

**REVISED**



**SAN DIEGO UNIFIED PORT DISTRICT  
BOARD OF PORT COMMISSIONERS  
SPECIAL MEETING  
AGENDA**

June 21, 2010

8:00 a.m.

Don L. Nay Port Administration Building  
3165 Pacific Highway  
San Diego, California

**PLEASE COMPLETE A "REQUEST TO SPEAK" FORM PRIOR TO THE COMMENCEMENT OF THE MEETING AND SUBMIT IT TO THE DISTRICT CLERK.**

Note: Agendas are available in alternative formats upon request. If you require assistance or auxiliary aids in order to participate at public meetings, please contact the Office of the District Clerk at (619) 686-6206 within 24 hours of the meeting. Documents that relate to an agenda item are available at the Office of the District Clerk, 3165 Pacific Highway, San Diego, California.

1. Roll Call
2. Public Communications (3 minutes each). No actions may be taken on these items.

**CLOSED SESSION**

3. CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION  
Pursuant to Subdivision (c) of Government Code Section 54956.9

One Case

**ACTION AGENDA**

4. Discussion regarding Status of Senate Bill 1039 and direction to staff.

Called by Robert Uddenhama Date June 18, 2010  
Chairman

**Note:**

For those planning to attend the Board meeting, parking is available in the Port Administration Building parking lot. Overflow parking can be accommodated to the west of the Port Administration Building in the Port District Employee/Visitor parking.

For the agenda online and more information about the Commissioners' names and city representation, and future Board meeting dates, please visit our website at [www.portofsandiego.org](http://www.portofsandiego.org).

As a courtesy to all who attend these public meetings, please turn all cell phones to off or vibrate before entering the Board Room.

**SAN DIEGO UNIFIED PORT DISTRICT**

**DATE:** June 21, 2010

**SUBJECT: DISCUSSION REGARDING SENATE BILL 1039 AND DIRECTION TO STAFF**

**EXECUTIVE SUMMARY:**

Senate Bill 1039, proposed by Senator Denise Moreno Ducheny, is scheduled to be heard in the Assembly on June 30. Since the last Board of Port Commissioners meeting, the District's lobbyist, Jonathan Clay, Vice President of Capri & Clay, has shared with the Senator and her office the amended language approved by the Board earlier this month. Mr. Clay has also shared the Board's recently-approved Capital Development Program projects and discussed the intent of the bill with the Senator. Currently, the Board has taken a position of neutrality while seeking amendments to the original language of the bill.

**RECOMMENDATION:**

Discuss Senate Bill 1039 and provide direction to staff, if any.

**FISCAL IMPACT:**

As currently written, SB 1039 has no fiscal impact at this time. However, future amendments could alter that scenario.

**COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- Promote the Port's maritime industries to stimulate regional economic vitality.
- Enhance and sustain a dynamic and diverse waterfront.
- Protect and improve the environmental conditions of San Diego Bay and the Tidelands.
- Ensure a safe and secure environment for people, property and cargo.
- Develop and maintain a high level of public understanding that builds confidence and trust in the Port.
- Develop a high-performing organization through alignment of people, process and systems.
- Strengthen the Port's financial performance.
- Not applicable.

**DISCUSSION:**

The three-member Board ad hoc committee formed to work through the challenges of SB 1039 met to discuss possible beneficial agreements to address possible funding streams that would be used for projects in National City and San Diego to alleviate the impacts from the marine terminals: the Tenth Avenue Marine Terminal in San Diego and the National City Marine Terminal in National City.

In order to understand the potential funding source from which the money may be drawn, the Board members asked for data from the CFO's office, which is outlined in two attachments to this agenda sheet.

Attachment A is a copy of an e-mail from the CFO showing maritime gross revenue from fiscal year 07/08 through fiscal year 09/10.

Attachment B is a breakdown of revenue for fiscal year 2009 generated by the individual marine terminals.

According to the District's lobbyist, Mr. Clay, the Senator and her staff have said that securing an annual funding mechanism and setting aside that money for specific maritime impact projects may, if agreed upon by all parties, alleviate the need for legislation. That is not a certainty but is worth discussing. An example given was the money set aside for the Environmental Fund.

Mr. Clay also shared with the Senator and her staff the projects totaling over \$6.8 million for National City and City of San Diego the Board voted to include in the Capital Development Program through 2013 that were specifically related to the issue and were recommended by the Maritime Enhancement Advisory Committee. Attachment C is the draft document outlining the changes the Board made on June 8, 2010.

