



The Port of Long Beach

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September 14, 2004

THE HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

SUBJECT: Appeal of Certification of Environmental Impact Report for Pier J South Terminal Development

DISCUSSION

The Harbor Department respectfully requests that the City Council uphold the Board of Harbor Commissioner's certification of the Final Environmental Impact Report for the Pier J South Terminal Development ("FEIR") and request that the City Attorneys' office prepare a resolution for the City Council's consideration at the September 21, 2004 City Council meeting.

On August 2, 2004, the Harbor Commission adopted Resolution No. HD-2207 (Attachment 1 to this letter), wherein it certified the FEIR as being in full compliance with the California Environmental Quality Act ("CEQA"). During the Board meeting, the commissioners carefully considered the testimony of the appellants herein as well as the testimony of Harbor Department staff and the public. The commissioners then asked questions, and the Harbor Department staff provided detailed, technical responses to all questions. At the conclusion of the meeting, the Harbor Commissioners unanimously voted to certify the FEIR; a copy of the transcript from that meeting is Attachment 2.

The project site was formerly two smaller terminals that were combined into one operation a couple of years ago, consistent with today's need for fewer, larger terminals. There is a neck of land between the two former terminals that forms a bottleneck impeding the movement of cargo by terminal equipment, trucks, and trains. The bottleneck costs the terminal time, and thus money, and the excessive idling and traffic congestion caused by the constriction also result in air emissions and, therefore, impacts to air quality.

The project's landfills would create a more rectangular land area that would allow re-configuration of the terminal to route the rail along the perimeter of the terminal and to permit free movement of equipment and trucks throughout the terminal, thereby moving cargo more efficiently. Construction and operation of the expanded terminal would create employment opportunities, and the project permits the Harbor Department to impose environmental controls on the terminals that would not otherwise be possible.

The certification of the FEIR was the culmination of an environmental review process that began over four years ago, on June 23, 2000, when the Harbor Department issued a Notice of Preparation for the EIR. From the very beginning this project involved extensive public input. A joint Harbor Department/Army Corps of Engineers public scoping meeting for the project was held on February 7, 2001. The Board and the Corps released a draft EIS/EIR on June 11, 2001,



HONORABLE MAYOR AND CITY COUNCIL
September 14, 2004
Page 2

and held a public hearing on July 16, 2001. Because of issues of concern raised in the comment letters, a second draft EIS/EIR which included an Air Toxics Health Risk Assessment, was prepared and released for public review on December 16, 2002. The Corps and the Port conducted two more public hearings on January 27, 2003, and, at the request of the public, extended the public review period from February 3 to February 27, 2003. In response to questions and concerns of the public and of other agencies, the draft EIR was again revised, and on August 18, 2003, the Board and the Corps released a second revised document for public review. The Corps and the Port conducted two more public hearings on September 22, 2003, and the public comment period ended on October 3, 2003.

Twenty-seven comment letters from 19 agencies and individuals were received during the last two public comment periods. The comments addressed the issues of air toxics and air quality, traffic and transportation infrastructure, wetland mitigation, CEQA processes, biology, noise, aesthetics, sediment quality, ballast water, storm water, project baseline, local and national economy, light and glare, public health and safety, seismic safety, flood elevations and tsunamis, oil wells, project alternatives, related projects, and cumulative impacts. Detailed responses to all of the comments were mailed to each of the commentors on July 21, 2004, and have been included in the FEIR, which was previously transmitted by the City Attorney's office for the Council's review and consideration.

Port staff has worked extensively with URS, the EIR consultant, and with their highly qualified subconsultants, including Meyer, Mohaddes Associates, traffic consultants, to fully respond to all of the comments and concerns raised. Both staff and the consultants have carefully reviewed all of the materials and have concluded that the responses are complete and accurate, and that the Final EIR fully complies with all legal requirements, including CEQA, the State CEQA Guidelines, and local CEQA guidelines.

After the close of business on Friday, July 30, 2004 (the business day before the August 2, 2004 Board meeting) appellants Natural Resources Defense Council (NRDC) and Coalition for Clean Air submitted a comment letter (Attachment 3) that sets forth, among other objections, the grounds that the appellants have raised as a basis for reversal of the Board's EIR certification. While Port staff did not have sufficient time to provide written responses to those comments to the Harbor Commission, Port staff did provide a response as part of the testimony before the Board (Attachment 2). Port staff has now had an opportunity to review the comments in detail with its EIR consultants and subconsultants, and has provided a detailed written response to the letter (Attachment 4) for your review. A comment letter was also received after the close of business on July 30 from the South Coast Air Quality Management District (SCAQMD) (Attachment 5), and staff has responded to that letter (Attachment 6). Finally, a letter was received from Coalition for a Safe Environment after the certification hearing. That letter and staff's response are attached (Attachments 7 and 8, respectively).

