

# Port Working Group, Green LA Coalition

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February 1, 2011

*via US Postal to:*

Chris Cannon  
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Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, CA 90731

*via e-mail to:* [ceqacomment@portla.org](mailto:ceqacomment@portla.org)

## **Re: Southern California International Gateway Project Draft Environmental Impact Report**

Dear Mr. Cannon:

The Port Working Group of the Green LA Coalition hereby submits comments to the Draft Environmental Impact Report (DEIR) for the Southern California International Gateway (SCIG) Project. Members of the Port Working Group have raised concerns about the negative environmental, health, labor, and overall project impacts on the surrounding neighborhoods and the region in various public workshops and public hearings related to this project. We present our comments below and appreciate your detailed response to these questions and concerns.

After careful review of the document, we have concluded that major flaws remain and request that these critical issues be addressed as required in the California Environmental Quality Act (CEQA).

### **1. THE DRAFT EIR'S PROJECT DESCRIPTION IS INADEQUATE**

The DEIR effectively disguises the true impacts of the project by omitting crucial information regarding what the project will actually do, underestimating many environmental impacts and ignoring others altogether. "An accurate, stable and finite project description is in sine qua non of an informative and legally sufficient EIR."<sup>1</sup>

### **2. OVERALL PROJECT NEED**

The purported need for the project is to have capacity for forecasted direct rail shipments after the currently planned on-dock rail system is (according to the DEIR) maxed out in 2020. BNSF's forecasts that capacity for roughly another 2.7 million TEUs will be needed between 2020 and 2035<sup>2</sup>.

The cargo forecast used by port planners appears to be based on economic assumptions from before the recent recession and now appears extremely inflated. The DEIR uses a cargo

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<sup>1</sup> County of Inyo v. City of Los Angeles (1977) 71 Cal. App. 3d 185 192-93

<sup>2</sup> See *Appendix G-2, page 2*

forecast<sup>3</sup> that suggests that cargo levels will quadruple from record 2006 levels by 2030. With the recession a new forecast<sup>4</sup> was constructed which suggests that cargo levels will still triple by 2035. The EIR suggests that actual cargo levels will be somewhere between the two forecasts. Given the current economic conditions of sluggish growth, tight credit, mortgage crisis, high unemployment and a shrinking middle class, tripling or quadrupling record cargo in the next 15 to 20 years seems unlikely. With additional cargo moving through the Panama Canal, it appears we are building port capacity for a demand that will not be realized.

These forecasts are extremely important because the projected growth is used to justify building the near dock rail yard and eliminate near-dock and on-dock alternatives to the project.

Based on this forecasting, we believe existing and already proposed port expansion projects to be able to accommodate this growth.

#### 2.1 Meeting the need of the project and meeting goals of the CAAP

The main purposes of the SCIG stated in the DEIR include helping to meet the current and anticipated containerized cargo from port terminals, reducing truck miles traveled associated with moving containerized cargo, increasing the use of the Alameda Corridor, and maximizing the direct transfer of cargo from port to rail with minimal surface transportation, congestion and delay.

As described in the Clean Air Action Plan (CAAP) adopted by both the Port of Los Angeles and the Port of Long Beach, maximizing on-dock rail is a shared goal and both ports plan to maximize on-dock rail as an effective way to limit emissions associated with operations of on-road trucks and rail yards.

The SCIG project does not meet the purpose or need of the first item mentioned above, to help meet the current and anticipated containerized cargo and if built the project will have the potential to shift freight away from on-dock rail, which could minimize the use of on-dock rail vs. maximizing the use of on-dock rail which is part of the CAAP goal. This would perpetuate the need to truck containerized cargo to the near-dock facility and fail to meet the goal of maximizing the direct transfer of cargo from port to rail with minimal surface transportation, congestion and delay. In fact, this could increase surface transportation, congestion and delay in and around the port due to the shift. Maximization of on-dock rail is also part of the assumed rail operation described in the DEIR, which cargo capacity assumptions depend upon and with this shift those assumptions would not hold true.

Assessing the performance of the cargo forecast used in the assumptions in the SCIG DEIR, over the last two years, it is reasonable to believe that there is no need for the SCIG project from now to the years of 2035 in terms of helping to meet the current and anticipated containerized cargo from the port terminals. The planned and proposed projects, which include on-dock rail, will be able to handle all anticipated containerized cargo. In the case the cargo throughput increases and follows an optimistic forecast growth rate, the project will not be needed until 2030 if no other alternative is identified.

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<sup>3</sup> Tioga. 2007. San Pedro Bay Cargo Forecast. Draft report prepared for the Ports of Los Angeles and Long Beach. Prepared by the Tioga Group, Inc., Global Insight, Inc., Railroad Industries, Inc., D. A. Varnado Analytics. December 2007.

<sup>4</sup> Tioga. 2009. San Pedro Bay Container Forecast Update. Report prepared for the Ports of Long Beach and Los Angeles. Prepared by the Tioga Group, Inc. and HIS Global Insight. July 2009.

The study by the Bay Area Council Economic Institute<sup>5</sup> supports that there is a high probability that the above mentioned could and or will be the outcome if the SCIG project gets approved (See Appendix A for document referenced and we ask that it be included in its entirety as part of formal comment for the DEIR). The SCIG DEIR fails to fully study the purpose and need of the project, the alternatives to the project, which should include the no build alternative based on meeting or the lack of meeting the major objectives of the project and goals of the Port of Los Angeles set in the CAAP, specifically the cancer risk threshold impacts from shift of cargo and or other implication of project, the container terminal capacity and intermodal cargo demand and capacity and forecasting. The SCIG DEIR fails to study and provide adequate data and information to justify the project approval with and without the mitigating impacts to the environment and human health.

### **3. ENVIRONMENTAL ANALYSIS IS FLAWED (Chapter 3.0)**

#### **3.1 Flawed Assumptions and Analysis**

Fundamentally, the DEIR includes an invalid traffic analysis that provides the basis for a flawed findings from the DEIR's air pollution study, the health risk analysis, and the cumulative impacts analysis that are based on it.

#### **3.2 Inadequate Air Quality Analysis and Health Risk Assessment**

These flaws illustrate the insincerity of the DEIR finding a net decrease in emissions between the unmitigated project and the CEQA baseline and the subsequent health impact findings. (DEIR, 3.2-59)

- a. Invalid traffic analysis provides the basis for a flawed findings from the DEIR's air pollution study, the health risk analysis, and the cumulative impacts analysis that are based on it.
- b. The DEIR ignores more than 30 studies that show lung cancer in workers exposed to diesel exhaust. Those studies are the basis for California naming diesel particulate matter as a Toxic Air Contaminant.
- c. Two USC papers (Gauderman, McConnell) on the health effects of children living in close proximity to traffic-related pollution are in the References, but there is no mention of the whole body of near-roadway and health effects research in the DEIR (needs references, what do they show?) . There is no mention in the text of proximity issues and health except with regard to CARB land use guidelines.
- d. The DEIR inappropriately credits Clean Air Action Plan (CAAP) and Clean Trucks Program (CTP) improvements to the SCIG. The 2005 baseline overstates the benefits of the project because the CAAP and CTP and state laws have been implemented since 2005. To compare the project's use of CTP-compliant trucks with pre-CTP trucks of 2005 is simply disingenuous. The port itself has repeatedly touted the early achievement of emission reductions goals from the CTP: more than 90% for sulfur oxides, 89% for DPM and 77% for NOx.

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<sup>5</sup> Monaco, K., Haveman, J. 2012. Assessing the Need for the Southern California International Gateway. Prepared by Bay Area Council Economic Institute. January 31, 2012.

- e. The DEIR understates the ongoing emissions of current tenants of the site. It assumes that emissions from current tenants, which are included in the baseline, simply vanish when these businesses are displaced. For example, though it currently operates on 104 acres, "California Cartage would be relocated to the 10-acre site and would retain the current 20 [sic] acre parcel on SCE land, comprising a total of 29 acres. All future year activities of California Cartage ... were assumed to be scaled down by 72 percent..."(DEIR, 3.2-29). For five of the nine current tenants, no continuing operations are calculated. This assumption is indefensible.
- f. The section on Toxic Air Contaminants is incorrect and misleading. It states:

*"Compared to the MATES II study, the MATES III study found a decreasing risk for air toxics exposure, with the population-weighted risk down by 17 percent from the analysis in MATES II."* (DEIR, 3.2-9)

In fact, the SCAQMD says:

*"Overall, the Ports area experienced an approximate 17% increase in risk, while the average population-weighted risk in other areas of the Basin decreased by about 11%."*<sup>6</sup>

- g. The DEIR fails to meet the standard for Environmental Impact Reports, which requires adequately inform all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project.<sup>7</sup> (See Appendix B for document referenced and ask that it be included in its entirety as part of formal comment for the DEIR).
- h. The DEIR fails to adequately consider the traffic impacts and resulting air quality impacts on the community immediately adjacent to the project.<sup>8</sup>
- i. The DEIR's Health Risk Assessment is flawed and fails to accurately calculate the potential health risk on residents in nearby communities.<sup>9</sup>

### 3.3 The Incremental Cancer Risk Is Greater Than 10 In A Million.

Appendix Table C3-7-4 shows maximum health impacts associated with the mitigated proposed project (DEIR, C3-50). Even given the insupportably low air emissions study results, this table shows maximum cancer risks of 48 in a million for residential receptors, 39 in a million for occupational receptors, 40 in a million for sensitive receptors, and 60 in a million for students -- all in excess of the 10 in a million threshold that the Port has promised not to exceed under the CAAP. This shows that local residents and their children will be the worse off, a fact that must be addressed in the environmental justice section of the DEIR. The DEIR downplays these numbers by asserting that cancer risk will be reduced by the project (due to the indefensible claims it makes about Hobart Yard not handling international cargo containers any longer) but

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<sup>6</sup> South Coast Air Quality Management District, Multiple Air Toxics Exposure Study III, Sept. 2008, p. 4-11, also see Table 4-4 on p. 4-16. Source at <http://www.aqmd.gov/prdas/matesIII/MATESIIIFinalReportSept2008.html>

<sup>7</sup> Clark & Associates. Comment Letter on Draft Environmental Impact Report (DEIR) for the Southern California International Gateway (SCIG) Project. January 30, 2012. Included in Appendix C.

<sup>8</sup> Ibid

<sup>9</sup> Ibid

this claim is unsupported because of the gross errors in the traffic analysis that we have described above.

### 3.4 Trucks

SCIG proposes nothing more than CTP compliant trucks (i.e. Model Year 2007), offering only that the Harbor Commission could include a stronger provision. The proposed "project condition" of "low-emission" trucks is not sufficient (DEIR, 3.2-96):

- a. It is much too slow of a phase-in period, taking until 2026 to transition to truck standards that can be met by trucks on the road today. In fact, cleaner natural gas trucks make 7% of moves at the POLB, evidence that this is an immediately available, affordable and viable technology.<sup>10</sup>
- b. "Low emission" trucks should be measured not only by PM but also by NO<sub>x</sub> and CO<sub>2</sub>
- c. Given the long life of the project, it is reasonable to phase-in zero-emission trucks, given that such technologies are already being demonstrated at the port. Rejecting zero-emission and hybrid trucks as "technically infeasible" (DEIR, 3.2-79) does not recognize the rapid progress in this sector, and the commitment to further advances that have been made by the ports (including in the "Roadmap for Zero Emissions"<sup>11</sup> prepared jointly by the two ports).
- d. Low- and zero-emission trucks should be integrated into the project itself so as to be enforceable rather than a condition dependent on future actions of the Harbor Commission.

The failure to require cleaner truck technology flouts the CAAP. The DEIR notes that the CAAP promotes "Alternative Fuel Infrastructure for Heavy-Duty Natural Gas Vehicles", yet it fails to promote the use of natural gas or zero emission trucks. (DEIR, 3.2-64)

### 3.5 Insufficient Disclosure of Human Health Impacts

The California Environmental Quality Act (CEQA) requires that all potential environmental changes that can result in significant adverse impact on humans or public health must be addressed in an environmental impact report.<sup>12</sup> The DEIR fails to address in detail the adverse health impacts that will result from this proposed project; therefore, a comprehensive health analysis needs to be conducted.

