

Coalition For A Safe Environment

P.O. Box 1918, Wilmington, California 90748
wilmingtoncoalition @ prodigy.net 310-834-1128

May 12, 2009

Honorable Mayor Foster &
Members Long Beach City Council
City of Long Beach
333 West Ocean Blvd., 14th Floor
Long Beach, CA 90802

Re: Middle Harbor Redevelopment Project
Final Environmental Impact Report (FEIR)/
Final Environmental Impact Statement (FEIS) &
Application Summary Report
SCH No. 2004091010

Su: Appeal Request To Deny Port of Long Beach Approval of Middle Harbor Redevelopment
Project and Certification of the Final EIR/EIS & Application Summary Report

The Coalition For A Safe Environment (CFASE) and the Long Beach Coalition For A Safe Environment (LBCFASE) submits our Appeal request to the City of Long Beach City Council to rescind, void and deny the Port of Long Beach Board of Harbor Commissioners (POLB BOHC) approval and certification of the Middle Harbor Redevelopment Project and Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS) & Application Summary Report.

1. Introduction

On Monday April 13, 2009 at the regularly scheduled Port of Long Beach Board of Harbor Commissioners meeting the Board of Harbor Commissioners voted unanimously to approve Port of Long Beach staff recommendations and a resolution for Approval of the Middle Harbor Redevelopment Project and Certification of the Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS).

The Coalition For A Safe Environment (CFASE) was represented at the Port of Long Beach Board of Harbor Commissioners Public Meeting by Jesse N. Marquez, Executive Director community resident members Juan Garibay and Sofia Carrillo and the Long Beach Coalition For A Safe Environment (LBCFASE) was represented by Gabrielle Weeks, Executive Director. Jesse N. Marquez, Gabrielle Weeks and Juan Garibay provided verbal comment during the public comment period opposing the Approval of the Middle Harbor Redevelopment Project and Certification of the Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS). Written public comments were additionally submitted by Jesse N. Marquez and Juan Garibay.

In both written public comment and in verbal comment provided during the public comment period CFASE and LBCFASE identified numerous technical and legal California Environmental Quality Act (CEQA) and National Environmental Protection Agency (NEPA), including but not limited to: the Federal Clean Air Act, Clean Water Act, Executive Order 12898, Council on Environmental Quality (CEQ) *Guidance for Environmental Justice Under NEPA* (CEQ, 1997), AB 32 Global Warming Act, Resource, Conservation & Recovery Act (RCRA), U.S. Civil Rights Act, the California Health and Safety Code deficiencies, errors, omissions and facts.

The Coalition For A Safe Environment and the Long Beach Coalition For A Safe Environment have additionally signed-on with other non-profit public interest organizations in the submission of common interests concerns, recommendations, requests and jointly written public comments during the Draft EIR/Draft EIS and Final EIR/Final EIS.

The Coalition For A Safe Environment and the Long Beach Coalition For A Safe Environment are non-profit Environmental Justice public policy organization involved in Ports, Goods Movement, Transportation, Energy and Petroleum Industry issues. CFASE is headquartered in Wilmington a community of the City of Los Angeles which borders the Port of Long Beach and the City of Long Beach. LBCFASE is headquartered in the City of Long Beach. CFASE has members in over 20 south Los Angeles County, California cities including the City of Long Beach.

2. Petition For Appeal Of A Decision By The Board Of Harbor Commissioners for Approval of the Middle Harbor Redevelopment Project and Certification of the Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS) & Application Summary Report

The Coalition For A Safe Environment and the Long Beach Coalition For A Safe Environment respectfully files this petition on behalf of its members, organization affiliations and the public to Appeal a decision by the City of Long Beach Harbor Department, Port of Long Beach Board of Harbor Commissioners for Approval of the Middle Harbor Redevelopment Project and Certification of the Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS) and Application Summary Report.

CFASE/LBCFASE claim that its members, organization affiliations and the public's life, health, welfare, safety, public mobility, public transportation infrastructure, economic resources, future sustainability, quality of life, environment, wildlife and wildlife habitats will be seriously, negatively and irreversibly impacted by the Middle Harbor Redevelopment Project.

CFASE/LBCFASE further requests that the Mayor and Long Beach City Council to grant the Appeal, to set aside the environmental determination, to set aside project and report approvals, to remand back to the Board of Harbor Commissioners, to correct all deficiencies, errors, omissions, incorrect facts, comply with all CEQA and NEPA and/or deny project approval in its entirety indefinitely.

CFASE/LBCFASE further requests the Long Beach City Council to reject the Middle Harbor Redevelopment Project and Certification of the Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS) and Application Summary Report because the project is not in the public's best interests, not a prudent investment of public's funds, is unacceptable because they fail to meet evaluation factors approval criteria, fails to adequately justify its purpose, fails to invest in 21st century technology, fails to eliminate where feasible all negative impacts, fails to mitigate negative impacts where feasible to less than significant and fails to include all reasonable and available feasible mitigation measures.

CFASE further requests a stay of the effect of: 1) the environmental impact report/environmental impact statement determination; 2) any project approval made pursuant to the environmental determination; 3) any application report summary determination made pursuant to the environmental determination; and 4) any notice of final determination; until the city council renders a decision on the appeal.

CFASE has previously described the legal failings of the Letter of Appeal, DEIR/DEIS, FEIR/FEIS and in our written submitted comments that are listed and included as attachments to this Appeal Petition and in verbal public comments made at public meetings sponsored by the Port of Long Beach.

3. Coalition For A Safe Environment (CFASE) & Long Beach Coalition For A Safe Environment (LBCFASE) History of Involvement

The Long Beach Coalition For A Safe Environment (LBCFASE) is an independent City of Long Beach sister affiliation of the Coalition For A Safe Environment (CFASE).

The CFASE's first involvement in this Appeal process began with CFASE's attendance at the Port of Long Beach Middle Harbor Redevelopment Project NOP/NOI Public Meeting, where CFASE provided verbal public comment regarding recommendations for inclusion in the Draft Environmental Impact Report (DEIR)/Draft Environmental Impact Statement (DEIS).

CFASE's second involvement included attendance at the Port of Long Beach Middle Harbor Redevelopment Project Draft Environmental Impact Report (DEIR)/Draft Environmental Impact Statement (DEIS) Public Meeting held on June 11, 2008, where CFASE provided verbal public comment and submitted written public comments regarding deficiencies, errors, omissions, information facts in the Draft Environmental Impact Report (DEIR)/Draft Environmental Impact Statement (DEIS).

CFASE's third involvement included attendance at the Port of Long Beach Middle Harbor Redevelopment Project Draft Environmental Impact Report (DEIR)/Draft Environmental Impact Statement (DEIS) Public Meeting held on August 6, 2008, where CFASE provided verbal public comment and submitted written public comments regarding deficiencies, errors, omissions, information facts in the Draft Environmental Impact Report (DEIR)/Draft Environmental Impact Statement (DEIS).

CFASE's fourth involvement included attendance at the Port of Long Beach Middle Harbor Redevelopment Project Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS) Public Meeting held on April 13, 2009, where CFASE provided verbal public comment and submitted written public comments regarding deficiencies, errors, omissions, information facts in the Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS).

LBCFASE first involvement included attendance at the Port of Long Beach Middle Harbor Redevelopment Project Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS) Public Meeting held on April 13, 2009, where LBCFASE provided verbal public comment and submitted written co-signed public comments with CFASE regarding deficiencies, errors, omissions, information facts in the Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS).

4. The Following Information, Outlined Points, Concerns, References, Examples, Issues, Recommendations And Requests Describe The Inadequacies Of The FEIR/FEIS and Decision Making Process:

Ground # 1. Board of Harbor Commissioners Failure To Perform Due Diligence

The Coalition For A Safe Environment and Long Beach Coalition For A Safe Environment wishes to state that the Board of Harbor Commissioners have a fiduciary responsibility involving trust, good faith, special confidence and obligations in the performance of due diligence in their capacity as a Commissioner representing the public's best interests and in upholding the laws of the State of California, CEQA and NEPA.

CFASE and LBCFASE allege and claim that the Board of Harbor Commissioners failed in their fiduciary responsibility to perform due diligence in making their decision, approving the resolution, determining legal compliance, seeking expert & legal opinion, protecting the public's interests and upholding applicable California and federal laws.

