CENTER *for* BIOLOGICAL DIVERSITY

VIA OVERNIGHT MAIL w/ATTACHMENTS

Dr. Ralph Appy, Director Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731

Dr. Spencer D. MacNeil, Commander
U.S. Army Corps of Engineers, Los Angeles District
P.O. Box 532711
Los Angeles, California 90053-2325

Re: Comments on DEIR/S for Berths 136-149 Container Terminal Expansion Project, State Clearinghouse No. 2003061153

September 24, 2007

Dear Dr. Appy:

These comments are submitted on behalf of the Center for Biological Diversity ("Center") on the Draft Environmental Impact Report/Environmental Impact Statement ("DEIR/S") for the Berths 136-149 Container Terminal Expansion Project ("Project"), State Clearinghouse No. 2003061153. The Project includes a series of proposed improvements to Berths 136-147 that would significantly expand the container terminal operations of the Port of Los Angeles. By expanding Port shipping capacity, the proposed expansion would generate significant amounts of greenhouse gases, primarily though increases in ship, truck, and rail traffic. According to the DEIR/S, even with proposed mitigation, the Project would add close to 400,000 annual metric tons of carbon dioxide equivalent greenhouse gases per year into the atmosphere. Such a sizable injection of greenhouse gases into the environment would severely frustrate California's mandate to reign in and reduce existing greenhouse levels. Additional alternatives should be considered and feasible mitigation adopted to reduce the Project's significant contribution to global warming. CBD-1

The Center is a non-profit conservation organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center's Climate, Air, and Energy Program works to reduce U.S. greenhouse gas emissions to protect biological diversity, our environment, and public health. We work to educate the public about the impacts of climate change on our world and the animals and plants that live in it and to build the political will to enact solutions. The Center has over 35,000 members throughout California, including Los Angeles. Center members will be directly impacted by the Project.

The Project as proposed will have numerous substantial impacts on the CBD-2

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environment due to its nature, size, and location. This letter primarily focuses on the Center's concern that the DEIR/S significantly understates the greenhouse gas emissions generated by the Project by limiting the consideration of transportation-related emissions generated by the Project to those produced within the boundaries of California and by failing to mitigate the Project's global warming impacts to the extent feasible as required under the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code § 21000 *et seq.*, 14 Cal. Code Regs. § 15000 *et seq.* ("Guidelines"). In addition, the NEPA analysis conducted by the United States Army Corps of Engineers ("USACE") establishes an improperly high emissions baseline and fails to identify the Project's greenhouse gas contribution as significant under NEPA.

CBD-2

A revised DEIR/S must be prepared to remedy the DEIR/S' deficiencies. Only by circulating a corrected document can the public, decision makers and affected agencies be adequately informed of the environmental repercussions of the Project.

I. THE DEIR/S FAILS TO ADEQUATELY SET FORTH THE THREAT OF GREENHOUSE GAS EMISSIONS

The DEIR/S' treatment of global warming impacts stumbles at the starting gate by providing an exceedingly cursory summary of the present and future impacts of global warming to California and the world. In order to conform to the informational mandates of NEPA and CEQA and properly inform the public and decision makers of the significance of the Project's contribution to greenhouse gases, the DEIR/S must first adequately discuss the threat posed by greenhouse gas emissions. *See, e.g., Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* ("Laurel Heights I"), 47 Cal.3d 376, 392 (1988) (EIR is intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action."); Guidelines § 15151 (requiring an EIR be detailed, complete, and reflect a good faith effort at full disclosure); 42 U.S.C. § 4332(C). A discussion of climate change impacts need not be lengthy, but should, at a minimum, convey the magnitude of the threat posed by global warming to humans and the environment.

CBD-3

To more accurately convey the severity of the impacts of global warming, the DEIR/S should be revised to include numerical estimates of the extent of projected impacts. For example, in lieu of the vague statement that greenhouse gas emissions will lead to a "significant" reduction in winter snow pack, the DEIR/S should clarify that loss for the Sierra snowpack is estimated to be between 30-90%, depending on the extent to which emissions are reduced now and in the near future. (Our Changing Climate, Assessing the Risks to California, A Summary Report from the California Climate Change Center (2006) (attached)).

Additional impacts projected for California by the end of the century include:

- Temperature rises between 3-10.5°F;
- 6-30 inches or more of sea level rise;
- 2-4 times as many heat wave days in major urban centers;
- 2-6 times as many heat-related deaths in major urban centers;
- 1.5-5 times more critically dry years;
- 25-85% increase in days conductive to ozone formation;

- 3-20% increase in electricity demand;
- 10-55% increase in the expected risk of large wildfires;
- 7-30% decrease in forest yields (pine);

(*Id.*) By providing details as to the ranges of proposed impacts, and indicating that the higher-range of impact estimates are projected if greenhouse gas emissions continue to increase under a "business as usual" scenario, decision-makers and the public will be better informed of the magnitude of the climate crisis and the urgency with which it must be addressed. CBD-3

II. THE DEIR/S GROSSLY UNDERSTATES THE LEVEL OF EMISSIONS RESULTING FROM THE PROJECT

A. The DEIR/S Improperly Excludes Indirect Emissions Generated Outside California as a Result of the Project

In calculating the emissions generated by the Project, the DEIR/S only includes emissions from the portion of travel that is within California borders from sources that travel out of California (ships, trucks, and line haul locomotives). (DEIR/S at 3.2-48.) Emissions generated outside California are excluded on the grounds that the California Climate Action Registry (CCAR) "has not developed a protocol for determining the operational or geographic boundaries" for some emission sources, such as ships, that are not owned or operated by the Port. (*Id.*) CBD-4

The DEIR/S' reliance on the CCAR is misplaced because the CCAR does not dictate the scope of CEQA or NEPA's impact analysis. CEQA and NEPA require the analysis of *all* direct and indirect effects on the environment caused by the project. *See* 40 C.F.R. Guidelines 1508.8; Guidelines § 15064(d). An indirect impact is a physical change in the environment that is not immediately related to the project but that is caused indirectly by the project. Guidelines § 15064(d)(2). Although caused by the project, an indirect or secondary impact is removed in time or distance but is still reasonably foreseeable. Guidelines § 15358(a)(2). Here, expansion of Berths 136-147 will result in foreseeable increases in the number of annual ship calls, truck trips, and rail trips. Moreover, if not already available, the origin/destination of the additional ships, trucks, and trains traveling to the Port as a result of its expanded facilities can be Port extrapolated from existing trip data. Because the full trip length from these transportation modes is reasonably foreseeable, it must be incorporated into the DEIR/S' emissions calculations.

Notably, neither CEQA nor NEPA define the environment in terms of political boundaries. To the contrary, NEPA "is clearly not limited to actions of federal agencies that have significant environmental effects within U.S. borders." *Environmental Defense Fund v. Massey*, 986 F.2d 528, 536 (D.C. Cir. 1993); 42 U.S. C. § 4332(2)(F) (requiring all federal agencies to "recognize the worldwide and long-range character of environmental problems," and promote international cooperation in solving environmental challenges."); 42 U.S.C. § 4321 (NEPA is intended to "encourage productive and enjoyable harmony between *man and his environment*" as well as to "promote efforts which will prevent or eliminate damage to the environment and *biosphere.*") (emphasis added). Cal. Pub. Res. Code § 21002.1(a) (requiring CBD-5

that an EIR "identify the significant effects on the environment of a project."). Like NEPA, nothing in CEQA limits its focus to environmental effects occurring within California. Rather, CEQA examines effects to "ecosystems," the boundaries of which are in no way influenced by state lines. *See* Guidelines § 15358(a)(2). Indeed, as CEQA is "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language" the DEIR/S' narrow interpretation of indirect environmental effects flies in the face of CEQA's foremost principles. *Laurel Height Improvement Ass'n v. Regents of University of California*, 47 Cal.3d 376, 404 (1988). Accordingly, the DEIR/S should be revised to include greenhouse gas emissions from all sources resulting from implementation of the Project. Such an inventory should include all indirect effects from additional ship, truck, rail, and automobile traffic resulting from the project, regardless of where such emissions occur.

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B. The NEPA Baseline Adopted by USACE Is Flawed

The DEIR/S is fundamentally flawed because USACE improperly conflates the NEPA Baseline with the No Action Alternative. Section 1.5.5.1 of the DEIR/S states:

> The NEPA baseline condition for determining significance of impacts is primarily dependent on the "No Federal Action" condition, which is defined by examining the full range of construction and operational activities the applicant could implement and is likely to implement absent a permit from USACE. In this project the NEPA Baseline coincides with the No Federal Action scenario, and the two terms will be used interchangeably throughout this document. The No Federal Action/NEPA Baseline includes all of the construction and operational impacts likely to occur absent a USACE permit (e.g., air emissions and traffic likely to occur without issuance of permits to modify wharves or dredge). The determination is based on direct statements and empirical data from the applicants, as well as the judgment and experience of USACE.

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USACE's merger of the environmental baseline with the No Action Alternative has a significant effect on the emissions estimates under NEPA. In the DEIR/S' CEQA analysis, which properly uses a baseline set at a fixed point in time, the baseline is 305,073 metric tons of carbon dioxide equivalent emissions. (DEIR/S at 3.2-102.) Using USACE's interpretation of NEPA, the NEPA baseline is almost 2/3 higher, at 498,977 metric tons. By adopting this significantly higher baseline, USACE improperly minimizes Project impacts.

Like CEQA, the NEPA baseline is set at a fixed point in time, and does not assume future growth absent the requested federal permit. *See* "The NEPA Book: A step-by-step guide on how to comply with the National Environmental Policy Act" by Ronald Bass, Albert Herson, and Kenneth Bodgan, 2001 Solano Press Books at 99; *American Rivers v. Federal Regulatory Energy Comm'n*, 201 F.3d 1186 (1999). CEQ Regulations first require an EIS to describe the "Affected Environment," which is then used as a basis to compare various alternatives, including the No Action Alternative. CEQ Regs. §§ 1502.14, 1502.15. Because the "Affected Environment" is the baseline, not the future

CBD-7

assumptions incorporated into the No Action Alternative, the NEPA baseline should be revised to be consistent with the CEQA baseline used in the DEIR/S.

USACE's adoption of the No Action Alternative baseline is further flawed because the DEIR/S provides no discussion of the factors and assumptions used by USACE to develop the NEPA baseline. By failing to elaborate on the "direct statements and empirical data" as well as "the judgment" of USACE, the DEIR/S falls short of its informational purpose. CBD-7

III. THE PROJECT'S IMPACT ON GLOBAL WARMING IS ALSO SIGNIFICANT UNDER NEPA

While the Los Angeles Harbor Department ("LAHD") properly determined that annual greenhouse gas emissions from the Project are significant under CEQA because they exceed baseline emissions, USACE refuses to acknowledge the significance of the Project's greenhouse gas contribution under NEPA on the grounds that there are no adopted greenhouse gas significance thresholds. (DEIR/S at 3.2-36). USACE's failure to find that the Project's greenhouse gas emissions are a significant impact is fundamentally flawed. Neither NEPA, CEQ guidelines, nor USACE NEPA Regulations require quantitative thresholds of significance in order to discuss the environmental impacts of a proposed project. By substantially increasing California's existing emission levels, the Project threatens the successful implementation of the California Global Warming Solutions Act (AB 32, 2006), which requires reductions in current levels of greenhouse gases in California. *See* 40 C.F.R. § 1508.27(10) (factor in significance determination includes whether action threatens to violate federal, state, or local law or requirements); *see also* Executive Order S-3-05 (June 1, 2005) (setting greenhouse gas emissions reduction targets for California); Control of Emissions From New Highway Vehicles and Engines, 68 FR 52922 (September 8, 2003) (affirming EPA's recognition of climate change and the need to reduce greenhouse gases). CBD-8

In addition, the Project's greenhouse gas emissions will indisputably have a cumulatively significant impact on global climate change. 40 C.F.R. § 1508.27(7). Climate change is a classic example of a cumulative effects problem; emissions from numerous sources combine to create the most pressing environmental and social problem of our time. These sources may appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact. The solution to climate change lies not in any one single action, but in systematically reducing emissions from all possible sources. Indeed, despite NEPA's mandate to examine cumulative impacts and the obvious application of cumulative impacts to global warming, USACE fails to conduct a cumulative impacts analysis of the Project's greenhouse gas emissions. USACE's failure to consider the significant cumulative impacts of the Project on global warming renders the EIS inadequate.[1] CBD-9

[1] LAHD acknowledges the cumulative nature of global warming but determined that the Project's emissions were already significant on a project-level basis. Because USACE did not find the Project's impacts were significant on a project-level basis, it must proceed with a cumulative impacts analysis.

IV. ADDITIONAL FEASIBLE MITIGATION MEASURES MUST BE ADOPTED TO ELIMINATE THE PROJECT'S GREENHOUSE GAS CONTRIBUTION

Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990). Under CEQA, feasible mitigation measures must be adopted that will avoid or substantially lessen significant environmental effects. Pub. Res. Code § 21002. As presented in the DEIR/S, proposed mitigation would reduce annual Project emissions from 468,116 metric tons of carbon dioxide equivalent greenhouse gases to 394,372 metric tons. While the mitigation measures adopted by the Port to reduce greenhouse gas emissions are an important first step, much more can be done to reduce the significance of this impact. Indeed, absent further mitigation, the sizable annual emissions resulting from the Project will frustrate achievement of California's mandate to reduce emissions under AB 32 and Executive Order S-3-05. With its potential to influence the environmental performance of the shipping sector, an industry that is largely unregulated and contributes more greenhouse gases than most Annex I countries to the Kyoto Protocol, LAHD/USACE are in a unique position to have considerable impact on global warming and fully mitigate the Project's global warming impacts.

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In *Air Pollution Greenhouse Gas Emissions from Ocean-going Ships: Impacts, Mitigation Options and Opportunities for Managing Growth*, the International Council on Clean Transportation provides a detailed analysis of potential mitigation a port can adopt to reduce greenhouse gas emission from the shipping sector. This report (hereinafter referred to as the "ICCT Report") is attached to these comments. Measures suggested therein are incorporated below.

Additional mitigation measures include:

Incorporation of Efficiency/Low Emission Standards Into New Vessel Construction: MM AQ-13 calls for all new vessel builds to incorporate NO_x and PM control devices. This mitigation measure should also incorporate criteria for low-emission/high efficiency vessels to reduce greenhouse gases generated by these ships to the extent feasible. Additional standards can include:

- Efficiency in ship design. Optimizing the shape of the hull to minimize resistance can lead to improved efficiency of 5-20%. Choosing the right propeller type can provide additional efficiency gains of 5-10%. ICCT Report at 54.
- All new vessels should also have engine rooms designed with enough space to allow for new retrofit technologies and include equipment to utilize shore-side power.
- Requiring the use of alternative fuels.
- Where applicable, the use of diesel electric pod-propulsion, which has been demonstrated in cruise and ferry applications to reduce power requirements by approximately 10-15%. (*Id.*; *see also* Kleiner, The Shipping Forecast, Nature Vol. 339 (Sept. 2007) (describing efficiency measures) (attached))
- Incorporation of emerging technologies, such as solar panels and diesel-

CBD-11

electric systems into vessel design as these technologies become available.
- Implementation of fuel economy standards by vessel class and engine.
- Use of non-greenhouse gas refrigerants were applicable.

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Incorporation of Efficiency/Low Emissions Standards Into Fleet Modernization of On-Road Trucks: According the DEIR/S, trucks are far and away the largest contributor of greenhouse gases resulting from the Project. MM AQ-9 should be modified to incorporate criteria for low-emission/high efficiency on-road trucks. Criteria can include:

- Use of biodiesel, hybrid technology, and specific fuel economy standards.
- A mitigation fund to assist in increasing the efficiency/decreasing emissions of trucks that serving the port.

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Incorporation of Efficiency/Low Emissions Standards Into Construction and Operation Equipment: MM AQ-3, MM AQ 7 and MM AQ 8 should be modified to incorporate criteria for low-emission/high efficiency criteria for construction and operation equipment. Criteria can include the use of biodiesel, hybrid technology, and specific fuel economy standards.

CBD-13

Environmentally Differentiated Port Fees Based on Vessel Greenhouse Gas Emissions: The ICCT Report discusses market-based mechanisms that impose variable fees designed to reward low-emissions and/or high efficiency vessels (and conversely penalize high-emissions and/or low-efficiency vessels). *See* ICCT Report at 56-64. A fee program has been implemented with a good deal of success in Sweden. Environmentally differentiated port dues would provide a significant incentive for large shipping companies to invest in emission control technologies for new and existing vessels and substantially reduce the greenhouse gases generated as a result of the Project.

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Limitations/Controls on Use of Greenhouse Gas Refrigerants: Fluorinated and chlorinated hydrocarbons are still used as cooling agents in refrigerated vessels. Hydrofluorocarbons (HFCs) are highly potent greenhouse gases. Because some HFC's have a global warming impact of close to 12,000 times that of carbon dioxide, even small reductions in HFC emissions can have a large impact.

It is estimated that 50 percent of HFCs on a ship are released to the air during operation and that an additional an additional 15 percent are emitted during maintenance. ICCT Report at 34. To reduce HFC emissions, the Port should evaluate the following mitigation measures:

- Requiring all ships using the Port to use alternative refrigerants. \
- Use of environmentally differentiated fees for vessels that use alternative refrigerants. Fees should be set at a rate significant enough to encourage a switch to alternative refrigerants.
- A mitigation fund to assist ships in switching to alternative refrigerants.
- Requiring periodic leak inspections for ships, trucks, and trains that use

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HFC refrigerants.

- Providing refrigerant servicing at the Port to ensure that HFC's are recovered during servicing.

CBD-15 In addition, an excerpt from the Environmental Protection Agency's *Global Mitigation of Non-CO_2 Greenhouse Gases* that specifically addresses HFCs and potential mitigation is attached. While the DEIR/S' estimate of emissions from refrigerant leaks is relatively low, the DEIR/S improperly limits its analysis to leaks occurring within California, not the entire trip length.

CBD-16 **Preferential Contracting with Cleanest Carriers.** To the extent the Port contracts with third parties, much like environmentally differentiated port dues, preferential contracting with cleanest carriers can provide incentives for additional greenhouse gas reductions. In addition, by only contracting with the cleanest carriers, the Port will reduce the emissions resulting from the Project.

- An examination of preferential contracting and environmentally differentiated fees should extend to the use of rail over trucks as a means of transport.

CBD-17 **Vessel Speed Reduction Program:** MM AQ-10 calls for speed reductions of 12 knots within 40 nautical miles of Point Fermin. (DEIR at 3.2-104). Please explain if the proposed program would maximize GHG reductions and/or if additional reductions are feasible if the program is extended beyond Point Fermin or if vessel speed is further reduced. In additional several whale deaths outside Los Angeles have recently been attributed to ship strikes. (*See* L.A. Times, Whale Death Attributed to Ship Strike (attached)). A revised EIR/S should analyze this potential impact and evaluate whether speed reduction should also be considered for areas trafficked by whales to prevent additional whale deaths.

CBD-18 **Increased Use of Renewable Power for Electricity Generation:** 47% of the Port's electricity comes from coal (DEIR/S at 3.2-104), which emits higher amounts of greenhouse gas emissions per unit of energy that any other source of electricity. The feasibility of generating additional on-site renewable electricity generation should be explored as well as a higher percentage of off-site renewable electricity, either from LADWP or independent sources of renewable energy.

- Specifically, the Port should examine the feasibility of expanding MM AQ-22, which calls for solar panels on the main terminal building, to the construction of solar panels on other Port buildings. Solar panels can also be built over parking lots, thereby generating both sustainable energy and shade.

CBD-19 **Use of Low-Sulfur Fuel or Biofuels:** Mitigation can include: 1) requiring the use of ultra low-sulphur diesel fuel (<15 ppm) in all on-board auxiliary engines, boilers, and compatible main engines; 2) requiring the use of low-sulphur marine gas oil (MGO) with a sulphur content of in all other main engines; 3) restricting the availability at Port facilities of fuels which do not meet ultra-low sulphur

standards for diesel or MGO; 4) providing financial incentives and technical assistance to international ocean-going shippers to install slide valves and other pollution-reducing devices on existing marine engines; 5) financial incentives and technical assistance to international shippers to use biofuels rather than fossil-fuels in all new engines; 6) requiring the use of fuel-borne catalysts in diesel, MGO, and other fuels to reduce particulate emissions. CBD-19

Use of Recycled Materials: Use of recycled materials will lessen the greenhouse gas footprint of the Project. The DIER/S should commit the Project to using recycled materials in the construction and operation phases of the Project. CBD-20

After all greenhouse gas emissions are calculated and reduced as much as possible, carbon "credits" and other voluntary market-based carbon-trading options are available to offset unmitigated emissions from the Project. A mitigation fund can be used to assist in reducing the greenhouse gas emissions from the trucks and ships that utilize the port and provide energy efficient retrofits to existing Port buildings as well as buildings in the surrounding area. CBD-21

V. THE PROJECT'S OBJECTIVES AND RANGE OF ALTERNATIVES TO THE PROJECT CONSIERED IN THE DEIR/S IS INADEQUATE

The evaluation of alternatives in the "heart" of the EIS. 40 C.F.R. § 1502.14. NEPA requires that the preparing agency "[r]igorously explore and objectively evaluate all reasonable alternatives" to the proposed action. *Id.*; *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985) (EIS must consider "every" reasonable alternative). To ensure that a full range of alternatives are considered, the preparing agency must not have unduly narrow project objectives. *City of Carmel-by-the-Sea v. United States Department of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997). Similarly, a proper analysis of alternatives is essential to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. Cal. Pub. Res. Code § 21002. The goal of the analysis is to determine whether there are alternatives to a proposed project that have fewer environmental impacts, yet still meet some, though not necessarily all, of the project's objectives. *See, e.g.*, Guidelines § 15126.6. The DEIR/S falls short of the meaningful evaluation of alternatives demanded by both CEQA and NEPA. CBD-22

The discussion of Alternative 4, which includes construction of an "Omni Terminal" such as that currently operated at Berths 174-181, does not accurately reflect how that alternative could meet Project objectives. The DEIR/S states at 2-45: "It is assumed that one-third of the Omni terminal would be used for container cargo, one-third for automobile off-loading/transport, and one-third for break-bulk use." (parentheticals omitted). Setting such rigid limits to Omni terminal capacity ignores the versatile nature of an Omni terminal, which can accommodate a wide range of cargo types and volumes. The terse and insufficient description of the possible capabilities of an Omni terminal and the ways it can be optimized to accommodate larger proportions of containerized cargo renders the discussion of this alternative inadequate.

Additionally, Alternative 3, the Reduced Wharf alternative, which is the Environmentally Preferred Alternative under USACE's NEPA analysis, is rejected because it CBD-23

CBD-23

does "not meet the need to optimize Port land and terminals for future cargo volumes because the resulting terminal would be capable of handling less cargo than the other two alternatives." However, the need to "optimize" Port facilities is not a Project objective for LAHD or USACE. LAHD's objectives to "provide a portion of the facilities needed to accommodate the projected growth in the volume of containerized cargo," "increase growth while mitigating the impacts of that growth on the local communities," and to "comply with the Port's Strategic Plan to maximize the efficiency and capacity of terminals while raising environmental standards through application of all feasible mitigation measures," can all plausibly be met by means of Alternative 3. *See* DEIR at 2-9. Likewise, USACE's purpose to "Construct sufficient berthing and infrastructure capacity to accommodate foreseeable increases in containerized cargo" does not require selection of the Alternative with the greatest cargo throughput.

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One possible alternative to the Project not discussed in the DEIR/S is the termination of the current holdover lease at berths 136-149 with TraPac, Inc. Forming a new lease with TraPac or some other contractor would allow the implementation of additional environmental controls developed by LAHD that are not part of the current lease. *See* DEIR/S at 2-46. When combined with proposed project components or other project alternatives, forming a new lease would plausibly allow Project objectives to be met with fewer environmental impacts than the proposed project. This and other additional reasonable alternatives that would reduce the proposed project's environmental impacts from greenhouse gases should be considered before USACE or LAHD take any action in furtherance of the Project.

CONCLUSION

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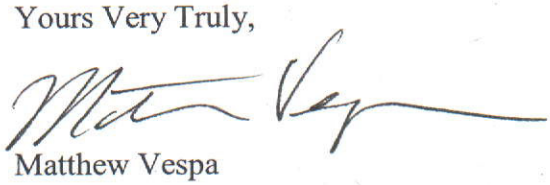
For the reasons set forth above, the Center requests that LAHD prepare and recirculate a revised EIR/S that complies with CEQA and NEPA. The Center is concerned that the proposed Project, without further mitigation measures or more fully explored alternatives, risks causing irretrievable and irreparable environmental harm throughout its projected operation. Considering the severe environmental consequences of unmitigated climate change and its effects on public health and welfare and environmental quality, LAHD and USACE should take dramatic action to proactively reduce greenhouse gas emissions from this and other Projects under consideration

Please do not hesitate to contact Matthew Vespa at 415-436-9682 x 309 or mvespa@biologicaldiversity.org if you have any questions regarding these comments. The Center for Biological Diversity wishes to be placed on the mailing/notification list for all future environmental decisions regarding this Project. We look forward to working with the Los Angeles Harbor Department and the Army Corps of Engineers now and in the future to reach our shared goals of reducing greenhouse gas emissions and protecting biological diversity, public health, and our environment. Thank you for your time and consideration of our concerns.

Yours Very Truly,



Matthew Vespa

ATTACHED LITERATURE

Cayan, et al. 2007. Our Changing Climate: Assessing the Risks to California. California Climate Change Center. Available at: http://www.climatechange.ca.gov/biennial_reports/2006report/index.html

Chawkins, Whale Death Attributed to Ship Strike, Los Angeles Times, Sept. 23, 2007.

International Council on Clean Transportation, Air Pollution and Greenhouse Gas Emissions from Ocean-going Ships: Impacts, Mitigation Options and Opportunities for Managing Growth (2007)

Kleiner, The Shipping Forecast, Nature Vol. 449, p. 272-273 (Sept. 20, 2007)

United States Environmental Protection Agency, Global Mitigation of Non-CO_2 Greenhouse Gases, EPA 420-R-06-005 (2006) (excerpts)

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Center for Biological Diversity, September 24, 2007

CBD-1. Thank you for participating in the Draft EIS/EIR public review process. We appreciate your time and effort.

CBD-2. As discussed in Draft EIS/EIR Section (Impact AQ-8), the project would result in increases in greenhouse gases (GHGs) from both construction and operation of the proposed Project and all alternatives.

CBD-3. As stated in Draft EIS/EIR Section 3.2.10, the direct environmental effect of GHG emissions is the increase in global temperatures, which in turn has numerous indirect effects on the environment and humans. This Project would increase GHG emissions from truck, rail, and ships both within and outside the State of California's borders. The Final EIS/EIR includes additional information on the potential effects of GHG emissions on the environment. Please see Final EIS/EIR Chapter 3.

CBD-4 The GHG analysis in the Draft EIS/EIR is comprehensive and provides emissions data on all sources beyond the boundary of the Project. While the Port acknowledges that climate change is a global phenomenon, the geographic scope used in the Draft EIS/EIR greenhouse gas analysis (GHG) is appropriate. In addition, reliance on the California Climate Action Registry CCAR protocols for geographic boundary determination is consistent with the direction provided by existing state statutes.

