

## ATTACHMENT 7

### **Coalition for a Safe Environment/Long Beach Coalition for a Safe Environment's Grounds for Appeal Gerald Desmond Bridge Replacement Project FEIR and the Harbor Department's Responses Thereto**

#### **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 four “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 fifth 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.

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

This issue does not relate to the certification of the FEIR by the Board of Harbor Commissioners and is therefore not an issue properly before the City Council. In addition, the Coalition never raised this issue prior to the Harbor Commissioners' certification of the FEIR, and the issue is not a proper basis for appeal pursuant to Long Beach Municipal Code section 21.21.507.E.3.

The Harbor Department was not required to obtain the approval of the State Lands Commission before certifying the FEIR and approving the Project. The Harbor Department manages properties covered by the Public Trust Doctrine pursuant to a grant from the California Legislature on behalf of the State of California. These "granted lands" must be managed in a manner that is consistent with the granting statutes and the Public Trust Doctrine, which generally provides that trust lands must be used for water dependent or related uses including commerce, fisheries, navigation, environmental preservation, and recreation, i.e., broad statewide purposes and not narrow municipal purposes. Ancillary uses, such as the replacement of the existing Gerald Desmond Bridge, also are permitted if such uses directly support or are necessary for trust uses or accommodate the public's enjoyment of trust lands. See Public Trust Policy and Public Trust Doctrine, prepared by the State Lands Commission and available online at:

[http://slc.ca.gov/Policy\\_Statements/Public\\_Trust\\_Home\\_Page.html](http://slc.ca.gov/Policy_Statements/Public_Trust_Home_Page.html).

Although grantees of trust lands are not required to secure approval from the State Lands Commission before approving development projects on their trust lands, the State Lands Commission does monitor activities of grantees to insure that they are complying with the terms of their statutory grants and the public trust. The Harbor Department routinely provides the State Lands Commission with copies of all notices of preparation, draft EIRs, and final EIRs for all projects in the Harbor District. In the case of this Project, the State Lands Commission received all project-related notices, and the FEIR, on pages 6-1 and 6-6, specifically notes that the State Lands Commission received a copy of the Revised Draft EIR in February 2010. The Commission did not provide any comments on the Project or raise any public trust concerns.

#### **Ground #5 – POLB Failed to Get Secretary of State Approval to Obligate and Encumber the State, Counties and Cities; and Ground # 6 – POLB Failed to Get State Treasurer & Controller Approval or Opinion**

These issues do not relate to the certification of the FEIR by the Board of Harbor Commissioners, and are therefore not an issue properly before the City Council. Economic issues are beyond the scope of CEQA (CEQA Guideline 15131.). In addition, the Coalition never raised these issues prior to the Harbor Commissioners' certification of the FEIR, and the issues are not proper bases for appeal pursuant to Long Beach Municipal Code section 21.21.507.E.3.

The Harbor Department provides the following information in response to the statements made in these grounds for appeal. The Port was not required to seek any option or approval of the Secretary of State, the State Treasurer, or the State Controller before initiating this Project and certifying the EIR. The Port, in cooperation with the Federal Highway Administration (FHWA), the California Department of Transportation (Caltrans), and the Los Angeles County Metropolitan Transportation Agency (Metro), has pursued legally available funding for the Project and will take all legally required steps to obtain state and federal funding for the Project. The Project has been designated as a Project of National and Regional Significance and received \$100 million through the federal transportation bill, SAFETEA-LU. The Project also received \$250 million from the State through the Trade Corridor Infrastructure Fund (TCIF) program. As stated in the EIR/EA, the Gerald Desmond Bridge is a designated segment of the National Highway System and will become part of the State Highway System (SHS) upon completion.

### **Ground #7 – POLB Failed to Get Attorney General Approval or Opinion of Proposed Actions**

This issue does not relate to the certification of the FEIR by the Board of Harbor Commissioners and is therefore not an issue properly before the City Council. In addition, the Coalition never raised this issue prior to the Harbor Commissioners' certification of the FEIR, and the issue is not a proper basis for appeal pursuant to Long Beach Municipal Code section 21.21.507.E.3.

