

**NATURAL RESOURCES DEFENSE COUNCIL
CHANGE TO WIN
COALITION FOR CLEAN AIR
COMMUNITIES FOR CLEAN PORTS
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
LONG BEACH ALLIANCE FOR CHILDREN WITH ASTHMA
LOS ANGELES ALLIANCE FOR A NEW ECONOMY**

December 5, 2007

Via Hand Delivery, Email, and Fax

Dr. Spencer MacNeil, Commander
U.S. Army Corps of Engineers, Los Angeles District
P.O. Box 532711
Los Angeles, CA 90053-2325
Fax: (805) 585-2154

Dr. Ralph G. Appy, Director of Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
Fax: (310) 547-4643
Email: ceqacommets@portla.org

**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 express great concern over the Berths 136-147 Container Terminal final Environmental Impact Statement ("EIS") Environmental Impact Report ("EIR")(collectively "FEIR"). At the outset, we are exceptionally concerned that the Port of Los Angeles ("Port") and Army Corps of Engineers ("Army Corps") did not heed several comments during the Notice of Preparation, Supplemental Notice of Preparation, and Draft EIS/EIR phases. While some improvements have been made to the FEIR, we remain concerned about the Port and Army Corps approving this expansion project before the Port catches up on the delayed implementation of the Clean Air Action Plan and significantly improves the FEIR to ensure that there are not significant impacts as measured by the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"). Since

there are still significant impacts and we do not consider the FEIR an accurate portrayal of the impacts associated with the expansion of this terminal, we respectfully request that the Port and Army Corps strengthen the FEIR, correct any inaccurate or misleading analysis in the document, and adhere to the comments made in this letter and the associated attachments.

In sum, some of the major flaws include the following:

- 1) The FEIR Uses an Inflated Baseline.
- 2) The FEIR Provides an Incomplete Analysis of the Impacts.
- 3) The Project Does Not Include All Feasible Mitigation Measures for Air Quality. Of particular importance, the FEIR must include better timelines for use of cleaner fuels, ensure that the mitigation for clean trucks is enforceable, and require that measure RL-3 in the CAAP applies to the relocated Pier A railyard.
- 4) The FEIR Must Include a General Conformity Analysis.
- 5) The Project Does not Adequately Evaluate and Mitigate Its Impacts on Surrounding Areas.

I. The Proposed Project Will Greatly Impact Port Adjacent Communities and Residents.

Like the Environmental Protection Agency (“EPA”) and South Coast Air Quality Management District (“SCAQMD”), we remain exceptionally concerned about the air quality impacts this project will have on the region and residents near the Port.¹ “The ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the single largest fixed sources of air pollution in Southern California.”² In fact, the California Air Resources Board (“CARB”) provides that of all goods movement sources in California, “The emissions and associated health impacts are greatest in regions with major ports.”³ CARB also found that “health risk at the community level is of special concern because exposure is highest near ports, rail yards, and high-volume truck traffic.”⁴ This FEIR is requesting that the Board of Harbor Commissioners approve a project that will add more than 1,800 daily truck trips per day, many more ships annually, and essentially drop the container throughput of the Port of Houston into the already existing container terminal capacity at one terminal at the Port of Los Angeles. In addition, the FEIR states that the project will increase emissions in the

¹ Letter from Nova Blazej, EPA, to Spencern MacNeil, Army Corps, Sept. 26, 2007; Letter from Susan Nakamura, SCAQMD, to Spencer MacNeil, Army Corps, and Ralph Appy, Port of Los Angeles, Sept. 26, 2007.

² 2007 Draft South Coast Air Quality Management Plan (AQMP), IV-A-119 (October 2006) [excerpts from the 2007 AQMP attached].

³ California Air Resources Board (“CARB”), Proposed Emission Reduction Plan for Ports and Goods Movement in California, at 1 (March 21, 2006)[attached].