CFASE and LBCFASE further claim that the Board of Harbor Commissioners failed as a commission and individual commissioners to allocate sufficient time and resources to investigate, research, question, consider, request information, conduct additional studies, study project alternatives, mitigate project impacts, compare information and allegations made by the public acting as individuals, City of Long Beach residents, impacted City of Los Angeles communities of Wilmington and San Pedro and City of Carson neighboring residents and non-profit public interests organizations opposing the City of Long Beach Harbor Department, Port of Long Beach Board of Harbor Commissioners Approval of the Middle Harbor Redevelopment Project and Certification of the Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS).

Ground # 2. POLB Failure To Allow An Adequate Public Comment Period & Public Participation

CFASE would first like to comment on the POLB's failure to allow adequate public participation by limiting the public comment period to 10 days. It is impossible to review a more than 1500 page Final EIR/EIS and write our Environmental Justice Organization's concerns on all of the POLB's determinations, comments, responses and proposed mitigation.

The POLB sponsored White Paper on Environmental Justice prepared by the consulting firm Jones & Stokes identifies and recommends numerous recommendations that the POLB refused to adopt and incorporate which addressed and recommended increased public participation.

CFASE and members of the public have regularly requested that there be a minimum 90 day public comment period for all Environmental Impact Report documents and POLB has refused to adopt this reasonable public request.

The POLB is under additional obligation when historically it has been asked by the public to provide additional and more specific advance public notification of public hearings and meetings when POLB proposed projects may have significant environmental, life threatening, public health, public safety and economic impacts and when they are multiple other known projects undergoing the same or similar public process. Numerous members of the public and non-profit organizations have requested additional public comment time, public information and proposed reasonable means of public notification and information distribution via newspapers articles, distribution of brochures, participation in community events and attendance at multiple public organization meetings.

The POLB has in the recent past been requested by the Long Beach City Council to address similar deficiencies in its CEQA documentation ie. SES/Mitsubishi LNG Proposal and the Pier J Expansion Project. In both instances the city mayor and city council did not agree with the POLB Board of Harbor Commissioners and in both instances the POLB decision was rebuffed.

The POLB had the option to also notify the Long Beach City Council of its decisions and to seek their opinion and/or approval to provide additional public comment time, yet failed to exercise this option.

Ground # 3. POLB Reliance On Outdated Port Economic Forecasts

The POLB reliance on an outdated Port economic forecasts and its failure to accept public comments regarding decreasing future cargo volumes has resulted in its failure to adequately justify the investment of public funds in the Middle Harbor Redevelopment Project. Not only are 2007 and 2008 low growth rate years, so is the current 2009 year and projections for 2010. There is no recent study that discloses any significant future growth projections for the Port of Long Beach. The POLB has no proof in the form of letters of commitment, purchase orders or company projections from any of its tenants to validate POLB significant future growth.

The FEIR/FEIS briefly mentions port growth, discusses employment and employment data, but provides no current economic study or assessment that proves that the Port is experiencing significant growth, will create employment or that there is a national or state crisis justifying the need for the expansion of this terminal.

The Port of Long Beach provided no current information that any of the current Pier C, D and F tenant terminal operators are experiencing substantial growth or has contracts that validate future significant growth or forecasts mentioned in the DEIR/DEIS. Most information provided

was for both the Port of Los Angeles and the Port of Long Beach. We would like to see current and separate Port of Long Beach information, studies and data.

It is a fact that the Port of Long Beach percentage of growth in 2008 was the lowest in the past 20 years and a review of 2009 TEU 1st quarter container data shows that it is lower than in 2008. Based on current information there is no need for terminal expansion, only port facility modernization and cargo handling efficiency.

Discussion and information of cargo capacity and backland capacity failed to discuss and consider and include the following:

- a. Increased capacity throughput, transportation and delivery if a new IT real time container and cargo ID Tracking Program System was purchased and implemented.
- b. Increased capacity throughput, transportation and delivery if containers and cargo were dropped directly from ship to train, instead of being relocated and staged several times.
- c. Increased capacity throughput, transportation and delivery if there was no required intermodal transfer.
- d. Increased capacity throughput, transportation and delivery if a new high speed Electric MagLev Train was used and it was not necessary to wait for a train of 300 cars to be assembled. A MagLev Train System can send one TEU or multiple TEU's at a time.

CFASE requested a new study be completed to include these recommendations, assumptions and increased capacity outputs.

The FEIR/FEIS failed to provide any substantial information, study or contractor employee registry that proves that City of Long Beach or Port of Long Beach bordering Harbor communities of Wilmington, Carson and San Pedro residents who will be the most negatively impacted by the Middle Harbor Redevelopment Project will be the primary employment and economic benefactors of this project. Board of Harbor Commissioner decision making must be primarily based on City of Long Beach benefits, Port of Long Beach Harbor Community benefits and not regional benefits. The Board of Harbor Commissioners is not composed of regional public representation.

Ground # 5. POLB Is Obfuscating Its Responsibility In Neglecting To Include Mitigation Requirements In Its Lease Agreements With Its Tenants

The POLB is obfuscating its responsibility in neglecting to include mitigation requirements in its lease agreements with its tenants to prevent negative environmental, life threatening, public health, public safety, biological habitat and socio-economic impacts from all of the Ports off-port property nexus activities, both locally and regionally.

The POLB has failed to identify or recommend new lease terms and conditions that the Long Beach Board of Harbor Commissioners should seriously consider and approve. POLB failed to provide the public a copy of the proposed tenant lease terms for review concurrent with the FEIR/FEIS process. There is no assurance that the POLB will honor verbal discussions and good intentions. Future conflicts and legal lease term disputes will occur if new lease terms and proposed mitigation were never identified during the CEQA/NEPA process.

The failure of the POLB to include a CEQA and NEPA off-port property nexus analysis has resulted in the Board of Harbor Commissioners not knowing that there are numerous and significant off-port property nexus environmental and public impacts.

The POLB has failed to study off-port property nexus tenant activities such as offsite chassis assembly & storage yards, offsite container & cargo storage yards & inspection facilities, fumigation facilities, offsite truck staging, local & regional public transportation congestion, parking and storage areas, railroad & rail yard activities, transportation infrastructure impacts, loss of wetlands, loss of community alternative land-use development opportunities. The POLB has made no assessment of the categories of off-port property nexus tenant business activities. The POLB has failed to conduct any CEQA or NEPA off-port property nexus analysis that has identified these issues and impacts as a problem even though CFASE has requested such a study and mitigation.

The POLB is wrong in its statement that existing federal, state and local environmental and land use laws regulate and control safe operation and storage of containers. There is no known law, rule, regulation or requirement for the decontamination and sanitization of containers because the POLB has failed to conduct any CEQA or NEPA analysis that has identified this as a problem even though CFASE has requested such a study and mitigation.

As an example, Port containers have not been decontaminated or sanitized and are having significant environmental, public health, public safety, biological habitat and socio-economic impacts that are require to have a CEQA and NEPA analysis and be mitigated. The West Nile Virus in the West Coast is an example of vector bourn crisis that probably originated from a port container. In 2007/2008 a Wilmington child was hospitalized at the Long Beach Memorial Hospital for months with West Nile Virus. The POLB has made no assessment of the number of containers that are stored off-port property and never returned to their place of origin.

Ground # 6. POLB Claim That It Is Not Inappropriate To Perform The CFASE Requested Public Health Survey, Establish a Public Health Baseline, Health Impact Assessment & That Health Risk Assessments Are All That Is Needed Is Not True

POLB claim that it is not inappropriate to perform the CFASE requested Public Health Survey and that Health Risk Assessments (HRA) are all that is needed is not true. Health Risk Assessments provide a limited amount of public health information and are significantly not accurate. They absolutely are not precise. A HRA only provides information on "Cancer Risk" and "Non-Cancer Risks" which does not provide any specific information as to what types of cancer and what types of non-cancer health problems. Dr. John G. Miller, MD has identified 31 public health problems associated with air pollution only. HRA's information is calculated based on computer model developed using statewide health data. No local public health data of the City of Long Beach residents & workers, POLB's surrounding bordering communities nor transportation corridor communities is included in the model.

CFASE would also like to request that a Health Impact Assessment (HIA) be conducted which is another excellent type of public health study that would meet our cumulative public health impacts assessment and information requirements. CFASE would additionally like to request that the POLB allocate \$ 250,000 to conduct a Middle Redevelopment Harbor Project HIA and a port wide HIA.

