ATTACHMENT 6

HARBOR DEPARTMENT'S RESPONSE TO THE ISSUES ON APPEAL

City of Riverside

All of the following appeal issues were addressed in the Final EIR in response to the City of Riverside's ("Riverside") comments on the Draft EIR/EIS dated August 12, 2008. A summary of the responses contained in the Final EIR/EIS are included below. The appeal does not include any new arguments.

City of Riverside Appeal Issue 1:

The Project will increase train trips 15-fold, to more than 2,000 annual trips, a majority of which travel through the City of Riverside, yet the Draft EIR did not analyze the impacts of those trips.

Harbor Department Response to Issue 1:

Riverside raised this issue in comment CR-7 on page 10-262 of the Final EIR/EIS. As stated in the response, the Draft EIS/EIR has estimated the baseline and "with-Project" number of trains. The Project will generate 5.37 additional trains per day more than the 2005 CEQA Baseline. The analysis assumed an average length of 7,500 feet for each train. Existing train lengths generally vary from 6,000 to 8,000 feet. Existing distribution indicates that approximately 75 percent of the Ports' trains travel to or from the east and 25 percent will travel to or from the north. There are two eastern routes, one owned by BNSF that travels along SR-91 and the other owned by UP that travels along I-10. The worst case scenario indicates that the Project would generate an additional three trains per day through Riverside.

Riverside provided the Port of Los Angeles with copies of Riverside's long-term train counts of 24-hour periods in Riverside in connection with POLA's consideration of phases II and III of the Berth 97-109 (China Shipping) Container Terminal Improvements project. POLB obtained those Riverside counts from POLA in connection with the consideration of the proposed Project. The EIR utilized those counts in its impact analysis and the methodology employed by Riverside County for prioritizing grade separation projects. Finally, the analysis applied the Highway Capacity Manual (2000) average vehicle delay, which is consistent with Riverside County Traffic Impact Analysis Preparation Guidelines, to determine the impact of any delay on vehicular traffic in Riverside stopped at the crossing gates.

The assumptions for the analysis were based on the following details derived from Riverside's Train Block Delay Study rail counts:

- 70 to 95 trains per day travel on the BNSF line, including 11 passenger trains
- An average of 40 trains per day travel on the UP line, including 13 passenger trains
- Average gate down time for freight trains is three minutes and for passenger is one minute

- No more than seven trains cross per hour

- During the AM peak hours (6:30 to 8:30 a.m.), the average total gate down time per hour is less than six minutes

- During the PM peak hours (4:30 to 6:30 p.m.), the total average gate down time per hour is less than five minutes

Regarding at-grade crossing delays, the Riverside County Transportation Commission ("RCTC"), of which Riverside is a member, made substantially identical claims in connection with the Port of Los Angeles's Recirculated Draft EIR/EIS recently prepared for POLA's Berth 97-109 project. In response, POLA conducted a field survey of trains traveling along rail lines through Riverside County and Riverside, which concluded that the additional project rail traffic would not result in significant impacts to traffic at at-grade crossings in Riverside County. The four-hour observations collected by POLA at various at-grade crossings in Riverside are consistent with the same hours included in the 24-hour counts provided by Riverside.

POLA's study, which analyzed the rail impacts when traffic congestion is heaviest, found that one additional train in the peak hour in Riverside County and Riverside would result in an average vehicle delay of approximately 5 to 6 seconds which is deemed a good level of service when compared to the Highway Capacity Manuel (HCM) measure of 55 seconds per vehicle.

POLA's study also included a cumulative analysis of the impact of multiple trains from different sources. While the delay would increase, multiple trains would cumulatively contribute to an impact that was less than significant. For example, four trains arriving in a peak hour (with an average gate down time of 3 minutes) would result in an average delay of approximately 24 seconds per vehicle. According to Riverside's 24-hour counts and the POLA peak hour counts, the probability of four freight trains crossing in a peak hour is less than ten percent. During 48 separate hours of observations in Riverside County in October 2008, there were only 3 hours (out of 48) when more than two freight trains were observed during the peak hours. This is consistent with Riverside's 24-hour counts. Moreover, it is likely that the additional trains generated by the Ports would travel during non-peak hours of the day when traffic volumes are lower, creating less than 5-6 seconds of additional delay during more non-peak hours.

