



# Memorandum

September 28, 2010

THE HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

The Harbor Department (Port) respectfully requests that the City Council: (1) receive the supporting documentation into the record and conduct a hearing on the appeal filed by the Coalition for a Safe Environment and the Long Beach Coalition for a Safe Environment (collectively, "Coalition") of the Board of Harbor Commissioners' certification of the Final Environmental Impact Report (FEIR) for the Gerald Desmond Bridge Replacement Project (Project), which appeal was filed pursuant to Long Beach Municipal Code section 21.21.507; and (2) deny the appeal and uphold the Board of Harbor Commissioners' certification of the FEIR for the Project by approving the attached City Council resolution (Attachment 1). The FEIR was transmitted to the City Council under separate cover on July 29, 2010. The FEIR is also available on Legistar and can be provided on a disk if any Member of the City Council prefers to review it in that manner. A copy of the disk can be obtained from the City Clerk Department.

## DISCUSSION

### A. The Board of Harbor Commissioners Action Being Appealed.

On August 9, 2010, the Harbor Commission unanimously adopted Resolution No. HD-2576 (Attachment 3), wherein it certified the FEIR as fully compliant with the California Environmental Quality Act (CEQA) (Attachment 2). The Commission took that action at the conclusion of a public hearing during which the Harbor Department Staff gave an extensive presentation on the Project and the FEIR (Attachment 4), and then answered a variety of questions regarding air quality, the San Pedro Bay Ports Clean Air Action Plan (CAAP), greenhouse gas emissions (GHG), traffic issues and impacts, bridge configuration, seismic issues, and the public review process. Following the Staff presentation, a total of 22 public speakers presented testimony during the public input portion of the hearing; 17 spoke in favor of the Project, four spoke in opposition to at least some aspect of the Project or asked that the matter be continued, and one did not object to the Project, but encouraged the Port to move forward expeditiously with its school, healthcare, and GHG grant programs. The Project will fund those programs in the amount of \$2.4 million. During the hearing, the Commissioners asked numerous questions and discussed key issues. A copy of the full transcript of that meeting is Attachment 5 to this report. The Commissioners' questions and their deliberations are set forth on pages 60-63 and 103-127 of the transcript.

B. Summary of the Gerald Desmond Bridge Replacement Project.

The existing Gerald Desmond Bridge was constructed in 1968. The bridge is a steel tied-arch truss structure, in which the horizontal forces of the arch are borne by the bridge deck, rather than the ground or the bridge foundations. It provides four through travel lanes (i.e., two in each direction). As the fifth largest seaport complex in the world, the Long Beach and Los Angeles ports handle more than 30% of U.S. waterborne container cargo. The bridge is a vital link in port-area goods movement infrastructure because it is the westerly extension of State Route 710 (SR 710). The SR 710 is the primary access route for the ports and carries approximately 15% of all U.S. port-related container traffic. The bridge also provides an important transportation link for non-port traffic between the City of Long Beach and the City of Los Angeles.

According to a 2007 L.A. County Department of Public Works Bridge Inspection Report, the bridge has a sufficiency rating of 43. Bridges that are found to be structurally deficient or functionally obsolete, as defined by the Federal Highway Administration (FHWA), with a sufficiency rating of less than 80 are eligible for federal funding for rehabilitation. Bridges are eligible for replacement when they fall below a rating of 50. The existing bridge is physically deteriorated. One of the major physical deficiencies of the bridge is that the concrete is spalling off the bridge in many areas. Pieces of concrete weighing several pounds have fallen from the bridge, requiring the Harbor Department to install netting underneath the bridge to protect facilities, watercraft, and workers below. In addition to the physical deficiencies, the existing bridge was not designed to handle the current traffic volumes in the area, let alone the volumes that are forecasted to use the bridge in the future. Nor was the bridge designed to allow the safe passage beneath of existing and new-generation container ships that are expected to call at the Port in the future. As a result, the Harbor Department has determined that there is a need to provide a structurally sound bridge linking Terminal Island and Long Beach/SR 710 over the next hundred years and improve both traffic operations and vessel safety. The Project will generate \$2.8 billion in economic activity in Southern California, and will create an average of 4,000 construction jobs a year for 5 years.

