

August 18, 2008

U.S. Army Corps of Engineers  
Los Angeles District, c/o Dr. Spencer D. MacNeil  
ATTN: CESPL-RG-2004-00917-SDM  
P.O. Box 532711  
Los Angeles, CA 90053-2325

Dr. Ralph G. Appy, Director Environmental Management Division  
425 S. Palos Verdes Street  
San Pedro, CA 90731

Subject: UPDATED UPDATED  
Comments Submittal for the Draft Supplemental EIR/Subsequent  
EIS for Pier 400, Berth 408 Project, Referred to herein as the  
Supertanker

Dear Dr. Appy and Dr. MacNeil,

At a meeting on August 14, 2008, I made some observations about the Supertanker terminal and was invited by Lena Maun-Desantis and Michael Christenson to submit these additional comments and an update to my comments event though they would be received after the deadline.

I thank the Port for the opportunity to expand on the issues raised at the meeting. I am doing so below. First, the additional comments.

#### ADDITIONAL COMMENTS:

1.

The Port met with the appellants to the TraPac agreement with regard to the Supertanker project on May 15, 2008. We raised a variety of issues that are discussed in the DEIR. The DEIR executive summary states that "the Port will continue to meet with the Appellant Group to discuss the Draft SEIS/SEIR and proposed Project impacts and mitigation measures."

This did not happen nor was it scheduled to happen prior to the deadline for filing comments under DEIR. It should be made clear in the final and any supplemental DEIR or documents that, despite this explicit promise, no such meeting to discuss the Supertanker project occurred. There was a meeting set to discuss another DEIR, but the agenda was full AND limited to that DEIR.

2. The project will bring between \$52 billion and \$70 billion worth of crude oil through the Plains All American terminal each year. If Plains receives 1% of that as a fee, it will gross between \$500 million and \$700 million a year. The size of the operation in dollar-value creates a number of significant issues with regard to

overriding considerations and defining what is “feasible mitigation.” In particular, it calls into question the standard parameters for these assessments and raises a question that should be answered in the EIR and the courts: Are there any realistic economic barriers to fully mitigating the so-called unavoidable impacts?

First, the amount of revenue precludes virtually any and all of the limitations on mitigation under any reasonable definition of feasible that is limited for economic reasons. Even the suggestion that sufficient tankers are not available on the market to provide full AMPing by 2020 must be thrown aside by the dollar value of the cargo and the revenues to Plains. Tankers take 10 years to build and cost about \$100 million. Given the revenues here, surely the AMPing schedule can be markedly improved.

Second, the amount of revenue precludes any assessment that overriding consideration would preclude mitigating impacts to insignificance. Below are project specific and cumulative impacts that are declared “unavoidable and significant.” We believe that with the proper perspective and incentives with regard to the lease, Plains and the Port of LA could mitigate all of these to insignificance.

- Air Quality;
- Biological Resources;
- Geology;
- Noise;
- Recreation;
- Risk of Upset/Hazardous Materials; and
- Water Quality, Sediments, and Oceanography.

Therefore, this statement is unacceptable: “ No feasible mitigation measures are available that would avoid all of the potential impacts or reduce all impacts to less than significant.”

**A similar standard should be applied to the following unavoidable Cumulative Impacts:**

The proposed Project or alternatives would result in cumulatively considerable impacts for the following resources:

- Air Quality;
- Biological Resources;
- Geology;
- Groundwater and Soils;
- Land Use;
- Noise;
- Recreation;
- Risk of Upset/Hazardous Materials; and
- Water Quality, Sediments, and Oceanography.

Finally, should the Port accede to the idea that these impacts are “significant and unavoidable” and choose to issue a finding of overriding consideration to allow the project to go forward, then the Board of Harbor Commissioners, as part of lease conditions, should provide substantial and significant offsite mitigation measures to residents.

As outlined below, most of the benefits of this project are state and regional, with just two dozen full-time jobs after construction. However and most significantly, virtually all of the analyzed negative impacts are concentrated in San Pedro and the harbor area, with the vast majority of them centered on the Point Fermin neighborhood; these locally centric impacts include increased noise, degraded aesthetics and health, additional air pollutants, and recreational and water quality degradation.

As part of the lease, the Port should consider direct annual awards to local homeowners for the impact of the project. In addition to the project’s significant revenues, by one standard calculation, each tanker trip docking at Pier 400 will save the owners of the crude oil at least \$2 million per shipment; that is in the reduction in the cost of transferring the crude from Supertankers to smaller vessels for unloading.

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UPDATED COMMENTS: there are revisions below in the original comment letter.