Because the average vehicle delay from cumulative trains from POLA's West Basin terminals would be substantially less than the significance threshold of 55 seconds per vehicle, POLA concluded that there would be no cumulative impact from its projects, and therefore there was no requirement to provide mitigation.

The Final EIR/EIS included a more quantitative analysis based on Riverside's 24-hour rail counts to confirm that there would be no cumulative impacts as a result of additional trains added from the TraPac, China Shipping, and Middle Harbor projects. The first two projects did not include specific estimates of number of trains, but provided detailed estimates of TEUs. For TraPac, the estimated additional rail freight is 2,304 TEUs per day, which translates to 4 additional trains per day. For China Shipping, the estimated additional rail freight is 128,741 TEUs per month, with 35 percent expected to be on-dock rail. Those projections translate to 3

additional trains per day. Therefore, the cumulative impact was based on 12 trains/day (4 from TraPac, 3 from China Shipping, and 5 from Middle Harbor). Of these, 75 percent (9 additional trains) are expected to travel east through Riverside. For most hours of the day, there would only be one additional train, particularly in the peak hours when passenger rail accounts for up to four trains per hour, but even at four additional trains in the peak hour, the average delay would be only 24 seconds per vehicle. A delay of 24 seconds would be less than significant when compared against the 55-second standard of the HCM, and therefore no mitigation waas required.

City of Riverside Appeal Issue 2:

Riverside submitted detailed comments explaining that it is trisected by railroads, that the railroad capacity is impacted, and that the additional rail traffic would have direct, indirect, and cumulative impacts to its residents. Riverside supported its comments with extensive and detailed materials, including local, state, and federal information, and data showing the delays to emergency service response cause by railroads.

Harbor Department Response to Issue 2:

As stated in Response to Issue 1, a detailed analysis of the at-grade crossings based on (i) Riverside's 24-hour train counts and (ii) POLA's at-grade crossing analysis prepared for the China Shipping project, indicates that the Project impacts at at-grade crossings in Riverside will be less than significant. A cumulative analysis of rail traffic also detailed in Response to Issue 1 found that the Project's cumulative impacts at at-grade crossings will be less than significant in Riverside.

The appeal states that Riverside's claim is supported by documentation that Riverside provided. The 24-hour train count data submitted with the appeal is identical to the data utilized in the analysis provided in the response to comments, which supports the EIR's finding of insignificant rail impacts in the Riverside. Furthermore, delay was measured consistent with the methodology employed by Riverside in its City of Riverside Train Block Delay Study. In addition, delay at at-grade crossings was measured using the Federal Railroad Administration methodology.

Response to comment CR-12 in the Final EIR addressed delays to emergency vehicles in Riverside. While existing trains do result in delays at at-grade crossings, the EIR considered only whether impacts from the proposed Project (*i.e.*, 3 additional trains a day) would have a significant impact on emergency services in Riverside. Riverside has 14 fire stations on either side of the main rail corridors strategically placed throughout Riverside. Pursuant to a discussion with the Riverside Fire Department on February 26, 2009, Riverside has an established emergency response goal of five minutes. Riverside also has a protocol for dealing with rail traffic. If an emergency vehicle experiences a delay at a rail crossing, the Captain is required to call dispatch if he anticipates the train delay to result in an overall response time of more than five minutes so that a station on the other side of the rail line can be dispatched. Therefore, Project generated trains, that will result in additional delays of only 5-6 seconds/vehicle per train, will generate less than a significant impact to emergency response.

City of Riverside Appeal Issue 3:

The Harbor Department denied or ignored Riverside's impacts, did not analyze those impacts, and instead relied upon a different agency's analysis. Unfortunately, that analysis is fatally flawed. In response to Riverside's comments on the rail impacts from the Port of Los Angeles's China Shipping Terminal Expansion Project, the Port of Los Angeles performed a short-term rail count and used the Highway Capacity Method (HCM) to find the less-than significant delays it sought. The short-term rail counts were inaccurate and under-estimated the number of rail trips through Riverside by up to two thirds. Furthermore, the HCM is not used for rail impact analysis - it is for signalized intersection analysis only. The proper analytical tool is the Federal Railway Administration (FRA) method, which the Port of Los Angeles did not use. The FRA method shows a much greater impact than the incorrect HCM method. The Port of Los Angeles response also grossly over-estimated the costs of grade separations, which fully mitigate for rail impacts.