GHG analysis in CEQA documents is new and largely based on new progressive laws passed in California, namely passage of Assembly Bill (AB) 32, the California Global Warming Solutions Act of 2006. As discussed on page 3.2.10 of the Draft EIS/EIR, there are no federal standards for GHGs emissions and control of GHGs is generally regulated at the state level, where CEQA guidance is yet to be developed. SB 97, which was enacted in August 2007, directs the California Office of Planning and Research to create, by July 1, 2009, "guidelines for the feasible mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions, as required by CEQA." In addition, as discussed in Draft EIS/EIR Section 3.2.4.3 the Port of Los Angeles has adopted the City of Los Angeles Thresholds Guide (2006) to develop both methodology and establish thresholds for CEQA impact analyses. In areas where the City of Los Angeles Thresholds Guide does not present guidance or defers to another agency, as in the case of criteria pollutant and health risk modeling, the Port will defer to guidance from another agency, for example SCAQMD and USEPA. In the case of GHG, neither the SCAQMD nor the City of Los Angeles has established a methodology or thresholds to use in CEQA documents.

Absent adopted guidance, under CEQA, the lead agency has the discretion to develop methodology as long as there is substantial evidence to justify the decision. AB 32 and its predecessor statutes provided the basis for reliance of the CCAR protocols and selection of California's borders as the geographic scope for analysis. The legislative findings for California's first GHG legislation, AB 1493, Vehicular Emissions: Greenhouse Gases (enacted in 2002), discusses the issues related to climate change within state boundaries only. (See Health and Safety Code, § 43018.5.) The legislative findings for AB 32, similarly focus on emission within, and impacts to, the state of California (see Health and Safety Code, § 38501, subds. (a), (b), (h)). AB 32 itself explicitly requires reporting for GHG emissions from out-of-state electricity generation (which the Draft EIS/EIR provides), but does not require reporting of any other type of out-of-state emissions (see Health and Safety Code, § 38530, subd. (b)(2)).

AB 32 directs the California Air Resources Board (CARB) to promulgate regulations to reduce statewide emissions to 1990 levels by 2020 and provides that "[w]here appropriate and to the maximum extent feasible, [CARB shall] incorporate the standards and protocols developed by [CCAR]." (Health and Safety Code, § 38530, subd. (b)(3)). CCAR, which was created in 2000 by SB 1771, directs GHG producers to use California as a geographic boundary for evaluation of GHG emissions until CCAR has devised a protocol for reporting global emissions (see CCAR General Reporting Protocol 2007).

Furthermore, the California Attorney General has gone on record stating that AB 32 is the foundation for including GHG emissions and analysis in CEQA documents. "The Governor's Executive Order and AB 32 inform agencies' obligations under CEQA." (Attorney General Letter to Maureen Parkes, Contra Costa County Planning Commission, May 8, 2007 regarding the ConocoPhillips Rodeo Refinery Expansion Project, p. 6.) The Settlement Agreement between the Attorney General and the County of San Bernardino regarding the EIR on the San Bernardino County General Plan Update ("Agreement") instructs that AB 32 should guide agencies' GHG CEQA analyses. The Agreement explicitly provides that in conducting CEQA analysis of the GHG reduction plan San Bernardino County shall rely on data and standards promulgated by CARB pursuant to AB 32 (Agreement, paragraph 1.3).

In addition, all the inventories developed by the state thus far, and CARB's proposed regulation for mandatory reporting of GHGs, do not include GHG emissions outside the state boundaries (with the exception of electricity).

In light of CCAR protocols, California's existing GHG legislative language, and the Attorney General's statements that AB 32 informs CEQA compliance for GHG analyses, it is reasonable to use California's borders as the geographic limit for the Project's GHG analysis.

The analysis presented in the Draft EIS/EIR quantified both direct and indirect emission sources of the Project. Direct sources from Project construction include off-road diesel construction equipment, on-road trucks, marine cargo vessels, and worker commute vehicles. Direct and indirect GHG sources from Project operation include ships, tugboats, terminal and rail yard equipment, on-road trucks, trains, fugitive refrigerant losses from reefers, on-terminal electricity usage, and worker commute vehicles (see Draft EIS/EIR, p. 3.2-101).

The precise geographic boundary for each GHG emissions source differs and has been clarified in Final EIS/EIR Section 3.2.4.3.2. GHG emissions attributable to onsite electricity consumption were calculated whether they were generated by power plants within or outside the political boundaries of California. The Draft EIS/EIR GHG analysis accounted for on-road truck transit along the following routes: (1) between the Port and the Carson Intermodal Container Transfer Facility ("ICTF"); (2) between the Port and the Los Angeles Rail Yards; (3) the average distance of local truck trips; and 4) the average distance within California of out-of-state truck trips (see Table XX-PP-37 in Appendix D1-3). The GHG analysis considered train transit along the following routes: (1) 250 miles between the Berths 136-147 ICTF and California's borders; and (2) 242 miles between the Carson/Los Angeles ICTF and California's borders (see Table XX-PP-44 in Appendix D1-3). For cargo ships, emissions from ocean transit along a 170-nm shipping route between the Port breakwater and the border of California's three mile jurisdictional waters off of Point Conception were analyzed. The Draft EIS/EIR assumed

that all ships traveling to and from the Port would follow this "northern route." The northern route represents the longest distance that container ships may travel to and from the Port while still within California's jurisdictional waters.

CEQA requires disclosure of all reasonably foreseeable emissions over the life of the project, which for this Draft EIS/EIR is 2038. The Draft EIS/EIR reports GHG emissions within California boundaries comparing baseline to the horizon year. Origin and destination data for out-of-state emissions over the life of the Project do not exist and would be speculative.

CBD-5. See response to comment CBD-4.

Environmental Defense Fund v. Massey, 986 F.2d 528 (D.C. Cir. 1993). The holding in *Massey* is clearly distinguishable from the facts in this situation and does not require that the TraPac EIS/EIR account for nation-wide and global GHG emissions. *Massey* held that the National Science Foundation was required to conduct NEPA review of its decision to operate a land fill in Antarctica. *Massey* thus applies only to projects that are themselves conducted overseas. *Massey* did not address indirect effects of domestic projects or geographic boundaries for analysis.

CBD-6 & 7 The NEPA Baseline depends on the federal control and responsibility over the proposed action (see the four factors at 33 CFR 325 Appendix B). For the Berths 136-147 Container Terminal Project, there is minimal cumulative federal control and responsibility over the Project and contrasts with the shipping terminal example provided in Appendix B (33 CFR 325 Appendix B § 7(b)(3) ("…a shipping terminal normally requires dredging, wharves, bulkheads, berthing areas and disposal of dredged material in order to function. Permits for such activities are normally considered sufficient Federal control and responsibility to warrant extending the scope of analysis to include the upland portions of the facility").

The Project is being built entirely on non-federal property and without any federal funding. There is no federal funding, guarantee, or other financial assistance associated with any aspect of the Project.

The Port has surveyed the entire site for the presence of cultural resources that may meet the criteria for listing in the National Register of Historic Places (NRHP). No significant cultural resource sites have been identified that fall within the permit area, as defined in the USACE's regulations regarding implementation of the National Historic Preservation Act (33 C.F.R. Part 325, Appendix C, § 1(g)).

No Federally listed endangered or threatened species or designated critical habitat occur on the site. No wildlife refuges, endangered species, wetlands, other dedicated natural resource areas occur on the site. As such, no other Federal agencies are required to take action under the Fish and Wildlife Coordination Act, the Endangered Species Act, Executive Order 11990 for Protection of Wetlands, or other environmental review laws or executive orders.

Other federal agencies exert no control over the environmental effects of land development on the upland portions of the Project.

Furthermore, the federal and non-federal portions of the proposed Project could exist independently of each other, state and local regulations primarily control the design of this Project, and this Project is undergoing extensive state environmental review.

Unlike the shipping terminal example in Appendix B, TraPac already operates a fully functional container terminal at this location, and continued operations and additional development of the upland portions of the Project could and undoubtedly would occur in the absence of a USACE permit, which would result in increased throughput and additional impacts over time. This is illustrated by the increases in throughput and air quality over which the USACE has no control or responsibility (e.g., 2003 annual TEUs = 891,976 versus estimated 2006 TEUs = 8,469,853 TEUs, Table 3.2-22 Average Daily Emissions Associated with the Operation of the Berths 136-147 Terminal Proposed Project). Furthermore, there is no other substantial federal interest in the upland portions of the Project that would warrant extending the NEPA scope of analysis beyond what is occurring immediately adjacent to the water (i.e., beyond the 100-foot-wide area of upland that might be needed to complete the proposed in-water work, fill, and structures). In short, the environmental consequences of the larger Project are not essentially products of the federal action. Rather, they are primarily the product of non-federal interests and designs. The Draft EIS/EIR component of the environmental document specifically analyzes the portion of each impact attributable to federal control and responsibility, and, as appropriate, evaluates each NEPA increment in a broader context to assess cumulative effects. The Draft EIS/EIR component of the environmental document specifically analyzes each impact relative to the conditions in 2003, to coincide with the issuance of the Notice of Preparation. The Draft EIS/EIR considers the various impacts that could occur throughout the entire Project area (i.e., proposed project and alternatives), because they are all subject to approval by the Port.

The specific portion of the Project subject to the USACE's control and responsibility is the in-water area (up to the high tide line) and adjacent upland area expected to be used to complete the in-water activities (i.e., approximately 100-foot-wide strip of upland area adjacent to the shoreline).

The USACE has no authority or responsibility to regulate activities, such as upland operations, that are occurring or could occur absent a USACE permit. These activities and resulting conditions, therefore, comprise the NEPA Baseline.

For this project, the NEPA Baseline is not fixed because the container facility onsite is expected to increase its throughput and impacts regardless of whether a USACE permit is issued. In contrast, the CEQA Baseline is static as normally required by CEQA (i.e., the conditions at the issuance of the Notice of Preparation). The fact that Project area conditions would change in the absence of a USACE permit underscores the limited federal control and responsibility that exists and the need for a dynamic Project NEPA Baseline. This is entirely different than a case involving the re-licensing of a federal facility (e.g., Federal Energy Regulatory Commission (FERC) hydropower facility) that has been operating for decades and where environmental conditions are not anticipated to change regardless of the re-licensing. Thus, a case involving complete or majority federal control and responsibility and no or very limited anticipated changes in environmental conditions over time supports a fixed NEPA Baseline; whereas a dynamic NEPA Baseline is warranted in a case involving limited federal control and responsibility over an existing non-federal facility and potentially substantial changes in conditions over time even in the absence of federal involvement.

The NEPA Baseline is different from the No Project Alternative (Alternative 1 in the Draft EIS/EIR). The No Project (Alternative 1) assumes there would be no federal action or CEQA action. Thus, the No Project Alternative is more restrictive than what is reasonably anticipated under the NEPA Baseline, which is equivalent to the No Federal Action Alternative. The alternative that is most similar but not identical to the NEPA Baseline is the Landside Terminal Improvements/CEQA No Project Variant (Alternative 5 in the Draft EIS/EIR). As the EIS/EIR explains: "Alternative 5 is a No Federal Action alternative, which would not require a USACE permit. Because there would be no federal action or permit, there would be no significance determinations under NEPA for this alternative. This alternative differs from the NEPA Baseline, however, in that only the upland infrastructure components are constructed but no new backland area for container storage is added. Therefore, while throughput has the potential to grow due to operational changes, actual throughput growth is constrained in 2015 by significantly less acreage and lack of operational changes in this time frame" (Draft EIS/EIR, Section 2.5.1.5.).

The Draft EIS/EIR includes discussion of the factors and assumptions used by the USACE to establish the NEPA Baseline and federal Scope of Analysis (see Sections ES.2.4.2 NEPA Baseline, 1.4.1 Scope of Analysis, Section 1.5.5.1 NEPA Baseline/No Federal Action, and 2.6.2 No Federal Action/NEPA Baseline, which also reference the four factors at 33 CFR 325 Appendix B). In fact, specific activities are identified that are included in establishing the NEPA Baseline for this Project (e.g., adding/reconfiguring 57 acres of existing land for backland area and an on-dock rail yard). If the USACE does not issue a permit for the proposed action, TraPac or another lessee would continue to operate the existing facility, throughput would continue to increase (as it has even since 2003, the year used to establish the CEQA Baseline), and GHG emissions would also continue to increase. This increase in GHG emissions over time under the NEPA Baseline conditions necessarily decreases the difference or increment between the GHG emissions of the proposed Project and the NEPA Baseline. The USACE has very limited control and responsibility over this non-federal facility's GHG emissions. The USACE has some degree of control over the additional GHG emissions that would result from the proposed expansion of this non-federal facility. The Draft EIS/EIR appropriately discloses the GHG emissions over which the USACE has federal control and responsibility pursuant to NEPA.

The dynamic NEPA Baseline, which accurately discloses impacts attributable to the federal action, is used consistently throughout the EIS/EIR, whether (as in the case of GHG emissions) that practice produces a lower level of impacts than under CEQA or (as in the case of diesel particulate matter emissions) it produces a higher level of impacts than under CEQA. The reason for the difference is that CAAP measures, which target pollutants such as DPM, are anticipated to be implemented throughout the Port of Los Angeles and Port of Long Beach over time, even in the absence of federal action. Implementation of CAAP measures could reduce the levels of DPM and other pollutants by approximately 50 percent. With the anticipated reduction in DPM over time as CAAP measures are implemented, the cancer risk is also anticipated to decrease under the NEPA Baseline conditions, which would increase the calculated cancer risk increment between the proposed Project and the NEPA Baseline. Because the modeled cancer risk increment exceeded 10 in a million over time, the NEPA analysis for the proposed Project determined the proposed Project would have a significant cancer risk. In contrast, the CEQA analysis predicted cancer risk attributable to the proposed Project to be below the 10 in a million threshold, because the CEQA Baseline is fixed to 2003 (i.e., the issuance

of the Notice of Preparation), which is before the implementation of any CAAP measures.

CBD-8 & 9. NEPA is a procedural statute requiring agencies to consider the environmental impacts of their actions, while at the same time "guaranteeing broad public dissemination of relevant information." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 333 (1989). The purpose of NEPA is to prevent "uninformed-rather than unwise-agency action." *Id*. It is true that neither NEPA, CEQ guidelines, nor the USACE NEPA regulations require quantitative thresholds in determining the significance of a NEPA impact. However, none of these requires the USACE to determine whether an identified impact is significant if an EIS is already being prepared. Given the lack of a federal or scientifically based GHG standard, the USACE believes it is premature to make a NEPA significance determination and is choosing instead to fully disclose the emissions attributable to the proposed project and alternatives.

CBD-10. Thank you for your comments. As stated in the document, due to difficulties with quantifying emission reductions from some mitigation measures, emission reductions are expected to be greater than 73,744 metric tons. Additionally, as part of the CAAP, the Port is actively pursuing technology and operational changes to further reduce criteria pollutants and GHG emissions. Future technologies and/or operational changes may be added through Mitigation Measure AQ-17 and/or Port-wide tariffs. In addition, an analysis of proposed mitigations measures is included below.

CBD-11. Mitigation Measure AQ-13 addresses PM and NO_x emission control devices in new engine builds. The proposed changes suggest including GHG emission control devices. The Port supports this addition and will amend Mitigation Measure AQ-13 as follows:

> **Mitigation Measure AQ-13: New Vessel Builds.** All new vessel builds shall incorporate NO_x ~~and~~ PM and GHG control devices on auxiliary and main engines. These control devices include, but are not limited to the following technologies, where appropriate: (1) selective catalytic reduction (SCR) technology; (2) exhaust gas recirculation; (3) in line fuel emulsification technology; (4) diesel particulate filters (DPFs) or exhaust scrubbers; (5) common rail; ~~and~~ (6) Low NO_x burners for boilers; (7) implementation of fuel economy standards by vessel class and engines; and (8) diesel-electric pod-propulsion system.
>
> This measure focuses on reducing DPM, NO_x, and SO_x emissions from main engines and auxiliary engines. OGV engine standards have not kept pace with other engine standards such as trucks and terminal equipment. New vessels destined for California service should be built with these technologies. As new orders for ships are placed, the Ports believe it is essential that the following elements be incorporated into future vessel design and construction:
>
> 1. Work with engine manufacturers to incorporate all emissions reduction technologies/options when ordering main and auxiliary engines, such as slide valves, common rail, and exhaust gas recirculation;
>
> 2. Design in extra fuel storage tanks and appropriate piping to run both main and auxiliary engines on a separate/cleaner fuel; and

3. Incorporate SCR or an equally effective combination of engine controls. If SCR systems are not commercially available at the time of engine construction, design in space and access for main and auxiliary engines to facilitate installation of SCR or other retrofit devices at a future date.

In addition, this measure will also incorporate design changes and technology to reduce GHG emissions where available.

Additionally, as discussed below, MOL has implemented or will implement some of your proposed upgrades.

Currently, all new MOL vessel builds include AMP retrofits and MOL has adopted use of the refrigerant R134a, which has an ozone depletion coefficient of zero. MOL also has a program to address and implement measures for maintaining and improving the vessel performance (fuel efficiency and speed). Examples include operational changes such as reducing navigation speed and select optimum routes depending on the situation and technological changes such as energy-saving designed vessels and Propeller Boss Cap Fins (PBCF) systems. In regards to refrigerant use, CFC refrigerants were traditionally used on ships for air conditioning systems and refrigeration of food, as well as to refrigerate cargo containers, and Halon was used in onboard fire extinguishing systems. MOL adopted R-22 (hydrochlorofluorocarbons [HCFC]), which has a smaller ozone depletion coefficient than R-12 (chlorofluorocarbons [CFC]) on vessels launched after the late 1970s. In 2002, MOL began to use R-404A, eliminated Halon fire-extinguishing equipment in favor of carbon dioxide systems, stopped using R-12 and adopted R134a, which has an ozone depletion coefficient of zero.

CBD-12. Mitigation Measure AQ-9 incorporates the Port's Clean Truck Program into the TraPac Terminal. The Port approved the Program on November 1, 2007. This mitigation measure will ensure required gate modifications are completed to support the Clean Truck Program, however, the Truck Program is being controlled outside the proposed Project. The Clean Truck Program also includes an LNG program, however, use of LNG was not assumed as part of this Project due to availability issues. A gate fee to support environmental upgrades will be established as part of this Program. Biodiesel use at the Port is not being heavily pursued due to reported increases in NO_x emissions. In a study done by Mc Cormick et al (2006), biodiesel use in trucks increased emissions 2 percent to 3 percent. Accordingly, trucks using biodiesel are not expected to meet the percent NO_x reduction assumed in the Draft EIS/EIR. As discussed in the Draft EIS/EIR (page 3.2-3), while the South Coast Air Basin has been in attainment for NO_x since 1991, the region is now considered a maintenance area for NO_x and local air agencies are pursuing further reductions that prevent regional increases from increased population.

CBD-13. Please see response to comment SCAQMD-12. As stated, Mitigation Measure AQ-3, addresses emission reductions in construction equipment. The proposed changes suggest including GHG emission control devices. The Port supports this addition and will amend the mitigation measures as follows:

Mitigation Measure AQ-3: Fleet Modernization for Construction Equipment. All off-road diesel-powered construction equipment greater than 50 hp, except derrick barges and marine vessels, shall meet the cleanest off-road diesel emission levels available but no greater than Tier 2 emission standards for projects starting construction prior to December 2011. Tier 3 emission standards shall be applied to

projects starting construction between December 2011 and January 2015. The contractor could meet Tier 3 equivalent PM10 emission limits through the use of new or repowered engines designed to meet Tier 2 PM standards and/or the use of CARB approved diesel particulate traps. ~~achieve the Tier 2 emission standards in Phase 1 construction and Tier 4 emission standards in Phase 2 construction, as defined in the USEPA Non-road Diesel Engine Rule (USEPA 1998 and 2004). Equipment not designated Tier 23 by the manufacturer may achieve the emissions requirement by retrofitting the equipment with an CARB Verified Diesel Emission Control System (VDECS) and/or by the use of an CARB verified emulsified fue~~l. For Phase II construction (post 2015), equipment shall meet the Tier 4 emission standards where available. In addition, construction equipment shall incorporate, where feasible, emissions savings technology such as hybrid drives and specific fuel economy standards.

In regards to Mitigation Measures AQ-7 and AQ-8, which control NOx and PM emissions from yard equipment, the Port does not feel that it is feasible at this time to require alternative fuel for yard equipment. These measures are fuel neutral, however, biofuel use at the Port is not being heavily pursued due to reported increases in NOx emissions. Accordingly, yard equipment using biofuel are not expected to meet the percent NO_x reduction assumed in the Draft EIS/EIR.

The Port is actively pursuing advanced technology, including electric rubber tired gantry cranes and hybrid yard tractors through the CAAP's Technology Advancement Program. Because a number of these technologies decrease fuel costs, terminal operators have expressed interest in implementing such technologies. However, such technology is still being tested and cannot be required at this time. Mitigation Measure AQ-17 would require the Berths 136-147 tenant to review, in terms of feasibility, any Port-identified or other new emissions-reduction technology, including yard equipment, and report to the Port.

TraPac has installed Energy Capacitors on all gantry cranes and substations. Energy capacitors are also called power factor correction (devices). Capacitors react opposite of inductors. Cranes, heating, ventilation and air conditioning (HVAC), refrigeration equipment, or anything that has a motor has inductance that causes inductive reactances; this creates a "lagging" power factor. The current will lag behind the voltage and the spacing causes inductive reactive losses (energy losses also called "wattless energy" or reactive power losses). For electricity to be used efficiently the voltage and current should be in unison. Properly sized capacitors will counter act the inductance and move the current closer to the voltage. The end result is less waste of electric energy and efficient operation, less heat generated by the motor, and less breakdown. In addition to saving energy, motors and equipment last longer because equipment is running more efficient with less heat losses.

CBD-14. The Port is a landlord port. Through leases, the Port imposes environmental measures on the tenant based on the CAAP, the Port's Leasing Policy, and CEQA analysis. As such, environmental "fees" are a part of every new lease or renewal at the Port. While the Port is pursuing Port-wide measures through the CAAP, including potential market-based solutions, these measures would be applied Port-wide and not through an individual lease.

CBD-15. In regards to refrigerant use, CFC refrigerants were traditionally used on ships for air conditioning systems and refrigeration of food, as well as to refrigerate cargo containers,

and Halon was used in onboard fire extinguishing systems. MOL adopted R-22 (HCFC), which has a smaller ozone depletion coefficient than R-12 (CFC) on vessels launched after the late 1970s. In 2002, MOL began to use R-404A, eliminated Halon fire-extinguishing equipment in favor of carbon dioxide systems, stopped using R-12 and adopted R134a, which has an ozone depletion coefficient of zero. Additionally, according to TraPac, refrigerated containers are checked 2-3 times a day for leaks and repaired immediately if a leak is detected.

CBD-16. The Port is a landlord Port and does not contract directly with cargo handlers, but instead leases out Port facilities terminal operators. As discussed in Draft EIS/EIR Section 1.1.2, the goods movement chain includes the shipping line, third party logistics providers, stevedoring company, terminal operators, laborers, truckers, railroads, and distribution centers. Manufacturers, retailers, or third party logistics firms often contract with shipping lines to move goods from origin and destination. Stevedores are responsible for loading and unloading ships; whereas the terminal operator handles the sorting of containers, as well as providing facilities for container pick-up and drop-off at the Port facility. Terminal operators may also contract out to invitee shipping lines to fill extra berth space. These "third-party invitee" shipping lines traditionally look for longer-term terminal and stevedoring agreements to secure their positions in the market place for at least five years, but may make agreements with the terminal operator for as little as six months because terminal operators are not always able to offer longer-term agreements due to requirements to serve parent company core businesses. Shipping lines own and lease container equipment. Shipping lines, the manufacturer, the retailer, or a combination of all three arranges contracts with trucking companies to move loaded containers to and from the Port complex. Railroad agreements for international cargo are usually handled by the shipping lines. Shipping lines also hold contracts with the tug companies. The terminal operator orders longshore labor (International Longshore and Warehouse Union [ILWU]) through the Pacific Maritime Association (PMA), the employer.

Through leases, the Port imposes environmental measures on the tenant based on the CAAP, the Port's Leasing Policy, and CEQA analysis. As such, environmental "fees" are a part of every new lease or renewal at the Port. While the Port is pursuing Port-wide measures through the CAAP, including potential market-based solutions like preferential contracting, these measures would be applied Port-wide and not through an individual lease.

CBD-17. The VSRP involves ships slowing to 12 knots/hour from 40 nm outside the San Pedro breakwater to the precautionary zone (five miles outside the breakwater) where they have to slow to nine knots/hour. Twelve knots represents the most efficient speed for an average ship (much like how highway speed limits are often pegged to vehicle efficiencies). Without VSRP, vessels average approximately 20 knots/hour. VSRP therefore increases transit time from 1.7 hours to 2.9 hours. Increases to the program's distance would further slow vessel arrivals into Port, potentially jeopardizing sailing schedules. Shipping companies deploy vessel strings based on a set schedule. Containers are scheduled to arrive and depart from Ports at set times to coordinate pick-up and drop-off by truck and rail companies and to meet manufacturers and retailers deadlines. Further reductions in speed may actually increase ship calls as a shipping line would potentially deploy additional ships with smaller loads (thereby reducing turnaround time at Port).

CBD-18. As discussed above, the Port is an active member of CCAR and is preparing a Port-wide inventory that will identify both sources of GHG and potential mitigation strategies to reduce such gases Port-wide. The Port agrees that additional solar panels can be added and Mitigation Measure AQ-22 has been amended as follows:

> **Mitigation Measure AQ-22: Solar Panels.** The ~~applicant~~ Port shall install solar panels on the main terminal building. Solar panels would provide the terminal building with a clean source of electricity to replace some of its fossil fuel-generated electricity use. In addition, the Port shall install stanchions equipped with solar power cells throughout the parking lot and backlands to further capture solar power.

CBD-19. Please see response to comments SCAQMD-19 and SCAQMD-20. Mitigation Measure AQ-11 that requires use of low-sulfur fuel (0.2%) in main, auxiliary, and boiler engines and Mitigation Measure-AQ-12, which requires ships to use slide valves. Please note that Mitigation Measures AQ-11 and AQ-12 have been amended as follows:

> **Mitigation Measure AQ-11: Ship Auxiliary Engine, Main Engine, and Boiler Fuel and Improvement Program.** Low Sulfur Fuel Ships calling at Berth 136-147 shall use low-sulfur fuel (maximum sulfur content of 0.2 %) in auxiliary engines, main engines, and boilers within 40 nm of Point Fermin (including hoteling for non-AMP ships) at the following annual participation rates: (a) 2009: 20 ~~10~~ percent of auxiliary engines, main engines, and boilers; (b) 2010: 30 ~~20~~ percent of auxiliary engines, main engines, and boilers; (c) 2012: 50 percent of auxiliary engines, main engines, and boilers; and (d) 2015: 100 percent of auxiliary engines, main engines, and boilers. In addition, by 2012, all frequent caller ships (three or more calls a month) shall use 0.2% in main and auxiliary engines within 40nm of the Port.
>
> **Mitigation Measure AQ-12: Slide Valves.** Ships calling at Berth 136-147 shall be equipped with slide valves or equivalent on main engines in the following percentages: (a) 15 percent in 2008; (b) 50 ~~25~~ percent in 2010; ~~(c) 50 percent in 2012;~~ and (c) 95 percent in 2015. By 2012, all frequent caller ships (three or more calls a year) shall comply with this requirement.

As discussed previously, the Port is not pursuing biofuels due to potential NO_x increases.

CBD-20. Please see Mitigation Measure AQ-23, which requires recycling during operation and Mitigation Measure PS-2 which requires recycling and use of materials with recycled content during construction.