The Attorney General's office was on the distribution list of the DEIR/EA for the Project. See page 6-3 of the FEIR. That office had no comments on the DEIR, the FEIR, or the Project.

The Port was not required to obtain the approval of the California voters or the state legislature before the Commission certified the FEIR and approved the Project. The Commissioners' actions did not obligate the State of California. As trustee for the State of California, the Board of Harbor Commissioners is responsible for making such decisions in the best interests of the harbor tidelands.

### **Ground #8 – POLB Failed to Get California Coastal Commission Approval or Opinion of Proposed Actions**

This issue does not relate to the certification of the FEIR by the Board of Harbor Commissioners and is therefore not an issue properly before the City Council. In addition, the Coalition never raised this issue prior to the Harbor Commissioners' certification of the FEIR, and the issue is not a proper basis for appeal pursuant to Long Beach Municipal Code section 21.21.507.E.3.

As an initial matter, it should be noted that the California Coastal Commission was on the distribution list for the DEIR and the FEIR (FEIR, p. 6-1). The Coastal Commission did not submit any comments on the DEIR.

The Harbor Department was not required to obtain approval or an opinion from the Coastal Commission prior to certifying the FEIR and approving the Project. Pursuant to the Coastal Act, the Coastal Commission has an opportunity to review local permits issued in the coastal zone, including the Harbor Development Permit issued for this Project, after it receives notice of a local decision.

**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 – Project as Proposed Primarily Benefits the Ports and Their Tenants Which is Why We Request That LBCC Deny Approval of Project as Proposed**

This issue does not relate to the certification of the FEIR by the Board of Harbor Commissioners and is therefore not an issue properly before the City Council. In addition, the Coalition never raised this issue prior to the Harbor Commissioners' certification of the FEIR, and the issue is not a proper basis for appeal pursuant to Long Beach Municipal Code section 21.21.507.E.3.

As stated above, CEQA does not address economic issues. Therefore, the arguments about costs and benefits, in addition to being factually wrong, are not relevant to the Harbor Commissioners' compliance with CEQA (CEQA Guideline 15131).

The Coalition's statement that the new bridge will be a "primary private industry diesel truck transportation corridor" is inaccurate. As explained in the traffic analysis for the Project, approximately 25% of the traffic on the bridge is port truck traffic and approximately 75% is commuter traffic. This was based upon actual traffic counts conducted in 2005. Of the 75% that is commuter traffic, approximately 15% are port-related auto trips. The split in 2030 (with or without the Project) is anticipated to be 39% regional traffic and 61% port-related, including 20% port-related auto trips.

With regard to the statements regarding the Zero Emission Cargo Transportation Systems, please see the response to Ground #14 below.

**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.

#### **Ground #15 – The Statement of Overriding Considerations is Not Adequately Justified**

This issue does not relate to the certification of the FEIR by the Board of Harbor Commissioners and is therefore not an issue properly before the City Council. Since the Harbor Commission has exclusive jurisdiction over the Project itself, the Commission is the final decisionmaking body with regard to whether the Statement of Overriding Considerations was proper. In addition, the Coalition never raised this issue prior to the Harbor Commissioners' certification of the FEIR, and the issue is not a proper basis for appeal pursuant to Long Beach Municipal Code section 21.21.507.E.3.

In general, the comments set forth under Ground #15 relate to economic concerns rather than environmental concerns. Pursuant to CEQA Guideline 15131, CEQA does not address economic issues.

With regard to the argument in subheading "A" that the benefits of the project have not been balanced, the Harbor Department notes as follows:

With regard to the percentage of bridge traffic that is port truck vs. auto, the Traffic Impact Study prepared for the Project calculated the baseline split for peak hour and daily (see Exhibit 4-7 and 4-11 of the Traffic Impact Study) [As explained in the FEIR at 2-87, the baseline traffic split was as follows: 44,500 autos, 15,200 trucks, for a total of 59,700 daily trips]. The trucks represent just over 25% of the daily trips. The year 2030 traffic split is estimated to be 76,200 autos and 59,730 trucks for a total of 135,930 daily trips. Based on the SCAG regional travel demand model, non-port traffic is projected to increase to 49,345 daily trips.