HRA's provide information only on potential cancer deaths and are based primarily on exposure to diesel air pollution. They do not tell you how many people died of cancer or will get cancer due to long term exposure to VOC's from diesel fuel or other petroleum fuels. Diesel truck drivers, fuel station attendants, locomotive engine operators, engineers, mechanics and fence-line residents who die or get leukemia, lymphoma or myeloma are not counted, assessed or even mentioned in a HRA. People who died of an acute asthma attack or COPD due to the increased or cumulative exposure to diesel fuel emissions are not counted. HRA's do not tell you how many people have asthma, bronchitis, sinusitis, allergies etc..

A Public Health Survey would identify the number of all public health impacted residents and workers, the types of public health problems, the distribution of health problems, the seriousness of the health problem and the socio-economic impact. An accurate Public Health Baseline could be established by which an accurate Health Risk Assessment could be performed. As of this time the POLB nor any governmental regulatory or public health agency can tell you this information as important as it is.

Governmental agencies have failed to provide adequate protection of public health by intentionally avoiding additional public health studies. The public is aware of this fact and that is why the public and POLB impacted communities have the right to request that POLB conduct additional health studies. It is the railroad industry, petroleum industry, their contractors and subcontractors that have lobbied against all and any additional public health studies. It is also a historical fact that POLB Board of Harbor Commissioners have never supported any new proposed public health studies or legislation that would involve the Ports and Goods Movement Industry.

Ground # 7. The POLB Adopted 10 In A Million Cancer Risk Threshold Is Not Acceptable To The Public

The 10 in a million cancer risk threshold adopted by the POLB, even if consistent with the guidelines of OEHHA, ARB and SCAQMD are not acceptable to the public. HRA's are absolutely not precise and the threshold established is just an adopted best guess. The public did not vote to approve this POLB threshold nor did residents volunteer to die so that the POLB, railroad industry and big box retailers like WalMart can maximize its profits. The POLB has the authority to adopt a lower risk threshold that provides maximum public, visitor and worker protection. CFASE requests that the POLB identify any Long Beach resident or member of the public who is willing to die for the POLB, the railroad industry, its tenants or any big box retailer.

Governmental regulatory agencies have failed to provide adequate protection of public health by intentionally negotiating a threshold acceptable to the railroad industry and petroleum industry. The public is aware of this fact and that is why the public and POLB impacted communities have the right to request that POLB establish a standard that results in no public deaths or significant public health impacts. It is the railroad industry, petroleum industry, their contractors and subcontractors that have lobbied against a lower risk threshold.

Ground # 8. Failure To Meet Clean Air Action Plan Goals & Adopt San Pedro Bay Standards

The FEIR/FEIS references the Clean Air Action Plan (CAAP) and San Pedro Bay Standards but fails to acknowledge that the Port is approximately one year behind schedule in adopting any standard and no new date for adoption or release has been announced. The FEIR/FEIS fails to mention that the CAAP is only a five year plan that will expire in 2011.

The Port has released no draft of the proposed San Pedro Bay Standards for public review. Without these standards it is impossible to determine if the Middle Harbor Redevelopment Project complies with the CAAP or San Pedro Bay Standards.

The CAAP air quality analysis includes numerous unsupported assumptions such as 33% of OGV's would be cold ironed by 2010 which is now impossible to achieve, 100% of OGV's calling at the Port would be using .2% Marine Gas Oil in auxiliary engines which is not occurring and 100% participation in the vessel speed reduction program which is not occurring.

Ground # 9. NEPA Project Purpose & Needs And CEQA Project Objectives To Modernize Existing Primary Port Facilities, Provide Efficient Terminal Traffic Flow And Cargo Handling Are Not Adequate

The FEIR/FEIS states that one of the project purposes is to increase and optimize the cargo handling efficiency. The definition of efficiency includes the ability to accomplish a job or task in the minimum expenditure of time, effort, cost and energy.

- a. The proposed new Pier F Intermodal Railyard while on-dock is not adjacent to the ships where they are docked, where containers and cargo can be immediately dropped from ship to rail car, containers and cargo must be picked-up, staged, sorted and later transported to the rail for intermediate or final destination. This is not efficient does not decrease time, effort, cost or energy.
- b. There is no new efficient technology being used to unload containers and cargo.
- c. There is no new efficient technology being used to transport containers and cargo.
- d. There is no new efficient technology being used to identify containers and cargo for sorting and transport to their intermediate or final destination.
- e. The information provided shows that only three large container ships can be docked at one time, which appears to be less dock able ships than the existing terminals.

The FEIR/FEIS states that one of the project purposes is to increase and optimize the infrastructure capacity of the Port:

- a. The proposed project infrastructure uses the same outdated design and layout of all existing terminals at the Port.
- b. The proposed project infrastructure does not use modern and efficient adjacent shore-side container and cargo drop-to-rail technology.
- c. The proposed project infrastructure does not use the best unloading technology. The most efficient infrastructure design would be to unload ships from both sides at one time. This would require a U-Shape or Horse-Shoe dock slip design. They could also be slightly angles to provide minimum a land foot print, maximum usage and rapid access. We estimate that 4-5 large capacity container ships could dock at one time using this configuration. There are companies that have proposed this design concept which have been ignored.

The FEIR/FEIS states that one of the project purposes is to increase and optimize the improving marine terminal operations efficiency:

- a. No IT Container Tracking Software/Hardware Technology is proposed to reduce identification, sorting, staging, cue and delivery time. Port could require tenants to use a bar code, transmitter, GPS or other technologies to quickly identify, sort, minimize cue time and transport containers and cargo to destination.

- b. No project infrastructure proposal to use modern and efficient adjacent shore-side container and cargo drop-to-rail transportation system technology.
- c. No proposal to incorporate the American MagLev Technology, Inc. MagLev Train for on-dock container and cargo transportation to the Union Pacific ICTF Terminal or Alameda Corridor. EMMI Logistics Solutions and American MagLev Technology have designed a state-of-the-art goods movement transportation system that can transport up to 8,000 containers a day and more than 3-4 times the speed of a traditional diesel locomotives. This technology does not require having to accumulate 250-300 train cars before it can travel to its destinations.
- d. No proposal design to incorporate a U-Shape or Horse-Shoe dock slip design.

The FEIR/FEIS states that one of the project purposes is to the upgrading utility infrastructure to support the implementation of controls necessary to reduce pollution & conserve energy:

- a. The upgrading of utility infrastructure failed to include alternative Renewable Energy Sources such as Solar Energy and Wind Energy as mitigation.
- a. POLB limits its solar mitigation to only LEED certified buildings and not the expansive land areas that can also have solar energy panels installed. The Port needs to utilize its vast open space to incorporate Solar Panel Array Networks which can be built on all building roof tops, car port canopies and on high poles in container yards. Solar Energy Panels can also be built above or along the MagLev Train Rail Network to supplement electricity needs.
- b. Vertical Axis Wind Turbines can be built along the port perimeters, offshore water breaker, building roof tops, canopies and poles. There are also two new Wind Energy companies we recommend. We recommend the Mariah Power Windspire and Quiet Revolution, LTD. Vertical Wind Turbine technology designs. They do not use traditional propeller blade technologies. The Windspire is a straight-bladed Darrieus rotor design that is extremely safe for birds and the Quiterevolution QR helical twisted design can have a wire-like air flow through cage placed around it.

Ground # 10. Failure To Sponsor Alameda Corridor Increase Usage Requirement Study To Prevent Local, Regional & Statewide Diesel Truck Impacts

POLB conclusion that an increased Alameda Corridor Increase Usage Requirement Study would not provide information that could be used to increase the Project use of the Alameda Corridor is not true. At this time the POLB does not have a report or study that provides accurate information that discloses the number of trucks which are traveling short distances, medium distances or long distance, the age of trucks, the type or amount of cargo and containers nor have they identified all local or regional destinations the Port and Tenants service in order to establish a maximum efficiency and usage of the Alameda Corridor.

There is no information in the FEIR/FEIS that states that all project intermodal cargo would use the Alameda Corridor and therefore not travel on public freeways, highways, streets, roads or bridges. The FEIR/FEIS failed to include as assessment of local, regional and statewide diesel truck impacts and appropriate mitigation.