CBD-21. As discussed above, the Port is an active member of CCAR and is preparing a Port-wide inventory that will identify both sources of GHG and potential strategies to reduce such gases Port-wide. The Port is currently not pursuing carbon offsets due to issues with accounting and verifiability.

As discussed on page 3.2-10 of the Draft EIS/EIR, GHG are a global issue. Unlike criteria pollutants that have mainly localized effects and therefore require local reductions, increased emissions of greenhouse gases are resulting in global effects, namely climate change, and reductions do not need to be local to reduce environmental impacts. As such, a number of organizations and companies have begun to offer voluntary carbon offset programs. Under such systems, the Port could purchase offsets, which are emission reductions elsewhere, to compensate for the greenhouse gas

emissions at the Port, resulting in a net reduction of global GHG. While the Port agrees with carbon offset programs in concept, currently such programs are not strictly regulated and the Port cannot verify or guarantee that the credits actually result in GHG emission reductions.

CBD-22. As described in Draft EIS/EIR Section 2.3.1, the Project objectives include accommodating foreseeable containerized cargo volumes through the Port. As discussed in Section 1.1.3, containerized cargo is expected to grow significantly at the Port of Los Angeles. The Port of Los Angeles is one of the largest container terminals in the country and with a network of existing infrastructure and close proximity to the Asian ports, the Port expects this throughput to grow fueled by consumer demand. Ports in this country have diversified to handle different commodities and to support local needs. For example, the West Coast Ports are largely container ports handling cargo from Asia. The Gulf Coast Ports handle large amounts of liquid and break bulk. The Omni terminal alternative describes what is most likely to occur if such an alternative was selected. The terminal would handle an amount of containers along with break bulk consistent with the present trends at the Port and objectives identified in the document.

CBD-23. Please see response to comment USEPA-12.

CBD-24. The proposed Project does include termination of the existing lease with TraPac. Under the proposed Project, the Port would enter into a new lease with TraPac, which would include environmental measures included in the Draft EIS/EIR.

CBD-25. As discussed above, the Port and the USACE believe that the analysis presented in the document meets the requirements of CEQA and NEPA and therefore, recirculation is not warranted.

NATURAL RESOURCES DEFENSE COUNCIL
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September 26, 2007

Via Email and Facsimile

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Re: Berths 136-147 [TraPac] Container Terminal Project
(Corps File Number 2003-01142-SDM)

Dear Dr. MacNeil and Dr. Appy:

On behalf of the undersigned organizations, we write to provide comments on the Berths 136-147 Container Terminal Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) ("DEIS/DEIR"). We appreciate the opportunity to provide comments on the DEIS/DEIR. While this DEIS/DEIR shows improvement in certain aspects compared to previous environmental review documents produced by the Port of Los Angeles ("Port"), we still have several concerns about the project itself and the environmental documents accompanying this proposed expansion project. Like the proposed China Shipping expansion plans, this project will expand port operations,

NRDC-1

creating numerous impacts on residents in the Harbor area. From an air quality perspective, this project has special relevance in that this is the first major EIS/EIR released since the Board of Harbor Commissioners ("Board") unanimously voted to adopt the San Pedro Bay Ports Clean Air Action Plan ("CAAP"). Thus, it is critical that the Port makes sure all impacts are adequately studied and truly mitigated in order that this project will result in minimal impact to residents near the Port. Moreover, the Project has many impacts beyond air quality that will affect residents and we are concerned that the Port has not adequately mitigated these impacts.

NRDC-1

At the outset, it is important to provide perspective on the magnitude of this project. At full build out, just the projected increase in throughput at this terminal is the equivalent of inserting the Port of Houston into the Harbor area.[1] Also, the projected final throughput for the project, 2,389,000 Twenty-foot Equivalent Units ("TEUs"), is approximately the container throughput of the current operations of the Port of Oakland, the fourth busiest container port in the nation.[2] Thus, this one project, part of a long list of container expansion projects in the Harbor area,[3] will undoubtedly impact port-adjacent communities and the region in general. Without an expanded suite of mitigation measures, this terminal expansion will have a harsh impact on the land, water and air.

I. The Proposed Project will have an indelible impact on port-adjacent communities and the region in general.

NRDC-2

The health impacts and regional air quality impacts from port activities are well documented. Of all listed TACs identified by the California Air Resources Board ("CARB"), diesel particulate matter ("DPM") is known to present the greatest health risks to Californians.[4] Dozens of studies have shown adverse impacts from DPM and NO_x including respiratory disease, cardiovascular mortality, cancer, and reproductive effects as well as an increase in regional smog and water contamination. CARB has determined that diesel exhaust is responsible for over 70% of the risk from breathing our air statewide and in the South Coast Air Basin ("SCAB").[5] Further, the South Coast Air Quality Management District ("SCAQMD") in the Multiple Air Toxics Exposure Study II ("MATES II") identified the communities of San Pedro and Wilmington as having among the highest cancer risks in the South Coast.[6] The MATES II study identified mobile sources, i.e. trucks, trains, ships, etc., to be the primary sources of toxic diesel particulate

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[1] Compare projected throughput increase from TraPac terminal, to 2006 throughput at the Port of Houston. Data from American Association of Port Authorities website. Accessed 9/18/07. Available at http://aapa.files.cms-plus.com/PDFs/2006_North_American_Container_Traffic.pdf
[2] *Id.*
[3] DEIS/DEIR, at Figure 4-1.
[4] CARB, Emissions Reduction Plan for Ports and Goods Movement in California at 7 (2006)(hereinafter "ERP").
[5] ERP, at 7.
[6] SCAQMD, Multiple Air Toxics Exposure Study in the South Coast Air Basin, at ES-5 (hereinafter "MATES II").

emissions.[7] Statewide, 2,400 premature deaths annually are linked to goods movement, mostly from particulate pollution and 50% of these deaths are in the SCAB.[8]

Residents of San Pedro, Wilmington, and Ranchos Palos Verdes will undoubtedly face additional health risks due to the increased pollution from this project. For sensitive populations, such as children and the elderly, and for those who live and work in close proximity to these major sources of diesel exhaust, the risk will be even higher. In our Supplemental Notice of Preparation Comments ("SNOP"), we attached several important documents for the record. To conserve resources, we are not resubmitting these documents again.

Moreover, in addition to the huge impacts on residents and workers closest to the sources of emissions, port operations pose a particularly acute threat to regional air quality. The SCAB, where the Port of Los Angeles is located, consistently ranks as the region in the nation with the worst air pollution problems. Freight transport, including the operations at the Port, greatly contributes to the persistent failure of the SCAB to meet clean air standards established by the Environmental Protection Agency. In fact, the SCAQMD has determined that the ports of Los Angeles and Long Beach are the single largest fixed-source of air pollution in Southern California. Pollution from the ports is responsible for more than 100 tons per day of smog and cancer-causing nitrogen oxides, more than the daily emissions from all 6 million cars in the region.[9] Without all feasible mitigation, the South Coast Air Basin could fail to achieve the federal annual PM2.5 standard by 2014. NRDC-2

This project proposes to add additional pollution that would not have occurred if the project was not built. Against this backdrop, there are several deficiencies in the DEIR/DEIS that must be addressed.

II. The TraPac Project Does Not Exhibit All the Elements of Truly "Green Growth."

We remain especially concerned that the environmental documentation reads more like CAAP provides the ceiling for mitigation, when it was our understanding throughout the CAAP comment period that CAAP would be the launching point for environmental mitigation. In fact, there are several portions of the DEIS/DEIR that do not even appear to comply with the CAAP, which is a terrible precedent to set. Given the intractable air quality problems within our region and the acute toxic risk posed by port operations on residents adjacent to trade corridors, it is incumbent upon the Port to provide more stringent mitigation measures. While there are several mitigation measures that we are pleased to see in the DEIR/DEIR, there are still additional mitigation measures we would like to see adopted. NRDC-3

[7] MATES II, at ES-3, ES-9.
[8] ERP, What's New-1 at 4.
[9] 2007 Air Quality Management Plan ("AQMP"), at IV-A-146.

NRDC-3

At the outset of these comments, it is important to note that compliance with the CAAP does not necessarily mean compliance with the California Environmental Quality Act's (CEQA) mandate that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects."[10] There are feasible mitigation measures that exist beyond the CAAP as we outline below, and the Ports are required under the law to include these measures to mitigate significant impacts. By not even complying with the CAAP, the Port has clearly violated CEQA. Thus, we encourage the Port to cure deficiencies in this DEIR/DEIS.

III. The DEIS/DEIR Utilizes an Inflated Baseline.

Initially, we want to express our concern over the history of land use at the TraPac terminal over the past twenty years. Pursuant to a Public Records Act ("PRA") request sent on June 22, 2004, the NRDC has examined numerous documents provided pertaining to the TraPac terminal. These documents indicate a long history of expansion without CEQA review.[11] Many times the Port relied on exceptions to CEQA for the gradual/or piecemeal, but altogether significant, expansion of use of these terminals.

For example, on October 24, 2001, the Port relied on Article III, Section 2(i) to exempt an amendment to Permit 552, which added *41.64 acres* to the Trapac's existing terminal at Berths 131-142. The EIR relied on was the West Basin Transportation Improvements Program EIR that was adopted on September 10, 1997.[12] As the Port is well aware, this is the very EIR that the court of appeal ruled was outdated and insufficient to support the China Shipping Project. As the court made clear regarding that project:

NRDC-4

> Before us, the Port argues that the 1997 EIR and the 2000 SEIS/SEIR are sufficient to cover all phases of the Project. The Port's position is supported neither factually nor legally…. There is no evidence that any site-specific environmental issues related to the China Shipping project were addressed in either the 1997 EIR or the 2000 SEIS/SEIR.[13]

The court's opinion is equally applicable to the TraPac expansion and the Port's improper reliance on the 1997 EIR to exempt this 41 acre project from CEQA review. The Port's failure to prepare an environmental review relevant to that expansion therefore violated CEQA. At the very least, we assumed that the impacts of this prior illegal expansion will **not** be included in the baseline for the proposed project and will, instead, be fully analyzed as part of the proposed project. Much to our dismay, this illegal expansion and other equally suspect piecemeal expansions appear to be included in the baseline for this project.

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[10] Cal. Public Res. Code, § 21002 (hereinafter "CEQA"). Through this statement, we are not contending that the TraPac project as outlined in the DEIR/DEIS complies with the CAAP. In fact, as outlined in sections below, we have found several places where it does not comply with CAAP.
[11] Relevant documents were attached to our SNOP comments.
[12] *Id*.
[13] *NRDC v. Port of Los Angeles*, 103 Cal.App.4th 268, 281 (2nd Dist. 2002).

We remind the Port that the segmentation of a project in this manner, in order to avoid finding and rectifying significant impacts, is a violation of CEQA and NEPA. *See, e.g. NRDC,* 103 Cal.App.4th 268; *Bozung v. Local Agency Formation Comm'n,* 13 Cal.3d 263, 283-84 (1975). NRDC-4

In addition, the emissions estimates for the baseline are inflated. The DEIS/DEIR erroneously compares peak daily emissions level in 2003 to projected peak emissions in the future horizon years.[14] This approach erroneously assumes a peak daily emissions estimate is the appropriate baseline to measure significance for CEQA and NEPA purposes. In fact, the more appropriate baseline for emissions should be the emissions levels articulated in Table 3.2-4, average daily emission from baseline operations in year 2003.[15] The estimates of peak future conditions have no bearing on what happened in 2003, and thus, the Port appears to be using an inflated measuring stick to assess the air quality impacts from this project. By using an inflated baseline—namely 1,977 lbs/day VOC, 6,935 lbs/day CO, 23,010 lbs/day NOx, 3,851 lbs/day SOx, 1,607 lbs/day PM10, and 1,329 lbs/day PM2.5—the DEIS/DEIR obscures the actual impacts from the Project and may have resulted in findings of insignificance when significance should have been found. Thus, we recommend that the DEIS/DEIR use the average daily emissions in 2003 as the baseline for the purpose of the air quality analysis. Further, we request a clarification on whether the greenhouse gas analysis assumed peak daily emissions when assessing the baseline conditions from the project. NRDC-5

IV. Air Quality: The DEIS/DEIR Underestimates Air Quality Impacts and Fails to Consider All Feasible Mitigation as Required Under CEQA.

The air quality section severely underestimates emissions from the proposed project by understating the pollution generated by the vast numbers of ships, harbor craft, yard equipment, trucks, and trains that will service the project. Given that accurately disclosing air quality impacts is crucial to the agencies' ability to fulfill their legal obligations under NEPA and CEQA, the Port and Corps must resolve these issues in subsequent versions of the DEIS/DEIR. At the outset, we recommend that subsequent drafts of the environmental documentation provide the emissions calculations for the horizon year 2010, given that the DEIS/DEIR projects this to be the year with the highest emissions.[16] NRDC-6

a. Emissions Assumptions:

i. The DEIS/DEIR Underestimates throughput at the Project Site.

Tucked away in the traffic analysis, the Port provides details regarding its assumptions about the hours of future activity at the Ports. The DEIS/DEIR notes the assumption that in 2015 there will be a breakdown of 80% of cargo moves during the dayshift, 10% during NRDC-7

[14] DEIS/DEIR, at 3.2-77 -.78.
[15] DEIS/DEIR, at 3-2.14.
[16] DEIS/DEIR, at 3.2-79

the night shift, and 10% during the hoot shift.[17] The DEIS/DEIR also assumes that in 2038, the breakdown will be 60% (day), 20% (night), and 20% (hoot).[18] These assumptions appear to grossly understate increases in throughput during the day shift, which has a direct impact on the air quality analysis. Under the Port's assumption, the amount of cargo moved during the day shift will be 139,800,000 TEUs in 2015 (80% of 1,747,500 TEUs) and 1,433,400 TEUs in 2038 (60% of 2,389,000). When compared to the explosive growth during the night and hoot shift, this indicates relatively modest growth during the daytime shift, even in light of greater capacity at the terminal. The Port has not provided sufficient rational for why this type of growth would not occur in the day shift as well.

NRDC-7

Our skepticism of the DEIS/DEIR estimates of the throughput at the terminal is compounded by the fact that the Port does not believe that "individual terminals [can] handle more than the port-wide averages of market demand by operating at higher levels of efficiency than other terminals."[19] The Port rationalizes this assumption by arguing that "[f]or a terminal to handle a greater number of container per acre than its competitor, it could compromise service and in general would require additional labor costs, longer operating hours, that would result in higher expenses to operate the terminal."[20] Beyond the fact that the DEIS/DEIR admits that there will be longer operating hours, it is unclear why the Port provides no persuasive rationale for discounting the ability of a terminal to make efficiency improvements that when incorporating labor and other operating costs would result in a net profit allowing the terminal to exceed port-wide averages. As has been articulated in previous meetings, we encourage the Port to assess a fee for container throughput that exceeds the estimates within the DEIS/DEIR in the horizon years. This was a provision of the China Shipping Amended Stipulated Judgment, and it should be extended to this expansion project.

NRDC-8

Another issue that is quite confusing is the fact that the Port assumes that the throughput with or without the additional 15 acres of fill[21] will be the same as the Proposed Project.[22] In fact, the Port has not provided any rationale for the nonsequeter conclusion that the Project without an additional 15 acres is more efficient measured by TEU throughput per acre than the Project as proposed in the years 2025 and beyond (10,300 TEUs/acre with out fill compared to 9,800 TEUs/acre with fill).[23] It is unclear why this increased level of efficiency would not be applied to the project with the additional 15 acres. Thus, if it is true that the proposed project is less efficient with the additional 15 acres, we suggest that

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[17] DEIS/DEIR, at 3.10-23.
[18] *Id.*
[19] DEIS/DEIR, App. I at 3.
[20] *Id.*
[21] In a meeting on September 24, 2007 with Port Staff, the staff indicated that the 15 acres was actually an error and should be 10 acres. Thus, in the subsequent versions, please confirm whether it is the it should be 15 acres or 10 acres.
[22] *Id.* at Figure 5.
[23] Id. (Compare Projected Throughput of 9,800 TEUs per acre for Proposed Project and 10,300 TEUs per acre for Proposed Project without 15 acre fill).

this portion of the project be excluded. In the alternative, the Port should assume the 10,300 TEU/acre throughput levels in calculating total project throughput.

NRDC-8

ii. The DEIS/DEIR Underestimates Locomotive Emissions.

The DEIS/DEIR has shifted its assumptions on idling times for rail from 1.9 hours to 1.0 hours to account for idling restrictions within the Rail MOU.[24] While the 2005 CARB/Railroad Statewide Agreement contains a measure on idling restrictions, exceptions abound within the agreement. Thus, we recommend that the Port revert to the old assumption of 1.9 hours unless the Port and Army Corps intend to incorporate a mitigation measure to ensure locomotives don't idle for more than 1.0 hour.

NRDC-9

iii. The DEIS/DEIR Underestimates Truck Emissions.

The DEIS/DEIR utilizes an overly optimistic estimate that on-terminal truck idling would only be 15 minutes in future years.[25] There does not appear to be support for this in the record. If the Port is going to assume this approach, it should provide a 15 minute on terminal idling limit.

NRDC-10

iv. The Geographic Scope of Emissions Analysis is Understated.

The Port limits the geographic scope of emissions to 90 miles for in bound trains[26] and 106 miles for outbound trains.[27] Under CEQA and NEPA, an agency should examine the impacts throughout California and not simply limit its analysis of impacts to the South Coast Air Basin.

NRDC-11

b. The DEIS/DEIR's Measures for Mitigating Construction Impacts are Insufficient.

We are deeply concerned that construction of the proposed project, including mitigation, would exceed SCAQMD emission thresholds for NO_x, SO_x, PM_{10}, and $PM_{2.5}$ and that offsite ambient concentrations of NO_2, PM_{10}, and $PM_{2.5}$ would all exceed SCAQMD thresholds of significance.[28]

NRDC-12

These emissions must be mitigated to the maximum extent possible as outlined below. In particular, mitigation measures AQ1–AQ5 and AQ-18A for project construction do not achieve enough emission reductions to keep construction-related emissions below the significance thresholds. We propose that these measures must be improved per the following:

[24] DEIS/DEIR, at 3.2-46.
[25] DEIS/DEIR, at 3.2-45.
[26] DEIS/DEIR, at 3.2-45.
[27] DEIS/DEIR, at 3.2-46.
[28] DEIS/DEIR, at 3.2-53-54

Construction Equipment
Equipment[29] greater than 25 horsepower must:
(1) Meet current emission standards[30] *and*
(2) Be equipped with Best Available Control Technology (BACT)[31] for emissions reductions of PM and NOx, *or*
(3) Use an alternative fuel such as natural gas or biodiesel.[32]

Diesel Trucks
On-road trucks used at construction sites, such as dump trucks, must:
(1) Meet current emission standards, *or*
(2) Be equipped with BACT[33] for emissions reductions of PM and NOx, *and*
(3) Any trucks hauling materials such as debris or fill, must be fully covered while operating off-site (i.e. in transit to or from the site).

NRDC-12

Generators
Where access to the power grid is limited, on-site generators must:
(1) Meet the equivalent current off-road standards for NOx, *and*
(2) Meet a 0.01 gram per brake-horsepower-hour standard for PM, *or*
(3) Be equipped with Best Available Control Technology (BACT) for emissions reductions of PM.

Special Precautions near Sensitive Sites
All equipment operating on construction sites within 1,000 feet of a sensitive receptor site (such as schools, daycares, playgrounds and hospitals)[34] would either:
(1) Meet US EPA Tier IV emission standards *or*
(2) Install ARB Verified "Level 3" controls (85% or better PM reductions), and
(3) Notify each of those sites of the project, in writing, at least 30 days before construction activities begin.[35]

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[29] Equipment refers to vehicles such as excavators, backhoes, bulldozers propelled by an off-road diesel internal combustion engine.
[30] These standards are described in Division 3 Chapter 9, Article 4, Section 2423(b)(1)(A) of Title 13 of the California Code of Regulations, as amended. An explanation of current and past engine standards can also be accessed at http://www.dieselnet.com/standards/. Currently all new equipment are meeting the US EPA Tier II standards and most equipment also meets Tier III standards (all 100HP to 750HP equipment). Note that Tier IV standards would automatically meet the BACT requirement.
[31] Here BACT refers to the "Most effective verified diesel emission control strategy" (VDECS) which is a device, system or strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the California Code of Regulations to achieve the highest level of pollution control from an off-road vehicle.
[32] Biodiesel is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, meeting the requirements of ASTM D 6751.
[33] Here BACT also refers to most effective VDECS as defined by the California Air Resources Board (CARB).
[34] Sensitive sites are defined and described in the CARB Air Quality and Land Use Planning Guidelines, 2005; http://www.arb.ca.gov/ch/landuse.htm.
[35] Notification shall include the name of the project, location, extent (acreage, number of pieces of equipment operating and duration), any special considerations (such as contaminated waste removal or other hazards), and contact information for a community liaison who can answer any questions.

Recommendations to Limit Global Warming Pollution from Construction:

(1) Prohibit all non-essential idling of equipment and vehicles onsite.
(2) Use the lowest carbon fuels possible (such as biodiesel or other alternative fuels).
(3) Electrify operations to the maximum extent possible. Where access to the power grid is possible, this measure should be established instead of using stationary or mobile power generators. All cranes, forklifts and equipment that can be electrified, should be.
(4) All constructed buildings should meet the Leadership in Energy and Environmental Design (LEED) Green Building Rating System™ including the use of locally sourced materials, where possible.[36]

NRDC-13

c. Operational

i. The Mitigation Measures Provided in the DEIS/DEIR Need to be Greatly Improved.

As a global concern, the Port needs a more aggressive implementation schedule for mitigation measures in the early years of the project given that the highest levels of emissions occur in 2010.

MM AQ-1 (Expanded VSR)

Expanded VSR alone is insufficient for ships used to transport marine terminal cranes. These ships must use marine fuel with no higher than 1,000 ppm sulfur fuel and must be retrofitted with best available control technology, such as selective catalytic reduction, where feasible. If these ships will idle for any period of time, they must also be fitted to accept shoreside power and associated dock space must have shoreside power installed. Further, all marine operations that can be fully electrified, such as dredging, must be electrified.

NRDC-14

Any VSR program must be rigorously enforced in order to count on reductions from it. A compliance rate of no more than 80 percent should be factored into the emission reduction calculations.

MM AQ-2 (Fleet Modernization for On-Road Trucks)

This mitigation measure needs to be strengthened to require that all on-road heavy-duty vehicles used in this construction project must be the most current model year available.

NRDC-15

MM AQ-3 (Fleet Modernization for Construction Equipment)

NRDC-16

[36] For information on LEED standards, see the U.S. Green Building Council: http://www.usgbc.org/DisplayPage.aspx?CategoryID=19

NRDC-16 All new equipment between 100 and 750 horsepower, which comprises the vast majority of all construction equipment, currently meets EPA tier 3 standards. The mitigation measure should be strengthened to require that all construction equipment meet the most recent EPA emission standard that applies to each horsepower class, for both phase 1 and 2. Additionally, use of "Level 3" CARB-verified diesel emission control systems (VDECS) achieving 85 percent or greater PM reductions should be required for any pre-tier 4 equipment, rather than in lieu of meeting EPA emission standards.

MM AQ-4 (Best Management Practices)

NRDC-17 The requirements of this measure are too vague; BMPs should be fully articulated and committed to within this EIR. The first suggested BMP is redundant to the requirements in MM AQ-3. The proposed idling limit of 10 minutes for all construction equipment would violate the newly adopted CARB off-road regulation limiting off-road equipment idling to 5 minutes.[37] This element should be removed, as it is slated to be required by law imminently. The BMPs should call for a manager on-site to verify compliance with all mitigation measures and best practices.

Additionally, the Los Angeles Harbor Department must ensure that grid power is available to the construction site whenever power is needed in place of using any diesel generators. Where access to the power grid is limited, on-site generators must meet the equivalent current off-road standards for NOx, *and* meet a 0.01 gram per brake-horsepower-hour standard for PM, *or* be equipped with Level 3 VDECS.

MM AQ-5 (Additional Fugitive Dust Controls)

NRDC-18 We support the elements of this measure. However, trucks hauling dirt or other materials must be covered at all times during transit to and from the site regardless of freeboard space.

MM AQ-6 Alternative Maritime Power (AMP)

NRDC-19 We remain convinced that one of the most effective strategies to reducing marine vessel pollution while vessels are docked is AMP. This is an especially important mitigation measure because of its benefits to protecting public health, attaining federal air quality standards, and reducing GHG emissions.[38] While the schedule outlined in MM AQ-6 appears to technically comply with CAAP, this does not comply with the Port's duty to adopt all feasible mitigation. The DEIS/DEIR should include a schedule to require 70% to 80% of all ships—both frequent and non-frequent visitors—to use shore-side power at every terminal by 2010 as exemplified by the China Shipping terminal and the RFP for Berths 206-209 at the Port of Los Angeles.

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[37] CARB Off-Road Regulation at: http://www.arb.ca.gov/regact/2007/ordiesl07/appa.pdf

[38] "[A] hoteling ship using AMP would reduce its auxiliary power GHG emissions by about 47 percent compared to a ship using its auxiliary engines for power" DEIS/DEIR, at 3.2-104

MM AQ-7 Yard Tractors

This measure is written such that it merely complies with existing regulations, requiring that new on-road registered yard tractors meet on-road emission standards (a 0.01 g PM /bhp-hr standard, slightly more stringent than proposed in the DEIS/DEIR) and that all other new yard tractors meet tier 4 off-road standards.[39] Further, the proposed measure only applies to new yard tractors, repeating the new yard tractor requirements (likely an error). These measures must make clear that by January 1, 2007 all *existing* and future yard tractors must run on alternative fuels and meet tier 4 on-road standards. To this end, the Ports should eliminate the "loop-hole" in MM AQ-7 which allows use of either cleanest available alternative-fueled engines or cleanest available diesel engines meeting 0.015 gm/hp-hr. This loop-hole allows for diesel engines even if alternative-fueled engines are the cleanest available option. The Port should require Cleanest Available Technology (or Best Available Control Technology (BACT)) standards for yard tractors. NRDC-20

Yard tractors should also be required to subscribe to idling limits, which would save fuel and cut pollution from these terminals, and reduce a significant source of worker exposure. Idling limits for captive fleets such as these should be easy to enforce.

MM AQ-8 (Low NOx and low-PM emissions standards for top picks, forklifts, reach stackers, RTGs, and straddle carriers)

Similar to MM AQ-7, this mitigation measure should remove the loop-hole which allows for diesel engines even if alternative-fueled engines are the cleanest available option. The Port should require Cleanest Available Technology (or Best Available Control Technology (BACT)) standards for top picks, forklifts, reach stackers, RTGs, and straddle carriers. NRDC-21

This measure should also require idling limits, which would save fuel and cut pollution from these terminals, as well as reduce a significant source of worker exposure to diesel fumes.

MM AQ-9 (Fleet Modernization for On-Road Trucks)

Addressing pollution from diesel-fueled, container-hauling trucks is a major priority, as trucks emit significant quantities of toxic particulate matter and smog-forming pollution. The diesel exhaust from these sources of pollution impacts workers and residents of communities adjacent to the Ports as well as residents of communities along the transport corridors which extend throughout the SCAB. The health impacts from diesel exhaust and regional smog have been well-documented and have been linked to respiratory illnesses such as asthma, heart disease, elevated cancer risk, and even premature death.[40] NRDC-22

[39] CARB Cargo Handling Equipment Rule at: http://www.arb.ca.gov/regact/cargo2005/revfro.pdf.
[40] *See supra* Section I.