⁴ *Id.*

short term in one of the most toxic hotspots in the region, so that the Port can increase throughput and eventually reduce emissions from the sources of pollution at the Port. The FEIR seeks to do this while at the same time not implementing all feasible mitigation measures, which is a clear violation of CEQA. We also question the Port and Army Corps apparent notion that in order to address the air pollution crisis currently plaguing port-adjacent communities, the Ports must increase impacts in the early years of the project, which could lead to more asthma and other health impacts in the short term. This is an unacceptable compromise for the region, and we remain strident in the notion that the Port should aim not to increase pollution from the TraPac terminal.

II. The FEIR Uses a Flawed Baseline.

The Port inappropriately relies on the wrong baseline to estimate project impacts. Specifically, the EIR relies on 2003 “peak” daily emissions and compares these emissions to “peak” future emissions to measure project impacts. Instead, the port should have relied on 2003 “average” daily emissions as the baseline. It is inappropriate to rely on peak emissions estimates as the baseline because the Port has not shown that peak emissions in 2003 are an accurate portrayal of impacts. Essentially, the Port attempts to rewrite history of terminal operations in 2003 to inflate the baseline and minimize the impacts from this project.

III. The FEIR Skews Relevant Information.

The FEIR also provides an incomplete portrayal of the impacts from the proposed project. There are several critical details either left out of the FEIR or hidden within the pages of the document. For example, the Port tucks this information about short term increase in pollution in appendix D. It is important for decision-makers and the public to realize that in the short term, the pollution impacts from this project are greatest. By excluding short term horizon years (e.g. 2010 or 2011) in the key air quality charts in Chapter 3.2, the Port appears to be hiding this important information.

Second, we find it unacceptable that instead of actually providing a quantitative analysis for how emissions calculations changed between the DEIR and the FEIR, the Port and Army Corps primarily relied on qualitative assumptions that the changes wash themselves out. It would have been more appropriate to recalculate emissions when there were changes to the document.

Third, we are concerned that the Port and Army Corps have artificially limited the scope of impacts associated with the Army Corps activities.⁵ The Corps own regulations make clear that “a shipping terminal normally requires dredging, wharves, bulkheads, berthing areas and disposal of dredged material in order to function. Permits for such activities are

⁵ See FEIR, Figure 2-10.

normally considered sufficient Federal control and responsibility to warrant extending the scope of analysis to include the upland portions of the facility.”⁶

Fourth, we are concerned that the Port is underestimating peak daily emissions. As the SCAQMD pointed out in its comments on the Draft EIR, the terminal could accommodate four ships, and the Port does not provide an adequate response for why there will not be more than two ships calling at the terminal at a time.

IV. The FEIR Does Not Include All Feasible Mitigation.

We are exceptionally disappointed that the FEIR does not include all feasible mitigation, which is contrary to CEQA. While our draft EIR comments provide great detail on how the mitigation measures could be strengthened, we will highlight several important areas where the FEIR falls short.

Heavy Duty Trucks

The Port appears to be putting the cart before the horse when taking credit for mitigation from a Clean Trucks Program that has yet to be put in place. While the Port recently adopted a tariff to ban specific trucks from accessing the Port of Los Angeles, it does not ensure that the compliance schedule within Mitigation Measure AQ-9 actually comes to fruition. While the tariff in the interim years bans some old trucks, the tariff says nothing about how the newer 2007 trucks will actually be placed in service at the TraPac terminal. The recently released Mitigation Monitoring and Reporting Program for TraPac states that the truck mitigation measure will be implemented by the following: “Tariff #4 establishes the progressive ban of trucks entering port Facilities.”⁷ While implementation of the tariff is a port-wide program, it remains unclear how a tariff that solely references the need to have 2007 compliant trucks by 2012 will ensure compliance with a schedule of 30% in 2008; 50% in 2009; and 70% in 2010. This deficiency clearly denotes the need to have an enforceable mitigation measure to ensure these interim benchmarks are met. Without a trucks program adopted, the mitigation measure is unenforceable.