C. Overview of the EIR and Public Input Process.

The EIR for this Project has undergone two rounds of public review. In 2002, the Harbor Department, in cooperation with the California Department of Transportation (Caltrans) issued a Notice of Preparation (NOP) to prepare a joint environmental study that would satisfy both CEQA and the National Environmental Policy Act (NEPA). The Harbor Department determined that it was appropriate to prepare an EIR pursuant to CEQA. Because of certain differences between CEQA and NEPA, Caltrans determined that it was appropriate to prepare an Environmental Assessment (EA) rather than an Environmental Impact Statement.

Two scoping meetings for the Project were held in November 2002. During the meetings, Caltrans and the Harbor Department received suggestions as to the scope of the analysis. The Board and Caltrans released the first draft EIR/EA in June 2004, and held two public hearings in July 2004. The Appellants did not comment on the first draft EIR/EA.

Based on the comments received on the first draft EIR/EA and the proposal for a new tolling alternative, the Harbor Department and Caltrans issued a revised NOP in December 2005 describing a proposed tolling alternative. Also, in 2005, the Port started developing a standard set of protocols that every environmental document would follow. During this time, preparation of all environmental documents was suspended. In February 2010, a revised draft EIR/EA was circulated for an additional public review period. Two public hearings were held on the revised draft EIR/EA and a total of 35 people spoke. In addition, 49 agencies/individuals commented on the revised draft EIR/EA during the comment period including three elected officials, one state government agency, two regional government agencies, two local government agencies, four community groups including appellants, 15 industry and business groups, and 22 individuals. Their individual comments are included and fully addressed in the FEIR Response to Comments Section of Chapter 4.

At the hearing before the Board of Harbor Commissioners on August 9, 2010, a total of 22 members of the public spoke on the item.

D. Summary of EIR Analysis and Conclusions Regarding the Project Impacts.

1. Description of the Project.

The Alternative selected by the Board involves the construction of a new bridge located approximately 140 feet north of the existing bridge. This bridge would have a vertical profile over the Back Channel of 200 feet above the mean high water level (MHWL). The roadway grades would be 5% in both directions. The new bridge would be a cable-stayed design. The total bridge length would be 2,000 feet. The bridge cross section and approaches to the new bridge would include the following design features:

- Three 12-foot-wide lanes in each direction
- A 10-foot-wide outside shoulder in each direction
- A 10- to 12-foot-wide inside shoulder in each direction
- A 32-inch high barrier along the outside of each shoulder
- Reconstruction of the existing Horseshoe interchange ramp connectors on Terminal Island
- Reconstruction of the existing connectors to SR 710 and the two ramp connections to Pico Avenue

It also would include demolition of the existing bridge and relocation of certain electric transmission lines that cross the Cerritos Channel north of the existing bridge site.

In Section 4.0 of their CEQA findings, the Commissioners made extensive factual findings regarding various alternatives that had been considered in the EIR. (Attachment 3, Exhibit A, pages 30-38.) That analysis explains in detail why the North-side Alignment Alternative was selected as the only feasible alternative.

## 2. Summary of Potential Unavoidable Environmental Impacts

Although most potentially significant environmental impacts of the Project will be reduced to a level of insignificance through project design features and the imposition of mitigation measures, some Project impacts are considered significant and unavoidable under CEQA even after they have been lessened to the extent feasible through design features or mitigation measures. These unavoidable impacts were fully set forth in the FEIR, and are as follows:

### a. Air Quality

The Project would have significant air quality impacts associated with construction activities that would result in temporary short-term exceedance of the SCAQMD regional and local daily significance threshold for NO<sub>x</sub>. In addition, operational activities would result in NO<sub>x</sub> emissions exceeding the SCAQMD daily operational emission threshold in the opening year 2015. Exceedance of SCAQMD NO<sub>x</sub> construction and operational thresholds would also result in cumulative air quality impacts.

### b. Traffic and Circulation

Construction-related detour traffic would result in short-term, temporary increases in auto and truck traffic at certain study intersections:

- Pico Avenue and Pier B Street/9th Street;
- Pico Avenue and Pier D Street;
- Westbound Ocean Boulevard between the Horseshoe Ramps and the Terminal Island Freeway; and
- Ocean Boulevard and Terminal Island Interchange.