Caltrans currently owns and maintains the other two bridges that provide access to Terminal Island, including the Vincent Thomas and the Schuyler Heim. The Vincent

Thomas and Gerald Desmond bridges create a loop that connects I-110 and I-710. In 1982, Assembly Bill 3375 (Streets and Highway Code, 347.1 and 622.1) was signed into law, which added the extension of the Long Beach freeway and Harbor Scenic Drive to SR 710 and deleted a portion of Route 47, north of Route 1, from the State Highway System. On February 23, 2000, the California Transportation Commission adopted Resolution 00-3 which states “conveyance will take place only upon completion of the Gerald Desmond Bridge widening by the Port and the conveyance will then consist of the south-to-west and east-to-north connectors with Ocean Boulevard, that portion of Ocean Boulevard within the connector area and the westbound Pico Boulevard on-ramp to Ocean Boulevard”. The resolution also states “that each said segment of State highway conveyed shall have the status of a freeway once the Department has recorded the appropriate deeds acknowledging the transfer of operation and maintenance responsibility to the Department and thereafter, for the purposes provided by law, is hereby designated as a portion of Route 710, a part of the California Freeway and Expressway System”.

As explained in Section 2.1.5 of the FEIR, the Project will actually reduce traffic congestion and travel delays in the area rather than increasing them.

The local region’s labor force is one of the largest in the nation and would be expected, under normal economic circumstances, to provide the great majority of construction jobs for the Gerald Desmond Bridge Replacement Project. This is more so the case today where the overall unemployment rate for Los Angeles County, the key labor supplier in the region, is among the highest in the nation at 12.4 % (State of California, Employment Development Department, August 20, 2010). Under these conditions, Project construction jobs would attract not only unemployed construction workers, but also out-of-work and underemployed job seekers from other sectors of the local economy.

The statements made by the Coalition under subheadings B, C, D, E, and F have no relationship to Ground #15. Nonetheless, the Harbor Department responds to the statements as follows:

With regard to the zero emitting cargo transportation, please see response to Ground #14.

Currently, the development and use of zero-emission drayage trucks are the subject of several Technology Advancement Program projects. The ports are currently conducting demonstrations of hybrid, alternative-fueled, and electrical trucks for moving containers from the ports. However, these technologies have not yet been proven feasible for large scale deployment. Once proven as feasible, the technologies will be moved forward as mitigation measures in future Clean Air Action Plan (CAAP) updates. Additionally, the ports have developed a programmatic approach to addressing and reducing drayage truck emissions through the Clean Trucks Program. Implementation of drayage trucks requirements is not feasible on a project-by-project basis due to the need to have consistent standards throughout the ports of Long Beach and Los Angeles. Finally, the Clean Trucks Program establishes stringent standards for drayage

trucks that serve the ports, requiring that all trucks entering port facilities meet USEPA 2007 emission standards by 2012. These requirements are more stringent than any other local, state, or federal requirements.

With regard to subheading C, as explained in the FEIR and the CEQA findings adopted by the Harbor Commission, all feasible mitigation measures have been adopted for this Project. The Coalition has not identified any feasible mitigation measure, instead just concludes that there are unidentified mitigation measures that have been overlooked. This is incorrect.

The final argument under subheading C is that the Project does not mitigate traffic impacts. As explained above, the Project is a transportation improvement project, and does not itself generate new trips apart from construction traffic. As demonstrated in Section 2.1.5 of the FEIR, the Project will actually relieve congestion within the study area. In addition, the replacement bridge will provide additional shoulder area, so that vehicles involved in accidents will be able to be removed from the travel lanes and be dealt with more safely.

The Coalition suggests that the mitigation measures are somehow flawed because there is not an independent third party responsible for monitoring the measures. Public Resource Code Section 21081.6(a)(1) governs the monitoring and reporting obligations for mitigation measures. It does not contain any requirement that a third party be retained to oversee the implementation of the measures. If any member of the public believes that the measures are not carried out, that member has legal remedies to compel compliance with the measures. Until the contrary is proven the law presumes that the Harbor Department will properly carry out its official duty (Evidence Code §664).