Mr. Clay is expected to attend the Board meeting on June 21, 2010 to facilitate discussion with the Board in its deliberations.

Attachment D is a draft of the comments made during discussion of legislation of interest to the Board on June 8, 2010.

**Port Attorney's Comments:**

The Port Attorney will monitor and analyze the bill as it is amended.

**Environmental Review:**

This proposed Board action is not subject to CEQA, as amended.

**Equal Opportunity Program:**

Not Applicable.

**PREPARED BY:** Irene McCormack  
Assistant Vice President,  
Government Relations & Communications

**Jeffrey McEntee - MARITIME NET INCOME**

Attachment to Agenda Sheet No. 4

**From:** Jeffrey McEntee  
**To:** Cushman, Stephen; dukieval@aol.com  
**Date:** 6/15/2010 4:41 PM  
**Subject:** MARITIME NET INCOME  
**CC:** Morales, Donna; Wurster, Charles

Following are the figures you requested for Maritime:

FY 07/08

Gross Revenues \$46.5M

Net Income \$6.1M

FY 8/09

Gross Revenues \$43.7M

Net Income (\$3.3M) net of \$5.3M payment to SANDAG

Net Income \$2.0M excluding SANDAG Payment

FY 09/10 YTD April

Gross Revenues \$35.0M

Net Income \$1.6M

Please note that the Gross Revenues include the cargo marine terminals, cruise terminals (includes Terminal Special Facility Fee), all of the marine industrial properties, e.g., NASSCO, BAE, National Distribution Center, and Harbor Cruises.

Jeff McEntee  
CFO/Treasurer  
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(619) 686-6423

**FOR MANAGEMENT DISCUSSION PURPOSES ONLY**

**San Diego Unified Port District  
Maritime Operations  
FY 2009**

	<b>TAMT</b>	<b>NCMT</b>
	<b>Total</b>	<b>Total</b>
<b>Revenues</b>	8,412,916	10,242,982
<b>Total Direct Expense</b>	4,979,279	7,407,717
<b>G&amp;A</b>	1,801,628	2,374,516
<b>Depreciation</b>	3,899,694	2,643,303
<b>Net Income/(Loss)</b>	<b>(2,267,684)</b>	<b>(2,182,554)</b>

**Direct Costs** - Any expense charged directly to terminals including major maintenance and costs charged by other departments. Also includes Direct costs such as PASHA operator retention at NCMT and Security Services at CST.

**Department G&A** - Expense charge to Maritime but not directly to a Terminal including costs allocated to Maritime (Maritime employee salaries, Prof Services, supplies.....) Allocated based on % Revenue and Expense by Terminal.

**G&A** - G&A costs allocated from Port wide services.

Allocated for Pending CDP Projects by Board Action \$ 25,840,000

**Amendments Resulting from the Board meeting on June 8, 2010**

**List Source**

6A	Prelim. Design for New B St. Cruise Ship Terminal - Thru Design Development	\$	750,000	Pending
20	Marina Parkway Realignment (Required by 1999 Relocation Agreement)	\$	2,900,000	Pending
New	Chula Vista Filling of the "L" Ditch (Site Implementation Agreement)	\$	4,700,000	Pending
36A	Imperial Beach Sand Replenishment	\$	1,000,000	Pending
40B	TAMT Shore Power - Design	\$	429,000	Pending
204	Coronado Boathouse	\$	1,500,000	200 Series
210	Navy Pier Head House Demolition	\$	650,000	200 Series
212	North Harbor Drive Parking Garage (Westy's)	\$	2,750,000	200 Series
214A	Remove/Relocate Office Buildings and Remove Bay in Transit Shed 1	\$	3,000,000	200 Series
216	MARAD Assistance - MOU	\$	100,000	200 Series
227A	Commercial Fisheries Revitalization Plan Implementation - Phase One	\$	250,000	200 Series
228	Marine Terminal Drayage Truck Compliance Monitoring System	\$	230,000	200 Series
229	B Street Pier Mooring Dolphin (north side)	\$	600,000	200 Series
<b>Marine Terminal Enhancement Projects - National City</b>				
207A	National City Park / Site Development	\$	3,000,000	200 Series
New	Maritime Truck Routes	\$	30,000	MEAC
New	Parking District	\$	50,000	MEAC
New *	National City Aquatic and Outdoor Education Center *	\$	830,000	MEAC
<b>Marine Terminal Enhancement Projects - San Diego</b>				
215	Freeway Access Project Environmental Review and Entitlement	\$	2,000,000	200 Series
New	Study Parking Structure in Vicinity of Main St - Evans to 28th	\$	700,000	MEAC
New	Reconstruct 32nd St - Harbor Drive to I-5	\$	228,000	MEAC
<b>Subtotal</b>		\$	25,697,000	
 <b>5-Year CDP Contingency</b>		\$	<u>143,000</u>	
 <b>Total Plus Contingency</b>		\$	<u>25,840,000</u>	

