



August 25, 2021

Via Email

Christopher Cannon, Director  
City of Los Angeles Harbor Department  
Environmental Management Division  
425 S. Palos Verdes Street  
San Pedro, CA 90731  
ceqacomment@portla.org

**Re: Public Comments on the Revised Draft Environmental Impact Report for the SCIG Project (SCH #2005091116)**

Dear Mr. Cannon,

On behalf of Natural Resources Defense Council (NRDC), East Yard Communities for Environmental Justice (EYCEJ), and Century Villages at Cabrillo, we submit these comments detailing our concerns about the proposed Southern California International Gateway Project (SCIG or the Project) and Revised Draft Environmental Impact Report (RDEIR).

SCIG is a racist project that will disproportionately impact communities of color and low-income communities already overburdened by pollution. It will generate truck and train traffic that will threaten the health and safety of local residents, exposing those residents to significant diesel emissions and putting them at risk of developing cancer, asthma, and other cardiovascular and respiratory illnesses. The West Long Beach neighborhood adjacent to the proposed SCIG site is home to residences, schools, parks, and a large supportive housing community. A new railyard simply does not belong there.

The Port of Los Angeles (Port) has nonetheless continued moving forward with SCIG and, in doing so, has attempted to sweep its air pollution impacts under the rug.

In fact, a court previously found the Port's 2013 Final Environmental Impact Report (2013 EIR) for the Project deficient and ordered the Port to prepare a new ambient air quality analysis and cumulative impact analysis for SCIG. Faced with an opportunity to fully investigate SCIG's air quality impacts and the resulting harms to the community, the Port has instead attempted to comply with the court's mandate by doing as little as possible. That effort falls well short of what the mandate and the California Environmental Quality Act (CEQA or Act) both require.

Specifically, the Port has declined to update any other sections of the 2013 EIR—even those closely interrelated with the EIR's air quality analyses—and has refused to consider any developments that have occurred over the past decade. These include changes to the Project, to Port infrastructure, to the surrounding neighborhood, and to the advancement of zero-emission technologies and clean air standards, all of which affect the 2013 EIR's analyses and conclusions. Many of these changed circumstances and informational developments likewise affect the sections of the 2013 EIR that the Port *did* revise. And yet the Port chose to ignore that link, too, inexplicably preparing ambient air quality and cumulative impact analyses that rely on the same data, assumptions, timelines, and thresholds used in 2013.

Compounding these errors is the Port's failure to adequately engage the public in its preparation and release of the RDEIR. The Port conducted no scoping meeting or other community outreach on the content of the RDEIR, and then published the RDEIR, without advance notice, in the middle of the COVID-19 pandemic. The pandemic has been devastating to many of the same communities who would also bear the brunt of SCIG's impacts. These community residents already suffer disproportionately from long-term exposure to air pollution and are now coping with unprecedented challenges to their health and daily lives as a result of COVID-19. Out of touch with this reality, the Port is proposing to move forward with a project that would exacerbate respiratory health for an already overburdened community of color.

The community deserves better. The little analysis contained in the RDEIR is deficient under CEQA, but even still confirms that SCIG poses an unacceptable health and safety risk to local residents. The Port must undertake a broader revision of the 2013 EIR to provide the public with a full accounting of SCIG's impacts, particularly in light of the significant changes that have taken place at the Port and surrounding area since that EIR was finalized. The Port must also recirculate the revised, subsequent EIR for public comment and hearing, ensuring a robust and accessible public participation process that allows the community to meaningfully weigh in on SCIG and its harms. But more fundamentally, the Port must reject this dirty, unjust project once and for all.

Our comments are organized as follows:

- I. The RDEIR's scope is inappropriately narrow
  - A. The RDEIR fails to account for over ten years' worth of developments, which significantly affect the 2013 EIR's analyses and conclusions
    1. Shifts in rail capacity and cargo demand undercut SCIG's purpose and need
    2. Several other changes and developments have occurred at the Project site and Port area, requiring further analysis
    3. Zero-emission locomotives, trucks, and cargo equipment represent feasible mitigation measures
    4. New clean air standards and commitments underscore the need to abandon SCIG
  - B. The RDEIR ignores the interrelationship between the air quality analysis and other sections of the 2013 EIR
- II. The RDEIR's revised ambient air quality and cumulative impact analyses are flawed
  - A. The RDEIR's Offsite Ambient Air Pollutant Concentration Analysis is inaccurate and misleading because it relies on a 2010 baseline and outdated information
  - B. The RDEIR's Offsite Ambient Air Pollutant Concentration Analysis' selection of benchmark years is inadequate, inaccurate, and misleading
  - C. The RDEIR's Ambient Air Pollution Analysis does not comply with the California Supreme Court's decision in *Friant Ranch*
  - D. The RDEIR's revised Cumulative Impact Analysis is also riddled with flaws
- III. The public process surrounding the EIR is inadequate
- IV. Conclusion

Sources referenced in the footnotes are available via this link: [https://nrdc1-my.sharepoint.com/:f:/g/personal/jbaird\\_nrdc\\_org/EoLK-jDhM8xMtni9iq6CvdIBu5RiWZOjmO0XUctrNcwcIg](https://nrdc1-my.sharepoint.com/:f:/g/personal/jbaird_nrdc_org/EoLK-jDhM8xMtni9iq6CvdIBu5RiWZOjmO0XUctrNcwcIg). We ask that these materials be added to the administrative record. If you have any trouble accessing the link or materials, please contact Jessie Baird at [jbaird@nrdc.org](mailto:jbaird@nrdc.org).

**I. The RDEIR's scope is inappropriately narrow**

The Port's insistence that it need only update those sections of the 2013 EIR found defective by the court is incorrect and runs afoul of CEQA.

The Port asserts that it is not required to revise any sections of the 2013 EIR beyond those the court found inadequate. *See* RDEIR at 11. But the “perimeters” of the court’s writ of mandate “do not necessarily mark the boundaries” of the Port’s obligations under CEQA. *Cnty. of Inyo v. City of Los Angeles*, 139 Cal. Rptr. 396, 409 (Cal. Ct. App. 1977); *id.* (deliberately “avoid[ing] any implication that compliance with our writ of mandate is the full measure of the Department’s CEQA-imposed obligations”). To the contrary, the Port retains an independent duty to ensure that its revised EIR for the SCIG Project complies with the Act.

