NATURAL RESOURCES DEFENSE COUNCIL

SAN PEDRO AND PENINSULA HOMEOWNER'S COALITION

CALIFORNIA EARTH CORPS

COALITION FOR A SAFE ENVIRONMENT

February 13, 2006

Via Hand Delivery (w/enclosures) and Electronic Mail (w/o enclosures)

Robert Kanter, Ph.D
Director of Planning & Environmental Affairs
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Long Beach, CA 90802
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Re: Notice of Preparation and Initial Study for the Port of Long Beach Middle Harbor Redevelopment Project

Dear Dr. Kanter:

On behalf of the Natural Resources Defense Council, Coalition for Clean Air, Long Beach Alliance for Children with Asthma, Coalition for a Safe Environment, California Earth Corps and San Pedro and Peninsula Homeowner's Coalition, we submit these comments on the Notice of Preparation and Initial Study ("NOP") for the Port of Long Beach ("Port") Middle Harbor Redevelopment Project ("Project").

We are deeply concerned about the impacts of this project. As you know, the proposed Project would include the demolition of existing structures, dredge and fill operations, wharf construction, and container yard improvements to consolidate existing Piers D, E, and F into one 342-acre "mega-terminal." Indeed, by 2023, the proposed Project is expected to result in a 96.7% increase in annual vessel calls, 92.4% increase in daily truck trips, and over a 900% increase in weekly trains over 2005 baseline conditions. Further, at full capacity, the proposed terminal will handle more than 3.3 million TEUs per year—about half of the number of TEUs handled by the *entire Port of Long Beach* in 2005.[1] A project of this magnitude will undoubtedly have a profound effect on the environment and nearby communities, including on air quality,

[1] Report of Port of Long Beach's "TEU's to Date", http://www.polb.com/about/port_stats/teus_year_to_date.asp (February 10, 2006)

water quality, navigation, traffic, noise, industrial blight and cancer risk. Accordingly, the Port must ensure that its environmental review for the Project is comprehensive, and that its mitigation of all impacts—from the entire 342-acre terminal—is complete. To that end, we have several major concerns regarding the scope of the proposed environmental impact report/statement ("EIR/EIS"), and request that the Port fully examine these issues in its EIR/EIS. It is essential that the impacts of this proposed Project, like all projects at the Port, be assessed and fully mitigated.

1. The EIR/EIS must accurately define the purpose and objectives of the Project.

The NOP incorrectly defines the "project purpose and need" as "*accommodate[ing]* a portion of the forecasted increases in containerized cargo throughput volumes." NOP at 4. In fact, the purpose of this project is to consciously expand container business at the Port of Long Beach, as well as the Port's bottom line. To accomplish this goal, the Port must make an informed decision regarding whether the costs of this expansion –in terms of health costs born by nearby residents and other costs to the environment—are outweighed by the benefits of increased trade. However, by painting the Project objectives as "accommodating" "inevitable" increases in cargo, the Port improperly relinquishes its responsibility to make these important decisions.

This incorrectly defined objective has significant implications for the EIR/EIS and the Port's ultimate decision making. As the court of appeal has stated: "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance." *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 192-193. By stating the purpose as to "accommodate" rather than cause growth, the Port will effectively ensure that this massive expansion occurs and the "no project" alternative is not selected, regardless of the impacts caused. Additionally, this distorted project description will effectively preclude many alternatives discussed in the NOP in violation of CEQA. Accordingly, we ask that the EIR/EIS more accurately define the project as one to "expand" the port's container business, rather than merely "accommodate" projected increases in trade.

2. The EIR/EIS must have an accurate environmental baseline.

Again, given the magnitude of this Project, it is imperative that the EIR/EIS analysis begin from an accurate baseline. The Port should provide documentation in the EIR/EIS of the level of activity as of the date of the NOP. In addition, the EIR for existing Piers D, E and F were completed many years ago, and the current activity at those terminals likely far exceeds what was analyzed in that EIR. Thus, much of what is now incorporated into the EIR/EIS' anticipated baseline was never analyzed or mitigated. If this is the case, then the EIR/EIS should provide that analysis and mitigate those impacts.

3. The EIR/EIS must consider the impacts from the proposed Project as it is constructed, in addition to the impacts created after full build-out.

The NOP indicates that the proposed Project would be constructed in two overlapping phases (Phase 1: 2007-2016, Phase 2: 2011-2017), with full build-out in 2020.[2] The NOP also indicates that in 2023, the Project would reach maximum throughput capacity. In this regard, the NOP provides preliminary estimates on the increase in TEUs, vessel calls, truck trips, and train trips that will be generated in 2020 and 2023 by the proposed Project. Understanding the extent of future growth created by consolidating Piers D, E and F is crucial to analyzing the environmental and public health impacts created by the proposed Project, and we appreciate such data in the NOP.

