

Coalition For A Safe Environment

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April 27, 2009

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Honorable Mayor &
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 a hearing before 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 a hearing 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 DEIR/DEIS and FEIR/FEIS 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 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. 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 Quiterrevolution 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.

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

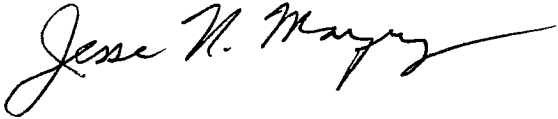
The use of the Vycon Electric Regen System on RTG's is a viable, feasible and cost effective technology that can be used at the Middle Harbor Terminal until final build-out and easily transferred to other POLB terminals where significant toxic air emissions are being released by non-electric RTG's. POLB 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.

Respectfully Submitted,

A handwritten signature in black ink, reading "Jesse N. Marquez". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jesse N. Marquez
Executive Director

Gabrielle Weeks
Executive Director
Long Beach Coalition For A Safe Environment

Attachments:

1. CFASE FEIR/FEIS Public Comments 4-13-09
2. CFASE DEIR/DEIS Public Comments 8-6-08
3. CFASE DEIR/DEIS Public Comments 6-11-08
4. CFASE Co-Signatory Public Comment Document Dated 4-17-09
5. CFASE Co-Signatory Public Comment Document Dated 4-10-09
6. CFASE Co-Signatory Public Comment Document Dated 8-8-08

Coalition For A Safe Environment

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April 13, 2009

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U.S. Army Corps of Engineers (USACOE)
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Los Angeles, CA 90053-2325
213-452-3920 Public Affairs Office

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

Su: Request To Deny Approval of Middle Harbor Redevelopment Project and
Certification of the Final EIR/EIS

The Coalition For A Safe Environment (CFASE) wishes to request the Port of Long Beach Board of Harbor Commissioners (POLB BOHC), City of Long Beach (COLB) and U.S. Army Corp of Engineers (USACOE) deny approval of the Middle Harbor Redevelopment Project proposal application, USACOE permit and certification of the Final Environmental Impact Report (FEIR)/Final Environmental Impact Statement (FEIS) for non-compliance and in violation of CEQA, 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.

The Coalition For A Safe Environment is an Environmental Justice Community based non-profit organization with members in Long Beach and 25 cities in California.

We find the proposed Middle Harbor Redevelopment Project FEIR/FEIS to be unacceptable because it fails to meet evaluation factors approval criteria, fails to adequately justify its purpose, 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.

The following information and outlined points, concerns, references, examples, issues, recommendations and requests describe the inadequacies of the FEIR/FEIS:

1. 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 comments and proposed mitigation. We request an extension of an additional 60 days for public comment.

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.

2. CFASE recommended that the POLB establish a Port Community Advisory Committee 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 four years.

The Port of Long Beach did not hold one public meeting, hearing, publish any notice or request of interests from Long Beach residents nor establish a taskforce 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.

3. The establishment of a Port of Long Beach Community Advisory Committee and/or the creation of a new non-profit organization to administer public health, public safety, environmental and cumulative impacts mitigation 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.
4. The two proposed mitigation programs although a great step forward are not adequate to address all the unmitigated impacts described in these public comments. The proposed funding amount is not adequate to address and mitigate the numerous unmitigated issues described in these public comments. 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 such as per barrel.

5. 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.
6. 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 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 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 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.

7. The Ports staff's discussion and reference to ACTA's staff's research and conclusions is not accurate. There are several Electric Train Technologies that do not use over head wires. The Disneyland Monorail Train does not use overhead wires and there are several high speed trains that do not use overhead wires.
8. 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 is Ports Staff intentional efforts 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.

9. The Ports 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. We would further request that another independent legal review be made of this clause and the public's right to amend the agreement.
10. The Ports staff 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.
11. The Ports staff response did not address CFASE's public comments regarding the use of the AMECS on terminals and ships that have not been retrofitted. CFASE requested that the POLB purchase, rent or lease the Advanced Cleanup Technologies – Advanced Maritime Emissions Control System (AMECS) at the Middle Harbor Terminal until such time all terminals have been converted to electric shore-power or used on un-retrofitted ships which would significantly reduce air emissions and protect public health. The environment and public should not be exposed to toxic emissions that can be feasibly mitigated. When the Middle Harbor is completed, the AMECS could be used at another of the 30+ terminals.
12. The Ports staff conclusion that an increased Alameda Corridor 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 who 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 destinations the Port services. 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.
13. The Ports staff 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 nor 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.
14. The Ports staff claim that it is not economically feasible to use the Advanced Maritime Emissions Control System (AMECS) is not true. 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.

15. The Ports staff's claim that it is not inappropriate to perform the CFASE requested Public Health Survey and that Health Risk Assessments 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. HRA's information is calculated based on computer model developed using statewide health data. No local public health data of the POLB's surrounding communities nor transportation corridor communities is included in the model, therefore there is no accurate data on local impacts. HRA's are only a rough estimate which is significantly underestimating public health impacts.

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 additionally 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.

16. The 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, deposition mechanisms and actual concentrations at the

POLB. The POLB is required to accurately assess its aerial deposition and propose appropriate mitigation. The POLB does not know if its proposed mitigation will reduce aerial deposition to non-significant.

17. 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 threshold nor did residents volunteer to die so that the POLB, railroad industry and WalMart can maximize its profits. The POLB has the authority to adopt a lower risk threshold that provides maximum public protection. CFASE requests that the POLB identify any person 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 risks due to cancer. It is the railroad industry, petroleum industry, their contractors and subcontractors that have lobbied against a lower risk threshold.

18. The Ports staff conclusion that they found no viable opportunities in Wilmington for Wetlands Restoration is not true. Cal Poly Pomona students prepared a Wetlands Restoration Concept Study of Pier A West and came to the conclusion that wetlands restoration was feasible. They provided an over view and comparison of other similar degraded, destroyed and lost wetlands and discussed wetlands restoration and sustainability opportunities. This information was provided to the POLB, POLB staff attended the public presentations and is not acknowledged in the DEIR/DEIS or Final EIR/EIS.

In addition, various other Wetlands Restoration sites have been identified in Long Beach by various non-profit conservation and environmental organizations. The Los Angeles River and Dominguez Channel Water Shed provides several opportunities.

The CFASE proposed Wetlands Restoration Mitigation is appropriate POLB mitigation. Although this project will not result in wetlands losses the current existing terminals when built in the past did destroy 100's of acres of natural wetlands that were never mitigated. POLB has destroyed approximately 1,000 acres of wetlands in its jurisdiction and held under the Public Trust Doctrine. The POLB has intentionally never held public meetings, hearings or established any task force or committee to ensure that protection and restoration of wetlands would be included in the POLB Master Plan and that a Wetlands Mitigation Fund be established for that purpose. City of Long Beach residents and City of Los Angeles Wilmington community residents supports Pier A West be restored to natural wetlands. Restoration would also significantly restore and enhance port and coastal water quality and wildlife habitats.

Pier A West is the ideal location for wetland restoration since 100% of the wetlands were previously destroyed in order to conduct the past and current private business profit making operations. The land is located in the City of Los Angeles and not the City of Long Beach. The approximate 60 acres of land is physically located in the City of Los Angeles community of Wilmington which is the most negatively significantly impacted by Port of Long Beach business operations. The Port of Los Angeles and the Board of Harbor Commissioners have also expressed an interest in financially investing a joint POLA/POLB Wetlands Restoration Project at Pier A West.

The Wilmington community would never support the building of another container terminal. The POLB would have to get permits from the City of Los Angeles before it could build

anything. The current Pier A West remediation cost of more than \$ 50 million could almost be cut in half if the land was restored to its previous natural wetlands state. City of Long Beach residents and City of Los Angeles Wilmington community residents do not support any further investment in the expansion of the Port of Long Beach.

Past POLB financial investments and credits for Wetlands Restoration in Bolsa Chica in the City of Huntington Beach and Los Baquitos Lagoon in the City of San Diego provided no biological mitigation benefits to the City of Long Beach or its residents. CFASE estimates that the POLB provided a minimum of \$ 40 million dollars to these other rich communities with multi-million dollar mansions bordering the wetlands to have a beautiful pristine coastal view with restored wetlands. City of Long Beach and Wilmington residents did not vote to have other rich cities communities coastal wetlands restored.

19. CFASE's request for the establishment for a Marine Fish Hatchery to restore fish populations in San Pedro Bay is justified because every new port development project, terminal expansion project, dredging project and business operations results in the loss and degradation of fish populations, biological habits and nesting grounds. The existing setting did not account for the 1,000's of water acres lost, destroyed or degraded and did not mitigate or restore the past or current Port development, expansion or operations impacts. The reference to the 1980 MEC Analytical Systems study occurred after the POLB decimated over 90% of the pre-existing fish population. Aerial deposition on Port waters and coastal tidelands has also not been quantified, assessed or mitigated.

20. 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.

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.

21. The POLB is obfuscating its responsibility in neglecting to include requirements in its lease agreements with its tenants to prevent negative environmental, public health, public safety, biological habitat and socio-economic impacts from containers that have not been decontaminated or sanitized. Since Port containers have not been decontaminated or sanitized they 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.

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.

22. 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. The failure of the POLB to include a CEQA and NEPA analysis has resulted in the Board of Harbor Commissioners not knowing that there is an environmental and public impact problem.
23. 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, the POLB could fund this project from its traditional profits as a Port infrastructure enhancement project. The public supports this use of Port public funds.

The proposed UP ICTF and BNSF 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 ICTF or SCIG. Currently every POLB container terminal utilizes the UP ICTF.

24. The use of AMECs or the Clean Air Logix's –Witmar Dual Voltage Cold Ironing System are viable technologies 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.
25. 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.
26. The use of the Vycon Electric Regen System on RTG's is a viable 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.
27. 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 trips and as yard hostlers. Continued support of this technology would greatly expand its distance and drayage capabilities. The use of Electric Drayage Trucks would have immediate and significantly local emissions reductions.
28. 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.

29. The POLB has a legal CEQA and NEPA responsibility to include in the cumulative impact assessment all projects that have been identified during the NOP/NOI and DEIR/DEIS process that the POLB omitted/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 independent research.
30. The POLB reliance on an outdated Port 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 for the Port of Long Beach. The POLB has no proof from any of its tenants of any anticipated significant growth.
31. 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 with an STC rating of 55 or higher.
32. 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 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.

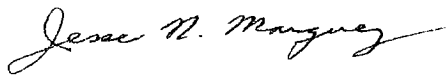
33. The POLB is obfuscating its responsibility in neglecting to include requirements in its lease agreements with its tenants to prevent negative environmental, public health, public safety, biological habitat and socio-economic impacts from off-port property tenant activities such as offsite chassis assembly & storage yards, offsite container & cargo inspection facilities, fumigation facilities and offsite truck staging, parking and storage areas. The POLB has made no assessment of the categories of off-port property tenant business activities. The POLB has failed to conduct any CEQA or NEPA analysis that has identified these issues and impacts as a problem even though CFASE has requested such a study and mitigation.
34. The POLB reference to recently developed Port complex models for predicting tsunami wave heights, flooding and impacts contradicts recently published USC studies which describe significant potential impacts and financial consequences.
35. 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 good recommendation.

36. The Coalition For A Safe Environment additionally incorporates all previous submitted public comments into these. However, due to the POLB's intentional 10 day limited public comment period this Environmental Justice Organization is unable to identify each applicable comment, discrepancy, clarification and challenge.

37. CFASE additionally incorporates the majority of findings and recommendations of the South coast Air quality management District and the Us EPA. However, due to the POLB's intentional 10 day limited public comment period this Environmental Justice Organization is unable to identify each applicable comment, discrepancy, clarification and challenge.

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.

Respectfully Submitted,



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Executive Director

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Executive Director
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August 6, 2008

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Re: Middle Harbor Redevelopment Project
Draft Environmental Impact Report (DEIR)/
Draft Environmental Impact Statement (DEIS) &
Application Summary Report
SCH No. 2004091010

Su: Request To Deny Approval of Middle Harbor Redevelopment Project
Certification of the Draft EIR/EIS

The Coalition For A Safe Environment (CFASE) wishes to request the Port of Long Beach Board of Harbor Commissioners (POLB BOHC), City of Long Beach (COLB) and U.S. Army Corp of Engineers (USACOE) deny approval of the Middle Harbor Redevelopment Project proposal application, USACOE permit and certification of the Draft Environmental Impact Report (DEIR)/Draft Environmental Impact Statement (DEIS) for non-compliance and in violation of CEQA, 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.

The Coalition For A Safe Environment is an Environmental Justice Community based non-profit organization with members in Long Beach and 25 cities in California.

We find the proposed Middle Harbor Redevelopment Project DEIR/DEIS to be unacceptable because it fails to meet evaluation factors approval criteria, fails to adequately justify its purpose, 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.

The following information and outlined points, concerns, references, examples, issues, recommendations and requests describe the inadequacies of the DEIR/DEIS:

1. The DEIR/DEIS states that the Middle Harbor Redevelopment Project and all Alternatives will have a disproportionate high and significant impacts on environmental justice, minority and low income populations is unacceptable, immoral and illegal.

The Ports and USACOE's conclusions that these impacts are unavoidable, that all potential mitigation measures were assessed and all feasible mitigation measures adopted is a lie and in violation of CEQA, NEPA, Executive Order 12898, Civil Rights Act, and other legal statues.

In our review of the DEIR/DEIS many assumptions, decisions, data, information, explanations and conclusions contained in the DEIR/DEIS failed to include complete and accurate information as described in this public comment letter which means that the disproportionate high and significant impacts on environmental justice, minority and low income populations are in fact worse than documented and therefore were not considered, properly assessed and mitigated.

In our review of significant impacts there are numerous mitigation measures that could have been incorporated but were not. A brief summary includes:

- a. A zero emissions American MagLev Technology, Inc. MagLev Train could be built on-dock, adjacent to the new Middle Harbor Terminal shipside docks and connected to the Union Pacific ICTF. The company has already volunteered to build the test facility at their own expense.
- b. A zero emissions American MagLev Technology, Inc. MagLev Train could be built on-dock, adjacent to the new Middle Harbor Terminal shipside docks and connected directly to the Alameda Corridor which can be converted to a MagLev Train. The Alameda Corridor is already designed to be retrofitted for Electric Trains or MagLev Trains.
- c. The Port of Long Beach could build a new supporting on-port property Intermodal Facility at Pier B at the Toyota Logistics Services Terminal. The Port could build a new 4-5 story import car parking structure which would open up sufficient land for a new zero emissions electric MagLev Train Intermodal Facility and therefore not require the expansion of the Union Pacific Railroad ICTF Terminal or BNSF Railroad Southern California International Gateway (SCIG) Terminal.
- d. The Port could purchase and incorporate a new IT Container Tracking Software/Hardware Technology to reduce identification, assignment, staging and cue time. The Port could require tenants to use a bar code, transmitter, GPS or other technologies to quickly identify and transport containers and cargo to destination.
- e. The Port could purchase and incorporate Advanced Cleanup Technologies, Inc. - Advanced Maritime Emissions Control Systems (AMEC's) at all terminals so ships that are not retrofitted for electric shore-power can be connected.

- f. The Port could purchase and incorporate Advanced Cleanup Technologies, Inc. – Advanced Locomotive Emissions Control Systems (ALEC's) at all terminals where there is no electric or MagLev Train.
- g. The Port could purchase and incorporate a Vycon Electric Regen System on all terminal RTG Cranes.
- h. The Port could purchase and incorporate a Balqon Corporation fleet of Electric Trucks for local delivery drayage.
- i. The Port could purchase and incorporate Clean Air Logix - Witmar Dual Multi Voltage Cold Ironing System at all terminals now and until electric shore-power is available..
- j. Construction could be spaced over more time to reduce compounded significant air quality and traffic impacts.
- k. Port could finance the installation of Air Purification & Sound Prevention Systems in public schools, senior care facilities and sensitive receptor homes.
- l. Port could fund comprehensive Public Health Surveys every five years to validate that the incorporated air quality mitigation measures are in fact improving public health.
- m. Port could donate funds to local community health clinics and hospitals to provide local resident medical care.
- n. Port could designate and donate the 80+ acres of Pier A land it owns in Wilmington for Wetlands Restoration.
- o. Port could stop or limit construction on high smog alert days.
- p. Port could provide financial grants to environmental justice and public health organizations to provide public education to help minimize public health impacts from air pollution, traffic congestion etc..
- q. The Port could have included the preparation of a Public Emergency Notification System, Evacuation Plan & Long Term Care Program.
- r. The Port could incorporate renewable and sustainable Solar and Wind Energy Technology.

The Zone of Impact (ZOI), environmental justice, minority populations and low income populations project area of influence one mile area of influence is an arbitrary decision and was not based on any study or assessment of actual CEQA/NEPA evaluation criteria such as environmental, public health, land use, traffic impacts of environmental justice, minority and low income communities. We recommend as a minimum a 5 mile radius.

The DEIR/DEIS must include all environmental justice, minority populations and low income populations which are currently and will be impacted by the construction, expansion and operation of the Middle Harbor Redevelopment Project. This includes all truck, train and worker traffic routes that are and will be used from start-to-final destination. Therefore the Zone of Impact in the DEIR/DEIS failed to include accurate population information and impacted communities information.

The Port ignored the composition of affected areas, the disproportionate high & adverse human health and environment effects, cumulative impacts, relevant public health data in its decision making and requests for further medical and scientific research. The Port made a conscious decision to move forward business as usual. A violation of the Council on Environmental Quality: Environmental Justice-Guidance under NEPA.

Environmental justice, minority and low income populations are not the sacrificial lambs for the monetary greed and political power of the Port of Long Beach, the City of Long Beach, the State of California, the Federal Government, their corrupt or incompetent management, staffs, consultants, commissioners and their fellow international trade industry racketeers.

Ports are allowed to operate in the public's best interest and not exclusively for private business profit making industries. Ports are not allowed to participate in premeditated murder, cause public health problems, cause personal injury, cause physical harm, cause loss of income, cause loss of quality of life, cause loss or damage to real or personal property or incur a potential safety impact.

2. The DEIR/DEIS states the project will have significant and unavoidable impacts and when considered in their entirety will have significant and numerous cumulative impacts.

Significant negative impacts and numerous cumulative impacts which can be mitigated are prohibited by law. They are contrary to the public's best interests, will cause disproportional impacts on environmental justice, minority and low income communities and are a legitimate basis for denial of project approval, a permit and DEIR/DEIS certification.

The DEIR/DEIS additionally fails to comply with the Title VI Civil Rights Act in protecting designated groups.

The cumulative impact assessment failed to include all impacted environmental justice, minority and low income populations in its Zone of Impact, failed to include all public traffic impacts, failed to include all air pollution impacts and failed to include current public health and premature death statistics. As a result, the DEIR/DEIS 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 DEIR/DEIS 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.

3. The DEIR/DEIS fails to justify that there is a need to expand the current Middle Harbor Redevelopment Project and the benefits of the project out way the reasonable foreseeable detriments. The DEIR/DEIS briefly mentions port growth, discusses employment and employment data, but provides no 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 and endangering the public to negative significant environmental, traffic, public health and public safety impacts.

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 2007 was the lowest in the past 20 years and a review of 2008 TEU 1st and 2nd quarter container data shows that it is lower than in 2007. A review of 2008 bulk cargo 1st and 2nd quarter data shows that it is lower than in 2007. 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.

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

The DEIR/DEIS failed to provide any information or study that proves that City of Long Beach, 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.

4. NEPA Project Purpose & Need:

The DEIR/DEIS 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 DEIR/DEIS 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 DEIR/DEIS 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 DEIR/DEIS states that one of the project purposes is to the upgrading utility infrastructure to support the implementation of controls necessary to reduce pollution:

- a. The upgrading of utility infrastructure failed to include alternative Renewable Energy Sources such as Solar Energy and Wind Energy as mitigation.
- b. There are numerous Solar Energy companies who offer this technology.
- c. 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.

The DEIR/DEIS states that one of the project purposes is to conserve energy.

- a. Although the project will incorporate a LEED certified building with a solar roof it will still require additional electric power which is being provided by public utilities which are paid for by the public who are the majority ratepayers. The Port needs to utilize its vast open space to incorporate Solar Panel Array Networks and new Vertical Axis

Wind Turbines which can be built on roof tops, canopies and poles. The Port of Los Angeles has announced plans to build a 10MW Solar Energy Facility at its facilities.

- b. Solar Energy Panels can also be built along the MagLev Train Rail Network to supplement electricity needs.
- c. Vertical Axis Wind Turbines can be built along the port perimeters, offshore water breaker, building roof tops, canopies and poles. They do not use propeller blade technologies. We recommend the Mariah Power Windspire and Quiet Revolution, LTD. Vertical Wind Turbine designs.

5. CEQA Project Objectives:

The DEIR/DEIS states that one of the project objectives is to modernize existing primary port facilities which is not entirely being achieved as stated in #4.

The DEIR/DEIS states that one of the project purposes is to implement the Green Port Policy which is not being achieved:

- a. The Green Port Policy includes to protect the community from harmful environmental impacts of Port operations. The DEIR/DEIS fails to identify, assess, prevent and mitigate all harmful environmental impacts of the Port as described in these public comments. The DEIS/DEIS fails to protect environmental justice, minority and low income populations as described in these public comments.
- b. The Green Port Policy includes to promote sustainability. The DEIR/DEIS fails to incorporate reasonable and available technologies and policies that would assure promotion and support of sustainability as described in these public comments.
- c. The Green Port Policy includes to employ the best available technology to avoid or reduce environmental impacts. The DEIR/DEIS fails to include the numerous available and new technologies that can eliminate, prevent, reduce and assure no to near zero environmental impacts.
- d. The Green Port Policy includes to engage and educate the community. The Port has failed to disclose all the public health impacts of the Ports business operations. The Port has failed to disclose that it can provide financial support for public health care and numerous other mitigation measures. The Port has failed to disclose that it can create a Port Community Advisory Council made up of residents and non-profit organizations such as the one the Port of Los Angeles has had in existence since 2003.
- e. We recommend the establishment of a Port of Long Beach Community Advisory Committee composed of Long Beach residents, homeowner associations, non-profit environmental justice, environmental, community, public health advocacy and academic organizations.

CFASE request that the DEIR/DEIS include that the Port of Long Beach Community Advisory Council be designated as a third party overseer of all Port of Long Beach mitigation.

The DEIR/DEIS states that one of the project purposes is to provide efficient terminal traffic flow which is not being achieved as stated in #4.

The DEIR/DEIS states that one of the project purposes is to provide for efficient cargo handling operations which is not being achieved as stated in #4.

6. The DEIR failed to include a Current Public Health Status Baseline Study.

- a. There has been no comprehensive assessment and determination of all the public health impacts that are currently occurring and have in the past on-port and off-port Port of Long Beach impacted communities adjacent to and near the Port of Long Beach. There has been no review and cataloguing of the various types of cancers, respiratory problems, learning disabilities, physical disabilities, short and long term disability impacts of public exposure to various toxic and hazardous airborne chemicals and substances. There has been no assessment of the number of local resident-public premature deaths caused by the Port of Long Beach business operations.
 - b. There has been no comprehensive door-to-door Public Health Survey conducted in the Port of Long Beach and Transportation Corridor communities that are adjacent too and near the Port of Long Beach to determine how many people are afflicted with what diseases or illnesses. The DEIR fails to disclose all public health impacts of the current and proposed Port of Long Beach Middle Harbor Redevelopment Project construction and business operations expansion on local residents, children, business workers and visitors.
7. CFASE has requests that the Port of Long Beach include public health care mitigation by establishing a Public Health Care Mitigation Trust Fund to fund local community clinics and hospitals in Long Beach, Wilmington, Carson and along train and truck transportation corridors. The Port has failed to provide an assessment of why this mitigation is not feasible.

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

8. The DEIR failed to include an accurate Sensitive Receptor Zone of Impact Study. The Grid layout that was included in the DEIR and used in the Health Risk Assessment was arbitrary and discretionary. It was not based on a current Public Health Status Baseline Study or Port of Long Beach Wind Pattern Aerosol Dispersion Meteorological Study which would have disclosed the actual range, distance and concentration of toxic air pollutants and their actual and possible public health impacts.

One example would be the California Air Resources Board - Wilmington Air Tracer Study conducted by the Desert Research Institute. The study established 70 community test site locations at various distances and a non-toxic gas was released to determine its dispersion pattern, distance and concentration.

9. The DEIR failed to include a West Long Beach and Wilmington Harbor community perimeter Port of Long Beach Wind Pattern Aerosol Dispersion Meteorological Study. This type of study would accurately record and define the air pollution dispersion and volume concentration of air pollutants throughout the Greater Port of Long Beach Harbor impacted communities. The information in the DEIR is not accurate and does not provide full disclosure of the air pollution dispersion and concentration of exposure to local communities and unique residential areas.

We request that a permanent Air Monitoring Sites Network be established at all major sensitive receptor locations.

10. The DEIR Health Risk Assessment is not complete and accurate because it did not include:
 - a. A review and cataloguing of the various types of cancers, respiratory problems, learning disabilities, physical disabilities, short and long term disability impacts of public exposure to various toxic and hazardous airborne chemicals and substances caused by the Port of Long Beach, the distribution and delivery of its containers and cargo.
 - b. A review of premature deaths attributed to the Port of Long Beach business operations, the distribution and delivery of its containers and cargo.
 - c. A comprehensive door-to-door Public Health Survey.
 - d. An accurate Sensitive Receptor Impact Zone Study.
 - e. Wind Pattern Aerosol Dispersion Meteorological Study.
11. The DEIR/DEIS 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 DEIR/DEIS 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 mitigation to address the significant impacts of the new terminals trucks on local Harbor

communities, transportation corridor communities, distribution centers and no proposed mitigation for regional and statewide impacts.

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.

CFASE requests that the Port of Long Beach conduct a Middle Harbor Redevelopment Project Study to determine the amount of containers and cargo that must be delivered by truck due to their local delivery requirements vs those which must travel long distance and out of state. The percentage of those that must travel long distance will be the mandatory Alameda Corridor use percentage requirement.

12. The DEIR/DEIS provides general information on new Terminal Security such as the Radiation Portal Monitors (RPM) but does not state if 100% of all containers and cargo will be inspected. We request that 100% be inspected.

The DEIR/DEIS fails to disclose if there are any off-port property inspection facilities that will be used. We want full disclosure, including facility location.

There is no mention or description of the proposed quantity of security personnel for this facility.

There is no mention or description of the proposed security monitoring and surveillance system or any studies to determine and quantify the terminal security needs.

The DEIR/DEIS fails to mention, address, assess and mitigate the off-port property public security needs. What are the potential public impacts from a major port terrorist attack, major natural disaster such as tsunami or earthquake etc.. What is the Public Emergency Notification, Evacuation & Care Plan. All security will be focused on protecting the Port and its assets, not the Port Harbor residents and public.

There have been several recent breeches in San Pedro Bay Ports security system. How was a truck with a container with the word Anthrax able to get past the gate and how was a disgruntled off-duty truck driver able to get past security and it was the longshoreman dockworkers that tackled the driver and restrained him until Port security got there.

Why is it that the Port authorities do not know how many and which fisherman at the Ports are allowed to have explosives for fishing.

13. The DEIR/DEIS states that new environmental Green Port Policies and conditions are being included in new leases, but fails to disclose a copy of the terms and conditions. The public has a right to know if the T & C's are adequate, comply with the San Pedro Bay Clean Air Action Plan, are being implemented as soon as possible or include the Best Available Technologies and the Best Available Pollution Control Technologies. Mandatory maximum use of the Alameda Corridor for container shipment is also an important issue. We request that these concerns be addressed, included and mitigated.

14. 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 to California Coastline, residents and Port communities.

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

15. The DEIR/DEIS Clean Vessel Fuels CAAP Measure proposes the use of 0.2 percent or lower sulfur MGO fuel. We request that it be 0.1 percent or lower sulfur MGO fuel since this fuel is readily available now.
16. The DEIR/DEIS discusses Water Resources Protection but fails to address, assess and mitigate atmospheric aerial deposition at the Port of Long Beach. This would include ship, train, truck and cargo handling equipment diesel fuel PM and other contaminants such as toxic truck brake dust.

These temporary, permanent and long term impacts will have significant toxic and hazardous chemicals and substances atmospheric aerial deposition impacts on water quality which includes ocean water, neighboring lakes, rivers, fresh water reservoirs and underwater aquifers.

Mitigation can include the design and construction of several Ocean Water Purification and Decontamination Systems.

17. The DEIR/DEIS acknowledges that this Middle Harbor Redevelopment Project will cause a significant increase in rail lines usage but fails to mitigate the locomotive engines diesel toxic emissions, traffic congestion and noise impacts.

The DEIR/DEIS fails to acknowledge, assess and mitigate train rail traffic, air emissions and noise at all transportation corridors, rail yards, distribution centers that China Shipping Lines will use. As a minimum these include the Wilmington Watson Rail Yard, Alameda Corridor, Carson ICTF Terminal, UP Vernon rail yard and BNSF East LA rail yard and Riverside and San Bernadino County Distribution Centers.

CFASE requests that the Port of Long Beach, Union Pacific and Burlington Northern Santa Fe purchase the Advanced Cleanup Technologies, Inc. – Advanced Locomotive Emissions Control System (ALECS) System for use at all Port of Long Beach Terminals on-dock, near dock rail locations and off-port property rail yard facilities that the Middle Harbor Redevelopment Project intends to use.

The increased noise may not exceed the state or federal standards, however, there will be a 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 DEIR/DEIS failed to research other 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.

18. The DEIR/DEIS states the Middle Harbor Redevelopment Project will use rail facilities such as the Union Pacific (UP) Carson ICTF intermodal facility, the Burlington Northern Santa Fe (BNSF) Hobart Yard facility in Vernon and the UP East Los Angeles Rail Yard facility but fails to mitigate the significant negative environmental, traffic, public health and public safety impacts in those bordering cities and communities.

The Port of Long Beach and USACOE has held no public hearings in those cities and communities, has provided no public notification and has solicited no public comment. City officials in those cities did not receive any official notification.

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.

19. The DEIR/DEIS, Port of Long Beach and its business tenants have deprived 1,000's of Harbor residents and children the right to live a normal and healthy life. The Port contributes and causes a significant amount of toxic air, land and water pollution which is known to cause cancer and numerous other temporary and permanent public health problems and disabilities.

The Port failed to notify Harbor residents, dock workers and the public of the life and health threatening nature of its business activities. The Port failed to provide to the public governmental agency, medical and scientific public health study information that it knew existed that could assist the public in preventing & minimizing health impacts, seeking health care and assist the public in participating in the Port public hearing and meeting process where they could make public comments on the negative impacts of the ports business activities on public health and request mitigation.

CFASE requests that the Port of Long Beach sponsor and finance a comprehensive Long Beach, Wilmington, Carson and San Pedro Port Harbor Community Public Health Survey, an Epidemiology Study and a Morbidity Study to validate its Health Risk Assessment conclusions and to establish a public health baseline. We request that the Port contract with UCLA and USC for these studies.

CFASE further requests that the Port conduct the same public health studies in all communities and cities that border all transportation corridors, rail yards, distribution centers that the Middle Harbor tenants will use.

20. The DEIR/DEIS fails to require that the Port of Long Beach include Wetlands Restoration Projects in Long Beach and San Pedro Bay as Biological Mitigation. The Ports use of off-port property such as Bolsa Chica Mitigation Credits is unacceptable. CFASE and the Sierra Club Harbor Vision Task Force have identified in the past numerous potential Wetlands Restoration Project sites in San Pedro Bay.

CFASE requests that a special taskforce of San Pedro Bay residents and community organization make recommendations.

CFASE requests that the Port of Long Beach establish a Wetlands Restoration Mitigation Trust Fund based on \$1.00 per Middle Harbor Redevelopment Project TEU Tariff and adopt the Coalition For A Safe Environment's and the Sierra Club's Harbor Vision Task Force San Pedro Bay submitted and identified recommendations.

21. CFASE has requests that the Port of Long Beach include the establishment of a Marine Fish Hatchery to restore the fish population that the Port has destroyed in San Pedro Bay. 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 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 requests that the Port of Long Beach establish fish hatcheries, reefs 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.

22. The DEIR/DEIS fails to address all Aesthetic impacts and feasible mitigation. The Port has failed to acknowledge and mitigate all off-port property transportation corridors, rail yard facilities, container storage yards, truck/chassis staging areas, distribution centers and dredged material storage/drying areas aesthetic community impacts.

The Port failed to conduct a comprehensive assessment of off-port property nexus impacts and mitigation that is not limited to land areas bordering the Port.

We request that the Port establish a taskforce with community residents and organizations to identify aesthetic impacts and appropriate mitigation

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

As an example there are also fugitive HFC's emissions from diesel trucks and refrigerated containers (reefers). Diesel truck and reefer 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.

24. The DEIR/DEIS fails to consider the Cumulative Impact of all ship vessels traveling to and entering the Port of Long Beach and San Pedro Bay and their impact on migrating whales and other sea mammals.

The DEIR/DIES fails to mitigate these negative impacts. CFASE recommends as appropriate mitigation to change the current ship routes and distances along California's and Baja California's coast. Ships do not need to have an aesthetically pleasing coastline view. Prohibit ships from traveling along the coast if not necessary and traveling no closer than 50 nautical miles when necessary. Reduce ship speed to 10nm when within 50 nautical miles of the coast and space the number of ships that enter to allow time for whale and mammal passage.

25. The DEIR/DEIS fails to address the impacts of Container Storage Facilities located off-port property. The Port of Long Beach has failed to adopt state-of-the art storage technologies which can automatically stack, identify, store, retrieve and transport containers which would eliminate the need for off-port property container storage yards in Wilmington and throughout the Harbor area. The Port has failed to establish empty container return policies and requirements in its tenant lease agreements that would eliminate storage of containers off-port property. The Port has failed to adopt a plan to eliminate off-port property storage of empty containers which have been stored for numerous years that will never go back.

The DEIR/DEIS fails to address the impacts of Container Storage Facilities located off-port property. The Port of Long Beach has failed to adopt state-of-the art storage technologies which can automatically stack, identify, store, retrieve and transport containers which would eliminate the need for off-port property container storage yards in Wilmington and throughout the Harbor area. The Port has failed to establish empty container return policies and requirements in its tenant lease agreements that would eliminate storage of containers off-port property. The Port has failed to adopt a plan to eliminate off-port property storage of empty containers which have been stored for numerous years that will never go back.

The Port has failed to adopt policies and requirements that would require the sanitation and decontamination of containers that are placed into storage yards. Workers and the public are exposed to the West Nile virus, other insect infestation, bacteria, fungus, toxic paint and coating due to deteriorating paint, toxic and hazardous chemicals that were stored in containers etc..

Container storage yards are also havens for rats, possums, raccoons, homeless and drug dealers. They also are trash magnets and have created truck routes in residential areas. The additional truck traffic destroys local streets, street signs, curves as trucks run-over them, damage bridges other transportation infrastructure and has increased traffic accidents.