Harbor Department Response to Issue 3:

As stated in response to Appeal Issues 1 and 2, the Final EIR did not rely on Port of Los Angeles' analysis conducted for its China Shipping Terminal Expansion Project. Rather, the Project's rail analysis utilized Riverside's 24-hour rail count data submitted to the Port of Los Angeles by Riverside at the certification hearing for the China Shipping project. The peak hour rail counts collected by CH2MHill for the China Shipping project were used to check Riverside's figures and were found to be consistent with the 24-hour counts provided by Riverside. Thus, both Riverside's study and POLA's survey support the conclusion in the EIR of no significant rail impacts from the Project in Riverside.

The EIR's rail analysis was **not** based on the HCM methodology as asserted by Riverside. Rather, the methodology used was the same standard methodology used by Riverside in its long-term train counts of 24-hour periods to estimate vehicle delay. That is, the Federal Railroad Administration ("FRA") rail delay methodology was utilized to determine the average amount of gate down time.

The FRA methodology, however, analyzes only a 24-hour period, rather than peak hour delays, and it does not provide any significance thresholds for determining impacts. Thus, it was not utilized to measure the impacts of delay. For the purposes of identifying traffic impacts, the environmental analysis required the Project to mitigate the worst case scenario, *i.e.*, peak hour. The Final EIR responses to comments included a rail analysis in Riverside County that determined the average delay using the FRA methodology, and utilized the HCM methodology to determine the impact of the delay on vehicular traffic stopped at the gates. Thus, the HCM was used only as a standard to assess whether that peak hour delay was significant (a 55 second delay standard is set forth in the HCM).

As for POLA's grade separation cost estimates, pages 10-317 -- 10-318 of the Final EIR make clear that the EIR did **not** rely on POLA's estimates for any of its conclusions regarding the feasibility of grade separation projects. Rather, the EIR states that the low traffic volumes such as those generated by the Project generally do not warrant grade separations because the costs

are too high for the benefit received. The EIR specifically recognizes that whereas POLA had estimated grade separation project costs at approximately $102 million (based on actual costs from prior grade separation projects at the Port), recent, more focused grade separation projects in Orange County had been estimated at $20 million or more. It was further noted that regardless of the cost, these projects often take a number of years to be constructed, which often results in periodic delays in traffic, and that for relatively low traffic volumes, the costs and potential traffic delays outweighed the potential benefits. Because the Project would not have significant rail impacts in Riverside, no mitigation was warranted under CEQA.

City of Riverside Appeal Issue 4:

Riverside submitted detailed factual data showing that it is negatively impacted by rail traffic and that the additional train trips from the Project would significantly impact Riverside even further.

Harbor Department Response to Issue 4:

Riverside raised this issue in response to the Draft EIR. The response is included in CR-6 on page 10-262.

As stated in the response, for at-grade crossings in Riverside County, the RCTC-2 and RCTC-4 responses provide a complete analysis of train impacts. The overall finding is that there are delay impacts from trains, but these impacts are approximately 5 to 6 seconds of delay/vehicle per train. Since this is below the threshold of significance (55 seconds of delay/vehicle), the impacts are not significant, and thus no mitigation is required.

Additional grade separations are neither feasible nor warranted as a Project mitigation measure. The minimal traffic delays at the at-grade crossings generated by the Project would not warrant grade separations because the costs are too high for the benefit received.

Although the Project impacts to the Riverside County at-grade crossings are not significant, the response to RCTC-2 provides more information about the Port's support of the Proposition 1B Trade Corridor Improvements Fund (TCIF) for grade separations. The County and Riverside are receiving more than $150 million of TCIF funding for grade separation projects. This regional approach is supported by SCAG and all impacted counties as the best means for dealing with regional goods movement activities.

City of Riverside Appeal Issue 5:

Riverside also made clear that mitigation is not infeasible, and not in the range of hundreds of millions as feared by Los Angeles. Instead, fair-share contributions to a regional solution, together with the actual costs of grade separations ($24 to $30 million), show that mitigation is feasible. Yet, the Harbor Commission refused to analyze mitigation.