However, the EIR/EIS should not limit its analysis to analyzing impacts solely in 2020 and 2023. The environmental document should also examine the impacts in the years *prior* to full-build out. Indeed, there is little question that surrounding communities will be impacted prior to 2020 as the two phases of the proposed Project are completed. Further, toxic particulate emissions from diesel trucks, ships and yard equipment are generally higher in earlier years of a project due to fleet turnover and stricter federal and state emissions standards in later years. Thus, if the EIR/EIS looks only at impacts in and after 2020, it could ignore the potential risks to public health that may be greater in the early phases of the proposed Project.

4. The EIR/EIS must fully address cumulative impacts.

Under CEQA, the EIR/EIS must discuss cumulative impacts "when the project's incremental effect is cumulatively considerable." CEQA Guidelines § 15130; *see also id*. § 15355. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past, current and probable future projects. *See id*. at §15065(c). An adequate cumulative impacts analysis is particularly important where, as in the South Coast, ozone and particulate matter pollution already far exceeds applicable state and federal ambient thresholds. Under these circumstances, any addition of ozone precursors or particulate matter exacerbates an already unacceptable condition. Thus, we are pleased that the EIR/EIS will examine the cumulative impact of the emissions from the proposed Project with emissions generated by other projects in the air basin. *See* NOP, at 22. In particular, a full assessment of the cumulative impacts of the Project should take into account existing pollution sources in the vicinity, including the refineries, freeways, ports, and rail yards. Only after this analysis is conducted can the Port consider whether the proposed "mega terminal" should go forward at all.

5. The EIR/EIS must contain a complete and accurate health risk assessment.

We are pleased that the Port has committed to conduct a health risk assessment ("HRA") as part of its air quality analysis. As the Port is aware, container terminals have the greatest impacts on air quality of any marine terminal use. Container terminals generate significantly more diesel

[2] It is unclear why the NOP states that the construction for the Project would be complete in 2017, *see* NOP, at 10, but that full build-out would not be until 2020. *See* NOP, at 12.

truck trips than any other type of terminal; they also generate a significant number of diesel ship visits and use polluting diesel off-road equipment. The proposed Project is no exception. The NOP indicates that by 2023, the consolidated Pier E container terminal will accommodate more than 3.3 million TEUs per year, which is more than 2.5 times what is currently handled by Piers D, E and F combined. *See* NOP, at 12. As a result, the number of vessel calls, daily truck trips and weekly train visits will increase dramatically. In addition, from the maps provided in the NOP, it appears that Piers D, E and F are among those closest to Wilmington, Long Beach and San Pedro residents, which would mean that cancer and other health risks are of particular concern.

The HRA must assess the level of toxic risk, as well as non-cancer related health impacts due to all of the pollution that the nearby communities will face from this proposed Project. The HRA should identify any and all sensitive populations that could be impacted by the proposed project and evaluate the health risks not only from activities at the Project site, but also from activities generated by the project, such as the emissions from the trucks and locomotives that will transport containers arriving or departing from the proposed Project. The HRA must also assess the cumulative risk from other sources in the region, including the existing Piers D, E and F, refineries, freeways, ports, and rail yards, as well as the cumulative risk posed from the growth at the Port that this Project will enable. Finally, given that HRA's for port projects in the past have been inadequate, and this EIR/EIS will likely set the stage for how future EIRs are prepared, the Port should not only use SCAQMD and ARB guidance documents, but work jointly with the SCAQMD to develop the HRA for this project.

6. The EIR/EIS analysis must be based on the maximum capacity of the terminal, rather than the expected usage.

Based on the description of the proposed Project in the NOP, it appears that this terminal, when completed, will have the capacity to handle significantly more activity than is described in the operations section. CEQA requires a conservative approach to environmental review that favors the fullest discussion of possible impacts. All "reasonably foreseeable" activity, future phases, and impacts of a project must be fully analyzed and mitigated. Here, the NOP states that a "maximum of three (3) vessels would be berthed at one time." NOP at 13. However, given the description of wharf construction on pages 9-10 of the NOP, it appears that just the *new and reconstructed* wharves have enough length to accommodate 5 ships at a time. That estimate does not assume *current* capacity at Piers D, E and F. The EIR/EIS must reflect the maximum, not the anticipated, ship activity this mega terminal can handle. If it is indeed the case that ship traffic is underestimated, then it is likely that TEU throughput and consequently, rail, truck, and yard equipment operations too are understated. This must be corrected in the EIR/EIS.

7. The EIR/EIS should analyze the mitigation measures in the Port of Los Angeles' "No Net Increase" Plan as well as other measures to mitigate the proposed Project's environmental impacts.