In addition, the Project is anticipated to reduce congestion, and therefore, attract traffic from parallel, more congested corridors. The redistribution of traffic caused by the Project could impact the intersection of Navy Way/Seaside Avenue. This impact can be mitigated to less than significant if mitigation measures identified in the FEIR are implemented by the City of Los Angeles. If those measures are not implemented, then this impact is potentially significant under CEQA.

c. Climate Change

The Project results in increases in Greenhouse Gas (GHG) emissions that would contribute to regional cumulative GHG increases.

d. Cumulative Impacts

The Project could result in cumulatively considerable construction and operational air impacts and climate change impacts even after all feasible mitigation measures have been applied to the Project. Therefore, the Project provides funding in the total amount of \$2.4 million to the three programs established by the Board of Harbor Commissioners: the *Schools and Related Sites Guidelines for the Port of Long Beach Grant Programs* (Schools Program), the *Healthcare and Seniors Facility Program Guidelines for the Port of Long Beach Grant Programs* (Healthcare Program), and the *Greenhouse Gas Emission Reduction Program* (GHG Program). The contributions to these grant programs are intended to fund projects or activities that could provide additional emission or exposure reductions in the communities surrounding the Port beyond what can be achieved through incorporation of all feasible mitigation measures.

The Schools Program and the Healthcare Program were developed in an effort to mitigate potential cumulative air quality and noise impacts of projects in the San Pedro Bay Ports' area (including marine terminal expansions/modernizations for the ports of Long Beach and Los Angeles and related transportation projects). The programs are specifically aimed at sensitive populations (i.e., school-age children, senior citizens, and persons with specific respiratory illnesses), which have been identified by state and local air agencies as particularly sensitive to air pollutants. The Schools Program, which is focused on school-age children, identifies eligible applicants as schools, preschools, and daycare centers where children spend a significant portion of their waking hours. The Healthcare Program is focused on specific prevention, education, and outreach programs, as well as direct mitigation projects for hospitals, healthcare facilities, retirement homes, senior centers, and convalescent homes, in areas near the ports determined to be most affected by cumulative air impacts. Projects funded by these two programs are intended to supplement source reduction measures in the near term when cumulative impacts are predicted to be highest. Implementation of Mitigation Measure CEQA (AQ)-1 (Cumulative Air Quality Impact Reduction Program) will ensure the Project's participation in the Schools Program and the Healthcare Program. This Project was required to fund each program in the amount of \$1 million.

To help address the cumulative GHG impacts of the Project, this Project was required to provide funding through Mitigation Measure CEQA (GHG)-1 (GHG Emission Reduction Program) in the amount of \$400,000. This money will be used to pay for measures pursuant to the GHG Program, which include projects such as generation of green power from renewable energy sources, goods movement efficiency measures, cool roofs to reduce building cooling loads and the urban heat island effect, building

upgrades for operational efficiency, tree planting for biological sequestration of CO<sub>2</sub>, energy-saving lighting, and purchase of renewable energy certificates (RECs).

The first grants in the Schools Program were approved by the Board of Harbor Commissioners on September 13, 2010. A total of 73 grants were approved totaling \$4.7 million. All eligible applicants received their requested grant amounts, leaving approximately \$300,000 in the Schools Program fund for future awards.

E. Summary of Appeal and the Harbor Department's Response to the Appeal.

One appeal was filed with regard to the Project FEIR. It was submitted jointly by the Coalition For a Safe Environment and the Long Beach Coalition For A Safe Environment (collectively referred to as "Coalition.") under the signature of Mr. Jesse Marquez. (See Attachment 6). Nine of the 20 grounds for appeal listed by Mr. Marquez have no relationship to the sole issue before the City Council, namely, the propriety of the Harbor Commissioners' certification of the FEIR. As to the 11 grounds that arguably have some bearing on the certification of the FEIR, a summary of why each ground has no merit is set forth below. The Harbor Department has worked with its environmental consultant and legal counsel to prepare a point-by-point response to each specific item raised, including those that have no relevance to the certification of the FEIR. The detailed response to all grounds identified in the appeal is submitted as Attachment 7, and a summary of the issues related to the FEIR is set forth below.

Because none of the grounds for appeal have merit, the Harbor Department respectfully requests that the City Council select option (1), *i.e.*, deny the appeal and affirm the Harbor Commission's certification of the FEIR by approving the resolution contained in Attachment 1.