Indeed, the Port implicitly concedes as much by including an updated discussion in the RDEIR of the potential health effects of criteria air pollutants in an effort to comply with the California Supreme Court’s decision in *Sierra Club v. County of Fresno (Friant Ranch)*, 431 P.3d 1151 (Cal. 2018).<sup>1</sup> And as one of the cases the Port cites makes clear, agencies must also consider broader revisions to an EIR when “there are changed conditions and new facts which were not in existence at the time” the earlier EIR was finalized and challenged. *Plan. & Conservation League v. Castaic Lake Water Agency*, 103 Cal. Rptr. 3d 124, 140 (Cal. Ct. App. 2009) (citation omitted); *id.* at 142 (holding that challenge to EIR prepared on remand from adverse court decision was justiciable where the “material facts” had changed since the original EIR).<sup>2</sup>

This comports with CEQA itself, which instructs agencies to prepare subsequent or supplemental EIRs when, *inter alia*, “[s]ubstantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions” in the EIR, or “[n]ew information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available.” Cal. Pub. Res. Code § 21166(b), (c). Accordingly, the CEQA Guidelines call for subsequent EIRs where new information shows that “[t]he project will have one or more significant effects not discussed in the previous EIR,” that “[s]ignificant effects previously examined will be substantially more severe than shown in the previous EIR,” or that “[m]itigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project.” Cal. Code Regs. tit. 14, § 15162(a)(3).

Such substantial changes and new information are present here. First, the purpose and need for SCIG has changed as Southern California’s rail capacity has shifted over the last decade. The Ports of Los Angeles and Long Beach have invested in

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<sup>1</sup> As discussed in section II.C, *infra*, that discussion nonetheless falls short of *Friant Ranch’s* requirements.

<sup>2</sup> The Port also relies on *Ione Valley Land, Air, & Water Defense Alliance LLC v. County of Amador*, 244 Cal. Rptr. 3d 791, 794 (Cal. Ct. App. 2019), in which the court held that *res judicata* barred a new challenge to a revised EIR because all the issues raised had been litigated and resolved, or could have been litigated and resolved, in connection with the first lawsuit. But there, the plaintiff forfeited the argument that “new and different circumstances render the newly certified EIR factually different from the prior EIR” – making *res judicata* inapplicable – and so the court declined to address it. *Id.* at 796.

significant build-out of new on-dock rail, and cargo projections have changed. Second, other changes at the SCIG site and broader Port area – including the change in operations at the former California Cartage lease and new residential developments at the Century Villages at Cabrillo – directly bear on SCIG’s traffic, air, and health impacts. Third, new technologies exist to reduce and eliminate emissions from the trains, trucks, and cargo handling equipment proposed to serve the SCIG facility. Fourth, new state and local policies promote environmental justice and call for transitioning to a zero-emissions goods movement system. SCIG threatens to undermine these policies. Each of these developments is discussed in more detail below, and requires a broader reexamination and update of the 2013 EIR. Additionally, given the significant overlap between the RDEIR’s air quality analysis and other sections of the 2013 EIR – such as those sections assessing available mitigation measures and SCIG’s health harms – both CEQA and basic common sense require the Port to update those sections as well.

A broader revision of the 2013 EIR is also a matter of good policy, particularly in light of the significant impacts at stake. As detailed throughout these comments, SCIG will increase local air pollution in a community already subject to poor air quality and other compounding stressors. The Port has a responsibility to manage its goods movement operations and infrastructure in a way that *minimizes* the burdens felt by these communities.<sup>3</sup> Thus, the Port should carefully study SCIG’s air pollution impacts based on the most current information and circumstances, such as those identified above, as well as updated emission and health-risk scientific methodologies. *See, e.g.*, Cal. Code Regs. tit. 14, § 15121(a)(1) (“Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project’s impacts,” a lead agency may use existing conditions, conditions expected when the project becomes operational, or both.). Only by doing so can the Port ensure that it is satisfying CEQA’s mandate and providing the public and decision makers with an accurate and complete assessment of SCIG’s environmental and public health effects. *See id.* § 15151 (courts look for “adequacy, completeness, and a good faith effort at full disclosure); *Union of Med. Marijuana Patients, Inc. v. City of San Diego*, 446 P.3d 317, 323 (Cal. 2019).

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<sup>3</sup> Indeed, the first guiding principle of the Port’s 2017 Clean Air Action Plan Update states: “The Ports must work with our tenants and customers to expeditiously reduce our fair share of air emissions and associated health risk from port-related operations to support a healthy, thriving community and clean environment.” San Pedro Bay Ports, *Clean Air Action Plan 2017 5* (2017), <https://cleanairactionplan.org/documents/final-2017-clean-air-action-plan-update.pdf/>.

**A. The RDEIR fails to account for over ten years' worth of developments, which significantly affect the 2013 EIR's analyses and conclusions**

**1. Shifts in rail capacity and cargo demand undercut SCIG's purpose and need**

The 2013 EIR states that one of SCIG's fundamental purposes is "to provide an additional near-dock intermodal rail facility serving the San Pedro Bay ports marine terminals that would meet current and anticipated cargo demands." 2013 EIR at 2. Putting aside that this statement of need, along with the underlying assumptions and forecasts, was flawed even then, more recent data demonstrate that rail capacity and cargo demand have both shifted substantially. These shifts throw SCIG's purported benefits into question and require the Port to prepare a subsequent EIR.

The 2013 EIR estimated that cargo demand would reach or exceed Port terminal capacity of 39.4 million Twenty-foot Equivalent Units (TEUs) by 2035, if not sooner. 2012 Recirculated Draft EIR (2012 RDEIR) at 1-22. It predicted that about 40 percent of that amount, or 15.7 million TEUs, would be direct intermodal and thus require handling by intermodal railyards. *Id.* at 1-22. The EIR then predicted that on-dock railyard capacity would reach 11.7 million TEUs by 2035 – meaning that 4 million TEUs would need to be handled by near/off-dock yards. *Id.* at 1-23. SCIG was projected to partly fill that gap, providing the capacity to handle 2.8 million TEUs. *See* 2013 EIR at 7.