\* 25% of total estimated project cost to be used as grant match

**DISCUSSION OF POSSIBLE LEGISLATION OF INTEREST TO THE SAN DIEGO UNIFIED PORT DISTRICT, STATUS REPORT AND DIRECTION TO STAFF IF ANY**

Agenda Item 31. Assistant Vice President of Communications & Governmental Affairs Irene McCormack addressed the Board with a staff report regarding possible legislation of interest. (A copy of the presentation and staff report is on file in the Office of the District Clerk.) To correct the wording included in the staff report, that had been submitted for the item dated June 8, 2010, Ms. McCormack stated for the record that the Board had taken a position of neutrality and to further seek amendments thereto, regarding Senate Bill (SB) 1039 at their meeting on May 4, 2010.

Ms. McCormack reviewed Senate Bill 972, Indemnity: Design Professionals, and requested the Board's consideration to oppose the bill.

Commissioner discussion ensued. Commissioner Smith expressed his concern regarding the intent of the bill and stated he was in support of the staff recommendation to oppose SB 972.

On a motion from Commissioner Smith, seconded by Commissioner Padilla, the Board voted to take a position of opposition to SB 972, Indemnity: Design Professionals, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Ms. McCormack addressed the Board with the status of SB 1039. She stated that staff recommended that any amendments should be communicated to Senator Denise Moreno Ducheny for her consideration by June 21, 2010. Ms. McCormack stated that Commissioner Burdick had drafted a proposed amendment, copies of which were

available for members of the public from the District Clerk. She explained that the Senator was monitoring the work of the Maritime Enhancement Advisory Committee. The Senator was seeking a mechanism that would help move forward the process for funding any projects that would help alleviate the impacts of marine terminal operations as identified by the Maritime Enhancement Advisory Committee and within the cities where marine terminals are located. Ms. McCormack explained that in addition to the District maintaining a position of neutrality while seeking amendments to SB 1039, if such a project funding process was found to work, staff further recommended submitting a clause that suggests taking the necessary efforts to have the proposed legislation pulled from consideration permanently. Ms. McCormack stated that staff would continue to work closely with Chairman Valderrama and Senator Ducheny's staff before the June 30, 2010 hearing.

Commissioner discussion ensued. Commissioner Burdick reiterated her severe concerns with the legislation and explained that she had submitted, for the Board's consideration, an amendment to SB 1039. She recommended directing staff and the District's legislative consultants to present the amendment to Senator Ducheny. She explained that it was her opinion that the bill, as submitted, and, if adopted, could be interpreted in such a way as to limit the Board's ability to mitigate the off-tidelands impacts of non-maritime related industry. She expressed doubt that the Senator would adopt the District's recommended amendment or consider withdrawing the bill without a guarantee of annual funds earmarked to address the specific impacts of maritime operations on the cities where maritime operations reside. She concurred with the California State Lands Commission finding that the proposed legislation that would set an earmark of funds for a specific use was unconstitutional and a violation of the Tideland's Trust. She explained that, in light of the revision she put forth and out of

respect for the Senator, she would maintain her position of neutrality and supported staff's suggestion to continue their efforts to have the bill pulled permanently.

Commissioner Valderrama requested clarification from Commissioner Burdick regarding her statement that the legislation was unconstitutional.

Commissioner Burdick clarified her position and explained that the State Lands Commission addressed the original version of SB 1039 in the form of a letter, which the District received in March 2010. (A copy of the letter is on file in the Office of the District Clerk.) The Commission stated that the bill, which would earmark funds for off-tidelands mitigation would be considered unconstitutional not because it proposed to earmark funds, but because it would legislatively limit the Board of Port Commissioners' discretion to consider off-tidelands mitigation projects in balance with the Board members other public trust obligations. Commissioner Burdick stated that, in essence, the State Lands Commission said that setting aside an earmark through legislative action is unconstitutional and in violation of the Public Trust Doctrine. She cautioned that even though Senator Ducheny has moved away from the language put forth in the original legislation, it was the Commissioner's opinion that the Senator was attempting to coerce the Board into adopting a policy which would, in essence, earmark funds for off-tidelands mitigation projects within those cities impacted by the marine terminal operations and limit the Board's discretion.

