Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 521.) California's power to control, regulate and utilize its navigable waterways and the lands lying beneath them, when acting within the terms of the trust, is absolute. (*Marks v. Whitney* (1971) 6 Cal.3d 251, 262 citing *California Fish, supra* at 597.)

The lands that would be affected by the Initiative are tidelands and submerged lands that have been granted to the Port District by the California Legislature subject to the public trust. (Harb. & Nav. Code, Appendix I, § 1 et seq.²⁴) However, the State's grant of these lands to the Port District did not end California's supervision and control of these lands. California still remains the ultimate trustee of the granted lands. (*Illinois Central, supra* at pp. 453-454.) California retains the power to require that moneys generated from public trust lands be spent only for public trust purposes, and to even revoke, alter or amend the granting statute. (*People ex rel S.F. Bay etc. Com* (1968) 69

2. All citations will be to the applicable section of Appendix I of the Harbors and Navigation Code unless otherwise noted.

1 Cal. 2d 533, 549; *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 208-209; *City of Coronado*
2 *v. San Diego Unified Port District* (1964) 227 Cal.App.2d. 455, 473-474.) The Court of Appeal has
3 described California's continuing role as follows:

4 Upon grant to a municipality subject to the public trust, and accompanied by a delegation
5 of the right to improve the harbor and exercise control over harbor facilities, the lands are
6 not placed entirely beyond the supervision of the state, but it may, and indeed has a duty
7 to, continue to protect the public interests.

8 (*City of Coronado, supra* at p. 474.)

9 The effect of a legislative grant is, therefore, to create a trust in which the grantee is the trustee,
10 and California the settlor-beneficiary. The consequence of this relationship is that the proper use of
11 tidelands is a statewide affair, subject to judicial regulation to prevent, or remedy, a breach of the
12 terms of the trust or other applicable statutory provision. (*Mallon, supra* at p. 209.) California, as
13 settlor-beneficiary, acting through proper officers and agencies, has the power to invoke judicial
14 intervention to compel performance of specific grant/trust provisions, to enjoin a breach thereof, or
15 to compel a grantee to redress a breach. (e.g. *State of California ex rel. State Lands Com. v. County*
16 *of Orange* (1982) 134 Cal App.3d 20 [SLC action against Orange County to halt spending of money
17 generated from public trust lands for purely municipal purposes].)

18 The SLC, consisting of the Lieutenant Governor, Controller, and the Director of the Department
19 of Finance, has been delegated by the Legislature California's retained trustee and supervisory rights
20 in granted lands, including those granted to the Port District. (Pub. Res. Code, § 6301 ["All
21 jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which
22 grants have been or may be made is vested in the commission."]; §6306(c) [grantees required to
23 submit detailed accounting of trust revenues to SLC each year]; *Graf v. San Diego Unified Port Dist.*
24 (1992) 7 Cal.App.4th 1224, 1231 fn. 9 [SLC exercises oversight authority over Port District's
25 administration of public trust lands granted to it].) Specific to the Port District, the SLC is also given
26 the responsibility to ensure that the lands conveyed have been improved as required in the grant or
27 the lands will revert to California. (Harb. & Nav. Code, Appendix L, § 87(j).)

28 In the exercise of its supervisory role, the SLC's staff is in frequent contact with the municipal
29 trustees, including the Port Board and its staff. The use of funds generated by granted lands is

1 monitored by the SLC and discussed with the municipal trustee. Allowable uses on the lands granted
2 are monitored by the SLC and planned amendments to the municipal trustee's planning documents,
3 such as the Port Master Plan here, are examined by the SLC staff for their consistency with the grant
4 and the public trust. This day-to-day relationship between the SLC and its municipal trustees would
5 be destroyed if initiatives could amend the municipal trustee's planning documents. The Legislature's
6 mandate that uses made of public trust lands be for statewide and public trust consistent purposes
7 would be imperiled by the possibility of locally enacted plans designed to further only local, rather
8 than statewide, interests. And the SLC's statutory oversight role over the uses of state sovereign lands
9 would be hindered if not utterly frustrated.

10 II.

11 **BECAUSE THE LEGISLATURE HAS SPECIFICALLY DELEGATED**
12 **LEGISLATIVE POWER OVER A MATTER OF STATEWIDE SIGNIFICANCE**
13 **TO THE PORT BOARD, THE INITIATIVE POWER CANNOT BE USED TO**
14 **AMEND THE PORT MASTER PLAN.**

15 Consistent with the public trust under which it hold the lands conveyed to the Port District,
16 California granted the lands that would be effected by the Initiative to the Port District (including
17 those previously conveyed to individual towns within the District) for the purposes outlined in section
18 87 of the Port District's organic statute. Section 87(a) begins:

19 The tide and submerged lands conveyed to the district by any city included in the district
20 shall be held by the district and its successors in trust and may be used for purposes in
21 which there is a general statewide purpose.