As an initial matter, it is unclear how SCIG's construction and operation timeline lines up with these forecasts. As originally proposed, SCIG would have taken three years to build and come online in 2016 with a capacity of 570,800 TEUs; it would not have reached its full capacity of 2.8 million TEUs until 2035. 2012 RDEIR at 2-11. Based on this information and assuming that the project is approved, SCIG presently wouldn't come online until 2025 at the earliest, and likely wouldn't reach full capacity until 2044. That is a material difference in circumstances that must be analyzed.

Meanwhile, cargo demand and existing rail capacity are in flux, such that the 2013 EIR's projections are no longer accurate.<sup>4</sup> The share of direct intermodal cargo has dropped from 40 percent to about 30-33 percent of total cargo volume, or 11.82-13 million TEUs.<sup>5</sup> On-dock rail capacity is now expected to reach 13 million TEUs by 2040.<sup>6</sup>

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<sup>4</sup> *See* Mercator Int'l LLC & Oxford Econ., *Executive Summary for San Pedro Bay Long-term Unconstrained Cargo Forecast* 8 (2016); Michael Leue et al., *San Pedro Bay Portwide Rail Planning for Today and 2040*, Ports 2019 366, 368, 371 (2019) (showing delays in forecasted cargo volumes); San Pedro Bay Ports, *Economic Study for the Clean Truck Fund Rate* 9-11, 16-17 (2020), <https://cleanairactionplan.org/documents/economic-study-for-clean-truck-fund-rate.pdf/> (discussing various factors that created volatility in cargo volume growth between 2006 and 2018).

<sup>5</sup> *Economic Study for the Clean Truck Fund Rate*, *supra* n.4, at 10; Leue et al., *supra* n.4, at 370.

<sup>6</sup> Leue et al., *supra* n.4, at 374-75; *see also id.* at 369 (indicating that on-dock volumes nearly doubled between 2003 and 2017).

Taken together, these new facts demonstrate that SCIG should not be built at all. But to the extent additional rail capacity *is* needed, the Port should – consistent with its 2017 Clean Air Action Plan Update – prioritize on-dock rail projects, which eliminate truck trips.<sup>7</sup>

Recent volatility in Port activity underscores the need to revise the EIR to account for current data on rail capacity and cargo growth. Despite an initial economic downturn due to the COVID-19 pandemic, the Port saw record freight volumes in 2020.<sup>8</sup> That trend is continuing into 2021; May “was the busiest month ever in the Port’s 114-year history, the 10th consecutive month of year-over-year increases and the first time a Western Hemisphere port has handled more than 1 million TEUs in a month.”<sup>9</sup> If the EIR is to have any use as an informational document, the Port must use the latest data reflecting facts on the ground to analyze SCIG’s impacts.

The Port’s decision to ignore these changed circumstances in the RDEIR is baffling – particularly because, in a 2018 recirculated draft supplemental EIR for the China Shipping Terminal, the Port acknowledged significant changes that had occurred in cargo demand and capacity and the need to update its analyses and assumptions accordingly. Here, the latest projections described above require a reassessment of SCIG’s purpose and need and, in fact, make clear that SCIG should not be built at all. If SCIG is nonetheless built despite being unnecessary, the Project will serve to induce demand, generating greater air quality and health impacts than previously disclosed. *See* Cal. Pub. Res. Code § 21100(b)(5) (EIRs must assess the “growth-inducing impact of the proposed project”); Cal. Code Regs. tit. 14, § 15126.2(e); *see also* *Sec. Env’t Sys., Inc. v. S. Coast Air Qual. Mgmt. Dist.*, 280 Cal. Rptr. 108, 115 (Cal. Ct. App. 1991) (new reports showing that incinerator’s emissions “may be much higher than the amounts previously assumed” raised “substantial concern as to the validity of the original data,” requiring “a full and complete investigation and disclosure of all health hazards” and possible mitigation measures). These impacts must be evaluated under CEQA.

## **2. Several other changes and developments have occurred at the Project site and Port area, requiring further analysis**

In addition to the substantial changes in on-dock rail capacity and cargo projections described above, other changes to the Project site and surrounding area

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<sup>7</sup> *Clean Air Action Plan 2017*, *supra* n.3, at 73; *see also* Cal. Dep’t of Transp. et al., *California Sustainable Freight Action Plan E-4* (2016), [https://ww2.arb.ca.gov/sites/default/files/2019-10/CSFAP\\_FINAL\\_07272016.pdf](https://ww2.arb.ca.gov/sites/default/files/2019-10/CSFAP_FINAL_07272016.pdf).

<sup>8</sup> Justin Ho, *As Imports Boom, Warehouses Fill Up, and Businesses Face a Storage Shortage*, Marketplace (Oct. 1, 2020), <https://www.marketplace.org/2020/10/01/imports-boom-warehouses-fill-up-businesses-face-storage-shortage-online-shopping-covid19/>; *Port of Long Beach Reports Busiest April In Its History*, Long Beach Post (May 12, 2021), <https://lbpost.com/news/cargo-movement-port-of-long-beach>.

<sup>9</sup> Press Release, Port of L.A., *Port of Los Angeles Surpasses 1 Million Container Units in Single Month* (June 15, 2021), [https://www.portoflosangeles.org/references/news\\_061521\\_onemillionteu](https://www.portoflosangeles.org/references/news_061521_onemillionteu).



warrant further review and revision of the 2013 EIR. Furthermore, a revised analysis of SCIG's air quality impacts based on updated methodologies, *infra* section II.A, may reveal that the location of those impacts has shifted, requiring a broader assessment of available monitoring stations and SCIG's effects on local sensitive receptors.

Critically, the RDEIR ignores that California Cartage (Cal Cartage) is no longer operating at the SCIG site. In the 2013 EIR, the Port indicated that the North Lead Tracks would cross a portion of the Southern California Edison (SCE) property via an easement, and that Cal Cartage would otherwise maintain its operations at the 19-acre property it leased from SCE. *See* 2013 EIR at 1-16.<sup>10</sup> But contrary to the 2013 EIR's assumptions, Cal Cartage has vacated the site<sup>11</sup> – a change that implicates the Port's traffic analysis. The Port's calculations of the CEQA baseline in the 2013 EIR found that Cal Cartage was responsible for about half of all truck trips. *See* 2012 RDEIR at 3.10-25. With the departure of Cal Cartage from the SCIG site, it is likely that an updated baseline analysis would show significantly decreased truck traffic. That is true even though Toll Group has apparently taken over Cal Cartage's lease. While the precise level of that entity's truck activity is unclear, it is likely much lower than Cal Cartage's.<sup>12</sup> The RDEIR's continued use of the 2013 EIR's baseline means that the RDEIR is likely overestimating the reduction in trips that will occur when SCIG becomes operational. That, in turn, means that the RDEIR is likely underestimating SCIG's air quality impacts and the consequent health impacts to the surrounding community.