Cleaner Fuels

As currently written, Mitigation Measure AQ-11 relies on the following schedule to implement lower sulfur fuels:

⁶ 33 C.F.R. pt. 325. App. B.

⁷ Mitigation Monitoring and Reporting Program, Berths 136-147 [TraPac] Container Terminal Project, 2-10 (December 2007)[tariff attached].

Courts allow a review of prior shortcomings in analyzing the adequacy of mitigation measures. The Supreme Court has stated that “[b]ecause an EIR cannot be meaningfully considered in a vacuum devoid of reality, a project proponent’s prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent’s promises in an EIR.”¹² As the largest fixed source of pollution in the region,¹³ the Port should have made greater strides in protecting residents from its harmful pollution before moving forward with a project that will increase emissions.¹⁴ While the Port has developed the CAAP, it is falling way behind in implementing some of the key measures contained within it. For example, the ports failed to meet the deadlines for the following three critical initiatives:

- By first quarter 2007, the ports were to adopt an implementation plan for reducing emissions from port trucks.¹⁵
- By Spring 2007, the ports were to adopt “San Pedro Bay Standards” that would commit the ports to reducing air pollution to levels that would help the region attain federal air quality standards.¹⁶
- By second quarter 2007, the ports were to evaluate the use of “tariffs” to require port tenants to use cleaner marine fuels and bring any appropriate tariff to their Boards for adoption by third quarter 2007.¹⁷

This past record of delay in implementing feasible technologies to reduce pollution raises significant red flags for those mitigation measures that are not truly enforceable and require strict timelines. CEQA is clear that “[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding agreements.”¹⁸ In fact, in response to comments by several environmental, environmental justice, labor, and governmental agencies, the Port references its efforts to develop a low sulfur fuel tariff¹⁹ as a means to argue against the need to include a more rapid deployment of low sulfur fuels in ships calling on the TraPac terminal. However, the FEIR fails to point to the fact that the CAAP included a commitment to “bring any

¹² *Laurel Heights Improvement Assoc. of San Francisco v. Regents of the University of California*, 47 Cal.3d 376, 420 (Cal. 1988).

¹³ SCAQMD, Air Quality Management Plan, at IV-A-146.

¹⁴ Letter from NRDC et al. to Mayor and Port of Los Angeles and Mayor and Port of Long Beach, September 25, 2007.

¹⁵ CAAP Technical Report, at 73.

¹⁶ *Id.* at 26-27.

¹⁷ *Id.* at 106, 110.

¹⁸ CEQA Guidelines § 15126.5(a)(2).

¹⁹ See Response to Comments at 2-161 (“Additionally, as part of the CAAP, the Ports, the Ports are developing a low sulfur fuel tariff that would apply to all container vessels entering San Pedro Bay); see also Response to Comments at 2-75 (“As discussed above, the Ports are pursuing a tariff mandating 100 percent compliance in all ships entering San Pedro Bay Ports).

appropriate tariff [on lower sulfur fuels] forward for adoption by 3rd quarter 2007.”²⁰ To the best of our knowledge, the Ports have not complied with this commitment, and as such, should not use this as a mechanism to appease commentors that the mitigation measure on lower sulfur fuels is phased in entirely too slowly.

VI. The FEIR Contains An Inadequate Alternatives Analysis.

We are disappointed by the Port’s unwillingness to evaluate alternatives, including technologies that could significantly reduce the impacts from this project. In fact, the Port’s response to our critique of the Draft EIR’s failure to analyze alternatives provides a completely unsatisfactory rationale for the Port’s failure to conduct an analysis in compliance with CEQA and NEPA. In fact, the Port’s response that focuses on “complexity and cost” is not supported by the materials within the FEIR and reality. CEQA is clear that “the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, *or be more costly.*”²¹ The fact that the Port’s own Zero Emissions Container Mover System Evaluation identifies several technologies that fall in the category as “more feasible” and “more ready” indicates that the Port’s alternative analysis improperly excluded consideration of several alternatives that could have mitigated significant criteria pollutant and greenhouse gas impacts.

