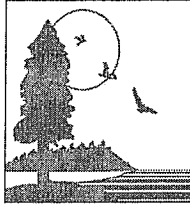


**CALIFORNIA STATE
LANDS COMMISSION**

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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.