The RDEIR's use of the old baseline and failure to consider or even disclose any other changes in nearby facilities and operations – such as current trip projections for Hobart Yard, or traffic and other impacts generated by the new Prologis warehouse<sup>13</sup> on W. Pacific Coast Highway or the expanded Marathon Petroleum refinery in Wilmington

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<sup>10</sup> We note that the RDEIR appears to include the full SCE right-of-way in depictions of the proposed Project site. *See, e.g.*, RDEIR at 83. If those depictions are meant to indicate that SCIG's footprint has expanded from what was shown in the 2013 EIR, that is a material change to the Project's description and design that must be disclosed.

<sup>11</sup> *See* Port of L.A., Res. No. 19-9546, at 1 (Oct. 3, 2019) (indicating that Cal Cartage vacated the premises on August 2, 2019).

<sup>12</sup> *See, e.g.*, Port of L.A., Revised Res. No. 18-8359, at 4 (Sept. 19, 2018), [https://kentico.portoflosangeles.org/getmedia/d039c7fe-33f5-4be0-bf4f-e43adb89a1a7/092018\\_Regular\\_Agenda\\_Item\\_11](https://kentico.portoflosangeles.org/getmedia/d039c7fe-33f5-4be0-bf4f-e43adb89a1a7/092018_Regular_Agenda_Item_11) (indicating that Cal Cartage generated about 300 permanent and 400 temporary jobs); Port of L.A., Minutes for Regular Board Meeting of Sept. 20, 2018, at 23-25 (Sept. 20, 2018), [https://portofla.granicus.com/MinutesViewer.php?view\\_id=9&clip\\_id=1176&doc\\_id=f15d8f3e-c830-11e8-a2a6-0050569183fa](https://portofla.granicus.com/MinutesViewer.php?view_id=9&clip_id=1176&doc_id=f15d8f3e-c830-11e8-a2a6-0050569183fa) (indicating approval of Revised Res. No. 18-8359); Res. No. 19-9546, *supra* n.11, at 1 (noting that Toll Group will generate about 300 jobs).

<sup>13</sup> *Recommendation to Adopt Mitigated Negative Declaration MND 08-17 and Approve a Site Plan Review (SPR1-079)*, City of Long Beach, <http://longbeach.legistar.com/LegislationDetail.aspx?ID=3283484&GUID=DE609612-9C6C-44CA-AFC7-23B6CB53A7CB&Options=ID%7CText%7C&Search=1901+pacific>.



and Carson<sup>14</sup>— means that the Port’s traffic analysis may be riddled with other projections that now prove inaccurate. Because the EIR’s truck traffic analysis underpins the air quality impact and health impact analyses, *see, e.g.*, 2012 RDEIR at 3.2-12, that is a serious failing.

The RDEIR also fails to account for the planned decommissioning and repurposing of the mile-long section of the Terminal Island Freeway between Pacific Coast Highway and Willow Street.<sup>15</sup> In 2012, the City of Long Beach submitted a comment letter to the Port discussing the possible reconfiguration of the Terminal Island Freeway and development of a greenbelt parkway as a means of mitigating SCIG’s impacts on sensitive receptors. The Port declined to adopt the greenbelt as a mitigation measure in the 2013 EIR, in large part because it lacked sufficient information to evaluate the measure’s effectiveness. *See* 2013 EIR at 2-181. Since the EIR’s certification, however, the project has moved forward; in October 2013 the California Department of Transportation awarded the City of Long Beach a \$250,000 social justice grant to prepare a concept plan for the project, and in 2015 the Long Beach City Council voted unanimously to further review the plan.<sup>16</sup> The RDEIR does not acknowledge these developments. The Port must assess how this new information about the Terminal Island Freeway’s redevelopment affects its feasibility as a mitigation measure for SCIG’s air, traffic, and noise impacts.

Finally, the RDEIR makes no mention of the changes that have occurred to the surrounding neighborhood, including changes in existing uses and demographics. For example, the Villages have seen substantial growth in recent years. Although the 2013 EIR acknowledged plans for a Phase IV development of the campus, 2012 RDEIR at 4-19, which was completed in 2014 and added 80 units,<sup>17</sup> the Villages have completed additional phases of redevelopment since then. The Phase V project at Anchor Place, completed in 2018, added 120 units to the site, while the Phase VI project at Williams Street, to be completed in 2023, will result in a net increase of 50 units.<sup>18</sup> A future planned expansion, slated to begin in 2023 and be completed in 2033, will result in an additional net increase of 515 units.<sup>19</sup> The Port must revise the 2013 EIR to analyze

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<sup>14</sup> Ingrid Lobet, *Communities Worry About Health as States Ignore Climate Pledges, Build Oil Infrastructure*, USA Today (Mar. 25, 2021), <https://www.usatoday.com/story/news/investigations/2021/03/25/health-concerns-despite-climate-commitments-states-ok-fuel-tanks/4769675001/>.

<sup>15</sup> *See* Sean Belk, *Long Beach City Council Agrees to Further Study Green TI Freeway Plan*, Long Beach Bus. J. (Dec. 7, 2015), <https://www.lbbusinessjournal.com/long-beach-city-council-agrees-to-further-study-green-ti-freeway-plan/>.

<sup>16</sup> *See id.*

<sup>17</sup> *See Development*, Century Villages at Cabrillo, <https://centuryaffordable.org/affordable-development/>.

<sup>18</sup> *Id.*

<sup>19</sup> PlaceWorks, *Century Villages at Cabrillo Specific Plan 9*, 20 (2020), <https://longbeach.gov/globalassets/lbds/media->

whether SCIG's air quality, traffic, and noise impacts will be more severely felt in light of these developments at the Villages, which bring hundreds more Veterans, disabled individuals, and low-income families within SCIG's ambit.