Harbor Department Response to Issue 5:

As for any mitigation required for the Project, including contributing to grade separation projects, the Project will result in less than significant impact rail impacts, including cumulative

impacts, and therefore no mitigation is required. Low traffic volumes, such as those generated by the Project, generally do not warrant grade separations because the costs are too high for the benefit received. Costs of grade separations vary depending on physical constraints (*i.e.*, utility relocations and right-of-way acquisition). The Port of Los Angeles has estimated costs at nearly $102 million based on actual costs from prior grade separation projects at the Port of Los Angeles, and Orange County has projects under construction with costs exceeding $20 million (as stated in the Final EIR/EIS, response to RCTC-2 on page 10-318). According to the Riverside County Priority Listing, the seven projects in Riverside included on the list range from $30.3 to $51.2 million for a total of $262.6 million. The total cost of the County's list is $980.5 million.

Despite the lack of any demonstrated significant impact of Port traffic on the Inland Empire jurisdictions, the Ports of Long Beach and Los Angeles have supported the region's pursuit of the Prop 1B Trade Corridors Improvement Fund (TCIF) for grade separations. The County and Riverside combined will receive over $150 million of the TCIF for 12 grade separation projects.

City of Riverside Appeal Issue 6:

The rail trip estimates are not supported by data or calculations. One example is the Draft EIR's estimate (repeated in the responses to comments) of trains, based on lengths of 25 cars. The Draft EIR did not explain that when the Port used the term "rail car," it meant "five articulated bare tables and averages 300 feet in length." A second example is the proportion of traffic to be transported by rail. The Port is actively seeking to increase the proportion of cargo transported by rail, and has already approved two such measures. Do the EIR rail trip calculations account for those?

Harbor Department Response to Issue 6:

The assumption that 26.3 percent of throughput will travel out of, and into, the terminal on rail is based on the Maximum Practical Capacity of the rail facilities and the terminal. (See SCAQMD-7 regarding site design constraints). As set forth in response to comment SCAQMD-40, the estimation of rail trips is based on a conversion of annual twenty-foot equivalent units (TEUs) to annual containers/boxes, with each box on average equal to 1.817 TEUs. The total of 3,320,000 TEUs in 2030 would equal 1,827,188 boxes. Based on mode split, the on-dock containers, which are those boxes being shipped by eastbound rail transport, are estimated to be 16.5 percent of total cargo in 2030 (1,827,188 boxes x .165 = 301,486 annual on-dock boxes). The assumption of train utilization is estimated at 87 percent, meaning that up to 13 percent of the bare tables are empty. (This primarily occurs in the westbound direction.) Thus, 301,486 boxes times 0.87 equals 262,293 boxes. Each train consists of 25 cars, and each car can carry up to 10 containers. Thus, 262,293 boxes divided by 25 cars equals 10,492 boxes, which divided by 10 boxes equals 1049 trains. The number of trains is then multiplied by 2 to account for trips in both directions (2 x 1049 = 2098). The annual train formula is as follows:

Annual Trains = [(annual on-dock containers x 0.165 x 0.87)/25]/10] x 2

Refer to revised Table 3.5-7 in the FEIS/FEIR, which has been updated with mode split percentage for each of the scenarios. The assumptions for these splits are based on the design of

the facility. The Project design balances berth locations, container yard space, on-dock rail, and vehicular access. Each of these elements has been maximized to ensure that cargo efficiently moves to and from vessels with minimum delays to trucks, trains, and ships.

Riverside's assertion that the Draft EIR was somehow misleading in not disclosing that the rail cars referred to in the EIR were 300 feet in length is wrong. The term "rail car" is defined as five articulated bare tables, and the average length of that five articulated bare table rail car is 300 feet. Further, the Draft EIR expressly set forth that the Project's trains would typically be 7,500 feet in length and consist of 25 rail cars, which computes to each rail car being 300 feet in length.