Appendix C includes a list of health studies that need to be reviewed and added to the EIR.

The California Environmental Quality Act ("CEQA"), Pub. Res. Code §21000, et seq., requires agencies to study the impact of proposed projects on human health and, if the impact is significant, require agencies to include mitigation measures and/or alternatives to reduce those impacts. Such an analysis is often called a Health Impact Analysis ("HIA").

- a. The plain language of the CEQA statute and regulations requires analysis and mitigation of human health impacts

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<sup>10</sup> See POLB Truck Activity Report, available at <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=6591>

<sup>11</sup> Roadmap for Moving Forward with Zero Emission Technologies at the Ports of Long Beach and Los Angeles, Technical Report, August 2011, Final.

<sup>12</sup> CEQA Section 15126.2 (a); Section 15065

The first words of CEQA display that the Legislature intended the law to safeguard human health and safety. Section 21000 of CEQA, entitled, “Legislative Intent,” states that the fundamental purpose of CEQA is “to provide a high-quality environment that at all times is **healthful** and pleasing to the sense and intellect of man.”<sup>13</sup> CEQA continues:

*“it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the **health and safety of the people of the state** and take all coordinated actions necessary to prevent such threshold being reached.”<sup>14</sup>*

The CEQA Guidelines define “Significant Environmental Impacts” to include “**health and safety problems** caused” by the project.<sup>15</sup> The CEQA Guidelines require a **mandatory** finding of significance if a project will have impacts on human health. The Guidelines state:

*“a lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where . . . the environmental effects of a project will cause **substantial adverse effects on human beings, either directly or indirectly.**”<sup>16</sup>*

b. CEQA case law requires analysis and mitigation of human health impacts

CEQA case law has uniformly interpreted the above provisions of law to require that an EIR include an analysis of human health impacts of a proposed project. An agency abuses its discretion and fails to proceed in a manner required by law if it refuses to analyze human health impacts of a proposed project in an EIR despite being presented with substantial evidence that such impacts may occur.<sup>17</sup>

- In *Bakersfield Citizens*, the court held that it was necessary in an EIR for two proposed WalMart projects to “correlate adverse air quality impacts to resulting adverse health impacts.”<sup>18</sup> The WalMart EIRs admitted that both projects would result in significant unmitigated air pollution impacts. However, the EIRs contained no analysis of the human health implications of that increased air pollution. The court held:

Guidelines section 15126.2, subdivision (a) requires an EIR to discuss, inter alia, “health and safety problems caused by the physical changes” that the proposed project will precipitate. Both of the EIR’s concluded that the projects would have significant and unavoidable adverse impacts on air quality. It is well known that air pollution adversely affects human respiratory health.<sup>19</sup> Emergency rooms crowded with wheezing sufferers are sad but common sights in the San Joaquin

<sup>13</sup> Pub. Res. Code §21000(b) (emphasis added)

<sup>14</sup> Pub. Res. Code §21000(d) (emphasis added)

<sup>15</sup> Cal. Code Regs. §15126.2(a) (emphasis added)

<sup>16</sup> Cal. Code Regs. §15065(d) (emphasis added). See also, CEQA Guidelines, App. G. Section XVIII (c) (“mandatory finding of significance” required if “the project [will] have environmental effects which will cause substantial **adverse effects on human beings, either directly or indirectly.**” (emphasis added)).

<sup>17</sup> *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-20 (“*Bakersfield Citizens*”).

<sup>18</sup> Id. at 1219-20

<sup>19</sup> See, e.g., Bustillo, Smog Harms Children’s Lungs for Life, Study Finds, L.A. Times (Sept. 9, 2004).

Valley and elsewhere. . . Yet, neither EIR acknowledges the health consequences that necessarily result from the identified adverse air quality impacts. Buried in the description of some of the various substances that make up the soup known as "air pollution" are brief references to respiratory illnesses. However, there is no acknowledgement or analysis of the well-known connection between reduction in air quality and increases in specific respiratory conditions and illnesses. After reading the EIR's, the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin. On remand, ***the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIR's.***<sup>20</sup>

- Similarly, in *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*, 91 Cal. App. 4th 1344, 1367-1368 (2001) ("*Berkeley Jets*"), the court held that the "public health impact" of an airport expansion had to be analyzed in the EIR despite the absence of an accepted scientific methodology. The court held that the Port failed to assess the health effect of toxic air contaminants ("TAC's") from mobile sources on persons who live in close proximity to the Airport.
- Numerous other cases have required that EIRs include an analysis of health impacts created by proposed projects. For example, the California Supreme Court recently held that an EIR was required for a refinery project due in part to "adverse health effects, especially aggravation of respiratory disease."<sup>21</sup>
- In *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1564-1565, the court held that an EIR was required due to potential human health effects of sewage sludge. The court held that, "additional scientific work is needed to reduce persistent uncertainty about the potential for adverse human health effects from exposure to biosolids [sludge]."
- In *Los Angeles Unif. Sch. Dist. v. City of Los Angeles* (1997), 58 Cal. App. 4th 1019, the court held that an EIR was required to analyze the human health impacts of increased noise caused by a proposed project.<sup>22</sup> In *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal. App. 4th 889, 906, the court held that an EIR was adequate because it evaluated project-related and cumulative health impacts, included a reasoned analysis in support of its conclusions, and appropriately relied on mitigation measures to reduce project impacts.<sup>23</sup>

### 3.6 Locomotive idling not included in their operations

The air quality analysis is inadequate and is flawed due to the lack of inclusion of the emissions from locomotive idling associated with rail yard operations.

<sup>20</sup> Id. 1219-20 (emphasis added); see also, *Woodward Park Homeowners Assn., Inc. v. City of Fresno*, 150 Cal.App.4th 683, 731-732 (2007) ("air pollution discussion is inadequate for another reason. . . there is no disclosure and analysis whatsoever of the correlation of 'the identified adverse air quality impacts to resultant adverse health effects.'")

<sup>21</sup> *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 317

<sup>22</sup> See also, *Gray v. Madera* (2008) 167 Cal. App. 4th 1099 (EIR required to analyze noise impacts of rock quarry)

<sup>23</sup> See also, *Sec. Env'tl. Sys. v. S. Coast Air Quality Management Dist.* (1991) 229 Cal. App. 3d 110 (EIR required due to human health impacts caused by waste-burning incinerator).

#### 4. GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE (Chapter 3.6)

“Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions.”<sup>24</sup> Here, the Project attempts to skirt responsibility for GHG mitigations, by attempting to exploit the lack of Port guidelines on managing or mitigating GHGs, and by referencing the Clean Air Action Plan (which does not include GHG targets) and the POLA Climate Action Plan (which deals only with the activities and facilities of the Harbor Department, not port operations more broadly). (DEIR, 3.6-15 & 16).

Furthermore, despite finding that the “best available information” indicates that sea-level rise due to global warming is expected to be 1.4 meters by 2100, inundating “a vast majority of the Port of LA,” it rejects out of hand any adaptation strategy for the site or contribution to adaptation for the larger port. It admits that adaptation plans are expected, but makes no offer to participate in or contribute (e.g. financially) to the implementation of those plans. It also indicates that the info is not “at an appropriate scale” or adequate to “address potential impacts to the Project.” (DEIR, 3.6-27&28)

Additionally, there is a requirement under CEQA<sup>25</sup> that projects consider cumulative impacts, and the cumulative impacts of global warming is not adequately considered.

##### 4.1 Mitigation Measures are inadequate and need to be strengthened

GHG mitigation measures are utterly inadequate. Mitigation measures neglect the most significant sources of GHGs and fail to account for even the most elementary of actions (DEIR, 3.6-26&27). For example:

- a. The truck “mitigation measure” (DEIR, MM AQ-2) “would not have a substantial impact on GHG emissions.” Yet the project makes no effort to incorporate cleaner truck technologies (like electric, hybrid, or natural gas) which could significantly reduce GHGs.
- b. Solar panels would be reviewed in the “future” rather than integrated into the design of the facility (DEIR, MM GH-2). The project accepts no responsibility for cleaner energy, offering only that POLA would consider it as a potential site for its solar inventory (This regular inventory and solar installations totaling 10 MW are actually required as a settlement<sup>26</sup> between POLA and the Attorney General). The project should integrate solar into the project design from the beginning rather than attempt to retrofit it at some unidentified future point. To avoid double-counting of mitigations, solar installation(s) at the SCIG site should be separate from POLA’s settlement requirements.
- c. The offer to recycle up to 60 percent of waste from “all buildings” does not even meet the city’s current diversion rate. In other words, BNSF could put its office paper and recyclables in any city trash receptacle and exceed the diversion rate it claims to be

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<sup>24</sup> CEQA Guidelines § 15126.4

<sup>25</sup> CEQA Guidelines § 15130

<sup>26</sup> Memorandum of Understanding Between the State of California, the Office of the Mayor of the City of Los Angeles, and the City of Los Angeles Harbor Department Creating A Partnership to Reduce Greenhouse Gases and Support the Port of Los Angeles Clean Air Action Plan.; available at:  
[http://ag.ca.gov/globalwarming/pdf/Port\\_of\\_Los\\_Angeles\\_Agreement.pdf](http://ag.ca.gov/globalwarming/pdf/Port_of_Los_Angeles_Agreement.pdf)

“mitigation.” Meanwhile it makes no mention of waste generated by operations outside its buildings.

- d. The DEIR offers to plant trees around the main administration building—without any specifics about location, quantity, purpose or type.
- e. There is no virtually no attempt to quantify GHG mitigations (except for the inclusion of CFLs in the administrative building, which would account for less than 0.1% of project GHG emissions (DEIR, 3.6-30)).
- f. Where lighting is concerned, CFLs are not even the most efficient lighting strategy; LED lighting is widely available and offers significantly more energy savings and electronic system management may yield even more efficiencies. Meanwhile there is no mention of the yard lighting, which is likely more energy intensive than the building lighting.
- g. There is no mention of heating and cooling systems.
- h. There is no mention of GHG reductions during construction activities.
- i. There is no commitment to offsetting unavoidable GHG emissions. Contrast that to the Port of Long Beach Pier S DEIR which sets a methodology that dedicates millions of dollars to offset GHGs (Pier S DEIS/DEIR, p 3.3-26).

## 5. HAZARDS AND HAZARDOUS MATERIALS (Chapter 3.7)

### 5.1 Concerns on Impact Risk 5b – “Operation at proposed project would not emit hazardous emissions or handle hazardous or acutely hazardous substances or waste within ¼ mile of existing or proposed schools.”

Impact Risk 5b assumes a minimal risk for the 5 adjacent schools. The analysis identifies 9,000 containers with hazardous materials moved through the Port of Los Angeles each year (DEIR, 3.7-2). It would probably be realistic to assume a similar number of containers containing hazardous materials moving through the Port of Long Beach.

- How many of these containers with hazardous materials are projected to be moving through this facility at full capacity?
- How does this increase the probability that significant spill would occur within ¼ mile of these schools?

While there is a discussion of risk while moving hazardous materials by truck, a similar discussion about moving hazardous material by rail seems to be missing in the analysis. The Press Telegram on 1/24/12 reported on a derailment and spill in the project neighborhood<sup>27</sup>. How frequent are spills in similar rail facilities? The report does not provide enough information to evaluate the risk to the schools from spills of hazardous materials.

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<sup>27</sup> Press-Telegram. Train derailment in harbor area prompts alert. January 24, 2011. Available at: [http://www.presstelegram.com/news/ci\\_19812672?source=rss](http://www.presstelegram.com/news/ci_19812672?source=rss)

5.2 The analysis fails to identify two schools within ¼ mile of the proposed project.

By our count the number of schools within a quarter of a mile of the project is 5 with a combined attendance of 5,900 students.

- a. Cabrillo High Schools with 3,400 students is adjacent the Terminal Island Freeway. Athletic field and classrooms are within ¼ mile of the proposed project.
- b. Stephens Middle School's fence line is next to the project north lead track and has 1,000 students in attendance.