Other sensitive receptors have undergone changes as well, or else are inaccurately described in the RDEIR. For example, the Bethune Transitional Center for the Homeless (Receptor #15) is now a Long Beach Unified School District Head Start Program. RDEIR Technical App'x at 6. In addition to the expansions discussed above, the Villages (Receptor #27) are now home to a full-time health clinic run by TCC Family Health and to the Elizabeth Ann Seton Residence, a 56-bed emergency shelter for families run by Catholic Charities of Los Angeles. *See id.* The VA Long Beach Clinic and Veteran's Support Services (Receptor #80) operates both an outpatient and a substance use center. *See id.* at 7. The Silverado Community Center (Receptor #67) includes both a community center and a park. *See id.* Admiral Kidd Park (Receptor #3) also includes a small community center. *See id.* at 6. Yet the RDEIR resolutely insists on using the same list of sensitive receptors as the 2013 EIR, without considering any of these changes. RDEIR at 17. That is absurd, and prevents local residents from understanding how and where SCIG's impacts will be felt.

These residents are facing significant health challenges – challenges that are not felt equally across racial and ethnic lines. In 2019, the Long Beach Department of Health reported that, while the age-adjusted mortality rate held steady or even decreased for white residents between 2013 and 2017, the rate increased among Hispanic/Latinx, Black, and Asian populations, with Blacks exhibiting the highest rate by far (1,294.6 deaths per 100,000 population in 2017).<sup>20</sup> Asthma rates have also increased; in the same report, the Long Beach Department of Health observed that “[t]he burden of asthma on Long Beach is . . . apparent with higher rates of hospital admissions and ER visits for both children and adults, where in all cases the rates exceed those for Los Angeles County and California.”<sup>21</sup> Again, “there is a stark contrast” in these rates across racial and ethnic groups, with Black residents *eight times as likely* to be hospitalized for asthma than white residents.<sup>22</sup> SCIG will only make these problems worse. ZIP Code 90810, where the project will be located, already “stands out” as an area with higher levels of pollution in Long Beach: there were 1,755 pounds of Persistent, Bioaccumulative, and Toxic Chemicals released into the environment in 2017 – more than *four times* as much

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[library/documents/planning/environmental/environmental-reports/pending/century-villages-at-cabrillo-specific-plan/cvc-specific-plan\\_initial-study\\_public-draft\\_2020\\_01-23.](https://www.longbeach.gov/globalassets/health/media-library/documents/healthy-living/community/community-health-assessment)

<sup>20</sup> City of Long Beach Dep't of Health & Human Servs., *2019 Community Health Assessment* 35 (2019), <https://www.longbeach.gov/globalassets/health/media-library/documents/healthy-living/community/community-health-assessment>.

<sup>21</sup> *Id.* at 39.

<sup>22</sup> *Id.* at 41 (reporting hospitalization rates (per 10,000 residents) of 2.5 for whites, 5.2 for Hispanics/Latinos, 8.5 for Asians and Pacific Islanders, and 21.2 for Blacks).

as any other ZIP Code in Long Beach – and 14,502 pounds of recognized carcinogens.<sup>23</sup> One local resident put it bluntly:

I have the diesel and concentrated smell, it's terrible. . . . you feel like your head is inside a balloon and tied around your neck as if you are suffocating.<sup>24</sup>

Another similarly remarked:

There is sometimes you don't want to go outside or workout because you don't want to breathe the air . . . I can see that pollution that we see every day. We want to open the windows, but we have to instead seal it so the air can't come inside. I try to get an air purifier, but it can lead to chronic diseases still. I was given an inhaler because someone needed to treat my asthma.<sup>25</sup>

This is unacceptable. SCIG does not belong in this community. The Port should honestly and accurately disclose the Project's devastating repercussions for residents' health and reject the Project once and for all.

### **3. Zero-emission locomotives, trucks, and cargo equipment represent feasible mitigation measures**

The 2013 EIR concluded that zero-emission locomotives and trucks were not commercially feasible, and, as such, declined to incorporate the use of those technologies as mitigation measures. Regardless of whether that conclusion was correct at the time, new information removes any doubt: these technologies are available. The Port must therefore analyze and adopt these technologies as mitigation measures for SCIG. *See* Cal. Pub. Res. Code § 21002 (agency should not approve project if feasible mitigation measures are available that would substantially lessen the project's significant environmental effects); *id.* § 21061.1 (“‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”).

Locomotive technology has progressed significantly in recent years. The U.S. Environmental Protection Agency's (EPA) regulation establishing a Tier 4 standard for locomotives took effect in 2015.<sup>26</sup> By 2016, several technologies were being employed in

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<sup>23</sup> *Id.* at 89.

<sup>24</sup> *Id.* at 165 (quoting health assessment focus group participant; quote translated from Spanish).

<sup>25</sup> *Id.* (quoting health assessment focus group participant).

<sup>26</sup> CARB, *Technology Assessment: Freight Locomotives IV-4* (2016), [https://ww2.arb.ca.gov/sites/default/files/classic//msprog/tech/techreport/final\\_rail\\_tech\\_assessment\\_11282016.pdf?\\_ga=2.229076319.2106258538.1590022486-1651316155.1554317363](https://ww2.arb.ca.gov/sites/default/files/classic//msprog/tech/techreport/final_rail_tech_assessment_11282016.pdf?_ga=2.229076319.2106258538.1590022486-1651316155.1554317363).

commercially ready Tier 4 locomotives.<sup>27</sup> By 2020, up to 10 percent of locomotive activity in the South Coast Basin met the Tier 4 standard;<sup>28</sup> the California Air Resources Board (CARB) expects that number to jump to 85 percent by 2030.<sup>29</sup> In fact, “[t]he current U.S. EPA Tier 4 locomotive emission standards no longer reflect the best available technology.”<sup>30</sup> As a result, CARB petitioned the EPA to establish a Tier 5 standard, to be implemented by 2025.<sup>31</sup> In its petition, CARB pointed to the availability of advanced technologies including selective catalytic reduction, diesel oxidation catalyst filters, on-board batteries for hybrid electric locomotives, and battery and fuel-cell electric locomotives with zero-exhaust emissions. The Ports of Long Beach and Los Angeles wrote EPA to express their support for CARB’s petition.<sup>32</sup> The South Coast Air Quality Management District (SCAQMD) likewise expressed its support, and urged EPA to consider a phase-in of 2023 instead of 2025.<sup>33</sup>