As for the two programs referenced by Riverside that were recently adopted to increase rail-hauled cargo, Riverside misreads the cited material. The description of the programs makes clear that the programs are designed not to add long-term train trips for this Project, but are Port-wide, short-term programs to try to regain some of the Port's business that has been lost over the past year due to the current global recession. The programs, which provide for lower fees on rail-connected cargo containers and monetary payments for new rail-hauled cargo, are only one-year in length. Cargo volume declined at the Port by 11 percent in 2008, and traffic in December 2008 and January 2009 declined even more precipitously, about 25 percent, and it is hoped that these programs will help to retain the Port's trade-related jobs. The programs focus on rail-hauled cargo because such cargo is not directly related to the local region's consumers or manufacturers, and thus could be shipped through other ports. These short-term programs designed to regain lost business are thus immaterial to the long-term rail assumptions of this Project.

Moreover, the EIR rail trip calculations account for the Ports' actions to actively seek to increase the proportion of cargo transported by rail, including projects such as the China Shipping and TraPac Projects, both which include on-dock rail facilities. A quantitative cumulative analysis was undertaken to confirm that there would be no cumulative impacts using the field survey prepared by the Port of Los Angeles in connection with its China Shipping analysis and applying Riverside's long-term train counts of 24-hour periods, which are discussed in the response to RCTC-2 in the Final EIS/EIR. The cumulative impacts would result from additional trains added from the TraPac, China Shipping, and Middle Harbor projects. The first two projects did not include specific estimates of number of trains, but provided detailed estimates of TEUs. For TraPac, the estimated additional rail freight is 2,304 TEUs per day, which translates to 4 additional trains per day. For China Shipping, the estimated additional rail freight is 128,741 TEUs per month, with 35 percent expected to be on-dock rail. Those projections translate to 3 additional trains per day. Therefore, the cumulative impact is based on 12 trains/day (4 from TraPac, 3 from China Shipping, and 5 from Middle Harbor). For most hours of the day, there would only be one additional train, but even at four additional trains in the peak hour, the average delay would be 24 seconds per vehicle, which is below the 55 second threshold of significance.

City of Riverside Appeal Issue 7:

The EIR contains critical factual errors. The harbor department has stated that "rail-hauled cargo makes up about half of the containers that pass through the Port." Working backwards from the Final EIR conclusions results in a different value of 31% by train. Yet the Draft EIR presumed

that 24% of the cargo throughput by rail. Those conflict by up to 100%. Another error is that the EIR assumes that 25% of the eastbound trains will use the Union Pacific line through San Bernardino, instead of traveling through Riverside. UP operates two (2) east/west lines, with the eastbound trains travelling through Riverside. The Port's rail impact conclusions cannot be correct if they are based on errors as fundamental as where the trains travel. Riverside's comments made clear that the UP trains travel through Riverside.

Harbor Department Response to Issue 7:

The Port website's statement that "about half" of the containers that pass through the Port are rail-hauled cargo refers to overall Port operations. The "about half" statement was never made with regard to this Project, and thus it is immaterial to the Project and the EIR. In light of the physical constraints of the site and the need to provide sufficient container yard capacity to handle the projected cargo throughput, the proposed project maximizes on-dock rail capacity. The proposed re-use of this site has been carefully planned to ensure adequate space for operations, storage, and trackage.

The Final EIR makes clear that the proposed expanded Pier F intermodal railyard would handle approximately 26.3 percent (872,480 TEUs per year) of the terminal's expected throughput. See response to issue 6 above regarding the calculations and assumptions regarding the Project's estimated train trips.

As for Riverside's "working backward" to arrive at the 31 percent figure that it references, Riverside's calculations are in error because of wrong assumptions and omitted factors. For example, Riverside assumes 4 TEUs per rail car for a 125 car train (or 20 TEUs per car for a 25 car train as defined in the EIR). As the EIR's formula discloses, there would be only 3.634 TEUs per car for a 125 car train (or 18.17 TEUs per car for the 25 car train). Moreover, approximately 13 percent of the bare tables are empty, which further impacts the total percentage of cargo throughput that the Project will move by rail. Riverside does not account for this factor in its calculation.

The statements in the EIR that 75 percent of the Ports' trains are assumed to go eastbound and 25 percent of the trains are assumed to go northbound through San Bernardino need to be clarified. Trains run into and out of the Port. The assumptions are that 75 percent of the Ports' trains are **to or from** the east and 25 percent of the trains are **to or from** the north line through San Bernardino. This correction clarifies that the EIR's assumptions about rail usage are accurate.