There is no discussion in the DEIR of Stephens Middle School located next to the northern lead track. This school and surrounding residential neighborhoods will be subjected to extremely high levels of diesel exhaust because of locomotives using this lead to break trains entering and to assemble trains leading the proposed rail yard. The exhaust levels would be much higher than calculated due to locomotives that will be stopping, idling and changing directions next to this school and neighborhood. With 16 trains a day<sup>28</sup>, the exhaust and noise from the assembling and breaking down of trains will be ongoing. This would be in addition to the already existing exhaust and noise from the ICTF rail yard, recognized by CARB as one of the dirtiest rail yards in the state and also sitting next to this school and neighborhood. The DEIR does not provide any analysis of these hazardous emissions within a few feet of this school. Not only was the risk from these activities not analyzed but also the school was not even recognized as an impacted school within ¼ of a mile of the proposed project.

## 6. LAND USE (Chapter 3.8)

6.1 The DEIR Executive Summary is Misleading in its Description of the Existing Environmental Setting and Surrounding Land Uses, and Therefore Fails to Describe Indirect Impacts Increased Truck and Train Traffic will have on Nearby Schools and Residences

“An EIR must include a description of the physical environmental conditions in the vicinity of the project. . . . This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.”<sup>29</sup> Here, the discussion of the existing environmental setting, as described in the Executive Summary, the Introduction, and the Project Description, is vague, focusing on the fact that the area is zoned industrial, and large minimizing the nearby sensitive receptors, such as schools and parks. Only later, in discrete sections—land use, noise—are these uses described. Furthermore, the setting fails to include the use of existing spurs by the Project. The sections that are specifically intended to provide the reader with a description of the environmental setting must be updated in the final EIR to reflect the actual setting, so that the environmental effects can be more accurately evaluated.

In the Executive Summary and the Introduction, the DEIR describes the “general area” as: “characterized by heavy industry, goods handling facilities and port-related commercial uses consisting of warehousing operations, trucking, cargo operations, transloading, container and

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<sup>28</sup> Parsons Transportation Group. 2011. SCIG Rail Simulation Modeling Study. August 3, 2011. (DEIR, Appendix G2)

<sup>29</sup> CEQA Guidelines § 15125(a).

truck maintenance, servicing and storage, and rail service.” (DEIR, ES-4, 1-3.) This description of the “general area” ignores most of the uses just east of the project, which include residences, schools, parks, and places of worship, among other sensitive receptors.

Only later in the DEIR does it mention that the area is also a “single-family residential area, but it includes a high school, an elementary school, and a nursery school, as well as veteran’s housing and a medical center.” (DEIR, 2-7.) Even then, only a page later, when describing the area surrounding the north lead tracks, the DEIR states that “to the east is an industrial warehouse and single-family residences within the West Long Beach area.” This description ignores the fact that Stephens Middle School is less than 200 feet away, and Webster Elementary School only a little farther. (DEIR, 2-8, 3.1-3.) The DEIR also entirely fails to address (except for a brief mention in the Noise section) that the Mary McLeod Bethune Transitional Center is on the Southwest corner of Hudson Park, which itself is only 260 feet east of the Project site.

## 6.2 The DEIR Fails to Discuss Inconsistencies Between the Project and Its Direct and Indirect Impacts with Applicable Land Use Plans

The EIR must discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans, including, among others, land use and air plans.<sup>30</sup> Inconsistency with a single policy or goal of a general plan can be the basis for a finding of impacts under CEQA.<sup>31</sup> The DEIR concludes that this Project is not inconsistent with any relevant plan or zoning determination. (DEIR, 3.8-21-23.) This conclusion conflates zoning and land use designations, with the goals, policies, and requirements of the relevant general, community, and redevelopment plans. In fact, the SCIG Project is inconsistent with several plans’ policies and goals, including the City of Los Angeles General Plan, the City of Long Beach General Plan, the Wilmington-Harbor Community Plan, the City of Carson General Plan, and ....<sup>32</sup>

### a. Port of Los Angeles Plan

The Port of Los Angeles Plan is part of the Land Use Element of the Los Angeles General Plan; therefore, the Project must be consistent with the Port Plan. Yet, as the DEIR acknowledges, one of the “primary purposes of the Port of Los Angeles Plan” is to “contribute to a safe and healthful environment.” (DEIR, 3.8-8.) An important objective of the plan includes “Objective 6. To relocate hazardous and incompatible land uses away from adjacent residential, public recreational, and tourist areas when appropriate land areas for relocation become available.” (DEIR, 3.8-11.)

As described elsewhere in these comments, however, this Project, along with its rail spurs and attendant truck traffic, will create significant air, noise and traffic impacts, especially on very nearby (far less than 1,000 feet) schools, parks, a temple, residential areas, and other sensitive receptors. Even with proposed mitigation measures the DEIR admits these impacts will remain significant and unavoidable. (DEIR, 3.8-27.) The DEIR

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<sup>30</sup> CEQA Guidelines § 15125(d).

<sup>31</sup> See *San Bernardino Valley Audubon Soc’y, Inc. v. County of San Bernardino*, 155 Cal.App.3d 738, 753 (1984).

<sup>32</sup> Because this Project is at the intersection of many different community and redevelopment plans, it is crucial that the EIR analyze the Project’s inconsistency with each plan with the understanding that the policies of one plan must apply to the entire Project area. Otherwise, reading each plan in isolation ignores the real-world fact that all of the areas border and impact each other, and would allow each community to externalize its impacts on another area. (For instance, Wilmington might ignore its own objective to minimize industrial development near residences if the residences are in Long Beach.)

inexplicably ignores these important goals and objectives, and instead focuses on the ones with which the Project is consistent. To comply with CEQA, the DEIR must discuss the Project's clear inconsistencies with the Plan's goals and objectives, as only Port development projects must be consistent with the Port Plan. (DEIR, p. 3.8-12.)

b. City of Long Beach General Plan

The Long Beach General Plan states that “[f]rom an overall policy standpoint, Long Beach does not wish to host plants and processes which present a high risk for environmental damage or neighborhood disruptions of any kind.”<sup>33</sup> Still, the City of Long Beach does have some districts designated for heavy industrial facilities; however, as the DEIR notes, the area where the Project is located is designated 9R, which is “intended to attract and maintain businesses which conduct industrial or manufacturing operations primarily indoors, with limited outdoor appurtenant activities....Zoning regulations on industrial developments are of key importance in the 9R District, where they are designated to ensure compatibility within industrial areas and with neighboring, non-industrial uses.”<sup>34</sup> (DEIR, 3.8-14.) The General Plan gives examples of the types of businesses usually located in 9R Districts—“research and development firms, warehousing operating, small-scale incubator industries, and flexible space”—and notes that the 9R District “typically will include clean, non-nuisance industries whose primary activities are confined completely indoors and those whose operations produce minimal off-site impacts with respect to traffic, emissions, noise, operating hours, etc.”<sup>35</sup> Despite the facts that a the SCIG Project is vastly larger than the example 9R industries, that rail yard's primary industrial activity occurs outdoors, and that SCIG Project will produce significant, unmitigated emissions, noise, traffic, and other impacts, the DEIR concludes without analysis that the Project is consistent with 9R land use designation. This conclusion is odd, given that 9G General Industry Districts, which are “intended to provide areas where industrial and manufacturing operations incorporating more intense activities, including outdoor storage and controlled outdoor industrial operations, may locate,” would seem to be more appropriately geared toward railroads.<sup>36</sup> The EIR must include an analysis of the inconsistency of this Project and the underlying General Plan Land Use Designation.

Additionally, the Long Beach General Plan Air Quality Element lays out crucial policies for rail-related emissions: “Policy 4.2: Reduce the impacts of rail-related emissions on Long Beach neighborhoods and the downtown.”<sup>37</sup> Thus, the General Plan recommends actions such as:

- 4.2.1. Request that the railroad companies adhere to their promise to eliminate train idling adjacent to the West side neighborhoods.
- 4.2.2. Encourage the conversion of the rail fleet to cleaner burning fuels and cleaner engine technologies.
- 4.2.5. Support the realization of the Alameda Corridor and promote the use of alternative fuels where feasible, including rail electrification.

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<sup>33</sup> Long Beach General Plan, Land Use Element, p. 52, available at: [http://www.lbds.info/planning/advance\\_planning/general\\_plan.asp](http://www.lbds.info/planning/advance_planning/general_plan.asp).

<sup>34</sup> *Id.* at 52a.

<sup>35</sup> *Id.* at 71.

<sup>36</sup> *Id.* at 52a.

<sup>37</sup> *Id.*, Air Quality Element, p. 88.

Despite attempts at minimizing emissions and idling times, there is no way to avoid the fact that the trains will mainly run on diesel, and they will idle next to adjacent residential neighborhoods. (DEIR, 2-15.) The DEIR, therefore, must discuss these inconsistencies with the Long Beach General Plan and discuss any possible modifications to the Project to bring it more in line with the goals and objectives of the General Plan.

c. Wilmington-Harbor City Community Plan

The DEIR also ignored several objectives in the Wilmington-Harbor City Community Plan—objectives which apply even to industrial areas. These include, among others:

- 3-1.3. Require a transition of industrial uses, from intensive uses to less intensive uses, in those areas in proximity to residential neighborhoods
- 3-1.5. No container storage shall be permitted within 300 feet of any residential zone.
- 4-5. To ensure the accessibility, security, and safety of parks by their users, particularly families with children and senior citizens.
- 18-3. To assure that Port programs for land acquisition and circulation improvements will be compatible with and beneficial in reducing environmental impacts to surrounding communities caused by Port-related activities, as well as beneficial to the Port.

Though the surrounding sensitive land uses, including Hudson Park (merely 260 feet from the boundary of the Project), are in Long Beach, the Project will have “unavoidable” significant environmental impacts on surrounding residential neighborhoods, parks, and schools. (See e.g., DEIR, 3.8-31.) The DEIR, therefore, must discuss inconsistencies with these objectives.

d. City of Carson General Plan

Although the area in which the project is located within the City of Carson is zoned for Heavy Industrial use, the Project is inconsistent with the City’s goal of not located incompatible land uses near one another.<sup>38</sup> Several policies in the General Plan relate to this goal, including, among others:

- LU-7.4 Through the discretionary review process, ensure that the siting of any land use which handles, generates, and/or transports hazardous substances will not negatively impact existing sensitive receptor land uses.
- LU-7.6 Coordinate with adjacent landowners, cities and the County in developing compatible land uses for areas adjacent to the City’s boundaries.<sup>39</sup>

The DEIR must address the Project’s inconsistencies with these policies and overall goal of the Plan.

e. Redevelopment Plans

The SCIG Project abuts or is nearby several redevelopment areas in both Long Beach and in Wilmington. These include: The Central Long Beach Project Area, the North Long Beach Project Area, the West Long Beach Industrial Redevelopment Project Area,

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<sup>38</sup> Goal LU-7, City of Carson, General Plan, Land Use Element (2006), available at: <http://ci.carson.ca.us/CityDepartments/DevServ/GenPlan/LandUse.htm>.

<sup>39</sup> *Id.*

and the Los Angeles Harbor Industrial Center Redevelopment Project Area. The DEIR acknowledges this fact (DEIR, 3.8-5 – 3.8-8), but fails to analyze whether the Project is inconsistent with any of these plans or projects. The EIR must analyze any potential inconsistencies between the Project and any direct or indirect environmental effects and these redevelopment plans.