22 The statewide nature of the grant to the Port District is repeated elsewhere in the granting statute. (§
23 2 [policy of the State of California to develop the State's harbors and ports, this necessity exists in
24 San Diego County]; § 79 [because the provisions of the grant are a matter of statewide concern, they
25 prevail over any inconsistent provisions in any municipal charter].)

26 In furtherance of the statewide nature of both the public trust under which the lands granted to
27 the Port District are held and the development of those lands as a port and harbor, the Legislature has
28 specifically delegated to the Port Board the power to legislate over the area granted. (§ 16 [district
governed by "board of commissioners"]; § 19 ["the board shall draft a master plan for harbor and port
improvements and for the use" of all district lands]; § 21 ["the board may pass all necessary

1 ordinances and resolutions for the regulation of the district]; § 55 [the board shall . . . make and
2 enforce all necessary rules and regulations governing the use and control of all navigable waters and
3 tidelands and submerged lands . . . within the territorial limits of the district.”].) Such a specific
4 delegation of all power to legislate regarding the lands, uses, and affairs of the Port District leaves no
5 room for the conflicting legislation offered by the Initiative.

6 While all doubts are normally resolved in favor of the initiative process (*Save Stanislaus Area*
7 *Farm Economy v. Board of Supervisors* (1993) 13 Cal. App.4th 141, 150), this presumption is
8 rebuttable upon a showing that the Legislature intended to delegate exclusive legislative power to a
9 specific local governing body in an area of statewide concern. (*COST v. Superior Court* (1988) 45
10 Cal.3d 491, 500; *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 776.) In *COST*, the California
11 Supreme Court invalidated an initiative that would have prohibited a city council from imposing new
12 development fees for the development of the Orange County toll roads without first submitting the
13 matter to the electorate. The Court noted that the statute giving rise to the new fee expressly
14 delegated the authority to impose the fee to “the *board of supervisors* of the County of Orange and
15 the *city council* of any city in that county.” (*COST, supra* at p. 501 quoting Gov. Code, § 66484.3,
16 emphasis added.) The Court found that the use of the specific terms, instead of generic terms like
17 “governing body,” gave rise to the strong inference that the Legislature intended to preclude the
18 exercise by the electorate of the initiative authority in the area delegated by the statute in question.
19 (*Id.* at pp. 504-505.)

20 Here, the Port District’s organic statute is replete with references to the Port Board as the entity
21 that possesses all legislative power within the geographic area encompassed by the district, including
22 the legislatively granted lands that are subject to the public trust. It is to the Port District acting
23 through the Port Board that the Legislature has granted the lands that encompass the Port District.
24 Those lands are subject to the public trust, are a matter of statewide significance, and are to be
25 developed for a port or harbor that serves statewide purposes. According to the terms of the
26 legislative grant, it is the Port Board, and only the Port Board, that may adopt or amend the Port
27 Master Plan for the TAMT. (§ 19.) It is to the Port Board that the SLC looks to ensure that the Port
28 District’s property is developed for purposes consistent with the grant and the public trust. The

1 initiative power possessed by the people simply does not extend to amendments to the Port District's
2 Port Master Plan.

3 **III.**

4 **THE PUBLIC'S RIGHT TO INITIATIVE DOES NOT EXTEND TO**
5 **AMENDMENTS OF THE PORT'S MASTER PLAN.**

6 Section 33, added to the existing granting act by Chapter 673 of the Statutes of 1963, provides
7 that "[t]he provisions of the Election Code of the State of California . . . governing the initiative and
8 the referendum in districts shall apply insofar as such provisions of the Election Code are not in
9 conflict with this act." However, section 51, amended to its present form also in 1963, clarifies
10 section 33's reference to the initiative and referendum. Section 51, dealing with Port District revenue
11 bonds, states that the Port Board may directly provide for the issuance of such bonds unless the
12 ordinance authorizing the bonds is the subject of a referendum. Pursuant to the language of section
13 33, the public's right to initiative and referendum is limited by the legislative power already delegated
14 by the Legislature to the Port's Board. And, pursuant to section 51, that power only applies to allow
15 referenda that concern the issuance by the Port Board of revenue bonds.

16 In determining the meaning of a statute, courts look primarily to the statute's language, purpose,
17 legislative history and administrative construction. (*People v. Woodhead* (1987) 43 Cal.3d 1002,
18 1007-1008.) And, where possible, the various parts of a statutory enactment must be harmonized
19 by considering the particular clause or section in the context of the statutory framework as a whole.
20 (*Moyer v. Workmen's Compensation Appeals Board* (1973) 10 Cal.3d 222, 230-231.) A distorted
21 interpretation of section 33 as applying the initiative power broadly over all aspects of the Port
22 Board's legislative functions would be to find that section 33 amended by implication all of the
23 granting statute's sections specifying "board of commissioners" to instead read a more generic term
24 such as "local authority." (*COST, supra* at pp. 504-505.) But when it scrutinized the Port District's
25 grant in 1963 and added section 33, the Legislature did not make the amendments necessary to delete
26 the original exclusive delegation of legislative power to the "Port Board." The failure of the
27 legislature to change the law in a particular aspect when the subject is generally before it and changes
28 in other respects are made is indicative of an intent to leave the law as is in the aspects not amended.