City of Riverside Appeal Issue 8:

The EIR also blames Riverside for being in the Port's way. As set forth in the State CEQA Guidelines, the baseline for CEQA analysis is the conditions as they exist at the time of analysis, not before a city or region experiences growth.

Harbor Department Response to Issue 8:

The EIR does not use the wrong baseline or blame Riverside for being in the Port's way; it simply notes that many of the congestion problems of which Riverside complains are existing conditions that are the result of land use decisions made by Riverside in the past, and that the Project is not obligated to mitigate existing conditions.

The EIR does not ignore the existing conditions; it merely concludes that the addition of a mere three trains a day traveling through Riverside in 2020 will result in an additional 5 to 6 seconds/vehicle per train of delay, which is not a significant impact, at a project level or cumulatively. There is no evidence in the record that rail lines are at or near capacity; indeed, the record reflects that the Alameda Corridor has a daily capacity of 150 trains, and currently the corridor carries between 50 and 65 trains per day.

Finally, the assertion by Riverside that Project-related rail traffic would cause significant environmental impacts in Riverside is inconsistent with the conclusions of the Final EIR for Riverside's General Plan (City of Riverside 2007). In that EIR, Riverside acknowledged that traffic delays at the at-grade rail crossings would occur under the Plan. However, Riverside did not identify those delays as being potentially significant environmental impacts. Instead, Riverside decided that no further analysis was required in the EIR because it had already studied the impacts of railroad crossings and had already identified a priority list of grade separation projects. Although Riverside acknowledged the role of expected growth of Riverside in contributing to at-grade rail crossing delays, Riverside did not revise its EIR to provide the requested detailed traffic impact delay analysis at the at-grade crossings. Instead, Riverside declined to make any change to its conclusion that at-grade rail crossings in Riverside would not be significantly impacted or require mitigation.

City of Riverside Appeal Issue 9:

The EIR claims that adequate rail capacity remains, but also admits to limited trackage and increasing demand. This is an irreconcilable conflict.

Harbor Department Response to Issue 9:

There is no irreconcilable conflict. As stated, the record reflects that the Alameda Corridor has a daily capacity of 150 trains, and currently the corridor carries between 50 and 65 trains per day. The record also reflects that despite the lack of any demonstrated significant impact of the Ports' traffic on the Inland Empire jurisdictions, the POLB and POLA have supported the region's pursuit of the Prop 1B TCIF for grade separations, and the County and City of Riverside combined will receive over $150 million of TCIF for 12 grade separation projects because of these efforts. The actions of the Ports merely recognize that resources are not unlimited, and that current facilities will not be sufficient forever. Thus, the EIR acknowledged that because current rail routes through Riverside County may someday have to be expanded and demand will no doubt increase, it is appropriate to study future alterations to rail freight travel. The fact that SCAG's 2005 Inland Empire Rail Study (available at: www.metro.net/projects studies/mcgmap/action_plan/), shows the preferred future rail routes for freight traffic projected to be the UP Alhambra and UP San Gabriel lines going through San Bernardino County instead

of Riverside County, is further justification that the Project need not mitigate impacts in Riverside. Also, as stated in the Draft EIS/EIR, should the California Department of Transportation (Caltrans) develop a plan for improving freight corridors and a related fair share calculation, the Port would participate as required.

Moreover. response to comment CR-9 in the Final EIR specifically states that according to the Multi-County Goods Movement Action Plan, which includes Riverside County, the railroad capacity in 2025 is 174 daily trains. Existing daily trains range from 110 to 140. Therefore, the Final EIR correctly concluded that trains generated by the Project and cumulative projects (a total of 12 per day) will not exceed the mainline capacity.

City of Riverside Appeal Issue 10:

The Harbor Commission did not provide the ten (10) days after written responses to comments and certification of the EIR required by CEQA.

Harbor Department Response to Issue 10:

The Harbor Department is in receipt of documentation showing that the RTCs were delivered to Riverside on April 2, 2009, rather than April 3rd. In any event, the Board received and considered Riverside's comments prior to making its decision on the Project.

Respectfully submitted,

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