Although we are pleased to see that the DEIS/DEIR includes mitigation for on-road trucks, we are concerned that there is a lengthy phase-in for modernizing the fleet of drayage trucks servicing this terminal. We also remain exceptionally concerned that the DEIS/DEIR does not outline any requirements that a certain percentage of the trucks servicing the TraPac terminal be alternative fueled trucks as the CAAP envisioned.[41] Moreover, the Port needs to require a certain percentage of the fleet to meet the 2010 USEPA standards given that these trucks will definitely be available in 2010, and at least one engine has been certified to meet the 2010 standard right now.[42] We also recommend that the Port require the same 50/50 mix of alternative-fueled and diesel-fueled trucks as proposed by the CAAP. Provided the significant NOx benefit from the 2010 standards, it is incumbent upon the Port to ensure these significantly cleaner trucks penetrate the drayage fleet as soon as possible. Finally, all trucks serving this terminal should comply with EPA 2010 standards for PM and NOx by 2015.

Based on these comments, we are providing the following chart that compares the mitigation from MM AQ-9 to our suggested mitigation structure.

NRDC-22

	DEIS/DEIR MM AQ-9 Proposal	Coalition Recommendation
2007	15% (US EPA 2007)	25% (2007 USEPA)
2008	30% (2007 USEPA)	40% (2007 USEPA); 10% (2010 USEPA)[43]
2009	50% (2007 USEPA)	55% (2007 USEPA); 20% (2010 USEPA)
2010	70% (2007 USEPA)	55% (2007 USEPA); 45% (2010 USEPA)
2011	90% (2007 USEPA)	Same as above
2012	100% (2007 USEPA)	Same as above
2015	N/A	100% (2010 USEPA)

The structure outlined above will provide a more viable approach to mitigating the significant impacts from pollution stemming from this project during the peak year of emissions, 2010.[44]

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[41] CAAP TR, at 62 ("The budget scenario currently under consideration is Budget Scenario 7, which is based on a 50/50 mix between alternative fueled and cleaner diesel replacements, as well as retrofits.").
[42] Cummins Westport First Off the Mark – 2010 EPA Certification for 2007 ISL G Natural Gas Engine, *available at* http://www.ngvglobal.com/technology/cummins-westport-first-off-the-mark-2010-epa-certification-for-2007-isl-g-natural-gas-e-2.html (July 9, 2007).
[43] If the Port is concerned about having sufficient numbers to comply with the percentages outlined in this measure, it can write the mitigation measure to be based on availability.
[44] DEIS/DEIR, at 3.2-79 ("The analysis focused on year 2010 as Project operational sources would produce the highest amount of daily and annual emissions during this year within and adjacent to the Berths 136-147 terminal. In other words, the scenario would produce the highest Project ambient impacts within the Port region, even in comparison to years 2007 through 2009 and 2015, when Project construction emissions would combine and overlap with operational emissions.")

MM AQ-11 (Ship Auxiliary Engine, Main Engine, and Boiler Fuel Improvement Program)

We are pleased that the DEIS/DEIR includes an emissions reduction strategy for the main engines of ocean-going vessels that is in line with the auxiliary engine requirements. Cleaner fuels in both types of engines could significantly reduce emissions from virtually unregulated engines transiting and maneuvering at the Port of Los Angeles. However, we have significant concerns that the implementation schedule and sulfur fuel level are not nearly stringent enough. Strengthening this measure could result in significant decreases in PM_{10} and $PM_{2.5}$ levels as well as reduced cancer risk from DPM.

The Maersk commitment to cleaner fuel, information provided by marine engine manufacturers, and CARB's Auxiliary Engine Regulation now provide substantial evidence that any technological concerns regarding the use of cleaner fuels in auxiliary engines and main engines have been addressed. At a recent Maritime Working Group meeting, representatives of some of the world's biggest engine manufactures and shipping lines including MAN B&W, Wartsila, BP Shipping, DNV, Maersk and other participants, concurred that the implementation of cleaner fuels in main engines is an excellent approach to achieve significant emission reductions in a cost-effective manner.[45] They consider fuel switching to be a standard operation that can be conducted safely by any competent marine engineer. These technical experts made it clear that low sulfur levels, such as 1000 ppm, in marine fuels were compatible with large ship engines and maritime operations in general, and that if it were required, the "free market" would respond and make supplies available. In fact, it is our understanding that NYK Line at the Port of Los Angeles is currently using <.1% sulfur fuel.[46] NRDC-23

Given the substantial shortfall that exists to achieve the CEQA significance thresholds in the short-term horizon years, it is imperative that the DEIS/DEIR pursue the cleanest lower sulfur distillate fuels in both auxiliary and main engines for all ships visiting Berths 136-147. Additionally, CARB announced at their September 25, 2007 marine regulation workshops that emissions from boilers are ten times higher than previously calculated. The resulting SOx, NOx and PM emissions must be addressed at the outset with the use of significantly cleaner fuels. In fact, without a high level of stringency on marine fuel usage for auxiliary engines, main engines and boilers, the South Coast AQMD's ability to meet Federal Standards for PM2.5 will be jeopardized.

Therefore, we recommend that the DEIS/DEIR require the following:
• Ensure 100% compliance and enforcement of the 2,000 ppm requirement for auxiliary engines, regardless of the status of the CARB auxiliary engine regulation; and
• By January 1, 2010, take necessary steps to ensure 100% compliance and enforcement of the 1,000 ppm requirement for auxiliary engines (interim deadlines for 1,000 ppm sulfur

[45] The Maritime Air Quality Technical Working Group, Focus on Fuel Switching, hosted by CARB, July 24, 2007; http://www.arb.ca.gov/ports/marinevess/meet.htm.
[46] SCAQMD, Mitigation Measure Examples: Ocean Going Vessels, *available at http://www.aqmd.gov/CEQA/handbook/mitigation/ogv/TableIX.doc*.

fuel should require 25% using 1,000 ppm by 2008; and a 50% requirement by 2009). This is especially important given that the Port projects the highest emissions levels to occur in 2010.[47]

NRDC-23 • Main engines and boilers, at a minimum, should fall under the same requirements and timetable as we recommend for auxiliary engines and, by 2010, main engines should be required to use 1,000 ppm fuel.

Finally, we want to emphasize that dock-side power should not be viewed as a substitute for cleaner fuels. These two strategies must be used in concert to ensure that emissions from large vessels are significantly reduced and significance thresholds are met.

MM AQ-12 (Slide Valves)

NRDC-24 We support the use of slide valves on main engines; however, additional emissions-control devices must be included in this measure. For example, we support the installation of emissions control devices such as SCRs on ocean-going vessels. As demonstration testing is completed and emission control devices for large ships are verified, applying these technologies to ships visiting the terminal must be a priority. As we have stated in the past, in order to properly reduce emissions from ocean-going vessels, we strongly believe that emissions-control devices will be necessary and must be coupled with the cleanest sulfur fuels in auxiliary and main engines as well as dockside power. In fact, strategies that promote the use of control devices *must* be coupled with a mandate for ships to use low sulfur diesel fuel, because certain after-treatment technologies will not work if the sulfur content of the fuel is too high. For example, 2,000 ppm sulfur fuel (ideally lower) should be used with SCR; 500 ppm sulfur fuel must be used with DOCs; and 15 ppm sulfur fuel must be used with DPFs.

MM AQ -13 (New Vessel Builds)

NRDC-25 We strongly support incorporation of the cleanest exhaust control technology into all new vessel design specifications.

MM AQ-14 (Clean Railyard Standards)

NRDC-26 It is unclear why this mitigation measure does not apply to the relocated Pier A railyard. Relocating the Pier A railyard triggers the RL3 because this falls under the CAAP definition of a "new and redeveloped rail facilities." At a minimum, the DEIS/DEIR needs to be recalibrated to include mitigation consistent with the requirements of RL-3. Thus, both the railyards associated with this project should "incorporate the cleanest locomotive technologies/measures…include[ing] diesel-electric hybrids, multiple engine generator sets, use of alternative fuels, DPFs, SCR, idling shut-off devices, and idling exhaust hoods."[48]

[47] DEIS/DEIR, at 3.2-79.
[48] DEIS/DEIR, at 3.2-69.

MM AQ -15 (Reroute Cleanest Ships)

Due to the minimal NO_x benefit and the lack of PM benefits from MARPOL Annex VI compliant ships, this measure must be more aggressive. We agree that the DEIS/DEIR can encourage the cleanest ships to frequent the terminal; however, the measure must aggressively pursue additional emission reductions from the visiting shipping fleets. Hundreds of new vessels are slated to come on line every year. New vessels provide a significant opportunity to ensure accommodation of the cleanest technologies, including cleaner engines and emissions-control devices such as SCR. The DEIS/DEIR should outline specific target requirements for the fleet visiting the terminal as a whole.

Specifically, we recommend altering this measure from simply focusing on rerouting Annex VI compliant ships to the terminal, to focusing on increasingly stringent ocean-going vessel ship engines standards. We recommend the following explicit standards and timeline for ships serving Berths 136 – 147:
• 25% of OGVs must meet "Blue Sky Series" Category 3 ship engine standards (those are 80% below current IMO NO_x standards) by 2010, either OEM or through SCR, or other add-on controls.
• 50% of OGVs must meet "Blue Sky Series" Category 3 ship engine standards (those are 80% below current IMO NO_x standards) by 2015 (OEM or add-on).
• 100% of OGVs must meet Blue Sky Series standards by 2020 (OEM or add-on).

NRDC-27

MM AQ -16 (Truck Idling Enforcement Measures)

Limiting truck idling is a feasible approach to reducing emissions at the docks. This measure must ensure enforcement of idling rules as well as anti-idling legislation currently aimed at reducing idling times. These issues remain problematic as reports of violations of these rules persist. In conjunction with recordkeeping and enforcement, this measure should also include a 30 minute limit on truck turnaround time. Additionally, at least one full time staff person should be designated to ensure that idling rules are followed and that trucks are moving through gates and terminals as efficiently as possible.

NRDC-28

MM AQ-17 (Periodic Review of New Technology and Regulations) and MM AQ-18B (General Mitigation Measure)

We generally support these measures and recommend a quarterly update on the progress of technologies under development and demonstration. Upon successful demonstration, we recommend that the DEIS/DEIR be revised to include any updated requirements within 60 days.

NRDC-29

ii. The DEIS/DEIR Must Include Mitigation Measures for Harbor Craft, Create Funding for Demonstration Projects, Increase its Commitment to On-dock Rail, and Provide for Sensitive Site Mitigation.

NRDC-30

Harbor Craft

The DEIS/DEIR noticeably omitted measures specific to harbor craft. The DEIS/DEIR should include a measure specifying that within one year only harbor craft equipped with Tier 2 engines may be utilized at the terminal. Furthermore, the measure should also prioritize the most effective verified NO_x and PM emission reduction standards, and phase these in to supplement the Tier 2 engine requirement so that within four years, all harbor craft are at a minimum using Tier 2 engines and are retrofitted with the best available VDECS. We suggest the following timetable for ensuring harbor craft are equipped with the most effective emission reduction NO_x and PM technologies: within 2 years – 25%; within 3 years - 50%; and within 4 years – 100%.

NRDC-30

Similarly, when Tier 3 engines become available, the measure should require specific phase-in requirements for these engines, as suggested above, building up to 100% within 4 years of their initial availability.

In order to facilitate the utilization of retrofit technologies, this measure should require technology demonstration tests for retrofit technologies on harbor craft within one year of project approval. Specifically, the Port should work in conjunction with ARB to ensure that the results and subsequent validation facilitate statewide efforts.

Finally, the DEIR/DEIS should include a mitigation measure requiring the Port to provide, within one year of project approval, an AMP staging area and require tugs servicing the terminal to plug into shoreside power when not in use.

Funding for Demonstration Projects

The Port and Corps should also consider as mitigation for project impacts, requiring the tenant to contribute a certain percentage of its profits or revenues into a fund that would pay for demonstration projects at the terminal or other terminals. The Technology Advancement Program could oversee how these funds are spent. It is clear that mitigating project impacts will rely in large part on implementation of emerging technologies. In fact, the DEIS/DEIR appears to acknowledge this fact in proposing MMAQ-17, which requires the tenant to periodically review new technology and implement such technologies as they become feasible.[49] Requiring that monies actually be set aside to fund demonstration projects would encourage testing of innovative technologies as well as implementation of feasible measures reviewed under MMAQ-17. Further, we note that CAAP indicates that the Ports of Los Angeles and Long Beach plan to contribute merely $3 million per year towards its Technology Advancement Program. While we applaud this contribution, it is clear that significant additional funds need to be created to truly advance emerging technologies. We strongly encourage the agencies to consider and adopt this measure.

NRDC-31

[49] DEIS/DEIR, at 3.2-73-.74.

The Ports Need to Commit to More Use of More On-dock Rail

In a section articulating why an off-site backland alternative is not desirable, the Port admits that "[d]raying containers between the terminal and the off-site facility would add truck trips to the Port road system. The additional truck trips and the additional handling cycle by terminal equipment would add air emissions… Consolidation results in reduced traffic within the Port and reduced air emissions per TEU."[50] This point also holds true to the use of on-dock rail versus near-dock rail. Given the Port's contention that reducing truck trips results in reduced air emissions, it is imperative that the Port maximize the use of on-dock rail at this terminal. As currently drafted, the DEIS/DEIR commits to shipping 31.6 % of TEUs in 2015 via on-dock rail and 29.3% of TEUs via on-dock rail in 2038.[51] Although the argument laid out in Figure 1-4 of the DEIS/DEIR seems to erroneously suggest that shipment via truck is as efficient as shipment via clean rail, the Port contends that "[a] terminal which is designed with equal capacity components makes the most efficient use of its land and its resource."[52]

NRDC-32

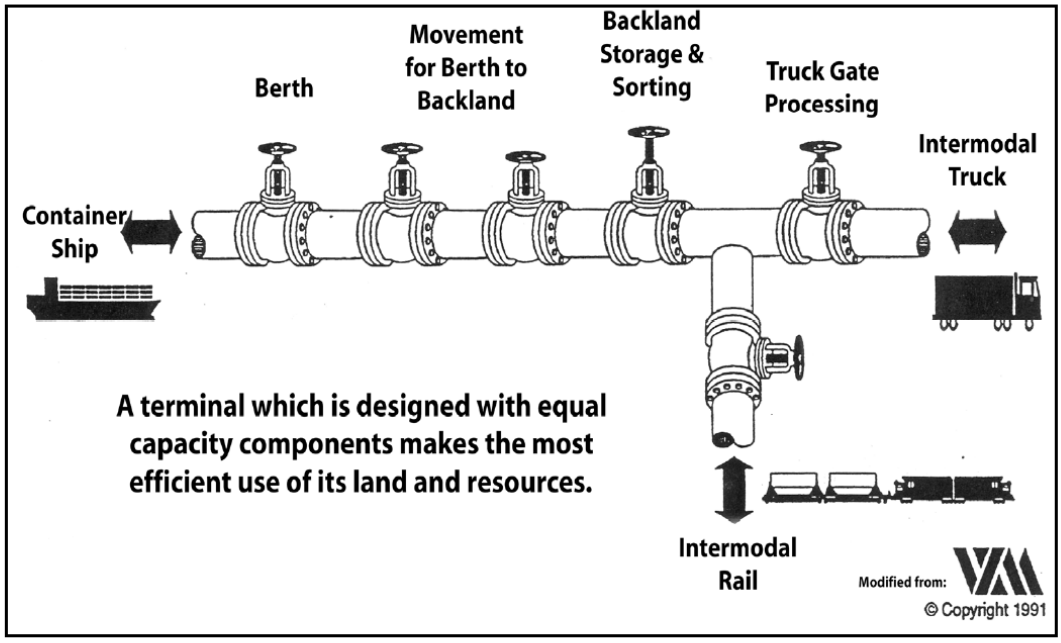

Fig 1-4. Flow of Containers through a Marine Cargo Terminal

[50] DEIS/DEIR, at 2-51.
[51] DEIS/DEIR, at 2-3.
[52] DEIS/DEIR, at 1-7 (DEIS/DEIR diagram pasted into the text).

NRDC-32

Under the Port's theory, it is not making the most efficient use of its land because in the future it relies on less than 50% on-dock rail. Given that the Port claims that one of the project's purposes is to "maximize the efficiency and capacity of the terminals while raising environmental standards through application of all feasible mitigation measures,"[53] the Port needs to amend the project by requiring that a minimum of 50% of its shipments take place via on-dock rail. We suggest that the actual percentage should be even greater—more on the order of 70% or more[54]—because clean rail is a more efficient means to transport the additional cargo generated from this project rather than adding more drayage trucks to transport containers to off-dock rail facilities. This mitigation will also provide benefits in mitigating the Greenhouse Gas emissions from the project.

The Port Needs to Commit to Sensitive Site Mitigation

NRDC-33

The sensitive site analysis is lacking because it fails to point out that the Los Angeles Housing Authority commenced construction on the Dana Strand project along C street between Hawaiian Avenue and Wilmington Blvd. in 2005.[55] This project includes such features as a childcare facility that will be within the zone of impact from the construction emissions and operational emissions from this project. For this reason, we suggest the use of on-site mitigation for all sensitive sites identified. On-site mitigation should include tools suggested by CARB, such as High efficiency particulate arrestor (HEPA) filters, which are most effective at removing particles from outdoor air as it is brought indoors.[56] HEPA filters can easily be added to Heating, Ventilation and Air Conditioning (HVAC) systems, which should be quiet (fewer than 45 decibels) and well maintained. It is also our understanding that there are several other sensitive sites close to the facility that have not been analyzed in the DEIS/DEIR that could be benefited from this type of mitigation. Other on-site mitigation that should be considered includes the use of vegetative material such as trees or shrubs as a buffer.

iii. Given the More than 100% Increase in Greenhouse Gas Emissions from the Proposed Project, the Port Needs Additional Mitigation.

NRDC-34

We agree with the Port that a number of air quality mitigation measures – e.g. MM AQ-6, MM AQ-10, MM AQ-14, and MM AQ-16 – will reduce GHGs, however these reductions are modest. Given that the Proposed Project will more than double the projected Greenhouse Gas Emissions compared to baseline emissions (compare 2003 levels of CO2-302,223; CH4-25.2 to 2038 levels of CO2-692,735; CH4-49.9), there is a demonstrable need to more aggressively add additional feasible mitigation measures that the Port has

[53] DEIS/DEIR, at ES-4.
[54] The Port should commit to a similar or greater percentage on-dock rail usage as committed to by the Port of Seattle (approximately 70%). *See* NRDC and CCA, *Harboring Pollution: The Dirty Truth about U.S. Ports* at 42.
[55] DEIS/DEIR, at 3.8-2.
[56] For more information see: http://www.arb.ca.gov/research/indoor/ab1173/report0205/rpt0205-es.pdf

overlooked. Additionally, this project constitutes a significant portion of the total GHGs from goods movement.[57]

NRDC-34

Proposed GHG Mitigation Measures

We applaud the Port's commitment to LEED Gold standards and to install solar panels on the main terminal building (MM AQ-19 and MM AQ-22). We also support the use of CFLs (MM AQ-20), a third party energy audit (MM AQ-21), recycling standards (MM AQ-23), and a commitment to tree planting (MM AQ-24). However, these measures amount to a minimal reduction in overall GHGs from the project, so much so that the reductions were not estimated or included in the DEIS/DEIR.

The Port provides insufficient rationale for why mitigation measures reviewed in Table 3.2-33 were not selected.[58] Some of these measures listed in this table could be instituted right away instead of waiting for regulatory measures to be developed by CARB. For example, the Port should institute its own low carbon fuel program to increase renewable and low carbon fuel use. Additionally, the port should create a program to collect all HFCs from refrigerated shipping containers and ensure that there are no HFC leaks from any refrigeration units on Port property. Finally, the Port must provide sufficient electrical hookup capacity for reefers (refrigerated containers) to meet peak demand.

NRDC-35

Since the port is proposing to mitigate less than ten percent of GHG emissions, we propose a number of additional mitigation measures that were not considered in the DEIR. Numerous improvements could be made to improve efficiency of the ships, trains and trucks that carry containers to and from the TraPac terminal. These efficiency measures can substantially reduce GHGs. Many have also been employed by other businesses or at other ports.

Port Electrification[59]

Numerous aspects of port operations could be electrified to reduce GHGs, in addition to the proposed cold-ironing measure. Depending on the source of electricity, 2-4 pounds of CO2 are saved by each kilowatt-hour replacing diesel fuel. The trucks, cargo-handling equipment, tugs and locomotives serving the port could all be electrified to some extent. The port should convene an "Innovations Workshop" to explore all of these options further.

NRDC-36

For example, the Port has already announced an initiative to develop electric tractors to haul containers to and from local destinations.[60] The Port should commit to using as many of these electric trucks as feasible as soon as the prototypes have been developed.

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[57] Note that the most current GHG inventory for CA from CARB shows that 45 MMTCO2e were from the goods movement sector. The TraPac project's 2003 CEQA baseline carbon emissions are 0.3 MMTCO2e per year. Under the project, carbon emissions would expand to 0.7 MMTCO2e per year.

[58] DEIS/DEIR, at 3.2-106.

[59] Port Innovation Workshop Final Report, Rocky Mountain Institute, April 2007

[60] http://www.portoflosangeles.org/Press/REL_Electric_Tow_Tractor_Demonstration_Project.pdf

Electrified tugs could plug in to charge at dock and use stored electric energy to perform ship assist operations. Fast-charging systems have already been commercialized for use at airports (for ground support equipment) and other industrial settings, powering over 15,000 vehicles in North America.

Cranes that are already powered by electricity could be further optimized to save energy. Virtually all ship-to-shore cranes are equipped with regenerative breaking to capture energy while lowering containers. However, this energy often goes unused for lack of storage or load sharing. We recommend optimization of cranes to fully utilize regenerative power. Other cargo-handling equipment can be electrified, at least partially. RailPower Technologies, for example, offers a retrofit hybrid system for rubber-tired gantries.

NRDC-36

Yard hostlers may be the most promising piece of yard equipment to electrify, since these are the greatest source of GHGs from yard equipment. Yard hostlers idle up to half the time, often pull minimal loads rather than a full container, and operate at low speeds. These characteristics make yard hostlers amenable to similar technology used to electrify airport ground support equipment. The Port should commit to commissioning the development of electric yard hostlers.

Finally, locomotives can and should be electrified to the extent possible. The Green Goat is just one of several battery electric hybrid options for locomotives. All switching locomotives should be converted to hybrids. The Port should also commit to supporting electric rail projects for short line haul service.

Heavy-duty Truck Efficiency

The Port should require truck efficiency standards that improve fuel economy by at least 10 percent,[61] incorporating the following elements for all trucks serving the terminals. Many truck efficiency technologies are commercially available now and have been developed under EPA's SmartWay Transport Program. The following SmartWay elements could improve long haul truck fuel economy by nearly 10 percent: Single Wide Tires, Trailer Aerodynamics, Automated Tire Inflation, and low viscosity lubricants.[62] Additionally, fuel additives and lighter vehicle components could provide further efficiency gains.

NRDC-37

Many of the measures used to improve truck efficiency also reduce NOx emissions. One study of two efficiency improvements, single-wide tires and improved aerodynamics,

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[61] DEIS/DEIR, at 3.2-109.

[62] EPA SmartWay Calculator, http://www.epa.gov/smartway/calculator/calculatorexplanation.htm#calculations Single-wide tire plus improved trailer aerodynamics together provide an 8% fuel efficiency improvement; automatic tire inflation provides an additional 0.6% efficiency improvement. Low viscosity lube oils can provide an additional 1.5% improvement according to ICF documentation prepared for EPA Smartway.

showed NOx reductions from those modifications ranging from 9 to 45 percent.[63] This is particularly important in light of the struggle in Los Angeles to attain federal air quality standards and the shortcomings of this DEIR in mitigating significant NOx and PM emissions.

The following measures must be considered as part of a heavy-duty truck efficiency standard:

Improved Aerodynamics- Truck aerodynamics can be improved by adding integrated roof fairings, cab extenders, and air dams. The tractor-trailer gap can be minimized by adding side skirts and rear air dams. Single unit trucks can be improved with air deflector bubbles.

Automatic Tire Inflation Systems-These systems are particularly effective for fleets or truck owners that have difficulty monitoring tire pressure on a regular basis.

Single Wide-Base Tires- Single wide-base tires save fuel by reducing vehicle weight, rolling resistance and aerodynamic drag. These tires can also improve tank trailer stability by allowing the tank to be mounted lower. The weight savings for a typical combination truck using single wide-base tires on the drive and trailer axles ranges from 800 to 1,000 pounds.

NRDC-37

Weight Reduction- Lighter weight tractor and trailer components, such as aluminum axle hubs, frames and wheels, can reduce truck weight by thousands of pounds, thus improving fuel economy. Every 10 percent drop in truck weight reduces fuel use between 5 and 10 percent.

Low Viscosity Lubricants-Conventional mineral oil lubricants may have too high of a viscosity to effectively slip between and lubricate the moving parts of truck systems. Low-viscosity lubricants can reduce friction and energy losses. Typically, the combined effect of low viscosity synthetic engine oils and drive train lubricants can improve fuel economy by at least three percent. Despite the higher cost of synthetic oils, truck owners can save more than $500 per year and additional savings may be possible due to reduced wear and maintenance.

Hybrid Vehicle Technology- This technology could improve efficiency by 30 to 50 percent. It is particularly effective in the medium-duty sector, which typically operates in urban stop-go traffic. Hybrid technology is also now being developed for longer haul trucks; at least one hybrid class 8 truck is already on the market.

Improved Freight Logistics- Software programs monitoring cargo transport delivery schedules can minimize the miles that a truck drives empty and ultimately remove many

[63] L.J. Bachman et. al., Effect of Single Wide Tires and Trailer Aerodynamics on Fuel Economy and NOx Emissions of Class 8 Line-Haul Tractor Trailers, SAE 2005, paper no. 05CV-45.

empty trucks from the road. Shippers, in particular, can use logistics software to ensure full loads to maximize operating efficiency. Chassis pooling, required by the Port of Virginia, is another method that should be employed to reduce unnecessary truck trips.[64]

Fuel Additives- Fuel additives may be able to improve the way diesel fuel is burned in the engine chamber reducing the amount of unburned fuel, and thus reducing pollution and improving efficiency. Any fuel additive must be rigorously tested not only for performance characteristics but also for potential toxic emissions or water quality contamination risks.

NRDC-37

Truck GHG requirements can and should be incorporated into the mitigation measures for TRAPAC.

Intelligent Container Design[65]

The Port should commit to exploring efficiency and design improvements to containers. Dramatically reducing the weight and improving the design of containers can result in greenhouse gas reductions as well as criteria pollutant reductions. The container itself is typically 10-25% of the gross weight of a container loaded with cargo, and 20% of containers are shipped empty. Container design has not changed in almost 50 years.

Clear targets for redesign include weight reduction and technology to facilitate logistics, such as tracking devices, as well as improved design for refrigeration. The most significant gains from redesign are the following:

- Reduced loads and increased efficiency for ships, trucks, and trains that carry containers;
- Reduced loads and increased efficiency for cargo handling equipments at ports, rail-yards, and warehouses;
- Improved logistics because of advanced tracking/scanning technology built into the container resulting in reduced wasted time and associated energy use, unnecessary miles traveled, engine idling, etc.;
- Reduced emissions of climate-changing refrigerant compounds and improved efficiency in refrigeration;
- Improved facility of security scanning and related logistical benefits;
- Easier adoption of smaller engines or advanced energy technologies like hybrid and fuel cells because of reduced loads;
- Improved ease of recycling or non-container reuse to reduce the waste caused by shipping and storing empty containers resulting from the trade imbalance; and
- Fewer trips necessary to carry the same amount of freight because of reduced tare weights.