1 (*People v. Barrera* (1999) 70 Cal.App.4th 541, 551.) Thus, the proper interpretation, the one in line
2 with the principles of statutory interpretation enunciated by the California Supreme Court and Courts
3 of Appeal, would be to find that the addition of sections 33 and 51 to the granting act in 1963, done
4 without any change to the sections delegating exclusive legislative power to the Port Board, were only
5 to provide a specific right of referendum over the issuance by the Port Board of revenue bonds (§ 51)
6 and a process by which referenda elections are to be conducted. (§ 33.) Thus, by enacting sections
7 33 and 51, the Legislature did not grant a broad right to legislate through initiative over land uses on
8 the Port District's Property.^{3/}

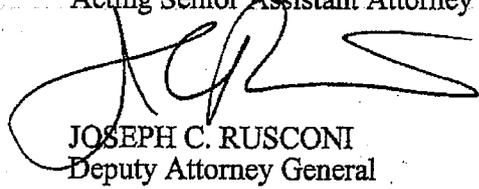
9 **CONCLUSION**

10 For the reasons cited herein, the power of initiative does not exist to amend the Port
11 Master Plan.

12 Dated: August 26, 2008

13 Respectfully submitted,

14 EDMUND G. BROWN JR.
15 Attorney General of the State of California
16 CHRISTIANA TIEDEMANN
17 Acting Senior Assistant Attorney General

18 
19 JOSEPH C. RUSCONI
20 Deputy Attorney General

21 Attorneys for Amicus Curiae State of
22 California Acting By and Through the State
23 Lands Commission

24
25
26
27
28

3. The SLC concurs with the legislative history analysis in support of this interpretation presented by the Port District at page 19 of its Points and Authorities.

PROOF OF SERVICE

Case Name: **San Diego Unified Port District v Deborah Seiler et al**
No.:

I am employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is 1515 Clay Street, 20th Floor, Oakland, California 94612-1413. On August 26, 2008, I served the following document(s):

APPLICATION TO FILE AMICUS BRIEF AND AMICUS CURIAE BRIEF OF THE STATE OF CALIFORNIA ACTING BY AND THROUGH THE STATE LANDS COMMISSION

on the parties through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

- (A) **By First Class Mail:** I caused each such envelope to be placed in the internal mail collection system at the Office of the Attorney General with first-class postage thereon fully prepaid in a sealed envelope, for deposit in the United States Postal Service that same day in the ordinary course of business.
- (B) **By Messenger Service:** I caused each such envelope to be delivered by a courier employed by Professional Messenger, with whom we have a direct billing account, who personally delivered each such envelope to the office of the address on the date last written below.
- (C) **By Overnight Mail:** I caused each such envelope to be placed in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
- (D) **By Facsimile:** I caused such document to be served via facsimile electronic equipment transmission (fax) on the parties in this action by transmitting a true copy to the following fax numbers listed under each addressee below.

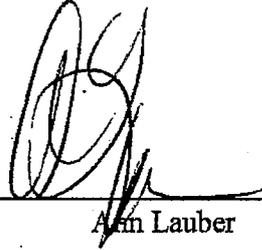
TYPE OF SERVICE

ADDRESSEE

D

see attached list

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on August 26, 2008 at Oakland, California.



Arin Lauber

1 *SAN DIEGO UNIFIED PORT DISTRICT vs .DEBORAH SEILER*
Case No. 37-2008-00089123-CO-WM-CTL

2 **SERVICE LIST**

3 John Sansone
4 San Diego County Counsel
COUNTY ADMINISTRATION CENTER
5 1600 Pacific Highway, Room 355
San Diego, CA 92101
6 (619) 531-4860
619-531-6005 Facsimile

Mary Ann Liner
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101
619-686-6444

7 Attorneys for Respondent and Defendant,
8 Deborah Seiler
Frederic Woocher
9 Strumwasser & Woocher LLP
100 Wilshire Boulevard, Suite 1900
10 Santa Monica, CA 90401
(310) 576-1233
11 310-319-0156 Facsimile

Michael W. Shonafelt
Allen Matkins et al
515 South Figueroa Street, 9th Floor
Los Angeles, CA 90017-3309
213-620-8816 Facsimile

Attorneys for San Diego Unified Port District

12 Attorneys for Real Party in Interest, San Diego
Community Solutions, LLC
13 Duane E. Bennett
San Diego Unified Port District
14 3165 Pacific Highway
San Diego, CA 92112-0488
15 619-686-6444

16 Attorneys for San Diego Unified Port District

17

18

19

20

21

22

23

24

25

26

27

28