The FEIR/FEIS failed to include as mitigation the Port of Long Beach mandate that the Middle Harbor Terminal tenants maximize the use the Alameda Corridor in lieu of diesel fuel air polluting trains and trucks.

Data in the FEIR/FEIS discloses that 68.4% of containers will be delivered by diesel fuel polluting trucks not trains. This is unacceptable when it is a fact that approximately 60% of containers are leaving California for out-of-state delivery. There is inadequate or no mitigation to address the significant impacts of the Middle Harbor Redevelopment Project trucks on local, regional and statewide transportation corridor communities and distribution centers.

There is also a conflict of data. Table 1.6-4 data conflicts with data in the text. The text states that approximately 2,523,200 TEU's will move by truck which leaves 796,800 leaving by train. In the table, if you multiply the average daily truck trips of 10,112 by 365 days you get 3,690,880, which is 1,167,680 more truck trips which are not being mitigated.

Ground # 11. POLB's Determination That Port Truck Traffic On Freeways Is Not Regarded As An Environmental Impact For Purposes Of NEPA Or CEQA Analysis Is Not Correct

POLB's determination that Port truck traffic on freeways is not regarded as an environmental impact for purposes of NEPA or CEQA analysis and does not need to be mitigated via the establishment of an Off-Port Property Transportation Infrastructure Mitigation Trust Fund is not correct. Port diesel trucks do not create equal impacts as other public or commercial vehicles.

Port diesel trucks weight, number of truck trips, frequency of travel over the same routes, infrastructure damage, number of truck involved accidents, truck breakdowns, air, land and water pollution on public freeways, highways, streets and bridges with cargo and containers has been increasing every year. The standard container length used to be 20', it is now 40', with 53' containers commonly being used. The average weight load has also increased with container size. The cost of public vehicle insurance has increased due to increasing truck accidents. The cost of public health care due to truck accidents has also increased. The degradation, maintenance, restoration or replacement of public infrastructure costs due to increasing Port diesel truck usage has also been increasing exponentially. See # 11.

The vehicle fuel tax does not compensate for the degradation, maintenance, restoration or replacement of public infrastructure caused by Port truck traffic. The POLB has failed to consider or adequately assess the environmental, public health, public safety, biological, socio-economic impacts and appropriate mitigation. Reference to other regional or statewide efforts does not release the POLB of its CEQA and NEPA analysis and mitigation requirements.

Ground # 12. Failure to Adequately Address, Assess & Mitigate Numerous Local, Regional And Statewide Truck Impacts

The FEIR/FEIS fails to address, assess and mitigate numerous local, regional and statewide truck impacts. The Port and its Tenants have allowed numerous unacceptable conditions to occur without mitigation:

- a. Increasing truck traffic congestion on public freeways, highways, streets and bridges.
- b. Increasing truck traffic accidents.
- c. Increasing public car insurance rates due to truck accidents.
- d. Increasing public health care costs due to truck caused accidents.
- e. Increasing truck breakdowns on freeways, highways, streets.
- f. Increasing truck breakdowns on public bridges.
- g. Increasing truck traffic running of street lights.

- h. Increasing truck blockage of drivers views.
- i. Increasing truck traffic running over sidewalks & curves while making turns.
- j. Increasing truck traffic damage to freeways, highways, streets, bridges.
- k. Increasing truck traffic failing to stop for residents crossing the streets.
- l. Increasing illegal truck driver dumping of tires, truck parts, oil, fluids and trash.
- m. Increasing illegal truck traffic through residential areas.
- n. Increasing illegal truck driver usage of containers to transport personal items.
- o. Increasing illegal truck parking on city streets, residential areas & public parks.
- p. Increasing public costs to maintain, repair & replace transportation infrastructure.
- q. Increasing truck transportation of toxic and hazardous chemicals, substances & materials.
- r. Increasing truck transportation of public health hazards such as the West Nile Virus, bacteria, fungus, molds and other non-native species.
- s. Failure to sanitize and decontaminate trucks & containers.
- t. Truck honking at all hours of the night while stopped at train intersections.
- u. Trucks revving their engines.
- v. Failure to update and include the Port Traffic Management Plan in the FEIR/FEIS

Ground # 13. Failure To Adequately Address, Assess & Mitigate Local, Regional And Statewide Rail Impacts

The FEIR/FEIS acknowledges that the Middle Harbor Redevelopment Project will cause a significant increase in rail lines usage but fails to acknowledge, assess and mitigate all the local, regional and statewide locomotive engines diesel toxic emissions, traffic congestion, ground vibration and noise impacts.

The FEIR/FEIS fails to acknowledge, assess and mitigate train rail traffic, air emissions and noise at all transportation corridors, rail yards and distribution centers that the Middle Harbor Redevelopment Project will use. As a minimum these include the Wilmington Watson Rail Yard, Alameda Corridor, US Customs Warehouse & Trans-loading Facilities, Carson UP ICTF Terminal, BNSF Dolores rail yard, UP Vernon rail yard and BNSF East LA rail yard and Riverside and San Bernadino County rail yards and Distribution Centers.

The increased noise may not exceed the state or federal standards, however, there will be a significant public nuisance and increased public health problems from non-stop continuous noise from train braking, connecting cars, turning corners, train whistles at stop, engine startup, transmission changing, changing speeds and no large silence periods from train noise. Due to the Port adopted Pier Pass Program trains are running 24/7 and Middle Harbor Redevelopment Project will increase train rail usage. In addition, when trains block public street intersections and access to Port terminals, truck drivers begin to honk their horns.

The FEIR/FEIS failed to research other local, regional and statewide public street intersections that will be impacted by increased Middle Harbor Redevelopment Project rail traffic such as near the intersection of Anaheim Street and Alameda. Wilmington residents must wait for the train to pass in order to travel east on Anaheim to go to Long Beach.

The Port of Long Beach and USACOE provided inadequate public notification and has held no public hearings in regional or statewide cities and communities that would be impacted by the Middle Harbor Redevelopment Project.

The ICTF facility impacts not only the City of Long Beach residents but also borders the neighboring Environmental Justice community of Wilmington in the City of Los Angeles, Compton and the City of Carson.

The UP East LA and BNSF Vernon facilities also impact the bordering cities of Commerce, Bell, Maywood and Bell Gardens.

Ground # 14. POLB Claim That It Is Not Feasible Or Practical To Build An Import Car Parking Structure(s) In Order To Create a New On-Port Property Intermodal Facility Is Not True

It is not infeasible and impractical to build a permanent parking structure on Pier B. The current limited parking lot land-use is wasteful, when intermodal land space is desperately needed and a higher priority. Imported cars can be easily be driven into a parking structure or even moved to an off-port property storage area. The cost does not entirely have to be borne by Toyota or the POLB. The POLB could fund this project from its traditional profits as a Port infrastructure enhancement project and as a fee or tariff. The public supports this use of Port funds held in trust for the public.

The proposed Union Pacific Railroad ICTF and BNSF Railroad SCIG are not independent of the Middle Harbor Redevelopment Project. The Middle Harbor Redevelopment Project will in fact send thousands of trucks with cargo and containers to both facilities. The POLB has provided no information stating that it will not use the UP ICTF or BNSF SCIG. Currently every POLB container terminal utilizes the UP ICTF.

Ground # 15. POLB Failure To Establish A Port Community Advisory Committee (PCAC)

CFASE recommended that the POLB establish a Port Community Advisory Committee (PCAC) and the Ports response that a separate advisory committee is not necessary is not appropriate, justified or acceptable. CFASE's recommendation is based on discussions with our City of Long Beach members, Long Beach public health advocacy organizations, Long Beach community organizations, Long Beach environmental organizations, Long Beach homeowners associations, Long Beach faith based organizations and the Long Beach Greens. The Port of Los Angeles has had a successful Port Community Advisory Committee for over five years.

The Port of Long Beach did not hold one public meeting, hearing, publish any notice or request of interests from Long Beach residents or organizations nor establish a taskforce or committee to determine the interest and feasibility.

The POLB sponsored White Paper on Environmental Justice prepared by the consulting firm Jones & Stokes identifies and recommends the formation of a citizen's advisory committee. The POLB refused to adopt this recommendation.