NRDC-38

[64] RMI, April 2007.
[65] Information provided by Laura Schewel, Rocky Mountain Institute, Personal Communication, September 21, 2007.

Nationwide adoptions of a lightweight container (~30-50% weight reduction) could reduce at least 1 million tons of CO2e (assuming that 5% of Class 8 trucks carry new containers and 20% of freight trains carry new containers).

Also, there is significant potential to reduce greenhouse gas emissions from the volatilization of HFCs via alternate refrigeration and improved efficiency of the refrigerated containers. Refrigerated transport is responsible for around 14 million tons of CO_2-equivlanet emissions in the US. NRDC-38

It should also be noted that other equipment at container terminals could be "lightweighted" to save fuel or energy and reduce GHGs. For example, Super-post-Panamax cranes can weigh 1,400 metric tons; reducing this unnecessary weight would cut energy use.[66]

Locomotive and Ship Efficiency[67]

Significant GHG reductions could be achieved through the use of more efficient trains and ships. Existing rail technologies could yield 13% fuel reductions, while advanced technology could yield even greater reductions of 30 percent. In fact, the Swiss railways forecast up to 60% efficiency gains through their R&D on lightweighting, cutting drag and friction and optimizing operations.

Marine transportation could save over 30% of fuel through improved hull designs, drag reductions, better engines and propulsors, and other improvements. The shape of a vessel's hull can be modified to best fit its operational and size characteristics, achieving fuel savings of up to 15%. The drawbacks are that hull modifications can be costly, depending on the nature of the work.[68] NRDC-39

Bulbous bows have been used for decades on large vessels. This is essentially a ball attached to the front of the hull, which reduces wave resistance through the "interference effect"—decreasing friction.[69] Many large commercial vessels use the bulbous bow, including an 11 deck car and passenger ferry in Sweden, which has been operating since 1996.[70]

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[66] RMI, April 2007.
[67] Based on Winning the Oil Endgame: Innovation for Profits, Jobs and Security, Rocky Mountain Institute, p. 79.
[68] Bray, Patrick J. The bulbous bow - what is it? *Marine Engineering Page*, January 2003. Available online at: http://members.shaw.ca/diesel-duck/library/articles/bulbous_bows.htm. Last visited on June 21, 2004.
[69] Rainer, Grabert. *Hull Form Optimisation of Ferries Using CFD.* Available online at: http://www.sva-potsdam.de/news/CFD-Opt.pdf. Last visited on June 23, 2004.
[70] Ship-Technology. *Stena Jutlandica Train, Vehicle, and Passenger Ferry.* Available online at: http://www.ship-technology.com/projects/jutlandica/. Last visited on June 30, 2004.

V. Health Risk Assessment: The DEIS/DEIR Underestimates Health Risks from Toxic Air Contaminants and Fails to Mitigate Health Impacts.

The DEIS/DEIR states that cancer risk equal to or above 10 in 1 million from the project is significant for residential receptors,[71] and concludes that after mitigation, operation of the project will result in residential, occupational and sensitive cancer risks above the significance threshold relative to the NEPA baseline.[72] We are gravely concerned over these elevated cancer risks, which may actually be under-estimated.

The HRA contains a number of flaws that likely lead to artificially lower risk characterizations:

First, the HRA should have utilized a more appropriate breathing rate in the exposure assessment, which would also have led to a residential cancer risk above the threshold of significance. While the DEIS/DEIR states that the 80th percentile breathing rate of 302 liters per kilogram of body weight per day (L/kg-day) was used per CARB guidelines,[73] the 95th percentile breathing rate of 393 L/kg-day, as provided by OEHHA, is more health protective and therefore a more appropriate breathing rate for this type of analysis.[74] Residential cancer risks based on this more appropriate breathing rate are 23% higher than risks based on the 80th percentile breathing rate.

NRDC-40

Second, many of the occupational, sensitive, student, and recreational "receptors" are likely to live in the community resulting in 24 hour exposures (not just their occupational and recreational exposures), greatly increasing the cancer risk they would face as a result of the project.[75] Therefore it's possible that a person growing up near this Project terminal, could go to school near the terminal, recreate in the HBB area, work at the terminal and reside near the terminal through the course of their lifetime, facing aggregate elevated risks of roughly double the residential risk reported. This worst-case scenario must be accounted for.

Third, while the HRA is based on a protocol approved by CARB and SCAQMD,[76] and discusses many important and well known health impacts from DPM other than cancer risk, the HRA fails to analyze these health impacts. For example, the DEIS/DEIR asserts that "CARB staff have stated that it would be neither appropriate nor meaningful to apply the health effects model used in the CARB study to quantify the mortality and morbidity impacts of PM on a project of the proposed Project's size because values quantified for a specific location would fall within the margin of error for their methodology."[77] However,

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[71] DEIS/DEIR, at 3.2-36.
[72] DEIS/DEIR, at 3.2-91
[73] DEIS/DEIR, at App. D3-17.
[74] Cal EPA, Office of Environmental Health Hazard Assessment, Air Toxics Hot Spots Program Risk Assessment Guidelines, August 2003. This breathing rate is posted as the "High end" in Table 5-4; http://www.oehha.ca.gov/air/hot_spots/pdf/HRAguidefinal.pdf.
[75] *See, e.g.,* DEIS/DEIR, at 7-14 (28% of longshoreman live in San Pedro and 10% live in Wilmington).
[76] DEIS/DEIR, at 3.2-82, App. E at 1.
[77] DEIS/DEIR, at 3.2-95.

CARB did in fact calculate those health impacts from goods movement at a regional level, reporting, for example, that 220 premature deaths were associated with the goods movement in 2005 in the San Francisco air basin, for which the Port of Oakland is the primary contributor to goods movement pollution and associated health impacts. The magnitude of the operations proposed by this project is on a par with current Port of Oakland operations. Therefore, health impacts are likely similar and should have been reported here.

Fourth, use of a 6 year period for determination of health risks to students is inappropriate for a number of reasons. First, OEHHA does not support the use of cancer potency factors to evaluate cancer risk from exposure durations of less than 9 years.[78] Second, impacted students are likely to live in the community as well, so that their exposure may actually be over a lifetime and would likely be 24 hours a day, seven days a week. Further, while the exposure assessment parameters do account for higher breathing rates of young students compared to adults, the heightened vulnerability to health impacts is not considered in the cancer potency factors and RELs, which may lead to significantly underestimated health risks.

NRDC-40

VI. Alternatives: The DEIS/DEIR Provides an Inadequate Alternatives Analysis Under CEQA and NEPA.

An adequate alternatives analysis is a crucial component of complying with CEQA/NEPA. The CEQ has labeled the alternatives requirement as the "heart" of the EIS.[79] Further, NEPA contains a clear mandate that alternatives must be explored in depth and with the same level of detail as the proposed action.[80] The analysis of the alternatives throughout the document fails in this respect.

Perhaps one of the most notable deficiencies in the alternatives assessment was overlooking utilizing a modern container transport system. A critical component of the CAAP was a section on "Green Container" Transport Systems.[81] The CAAP states that "the ultimate goal is a 21st century electric powered system that will move cargo from our docks to the destinations within 200 miles that today are moved by truck. It may take 20 years to complete such a system but it will always be 20 years away unless in the next five years we build and test a demonstration prototype and perfect a detailed plan for widespread construction."[82] In addition, the Southern California Association of Governments ("SCAG"), the designated Metropolitan Planning Organization for the area

NRDC-41

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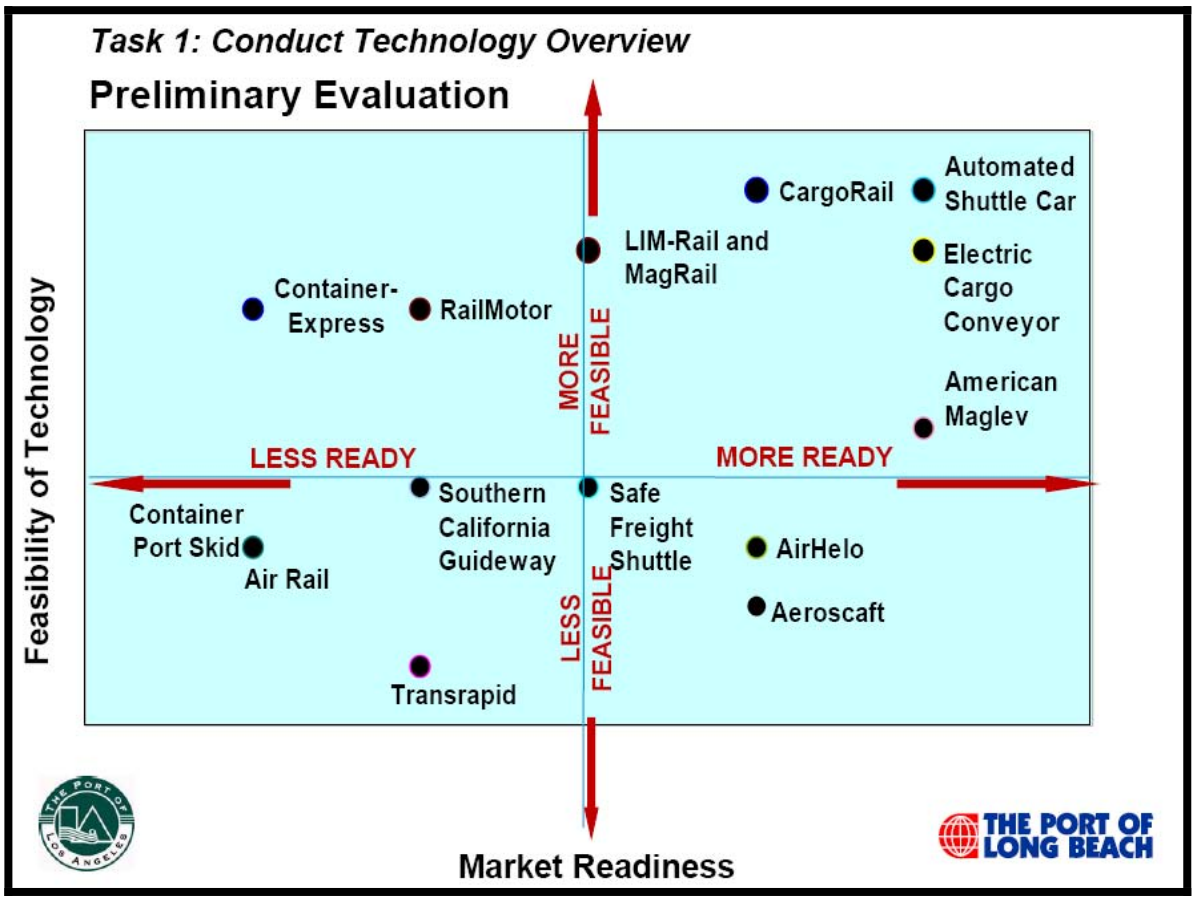
[78] Cal EPA, Office of Environmental Health Hazard Assessment, Air Toxics Hot Spots Program Risk Assessment Guidelines, August 2003, p. 8-4; http://www.oehha.ca.gov/air/hot_spots/pdf/HRAguidefinal.pdf.
[79] 40 C.F.R. § 1502.14; *see also Monroe County Conservation Council, Inc. v. Volpe*, 472 F.2d 693, 697-98 (2d. Cir. 1972)("The requirement for a thorough study and a detailed description of alternatives…is the linchpin of the entire impact statement."); Cal. Pub. Res. Code § 21002; 14 Cal. Code Regs. § 15126.6.
[80] *See* 40 C.F.R. § 1502.14 (a) and (b); *see also Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act* Regulations, 46 Fed. Reg. 18026 (Mar. 23, 1981)("The degree of analysis devoted to each alternative in the EIS is to be substantially similar to that devoted to the "'proposed action.'").
[81] CAAP TR, at 141.
[82] CAAP TR, at 141.

encompassing the Port, has determined that "the region is [] paying a high price in terms of the air pollution generated from [goods movement] activities."[83] In its declaration of a state of emergency due to severe air pollution impacts, SCAG called for pursuit of "all actions associated with implementation of an alternative clean freight movement system."[84] Thus, it is inconceivable why such a modern system was not even considered in the DEIS/DEIR for this project. Obviously, the Port of Los Angeles has determined that such a system is potentially feasible and a desirable result, so we were exceptionally disappointed that an analysis of this type of technology was not included in the DEIS/DEIR.

In conjunction with the Port of Long Beach, the Port commissioned a study of Zero Emission Container Mover Systems. As the chart from a presentation to the Board of Harbor Commissioners demonstrates, there are several technologies that have been quantified as "More Feasible" and "More Ready."[85]

NRDC-41



[83] SCAG, Press Release, SCAG Urges Declaration of Air Quality Emergency For South Coast Air Basin, *available at* *http://www.scag.ca.gov/media/pdf/pressReleases/2007/pr029_SCAGAQCrisis.pdf*.
[84] *Id.*
[85] Zero Emissions Container Mover System Evaluation Status Update, (September 6, 2007) *available at* http://www.portoflosangeles.org/DOC/Zero_Emissions_Container_Mover_System_Pres_090607.pdf.

The Port needs to address the DEIS/DEIR's deficiency of failing to analyze one or more of these more efficient systems of transportation. Moreover, it is unclear why the Port is shying away from a true analysis of alternatives, and instead, relying on a very similar list of alternatives from the China Shipping DEIS/DEIR, an environmental review document that predated the Clean Air Action Plan.[86] It is our understanding that the Port is hoping to move the goods movement sector into the 21st century, and the alternatives analysis within this document does nothing to advance the ball on this.

NDRC-41

VII. Aesthetics: The DEIS/DEIR Contains an Inadequate Analysis of Aesthetic Impacts.

A. The DEIS/DEIR Understates the Project's Aesthetic Impacts.

1. The DEIS/DEIR's Analysis of Aesthetic Impacts Contains Numerous Substantive Flaws and Underestimates Impacts.

As discussed below, the DEIS/DEIR takes an overly narrow view of how the proposed project may affect aesthetics, and as a result, severely underestimates the significant aesthetic impacts the proposed project will have on nearby communities in San Pedro, Wilmington, and Rancho Palos Verdes.

NDRC-42

First, the DEIS/DEIR presents an incomplete and misleading description of the existing environmental setting by emphasizing that industrial elements dominate the existing landscape.[87] While we acknowledge that the project site is part of one of the country's busiest ports, it also lies in close proximity to residential neighborhoods, schools, a hospital, and local businesses.[88] By glossing over the presence of these non-industrial areas, the DEIS/DEIR skews the description of the existing environmental setting and minimizes the proposed project's off-site aesthetic impacts.

Second, we are concerned that the DEIS/DEIS does not present the worst-case scenario, which would also include stacked containers, light standards, yard equipment, trucks, top-pick and RTG cranes, and ships in many of its analysis of impacts from "critical views." As a result, the DIES/DEIR fails to accurately depict project impacts.

2. Had the DEIS/DEIR Comprehensively Considered All Aesthetic Impacts, It Would Have Found Additional Significant Impacts.

First, contrary to the Port and Corps findings, the proposed project will have a demonstrable negative aesthetic effect under AES-1 and AES-3.[89] Indeed, as outlined above, had the DEIS/DEIR considered project elements such as ships, infill, stacked containers, yard equipment, etc., the document would have concluded that the open

NDRC-43

[86] *Id.*
[87] *See, e.g.*, DEIS/DEIR, 4-19.
[88] DEIS/DEIR, at 3.2-11.
[89] DEIS/DEIR, at 3.1-81.

panoramic views of the water and skyline—two of the most important visual resources for nearby communities at grade and at higher elevations—would be dramatically impacted by the proposed project. In essence, the DEIS/DEIR ignores numerous elements of the project and downplays the huge contrast between baseline conditions—primarily a much smaller scale operating terminal—and 24-hour, 365-day expanded container terminal operations.[90]

Second, by failing to include nearby residential areas in the description of the existing environmental setting and presenting a limited discussion of the project's components that could cause light impacts, the DEIS/DEIR improperly concludes under AES-4 that the proposed project would not produce significant impacts from light or glare.[91] However, the DEIS/DEIR glosses over the fact that lighting does not occur in 19 of the 67 acres of backlands to be developed.[92]

NRDC-43

Third, the Port provides insufficient rationale for why views of offsite container storage areas will not result. The Port notes that "the proposed Project includes adding expanded and reconfigured backlands to the Berths 136-147 Terminal, which will provide additional on-site container storage activities, thereby reducing the need for offsite container storage."[93] However, it is our assumption that increased container storage serves to accommodate the additional cargo throughput at the terminal. The Port provides no evidence that the expanded terminal will result in the "reduced need for offsite container storage"[94] when compared to baseline conditions.

B. The Aesthetic Mitigation Presented in the DEIS/DEIR is Wholly Inadequate.

The DEIS/DEIR's lack of mitigation measures fall short of the CEQA requirement that all significant impacts be mitigated to the fullest extent feasible.[95] This results largely from the DEIS/DEIR's inadequate analysis of aesthetic impacts, as discussed above.

NRDC-44

Further, the DEIS/DEIR wholly omits an analysis of various use restrictions from its range of proposed mitigation measures. Use restrictions can be a practical and feasible approach to mitigate the proposed project's aesthetic impacts, including visual impacts, glare, odor, etc. that the Port and Corps must consider.

C. The Cumulative Aesthetic Impacts Analysis Is Inadequate.

NRDC-45

As discussed, the Port and Corps have taken an artificially narrow view of the aesthetic impacts from the proposed project. As a result, the DEIS/DEIR likely underestimates cumulative impacts as well. In particular, despite emphasizing the relatively high existing

[90] *See*, *e.g.*, DEIS/DEIR, at 3.1-1, 3.1-36, 3.1-52, 3.1-59, 3.1-62, 3.1-64.
[91] DEIS/DEIR, at 3.1-117.
[92] DEIS/DEIR, at 3.1-89.
[93] DEIS/DEIR, at 3.1-117.
[94] *Id.*
[95] Cal. Pub. Res. Code § 21002; CEQA Guidelines, § 15126.4.

ambient nighttime light from Port operations and potential increases into the future, the Port determines that there is no significant cumulative lighting affect. The Port must recognize that cumulative light and glare impacts of existing and future port operations will affect residential neighborhoods in the area, and fully address this issue in subsequent drafts of the DEIS/DEIR. NRDC-45 NRDC-46

IX. Land Use: The DEIS/DEIR Presents an Insufficient Analysis of Land Use Impacts From the Proposed Project.

A. The DEIS/DEIR Severely Underestimates Significant Off-Port Land Use Impacts.

The DEIS/DEIR's land use impacts analysis is insufficient under CEQA in several respects. First, under LU-2, the DEIS/DEIR inappropriately focuses on port growth-oriented elements of the applicable land use plans to the exclusion of other, equally-important public health elements. Second, under LU-3, the DEIS/DEIR consistently understates the land use impacts created by expanding a new, heavy industrial container terminal operations in close proximity to extant residential land uses. Third, under LU-4, the DEIS/DEIR fails to address off-site project operations that may disrupt and divide the community of Wilmington. NRDC-47

1. The Project is Inconsistent With Some Goals of Applicable Land Use Plans.

Contrary to the findings in the DEIS/DEIR, the Project will likely cause significant land use impacts, as inconsistency with a single policy or goal of a general plan can be the basis for a finding of significant impacts under CEQA.[96] For instance, two of the Port of Los Angeles Plan Objectives and Policies are geared towards creating and maintaining a physically safe, healthy community and environment.[97] The ARB's land use policy guidelines underscore the importance of the impact of land use decisions on air quality, cautioning that "land use policies and practices can worsen air pollution exposure and adversely affect public health by mixing incompatible land uses."[98] Indeed, in light of the recent CARB land use policy guidelines, the Port should evaluate the relevant Port and City plans to determine whether these documents contain outdated, inaccurate, or incomplete land use policies, and report findings in subsequent drafts of the DEIS/DEIR. NRDC-48

Additionally, applicable plans' goals to "preserve and enhance the positive characteristics of existing neighborhoods" would be substantially undermined by expanding a major source of toxic air pollution, noise, traffic, and heavy industrial scenery into existing residential neighborhoods in the Harbor area. This further solidifies the need for all

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[96] *See San Bernardino Valley Audubon Soc'y, Inc. v. County of San Bernardino*, 155 Cal.App.3d 738, 753 (1984).
[97] DEIS/DEIR, at 3.8-11-12.
[98] CARB, Air Quality and Land Use Handbook: A Community Health Perspective, at 38 (April 2005) (enclosed as Attachment H).

feasible mitigation of air quality impacts. The DEIS/DEIR fails to acknowledge the proposed project's inconsistency with these extremely important environmental goals.

NRDC-48

Furthermore, the DEIS/DEIR ignores the fact that several of the proposed project's traffic impacts will exceed thresholds of significance. Such traffic impacts are inconsistent with the Port's plan aimed at minimizing conflicts among vehicular, pedestrian, railroad- and harbor-oriented industrial traffic, tourist and recreational traffic, and commuter traffic patterns. But the proposed project does exactly that. The DEIS/DEIR improperly ignores this substantial inconsistency in finding no significant impact under LU-2.

2. The Project Will Substantially Affect Existing Types of Land Uses in the Area.

As the DEIS/DEIR acknowledges, a project will have a significant impact on land use if it has the potential to substantially affect existing types of land uses in the project area.[99] The DEIS/DEIR purports to evaluate the proposed project's potential to significantly impact land use. Yet the DEIS/DEIR consistently downplays the off-port land use effects of expanding a massive, 365-day a year, 24-hour container terminal in the backyards of residential communities. In fact, the Port appears to argue that "because terminal activities would be confined to the proposed Project site, project operations would not affect blighted conditions in surrounding redevelopment areas."[100] It is this area where much disagreement arises because many argue that port operations, which invites mobile sources to a specific terminal is not simply confined to terminal space. This flaw—which particularly weakens the discussion of LU-3—infects the entire Land Use discussion, beginning on the first page of the Land Use chapter, where the "Environmental Setting" description includes the project site and nearby port terminals, but inexplicably excludes neighboring residential communities of San Pedro, Wilmington, and Rancho Palos Verdes.[101]

NRDC-49

In this vein, the DEIS/DEIR states that the proposed project's activities would be confined to the project site,[102] ignoring a host of project-related land uses such as trucks and rail that will occur beyond the project site in neighboring residential communities. These and other off-site activities and their associated impacts—industrial-level noise, traffic, glare, and air pollution—on existing residential land uses must be addressed. Subsequent drafts of the DEIS/DEIR should include land use maps showing truck routes, gate locations, rail, and zones affected by on- and off-site, project-related noise and light.

Finally, we commend the Port for acknowledging the community position that Port conditions cause blight.[103] But the DEIS/DEIR's response inappropriately avoids serious inquiry into the reasons for this community sentiment. As the Port should recognize,

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[99] DEIS/DEIR, at 3.8-23.
[100] DEIS/DEIR, at 3.8-25.
[101] DEIS/DEIR, at 3.8-1.
[102] *See e.g.*, DEIS/DEIR 3.8-23 *et seq*.
[103] DEIS/DEIR, at 3.8-4.

"blight" commonly refers to a generally deteriorated urban condition.[104] By arguing that the elements of the technical definition of blight are absent from the area, the Port has failed to reasonably respond to the widely acknowledged and empirically evident fact that Port activities increasingly cause negative land use impacts off of port lands such as traffic congestion, air pollution, noise, etc. in neighboring residential communities, and that the proposed project will further worsen those impacts.[105] Moreover, even under the proffered technical definition, evidence shows that "blight" does in fact exist in these communities.[106] The Port must take seriously the question of whether port industrial activities on and off port lands cause blighted conditions, and comprehensively address the proposed project's off-site land use impacts in subsequent drafts of the DEIS/DEIR. Actions such as creating buffer zones and open spaces are crucial to mitigate these impacts, so we encourage the Ports to more effectively utilize these tools in communities adjacent to the Port. We were encouraged to see the Port utilize a buffer area as part of this project, and we encourage the Port to more fully explore how to effectively separate residents from the adverse effects of port operations.

NRDC-49

3. The Project Will Disrupt or Divide Communities.

A project has a significant impact on land use if its elements would disrupt or divide communities.[107] The DEIS/DEIR blatantly underestimates the impacts of substantially increasing throughput at one terminal and its associated impacts on land use in Wilmington and San Pedro. The DEIS/DEIR fails to truly acknowledge the heightened impacts from the disruptive effect of increased use of rail and truck corridors that traverse the neighboring community of Wilmington.

The DEIS/DEIR proposes two mitigation Measures: (1) LU-1: Install Truck Route Signage and (2) LU-2: Truck Traffic Enforcement. While signage and ensuring trucks that service the ports comply with the law is important, these mitigation measures are not nearly strong enough to mitigate the disruption of adding an additional 682,812 trucks a year[108] in Wilmington and surrounding areas.

NRDC-50

Moreover, these mitigation measures lack sufficient specificity to provide meaningful reductions in the severe community impacts this program will have. The measure does not describe how many signs will be placed "throughout Wilmington." Theoretically, the Port could simply place fewer than five signs in Wilmington and claim it is complying with this mitigation measure. Moreover, LU-2 does not denote how many more resources the Port Police will allocate to enforcing violations by trucks. Read to the extreme, an increase in enforcement could mean the Port police simply spend one additional minute a week enforcing this provision. Thus, the Ports need to provide greater specificity for LU-1 and

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[104] *See* http://www.merriamwebster.com/cgi-bin/dictionary, last accessed Sept. 14, 2006.
[105] DEIS/DEIR, at 3.8-4.
[106] For example, the City of Los Angeles has designated surrounding areas as redevelopment zones, making findings of blight under applicable land use law. DEIS/DEIR, at 3.8-3-5.
[107] DEIS/DEIR, at 3.8-23.
[108] DEIS/DEIR, at 2-3 (comparing Annual Truck Trips in 2003 to Annual Truck Trips in 2038).

NRDC-50 LU-2. Providing more specificity will greatly enhance the effectiveness of thes mitigation measures.

4. The Project Will Cause Secondary Impacts to Surrounding Land Uses.

While the DEIS/DEIR acknowledges that a project will have significant land use impacts if it causes secondary impacts to the surrounding land uses, it inappropriately limits its analysis of secondary impacts to potential increases in property values. [109] Both CEQA and NEPA define "secondary effects" or "indirect effects" much more broadly to include "effects related to induced changes in the pattern of land use" in neighboring communities.[110] This inquiry is particularly important in any port-expansion project. As NRDC-51 the Port expands, the port-serving facilities that are necessary to support terminal operations are increasingly concentrated in off-port areas immediately adjacent to the Port. For instance, container storage yards, truck service facilities, warehouses, and numerous other port-serving operations are located off of port lands in the communities of Wilmington and San Pedro. In many cases, these industrial land uses—essential for day-to-day port operations and guaranteed to increase with Port expansion—are found near homes, playgrounds, and schools. Subsequent drafts of the DEIS/DEIR must evaluate these secondary impacts and propose feasible off-site mitigation measures for these adverse impacts on community land use.

B. The DEIS/DEIR Inadequately Addresses Mitigation Measures for Land Use Impacts.

NRDC-52 As described above, the Port failed to address several significant land use impacts. As a result, the DEIS/DEIR's evaluation of feasible mitigation of off-port land use impacts is severely lacking. We strongly urge the Port and Corps to find significant land use impacts based on the information provided above, and mitigate those impacts off of port lands accordingly.