VII. The FEIR Must Include a General Conformity Analysis.

The ability of this region to attain federal clean air standards on time is of paramount importance to the Port, Army Corps and residents in the region. Thus, we find it inexplicable while after the Environmental Protection Agency told these agencies that a general conformity analysis is required for this project, the Port did not heed this requirement and instead applied an exemption that clearly does not apply to this project.

VIII. The Project Does not Adequately Evaluate and Mitigate Its Impacts on Surrounding Areas.

Accurately portraying the impacts from a proposed project is a fundamental tenant of CEQA/NEPA. As such, an analysis of off-port impacts of Port operations in the surrounding communities should be conducted to ensure the Port to accurately allow decision-makers to assess the benefits and burdens of port expansion. The analysis of off-port impacts, including land use and aesthetics, in the FEIR is lacking for the reasons outlined by many commentors on the draft EIR.

²⁰ CAAP TR, at 106.

²¹ See CEQA Guidelines at § 15126.6(b)(emphasis added).

2009	20% of total ship calls
2010	30% of total ship calls
2012	50% of total ship calls
2015	100% of total ship calls

This schedule for use of cleaner fuels in marine vessels must be greatly enhanced by speeding up the timeline for use of lower sulfur fuel and requiring that ships use 0.1% sulfur fuel. Given the great health impacts associated with the movement of goods, this schedule remains entirely too lengthy to implement these cleaner fuels. Given that use of these fuels is feasible (as articulated in our previous comment letter and letters from other commenters), the Port must ensure that soon after approval of the lease, all ships visiting this terminal must utilize .2% sulfur fuel. Also, the lease should be written to include .1% sulfur fuel at the following schedule: 25% by 2008; 50% by 2009; and 100% by 2010. Accelerating the implementation of these cleaner fuels is of critical importance because there are great emissions reductions benefits associated with these cleaner fuels.

Moreover, even the World Shipping Council, which claims that its members ship approximately 90% of the containerized cargo supports an EPA proposal that would require 0.1% fuel be used. In pertinent part, the WSC has stated that "The proposal by the U.S government is 0.1%, a standard that has already been set for future use in European ports and in Southern California. WSC has no objection to a 0.1% or a 0.2% standard, so long as fuel meeting the standard is reasonably available. 0.2% or lower sulfur fuel is used by a number of WSC lines in certain areas today on a voluntary basis. The sulfur content chosen needs to meet governments' environmental objectives. WSC believes that a sulfur standard in this range, while significantly lower than some proposals at the IMO, is necessary to ensure that the IMO standards are embraced by governments around the world as environmentally adequate. The only obvious condition WSC sees as necessary is that fuel meeting this standard is reasonably available from refiners on a global basis by the proposed implementation date of 2011, and we are not aware of a reason to believe that it would not be available if the IMO can act promptly and provide refiners with a clear and uniform standard and date."⁸

Relocated PHL Railyard

We are exceptionally dissatisfied with the Port ducking its obligations to utilize cleaner rail technology measures for the relocated PHL railyard. It is unclear why use of cleaner rail technology at one of the railyards associated with this project is feasible and not the other railyard associated with the project. The Port parses the words of Rail Measure-3 within the CAAP to argue that it is not triggered by the relocated PHL railyard. The relocated PHL railyard clearly falls within the category of "new rail facilities, or

⁸ http://www.worldshipping.org/Vessel_air_emissions_WSC_position_paper_on_USG_proposal.pdf.

modifications to existing rail facilities.”⁹ As such, the Port confounds feasibility under CEQA with CAAP requirements. The cleaner rail measures associated with RL-3 should have applied to the relocated railyard.

Mitigation of Health Impacts

The Port and Army Corps summarily dismiss recommendations from the EPA to include mitigation to address health impacts associated with freight transport, such as health clinics. The Port points to the fact that it is trying to reduce the emissions that generate the pollution. However, the Port ignores the fact that port-adjacent residents are suffering now from the impacts of its operations, and the Proposed Project will generate more emissions in the short term as compared to the Port’s 2003 baseline. The Port has not provided sufficient rationale why mitigation such as health clinics and filtration systems for schools is infeasible.