Ground # 16. POLB Failure To Establish A PCAC and/or Non-Profit Community Mitigation Organization

CFASE recommended that the POLB establish a Port of Long Beach Community Advisory Committee (PCAC) and/or the creation of a new Non-Profit Community Mitigation Organization to administer public health, public safety, environmental and cumulative impacts mitigation and funds is the best method for a successful public mitigation program. Long Beach public health advocacy organizations, community organizations, environmental organizations, homeowners associations, faith based organizations and the Long Beach Greens are better qualified to administer public mitigation program funds than Port of Long Beach Board of Harbor Commissioners who have no direct or appropriate public service experience nor past history.

The Port of Long Beach did not hold one public meeting, hearing, publish any notice or request of interests from Long Beach residents or organizations nor establish a taskforce or committee to determine the interest and feasibility of a Non-Profit Mitigation Organization to administer public health, public safety, environmental and cumulative impacts mitigation.

The POLB sponsored White Paper on Environmental Justice prepared by the consulting firm Jones & Stokes identifies and recommends the formation of a citizen's advisory committee. The POLB refused to adopt this recommendation.

Ground # 17. POLB Failed To Include Public Identified Construction Projects in the Cumulative impact Assessment

The POLB has a legal CEQA and NEPA responsibility to include in the cumulative impact assessment all current and future construction projects that have been identified during the NOP/NOI and DEIR/DEIS process that the POLB omitted/or and neglected to research. POLB is not allowed to random select which projects to include or not include, especially when it has not completed any assessment on the project. Reliance on other governmental regulatory research or studies does not relinquish the responsibility of the POLB to conduct its own comprehensive independent research.

The Cumulative Impact Assessment are required to include all impacted environmental justice, minority and low income populations in its Zone of Impact, failed to include transportation corridors, failed to include all public traffic congestion impacts, failed to include all air pollution impacts and failed to include current public health and premature death statistics. As a result, the FEIR/FEIS underestimated the public health impacts, number of premature deaths, health risk assessment and appropriate and feasible mitigation needed to offset the negative, significant, long term permanent and cumulative impacts.

The FEIR/FEIS Cumulative Impact Assessment is incomplete and fails to include numerous other local and non-local construction and operation projects. Locally the assessment fails to include expansion construction projects in Wilmington such as: L.A. Harbor College, ConocoPhillips Oil Refinery, Tesoro Shell Oil Refinery, Valero Oil Refinery, new Elementary/Middle School and Carson such as: BP/ARCO Oil Refinery, BP/ARCO Hydrogen Power Plant, a new Elementary & High School and a new Retail Shopping Mall.

CFASE requests that the Port conduct a more comprehensive Cumulative Impact Assessment that does not leave out other significant projects toxic and hazardous air emissions and traffic impacts. We request that a regional community resident and organization taskforce be created to make recommendations.

Ground # 18. Proposed Mitigation Programs Are Not Adequate To Address Public & Environmental Impacts

The proposed mitigation programs although a great step forward are not adequate to address all the identified environmental impacts, public impacts and unmitigated impacts described in the FEIR/FEIS, these public comments and previous public comments.

The Port has failed to provide any medical financial assistance to the impacted families who have identified themselves at previous Port of Long Beach public hearings and meetings. The Port has failed to assess the extent of the public health problems and premature deaths it has caused. The Port has failed to provide any financial assistance to impacted families who have had family members die due to the Ports business operations.

CFASE and the public have requested that the Port of Long Beach establish a Public Health Care Mitigation Trust Fund which can provide financial assistance for immediate, short term and long term such as:

- a. Public health care & treatment.
- b. Financial assistance to pay for health care at local clinics & county hospitals.
- c. Financial assistance to pay for health insurance.
- d. Financial assistance to pay for medical equipment.
- e. Financial assistance to pay for medical supplies.
- f. Financial assistance to pay for medical prescriptions.
- g. Financial assistance for funeral expenses.
- h. Financial assistance for short & long term convalescent care.
- i. Financial assistance for rehabilitation.
- j. Financial assistance for job retraining.
- k. Financial assistance for lost income.
- l. Financial assistance for special learning disability assistance.

CFASE requested that the Port of Long Beach establish a Public Health Care Mitigation Trust Fund and charge a Public Health Care Mitigation Tariff of \$100.00 per ton bulk cargo, \$10.00 per Middle Harbor Redevelopment Project TEU for the FEIR/FEIS current baseline and \$15.00 per TEU over the FEIR/FEIS baseline to mitigate future growth.

Ground # 19. Proposed Mitigation Program Funds Are Not Adequate To Address Public & Environmental Impacts

The proposed mitigation programs funding amount although a great step forward are not adequate to address all the identified environmental impacts, public impacts and unmitigated impacts described in the FEIR/FEIS, these public comments and previous public comments.

POLB failed to conduct a comprehensive cost assessment of environmental and public nexus impacts. CFASE requests that funding be based on a per container fee or tariff and a bulk weight such as per ton, quantity unit charge or per volume charge per barrel. This would provide continuous long term funding.

Ground # 20. POLB Failed To Sponsor Any Special Meeting or Task Force Too Consider Public Mitigation Requests

The Port of Long Beach did not provide any opportunity for additional and constructive public participation in the preparation of the Final EIR/EIS because the Port never established one taskforce or committee or hold one public meeting or hearing to discuss specific public concerns in depth, public proposed mitigation, public proposed mitigation over-site, public proposed alternatives, public challenges to technical or scientific accuracy or completeness, or public proposed port modernization, optimization, efficiency or capacity. The FEIR/FEIS is strictly the Ports staff opinion and conclusions.

Ground # 21. POLB Staff's Reference to ACTA's Staff's Research & Conclusions On Electric Train Technologies Are Not Accurate

POLB staff's discussion and reference to ACTA's staff's research and conclusions regarding Electric Train Technologies is not accurate. There are several Electric Train Technologies that do not use over head wires such as Monorail Trains. POLB conducted no research to identify the various existing and new emerging technologies.

Ground # 22. POLB Exaggerated CFASE's Request For Electrification Rail

CFASE did not request that all of Southern California's railways be electrified, only from the Ports of Long Beach and Los Angeles to the downtown East Los Angeles rail yards. The POLB Staff intentionally continues to distort the facts. The cost for the short distance electrification retrofit would be reasonable and feasible. Future expansion outside Los Angeles could also be phased in. All costs would be paid by the terminal operators not the City of Long Beach or the public.

Ground # 23. POLB Reference To ACTA Use & Operating Clause Is Only Their Interpretation & Does Not Include Potential Renegotiations

POLB reference to the Alameda Corridor Use & Operating Agreement clause is just another blatant example of the railroad industry's political power and lobbying power for the political appointment of individuals to ACTA who are easily influenced to do whatever the railroad industry wants. The public's best interest was not the priority and was not taken into consideration. The railroad industry and their colleagues lobbied to give them exclusive rights in perpetuity and in today's world would never be accepted or approved by the public.

CFASE requests that an independent legal review be made of this clause and POLB initiate discussion with ACTA for the amendment of the agreement and that a public meeting be held to discuss an amendment to the agreement.

Ground # 24. POLB Discussion Of EPA Standards For Tier 3 & 4 Are Not Relevant

POLB reference to the federal EPA standards for Tier 3 and 4 locomotives has absolutely nothing to do with Alternative Electric Container Mover Systems. Tier 3 and Tier 4 locomotives do not reduce toxic air emission to non-significant as required by CEQA and NEPA. It is the railroad industry, petroleum industry, their contractors and subcontractors that have lobbied for these technologies to be used. US EPA supports 100% green, clean and non-polluting technologies. This FEIR/FEIS discussion and information is the 100% opinion and misinterpretation of Ports' staff of the true facts.