Taken together, these facts confirm the availability of advanced locomotives—a conclusion that is bolstered by more recent analyses.<sup>34</sup> For example, one study found that battery-electric locomotives are already technically feasible and are expected to become cost-competitive quite soon thanks to ongoing declines in lithium-ion battery and renewable energy costs.<sup>35</sup> Indeed, the study concluded that, in certain scenarios, battery-electric locomotives are already profitable for the freight rail sector—even

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<sup>27</sup> *Id.*

<sup>28</sup> SCAQMD, *Status Update on Railyard Indirect Source Rule 6* (2020), <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2020/2020-apr3-028.pdf?sfvrsn=8>.

<sup>29</sup> *Technology Assessment: Freight Locomotives*, *supra* n.26, at ES-10.

<sup>30</sup> CARB, *Petition for Rulemaking: Seeking the Amendment of the Locomotive Emission Standards for Newly Built Locomotives and Locomotive Engines and Lower Emission Standards for Remanufactured Locomotives and Locomotive Engines* 11 (2017), [https://ww2.arb.ca.gov/sites/default/files/2020-07/final\\_locomotive\\_petition\\_and\\_cover\\_letter\\_4\\_3\\_17.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-07/final_locomotive_petition_and_cover_letter_4_3_17.pdf).

<sup>31</sup> *Id.*

<sup>32</sup> Letter from Heather A. Tomley, Dir. Env’t Planning, Port of Long Beach, and Chris Cannon, Dir. Env’t Mgmt., Port of Los Angeles, to Scott Pruitt, Administrator, EPA (June 13, 2017), <https://ww2.arb.ca.gov/sites/default/files/2021-02/SanPedroBayPortsLocomotivePetitionSupportLetter.pdf>.

<sup>33</sup> Letter from Wayne Nastro, Exec. Officer, SCAQMD, to Scott Pruitt, Administrator, EPA 2 (June 2, 2017), <https://ww2.arb.ca.gov/sites/default/files/2021-02/SCAQMDLocomotivePetitionSupportLetter.pdf>.

<sup>34</sup> See, e.g., *Locomotive Emission Verifications, Technology Demonstrations, and Incentives*, CARB, <https://ww2.arb.ca.gov/our-work/programs/reducing-rail-emissions-california/locomotive-emission-verifications-technology> (listing over ten CARB-verified Tier 4 technologies and two current zero-emission technology demonstrations).

<sup>35</sup> Amol Phadke & Elif Tasar, *Big Batteries on Wheels: The Economic, Environmental, and Resilience Case for Rapidly Converting Diesel Locomotives to Battery-Electric 4-5* (2019); see also Press Release, Bombardier, AGC Battery Train: Innovating a Sustainable Future (Jan. 27, 2021), <https://rail.bombardier.com/en/about-us/worldwide-presence/united-states/en.html/bombardier/news/stories/2021/agc-battery-train-innovation-for-a-sustainable-future/en> (announcing that Bombardier is converting five of its diesel-hybrid trains to purely electric operation by 2023, in support of France’s goal of eliminating diesel trains by 2035).

without monetizing the locomotives' health and climate benefits.<sup>36</sup> And Burlington Northern Santa Fe (BNSF) and Wabtec recently completed a battery-electric locomotive pilot test from Barstow to Stockton, with BNSF "look[ing] to expand testing to other locations and operating conditions on its system."<sup>37</sup>

These developments flatly contradict the Port's conclusion in the 2013 EIR that adopting a mitigation measure requiring the use of Tier 4 locomotives by 2020 was not feasible. *See* 2013 EIR at 88. Not only is such a measure feasible, it (and in fact, something stronger) is necessary to reducing SCIG's nitrogen oxide (NOx) emissions, which will otherwise exceed national and state ambient air quality standards and subject local residents to negative health impacts. *See* 2013 EIR at 35-37 (discussing SCIG's projected air quality exceedances); *infra* pp. 19-21, 25-27, 30.<sup>38</sup> The Port must prepare a subsequent EIR that evaluates this new information, particularly in light of SCIG's significantly delayed construction and operation timeline. In doing so, the Port must consider the rapid advancement of zero-emission technology and, as such, the ability to require zero-emission locomotives as mitigation measures.

Similarly, continued developments in zero-emission truck technologies solidify their feasibility as a mitigation measure. Public investment in these technologies has been significant. For example, the Goods Movement Emission Reduction Program, created by Proposition 1B, provided over \$1 billion in funding to CARB for cleaner freight vehicles and equipment.<sup>39</sup> Based on "population, goods movement emissions, and federal attainment needs," CARB earmarked \$550 million to the Los Angeles/Inland Empire trade corridor – more than double the amount allocated to any other trade corridor – and planned to spend the majority of all funds on heavy duty diesel trucks.<sup>40</sup> In its 2015 guidelines for use of those funds, CARB established higher funding levels for zero and near-zero emission technologies.<sup>41</sup> The Carl Moyer Program, established in 1998 and updated in 2015, provides about \$60 million in grant funding

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<sup>36</sup> Phadke & Tasar, *supra* n.35, at 6-7.

<sup>37</sup> Press Release, BNSF Railway, *BNSF and Wabtec Commence Battery-Electric Locomotive Pilot Test in California* (Jan. 4, 2021), <https://www.bnsf.com/news-media/news-releases/newsrelease.page?relId=bnsf-and-wabtec-commence-battery-electric-locomotive-pilot-test-in-california>.

<sup>38</sup> *See also* Letter from Wayne Natri, *supra* n.33, at 1 (asserting that "[l]ocomotives represent a very significant source of NOx emissions in the South Coast Air Basin" and that, without significant reductions in emissions from such sources, "it would be impossible to attain the [National Ambient Air Quality Standards] for ozone in 2023 and 2013"); Letter from Heather A. Tomley and Chris Cannon, *supra* n.32 (recognizing that more stringent locomotive standards are needed to "assist our region . . . in meeting health-based federal air quality standards and protect[ing] public health and welfare").