**Ground #1 – Board of Harbor Commissioners Failure to Perform Due Diligence**

The Board of Harbor Commissioners and the public were provided ample time to review the EIR and its contents. The Commissioners were provided the first draft of the DEIR in 2002. They received the revised draft EIR on February 4, 2010, and received the FEIR on July 29, 2010. The Commissioners had ample opportunity to ask questions before and during the August 9, 2010 hearing. Their questions and comments reflect that they did closely study the FEIR and all of the written comments on the EIR submitted by the public. (See Attachment 5, page 61-63 and 103-126.) The Commissioners asked about zero emission systems and the progress being made on those efforts; the procedures that were followed during the public review of the DEIR and FEIR; public safety; terrorism assessments; the progress of the Schools, GHG, and Healthcare Programs; the aesthetics of the bridge; and GHG, as well as other issues.

The Board certified that its members had reviewed and considered the FEIR before they approved the Project and that the FEIR reflected the Commissioners' independent judgment. (Attachment 3, page 3, line 27 to page 4, line 4, and § 1 on pages 4-5.) The

Commissioners devoted a substantial amount of time to reviewing the DEIR and the FEIR. Commissioner Wise commented on the thoroughness of the FEIR and noted spending “considerable time reviewing the document...” (Attachment 5, p. 110.) Indeed, Chairman Sramek explained that because the DEIR was revised and recirculated, it was “thorough,” noting that the Harbor Department and its consultants have “gone all out to really make sure...everything is included in there...” (Attachment 5, page. 119, line 22.)

The Appellants criticize the Commissioners for their reliance on the Harbor Department Staff. As explained immediately above, the Commissioners independently reviewed the FEIR. However, it is totally appropriate in the context of assessing an EIR for decisionmakers to rely upon their staff. Court cases have held that an agency may rely upon the opinion of its staff in reaching decisions, and the opinion of staff has been recognized as constituting substantial evidence. (See e.g., *Browning-Ferris Industries v. City Council of the City of San Jose* (1986) 181 Cal.App.3d 852, 866.)

In addition, the Coalition never raised this issue in front of the Harbor Commission prior to its certification of the FEIR; thus, the issue is not a proper basis for appeal pursuant to Long Beach Municipal Code section 21.21.507.E.3, which requires that all grounds of appeal to the City Council had to have been raised in front of the Board.

**Ground #2 – POLB Failure to Allow an Adequate Public Comment Period & Public Participation**

As stated above, this Project went through extensive public review and scrutiny. Two separate Notices of Preparation were issued relating to the EIR. These NOPs called for written comments as to what should be included in the environmental analysis. A total of two “scoping” meetings were held in connection with the NOPs. Two public hearings were held after the original DEIR was issued. Two more public hearings were held when the Revised DEIR was released. The August 9<sup>th</sup> hearing before the Harbor Commission was the seven public hearing on the EIR.

The Revised Draft EIR was circulated for 47 days, longer than the standard review period of 45 days. (Pub. Res. Code § 21091(a).) The Coalition had sufficient time to submit a detailed comment letter that raised some 32 different issues, all of which were fully addressed in the FEIR. (FEIR, pp. 4-50 to 4-62, and 4-226 to 4-242.) The letter did not indicate that the Coalition needed additional time to submit comments and did not object to the 47-day review period. Indeed, the Coalition did not raise this issue until the very day of the certification hearing. (See August 9, 2010 Coalition letter, page 4, Comment 5, contained in Attachment 6.)

Time is of the essence with this project. As was explained in response to other suggestions of postponement, further postponing the project could jeopardize the Project funding. In addition, the Harbor Department would like to take advantage of the current bidding environment to reduce the construction costs.

**Ground # 3 - POLB Failed to Notify the Public & Circulate the EIR/EA Statewide**

The EIR for the Project was processed as required for Projects of "statewide concern." This was done through the "State Clearinghouse" (Clearinghouse). CEQA specifically outlines the Clearinghouse process. The Clearinghouse assigns the EIR a number and is responsible for making sure that all of the appropriate state agencies review the environmental documents. (Pub. Res. Code § 21091.) It tracks the review by the appropriate agencies.

On October 24, 2002, Staff sent the NOP to the Clearinghouse. On October 29, 2002, the Clearinghouse responded with the tracking number assigned to the project (2002101141) and a list of agencies to which the NOP was sent. The first draft EIR/EA, the revised NOP, and the revised draft EIR/EA were also sent to the Clearinghouse for distribution.