Ground # 25. POLB Conducted No Study Or Assessment That Identifies Destinations That Do Not Have Rail

POLB statement that non-intermodal cargo that must travel long distances cannot be transported by rail if there are no rail facilities in proximity to the destination is not justified. POLB conducted no study or assessment that identifies destinations that do not have rail or that can have rail built to accommodate rail service. Railroad line spurs are built all the time to accommodate new warehouse and distribution centers. CFASE has also commented on the need for a new Port and region rail master plan that will meet future modernization, capacity & velocity needs, environmental and public health protection requirements. POLB has proposed no new local ports or regional master plan planning process no supported the recommendation for a new master rail plan. The public supports the proposal for a new Port and region rail master plan that will meet future modernization, capacity & velocity needs, environmental and public health protection requirements

Ground # 26. POLB Discussion Of Atmospheric Deposition Of Pollutants At The Port Was A Limited Discussion

POLB discussion of atmospheric deposition of pollutants at the Port was a limited discussion. POLB discussion was based primarily on other out-of-state studies. POLB has conducted no research to learn about the chemical composition of truck break dust, tire rubber, engine blow-by, container paint degradation, deposition mechanisms and actual concentrations at the POLB. The POLB is required to accurately assess its aerial deposition on land and water and appropriate mitigation. The POLB does not know if its proposed mitigation will reduce aerial deposition to non-significant.

Ground # 27. The POLB Is Required By CEQA And NEPA To Include In The FEIR/FEIS A Comprehensive Assessment Of Green House Gases

The POLB is required by CEQA and NEPA to include in the FEIR/FEIS a comprehensive assessment of Green House Gases and a mitigation plan. POLB's statement that they will develop a plan is not satisfactory and does not comply with CEQA and NEPA requirements identify, assess and mitigate all Green House Gases.

The FEIR/FEIS fails to comply with the California AB32 Global Warming Act to decrease and prevent the generation of CO2 and other Port, Tenant or Contractor generated or caused Green House Gases. The FEIR/FEIS does not require all BACT's, Comprehensive Inspection & Preventive Maintenance Programs, Zero and Near Zero Emissions Technologies and Biodiesel Fuels.

As an example there are also fugitive HFC's emissions from diesel trucks and refrigerated containers (reefers). Diesel truck and reefer TRU air conditioning units have a high seal failure rate, which gets worse over time. They are being refilled numerous times during the year. The Port did not accurately estimate the amount of HFC's being leaked into the atmosphere.

Thousands of containers are in storage yards which are not evacuated and a result tens-of-thousands are leaking every day. Not only is this a global warming concern, but a resident public health concern due to the fact children and residents are breathing these toxic HFC's.

Ground # 28. POLB Fails To Acknowledge Or Study Public Noise Impacts

The POLB fails to understand that noise levels do not have to exceed state or federal standards to be a public nuisance or cause sleep or rest deprivation. The POLB has conducted no studies of residents living near the Port and Port freight transportation corridors to determine if they are having a noise impact. The POLB operating 24/7 would provide no public respite period. The POLB has failed to provide any public noise mitigation such as the free installation of sound proof glass windows and doors with an STC rating of 55 or higher.

POLB caused noise includes:

- a. Ship
- b. Train
- c. Truck
- d. Equipment
- e. Worker Vehicles
- f. Dropped Containers
- g. Port Police vehicles

Ground # 29. POLB Fails To Consider Feasible Alternative Ship Vessel Route Mitigation To Protect Whales and Other Sea Mammals

Although the POLB references USCG and IMO vessel routes and the Regulated Navigation Areas they failed to disclose the furthest distance from shore a ship could travel that could be adopted or required to protect whales and sea mammals, which then could be made into a POLB mitigation measure. The POLB statement that an increase in collisions would result from any changes is not the facts, any change in vessel routes or spacing requirements would be made public record and all vessels and shipping companies would be advised.

The POLB also fail to acknowledge that these routes were established more than 50 years ago before new GPS and other modern navigational technologies were invented and are now mandatory for use. They also failed to determine if a slower vessel speed would be of benefit. The POLB could petition and request a revision of ship vessel routes and although it may not happen overnight, it would be recognized as a legitimate and responsible mitigation measure.

Ground # 30. POLB Failed To Adopt Additional Feasible Vessel Speed Reductions

The Port of Long Beach proposes a Vessel Speed Reduction Program CAAP Measure requirement of 12 knots within 40 nm of Point Fermin. We request that it be within 100nm of Pt. Fermin for maximum reduction of air pollution, environmental and public health impacts.

We additionally request this mitigation to prevent and reduce vessel strikes of whales and other sea mammals.

Ground # 31. POLB Failed To Adopt The Use Of Zero and Near Zero Low Carbon Fuels

The DEIR/DEIS Clean Vessel Fuels CAAP Measure proposes the use of 0.2 percent or lower sulfur MGO fuel. CFASE requested that it be 0.1 percent or lower sulfur MGO fuel since this fuel is readily available now. Alternative biodiesel fuels are readily available.

Primafuel, Inc. of Long Beach recently built a 60 million gallon biodiesel manufacturing and storage facility at the North Terminal at the Port of Sacramento. Primatefuel manufactures zero-carbon and low carbon fuels.

Ground # 32. POLB Failed To Adequately Assess The Impacts Of Earthquakes, Seismicity, Tsunamis, Seiches & Recently Published USC Studies On Tsunamis

The General Geology and Stratigraphy section discusses earthquakes, seismicity, tsunamis, seiches etc. but all conclusions state that there is little to be concerned with, which is contrary to major researches who are for example predicting a major earthquake above the DEIR/DEIS's study parameters. There is no reference to the recent USC earthquake study that a major offshore earthquake could cause a trillion dollars damage to the San Pedro Bay Ports. Not even addressing with what about the local Harbor residents.

In the tsunami section it discusses possible 5' waves and 12' waves but fails to discuss the difference in impact if the 5' wave is traveling at 5mph or 100mph. A fast moving small wave can crash a ship into a dock or into a nearby fuel tanker ship very easily. It provides little information if a big one was to happen. The Port would be unprepared to deal with natural disaster.

The FEIR/FEIS discusses the oil production facilities and the VOC's, SVOC's toxic and hazardous chemicals but does not provide any assessment for fires and explosions that could be caused by earthquakes, seismicity, tsunamis, seiches. These could cause horrific impacts on the Ports cargo, infrastructure, dock workers and the public.

CFASE has no confidence in the assessment, conclusions and recommendations made by the consulting companies hired by the Port of Long Beach. We request more comprehensive studies that disclose additional worst case assessment scenario information and to include cascading and domino effect impacts.

Ground # 33. POLB Failed To Adopt White Paper Environmental Justice Recommendations & Address Significant Impacts to Environmental Justice Communities

The POLB sponsored White Paper on Environmental Justice prepared by the consulting firm Jones & Stokes identifies and recommends numerous recommendations that the POLB refused to adopt and incorporate into the Final EIR/EIS and mitigation measures. Due to the POLB's intentional 10 day limited public comment period this Environmental Justice Organization is unable to identify, list and describe each beneficial recommendation.

In September 2008, the South Coast Air Quality Management District released the MATES III Study which came to the conclusion that the Ports area experienced an approximate 17% increase in cancer risk from exposure to toxic air contaminants between 1998 and 2005, while the average population-weighted risk in other areas of the South Coast Air basin decreased by about 11%.

The MATES III and previous MATES II Study specifically identifies West Long Beach, Wilmington and San Pedro at the highest risk of cancer.

The POLB FEIR/FEIS fails to eliminate, reduce and adequately mitigate past, current and future Environmental Justice Communities exposure to unsafe toxic air contaminants, premature deaths, public health impacts, traffic congestion impacts, transportation infrastructure impacts, noise impacts, aesthetic impacts and regressive economic impacts to less than significant.

Ground # 34 POLB Failed To Adopt Mitigation To Offset Significant & Unavoidable Impacts

Significant and unavoidable negative impacts which can be feasibly and cost effectively mitigated are required by CEQA and NEPA. Unmitigated significant and unavoidable negative impacts which will cause disproportional impacts on the public, environmental justice, minority and low income communities and are a legitimate basis for denial of project approval, a permit and FEIR/FEIS certification. The FEIR/FEIS additionally fails to comply with the Title VI Civil Rights Act in protecting designated groups.

Ground # 35. POLB Failed To Adopt Mitigation To Offset The Loss Of Coastal Tidelands, San Pedro Bay and Outer Harbor Marine Fish & Aquatic Life Habitats

POLB failed to consider the establishment of a Marine Fish Hatchery to restore the fish population and aquatic life habitats that the Port has destroyed and degraded in San Pedro Bay and will continue to destroy and degrade in the future which was not addressed or mitigated. The Ports fish inventory is unacceptable because it is based after the natural fish population has been decimated.