The Port has not conducted a comprehensive assessment of these impacts on the Long Beach, Wilmington and Harbor communities.

26. The DEIR/DEIS fails to identify and address the impacts of any Off-Port Property Container Inspection Facilities. These facilities can cause new unapproved Port truck routes to be established through the community and non-industrial traditional streets to get to the facilities that never existed. This can create new truck traffic, increased traffic accidents, truck breakdowns, endangers the public from potential hazardous materials spills, fires and explosions.

An example is the Port of Los Angeles. There was a recent bomb detection threat which required the evacuation of the company, all neighboring industrial park business facilities and the local corner market. Carson and Wilmington residents and workers lives were in danger. People lost income, could not get to work, residents could not get to their homes. Carson sheriffs, Los Angeles police, Port police, bomb squad, FBI, fire departments and others were on-sight.

To by-pass the public hearing process, public disclosure and its legal responsibilities it secretly subcontracted these services to a private company. The City of Carson licensing, permitting and zoning departments were not aware of these activities when the issued any license or permit. There was no public hearing or public disclosure.

The Port has not conducted a comprehensive assessment of these impacts on the Long Beach, Wilmington and Harbor communities.

27. The DEIR/DEIS does not address Truck & Chassis Storing & Staging Areas Impacts. The Port and its tenants have allowed numerous Truck & Chassis Storing & Staging Areas to be established by private business owners and subcontractors in Long Beach and off-port property which can border residential areas. These facilities cause traffic congestions problems, community blight, contaminate the land and adjacent properties, release toxic and hazardous air emissions, they destroy sidewalks, destroy and modify sidewalks to make driveways, illegally double park, conduct unauthorized business activities and cause a public safety hazard.

The Port of Long Beach currently own numerous acres of land off-port property which are being used for off-port property activities for truck & chassis storage and staging areas. The Port also leases these properties to companies so that they can deny and avoid any mitigation and liability.

The Port has not conducted a comprehensive assessment of these impacts on the Long Beach, Wilmington and Harbor communities.

28. The DEIR/DEIS fails to address and mitigate numerous truck issue 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. Truck revving their engines.

The Port has not conducted a comprehensive assessment of these impacts on the Long Beach, Wilmington, San Pedro and other Harbor communities.

We request that the Port Traffic Management Plan be included in the DEIR/DEIS for public review and participation. The City of Long Beach and current emergency response providers have failed to develop past adequate Traffic Management Plans and Emergency Public Notification, Evacuation and Care Plans because there was no public participation or approval.

29. The DEIR/DEIS fails to address the increase in other noise categories from on-port property and off-port property business operations due to increased Port & Homeland Security, these include:
- a. Ship horns during the day & at all hours of the night.
 - b. Police Helicopters flying during the day & at all hours of the night.
 - c. Port Tour Helicopters flying during the day.
 - d. Media News Helicopters flying during the day& at all hours of the night.
 - e. Film Crew Helicopters flying during the day& at all hours of the night.
 - f. Port, City, State & Federal Police/FBI/CIA etc. Sirens during the day & at all hours of the night.
 - g. Fire Department Vehicle Sirens during the day and at all hours of the night.
 - h. Containers being accidently dropped during the day & all hours of the night.

Long Beach, Wilmington and San Pedro residents have no cessation of noise, it is continual 24hrs. a day and 7 days a week.

The proposal to publish notices in the Press Telegram is not adequate. We request that notices be published in all newspaper within 20 miles of the port. We request that in addition to a classified notice the port place full page adds discussing the construction schedule and any other significant construction or operation activity.

30. The DEIR/DEIS fails to acknowledge, address and mitigate the fact that there is no adequate Port Public Emergency & Disaster Notification, Response or Long Term Care System. The Port has created no emergency funds pool, contracted no third party support services, contracted no relocation areas, contracted no food or water services etc.

The Port has put every Harbor resident and Harbor Community in extreme danger from its business operations. All planning that has been conducted has been to protect "Port Assets" not Harbor resident's lives and livelihoods. If there is a Port catastrophe"

- a. There are inadequate Port and City Police to protect and assist the public.
- b. There are inadequate Fire Department Personnel & Equipment to provide assistance.
- c. There are inadequate medical & hospital services & beds available.
- d. There is no relocation place for displaced families to go to.
- e. There are no emergency food & water resources for displaced families.

31. The DEIS/DEIS fails to disclose and require that the Port of Long Beach could conduct a Port of Long Beach Air Tracer Study to validate used dispersion modeling and public impacts. A Wilmington Air Tracer Study conducted for the California Air Resources Board (CARB) Desert Research Institute did not collaborate the toxic and hazardous air emissions dispersion models and data that were contained in Port of Los Angeles DEIR's/DEIS's. The CARB Study in fact showed a wider and farther dispersion than what the Port was claiming and mitigating.

32. The DEIS/DEIR describes the mitigation measures for Fugitive Dust but fails to mention that Boat owners and Boat Live-ins at Consolidated Slip which houses several boat marinas are exposed to fugitive dust. They have also complained about chemical odors, having headaches, feeling nausea, dizzy and breaking out in skin rashes.

We ask the Port to clearly identify where it will store and dry dredged materials.

We request that the Port conduct an assessment and interview any Consolidate Slip marina residents and boat owners or other location residents and businesses to determine any impacts to them.

33. Middle Harbor Redevelopment Project DEIR/DEIS failed to disclose and include all train container and cargo routes public, environmental justice, minority populations and low income populations impacts leaving the Port of Long Beach to their final destination:
- a. The route to the Union Pacific ICTF as a minimum.
 - b. The route to the Alameda Corridor to the Union Pacific Vernon Rail Yard and the BNSF East Los Angles Rail Yard as a minimum.
 - c. The rout to the Wilmington Watson Rail Yard.
 - d. The route through Carson and Torrance.
 - e. Regionally

34. Middle Harbor Redevelopment Project DEIR/DEIS failed to disclose and include all truck container and cargo routes public, environmental justice, minority populations and low income populations impacts leaving the Port of Long Beach to their final destination:
- a. Long Beach I-710 Freeway
 - b. Los Angeles Harbor I-110 Freeway
 - c. Terminal Island 103 Freeway
 - d. San Diego I-405 Freeway
 - e. Riverside I-91 Freeway
 - f. Etc.
35. Middle Harbor Redevelopment Project DEIR/DEIS failed to disclose and include all worker vehicle public, environmental justice, minority populations and low income populations impacts traveling to the Port of Long Beach and leaving to their point of origin:
- a. Long Beach I-710 Freeway
 - b. Los Angeles Harbor I-110 Freeway
 - c. Terminal Island 103 Freeway
 - d. San Diego I-405 Freeway
 - e. Riverside I-91 Freeway
 - f. Etc.
36. Middle Harbor Redevelopment Project DEIR/DEIS failed to disclose and include all truck, container and cargo routes public, environmental justice, minority populations and low income populations impacts leaving the Port of Long Beach to their multiple destinations such as:
- a. Off-port property container storage yards.
 - b. Off-port property chassis assembly & storage yards
 - c. Off-port property container & cargo inspection facilities
 - d. Off-port property container & cargo fumigation facilities
 - e. Off-port property truck staging, parking & storage areas

37. 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.

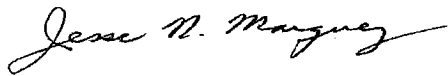
In the tsunami section it discusses possible 5' waves and 12' waves but fails to discuss the difference in impact if the 5' wave is traveling at 5mph or 100mph. A fast moving small wave can crash a ship into a dock or into a nearby fuel tanker ship very easily. It provides little information if a big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

The DEIR/DEIS 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. These could cause horrific impacts on the Ports cargo, infrastructure and dock workers.

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 more worst case assessment scenario information and to include cascading and domino effect impacts.

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.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jesse N. Marquez".

Jesse N. Marquez
Executive Director

Coalition For A Safe Environment

P.O. Box 1918, Wilmington, California 90748
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LONG BEACH, CALIF.

09 APR 27 PM 4:06 June 11, 2008

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U.S. Army Corp of Engineers (USACOE)
Los Angeles District, Regulatory Division
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805-585-2148 Off
213-542-3406 Off
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Re: Middle Harbor Redevelopment Project Draft Environmental Impact Report (DEIR),
Draft Environmental Impact Statement (DEIS) & Application Summary Report
SCH No. 2004091010

Su: DEIR/DEIS CEQA Document Deficiencies Public Comment

The Coalition For A Safe Environment (CFASE) wishes to request the Port of Long Beach Board of Harbor Commissioners, City of Long Beach and U.S. Army Corp of Engineers "deny approval" of the Draft Environmental Impact Report (DEIR)/Draft Environmental Impact Statement (DEIS) for non-compliance and in violation of CEQA, 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), U.S. Civil Rights Act, the California Health and Safety Code.

We find the proposed Middle Harbor Redevelopment Project DEIR/DEIS to be unacceptable because it fails to justify its purpose, needs and objective and fails to eliminate where feasible all negative impacts, fails to mitigate negative impacts to less than significant and fails to include all reasonable and available feasible mitigation measures.

1. CFASE requests as mitigation for the past, current and long term negative environmental, public health, public safety, socio-economic impacts of the Middle Harbor Redevelopment Project and other terminals the Port of Long Beach establish a Port Community Advisory Committee
2. The DEIR/DEIS states that one of the project purposes is to increase container terminal efficiency to accommodate a portion of the predicted future containerized cargo throughput.

CFASE during the past public comment periods has recommended that the Port build as its primary container and cargo goods movement transportation system an all Electric Rail Transportation Systems or a Magnetic Levitation (MagLev) Rail Transportation System both which produce zero-emissions.

Our research has further confirmed that MagLev Technology is feasible and the least environmentally and public health impacting technology. The Port has failed to provide an assessment of why this mitigation is not feasible.

Toxic air polluting diesel fuel locomotive trains can be replaced with a 100% clean operating Electric MagLev System and achieve a non-significant impact. This will significantly reduce public health risks and public health impacts.

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 times the speed of a traditional diesel locomotives.

The increased velocity and through-put would therefore not require the construction of additional backlands, since the traditional long queue times would be eliminated.

This high speed transportation logistics system would decrease the need for 1,000's of additional diesel air polluting trucks trips a day to carry cargo since higher volumes could be transported by the Maglev System. The current 2005 baseline of 6,528 truck trips will increase to 10,112 which is a 35% increase in truck traffic, congestion and public health impacts which is unacceptable.

EMMI has further proposed to the Board of Harbor Commissioners and Port of Long Beach to build at their expense a MagLev System demonstration project from the Port of Long Beach to the Union Pacific ICTF facility in less than three years. This would eliminate significant air pollution in West Long Beach where residents, public schools and a veterans homeless & rehabilitation center border the Terminal Island Freeway 103.

We request that the Port of Long Beach replace the on-dock and near-dock diesel air polluting locomotive rail systems the Middle Harbor Redevelopment Project proposes to use with an on-dock MagLev Transportation Clean Technology.

3. CFASE during the past public comment periods has recommended that the Port of Long Beach finance the conversion of the Alameda Corridor to an all Electric Train Rail System or MagLev Rail System. The Alameda Corridor current two railroad companies Union Pacific and BNSF railroad both use diesel fuel air polluting locomotive engines which can never achieve zero emissions like a MagLev System.

The Middle Harbor Redevelopment Project will be using the Alameda Corridor and by converting the Alameda Corridor to a MagLev System the Port of Long Beach can achieve a non-significant impact. The Port has failed to provide an assessment of why this mitigation is not feasible.

We request once again that the Port of Long Beach finance the conversation of the Alameda Corridor diesel fuel air polluting locomotive rail system Middle Harbor Redevelopment Project proposes to use with a zero emissions American MagLev Transportation Technology. This will significantly reduce public health risks and public health impacts.

4. The DEIR/DEIS states that toxic air emissions and green house gases would remain significant and unavoidable, which is unacceptable. CFASE, other organizations and

individuals have requested and recommended mitigation that we believe can significantly reduce negative environmental, public health, public safety, environmental justice and socio-economic exposure and impacts.

5. CFASE has requested in past public comments that the Port of Long Beach mandate that all Port Terminals and the Middle Harbor Redevelopment Project maximize the use the Alameda Corridor in lieu of diesel air polluting trucks.

CFASE requests that the Port of Long Beach conduct a Middle Harbor Redevelopment Project Study to determine the amount of containers that must be delivered by truck due to their local delivery requirements vs those which must travel long distance and out of state. The percentage of those that must travel long distance will be the mandatory Alameda Corridor use percentage requirement.

Refusal of Middle Harbor Redevelopment Project to increase the use of the Alameda Corridor is grounds for not approving expansion and this DEIR/DEIS

6. The DEIR/DEIS does not mandate that all Middle Harbor Redevelopment Project container ships must use the Port of Long Beach electric shore-power system.

CFASE requests that the Port of Long Beach mandate that all of the Middle Harbor Redevelopment Project shipping fleet use the shore-power system. This will significantly reduce public health risks and public health impacts. The Port has failed to provide an assessment of why this mitigation request is not feasible.

CFASE requests that the Port of Long Beach purchase, rent or lease the Advanced Cleanup Technologies – Advanced Marine Emissions Control System (AMECS) System for use at the Middle Harbor Redevelopment Project for all ships that have not been retrofitted to use the electric-shore power system.

CFASE requests that the Port of Long Beach purchase an AMEC's barge system which can meet ships outside the breaker and dock alongside to capture all emissions. The use of this system will be mandatory for ships that must wait outside the breaker.

7. CFASE has requested in past public comments that the Port of Long Beach sponsor a West Long Beach and East Wilmington Port Harbor Community Public Health Survey to validate its Health Risk Assessment conclusions. The Port of Long Beach criterion of 10 in one million cancer risk is unacceptable and is unvalidated. The 10 in one million cancer risk is an arbitrary adopted criteria that is not based on any scientific or medical study of the Port of Long Beach impacted communities and residents.

The Port of Long Beach has failed to conduct any local public health assessment of West Long Beach and East Wilmington residents and sensitive receptors in order to establish a Public Health Baseline. The Port of Long Beach and the USACOE has no idea of the number of West Long Beach and East Wilmington residents currently afflicted with a respiratory disease, cardio-pulmonary disease or disability caused by its current and past unmitigated business operations.

CFASE requests that the Port of Long Beach sponsor a university comprehensive West Long Beach and East Wilmington Port Harbor Community Public Health Survey to validate its Health Risk Assessment conclusions and the Port of Long Beach adopted cancer risk. We recommend that the Port contract with UCLA and USC medical research centers.

8. CFASE has requested in past public comments that the Port of Long Beach include public health care mitigation by establishing a Public Health Care Mitigation Trust Fund to fund local community clinics in West Long Beach and Wilmington and the Los Angeles County Harbor General Hospital. The Port has failed to provide an assessment of why this mitigation is not feasible.

CFASE further requests that funds be used to provide air purification and sound proofing systems in local public schools, child care centers, public libraries, public recreational facilities convalescent care facilities, senior citizen housing & centers and resident's homes.

CFASE requests that the Port of Long Beach establish a Public Health Care Mitigation Trust Fund and charge a public health care mitigation tariff of \$2.50 per Middle Harbor Redevelopment Project container for the determined current baseline and \$5.00 per container over the current baseline.

9. CFASE has requested in past public comments that the Port of Long Beach include Wetlands Restoration Projects in San Pedro Bay as Biological Mitigation. The Ports use of off-port property Bolsa Chica Mitigation Credits is unacceptable. CFASE and the Sierra Club Harbor Vision Task Force have identified potential Wetlands Restoration Project sites in Long Beach, Wilmington and San Pedro.

CFASE requests that the Port of Long Beach owned property in Pier A West which is approximately 80 acres and physically located in Wilmington in the Port of Los Angeles Consolidate Slip area be designated a Wetlands & Biological Habitat Restoration Mitigation Project. This project could also be a joint venture project with the Port of Los Angeles which has also stated its desire to locate and fund Wetlands Restoration Projects. The Port of Los Angeles could also contribute an additional 25 acres approximately which are currently adjacent to the Port of Long Beach property.

The Port of Los Angeles would also be willing to purchase the Port of Long Beach property for a Wetlands Restoration Project.

CFASE requests that the Port of Long Beach establish a Wetlands Restoration Mitigation Trust Fund based on \$1.00 per Middle Harbor Redevelopment Project Container Tariff and adopt the Coalition For A Safe Environment's and the Sierra Club's Harbor Vision Task Force Wetlands Restoration Project Sites recommendations.

10. CFASE requests that the Port of Long Beach include the establishment of a Marine Fish Hatchery to restore the fish population that the Port of Long Beach has destroyed in San Pedro Bay. The Ports DEIR/DEIS 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 requests that the Port of Long Beach establish fish hatcheries, reefs and seaweed beds in San Pedro Bay as Biological Mitigation.

11. The DEIR/DEIS fails to address and mitigate the past, current and future long term traffic permanent impacts on public highway, freeways, streets and bridges. The Port

obfuscates its responsibilities and impacts by stating that it falls under the jurisdiction of CalTrans and further claims it does not own, control or maintain any highway impacted segment.

This is irresponsible when the fact is that all freeways, highways, streets and bridges exist for the general public benefit and paid by the public funds and are not private commercial business industry truck routes. Port trucks destroy local, regional and statewide transportation infrastructure due to their weight, size and quantity. Port trucks further endanger public safety and lives due to increasing truck accidents.

CFASE requests that the Port of Long Beach establish an Off-Port Property Transportation Infrastructure Mitigation Trust Fund based on \$10.00 per Middle Harbor Redevelopment Project Container Tariff. Funds would be donated to CalTrans, Los County, City of Long Beach and City of Los Angeles Transportation Departments and for Civil, Police, Fire Departments emergency response.

12. CFASE requests that the Port of Long Beach decontaminate and sanitize containers before allowing its Middle Harbor Redevelopment Project tenant to place them in container storage yards in Long Beach, Wilmington and other port communities.

CFASE has stated that Port of Long Beach ships and containers as carriers of the West Nile Virus, various insects, bacteria, fungus, toxic and hazardous materials.

CFASE has stated that Port of Long Beach containers are painted with lead and other toxic chemicals which deteriorate in container storage yards in Long Beach, Wilmington and other port communities. The lead paint peels, pulverize and are blown into residents homes, yards and public parks.

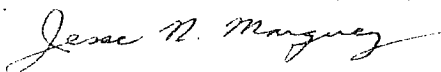
CFASE requests that the Port of Long Beach decontaminate and sanitize containers before they are placed into off-port property container storage yards.

13. CFASE would like to have the newly signed lease with two tenants made public to verify that all environmental measures have been incorporated, under what terms & conditions and schedule.

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The Coalition For A Safe Environment reserves the right to submit additional public comments.

Respectfully Submitted,



Jesse N. Marquez
Executive Director

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**Center for Biological Diversity
Coalition for Clean Air
Coalition for a Safe Environment
Communities for Clean Ports
Los Angeles Alliance for a New Economy
Natural Resources Defense Council**

President Hankla and Members of the Board
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Dear President Hankla and Members of the Commission:

On behalf of the undersigned organizations, we write to provide comments on the Middle Harbor Redevelopment Project Final Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR) and Application Summary Report Berths ("EIR/S"). We appreciate the opportunity to provide comments on the EIR/S. We have previously described the legal failings of the Draft EIR/S in our letter of August 8, 2008, which is by this reference incorporated in its entirety. While this EIR/S shows improvement in certain aspects compared to previous environmental review documents produced by the Port of Long Beach ("Port" or "POLB"), such as the Draft EIR/S for the Pier J project, we still have several concerns about the project itself and the accompanying environmental document. After careful review, we have concluded that it fails in many respects to comply with the requirements of the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA").

I. Failure to Comply with the Clean Air Action Plan ("CAAP") in Adopting San Pedro Bay Standards Serves as a Major Flaw of this Project.

The Port promised in Section 2.2 of the CAAP that it and the Port of Los Angeles would establish these standards for the San Pedro Bay:

- Reduce public health risk from toxic air contaminants associated with port-related mobile sources to acceptable levels.
- Reduce criteria pollutant emissions to the levels that will assure that port-related sources decrease their "fair share" of regional emissions to enable the South Coast Air Basin to attain state and federal ambient air quality standards.
- Prevent port-related violations of the state and federal ambient air quality standards at air quality monitoring stations at both ports.

As the CAAP states: "[P]rojects that meet the Project Specific Standard associated with health risk must also meet the criteria pollutant emissions reductions associated with their

“fair share” of regional emissions, and health risk reductions, as stated in the San Pedro Bay Standard.”¹

In the Middle Harbor case, the decision makers cannot know whether the project specific standards are tough enough precisely because San Pedro Bay Standards have not been adopted by either port. In the more than eight months since commenters made this exact comment to the Port in relation to the Draft EIR/S, there has not been a standard released. Additionally, many commenters previously made this comment about the failure to complete these standards in September of 2007. Moreover, the monitoring stations whose data is available on the ports’ CAAP website consistently continue to show that PM 2.5 emissions are well above the federal and California annual average standards.² The recent MATES III report from the Southern California Air Quality Control District³ shows that the areas of highest cancer risk in the District are those immediately adjacent to the Ports – just as they were in the MATES II report.⁴ Accordingly, it is impossible for decision makers to know whether moving forward with this project will allow the Port to meet clean air goals because the goals have not been established yet. The continued failure to comply with this commitment should prevent the Commission from certifying this EIR because these standards are critical to understanding the impacts of moving forward with this project.

Given these circumstances, it would not be in the public interest to decide whether to certify the Middle Harbor Project or approve the Project before the San Pedro Bay Standards promised in the CAAP have been adopted.

II. Contrary to EIR/S’s Claims, This Project Will Result In Increased Emissions.

The EIR/S attempts to confuse the public and decision makers in stating that commenters “innacurately state[] that the Project would increase emissions.” EIS/R, at 10-404. There are several components of this project that will result in increased emissions. As detailed in several sections below, the project will result in a dramatic increase in greenhouse gas emissions when compared to the CEQA and NEPA baseline. In addition, the construction phase of this project will result in significant increases in emissions during the 10 year construction phase. Almost all future years of emissions show increases when compared to the NEPA baseline. Accordingly, this attempt to obfuscate the impacts from this project is not warranted under CEQA and NEPA. Moreover, this approach attempts to skew the need for additional mitigation measures to reduce the impacts from the project.

¹ CAAP Final Technical Report at 24.

² See <http://caap.airsis.com/>. The U.S. EPA standard for annual average PM 2.5 exposure is 15 milligrams per cubic meter. The analogous California standard is 12 milligrams per cubic meter.

³ SCAQMD, Draft Report Multiple Air Toxics Exposure Study-III, at ES-3 (Jan. 2008), *available at* <http://www.aqmd.gov/prdas/matesIII/matesIII.html> (hereinafter “MATES III”).

⁴ See MATES II.

III. The EIR/S Fails to Adequately Analyze and Mitigate Impacts from the Project's GHG Emissions

A. To Properly Alert Decision-Makers and the Public, the EIR/S Must Integrate Out-of-State Emissions Generated by the Project Directly Into the EIR/S' Air Quality Analysis and Acknowledge that These Emissions Are Part of the Project's Impact Under CEQA

While the Response to Comments includes data on the out-of-state emissions generated by the Project, the Port's continued efforts to deny that out-of-state emissions are part of project impacts under CEQA and the failure to integrate this information in the Air Quality Analysis in the body of the EIR/S violates CEQA.

The Port's decision to bury critical information on the true magnitude of Project impacts in the Response to Comments rather than integrate this data into the Air Quality Impact analysis grossly understates Project impacts and improperly misleads the public and decision makers. *See, e.g., Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40 Cal.4th 412, 442 (2007) (CEQA requires that information "be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project."). When emissions generated outside California are included, emissions resulting from the Project are increased by a factor of 15-20. Comparing California only emissions for mitigated Alternative I with Project emissions that include the entire trip length of the increased ship and truck trips resulting from the Project yields the following:

Mitigated Alternative I		
Net Change from CEQA Baseline	Project Emissions in CA Only	Project Emissions for Entire Vehicle Trip Length
2010	41,797	850,084
2015	95,157	1,872,627
2020	179,563	2,944,784
2030	245,655	3,620,022

Thus, at build-out, the Project would result in additional emissions of over 3.5 million tons.

Rather than acknowledge total Project emissions in the EIR/S' impact analysis, the EIR only states that "From the Middle Harbor Project EIR/S, the change in GHG compared to the CEQA Baseline ranged from an increase in 41,797 to an increase of 247,058 metric tons CO₂e per year in 2010 and 2030, respectfully." To comply with CEQA's informational mandate, data on the full extent of Project emissions must be fully incorporated into the EIR/S' impact analysis.

In addition, the Port's continued assertion that emissions resulting from the Project that are emitted outside California are not part of Project impacts under CEQA

does not withstand scrutiny. In claiming that out-of-state emissions resulting from the Project are outside the scope of CEQA, the Response to Comments cites to Minutes from an April 2008 SCAQMD GHG Threshold Working Group Meeting stating that "Staff is recommending that direct and indirect GHG emissions in California be analyzed, not life cycle emissions." EIR/S, 10-89. However, following further exchange with the Working Group, SCAQMD corrected its position. Regarding life-cycle analysis, the Guidance Document on the Interim GHG significance threshold ultimately adopted by the SCAQMD Board provides:

CEQA requires that the lead agency analyze direct and indirect impacts from a proposed project, giving due consideration to short-term and long-term effects (CEQA Guidelines 15126.2(a)). In the case of GHG pollutants a systems approach to evaluating the consequences of a particular product, process or activity may be more appropriate because of the long atmospheric lifetimes of the various GHGs (see Table 3-1). One of the most effective ways of evaluating GHGs using a systems approach is through the preparation of a life cycle analysis (LCA).

The goal of a life cycle analysis is to compare the full range of environmental damages assignable to products and services, to be able to choose the least burdensome one. The term 'life cycle' refers to the concept that a fair, holistic assessment requires the assessment of raw material production, manufacture, distribution, use and disposal including all intervening transportation steps necessary or caused by the product's existence. The sum of all those steps - or phases - is the life cycle of the product.

Performing a life cycle analysis may be difficult for a number of projects or processes because life cycle emission factors may not be well established for many activities or projects and the life cycle process itself may not be known or well-defined. SCAQMD staff, however, recommends that life cycle analyses be prepared for all projects undergoing a CEQA analysis, as this will produce a more defensible approach. If, however, any component of the life cycle analysis is unavailable, unknown, or not supported by scientific evidence, the lead agency should note such an analysis would be speculative pursuant to CEQA Guidelines §15145 and terminate discussion of that impact.

(SCAQMD 2008). Thus, as set forth in our comments on the DEIR/S and now recognized by SCAQMD, out-of-state emissions resulting from the Project are part of the impact analysis to the extent these emission can be reasonably calculated. *See also* Guidelines § 15144 (an agency must "use its best efforts to find out and disclose all that it reasonably can."). As the Port was able to estimate emissions from the full trip length of the additional ship and truck trips resulting from the Project, it cannot legitimately argue that it is not feasible to include these estimates directly in its impact analysis. The EIR's

continued assertion that these emissions need not be considered under CEQA serves to understate Project impacts and misleads decision makers and the public. Moreover, the Port's reliance on superseded meeting minutes to support its arguments is an inadequate response to comments. *See* Guidelines § 15088(c) ("There must be good faith, reasoned analysis in response [to comments].").

B. Measure AQ-28 Provides No Assurances of the Additionality of Reductions From Funded Projects and Has No Connection With Achieving Specific Emission Reductions Necessary to Fully Mitigate Project Impacts

Mitigation Measure AQ-28, the GHG Reduction Program Guidelines,⁵ provides that:

[T]he Port will require this Project to provide funding to the GHG Program in the amount of \$5 million. This money will be used to pay for measures pursuant to the GHG Emission Reduction Program Guidelines, include [sic], but not limited to, generation of green power from renewable energy sources, ship electrification, goods movement efficiency, tree planting for biological sequestration of CO₂, energy-saving lighting, and purchase of renewable energy certificates (RECs).

EIR/S, 3.2-148. While contributions to fee-based programs can be an effective form of mitigation and can potentially be used to fund off-site GHG reduction projects, AQ-28 is too loosely crafted to meet CEQA's standards of adequacy.

First, AQ-28 poses serious additionality concerns. Additionality is a term first used by Kyoto's Clean Development Mechanism to describe the fact that a carbon dioxide reduction project would not have occurred had it not been for concern for the mitigation of climate change. More succinctly, a project that has proven additionality is a beyond-business-as-usual project. Additionality is a standard prerequisite for any legitimate off-site GHG mitigation. Because the Port's GHG Emission Reduction Program does not guarantee additionality – and even goes so far as to encourage funding of projects that are required to meet regulatory requirements – it fails as a means to effectively mitigate project impacts under CEQA.

For example, port electrification is an adopted early action measure under AB 32 yet the proposed mitigation fund would nonetheless consider funding ship electrification. *See, e.g.*, EIR/S, 3.2-69. Therefore, using the mitigation fund to finance required port electrification is not valid mitigation because it does not result in emission reductions beyond what is required from business-as-usual. In complete disregard for the requirement that GHG mitigation be additional, the Port's GHG Reduction Program provides:

⁵ This measure is listed as AQ-2 in the EIR/S' air quality analysis.

If a project is being performed to satisfy a regulatory or government requirement, the Proposer should verify with that agency with regard to the appropriate emission quantification protocol to use prior to initiating the project so that the Port can ensure the project meets any regulatory and compliance requirements as well as meeting the Port's cost effectiveness criteria.

(Port GHG Emission Reduction Program Guidelines at 11). Thus, measure AQ-28 goes so far as to explicitly call for the funding of projects that are already required to meet existing regulatory requirements. Accordingly, the purported benefits of AQ-28 and the Port's GHG Program are entirely illusory as funds may be freely used to finance projects (and potentially even other mitigation for this Project) that are already required in order to meet existing or imminent regulatory requirements.

While we appreciate the Port's efforts to develop a greenhouse gas reduction program, changes must be made to this program before it can be used as a means of mitigating impacts under CEQA. For example, the MOU between the Attorney General and BAAQMD regarding BAAQMD's development of a carbon offset fund requires that funded projects meet criteria that include:

[A]n activity is eligible for a grant only if the GHG emission reductions are "additional" because (1) they are not required by any law, regulation, permit, court order, order issued by an administrative agency, memorandum of understanding, or other legally binding documents; (2) GHG emissions will be reduced beyond what would have happened in the absence of the grant; and (3) the grant is needed for the activity to occur in a timely and successful manner (taking into account any available rebates, incentives or tax credits).

.....

Grant recipients shall agree that they will not seek credit toward any obligations imposed pursuant to the California Global Warming Solutions Act of 2006, California Health and Safety Code Section 38500, et seq., for early voluntary reductions of GHG emissions based on GHG reductions that result from any project funded in any part by a grant of funds from the Carbon Offset Account. Grant recipients shall further agree not to use any such project for credit under any state or federal emissions averaging, banking, or trading program or use any emission reduction generated by any such project as marketable emission reduction credits or offsets of any type or offset any emission reduction obligation by any entity.

(MOU Attorney General and BAAQMD 2007). Similar provisions must be included in the Port's program to address the additionality concerns that the EIR ignores. A revised program should also include additional criteria ensuring that projects cannot fund feasible

mitigation measures for new projects (or the current project) because these measures would already be required under CEQA. Pub. Res. Code § 21002.1(b). If the Port is unwilling to correct the fatal flaws in its GHG Program, then mitigation funds can be directed to SCAQMD pursuant to an agreement akin to the MOU between the AG and BAAQMD that ensures funded projects result in emission reductions that would not otherwise have occurred.

Second, the \$5 million contributed to the GHG fund has no connection with specific emission reductions. In the context of fee-based programs, CEQA case law provides that fee-based, off-site mitigation is legally adequate (i.e. roughly proportional, not deferred into the future, and fully enforceable) where: (1) the agency has factually evaluated the project's functional equivalent in fees or replacement resources; (2) the agency has developed a reasonable plan to implement the mitigation scheme; and (3) evidence indicates that mitigation will actually occur as a precondition for the project. *Anderson First Coalition v. City of Anderson*, 130 Cal. App. 4th 1173, 1188 (2005). Here, the \$5 million falls far short of mitigating the over 3.5 million tons of emissions resulting from the Project or even the emissions generated in-state. Nor is there any demonstration that \$5 million in funding is the maximum economically feasible amount.⁶ To comply with CEQA, Measure AQ-28 must either demonstrate how the mitigation fee will reduce the project's greenhouse gas impacts to a less-than-significant level and if not, then demonstrate why the proposed fee is the maximum economically feasible.

C. Measure AQ-24 Must Be Tightened to Ensure Purchase of Higher Quality Offsets

To help ensure that any purchased offsets are real, verifiable, and additional, Measure AQ-24 should be modified as follows:

Indirect GHG Emissions. The terminal tenant shall be required to use green commodities that comply with protocols that have been approved for voluntary emission reductions by CARB ~~such as those available from the California Climate Action Registry's Climate Action Reserve~~, to offset carbon emissions associated with the terminal's electricity consumption subject to the limitation specified below. This measure applies to all electricity consumed at the terminal, including shore-to-ship power usage ("cold ironing"). The terminal-related carbon emissions from electricity consumption will be calculated each year based on the local utility's

⁶ Mitigation measures and alternatives are economically feasible under CEQA if, despite the added cost, the project will remain economically successful with their adoption. *Maintain Our Desert Environment v. Town of Apple Valley*, 124 Cal.App.4th 430, 449 (2004) (economic success of project, not the wealth of the project proponent, determines feasibility); *Citizen of Goleta Valley v. Board of Supervisors of Santa Barbara County (Goleta I)* 197 Cal.App.3d 1167, 1181 (1988) (economic infeasibility of an alternative must be supported by "evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project"). The relevant question in determining economic feasibility is whether a reasonably prudent person would go through with the project if forced to adopt the mitigation measure or alternative. *Uphold Our Heritage v. Town of Woodside*, 147 Cal.App.4th 587, 600 (2007).

carbon intensity for that year as recognized by the State of California. The tenant must account for any carbon offsets already used by the electricity deliverer for compliance with California, regional, or federal cap-and-trade regulations ~~may adjust the carbon intensity value to wholly reflect any carbon offsets provided by the electricity deliverer (i.e., point of generation or point of importation) under applicable California and/or federal cap and trade regulations (i.e., no double offsetting).~~ The Port is limiting the potential cost of this measure. The maximum expenditure for purchased offsets required under this measure shall not exceed 15 percent of the terminal electricity costs for any given year (i.e., cost of offsets shall not exceed 15 percent of terminal electricity costs [US\$ basis]). With respect to Mitigation Measure AQ-24, the reason the Port is limiting the potential cost of this measure because the future implementation cost for this measure is not known. It is could potentially be affected by several unknown factors including: (a) the future carbon intensity of electricity delivered by the local utility, (b) the future price of green commodities (RECs and VERs), (c) the price of electricity, and (d) the effects of future cap and-trade regulations on the (a), (b) and/or (c).