In addition, the Coalition never raised this issue prior to the Harbor Commissioner's certification of the FEIR, and, as discussed above, the issue is not a proper basis for appeal pursuant to Long Beach Municipal Code section 21.21.507.E.3.

Grounds #4-8 do not raise a CEQA issue, however, the grounds and Harbor Department responses are in Attachment 7.

**Ground # 9 – POLB Failed to Adequately Identify, Describe, Assess and Disclose All Negative Environmental Justice Community, Protected Classes and Low Income Community Impacts; and Ground #10 – POLB failed to Adequately Identify, Describe, Assess and Disclose All Negative Socio-Economic and Cumulative Public Impacts**

Grounds #9 and #10 are closely related, so they are addressed together.

As an initial matter, these grounds are not relevant to the Harbor Department's CEQA compliance. The environmental justice portion of the EIR/EA was included for purposes of complying with NEPA. CEQA does not address economic or social effects. CEQA Guidelines section 15131(a) states in relevant part: "Economic or social effects of a project shall not be treated as significant effects on the environment."

Since Caltrans was lead agency with regard to the environmental justice portion of the EIR/EA, Caltrans oversaw the preparation of the analysis, and verified consistency with FHWA Region 9 (California) Guidance, "Addressing Environmental Justice in the Environmental Assessment (EA)/Impact Statement." Caltrans is experienced in completing environmental justice analyses for transportation projects and has environmental justice experts both in the District and at Headquarters. The environmental justice analysis was completed in accordance with DOT and FHWA policy, and is consistent with the requirements of Executive Order 12898.



Caltrans, both as a state agency and as a department whose funding is substantially tied to federal programs, has long been a leader in understanding environmental justice, since the inception of President Clinton's Executive Order 12898. Caltrans has had a dedicated full-time environmental justice senior-level statewide coordinator in HQ Division of Planning since 2001, and a designated staff representative in the Division of Environmental Analysis since 1997. In recognizing the importance of local expertise Caltrans HQ designated an environmental justice coordinator in each of the twelve districts' planning units in 2004. Furthermore, the Caltrans Headquarters Division of Civil Rights works closely with its Planning and Environmental staff, as well as the other programs, to not only prohibit discrimination, but actively promote fair treatment and the meaningful involvement of people of all races, cultures, and income levels, including minority and low-income populations. Caltrans was the first California state agency to issue its own Director's Policy on Environmental Justice (2001) and in that same year began an Environmental Justice Grant Program that distributed \$3 million in each 2 year cycle. It has also developed and distributed guidance products for both planners and the public, including *Environmental Justice in Transportation Planning and Investments* (2003) and *Community Primer on Environmental Justice and Transportation Planning* (2009).

The environmental justice analysis included in EIR/EA Section 2.1.3.3 meets all requirements of the Executive Order, FHWA, and DOT environmental justice policy and procedure, and applicable requirements of NEPA. Cumulative effects related to environmental justice were also considered in section 2.4.3.3. As described in the EIR/EA, construction and operation of the Bridge Replacement Alternatives will not directly or indirectly affect residences. The Project would not result in disproportionately high and adverse effects on minority and/or low-income populations, and when considered with other past, present, or reasonably foreseeable projects, it would not result in cumulatively considerable significant or disproportionately high and adverse effects within the study area.

Moreover, as stated above, the Project will contribute substantial funds to the Schools and Healthcare Programs which primarily benefit low income and minority communities in close proximity to the port and the Project.

The Coalition has not identified any specific insufficiency in the analysis. Instead, three of the four lettered paragraphs listed by Coalition in Ground #9 (paragraphs a, b, and c) relate to taxes and the Coalition's objection to the use of federal funding for this project. All of the lettered paragraphs in Ground #10 relate to costs. These are not environmental justice issues.