VIII. Noise: The DEIS/DEIR Fails to Adequately Consider and Mitigate Noise Impacts.

Noise is a serious, and often dismissed, public health problem, which causes numerous health and social effects, ranging from hearing to cardiovascular problems, and from learning problems in school to sleep disturbances at home.

NRDC-53

We are concerned that the baseline for the noise analyses may have established during a time of active construction at Berth 100 of China Shipping, which would invalidate the sampling periods in April and October 2002 for the TraPac DEIS/DEIR as providing an acceptable "baseline" for the DEIS/DEIR. Please note that a judge ordered that construction cease on October 30, 2002. We request that the Port of L.A. and Army Corps

[109] DEIS/DEIR, at 3.8-23, -31.
[110] CEQA Guidelines § 15358; 40 C.F.R. § 1508.8(b).

of Engineers obtain information (and provide it for the record and public review) on exactly what construction activities were occurring during the period from April to November 2002; without such information, we assume that construction may have been occurring during this period, thus invalidating the noise analyses as providing an accurate "baseline" for noise activities during this period. NRDC-53

In addition, we are concerned that the geographic scope for analyzing noise impacts is much too limited. Traffic impacts (including ones declared to be of significant impact) are determined by the DEIS/DEIR to exist far from the proposed TraPac terminal itself. Thus, noise impacts should be analyzed at these more distant locations also, not just within a stone's throw of the proposed terminal, such as along Harry Bridges Boulevard immediately north of the proposed terminal – and even for residents in west Long Beach east of the Terminal Island Freeway where thousands of trucks will be traveling to the Union Pacific ICTF from the proposed TraPac Terminal. NRDC-54

We note that the environment near the proposed TraPac expansion is already a "degraded noise environment" and that noise levels currently present are higher than what is typically acceptable in a residential community. We question whether the additional noise from roughly adding the throughput of the Port of Houston, which comprises greatly enhanced terminal operations as well as thousands more trucks traveling on Harry Bridges Boulevard, the 110 Freeway, Alameda Street and other roadways can possibly be of "insignificant impact" to residents.

One set of noise surveys utilized in the China Shipping DEIR/EIS (attached) not provided in the TraPac DEIS/DEIR, show that over a 24-hour weekend period, on a Sunday, when the Port was not yet operating its "Pier Pass" 24/7 operation, the noise levels at 207 W. Amar Street, a residential location that the DEIR/DEIS says "overlooks the West Basin" *(DEIR/DEIS at 3.11-21 in China Shipping DEIR/DEIS)*, averaged only 46 dBA with a CNEL of 57dBA. The Ldn for Harry Bridges Blvd, 57 feet from the Center, is 77 dBA. For Shields Drive, the Ldn is 72 Ldn. To the undersigned, this appears to indicate that the area immediately north and west of the proposed TraPac Terminal is already a "degraded noise environment" into which additional sources of noise would create an even more serious noise problem. NRDC-55

We note that the "Region of Influence" (ROI) for the *Port of Los Angeles Deep Navigation Project (Final EIR/EIS, 1992, Section 4H.1.1* with regard to noise impacts included "the area surrounding the offshore and onshore elements of the project alternatives." The ROI also included the "corridors adjoining the ground transportation routes, including both vehicular and rail traffic, that would be used to access the Port. Any noise sensitive receptors which could be affected by noise from project construction or operation, both on-site and off-site, are included in the ROI." In fact, that 1992 EIR/EIS considers the noise levels at the Union Pacific Intermodal Container Transfer Facility (UP ICTF) in Carson on west Long Beach residents and reports on noise monitoring surveys conducted there. We request that the final DEIS/DEIR include a much wider geographically affected area than does the draft, including along the 110 Freeway, Alameda Street, Terminal Island Freeway, NRDC-56

I-710 Freeway, Alameda Corridor, near the ICTF, and along other roadways. We request that the final EIR/EIS include comparison between noise levels in 1992 (as they exist) with current noise levels to show the impact of Port operations on local residents in L.A. and Long Beach.

NRDC-56

VIII. Conclusion

We appreciate the opportunity to review this document. We hope the Ports will continue to solicit input from environmental, community, and labor groups in subsequent versions of this environmental review document.

Sincerely,

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Natural Resources Defense Council, et. al, September 26, 2006

NRDC-1. Thank you for participating in the Berth 136-147 Draft EIS/EIR public review process. We appreciate your time and effort. As discussed in the document, the Berth 137-147 Terminal will increase from 891,976 annual TEUs to 2,389,000 annual TEUs over a 30-year lease. The environmental analysis addresses environmental impacts as a result of this expansion. As described in Section 1.6 of the Final EIS/EIR, the Port of Los Angeles has a number of environmental programs, including the CAAP, to reduce the potential environmental impacts associated with both today's Port activities and expansions. As one of the largest container terminals in the country with a network of existing infrastructure and close proximity to the Asian ports, the Port expects future growth as smaller Ports with less developed infrastructure for container cargo are not able to absorb the additional growth fueled by consumer demand. For example, the Port of Houston primarily handles liquid and dry bulk. While TraPac's container volume may be similar to the Port of Houston's entire container trade, the Port of Houston handled over 200 million tons in 2006 with 7,550 vessel calls (as opposed to 2,771 vessel calls at the Port of Los Angeles in 2006).

The Final EIS/EIR provides an adequate analysis of air quality impacts for CEQA/NEPA purposes. Mitigation Measures AQ-1 through AQ-24 represent all feasible means to reduce air pollution impacts from proposed construction and operational emission sources. The Final EIS/EIR has accelerated implementation of some mitigation measures proposed in the Draft EIS/EIR, and added additional mitigations as discussed in more detail in the following responses (please see response to comments NRDC 12, 13, 14, 19, 22, 23, 24 and 27).

NRDC-2. Thank you for your comments. Please see the response to comment NRDC-1. The Final EIS/EIR concludes that the Project would produce significant air quality impacts. However, the analysis shows that on a regional basis, the mitigated Project would produce lower emissions than the existing terminal operations in 2003 (see Table 3.2-26). Additionally, the mitigated Project also would produce lower health risks compared to the CEQA Baseline, except for a very small area in East Wilmington as disclosed in the document. See also response to RPV-4.

NRDC-3. Please see the response to comment NRDC-1. The Project would comply with all applicable Project-specific CAAP measures. The Final EIS/EIR has accelerated implementation of some mitigation measures proposed in the Draft EIS/EIR, and added additional mitigations.

NRDC-4. The CEQA Baseline for the Project is equal to the conditions of the Berths 136-147 Terminal at the time of the release of the CEQA Notice of Preparation, or October 19, 2003. CEQA Guidelines Section 15125, subdivision (a), provides:

"An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant."

CEQA case law holds that, where facts in the record show that activities were occurring at a project site prior to environmental review, it may be "misleading and illusory" to describe baseline conditions as if those activities were not occurring. (See *Fairview Neighbors v. County of Ventura*, 70 Cal.App.4th 238, 243 (1999) (upholding baseline for evaluation of conditional use permit to expand existing mining operations as including levels of truck traffic actually achieved under prior approvals). Additionally CEQA provides for the environmental baseline to include all uses that actually existed during the baseline period, regardless of whether those activities are alleged to have exceeded prior approvals. See, e.g., *Fat v. County of Sacramento*, 97 Cal.App.4th 1270, 1277-1281 (2002); *Riverwatch v. County of San Diego*, 76 Cal.App.4th 1428, 1451-1453 (1999).

The Draft EIS/EIR adequately describes the conditions during 2003. In 2003, the terminal had 176 acres, received 246 annual ship calls, and handled 891,976 TEUs per year.

NRDC-5. As discussed in Draft EIS/EIR Section 3.2.2.4, peak daily emissions were estimated for 2003 CEQA Baseline operations at the Berths 136-147 Terminal. Peak Day emissions are estimated to comply with SCAQMD reporting standards. These emissions are compared to future Project peak day scenarios to determine CEQA significance. However, annual average daily emissions more adequately express typical Port operations, as peak daily conditions occur infrequently and they are based upon a lesser known and therefore more theoretical set of assumptions.

To determine the net change in peak daily emissions between the Project scenarios and CEQA and NEPA Baselines, it was deemed important in the Draft EIS/EIR to compare like scenarios to each other, in other words peak Project to peak baseline activities. This same approach was taken in the determination of the net change in annual average daily emissions, where the Draft EIS/EIR compared annual average Project to annual average baseline activities. Throughput is a measure of container movement over time. As discussed in Chapter 2, containers arrive at the Port waterside, through the wharf, by ships and landside, through the gate, by rail and trucks. Cargo pick-up and drop-off by these entities create emissions. Containers are also sorted and moved on and around the backland by yard equipment, another source of emissions. Because of the time associated with unloading and loading ships and then sorting and stacking containers on the backland, peak wharf activity does not correspond with peak rail activity. As discussed in Section 3.2.2.4, the peak day emissions assume the two activities are occurring simultaneously, thereby potentially inflating both baseline and Project emissions. The average day emissions presented in the document better represents actual cargo movement over time. Additionally, peak day calculations do not take into consideration all increases in ships, truck, and rail emissions calls over time. For example, when construction is finalized, daily ship calls would be limited to the amount of available berth space. Therefore, average day emissions may not change overtime despite annual increases in ship visits because of the daily limitations. The Port therefore also computes an average day, which accounts for the total annual ship, truck, and rail visits thereby presenting a better representation of total emissions increases. As shown in Tables 3.2-22 and 3.2-23, the peak day emissions result in larger negative increment than the average day emissions, illustrating that the average day is a more conservative analysis.

It is possible that there were some days during the baseline year (2003) when minimal activities occurred at the Berths 136-147 Terminal, which resulted in nearly zero operational emissions. Consequently, one could conclude that an extreme net change in Project peak daily emissions is equal to either the Project daily annual average or peak

daily emissions minus a near zero baseline. However, to determine the significance of Project emissions for purposes of CEQA and NEPA, the analysis compared the net change in emissions between like scenarios.

The Draft EIS/EIR evaluated the net change in GHG emissions between the Project scenarios and CEQA and NEPA Baselines with the use of annual GHG emissions. Since these emissions produce long-term effects, it is less useful to evaluate them in short-term units of daily emissions.

NRDC-6. Appendix D2.1 of the Draft EIS/EIR provides tabulated summaries of data used to estimate year 2010 annual and daily emissions for each Project scenario. However, some of the incremental calculations that compare Project alternative daily emissions to baseline emissions are in error. Appendix D2.1 of the Final EIS/EIR includes these corrected calculations. Additionally, Appendix D2.1 of the Final EIS/EIR presents 2010 peak daily emission calculations for each Project scenario.

NRDC-7. This document has not underestimated the throughput. Total throughput in 2030 will be 2,389,000 TEUs as reported in the document. As throughput grows, more gate movements will be distributed to the night and hoot shift. Currently, infrastructure (such as the highway network) and employee levels can handle the majority of gate movements during the day hours. However, although expected future upgrades to both on- and off-Port infrastructure and additional employees, will add additional capacity, the gate will become more congested during these hours shifting the additional throughput to the night and hoot shifts. Most cargo will continue to move through the gate during the day because warehouses and other cargo end users are expected to operate primarily during the day. To ensure cargo can be handled and moved through the gate at night, the Port and industry groups are exploring operational changes both at the Port and with end users. For example, Pier*PASS*, is a new program that implements financial disincentives to the movement of containers during peak hours (3:00 a.m. to 6:00 p.m., Monday through Friday. While this project assumes 24/7 operation in the future, the terminal, rail facilities, distribution centers and warehouses, and retailers are not expected to operate at full capacity during the night and hoot shifts.

Although individual container terminals do operate today at different throughput-per-acre levels, and will continue to do so in the future, it is speculative to predict which terminals, if any, will process throughput at slightly higher or lower densities (throughput refers to movement of containers over time while density refers to the number of total containers on a terminal at a given time). Terminals that operate at higher densities than their competitors do so with significantly increased operational costs. These increased costs can seldom be passed on to customers in the extremely competitive container shipping business. It is unreasonable to assume that, over time, a terminal will be able to maintain significantly denser, and correspondingly more expensive, operations than its competitors.

In addition, this point is essentially moot for the Berths 136-147 Terminal, since the 2005 projection (which is higher than actual throughput) was determined empirically from 2002 data, and the 2025 projection was governed by the terminal capacity. All of the interim years were determined by straight-line projections between 2005 and 2025. The Mercer demand forecast turned out not to be a factor at all in the Berths 136-147 container terminal throughput projections.

NRDC-8. Thank you for your comment. As discussed in Section 2.5.1.2, as compared to the proposed Project, Alternative 2 would result in the same level of throughput as the proposed Project. At full build-out, the Berth 136-147 Terminal will be berth-limited, meaning throughput will be limited to the amount of berth space available for ships. The additional 10 acres included in the proposed Project would improve cargo handling efficiencies by providing more backland space for wheeled operations (please also see response to comment USEPA-12). TraPac's total throughput is assumed to remain the same with or without additional 10 acres. The additional land will allow TraPac to "spread out" and operate more wheeled operations versus a stacked operation. Wheeled operations are more efficient and cheaper than stacked, but terminals are often limited by their backlands area necessitating a certain amount of stacking.

NRDC-9. The one hour "idling" duration is an assumption and not a restriction for line haul locomotives. In actuality, the air quality analysis simulated the presence of line haul locomotives in rail yards with a notch 1 engine setting (load factor of 0.05), which is a blend of idling (load factor of 0.004) and notch 2 (load factor of 0.11) modes of operation. Hence, this approach produces higher emissions than the use of idling mode. The POLA 2005 emissions inventory process determined that line haul locomotives operated within on-dock rail yards at the Port for 1 hour per trip into the Port and 2.5 hours per outbound trip (Table 5.11). Hence, the use of a 1 hour duration for inbound trains is a reasonable assumption. Use of a longer dwelling time for outbound locomotive trips within the rail yard would increase the estimate of Project locomotive emissions, but not substantially when compared to Project emissions as a whole. Additionally, revisions to other Project operational assumptions essentially would offset these emission increases. These revisions include (1) use of electric rubber-tired gantry (RTGs) cranes in the Project on-dock rail yard instead of diesel-powered units, (2) acceleration of the implementation of proposed mitigation measures, and (3) a shift of Project year 1 from 2007 to 2008, which would allow all Project vehicle fleets except vessels an additional year to turn over to vehicles with newer and cleaner emission standards.

NRDC-10. On-terminal truck dwelling times at Berths 136-147 have decreased by about 50 percent since 2001, due to automating their out gate and empty yard and the addition of the appointment system. TraPac estimated that truck idling times in 2006 averaged about 10 to 15 minutes (personal communication, Scott Axelson 2006). TraPac states that their new terminal design, plus a container optical character recognition scanning system, will eliminate the need for queuing on terminal. As a result, they do not see the need to provide queuing lines for either the new in or out gate facilities. These features would reduce on-terminal truck idling times in future years to less than the 15 minute duration that is currently assumed in the air quality analysis (personal communication, Scott Axelson 2007).

NRDC-11. The Draft EIS/EIR air quality analysis focused on impacts within the SCAB, as the overwhelming majority of Project impacts would occur in this region. While emissions from Project sources would occur along truck, train, and vessel routes outside of the SCAB, they would not contribute to exceedances of ambient air quality standards in these locations. Therefore, analysis of Project emissions outside of the SCAB was deemed unnecessary in the Draft EIS/EIR.

NRDC-12. Thank you for your comment. Please see response to comments SCAQMD 11, 12, and 13. The Project construction procurement process will include a selection system that requires bidders to use clean construction equipment. Additionally, the following mitigation measures have been amended in the Final EIS/EIR:

Mitigation Measure AQ-1: Harbor Craft for Crane and Sheet-pile Deliveries and Construction ~~Expanded VSR Program~~. All cargo ships used for terminal crane and sheetpile deliveries shall comply with the expanded VSRP of 12 knots from 40 nm from Point Fermin to the Precautionary Area. In addition, ships used for sheetpile deliveries in Phase II construction (post 2015) shall use low-sulfur fuel (maximum sulfur content of 0.2 percent) in auxiliary engines, main engines, and boilers within 40 nm of Point Fermin. This measure shall also require all harbor craft used during the construction phase of the project to, at a minimum, be repowered to meet the cleanest existing marine engine emission standards or USEPA Tier 2. Additionally, where available, harbor craft shall meet the proposed USEPA Tier 3 (which are proposed to be phased-in beginning 2009) or cleaner marine engine emission standards.

The above harbor craft measures shall be met, unless one of the following circumstances exist and the contractor is able to provide proof that any of these circumstances exists:

1. A piece of specialized equipment is unavailable in a controlled form within the state of California, including through a leasing agreement.

2. A contractor has applied for necessary incentive funds to put controls on a piece of uncontrolled equipment planned for use on the Project, but the application process is not yet approved, or the application has been approved, but funds are not yet available.

3. A contractor has ordered a control device for a piece of equipment planned for use on the Project, or the contractor has ordered a new piece of controlled equipment to replace the uncontrolled equipment, but that order has not been completed by the manufacturer or dealer. In addition, for this exemption to apply, the contractor must attempt to lease controlled equipment to avoid using uncontrolled equipment, but no dealer within 200 miles of the project has the controlled equipment available for lease.

Mitigation Measure AQ-2: Fleet Modernization for On-Road Trucks. All on-road heavy-duty diesel trucks with a gross vehicle weight rating (GVWR) of 33,000 pounds or greater used on-site or to transport materials to and from the site shall comply with year 2007 emission standards for Phase I. In addition, for Phase II construction (post January 2015), all on-road heavy-duty diesel trucks with a gross vehicle weight rating (GVWR) of 33,000 pounds or greater used on-site or to transport materials to and from the site shall comply with year 2010 emission standards where available. Trucks hauling materials such as debris or fill shall be fully covered while operation off Port property.

The above on-road truck measures shall be met, unless one of the following circumstances exist and the contractor is able to provide proof that any of these circumstances exists:

1. A piece of specialized equipment is unavailable in a controlled form within the state of California, including through a leasing agreement.

2. A contractor has applied for necessary incentive funds to put controls on a piece of uncontrolled equipment planned for use on the project, but the application process is not yet approved, or the application has been approved, but funds are not yet available.

3. A contractor has ordered a control device for a piece of equipment planned for use on the project, or the contractor has ordered a new piece of controlled equipment to replace the uncontrolled equipment, but that order has not been completed by the manufacturer or dealer. In addition, for this exemption to apply, the contractor must attempt to lease controlled equipment to avoid using uncontrolled equipment, but no dealer within 200 miles of the project has the controlled equipment available for lease.

Mitigation Measure AQ-3: Fleet Modernization for Construction Equipment. All off-road diesel-powered construction equipment greater than 50 hp, except derrick barges and marine vessels, shall meet the cleanest off-road diesel emission levels available but no greater than Tier 2 emission standards for projects starting construction prior to December 2011. Tier 3 emission standards shall be applied to projects starting construction between December 2011 and January 2015. The contractor could meet Tier 3 equivalent PM10 emission limits through the use of new or repowered engines designed to meet Tier 2 PM standards and/or the use of CARB approved diesel particulate traps. ~~achieve the Tier 2 emission standards in Phase 1 construction and Tier 4 emission standards in Phase 2 construction, as defined in the USEPA Non-road Diesel Engine Rule (USEPA 1998 and 2004). Equipment not designated Tier 2~~3 by the manufacturer ~~may achieve the emissions requirement by retrofitting the equipment with an CARB Verified Diesel Emission Control System (VDECS) and/or by the use of an CARB verified emulsified fue~~l. For Phase II construction (post 2015), equipment shall meet the Tier 4 emission standards where available. In addition, construction equipment shall incorporate, where feasible, emissions savings technology such as hybrid drives and specific fuel economy standards.

The above construction equipment measures shall be met, unless one of the following circumstances exist and the contractor is able to provide proof that any of these circumstances exists:

1. A piece of specialized equipment is unavailable in a controlled form within the state of California, including through a leasing agreement.

2. A contractor has applied for necessary incentive funds to put controls on a piece of uncontrolled equipment planned for use on the project, but the application process is not yet approved, or the application has been approved, but funds are not yet available.

3. A contractor has ordered a control device for a piece of equipment planned for use on the project, or the contractor has ordered a new piece of controlled equipment to replace the uncontrolled equipment, but that order has not been completed by the manufacturer or dealer. In addition, for this exemption to apply, the contractor

must attempt to lease controlled equipment to avoid using uncontrolled equipment, but no dealer within 200 miles of the project has the controlled equipment available for lease.

The following mitigation measure has also been added to the Final EIS/EIR:

Mitigation Measure AQ-25: Special Precautions near Sensitive Sites. All construction activities located within 1,000 feet of sensitive receptors (defined as schools, playgrounds, daycares, and hospitals), shall notify each of these sites in writing at least 30 days before construction activities begin.

NRDC-13. Thank you for your comment. As discussed in the document, the new terminal building will be built to LEED gold certification level. Mitigation Measure AQ-4 has been revised to limit idling to 5 minutes as follows:

Mitigation Measure AQ-4: Best Management Practices (BMPs). LAHD shall implement a process by which to select additional BMPs to further reduce air emissions during construction if it is determined that the proposed construction equipment exceed any SCAQMD significance threshold. The following types of measures would be required on construction equipment: (a) use of diesel oxidation catalysts and catalyzed diesel particulate traps; (b) maintain equipment according to manufacturers' specifications; (c) restrict idling of construction equipment to a maximum of 5~~10~~ minutes when not in use; and (d) install high-pressure fuel injectors on construction equipment vehicles. The LAHD shall determine the BMPs once the contractor identifies and secures a final equipment list.

The Port believes it is infeasible at this time to require alternative fuels for construction equipment, due to lack of availability. In consideration of this comment, the Port queried a number of construction contractors and determined that none of them currently use alternative fuels. In addition, biodiesel use at the Port is not being heavily pursued due to reported increases in NO_x emissions. Construction equipment using biodiesel are not expected to meet the percent NO_x reduction assumed in the Draft EIS/EIR. As discussed on page 3.2-3, while the South Coast Air Basin has been in attainment for NO2 since 1991, the region is now considered a maintenance area for NO2 and local air agencies are pursuing further reductions in NOx emissions to offset regional increases in population.

NRDC-14. There will be a total of only three ship visits that deliver sheet pile and cranes during phase 1 construction (2008 to 2010). Since they will visit the Port so soon after initiation of the low sulfur fuel and AMP initiatives and they likely will not be a dedicated service to the Port, they cannot be expected to so quickly comply with these radically new measures. However, one vessel will deliver sheet pile during phase 2 construction beginning in 2015 and Mitigation Measure AQ-1 has been revised in the Final EIS/EIR to say that this vessel will be required to burn fuel with a sulfur content of no more than 0.2 percent in all engines/boilers within 40 nautical miles of the Port.

Mitigation Measure AQ-1: Harbor Craft for Crane and Sheetpile Deliveries and Construction ~~Expanded VSR Program~~. All cargo ships used for terminal crane and sheetpile deliveries shall comply with the expanded VSRP of 12 knots from 40 nm from Point Fermin to the Precautionary Area. In addition, ships used for sheetpile deliveries in Phase II construction (post 2015) shall use low-sulfur fuel (maximum sulfur content of 0.2 percent) in auxiliary engines, main engines, and boilers

within 40 nm of Point Fermin. This measure shall also require all harbor craft used during the construction phase of the project to, at a minimum, be repowered to meet the cleanest existing marine engine emission standards or USEPA Tier 2. Additionally, where available, harbor craft shall meet the proposed USEPA Tier 3 (which are proposed to be phased-in beginning 2009) or cleaner marine engine emission standards.

The above harbor craft measures shall be met, unless one of the following circumstances exist and the contractor is able to provide proof that any of these circumstances exists:

1. A piece of specialized equipment is unavailable in a controlled form within the state of California, including through a leasing agreement.

2. A contractor has applied for necessary incentive funds to put controls on a piece of uncontrolled equipment planned for use on the project, but the application process is not yet approved, or the application has been approved, but funds are not yet available.

3. A contractor has ordered a control device for a piece of equipment planned for use on the project, or the contractor has ordered a new piece of controlled equipment to replace the uncontrolled equipment, but that order has not been completed by the manufacturer or dealer. In addition, for this exemption to apply, the contractor must attempt to lease controlled equipment to avoid using uncontrolled equipment, but no dealer within 200 miles of the project has the controlled equipment available for lease

The construction bid package will require the contractor to meet a 100 percent compliance rate for the VSRP out to 40 nm. Therefore, a 100 percent compliance rate is assumed in the Final EIS/EIR.

NRDC-15. Please see response to comment NRDC-12.

NRDC-16. Please see response to comment NRDC-12.

NRDC-17. Please see the response to comments NRDC-12 and NRDC-13. Mitigation Measure AQ-4 has been revised to limit truck idling to five minutes.

NRDC-18. Mitigation Measure AQ-5 has been revised to state that trucks hauling materials such as debris or fill shall be fully covered while operating off Port property. Please also see response to NRDC-12.

NRDC-19. Please see response to comment SCAQMD-14. Final EIS/EIR Mitigation Measure AQ-6 has been revised to increase the AMP compliance rate as follows:

Mitigation Measure AQ-6: Ships calling at Berth 136-147 shall use AMP while hoteling at the Port in the following at minimum percentages: (a) 2009: 25% of ship calls; (b) 2010: 50% ~~40%~~ of ship calls; (c) 2012: 60% ~~50%~~ of ship calls; (d) 2015: 80% of ship calls; and (e) 2018: 100% of ship calls. In addition, by 2010, all ships retrofitted for AMP shall be required to use AMP while hoteling at 100 percent

compliance rate, with the exception of circumstances when an AMP-capable berth is unavailable due to utilization by another AMP-capable ship.

Mitsui O.S.K. Lines Ltd (MOL) is TraPac's parent company and they have committed to retrofitting MOL ships dedicated to the Los Angeles service with AMP technology. The phase-in schedule assumes that 100 percent of MOL's P-Class vessels will be AMP-capable and will use AMP by 2010. These P-class vessels will be the most frequent callers at the terminal that provide weekly service between the US West Coast and Asia and they are assumed to make up approximately 50 percent of TraPac's ship calls. The phase-in schedule will allow for the AMP infrastructure to be constructed on the berth.

The longer phase-in schedule is to accommodate MOL's APX class vessels and 3rd party invitees. MOL's APX service provides monthly service to Europe, the US East Coast, and connections to the US West Coast through the Panama Canal. These ships are not dry-docked as frequently as the P-class vessels, due to their long vessel transits, and therefore they will require a longer phase-in to achieve AMP retrofits. The APX service is only expected to call at the terminal monthly.

While MOL represents TraPac primary business partner, TraPac will also contract with other shipping lines, referred to as 3rd part invitees, to fill extra terminal capacity. TraPac has recently lost a majority of their third-party invitees in part due terminal upgrades delays and costs associated with expected future environmental requirements. While TraPac anticipates they will be able to attract new third-party invitees with the terminal upgrades assumed as part of the proposed Project, the actual customer mix is not yet known and costs associated with environmental requirements remain an issue. Currently, AMP retrofits cost approximately $800,000 per vessel. Through future lease amendments and the CAAP, all Port container terminals and shipping lines are expected to comply with AMP in the future. However, until most or all of the other container terminals and vessels are required to use AMP, with AMP requirements at the Berth 136-147 Terminal, TraPac will have difficulty attracting third party business. The longer phase-in schedule allows TraPac to negotiate environmental upgrades with the invitees and to also to remain competitive with other Port terminals that do not yet have environmental requirements as part of their operating requirements.