Alternative Maritime Power

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.¹⁰ While the changes between the DEIR and FEIR is an improvement, this slight modification 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.

Construction Equipment

The construction equipment mitigation measures need to be strengthened. The Port admits that “Tier 3 standard off-road engine became commercially available in 2006/2007 for the prevalent horsepower categories proposed for Project construction.”¹¹ Given the availability of Tier 3, the Port should rewrite MM-AQ-3 to have Tier 3 as the default unless a piece of equipment is unavailable. Finally, we appreciate your inclusion of MM-AQ 25.

V. The Port’s Past Failure to Effectively Address Diesel Pollution Provides Great Concern.

⁹ CAAP Technical Report, at 135

¹⁰ “[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

¹¹ Response to Comments, at 2-71.

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We appreciate your prompt consideration of these comments, and if you wish to talk to the undersigned organizations about the flaws in this environmental document, please contact Adrian Martinez at (310) 434-2300, and he will set up a meeting with the undersigned organizations.

Sincerely,



Adrian Martinez

Project Attorney

Natural Resources Defense Council

Greg Tarpinian

Executive Director

Change To Win

Candice Kim

Program Associate

Coalition for Clean Air

Rupal Patel

Outreach Director

Communities for Clean Ports

Chuck Mack

International Vice President and Port Division Director

International Brotherhood of Teamsters

Elina Green, MPH

Project Manager

Long Beach Alliance for Children with Asthma

Patricia Castellanos

Co-Director, Ports Campaign

Los Angeles Alliance for a New Economy

[Attachments]

CC: Board of Harbor Commissioners [without attachments]

Response to Comments: NRDC Comments on the Berth 136-147 Final EIR

I. The Proposed Project Will Greatly Impact Port Adjacent Communities and Residents

The Final EIR/EIS acknowledges the significant air quality impacts that will be caused by the proposed Project. The Final EIR/EIS consequently requires the project to implement all feasible measures to mitigate these impacts to the furthest extent possible. The upgrade of Berths 136-147 is a necessary and prudent response to the increase in consumer demand that drives increased container throughput. The Port's aim in developing the proposed Project is to accommodate such a demand while reducing environmental and health impacts from existing and future throughput. Without the proposed project, as shown in the No Project analysis, throughput would continue to increase in the absence of valuable environmental measures implemented as part of the project, causing long-term detriment to the environment and public health.

II. The FEIR Uses a Flawed Baseline

As the Port explained in the FEIR in response to comment NRDC-5, the EIR used the correct baseline. Peak Day emissions were estimated to comply with SCAQMD reporting standards. These emissions were compared to future Project peak day scenarios to determine CEQA significance. To determine the net change in peak daily emissions between the proposed Project and CEQA and NEPA Baselines, the EIR compared peak proposed Project activities to peak baseline activities. As discussed in NRDC-5, 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 (i.e. these peaks may not happen on the same day). The peak day emissions in the EIR assume the two activities are occurring simultaneously. Therefore, using these emission numbers would potentially inflate both baseline and Project emissions.

The Draft EIR also presents average day emissions to better represent actual cargo movement over time, and computes an average day, which accounts for the total annual ship, truck, and rail visits, thereby presenting a complete representation of total emissions increases. As with the peak day calculations, the EIR compared average day proposed Project activities to average baseline activities.

Because the peak day and the average day represent two different scenarios, the two should not be compared.

III. The FEIR Skews Relevant Information

The project EIR/EIS has acknowledged all significant air quality impacts that will be caused by the project, including short term impacts. As part of the air quality impact

analysis, the EIR/EIS forecasts the project’s operational emissions between project construction in 2008 and the horizon year of 2038. Data concerning benchmark year 2010 – included in Appendix D2 – has now been included in the main text of the EIR/EIS (the average annual daily mitigated emissions are included below). This forecast data is sufficient to evaluate the project’s impacts to air quality. As shown below, in 2010, all criteria pollutants are below 2003 levels.