IV. The EIR/S Fails to Assess the Impact of Sea-Level Rise on the Project.

Comments on the DEIR/S requested that the Port “disclose the impacts climate change may have on the Port” with specific reference to sea level rise. EIR/S, 10-80. Since the DEIR was released, significant new studies have been released indicating that sea level rise is more certain and more severe than previously estimated. The EIR/S’ failure to substantively address this critical issue not only constitutes an inadequate response to comments but also presents significant future risk that must be disclosed to decision-makers and the public. *See* CEQA Guidelines, Appendix G § VIII(i) (asking whether the project would “[e]xpose people or structures to a significant risk of loss, injury or death involving flooding”).

CEQA requires that an EIR “analyze any significant environmental effects the project might cause by bringing development and people into the affected area.” Guidelines § 15126.2(a). In recent guidance to local governments on the analysis of global warming in a general plan update, the Attorney General noted that “[l]ead agencies should disclose any areas governed by the general plan that may be particularly affected by global warming, e.g., coastal areas that may be subject to increased erosion, sea level rise, or flooding....General plan policies should reflect these risks and minimize hazards for current an future development.” (Cal. Attorney General 2009 at 6). This guidance applies with equal force to developments like the Project.

The imminent threats posed by sea level rise are recognized by the State. Executive Order S-13-08 states that “the longer California delays planning and adapting to sea level rise the more expensive and difficult adaptation will be.” As noted in S-13-08, California’s efforts to reduce greenhouse gas emissions “coupled with others around the world, will slow, but not stop all long-term climate impacts to California” and “global

sea level rise for the next century is projected to rise faster than historical levels.” Indeed, in its most recent report, the Climate Action Team determined that the latest scientific findings indicate that “prior estimates [of sea-level rise] likely have been too low.” (CAT Report 2009 at 1.9). Based on two recent models, “[b]y 2050, sea-level rise could range from 30-45 cm (11 to 18 inches) higher than in 2000, and by 2100, sea-level rise could be 60 to 140 cm (23 to 55 inches) higher than in 2000. As sea level rises, there will be an increased rate of extreme high sea-level events, which can occur when high tides coincide with winter storms and there are associated high wind wave and beach run-up conditions.” (*Id.* at 1.10) Moreover, the rise in sea-level may be much higher than even these models predict because they do not account for the ice-melt contributions from the Greenland and Antarctic ice sheets and assume medium to medium high emissions scenarios. (California Climate Change Center 2009 at 1). Despite existing efforts to curb emissions by a number of Kyoto Protocol signatory countries, anthropogenic CO₂ emissions have been growing about four times faster since 2000 than during the previous decade and at rate above even the IPCC’s highest emission scenarios. (Raupach 2007). Accordingly, observed data on emissions trends suggest impacts at a range even more severe than that based on medium to medium-high emission scenarios.

The California Climate Change Center (“CCCC”) has specifically concluded that “significant flooding is possible at California’s major ports in Oakland, Los Angeles, and Long Beach” due to sea level rise. (California Climate Change Center 2009 at 61). Importantly, projecting impacts from sea-level rise is not speculative. The Pacific Institute, which assisted in the preparation of the CCCC *Impacts of Sea-Level Rise on the California Coast* report, has also generated sea-level rise maps. The Pacific Institute has generated various “hazard maps” for different locations in California; specifically, these maps were prepared by researchers at the Pacific Institute, with support from the California Energy Commission, California Department of Transportation, and the Ocean Protection Council. These maps show the coastal flood and erosion hazard zones from Pacific Institute’s study. In these maps, “data are overlaid on aerial photographs and show major roads. These maps use the quadrangle names and boundaries as US Geological Survey 7.5-minute topographic maps. The maps are 1:24,000 scale when printed at full size, 17” x 22.”⁷ There are a number of maps pertaining to the Port of Long Beach and the Long Beach area, which were created in 2009.⁸ These maps show significant sea-level rise impacts to the Long Beach area and the Port.⁹ It is incumbent upon the Port to assess, disclose, and mitigate these impacts in the EIR.

⁷ Sea-level rise maps available at: <http://www.pacinst.org/reports/sea-level-rise/maps/index.htm>.

⁸ Pacific Institute: California Flood Risk: Sea Level Rise, San Pedro Quadrangle, Los Alamitos Quadrangle, Torrance Quadrangle, Seal Beach Quadrangle, Long Beach Quadrangle.

⁹ *Id.*

V. The EIR/S Fails To Adequately Examine and Implement Cleaner Technologies as Mitigation Measures.

a. The EIR/S Exclusion of Electric Trucks Violates CEQA.

Perhaps the most egregious flaw from an air quality perspective is the Port's complete dismissal of the use of alternative fueled trucks in several applications for this project. In the Port's response to comments from the South Coast Air Quality Management District related to this issue, EIR/S, 10-157, the Port attributes the infeasibility of use of electric trucks for yard hostling duties due to economic and productivity considerations. *Id.* We will address each claim below.

Economic Considerations

The Port fails to explain any rationale calculation that makes costs associated with use of this technology economically infeasible. In fact, the EIR/S fails to meet the standards outlined in section IIIB n.6 of these comments. The EIR/S points to the \$140,000 difference between diesel and electric equipment as a rationale for exclusion of this technology. However, the China Shipping terminal (which is an approximately \$206.5 million dollar expansion project—see <http://www.eyefortransport.com/content/china-shipping%E2%80%99s-la-container-terminal-expansion-approved>) determined that the use of an electric truck for yard hostling applications was feasible. For a project that is more than 3 times larger in costs, the EIR/S fails to provide justification why use of similar technology is economically infeasible at this terminal.

Moreover, Commenters believe sufficient funds are available due to the availability of allocated funds from other Port programs. For example, the Port mentions the low sulfur fuel incentive program that it has created. EIR/S, 10-406. The Port references that it allocated \$10 million dollars for this program. *Id.* However, the Port has expended less than \$250,000, and accordingly, there are significant funds remaining in this program. Since this program is set to expire in less than three months, there will be excess money that has not been expended. Moreover, significant unspent funds remain from allocations to the Clean Trucks Program. (Port of Long Beach, March 23, 2009 Memorandum). Thus, there is a significant amount of money remaining from these air quality mitigation allocations that could be used towards clean air programs.¹⁰ Moreover, the Port has failed to meet the requisite showing to prove economic infeasibility mentioned in Section IIIB n.6.

¹⁰ This inability to spend money allocated to mitigation programs also calls into question the efficacy of the mitigation programs created through this EIR/S. For example, there is no requirement for an end date when funds must be expended. The Port should add a requirement that funds be spent by a certain date. Otherwise, it will be hard to enforce these mitigation measures.

Productivity

The EIR/S fail to explain why electric trucks for yard hostling will not achieve the productivity gains needed. “Designed specifically for short-haul or “drayage” operations, this heavy-duty truck can pull a 60,000-pound cargo container at a top speed of 40 mph, and it has a range of 30 to 60 miles per battery charge. The battery charger can charge up to four electric trucks simultaneously in 4 hours and can also provide up to 60% of the charge in 1 hour to meet peak demands during daily operations.” *See* <http://www.portoflosangeles.org/environment/etruck.asp>. The China Shipping terminal has determined it is productive to use this technology, and the EIR/S fails to explain what factors make the Middle Harbor Project incapable of using these technologies that would reduce criteria pollutants and greenhouse gas emissions. Bald assertions that equipment does not achieve productivity requirements do not render technology infeasible.

b. The Port Fails To Ensure Sufficient Controls on Ships to Reduce Criteria Pollutant Emissions To Levels Needed for Attainment.

The Port must ensure that vessel emissions are adequately controlled. The Port should reevaluate mitigation measures aimed at ensuring early compliance with Tier III engine standards and incentives/disincentives to attract cleaner ships to call at this facility. The agency responsible for demonstrating attainment of federal air quality standards has requested these measures, and the Port should not just rely on assumptions that its operations will not impede meeting clean air standards. For example, the EIR/S even notes that it is “speculative” whether the region will meet clean air standards for PM_{2.5} by 2015 and ozone by 2023. EIR/S, 3.2-91.

This inability to directly state that ship engine emissions will be controlled to a level that will ensure attainment of federal air quality standards is yet another reason why the San Pedro Bay Standards must be completed before moving forward with this project. The Port may or may not be aware of the deep challenges the region faces to meeting several clean air standards, including the one-hour ozone standard, the eight hour ozone standard, and the upcoming PM_{2.5} standards. Given these immense hurdles, it is incumbent upon the Port to demonstrate that it is not taking actions that will impede attainment.

VI. The U.S. Army Corps of Engineers Must Complete Consultation With the National Marine Fisheries Service Pursuant to the Endangered Species Act Prior to Authorizing the Project

The EIR/S acknowledges that increased vessel traffic caused by the Project will contribute to “significant and unavoidable” cumulative effects on blue whales and other threatened and endangered whale species. EIR/S, ES-23, 3.4-28. Vessel strikes on blue whales, gray whales, fin whales, and other species are known to occur in the waters approaching the Long Beach/Los Angeles Harbor. In the fall of 2007 alone, at least 3 blue whales were struck and killed in this area. Two more dead blue whales were

observed. In the fall of 2008, a fin whale was killed by a ship strike. Overall, an average of 2.6 ship strikes on whales in California coastal waters are recorded every year. EIR/S, at 3.4-3. The highly imperiled blue whale, listed as an Endangered species under the Endangered Species Act (“ESA”) accounts for 15 percent of the victims of these incidents. The number of whales actually injured and killed by ship strikes is likely significantly higher, since many ship strikes go unnoticed or unreported. *Id.*

The proposed project will substantially increase vessel traffic in waters approaching the Middle Harbor. The EIR/S acknowledges that increased vessel traffic brings with it an increased risk of ship strikes on whales. However, the EIR/S improperly discounts the project’s impacts by defining them only in terms of the increase in vessel traffic directly attributable to “project-related” vessels (i.e. vessels used to transport materials, aid in construction, or otherwise directly involved in the completion of the project). In reality, the redevelopment project makes way for a significant increase in large vessel traffic traveling through offshore waters toward the harbor. These vessels are not currently subject to any mandatory speed limit while at outside the harbor and, in fact, most travel at speeds well in excess of 10 knots. Research has shown that collisions between whales and ships are usually fatal when vessel speed exceeds 10 knots. Moreover, the recurrence of ship strikes on blue whales and other species demonstrates that, regardless of their ability to swim quickly when startled so often cited in the EIR/S, too often these animals are either unable to detect the presence or direction of an approaching vessel, or simply cannot evade them in time.

Any increase in mortality to blue whales and other imperiled whale species is unacceptable. NMFS has estimated that the Eastern North Pacific stock of blue whales, the population that frequents southern California waters, can only withstand one non-natural death per year in U.S. waters while remaining viable. If this species is to survive and recover, impacts from vessel strikes must decrease.

As the US EPA comment letter points out, the EIR also fails to mitigate impacts resulting from increased ship traffic on whales. Specifically, “EPA remains concerned that additional mitigations beyond the CAAP Vessel Speed Reduction Program are not provided” and the Port “should institute improved methods for identifying whales that are potentially in harm’s way from vessels.” EIR/S, 10-34.

The EIR dismisses the agency’s suggestion and responds that the recommended technology for identifying whales that could be harmed “is not feasible for the Project at this time.” EIR/S, 10-52. The Port fails to provide the necessary explanations, technical support, and documentation for the Port’s self-serving assumptions regarding the feasibility of implementing mitigation. Simply claiming that available technology, which is successfully being implemented at other Ports, is “not feasible” does not satisfy the Port’s obligation to identify and describe these measures. *See* CEQA Guidelines § 15126.4(a)(1) (“An EIR shall describe feasible measures which could minimize significant adverse impacts . . .”). Here, the mitigation proposed by EPA could lessen cumulative impacts from ship strikes on whales in Port waters and beyond. Therefore,

the Port is obligated to consider the measures and to substantiate claims regarding the feasibility of implementation. Such an analysis must be the starting point for any analysis of impacts on special status species.

Moreover, it appears that the Corps has failed to fulfill its non-discretionary duties with respect to ensuring the protection of whales under the ESA. Section 7(a)(2) of the ESA requires federal agencies to “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the adverse modification of habitat of such species . . .determined . . . to be critical . . .” 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). To accomplish this goal, agencies must consult with the delegated agency of the Secretary of Commerce or Interior whenever their actions “may affect” a listed species. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).

At the completion of consultation NMFS issues a Biological Opinion that determines if the agency action is likely to jeopardize the species. If so, the opinion must specify a Reasonable and Prudent Alternative (“RPA”) that will avoid jeopardy and allow the agency to proceed with the action. 16 U.S.C. § 1536(b).

The Corps’ authorization of the proposed project is a federal agency action that “may affect” listed species, including blue whales and fin whales, by causing a significant increase in overall vessel traffic destined for the harbor. As such, it triggers the obligation to consult with NMFS regarding the effects of the project on ESA-listed species. This remains true even if one accepts the EIR/S’s narrow definition of project effects. The fact that these species occur within the vicinity of the project and the project will result in any increase in vessel traffic meets the ESA’s broad definition of “may affect.” 50 C.F.R. § 402.14(a), (c). The EIR/S itself acknowledges that cumulative impacts from the project are “significant and unavoidable.” Plainly, the Corps must consult with NMFS regarding these effects and obtain a Biological Opinion before authorizing the project.

VII. The EIR/S’s Analysis of and Mitigation for the Project’s Traffic Impacts Remains Inadequate.

In our original comments, we pointed out several flaws in the DEIR/S’s analysis of the Project’s potential traffic impacts. First, we pointed out that the DEIR/S’s truncated study area led it to ignore serious impacts in communities along I-710 north of the Port. Second, we noted that the DEIR/S’s mitigation program for traffic impacts was unacceptably vague and ignored several potentially feasible mitigation measures. The EIR/S’s responses to our comments do nothing to resolve these inadequacies.

A. The EIR/S Continues to Use a Truncated Study Area That Leads It to Ignore Substantial Parts of the Project’s Impact.

As we noted in our original comments, the port is responsible for tens of thousands of daily trips, even as far north as SR 60. The EIR/S does not contest this fact, nor could it. The EIR/S does assert, however, that the Project’s contribution to peak-hour

traffic in Commerce would not meet the document's standard of significance. EIR/S, 10-422.

This point serves only to call into question the value of those standards. There is no indication that Port-related traffic follows the standard commute pattern of substantial morning and evening peaks. Instead, it is likely to be evenly spread out through the day. In light of this pattern, the peak-hour analysis is inappropriate, and the EIR's traffic analysis should consider the Project's total contribution to daily traffic. By such a measure, the Project is likely to have a significant impact.

The EIR/S acknowledges that even its flawed methodology determines that traffic impacts would be significant and unavoidable. EIR/S, 10-422. This determination, however, does not relieve the EIR of its responsibility to disclose all of the Project's impacts, accurately and completely. Nor may the Port escape its duty to mitigate impacts by adopting a Statement of Overriding Concerns. "CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of these effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible. *City of Marina v. Bd. of Trustees* (2006) 39 Cal. 4th 341, 368-69.

B. The EIR/S Offers No Sufficient Justification for its Dismissal of Feasible Alternatives.

The EIR/S next attempts to avoid its responsibility to identify mitigation measures that would reduce traffic impacts by stating that such measures "have not yet been identified and are under the jurisdiction of another agency." EIR/S, 10-422. The first part of this is a simple truism--- the measures have not been identified because the EIR has failed to identify them. The second is also apparently true, but is not relevant. CEQA clearly anticipates that an agency will from time to time identify mitigation measures that are outside their authority to implement. This is why CEQA allows a lead agency to find that the changes to the project are required to "mitigate or avoid the significant effects on the environment" but that "those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by the other agency." Public Resources Code § 21081(a)(1), (2). This provision plainly requires that the EIR identify "those changes." In other words, an EIR must identify the needed mitigation measures, even when those measures are not within the lead agency's authority.

This task, contrary to the EIR's claim, is far from "impossible." It is, in fact, quite common for EIRs to list the traffic improvements that would reduce its impacts, even when they are outside the lead agency's authority. Disclosing these measures fulfills several key goals of CEQA: it allows the public and decisionmakers to consider the ultimate effects of the Project on their communities, it provides a basis for the required analysis of the efficacy of mitigation measures (*see Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal. App. 4th 99, 130), and it allows the required analysis of the environmental impacts of such measures

(CEQA Guidelines 15126.4(a)(1)(D)). If the Port intends to find that the changes needed to reduce the Project's impacts are in another agency's jurisdiction, then it must provide substantial evidence to support that finding, including evidence that there are, in fact, changes that would do so. The EIR's continued refusal to identify the required measures renders the document incomplete and inadequate to support approval of the Project.

Moreover, even the EIR's gesture towards traffic mitigation, its discussion of fair-share payments toward needed improvements, does not constitute an adequate mitigation measure. "Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments." CEQA Guidelines § 15126.4(a)(2). The EIR/S does not provide any such mechanism for the enforceability of its fair-share commitments, and is thus inadequate.

Our previous comments also proposed public transit improvements as mitigation for the Project's traffic impacts. The EIR's assertion that the Project would not impact public transit is simply irrelevant. The Project would create new jobs at the Port; in the absence of effective public transit, these new employees are likely to drive to work or to the termini of the shuttles that the EIR/S references at page 10-424. These trips are a part of the Project's significant traffic impacts; public transit improvements would reduce such trips and mitigate the impact. As such, the Port must adopt mitigation measures regarding such improvements unless they are infeasible. CEQA Guidelines § 15091(a)(3). The EIR/S provides no evidence of infeasibility.

Finally, our prior comments proposed a number of potential mitigation measures that would reduce truck traffic by providing alternative modes of goods movement, both on and off the Port's docks. The EIR/S offers a variety of claims about the infeasibility of these measures, but none of these assertions meet CEQA's standards. A feasible mitigation measure is one that is "capable of being accomplished in a successful manner . . . taking into account economic, environmental, social, and technological factors." Public Resources Code § 21061.1.

The EIR/S does not meet this standard with its bald assertion that it is infeasible to construct an intermodal facility at the location of the import car lot off Anaheim Street because it would "negatively interrupt tenant operations." EIR/S at 10-424. The EIR/S does not explain whether the current tenant could co-exist with the proposed mitigation. If the two uses of the lot are mutually exclusive, then it may be feasible for the tenant to give way to the mitigation; it is impossible to determine the feasibility of this option without knowing the terms of the tenant's lease and the penalties for terminating it early. Without this information, the EIR's determination of infeasibility lacks substantial evidence or support. Similarly, the EIR's statement that the Port is "exploring options for" and "considering" other intermodal projects does nothing to establish their infeasibility. EIR/S, 10-424. To the contrary, apparently the Port's thinks these mitigations are worth studying---that is hardly a point in favor of infeasibility.

Finally the EIR/S dismisses our proposal of a Maglev system. First it questions whether such a system is a "zero emissions technology." EIR/S 10-160. This,

of course, is not CEQA's standard. Under CEQA, a mitigation measure must be able to "minimize significant adverse impacts." CEQA Guidelines § 15126.4(a). The EIR/S offers no reason to believe that the Maglev system would not meet definition.

The EIR/S then claims that Maglev would be infeasible, essentially by stating that it is too expensive, because of capital costs and right-of-way acquisition costs, and because it would require approval of a other agencies. EIR/S, 10-160. Neither of these factors is sufficient to render the mitigation measure infeasible. Just stating the expense of a mitigation measure does not establish its infeasibility. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to" implement the measure. *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181. Similarly, the mere fact that another agency would be involved in implementing a measure says nothing about its feasibility. The EIR/S does not establish a mitigation measure involving a Maglev system is feasible; thus the Port may not approve the Project without adopting the measure.¹¹

VIII. The EIR's Responses To Comments Regarding the Project's Noise Impacts Are Inadequate.

As discussed above, the traffic generating impacts of this Project are understated in the EIR. In turn, this causes the EIR to understate the ongoing noise levels produced by the increased traffic. The EIR/S seeks to defend the Port's faulty assumptions in establishing thresholds of significance for noise impacts and presents inadequate responses to comments regarding Project-generated noise impacts on the adjacent community. The document continues to rely on thresholds of significance inappropriate for the context of the Project and continues to understate the impacts from noise to the surrounding community. The EIR/S also ignores the CEQA Guidelines and multiple comments, (e.g., U.S. Environmental Protection Agency (EPA), Center for Biological Diversity, Natural Resources Defense Council and others), regarding community outreach. Moreover, the EIR provides no evidence that uncertain improvements would adequately mitigate cumulative noise impacts to the community. These issues are discussed further below.

A. The EIR's Thresholds of Significance Remain Inappropriate

Determining whether or not a project may result in a significant adverse environmental effect is one of the key aspects of CEQA and thresholds are an analytical tool for judging significance. In this case, the EIR/S continues to argue that incremental contributions to ambient noise levels are less than significant, despite the fact that existing ambient noise levels are already in violation of the Long Beach Municipal Code limits. See EIR/S at 3.9-8 and 3.9-9. Since the requirement to provide mitigation is triggered by the identification of a significant impact, the EIR's failure to identify all of the Project's significant impacts also results in a failure to mitigate these impacts.

The CEQA Guidelines indicate that:

¹¹ The failings discussed in this section equally afflict the EIR's discussion of alternatives at page 10-433 and 434.

“The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not always possible because the significance of an activity may vary with the setting.”

CEQA Guidelines 15064(b); emphasis added.

In addition, as expressed by the U.S. EPA in comment B-22: “The local community is already heavily impacted” and “is designated as a Medically Underserved Area” therefore, “...all impacts, *even seemingly small ones*, are important to consider and mitigate in order to fully offset the adverse Project-related impacts to the local community.” EIR/S at page 10-40; emphasis added. Here, the EIR treats the established significance threshold as “an iron clad definition of significant effect,” the context of the Project setting notwithstanding. The EIR’s response to the EPA comment referenced above simply reiterates the list of mitigation measures identified in the DEIR, including two measures addressing construction noise impacts. This approach is unresponsive. With the development of the proposed Project, receptors at these locations will be subject to an even greater level of exceedance.

It is also important to note that where existing ambient noise is already elevated, tolerance is very low for any increase in noise. Existing ambient noise at many residences, schools and other sensitive receptors along the 710 and other area roadways is already elevated. Here, the proper question is not the relative amount of noise resulting from the Project, but “whether any additional amount of [] noise should be considered significant . . .” in light of existing conditions. *Los Angeles Unified School District v. City of Los Angeles*, 58 Cal.App.4th 1019, 1025-26 (1997) (emphasis added).

B. The EIR/S Fails to Evaluate Single Noise Events.

The EIR fails to evaluate single noise events. See Tables 3.9-4 and 3.9-5 at EIR/S page 3.9-7. Mobile noise sources may be one of the most annoying noise producers in a community because they are louder than background noises and more intense than many acceptable stationary noise sources. Though the noise emitted from mobile sources is temporary, it is often more disturbing because of its abruptness, especially single noise-producing events such as those produced by certain construction equipment, such as pile-driving, or back-firing vehicles. Heavy trucks, such as those used for Project construction and transport of freight, generate significantly more single noise events than other vehicle types. Moreover, single-event noise can be far more intrusive during the evening and nighttime hours when ambient noise levels are at their lowest and when sensitive receptors are sleeping.

The EIR’s noise analysis should have evaluated how single noise events from construction activities, and from trucks traveling along the 710 during Project operation, would impact sensitive receptors. Yet the document focuses only on average

noise, not such single noise events as pile driving, trucks' engines revving up and trucks' braking. Analyzing only average noise impacts has been rejected by California courts because impacted residents do not hear noise averages, but single events. *See Berkeley Keep Jets Over the Bay Committee v. Port of Oakland*, 91 Cal.App.4th 1344, 1382 (2001). Single event noise levels have been shown to be likely to result in sleep disruption and speech interference, and heightened levels of stress and annoyance. Noting that "sound exposure level [SEL] has been found to be the most appropriate and useful descriptor for most types of single event sounds," the court in *Berkeley Keep Jets* held that the Port must prepare a supplementary noise analysis calculating the impacts of single-event sounds. *Id.* at 1382. As discussed above, the EIR should have analyzed the impacts of single event noise on sleep, speech, stress and annoyance levels, and analyzed adequate measures to mitigate those impacts.

The result is an EIR with an incomplete analysis that does little to provide the public and decision-makers with the basic information necessary to evaluate the extent and severity of the Project's noise impacts. Such omissions are fatal under CEQA.

C. The EIR/S Fails to Elicit and Incorporate Community Input

Given the Project's size and the extensive impacts that will result to the community, the Port should have consulted with community groups regarding existing conditions and expected future impacts in surrounding neighborhoods. The surrounding community is already highly and disproportionately impacted and stands to suffer even greater impacts in the future. We concur with EPA's comment B-22 which states:

"all impacts, even seemingly small ones, are important to consider *and mitigate* in order to fully offset the adverse Project-related impacts to the local community" and "...the identification of such (environmental) effects is expected to encourage agency consideration of alternatives, mitigation measures, and *preferences expressed by the affected community or population.*"

DEIR comment 10-40; emphasis added.

The CEQA Guidelines state:

"In determining whether an effect will be adverse or beneficial, the lead agency shall consider the *views held by members of the public in all areas affected* as expressed in the whole record before the lead agency."

CEQA Guidelines 15064(c); emphasis added.

The Port fails entirely to "consider the views held by members of the public in all areas affected." In response to the U.S. Environmental Protection Agency's (EPA) comments that the Port should elicit input from neighboring communities to

identify appropriate offset measures, the EIR responds that the local community has “the opportunity through other community outreach programs to express their concerns about environmental management at the Port.” See EIR/S responses to comments B-7 at page 10-50. This response is dismissive and flies in the face of CEQA guidance intended to involve communities at all stages of the decision-making process.

On the contrary, the Port appears determined to minimize public input. For example, despite the community’s concerns and comments, the Port developed a grant program to provide mitigation funds to area schools and health centers without consulting the community. (See further comments on the grant program below.) As a matter of fact, the Port did not post information regarding the program on their website until the Friday prior to a Monday Board of Commissioners meeting to review and approve the proposed program. This tactic gave the public little to no time to review and comment on the proposed mitigation program. It was only upon the request of certain commenters that this program was delayed for adoption. Moreover, this approach to creating and adopting mitigation programs and completing the EIR/S does not comply with the White Paper on Environmental Justice that Jones and Stokes prepared for the Port in April of 2005. (Attached to these comments and provided as Supplemental Information to the FEIR).

D. The EIR’s Proposed Noise Mitigation Remains Inadequate.

The EIR’s mitigation measures related to minimizing noise are restricted to limiting hours of operation for the very loudest of construction equipment (i.e., pile drivers) and setting up temporary noise barriers during the construction period. EIR at 3.2-22. In response to comments about anticipated project-related and cumulative impacts, the Port also developed a grant program to fund implementation of mitigation to reduce impacts from noise and air quality at area schools, healthcare, and seniors’ facilities. See, EIR/S 10-53. However, according to the EIR/S description, the amount of mitigation to be implemented is uncertain and the mitigation would only be implemented at *some* of the impacted schools. The measures to be implemented would depend on how many schools apply for grant money and how many are deemed eligible. *Id.* In addition, the grant program has a funding cap. The Middle Harbor project would provide a one-time grant of five million dollars towards measures specified by the Program (e.g., noise walls or berms, dense vegetation, insulated doors and windows, and ventilation systems). EIR/S at 10-54.

The EIR/S provides no information on how the funding cap was determined. If the program receives many applications and funding is not adequate to provide mitigation for all the applicant schools and facilities, the panel of Port Commissioners will prioritize which projects to fund. The EIR does not address how impacts to schools that are not funded will be mitigated. Therefore, there is no accountability as to whether all schools potentially experiencing noise impacts would have funding for mitigation. This approach does not ensure that all foreseeable impacts will be mitigated. Moreover, the Mitigation Monitoring and Reporting Program for the Project does not include provisions to monitor the grant program. Such monitoring is

essential to ensure that 1) all impacted schools receive adequate funding, and that 2) the improvements implemented actually result in a reduction of impacts.

Finally, the grant program places the burden of applying for grant funding on the schools. In this economic climate of budget and staffing reductions, it is foreseeable that many schools, even though they may be impacted, may not have the staff and resources to commit the time to apply for the funding. The Port should evaluate schools that will be impacted and provide mitigation funding regardless of the schools' ability to allocate staff and resources to participate in the grant process. The EIR's Analysis of Growth-Inducing Impacts Continues to be Based on Unsupported Assumptions.

We pointed out in our previous comments that the DEIR analyzed the Project's growth-inducing impacts simply by assuming, with no reasoning or support, that new employees would move to the cities surrounding the Port in exactly the proportions that each city makes up of the regional population. In response to this comment, the EIR/S offers a slightly longer explanation that similarly lacks any actual support. The EIR/S first asserts, out reference to any evidence, that "the relative attractiveness of a given subregion city to immigrants is directly related to that city's amenities , , , and accessibility of places of work." EIR/S, 10-431. This may be partially true, although the EIR/S offers no facts that would give us reason to believe it. However, any hypothesis that ignores the impact of housing costs on population distribution cannot be considered complete, and any analysis that attempts to predict where people will live without considering the cost of living is inherently inadequate.

The EIR/S then states that it uses city population as proxy for amenities and that it assumes that all places in the subregion are equally accessible to Port jobs. EIR/S, 10-432. Neither of these assumptions has any support whatsoever—neither in the EIR/S nor in common sense. The first requires us to assume that all cities of similar population have similar amenities. This is just not true. And the second just denies reality—workers throughout the subregion have commutes of different lengths. This analysis takes an easy way out---it undertook no real study of conditions on the ground—and the EIR/S provides no justification for its approach.

The EIR/S similarly shirks its duty to consider the growth-related impacts of jobs indirectly induced by the Project. The EIR/S states that "it is not possible to estimate what opportunities might be created by the Project." EIR/S at 10-433. In fact, it is entirely possible to estimate indirectly-induced employment. Planners and economists use a multiplier to estimate induced growth, as demonstrated in the attached documents. The first provides a general overview of multipliers and the second describes IMPLAN, a software package that models the economic effects—including indirectly induced job growth—of changes in industries.¹² , This is an accepted, easily accessible methodology,

¹² Alan W. Hodges, Understanding and Using Economic Multipliers, USDA Economists Presentation; David Mulkey & Alan W. Hodges, Using Implan to Assess Local Economic Impacts, University of Florida, IFAS Extension Program, Publication #FE 168.

and the Port's refusal to take advantage of it is somewhat mysterious. Without such analysis, the EIR/S cannot meet the mandate of CEQA Guidelines section 15126.2(d), which requires that EIRs to examine "the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly." This EIR has made no such examination.

These flaws in the way the analysis counts and distributes new workers among the nearby cities renders the rest of its conclusions untenable. The Project may in fact substantially increase housing demand or certain environmental impacts in one or more cities, but the EIR/S denies the possibility. EIR/S, 10-433. Until the EIR/S provides an accurate analysis of induced growth, and a thorough accounting of the impacts of that growth, it will remain inadequate and insufficient to support approval of the Project.

IX. The EIR/S's Continued Refusal to Include Upland Activities in Its NEPA Analysis Renders the Document Inadequate Pursuant to the Corps of Engineers' Own Regulations.

In our previous comments we noted that the Corps of Engineers inappropriately omitted the Project's upland development from its impact analysis, instead including that development in the baseline instead. The Corps' own regulations, we pointed out, require the use of an existing conditions baseline when federal permits are as essential as they are to this Project. "[I]t is the impact of the [federal action] on the environment at large that determines the Corps' NEPA responsibility." *Save Our Sonoran, Inc. v. Flowers* (9th Cir. 2005) 408 F.3d 1113, 1122. In fact, those regulations specifically note that federal permits for a shipping terminal, like Middle Harbor, "warrant extending the scope analysis" by using an existing conditions baseline. 33 C.F.R. § 325 (App. B, § 7(b)(3)); see also *Arkansas Nature Alliance v. Army Corps* (E.D. Ark. 2003) 266 F.Supp.2d 876, 891-92 (because the bridge provided access to the island, development on the island was "essentially a product" of the Corps' permit); *Friends of the Earth v. Army Corps of Engineers* (D.D.C. 2000) 109 F. Supp.2d 30, 40-41 (applying shipping terminal example to require Corps to expand scope of review for "floating casinos" to include upland impacts from hotels, parking garages and other related development). In response, the FEIR/S offers no justification for ignoring this regulation, nor any explanation for why it might not apply in this instance.

By ignoring the upland activities, the EIR/S impermissibly "segments" the Project. Agencies must consider related actions in a single EIS. *Thomas v. Peterson* (9th Cir. 1985) 753 F.2d 754, 758. This error leads the document's NEPA analysis to greatly understate the Project's GHG emissions and renders that analysis inadequate.

X. Conformity Analysis.

Commenters will be providing detailed comments to the United States Army Corps of Engineers related to the draft conformity analysis for this project by the May 3, 2009 deadline. However, the Port should not move forward with approval of this document without the benefit of a final Conformity Analysis. As mentioned above, the

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Port has failed to complete its San Pedro Bay Standards, and the conformity analysis serves to show whether the project will interfere with meeting federal clean air standards.

Thank you for considering these comments. If you have any questions, please contact Matt Vespa, mvespa@biologicaldiversity.org, (415) 436-9682 x309, or Adrian Martinez, amartinez@nrdc.org, (310) 434-2300.

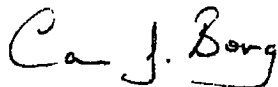


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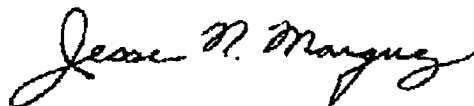
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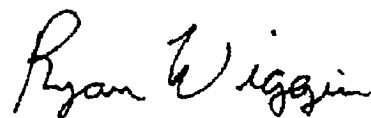
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LONG BEACH MOTHERS' BRIGADE
LONG BEACH COMMUNITY PARTNERS COUNCIL
LOS ANGELES ALLIANCE FOR A NEW ECONOMY
NATURAL RESOURCES DEFENSE COUNCIL
SIERRA CLUB HARBOR VISION TASK FORCE**

August 8, 2008

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**RE: JOINT COMMENTS ON MIDDLE HARBOR REDEVELOPMENT
PROJECT DRAFT ENVIRONMENTAL IMPACT STATEMENT
(DEIS)/DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) AND
APPLICATION SUMMARY REPORT BERTHS**

Dear Mr. Cameron:

On behalf of the undersigned organizations, we write to provide comments on the Middle Harbor Redevelopment Project Draft Environmental Impact Statement (DEIS)/Draft Environmental Impact Report (DEIR) and Application Summary Report Berths ("DEIR/S"). We appreciate the opportunity to provide comments on the DEIS/DEIR. While this DEIR/S shows improvement in certain aspects compared to previous environmental review documents produced by the Port of Long Beach ("Port" or "POLB"), such as the DEIS/DEIR for the Pier J project, we still have several concerns about the project itself and the accompanying environmental document. After careful review, we have concluded that it fails in many respects to comply with the requirements of the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"). As described below, the DEIR/S is inadequate because it fails to carry out CEQA's mandates: It does not accurately identify or analyze the significant environmental impacts that would result from the implementation of the massive Project,

and it fails to provide sufficient mitigation for such impacts as it does identify. Moreover, it fails to consider alternatives that effectively protect the environment while providing good, well-paying, sustainable jobs for the region's workforce.