I would particularly request that the Council review Attachment 4 because it explains, in detail, why the three written objections raised by the appellants in their appeal are groundless. The three issues raised in the appeal are highly technical, but the following is a brief summary of why they are without merit:

Issue 1: Baseline for Analysis

NRDC alleges that the analysis in the FEIR inappropriately compares environmental impacts of the Project with conditions that would exist in 2015, which is when the Project would become fully operational. NRDC asserts that the FEIR should instead analyze impacts under a scenario in which the fully constructed project is inserted into the environment that existed on the date the Notice of Preparation was originally issued (i.e., June 2000). This assertion is incorrect for several reasons.

First, NRDC overstates the FEIR's use of a 2015 baseline. Except with regard to the operational traffic impacts under "Ground Transportation" (which did utilize 2007, 2011 and 2015 baselines, corresponding with full build-out of the 52-Acre, the 75-Acre and the 115-Acre alternatives), the FEIR measures the project's impacts either against existing (year 2000) conditions or in the manner specifically prescribed for such impacts. For example, air quality impacts are first examined against the backdrop of the existing environmental setting, but are ultimately measured against thresholds of significance established by SCAQMD for project construction and operation. In all instances, the assessments of the impacts of the proposed project alternatives involve the alternative's relationship to the existing conditions. Certain operational traffic impacts are also analyzed against pre-2015 baseline conditions.

CEQA does not establish an inflexible rule as to what physical conditions must be used as the baseline for a project; rather, CEQA simply seeks to ensure that project impacts are not underestimated. Although the existing physical conditions at the time the Notice of Preparation is published "normally" should be used as the baseline for determining whether impacts are significant (14 Cal. Code Regs. § 15125(a)), the CEQA Guidelines recognize that lead agencies may elect to formulate a different baseline in appropriate situations (*Save Our Peninsula Comm. v. Monterey County* (2001) 87 Cal.App.4th 99, 126; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1277.) If a lead agency knows that various environmental conditions will either improve or degrade before a project is constructed, the lead agency may take the changing environment into account in setting the baseline for its impact analysis (*Napa Citizens for Honest Government v. Napa County* (2001) 91 Cal.App.4th 342, 363). Thus, it was appropriate to use a 2015 baseline with regard to operational traffic impacts of the 115-ac alternative because that is when the Project is projected to be fully operational, and that is the condition that allows evaluation of a "worst case" scenario.

In addition, Attachment 9 is a letter from Gary Hamrick of Meyer Mohaddes, the traffic consultant who prepared the traffic study for the project. Mr. Hamrick, who has authored hundreds of EIR traffic analyses, explains that the methodology utilized for the traffic analysis, including the use of a future baseline, is proper. Indeed, as Mr. Hamrick explains, because many of the intersections and freeway segments studies are in the City of Los Angeles, he was required under the Los Angeles Traffic Study Guidelines/Thresholds to define the project's impacts by comparing the cumulative base with the cumulative base plus the project.

In any event, the FEIR provides all of the information necessary for the public and the decision makers to compare the operational traffic impacts of the Project with the year 2000 baseline. The FEIR contains an analysis of the existing conditions at the 12 Study Intersections and Highway Links (pages 47-48 of Responses to "A" Comments in the FEIR), which allows for a comparison of existing conditions to the full build-out project condition plus the cumulative traffic. The FEIR shows how these 12 study sites operated in the year 2000 and how they will perform in 2015 (for the approved project alternative), the first full year of operation, both with the Project and without the Project.

With regard to calculations of air emissions, it would be nonsensical to suggest that calendar year 2000 be used in the Emission FACTors ("EMFAC") models in order to create a totally hypothetical scenario where the project was fully operational in that year. This would also violate the instructions in the California Air Resources Board's (CARB's) User's Guide for EMFAC 2001/EMFAC 2002. Using that scenario for a project that would not be fully operational until 2015 (and would not even begin the first phase of operation until 2007) would produce results based upon vehicle age mixes that are off by 15 years. It would be unscientific to conduct modeling that would not reflect the true conditions of the project alternatives, namely, that the first operations year of the 52-Acre Alternative would be 2007, of the 75-Acre Alternative, 2011, and of the 115-Acre Alternative, 2015. Using 2000 as the base year for air quality purposes would also be at odds with SCAQMD's instructions regarding EMFAC. SCAQMD instructs, "Make sure EMFAC is run for a calendar year and county/air basis representative of the proposed project" (SCAQMD, Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis, Aug. 2003, p. 4).