The comments stated under subheading D relate to the same issue the Coalition raised regarding Health Risk Assessments. These are addressed in response to Ground #17.

The comments under subheading E relate to job creation. The Coalition states it supports the construction of a new bridge, but only if it is not part of a “major port truck transportation corridor route.” This Project is not causing the bridge to become a major transportation route for the ports. It already is such a corridor. The bridge is a vital component of the Port transportation infrastructure.

With regard to subheading F, the assertion that future regulations governing vessels are not in place is incorrect. The International Maritime Organization’s (IMO) MARPOL Annex VI was recently amended to include more stringent emission controls for vessels beginning in 2011, with further tightening in 2016. The Port has never represented that vessel emissions are approaching zero. In fact, the Port acknowledges that vessels are a significant source of pollution and will be in the future. That is why the Port has identified a number of strategies in the CAAP to reduce emissions from vessels, such as shore-power, clean fuels, vessel speed reduction, as well as new engines and technologies, and has supported the strengthening of MARPOL Annex VI.

In general, as cargo volumes have increased vessels have become both larger and cleaner, complying with the latest emission standards for vessel engines. In addition, the assertion that most ships are not using low sulfur fuels at the Port is incorrect. The California Air Resources Board now regulates the sulfur content of vessel fuels, requiring that all vessels within 24 nautical miles of the California coast use distillate marine fuel that does not exceed 0.5% sulfur. This requirement, in place since July 2009, will tighten to a 0.1% sulfur limit in 2012.

As described in the FEIR, the fleet mix that calls a terminal is determined by the capacity of that terminal. Changes in the height of the bridge will not affect the capacity of container terminals in the Inner Harbor. As a result, the bridge is not expected to have a significant impact on vessel emissions. In addition, as documented in the Port's annual emissions inventories, as vessel size increases, emissions per twenty-foot container decline. As a result, for any given terminal capacity, vessel emissions would be stable or decline as the vessel fleet size that serves that terminal increases. Finally, as discussed in the FEIR, the Project will not result in navigational improvements that are necessary to allow the largest vessels to navigate through to the Inner Harbor. Impacts from such improvements would be considered in the environmental documentation of any project they are included in.

**Ground #16 – POLB is Obfuscating its Responsibility in Neglecting to Include an Off-Port Property Nexus Study and Mitigation Requirements in its Lease Agreements With its Tenants**

This issue does not relate to the certification of the FEIR by the Board of Harbor Commissioners and is therefore not an issue properly before the City Council. In addition, the Coalition never raised this issue prior to the Harbor Commissioners' certification of the FEIR, and the issue is not a proper basis for appeal pursuant to Long Beach Municipal Code section 21.21.507.E.3.

The Harbor Department was not required to prepare an "off-port property nexus study" in connection with preparing the EIR for this Project. This Project does not involve the leases of any Port tenant. The arguments made by the Coalition have nothing to do with this Project, which is a transportation improvement project, not a terminal development project.

**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 – EIR/EA Fails to Adequately Disclose the Public Benefits of the POLB Remaining the Owner of the Gerald Desmond Bridge**

This issue does not relate to the certification of the FEIR by the Board of Harbor Commissioners and is therefore not an issue properly before the City Council. In addition, the Coalition never raised this issue prior to the Harbor Commissioners' certification of the FEIR, and the issue is not a proper basis for appeal pursuant to Long Beach Municipal Code section 21.21.507.E.3.

Although already part of the national highway system, the Gerald Desmond Bridge and associated facilities are not yet part of the state highway system. At a meeting of the California Transportation Commission on February 23, 2000, the commission adopted Resolution HRA00-3, which adds the Gerald Desmond Bridge to the state highway system once the Harbor Department completes certain improvements to the bridge, including widening and improved connectors to the I-710. Once operational, and maintenance responsibility for the bridge is transferred to Caltrans, the bridge and associated roadway would be given the status of a freeway. Although the Harbor Department will retain ownership of all property underlying the bridge and associated facilities, Caltrans will be granted easements for the physical structures and for access necessary to carry out its maintenance responsibilities. This transfer may become a

prerequisite for certain funding and approvals the Harbor Department seeks in order to carry out the Project.