We want to first note that the Point Fermin area of San Pedro, where we live, will be inordinately impacted by this project, should it go forward in its current form. It would add significant noise, light and air pollution that will be evident from within and around our home. It will impact our neighborhood and our neighbors will be those people most directly affected by the project. The project benefits will be distributed throughout the city, region and state. But the vast majority of negative impacts will be felt and have their greatest effects here. We more than others, will breathe dirtier air, swim in less clean water, suffer more noise pollution, and see more negative impacts on our recreational space, health, night skies and to our well-being than any other people in the City of Los Angeles or the State of California.

We ask directly, what do we and our neighbors get in return for this marked change in our lives and to our welfare? What is our recompense?  
Where is the evacuation plan, which should be funded by the developer?  
Where is the permanent public air quality monitoring station in our neighborhood?  
Where is a community mitigation fund to offset pollution impacts?  
Where is a community health care fund to offset externalized health costs?

All of these things have been asked for when this project was first suggested years ago and yet none of these things have been done nor are they part of the proposal.

Let us state clearly, the DEIR has failed to adequately explore the best project alternative, which would be relocation of the supertanker berth to the east side of Pier 400. That issue requires re-examination and the section requires rewriting.

First and foremost, we are opposed to proceeding with the Project under any action that states the air quality, water, recreation, biological, view, light and other impacts are “considered significant, adverse, and unavoidable” after the proposed mitigation measures have been applied. That is unacceptable and a warrant to impose significant health, safety, financial burdens on Point Fermin residents and visitors.

We remind the Port and the Corps of Engineers that the affected area remains a Federal non-attainment area for Air Quality and that the proposed Project as currently defined could only be implemented through consideration of “overriding importance” (reference Socioeconomic Impact) or through “Overriding Considerations (if necessary)” (reference Executive Summary and Introduction).

We recommend that the Port require the mitigation efforts for the Project as defined in the CAAP and if projected emissions still create residual significant air quality impacts after full application of all feasible mitigation measures, that mitigation measures be required for existing sources in closest proximity to the Project. The mitigations applicable to sources other than the Project provide the opportunity to reduce the residual emissions to below significant levels on a port-wide basis. We believe that the Port and the Corps of Engineers has the capability and the responsibility to require the application of currently available mitigations such that the impacts to air quality can be reduced to a level that will not require application of Overriding Considerations.

### DETAILED COMMENTS

1. Measure MM AQ-14, Low Sulfur Fuel Use in Main Engines, Auxiliary Engines and Boilers, requires revision to schedule full implementation based on current availability of LSF and as was originally committed in the CAAP for Main and Auxiliary engines. The SEIR/SEIS currently stated phase-in of LSF (maximum sulfur content of 0.2 percent) for in-bound Ocean Going Vessels of 20% in Year 4, 50% in Year 5, and 90% in Year 7 violates the CAAP commitment to implement 100% LSF compliance in terminal leases as they are renewed or modified. The SEIR/SEIS requires revision to impose 100% LSF implementation on start of operations for both in-bound and out-bound ships.

We noted that the CAAP included implementation of Measures OGV3, applicable to Auxiliary Engines, and OGV4, applicable to Main Engines, which required that, on lease renewal or revision, all ocean going vessels utilizing the leased facilities must burn  $\leq 0.2\%$  S MGO within the current Vessel Speed Reduction program boundary of 20 nm, subsequently expanded to the 40 nm boundary. The schedule in the Draft SEIR/SEIS as proposed will never require all OGV to comply with the critically important CAAP OGV Measure.

We also noted that the recently published Fuel Availability Study, conducted by Tetrattech for the Port of LA (POLA), established that regional LSF supply is sufficient such that the fuel would be available for Pier 400 ships in bunkering locations on inbound routes or that the inbound ships' routes can simply be planned in advance to ensure access to LSF prior to arriving at the San Pedro Bay ports.

We recognize and appreciate that the Draft EIR/EIS includes 100% LSF compliance for Hoteling and Outbound ships and extended the boundary zone to 40NM.

With regard to LSF compliance and speed reductions and other issues raised in ITEMS 1-4, we ask that the DEIR be revised to incorporate the latest CAAP standards and the latest CARB standards, and where CARB and CAAP standards conflict, the MORE stringent be the rule applied in the revised document.

As part of the revised document, the PORT should make it a condition of the lease that vessels that do not comply would be subject to fees in lieu of compliance beginning at \$45,500 for each visit, with a maximum of \$227,500 on the fifth visit.

As Air Resources Board Chairwoman Mary Nichols said, "We've known for years that a large percentage of onshore pollution comes from activities in the water. Our ports need to expand and modernize, but the adjacent communities are not willing to tolerate the health risks."

These changes would save more than 3,600 lives in coastal communities over the first six years through reduced respiratory illnesses and heart disease, including a potential 80% drop in cancer risk associated with ship pollutants, according to state regulators.

