

Coalition For A Safe Environment

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September 28, 2010

City Clerk Larry Herrera
City of Long Beach
Lobby Level
cityclerk@longbeach.gov
562-570-6101

Honorable Mayor &
Members Long Beach City Council
City of Long Beach
333 West Ocean Blvd., 14th Floor
Long Beach, CA 90802

Re: Request To Appeal the Port of Long Beach Board of Harbor Commissioners Approval of Gerald Desmond Bridge Replacement Project Final Environmental Impact Report (FEIR)/Final Environmental Assessment (FEA) SCH No. 200210141 before Long Beach City Council

Su: LB City Council Appeal Presentation

Honorable Mayor &
Members Long Beach City Council

The Coalition For A Safe Environment (CFASE) and the Long Beach Coalition For A Safe Environment (LBCFASE) submitted our Appeal Request to the City of Long Beach City Council to rescind, void and deny the Port of Long Beach Board of Harbor Commissioners (POLB BOHC) final project approval decision on the Port of Long Beach and State of California Department of Transportation (Caltrans) Gerald Desmond Bridge Replacement Project Final Environmental Impact Report (FEIR)/Final Environmental Assessment (FEA) and Application Summary Report. We are requesting that the Long Beach City Council:

- a. Deny approval of project as proposed
- b. Not certify the Final EIR/EA
- c. Not adopt a Statement of Overriding Considerations
- d. Not adopt the Mitigation Program as proposed
- e. Not adopt the Application Summary Report as written
- f. Not issue a Level III Harbor Development Permit as proposed
- g. Rewrite and re-circulate the final EIR/EA
- h. Rewrite the Application Summary Report

1. Appeal Issue:

The POLB Has Not Mitigated All Of Its Impacts

POLB Response:

POLB claims that it has incorporated all feasible mitigation, does not believe that it has to mitigate its impacts to communities that are near the port and freight transportation corridor, railyard, intermodal facilities and warehouse distribution centers communities and does not believe a Health Impact Assessment is necessary because the limited scope Health Risk Assessment (HRA) found no significant risk impact.

CFASE Response:

The POLB was requested to include mitigation for communities that border or are near freight transportation corridor, ailyard, intermodal facilities and warehouse distribution centers communities. The POLB was informed that HRA's are not comprehensive to identify all public health impacts as are Health Impact Assessments. By leaving out freight transportation corridor, railyard, intermodal facilities and warehouse distribution centers communities the POLB eliminated the majority of potentially impacted residents and sensitive receptors. The Gale Ave. Homeowners Association which borders the I-710 Long Beach Freeway submitted public comments objecting to the expansion of the bridge for the purpose of permitting more truck usage because they would be impacted and no migration was being proposed for them. A Port Community Impact Nexus Study would have identified all off-port tidelands property impacts. The POLB three mitigation funds are not adequate to financially mitigate all air pollution health impacts to residents and sensitive receptors by the use of HVAC Air Purification Systems.

The new bridge:

a. Will increase truck usage capacity:

The proposed air pollution can be mitigated to further reduced emissions by the POLB purchasing the Vision Motor Corporation Hydrogen Gas Fuel Cell Class VIII Drayage Truck and Yard Hostler and the Balqon Electric Battery Drayage Truck for local deliveries. POLB does not own one ZERO Emissions truck. We recommend purchasing a small fleet of 25 of each truck type to further demonstrate their capability. We recommend the POLB place a second order of 500 trucks after 12 months of performance and up to 25% of the 16,000+ trucks that service the port to meet the CAAP Clean Truck Program Deadline. The POLB does have the authority to restrict the number of trucks that use the bridge by requiring it in its tenants lease agreements.

Air Pollution Impacts to residents and sensitive receptors can be mitigated by the purchase and installation of HVAC Air Purification Systems. Noise Pollution

Impacts can be mitigated by the installation of sound proof windows and materials with an STC Rating of 80 and above.

b. Will allow faster truck passage

The proposed air pollution can be mitigated to further reduced emissions by the POLB

purchasing the Zero Emissions Vision Motor Corporation Hydrogen Gas Fuel Cell Class VIII Drayage Truck and Yard Hostler and the Balqon Electric Battery Drayage Truck for local deliveries. POLB does not own one truck. We recommend purchasing a small fleet of 25 of each truck type to further demonstrate their capability. We recommend the POLB place a second order of 500 trucks after 12 months of performance and up to 25% of the 16,000+ trucks that service the port to meet the CAAP Clean Truck Program Deadline.

Air Pollution Impacts to residents and sensitive receptors can be mitigated by the purchase and installation of HVAC Air Purification Systems. Noise Pollution Impacts can be mitigated by the installation of sound proof windows and materials with an STC Rating of 80 and above.

To facilitate faster transport of containers and cargo we recommended the POLB purchase a Zero Emissions MagLev Train System. The ZEMS project can fast track the approval and building of a demonstration system. American MagLev Technologies, Inc. has proposed for the past four years to build a demonstration project at their expense, has provided proof of financial capability, which could have already been operating while the port continues to research other technologies. A location could have already been chosen that has little to no impact on current port operations.