Which entity holds title to the Bridge does not affect the environment in which the Bridge will be constructed or will operate, and has no relevance to the environmental impacts of the Project. Moreover, the Harbor Department already makes efforts to maximize the use of the Alameda Corridor and is pursuing projects that will increase usage of on-dock rail (see, for example, the enhanced on-dock rail facilities included in the recently approved Middle Harbor Redevelopment Project and the proposed Pier B On-dock Rail Support Facility, for which an EIR currently is being prepared).

The comments regarding the MagLev Train Demonstration Project have no relevance to this Project. However, the issues raised by the Coalition were addressed in depth in the FEIR as part of the response to comments CSE-14 and CSE-15.

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

As required by both CEQA and NEPA, the purpose of the EIR/EA is to identify and disclose the potentially significant impacts (under CEQA) and/or major adverse effects (under NEPA) of the proposed Gerald Desmond Bridge Replacement Project across a full spectrum of environmental factors. CEQA and NEPA do not mandate that agencies conduct a broad study addressing effects associated with activities not connected with the project being examined in the environmental document. Accordingly, the purpose of the EIR/EA is narrower in scope than the studies referenced in the comment. The EIR/EA for the proposed project is intended to examine those impacts that would logically occur as a result of replacing the existing bridge with a new bridge. Therefore, comments illustrating impacts of general port activities as a whole are not relevant to the requirements of this environmental document, but are rather more appropriately directed to sub-regional and regional studies conducted for other purposes. The studies referenced in the comment - Los Angeles County Metropolitan Transportation Authority Study entitled I-710 Major Corridor Study and the Port of Los Angeles Baseline Transportation Study prepared by Meyer, Mohaddes & Associates - are examples of studies conducted for purposes different from that which this EIR/EA is required to fulfill.

Regarding the appropriateness of study areas, each of the impact factors considered in the environmental document were considered individually, and study areas were identified for each based upon a due consideration of the extent to which impacts of the proposed project would occur. A few examples illustrate this approach:

Land Use, Recreation & Coastal Zone (section 2.1) - The study area was defined as the Port's Northeast, Middle Harbor, and Terminal Island Planning Districts, within which the proposed project is entirely located and within which all affected land use impacts are contained.

Community Impacts (section 2.1.3) - The study area was defined on the basis of potential effects circumscribed within an area of 11 adjacent census tracts. This study

area definition touches portions of both ports, the Wilmington community, and the southwestern portion of the City of Long Beach to the east of the Los Angeles River.

Visual and Aesthetics (section 2.1.7) - Both local and regional visual settings were defined, the former being confined to the immediate Port surroundings and the latter including distant views experienced by residents, recreational users, businesses, workers, and motorists.

Hazardous Materials/Waste (section 2.2.3) - An area extending 0.25 miles from the proposed project was considered, and the effects pertaining to surrounding uses were also considered.

Public Health and Safety (section 2.2.4) - The study area was defined to encompass the nearest emergency service responders and included both fire and police.

Noise (section 2.2.6) - The study area was chosen based upon FHWA guidance and included the nearest areas of frequent human use, which were residential, park, and school uses east of the Los Angeles River.

Air Quality Study Area (section 2.2.5.2) - Several study areas were defined, corresponding to the particular impact considered. For example, the South Coast Air Basin, inclusive of some 6,745 square miles, is the context for criteria pollutant evaluation. The study area for addressing localized impacts extended as far as 1.3 miles from the project site, in order to capture potentially affected receptors. This definition resulted in the inclusion of 61 child care centers, 24 convalescent homes, 49 schools and 5 hospitals, as well as nearby residential areas (see Exhibit 2.2.5-1).