Given the inevitable regional and acute local impacts of the proposed Project, it is especially important that the DEIR/S contain the necessary analysis to enable both the decision makers and the public to understand the significant environmental repercussions of the Project. Additionally, it is also critical that the DEIR/S compare the proposed Project to other possible alternatives for redeveloping the Port. Instead, the DEIR/S effectively disguises the true impacts of the Project by omitting crucial information regarding what the Project will actually do, underestimating many environmental impacts and ignoring others altogether.

As a result of the DEIR/S's inadequacies, there can be no meaningful public review of the Project. CEQA accordingly requires the Port to prepare and circulate a revised DEIR/S to permit a complete understanding of the environmental issues at stake.

I. Overview of Project

Like previous plans, this project will expand port operations, creating numerous impacts on residents in the Harbor area and beyond. From an air quality perspective, this project has special relevance in that this is the first major EIR/EIS released since the Board of Harbor Commissioners ("Board") unanimously voted to adopt the San Pedro Bay Ports Clean Air Action Plan ("CAAP"). Thus, as deadlines slip in implementation of the CAAP, we become concerned about the general approach of this EIR/EIS. Thus, it is critical that the Port makes sure all impacts are adequately studied and truly mitigated in order that this project will result in minimal impact to residents near the Port. Moreover, the Project has many impacts beyond air quality that will affect residents, and we are concerned that the Port has not adequately mitigated these impacts.

At the outset, it is important to provide perspective on the magnitude of this project. At full build out, just the projected increase in throughput at this terminal is the equivalent of inserting the container throughput of the Port of Vancouver into the Harbor area.¹ Also, the projected final throughput for the project, 3.3 million Twenty-foot Equivalent Units ("TEUs"), will be approximately 1/3 greater than the container throughput of the current operations of the Port of Oakland, the fourth busiest container port in the nation.² Between the baseline year and full build-out, more than 3,000 trucks trips per day will be added to the roads surrounding the port.³ Thus, this one project, part of a long list of

¹ Compare projected throughput increase from the Middle Harbor project, to 2006 throughput at the Port of Vancouver. Data from American Association of Port Authorities website. Accessed 9/18/07. Available at http://aapa.files.cms-plus.com/PDFs/2006_North_American_Container_Traffic.pdf

² *Id.*

³ DEIR/S, at Table 1.6-1.

container expansion projects in the Harbor area,⁴ will undoubtedly impact port-adjacent communities and the region in general. Without an expanded suite of mitigation measures, this terminal expansion will have a harsh impact on the land, water and air.

a. The Proposed Project will have an indelible impact on port-adjacent communities and the region in general.

The health impacts and regional air quality impacts from port activities are well documented. Of all listed TACs identified by the California Air Resources Board ("CARB"), diesel particulate matter ("DPM") is known to present the greatest health risks to Californians.⁵ Dozens of studies have shown adverse impacts from DPM and NO_x including respiratory disease, cardiovascular mortality, cancer, and reproductive effects as well as an increase in regional smog and water contamination. CARB has determined that diesel exhaust is responsible for over 70% of the risk from breathing our air statewide and in the South Coast Air Basin ("SCAB").⁶ Further, the South Coast Air Quality Management District ("SCAQMD") in the Multiple Air Toxics Exposure Study II ("MATES II") identified harbor-area communities as having among the highest cancer risks in the South Coast.⁷ The MATES II study identified mobile sources, i.e. trucks, trains, ships, etc., to be the primary sources of toxic diesel particulate emissions.⁸

CARB recently revised its analysis of annual impacts from PM_{2.5} pollution. Previously, CARB estimated that statewide, 2,400 premature deaths annually are linked to goods movement, mostly from particulate pollution and 50% of these deaths are in the SCAB.⁹ Now, as the chart below demonstrates, CARB estimates that there are 3,700 premature deaths statewide associated with PM_{2.5} from Goods Movement activities.¹⁰

⁴ DEIS/DEIR, at Figure 4-1.

⁵ CARB, *Emissions Reduction Plan for Ports and Goods Movement in California*, 7 (2006)(hereinafter "ERP").

⁶ ERP, at 7.

⁷ SCAQMD, *Multiple Air Toxics Exposure Study for the South Coast Air Basin-II*, at ES-5 (March 2000) available at <http://www.aqmd.gov/matesiid/matesioc.htm>. (hereinafter "MATES II").

⁸ MATES II, at ES-3, ES-9.

⁹ ERP, What's New-1 at 4.

¹⁰ CARB, *Methodology for Estimating Premature Deaths Associated with Long-Term Exposures to Fine Airborne Particulate Matter in California Draft Staff Report*, (May 22, 2008) [See "Attached Literature" Exhibit A].

Table 6: Annual premature deaths associated with PM2.5 from Goods Movement activities¹

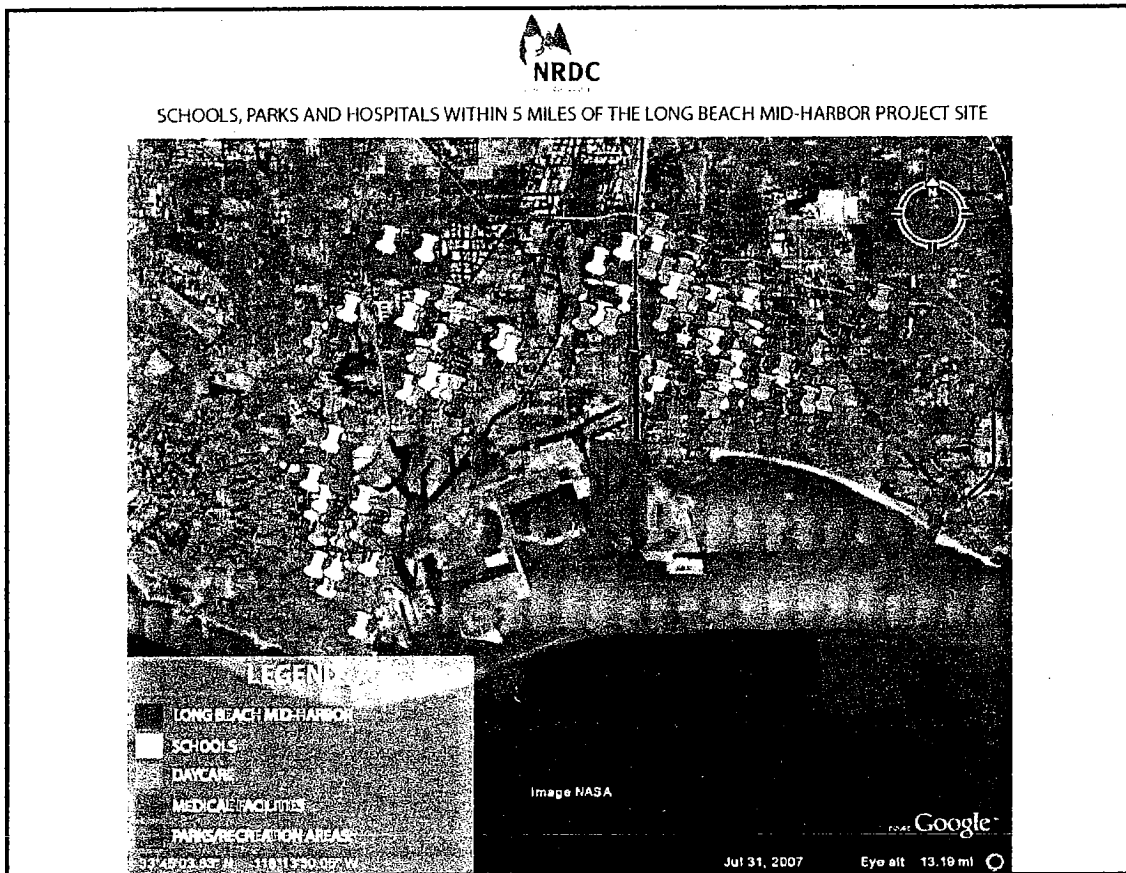
Pollutant	Low	Mean	High
Primary Diesel PM	600	2,000	3,500
Secondary Diesel PM (Nitrates)	480	1,600	2,800
Secondary Diesel PM (Organic Aerosols)	15	49	85
Other Primary PM2.5 ²	12	39	68
Statewide Total³	1,100	3,700	6,500

¹For the year 2005, these estimates do not include the contributions from particle sulfate formed from SO_x emissions, which is being addressed with several ongoing emissions, measurement, and modeling studies. Results listed are based on the previous emission inventories used in the Goods Movement Emission Reduction Plan in April of 2006 but with the new PM2.5-mortality relationship of 10 percent per 10 µg/m³ increase in PM2.5 exposures; these values may change if emissions inventories are updated.

²PM2.5 includes tire wear, brake wear, and particles from boilers, which are not covered under primary diesel PM.

³Totals do not add up due to rounding.

Residents of Long Beach and other harbor area communities will undoubtedly face additional impacts due to the increased pollution from this project. For sensitive populations, such as children and the elderly, and for those who live and work in close proximity to these major sources of diesel exhaust, the risk will be even higher. Using Google Earth, the Natural Resources Defense Council (“NRDC”) created the map below showing the myriad of sensitive sites within a 5-mile radius of the Middle Harbor Project. This chart clearly demonstrates the need for strong protections to ensure the health of these most sensitive populations are protected from the ills of port operations.



In this submission, we are attaching several studies that should be evaluated in improving the DEIS/DEIR.

Moreover, in addition to the huge impacts on residents and workers closest to the sources of emissions, port operations pose a particularly acute threat to regional air quality. The South Coast Air Basin (“SCAB”), where POLB is located, consistently ranks near the top of the lists for the nation’s filthiest air quality. Freight transport, including the operations at the Port, greatly contributes to the persistent failure of the SCAB to meet clean air standards established by the Environmental Protection Agency. In fact, the SCAQMD has determined that the ports of Los Angeles and Long Beach are the single largest fixed-source of air pollution in Southern California. Pollution from the ports is responsible for more than 100 tons per day of smog and cancer-causing nitrogen oxides, more than the daily emissions from all 6 million cars in the region.¹¹ Without all feasible mitigation, the SCAB could fail to achieve the federal annual PM2.5 standard by 2014. This project proposes to add additional pollution that would not have occurred if the project was not

¹¹ SCAQMD, 2007 Air Quality Management Plan (“AQMP”), at IV-A-146.

built. Against this backdrop, there are several deficiencies in the DEIR/S that must be addressed.

II. The DEIR/S's Project Description is Inadequate.

The DEIR/S's project description fails to address numerous Project features. These omissions skew the DEIR/S's analysis of impacts and, thus, undercut the validity of the entire document under CEQA. Without a complete and accurate project description, an agency and the public cannot be assured that all of a project's environmental impacts have been revealed and mitigated.

"An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR."¹² A complete project description is indispensable because "[a] curtailed or distorted project description may stultify the objectives of the reporting process."¹³

The DEIR/S's description of the proposed Project fails to meet this mandate in a number of respects. First, the Project description does not provide any specificity regarding the loading and unloading procedures at the expanded facilities. The DEIR/S acknowledges that many hazardous materials will be handled at the new project site.¹⁴ Petroleum products, and certainly others identified in the document, have very different potential impacts than non-hazardous materials. Loading and unloading procedures could implicate several potential impacts, including direct discharges and discharges through storm water runoff into receiving waters. The CEQA Guidelines define a project as "the whole of an action, which has potential for resulting in a physical change in the environment."¹⁵ The Project under review thus clearly includes these activities. In order for the public to have an opportunity to meaningfully comment on these impacts, the revised DEIR/S must disclose more detail regarding the protocol for handling hazardous materials at Middle Harbor.

Second, with respect to the dredging description, the DEIR/S describes only a portion of the actual dredging required for the Project. The DEIR/S describes the proposed dredging that would occur initially to implement the Project, but omits any description of future maintenance dredging activities, which are an integral part of most dredging projects. The revised DEIR/S must include an accurate and complete estimate of the frequency and volume of dredged material as part of the project description, and the analyses of dredging impacts must take these ongoing activities into account.

¹² *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185 192-93.

¹³ *Id.* at 199; see also *San Joaquin Raptor/Wildlife Center v. Stanislaus County*, 27 Cal.App.4th 713, 730 (1994) ("An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.")

¹⁴ DEIR/S, at 3.10-1.

¹⁵ CEQA Guidelines § 15378.

Third, the DEIR/S's discussion of the need for the Project is circular. On the one hand, the Port contends that it cannot accommodate projected growth without facility improvements and upgrades.¹⁶ On the other hand, long-term forecasts didn't take into account capacity limitations of infrastructure.¹⁷ In sum, the Port relies on forecasts that assume new infrastructure but then justifies the new infrastructure to accommodate the forecasted growth. The Port cannot have it both ways. The revised DEIR/S should include demand forecasts under existing conditions to provide a true picture of forecasted growth under the No Project Alternative.

Finally, CEQA requires the Port to assess and consider alternative uses for this terminal, which includes development smaller container terminal.¹⁸ By starting with the intention to "increase and optimize cargo handling efficiency of the Port"¹⁹ the deck has been stacked at the outset to uncritically validate the project. Any alternative or mitigation measure that takes away from "increas[ing] and optimiz[ing] cargo handling efficiency of the Port"²⁰ will be deemed to violate the overall purpose of the project. For example, by utilizing such an erroneous project description, a broader range of smaller container operations were excluded from consideration. By predetermining the outcome, the Port has fallen into the trap warned by the court in *County of Inyo*, and it has precluded an open discussion of the various uses of this land in violation of CEQA.

III. The Port's Past Failure to Effectively Mitigate Its Impacts Provides Great Concern.

Courts allow a review of prior shortcomings in analyzing the adequacy of mitigation measures. The Supreme Court has stated that "[b]ecause an EIR cannot be meaningfully considered in a vacuum devoid of reality, a project proponent's prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's promises in an EIR."²¹ As one of the largest fixed source of pollution in the region,²² the Port should have made greater strides in protecting residents from its harmful pollution before moving forward with a project that will increase throughput and will increase emissions.²³ While the Port has developed the CAAP, it is falling way behind in implementing some of the key measures contained within it. For example, the ports failed to meet the Spring 2007 deadline to adopt "San Pedro Bay Standards" that would commit the ports to reducing air pollution to levels that would help the region

¹⁶ DEIR/S, at 1-4.

¹⁷ *Id.*

¹⁸ Cal. Pub. Resources Code §§ 21002 et seq.

¹⁹ DEIR/S, at ES-2.

²⁰ *Id.*

²¹ *Laurel Heights Improvement Assoc. of San Francisco v. Regents of the University of California*, 47 Cal.3d 376, 420 (Cal. 1988).

²² SCAQMD, Air Quality Management Plan, at IV-A-146.

²³ Letter from NRDC et al. to Mayor and Port of Los Angeles and Mayor and Port of Long Beach, September 25, 2007.

attain federal air quality standards.²⁴ Moreover, the Port is behind schedule in implementing several clean air technologies that will provide demonstrable benefits to harbor-area residents and the region in general.

This past record of delay in implementing feasible technologies to reduce pollution raises significant red flags for those mitigation measures that are not truly enforceable and do not require strict timelines. CEQA is clear that “[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding agreements.”²⁵ As such, we articulate below several concerns about the mitigation measures contained within the DEIR/s because they are unduly vague and fail to insure residents that clean up of sources will occur.

IV. The Air Quality Analysis and Associated Mitigation Measures Are Inadequate Under CEQA and NEPA.

a. Failure to Comply with the Clean Air Action Plan in Adopting San Pedro Bay Standards Serves as a Major Flaw of this Project.

The Port promised in Section 2.2 of the CAAP that it and the Port of Los Angeles would establish these standards for the San Pedro Bay:

- Reduce public health risk from toxic air contaminants associated with port-related mobile sources to acceptable levels.
- Reduce criteria pollutant emissions to the levels that will assure that port-related sources decrease their “fair share” of regional emissions to enable the South Coast Air Basin to attain state and federal ambient air quality standards.
- Prevent port-related violations of the state and federal ambient air quality standards at air quality monitoring stations at both ports.

As the CAAP states: “[P]rojects that meet the Project Specific Standard associated with health risk must also meet the criteria pollutant emissions reductions associated with their “fair share” of regional emissions, and health risk reductions, as stated in the San Pedro Bay Standard.”²⁶

In the Middle Harbor case, the decision makers cannot know whether the project specific standards are tough enough precisely because San Pedro Bay Standards have not been adopted by either port. The monitoring stations whose data is available on the ports’ CAAP website consistently show that PM 2.5 emissions are well above the federal and

²⁴ *Id.* at 26-27.

²⁵ CEQA Guidelines § 15126.5(a)(2).

²⁶ CAAP Final Technical Report at 24.

California annual average standards.²⁷ The recent MATES III report from the Southern California Air Quality Control District²⁸ shows that the areas of highest cancer risk in the District are those immediately adjacent to the Ports – just as they were in the MATES II report.²⁹ Accordingly, it is impossible for decision makers to know whether moving forward with this project will allow the Port to meet clean air goals because the goals have not been established yet. Moreover, this is not an issue that is in front of the Port for the first time. On September 25, 2007, more than ten months ago, several members of the CAAP stakeholder group brought the extreme delay in setting these standards to the Port's attention. While we appreciate the Port providing an explanation of the difficulty in setting these standards at the last CAAP stakeholder meeting, we also note that publishing the Middle Harbor Project DEIR/S was a large task too, and the Port managed to produce this document. As such, we would prefer that resources be shifted to complete this critical CAAP commitment before moving forward with work on the Middle Harbor Project.

Given these circumstances, it would not be in the public interest to decide whether to certify the Middle Harbor Project or approve the Project before the San Pedro Bay Standards promised in the CAAP have been adopted.

b. The Air Quality Analysis Makes Several Unsupported Assumptions.

Initially, the air quality analysis is flawed in several respects. The Port has engaged in an analysis that assumes many of the benefits of the CAAP will proceed even in the unmitigated air quality numbers. Given that the CAAP is only a five year plan that could be changed at any point, the Port must include actual enforceable mitigation measures as a part of this project. Moreover, CAAP was designed by the Ports to be implemented through leases, so we are discouraged by the failure of the environmental document to include specific, enforceable mitigation measures. Before discussing the mitigation, it is important to cull out some of the major flaws in the air quality analysis. The following bullets provide a list of several assumptions that lack support:

- The air quality analysis assumes that 33% of the OGVs would cold-iron by 2010.³⁰ There is no basis to assume this without an enforceable commitment to achieve this level of cold-ironing.
- In its unmitigated emissions analysis for auxiliary engines, the Port assumes that 100% of vessels calling at the Port will use .2% Marine Gas Oil (“MGO”).³¹ The Port has provided no basis to conclude that 100% of ship auxiliary engines will

²⁷ See <http://caap.airsis.com/>. The U.S. EPA standard for annual average PM 2.5 exposure is 15 milligrams per cubic meter. The analogous California standard is 12 milligrams per cubic meter.

²⁸ SCAQMD, Draft Report Multiple Air Toxics Exposure Study-III, at ES-3 (Jan. 2008), available at <http://www.aqmd.gov/prdas/matesIII/matesIII.html> (hereinafter “MATES III”).

²⁹ See MATES II.

³⁰ DEIR/S, at A-1-5.

³¹ See DEIR/S, at Table A.1.2-Alt1-U9, Table A.1.2-Alt1-U10.

burn .2% MGO within the timeframes analyzed in the DEIR/S because the unmitigated project will not have any enforceable commitment to use this fuel until 2012 when the CARB regulation applies.³² Even with the CARB regulation, the Port will need a backstop because industry groups may sue to block implementation of this regulation. Perhaps, the Port relies on its voluntary fuel incentive program that is set to run from July 2008 until the end of the June 2009 as the basis to assume 100% use of .2% sulfur fuel.³³ However, given that this is simply a one year program and there is not even 100% participation, this should not be included in the unmitigated emission numbers.

- In its unmitigated emissions analysis for auxiliary engines, the Port also assumes 100% compliance with vessel speed reduction. It is our understanding that under the Port's voluntary program, there is not 100% compliance. This defect in the analysis must be cured.
- It is unclear whether the Port included the 2005 ARB/Railroad Statewide Agreement in its emissions assumptions for the mitigated and unmitigated emissions. This should not be included in these assumptions, and if the Port relied upon emissions assumptions for its analysis, it should write those assumptions as a mitigation measure. For example, although the Statewide Agreement includes a provision for idling, there are many exceptions to this provision. In addition, there is no assurance that even the agreed upon idling scenarios would be limited to 1.5 hours, since the Statewide Agreement contains exemptions for self-determined "essential" idling and CARB enforcement staff cannot feasibly enforce more than a small portion of idling events. Please clarify whether this was assumed in the next version of the document.
- Commenters could not find the description in the DEIR/S of what peak daily emissions would entail. The DEIR/S claims that "annual average daily emissions...are more representative of typical port conditions, as peak daily conditions occur more infrequently and they are based on a more theoretical set of assumptions."³⁴ However, it is hard for commenters to verify this without the assumptions that form the basis for peak daily emissions. Commenters believe that the DEIR/S should not be so quick to assume that peak daily emissions will not occur at the facility.
- The DEIR/S air quality analysis assumes that the mitigated project will comply with the CAAP. However, as mentioned above, the CAAP is only a five year plan set to expire in 2011. The Port has provided no guarantee that all the measures within the CAAP would extend beyond this 2011 date.³⁵ The

³² Even reliance on the CARB regulation should be backstopped with enforceable mitigation commitments

³³ See POLB News Release, Vessel Fuel Incentive Program Launched (July 10, 2008)(noting "projected participation of 50%").

³⁴ DEIR/S, at 3.2-30.

³⁵ DEIR/S, at 3.2-20.

appropriate approach here is to codify the mitigation measures as enforceable commitments with clear timelines under CEQA and NEPA.

- Since the publication of this report, CARB has revised its numbers on the impacts of goods movement in California. The chart on page 3.2-59 of the AQ should be updated to reflect these updated numbers.

c. The Project Must Include An Analysis of Construction Emissions and Operational Emissions Combined.

This project entails significant construction to take place over a decade.³⁶ Accordingly, construction emissions and operations emissions will take place concurrently. Given the significant construction involved in the development of this project (e.g. 9 stages over 2 construction phases), the environmental documentation must include an analysis of the emissions combined. Moreover, this analysis should include information on peak daily construction and peak daily operational emissions combined.

d. The Clean Air Act Conformity Analysis Must be Improved.

i. Reliable Scientific Evidence Shows Elevated PM_{2.5} in the Near-Highway Environment.

The evidence that highway emissions have a significant impact on air quality in the near-highway environment is not new. MATES-II first identified the importance of highway emissions in 2000. Although MATES-II was focused on the significance of diesel particulate as the largest source of cancer risk in the air basin, it also provided important findings that demonstrated that higher levels of diesel pollution occur near highways. The Report found the greatest exposure to diesel PM at locations where “the dominance of mobile sources is even greater than at other sites.” It also found that “model results, which are more complete in describing risk levels...than is possible with the monitored data, show that the higher risk levels occur... near freeways.” “Results show that the higher pollutant concentrations generally occur near their emission sources.” These findings provided evidence that neighborhoods near highways would experience higher concentrations than the regional averages. Based on these observations, MATES-II concluded that “[f]or mobile source compounds such as benzene, 1-3 butadiene, and particulates associated with diesel fuels, higher concentration levels are seen along freeways and freeway junctions.” This work identified the near-highway environment as a high risk environment where elevated levels of PM would be expected because of emissions from diesel vehicles.

This triggered further research in the region. A team from USC conducted seminal studies to measure the concentrations of highway pollutants as a function of distance

³⁶ DEIR/S, at 1-25.

from the I-710 and I-405 freeways.³⁷ Both studies included measurements of concentrations of CO and black carbon (BC) at increasing distances from the freeway. CO and BC were intentionally selected because their ambient concentrations are strongly related to vehicle emissions. Black carbon, also measured as elemental carbon (EC) in the monitoring reported in MATES-II and MATES-III, is a species of PM_{2.5} that was used in the MATES-II study as a measure of diesel PM in the Air Basin. The MATES-III study reported more recent investigations showing that elemental carbon is an inadequate measure of diesel PM, and that other methods show that total diesel PM is at least 72% greater than elemental carbon.³⁸ The AQMP relies on the MATES-III data to identify elemental carbon as one of the six major species of PM_{2.5} in the South Coast air shed that contribute significantly to PM_{2.5} nonattainment.

The freeway studies show the dramatic increase in BC/EC in the near-highway environment. The studies measured concentrations at five distances downwind and upwind from the freeways. By comparing the upwind measurements which provide a good estimate of regional carbon loadings in the Air Basin with the downwind measurements, these studies provide a good estimate of the increase in concentrations of primary carbon particles emitted from highways in the vicinity of major highways compared to regional concentrations measured in the urban air shed.

The BC measurements from each of the freeway studies are summarized separately below along with measured upper and lower limits, and the observed difference between the comparable upwind and downwind BC concentrations:

Measured Average (and Upper and Lower Limit) BC Concentrations at Increasing Distances from the 405 Freeway

Downwind (m)	Distance	BC ($\mu\text{g}/\text{m}^3$)	BC ($\mu\text{g}/\text{m}^3$) Downwind-Upwind Average Concentration
30		5.4 (3.4-10.0)	4.75
60		3.2 (3.0-3.5)	2.55
90		2.5 (2.4-2.6)	1.85
150		1.6 (1.1-2.0)	0.95
300		1.3 (1.1-1.5)	0.65

³⁷ See Zhu Y. et al., *Concentration and Size Distribution of Ultrafine Particles Near a Major Highway*. J. Air & Water Management, 52: 1032-1042 (2002) [See "Attached Literature" Exhibit B1]; Zhu Y. et al. *Study of Ultrafine Particles Near a Major Highway With Heavy-Duty Diesel Traffic*. Atmospheric Environment, 36: 4323-4335 (2002). [See "Attached Literature" Exhibit B2]

³⁸ MATES-III, at 2-9.

Measured Average (and Upper and Lower Limit) BC Concentrations at Increasing Distances from the 710 Freeway

Downwind (m)	Distance	BC ($\mu\text{g}/\text{m}^3$)	BC ($\mu\text{g}/\text{m}^3$) Downwind-Upwind Average Concentration
200 m (upwind)		4.6 (3.1-5.9)	N/A
17 m		21.7 (20.3-24.8)	17.1
20		19.4 (16.5-21.6)	14.8
30		17.1 (12.6-19.3)	12.5
90		7.8 (4.5-9.3)	3.2
150		6.5 (3.9-9.2)	1.9
300		5.5 (3.5-7.7)	0.9

Notice the large increase in the near-highway concentrations of BC downwind of the I-710 compared to the I-405. The Interstate 710 study was conducted in part because the freeway has a much higher percentage of heavy-duty diesel truck travel than the Interstate 405 freeway. Average traffic flow during sampling periods was 12,180 vehicles per hour with more than 25 percent of vehicles being heavy-duty diesel trucks. This is perhaps the highest density of diesel truck traffic anywhere in the U.S. Measurements were taken at 17, 20, 30, 90, 150 and 300 meters downwind and 200 meters upwind from the center of the freeway. As with the 405 freeway study, relative concentrations of CO and BC downwind from the freeway were found to be many micrograms per cubic meter greater than upwind concentrations and tracked each other well as one moves away from the freeway.

These studies show that in the impact zone downwind of a heavily traveled freeway in the Air Basin with average truck traffic (I-405), emissions of BC from the freeway will add 4.75 $\mu\text{g}/\text{m}^3$ to PM_{2.5} at 30 meters from the freeway dropping off to 0.65 $\mu\text{g}/\text{m}^3$ greater than the regional concentration at 300 meters. The study also shows a freeway with heavy truck traffic will add 12.5 $\mu\text{g}/\text{m}^3$ at 30 meters dropping off a 1.9 $\mu\text{g}/\text{m}^3$ increase above the regional levels at 300 meters.

The incremental effect of highway emissions downwind from the I-710 have been confirmed in recent weeks by data released as part of the deployment of Mobile Monitoring Platform Results in the I-710 corridor.³⁹ These results include BC concentrations within the so-called buffer zone 500 feet from the freeway compared with results measured beyond the 500 feet buffer. Concentrations measured in West Long Beach residential area on the morning of July 17, 2007, show nearly a four-fold greater BC level within 500 feet from the 710 freeway compared to the same neighborhood outside the 500 feet zone (18 vs. 5 $\mu\text{g}/\text{m}^3$). This difference of 13 $\mu\text{g}/\text{m}^3$ is highly consistent with the upwind/downwind results reported in the original 710 study.

³⁹ See CARB. Mobile Monitoring Platform Update and Results, April 17, 2008, at the HCMS Community Meeting, Wilmington Senior Center. [See "Attached Literature" Exhibit C]

These results were supported by measurements made in other regions. A study in Seattle, WA measured the relationship between BC levels at an urban near-roadway monitoring site, and a heavily traveled freeway.⁴⁰ This study showed that near the I-5 there was frequently peak evening rush hour BC levels of 5 $\mu\text{g}/\text{m}^3$ or above. The BC data was obtained from the Olive Street monitoring site located at the EPA-designated micro scale within the I-5 traffic corridor. The traffic volumes and BC readings correlate well, supporting the hypothesis that traffic is a major contributor to PM_{2.5} at the site, given that BC originates from motor vehicle exhausts as ultrafine or fine particles. The Olive Street air monitoring site is about 20 meters west of the southbound lane of I-5 in the CBD. This area of I-5 contains express lanes along with several high use overpasses, which all contribute to the area traffic. In 2003, daily volumes along this section of I-5 average 284,700 vehicles per day. Light-duty traffic has peak weekday flows above 10,000 vehicles per hour, with diesel traffic of about 1,000 vehicles per hour (10%). BC tends to peak during weekdays with high traffic volumes, and is sharply lower on weekends. This reduction parallels the significantly lower weekend diesel traffic volumes. Peak BC measurements occur during the afternoon rush hour (4-6 pm). Correlations between light-duty vehicle volumes and BC peaks (readings above 5 $\mu\text{g}/\text{m}^3$) are better than those between diesel truck volumes and BC peaks. This may occur because light-duty volumes overwhelm diesel truck volumes during this peak period (93 percent of the traffic volume is from light-duty vehicles).

The Seattle study also measured BC at a Beacon Hill site about 600 meters from a major freeway, which is used as the urban background for Seattle. Hourly BC readings during the study period stayed within the range of 0 to 2 $\mu\text{g}/\text{m}^3$, with readings mostly below 1.0 $\mu\text{g}/\text{m}^3$. Comparing these sites demonstrates results similar to the data obtained from the I-405 study with BC concentrations in the near-highway environment being about 4 $\mu\text{g}/\text{m}^3$ greater than the urban regional concentration.

The East Bay (California) Children's Respiratory Health study⁴¹, conducted with support from Cal EPA's Office of Environmental Health Hazard Assessment, obtained measurements of PM_{2.5} concentrations at monitors located in the schoolyards of 10 middle schools in communities across the East Bay. This study reported the distance of each monitor from major freeways, the traffic density on the nearest freeway, and whether the school was located downwind of the traffic source. The PM_{2.5} measured at the school closest to (60 meters away) and downwind from a major freeway, was 15 $\mu\text{g}/\text{m}^3$ which was 3 $\mu\text{g}/\text{m}^3$ greater than the 12 $\mu\text{g}/\text{m}^3$ PM_{2.5} concentrations reported at the regional air district network monitor located about 1 mile from major traffic sources.

⁴⁰ Curtis H. et al., *Traffic Flows and Black Carbon Levels in the Urban Seattle Environment*, (Fall 2004). [See "Attached Literature" Exhibit D]

⁴¹ Kim J. et al., *The East Bay (California) Children's Respiratory Health Study*, (June 2004). [See "Attached Literature" Exhibit E].

The recently released West Oakland Health Risk Assessment⁴² conducted by the CARB provides similar results from a modeling study that shows highly elevated concentrations of diesel PM in a neighborhood downwind of the Port of Oakland and surrounded by heavily traveled major freeways. The risk assessment showed that despite the significant contribution of emissions from ocean going vessels, local watercraft, railyard and port activities, the emissions from non-port related on-road truck operations accounted for 80% of the diesel PM in West Oakland.

These and other studies provide credible evidence that PM_{2.5} concentrations in the near-highway environment are expected to range from 3 µg/m³ to as much as 13 µg/m³ greater than concentrations measured at regional monitors located outside the high impact zone of heavily traveled freeways.

Data from these highway studies were expressly relied upon by US EPA to decide that it must establish a transportation conformity program to review the localized impacts of PM_{2.5} emissions from highways.⁴³ EPA concluded that the evidence of localized impacts from highways was sufficiently compelling to require that “it is essential that a quantitative PM_{2.5} or PM₁₀ hot-spot analysis be performed for all projects of air quality concern.” *Id.* If the evidence of localized impacts was sufficient to justify a national regulatory program to protect against NAAQS violations caused by new highways, it is also compelling enough to require a quantitative analysis to ensure that the SIP will protect against existing localized NAAQS violations caused by highway emissions.

ii. The Conformity Analysis is Inadequate Because it Fails to Assure Attainment in the Near-Highway Environment.

Despite the Port’s claims that - “[t]he POLB regularly provides its Port-wide cargo forecasts to SCAG for the development of the AQMP” and that “[c]argo projections have been included in all SCAB attainment and maintenance plans, including the most recent EPA-approved 1997/1999 SIP. As a result, the Proposed Project would conform to the most recently EPA-approved SIP,”⁴⁴ - these attainment plans failed to consider the spike in emissions occurring in the near-highway environment. As such, the Port cannot claim the Project will conform under the Clean Air Act because the SIP’s and associated documents do not show attainment in the near highway environment.

Moreover, given the data exhibiting the spike in emissions in the near highway environment demonstrates a need for the Port to ensure greater monitoring and protection of those residents residing in close proximity to these major goods movement freeways.

⁴² CARB, *West Oakland Health Risk Assessment*, (March 2008) [See “Attached Literature” Exhibit F]. Appendices A through E not attached and available at

<http://www.arb.ca.gov/communities/foi/westoakland/westoakland.htm>.

⁴³ See Transportation “hot spot” rule, 71 Fed.Reg. 12468, 12494 (March 10, 2006).