With regard to the sole environmental issue raised in these two grounds for appeal, Ground #9.d., relating to a disproportionate impact of truck traffic, the FEIR fully addressed that issue at pages 4-236 to 4-237 in response to the Coalition's Comment No. 26. The Project is a transportation infrastructure project that would not directly generate any additional new trips. As discussed in Section 2.1.5 and 2.1.3.3.3 of the

FEIR, operation of the replacement bridge is expected to result in some local redistribution of traffic as Port and regional traffic modify travel paths to take advantage of the congestion-relief benefits of the Project. This redistribution would most likely occur from parallel roadways north of the ports, such as Anaheim Street, Pacific Coast Highway, and Willow Street. Some trips that would otherwise seek local street routes would use the new bridge, thereby acting to improve local circulation and reduce port-related traffic in the referenced communities. Port transportation demand is generated at the terminals; the Project would have no effect on the origin of goods that pass through the Port, the destination of those goods, or the demand for goods.

**Ground # 11 – POLB Failed to Adequately Identify, Describe, Assess and Disclose All Negative Port Drayage Truck and Commuter Vehicle Traffic; and Ground #12 – POLB Failed to Adequately Identify, Describe, Assess and Disclose All Negative Port Drayage Truck and Commuter Vehicle Public Impacts**

Grounds #11 and #12 are closely related, so they are addressed together.

As of the CEQA baseline year (2005), 25% of the traffic on the bridge was port truck traffic, which includes a mix of trucks destined for intermodal railyards, warehouses, distribution centers, factories, etc. throughout the region. The remaining traffic consists of commuters, domestic delivery trucks, transit buses, visitors, etc. This would include commuters and visitors traveling to and from the Port. This data is contained in the travel demand model that was used to analyze the Project's traffic impacts. A detailed explanation of the traffic impact analysis methodology is contained in Appendix G of the FEIR.

As stated in the FEIR, approximately 25 percent of the traffic crossing over the Gerald Desmond Bridge in 2005 consisted of port trucks. This information is based on the trip tables contained in the Southern California Association of Governments (SCAG) model, which is the basis for the traffic impact analysis conducted for the Project. More specifically, the bridge trips in 2005 consisted of approximately 15% port autos and 60 percent non-port traffic. The travel demand model, which is based on the regional travel demand model, projects that non-port traffic will increase in the future from 35,818 to 49,345 trips per day over the bridge (see Appendix G in the FEIR for details about the model assumptions). This traffic data is used in the FEIR to analyze related impacts, such as air quality impacts. The FEIR analysis of the direct and indirect impacts of truck and other traffic is comprehensive and the Coalition does not cite a single specific instance of this analysis falling short of what CEQA requires.

Ground #13 does not raise a CEQA issue; however, the ground and Harbor Department response are included in Attachment 7.

**Ground #14 – The Final EIR/EA Fails to Comply with CEQA and NEPA and Should Not be Certified as Proposed**

The Harbor Department worked closely with the City Attorney's office and its outside CEQA counsel, Rutan & Tucker, LLP, to ensure that the EIR/EA complied with all legal requirements, including CEQA and NEPA. However, the only issue before the City Council is the CEQA compliance. Caltrans, acting as FHWA's designee, must determine the NEPA compliance.

The first three of the Coalition's points listed under this ground relate to the environmental justice analysis. As explained in response to Grounds #9 and #10, above, the environmental justice analysis is a requirement of NEPA, not CEQA. The analysis set forth in Section 2.1.3.3 meets all of the legal requirements.

The Coalition's fourth point is that the Project fails to include all feasible air pollution controls. To the contrary, as explained in Sections 2.2.5 of the FEIR, all feasible air quality mitigation measures have been incorporated. The Commission made detailed factual findings in Section 3.4.1 of their CEQA findings to support their determination that no other feasible measures are available. (Attachment 3, Exhibit A, pages 20 to 26.) The Coalition has not identified any additional feasible mitigation measures.

The Coalition's final point under Ground #14 relates to zero emissions cargo transportation technologies. Obviously, this Project is not a terminal improvement project. Nonetheless, the ports of Long Beach and Los Angeles have set a goal of minimizing combustion emissions resulting from port operations and are fully committed to achieving that goal. Their CAAP initiatives have led to reduced diesel emissions from ships, harbor craft, on-terminal cargo-handling equipment, and port drayage diesel trucks. In addition, the Clean Trucks Program has replaced the drayage fleet of trucks serving the ports and reduced emissions in 2009 by 73%. Part of that reduction is due the Port of Long Beach's support of alternative technologies like liquefied natural gas-fueled (LNG) trucks. As of July 2010, 8% of all truck trips are made by LNG trucks. The ports are also looking to the next generation of clean trucks through the Technology Advancement Program (TAP). The TAP involves demonstrations projects for electric trucks, hybrid electric trucks, and fuel cell trucks. All of these technologies represent significant financial investment on the part of the ports to move forward clean technologies. However, all of these technologies are dependent upon having a sound bridge to serve as the transportation link between Terminal Island and Long Beach. Non-port traffic is also dependent on having a safe bridge.