### 6.3 The Project is Inconsistent with School Siting Guidelines

The DEIR notes that the proposed Project site is within 1,000 feet of Hudson Elementary and Cabrillo High School, as well as only 260 feet from Hudson Park (a large park housing sports fields as well as other recreation areas), a Buddhist temple, and residential areas. (DEIR, 3.8-23.) The project is, in fact, only 310 feet from Hudson Elementary School and 280 feet from Cabrillo High School. (DEIR, Table 3.8-3.) “The UPRR San Pedro Branch rail line (the site of the proposed North Lead Tracks)” are less than 200 feet from Stephens Middle School and a residential area. (DEIR, 3.1-3.) Despite the close proximity of the project and the schools, the DEIR blithely asserts that the “Project would not be inconsistent with the *intent* of CARB and SCAQMD’s land use planning guidance related to siting new sensitive uses near industrial facilities, including rail yards, as it does not include the siting of any sensitive uses.” (DEIR, 3.8-24, *emph. added.*) The actual *intent* of the guidelines is to avoid siting industrial facilities and sensitive receptors in close proximity in order to prevent harming children’s health, and focusing on which came first is irrelevant. Indeed, the Project is entirely inconsistent with the intent of state and local policies for siting industrial and sensitive uses near each other. The DEIR thus fails to provide substantial evidence to support approval of the Project.<sup>40</sup>

As the DEIR acknowledges, CARB policy recommends against siting a school near a major rail yard within 1,000 feet of each other.<sup>41</sup> Los Angeles Unified School District’s policy is not to site schools within 1,500 feet of any active rail lines.<sup>42</sup> SCAQMD’s school siting guidance states:

*California law is very clear about separating sources of hazardous emissions, particularly those from mobile sources, from sensitive receptors at school sites. . . . Based on the recommendations from the above documents [CARB’s Air Quality and Land Use Handbook, PRC § 21151.8, California Senate Bill (SB) 352, SCAQMD’s Health Risk Assessment (HRA) CEQA guidance for diesel idling, California’s Office of Environmental Health Hazard Assessment (OEHHA) study, the California Department of Education (CDE) Site Selection and Approval Guide], a general buffer zone of no less than 500 feet (150 m), and possibly as much as 1,000 feet (300 m), between major roadways and school sites should be considered to protect the health*

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<sup>40</sup> With respect to schools, it is worth noting that CEQA also requires lead agencies of projects that may emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances to consult with any affected school districts. *Pub. Res. Code* § 21151.4; CEQA Guidelines § 1516(b). After reviewing the DEIR, Long Beach Unified School District opposed the project, stating: “WHEREAS, the SCIG Project is in a location close to sensitive receptors that will adversely affect the District’s students and staff as nearby schools include Webster Elementary, Garfield Elementary School, Muir Elementary School, Stephens Middle School, Hudson K-8 School, Cabrillo High School, Reid High School, and Bethune Transitional School; and WHEREAS, the SCIG Project EIR fails to adequately disclose significant project impacts. . . . That the Board of the District hereby formally opposes certification of the SCIG project EIR in its current form, and requests recirculation after completion of substantial revisions to ensure it adequately evaluates the environmental impacts on District students, staff and facilities.” <http://www.lbreport.com/schools/jan12/scigsku2.htm>

<sup>41</sup> California Air Resources Board, *Air Quality and Land Use Handbook*, Table 1-1, available at <http://www.arb.ca.gov/ch/handbook.pdf>.

<sup>42</sup> Los Angeles Unified School District (LAUSD), *Distance Siting Recommendations*. Revised 12/10/2008. [http://www.lausd-oehs.org/docs/Misc/DistanceCriteriaTable%20Rev12\\_10\\_08.pdf](http://www.lausd-oehs.org/docs/Misc/DistanceCriteriaTable%20Rev12_10_08.pdf).

*of students and school employees and meet state guidelines on location of mobile source emissions. New school sites should not be located closer than 1,000 feet (300 m) from other major mobile sources, and possibly further, depending on the source.*<sup>43</sup>

The DEIR states that AQMD's guidance suggests such mitigation as a vague "physical separation between sources and sensitive uses" (despite the fact that the document, in fact, recommends a specific distance), "pollution reduction features at the source," and "changing land use designations as necessary." (DEIR, 3.8-20.)<sup>44</sup> Strutting the fact that the railroad itself is located in an area zoned for industrial uses, the DEIR immediately dismisses this potential mitigation measure. The DEIR also contains no discussion about increasing the "physical separation" between the rail yard and the schools as potential mitigation either. Instead, the DEIR merely offers "the construction of sound walls as mitigation along the eastern side of the Terminal Island Freeway that would serve as a buffer for sensitive uses along the corridor," despite the fact that sound walls have not been proven to mitigate any impacts except noise.<sup>45</sup>

While CARB's and the SCAQMD's recommendations are due primarily to the severe health impacts from air emissions from railroads and rail yards, the California Department of Education and EPA policies take into account other factors in addition to air impacts, such as traffic and safety. The *California Code of Regulations, Title 5*, section 14010(d), established the following regulations pertaining to the proximity of schools to railroads:

*If the proposed site is within 1,500 feet of a railroad track easement, a safety study shall be done by a competent professional trained in assessing cargo manifests, frequency, speed, and schedule of railroad traffic, grade, curves, type and condition of track, need for sound or safety barriers, need for pedestrian and vehicle safeguards at railroad crossing, presence of high pressure gas lines near the tracks that could rupture in the event of a derailment, preparation of an evacuation plan. In addition to the analysis, possible and reasonable mitigation measures must be identified.*

Although the guidance documents and this code section apply to school siting, their logic and intent mean that that it should apply equally to siting of hazardous facilities near schools. Any other interpretation would be absurd and negate the clear priority of the state and local governments in protecting school children. Rather, the LAHD should be conducting a complete health risk assessment and a safety study in order to determine how best to mitigation the rail yard's impacts on the school children. Anything less violates the intent and spirit of state and local policy, and fails to provide substantial evidence to approve the project.

#### 6.4 The Impacts of the Tenant Relocations are Unclear

The DEIR notes that the proposed project "would result in the termination of current leases and in some tenants relocating to nearby sites. Other non-LA Harbor Dept land would require property acquisition by BNSF and the removal of existing businesses." (DEIR, ES-4.) While the

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<sup>43</sup> SCAQMD, Air Quality Issues in School Site Selection, Guidance Document (June 2005 revised May 2007), ES-3-4.

<sup>44</sup> These recommendations do not appear in the SCAQMD's school site selection guidance. It is unclear, then, where they came from, as there is no citation.

<sup>45</sup> The problems with the air quality mitigation measures are discussed elsewhere in these comments, and in comments submitted by the Natural Resources Defense Council and Coalition for Clean Air, and incorporated by reference herein.

DEIR states the sites to which some of the tenants would be relocated, it also states that “[o]ther potential relocation sites have not been determined.” (DEIR, 3.8-2.) Despite this uncertainty, the DEIR insists that “[n]o incompatibility with existing or planned land uses within or adjacent to tenant relocation areas would occur.” (DEIR, 3.8-21.) This assertion is based on very general assumptions, such as that the “displaced businesses for which no relocation sites were identified as part of the proposed Project or during the time of this analysis are assumed to likely move to other compatible areas in the general port vicinity,” likely “within a 25-mile radius of the Port of the Los Angeles.” (DEIR 3.8-27 – 3.8-28.) The 25-mile vicinity of the Port consists of a large variety of land uses. Such generalized and unsupported assumptions cannot provide the necessary analysis of the indirect environmental impacts of the Project.

## 7. Noise (Chapter 3.9)

7.1 Section 3.9.1 - Introduction, the DEIR fails to mention that the Cities of Los Angeles, Long Beach and Carson Noise Ordinances, County, State and Federal Agency Standards do not meet current World Health Organization (WHO) Guidelines for Community Noise and the American National Standards Institute (ANSI) ANSI S12.60-2002 Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools and that there are sensitive receptors in the City of Carson and other cities who will be impacted by noise from the BNSF SCIG Facility.

In 3.9.1 Introduction, the DEIR fails to disclose that the Cities of Los Angeles, Long Beach and Carson Noise Ordinances, County, State and federal Standards do not meet current World Health Organization (WHO) Guidelines for Community Noise<sup>46</sup> and the American National Standards Institute (ANSI) ANSI S12.60-2002 Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools<sup>47</sup>. There guidelines and standards provide the maximum protection of public health and children from noise.

In 3.9.1 Introduction, the DEIR fails to disclose that there are sensitive receptors in other cities and counties, including the City of Carson, who will be impacted by noise from the BNSF SCIG Facility and its supporting train and truck transportation corridors. Carson and other city and county elected officials, appointed Commissioners, residents and workers who would begin to read this introduction could easily get the impression that there was no noise impact to Carson. This is particularly relevant because a conclusion can be drawn that if there is no noise impact there would be no noise health impact and therefore no required mitigation, which is not accurate. The BNSF SCIG Facility noise from train and truck freight transportation corridors will cause increased noise and increased health impacts to Carson and numerous other transportation corridor residential communities.

We therefore request that:

- a. the noise standards for the POLA BNSF SCIG Project comply with the World Health Organization (WHO) Guidelines for Community Noise and the ANSI S12.60-2002 Table 1 pg. 5 for Learning space 35dBA.

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<sup>46</sup> World Health Organization (WHO), Guidelines for Community Noise, 1999, available at <http://www.who.int/docstore/peh/noise/guidelines2.html>

<sup>47</sup> American National Standards Institute. (2002). *Acoustical performance criteria, design requirements, and guidelines for schools* (S12.60-2002); available at <http://www.caspla.ca/PDF/noise%20in%20classroom/ASA%20Acoustic%20requirements%20for%20schools.pdf>

- b. all proposed and incorporated mitigation meet the requirements of the World Health Organization (WHO) Guidelines for Community Noise and the American National Standards Institute (ANSI) ANSI S12.60-2002, Table 1 pg. 5 for Learning space 35dBA.
- c. the DEIR, through full disclosure, include an assessment and listing of all impacted communities that will be impacted by the project site and adjoining train and truck transportation corridors.

7.2 Section 3.9.2.1.3 - Human Responses to Noise, the DEIR states that the "World Health Organization and the USEPA consider LAeq = 70 dB (A) to be a safe daily average noise level for the ear," which is incorrect.

In 3.9.2.13 Introduction, the DEIR fails to disclose that the World Health Organization (WHO) recommends in its "Guideline values for community noise in specific environments." Table 4.1 page 47 of the Guidelines for Community Noise report that safe ranges for specific environments should be in the LAeq 30dBA < - 55 < dBA. We request that the DEIR include the World Health Organization (WHO) recommended "Guideline values for community noise in specific environments."<sup>48</sup>

7.3 Section 3.9.2.1.3 - Human Responses to Noise, the DEIR states that the "Research into these potential effects is still in its early stages, and there is not yet enough information to permit an evaluation of an individual project's impacts on public health," which is not true.

There is an abundance of scientific medical research that the DEIR failed to research, reference, include and acknowledge. The DEIR failed to acknowledge that the Port of Los Angeles and BNSF Railway failed to sponsor additional research and assessments which would have disclosed a projects impacts on public health.

- We request that the DEIR include additional Port of Los Angeles and BNSF Railway public health studies and assessments.
- We further recommends that a Health impact Assessment be included in the DEIR to additionally address this unacknowledged and unmitigated issues.

7.4 Section 3.9.2.1.4 - Sound Propagation, discusses sound propagation and states that research by Caltrans and others has shown that atmospheric conditions can have a profound effect on noise levels. Wind, vertical air temperature gradients, humidity and turbulence all affect noise propagation, but fails to clearly disclose that these conditions will make sound higher than normal and therefore have more significant negative impacts on public health.

The DEIR intentionally fails to accurately characterize the negative impacts of noise and conditions in which noise levels would be higher than normal. The DEIR further fails to disclose that these conditions are frequent and would increase the referenced estimates of both level of sound and duration of sound. The Port of Los Angeles harbor area has regular and long time atmospheric low inversion layers which would propagate and attenuate noise over longer distances.

- We therefore requests that the DEIR include accurate characterizations of noise from all sources and probable attenuations of noise.

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<sup>48</sup> WHO (1999), Table 4.1 page 47.

- We further requests that all increased noise estimates be included in the DEIR data and mitigated.

7.5 Section 3.9.2.3 - Existing Noise Environment, discusses local and surrounding noise but fails to include all noise sources in its list.

While the DEIR provides a list of typical and local noise sources, it fails to list all noise sources, both locally and regionally, such as:

- Off-Port Tidelands Property - Truck Transportation Corridors
- Off-Port Tidelands Property - Container Storage Yards
- Off-Port Tidelands Property - Chassis Storage Yards
- Off-Port Tidelands Property - Container Inspection Facilities
- Off-Port Tidelands Property - Fumigation Facilities
- Off-Port Tidelands Property - Truck Fuel/Gas Stations
- Off-Port Tidelands Property - Truck Maintenance Garages
- Off-Port Tidelands Property - Truck Storage Areas
- Off-Port Tidelands Property - Truck Staging Areas
- Off-Port Tidelands Property - Truck Lunch/Rest Stop Areas
- Off-Port Tidelands Property - Truck Idling Locations i.e. bridges & intersections
- Off-Port Tidelands Property - Truck Detour Locations
- Off-Port Tidelands Property - Train Transportation Corridors
- Off-Port Tidelands Property - Train Idling Locations
- Off-Port Tidelands Property - Train Stop Locations

We therefore requests that the DEIR include all typical, local and regional noise sources and include a noise impact assessment of all sources both locally and regionally and that they be mitigated.