⁴⁴ DEIR/S, at 3.2-12.

e. Mitigation Measures Must Be Strengthened in the DEIR/S.

i. AQ-6: Low-sulfur Fuels in OGV.

We are pleased that the DEIR/S mentions an emissions reduction strategy for the main engines of ocean-going vessels that is in line with the auxiliary engine requirements. However, the DEIR/S provides an exceptionally vague description of the commitments related to use of low sulfur fuels. At the CAAP Stakeholder group meeting that took place on July 25, 2008, Port of Long Beach staff indicated that the low sulfur fuel requirements would be implemented 100% upon lease renewal. However, the document provides no detail on the timeline and percentages of compliance. This lack of specificity violates CEQA. This must be cured in subsequent versions of the EIR/S.

Cleaner fuels in both types of engines could significantly reduce emissions from virtually unregulated engines transiting and maneuvering at the Port of Long Beach. In its current state, the mitigation measure is unenforceable, and as such, must be strengthened in subsequent iterations of the environmental document. Strengthening this measure could result in significant decreases in PM10 and PM2.5 levels as well as reduced cancer risk from DPM.

The Maersk commitment to cleaner fuel, information provided by marine engine manufacturers, and CARB's Auxiliary Engine Regulation now provide substantial evidence that any technological concerns regarding the use of cleaner fuels in auxiliary engines and main engines have been addressed. At a recent Maritime Working Group meeting, representatives of some of the world's biggest engine manufactures and shipping lines including MAN B&W, Wartsila, BP Shipping, DNV, Maersk and other participants, concurred that the implementation of cleaner fuels in main engines is an excellent approach to achieve significant emission reductions in a cost-effective manner.⁴⁵ They consider fuel switching to be a standard operation that can be conducted safely by any competent marine engineer. These technical experts made it clear that low sulfur levels, such as 1,000 ppm, in marine fuels were compatible with large ship engines and maritime operations in general, and that if it were required, the "free market" would respond and make supplies available. In fact, it is our understanding that NYK Line at the Port of Los Angeles is currently using <.1% sulfur fuel.⁴⁶

Given the likely shortfall that exists to achieve the CEQA significance thresholds in the short-term horizon years, it is imperative that the DEIR/S pursue the cleanest lower sulfur distillate fuels in both auxiliary and main engines for all ships visiting these terminals. Additionally, CARB announced at their September 25, 2007 marine regulation workshops that emissions from boilers are ten times higher than previously calculated.

⁴⁵ The Maritime Air Quality Technical Working Group, Focus on Fuel Switching, hosted by CARB, July 24, 2007; http://www.arb.ca.gov/ports_marine/vess/meet.htm.

⁴⁶ SCAQMD, Mitigation Measure Examples: Ocean Going Vessels, available at <http://www.scaqmd.gov/CEQA/handbook/mitigation/ogv/TableX.doc>.

The resulting SO_x, NO_x and PM emissions must be addressed at the outset with the use of significantly cleaner fuels. In fact, without a high level of stringency on marine fuel usage for auxiliary engines, main engines and boilers, the South Coast AQMD's ability to meet Federal Standards for PM_{2.5} will be jeopardized.

Therefore, we recommend that the DEIS/DEIR require the following:

- Ensure 100% compliance and enforcement of the 2,000 ppm requirement for auxiliary engines, regardless of the status of the CARB auxiliary engine regulation; and
- By January 1, 2010, take necessary steps to ensure 100% compliance and enforcement of the 1,000 ppm requirement for auxiliary engines (interim deadlines should include a 50% requirement by 2009).
- Main engines and boilers, at a minimum, should fall under the same requirements and timetable as we recommend for auxiliary engines and, by 2010, main engines should be required to use 1,000 ppm fuel.

Ultimately, the Port must commit to unconditionally require low sulfur fuel immediately upon lease renewal. Finally, we want to emphasize that dock-side power should not be viewed as a substitute for cleaner fuels. These two strategies must be used in concert to ensure that emissions from large vessels are significantly reduced and significance thresholds are met.

ii. Locomotive Mitigation Must Be Strengthened.

While we appreciate the inclusion of on-dock rail in this project, the rail mitigation measures are completely lacking. We have identified two major deficiencies.

First, the project should incorporate more on dock rail. Though rail is a more efficient means to transport cargo rather than adding more drayage trucks, the proposed expanded Pier F intermodal rail yard would handle only 24 percent (796,800 TEUs per year) of the terminal's expected throughput.⁴⁷ The Port fails to explain why this number is not higher. In fact, the Port of Long Beach's own consultants explain that "[a] near-dock intermodal rail facility has some attractive characteristics, but it also has significant disadvantages and negative impacts relative to on-dock facilities."⁴⁸ Considering that current demand on the Alameda Corridor is "very low" and that forecasted project-related increases in trains could be "easily accommodated,"⁴⁹ the Port needs to explore further increasing on-dock rail to at least 50 percent. We suggest that the actual percentage should be even greater—more on the order of 70% or more⁵⁰—because clean rail is a

⁴⁷ <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=5131> pg. 5

⁴⁸ See Moffatt and Nichol, *Screening Analysis of Container Terminal Options Part 2: Evaluation of Options*, 43 (Aug. 28, 2007).

⁴⁹ DEIR/S, at 3.5-21

⁵⁰ The Port should commit to a similar or greater percentage on-dock rail usage as committed to by the Port of Seattle (approximately 70%). See NRDC and CCA, *Harboring Pollution: The Dirty Truth about U.S. Ports* at 42.

more efficient means to transport the additional cargo generated from this project rather than adding more drayage trucks to transport containers to off-dock rail facilities. The increase of rail will also assist with the mitigation of impacted highway segments (MM TRANS-2.1), where the POLB is currently depending on Caltrans to implement measures in order to avoid significant impacts.⁵¹

Second, the Project should seek to expeditiously transfer to electrified rail. There is not even an analysis of this in the DEIR/S. Electrifying the rail will also aid in reducing the GHG footprint from this proposed project.

Third, *MM AQ-9 (Clean Railyard Standards) Must Be Augmented*—The Port states that the Clean Railyard Standard (MM AQ-9) will incorporate the cleanest railyard technologies but fails to quantify any section of the measure because “some of the systems are not yet available.”⁵² Yet even the technologies that are ready and commercially on the market are not assessed or mandated as requirements. The following systems within the Clean Railyard Standard should be quantified and phased in for locomotives:

- **Diesel electric hybrids**—the Green Goat provided by RailPower has been commercially available since 2005, and provides a 40 to 70 percent reduction in greenhouse gases and diesel fuel consumption.⁵³
- **Multiple generator sets**—Union Pacific has been testing and operating Genset locomotives since 2005, and currently owns 159 Genset locomotives running in California and Texas. The Genset yard switcher reduces emissions of NOx by 80 percent and particulate matter by 90 percent while using as much as 30 percent less fuel compared to current older switching locomotives. The fuel savings also translates into a 30 percent reduction of greenhouse gas.⁵⁴
- **Idling shut-off devices**—Line Haul locomotives can spend up to 40 percent of their time idling and switchers as much as 90 percent.⁵⁵ At least four EPA-recommended models of idling shut-off devices are already on the market for locomotives,⁵⁶ and CARB signed agreements with UP and BNSF in 2005 ensuring “idling devices limiting idling to 15 minutes” were to be installed on 99 percent of the 450 CA-based locomotives by July 1, 2008.⁵⁷

⁵¹ DEIR/S, at 3.5-18.

⁵² DEIS/DEIR, at 3.2-34. <http://www.polb.com/civica/filebank/blobload.asp?BlobID=5127>

⁵³ <http://www.dieselforum.org/technology-spotlight/diesel-hybrid-corner/bnsf-green-goat-release/>

⁵⁴ <http://www.uprr.com/newsinfo/chi-genset.shtml>

⁵⁵ SCAQMD. *Container Movement Technology Forum and Roundtable Discussion*. January

2007. [http://www.aqmd.gov/LAO/Conferences/Workshops/Container_Forum-01-26-](http://www.aqmd.gov/LAO/Conferences/Workshops/Container_Forum-01-26-07/ContainerForumReport.pdf)

[07/ContainerForumReport.pdf](http://www.aqmd.gov/LAO/Conferences/Workshops/Container_Forum-01-26-07/ContainerForumReport.pdf); pg. 27

⁵⁶ <http://www.epa.gov/otaq/smartway/idlingtechnologies.htm#loco-mobile-sdsu>

⁵⁷ http://www.arb.ca.gov/railyard/hra-031808hra_stra_fsp.pdf

iii. Shoreside Power Mitigation is Weak.

Mitigation measure AQ-5 must be improved. We are disappointed that only 33% of the vessels calling at this terminal will cold-iron by 2010. While this may technically comply with the CAAP commitment, this does not comply with the Port's duty to adopt all feasible mitigation. The DEIR/S should include a schedule to require 70% to 80% of all ships—both frequent and non-frequent visitors—to use shore-side power at every terminal by 2010 as exemplified by the China Shipping terminal and the RFP for Berths 206-209 at the Port of Los Angeles. In addition, there should be greater specificity on the percentages of use that will be achieved between 2010 and 2015. According to the Mitigation Measure, there will be a jump from 33% to 100% between 2010 and 2015. Does this mean that the terminal could wait until 2014 to accelerate its use of shoreside power? Finally, we remind the port that in addition to being a way to mitigate traditional criteria pollutant emissions, cold-ironing serves to mitigate greenhouse gas emissions too.

iv. Main Engine Controls for New Vessel Builds and Existing Vessels Must Be Included as a Mitigation Measure.

The Port must include a mitigation measure for new vessel builds to require new vessels to utilize a combination of advanced control technologies to achieve fleet average emission reductions of 30% for NOx and particulates by 2014, and a 70% reduction of NOx and 50% reduction of particulates by 2023. Currently, there are many vessels on order to be constructed. Once those vessels are built, it is more difficult to control their emissions. Controls such as water injection, emulsified fuels or humid air are feasible technologies. In addition, SCR is a mature technology in use on a wide variety of sources including marine vessels. The feasibility of using advanced controls on marine vessel engines, including main engines, is supported by the recent proposal by the Marine Environmental Protection Committee of the International Maritime Organization to establish increasingly stringent marine vessel emissions limits.

v. The Construction Mitigation Measures Must be Improved.

The mitigation measures for construction are vague. We recommend that the construction mitigation comply with the following requirements:

Construction Equipment

Equipment⁵⁸ greater than 25 horsepower must:

- (1) Meet current emission standards⁵⁹ *and*

⁵⁸ Equipment refers to vehicles such as excavators, backhoes, bulldozers propelled by an off-road diesel internal combustion engine.

⁵⁹ These standards are described in Division 3 Chapter 9, Article 4, Section 2423(b)(1)(A) of Title 13 of the California Code of Regulations, as amended. An explanation of current and past engine

- (2) Be equipped with Best Available Control Technology (BACT)⁶⁰ for emissions reductions of PM and NOx, *or*
- (3) Use an alternative fuel.

Diesel Trucks

On-road trucks used at construction sites, such as dump trucks, must:

- (1) Meet current emission standards, *or*
- (2) Be equipped with BACT⁶¹ for emissions reductions of PM and NOx, *and*
- (3) Any trucks hauling materials such as debris or fill, must be fully covered while operating off-site (i.e. in transit to or from the site).

Generators

Where access to the power grid is limited, on-site generators must:

- (1) Meet the equivalent current off-road standards for NOx, *and*
- (2) Meet a 0.01 gram per brake-horsepower-hour standard for PM, *or*
- (3) Be equipped with Best Available Control Technology (BACT) for emissions reductions of PM.

Special Precautions Near Sensitive Sites

All equipment operating on construction sites within 1,000 feet of a sensitive receptor site (such as schools, daycares, playgrounds and hospitals)⁶² would either:

- (1) Meet US EPA Tier IV emission standards *or*
- (2) Install ARB Verified "Level 3" controls (85% or better PM reductions), and
- (3) Notify each of those sites of the project, in writing, at least 30 days before construction activities begin.⁶³

standards can also be accessed at <http://www.dieselnet.com/standards/>. Currently all new equipment are meeting the US EPA Tier II standards and most equipment also meets Tier III standards (all 100HP to 750HP equipment). Note that Tier IV standards would automatically meet the BACT requirement.

⁶⁰ Here BACT refers to the "Most effective verified diesel emission control strategy" (VDECS) which is a device, system or strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the California Code of Regulations to achieve the highest level of pollution control from an off-road vehicle.

⁶¹ Here BACT also refers to most effective VDECS as defined by the California Air Resources Board (CARB).

⁶² Sensitive sites are defined and described in the CARB Air Quality and Land Use Planning Guidelines, 2005; <http://www.arb.ca.gov/ch/landuse.htm>.

⁶³ Notification shall include the name of the project, location, extent (acreage, number of pieces of equipment operating and duration), any special considerations (such as contaminated waste removal or other hazards), and contact information for a community liaison who can answer any questions.

vi. The Port Should Provide Funding to Provide Clinics and Other Sensitive Site Mitigation to Reduce the Impacts from Port Pollution.

To avoid injury to public health, the project must mitigate its impacts through the reduction of emissions to as near zero as possible, and this comment letter offers numerous measures that should be used in pursuing that goal. Given that increases in pollution are likely even after these measures are implemented and given the lasting effects of baseline pollution, further mitigation is needed to address the extraordinary impact of port related emissions on the respiratory health of communities near the ports and port-related goods movement corridors. The impact of this pollution is perhaps most demonstrable in children in the harbor area. According to the 2003 National Health Interview Survey, an estimated 9 million (12.5%) children under the age of eighteen in the United States have been diagnosed with asthma at some time in their lives. Data from the 2005 LA County Health Survey shows that 13.7% (381,000) of children 0-17 years old in LA County have been diagnosed with asthma. Research conducted by the Long Beach Health District demonstrates that 19.8% (28,000) of Long Beach children have been diagnosed with asthma.

Many residents of goods movement communities and workers at the ports have already suffered irreparable long term damage to their lungs – as noted earlier, diminished lung function in children generates lifelong health effects. The ports should fund the establishment of one or several medical facilities in Long Beach dedicated to the respiratory and general health of the people most affected by port emissions – those living in the neighborhoods closest to the port and along the I-710 corridor, and workers at the port.

Many of the goods movement adjacent neighborhoods in Long Beach and along the I-710 and other routes are heavily populated with low and moderate income families unable to afford health insurance. Similarly, while some workers at the port earn relatively high wages with good benefits, thousands of others earn low wages with few or no benefits. For example, the most recent academic study of port truck drivers – a class of workers severely impacted by diesel emissions – concluded that the drivers earn on average \$29,000 per year, and that 90% of them lack health insurance.

Thus, funding for clinics should be sufficient not only to construct appropriate facilities, but also include adequate support for operations so that two classes of patients – residents of the identified goods movement adjacent communities and port workers can access the facility without out of pocket cost regardless of insurance status.

Finally, the Port needs to explore installation of air filtration system to protect residents from harmful levels of air pollution. The Port of Los Angeles agreed through the TraPac MOU to fund filtration systems in school in the vicinity of that project, and this Project should also include this type of mitigation.

f. The Cumulative Impacts Analysis Does Not Meet CEQA Guidelines.

CEQA requires that an EIR address cumulative impacts “when the project’s incremental effect is cumulatively considerable.”⁶⁴ The DEIR/S concedes that it will have many cumulatively considerable impacts under both CEQA and NEPA.⁶⁵ However, although there is some discussion of the incremental impact that the Middle Harbor project will have, there is no discussion of the effects of the recognized cumulative impacts as a whole on human health or the physical environment. Nor is there any discussion of how to mitigate the cumulative impacts of the identified Port projects.

This lack of analysis violates CEQA. CEQA Guideline 15130(b)(4) provides that the following (among others) element is necessary “to an adequate discussion of significant cumulative impacts(4) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available” The policy reason supporting Section 15130(b)(4) is that decision makers need to know, in deciding whether to approve a project, what the expected impacts will be on the ground as a result of all of the projects identified as cumulative impacts. A person living across the fence line from the Port breathes or will be breathing air that is affected by all of these projects, not just by the Middle Harbor Project or another individual project. At some point, the decision makers may decide, for example, that the overall health risks from Port development are just too high, even though the contribution of a single project may be relatively small – and they need the data and analysis to make this call. This is especially true given the conclusions of the recent MATES III study and CARB’s updated study of the number of goods movement-related deaths in California each year.⁶⁶ But the data required to evaluate this issue is not present in the DEIR/S.

Of the list of projects on pages 3.2-108 to 3.2-109 of the DEIR/S, many have already commenced the formal planning process, and many have CEQA-related documents already in existence. There is sufficient data already available in documentation about these Port of Long Beach-related projects for the DEIR to describe the current environmental and health impacts from these projects, taken together, as well as the expected situation on the ground when and if the Middle Harbor project is constructed and operated. Each of these is a public project for which substantial environmental documentation is or will be available.⁶⁷

⁶⁴ CEQA Guidelines § 15130; *see also* CEQA Guidelines § 15355.

⁶⁵ DEIR/S, at 3.2-110.

⁶⁶ CARB, Methodology for Estimating Premature Deaths Associated with Long-Term Exposures to Fine Airborne Particulate Matter in California Draft Staff Report (May 22, 2008).

⁶⁷ For example, there are existing EIRs, Notices of Preparation or other environmental planning documents that can be consulted on these Port of Los Angeles projects listed in Table 4-1: Pier 400/Plains All American; Berth 136-147; San Pedro Waterfront Project, Channel Deepening Project, Cabrillo Way Marina Phase II, Port Police Headquarters, Ultramar lease renewal, Berth 206-209, Southern California International Gateway, Port Transportation Master Plan, I-110/SR-

Nonetheless, as we noted in our initial comment letter, there is no discussion of the effects of the recognized cumulative impacts as a whole on human health or the physical environment. Nor is there any discussion of how to mitigate the cumulative impacts of the identified projects. This violates CEQA.

Finally, it is unclear why the DEIR/S excludes the I-710, Southern California International Gateway, and the Union Pacific ICTF projects in its cumulative impacts air quality analysis. This is especially egregious because this project will place added stress to potentially force the need for these expansion projects. Accordingly, they should be included in the cumulative impacts section.

V. The Greenhouse Gas Analysis and Associated Mitigation Measures Are Inadequate Under CEQA and NEPA.

a. The DEIR/S Fails to Adequately Set Forth the Threat of Greenhouse Gas Emissions.

The DEIR/S's exceedingly cursory summary of the present and future impacts of global warming is inadequate and fails to fulfill the informational requirements of CEQA and NEPA. The DEIR/S devotes only one sentence to describe the impacts of global warming, stating that global warming and GHG emissions may lead to "potentially negative environmental, economic, and social consequences around the globe."⁶⁸ There is no discussion of what these consequences may be, how global warming will impact California, or how global warming will effect the environment throughout the United States and in other countries around the world.

CEQA requires that an "EIR must demonstrate that the significant environmental impacts of the proposed project were *adequately investigated and discussed* and it must permit the significant effects to be considered in the *full environmental context*."⁶⁹ Accordingly, the DEIR/S should at a minimum describe the cumulative impacts of global warming on the environment and how increasing GHG emissions will affect those impacts. Furthermore, an EIR "must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published...or...at the time the environmental analysis is commenced, from both a local and regional perspective."⁷⁰ In other words, the DEIR/S should describe the current state of the "local and regional" environment as it is affected by global warming in order

47 Connector, Terminal Free Time, Pier Pass, Union Pacific ICTF Modernization. The same is true for Long Beach projects Middle Harbor Terminal Redevelopment, Piers G and J, and Pier T, and for the Alameda Corridor Transportation Authority / CalTrans project the Schuyler Heim Bridge Replacement and SR 47 Expressway.

⁶⁸ DEIR/S, at 3:2-8.

⁶⁹ CEQA Guidelines, § 15125(c), (emphasis added).

⁷⁰ CEQA Guideline § 15125(a)

to establish a baseline for comparing the impacts increased GHG emissions will have on the environment. Because an EIR is intended “to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action,” the DEIS/R must be revised to adequately inform the public about the risks associated with increasing GHG emissions.⁷¹

Similarly, NEPA requires an EIS to “succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration.”⁷² This description “shall be no longer than is necessary to understand the effects of the alternatives” but “shall be commensurate with the importance of the impact.”⁷³ In light of the seriousness and worldwide scope of global warming impacts and considering the cumulative nature of GHG emissions, an DEIS must describe the affected environment in sufficient detail to convey the potential risks both California and the world may face due to increasing GHG emissions.

To more accurately convey the severity of the impacts of global warming, the DEIR/S should be revised to include numerical estimates of the extent of projected impacts. The DEIR/S should include specific information about the projected impacts in California caused by GHG emissions, for example, by describing that loss for the Sierra snowpack is estimated to be between 30-90%, depending on the extent to which emissions are reduced now and in the near future.⁷⁴ Additional impacts projected for California by the end of the century include:

- Temperature rises between 3-10.5°F;
- 6-30 inches or more of sea level rise;
- 2-4 times as many heat wave days in major urban centers;
- 2-6 times as many heat-related deaths in major urban centers;
- 1.5-5 times more critically dry years;
- 25-85% increase in days conducive to ozone formation;
- 3-20% increase in electricity demand;
- 10-55% increase in the expected risk of large wildfires; and
- 7-30% decrease in forest yields (pine).

Id. By providing details as to the ranges of proposed impacts, and indicating that the higher-range of impact estimates are projected if GHG emissions continue to increase under a “business as usual” scenario, decision-makers and the public will be better

⁷¹ *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 392 (1988).

⁷² CEQ Regulation, §1502.15.

⁷³ *Id.*

⁷⁴ California Climate Change Center, “Our Changing Climate, Assessing the Risks to California.” (2006). (See “Attached Literature” Exhibit G).

informed of the magnitude of the climate crisis and the urgency with which it must be addressed. Furthermore, the DEIS/R should consider supplementing its description of global warming impacts with data from the recently released report of the Committee on Environment and Natural Resources, the *Scientific Assessment of the Effects of Global Change on the United States* (May 2008).⁷⁵

b. THE DEIR/S FAILS TO ANALYZE AND MITIGATE BLACK CARBON EMISSIONS

i. Background: Black Carbon Has a Significant Impact on Global Warming, and as a Short-Lived Pollutant, Mitigation Can Provide Immediate Significant Climate and Health Benefits

While the DEIS/R provides some treatment of traditional greenhouse gases, it utterly fails to address black carbon, an important short-lived pollutant that contributes to global and regional warming. Black carbon is produced by incomplete combustion and is the black component of soot. Although combustion produces a mixture of black carbon and organic carbon, the proportion of black carbon produced by burning fossil fuels, such as diesel, is much greater than that produced by burning biomass.

Black carbon heats the atmosphere through a variety of mechanisms. First, it is highly efficient at absorbing solar radiation and in turn heating the surrounding atmosphere. Second, atmospheric black carbon absorbs reflected radiation from the surface. Third, when black carbon lands on snow and ice, it reduces the reflectivity of the white surface which causes increased atmospheric warming as well as accelerates the rate of snow and ice melt. Fourth, it evaporates low clouds. Notably, black carbon is often complexed with other aerosols such as sulfates, which greatly increases its heating potential.⁷⁶

Due to black carbon's short atmospheric life span and high global warming potential, decreasing black carbon emissions offers an opportunity to mitigate the effects of global warming trends in the short term.⁷⁷ Black carbon is considered a 'short-lived pollutant' (SLP) because it remains in the atmosphere for only about a week in contrast to carbon dioxide, which remains in the atmosphere for over 100 years. Furthermore, the global warming potential of black carbon is approximately 760 times greater than that of carbon

⁷⁵ [See "Attached Literature" Exhibit H].

⁷⁶ Ramanathan, V. & Carmichael, G., *Global and Regional Climate Changes Due to Black Carbon*, *Nature Geoscience* 1:221-227 (2008); AND Jacobson M., *Strong Radiative Heating Due to the Mixing State of Black Carbon in Atmospheric Controls*, *Nature* 499: 695- 697 (2001). [See "Attached Literature" Exhibit I and J, respectively].

⁷⁷ Ramanathan, V. & Carmichael, G., *Global and Regional Climate Changes Due to Black Carbon*, *Nature Geoscience* 1:221-227 (2008). [See "Attached Literature" Exhibit I].

dioxide over 100 years⁷⁸ and approximately 2200 times greater over 20 years.⁷⁹ It is estimated that black carbon is the second greatest contributor to global warming behind carbon dioxide.⁸⁰

Unlike traditional greenhouse gases, which become relatively uniformly distributed and mixed throughout the Earth's atmosphere, black carbon exerts a regional influence. The impacts of black carbon on a regional level include both atmospheric heating, as discussed above, and hydrological changes. Hydrological changes occur due to alterations in cloud formation and heat gradients.⁸¹ For instance, aerosol pollution has been linked to decreases in the summer monsoon season in tropical areas as well as the drought in the Sahel region of Africa.⁸² California is an area of particular concern because of the drought-fire cycle. The more drought conditions prevail, the more forest fires burn, and the forest fires in turn emit massive quantities of black and organic carbon. The release of these aerosols intensifies the drought effect.

Another impact of black carbon is accelerated snowmelt; for instance, black carbon is likely contributing to the retreat of Himalayan glaciers and the resulting water shortage in areas of Asia.⁸³ When black carbon settles on snow, it makes the snow darker so that it absorbs more solar radiation. This directly leads to snow melt. In addition, local atmospheric heating due to black carbon increases the melting rate. These same effects may well be operating on the Sierra Nevada, which would reduce water availability throughout California at crucial times of the year.

Black carbon is also detrimental to human health. The health effects of particulate matter (PM), of which black carbon is one constituent, have been documented in the DEIR/S. But black carbon specifically has a number of negative effects on human health. Black carbon has been linked to a variety of circulatory diseases. One study found an increased mortality rate was correlated with exposure to black carbon.⁸⁴ The same is true for heart attacks.⁸⁵ Another study found that residential black carbon exposure was associated

⁷⁸ Reddy, M.S. & Boucher, O., *Climate impact of black carbon emitted from energy consumption in the world's regions*. *Geophys. Res. Letters*. 34: L11802 (2007). [See "Attached Literature" Exhibit K].

⁷⁹ Bond, T. & Sun, H. *Can Reducing Black Carbon Emissions Counteract Global Warming?* *Environ. Sci. Technol.* 39:5921-5926 (2005). [See "Attached Literature" Exhibit L].

⁸⁰ Ramanathan, V. & Carmichael, G., *Global and Regional Climate Changes Due to Black Carbon*, *Nature Geoscience* 1:221-227 (2008).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Maynard, D. et al., *Mortality risk associated with short-term exposure to traffic particles and sulfates*, *Environ. Health Perspect.* 115:751-755 (2007). [See "Attached Literature" Exhibit M].

⁸⁵ Tonne, C. et al., *A case control analysis of exposure to traffic and acute myocardial infarction*. *Environ Health Perspect.* 115:53-57 (2007). [See "Attached Literature" Exhibit N].

with increased rates of infant mortality due to pneumonia, increased chronic bronchitis, and increased blood pressure.⁸⁶

In developed countries, diesel burning is the main source of black carbon. Diesel emissions include a number of compounds such as sulfur oxides, nitrogen oxides, hydrocarbons, carbon monoxide, and particulate matter. Diesel particulate matter is approximately 75% elemental carbon.⁸⁷ The Port has numerous diesel engines in use: marine vessels, cargo loading equipment, stationary equipment engines, construction vehicles, heavy-duty trucks, and locomotives. Thus, it is crucial that black carbon be addressed in the DEIR/S.

ii. The DEIS/R Must Quantify the Project's Black Carbon Emissions

1. Analyzing Particulate Matter is Insufficient to Address Black Carbon

Particulate matter (PM) refers to the particles that make up atmospheric aerosols. The primary constituents of PM are sulfates, nitrates, and carbon compounds. Sulfates and nitrates form in the atmosphere from the chemical reaction of sulfur and nitrogen dioxides. These may often be present as ammonium sulfate or nitrate salts. Carbon compounds may be directly emitted, e.g. black carbon emitted from combustion, or may form in the atmosphere from other organic vapors, e.g. oxidation of volatile organic compounds.

Because PM can be reduced through mitigation of other constituents of PM than black carbon, it is essential that black carbon emission reduction strategies be considered independently from PM reductions. The proportions of the constituents of PM vary over time and by location.⁸⁸ According to a recent series of surveys conducted at various U.S. cities under the EPA's "Supersite" program, black carbon was often only about 10% of total measured PM_{2.5}.⁸⁹

In contrast to total PM_{2.5}, diesel PM is composed largely of black carbon. Nonetheless, some diesel PM reduction strategies do not affect black carbon. For instance, diesel oxidation catalysts can reduce diesel PM emissions as a whole by approximately 20 to

⁸⁶ Schwartz, J. Testimony for the Hearing on Black Carbon and Arctic, House Committee on Oversight and Government Reform United States House of Representatives (Oct. 18, 2007).
<<http://oversight.house.gov/documents/20071018111144.pdf>>

⁸⁷ EPA (2002) *Health Assessment Document for Diesel Engine Exhaust*, EPA/600/8-90/057F.
<<http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?id=29060>>

⁸⁸ See EPA (2004) *The Particle Pollution Report*, EPA 454-R-04-002.

<http://www.epa.gov/air/airtrends/aqtrnd04/pm.html>

⁸⁹ For an overview of the program and initial results see

<http://www.epa.gov/ttn/amtic/supersites.html>

40%, yet they do not decrease black carbon emissions.⁹⁰ In addition, while low-sulfur fuel will reduce sulfate emissions, in and of itself low-sulfur fuel will not reduce black carbon. Low-sulfur fuel is important because it *allows* for better technology to reduce black carbon.⁹¹ Yet those reductions can only occur once the technology has been implemented.

2. Methods Are Available to Specifically Quantify Black Carbon Emissions from the Project

Although the DEIR/S quantifies the estimated traditional GHG emissions from the proposed Project, it makes no attempt to quantify black carbon. This omission must be rectified. Like GHG, black carbon emissions from various types of engines and activities can be estimated through numerical calculations.⁹² Considering the importance and ability of quantifying black carbon emissions, the DEIR/S should be revised to incorporate an analysis of the Project's contribution of black carbon.

The estimated black carbon emissions from the Project can be inventoried similarly to other greenhouse gas emissions:

- Estimate the mass of diesel fuel consumed by each type of diesel engine, e.g. ship, machinery, truck, construction equipment, and locomotive.
- Calculate a black carbon emission factor (EF) using reference values available in the literature.⁹³ For instance, Bond and colleagues provide an equation for "EF_{BC}" from various types of diesel engines that takes into account 4 different factors.⁹⁴
- Multiply the emission factor times the mass of diesel (in kilograms) used for each engine type. This will provide the grams of black carbon emitted by that engine type.
- Sum all black carbon emissions from each engine category to obtain total black carbon emissions from the Project.

After obtaining the total black carbon emissions from the Project, the relative global warming impact of the emissions can be compared to other global warming pollutants. Carbon dioxide-equivalent values, such as those in Table 3.2-6 of the DEIR/S, can be obtained by multiplying total black carbon emissions (in kilograms) from the Project by the global warming potential (GWP) for black carbon. Although there is some variation

⁹⁰ Walker, A.P., *Controlling Particulate Emissions from Diesel Vehicles*, Topics in Catalysis 28: 165-170 (2004). [See "Attached Literature" Exhibit O].

⁹¹ See, e.g. 69 Fed. Reg. 38957, 38995 (June 29, 2004).

⁹² See, e.g., Bond T. et al., *A technology-based Global Inventory of Black and Organic Carbon Emissions from Combustion*, J. Geophys. Res., 109: D14203 (2004).

⁹³ Id.

⁹⁴ Id. at 4 and Table 7.

in estimated GWP values, representative black carbon GWP values are: 760 over 100 years⁹⁵ or 2200 over 20 years.⁹⁶

c. The DEIS/R Grossly Understates the Level of Emissions Resulting from the Project.

i. The DEIR/S Violates CEQA and NEPA by Improperly Excluding GHG Emissions Generated Outside California as a Result of the Project.

In calculating the emissions for Project sources that travel outside of California (namely on-road trucks, line haul trains, and ships) the DEIS/R only includes emissions from the portion of travel that is within California borders.⁹⁷ Emissions generated outside California are excluded on the grounds that the California Climate Action Registry (CCAR) “does not require reporting of [this type] of emissions” and because the CCAR has “not developed assumptions for operational or geographical boundaries” of these out-of-state emission sources.⁹⁸ Restricting the analysis of increased GHG emissions to only those within the California border reflects the Port and USACE’s failure to comply with the reach of both CEQA and NEPA. Since CCAR does not dictate the scope of effects analyzed under CEQA and NEPA, the Port and USACE must re-total the GHG emissions caused directly and indirectly by the Project and then must reassess the impacts these additional emissions may cause.

Under CEQA, an EIR must consider “reasonably foreseeable indirect physical changes in the environment which may be caused by the project.”⁹⁹ An indirect impact is a physical change in the environment that is “not immediately related to the project but...is caused indirectly by the project.”¹⁰⁰ These indirect impacts or effects may be removed in time or distance but are still reasonably foreseeable.¹⁰¹ Redevelopment of Middle Harbor will result in foreseeable increases in the number of annual ship calls, truck trips, and rail trips which will generate both direct and indirect increases in GHG emissions.¹⁰² Additionally, “[a]ny emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges.”¹⁰³ Here, because a California

⁹⁵ The combined global average direct (480) and indirect (281) GWP for black carbon as reported in Reddy & Boucher, *supra* Note 3.

⁹⁶ Bond T. & Sun H. *Can Reducing Black Carbon Emissions Counteract Global Warming?* Environ. Sci. Technol. 39:5921-5926 (2005).

⁹⁷ DEIR/S, at 3.2-17.

⁹⁸ *Id.* at 3.2-23.

⁹⁹ Guidelines § 15064(d)

¹⁰⁰ Guidelines § 15064(d)(2).

¹⁰¹ Guidelines § 15358(a)(2).

¹⁰² DEIR/S at 1-7.

¹⁰³ Guidelines § 15277

public agency, namely CARB, has authority over regulating GHG emissions, and because out-of-state emissions will indisputably have an effect on the environment in California, all indirect emissions, both within and outside California, must be quantified and addressed. Regardless of the point of origin of these additional trips, the increased transit will partially be a result of the increased capacity of the Port, and their corresponding GHG emissions must be must be included in the calculation of total GHG emissions.

Furthermore, CEQA requires an agency to “use its best efforts to find out and disclose all that it reasonably can.”¹⁰⁴ Nothing in CEQA limits its focus to environmental effects occurring within California. Rather, CEQA examines effects to “ecosystems,” the boundaries of which are in no way influenced by state lines.¹⁰⁵ Indeed, as CEQA is “to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language” the DEIR/S’s narrow interpretation of indirect environmental effects flies in the face of one of CEQA’s foremost principles.¹⁰⁶ Because the full trip length from these transportation modes is reasonably foreseeable, it must be incorporated into the DEIR/S’s emissions calculations.