CFASE believes that the establishment of a Marine Fish Hatchery could replenish the decreasing fish population. Various types of native fish could be raised and released into San Pedro Bay. CFASE supports the restoration of reefs and seaweed beds in the outer harbor, however, CFASE does not support the sinking of ships and dumping of junk to create new habitats. New habitats should be created as close to the original natural materials that used to exist.

CFASE requested that the Port of Long Beach establish fish hatcheries, reefs, kelp and seaweed beds in San Pedro Bay as Biological Mitigation. CFASE requests that the Port of Long Beach establish a Marine Biological Restoration Mitigation Trust Fund based on \$1.00 per Middle Harbor Redevelopment Project TEU Tariff.

Ground # 36. POLB Conclusions That MagLev Technology Is Physically Impractical And Financially Infeasible Is Not True Nor Factual

The Ports staff conclusion that MagLev Technology is both physically impractical and financially infeasible is not true nor factual. The FEIR/FEIS hides the details that one of the ZERO Emission Transport Systems being reviewed is the MagLev Technology and the technology for a port demonstration project for a marine terminal to near-dock rail facility is the MagLev Technology. The Ports staff failed to state the benefits of the MagLev Technology or prepare a current and Electric/MagLev Technology and cost-benefits assessment.

The Ports staff has failed to mention in the FEIR/FEIS that American MagLev Technology Corporation has offered to build a MagLev Train Demonstration Project for cargo and container transport at the Port of Long Beach to the ICTF at no cost to the Port of Long Beach or the public. The only impediment now is the failure of the Port of Long Beach to grant a 20' track right-of-way. Even if some parcels of land are not owned by POLB does not condemn the proposal, negotiations with land owners could easily be accomplished to get the necessary right-of-ways and approvals. Alternative routes could also be determined. A Maglev Train System can also be built above ground and use above space right-of-ways of existing freeways, highways, other transportation corridors or possibly the Los Angeles River Channel. A Port of Long Beach terminal has already volunteered to place 400 containers day on the Maglev Train System.

The Ports discussion of construction, operation and maintenance costs failed to state that the Ports staff estimates are significantly higher than sponsors of proposed Maglev projects estimated costs. The Ports discussion fails to state that all costs of construction, operation and maintenance would be paid by the terminal operators not the public. Accurate costs of construction, operation and maintenance would be determined and disclosed once a Maglev Train Demonstration Project was completed.

Building a MagLev Train in the Alameda Corridor is completely feasible. There is nothing wrong with a MagLev Train operating from the Port to the downtown rail yards. Containers and cargo would be unloaded the same way as existing containers and cargo.

The public supports investment in new green clean electric MagLev Technology over the existing Ports old outdated 19th century air polluting container and cargo transportation systems. The public supports the development of a new green, clean electric Master Rail Plan for the future.

Ground # 37. The Use Of The Clean Air Logix's –Witmar Dual Voltage Cold Ironing System Is A Viable, Feasible & Cost Effective Technology

The Clean Air Logix's –Witmar Dual Voltage Cold Ironing System is a viable, feasible and cost effective technology that can be used at the Middle Harbor Terminal until final build-out and easily transferred to other POLB terminals where significant toxic air emissions are being released. POLB also has the option to lease or rent them for shorter time periods. The Clean Air Logix's –Witmar Dual Voltage Cold Ironing System was successfully demonstrated at the Port of Los Angeles in 2008.

Ground # 38. POLB Claim That It Is Not Economically Infeasible To Use The Advanced Maritime Emissions Control System (AMECS) Is Not True

POLB claim that it is not economically infeasible to use the Advanced Maritime Emissions Control System (AMECS) is not true. The AMECS is a viable, feasible and cost effective technology that can be used at the Middle Harbor Terminal until final build-out and easily transferred to other POLB terminals where significant toxic air emissions are being released. POLB also has the option to lease or rent them for shorter time periods. The AMECS was successfully demonstrated at the Port of Long Beach in 2008.

POLB has not determined or calculated all the costs of public health care, environmental damage, damage to water resources, damage to wildlife habitats, global warming and climate change impacts. The POLB has conducted nor participated in any comprehensive public cost assessment studies of its significant public and environmental impacts. The POLB has not conducted any assessment of the number of times and quantity ships that must wait outside the breakwater. The AMECS system can be moved to other POLB terminals that do not have electric shore power. The AMECS system could also be sold to another port should the POLB ever be 100% electrified after years of successful and valuable service.

Ground # 39. The Use Of The Advanced Locomotive Emissions Control System Is A Viable, Feasible & Cost Effective Technology

The Advanced Locomotive Emissions Control System (ALECS) is a viable, feasible and cost effective technology that can be used at the Middle Harbor Terminal on-dock rail. The POLB has not conducted any assessment or study that indicates that Pier F locomotives using the ALECS is not viable. The POLB staff has only made generalizations. ALECS does not require that they be completed stationary, ALECS could be easily be modified to allow some movement and travel distance.

Ground # 40. The Use Of The Vycon Electric Regen System on RTG's Is A Viable, Feasible & Cost Effective Technology

The use of the Vycon Electric Regen System on RTG's is a viable, feasible and cost effective technology that can be used at the Middle Harbor Terminal until final build-out and easily transferred to other POLB terminals where significant toxic air emissions are being released by non-electric RTG's. POLB also has the option to lease or rent them for shorter time periods. . The Vycon Electric Regen System on RTG's was successfully demonstrated at the Port of Long Beach in 2008.

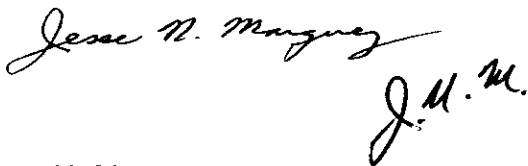
Ground # 41. The Use Of The Electric-Powered Drayage Trucks Is A Viable, Feasible & Cost Effective Technology

The POLB claim that Electric-Powered Drayage Trucks are not a proven technology is not true. The Port of Los Angeles has successfully demonstrated that Electric Drayage Trucks are feasible for short haul drayage trips and as port yard hostlers. Balqon Corporation has successfully built and demonstrated an Electric-Powered Drayage Truck. Continued support of this technology would greatly expand its distance and drayage weight capabilities. The use of Electric Drayage Trucks would have immediate and significantly local emissions reductions.

Coalition For A Safe Environment Mission Statement is - To protect, promote, preserve and restore our Mother Earth's delicate ecology, environment, natural resources and wildlife. To attain Environmental Justice in international trade marine ports, goods movement transportation corridors, petroleum and energy industry communities.

In conclusion, CFASE requests to the City of Long Beach City Council to rescind, void and deny the Port of Long Beach Board of Harbor Commissioners (POLB BOHC) approval and certification of the Middle Harbor Redevelopment Project and Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS) & Application Summary Report.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jesse N. Marquez". To the right of the main signature, there are the initials "J.N.M." also written in cursive.

Jesse N. Marquez
Executive Director

Gabrielle Weeks
Executive Director
Long Beach Coalition For A Safe Environment

Attachments:

1. CFASE Appeal Presentation Summary 5-12-09

Coalition For A Safe Environment

May 12, 2009

Long Beach City Council

Middle Harbor Redevelopment Project

Appeal Presentation Summary

1. Inadequate Health Risk Assessment & No Public Health Study

POLB claim that it is inappropriate to perform the CFASE requested Public Health Survey and that Health Risk Assessments (HRA) are all that is needed is not true. Health Risk Assessments provide a limited amount of public health information and are significantly not accurate. A HRA is not based on any Public Health Survey of Long Beach residents or bordering communities, dock workers, construction workers and truck drivers impacted by the Port of Long Beach or Port of Long Beach Freight Transportation Corridors.

HRA's provide information only on potential cancer deaths and are based primarily on exposure to diesel air pollution. They do not tell you how many people died of cancer or will get cancer due to long term exposure to VOC's from diesel fuel or other petroleum fuels. Diesel truck drivers, fuel station attendants, locomotive engine operators, engineers, mechanics and fence-line residents who die or get leukemia, lymphoma or myeloma are not counted, assessed or even mentioned in a HRA. People who died of an acute asthma attack or COPD due to the increased or cumulative exposure to diesel fuel emissions are not counted. HRA's do not tell you how many people have asthma, bronchitis, sinusitis, allergies etc..

We the public do not except the Port of Long Beach's adopted 10 in one-million Cancer Risk threshold. I ask you to name me one person who is willing to die for the Port of Long Beach, its shipping company tenants or big box retailers like Walmart.