To further mitigate its air pollution impacts the POLB could require its Tenants to maximize the use of the Alameda Corridor in its lease agreements. POLB conducted no study to assess this possibility now or in the future.

c. Will allow more and larger ships to enter the inner harbor terminals

More ships and larger ships produce more air emissions; POLB cannot guarantee or show that the additional ships will be less polluting. Proposed future standards will still allow significant amount of air emissions. As an additional example 14 new ships will produce the same amount of pollution as 10 old ships. The proposed air pollution can be mitigated to further reduce emissions by the POLB purchasing the Advanced Cleanup Technologies, Inc. - Advanced Maritime Emissions Control System (AMECS) which is the bonnet that is placed over the ships smoke stack to collect all emissions. This technology is 92%-98% effective in capturing all emissions. Electric shore-power does not capture the boilers which produce the majority of emissions while at dock.

2. Appeal issue

Ground # 3. POLB Failed To Notify The Public & Circulate The EIR/EA Statewide

POLB Response:

POLB claims that it has complied via its submittal of the "State Clearinghouse" and public notification in three newspapers.

CFASE/LBCFASE Response:

- a. CFASE has consistently mentioned in its public comments that the public was not adequately informed of various details contained in the DEIR/EA and Final EIR/EA which were not adequately discussed and assessed. In some instance the Final EIR/EA deleted items contained in the Draft EIR/EA.
- b. CFASE claims that this action in itself is not sufficient to satisfy all of CEQA public notification requirements. The primary purpose of the State Clearinghouse is to notify governmental agencies not the general public. It also is not sent to state elected officials such as the Secretary of State, State Treasurer, State Controller or Attorney General.
- c. CEQA also requires that the public be informed via a newspaper of general circulation. The publications the POLB used to notify the public of the DEIR/EA and Final EIR/EA do not have adequate statewide circulation to provide a reasonable number of the public who will impacted proper notice.
- d. Two of the publications used by the POLB, 99%+ of the general public does not know even exists.
- e. CFASE claims that POLB was obligated to provide reasonable statewide notice due to three factors:
 1. The DEIR/EA and Final EIR/EA failed to include an in-depth discussion and analysis of the financial impacts that the state of California, all residents, counties, cities and environmental justice communities will incur when the Port of Long Beach transfer ownership of the Gerald Desmond Bridge to Caltrans causing the cost of the bridge replacement of \$983 million being transferred to the public and the cost of mitigation.
 2. The State of California, the general public, counties, cities and environmental justice communities were not adequately advised that they will assume the majority of the debt of \$983 million and all future liabilities.
 3. The State of California, the general public, counties, cities and environmental justice communities were not adequately advised that sources of funds the POLB claims will be used to offset the debt will deprive cities, counties, the public and environmental justice communities of funds for local community infrastructure projects.
 4. This project will impact regional and statewide, railyard, intermodal facilities and warehouse distribution centers communities.

3. Appeal Issue

Ground # 4 POLB State Tidelands Trust Agreement Prohibits Transfer of Property or Assets

POLB Response:

POLB claims that this issue does not relate to the certification of the FEIR, was not raised prior to the certification of the FEIR by the Harbor Dept. and was not required to obtain approval of the State Lands Commission.

CFASE/LBCFASE Response:

- a. This issue becomes CEQA relevant and applicable because by transferring ownership of the Gerald Desmond Bridge to Caltrans the POLB claims that certain types of public proposed mitigation cannot be adopted because it falls under the jurisdiction of Caltrans. POLB has full authority now to mandate and perform the mitigation proposed by CFASE. CFASE proposed several additional mitigation measures that have been previously described that Caltrans would have no authority to mandate.
- b. Public comments made during the Final EIR certification meeting by the Harbor Dept. is legal standing under CEQA and Appealable. The Long Beach Municipal Code section 21.21.507.E.3 must comply with CEQA which supersedes all other government agency authorities. Had this meeting only been a status progress report meeting followed by the final certification meeting the Harbor Dept. it would have been raised by CFASE. The Board of Harbor Commissioners could have delayed their vote to research CFASE's claims.
- c. POLB claims that it does not require approval by State Lands Commission for projects it develops, however, it is doing more than just develop a project. The City of Long Beach Trust Agreement, Public Trust Policy and Public Trust Doctrine do not grant authority to transfer ownership or assets without SLC approval. The Board of Harbor Commissioners could have delayed their vote to research CFASE's claims.
- d. POLB claims that since they provided copies of all documentation (5,000+ of pages since 2002) to the SLC and they did not comment that everything is fine for them to proceed. It is the purpose of the public participation process in CEQA to identify deficiencies in the EIR/EA and questionable procedural improprieties.

4. Appeal Issue

POLB's Cumulative Public Impacts Assessment Is Incomplete

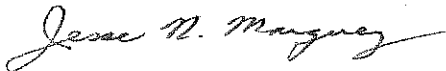
POLB Response:

POLB claims that this issue does not relate to the certification of the FEIR

CFASE/LBCFASE Response:

Since POLB has omitted freight transportation corridor, railyard, intermodal facilities and warehouse distribution centers communities from its various studies and assessments the Cumulative Public Impacts Assessment is incomplete and requires the EIR/EA to be revised and recirculated.

Respectfully Submitted,



Jesse N. Marquez
Executive Director
Coalition For A Safe Environment

Gabrielle Weeks
Executive Director
Long Beach Coalition For A Safe Environment