In addition to these programs both ports have jointly invested to date over \$1 million to identify promising zero emission container movement systems/conveyance (ZECMS) technologies and investigate their readiness for commercial deployment. In June 2009, the Port of Long Beach (POLB) in conjunction with the Port of Los Angeles (POLA) and the Alameda Corridor Transit Authority (ACTA) issued a Request for Concepts and Solutions (RFCS) for a ZECMS linking the San Pedro Bay Ports to near-dock intermodal rail facilities approximately five miles north. POLB contracted with the Keston Institute for Public Finance and Infrastructure Policy at the University of Southern California to develop a team of experts to evaluate the technical and financial

aspects of the RFCS submittals. The Keston Institute, POLB, POLA, and ACTA reviewed the submitted proposals, interviewed respondents to obtain additional information, and ultimately determined that none of the systems proposed are sufficiently mature to move to a full-scale operational deployment in a port application at this time. Keston concluded that prior to the selection and deployment of any guide-way system, additional testing needs to be carried out in an environment that mimics actual container handling and transportation operations in a port. On August 19, 2010, the POLB Board of Harbor Commissioners concurred with the findings and directed staff to develop an approach, in coordination with POLA and ACTA, for advancement of the ZECMS technology under the CAAP TAP. POLB will continue to support efforts to develop feasible ZECMS systems for Port application consistent with its commitments in the CAAP and POLB Board policies.

Keston noted that none of the systems proposed are sufficiently mature to move to a full-scale operational deployment in a port application at this time. They also noted that commercial financing assumed by some of the respondents may not be readily available for a financially sustainable technology deployment. Keston concluded that prior to the selection and deployment of any guide-way system, additional testing needs to be carried out in an environment that mimics actual container-handling and transportation operations in a port. The Harbor Department will continue to support efforts to develop feasible ZECMS systems for Port application consistent with its commitments in the CAAP and POLB Board policies.

Grounds #15-16 do not raise a CEQA issue, however, the grounds and Harbor Department responses are included in Attachment 7.

**Ground #17 – POLB Claim That it is Not Appropriate to Perform the CFASE Requested Public Health Survey, Establish a Public Health Baseline or Conduct Health Impact Assessment is Not True**

The FEIR was not required to include a Health Impact Assessment (HIA). Instead, it addressed the Project's potential public health impacts by including a Health Risk Assessment (HRA). The HRA was performed following the analytical methods and guidance prescribed by the Office of Environmental Health Hazard Assessment (OEHHA) and the South Coast Air Quality Management District (SCAQMD). The HRA used accepted models based upon a detailed set of technical assumptions and factors. The modeling was applied to a broad study area in which potential residential, occupational, and sensitive receptors were identified. Applying these procedures resulted in findings that cancer risk and hazard indices are all below the established impact significance thresholds for all receptors. The process is described in detail in the FEIR in section 2.2.5.4.

The studies that Coalition has asked for are beyond the bounds of typical project-level impact determinations required under CEQA. Moreover, a study of this scope is not

warranted since the analyses in the FEIR demonstrate the absence of health risk effects above established significance thresholds.

Health Impact Assessment (HIA) approaches to evaluating impacts are, by definition, holistic, and not project-specific, taking into account a broad range of factors. As stated in *A Health Impact Assessment Toolkit* (Human Impact Partners; April 2010) -- "The scope of a HIA assesses physical and mental health outcomes like mortality and disability, and also assesses behavioral, neighborhood, environmental and economic factors, as well. A broad definition of health is necessary because most social decisions affect health indirectly through effects on social or environmental conditions." To address such effects on a holistic basis would require a series of assumptions regarding second- and third-order effects that would be speculative for a project-specific document. Potential outcomes affecting mental health and disability cannot be determined as a direct effect of a given project. Moreover, such assessments would require the use of methodologies that are not generally agreed upon, and would produce results that would be speculative. Such analyses are not required under CEQA; nor are they generally suited to the procedural and substantive requirements of CEQA. Such studies tend to be longer term than HRAs, whereas the environmental review process is supposed to have a beginning and end to facilitate informed and prompt decision making in a manner that does not unduly stifle project progression. For example, CEQA sets a one year time period for completing EIRs. (See, e.g., Public Resources Code Section 21151.5.)