7.6 Section 3.9.2.3 - Existing Noise Environment, the DEIR states that Noise-sensitive receivers are located near the proposed Project site and along the designated truck routes and rail segments that serve the proposed Project site, but fails to accurately identify those impacted.

The DEIR states that noise-sensitive receivers are located near the proposed Project site and along the designated truck routes and rail segments that serve the proposed Project site but fails to identify all the areas impacted and also states that, "*although a portion of the proposed Project is located within the City of Carson, there are no noise sensitive receivers within the City of Carson that are directly exposed to the proposed Project.*" (DEIR, F1-9) This is not true because the trains leaving the BNSF Facility will travel north passing Carson residential communities and other transportation city communities. In addition, trucks traveling to the Port of Los Angeles and leaving at the end of the day will travel through Alameda Street and other local streets and transportation corridors to go home. GPS units will not be used for trucks arriving at the Ports in the morning and leaving the BNSF Facility at the end of the day.

- We therefore requests that the DEIR include accurate information of impacted residents and sensitive receptors.
- Additionally, we requests that the DEIR include all typical, local and regional noise sources and include a noise impact assessment of all sources both locally and regionally and that they be mitigated.

7.7 Section 3.9.2.3.1 - Sensitive Receivers in Long Beach, discusses sensitive receivers but fails to state that noise studies conducted did not measure long term continuous public exposure, high frequency loud noise and low frequency noise sound levels up to 3 miles distance from the project site, other off-site truck destinations and transportation corridors the normal audible distance of sound.

- a. The DEIR discusses sensitive receivers in Long Beach, Leq and CNEL noise levels but fails to state that Leq and CNEL noise levels are not adequate to measure long term continuous public exposure to noise, high frequency loud noise and low frequency sound levels up to 3 miles from the project site, other off-site truck destinations and transportation corridors which is the normal audible distance of sound. The DEIR fails to neither distinguish between day noise and night noise nor mention that all referenced sound levels do not comply with adopted night time standards and recommended guidelines. Failure to distinguish this information gives decision makers and the public the impression that these noise levels are acceptable since they are not red flagged.
- b. The DEIR fails to state that the measured sound levels fail to comply with the Los Angeles Noise Ordinance.<sup>49</sup>
- c. The DEIR fails to state that the measured sound levels fail to comply with the recommendations of World Health Organization – Guidelines for Community Noise, Table 1 & Table 4.1 Guidelines Values for Community Noise in Specific Environments – Specific Environment: Inside Bedrooms 30dBA, Preschool Sleep 30dBA and School Class Rooms 35dBA the American National Standards Institute (ANSI) ANSI S12.60-2002 Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools.
- d. The DEIR further fails to comply with the World Health Organization – Guidelines for Community Noise, 4.2.3 Sleep Disturbance Effects states, “For noise with a large proportion of low frequency sounds a still lower guideline lower than 30dBA is recommended,” and “Since A-weighting underestimates the sound pressure level of noise with low frequency components, a better assessment of health effects would be to use C-weighting.”

We therefore request that:

- the DEIR include a study and assessment of long term continuous public exposure to noise, high frequency loud noise and low frequency sound levels measurement up to 3 miles from the project site, other off-site truck destination locations and transportation corridors which is the normal audible distance of sound.
- the DEIR clearly state that referenced and recorded sound level measurements do not comply with the Los Angeles Noise Ordinance Standards or the World Health Organization – Guidelines for Community Noise.
- all noise impacts be mitigated to less than significant as required by CEQA.

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<sup>49</sup> Chapter XI Noise Regulation, Article 1 General Provisions Sec. 111.00 Declaration of Policy and Sec. 111.03 Minimum Ambient Noise Level Table II Zone A1, A2, RA, RE, RS, RD, RW1, RW2, R1, R2, R3, R4, R5 Presumed Ambient Noise Level Day dBA 50 and Night 40dBA and Article 6 General Noise Sec.116.01 Loud, Unnecessary and Unusual Noise.

7.8 Section 3.9.2.3.10, Existing Classroom Noise Reduction Measurements, failed to test for all sound conditions such as long term continuous noise, high frequency loud noise and low frequency sound levels.

The DEIR discusses existing traffic noise but fails to include information of measured noise levels at the peak container traffic months, failed to measure long term continuous public exposure noise levels, high frequency loud noise and low frequency noise sound levels up to 3 miles distance from the project site, other off-site truck destinations and transportation corridors the normal audible distance of sound.

The DEIR fails to state that the measured sound levels fail to comply with the recommendations of World Health Organization – Guidelines for Community Noise, Table 1 & Table 4.1 Guidelines Values for Community Noise in Specific Environments – Specific Environment: Inside Bedrooms 30dBA, Preschool Sleep 30dBA and School Class Rooms 35dBA and the American National Standards Institute (ANSI) ANSI S12.60-2002 Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools, Table 1 pg. 5 for Learning space 35dBA.

We therefore request that the DEIR include a long-term noise studies and the level study period be a minimum 30 days and 24/7hrs.

7.9 Section 3.9.3.6 - Sleep Disturbance and Speech Intelligibility, only references train noise and fails to include truck noise, other off-site truck destinations facility noise, transportation corridors noise and public health impacts.

The DEIR discusses increased community reaction to rail noise but fails to state clearly that all residential communities that border the port, other off-site truck destinations facilities, transportation corridors and other off-port tidelands property vehemently hate the Port of Los Angeles, ACTA and railroad companies noise and oppose the BNSF SCIG Project Proposal which will generate additional noise.

The DEIR also fails to discuss the public health impacts of noise other than sleep disturbance and speech intelligibility.

- We therefore request that the DEIR include and identify all typical, local and regional noise sources and include a noise impact assessment of all sources both locally and regionally.
- Additionally we requests that the DEIR include and discuss all short and long term public health impacts from noise and that they be mitigated.

7.10 Section 3.9.3.6.1-2 - Sleep Disturbance and Speech Inference, the DEIR fails to reference relevant sleep disturbance and speech inference scientific medical noise studies and fails to reference current scientific medical studies after 1995.

The DEIR writers have intentionally omitted relevant scientific medical noise studies and failed to reference current scientific medical studies after 1995. We therefore ask that the DEIR

include relevant sleep disturbance and speech interference scientific medical noise studies and current scientific medical studies after 1995 through 2011.

7.11 Section 3.9.4 - Impacts and Mitigation Measures, fails to include a discussion on the legal requirements of CEQA to assess all direct and indirect secondary noise impacts and mitigate all noise impacts to less than significant.

The DEIR fails to discuss the legal requirements of CEQA to identify and assess all direct and indirect secondary noise impacts and to mitigate all noise impacts to less than significant. We therefore request that the DEIR discuss the legal requirements of CEQA for EIR's to identify and assess all direct and indirect secondary noise impacts and to mitigate all noise impacts to less than significant.

7.12 Section 3.9.4.1 - Methodology, fails to discuss long term continuous public exposure, high frequency loud noise and low frequency noise sound levels up to 3 miles distance from the project site. References the CERL but provides no evidence it was used in the DEIR.

- a. The DEIR discusses that the Construction Engineering Research Laboratory (CERL) methodology that was used but provides no evidence that it was in fact used. The DEIR fails to disclose that CERL is a division of the US Army Corp of Engineers and that 90%+ of its work applications are military related. The DEIR Chapter 3.9 Noise and Appendix F1 SCIG Noise Study fail to reference the claimed methodology that was used. We do not know if it was a computer model, test method or other.
  - We therefore request that the Port verify what CERL methodology was used and what data was obtained and used.
- b. The DEIR references the use of the Cadna Noise Model (DEIR, F1-73) and we would like to know why they chose this software program vs. SoundPlan which is used by 90% of American Acoustical Engineering Companies. Additionally, what are the distinguishing benefits?
- c. The DEIR discusses existing traffic noise but fails to include information of measured noise levels at the peak container traffic months, failed to measure long term continuous public exposure noise levels, high frequency loud noise and low frequency noise sound levels up to 3 miles distance from the project site, other off-site truck destinations and transportation corridors the normal audible distance of sound.

7.13 Section 3.9.4.2 - Thresholds of Significance, fails to acknowledge that the World Health Organization Guidelines for Community Noise Report Table 4.1 "Guideline values for community noise in specific environments" contains the best recommendations to protect public health and children of which the DEIR fails to incorporate.

- a. The DEIR fails to acknowledge that all stated thresholds do not comply with the World Health Organization Guidelines for Community Noise Report Table 4.1 "Guideline values for community noise in specific environments" and the American National Standards Institute (ANSI) ANSI S12.60-2002 Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools, Table 1 pg. 5 for Learning space 35dBA.

- b. The DEIR fails to state that all stated thresholds would be exceeded significantly higher than those quoted, therefore presenting a greater public health risk and hazard.
- c. The DEIR tries to piece meal information and diminish public health impacts by trying to impose different and less stringent noise standards for the cities of Long Beach and Carson who are impacted by the City of Los Angeles project.
- d. The DEIR makes a claim that there is no conclusive data to establish a proven statistical relationship between noise and the ability of children to learn in the classroom, when in fact the DEIR contains no recent research studies earlier than the year 1995 and does not include sufficient international research studies. The DEIR fails to state that the Port of Los Angeles and BNSF Railway have failed to sponsor research that would provide this information.
- e. The DEIR uses incomplete and inaccurate information, assessments, data and assumptions in order to dismiss noise impacts, diminish noise impacts and avoid required mitigation measures.

7.14 Section 3.9.4.3 - Impacts and Mitigation

- a. NOI-3 - The proposed Project would have a significant impact on noise levels, but the noise levels would be higher than claimed, for longer duration, lower frequency, from other off-site sources and can be mitigated.

The DEIR discusses noise levels but fails to discuss circumstances why noise would increase from trains, trucks and equipment. The DEIR fails to mention that train lengths have been continuously increasing over the past 40 years and an increased need for additional locomotives and larger locomotive engines to pull the weight which will generate higher noise levels.

The DEIR references day noise levels when in fact trains will operate 24hrs., nights, weekends, holidays and exceed night and weekend noise standards and guidelines.

The DEIR fail to state that trucks and trains carrying empty containers or no containers makes more noise than loaded containers, therefore increasing the estimated noise levels.

The DEIR fails to identify and list all noise sources, both locally and regionally, such as:

- b. NOI-5 - Exposure to exterior noise levels from the proposed Project during school hours will result in increased noise levels due to underestimated sound levels and failure to identify and assess all noise sources.

The DEIR fails to acknowledge that train and truck transportation corridors are part of the project. The DEIR fails to disclose that CEQA requires the identification and assessment of all direct and indirect secondary noise sources related to the project.

The DEIR fails to state that the measured sound levels fail to comply with the recommendations of World Health Organization – Guidelines for Community Noise, Table 1 & Table 4.1 Guidelines Values for Community Noise in Specific Environments – Specific Environment: Inside Bedrooms 30dBA, Preschool Sleep 30dBA and School Class Rooms 35dBA and the American National Standards Institute (ANSI) ANSI S12.60-2002 Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools, Table 1 pg. 5 for Learning space 35dBA.

The DEIR fails to disclose that Wilmington Park Elementary School and Apostolic Faith Academy are near the Alameda Corridor, Pacific Coast Hwy. and Anaheim Street.

- c. MM NOI-1 - The proposed sound wall is not adequate to provide maximum noise reduction at the proposed location and is proposed for only one location when it should also be applied to other impacted locations.

The DEIR proposes only one sound wall location when sound walls should also be constructed along all train and truck transportation corridors, especially where schools and other sound source locations will impact other sensitive receivers. This includes transportation corridors near Wilmington Park Elementary School and Apostolic Faith Academy.

The DEIR proposes only one sound prevention method for this residential location, when there are a variety of sound prevention, reduction and suppression mitigation methods available such as sound proof doors, windows, curtains and sound proofing walls and attics.