Under CEQA, all feasible mitigation measures must be considered and implemented to reduce environmental impacts to a level of insignificance. *See* CEQA Guidelines § 15126.4. To that

end, the EIR/EIS for this project should consider all applicable mitigation measures identified in the Port of Los Angeles' No Net Increase ("NNI") Plan. As you are likely aware, that plan was completed in June 2005 by a task force appointed by Mayor James Hahn in an effort to reduce air emissions at the Port of Los Angeles back to 2001 levels notwithstanding a near quadrupling in port activities. This plan contains invaluable information on how to dramatically reduce toxic air emissions from port operations.

In fact, we are pleased that several of the measures discussed in the NNI Plan were listed in the NOP as environmental controls that will be included in the proposed Project (i.e., cold-ironing, alternative fuel yard equipment, and hybrid switching engines). *See* NOP, at 13. However, there are still many more mitigation measures that could be undertaken by the Port to reduce emissions, such as cleaner fuels in vessel main engines and harbor craft, funding a truck replacement program, and requiring idling controls for locomotives. The EIR/EIS should discuss all of these and other feasible NNI measures. In addition, while the NOP briefly discusses mitigation measures for a number of pollution sources at the Port, no measures have been suggested to mitigate the pollution generated by harbor craft or construction equipment. The EIR/EIS must consider measures to mitigate these significant pollution sources.

Further, to be sure, the NNI Plan does not include every measure that the Port could implement to reduce air emissions, and thus the EIR/EIS for the proposed Project should also address mitigation measures that may not be included in the NNI plan, including non-diesel delivery systems such as magnetic levitation and electric technology. We appreciate the addition of such measures to the list of alternatives in the NOP. *See* NOP, at 15. Other mitigation measures that the EIR/EIS should address include, but are not limited to, conveyor technology such as that currently used in the quarry transport context. *See* Muids-Daubeuf Conveyor-belt and River Transport, http://www.lafarge.com (follow "Sustainable Development" hyperlink; then follow "Case Studies" hyperlink; then follow "Transport" hyperlink; then follow "Muids-Daubeuf Conveyor-belt and river transport" hyperlink).

In addition to air quality impacts, other environmental impacts must also be mitigated, including noise, light pollution, and traffic. Furthermore, although the NOP does not address the water quality impacts implicated through atmospheric deposition of air pollutants, the EIR/EIS should address these impacts and must include mitigation measures to reduce such impacts to a level of insignificance.

Moreover, the EIR/EIS must describe the mitigation measures that will be included in the proposed Project with specificity. *See e.g.*, CEQA Guidelines §§ 15126.4; 15146. Currently, while several mitigation measures are listed in the NOP, it is difficult to assess what would actually be required. For example, while the NOP lists cold-ironing as a clean air technology that will be included in the Project, the discussion for this measure states that "[v]essels servicing the proposed terminal would be required to cold-iron *or* use alternative fuels *or* other clean air technology while at the Port terminal." NOP, at 13 (emphasis added). Accordingly, it is unclear if cold-ironing will actually be "required," or what the Port is referring to when it lists "alternative fuels" and "other clean air technology." What is clear is that, given the magnitude of

this project, *all* of these measures must be required – not just one or the other.[3] Further, for container handling equipment, it is unclear whether a preference for alternative fuel yard equipment will be required, or if terminal operators can choose equipment that complies with Tier 4 off-road engine standards *or* use alternative fuel yard equipment. The Port should require the use of alternative fuel yard equipment if such equipment is commercially available. Additionally, it is unclear what measures will be undertaken to reduce emissions from trucks. The NOP states that the Port will "work" with local regulatory agencies to implement the use of cleaner fuels and control devices, but it is unclear what this means. Will the Port require trucks that service the Port to use cleaner fuels or control devices? Will the Port contribute a percentage of its profits to a "Gateway Cities-type" program? Such questions must be answered in the EIR/EIS, and given that this project will generate almost 9,000 *additional* truck trips *every day*, these questions must be answered in the affirmative.

Finally, as some of us argued with regard to the Pier J project, the Port should apply all of these mitigation measures to the *entire* terminal, not just the newly constructed portions. First, the final Piers D, E and F will operate as a single "mega terminal" and thus, the entire terminal should be considered and mitigated as a single project. Second, the Port of Long Beach has pledged through its Green Port Policy to reduce impacts on the region and local communities. This will never come to fruition unless the Port addresses impacts from existing–as well as new–terminals. The opening of the lease for the proposed consolidated terminal provides a rare and necessary opportunity for the Port to require these measures at an existing facility.