Finally, the underlying intent of the HIA approach -- namely a comprehensive view of potential impacts on persons -- was accomplished in the FEIR, in the sense that it analyzed Project-specific effects across a broad range of topics relating to the human environment. Included among these are: land use, parks and recreation facilities, growth inducement, community character and cohesion, community facilities and services, relocations, environmental justice, traffic and circulation (including pedestrian and bicycle travel), visual and aesthetic considerations, hazardous waste/materials, public health and safety, air quality, noise, and energy. Therefore, subjects that would be examined in an HIA were included in the EIR and analyzed with respect to this particular Project.

#### **Ground # 18 – Proposed Mitigation Programs Are Not Adequate to Address Public Health Impacts**

The appeal fails to identify any specific purported flaw in the EIR analysis. Instead, it includes broad policy statements that extend far beyond the EIR for the Project at issue. Nonetheless, the Harbor Department responds to the Coalition's assertions as follows.

With regard to the Coalition's claim that the HIA is necessary prior to implementing the Schools or Healthcare Programs, it should be noted that the Coalition's request is in direct contradiction to requests by other organizations, such as the Natural Resources Defense Council as set forth on pages 81-83 of the transcript, to expedite the

implementations of these programs. In addition, for the reasons stated in response to appellate Ground #17, an HIA is not the appropriate tool for studying a specific project's environmental impacts.

The Coalition provides no support for its statement that the grant programs are underfunded. As explained section D.1.d of this staff report, in the first solicitation under the Schools Program, even after all eligible applicants received grants in the full requested amount, \$300,000 remains in the fund for future projects. The Healthcare Program, for which the grant solicitation will be issued in the very near future, is available to cover many of the specific items identified by the Coalition including health care-related medical equipment and medical supplies, as well as other programs not identified by the Coalition such as public health education and outreach.

The Coalition's request for the establishment of a per container fee to establish health care fund is not relevant to or necessary for this Project. It is not relevant to the Project EIR because the Project at hand is a transportation project, not a terminal project. The approval of the Project does not involve the entitlements of any of the Port tenants, and therefore provides no opportunity for the imposition of such fees. Such a fee is not necessary in connection with this Project because the Project is contributing to the Schools and Healthcare Programs which are designed to address cumulative impacts from Port projects, including this one.

Ground #19 does not raise a CEQA issue, however, the ground and Harbor Department response are included in Attachment 7.

**Ground #20 – The EIR/EA Failed to Disclose All of the Significant Information to the Public Regarding the Affected Environment Study Area**

The scope of the study area was fully addressed in the FEIR at pages 4-243 to 4-246. As explained at the referenced pages, the scope of the study area was established in a manner that ensures that all potentially significant impacts were identified. For each topic studied, the geographic area to be studied was specifically tailored to capture any potentially significant impact. (See Attachment 7, Ground #20 for a full discussion.)

**TIMING CONSIDERATIONS**

City Council action on this matter is requested on September 28, 2010, to respond to this appeal in a timely manner.

**FISCAL CONSIDERATIONS**

If the appeal is rejected, there should be no additional fiscal impact. Should the City Council sustain the appeal, funding for the Project will be jeopardized, and the region would lose the many job opportunities that construction and operation of this Project would create.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



Robert Kanter, Ph.D.

Managing Director, Environmental Affairs and  
Planning Harbor Department



Richard D. Steinke

Executive Director  
Harbor Department

Attachments:

1. Proposed Resolution for City Council
2. Staff Report to Board of Harbor Commissioners, with Attachments
3. Harbor Commission Resolution HD-2576
4. Power Point from August 9, 2010 Harbor Commission Hearing
5. Transcript of August 9, 2010 Harbor Commission Hearing
6. Appeal filed August 23, 2010, by Coalition for a Safe Environment et al., with Attachments
7. Detailed Response of Harbor Department to State Ground for Appeal

Previously delivered:

Final Environmental Impact Report/Environmental Assessment for the Gerald Desmond Bridge Replacement Project (SCH No. 2002101141) (also available on Legistar)