The DEIR failed to identify all noise sources and assess long term continuous public exposure to noise, high frequency loud noise and low frequency sound levels.

The DEIR failed to identify all impacted sensitive receivers locations such as Wilmington Park Elementary School, Wilmington Park Child Care Center, Mahar House, Apostolic Faith Academy and Apostolic Church etc..

Sound proofing materials shall have an STC Rating of 80 or above and as a minimum include ceilings, walls, doors, windows and attics as necessary to meet ASTM E-90: Standard Method for Laboratory Measurement of Airborne Sound Transmission, ASTM E413 Classification for Rating Sound Insulation and ASTM E1332 Standard Classification for Rating Outdoor-Indoor Sound Attenuation.

- d. MM NOI-2 - The proposed noise control measures are not adequate to mitigate all noise impacts.

- The proposed construction hours are unacceptable.
- The proposed temporary noise barriers should include sound suppression methods on operating equipment, classrooms, buildings, residential homes and all sensitive receiver locations.

- The proposed construction equipment mitigation fails to identify what methods shall be used to muffle sound and what criteria equipment shall be required to be maintained.
  - The proposed idling prohibitions fail to disclose how idling will be monitored, enforced and what penalties shall be imposed for non-compliance.
  - The proposed equipment location information fails to disclose how it will be monitored, enforced and what penalties shall be imposed for non-compliance.
  - The proposed quiet equipment selection information fails to require the research, assessment, preparation and identification of a quiet equipment list. A contractor will use the excuse that what they have is what they will use and anything other than that will be cost prohibitive or will take time to research
  - The proposed notification is inadequate because it fails to state how residents will be notified, what frequency and in what language. Writing can be a post card with little information vs. a detailed multipage brochure. It also fails to describe how many people will be notified and the distribution of the notification. Past Port of Los Angeles notifications have been unacceptable. A one-time notification during a 3 year construction time period is unacceptable. Advertising only in a major regional newspaper is unacceptable.
  - The potential use and need of portable generators should be identified in advance and the use of near noiseless generators should be identified in advance.
  - The noise complaint process is unacceptable. Posting information at the construction site is only the minimum way for a resident to find information and file a complaint.
- 7.15 Section 3.9.4.4 - Summary of Impact Determinations, conclusion is incomplete, inaccurate assessment, fails to acknowledge and incorporate the best public health standards and guidelines and fails to mitigate all noise impacts to less than significant as described in these public comments.
- 7.16 Section 3.9.4.5 - Mitigation Monitoring's conclusion is incomplete, inaccurate assessment, fails to acknowledge and incorporate the best public health standards and guidelines and fails to mitigate all noise impacts to less than significant as described in these public comments.
- 7.17 Section 3.9.5 - Significant Unavoidable Impacts' conclusion fails to acknowledge that significant unavoidable impacts will occur during both daytime and nighttime which can be mitigated to less than significant as described in these public comments.

## 8. TRANSPORTATION / CIRCULATION (Chapter 3.10)

Despite the claims the proposed project will have no impact, we find the following inconsistencies in the assumptions and also the findings.

### 8.1 Inadequate traffic study

The baseline for a CEQA analysis is generally the date of the Notice of Preparation, which was 2005.<sup>50</sup> Here the traffic studies that back up the CEQA baseline were conducted in 2007 and 2009. Moreover, the traffic counts were conducted on a total of two days in the winter, hardly a representative sample. Moreover, the DEIR consultants did not obtain precise data on truck movements from the largest truck operator on site in 2005: Cal Cartage. Cal Cartage's data for 2006 shows that the traffic baseline in the DEIR has been grossly inflated. Meanwhile, the DEIR understates the ongoing emissions of current tenants of the site. It assumes that emissions from current tenants, which are included in the baseline, simply vanish when these businesses are displaced. For example, though it currently operates on 104 acres, "California Cartage would be relocated to the 10-acre site and would retain the current [19] acre parcel on SCE land, comprising a total of 29 acres. All future year activities of California Cartage ... were assumed to be scaled down by 72 percent..." (DEIR, 3.2-29). For five of the nine current tenants, no continuing operations are calculated—perhaps they simply go out of business.

### 8.2 Inadequate assessment of regional traffic

The DEIR fails to adequately assess the changes in the regional rail system due to the increase in trains generated from the SCIG into the East-West rail corridors. The increase of train traffic generated by the SCIG project could have an effect on commuter rail that share the East-West corridor in terms of rail capacity and commuter train delays. The Proposed Project's Trans-5 (DEIR, ES-69, Trans-5) states that "project operations would not cause an increase in rail activity, causing potential delays in regional traffic", yet the DEIR fails to analyze the impacts on commuter rail delays and the potential delay on regional traffic due to a shift from rail commuters to single on-road vehicle commuters.

### 8.3 Regional Impacts, Air Quality and Circulation

The Goods Movement system in the southern California region, specifically in the Southern California Associations of Governments (SCAG) region and outlined in the Goods Movement Action Plan<sup>51</sup>, involves a series of projects, and as such, the broad system as a whole should be connected and analyzed in the DEIR. As each and every one of these projects impacts the other, all the projects need to be considered cumulatively as well as their impacts to the local community, region, and the rest of the projects in the system.

#### a. Inconsistency Between SCIG and BNSF Hobart

Although truck traffic and the associated impacts related to the Hobart Yard are included in the proposed project's baseline, the full impacts of this change in operations at the Hobart Yard due to this project as not been fully analyzed. There will be two shifts occurring at the Hobart yard if this project is approved. The first shift would be diverting international containers from Hobart to SCIG. The second shift would be increasing capacity at Hobart for domestic containers and the associated traffic. The DEIR includes the change shift in operations from the Hobart yard, to SCIG, however, it does not include the associated projections from future truck traffic related to the shift in

<sup>50</sup> CEQA Guidelines §15126.2(a)

<sup>51</sup> Business, Transportation and Housing Agency and California Environmental Protection Agency. 2007. Goods Movement Action Plan. Available at: <http://www.arb.ca.gov/gmp/docs/gmap-1-11-07.pdf>

operations at the Hobart. To capture the true impacts of the proposed project, the DEIR needs to examine the shifts in traffic related to the classification shift to the Hobart yard associated with the SCIG project proposal. Since the Hobart yard is clearly associated to this SCIG proposed project, the associated shifts in their operation need to be included in the full environmental analysis. Without a comprehensive analysis of the shift in operation of the Hobart yard due to the SCIG project, the DEIR fails to support the claims that the SCIG will replace trucks on the 710 and reduce truck traffic to the Hobart yard. The SCIG project will have an impact that must be part of the local and regional analysis in terms of traffic circulation, air quality, and health impacts.

Again, although truck traffic to the Hobart Yard is included in the baseline, it is not included in projections of future truck traffic. This could only be valid if BNSF committed never to truck cargo to the Hobart Yard in the. This error concerning the Hobart Yard, combined with the improperly high baseline, makes the entire traffic analysis completely flawed. Unfortunately, it is also the basis of false claims that the SCIG will take trucks off the 710.

b. Inconsistency between SCIG and the 710 project

The SCIG DEIR claims that the project will take two million truck trips per year off the I-710 Freeway. However, CalTrans is preparing a DEIR on a greatly expanded I-710, in which it claims it necessary to handle increased truck traffic from the ports to the off-dock rail yards. This inconsistency needs to be clarified and supported within the DEIR.

c. Regional impacts for locomotive maintenance

The increase in locomotive traffic is included as part of the proposed project's DEIR. The status-quo for class-1 rail yard and locomotive operation states that maintenance is required for all outgoing locomotive units (load-testing, diagnostics and repair) from the region. With an increase in locomotive traffic produced by the proposed SCIG project, and the associated increase of maintenance emissions due to the load testing, the probability of increased local and regional air pollution and health impacts is certain. The SCIG DEIR fails to analyze the impacts to the local communities and of the region from increased maintenance operation due to the increase locomotive traffic into the region from the Proposed SCIG project. Specifically, the SCIG DEIR fail to analyze the impacts to the Sheila maintenance yard and or any other maintenance facilities servicing locomotives related to the SCIG.

8.4 Inadequate emergency access assessment

The DEIR fails to fully study the impacts related to emergency access, specific to the Villages of Cabrillo from the Village from the Villages of Cabrillo's main entrance at San Gabriel Ave. and Pacific Coast Highway to San Gabriel and West 20<sup>th</sup> Street. (DEIR, ES-69, Proposed Project Trans-7).

## **9. CHAPTER 4: CUMULATIVE ANALYSIS**

### 9.1 Cumulative Impacts in the CEQA Process

CEQA requires "the lead agency [to] consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. 'Cumulatively considerable' means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects

of probable future projects.”<sup>52</sup> The cumulative impacts analysis under CEQA requires a 2-step analysis: (1) determine whether the combined effects from both the proposed project and other projects would be cumulatively significant; and (2) if found to be significant it must be determined whether “the proposed project’s incremental effects are cumulatively considerable.”<sup>53</sup> This discussion of cumulative impacts in an EIR “shall reflect the severity of the impacts and their likelihood of occurrence. . . . The discussion should be guided by standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact.”<sup>54</sup>

### 9.2 Inadequacies of Cumulative Impacts Analysis for the SCIG Project

The SCIG EIR fails to adequately discuss cumulative impacts, particularly with respect to air quality, secondary impacts to surrounding land uses, and traffic.

### 9.3 Air Quality

The DEIR acknowledges that the South Coast Air Basin (SCAB) is a nonattainment area for O<sub>3</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> and a maintenance area for CO (DEIR, 4-24). Although extensive dispersion modeling has not occurred, the DEIR states previous work with large projects in the SCAB indicates that there would be a significant impact on threshold levels for NO<sub>x</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub>. While it is commendable that the DEIR acknowledges a significant cumulative impact on these criteria pollutants, actual air modeling is necessary to determine the extent of the impact and suggest appropriate mitigation measures.

The DEIR states that:

*In the time period between 2013 and 2015, several large construction projects will occur at the two ports and in the surrounding areas (see Table 4-1), including several container terminal redevelopments and a major highway and bridge project, that will overlap in time, and a number of smaller commercial and residential projects are or will be under construction as well. . . . / Emissions from proposed Project construction would exceed SCAQMD significance criteria for VOCs, CO, NO<sub>x</sub>, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>; accordingly, there would be increases in criteria pollutants for which the region is in non-attainment (PM<sub>10</sub> and PM<sub>2.5</sub>). These emissions, when combined with emissions from the other concurrent construction projects, would make a cumulatively considerable contribution to a significant cumulative impact for PM<sub>10</sub> and PM<sub>2.5</sub> emissions. (DEIR, 4-24)*

First, it appears (though is not supported by any modeling) that the construction impacts from the Project will make a cumulatively considerable contribution to a significant cumulative impact for other criteria pollutants in addition to PM<sub>10</sub> and PM<sub>2.5</sub>, including O<sub>3</sub>, for which the SCAB is also out of attainment. Second, the DEIR acknowledges that operational cumulative impacts for NO<sub>2</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> would be cumulatively significant. CEQA requires the lead agency to analyze a proposed project’s potentially significant cumulative impacts and “examine reasonable, feasible options for mitigating or avoiding the project’s contribution to any significant cumulative effects.”<sup>55</sup> The proposed mitigation (on-site sweeping) for operation-related

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<sup>52</sup> CEQA Guidelines § 15064(h)(1).

<sup>53</sup> *Communities for a Better Environment v. California Resources Agency* (3d Dist. 2002) 103 Cal. App. 4<sup>th</sup> 98, 120.

<sup>54</sup> CEQA Guidelines, §15130(b).

<sup>55</sup> CEQA Guidelines § 15130(b)(5).

cumulative impacts, however, is an entirely inadequate attempt to remedy this significant contribution to cumulative air pollution.

a. On-Road Traffic Impacts

The DEIR assumes that CO will decrease due to the switch to cleaner fuels for car traffic. While the CEQA guidelines and case law acknowledge that cumulative impacts analyses do not need to be exhaustive, they must be complete. Although information can be drawn from both past and future projects, the DEIR should be able to give alternative scenarios as well. The DEIR makes the sweeping assumption that, as a society, we are moving toward cleaner fuel, stricter emission rules, and newer, more fuel efficient cars replacing current cars. If all of these rosy predictions do occur the cumulative impact will be decreased. The DEIR must also address, however, the cumulative impacts in alternative scenarios in which either these predictions do not materialize, or they do not result in decreased impacts (for instance, if increased population, traffic, and vehicle miles traveled offset the emissions controls).