NRDC-20. Mitigation Measure AQ-7 is an equivalent portion of CAAP measure CHE-1. This measure is fuel neutral and it has no loop hole. The second bulleted paragraph of Mitigation Measure AQ-7 in the Draft EIS/EIR is a typographical error and it has been revised in the Final EIS/EIR to state the following: By the end of 2010, all yard tractors will meet at a minimum the USEPA 2007 Tier 4 non-road emission standards.

An idling limitation is unnecessary, as equipment crews are developed to operate efficiently, and if excessive idling occurs, a crew will stop operation of a hostler.

NRDC-21. Mitigation Measure AQ-8 is an equivalent portion of CAAP measure CHE-1. Regarding an idling limitation, please see the response to comment NRDC-20.

Please also see response to comment SCAQMD-16. TraPac has stated that they intend to electrify their rail-mounted gantry cranes (RMGs) in the new intermodal yard. TraPac also indicates that they are interested in electric RTGs on their backland, but that they plan to evaluate the results of Port tests before they commit to this measure due to a number of operational issues. Currently, diesel powered RTGs can be moved around the

backlands. Electric RTGs must be plugged-in, thereby limiting mobility. Port tests will examine the best physical terminal layout and whether overhead or trenched electricity provides the most flexible backlands operation.

NRDC-22. Please see response to comment SCAQMD-17. Trucks that call at the Berths 136-147 Terminal will be CAAP-compliant. Mitigation Measure AQ-9 incorporates the Port's Clean Truck Program into the TraPac Terminal. This mitigation measure would ensure required gate modifications are completed to support the Clean Truck Program, however, the Truck Program is being controlled outside the proposed Project.

The text in the Final EIS/EIR Table 3.2-24 has been revised to state that Clean Trucks Program compliant trucks are those that achieve the USEPA 2007 Heavy-Duty Highway Rule PM emission standards and have the cleanest available NOx emissions at time of purchase. Additionally, as discussed in the Final EIR, the Project start year was identified as 2007 in Chapter 3.2. Due to delays in project approval, the start year has been changed to 2008, consistent with the construction schedule and the lease term (2008-2038) presented in Chapter 2 of the Draft EIS/EIR. Changes to the start year results in changes to Mitigation Measure AQ-9:

> **Mitigation Measure AQ-9:** Trucks Heavy-duty diesel trucks entering the Berths 136-147 Terminal shall achieve the USEPA 2007 Heavy-Duty Highway Rule emission standards for on-road heavy-duty diesel engines (USEPA 2001a) in the following percentages:15% in 2008 ~~2007~~, ~~30% in 2008, 50% in 2009~~, 70% in 2010, and 100% in or newer 2012 and thereafter.
>
> The new implementation schedule does not change the significance findings presented in the Draft EIS/EIR, as Project emission projections for 2008 are expected to be essentially the same or slightly lower compared to those estimated for the Project in year 2007 for the following reasons: (1) all Project vehicle fleets except vessels would have an additional year to turn over to vehicles with newer and cleaner emission standards, (2) proposed Project throughput does not increase between 2007 and 2008 due to lack of terminal upgrades, (3) operational scenarios remain the same, and (4) mitigation measures remain the same or become more aggressive.

NRDC-23. Thank you for your comment. Mitigation Measure AQ-11 in the Final EIS/EIR has been revised to increase the compliance rate of total ship calls that use low-sulfur fuel (maximum sulfur content of 0.2 percent) in auxiliary engines, main engines, and boilers within 40 nm of Point Fermin (including hoteling for non-AMP ships) to a minimum of 20 to 30 percent in years 2009/2010 as follows:

> **Mitigation Measure AQ-11: Low Sulfur Fuel.** Ships calling at Berth 136-147 shall use low sulfur fuel (maximum sulfur content of 0.2 %) in auxiliary engines, main engines, and boilers within 40 nm of Point Fermin (including hoteling for non-AMP ships) at the following minimum annual participation rates: (a) 2009: <u>20</u> ~~10~~ percent of auxiliary engines, main engines, and boilers; (b) 2010: 30 ~~20~~ percent of auxiliary engines, main engines, and boilers; (c) 2012: 50 percent of auxiliary engines, main engines, and boilers; and (d) 2015: 100 percent of auxiliary engines, main engines, and boilers. <u>In addition, by 2012, all frequent caller ships (three or more calls a month) shall use 0.2% in main and auxiliary engines within 40 nm of the Port.</u>

MOL has committed to using low sulfur (0.2%) fuel in MOL ships dedicated to a Los Angeles service. This phase-in schedule assumes 100 percent of MOL's P-Class vessels will use low sulfur fuel in auxiliary engines, main engines, and boilers by 2012. These P-class vessels will be the most frequent callers at the terminal providing a weekly service between the US West Coast and Asia and are assumed to make up approximately 50 percent of TraPac's ship calls.

The longer phase-in schedule is to accommodate 3rd party invitees. TraPac has recently lost a majority of their third-party invitees due, in part, to terminal upgrades delays and costs associated with expected future environmental requirements. While TraPac anticipates they will be able to attract new third-party invitees with the terminal upgrades assumed as part of the proposed Project, the actual customer mix is not yet known and costs associated with environmental requirements remain an issue.

Currently, ships that frequent the Port burn heavy fuel oil (HFO), that has a sulfur content ranging from 1.0 to 4.5%, with an average sulfur content of 2.7% in their main, auxiliary, and boiler engines. At today's cost, low sulfur (0.2%) costs approximately $350 more per ton than bunker fuel (currently, bunker fuel is approximately $400 per ton, while low sulfur fuel is $750 [www.bunkerworld.com accessed 10/10/07]). Assuming a round trip voyage from 40 nm to Berth 136-147 at 12 knots an hour and hotelling, a 5,000 TEU ship would use approximately 22 tons of fuel in main, auxiliary and boiler engines. Based on this scenario, low sulfur fuel (0.2%) would cost approximately $7,700 more than the use of HFO (MOL 2007). Additionally, there may be retrofits associated with using low sulfur fuel. Maersk ship retrofits cost approximately $300,000 per vessel. Through future lease amendments and the CAAP, all Port container terminals are expected to comply with low sulfur fuel regulations in the future. However, until most or all of the other container terminals and shipping lines are required to use low sulfur fuel, with 0.2% sulfur requirements at the Berth 136-147 Terminal, TraPac will have difficulty attracting third party business. The longer phase-in schedule allows TraPac to negotiate environmental upgrades with the invitees and to also to remain competitive with other Port terminals that do not yet have environmental requirements as part of their operating requirements. Additionally, as part of the CAAP, the Ports are developing a low sulfur fuel tariff that would apply to all container vessels entering the San Pedro Bay. This tariff would both remove any competitive disadvantages among the different container terminals competing for third party business (Maresk does not currently go after third party business) and accelerate emissions reductions. This tariff would supersede the proposed environmental mitigation.

While the phase-in schedule is largely to accommodate financial considerations, there are potential issues with fuel availability and potential ship retrofits. As a whole, most container ships would require minimal upgrades to use 0.2% sulfur fuel, especially newer ships designed with low sulfur fuel in mind. However, each ship must be looked at on a case-by-case basis to ensure safe vessel functions. MOL is currently performing retrofits and safety testing on all ships dedicated to the Berth 136-147 Terminal. Third party customers would also require time to address their ship fleets. According to the *Evaluation of Low Sulfur Marine Fuel Availability- Pacific Rim* (2005) and further investigations by the San Pedro Bay Ports, low sulfur fuel is available in most Japanese ports (the origin of most MOL ships dedicated to the Berth 136-147 Terminal), Singapore and Hong Kong. However, low sulfur fuel is not readily available in China (most of TraPac's former third-party business originated in China). These vessels could take on fuel in Los Angeles, but use of low sulfur fuel in their inbound leg cannot be guaranteed

at this time. As part of the CAAP, the Ports are working with local port authorities and fuel suppliers in areas that low sulfur fuel is not readily available to remove this hurdle.

0.2% vs 0.1% Sulfur Fuel

In order to allow for some margin of error and product contamination in the distribution system, when a shipping line orders 0.2% sulfur fuel, they are actually receiving a fuel with a lower sulfur content of between 0.13% and 0.16%. Therefore, if the mitigation measure required 0.1% fuel, the fuel supplier would have to provide fuel at a lower than 0.1% content, which may not be possible in current refineries. Additionally, 0.2% is consistent with the CAAP. In developing and approving the CAAP, the Ports of Los Angeles and Long Beach met and collaborated with agencies (including CARB, AQMD, and USEPA), environmental and community groups, and the shipping industry. As a result of this collaborative process, 0.2% sulfur fuel was found to be feasible from port-wide perspective and use of this fuel represents consensus.

CAAP Compliance

The phase-in schedule allowed by this mitigation measure is consistent with the CAAP. The CAAP assumes full compliance of OGV-4 and OGV-5, pending technical feasibility and fuel availability. As discussed above, the Ports are pursuing a tariff mandating 100 percent compliance in all ships entering the San Pedro Bay Ports. However, as detailed in the CAAP, a number of steps must be performed, including further fuel availability and technical studies, and legal analysis, prior to implementing this tariff. Lease implementation was another identified strategy to implement OGV-4 and OGV-5 in the CAAP. However, a phase-in schedule (Port-wide) was assumed in all presentations of emission reductions.

NRDC-24. Thank you for your comment. Please also see response to comment SCAQMD-20. Mitigation Measure AQ-12 in the Final EIS/EIR has been revised to increase the compliance rate of total ship calls that implement slide valves or equivalent on main engines to a minimum of 50 percent in year 2009. Additionally, the measure will state the following:

By 2012, all frequent caller ships (three or more calls a month) shall comply with this requirement as follows:

> **Mitigation Measure AQ-12: Slide Valves.** Ships calling at Berth 136-147 shall be equipped with slide valves or equivalent on main engines in the following percentages: (a) 15 percent in 2008; (b) 50 ~~25~~ percent in 2010; ~~(c) 50 percent in 2012;~~ and (c) 95 percent in 2015. By 2012, all frequent caller ships (three or more calls a year) shall comply with this requirement.

MOL has committed to retrofitting MOL ships with slide valves. This phase-in schedule assumes 100 percent of MOL's P-Class vessels would be retrofitted with slide valves by 2010. These P-class vessels would be the most frequent callers at the terminal providing a weekly service between the US West Coast and Asia and are assumed to make up approximately 50 percent of TraPac's ship calls.

The longer phase-in schedule is to accommodate third party invitees. While MOL represents TraPac's primary business partner, TraPac would also contract with other shipping lines, referred to as third-party invitees, to fill extra terminal capacity. TraPac has recently lost a majority of their third-party invitees due, in part, to terminal upgrades delays and costs associated with expected future environmental requirements. While TraPac anticipates they would be able to attract new third-party invitees with the terminal upgrades assumed as part of the proposed project, the actual customer mix is not yet known and costs associated with environmental requirements remain an issue.

Slide valves are relatively easy to install, not overly expensive, and provide good NO_x and PM reductions. However, slide valves are specific to Man B&W engines. Other engine manufactures are working on equivalent technologies and preliminary tests appear promising. Because the third-party invites mix is not yet known, slide valves are being phased in over time to allow for this research and development.

Implementation of the additional measures requested in comment NRDC-24 would be more feasible for new vessel builds, as identified in Mitigation Measure AQ-13.

NRDC-25. Thank you for your comment.

NRDC-26. Relocating the PHL rail yard does not trigger RL3. RL3 does apply to new and redeveloped rail facilities, but, in this instance, cannot be applied to PHL given the language of RL3, which states that a list of cleanest available locomotive technologies "will be provided for project proponents to consider…and the measures will be formalized in lease requirements." (CAAP, p. 50, emphasis added.) Because the PHL rail yard is being relocated at the discretion of the Port, PHL is not a Project proponent. Furthermore, TraPac is not responsible for PHL's relocation or operation. Nor does TraPac have any ability, directly or indirectly, to control PHL's operations. Accordingly, RL3 cannot be applied to PHL at this time.

PHL entered into an agreement with the Ports of Los Angeles and Long Beach in January 2006 to replace their switch locomotive engines with cleaner engines that meet the Tier 2 locomotive standards. The replacement is scheduled to occur between the 3rd quarter of 2006 and the 3rd quarter of 2007, per CAAP measure RL1. This agreement is discussed in Draft EIS/EIR Section 3.2.3.3, Local Regulations and Agreements, and in the context of Impact AQ-3 (see Section 3.2.4.4).

CAAP measure RL-3 pertains to container rail yards and therefore is not applicable to the relocated PHL rail yard. However, please note that the Final EIS/EIR proposes to implement diesel particulate traps (DPTs) on PHL locomotives beginning in 2015. This control measure is a strategy of RL-3 and it would reduce diesel particulate matter (DPM) emissions from these locomotives by about 90 percent from uncontrolled levels.

Please also see responses to comments SCAQMD-2, SCAQMD-22, and PCAC-AQ-14.

NRDC-27. The Blue Skies Series Category 3 engines refer to a theoretical ship retrofit program developed for the No Net Increase (NNI) Plan being considered by the Port. NNI was never adopted by the Port or the City of Los Angeles. However, as discussed in the Draft EIS/EIR, page B-4 of Appendix B, the Blue Sky Series engines are not yet available and therefore not considered feasible at this time. As discussed in SCAQMD-20 and -21, a lease measure would be added to address potential future engine technologies.

Mitigation Measure AQ-17, in conjunction with the lease measures below, provides a process to consider new or alternative emission control technologies in the future and an implementation strategy to ensure compliance.

> As partial consideration for the Port's agreement to issue the permit to the tenant, tenant shall implement not less frequently than once every 7 years following the effective date of the permit, new air quality technological advancements, subject to the parties mutual agreement on operational feasibility and cost sharing.

Additionally, Mitigation Measure AQ-13 has been modified to include additional future technologies:

> **Mitigation Measure AQ-13 New Vessel Builds.** All new vessel builds shall incorporate NO_x ~~and~~ PM and GHG control devices on auxiliary and main engines. These control devices include, but are not limited to the following technologies, where appropriate: (1) selective catalytic reduction (SCR) technology; (2) exhaust gas recirculation; (3) in line fuel emulsification technology; (4) diesel particulate filters (DPFs) or exhaust scrubbers; (5) common rail; ~~and~~ (6) low NO_x burners for boilers; (7) implementation of fuel economy standards by vessel class and engines; and (8) diesel-electric pod-propulsion system.
>
> This measure focuses on reducing DPM, NO_x, and SO_x emissions from main engines and auxiliary engines. OGV engine standards have not kept pace with other engine standards such as trucks and terminal equipment. New vessels destined for California service shall be built with these technologies. As new orders for ships are placed, the Ports believe it is essential that the following elements be incorporated into future vessel design and construction:
>
> 1. Work with engine manufacturers to incorporate all emissions reduction technologies/options when ordering main and auxiliary engines, such as slide valves, common rail, and exhaust gas recirculation;
>
> 2. Design in extra fuel storage tanks and appropriate piping to run both main and auxiliary engines on a separate/cleaner fuel; and
>
> 3. Incorporate SCR or an equally effective combination of engine controls. If SCR systems are not commercially available at the time of engine construction, design in space and access for main and auxiliary engines to facilitate installation of SCR or other retrofit devices at a future date.
>
> In addition, this measure would also incorporate design changes and technology to reduce GHG emissions where available.

NRDC-28. Please see the response to comment NRDC-10. In regards to having a staff member track idling, the MMRP shall require the tenant to do self reporting and quarterly reports to the Port of Los Angeles.

NRDC-29. Mitigation Measures AQ-17 and AQ-18B will be incorporated into the lease agreement. The Project MMRP requires Port staff to develop annual reports on the progress of these measures and to make these reports available to the Board at a regularly scheduled public

Board Meeting. The Port and Project terminal operator will comply with the MMRP for the life of the lease, or 30 years.

NRDC-30. The CAAP proposes to reduce harbor craft emissions within the next 5 years and thereafter with the use of a Portwide measure (HC-1), as tugboats operate independent of proposed terminal developments and associated lease renewals. Additionally, terminals may not have the infrastructure necessary to implement HC-1. All of the measures proposed in comment NRDC-30 are included in HC-1. Rather than simulate the effects of HC-1, the air quality analysis in the Draft EIS/EIR more conservatively assumes that the future baseline vessel assist tug boat fleet would be 38/100 percent Tier 2-compliant in years 2015/2030, based upon a slower pre-CAAP fleet turnover rate that has occurred by funding from the CARB Carl Moyer Program.

NRDC-31. As discussed above in response to comment NRDC-27, the Port would include the following lease measure in conjunction with Mitigation Measure AQ-17.

As partial consideration for the Port's agreement to issue the permit to the tenant, tenant shall implement not less frequently than once every 7 years following the effective date of the permit, new air quality technological advancements, subject to (a) the parties mutual agreement that the implementation is operationally feasible, (b) the Port and the tenant agreeing in writing to implement such advancements, and (c) the Port and tenant agreeing in writing to a cost sharing agreement with respect to such implementation.

As shown, the Port would potentially fund new mitigation identified as part of the TAP.

NRDC-32. The design and capacity of the Project rail yard optimizes a balance between the need to support intermodal rail projections and the need for terminal backland area to support cargo destined for the local market. While the railyard has been sized to handle the majority of rail-destined cargos, it is neither efficient nor environmentally beneficial to require that all rail-destined cargoes be required to be transported only via on-dock rail facilities. Because all the containers on a unit train built in on-dock rail yards are bound for the same destination, the on-dock rail yard cannot accommodate intermodal cargo destined for locations other than that of the unit train. For example, over the course of a week, the container terminal may have enough containers to build a number of unit trains to Chicago. However, the terminal may have 20 additional containers bound for Texas and 30 containers bound for New York. In such a scenario, containers bound for these other locations are hauled to near dock facilities to be grouped with containers from other terminals bound for the same destinations.

NRDC-33. As presented in Draft EIS/EIR Chapter 3.2, criteria pollutants and health risk for all receptors would be reduced below 2003 levels as a result of this Project. Therefore, high efficiency particulate air (HEPA) filters are not warranted. The Port, through the CAAP, is working to reduce pollution Port-wide. Please see response to comment USEPA-8.

NRDC-34. Thank you for your comment. The Port has modified existing mitigation measures and added a number of new mitigation measures to further reduce GHG emissions. As discussed previously, the Port is an active member of CCAR and is embarking on an inventory of GHG at the Port. The inventory would be used to identify reduction strategies that would be implemented as part of the CAAP.

NRDC-35. As presented in the Table 3.2-33, CARB has been identified as the agency responsible for regulating alternative fuels in California. As discussed in CBD-13, biofuel use at the Port is not being heavily pursued due to reported increases in NOx emissions. Accordingly yard equipment using biofuels is not expected to meet the percent NO_x reduction assumed in the Draft EIS/EIR. As discussed on page 3.2-3, while the South Coast Air Basin has been in attainment for NO_x since 1991, the region is now considered a maintenance area for NO_x and local air agencies are pursuing further reductions prevent regional increases from increased population.

In regards to refrigerant use, CFC refrigerants were traditionally used on ships for air conditioning systems and refrigeration of food, as well as to refrigerate cargo containers, and Halon was used in onboard fire extinguishing systems. MOL adopted R-22 (HCFC), which has a smaller ozone depletion coefficient than R-12 (CFC) on vessels launched after the late 1970s. In 2002, MOL began to use R-404A, eliminated Halon fire-extinguishing equipment in favor of carbon dioxide systems, stopped using R-12 and adopted R134a, which has an ozone depletion coefficient of zero. Additionally, according to TraPac, refrigerated containers are checked 2-3 times a day for leaks and repaired immediately if a leak is detected.

NRDC-36. The Port supports electrifying equipment where available. As discussed in response to comment NRDC-21, TraPac has stated that they intend to electrify their rail-mounted gantry cranes (RMGs) in the new intermodal yard. TraPac also indicates that they are interested in electric RTGs on their backland, but that they plan to evaluate the results of Port tests before they commit to this measure due to a number of operational issues. Currently, diesel powered RTGs can be moved around the backlands. Electric RTGs must be plugged-in, thereby limiting mobility. Port tests will examine the best physical terminal layout and whether overhead or trenched electricity provides the most flexible backlands operation.

TraPac has installed Energy Capacitors on all gantry cranes and substations. Energy capacitors are also called power factor correction (devices). Capacitors react opposite of inductors. Cranes, HVAC, refrigeration equipment, and anything that has a motor has inductance that causes inductive reactances; this creates a "lagging" power factor. The current will lag behind the voltage and the spacing causes inductive reactive losses (energy losses also called "wattless energy" or reactive power losses). For electricity to be used efficiently the voltage and current should be in unison. Properly sized capacitors will counter act the inductance and move the current closer to the voltage. The end result is less waste of electric energy and efficient operation, less heat generated by the motor, and less breakdown. In addition to saving energy, motors and equipment last longer because equipment is running more efficient with less heat losses.

NRDC-37. As discussed in response to comment NRDC- 22, Mitigation Measure AQ-9 incorporates the Ports' Clean Truck Program into the TraPac Terminal. The Truck Program includes replacing older trucks to new 2007 trucks. The Truck Program will accomplish many of the suggested measures including Improved Aerodynamics. Other measures, such as Low Viscosity Lubricants, Hybrid Vehicle Technology, and Improved Freight Logistics will be looked at as part of the Port Truck Program. However, the Truck Program is being developed on a Port-wide basis. Additionally, as discussed previously, the Port is performing a GHG inventory and will be developing GHG reduction strategies as part of the CAAP.

NRDC-38. Please see response to comment SCAQMD-3. While the Port supports Intelligent Container Design, such mitigation is not appropriate on a project specific level. As discussed in Draft EIS/EIR Section 1.1.2, there are a number of entities involved in the goods movement chain. TraPac is a terminal operator and is responsible for unloading and loading cargo, accepting truck visits, and storing containers. TraPac does not own the containers it handles. Containers are owned by the shipping line and/or manufactures. Additionally, as discussed in Chapter 1, containerization is a standardized shipping method. Changing container design would affect the global goods movement chain. Such changes are better implemented on a regional basis through a larger governing body, like the State, or directly through shipping consortiums.

NRDC-39. As discussed previously, the Port is an active member of CCAR and is embarking on an inventory of GHG at the Port. The inventory will be used to identify reduction strategies that will be implemented as part of the CAAP. In addition, Mitigation Measure AQ-13 has been amended as follows:

> **Mitigation Measure AQ-13: NO_x ~~and~~ PM and GHG Control Devices on Auxiliary and Main Engines.** These control devices include, but are not limited to the following technologies, where appropriate: (1) selective catalytic reduction (SCR) technology; (2) exhaust gas recirculation; (3) in line fuel emulsification technology; (4) diesel particulate filters (DPFs) or exhaust scrubbers; (5) common rail; ~~and~~ (6) Low NO_x burners for boilers; (7) implementation of fuel economy standards by vessel class and engines; and (8) diesel-electric pod-propulsion system.
>
> This measure focuses on reducing DPM, NO_x, and SO_x emissions from main engines and auxiliary engines. OGV engine standards have not kept pace with other engine standards such as trucks and terminal equipment. New vessels destined for California service should be built with these technologies. As new orders for ships are placed, the Ports believe it is essential that the following elements be incorporated into future vessel design and construction:
>
> 1. Work with engine manufacturers to incorporate all emissions reduction technologies/options when ordering main and auxiliary engines, such as slide valves, common rail, and exhaust gas recirculation;
>
> 2. Design in extra fuel storage tanks and appropriate piping to run both main and auxiliary engines on a separate/cleaner fuel; and
>
> 3. Incorporate SCR or an equally effective combination of engine controls. If SCR systems are not commercially available at the time of engine construction, design in space and access for main and auxiliary engines to facilitate installation of SCR or other retrofit devices at a future date.
>
> In addition, this measure would also incorporate design changes and technology to reduce GHG emissions where available.
>
> In regards to hull design and bulbous bows, modern ships are designed with bulbous bows and shipping companies routinely.

NRDC-40. The Health Risk Assessment presented in the document was based on guidance from the California Office of Environmental Health Hazard Assessment (OEHHA), USEPA, and SCAQMD.

The predicted significant NEPA increments are attributable to the decreasing DPM and cancer risk expected over time under the NEPA baseline scenario, as CAAP measures are implemented. Therefore, while the proposed Project would be the same regardless of the baseline evaluated, DPM and cancer risk are expected to decrease over time as mitigation measures are implemented, which increase the calculated difference/increment between the mitigated Project and the NEPA baseline above 10 in 1 million in certain locations and for particular receptor types (Figure D3-17 and Table 3.2-69 of the Draft EIS/EIR). As shown in Figure D3-16 and Table 3.2-69 of the Draft EIS/EIR, however, relative to recent (2003) conditions, predicted cancer risk would decrease in nearly all locations for most receptor types, with the few increases being approximately 1 in 1 million (well below the 10 in 1 million significance threshold). Clarifying language has been added to the Final EIS/EIR.

For carcinogenic risk assessments based on the inhalation pathway only (as appropriate for DPM), where a single cancer risk value is required for a risk management decision, the CARB policy recommends that the potential cancer risk be based on the breathing rate representing the 80^{th} percentile for a 70-year exposure period.

It is acknowledged that many citizens live, work, and play in the same adjacent communities. However, determining these combined exposure scenarios experienced by an individual requires specific locations/durations, which become very speculative. Hence, the Project HRA used widely accepted health impact analysis methods by focusing on impacts experienced by individual receptor types. These methods produce very conservative results.

The HRA performed in the Draft EIS/EIR provides an adequate estimation and indicator of health effects due to Project air emissions. The Port of Oakland is much larger in geographic scale than the proposed Project.

To provide a sense of reality to the analysis of student impacts, the Project HRA developed an exposure scenario equal to the number of years a student would spend at an elementary school, as documented in the Project HRA protocol. Regarding multiple exposure scenarios, please see the above response. The cancer potency factors and RELs used in the analysis are those recommended by the CARB, as identified in the Project HRA protocol.

NRDC-41. Due to the complexity and cost of implementing new low-emission technologies, such as rail electrification, development and implementation of these technologies are best handled on the Port-wide basis. The CAAP's Technology Advancement Program is a process to achieve this objective. In addition to evaluating zero-emission container handling systems (POLA, POLB, and Cambridge Systematics 2007), the Port is conducting a demonstration project with the SCAQMD to test the feasibility of an electric tow-tractor for use in hauling containers between the Port and local warehouses and rail yards. As stated in Mitigation Measure AQ-17, the opportunity exists to require such technologies if the tenant proposed a lease amendment or facility modification.

The Final EIS/EIR proposes adequate alternatives under CEQA/NEPA. The range of alternatives examined need not be beyond a reasonable range necessary to allow a

reasoned choice among the alternatives and the proposed Project. In addition to the proposed Project and No Action alternative, several alternatives were identified and analyzed that involved different project sizes, configurations, uses, and sites. Many alternatives were eliminated from detailed analysis for reasons disclosed in the EIS/EIR. However, five alternatives and the proposed Project were carried forward for co-equal analysis in the document.

NRDC-42. This comment consists of two issues: 1) the analysis glosses over the close proximity of the Project to residential neighborhoods, schools, a hospital, and local businesses, and 2) the analysis does not address the effect of stacked containers, light standards, yard equipment, trucks, top-pick and RTG cranes, and ships in many of its analyses of impacts from "critical views."