<sup>39</sup> CARB, *Proposition 1B: Goods Movement Emission Reduction Program 2015 Guidelines for Implementation 3* (2015), [https://ww2.arb.ca.gov/sites/default/files/2020-06/prop\\_1b\\_goods\\_movement\\_2015\\_program\\_guidelines\\_for\\_implementation.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-06/prop_1b_goods_movement_2015_program_guidelines_for_implementation.pdf).

<sup>40</sup> *See id.* at 24-26.

<sup>41</sup> *Id.* at 3.



each year for the advancement of zero- and near-zero technologies.<sup>42</sup> As a result of grant programs such as these, CARB, as of 2017, had awarded: \$24 million to the South Coast for a statewide demonstration project for zero-emission drayage trucks; \$9 million to demonstrate two types of zero-emission trucks in the weight classes most commonly used at rail yards and freight transfer yards; \$14 million for a demonstration project integrating zero- and near-zero emission vehicles and cargo handling equipment into marine terminal operations; and \$60 million for zero-emission truck and bus pilot deployments.<sup>43</sup>

Private investments in zero-emission trucks have also surged in recent years, reinforcing that this technology is available and feasible as a mitigation measure – particularly given that SCIG would not become operational until 2025 at the earliest (assuming it is built).<sup>44</sup> Ford announced that it was committing \$22 billion to electrification, and that its commercial vehicles would be zero-emission capable by 2024.<sup>45</sup> Volvo created a new business area dedicated to accelerating electrification of its commercial vehicles;<sup>46</sup> its all-electric heavy-duty trucks became available in Europe in 2021.<sup>47</sup> Daimler set a goal of selling only carbon-neutral commercial vehicles by 2039 across all of its markets, including the United States.<sup>48</sup> Cummins, Freightliner, Mack, Navistar, Nikola, Mitsubishi Fuso, Peterbilt, and Tesla have also announced plans to sell zero-emission commercial vehicles by 2024.<sup>49</sup> In fact, as of September 2020, over a dozen Class 8 zero-emission truck models were already commercially available in California.<sup>50</sup> Volvo has begun its deployment of 70 VNR Electric Class 8 trucks in

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<sup>42</sup> *Carl Moyer Memorial Air Quality Standards Attainment Program*, CARB, <https://ww2.arb.ca.gov/our-work/programs/carl-moyer-memorial-air-quality-standards-attainment-program>.

<sup>43</sup> See CARB, *Revised Proposed 2016 State Strategy for the State Implementation Plan* 43-44 (2017), <https://ww3.arb.ca.gov/planning/sip/2016sip/rev2016statesip.pdf>; see also *id.* at 38-43 (identifying additional grant programs and contemplating new sources of funding); San Pedro Bay Ports, *Technology Advancement Program: 2020 Annual Report and 2021 Priorities* 4-7, 29-33, 38-39 (2021), <https://cleanairactionplan.org/documents/2020-tap-annual-report.pdf/> (detailing 2020 accomplishments and investments in various technology advancement projects).

<sup>44</sup> Int'l Council on Clean Transp. et al., *Race to Zero: How Manufacturers Are Positioned for Zero Emission Commercial Trucks and Buses in North America* 1 (2020), <https://theicct.org/sites/default/files/publications/Canada-race-to-zero-EN-oct2020.pdf>.

<sup>45</sup> Dana Lowell & Alissa Huntington, M.J. Bradley & Assocs., *Electric Vehicle Market Status–Update* 3 (2021), [http://blogs.edf.org/climate411/files/2021/04/EDF\\_EV\\_Market\\_Report\\_April\\_2021\\_Update.pdf](http://blogs.edf.org/climate411/files/2021/04/EDF_EV_Market_Report_April_2021_Update.pdf).

<sup>46</sup> Press Release, Volvo, *The Volvo Group Creates Business Area Dedicated to Accelerating Electrification* (Jan. 28, 2021), <https://www.volvogroup.com/en/news-and-media/news/2021/jan/news-3876656.html>.

<sup>47</sup> Press Release, Volvo, *Volvo Trucks Launches a Complete Range of Electric Trucks Starting in Europe in 2021* (Nov. 5, 2020), <https://www.volvotrucks.com/en-en/news-stories/press-releases/2020/nov/volvo-trucks-launches-a-complete-range-of-electric-trucks-starting-in-europe-in-2021.html>.

<sup>48</sup> Lowell & Huntington, *supra* n.45, at 16.

<sup>49</sup> CARB, *Advanced Clean Fleets Workshop* 21 (2020), [https://ww2.arb.ca.gov/sites/default/files/2020-09/200918presentation\\_ADA.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-09/200918presentation_ADA.pdf).

<sup>50</sup> *Advanced Clean Fleets Workshop*, *supra* n.49, at 20.

Southern California.<sup>51</sup> Daimler recently announced that its battery-electric heavy-duty model, the eCascadia, is available for preorder and is set to enter production in late 2022.<sup>52</sup> Several other major companies are slated to quickly follow suit with their own models.<sup>53</sup> This dynamic and competitive market has produced a race to get vehicles to market quickly, with “new zero-emission products being announced on nearly a weekly basis.”<sup>54</sup> It has also produced economies of scale and decreased battery prices, resulting in a favorable total cost of ownership relative to diesel trucks that exists today and will “soar” by 2030.<sup>55</sup>

On the regulatory front, CARB and SCAQMD recently finalized, or will soon finalize, several rules designed to further accelerate the transition to zero-emission vehicles. These include: (1) CARB’s Advanced Clean Trucks Regulation, which is the “world’s first zero-emission commercial truck requirement”<sup>56</sup> and “ensures that commercialized zero-emission trucks will arrive by 2024”<sup>57</sup>; (2) CARB’s Advanced Clean Fleets Regulation, which aims to achieve a “zero-emission truck and bus California fleet by 2045 everywhere feasible and significantly earlier for certain market segments such as last mile delivery and drayage applications”;<sup>58</sup> (3) and SCAQMD’s Warehouse Indirect Source Rule, which forces warehouses to reduce NOx and particulate matter (PM) emissions by, e.g., using zero-emission trucks and cargo handling equipment.<sup>59</sup>

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<sup>51</sup> Press Release, Volvo, *Volvo Trucks Awarded \$21.7M from U.S. EPA and South Coast AQMD to Deploy 70 Class 8 VNR Electric Zero-Emission Trucks* (Oct. 19, 2020), <https://www.volvotrucks.us/news-and-stories/press-releases/2020/october/volvo-trucks-awarded-21-7m-to-deploy-70-class-8-vnr-electric-zero-emission-trucks/>.