CFASE is requesting that a Health Impact Assessment (HIA) be conducted which is another excellent type of public health study that would meet our cumulative public health impacts assessment and information requirements. The HIA would include a Public Health Survey and would establish a Public Health Baseline that could be used in all future Port of Long Beach Project EIR's. CFASE is requesting that the POLB allocate \$ 250,000 from its proposed Health Mitigation Fund to conduct a Middle Redevelopment Harbor Project HIA and a port wide HIA.

2. Inadequate Cumulative Impact Assessment & No Off-Port Property Nexus Study

The Cumulative Impact Assessment is incomplete and fails to include numerous other local and non-local construction and operation projects. The Port of Long Beach staff literally made a decision to draw the line where to stop which was probably based on their time availability which is not allowed under CEQA.

The EIR failed to include a comprehensive assessment all off-port tidelands property impacts such as impacts to Port of Long Beach bordering communities, cities and port freight transportation corridor communities. These include but are not limited to: non-stop noise from trains & trucks that does not exceed 65dbs, increasing truck accidents, increasing truck breakdowns on public streets & highways, increasing traffic congestion, increasing container storage yards near residential areas and loss of land for community uses other than port expansion.

CFASE is requesting that the Port conduct a more comprehensive Cumulative Impact Assessment and Off-Port Tidelands Property Nexus Study that does not leave out other significant projects toxic and hazardous air emissions and off-port tidelands property impacts.

3. POLB Failure To Establish A Port Community Advisory Committee

CFASE recommended that the POLB establish a Port of Long Beach Community Advisory Committee (PCAC) and/or the creation of a new Non-Profit Community Mitigation Organization to administer public health, public safety, environmental and cumulative impacts mitigation and funds is the best method for a successful public mitigation program.

There have been numerous instances where Long Beach residents have requested at Port of Long beach Board of harbor Commissioner public hearings and public meetings that the Port of Long Beach establish a Port Community Advisory Committee.

Long Beach public health advocacy organizations, community organizations, environmental organizations, homeowners associations, faith based organizations and the Long Beach Greens are better qualified to administer public mitigation program funds than Port of Long Beach Board of Harbor Commissioners who have no direct or appropriate public service experience nor past history.

The Port of Long Beach did not hold one public meeting, hearing, publish any notice or request of interests from Long Beach residents or organizations nor establish a taskforce or committee to determine the interest and feasibility of a Non-Profit Mitigation Organization to administer public health, public safety, environmental and cumulative impacts mitigation.

The POLB sponsored White Paper on Environmental Justice prepared by the consulting firm Jones & Stokes identifies and recommends the formation of a citizen's advisory committee. The Port of Long Beach OLB refused to adopt this recommendation.

4. Failure to Include Viable, Feasible & Cost Effective Air Pollution Control Technology

The Port of Long Beach staff concluded that many publicly proposed air pollution reduction and control technologies were physically impractical and financially infeasible is not true nor factual. In fact several new technologies have been successfully demonstrated at the Port of Long Beach which they failed to disclose.

The Advanced Maritime Emissions Control System (AMECS) was successfully demonstrated at the Port of Long Beach in 2008. It uses a fume hood that can be placed over a ship's smoke stack to capture the exhaust. The system is 92%-97% effective in capturing PM, NOX and SOX. The AMECS is a viable, feasible and cost effective technology that can be used at the Middle Harbor Terminal until final build-out and easily transferred to other POLB terminals. POLB also has the option to lease or rent them for shorter time periods. The AMECS system could also be sold to another port when the POLB becomes 100% electrified.

The Advanced Locomotive Emissions Control System (ALECS) was successfully demonstrated at the BNSF Roseville rail yard near Sacramento. It also uses a fume hood that can be placed over a locomotive engine smoke stack to capture the exhaust. The system is 92%-97% effective in capturing PM, NOX and SOX. ALECS is a viable, feasible and cost effective technology that can be used at the Middle Harbor Terminal on-dock rail. The POLB has not conducted any assessment or study that indicates that Pier F locomotives using the ALECS is not viable. The POLB staff has only made generalizations. ALECS does not require that they be completed stationary, ALECS could be easily be modified to allow some movement and travel distance.

The Clean Air Logix's – Witmar Dual Voltage Cold Ironing System was successfully demonstrated at the Port of Los Angeles in 2008. The system uses LNG fuel to operate a shore-side generator that can provide any power requirement to any international ship. Witmar Dual Voltage Cold Ironing System is a viable, feasible and cost effective technology that can be used at the Middle Harbor Terminal until final build-out and easily transferred to other POLB terminals. POLB also has the option to lease or rent them for shorter time periods. The Clean Air Logix's –Witmar Dual Voltage Cold Ironing System was successfully demonstrated at the Port of Los Angeles in 2008.

5. Failure to Include Viable, Feasible & Cost Effective MagLev Electric Train Technology

The Ports staff conclusion that MagLev Technology is both physically impractical and financially infeasible is not true nor factual. The FEIR/FEIS hides the details that one of the ZERO Emission Transport Systems being reviewed by the Port is the MagLev Technology and the technology for a port demonstration project for a marine terminal to near-dock rail facility is the MagLev Technology. The Ports staff failed to state the benefits of the MagLev Technology.

The Ports staff also failed to mention in the FEIR/FEIS that American MagLev Technology Corporation has offered to build a MagLev Train Demonstration Project for cargo and container transport at the Port of Long Beach to the Union Pacific ICTF at no cost to the Port of Long Beach or the public. The SSA Terminal at Pier A has already volunteered to place 400 containers day on the Maglev Train System. The only impediment now is the failure of the Port of Long Beach to grant a 20' track right-of-way. Building a MagLev Train in the Alameda

Corridor is completely feasible. There is nothing wrong with a MagLev Train operating from the Port directly to the downtown rail yards. Containers and cargo would be unloaded the same way as existing containers and cargo. A MagLev Train is 3X faster than a locomotive engine, can travel as individual container carriers and does not have to wait for 300 cars to be connected and produces no air pollution.

6. Failure to Include Viable & Feasible Effective Electric Drayage Trucks & LNG Trucks

The Port of Long Beach staff claim that Electric-Powered Drayage Trucks are not a proven technology is not true. The Port of Los Angeles has successfully demonstrated that Electric Drayage Trucks are feasible for short haul drayage trips and as port yard hostlers. The Port of Los Angeles has already placed an order for Balqon trucks. Balqon Corporation has successfully built and demonstrated an Electric-Powered Drayage Truck. Continued support of this technology would greatly expand its distance and drayage weight capabilities. The use of Electric Drayage Trucks would have immediate and significantly local air emissions reductions.

The Port of Long Beach failed to include the use and purchase of LNG Trucks which are using a low air pollution emission fuel that could be used at the Port of Long Beach.

7. Inadequate On-Dock Rail System Modernization

The Port of Long Beach has chosen to modernize the terminal design by building an on-dock rail system that is not located dockside to the ships. The most modern and efficient system is to unload a container from a ship and then drop it directly to a rail car dockside. Under the proposed plan the rail is to be built on the other side of the dock opposite the ship. A container has to then be dropped onto a truck and then moved to a storage location or sent to the ICTF and then to the Alameda Corridor. The other option is to drop it to the ground for a RTG Crane to pick up or Top Pick to move and stack it. Either way this requires the container to be picked up and moved 2 to 3 times, which also significantly increases que time and the cost of handling.

8. Failure to Implement The CAAP, San Pedro Bay Standards and Truck Program

The Port of Long Beach while referencing the Clean Air Action Plan (CAAP), San Pedro Bay Standards (SPBS) and Truck Program in the EIR as legitimate measures and mitigation has failed to mention that over 70% of CAAP measures have not been implemented, the SPBS are over one year behind schedule and the port and its shipping companies are also a year behind schedule in purchasing new clean trucks.

The Port of Long Beach is not providing adequate over-site on trucking companies who are using port funds to purchase new trucks. We have heard from truck drivers that companies are purchasing trucks and then turning around and renting them back truck drivers. We have heard that truck companies are not offering their truck drivers workers compensation or health benefits. Truck companies are not properly maintaining trucks and failing to follow manufacturers recommended maintenance schedules. We are concerned with truck driver safety, their health and well being.