Table D1.2.PPMit-40. Year 2010 Annual Average Daily Mitigated Operational Emissions - Berths 136-147 Terminal Proposed Project

Project Scenario/Source Type	Pounds Per Day					
	ROG	CO	NOx	SOx	PM10	PM2.5
Project Year 2010						
Ships - Fairway Transit (1)	58	149	1,511	757	107	100
Ships - Precautionary Area Transit (1)	18	44	388	212	29	27
Ships - Harbor Transit (1)	26	40	290	131	25	23
Ships - Docking (1)	9	11	81	32	7	7
Ships - Hoteling Aux. Sources	39	157	1,388	1,415	108	102
Tugboats - Cargo Vessel Assist (1)	3	16	92	0	4	4
Terminal Equipment	135	709	1,407	1	61	56
On-road Trucks	380	1,303	4,065	10	401	369
Trains	115	293	1,592	35	44	41
Railyard Equipment	17	88	180	0	8	7
Commuting	12	161	21	0	22	21
Pier A Railyard	2	9	31	0	1	1
Project Year 2010 Total	814	2,979	11,044	2,595	817	757
Net Change from Existing Conditions	(371)	(1,097)	(2,428)	(129)	(205)	(75)
Net Change from NFAB Year 2010	120	501	1,501	262	116	274
SCAQMD Daily Significance Thresholds	55	550	55	150	150	

Note: (1) Includes auxiliary generator emissions.

As explained in the response to SCAQMD-25, the analysis of peak daily emissions accounts for the presences of four vessels in 2007 and five vessels in 2015 and thereafter. Thus the analysis accounts for all projected ship calls.

Comments regarding federally regulated activities have been forwarded to the Army Corps of Engineers.

IV. The FEIR Does Not Include All Feasible Mitigation

Heavy Duty Trucks

As the FEIR explains, Mitigation Measure AQ-9 complies with the overall truck modernization program described in the Clean Air Action Plan (CAAP). The Port is largely responsible for this mitigation measure through the recently adopted Clean Trucks Program. To the extent the specific emission standards set forth in the mitigation measure are not specified in the CAAP, the Port commits to implementation of such emission standards through adoption of the mitigation measure and MMRP.

Cleaner Fuels

The proposed schedule for implementation of low sulfur fuels is consistent with the CAAP, which is the Port's five-year commitment to the State Implementation Plan under the federal Clean Air Act. The Port is working as quickly as possible to implement a low sulfur fuel tariff under the CAAP. As noted in the NRDC's comments regarding the World Shipping Council, the CAAP envisions the need for additional information on the availability of fuel in quantities required for the number of ships entering San Pedro Bay as part of its ongoing implementation. The schedule for low-sulfur fuel implementation minimizes environmental impacts, while accommodating technical and financial limitations on the shipping lines. The low-sulfur fuel schedule will require ships to be retrofitted, including ships operated by TraPac's parent company MOL as well as third party invitees. These retrofit costs are approximately \$300,000 per ship. Use of low sulfur fuel is complicated by the fact that, historically, half of TraPac's business has been third-party invitees. As discussed in the EIR, TraPac has lost a number of these invitees but hopes to attract new business as a result of the proposed Project. Because these invitees are unknown at this time, TraPac does not know exactly what type of ships will call at the terminal and therefore what types of potential retrofits, are necessary. Without knowing what ships will call, along with the extra fuel costs associated with low sulfur fuel (presently approximately \$350 more per ton than bunker fuel), retrofit costs are also not known. TraPac may be at a competitive disadvantage if invitees can go to other terminals without the need to retrofit and purchase more expensive low sulfur fuel. Because TraPac is one of the first terminals required to adhere to environmental measures, the phase-in schedule allows TraPac time to negotiate contracts with invitees. An accelerated schedule would simply encourage dirty ships to berth at other terminals with less strict requirements. Thus, the current schedule ensures that the maximum amount of ships possible will be required to comply with low-sulfur fuel standards.