As noted in the FEIR (p. 3-12), using the first year of full operations is conservative. For example, for the 115-Acre Alternative, if the calendar year 2016 was used, the resulting emissions could be lower. This is because although cargo volumes might increase, another year of older, more polluting vehicles (1970 models) drop out of the model and a year of newer vehicles (2016 models) is added. Obviously, the terminal, once built, will operate far into the future, and vehicles will continue to improve. By using the first year of full operations to calculate emissions, the FEIR presents a "worst case scenario."

For more complete discussions of this issue Council may wish to review Section I.A. of Attachment 4 and pages 45-51 of the Response to Comments portion of the FEIR.

Issue 2: Priority Toxicants

The appellants allege that the Health Risk Assessment (HRA) prepared for the Project omits toxic air pollutants. The Port's consultants, URS, have completed and updated HRAs for the 115-Acre Project and for the various alternatives. A total of 22 different Toxic Air Contaminants ("TACs") were identified as compounds that would be emitted during project operation. The appellants object because chromium and the criteria pollutants (NOx, SOx, CO, ROG, and PM) were not among the 22 TACs included in the HRA analysis.

As explained on page 2-1 of the HRA contained in the FEIR as Appendix C, the identification of the 22 TACs included in the HRA was done in accordance with SCAQMD's "Risk Assessment Procedures for Rules 1401 and 212" and based upon CARB specification profiles. Chromium is not listed as a carcinogenic or non-carcinogenic chemical by the Office of Environmental Health Hazard Assessment (OEHHA) HRA guidelines, nor does OEHHA, CARB, or SCAQMD recommend including it in health risk assessments, nor was it included as a TAC in the sample HRA that SCAQMD provided to URS as a model. Criteria air pollutants are evaluated separately because they have a different set of significance thresholds in the SCAQMD Handbook. The criteria pollutants were not recommended for inclusion in risk assessments by OEHHA, CARB, or SCAQMD. The HRA that SCAQMD provided to URS as a model did not include criteria pollutants as TAC. Neither chromium nor the criteria pollutants are included in CARB's Consolidated Table of OEHHA/ARB Approved Risk Assessment Health Values. In summary, it would be neither possible nor appropriate to include such compounds in the HRA, and none of the agencies with jurisdiction over air quality issues requested that the Harbor Department do so.

Issue 3: Alleged Failure to Mitigate Adverse Impacts

The final ground for appeal listed in the appellants' appeal form was that the mitigation of impacts was inadequate. In their last-minute submittal to the Harbor Board, the appellants complained that the FEIR fails to adequately mitigate adverse impacts largely on the basis that the FEIR uses an incorrect baseline. As explained above, that assumption is incorrect. With regard to specific additional measures which were found to be infeasible, please see the full explanation in Attachment 4, Section II. In particular, Section II.A. explains why the cold ironing mitigation measure imposed on the project is proper, and why it is not feasible to retrofit the existing berths at Pier J for cold ironing.

TIMING CONSIDERATIONS

City Council action on this matter is requested on September 14, 2004, to respond to this appeal in a timely manner.

FISCAL CONSIDERATIONS

If the staff recommendation is supported there should be no additional fiscal impact. Should the City Council sustain the appeal, then the city will incur substantial additional costs to prepare and circulate another draft EIR and final EIR.

HONORABLE MAYOR AND CITY COUNCIL
September 14, 2004
Page 6

IT IS RECOMMENDED THAT THE CITY COUNCIL:

Receive supporting documentation into the record, conclude the hearing, deny the appeal, sustain the action of the Board of Harbor Commissioners, and request that the City Attorney prepare a resolution affirming the FEIR certification for presentation at the City Council's meeting on September 21, 2004.

Respectfully submitted,



RICHARD D. STEINKE
EXECUTIVE DIRECTOR, HARBOR DEPARTMENT

Attachments:

1. Harbor Commission Resolution No. HD-2207
2. Transcript of Aug. 2, 2004 Harbor Board Meeting
3. Letter dated July 30, 2004, from NRDC to Port
4. Letter dated Sept. 9, 2004 from Port to NRDC
5. Letter dated July 30, 2004, from SCAQMD to Port
6. Letter dated Sept. 9, 2004 from Port to SCAMD
7. Letter dated Aug. 2, 2004, from Coalition for a Safe Environment to Port.
8. Letter dated Sept. 9, 2004, from Port to Coalition for a Safe Environment
9. Letter from Meyer Mohaddes re Traffic Analysis and Baseline