Similarly, NEPA requires every EIS to address and describe the indirect effects of a project, defined as those effects “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”¹⁰⁷ Included in the definition of “indirect effects” under NEPA are those “growth inducing effects and other related effects on air and water and other natural systems, including ecosystems.”¹⁰⁸ The GHG emissions emanating from the increased ship, truck, and train traffic both to and from the Port are considered indirect effects of the Project under NEPA, as they are “farther removed in distance,” “reasonably foreseeable,” and are considered “growth inducing effects” since they result from the increased ship handling capacity of the Port. Furthermore, NEPA “is clearly not limited to actions of federal agencies that have significant environmental effects within U.S. borders.”¹⁰⁹ Therefore, to ignore GHG emissions simply because they originate outside of the California borders is to ignore the

¹⁰⁴ Guidelines § 15144; *see also* Guidelines § 15151 (an EIR must disclose what is “reasonably feasible”).

¹⁰⁵ *See* Guidelines § 15358(a)(2).

¹⁰⁶ *Laurel Height Improvement Ass’n v. Regents of University of California*, 47 Cal.3d 376, 404 (1988).

¹⁰⁷ 40 C.F.R. Guideline 1508.8

¹⁰⁸ *Id.*

¹⁰⁹ *Environmental Defense Fund v. Massey*, 986 F.2d 528, 536 (D.C. Cir. 1993); 42 U.S.C. § 4332(2)(F) (requiring all federal agencies to “recognize the worldwide and long-range character of environmental problems,” and promote international cooperation in solving environmental challenges.); 42 U.S.C. § 4321 (NEPA is intended to “encourage productive and enjoyable harmony between *man and his environment*” as well as to “promote efforts which will prevent or ~~eliminate damage to the environment and biosphere~~”) (emphasis added); Cal. Pub. Res. Code § 21002.1(a) (requiring that an EIR “identify the significant effects on the environment of a project.”).

clear language of the NEPA regulations.

As demonstrated by the Memorandum of Understanding between the Port of Los Angeles (POLA), California Attorney General Edmund G. Brown, and the Mayor of Los Angeles,¹¹⁰ emissions outside California indirectly resulting from the Project are both reasonably foreseeable and feasible to quantify. In the Memorandum of Understanding, POLA agreed to set the geographic boundary for its GHG emissions calculations at the point of origin/destination for ships, the major cargo destination/distribution points for rail transit, and the major destination/distribution points for out-of-state truck transit. The POLA inventory recognizes the proper geographic scope for port-related GHG analyses, and for the above stated reasons, this model of calculating and reporting emissions should be incorporated into the Port's NEPA and CEQA analyses.

Accordingly, the DEIR/S should be revised to include GHG emissions from all sources resulting from implementation of the Project. Such an inventory should include all indirect effects from additional ship, truck, rail, and automobile traffic resulting from the project, regardless of where such emissions occur.

ii. The DEIS/R Misrepresents the CCAR Protocol for Tracking GHG Emissions.

Reliance on the CCAR Protocol as a method for calculating direct and indirect effects under NEPA and CEQA is also improper because, unlike NEPA and CEQA, the Protocol does not require reporting of indirect emissions. The CCAR Protocol was not intended to be used as a tool to measure a project's impact on the environment, but was designed "to help organizations [] establish GHG emissions baselines against which any future GHG emission reduction requirements may be applied."¹¹¹ Because a purpose of the Protocol is to help entities establish their GHG baseline, it is important that the Protocol limit reporting to sources of emissions that each entity is directly responsible for. However, NEPA and CEQA require agencies to analyze both the direct *and* indirect effects on the environment. Therefore, the focus of the CCAR Protocol on direct emissions and its requirement that entities at a minimum report sources of emissions within the state does not constitute a "reasonable explanation for the geographic scope" of the GHG analyses.¹¹²

The DEIR/S also misstates the scope of emissions covered by the CCAR Protocol. The CCAR Protocol does not limit an entity's emissions reporting to only California-based sources, but it encourages its members to report all their GHG emissions, regardless of where they occur, setting the California border as the floor for the geographic scope of

¹¹⁰ Memorandum of Understanding between POLA, the Attorney General, and the Mayor of Los Angeles, December 6, 2007. (See Attached Literature Exhibit P).

¹¹¹ *General Reporting Protocol, Version 3.0* at 9. [See "Attached Literature" Exhibit Q].

¹¹² Guidelines § 15130 (b)(3).

emissions.¹¹³ Furthermore, the CCAR Protocol requires its members to report out-of-state emissions from car and truck trips if the vehicles are registered in California.¹¹⁴ Recognizing the global impact of GHG emissions, the CCAR Registry also accepts emissions data from an entity's sources outside the U.S; although it currently is unable to verify international emissions data.¹¹⁵

iii. The NEPA Baseline Adopted by USACE Is Flawed.

The DEIS/R is fundamentally flawed because USACE improperly incorporates upland construction projects as part of the NEPA baseline. Section 1.2.1.2 of the DEIS/R states:

The NEPA Baseline for this Project assumes that increases in cargo throughput will occur in the future as a result of demands for higher levels of containerized shipping and Port authorized upland developments not under federal jurisdiction. As a result, this baseline is not bound to a "no growth" scenario. Potential impacts are determined by comparing conditions with and without the federal components of the Project at given points in the future... The NEPA Baseline would include construction of site improvements and operational activities that could occur without issuance of federal permits. Therefore, the baseline would not include any in-water activities (e.g., dredging, filling, and/or new wharf construction)... [T]his baseline would include redevelopment and backland expansion on existing lands within the Project site to accommodate additional containerized cargo up to the capacity of the existing wharves and berths... The NEPA Baseline is equivalent to Alternative 3 (Section 1.6.3.3) because Alternative 3 only includes construction and operational activities that would not require issuance of federal permits.

Incorporating project activities that are outside the jurisdiction of USACE into the NEPA baseline depends on the degree of USACE involvement in the Project. Where USACE participation is nominal, the scope of the NEPA analysis corresponds to the degree of "control and responsibility" the USACE exercises over the Project.¹¹⁶ Therefore, if the USACE exerts minimal control or if the regulated activity is "merely a link" in a corridor type project, the NEPA baseline should include all the environmental conditions and changes that are beyond the USACE's jurisdiction.¹¹⁷ In other words, only those environmental impacts that stem directly and indirectly from the portion of the project within USACE's jurisdiction will be analyzed under NEPA.

¹¹³ *General Reporting Protocol*, at 6.

¹¹⁴ *Id.* at 11.

¹¹⁵ *Id.* at 12.

¹¹⁶ 33 C.F.R. Pt. 325, App. B (7)(b)(1).

¹¹⁷ 33 C.F.R. Pt. 325, App. B (7)(b)(2)(i).

However, where, as here, USACE activity is more substantial, the extent of USACE's participation suffices "to turn [the] essentially private action into a Federal action" and all impacts and effects from the Project must be considered under NEPA.¹¹⁸ Indeed, this Project is very similar to the "shoreside facility" example in the USACE's NEPA Implementing Procedures which represents a type of project that merits "extending the scope of analysis to include the upland portions of the facility."¹¹⁹ Activities normally permitted at a shoreside facility, such as: "dredging, wharves, bulkheads, berthing areas and disposal of dredged material" typically warrant extending USACE control over an entire project for purposes of NEPA review.¹²⁰ The Middle Harbor Redevelopment Project is extremely similar to the activities planned at the "shoreside facility," consisting largely of dredging, wharves, berthing areas, and disposal of dredged material. Specifically, the activities under USACE warrant extending federal jurisdiction include:

- Removal of 14.4 acres of existing land producing 680,000 cubic yards (cy) of dredged material and 1,290,000 of excavated material, resulting in the filling of 65.3 acres of water and creating approximately 54.6 acres new land;
- Removal of portions of Pier D and Pier E;
- Demolishing existing wharf at Berths D29-D31, E12-13, E23-26, F6-F10;
- Construction of dikes at Berths D29-D31, E24, the southern boundary of Slip 1, between Berths E24 and F10;
- Construction of new wharf structures at the extension of Berth E23, E24, E25, E26;
- Construction of four temporary pile-supported mooring dolphins.¹²¹

Considering the extensive nature of these activities and their dominance among the Project components as a whole, the USACE has sufficient "control and responsibility" to extend the scope of the NEPA analysis over the all activities planned in the Project.

Second, the Corps' own regulations properly recognize that "[i]n some situations, a permit applicant may propose to conduct a specific activity requiring a Department of the Army (DA) permit (e.g., construction of a pier in a navigable water of the United States) which is merely one component of a larger project." 33 C.F.R. Pt. 325 (App. B., § 7(b)(1)); *see also Friends of the Earth v. U.S. Army Corps of Engineers*, 109 F. Supp.2d 30, 40-41 (D.C. Dist. 2000)(holding that the Corps was required to prepare an EIS that assessed the impacts of the *entire* project, including the building and operation of hotels, parking garages and other related complexes on the upland area, and not just from the physical mooring of the boat at the harbor as the Corps had contended). The regulations further explain that "shipping terminals" are one clear example of a project for which the Corps should expand the scope of its environmental review to include the impacts of the

¹¹⁸ 33 C.F.R. Pt. 325, App. B (7)(b)(2)

¹¹⁹ 33 C.F.R. Pt. 325, App. B (7)(b)(3)

¹²⁰ *Id.*

¹²¹ DEIR/S, at 1-25 through 1-37.

larger project. In such an instance, the Corps must determine whether an EIS is required for the larger project. The regulations explain:

a shipping terminal normally requires dredging, wharves, bulkheads, berthing areas and disposal of dredged material in order to function. Permits for such activities are normally considered sufficient Federal control and responsibility to warrant extending the scope of analysis . . .

33 C.F.R. § 325 (App. B., § 7(b)(3)) (emphasis added).

Third, many of the activities which were improperly incorporated into the NEPA baseline, also known as Alternative 3 - Landside Improvements Alternative, are partially dependent on the increased berthing capacity resulting from the dredging and wharf improvements. Alternative 3 activities, such as the redevelopment of terminal areas and container yard and updating railroad infrastructure, are designed to respond to the increased throughput from the modern cargo vessels which will be able to berth in the deeper waters.¹²² If not for the increased ship handling capacity and the Port's future ability to handle much larger ships, there would be less of a need for the upland terminal and rail improvements.¹²³ The dependent nature of the upland Project activities upon the resulting increased berthing capacity from the USACE controlled activities is reason enough to extend the scope of the NEPA analysis to the Project as a whole.

Due to the considerable "control and responsibility" the USACE maintains over the Project as a whole and the clear guidance within USACE regulations, the NEPA baseline should be set similar to the CEQA baseline, at a fixed time before the commencement of any redevelopment activities. Therefore, all activities associated with the Project occurring after the baseline date should be analyzed under NEPA.

d. The Project's Impact on Global Warming is Also Significant Under NEPA.

While the Port properly determined that annual GHG emissions from the Project are significant under CEQA because they exceed baseline emissions, USACE refuses to acknowledge the significance of the Project's GHG contribution under NEPA on the grounds that there are no adopted GHG significance thresholds.¹²⁴ USACE's failure to find that the Project's GHG emissions are a significant impact is fundamentally flawed. Neither NEPA, CEQ guidelines, nor USACE NEPA Regulations require quantitative thresholds of significance in order to discuss the environmental impacts of a proposed project. The Ninth Circuit in *Center for Biological Diversity v. National Highway Traffic Safety Administration* recognized the legal necessity of evaluating the cumulative significance of GHG emissions under NEPA, despite the absence of a quantitative

¹²² DEIR/S, at 1-47,48; 1-7.

¹²³ DEIR/S, at 1-6.

¹²⁴ DEIR/S, at 3.2-112.

threshold, stating “[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.”¹²⁵ “Thus, the fact that climate change is largely a global phenomenon that includes actions that are outside of [the agency’s] control . . . does not release the agency from the duty of assessing the effects of *its* actions on global warming within the context of other actions that also affect global warming. The cumulative impacts regulation specifically provides that the agency must assess the impact of the action when added to other past, present, and reasonably foreseeable future actions *regardless of what agency (Federal or non-Federal) or person undertakes such other actions.*”¹²⁶

In addition, “it is reasonable to anticipate a cumulatively significant impact on the environment” from increased GHG emissions.¹²⁷ The DEIR/S recognizes that there will be an “appreciable impact on global climate change” resulting from a project’s emission combined with other anthropogenic GHG sources.¹²⁸ Therefore, the failure to analyze the indisputable significance of the Project’s GHG emissions violates NEPA because the DEIS/R misrepresents the environmental impact of the proposed actions.¹²⁹

Furthermore, by substantially increasing California’s existing emission levels, the Project threatens the successful implementation of the California Global Warming Solutions Act (AB 32, 2006) and Executive Order S-3-05, which require deep reductions in current levels of GHGs in California.¹³⁰ Accordingly, a revised DEIR/S must be prepared that adequately analyzes the cumulative significance of the Project’s GHG emissions on global warming under NEPA.

e. Additional Feasible Mitigation Measures Must be Adopted to Eliminate the Project’s GHG Contribution.

Mitigation of a project’s significant impacts is one of the “most important” functions of CEQA.¹³¹ Under CEQA, feasible mitigation measures must be adopted that will avoid or substantially lessen significant environmental effects.¹³² As presented in the DEIR/S, proposed mitigation will only reduce annual Project GHG emissions by 40,974 metric

¹²⁵ 508 F.3d 508, 550 (9th Cir. 2007) (holding an EA inadequate for inadequate cumulative impacts analysis).

¹²⁶ *Id.* (internal citations and quotations omitted; emphasis in original).

¹²⁷ CEQ Reg. 40 C.F.R. § 1508.27(7)

¹²⁸ DEIR/S at ES-22.

¹²⁹ 42 U.S.C. § 4332 (C)

¹³⁰ *See* 40 C.F.R. § 1508.27(10) (factor in significance determination includes whether action threatens to violate federal, state, or local law or requirements); *see also* Executive Order S-3-05 (June 1, 2005) (setting greenhouse gas emissions reduction targets for California); Control of Emissions From New Highway Vehicles and Engines, 68 FR 52922 (September 8, 2003) (affirming EPA’s recognition of climate change and the need to reduce greenhouse gases).

¹³¹ *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990).

¹³² Pub. Res. Code § 21002.

tons of CO₂ equivalent in 2010, from 587,463 to 546,669 metric tons.¹³³ The mitigation measures applied for the purposes of calculating mitigated emissions data were AQ-5, AQ-12, and AQ-13.¹³⁴ Depending on the Project year, these three measures would reduce the Project's GHG emissions by 8 to 10 percent, leaving 90 to 92 percent of emissions unmitigated.¹³⁵ While the mitigation measures adopted by the Port to reduce greenhouse gas emissions are an important first step, much more can be done to reduce the significance of this impact. Indeed, absent further mitigation, the sizable annual emissions resulting from the Project will frustrate achievement of California's mandate to reduce emissions under AB 32 and Executive Order S-3-05. With the potential to influence the environmental performance of the shipping sector, an industry that is largely unregulated and contributes more greenhouse gases than most Annex I countries to the Kyoto Protocol, the Port and USACE are in a unique position to have considerable impact on global warming and fully mitigate the Project's global warming impacts.

The Port and USACE should include the following mitigation measures, some of which were derived from the International Council on Clean Transportation's report, *Air Pollution and Greenhouse Gas Emissions from Ocean-going Ships: Impacts, Mitigation Options and Opportunities for Managing Growth*,¹³⁶ which provides a detailed analysis of potential mitigation a port can adopt to reduce GHG emissions from the shipping sector.

- a. **Create a Technology Advancement Program ("TAP") for GHG Mitigation:** The Port needs to take seriously the impacts associated with climate change. Accordingly, the Port should develop (or expand the already existing criteria pollutant TAP under the CAAP) to include the development of technologies to reduce GHG emissions from freight movement.
- b. **Implement Stricter Fuel-Efficiency/Design Standards for Heavy Duty Trucks:** While MM AQ-8 partially addresses the significant contribution of GHG emission from heavy duty trucks, the DEIR/S does not fully explore the mitigation options available in this sector.¹³⁷
 - Aerodynamics: Aerodynamic truck designs can improve fuel economy

¹³³ DEIR/S, at 3.2-64, 3.2-69.

¹³⁴ DEIR/S, at 3.2-68.

¹³⁵ *Id.*

¹³⁶ International Council on Clean Transportation (ICCT) (Mar. 2007) *Air Pollution and Greenhouse Gas Emissions from Ocean-Going Ships: Impacts, Mitigation Options and Opportunities for Managing Growth* at 34,

<http://www.theicct.org/documents/MarineReport_Final_Web.pdf> [hereinafter "ICCT"] [See

"Attached Literature" Exhibit Q].

¹³⁷ See Union of Concerned Scientists, *Technology Options for Tractor Trailers*, 2008. [See "Attached Literature" Exhibit R].

15 to 20 percent, but manufacturers continue to produce trucks with the “classic,” and less efficient, body style.¹³⁸ MM AQ-8 does not address the potential GHG reductions in truck aerodynamics. Therefore, as well as phasing out truck models based on their year of manufacture, the Port should also ban trucks, both new and old, that are of the “classic” and inefficient design. Truck aerodynamics can be improved by adding integrated roof fairings, cab extenders, and air dams. The tractor-trailer gap can be minimized by adding side skirts and rear air dams. Single unit trucks can be improved with air deflector bubbles. Improving the aerodynamics of a typical line-haul truck by 15 percent could cut annual fuel use more than 2,000 gallons, save over \$3,500 in fuel costs, and eliminate 20 metric tons of carbon dioxide.

- Reduce Rolling Resistance:
 - All truck tires should be of a make and model identified by the EPA’s SmartWay program¹³⁹ as having the lowest rolling resistance and best fuel economy improvements. Also, it is important that tires which are retreaded continue to meet the same standards for rolling resistance as the original tire.
 - When possible, truck owners should use single wide tires, or “super singles,” which are designed to replace two side-by-side tires. Single wide-base tires save fuel by reducing vehicle weight, rolling resistance and aerodynamic drag, while also improving tank trailer stability by allowing lower mounting. Specifying single wide-base tires on a new combination truck could save \$1,000 immediately and reap annual fuel savings of two percent or more while cutting carbon dioxide by more than four metric tons. These offer the advantage of reduced rolling resistance and reduced overall weight.
 - All trucks should be equipped with automatic tire inflation systems to ensure tires are maintained at the proper inflation level, thereby improving fuel efficiency. Retrofitting a line-haul truck with an automatic tire inflation system could save 100 gallons of fuel annually and reduce tire wear and maintenance, while eliminating one metric ton of carbon dioxide. An ATI system used on a typical line-haul truck can generally pay for itself in just over two years, while decreasing the risk of expensive tire failure caused by under inflation.

¹³⁸ *Id.*

¹³⁹ <<http://epa.gov/smartway/documents/429d07033.htm>>

- **Weight Reduction**- Lighter weight tractor and trailer components, such as aluminum axle hubs, frames and wheels, can reduce truck weight by thousands of pounds, thus improving fuel economy. Every 10 percent drop in truck weight reduces fuel use between 5 and 10 percent.
 - **Low Viscosity Lubricants**- Low viscosity lubricants can reduce friction and energy losses. Typically, the combined effect of low viscosity synthetic engine oils and drive train lubricants can improve fuel economy by at least 3 percent. Despite the higher cost of synthetic oils, truck owners can save nearly 500 gallons of fuel and cutting five metric tons of carbon dioxide annually. Additional monetary savings may be possible due to reduced wear and maintenance.
 - **Driver Training Program**- Even highly experienced drivers can enhance fuel economy using simple practices such as cruise control, coasting whenever possible, limiting use of cab accessories, smooth and gradual acceleration, progressive shifting, etc. Driver training can reduce fuel consumption by 5 percent or more, eliminating about eight metric tons of greenhouse gas emissions per truck each year.¹⁴⁰
- c. **Incorporation of Efficiency/Low GHG Emissions Standards into Construction and Operation Equipment:** MM AQ-2, MM AQ-3 and MM AQ-7 should be modified to incorporate criteria for low-emission/high efficiency criteria for construction and operation equipment. Criteria can include the use of alternative fuels, hybrid technology, and specific fuel economy standards.
- d. ***Ocean Going Vessels:*** We recommend that the Port analyze further technologies that could be adopted to take advantage of increased fuel savings and promote the use of alternative energy sources.
- i. **Bulbous Bows:** Application on large tankers and bulk cargo ships result in a 5-15% decrease in resistance, thus decreasing the amount of fuel necessary to power ships and reducing emissions.¹⁴¹ Bows save significant fueling costs and overall life cycle costs.¹⁴²
 - ii. **Sky Sail:** Initial retrofit of a cargo vessel utilizing the Sky Sail system was completed in January 2008. Testing under normal shipping operation is currently being conducted, with potential fuel reduction use of up to 35 percent.¹⁴³ Since high propulsion power

¹⁴⁰ US EPA. *A Glance at Clean Freight Strategies*.

<http://epa.gov/smartway/documents/drivertraining.pdf>

¹⁴¹ Kyriazis, Georgios. *Bulbous Bow Design Optimization for Fast Ships*. Massachusetts Institute of Technology, 1996. <http://dspace.mit.edu/bitstream/1721.1/10238/1/36001502.pdf>

¹⁴² ~~Zoccola, Mary. *Bulbous Bows Save Fuel*.~~

<http://www.dn.mil/pao/excerpts%20pages/1997/bulbous3.html>

¹⁴³ <http://news.bbc.co.uk/2/hi/europe/7295217.stm> and

can only be reached from 70 degrees onwards, with optimal courses between 120 and 140 degrees,¹⁴⁴ the Sky Sail is not appropriate for all routes. However, the Ports should analyze up to what extent the Sky Sail would be feasible and develop requirements to encourage vessel owners to test and adopt the technology.

iii. The DEIS/DEIR also fails to mention some measures that are recommended in the CAAP. For new ships, the following should be considered as mandatory measures:

1. **Energy Recovery Systems:** Incorporate shaft generators, micro turbines, and waste heat recovery/economizer devices to take advantage of main engine power and exhaust heat. These systems allow for better energy efficiencies and can allow boilers and auxiliary engines to be shut down during ocean transits. Such systems can reduce fuel consumption and corresponding GHG emissions by 10 percent.¹⁴⁵

2. **Fueling Flexibility-** Design extra fuel storage tanks and appropriate piping to run both main and auxiliary engines on a separate/cleaner fuel, as ports, states, and national governments set regional or localized fuel standards.

iv. **Utilization of Environmentally Differentiated Port Fees Based on Vessel GHG Emissions:** Environmentally differentiated port dues would provide a significant incentive for large shipping companies to invest in emission control technologies for new and existing vessels and substantially reduce the GHG generated as a result of the Project.

f. **Limitations/Controls on Use of GHG Refrigerants:** The Port and USACE did not address any mitigation measures that would reduce GHG emissions caused by escaped refrigerants. Fluorinated and chlorinated hydrocarbons are still used as cooling agents in refrigerated vessels. Hydrofluorocarbons (HFCs) are highly potent greenhouse gases. Because some HFCs have a global warming impact of close to 12,000 times that of carbon dioxide, even small reductions in HFC

[http://www.skysails.info/index.php?id=64&L=1&tx_ttnews\[tt_news\]=98&tx_ttnews\[backPid\]=6&clhash=cfa209e350](http://www.skysails.info/index.php?id=64&L=1&tx_ttnews[tt_news]=98&tx_ttnews[backPid]=6&clhash=cfa209e350)

¹⁴⁴

http://www.skysails.info/fileadmin/user_upload/Pres_zedownload/Dokumente/EN_Technology_Information.pdf pg.3

¹⁴⁵ Maersk. *Maersk Pilot Fuel Switch Initiative*. 16 May 2008.

http://www.futureports.org/event/californiaquality_aq-planagan-ppt.pdf

emissions can have a large impact. It is estimated that 50 percent of HFCs on a ship are released to the air during operation and that an additional 15 percent are emitted during maintenance.¹⁴⁶ To reduce HFC emissions, the Port should evaluate the following mitigation measures:

1. Require all ships using the Port to use alternative refrigerants.
2. Use environmentally differentiated fees for vessels that use alternative refrigerants. Fees should be set at a rate significant enough to encourage a switch to alternative refrigerants.
3. Establish a mitigation fund to assist ships in switching to alternative refrigerants.
4. Require periodic leak inspections for ships, trucks, and trains that use HFC refrigerants.
5. Provide refrigerant servicing at the Port to help ensure HFC's are recovered during servicing.

In addition, the Environmental Protection Agency's *Global Mitigation of Non-CO₂ Greenhouse Gases* specifically addresses HFCs and potential mitigation.¹⁴⁷ While the DEIR/S's estimate of emissions from refrigerant leaks is relatively low, the DEIR/S improperly limits its analysis to leaks occurring within California, not the entire trip length.

- g. Preferential Contracting with Cleanest Carriers.** To the extent the Port contracts with third parties, much like environmentally differentiated port dues, preferential contracting with the cleanest carriers can provide incentives for additional GHG reductions. In addition, by only contracting with the cleanest carriers, the Port will reduce the emissions resulting from the Project. An examination of preferential contracting and environmentally differentiated fees should extend to the use of rail over trucks as a means of transport.
- h. Increased Use of Renewable Power for Electricity Generation:** The feasibility of generating additional on-site renewable electricity generation should be explored as well as a higher percentage of off-site renewable electricity.
- Maximize use of Solar Power: The Port should further consider the use of solar power as a self-generated source of renewable energy. Apart from the installation of solar panels on the main terminal building that is identified in MM AQ-17, the Port should explore additional locations for panels, such as installing panels on other buildings at the Port and on canopies over parking lots, which has the added benefit of providing shade.

¹⁴⁶ ICCT Report at 34. [See "Attached Literature" Exhibit Q].

¹⁴⁷ (See "Attached Literature" Exhibit S).

The Port should also commit to producing a specified amount of energy from its own solar panel system. In the December 7, 2007 Memorandum of Understanding between the Port of Los Angeles (POLA), the Attorney General of California, Edmund G. Brown, Jr., and the Mayor of Los Angeles, POLA committed to installing a solar panel system capable of producing approximately of 10 Mega-Watts of energy.¹⁴⁸ During the initial phase of solar development, POLA agreed to install panels on the cruise terminal and in adjacent parking lots, with later plans of installing panels on other POLA building and possibly tenant properties.¹⁴⁹ Like POLA, the Port should make a similar Mega-Watt commitment and capture solar energy. To the extent space for solar power may be limited at POLB, the solar can be installed in the surrounding community to offset Project emissions.

- i. **Enhance MM AQ-10 (Truck Idling Reduction Measures):** The Port assumes that methods such as increasing the amount of time gates are open as well as creating a tracking and appointment-based delivery schedule will result in idling minimization. However, the Port fails to limit the idling time allowed or present any monitoring or enforcement of this mitigation measure. We recommend that the Port mandate specific idling restrictions, such as time limits for Cargo-Handling Equipment required by CARB, and include a 30 minute limit on truck turnaround time. Further measures in order to assist drivers in meeting the requirement should also be established. For example, the Port should provide plug-ins for trucks that must keep engines running for operational purposes. Climate-controlled “comfort stations” could be provided for drivers who would otherwise idle their trucks in order to operate the air conditioner or heating. Mandatory logistics software as a part of the tracking system would improve scheduling, increase efficiency and ensure full truckloads.
- j. **Utilize Recycled Materials:** Use of recycled materials will lessen the carbon footprint of the Project. The DIES/R should commit to using recycled materials whenever possible in the construction and operation phases of the Project.
- k. **Implement Fleet Monitoring for Hull Efficiency:** Managing hull resistance involves an evaluation of ship performance data to determine the extent of resistance on a ship from fouling on the hull and propeller and ascertain the point where ship maintenance (such as hull cleaning) would be economically

¹⁴⁸ Memorandum of Understanding between POLA, the Attorney General, and the Mayor of Los Angeles, December 6, 2007. [See “Attached Literature” Exhibit P].

¹⁴⁹ Memorandum of Understanding between POLA, the Attorney General, and the Mayor of Los Angeles, December 6, 2007. Attachment C, *Conceptual Scope of Solar Photovoltaic Development: Port of Los Angeles*, [See “Attached Literature” Exhibit T].

beneficial.¹⁵⁰ A rough hull (through use of poor quality paints and algae growth) requires additional power (and thus more fuel) to move.¹⁵¹ Fleet monitoring for hull efficiency is a service provided in Long Beach.¹⁵² Requiring the monitoring of hull efficiency, use of low-resistance hull paint, and hull cleaning when appropriate would reduce fuel consumption, and consequently, emissions of GHG and criteria pollutants from the excess and needless burning of fuel.

- l. AQ-19 (Tree Planting):** We also support the planting of trees around the main terminal building in order to decrease the amount of energy needed for heating and cooling, as well as for the uptake of carbon. This is another measure that could be expanded beyond the Port complex. Enhancement of Long Beach's Urban Forest is an effective way of not only reducing greenhouse gas emissions, but also improving air quality and reducing air pollution.
 - A single mature tree can absorb as much as 48 lbs of CO₂ per year and release enough oxygen into the atmosphere to support two human beings.
 - Urban forests provide tangible economic benefits, including: energy savings, enhancement of property values, deferred street maintenance costs, reduced costs associated with poor air quality, and increased commercial activity.¹⁵³ The Port should work with the city of Long Beach in order to survey the current urban forest and create appropriate targets and programs for the planting and maintenance of trees within the city; ideal canopy is considered to be between 30 to 40 percent.¹⁵⁴ Guidelines on analyzing an Urban Forest as a carbon sink can be found under the Urban Forest Greenhouse Gas Protocol.
- m. Electrified Tugs:** The Port should plug in to charge at dock and use stored electric energy to perform ship assist operations. Fast-charging systems have already been commercialized for use at airports (for ground support equipment) and other industrial settings, powering over 15,000 vehicles in North America. The DEIR/S should include a mitigation measure requiring the Port to provide, within one year of project approval, an AMP staging area and require tugs servicing the terminal to plug into shoreside power when not in use.

¹⁵⁰ Munk, Torben. *Fuel Conservation Through Managing Hull Resistance*, (2006). [See "Attached Literature" Exhibit U].

¹⁵¹ IMO, *Study of Greenhouse Gas Emissions From Ships*, Part 5. "Technical and Operational Measures to Reduce Greenhouse Gas Emissions from Ships," Issue No. 2-32 (Mar. 2000) at 72 [See "Attached Literature" Exhibit V].

¹⁵² Propulsion Dynamics, Inc. <<http://www.propulsiondynamics.net/cm/index.php>>

¹⁵³ ICLEI Local Governments for Sustainability. *Talking Trees An Urban Forestry Toolkit for Local Governments*. November 2006.

¹⁵⁴ California Climate Action Registry, US Forest Service et al. *Urban Forest Greenhouse Gas Reporting Protocol*. June 1, 2008.

- n. **Cranes:** Already electrically powered cranes could be further optimized to save energy. Virtually all ship-to-shore cranes are equipped with regenerative braking to capture energy while lowering containers. However, this energy often goes unused for lack of storage or load sharing. We recommend optimization of cranes to fully utilize regenerative power. Other cargo-handling equipment can be electrified, at least partially. RailPower Technologies, for example, offers a retrofit hybrid system for rubber-tired gantries.

- o. **Yard hostlers:** This equipment may be the most promising piece of yard equipment to electrify, since these are the greatest source of GHGs from yard equipment. Yard hostlers idle up to half the time, often pull minimal loads rather than a full container, and operate at low speeds. These characteristics make yard hostlers amenable to similar technology used to electrify airport ground support equipment. The Port of Los Angeles and SCAQMD are currently in development of an electric hostler,¹⁵⁵ and POLA is also considering the substitute of electric drayage trucks for hostlers. Once these prototypes have been developed, POLB should commit to using as many electric yard hostlers or electric trucks as possible.

- p. **Intelligent Container Design:**¹⁵⁶ The Port should commit to exploring efficiency and design improvements to containers. Dramatically reducing the weight and improving the design of containers can result in greenhouse gas reductions as well as criteria pollutant reductions. The container itself is typically 10-25% of the gross weight of a container loaded with cargo, and 20% of containers are shipped empty. Container design has not changed in almost 50 years. Clear targets for redesign include weight reduction and technology to facilitate logistics, such as tracking devices, as well as improved design for refrigeration. The most significant gains from redesign are the following:
 - Reduced loads and increased efficiency for ships, trucks, and trains that carry containers;
 - Reduced loads and increased efficiency for cargo handling equipments at ports, rail-yards, and warehouses;
 - Reduced emissions of climate-changing refrigerant compounds and improved efficiency in refrigeration;
 - Improved facility of security scanning and related logistical benefits;
 - Improved ease of recycling or non-container reuse to reduce the waste caused by shipping and storing empty containers resulting from the trade imbalance; and

¹⁵⁵ SCQAMD. *Board Meeting Date: April 4, 2008. Agenda No. 5.*

<http://www.scaqmd.gov/html/2008/April/08043a.htm>

¹⁵⁶ Information provided by Laura Schewel, Rocky Mountain Institute, Personal Communication, 21 September 2007.

- Fewer trips necessary to carry the same amount of freight because of reduced tire weights.

Nationwide adoptions of a lightweight container (~30-50% weight reduction) could reduce at least 1 million tons of CO₂e (assuming that 5% of Class 8 trucks carry new containers and 20% of freight trains carry new containers).

Also, there is significant potential to reduce greenhouse gas emissions from the volatilization of HFCs via alternate refrigeration and improved efficiency of the refrigerated containers. Refrigerated transport is responsible for around 14 million tons of CO₂-equivalent emissions in the US.

It should also be noted that other equipment at container terminals could be “lightweighted” to save fuel or energy and reduce GHGs. For example, Super-post- Panamax cranes can weigh 1,400 metric tons; reducing this unnecessary weight would cut energy use.

q. AQ-17 (Solar Panels): We are pleased that the DEIS/DEIR includes the installation of photovoltaic panels in order to increase the amount of renewable power used and reduce GHGs. However the small amount of photovoltaics on the main terminal building will result in a less than 1% reduction in GHGs created by the project, while solar panels are a measure that could be expanded beyond the main terminal building and beyond the Port complex. The installation of photovoltaic panels on all buildings, parking lots or carports within the project, as well as to houses, schools and buildings within the community of Long Beach could make a large impact on the amount of carbon emissions for the project.

- Photovoltaic panels are a renewable, clean energy source that would provide 3.6 MWh/year per average household for 250 square feet of PV panels, saving approximately over 3,000 pounds of CO₂ and over a thousand dollars per average household annually.¹⁵⁷
- The solar industry is one of the few construction sectors currently growing, with solar companies employing between 16,500-17,500 California workers and expecting to hire approximately 5,000 more in the next year. Most of these jobs are in installation, requiring limited training and providing annual salaries ranging from \$31,200 to \$60,000.¹⁵⁸ An increase in solar power in Long Beach would not only mean

¹⁵⁷ Assumptions: 50% capacity, annual usage is 7200 KWh/year, average electricity rate is \$0.1738/kWh. <http://www.find-solar.com/index.php?page=rightforme>

¹⁵⁸ Baker, David. *Solar industry needs workers*. San Francisco Chronicle. May 8, 2008.