The EIR also looks at the cumulative impact of growth in traffic. According to the report there is no any significant hot spot impact for the project operation because CO standards would be upheld and traffic would be decreased. There is no further explanation as to how the traffic would decrease in the area other than this simple, conclusory statement. (DEIR, 4-27). The cumulative impact analysis “must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them.”<sup>56</sup> Conclusory statements about cumulative impacts do not help provide adequate information on a proposed project. Rather, the DEIR should provide meaningful and reliable supporting data and evidence for its cumulative impacts analysis, including for its conclusion that traffic will decrease.<sup>57</sup>

9.4 Operation of Proposed Project Contributes to Objectionable Odors at Nearby Sensitive Receptors

The DEIR recognizes that there are different sources of odors in the area. Some of the strongest odors originate from diesel. Due to the large amount of industrial operations in the area diesel emissions are a prevalent pollutant. It is, therefore, unclear why the DEIR would conclude: “Given the proposed Project’s distance from sensitive receptors (more than 300 feet) and the localized nature of the emissions, Project operations would not result in cumulatively considerable contributions to a significant cumulative odor impact within the Project region.”<sup>58</sup>

Additionally, research has clearly demonstrated that diesel is a carcinogen. Although the DEIR includes some discussion of the cancer risks in the port area and even references the MATES II studies that support high cancer rates, it does not state that diesel is a carcinogen. While the Clean Air Action Plan (CAAP) hopefully will decrease the risk, there is still considerable uncertainty as to the type of reductions the CAAP will make. Nevertheless, the DEIR concludes that the SCIG project does not require mitigation for diesel “because the proposed Project would not make a cumulatively considerable contribution to an existing cumulatively significant impact.” (DEIR, 4-29.)

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<sup>56</sup> *Mountain Lion Coalition v. Fish and Game Comm’n* (1989) 214 Cal.App.3d 1043, 1051.

<sup>57</sup> *Laurel Heights*, 47 Cal.3d at 398. It is up to the agency to educate itself about potential methodologies that could be used to study environmental impacts.

<sup>58</sup> DEIR 4-28

As with the cumulative traffic impacts above, the DEIR concludes that the cancer risk in the area will be mitigated by present and future policies that are/will be implemented in the port area to decrease diesel emissions. Unfortunately, there is no analysis of the cumulative impacts in any alternative scenarios (in the event these diesel reduction programs are not implemented or continued). In order to comply with CEQA the FEIR should include further information, rather than merely optimistic aspirations, to support its analysis.

#### 9.5 Greenhouse Gases

Projects in the area generate a high level of GHG emissions, and the Project will contribute to these emissions. (DEIR 4-42 and 43) There is deep concern amongst community residents regarding an increase of GHG emissions. The DEIR acknowledges that the Project will significantly contribute to the cumulative emissions of GHGs. The mitigation measures, however, lack the “relevant detailed information” required by CEQA. For instance, the DEIR should provide more concrete detail regarding types of energy efficiency projects the LA Harbor Department plans.

#### 9.6 Transportation and Circulation

The DEIR discusses at length future intersection traffic volumes. These numbers were developed based on SCAG socioeconomic projects for the years 2008, 2014 (used for 2016), 2023, and 2035. According to the DEIR, to “analyze impacts accurately it is necessary to project future Project traffic and its distribution on the road network for each analysis year. That analysis includes accounting for cargo growth at the marine terminals in the two ports, since a portion of that cargo would be conveyed to and from the Project.” (DEIR, 4-60)

In discussing the growth of the port and shipments that will come through the port, the LA Harbor Department has determined there is to be 17.1 million TEUs of intermodal rail demand, 12.7 million TEUs would be handled on-dock rail and the 4.4 million TEUs would be handled off-dock rail yards. (DEIR, 4-60) The DEIR concludes that even this predicted growth will not generate new truck trips, but rather will and decrease truck traffic on the I-710. In order to have a more complete analysis, the DEIR must include an analysis of the proposed future I-710 expansion.

Additionally, the DEIR states that the “proposed Project site is currently occupied by container and truck maintenance; grain terminal operations; storage; rail service; and auto salvage activities...none of the existing uses would remain on the footprint of the proposed railyard.” (DEIR 4-66) The DEIR states that many of the current tenants will be relocated very nearby. Therefore, these tenants combined with a large construction and goods movement project will most likely increase truck traffic and thereby impact traffic flow and patterns in the area. (DEIR, 4-68) While the DEIR states that some of the truck traffic from these tenants will shift from Pacific Coast Highway and Sepulveda Boulevard to Anaheim Street, the cumulative impacts analysis must analyze the potential cumulative increase in truck traffic all around the site, including Anaheim Street. In order to better inform the public and decision makers the DEIR should address more fully mitigation efforts and local as well as regional traffic patterns to and from the ports.

## 10. THE DEIR DOES NOT ADEQUATELY DISCUSS ALTERNATIVES TO THE PROPOSED PROJECT

The SCIG cannot be properly evaluated in the absence of a full analysis of the anticipated proposed expansion of the Union Pacific ICTF yard, which exists adjacent to the SCIG location. It is notable, and negligent that the Rail Traffic Controller Model (RTC) performed to estimate rail network performance (DEIR, G-2, p 4) assumed no expansion of the ICTF.

According to the preferred assumptions in the San Pedro Bay Ports Rail Study Update<sup>59</sup> prepared for the ports of Los Angeles and Long Beach in December 2006, rail demand would exceed capacity by 0.97 mil TEU x 2010, 0.48 mil TEU x 2015; 0.90 mil TEU x 2020; and 2.23 mil TEU x 2030 (DEIR, ES-9, Table 3a). In other words, a project smaller than the SCIG would cover the gap beyond 2030. Given revised growth projections, that shortfall may not be reached until 2035 or later.

The 2006 study underestimated the SCIG at 1.8 mil TEU new capacity (the DEIR promises 2.8 mil TEU). Assuming its projection of 1.9 mil TEU new capacity at ICTF is accurate, if both SCIG and ICTF are built, their combined capacity would exceed the 2030 projected demand by almost 2.5 mil TEU. The “demand” for on-dock rail would be correspondingly reduced, thereby undermining existing plans for new or expanded on-dock rail projects (the 2006 Rail Study Update identified 13 such projects, some of which are underway or under consideration.)

The DEIR ignores this underlying conflict by simply claiming that a need exists. Indeed there is a real risk that the SCIG is contrary to port interests in its conflict with planned on-dock projects and rail-system enhancements. The project fails to satisfy a fundamental port objective, which is identified in the DEIR (DEIR, p1-21): “The goal of the ports is to maximize on-dock rail operations within the Ports.”

Many more scenarios should be considered in the alternatives analysis. According to the 2009 cargo forecast<sup>60</sup>, the ports are expected to reach their ENTIRE capacity in 2027 (Port of Los Angeles Public Rail Workshop presentation, October 22, 2009, slide 24. Contradicting this oft-presented cargo forecast chart, the DEIR claims without citation that the ports “have increased the overall capacity estimate to 43.2 million TEU” (DEIR, p 1-19)). In either interpretation, it is reasonably anticipated that considerable infrastructure investments will be undertaken in the next 15 years to provide additional capacity. In so doing, the port has a clear opportunity to improve on-dock rail facilities and efficiencies beyond what is assumed in the DEIR. These opportunities should be examined more fully as alternatives to the SCIG.

The lack of a more thorough alternative that would maximize on-dock rail, with investments sequenced to avoid community impacts, reflects a failure of the Port to fulfill the Mayor Villaraigosa’s promise of a “strategic plan for the Port of Los Angeles, including sustainable and green growth options.”<sup>61</sup>

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<sup>59</sup> Parsons. 2006. San Pedro Bay Ports Rail Study Update: December 2006, available at: <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=7599>

<sup>60</sup> Tioga. 2009. San Pedro Bay Container Forecast Update. Report prepared for the Ports of Long Beach and Los Angeles. Prepared by the Tioga Group, Inc. and HIS Global Insight. July 2009.

<sup>61</sup> GREEN LA, May 2007, p 24, [http://www.ci.la.ca.us/mayor/villaraigosaplan/EnergyandEnvironment/LACITY\\_004467.htm](http://www.ci.la.ca.us/mayor/villaraigosaplan/EnergyandEnvironment/LACITY_004467.htm)

10.1 The DEIR gives scant consideration to two important, feasible alternatives: on-dock rail and zero emission container movement.

a. On-dock Rail

There is no logistical necessity for SCIG to be replicated, inch for inch, on-dock. The rail capacity does not all have to be located on one plot of land, but can be spread over different parts of both ports. It is the excess *capacity* represented by SCIG that needs to be analyzed in the DEIR -- but it is not.

The analysis of alternatives is willfully narrow and therefore inadequate. A flaw in The SCIG DEIR inappropriately limits consideration of alternatives to single projects that are of comparable size. Instead, a true review of alternatives would consider adding smaller capacities together to match the size—and perhaps more importantly, to match the actual need.

The entire technical analysis of on-dock rail in the DEIR is 4 pages, buried in Appendix G2. This study claims that the San Pedro Bay ports will have an on-dock capacity of 12 million TEUs in 2035, and thus the excess represented by SCIG is an additional 23%. Most of the 4 pages in Appendix G-2 are devoted to describing the results of a modeling exercise of rail traffic delay, assuming that SCIG will be built as planned. There is not a single word in this study that analyzes whether additional on-dock capacity can be found anywhere in the POLA-POLB complex. As a basis for summarily rejecting the on-dock alternative (see pages ES 14-15), this will not pass in court.

b. Zero Emission Container Movement.

During the public hearings for the Notice of Preparation for the SCIG project, the then Chair of the Harbor Commission (David Freeman) said that there would be no diesel-powered drayage of containers from the Port to the project site, that alternatives would be found by the five new commissioners all appointed by the Mayor of Los Angeles. Yet, in the DEIR, zero emission container movement technology is not even mentioned by name as an alternative. (DEIR, ES-14) The DEIR concludes that these technologies "are not yet viable as alternatives to truck-based drayage...." (DEIR, 2-51)

Under the analysis of the DEIR, the SCIG project will not be needed until 2020, if then. A legally defensible analysis would consider whether zero emission container movement technology could begin to be phased in by 2020. But that study was not done.

10.2 Off-dock alternatives should not have been dismissed without thorough analysis

The off-dock alternative "East of Alameda Street" (Port Property) should not have been dismissed without analysis. The site would impact a small marina but the amount of these impacts would be less significant than the one currently proposed. However it was not examined as an alternative.

10.3 Section ES.4.3 – Alternatives Analyzed in this DEIR, discusses key features but fails to discuss the key significant negative impacts of the project or justified public objections of the project.

In the 'Alternatives Analyzed' section (DEIR, ES 4.3), the DEIR fails to present a fair and unbiased summary and discussion of the project. THE DEIR information and TABLE ES-2 fails to include a listing of public and scientific research identifying significant negative impacts of the project as well as public objections and rational against the project received during the public

hearings. The DEIR needs to include the negative impacts, such as environmental, public health, public transportation, socio-economic, etc. and public objections when listing summaries of information or data.

10.4 Section ES.4.3.1 – Alternatives 1 – No Project Alternative, does not present a factual or accurate assessment of the facts and Port options.

Section ES.4.3 – Alternatives 1 – No Project Alternative, fails to state that the Port of Los Angeles does not need to expand its current capacity, the Port has failed to mitigate all of its past and current negative impacts which will now cause further negative environmental and public impacts. The DEIR should portray an accurate assessment of the Ports capacities, tidelands property efficiency land use, public support, potential technology solutions and viable project alternatives.

10.5 Section ES.4.3.2 – Alternatives 2 – Reduced Project Alternative, fails to disclose that this alternative will still have significant negative environmental, public health and socio-economic impacts on the public.