2. Measure MM-A Q15, Alternative Marine Power (AMP), requires revision to schedule full implementation based on currently available technology. The Draft SEIR/SEIS currently stated phase-in of AMP of 4% in Year 2, 10% in Year 3, 15% in Year 5, 40% in Year 10, and 70% in Year 16 violates the

Port's commitments to Air Quality and to Public Health and requires revision to implement AMP at 100% on project start.

As technology advances may include potential for methods other than AMP to reduce emissions at dock, such as bonnet applications, we suggest that AMP implementation may be reduced as other methods such as bonneting result in proven reduced emissions that would achieve the reductions possible through 100% AMP.

3. Project Description requirements applicable to boiler operations should specifically require use of .2% LSF within the 40 nautical mile boundary zone.

We recognize and appreciate that the current Project description includes use of distillate Marine Diesel Oil/Marine Gas Oil (MDO/MGO) at .5% LSF for boiler operations while close to Port. Please note that use of .5% LSF MDO/MGO achieves minimal emission reduction compared to .2% LSF and that the .2% LSF should be considered the minimum threshold of all fuel use within the 40 nm boundary zone, as consistent with the CAAP.

In addition, the document MUST, yet fails to, assess the impact of running boilers beginning three hours offshore, rather than restricting ALL boiler operations to dockside, when the ship's boiler emissions could be reduced through bonneting, the immediate availability of the cleanest possible fuel or the employing of AMP technology. Consultants for the Plains All American have speculated that the dispersal of pollution from running the boilers while inbound would reduce the air pollutants actually reaching Southern California, however, no calculation has been done to determine the actual tonnage of air pollutants from the different operation rules, including requiring the .1% LSF for all boiler operations with operations restricted to dockside in conjunction with bonneting or, if possible, replaced entirely by AMPing.

4. Measure MM AQ-16, Slide Valves requires revision to state the specific rate of implementation and to ensure compliance with the CAAP. The AQ-16 as currently worded, "Ships calling at Berth 408 shall be equipped with slide valves or a slide valve equivalent . . . to the maximum extent possible," provides the Port opportunity to demonstrate commitment to Slide Valves and the CAAP.

The CAAP Measure OGV5 stated that Slide Valve Technology shall be implemented through lease requirements as new leases are established or existing leases are revised. Specifically, OGV5 requires that immediately upon lease renewal, all ocean going vessels utilizing the leased facilities must employ slide valve technology.

5. Measure MM-AQ-21, Throughput Tracking, indicates the Port's recognition of the potential for exceeding throughput as planned in the Draft SEIR/SEIS yet

requires revision to impose review of actual throughput through a defined process and on a more frequent basis than as currently stated. The current MM-AQ-21 defines no specific requirement for how the reviews will be performed and further definition for the Measure is required to ensure compliance. The Throughput reviews are required on no less than a five-year basis rather than in the currently stated cycle of “through the years 2015, 2025, or 2040.”

6. The lease term stated in the DEIR/DEIS requires adjustment to reduce the term or to include re-opener clauses to allow for evaluation at 10-year intervals to ensure application of best available technologies and mitigation measures.
7. The DEIR/DEIS requires revision to incorporate the mitigations required in the recent TraPac EIR/EIS Memorandum of Understanding established through Settlement with the Appellants to the TraPac EIR/EIS.
8. The DEIR/DEIS requires revision to fully assess biologic impacts from both oil spills and from invasive species arriving on vessel hulls and in bilge water, which it admits would occur and result in substantial impact on native species. These are not adequately mitigated. There is no attempt to assess the volume, range and full impact of these impacts. There are both project specific and cumulative impacts that should be more fully assessed.
9. The DEIR/DEIS requires revision as it fully omits an assessment of noise impacts during operations. This revision must assess what are likely to be very significant impacts and offer mitigation, particularly in the residential areas that already are significantly impacted by noise from POLA operations. As these operational noise impacts are not identified at all, these impacts are not adequately mitigated. The current document fails to document, test or discuss the noise levels expected from the pumping stations on ship and on shore. These pumping stations are likely to add significantly to the noise level from Pier 400, which is substantial. We note that the Pier 400 EIR/EIS failed to adequately assess noise impacts from the project and the operations contribute marked and significant noise 24 hours a day, which carries clearly over the water to the Point Fermin neighborhood. In effect there is a constant HUM from the pier, as well as significant loader noises. At a minimum, all pumps should be tested and the noise levels monitored as part of the EIR/EIS process and adequate noise reduction measures should be taken up to and including having all pumping done from dockside pumps that are housed in soundproof structures. There are both project specific and cumulative impacts that should be more fully assessed.
10. The DEIR/DEIS requires revision to fully assess significant noise impacts to residents and recreational areas that would occur during construction. These currently are not adequately mitigated. A day at the beach should be one

where the noise of the surf is not impacted by the thrum of pumps. There are both project specific and cumulative impacts that should be more fully assessed.

