

## 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.

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(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

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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 Morrisson (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 10<sup>th</sup> Avenue Marine Terminal along San Diego Bay.

We understand the importance of the 10<sup>th</sup> 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.

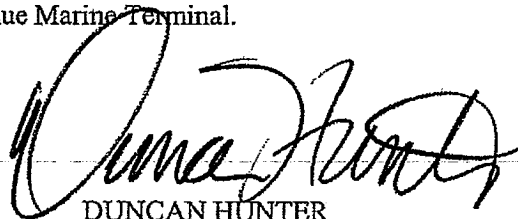
The 10<sup>th</sup> Avenue Marine Terminal also plays an important role in our nation's defense. This facility has been designated by our military as a strategic port that may serve our Navy in times of crisis. Additionally it is a critical component of our region's shipbuilding and ship repair industry 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 10<sup>th</sup> 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 10<sup>th</sup> Avenue Marine Terminal.

Sincerely,



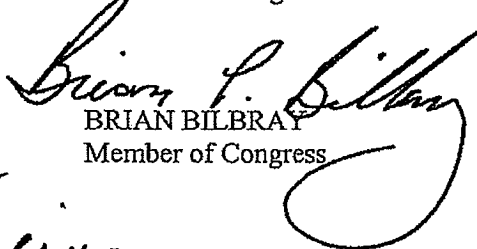
SUSAN A. DAVIS  
Member of Congress



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

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SAN DIEGO, CA 92101  
(619) 231-9712

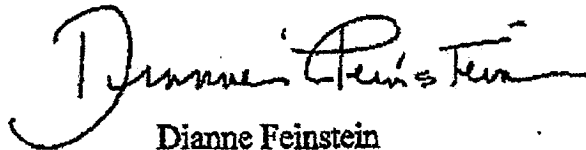
SAN FRANCISCO OFFICE:  
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SAN FRANCISCO, CA 94104  
(415) 393-0707

**"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 10<sup>th</sup> 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 10<sup>th</sup> 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 10<sup>th</sup> 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 10<sup>th</sup> Avenue Terminal."

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