Issue 1 Response

Adjoining Communities and the Existing Environmental Setting.

The Draft EIS/EIR adequately discusses and analyzes visual impacts in the context of the adjoining communities, including their residential neighborhoods, schools, hospitals, and local businesses. Critical public views were identified based on variables of exposure to the project and visual sensitivity. Several critical public views were identified at points within the surrounding communities. These include views from Wilmington, San Pedro and Rancho Palos Verdes, and the character of the setting for those views was described in Section 3.1.2.2.3 (Existing Visual Conditions within Critical Public Views). Specifically, Viewing Position 11 represents the view from Shields Drive Residential Area in San Pedro, and Viewing Positions 12 and 13 represent from San Pedro residential neighborhoods located in the hills to the west and southwest of the site. Figures 3.1-3 and 3.1-6 are representative of the residential area along the side of "C" Street (residential) in Wilmington (also see Figure 3.1-7).

The analysis also explained that the existing visual setting at the relevant residential neighborhoods is currently dominated by features that are not congruent with their residential character. The significance of Project impacts is necessarily determined in comparison to the baseline existing settings. For example, relative to the community of Wilmington, "…it is the visual character of the neighborhood along the north side of "C" Street and its vicinity that is relevant to the baseline visual condition for views from this area. The nearby Port facilities are seen by the residents in terms of their immediate surroundings and not those of the Port environment." Further, "views to the south that include the Berths 136-147 Terminal facilities are part of a sequence of views that includes the larger residential area to the north, and the mix of commercial/industrial and residential land uses along "C" Street." It is the character of the south edge of Wilmington, along "C" Street, that is the benchmark for judging the visual condition of lands within view to the south. In the case of Wilmington, the existing Port facilities are of a character that is not congruent with the character of the residential area along and north of "C" Street and the existing visual condition for south-directed views is Visual Modification Class 4: the available views are dominated by visually incongruent and incoherent land uses. Similarly, the existing view from Shields Drive, relative to its residential context the Port's features are incongruous, dominate attention, and visual quality is low (Visual Modification Class 4). (See discussion of Impact AES-1.)

Issue 2 Response

As a preliminary matter, an EIR is not required to engage in speculation to analyze a worst-case scenario. (*Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671; see *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342). The Draft EIS/EIR analyzes the reasonably foreseeable effects of the Project on existing visual conditions. Additionally, the comment lists physical components of the Project, but does not identify specific information or evidence of how or why such components would cause a so-called "worst-case scenario." In any event, the Draft EIS/EIR specifically considered the project components listed in the comment, as discussed below.

Stacked Containers. The presence of stacked cargo at the Project site and the several container terminals in the Project vicinity is part of the character of the Ports of Los Angeles and Long Beach, which form a large and distinct landscape region (Section 3.1.2.2.2.1). The discussion explains that "the appearance of many Port operations is functional in nature, characterized by…high-visibility colors such as orange, red, or bright green for mobile equipment such as cranes, containers, and railcars" (Section 3.1.2.2.2.1). The analysis specifically addresses backland storage containers and concludes that the backlands of the terminal would not be noticeable from critical public views. This is because the perimeter of stored containers lining John S. Gibson Boulevard and Harry Bridges Boulevard blocks views into the interior of the terminal from the ground-level critical positions in the vicinity (along "C" Street and near designated scenic routes). Only from a nearby elevated position may the backlands and slip be viewed. The closest such position would be from the easternmost northbound lane of the Harbor Freeway. From this lane, at a point near the "C" Street offramp, limited views of the slip can be seen. However, these views are not effectively available because they are greatly abbreviated by intervening landforms and vegetation. Also, the slip is 90 degrees to the east of the direction of travel and, therefore, not functionally within the field-of-view (Section 3.1.4.3.1.).

Trucks. Please see page 3.1-83 where the subject of the visibility of truck movement was addressed: "Containers from Berths 136-147 would be hauled by yard tractors from the wharf to the new on-dock rail yard located within the terminal, and public streets would not be affected. That is, such equipment movements would not be within public views. Rail-bound containers that could not be accommodated by the new on-dock rail yard would be trucked to off-site rail yards. Additionally, trucks would take containers directly to their destination, locally and nationally. Off-site truck operations would not be visible from any critical viewing positions, primarily due to intervening Port infrastructure. From "C" Street, Port infrastructure would not conceal off-site trucking as it moves along Harry Bridges Boulevard, but the Harry Bridges Buffer Area planned for the open space along the south side of "C" Street (see description which follows) would block sight of traffic along this road before increased trucking would become apparent (see Section 3.1.4.3.1.3, "C" Street Residential Area). While the proposed Project would increase the number of trucks serving the facility, these trucks would utilize public roadways which currently handle this type of activity and which were built for this purpose."

Cargo Ships. Concerning the visual effect of larger cargo ships, this issue was systematically addressed relative to every critical view assessed. Please see the analyses on pages 3.1-103 and 3.1-111 (Banning's Landing views); 3.1-108 (Harbor Freeway

Views); 3.1-110 ("C" Street views); 3.1-112 (Knoll Hill views); and 3.1-113 (Shields Drive views). Also, refer to Page 3.1-115 for the NEPA impact conclusion where it discusses cargo ships. Regarding Impact AES-3, the conclusion states:

"The larger container ships expected in the future would be among the features characteristic of a working port and would not differ unfavorably in scale from ships that dock at these berths today. In views from the Harbor Freeway and Banning's Landing, the increased length of the ships would not be noticeable due to intervening features; the increased width would not be perceived from the side; and the heights would not differ appreciably from those of the largest ships docking at Berths 136-147 during the Baseline period. Seen from Banning's Landing, moreover, views to the southwest toward the container ships would be incidental, being 60 degrees or more away from the primary direction of viewing, which is to the south. From Knoll Hill, the ships docking at Berths 145-147 would be fully in view but seen as a background feature that is a small part of the wide panoramic view available. The context for views from there is the working port, and the ships, iconic of the Port environment, would be entirely in character with that context.

For views from Shields Drive, the context is the residential area there, not the Port environment, which strongly contrasts with the features inherent to a residential context. However, the container ships would be well in the background of a panorama that is peripheral to this residential area. Moreover, the ships would be congruent with their immediate Port character, as noted, and would not, relative to the Baseline period, additionally contrast with the immediate residential setting."

[Note that for views from "C" Street relative to the NEPA Baseline, the Harry Bridges Boulevard Buffer is assumed to have been constructed, and cargo ships would not be in view.]

Ancillary Features. Section 3.1.4.3.1, Proposed Project, indicates which of the many aspects of the Project would be within public view. The focus was on the most apparent Project features with the greatest potential for visual impacts. Public views of the Project site are from substantial distances, and smaller features, such as yard equipment, signage, security lighting, top-pick cranes and RTG cranes would not be discerned, either because they would be shielded from view by stacked containers stored in the backlands and/or neighboring terminal equipment, or their effect would be attenuated by distance to the point of not being noticeable.

Further, light standards are discussed in Section 3.1.3.1.1 (POLA's Terminal Lighting Design Guidelines and Section) and Section 3.1.3.1.1.2 (Lighting for Container Yard and Similar Facilities) and in the context of Project features not within critical public views (Section 3.1.4.3.1) and Impact AES-4.

NRDC-43. This comment consists of two issues: 1) lack of analyses of the aesthetic impacts associated with the project elements such as ships, infill, stacked containers, yard equipment; and 2) failure to include nearby residential areas in the description of the existing environmental setting and presents a limited discussion of the Project's components that could cause light impacts.

Issue 1 Response

Open panoramic views of the water and skyline. The only "at grade" community in the Project vicinity is Wilmington, and the views of the Project site are limited to those from "C" Street and Banning's Landing. From "C" Street, no water surface is in view and, therefore, no "open panoramic view of the water" would be affected. The skyline as seen from there is characterized by the Port environment as the baseline for the assessment. Comparing the existing conditions shown in Figure 3.1-4 with the simulation in Figure 3.1-21, the only noticeable difference is that two 100-gauge cranes have been replaced with one such crane of an upgraded design and the skyline has become more, not less, open. The other cranes along Berths 136 – 139 remain unchanged, and the visible changes to the cranes along Berths 142 – 149, the stowed booms, are not appreciably noticeable. However, the view as shown would be supplanted by the Harry Bridges Boulevard Buffer, a park setting compatible with the character of the adjacent residential area along the north side of "C" Street. Little of the terminal's facilities would be in view and visual conditions would substantially improve from Visual Modification Class 4 to 1 and 2, relative to views to the south (Section 3.1.4.3.1.3, AES-3, "C" Street Residential Area).

The other at-grade view from Wilmington of the Project's features occurs from Banning's Landing. However, it is the view to the south that is primary, recognized and valued for its high scenic quality within the Port context by the community of Wilmington (Section 3.1.4.3.1.1, Impact AES-1, Banning's Landing). However, the few Project features in view are 60 degrees to the west and are extremely peripheral, having no potential for interrupting the skyline. Also, as is apparent from Figures 3.1-9, -10 and -11, no aspect of the Project could possibly obstruct or otherwise affect views of Slip 5 in the foreground.

Regarding communities at higher elevations, points within some areas of San Pedro and Rancho Palos Verdes permit distant views of the West Basin and Main Channel. The closest such views occur from Knoll Hill and Shields Drive (Figure 3.1-13 and Figure 3.1-15). In these views, the water surfaces do not play a significant part in the view, the dominant features being those of the port complexes of the Ports of Los Angeles and Long Beach. In no case does the proposed Project or its alternatives have the potential to occlude views of the water. Views from San Pedro and Rancho Palos Verdes are from the west and southwest, placing the water surfaces, such as they are visible, in front of the Project's features and not behind them.

Regarding the skyline, as seen from San Pedro and Rancho Palos Verdes, the Project would introduce no appreciably noticeable change. Please see the simulation in Figure 3.1-23 and also review the wider panoramas in Figures 3.1-13, and 3.1-15. One must evaluate the Project in the context of the wide panorama available in the views shown. In this context, the changes in the cranes along Berths 136-147 (the only features with the potential to define the skyline) form an incidental part of the greater Port environment. Note that, except for the larger cargo ships at Berths 145-147, the other Project features would not be discerned at the distances involved and would be low enough not to project into the skyline. The cargo ships, while noticeable, would not project into the skyline either.

To conclude, there are no at-grade views of the water from any community adjacent to the Project, nor would the skyline be affected relative to at-grade community-based

views. Further, in no elevated panoramic community-based view of the water and skyline would the proposed Project or its alternatives intercede or be appreciably noticed.

Issue 2 Response

Please see the response to comment NRDC-42, Issue 1, which describes how the community context was addressed relative to existing visual condition and public sensitivity. The existing lighting environment was described as part of the discussion regarding visual condition (see Section 3.1.2.2.1.2).

Light and Glare Impacts. Section 3.1.4.3.1 describes features of the proposed Project that would be within public view and, specifically, changes to backland lighting that would occur if the Project were implemented. Where the existing lighting does not meet current POLA standards, fixtures would be replaced during proposed Project construction with more efficient lamps. The existing and replacement lamps would both be high pressure sodium lights at 1000 watts per fixture. However, the new lamps would be 20 percent more efficient than the existing lamps, as they do not waste input energy by producing non-useable light in the form of glare (Section 3.12, Utilities and Public Services). By design, both replacement and new lighting would result in reduced levels of off-site illumination attributed to the operation of the Berths 136-147 Terminal, relative to the December 2003 Baseline conditions. POLA engineering would demonstrate that a reduction in off-site illumination would occur by measuring offsite light levels at strategic points prior to implementing the Project lighting plan and comparing the illumination to lighting measured at the same points after the Project is completed.

NRDC-44. As the commenter notes, CEQA requires significant impacts to be mitigated to the fullest extent feasible. However, the Draft EIS/EIR found that the proposed Project and its Alternatives would not cause adverse visual impacts and, therefore, the impacts would be less than significant and not require mitigation.

NRDC-45. As discussed in responses to comments NRDC-42 through NRDC-44 above, the Draft EIS/EIR included a comprehensive analysis of existing visual conditions and the Project's potential aesthetic impact on those conditions. With respect to the cumulative impact analysis, the Draft EIS/EIR explains that Port operations have completely transformed the original natural setting to create a landscape that is highly engineered and is visually dominated by large-scale man-made features (Section 4.2.1.). The analysis considers the contribution of these past operations to the existing setting (see p. 4-20) and concludes that, given the context of the distinctive marine industrial character of the working port, the Project's less than significant aesthetics/visual resources impacts would not be cumulatively considerable.

NRDC-46. The Draft EIS/EIR analyzed the Project's anticipated impact on nighttime light and glare and determined that the design of new and replacement high-mast lighting and directional floodlights at the Berths 136-147 Terminal would result in the reduction of light emissions relative to off-site receptors (see Section 3.1.4.3.1). As the Project would reduce light emissions, it would have no potential to incrementally contribute to ambient nighttime light from Port operations. CEQA specifies that "[a]n EIR should not discuss impacts which do not result in part from the project evaluated in the EIR" (CEQA Guidelines § 15130(a)(1)). Therefore, the cumulative impact analysis correctly concluded that the Project would not have an adverse cumulative impact on existing light and glare conditions.

NRDC-47. Thank you for your comments. Please see responses to comments NRDC-48, NRDC-49, NRDC-50, and NRDC-51.

NRDC-48. Inconsistency with a land use policy is only a significant impact under CEQA if the inconsistency results in a significant adverse environmental impact. (See *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170 [inconsistency with a plan does not alone mandate a finding of a significant impact under CEQA].) The appropriate place to conclude that a physical impact on the environment may be caused by inconsistency with a land use policy is within the discussion of the resource itself, not in the discussion of land use. (See L.A. CEQA Thresholds Guide, Section H.2 ["[T]he presence of project impacts does not automatically indicate a land use compatibility impact and the effect of these impacts should be evaluated *within the primary impact category (e.g., noise, traffic)*."], emphasis added; see also Kostka & Zischke, *Practice Under the California Environmental Quality Act*, (CEB, 2007), p. 611, § 12.36 ["An inconsistency between a proposed project and an applicable plan is a legal determination, not a physical impact."])

Accordingly, it is appropriate for the EIS/EIR to evaluate such impacts within the individual resource area section and not, as the comment suggests, in the discussion of Land Use. Specifically, air quality impacts and feasible mitigation measures are addressed in Section 3.2; transportation and traffic impacts and mitigation measures are addressed in Section 3.10.

Furthermore, the determination of consistency with applicable plans is made by the Lead Agency under CEQA. The Port evaluated all applicable plans in compliance with the screening criteria set forth in the L.A. CEQA Thresholds Guide in making its determination. Please note that while the CEQA Guidelines require an EIR to "discuss" inconsistencies with applicable plans, they do not require an EIR to reach a conclusion on whether a conflict exists. (See CEQA Guidelines § 15125(d) and CEQ Regulations 40 CFR 1502.15.) The Port evaluated all applicable plans and determined that the proposed Project was consistent with such plans.

With respect to the recent CARB land use policy guidelines referenced in the comment, please note that CARB is an advisory body and the recommendations in these guidelines do not establish regulatory standards of any kind. Further, while the CARB guidelines are an informational guide, they do not mandate or trigger updates to any Port or City plans. It is beyond the scope of the EIS/EIR to determine whether relevant Port and City plans should be updated in light of these guidelines.

NRDC-49. As discussed in response to comment NRDC-48, inconsistency with a land use policy is only a significant impact under CEQA if the inconsistency results in a significant adverse environmental impact. (See *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170 [inconsistency with a plan does not alone mandate a finding of a significant impact under CEQA].) The appropriate place to conclude that a physical impact on the environment may be caused by inconsistency with a land use policy is within the discussion of the resource itself, not in the discussion of land use. (See L.A. CEQA Thresholds Guide, Section H.2 ["[T]he presence of project impacts does not automatically indicate a land use compatibility impact and the effect of these impacts should be evaluated *within the primary impact category (e.g., noise, traffic)*."], emphasis

added; see also Kostka & Zischke, *Practice Under the California Environmental Quality Act*, (CEB, 2007), p. 611, § 12.36 ["An inconsistency between a proposed project and an applicable plan is a legal determination, not a physical impact."])

Accordingly, it is appropriate for the EIS/EIR to evaluate such impacts within the individual resource area section and not, as the comment suggests, in the discussion of Land Use. However, truck use within Wilmington and off-site container storage facilities were addressed in the analysis of Impact LU-3 because of TraPac's unique proximity to Wilmington and in response to comments on these issue raised during scoping and at the request of PCAC. There is a history of truck incursion complaints from the Figuroa/Harry Bridges Blvd./Alameda Streets that form a direct boundary with the Community of Wilmington and which was the partial reasoning behind the original "B" Street Project. The construction of the buffer, and several street closures as part of the proposed Project will resolve a majority of these incursions. However, in light of the fact that these incursions are still possible, especially in the Alameda Street area, measures LU-1 and LU-2 were added here to further discourage the trucks from leaving the designated truck routes that border the Port and directly entering the community. It should be noted that CEQA does not require illegal activity to be identified as an environmental impact. (See *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 371 [alleged illegal activity may be relevant to certain aspects of project approval, but it is not a CEQA consideration]; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428 ["[W]hether the past actions of third parties were properly authorized may be of interest to resource agencies for enforcement actions but are not pertinent to the proposed project."].) However, to be very conservative and to address concerns raised in scoping, the analysis went beyond CEQA's requirements to include a discussion of such activity.

The Draft EIS/EIR does not ignore impacts from off-port, Project-related truck and rail travel. However, these impacts were properly addressed under the appropriate resource section and its significance thresholds because they do not constitute land use impacts under CEQA. For example, the transportation study evaluates Project impacts on 17 intersections, the majority of which are off-port. (See Draft EIS/EIR, p. 3.10-5 and Figure 3.10-1, attached.) The noise analysis evaluated turning movement volumes at each of these 17 intersections to determine if there would be a measurable increase in traffic noise as a result of project-generated traffic. (See Draft EIS/EIR, p. 3.9-37.) The noise analysis also evaluated noise impacts from rail movements into and out of the Port of Los Angeles along the Alameda Transportation Corridor. (See Draft EIS/EIR, p. 3.9-35.) Additionally, sources of emissions for trucks and locomotives were analyzed beyond the boundaries of the Port for the Health Risk Assessment. (See Appendix D.3, Figures D.3-2, D.3-3, and D.3-4 for mapping.)

With respect to the EIS/EIR's discussion of blight, "blight" is a legal definition under the Community Redevelopment Law (Cal. Health and Safety Code § 33030 et seq.). A blighted area is:

> An area that is predominantly urbanized…and…in which the combination of [physical and economic conditions that cause blight (e.g., neglected buildings, abnormally high business vacancies, etc.)] is so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical and economic burden on the community that cannot reasonably be expected to be reversed or alleviated by private enterprise or

governmental action, or both, without redevelopment. (Cal. Health and Safety Code §§ 33030, 33031.)

As explained in the Draft EIS/EIR Section 3.8.2.2, there are three redevelopment areas in the vicinity surrounding the proposed Project site: the Los Angeles Harbor Industrial Center Redevelopment Project area, the Pacific Corridor Redevelopment Project area, and the Beacon Street Redevelopment Project area. (See Draft EIS/EIR p. 3.8-5.) The discussion of Impact LU-1 properly concluded that "the proposed Project would not affect blighted conditions in surrounding redevelopment project areas." (Draft EIS/EIR p. 3.8-23.) Because the location of proposed terminal activities is not a factor in determining the existence of "blight", the following clause has been removed from the EIS/EIR wherever it appears in the context of blight: "because terminal activities would be confined to the project site." Blight was also addressed in the Socioeconomics chapter of the EIS/EIR and was used as a factor in the evaluation of socioeconomic impacts. (See Draft EIS/EIR, Chapter 7 Socioeconomics.)

NRDC-50. As discussed in response to comments NRDC-48 and NRDC-49, the Draft EIS/EIR appropriately evaluated impacts within the individual resource area section. Truck use within Wilmington and off-site container storage facilities were addressed in the analysis of Impact LU-3 because of TraPac's unique proximity to Wilmington and in response to comments on these issues raised during scoping and at the request of PCAC. There is a history of truck incursion complaints from the Figuroa/Harry Bridges Blvd./Alameda Streets that form a direct boundary with the Community of Wilmington and which was the partial reasoning behind the original "B" Street Project. The construction of the buffer, and several street closures as part of the proposed project would resolve a majority of these incursions. However, in light of the fact that these incursions are still possible, especially in the Alameda Street area mitigation, measures LU-1 and LU-2 were added here to further discourage the trucks from leaving the designated truck routes that border the Port and directly entering the community. It should be noted that CEQA does not require illegal activity to be identified as an environmental impact. (See *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 371 [alleged illegal activity may be relevant to certain aspects of project approval, but it is not a CEQA consideration]; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428 ["[W]hether the past actions of third parties were properly authorized may be of interest to resource agencies for enforcement actions but are not pertinent to the proposed project."].) However, to be very conservative and to address concerns raised in scoping, the analysis went beyond CEQA's requirements to include a discussion of such activity.

With respect to Mitigation Measures LU-1 and LU-2, the Port has hired an officer whose sole job is to patrol the Wilmington area for truck violations. In addition, the Port has posted over fifty signs in Wilmington with information about the trucks routes and prohibitions. LU-1 will build on actions already taken by the Port by further surveying the Wilmington area to identify additional locations where signage may help restrict truck activity from and residential areas:

> **Mitigation Measure LU-1: Install Truck Route Signage.** Fixed signs directing truck drivers to designated and alternative truck routes shall be installed throughout Wilmington. The <u>Port shall survey the Wilmington area to identify additional locations where signage may help restrict truck activity from and residential areas on an annual basis.</u>

In addition, LU-2 will be amended as follows:

> **Mitigation Measure LU-2: Truck Traffic Enforcement**. Port police will increase patrols to further enforce the prohibition against truck traffic that might enter residential streets from the designated truck routes adjacent to the Port The Port Police will prepare a quarterly report on truck traffic enforcement actions

NRDC-51. As discussed in response to comments NRDC-48 and NRDC-49, the EIS/EIR appropriately evaluated impacts within the individual resource area section. This evaluation included both direct and indirect impacts. For example, the noise analysis evaluated turning movement volumes at numerous off-site intersections to determine if there would be a measurable increase in traffic noise as a result of project-generated traffic. (See Draft EIS/EIR, p. 3.9-37.) Additionally, sources of emissions for trucks and locomotives were analyzed beyond the boundaries of the Port for the Health Risk Assessment. (See Appendix D.3, Figures D.3-2, D.3-3, and D.3-4 for mapping.) The analysis of hazardous materials also analyzed the potential impacts of increased truck traffic on regional injury and fatality rates. (See Draft EIS/EIR, p. 3.7-17.)

With respect to container storage yards and other "port-serving" operations, the EIS/EIR explains that the increase in acreage, related increased efficiencies in handling of cargo on-site (e.g., new and better cranes), and construction of the new on-dock rail would reduce the amount of time needed to move containers through the TraPac Terminal. Therefore, container storage associated with the proposed Project would not have direct impacts on surrounding communities (Draft EIS/EIR, p. 3.8-29).

The EIS/EIR also acknowledges that although TraPac does not operate any satellite container storage facilities, some shippers utilize off-site container storage facilities and warehouses. These offsite facilities vary in size and are sometimes located in close proximity to residential areas due to the proximity of industrial and residential zoning and land uses in Wilmington. The Port contributes indirectly to the proliferation and use of offsite container storage facilities. LAHD has no authority to regulate the locations of these facilities; however, recent controls and limitations implemented by the City of Los Angeles on container storage in Wilmington apply to these offsite facilities. As stated in Draft EIS/EIR Section 3.8.3.8, these regulations place additional controls on existing storage facilities such as setbacks, landscaped buffers, storage and stacking height, and fencing and screening requirements, and also prohibit new container storage yards in some areas zoned Light Industrial or Limited Industrial (Draft EIS/EIR, p. 3.8-29).

NRDC-52. Please see responses to comments NRDC-48, NRDC-49, NRDC-50, and NRDC-51 above for a discussion of the determinations in the EIS/EIR regarding Land Use impacts, off-port impacts, and mitigation measures. Mitigation Measures LU-1 and LU-2 will be implemented to mitigate the impacts identified in this chapter. No mitigation is required for impacts that were not determined to be significant.

NRDC-53. Ambient noise levels were monitored in April 2002 in the Wilmington neighborhood north of "C" Street. As discussed in Section 3.9.2.2.1, the 2002 readings are representative of the 2003 baseline conditions. Both unattended long-term measurements and attended short-term measurements were made during this noise survey. Significant sources of noise contributing to noise levels included vehicular traffic on the local roadway network, traffic on the I-110 freeway, and activities at a remaining nearby commercial light industrial land use located near the west end of "C" Street. If

construction activities were occurring anywhere near the Port, they did not make an audible or measurable contribution to measured noise levels during the April noise survey. A special construction noise measurement survey was conducted in July 2002 during an active construction period at Berth 100. These data were not used in the ambient noise survey. These data were used to refine the assessment of construction noise. During this survey, measurements were made close in to construction equipment and at several sensitive receiver locations on Knoll Hill and west of Knoll Hill. These neighborhoods were visited again at the end of October 2002. These measurements were made by the primary researcher, the person who conducted all of the measurements described and discussed in this report and responses to comments. This researcher was, therefore, cognizant of and familiar with the construction activity noise survey. During the ambient noise measurements conducted on October 29-30, 2002, it was noted that construction was virtually stopped at Berth 100 and there was no noticeable contribution from construction activities at Berth 100 during the October 2002 ambient noise survey. The ambient noise surveys provide an accurate baseline for this assessment.

NRDC-54. The noise analysis considered an appropriate region of influence for the assessment of construction and operation noise of each of the project components. The noise analysis analyzed potential noise impacts at each of the 17 intersections considered in the traffic impact study. The conclusion that a traffic impact may occur at a particular intersection does not mean that a noise impact may also be expected at that intersection. Frequently, noise impacts are inversely correlated to traffic impacts. Where traffic volumes are low, a small further increase in traffic can degrade the operation of a facility leading to a finding that the impact is significant. Conversely, where traffic volumes are high, a slight increase in traffic will cause no measurable or noticeable change to the noise environment. This was, in fact, the finding for the 17 study intersections. Because no noise impacts were found at any of the 17 intersections studied, there was no reason to believe there would be Project-related noise impacts outside the specified region of influence. Therefore, no revisions to the Draft EIS/EIR are necessary.

NRDC-55. Residential neighborhoods north and west of Berths 136 to 147 are affected by noise from vehicular traffic on the local streets, distant traffic, railroad trains, and existing operations at the Port of Los Angeles. At most of the sensitive receiver locations, the ambient noise levels are within the range of 65-70 dBA CNEL. Similar noise levels are found in residential neighborhoods throughout the City of Los Angeles located near the transportation routes. The comments suggest that the addition of noise sources, regardless of their level would create an even more serious noise problem. In fact, the noise analysis evaluated each of the noise sources to determine whether the sources would individually or collectively cause noise levels to increase substantially at any sensitive receivers.

NRDC-56. As noted in the response to comment NRDC-54, the Region of Influence for the proposed Project was appropriate for each of the noise sources analyzed. Vehicular traffic was analyzed for each of the 17 study intersections evaluated in the traffic analysis. Noise levels along the rail corridors were analyzed in the vicinity of the Project area where any potential impacts would be the greatest. The noise analysis compares noise levels of the Project or its alternatives to the 2003 baseline condition to determine whether or not a substantial increase in noise would result from the Project or its alternatives.