11. The DEIR/DEIS requires revision to fully assess significant unmitigated impacts to recreation that will occur during the two-and-one-half-year construction. In particular, Pier 400 had a marked impact on open water areas for recreational boating, sailing and fishing. The addition of up to 201 Supertanker trips a year will add to these degradation. As noted below, an east-side berth would mitigate these impacts. These currently are not adequately mitigated. There are both project specific and cumulative impacts that should be more fully assessed.
12. The DEIR/DEIS requires revision to fully assess water quality impacts from both oil spills and from invasive species arriving on vessel hulls and in bilge water. These are not adequately mitigated and the federal ballast water regulations with regard to invasive species are not complied with or discussed. There are both project specific and cumulative impacts that should be more fully assessed.
13. With regard to invasive species carried on the hulls of ships, hull cleansing should be required at a level that would meet the same species induction levels required by ballast treatment.
14. The DEIR/DEIS requires revision to fully assess visual impacts. The document relies on a baseline created by the existence of PIER 400. But the Pier 400 EIR said "loss of views of open water" would be mitigated by tree and vegetation planting on Pier 400, which has not been done. The Pier 400 EIR did not adequately assess visual impacts. There are both project specific and cumulative impacts that should be more fully assessed.
15. The DEIR/DEIS requires revision to adequately assess light spillage and loss of nighttime sky views in the residential and public recreation areas west of the project. There has been a dramatic change in night sky since the construction of Pier 400, which was not adequately discussed in the Pier 400 EIR. Further light intrusion on the night sky of Point Fermin would compound this serious error and is unacceptable. The current document also fails to adequately assess light pollution and its impacts because it accepts as a baseline the existing impacts from intrusive and poorly designed lighting at Pier 400. Using this as a baseline is unacceptable. The baseline results from a previous and continuing injury, the failure by POLA to adequately identify and mitigate light spillage from Pier 400 in the 1992 EIR/EIS. There are both project specific and cumulative impacts that should be more fully assessed.
16. The DEIR/DEIS requires revision because it fails to adequately analyze alternatives to the current project. Items 8 through 14 (above) discuss a



variety of unmitigated impacts. These impacts would be mitigated, eliminated or reduced if the so-called Face E Project alternative, which calls for building the supertanker berthing on the East face of Pier 400, were adequately assessed. Currently, that alternative is dismissed, largely for reasons of navigation. This is asserted without supporting information.

17. The DEIR/DEIS requires revision because it fails to adequately analyze the Face E Project alternative. Items 8 through 14 (above) discuss a variety of unmitigated impacts. These impacts would be mitigated, eliminated or reduced by the Face E alternative. In evaluating Face E, the document does not consider either: having tankers enter through the Long Beach gate with a dredged channel to Pier 400 or altering the width of the breakwater at the mouth of Angels Gate to reduce or eliminate the navigational issues.
18. The DEIR/DEIS requires revision to include the installation of AMP as part of and a requirement of the Project. The current DEIR/DEIS specifically excludes AMP from the Project, stating AMP will be built “as soon as tankers become available that could utilize AMP.”
19. The DEIR/DEIS requires revision to adequately analyze impacts on recreation. Specifically impacts on sailing and fishing, including impacts from navigation limits and pollution impacts on species. There are both project specific and cumulative impacts that should be more fully assessed.

In conclusion, we note that the DEIR/DEIS process has been flawed and may not comply with federal and state law. There has been a demonstrable inadequacy of process by both the POLA and the Army Corps of Engineers, and a lack of commitment by both agencies to openness and public dialogue.

We site below a few examples and point out that both agencies have failed in their public obligation by not agreeing to repeated requests to extend the comment period on the DEIR/DEIS by 90 days and use the added time to remedy errors in the public outreach and public notice and public access to materials, as outlined below.

-A flawed public hearing process, in which the single public hearing was held on the same evening as a hearing into another controversial land-use project in San Pedro. The competing hearing, convened by another agency of the City of Los Angeles, drew approximately 500-700 people, including many CSPNC stakeholders who otherwise would have testified on the Pier 400/Supertanker proposal;

-The refusal by the POLA to continue funding of Port Community Advisory Committee consultants to assist unpaid community representatives, including CSPNC members, in understanding the 4200-page DEIR/DEIS. The complex

document, by contrast, was prepared using tens of thousands of work hours from trained Port staff and expert consultants;

-The refusal by POLA and Corps to extend to 90 days the comment period for this document, which took two years to draft;

-The timing of the release of the document so that the bulk of comment period takes place during the summer months;

-The initial refusal by POLA of direct requests from community and PCAC members to print and distribute additional printed copies of the DEIR/DEIS.

We look forward to your rectifying the above cited deficiencies of content and process. We ask that the release of the Final EIR/EIS incorporate our recommendations.

Sincerely,

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