Traffic Study Area (Section 2.1.5.2) - The traffic study area defined in Section 2.1.5.2 of the DEIR/EA is appropriate to assess the potential traffic impacts of the project. The traffic study area includes those locations with sufficient additional traffic resulting from the operation of the replacement bridge or its construction activity to have a significant impact. The traffic study area was determined by evaluating the forecast changes in traffic for increases attributable to a replacement bridge that would potentially result in any of the following:

- significant impacts at Congestion Management Plan (CMP) monitoring locations where impact would be measured based on the criteria in the 2004 CMP for Los Angeles County;
- the addition to a signalized intersection of 50 or more vehicles during a peak hour as required by the City of Long Beach traffic impact analysis guidelines available from the City of Long Beach Department of Public Works Traffic and Transportation Bureau; and
- LOS F (over capacity) conditions on SR-710 north of the project to 9th Street or SR-47 (Seaside Avenue) west of Navy Way.



The study area extends to the east into downtown Long Beach as far as needed to include intersections expected to receive an additional 50 entering vehicles during a peak hour, consistent with the City of Long Beach traffic impact analysis guidelines cited above. To the west, the study area includes the intersection of Navy Way and Seaside Avenue. Farther west, the forecast volumes on Seaside Avenue are well within its capacity as a four lane controlled access roadway and no LOS F conditions or significant impacts are expected. To the north, the additional volumes redistributed to I-710 do not create a significant impact at the Congestion Management Plan monitoring location at the Willow Avenue interchange with I-710. Nor do they create LOS F conditions or a significant impact on the portion of SR 710 south of 9th Street. Since the portion south of 9th Street has fewer lanes than portions to the north, it was concluded that there would be no significant impacts to SR 710 or I-710 farther north where the highway has more lanes.

While it is true that traffic passing over the bridge can be found on I-710 as far north as I-105 and at other locations in the region, the EIR/EA is only concerned with changes in traffic attributable to the replacement bridge that would potentially result in significant traffic impacts. No significant traffic impacts are expected outside the traffic study area because no significant impacts are predicted by Project travel modeling:

- to the north of the Project on I-710 at the Congestion Management Plan (CMP) monitoring location at the Willow interchange or south of 9<sup>th</sup> Street;
- to the west of the Project on SR-47 (Seaside Avenue) west of Navy Way; or
- to the east of the Project at signalized intersections in downtown Long Beach since all intersections with a potentially significant impact are included within the study area.

Using the study areas described above, the EIR/EA identifies potential impacts associated with the proposed project and, where available, corresponding mitigation measures are offered to lessen such impacts. For example, traffic impacts accruing to the project along study area roadways, for both project construction and operations, are identified in section 2.1.5 of the EIR/EA. And, given the 50-trip criterion used to assess affected roadways, all potential impacts directly associated with the proposed project have been identified and addressed. Similarly, construction and operational air quality impacts have been identified and mitigation measures have also been identified (see section 2.2.5).

The project is not a “freight expansion project” as stated in the comment. As is noted in section 2.1.5 of the EIR/EA, the project is a bridge replacement and does not generate any additional new traffic, in and of itself. Because the project provides more capacity than the existing bridge and thereby may reduce congestion on the bridge, some traffic avoiding the bridge under the No Action or Rehabilitation conditions may change travel path and use the new bridge. Such changed travel paths are identified and discussed in the EIR/EA as traffic redistributions. While it is true that traffic ultimately traveling across the bridge can be found on I-710 as far north as I-105, and at other locations in

the region, the Bridge Replacement Alternatives described in the EIR/EA would affect only the localized paths in the Port area to access these freeways, and not the destination or origin of these trips. Thus, the traffic impact analysis within the EIR/EA is concerned with changes in traffic attributable to a replacement bridge, and the potential impacts associated with these changes. No changes in traffic attributable to the replacement bridge and potentially resulting in significant traffic impacts are expected outside the traffic study area.

It can be seen from the above examples (see referenced EIR/EA sections for a complete description of all impact areas) that careful thought was put to the selection of each study area, such that potential impacts resulting from the proposed project would be captured, and also that potentially affected persons and locations would also be identified. Accordingly, the various study areas were selected to be sufficiently broad to be sure that the impact of significance would be identified.