Section ES.4.3.2 – Alternatives 2 – Reduced Project Alternative, as written gives the impression that it also has reduced negative environmental, public health and socio-economic impacts etc. on the public, when in fact impacts will remain high and significant. The DEIR should provide an accurate description that also discusses the significant negative environmental, public health and socio-economic impacts etc. to the public.

10.6 Section ES.4.4.2 – Alternative Sites Inside the Ports – misrepresents numerous facts regarding Alternative Sites and Alternative Technologies.

- a. Section ES.4.4.2 – Alternative Sites Inside the Ports, misrepresents and omits numerous facts regarding Alternative Sites and Alternative Technologies. The DEIR gives the impression that an Inside Port Site cannot be a joint Port of Los Angeles and Port of Long Beach Project, when in fact the two Ports makeup up the Union Pacific ICTF Joint Power Authority, Clean Air Action Plan, Clean Truck Plan and Technology Advancement Program, all of which have major public support.
- b. The DEIR states that “All sites inside the ports would meet at least some of the project objectives,” when in fact the majority would meet most of the project objectives when compared side-by-side, which the DEIR failed to do.
- c. The DEIR states that, “Construction of new land for a rail yard for the TIJIT would have substantial biological impacts and require the use of mitigation credits that the LAHD does not possess. Accordingly, this alternative was rejected on the basis of its incompatibility with the Clean Water Act and the unavailability, to the LAHD, of mitigation credits for the necessary fill,” but fails to state that when the Port wanted Pier 400 it made it happen even though it was incompatibility with the Clean Water Act then as it would be now. The DEIR fails to discuss how mitigation credits can be obtained, created or negotiated, which would allow the project alternate site to move forward.
- d. The Pier S is a viable site and even though considered smaller would meet 90%+ of the project objectives and even though it is being considered by the Port of Long Beach as a container terminal the public supports this site as an Alternative Site and/or additional

intermodal facility site which when combined with a second location would meet 95+ of the project objectives.

- e. The Port of Los Angeles also failed to mention another potential site location which has been recommended to both Ports, the Port of Long Beach Pier B Toyota Logistics Services Terminal which is 168 acres of which 2 or more parking structures could be built to free up over 100 acres for an intermodal facility. This site location is also adjacent to a multi-track railway which borders Anaheim Street.
- f. A new project does not have to use conventional cargo-handling and cargo moving technology. Diesel fuel locomotives can be replaced with Zero Emissions Electric Trains and American MagLev Technology, Inc., (AMTI) Environmental Mitigation & Mobility Initiative "EMMI" Logistics Solutions all Electric Maglev Trains. On-Dock Rail can be built dockside to ships so that containers can be directly unloaded and dropped to waiting trains. Containers can be moved with technologies such as Vision Motor Corp Zero Emissions Near Noiseless Tyrano a Class VIII 80,000lbs. Drayage Truck and ZETT (Zero Emission Terminal Tractor) a Class VIII 130,000 lbs. Terminal Tractor (yard dog) for off-road port terminal, rail yard and intermodal facility operations.
- g. The EIR fails to disclose in the DEIR that American MagLev Technology, Inc., (AMTI) has volunteered for four years to build a test demonstration project at its own expense to prove its feasibility, yet the ports have not taken advantage of the opportunity to demonstrate a 21<sup>st</sup> century clean technology. The demonstration project can be built at terminals that operate at only 50% of the year such as the two Ports import car terminals or can also be built at an off-port site container storage yard with connecting tracks to the main rail lines to the Ports and Alameda Corridor.

10.7 Section ES.4.5.1 – Approaches to Avoid Building a Near-Dock Rail yard, fails to include all public requested and discussed alternatives.

Section ES.4.5.1 – Approaches to Avoid Building a Near-Dock Rail yard, failed to include, identify and assess other public requested and discussed alternative such as:

- a. Maximizing the usage of the Alameda Corridor by its current Tenants. The Port of Los Angeles has failed to make it mandatory for Tenants to use the Alameda Corridor and as a result it is only being used at 35% of its capacity last year 2011 and at times down to 24% of its capacity.

10.8 Section 2.5 Alternatives - Evaluation Criteria, the DEIR states that, "of those alternatives, the EIR need examine in detail only the ones that LAHD determines could feasibly attain most of the basic objectives of the project," however, the Port of Los Angeles and BNSF cannot be trusted to tell the truth, because they have misrepresented information, have intentionally omitted information, failed to disclose all information and failed to adequately assess all alternatives as disclosed during public comment periods, submitted documentation and in these public comments.

Section 2.5 Alternatives-Evaluation Criteria, the DEIR does not present a fair, accurate and complete disclosure of information.

- a. The DEIR Cost section, states that potential alternatives and other concepts were not subjected to formal detailed cost analyses and comparisons because too little data are available on the costs of advanced technology, which is not true. Two demonstration MagLev Train Test Tracks are already built and running with cost data available. One company American MagLev Technology, Inc., (AMTI) Environmental Mitigation & Mobility Initiative "EMMI" Logistics Solutions all Electric Maglev Trains has volunteered to build a demonstration project at the Port of Los Angeles or any location at their expense for the past 4 years and presented a detailed budget. Its success, failure and cost details could have already been known. AMTI has already presented a letter of commitment from its billion dollar financial partner and international major project construction company. The DEIR also fails to disclose that there are several MagLev Passenger Trains operating in different countries throughout the world and cost data is available. A MagLev Train would use the same chassis carrier design as a regular locomotive train. The DEIR further fails to disclose that there are all Electric Trains transporting containers in different countries through the world. The DEIR further fails to disclose that the Alameda Corridor is already designed to be retrofitted to an Electric Train.

The DEIR fails to disclose that there are Balqon, Inc. Electric Battery Drayage Trucks and Vision Motor Corp. Hydrogen Gas Fuel Cell Drayage Truck currently in operation and being further refined to optimize their capabilities.

- b. The DEIR Compatibility with Existing Port and Railroad Infrastructure and Operations section, fails to disclose that the current locomotive train system is 19<sup>th</sup> century and needs to be replaced with 21<sup>st</sup> century technologies. The current trains must connect upwards of 300 train cars, are time consuming to connect 1-2 days, are slow, major air polluting and noise source. The Port can easily master plan a phase-in schedule for a superior and more efficient alternative transportation system like any other project for a new terminal. New Electric Container Transportation Trains are being built at different ports throughout the world.
- c. The DEIR Environmental Benefits section, fails to disclose the overwhelming significant environmental and long term cost-benefits of Zero Emission Transportation Technologies, Near Noiseless Transportation Technologies and More Efficient Transportation Technologies. The DEIR fails to state the energy balance could be achieved using Solar Panel Arrays at the Port, Port Terminals and above the MagLev Train route and in the bottom railway of a MagLev Train combined with Fuel Cell Technology.

10.9 Section 2.5.2.2.1 - Pier S, the DEIR criticizes Pier S but the fact is that Pier S is a viable site and even though considered smaller would meet 90%+ of the project objectives.

The DEIR criticizes Pier S but Pier S is a viable site and although considered smaller, would meet 90%+ of the project objectives. and even though it is being considered by the Port of Long Beach as a container terminal the public supports this site as an Alternative Site and/or additional intermodal facility site which when combined with a second location would meet 95+ of the project objectives. The DEIR states, "the Pier S site, in particular, is unsuitable for a modern intermodal rail yard.

The DEIR fails to disclose that the recent Port of Long Beach Pier S Project Proposal DEIR states the following,

*“The proposed Pier S Marine Terminal would include an intermodal rail yard facility designed for operation using top-picks, reach stackers, and rail-mounted, electric-powered gantry cranes (RMGs). The facility would have the capability to exchange information electronically with terminal administration through OCR portal(s). The rail yard would consist of 10 single-ended loading tracks, varying from approximately 1,400 to 1,700 feet of working length, and would be able to accommodate two unit trains, each composed of the equivalent of twenty-four, 309-foot-long, double-stack, articulating, deep-well rail cars (Figure 1-6). The rail yard would be served via a new lead track running parallel to the Pier T East lead track along the terminal’s southwest corner (see below). The loading tracks would be connected directly to this lead track, which would also accommodate train movements from elsewhere on Terminal Island. Construction of the rail yard and new lead track would require realignment of approximately 2,800 feet of the existing Pier T East lead track, which would be accomplished as part of the Terminal Island Wye improvements (see below) The Project would add a second track on the southern leg of the Terminal Island Wye and along a portion of the Pier T East lead track, and would realign that portion of the lead track to accommodate the new Pier S rail yard (Figure 1-3). As mentioned above, the north track of the lead would serve as a lead track for the rail yard and allow two train movements to use the Terminal Island Wye at once, which is not possible under current conditions.”*

This discloses that Pier S is already proposed to be part intermodal.

The rail simulation study commissioned by the LAHD (Parsons 2010) is significantly flawed because it assumes the same outdated 19<sup>th</sup> century locomotive technology will continue to be used in the next 50 years.

## **11. CHAPTER 6: ENVIRONMENTAL JUSTICE**

The Environmental Justice section of the DEIR shows that the proposed project will be situated in a predominantly low-income, minority community, while the DEIR brushes off reasonable alternatives. This fact has very serious legal and policy implications. In addition, the DEIR admits that the project will have significant impacts related to air quality, but claims, without substantiation, that these impacts "are not linked to localized health effects ...". (DEIR, 6-13) This unsubstantiated claim is not backed-up by any data, and as discussed above, is unsupported because the air emissions study is invalid.

## **12. CHAPTER 7: SOCIOECONOMICS AND ENVIRONMENTAL QUALITY**

### **12.1 Permanent jobs will be lost**

We are concerned that the SCIG will cost more jobs to the local economy than the project will create. The DEIR estimates that “during the construction phases of the proposed Project, approximately 1,500 jobs annually (DEIR, 7-29), both direct and secondary, could be added to the regional economy. The majority of total jobs are attributable to the construction sector of the economy (54.8 percent). About 27.7 percent of the total number of new jobs would be in the services sector, about 2.2 percent in the manufacturing sector and 9.2 percent in the retail trade sector.” (7.2.1.1 Employment and Income. 7-1) We are concerned, however, that the project, even at its peak, will not replace the jobs currently created by the local businesses. For

example, after construction of the SCIG culminates, implementation of the proposed Project will result in an increase in employment of between 660 jobs in 2016 to 1,096 jobs in 2046. (8.2.2 Indirect Growth-Inducing Impacts. 8-3). In the meantime, existing businesses at the proposed site provide more than 1,700 permanent jobs, and more during peak seasons. (See *Table 1 below*)

**Table 1**<sup>62</sup>

| <b>COMPANY</b>                   | <b>EMPLOYEE COUNT</b> | <b>INDEPENDENT COUNT</b> |
|----------------------------------|-----------------------|--------------------------|
| <b>Fast lane</b>                 | 125                   | 100                      |
| <b>Three Rivers</b>              | 125                   | 100                      |
| <b>San Pedro Forklift</b>        | 40                    | 12                       |
| <b>Cal Cartage</b>               | Up to 900             | 150                      |
| <b>LAHGTF</b>                    | 47                    | 45                       |
| <b>Frupco (at Three Rivers)</b>  |                       | 50 expediting firm       |
| <b>Agricom (at Three Rivers)</b> |                       | 25 expediting firm       |

Thus, even at its peak, the project will never replace the jobs that will be lost with its construction.

### **13. A REVISED DRAFT EIR MUST BE PREPARED AND RE-CIRCULATED**

Due to the inadequacies discussed above, the SCIG DEIR cannot form the basis of a final EIR. CEQA requires preparation and recirculation of a supplemental draft "[w]hen significant new information is added to an environmental impact report" after public review and comment on the earlier draft EIR.<sup>63</sup>

In order to cure defects of the DEIR identified in this letter, the Port of Los Angeles must adequately assess the proposed project's environmental impacts, and to identify effective mitigation and alternatives capable of alleviating the project's significant impacts.

We ask that you re-circulate the DEIR to adequately and accurately assess environmental, air quality, and human health impacts.

We appreciate your consideration of our comments. Please feel free to contact us if you have any questions.

<sup>62</sup> Numbers used in this where obtained from directly from the companies via phone or email

<sup>63</sup> Pub. Resources Code § 21092.1.

Sincerely,

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