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008-05-10/BLGGD1QV4P.D1L>

reductions in greenhouse gases and energy cost savings for city residents, but also the creation of well-paid green collar jobs.

r. Fully Mitigate Remaining GHG in Surrounding Community: Despite the implementation of the mitigation measures outlined in the DEIR/S, the remainder of unmitigated emissions may still be substantial.¹⁵⁹ The Port needs to look for GHG mitigation opportunities at the Project Site and the Port in general before looking elsewhere. The DEIR/S must examine the ability to achieve these additional reductions in GHG through programs in the surrounding community. GHG offset programs can be designed to benefit local communities, both contributing global reduction benefits and demonstrating an entity's commitment to sustainable business practices. For example, in a recent settlement with the Attorney General regarding the mitigation of GHG emissions from a proposed refinery expansion, ConocoPhillips Co. agreed to contribute \$7 million to a carbon offset fund created by the Bay Area Air Quality Management District, with the goal of achieving "verifiable quantifiable reductions in GHG emission, with priority given to projects near" the expansion site.¹⁶⁰ The Settlement also provided \$2.8 million to fund reforestation and conservation projects and \$200,000 for restoration of the San Pablo Bay wetlands.

s. Specific Mitigation Measures are Necessary to Reduce Black Carbon Emissions

Apart from the mitigation measures the Port should implement to reduce and offset the Project's GHG emissions, the Port should also establish measures to monitor and control black carbon.

i. Monitor and Report Black Carbon Emissions from the Port: One of the first steps towards reducing black carbon is to develop a proper monitoring and reporting system. The Port of Long Beach currently reports daily concentrations of various air pollutants, including PM, on the Clean Air Action Plan website.¹⁶¹ As discussed above, however, black carbon must be considered separately from PM.

The Port should monitor and make publicly available the daily concentrations of black carbon. This can be accomplished using measuring devices called *aethalometers*, which are commercially available and simple to operate.¹⁶² An aethalometer is an electronic

¹⁵⁹ DEIS/R at 3.2-64.

¹⁶⁰ Settlement Agreement between ConocoPhillips Co. and the California Attorney General, Sept. 10, 2007. (See "Attached Literature," Exhibit W).

¹⁶¹ <<http://www.palmdes.com/Default.aspx>>

¹⁶² See <<http://www.merck.com>> (one of the companies that mass produces aethalometers).

box that measures the attenuation of light in certain wavelengths of particles that collect as air passes through a filter.¹⁶³ The units come in rack-mounted as well as portable versions.¹⁶⁴

- ii. **Accelerate Compliance Schedules:** Because black carbon pollution causes rapid and significant atmospheric heating as well as substantial human health risks, it is necessary to address this pollutant as rapidly as possible.

Mitigation Measures AQ-2, 3, 7, and 8 require that non-road construction equipment, tug boats, container handling equipment and heavy-duty trucks implement PM emissions control strategies. Because black carbon is a component of diesel PM, these strategies will also reduce black carbon. One of the most common options is the use of a catalyzed diesel particulate filter, which can be added to existing engines as well.¹⁶⁵ The schedule for compliance, however, is far too lax. These technologies are available today and should be introduced as rapidly as possible. The DEIR/S must set earlier deadlines for implementation.

Likewise, MM AQ-5 will eventually require 100% use of shore power or other emissions reduction strategy. This will reduce total PM emissions as well as black carbon. But full implementation is not required until 2015 and only 33% compliance is required by 2010. Full compliance should be required much earlier.

- iii. **Detect and Mitigate “Super-emitters”:** Some engines that receive poor maintenance or have mechanical difficulties emit 10 to 15 times the average levels of black carbon.¹⁶⁶ While these may be older engines, engine age is not the single indicator of emissions levels. A single super-emitter can negate the positive reductions achieved through retrofitting or replacing a number of “average” diesel engines. Therefore, it is essential to add a mitigation measure that requires the Port to develop a monitoring system to detect diesel engines of all varieties that emit high levels of black carbon.

¹⁶³ See the Magee Science Aethalometer Owner’s Manual available at:

<http://www.mageesci.com/support/downloads/Aethalometer_book_2005.07.03.pdf>

¹⁶⁴ *Id.*

¹⁶⁵ See generally 69 Fed. Reg. 38957 (June 29, 2004) (discussing diesel particulate filters as a means of complying with EPA’s Non-road Diesel Rule).

¹⁶⁶ Bond, T. et al., *A technology-based Global Inventory of Black and Organic Carbon Emissions from Combustion*. J. Geophys. Res., 109: D14203 (2004). [See “Attached Literature” Exhibit X].

A potential monitoring device is the new AE90 aethalometer which has a tailpipe monitoring extension.¹⁶⁷ Periodic measurement of Port vehicles using this device should be required. A mitigation fund could be created to help vehicle operators rapidly and effectively mitigate the emissions from super-emitting vehicles.

- iv. **Require Mitigation of Locomotive Black Carbon Emissions:** As mentioned above, MM AQ-9 requires that the “cleanest locomotive technologies” be used, but sets no explicit criteria.¹⁶⁸ Like non-road engines and heavy-duty road engines, locomotive engines are also subject to PM emissions reductions standards under the EPA’s recent Locomotive Rule.¹⁶⁹ Similar to the accelerated standards set for other types of diesel engines in use as the Port, this mitigation measure should create an explicit and accelerated timetable by which new and existing locomotives must reach Tier 3 and Tier 4 standards.
- v. **Require Ocean Going Vessels (OGV) to Reduce Black Carbon Emissions:** The shore power requirement in MM AQ-5 is a first step towards reducing black carbon emissions from OGVs. But more needs to be done. As mentioned above, the compliance schedule could be greatly accelerated. OGVs should be required to implement similar diesel emissions reductions as other diesel engines in use at the Port.

Many of the same technologies used in trucks and locomotives could be translated to use in large marine engines. Technologies such as diesel particulate filters require low-sulfur fuel, but MM AQ-6 and 13 already mandate use of this fuel. Consequently, there is no barrier to requiring that large OGVs achieve substantial reductions in diesel PM emissions on a similar schedule to that of other diesel engines at the Port.

IV. The DEIR/S Provides Inadequate Analysis of and Mitigation For the Project’s Traffic Impacts.

Study after study shows that the Port of Long Beach is one of the major contributors to the egregious traffic congestion on the 710 freeway. The Project, by substantially

¹⁶⁷ Hansen, T. From Magee Science, 2005. A recent presentation on this device is available at: www.epa.gov/airnow/2005conferencesunday/hansen.ppt [See “Attached Literature” Exhibit Y].

¹⁶⁸ DEIS/R at 3.2-114.

¹⁶⁹ 73 Fed. Reg. 25098 (May 6, 2008).

increasing throughput and employment at the Port will inevitably worsen these conditions through trips related both to goods movement and to commuting. Traffic is surely one of the issues that most concern the Port's local and regional neighbors. Any decision made concerning the Project that was not supported by complete and accurate information about traffic could not be considered an unformed decision. And, of course, CEQA's entire purpose is to promote informed decisionmaking.

It is thus disappointing that the DEIR/S has chosen to take a view of traffic impacts so narrow as to make accurate analysis impossible. Even as other documents make clear that the Port has region-wide traffic impacts, the DEIR/S limits its analysis to the relatively tiny area south of Anaheim Street. At the same time, the DEIR/S the only substantial mitigation measures the EIR considers are road improvements, and it fails even to accurately describe, or even identify, those improvements. In short, the DEIR/S's treatment of traffic issues is far less than its community and their decisionmakers deserve.¹⁷⁰

i) The DEIR/S Uses a Study Area That Inaccurately Minimizes the Project's Severe Traffic Impacts.

The study area chosen for the DEIR/S's traffic analysis is unaccountably small, considering no freeway segments north of the 405/710 junction, and no part of the 710 north of Willow Road. The DEIR/S provides no explanation, let alone substantial evidence, supporting its apparently arbitrary exclusion of the long stretch of the 710 freeway impacted by Port-related traffic, running at least as far north as the City of Commerce.

The short segment of the 710 that the DEIR/S does consider has an LOS of F under baseline conditions and would obviously get worse if the Project were built as proposed without mitigation. There is every reason to believe that the northerly segments of the same freeway are, and will be, similarly effected by Port traffic. According to one recent important freeway study, "large numbers of trucks that use I-710 to travel between the Ports and rail freight yards located near Interstate 5 (I-5), and to warehousing and distribution points scattered *throughout the Southern California urban area*"¹⁷¹ (emphasis added). This study, which focused on the same Port-related congestion problems at issue here, considered a study area extending through Commerce to SR 60.

More specifically, the Port of Los Angeles Baseline Transportation Study¹⁷² prepared by Meyer, Mohaddes Associates, Inc. ("MMA") illustrates the projected and current volume of truck trips that is directly related to the combined operations of both Ports' (the Port of

¹⁷⁰ *Laurel Heights Improvement Association, Inc. v. Regents of the University of California* (1988) 47 Cal. 3d 376, 494.

¹⁷¹ Los Angeles County Metropolitan Transportation Authority, "I-710 Major Corridor Study" at S-9. [See "Attached Literature" Exhibit Z].

¹⁷² See "Attached Literature" Exhibit AA.

Los Angeles and Port of Long Beach). MMA found that the I-710 carries over 25,000 port truck trips per day for travel south of the 405. Truck travel further north on I-710 carries 20,000 port trucks north of I-405, 15,000 north of Route 91, and 11,600 north of I-105. MMA projects that in a worst-case scenario, by 2025 unmitigated “port-related truck volume (for both ports combined) is projected to reach 60,000 on I-710 just north of the Ports, compared to 25,300 currently.” The Port’s own documents demonstrate the Port of Long Beach’s share of traffic on these segments, which are outside the DEIR/S’s arbitrary study area, is substantial in its own right.¹⁷³

By excluding large portions of heavily-impacted freeways, the DEIR/S severely understates the Project’s traffic impacts. The California Supreme Court has emphasized that “an EIR may not ignore the regional impacts of a project approval, including those impacts that occur outside of its borders; on the contrary, a regional perspective is required.”¹⁷⁴ An EIR must analyze environmental impacts over the entire area where one might reasonably expect these impacts to occur.¹⁷⁵ This principle stems directly from the requirement that an EIR analyze all significant or potentially significant environmental impacts.¹⁷⁶ An EIR cannot analyze all such environmental impacts if its study area does not include the geographical area over which these impacts will occur.

Traffic from the Project, together with traffic from the cumulative development anticipated in the region, would inundate area freeways. It would also contribute to the Project’s air quality and noise impacts, discussed in Sections VI and VII, respectively. Yet this DEIR/S leaves the public and decision-makers in the dark as to the Project’s actual traffic impacts because it arbitrarily omits critical freeway segments north of Anaheim Street. The DEIR/S has clearly failed to meet CEQA’s mandate, and must be revised and recirculated if it is to support approval of this Project.

ii) The DEIR/S Ignores Several Feasible Measures That Would Mitigate the Project’s Traffic Impacts.

Even with its truncated study area, the DEIR/S still finds that Project-related traffic will contribute to significant impacts at several intersections and freeway segments. Faced with these substantial traffic impacts, the DEIR/S proceeds to shirk its duty to identify measures that would mitigate or avoid the Project’s traffic impacts. The EIR’s duty in this regard is straightforward: it “shall describe feasible measures which could minimize

¹⁷³ See Port of Long Beach, “2006 Emissions Inventory.” Section 6 Heavy Duty Vehicles. (2008) [See “Attached Literature” Exhibit AB.]

¹⁷⁴ *Citizens of Goleta Valley*, 52 Cal. 3d at 575.

¹⁷⁵ See *Kings County Farm Bureau*, 221 Cal. App. 3d at 721-23.

¹⁷⁶ See Pub. Res. Code §§ 21061, 21068; see also *Citizens to Preserve the Ojai v. County of Ventura* (1986) 176 Cal. App. 3d 421, 432-33 (finding “an absolute failure to comply [with CEQA]” where information relevant to project’s impacts was omitted).

significant adverse impacts.”¹⁷⁷ The DEIR/S flatly declines to follow this mandate, and so fails at its most essential duty— minimizing the environmental impacts of the Project.¹⁷⁸

Instead of identifying measures to mitigate traffic impacts, the DEIR/S simply states that it will contribute its fair share into a hypothetical Caltrans program “to improve the impacted study highway segments in a manner that will improve the segments['] level of operation.”¹⁷⁹ Where, as here, the lead agency does not have the authority to implement needed road improvements, a commitment to “fair share” payments is a reasonable beginning for a traffic mitigation program, but it is nowhere near sufficient. First, the DEIR/S must identify the specific measures that would reduce or avoid the Project’s significant traffic impacts. Punting to Caltrans does not fulfill the Port’s duty to describe mitigation measures. While CEQA allows a lead agency, as part of its approval of a project, to make findings that mitigation measures are “within the responsibility and jurisdiction of another public agency”¹⁸⁰ this provision does not in any way relieve the EIR of its duty to identify those measures. The DEIR/S must be revised to include a clear, specific list of improvements that would mitigate the Project’s significant traffic impacts. Only then will its commitment to a fair share program begin to be meaningful and legally adequate.

Moreover, merely stating that the Port will contribute its “fair share” to the hypothetical Caltrans program is insufficient. An EIR must include evidence of a mitigation measure’s efficacy.¹⁸¹ The DEIR/S’s vague commitments to pay a “fair share” toward improvements does not meet this requirement. The term “fair share” is hardly self-defining. The DEIR/S must include an outline of the procedures by which the Port will determine its fair share. Without an explanation of how fair share would be determined, the measure does nothing to assure the public that the Port’s contribution to the hypothetical improvement program will be sufficient to ensure that the improvements are actually implemented.

Similarly, there is no guarantee that the Port and Caltrans will be able to reach agreement on the magnitude of the Port’s contribution to cumulative traffic impacts. Mitigation

¹⁷⁷ CEQA Guidelines § 15126.3(a)(1); see also *Woodward Park Homeowners Ass’n, Inc. v. City of Fresno* (2007) 150 Cal. App. 4th 683, 724 (“The EIR also must describe feasible measures that could minimize significant impacts.”).

¹⁷⁸ See, e.g., *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437, 1446 (“The foremost principle under CEQA is . . . to afford the fullest possible protection to the environment . . .”) (internal quotation marks omitted).

¹⁷⁹ DEIR/S, at 3.5-15.

¹⁸⁰ CEQA Guidelines section 15091(a)(2)

¹⁸¹ See *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal. App. 4th 99, 130.

measures must be “fully enforceable.”¹⁸² The lead agency must provide substantial evidence showing that measures “will actually be implemented . . . , and not merely adopted and then neglected or disregarded.”¹⁸³ Again, with neither an explanation of how the Port intends to determine its fair share nor any provision to make this obligation enforceable, the measure does not meet CEQA’s standards.

CEQA’s core substantive component—with which every public agency must comply—requires that the Port “*shall* mitigate or avoid the significant effects . . . of projects that it carries out or approves *whenever* it is feasible to do so”¹⁸⁴ (emphasis added). Despite this clear mandate, the DEIR/S ignores several feasible mitigation measures that could substantially reduce the Project’s traffic impacts.

First, as the DEIR/S admits, the Port is not well served by public transit.¹⁸⁵ Improving this situation by increasing transit service to the Port would obviously reduce traffic impacts. The DEIR/S contains nothing to suggest that such improvements would be infeasible. While the document states that work schedules at the Port are “non-typical,” transit schedules could be coordinated with those work schedules. Given the large number of Port employees, it is likely that efficient, effective transit routes and schedules could be devised. These transit improvements would, moreover, serve as effective mitigation measures for the Port’s air quality and greenhouse gas impacts, and must be considered in those contexts as well. Implementing such transit improvements would likely require further study of where Port workers live; as discussed below, such a study is already necessary for accurate analysis of the Project’s population and housing impacts.

Another potential traffic mitigation measure would focus on improving the efficiency of truck usage at the Port. Currently, the port drayage market is structured to maintain a truck to driver ratio of close to 1:1. A system, like the one currently in place at the Port, that relies on individual drivers to own and operate their own trucks, inevitably contributes excessive traffic to the roadway system, as drivers must bring their trucks to and from work. If, however, trucks are owned by the trucking companies according to an asset-based employee model, then trucks could be slip-seated. That is, a trucking company could dispatch a single truck on multiple shifts to be driven by different drivers. This would reduce the number of trucks needed to move the same number of containers on any given day. Additionally, with trucking companies owning their trucks and providing parking while trucks are out of use, this system would ensure that trucks were used for their real purpose—moving goods—and would reduce the amount of time trucks spend on the region’s freeways—and causing congestion—solely for the purpose of getting a driver to or from work. By limiting the number of commute-only truck trips,

¹⁸² CEQA Guidelines 21081.6(b); see also *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1260-61.

¹⁸³ *Federation of Hillside and Canyon Associations*, 83 Cal. App. 4th at 1261.

¹⁸⁴ Pub. Res. Code § 21002.1(b).

¹⁸⁵ DEIR/S, at 3.5-1.

the asset-based model and slip-seating could substantially reduce the Project's traffic impacts. The Port could implement this system simply by creating a concession system that requires all trucks accessing the Port to be owned by an asset-based trucking company. This system would, moreover, diminish idling time, substantially improving trucks' emissions performance and reducing the Project's air quality and greenhouse gas impacts. We see no reason it is not feasible.

Similar efficiency-focused measures would shift goods movement away from trucks, reducing the numbers of trucks on the road. Such measures include the use of maglev systems or on-dock rail for short-distance goods movement in the Port vicinity. A recent study found maglev to be both feasible and capable of eliminating up to 1 million truck trips per year within the Port of Los Angeles.¹⁸⁶ The increased use of on-dock rail, discussed in Section IV.e.ii above in the context of air quality mitigation, would also serve to relieve freeway congestion and must be considered as a traffic mitigation measure as well. The program discussed in Section IV.e.ii above, by which rail is to be given preferential treatment over truck transport, would have a similar effect and must also be identified as a traffic-reducing measure. Measures to improve the utilization and efficiency of the regional rail system would also reduce dependence on trucks. These include the implementation of a Goods Movement High Speed Rail Transport for freight, a computer-based technology that improves efficiency with near zero emissions¹⁸⁷, or an effort to maximize the use of the currently under-utilized Alameda Corridor. Finally, the Port could reduce truck usage, and all its related impacts, by making the transfer from trucks to rail easier through the construction of an intermodal facility on Port property, perhaps on the import car lot off Anaheim Street.

Again, these systems would clearly take trucks off the region's roads and reduce all of the Project's impacts related to truck traffic: congestion, air quality, and noise. There is no indication in the DEIR/S that such infrastructure measures would be infeasible. CEQA therefore requires that they be implemented. The DEIR/S cannot be certified as adequate, and the Project cannot be approved, until these measures have been considered.

VII. The DEIR/S Severely Understates the Project's Noise Impacts.

The noise generated by Port operations greatly affects the residents of Long Beach, particularly residents of the Cesar Chavez Park neighborhood, located approximately a quarter mile from the project site's boundary. The DEIR/S acknowledges that the sensitive receptors in the vicinity of the Port already suffer noise levels that exceed the maximum noise limits prescribed by the Long Beach Municipal Code ("LBMC") and that the proposed Project will substantially increase the noise levels in and around the Project

¹⁸⁶ See General Atomics, "Conceptual Design for the Electric Cargo Conveyor System" (2006) at 1-10. [See "Attached Literature" Exhibit AC].

¹⁸⁷ See Southern California Association of Governments, "Regional Transportation Plan" (2008), at 32. Hereafter, "SCAG RTP". [See "Attached Literature Exhibit AD].

area.¹⁸⁸ Nonetheless, the analysis and proposed mitigation measures for noise impacts are wholly inadequate for the reasons described below. First, the DEIR/S establishes thresholds of significance that are not appropriate given the context of the Project site. Second, the DEIR/S employs faulty methodology for selecting noise monitoring sites. The noise analysis goes on to omit obvious sources of noise from the Project, inadequately describe others, and neglect important effects noise has on human health. Finally, the DEIR/S proposes only minimal measures to lessen the severity of noise and vibration impacts and absolutely no measures to avoid them. For all of these reasons, the DEIR/S's noise analysis does not meet the requirements of CEQA.

i) The Noise Analysis Identifies Improper Significance Criteria.

By selecting inaccurate and misleading significance criteria, the DEIR/S understates the significance of the noise impacts resulting from development and operation of the Project. First, the DEIR/S's significance criteria state impacts in terms of increases of ambient noise levels of three dBA or exceedance of maximum noise levels allowed by the LBMC, even if ambient noise levels already exceed compatible levels for nearby uses.¹⁸⁹ These criteria are inappropriate at this project site given that "existing ambient noise levels already exceed the maximum day and nighttime noise limits prescribed by the LBMC . . . in some cases by a substantial margin."¹⁹⁰ In fact, according to the DEIR/S, residents of the Cesar Chavez Park neighborhood already tolerate ambient noise levels that exceed the maximum allowed by the LBMC by 11 dBA on average during both daytime and nighttime hours.¹⁹¹ In effect, this level of exceedance results in a doubling of loudness compared to the maximum allowed under the LBMC.¹⁹²

CEQA does not countenance finding significant impacts only if a project contributes an arbitrary increase over existing impact levels.¹⁹³ Rather, any worsening of noise impacts could be considered a significant impact depending on the Project setting.¹⁹⁴ Where, as here, the Project occurs in a neighborhood setting where residents are already faced with noise problems, any worsening of noise impacts should be considered a significant impact. The Port provides no justification for its approach of automatically deeming all such increases of less than three dBA insignificant. The DEIR/S must consider that the noise impacts will be experienced by residents already exposed to exceptionally high noise levels from the Port.

¹⁸⁸ DEIR/S, at 3.9-8.

¹⁸⁹ DEIR/S, at 3.9-11.

¹⁹⁰ DEIR/S, at 3.9-8.

¹⁹¹ DEIR/S, at Table 3.9-5.

¹⁹² DEIR/S, at 3.9-1.

¹⁹³ *See Los Angeles Unified School District v. City of Los Angeles*, 58 Cal.App.4th 1019, 1025-26 (1997).

¹⁹⁴ *See id.*

The DEIR/S also fails to adequately address residents' existing noise concerns or to discuss the adverse effects that noise has on people. The DEIR/S provides no attempt to gauge existing levels of communication interference, sleep interference or physiological responses and annoyance, nor does it attempt to predict future levels associated with the Project. At the very least, the DEIR/S should have included a community attitude survey to assess how residents perceive existing noise levels. Such a survey should include a summary of the type and extent of the noise complaints that have been registered with the Port of Long Beach. Additional significance criteria for all stages of the Project should have been included based on this information.

Accordingly, in order to accurately evaluate the effects of the Project on nearby residents, the EIR must utilize thresholds of significance that are based on *all* of the following: (1) existing noise impacts experienced by residents; (2) community attitude and health criteria (described below); (3) the EPA's noise regulation, which identifies 55 dB DNL as the requisite level with an adequate margin of safety for areas with outdoor uses, including residential and recreation uses; and (4) the noise regulations set forth in the City of Long Beach's Municipal Code.

ii) The DEIR/S Employs Faulty Methodology to Select Noise Monitoring Sites.

The DEIR/S selects Cesar Chavez Park (Site 3) as the noise monitoring site to represent noise experienced by residences in the vicinity of the park. However, measurement of noise levels at this park alone are not necessarily representative of the noise levels residents will experience. As the DEIR/S states "a substantial sound wall at the western boundary of the park....provides significant attenuation of the noise produced by traffic flows..." on the freeway and area roadways.¹⁹⁵ However, the document assumes that the only noise impacts of consequence to the residents would be noise generated by project traffic. As discussed further below, operational noise impacts to this neighborhood must also be evaluated. It stands to reason that those residences located some distance away from the soundwall would be susceptible to noise impacts not only from roadway noise but also from increased operations at Pier E. Therefore, a noise monitoring station should have been established at both the park and at an actual residence in the neighborhood.

iii) The DEIR/S Does Not Adequately Analyze or Mitigate Noise Impacts.

The DEIR/S erroneously omits numerous sources of noise from the acoustical model in its assessment of project impacts. To determine operational noise impacts, the DEIR/S employed a "road traffic model," which included noise from cars and trucks. The DEIR/S also compared existing train movements with future train volume projections to estimate train operation and vibration impacts. The DEIR/S failed to evaluate operational noise

¹⁹⁵ DEIR/S, at 3.9-4.

from several key operations and Project elements: 1) a substantial increase in the number of ships entering the Port, 2) a substantial increase in noise from ship loading and unloading operations, 3) increased use of gantry cranes and yard tractors for loading and unloading operations, and 4) noise associated with construction and maintenance dredging activities. These omissions render the documents acoustical model inadequate. Noise associated with these activities, as well as others (e.g. increased rail and truck traffic), must be quantified and incorporated into a revised assessment of potential noise impacts.

The DEIR/S's description of impacts related to construction noise is equally unsatisfactory. In lieu of actually analyzing construction related noise impacts on nearby sensitive receptors, the document summarily concludes that for Sites 3-7, in all residential communities and all but one located within two miles of the project site, construction noise levels would be reduced to less-than-significant levels due to distance, intervening structures, and topography.¹⁹⁶ Similarly, the document concludes that for Sites 3-7 construction noise would be reduced to levels below the maximum allowed by the LBMC due to distance, intervening structures, and topography.¹⁹⁷ In both instances, the DEIR/S provides no evidence, let alone analysis, to conclude that the Project's construction-related noise impacts would be less than significant. Furthermore, compliance with a certain standard does not necessarily mean noise impacts are insignificant.¹⁹⁸ This is especially true in an area that is already adversely impacted by high noise levels. Here, the effected public is given no specific information as to the type and severity of potential noise impacts. Any revised document must quantify and analyze noise levels experienced at sensitive receptor sites.

Most egregiously, the documents analysis of impacts related to operational noise dismisses entirely the residential communities surrounding the Port by concluding that since the nearest sensitive receptors are outside Port property, operational noise sources generated at the Project site would not increase noise levels at sensitive receptor sites.¹⁹⁹ Again, the document provides no evidence to support this conclusion. A conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA's informational goal.²⁰⁰ The Port of Long Beach DEIR/S fails to fulfill this paramount CEQA purpose both because it neglects to present all relevant facts relating to the Project's construction and operational noise impacts upon sensitive receptors and because its cursory conclusions are based upon no analysis. Without a detailed quantitative analysis of construction and operation related noise, it is not possible to assess the significance of noise effects, determine the severity of these

¹⁹⁶ DEIR/S, at 3.9-13.

¹⁹⁷ DEIR/S, at 3.9-14.

¹⁹⁸ See *Oro Fino Gold Mining Corporation v. County of El Dorado*, 225 Cal. App. 872, 881-82 (1990).

¹⁹⁹ DEIR/S, at 3.9-15.

²⁰⁰ See also *Stanislaus Natural Heritage Project*, 48 Cal.App.4th at 182; *Citizens of Goleta Valley*, 52 Cal.3d at 568.

impacts, or establish whether the proposed mitigation measures would effectively reduce such effects.

The DEIR also understates appropriate noise limits and ignores other relevant indicators of significance. For example, as discussed above, the DEIR/S's significance threshold of changes in noise levels of 3 dBA or greater ignores established standards for noise levels to protect human health and welfare. According to the U.S. Environmental Protection Agency ("EPA"), a noise impact is significant if it exceeds 55 DNL, which the EPA has identified as the requisite level with an adequate margin of safety for areas with outdoor uses, including residential and recreational uses.²⁰¹ The same report identifies 70 dB as the requisite 8-hr exposure level necessary to protect against hearing loss from intermittent noise.²⁰² Here, we know that residents in neighborhoods already suffer ambient noise levels above maximum allowable levels in the LBMV. The blatant disregard for established appropriate noise limits combined with a lack of analysis of likely impacts that will be experienced by sensitive receptors results in a wholly inadequate analysis of noise impacts under CEQA.

Furthermore, the DEIR/S's antiseptic approach to noise analysis omits the most relevant effects that come from noise. The DEIR/S fails to identify the multiple criteria which have been established to help protect public health and safety and prevent disruption of certain human activities.²⁰³ These criteria are based on the effects of noise on people such as communication interference, sleep interference, physiological responses and annoyance. These are described more fully below.

(1) Communication Interference

A primary concern in environmental noise problems is communication interference including speech interference and interference with activities such as social interaction. Normal conversational speech is in the range of 60 to 65 dBA and any noise in this range or louder may interfere with speech. There are specific methods of describing speech interference as a function of distance between speaker and listener and voice level.

(2) Sleep Interference

Sleep interference is a major noise concern in noise assessment and is most critical during nighttime hours. Noise can make it difficult to fall asleep, create momentary disturbances of natural sleep patterns by causing shifts from deep to lighter stages and cause awakening. Noise may also cause awakening which a person may or may not be able to recall. Extensive research has been conducted on the effect of noise on sleep

²⁰¹ See EPA, "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety" 21 (March, 1974),

<http://www.nonoise.org/library/levels74/levels74.htm> [See "Attached Literature" Exhibit AD].

²⁰² *Id.* at 20.

²⁰³ *Id.*

disturbance. Recommended values for desired sound levels in residential bedroom range from 25 to 45 dBA, with 35 to 40 dBA being the norm.

The National Association of Noise Control Officials has published data on the probability of sleep disturbance with various single event noise levels. Based on experimental sleep data as related to noise exposure, a 75 dBA interior noise level event will cause noise induced awakening in 30 percent of the cases.

(3) Physiological Responses

These are measurable effects of noise on people such as changes in pulse rate and blood pressure. Generally, physiological responses are a reaction to a loud short term noise such as a rifle shot or a loud jet overflight.

Annoyance is a very individual characteristic which can vary widely from person to person. What one person considers tolerable can be quite unbearable to another of equal hearing capability. The level of annoyance depends on the characteristics of the noise, defined as the loudness, frequency, time and duration of the noise, and how much speech and/or sleep interference results from the noise. The level of annoyance is also a function of the attitude of the receiver. Personal sensitivity to noise varies widely. It has been estimated that 2 to 10 percent of the population is highly susceptible to annoyance from noise not of their own making, while approximately 20 percent is unaffected by noise.

VIII. The DEIR/S Fails to Analyze the Projects Impacts to Hydrology and Water Quality Accurately.

The DEIR/S's discussion of water quality impacts and mitigation is also inadequate. The document fails to identify and fully describe potential impacts and fails to discuss feasible mitigation measures. First, the DEIR/S fails to describe with any specificity several activities at the proposed Project site that could lead to violation of regulatory standards pertaining to water quality. For example, as discussed above, the document does not describe the unloading and loading procedures of bulk materials at the Port. This omission renders the document insufficient to determine if there is a potential for discharge of materials into harbor waters apart from any potential contamination from runoff.

Second, the DEIR/S fails to adequately analyze several potential impacts related to additional pollutants entering the receiving waters through stormwater runoff. For example, with respect to stormwater discharges, the document acknowledges that "impacts would depend on the material spilled, speed of cleanup, and sedimentation rate of the material" but stops short of actually analyzing the impacts of a spill.²⁰⁴ Even though there are several parameters that would influence the impact, the document should

²⁰⁴ DEIR/S, at 3.3-18.

analyze potential impacts from a spill of materials typically transported through this facility and measures to be employed to avoid and mitigate the effects of such a spill. Furthermore, the document does not discuss the Port's historical record regarding compliance with applicable water quality permit provisions and regulations. A review of the DEIR/S' section on Hazards and Hazardous Materials reveals that the Port's history of hazardous materials spills, both container-related spills and overall spills, is far from stellar.²⁰⁵ The DEIR/S should evaluate the effects of all hazardous materials spills that can potentially occur based both on the Port's compliance history and on the added potential for future spills given a dramatic increase in operations. Without such an analysis the DEIR/S provides insufficient evidence to substantiate its claim that any resulting impacts to receiving waters from spills would be less than significant.

Similarly, the DEIR/S states that increased truck and rail activities at the site could increase the amount of particulate and chemical pollutants settling from the air and brought in by vehicles and that these pollutants would enter the East Basin waters through stormwater runoff.²⁰⁶ The document goes on to say that sampling at the POLB showed that "copper, lead, nickel, and zinc were found in concentrations that could have the potential to exceed the standards for marine water quality standards" in other parts of the Port.²⁰⁷ Yet, the document concludes that "project activities are unlikely to result in runoff of metals at concentrations that would exceed water quality standards."²⁰⁸ The conclusion begs the question of why exactly activities at the expanded facilities would not result in this type of runoff. Once again, the DEIR/S provides no evidence to support this statement.

Third, although the DEIR/S acknowledges that turbidity can impact water quality and that turbidity would increase during several project construction activities, the document concludes in each potential instance that the turbidity would be localized to the area of the activity and would thus not result in violation of regulatory standards or guidelines for water quality.²⁰⁹ However, the conclusion is not supported with evidence. The document reports that dredging and excavation would occur twelve times over a period of ten years for a total of 528 days; pile removal would occur seven times over eight years for a total of 800 days; pile and bulkhead installation would occur eleven times in nine years for a total of 503 days; and placement of riprap would occur nine times in nine years for a total of 695 days.²¹⁰ It is difficult to imagine that all of these "localized" impacts would not combine to constitute an impact to water quality. Given an estimated construction schedule of ten years, or 3,650 days, the proposed turbidity-inducing activities would take place on approximately 2,526 of these days, and that is if one calculates the average number of days that the construction activities take place rather than the maximum

²⁰⁵ See DEIR/S, at 3.10-2 and 3.10-3.

²⁰⁶ DEIR/S, at 3.3-18.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ DEIR/S, at 3.3-14.

²¹⁰ DEIR/S, at 3.3-12.

number of days it could occur. Even if these impacts are localized, in the least it would seem that water quality in the immediate vicinity of the construction activities would be severely affected. Nowhere does the document analyze the potential for these activities to overlap and the resulting impacts from having multiple construction activities happening at once.

Similarly, the cumulative impacts analysis dealing with potential water quality impacts caused by suspension of sediments during construction concludes that impacts would not be significant. The estimated cumulative development at the Port of Los Angeles and the Port of Long Beach will combine to fill approximately 277 acres of marine waters and construction activities from all the projects "would cause suspension of sediments that could alter water quality parameters," such as dissolved oxygen, nutrients, and turbidity.²¹¹ Yet, the document asserts that the impacts will be less than significant because the effects are dispersed in time and space and are not expected to exceed regulatory quality standards. The DEIR/S provides no analysis to support this conclusion.