8. The EIR/EIS must address the effects of atmospheric deposition on water quality.

The NOP does not appear to address water quality impacts from atmospheric deposition at either the local or regional level. Diesel exhaust is known to contribute to water pollution through the process of atmospheric deposition. *See e.g.*, U.S. E.P.A., FREQUENTLY ASKED QUESTIONS ABOUT ATMOSPHERIC DEPOSITION: A HANDBOOK FOR WATERSHED MANAGERS, Appendix 1, at 79, (2001). As proposed, this Project would introduce a tremendous amount of diesel emissions locally. The EIR should address this potentially local and regional impact and identify appropriate mitigation measures.

9. The EIR/EIS must consider environmental justice impacts.

The proposed Project site is located near Long Beach and Wilmington, two residential communities that already experience high levels of mobile and stationary source emissions known to be toxic. However, the NOP does not make clear that the EIR/EIS will assess and mitigate environmental justice impacts. The California Air Resources Board recently observed that "[t]he Californians who live near ports, rail yards, and along high traffic corridors are subsidizing the goods movement sector with their health." *See* CALIFORNIA AIR RESOURCES

[3] For example, in order to address the significant emissions from container vessels, the EIR/EIS must evaluate mitigation strategies that can maximize pollution reductions from auxiliary and main engines while vessels are at dock and in California coastal waters. To achieve this, the EIR/EIS must consider requiring multiple strategies for marine vessels such as cold-ironing and cleaner fuels.

BOARD, DRAFT EMISSION REDUCTION PLAN FOR PORTS AND INTERNATIONAL GOODS MOVEMENT IN CALIFORNIA, Chapter 5, at1, (Dec. 1, 2005). Wilmington and west Long Beach are already burdened by all three of those pollution sources—including the Port of Los Angeles, Port of Long Beach, the 710 freeway, the Terminal Island Freeway, and the UP-ICTF—in addition to the nearby refineries. Of particular concern in this area are the adverse health effects of diesel emissions, dramatically increased local levels of which would be implicated by the construction and operation of the proposed Project. The EIR/EIS must consider and implement mitigation measures to eliminate all environmental justice impacts implicated by the proposed Project, taking into account impacts introduced by the Project itself as well as cumulative impacts that arise from existing and foreseeable future sources of air, light, and noise pollution—including the tremendous growth at the Port that this Project will enable.

10. The EIR/EIS should consider a reasonable range of alternatives.

We also urge the Port to consider alternatives to the proposed Project that would increase efficiency and productivity at the Port without the proposed Project (or the full extent of the proposed Project). For example, the Port should consider implementation of Agile Port Systems ("APS") in the EIR/EIS. Recent studies by the Center for the Commercial Deployment of Transportation Technologies show that APS can be implemented at existing mixed-modal marine terminals to greatly increase efficiency and throughput while minimizing cost and avoiding the need to create more land for new terminals. It is our understanding that that there are two primary components of APS: (1) integration of vessel and rail information systems in a marine terminal; and (2) on-terminal equipment structuring providing for simultaneous container loading and discharge, an arrangement called an Efficient Marine Terminal ("EMT"). Further, the benefits of APS include increased marine terminal productivity, increased marine terminal efficiency (less equipment needed), and reduced marine terminal acreage. Accordingly, this alternative could fulfill the stated purpose and objectives of the Project, and help avoid significant environmental effects without requiring the physical "expansion" aspects of the Project.

Thank you for considering our comments.

Sincerely,

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Natural Resources Defense Council

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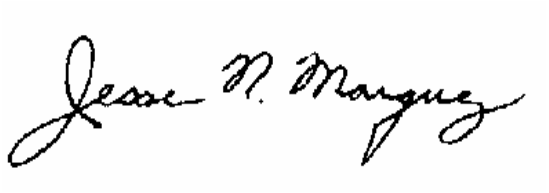

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Enclosures:[4]

1. Report to Mayor Hahn and Councilwoman Hahn by the No Net Increase Task Force, June 24, 2005
2. Notice of Entry of Amended Stipulated Judgment, Modification of Stay, and Order Thereon (*NRDC et al. vs. City of Los Angeles et al.*)
3. Request for Proposals for Occupancy of Property at the Port of Los Angeles: Five-Year Lease of the Berths 206-209 Container Terminal
4. Harboring Pollution: The Dirty Truth About U.S. Ports
5. Harboring Pollution: Strategies to Clean Up U.S. Ports
6. Report of Port of Long Beach's "TEU's to Date" http://www.polb.com/about/port_stats/teus_year_to_date.asp (February 10, 2006)

[4] Enclosed with this comment letter are a number of reports and documents that we urge Port staff and the Board to consider when drafting the EIR/EIS. These documents, among other things, discuss potential mitigation measures that could be adopted by the Port, provide examples of ways to implement mitigation (i.e., through lease agreements), and support the observations contained in this letter.