Relocated PHL Railyard

As explained in the FEIR in response to comment NRDC-26, PHL is *not* a Project proponent with whom the Port is renegotiating a lease. The CAAP contemplates application of RL3 in the context of lease negotiations with new railyard project proponents. Further, the project proponent in this instance, TraPac, is not responsible for PHL's relocation or operation; the PHL rail yard is being relocated at the discretion of the Port. Accordingly, RL3 cannot be applied to the PHL rail yard at this time.

Mitigation of Health Impacts

The Port has acknowledged the public health impacts caused by Port operations to the adjacent community. For this precise reason, the Port has made every effort to minimize these impacts with feasible mitigation measures. As noted in the EIR/EIS, the project will reduce emissions and related cancer risks to below 2003 levels. The Port believes the most efficient manner of mitigating project impacts is to address these impacts at their source, that is, construction and operation of Port projects. Thus, the project EIR/EIS imposes mitigation measures that reduce emissions from construction vehicles, commuter

vehicles, trains, trucks, terminal equipment, cargo vessels, on-site electricity consumption, and other operational sources.

Alternative Maritime Power

The project EIR/EIS's AMP requirements are consistent with the San Pedro Bay Ports Clean Air Action Plan. The CAAP acknowledges that implementation of APM will occur on a case by case basis. The EIR/EIS's schedule assumes that 100 percent of MOL's P-Class vessels will be AMP-capable by 2010. These P-Class vessels will be the most frequent callers at the terminal. The schedule imposed by the EIR/EIS minimizes at-berth emissions while accommodating MOL's APX class vessels and third party invitees. An accelerated schedule would encourage ships without AMP to berth at other terminals with less strict requirements. Thus the current schedule allows TraPac to negotiate environmental upgrades with invitees and to remain competitive with other Port terminals that do not yet have similar environmental requirements. Thus, the current schedule ensures that the maximum amount of ships possible will implement AMP.

Construction Equipment

The Port has implemented the most stringent mitigation measures possible for construction emissions standards. The Port has chosen to require Tier 3 standards in 2010/2011 in order to accommodate construction equipment that complies with Tier 2 standards, until most commercially available construction equipment has been upgraded to Tier 3. It is likely that some equipment used for project construction will not meet Tier 3 standards, as Tier 3 will only be commercially available in 2006/2007.

V. The Port's Past Failure to Effectively Address Diesel Pollution Provides Great Concern

The TraPac Project is compliant with the CAAP, and the Port is committed to implementation of all mitigation measures adopted in the Final EIR.

VI. The FEIR Contains an Inadequate Alternatives Analysis

The Final EIS/EIR proposes a reasonable range of alternatives under CEQA and NEPA. The CEQA Guidelines provide that "an EIR need not consider every conceivable alternative to a project" but must describe a range of reasonable alternatives to the project that would feasibly attain most of the basic project objectives, but would avoid or substantially lessen any of the project's significant environmental effects. The range of alternatives considered in the EIR allows for a reasoned choice among the alternatives and the proposed Project.

VII. The FEIR Must Include a General Conformity Analysis

Project construction and operation of the mitigated project would exceed the applicable conformity NO_x de minimis threshold of 10 tons per year. The conformity analysis in the

FEIR was completed consistent with applicable laws and regulations, specifically 42 USC §7506(c) and 40 CFR 93 § 153.

VIII. The Project Does not Adequately Evaluate and Mitigate Its Impacts on Surrounding Area

As explained in the FEIR in responses to comments NRDC-48 through 51, the Port's analysis of off-port impacts is adequate and, in some instances, far more conservative than what CEQA requires. Furthermore, the EIR adequately discusses and analyzes visual impacts in the context of the adjoining communities. Specifically, critical public views were identified and analyzed in Wilmington, San Pedro and Rancho Palos Verdes.