Third, the DEIR/S states that "the amount of vessel traffic in East Basin would nearly double compared to baseline conditions...as a result of the Project."²¹² Despite this enormous increase in ship traffic, however, the DEIR/S fails to discuss potential impacts related to a decrease in dissolved oxygen associated with turbidity from increased ship traffic.

Finally, the proposed dredging would impact the tidal prism of the Long Beach harbor, i.e. the volume of water that flows into a tidal channel and out again during a complete tide, excluding any upland discharges. In general, increased harbor system volume, especially via channel deepening, increases the tidal prism and, thus, the salinity intrusion. Although the DEIR/S states that "the tidal prism would be slightly reduced by the fill" called for by the Project, it fails to provide any further information or analysis to support its conclusion that the change will not result in a significant impact.²¹³ The DEIR/S is silent as to potential impacts to the tidal prism due to cumulative effects and silent as to projected sea-level rise from global climate change. The revised DEIR/S must assess the direct, indirect, and cumulative impacts of the proposed Project on the tidal prism and salinity of the Port of Long Beach harbor system.

IX. The DEIR/S Fails to Disclose the True Risk Hazardous Materials Pose to Water Quality.

The DEIR/S discloses spills of petroleum and other hazardous materials between 1997 and 2007.²¹⁴ The POLB has experienced an average of 43 spills of hazardous material

²¹¹ DEIR/S, at 3.3-22.

²¹² DEIR/S, at 3.3-18.

²¹³ DEIR/S, at 3.3-16.

²¹⁴ DEIR/S, at Table 3.1-1 at 3.10-2.

per year during the past decade.²¹⁵ This number does not reflect all spill incidents (approximately 100-250 spills annually), but rather only those spills that were of a sufficient size to warrant investigation. The document also presents a segregated list of container-related spills.²¹⁶ The DEIR/S's analysis, however, focuses only on those hazardous materials spills directly associated with container terminals. Thus, the document's evaluation of potential risk associated with the probability of a spill is falsely skewed because it is based on a lower number of spills per year. Yet, the proposed Project area is likely to include several of the activities that have the potential to result in spills other than those listed in Table 3.10-2. For instance, incidental spills of hazardous materials used in boat maintenance, fuel dock and bunking accidents, incidental spills from onshore vehicles and large commercial vessels discharging oil-contaminated ballast water could all conceivably take place at the proposed facilities. These spills, although not strictly container-related, can still occur as a result of proposed Project activities and can still result in significant environmental impacts. This faulty analysis is particularly disturbing because it implicates other issue areas evaluated by the document including impacts on water quality and biota and habitat. The DEIR/S should have included all potential spills in its projections of future probable spills and in its analysis of potential impacts from those spills. Moreover, the DEIR/S should have used this more comprehensive analysis to inform other relevant sections of the document.

X. The DEIR/S Presents an Inadequate Analysis of the Project's Impacts to Biological Resources

The analysis of impacts on biological resources from dredging is similarly defective. The DEIR/S glosses over potential impacts on special status birds and marine mammals (e.g., brown pelicans, least terns, seals and sea lions) by characterizing the loss of foraging habitat as "temporary." For example, the DEIR/S attempts to reason that mammals and birds will be disturbed by construction activities because the activities "would likely cause fish and birds to leave the immediate construction area."²¹⁷ This mischaracterization of the Project's construction-related impacts downplays the nature and time-frame of the Project construction. The Project's protracted construction schedule proposes an intensive and disruptive array of construction activities for the next 10 years. Ten years is not an insignificant amount of time to evict special status species from foraging habitat in and around Middle Harbor.

Furthermore, the document's treatment of cumulative impacts on biota and habitats falls far short of meeting CEQA requirements. The document summarily concludes that since cumulative projects in the POLB and POLA would be "dispersed in time and space" no significant impacts to birds and marine mammals would occur.²¹⁸ Rather than presenting an analysis of construction activities and construction schedules that can reasonably be

²¹⁵ *Id.*

²¹⁶ DEIR/S, at Table 3.10-2.

²¹⁷ DEIR/S, at 3.4-18.

²¹⁸ DEIR/S, at 3.4-28.

anticipated, the DEIR/S takes a “trust us” approach and asks the reader to believe that cumulative impacts from a long list of massive construction projects would result in minimal impacts to wildlife in the harbor. This approach is not acceptable, and its conclusion that potential cumulative impacts to biota and habitats would be less than significant cannot stand.

Moreover, the DEIR/S’s analysis of dredging impacts fails to quantify the impacts of re-suspended contaminants on fish mortality rates.²¹⁹ The revised document must identify and analyze this impact and propose and adopt adequate mitigation. Finally, the DEIR fails to identify and analyze the impacts associated with the any dredging necessary for maintenance. This “maintenance” dredging could exacerbate all of the above impacts, and could keep the habitat value of the Middle Harbor and the larger POLB/POLA low by preventing the reestablishment of the benthic community and fish populations.

XI. The DEIR/S’s Analysis of the Project’s Effect on Regionwide Population and Housing Is Seriously Flawed.

The DEIR/S’s discussion of the Project’s population and housing impacts is hardly worthy of the name “analysis.” It is, rather, a series of assumptions repeated in various forms, with no attempt to describe the Project’s actual impacts on the real world. As explained below, the DEIR/S’s analysis cannot support its conclusions.

Initially, the DEIR/S is quite confused as to the area of analysis in this section. At first, the DEIR/S sets out clear standards of significance for the Project’s impact on population and housing: If the Project would increase employment, population, or housing demand by 0.5 percent or more, it is deemed to have a significant impact.²²⁰ The study area for employment is the five-county Los Angeles region, and the study area for population and housing is the Gateway Cities subregion.²²¹ Moreover, the standards for population and housing demand focus on impacts to individual cities within the subregion, while the employment standard looks at the region as a whole.²²² The DEIR/S provides no explanation for wither the different study areas or for the shifting focus from regionwide to local impacts.

While the tables within the chapter reflect these studies, the headings preceding *all* the impact discussions, however, state that each standard concerns the entire five-county region. Thus, it is not unclear why the DEIR/S focuses on particular geographic areas, and it is unclear which areas it actually focuses on. Until these discrepancies are remedied, and substantial evidence provided to support the choice of study areas and standards, the EIR/S will remain wholly inadequate and insufficient to support project approval.

²¹⁹ DEIR/S, at 3/4-17.

²²⁰ DEIR/S, at 3:12-7.

²²¹ *Id.*

²²² *Id.*

Moreover, population and housing demand standards, by their own terms, require an analysis of the Project's impact on individual cities. The DEIR/S, however, only analyzes population and housing impacts on a subregion-wide basis. It simply calculates the Port and the Project's percentage of the total population and housing demand of the Gateway Cities subregion, and assumes that the population will be spread out evenly--the same percentage in each individual city.²²³ The tables listing the individual cities thus do not represent an analysis of the Project's impact on those cities; they are merely restatements of the original subregion-wide calculation. These tables provide no support whatsoever for the DEIR/S's conclusion that the Project will have a less than significant impact on population and housing demand in any individual city.

By spreading the population so thinly, the DEIR/S's approach minimizes the Project's impact. In fact, some cities will certainly have a higher percentage of new Port-related residents than others; it is very likely that some cities' population growth will exceed the stated standards of significance. This is especially true with respect to housing demand, where the percentage of subregion-wide demand attributable to the Project is 0.4 percent, just below the threshold.²²⁴ For just one example, if further study demonstrated that the Project would likely lead to new demand for 52 housing units in Bell Gardens (just 13 units more than the DEIR/S currently claims), then it will have crossed the threshold into significance. It is very likely that at least one of the cities in the Gateway subregion will have an increase in housing demand of 0.5 percent or more; the same may well be true of population.

The only way the DEIR/S could answer the questions posed by its own significance standards would be to create formulae for projecting the percentages of new Port-related population that will live in each city. The current residences of Port-related workers, along with historical trends, would provide a good start. The EIR would then need to analyze the types of jobs that will be created, and to compare the likely incomes against housing prices in the various cities.

This analysis would also provide much-needed information related to other sections of the DEIR/S and the CEQA process. The housing data would also help analyze traffic, as it would explain where commuters are likely to be coming from, and the employment data will be essential for the Port's determination of whether or not this project will provide the community with sufficient benefits to make its serious environmental impacts worthwhile.

Until the DEIR/S is revised to undertake this analysis, and recirculated to allow public review and input regarding the analysis, it will remain inadequate. As the documents

²²³ See, e.g., DEIR/S at 3.12-9 ("[I]t is assumed that the incoming population would be distributed through the 27 cities of the Gateway Cities subregion based on the relative population of each city . . .").

²²⁴ Table 3.12-18.

stands now, there is no evidence supporting its impact conclusions, let alone the substantial evidence required by CEQA. In light of the total lack of evidence, the DEIR/S cannot validly be certified, nor may the Project be approved.²²⁵

XII. The EIR Fails to Provide an Accurate Picture of the Project's Growth-Inducing Effects.

An EIR must discuss the ways a project could directly or indirectly facilitate or remove obstacles to population growth or new development in the surrounding environment.²²⁶ A proposed project is considered either directly or indirectly growth-inducing if it: (1) fosters economic or population growth or additional housing; (2) removes obstacles to growth; (3) taxes community services or facilities to such an extent that new services or facilities would be necessary; or, (4) encourages or facilitates other activities that cause significant environmental effects.²²⁷ An environmental impact report must discuss how a proposed project, if implemented, could induce growth.²²⁸ While the growth-inducing impacts of a project need not be labeled as adverse, the secondary impacts of growth (e.g., loss of open space/habitat/agricultural lands, air quality, transportation, etc.) may be significant and adverse. In such cases, the secondary impacts of growth inducement must be disclosed as significant secondary or indirect impacts of the project.

The appropriate components for an adequate analysis include: (1) estimating the amount, location and time frame of growth that may occur as a result of the project (e.g., additional housing, infrastructure, and mixed use developments); (2) applying impact assessment methodology to determine the significance of secondary or indirect impacts as a result of growth inducement; and (3) identifying mitigation measures or alternatives to address significant secondary or indirect impacts. The Port of Long Beach's DEIR/S's growth-inducing impacts analysis fails to contain these essential components.

At the outset, the analysis of growth inducing impacts includes a glaring inconsistency regarding the number of jobs the proposed Project will create. While one portion of the section claims the Project would generate 2,961 new jobs in addition to construction jobs, another section claims the Project would add 24,779 jobs.²²⁹ This inconsistency must be rectified.

²²⁵ See *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal. App. 3d 818, 829 (“[T]he ultimate decision of whether to approve a project . . . is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.”); *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal. App. 3d 421, 428 (“Certification of an EIR which is legally deficient because it fails to adequately address an issue constitutes a prejudicial abuse of discretion”)

²²⁶ Pub. Res. Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1337.

²²⁷ CEQA Guidelines § 15126.2(d).

²²⁸ *Id.* at § 15126(d).

²²⁹ DEIR/S at 5-2 and 5-3, respectively.

The DEIR/S's analysis of the projects effect on region-wide population and housing is seriously flawed. First, while the document acknowledges that the Project would result in growth-inducing effects during the construction period, it dismisses the potential impacts of this growth by calling them incremental short-term effects. Ten years of construction is not "short-term," however. These impacts must be analyzed.

Moreover, the DEIR/S fails to consider any of the growth-inducing effects of the Project's operation, and provides thoroughly insufficient justification for this failure. First, the DEIR/S fails to consider the substantial economic activity that is indirectly induced by Port operations. Presently, Long Beach and other near-Port cities host dozens, if not hundreds of ancillary facilities that serve the Port, including such operations as warehouses, truck service and fueling centers, container storage yards, and distribution centers. A small sampling of these facilities are shown on the map attached to this letter as Exhibit AE, titled "Map of Off-Port Goods Movement Related Facilities". *See also, e.g.,* SCAG RTP at 3, 4. Such facilities have a wide range of environmental impacts, including noise, air pollution, greenhouse gas emissions, land use conflicts, and stormwater runoff.

For just one example, as noted in a recent study, "warehousing and redistribution centers may be located as far as 60 miles inland from the ports."²³⁰ Carrying goods to an increased number of such ancillary facilities would add to the Project's already significant traffic-related impacts, including congestion, air quality, greenhouse gas emissions, and noise. In other communities, closer to the Port, ancillary facilities lead to the accumulation of empty containers that blight views and pose serious hazards to residents, especially children.²³¹ These aesthetic and safety impacts are nowhere analyzed in the DEIR/S.

These facilities are directly induced by the Port. The Project, by greatly expanding Port operations, will similarly cause these ancillary facilities—and their environmental impacts--- to multiply and grow. The DEIR/S must analyze this induced growth and all of its environmental impacts, both in the standalone Growth-Inducing Effects section, and as a part of the main analysis of each relevant impact area.

Second, despite the impacts to housing demand discussed in Section XI above, the DEIR/S denies that this housing demand will have environmental impacts, because the "residential area in the Project vicinity is largely built out."²³² This statement displays, once again, that the DEIR/S has an inappropriately narrow view of the Project's impact

²³⁰ Wilbur Smith and Associates, "Economic Benefits and Costs of Growth in Goods Movement: Multi-county Goods Movement Action Plan" (2007), at 1-13. [*See* "Attached Literature" Exhibit AF].

²³¹ *See* Deborah Schoch, "Unsightly Evidence of U.S. Trade Gap Piles Up," Los Angeles Times (June 9, 2006). [*See* "Attached Literature" Exhibit AG].

²³² DEIR/S at 5-2.

area. Large parts of the Los Angeles region, notably the Inland Empire area of Riverside and San Bernardino counties, are far from built out. It is very likely that many new Port-related workers, or workers brought to the region by induced growth, will settle in these fast-growing areas.

Housing patterns in the Inland Empire tend to be sprawling and therefore to have substantial environmental impacts. To provide an accurate account of these indirect impacts, the DEIR/S will need to include, as discussed above, a thorough study of where Port-related workers live, and where new such workers will live. Again, this study will require considering the types and compensation levels of the jobs that will be created, both directly at the Port and indirectly through the Project's growth-inducing effects.

Finally, regardless of where new workers live, the increase in population, both during the prolonged construction period and during Project operation, would also place additional demands on region's roadways, nearby school facilities, and other public services. Yet the DEIR/S fails to disclose and analyze these related impacts. As with numerous other impact analyses in the DEIR/S, the document never bothers to actually analyze these impacts or provide any evidence to support its cavalier conclusions. The associated environmental impacts to, for example, traffic, air quality, and public infrastructure and services, resulting from the increased population growth must be addressed in any revised document.

XIII. The DEIR/S Does Not Adequately Discuss Alternatives to the Proposed Project.

The analysis of alternatives to the proposed project lies at "[t]he core of an EIR."²³³ In this analysis, the EIR must consider a reasonable range of alternatives that would avoid or substantially lessen this impact while feasibly attaining most of the Project's basic objectives.²³⁴ If the EIR refuses to consider a reasonable range of alternatives or fails to support its analysis with substantial evidence, the purposes of CEQA are subverted and the EIR is legally inadequate.²³⁵ If a feasible alternative exists that will meet the project's objectives while reducing or avoiding its significant environmental impacts, the project may not be approved.²³⁶

An adequate alternatives analysis is a crucial component of complying with CEQA/NEPA. The CEQ has labeled the alternatives requirement as the "heart" of the

²³³ *Citizens of Goleta Valley II*, 52 Cal. 3d at 564; see also Pub. Res. Code § 21002.1(a) ("The purpose of an environmental impact report is . . . to identify alternatives to the project . . .").

²³⁴ See § 21100(b)(4); CEQA Guidelines § 15126.6(a).

²³⁵ *San Joaquin Raptor*, 27 Cal. App. 4th at 735-38; *Kings County Farm Bureau*, 221 Cal. App. 3d at 736-37.

²³⁶ Pub. Res. Code § 21002.

EIS.²³⁷ Further, NEPA contains a clear mandate that the alternatives must be explored in depth and with the same level of detail as the proposed action.²³⁸ The analysis of the alternatives throughout the document fails in this respect. As articulated in detail above, the incorrect project description inhibits an accurate assessment of the alternatives to this expansion project by artificially limiting the number of alternatives that could fulfill this flawed objective.

The alternatives analysis, moreover, misconstrues the Coastal Act by stating “Port activities should be water-dependant and give highest priority to navigation, shipping, and necessary support facilities to accommodate the demands of foreign and domestic waterborne commerce.”²³⁹ However, the DEIR/S fails to note that the Coastal Act states explicitly that ports must “[g]ive highest priority to the use of existing land use of existing land space within harbors for port purposes, including, but not limited to, navigational facilities, shipping industries, and necessary support and access facilities.”²⁴⁰ As such, the choice of four alternatives, which include two that require the creation of new land out of ocean, do not appear to comply with this mandate.

The proposed project would have significant and unavoidable air quality and traffic impacts. Similarly, though many of the proposed greenhouse gas mitigation measures included in the DEIS/DEIR such as utilizing compact fluorescent lights, LEED building and increased recycling rates (AQ 15, AQ-14 and AQ-18) are commendable, they fail to tackle the project’s largest sources of greenhouse gases: the transport and movement of goods. Considering that the 2030 Annual GHG Emissions Associated with Operations of the Middle Harbor Container Terminal are projected to grow by more than fourfold, the Port must analyze an alternative that seriously curbs GHG emissions. CEQA requires the DEIR/S to consider alternatives that directly address these impacts.²⁴¹

As the Port is well aware, California passed an ambitious law to tackle climate change, and it is discouraging that the DEIR/S for a project with such a great increase in GHG includes neither adequate mitigation any alternative, other than required No Project

²³⁷ 40 C.F.R. § 1502.14; *see also Monroe County Conservation Council, Inc. v. Volpe*, 472 F.2d 693, 697-98 (2d. Cir. 1972)(“The requirement for a thorough study and a detailed description of alternatives...is the linchpin of the entire impact statement.”); Cal. Pub. Res. Code § 21002; 14 Cal. Code Regs. § 15126.6.

²³⁸ *See* 40 C.F.R. § 1502.14 (a) and (b); *see also Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18026 (Mar. 23, 1981)(“The degree of analysis devoted to each alternative in the EIS is to be substantially similar to that devoted to the “proposed action.”).

²³⁹ DEIR/S, at 1-13.

²⁴⁰ Cal. Pub. Res. Code Div. 20 at § 30708.

²⁴¹ . *See* CEQA Guidelines § 15126.6(b); *Laurel Heights*, 47 Cal. 3d at 401-04; *Kings County Farm Bureau*, 221 Cal. App. 3d at 732 (“[I]f there is evidence of one or more potentially significant impacts, the report must contain a meaningful analysis of alternatives . . . which would avoid or lessen such impacts.”).

alternative, that eliminates the proposed project significant and unavoidable greenhouse gas emissions.

Fortunately, many of the mitigation measures aimed at SCAQMD thresholds also increase efficiency or utilize technologies that decrease diesel fuel use and corresponding emissions of greenhouse gases; these measures can form the basis of an alternative project design aimed at improving the efficiency of ships, trucks, locomotives, and cargo-handling equipment, in order to reduce the Port expansion's carbon footprint.

The most important aspect of this alternative would be the reduction of the Port's dependence on diesel trucks, primarily through rail electrification and other technologies, none of which the DEIR/S addresses.. Electricity coming from power plants does create GHG emissions, however each kilowatt-hour that replaces diesel saves 2–4 pounds of carbon dioxide (depending upon the source of electricity replacing it is).²⁴² Several electric rail systems were reviewed under the *CAAP Joint Port Transportation Technology Review Program - Zero Emissions Container Mover System* which is partly funded by the Technology Advancement Program.²⁴³ The following systems were deemed either "More Feasible" or "More Ready":²⁴⁴

Maglev- utilizing electromagnetic force, a Maglev system would create zero emissions at source and has been demonstrated in La Jolla, CA as a feasible cargo shipping technology, though not yet ready and market available. At 80 mph new, elevated guideways would move cargo, also requiring associated terminal infrastructure. A demonstration project would not be undertaken to prove technological capacity but economic feasibility, since the Maglev is admittedly expensive. Port of Los Angeles study cost estimates \$45.5 million/mile however annual fuel savings in 2007 were estimated to be \$2 million.²⁴⁵

LIM-Rail-Linear motors would be placed along railroad tracks and aluminum plates attached to the bottom of cars. A magnetic field moving along the motors in the track would induce a current in the plates and propel the vehicles. The LIM-Rail system uses existing infrastructure and current railroad operational practices, but can also be used in conjunction with the Maglev system. There is currently no test track for this concept, though the principles have been applied in other systems.

²⁴² Port Innovation Workshop Final Report, Rocky Mountain Institute, April 2007

²⁴³ Lyte, William. *Building a Maritime Technology Cluster at the San Pedro Ports*. Kennedy/Jenks Consultants. Presented 12/4/07.

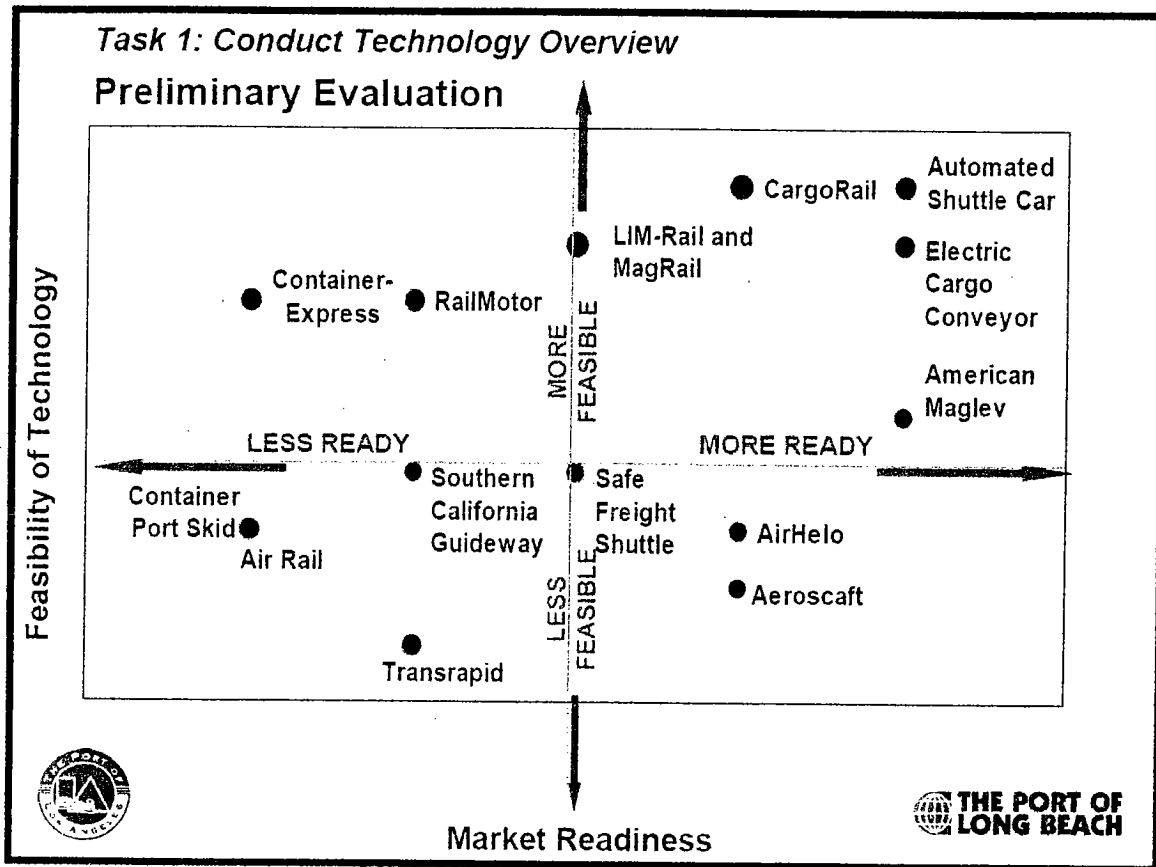
http://www.ametrans.org/nul/2007_documents/Lyte_representation.pdf

²⁴⁴ General Atomics. *MAGLEV and Linear Motors for Southern California Transportation Presentation to Southern California Association of Government MAGLEV Task Force*. February 8, 2007. pg. 28.

²⁴⁵ Assumptions: 10-mile route, 1 million cargo cars and 50 tons/car or 500 million ton-miles per year. Ibid. pg. 42.

Electric Dual-Mode Trams- The CargoRail trams are rubber-wheeled vehicles that can carry marine cargo containers at 75 mph on an elevated guideway or on local streets. On the guideway, they would be propelled by electricity via permanent magnet hub motors in the wheels. On local streets they could be fueled by clean fuel, such as CNG, to generate the electricity for the motor.

Moreover, in conjunction with the POLA, the POLB commissioned a study of Zero Emission Container Mover Systems. As the chart from a presentation to the Board of Harbor Commissioners demonstrates, there are several technologies that have been quantified as “More Feasible” and “More Ready.”²⁴⁶



Finally, we are providing some rough calculations of the benefits and costs of various technologies that have been proposed as alternatives to traditional modes of diesel transport.

²⁴⁶ Zero Emissions Container Mover System Evaluation Status Update, (September 6, 2007) available at

[http://www.portoflongbeach.org/DOE/Zero Emissions Container Mover System Pres 090607.pdf](http://www.portoflongbeach.org/DOE/Zero%20Emissions%20Container%20Mover%20System%20Pres%20090607.pdf)

Table 1: Technology Comparison

	Commercial Applications?	Use w/ existing infrastructure?	Ton-mile/kWh ²⁴⁷	Cost per Mile (single track estimates)
LIM on the vehicle	TRANSIT	NO ²⁴⁸	N/A	\$100+ million (transit applications)
LIM on the Track	NO	YES	5-10	\$10-20 million ²⁴⁹
EMS Maglev	TRANSIT	NO	5-10	\$70-170 million ²⁵⁰ (double track cost)
EDS Maglev	NO	NO	5-10	\$45.5 million ²⁵¹
Electric Rail	YES	YES	8-10	\$9-13 million ²⁵²
CargoRail Concept	NO	NO	N/A	\$40-54 million ²⁵³
Automated Shuttle Car Concept	YES ²⁵⁴	NO	N/A	N/A
Container Pipelines	NO	NO	N/A	N/A

²⁴⁷ The ton-mile/kWh figures are estimates since it is hard to determine efficiency without pilot tracks under weight. Direct use of electricity will likely have higher efficiency. Efficiency will differ based on loads and speeds. Electric applications also lose efficiency in creating and transferring electricity to the vehicle.

²⁴⁸ Transit applications have been dedicated lines only. Likely lower grade steel rails not capable of withstanding heavy freight applications. All the concepts would require new guideway construction.

²⁴⁹ Does not include costs to apply metal reactive plates to locomotives and railcars.

²⁵⁰ Low cost figure based on the Transrapid dual guideway system built in Shanghai, China for high-speed transit. The high cost figure is based on the cost/mile for the low-speed Linimo transit line in Nagoya, Japan.

²⁵¹ Does not include cost of the vehicles estimated at \$800,000 each – General Atomics figures.

²⁵² Cost estimates are from early 1990's SCAG study of electrifying the Alameda Corridor. Costs include cost of implementing electric infrastructure and 12-14 electric locomotives. Cost figures were put in 2007 dollars with inflation calculator. Total costs were divided by 20 miles to derive cost per mile estimates.

²⁵³ Includes the cost of 180 to 285 vehicles needed per mile at \$120,000 per vehicle.

²⁵⁴ The concept has been used in the Steel industry for heavy applications.

A reasonable range of alternatives must include proposals that “offer substantial environmental advantages” over the proposed project.²⁵⁵ The technologies discussed here offer such an advantage and are proven to be feasible. Thus, it is inexplicable why this DEIR/S is devoid of any true analysis of alternatives to ease the Port into a more efficient and less polluting future.

XIV. The Environmental Justice Analysis Is Similarly Lacking.

It is no secret that port operations implicate several environmental justice concerns. Accordingly, we found the environmental justice analysis completely lacking in that it skewed the real impacts of who is being impacted by Port operations. Perhaps, the most glaring example of this inadequacy is the discussion related to Impacts AQ-2 and AQ-4 where the DEIR/S concludes that there are no environmental justice impacts from construction and operations of the facility because “[t]he criteria pollutant dispersion model indicates the highest offsite concentrations of one-hour and annual NO₂ would be well within the industrial areas of the Port.”²⁵⁶ This conclusion completely misses the point that Figures 3.15-1 and 3.15-2 show that there are significant census tracts that have a high percentage of low income communities of color just outside of the port complex. In fact, for another air quality impact (odor), the DEIR/S finds that this impact would represent a disproportionately high and adverse impact on minority and low-income populations because “the populations in closest proximity to the Port, where effects are likely to be greatest, are predominantly minority...and disproportionately low-income.”²⁵⁷ It is hard for commenters to fathom why the air quality impact would not result in this same conclusion, especially considering there are significant impacts for several air pollutants. This myopic view of the environmental justice impacts from project-related air pollution that effectively precludes the Port from looking beyond its own gates is not valid under CEQA and NEPA.

XV. A Revised Draft EIR Must Be Prepared and Recirculated.

Because of the inadequacies discussed above, the Port of Long Beach DEIR/S cannot form the basis of a final EIR/EIS. CEQA requires preparation and recirculation of a supplemental draft “[w]hen significant new information is added to an environmental impact report” after public review and comment on the earlier draft EIR.²⁵⁸ The opportunity for meaningful public review of significant new information is essential “to test, assess, and evaluate the data and make an informed judgment as to the validity of the

²⁵⁵ See *Citizens of Goleta Valley*, 52 Cal. 3d at 565-66.

²⁵⁶ DEIR/S, at 3.15-9.

²⁵⁷ DEIR/S, at 3.15-9.

²⁵⁸ Pub. Resources Code § 21092.1.

conclusions to be drawn therefrom.”²⁵⁹ An agency cannot simply release a draft report “that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review.”²⁶⁰

In order to cure the panoply of DEIR/S defects identified in this letter, the Port must obtain substantial new information to adequately assess the proposed Project’s environmental impacts, and to identify effective mitigation and alternatives capable of alleviating the Project’s significant impacts. This new information will clearly necessitate recirculation. CEQA requires that the public have a meaningful opportunity to review and comment upon this significant new information in the form of a recirculated draft supplemental EIR.

We appreciate your consideration of our comments. Please feel free to contact us if you have any questions.

Sincerely,

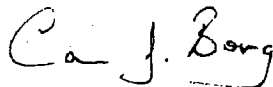


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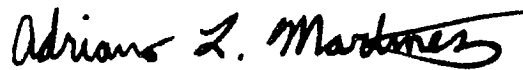
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²⁵⁹ *Sutter Sensible Planning, Inc. v. Sutter County Board of Supervisors*, 122 Cal. App. 3d 813, 822 (1981); *City of San Jose v. Great Oaks Water Co.*, 192 Cal. App. 3d 1005, 1017 (1987).

²⁶⁰ *Mountain Lion Coalition v. California Fish and Game Comm'n*, 214 Cal.App.3d 1043, 1052 (1989).



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Rosa Batres
Long Beach Mothers' Brigade

(Names Continued On Next Page)

Richard Cameron, Port of Long Beach
August 8, 2008
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Tom Politeo
Co-Chair
Sierra Club Harbor Vision Task Force

Jim Santangelo
President
Teamsters Joint Council 42

ATTACHED LITERATURE

- 1) Exhibit A -- CARB, *Methodology for Estimating Premature Deaths Associated with Long-Term Exposures to Fine Airborne Particulate Matter in California Draft Staff Report*, (May 22, 2008).
- 2) Exhibit B -- Zhu Y. et al., *Concentration and Size Distribution of Ultrafine Particles Near a Major Highway*. *J. Air & Waster Management*, 52: 1032-1042 (2002).
- 3) Exhibit B2-- Zhu Y. et al. *Study of Ultrafine Particles Near a Major Highway With Heavy-Duty Diesel Traffic*. *Atmospheric Environment*, 36: 4323-4335 (2002).
- 4) Exhibit C -- CARB, *Mobile Monitoring Platform Update and Results*, April 17, 2008, at the HCMS Community Meeting, Wilmington Senior Center.
- 5) Exhibit D -- Curtis H. et al., *Traffic Flows and Black Carbon Levels in the Urban Seattle Environment*, (Fall 2004).
- 6) Exhibit E -- Kim J. et al., *The East Bay (California) Children's Respiratory Health Study*, (June 2004).
- 7) Exhibit F -- CARB, *West Oakland Health Risk Assessment*, (March 2008).
- 8) Exhibit G -- California Climate Action Registry, *General Reporting Protocol, Version 3.0: Reporting Entity-Wide Greenhouse Gas Emissions* (April 2008).
- 9) Exhibit H -- Committee on Environment and Natural Resources, National Science and Technology Council, *Scientific Assessment of the Effects of Global Change on the United States*, (May 2008).
- 10) Exhibit I -- Ramanathan, V. & Carmichael, G., *Global and Regional Climate Changes Due to Black Carbon*, *Nature Geoscience* 1:221-227 (2008).
- 11) Exhibit J -- Jacobson, M., *Strong Radiative Heating Due to the Mixing State of Black Carbon in Atmospheric Controls*, *Nature* 409: 695- 697 (2001).
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- 17) Exhibit P -- Memorandum of Understanding between POLA, the Attorney General of California, and the Mayor of Los Angeles. Dec. 6, 2007.
- 18) Exhibit Q -- International Council on Clean Transportation (ICCT) (Mar. 2007) *Air Pollution and Greenhouse Gas Emissions from Ocean-Going Ships: Impacts, Mitigation Options and Opportunities for Managing Growth* at 34.
- 19) Exhibit R -- Union of Concerned Scientists, *Reducing Global Warming Pollution: Technology Options for Tractor Trailers*, (2008).
- 20) Exhibit S -- Environmental Protection Agency: Office of Atmospheric Programs. *Global Mitigation of Non-CO₂ Greenhouse Gases* (June 2006).
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- 22) Exhibit U -- Munk, Torben. *Fuel Conservation through Managing Hull Resistance*, (2006).
- 23) Exhibit V -- IMO, Study of Greenhouse Gas Emissions From Ships, Part 5, Technical and Operational Measures to Reduce Greenhouse Gas Emissions from Ships, Issue No. 2-32 (Mar. 2000) at 72.
- 24) Exhibit W -- Settlement Agreement between ConocoPhillips Co. and the California Attorney General, Sept. 10, 2007.
- 25) Exhibit X -- Bond, T. et al., *A technology-based Global Inventory of Black and Organic Carbon Emissions from Combustion*. J. Geophys. Res., 109: D14203, (2004).
- 26) Exhibit Y -- Hansen, T. from Magee Science, PowerPoint on the AE90 Aethalometer Presented to EPA NAQC in San Francisco, CA (2005).

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- 34) Exhibit AG -- Wilbur Smith and Associates, "Economic Benefits and Costs of Growth in Goods Movement: Multi-county Goods Movement Action Plan" (2007).
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