Commissioner Cushman left the dais at 3:11 p.m.

Commissioner Valderrama sought counsel from Port Attorney Duane Bennett regarding the matter. Mr. Bennett stated that the language of the original legislation was problematic because it sought to constrain the Board's discretion. There were concerns related to the following: Port Tidelands Trust, concepts within the California

Constitution, and common law doctrines. He explained that until the final language of the bill was presented for consideration it could be determined whether the bill was legal or not. He cautioned that to the extent that there is legislation put forth that constrains the Board's discretion in a manner that is inconsistent with the charge of the Port District; such legislation would pose a problem and create legal perils for the Board and the legislation enabling the action. He offered his opinion that the amendments suggested by Commissioner Burdick appeared to flow right in line with the public trust doctrine and the Port Act as he understands them. He concurred that the current version of the legislation and Commissioner Burdick's amendments are a reflection of what the Port Act already allows the Board to do. He further explained that the State Legislature may amend the Port Act; however, the changes would need to be consistent with the overall governing body, otherwise the whole doctrine would fall. He additionally explained that those changes must be consistent with the State Constitution mandates and within the charge of the Board of Port Commissioners.

Commissioner Bixler concurred with Commissioner Burdick's core issue of concern that earmarks such as the ones proposed, if carried forward, significantly reduce an agency's flexibility to balance the District's lawfully delegated authority to meet the needs of the San Diego Unified Port District, the people it serves and the other agencies that it serves. He cautioned that legislation, such as the piece proposed, could trigger similar compensation requests in the future, and could challenge the foundation of a win-win style of decision making that all of the District's stakeholders have benefited from.

Commissioner Padilla concurred with the Commissioner concerns previously stated, and concurred with the request to direct the District's legislative consultants to submit the amended language proposed by Commissioner Burdick. Commissioner

June 8, 2010

**DRAFT**

**Attachment D-5**  
Attachment to Agenda Sheet No. 4

Padilla requested that the Chairman consider directing staff to form a work group and develop a standing legislative program with a standing set of legislative principles for the District.

Commissioner Smith reiterated his concerns with the bill and the notion of putting fences around funds. He also cautioned that legislation, such as the piece proposed, may be precedent setting and could drive wedges between individual cities to address firstly the unique needs of their constituents. He commended Chairman Valderrama for the work that he and the Maritime Enhancement Advisory Committee have done to address Senator Ducheny's concerns. While he was hopeful that the legislation would be withdrawn, he expressed doubt in such an outcome.

Commissioner Burdick made a motion that the Board adopt the proposed revisions, which included a change in the text substituting "District" for "Port Tidelands" where referenced. She continued her motion requesting that the Board maintain their position of neutrality regarding the SB 1039, and direct staff and lobbyists to work diligently to have the bill pulled permanently. Commissioner Bixler seconded the motion.

Chairman Valderrama requested confirmation from Port Attorney Duane Bennett that the revisions as submitted by Commissioner Burdick were acceptable.

Commissioner Cushman requested Chairman Valderrama state his position on the matter.

Chairman Valderrama stated that he had no concern with the proposed language submitted by Commissioner Burdick. He provided an update on recent conversations with Senator Ducheny. He explained that even with the projects put forth from the Maritime Enhancement Committee, which had been included the proposed Capital Development Program and the Board would consider funding, the Senator indicated

June 8, 2010

**DRAFT**

**Attachment D-6**  
Attachment to Agenda Sheet No. 4

that she would not withdraw SB 1039. He stated that the Senator's staff has reiterated that she is seeking some certainty for funding in subsequent years. He explained that following the vote, he would form an ad hoc committee among the Commissioners to address the request for developing some sort of funding certainty in the future. He concluded his report that the Senator indicated that if some funding certainty commitment was put forward she would pull SB 1039.

On a motion by Commissioner Burdick, seconded by Commissioner Bixler, the Board submitted a proposed revision to SB 1039, maintained their position of neutrality regarding SB 1039, and directed staff to work with the District's contracted state lobbyists to actively seek the permanent withdrawal of SB 1039 from consideration, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.