<sup>52</sup> Kyle Hyatt, *Daimler Trucks Opens Preorders on its eCascadia and eM2 Electric Trucks*, CNET (Apr. 7, 2021), <https://www.cnet.com/roadshow/news/daimler-trucks-ecascadia-em2-preorder-electric-truck/>.

<sup>53</sup> Int’l Council on Clean Transp. et al., *supra* n.44, at 37.

<sup>54</sup> *Id.* at 2; *see also id.* at 37 (“By 2023, leading experts . . . expect the number of available models to double in the United States and Canada”).

<sup>55</sup> Goldman Sch. of Pub. Policy, Univ. of Cal. Berkeley, *2035 The Report: Transportation* 15-16 (2021), <http://www.2035report.com/transportation/wp-content/uploads/2020/05/2035Report2.0-1.pdf?hsCtaTracking=544e8e73-752a-40ee-b3a5-90e28d5f2e18%7C81c0077a-d01d-45b9-a338-fcaef78a20e7>; *see also Advanced Clean Fleets Workshop*, *supra* n.49, at 19, 23.

<sup>56</sup> Patricio Portillo, *California Makes History With Clean Trucks Rule*, NRDC (June 25, 2020), <https://www.nrdc.org/experts/patricio-portillo/california-makes-history-clean-trucks-rule>; *see also Large Entity Reporting*, CARB, <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-trucks/large-entity-reporting>; CARB, *Advanced Clean Trucks Regulation* (Mar. 15, 2021), [https://www.arb.ca.gov/msprog/onrdiesel/documents/tbfinalreg.pdf?\\_ga=2.95110428.1607038412.1624474215-1600068119.1611616912](https://www.arb.ca.gov/msprog/onrdiesel/documents/tbfinalreg.pdf?_ga=2.95110428.1607038412.1624474215-1600068119.1611616912).

<sup>57</sup> *Technology Advancement Program: 2020 Annual Report and 2021 Priorities*, *supra* n.43, at 3.

<sup>58</sup> *Advanced Clean Fleets*, CARB, <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets/about>.

<sup>59</sup> Press Release, SCAQMD, *South Coast AQMD Governing Board Adopts Warehouse Indirect Source Rule* (May 7, 2021), <https://www.aqmd.gov/docs/default-source/news-archive/2021/board-adopts-waisr-may7-2021.pdf>; SCAQMD, *Warehouse Indirect Source Rule* (May 7, 2021), <http://www.aqmd.gov/docs/default-source/rule-book/reg-xxiii/r2305.pdf?sfvrsn=15>.



In particular, zero-emission trucks are available today for short-haul trips, such as the truck trips that would occur between SCIG and the Port.<sup>60</sup> The “vast majority” of trucks serving the Port have trips of less than 130 miles in length, “with a significant peak around 30 miles.”<sup>61</sup> Of the six trucks eligible for the California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP) – which provides point-of-sale discounts for zero- and near-zero-emission truck and bus purchases – three have a range of 150 miles and two have a range of 200 miles.<sup>62</sup>

Zero-emission cargo handling equipment (CHE) is available today as well. According to the Port’s latest feasibility assessment, “most (if not all)” original equipment manufacturers (OEMs) are developing zero- and/or near-zero-emission fuel technology platforms for all four key CHE types (yard tractors, top handlers, rubber-tired gantry (RTG) cranes, and large-capacity forklifts).<sup>63</sup> According to the Port’s assessment, zero-emission RTG cranes were already fully commercially available as of 2018, while three OEMs were commercially selling zero-emission yard tractors.<sup>64</sup> These technologies are increasingly becoming cost-effective thanks to greater economies of scale and cheaper battery prices.<sup>65</sup> That progress, in turn, helps advance efforts to incorporate zero-emission technology into other types of CHE products.<sup>66</sup> Indeed, “[o]ne major OEM has publicly stated that by 2021, it will make and sell at least one [zero-emission] model for all four key CHE types.”<sup>67</sup> Zero-emission fueling and charging infrastructures are also advancing. As the Port stated: “Good progress is underway to accelerate the pace of this transition at the Ports. This can be seen in the many [zero-emission] CHE demonstrations that are now, or will soon be, underway at marine terminals serving both Ports.”<sup>68</sup> For example, the Port described its partnerships with other government agencies to initiate at least 24 major demonstration projects, which would include testing of 113 individual zero-emission yard tractors, 11 zero-emission top handlers, 9 zero-emission RTG cranes, and 12 zero-emission large-capacity

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<sup>60</sup> See James Di Filippo et al., UCLA Luskin Center for Innovation, *Zero-Emission Drayage Trucks: Challenges and Opportunities for the San Pedro Bay Ports* 15, 18-19, 35-37 (2019), [https://innovation.luskin.ucla.edu/wp-content/uploads/2019/10/Zero\\_Emission\\_Drayage\\_Trucks.pdf](https://innovation.luskin.ucla.edu/wp-content/uploads/2019/10/Zero_Emission_Drayage_Trucks.pdf).

<sup>61</sup> *Id.* at 19.

<sup>62</sup> See *Tractor*, California HVIP, <https://californiahvip.org/vehicle-category/heavy-duty/>.

<sup>63</sup> San Pedro Bay Ports, *2018 Feasibility Assessment for Cargo-Handling Equipment* 6-7 (2019), <https://cleanairactionplan.org/documents/final-cargo-handling-equipment-che-feasibility-assessment.pdf/>.

<sup>64</sup> *Id.* at 2, 17.

<sup>65</sup> *Id.* at 7.

<sup>66</sup> *Id.* at 6.

<sup>67</sup> *Id.* at 7.

<sup>68</sup> *Id.* at 7.

forklifts.<sup>69</sup> Several other demonstrations are also underway,<sup>70</sup> and new models of all-electric yard tractors are making their way to market.<sup>71</sup> Additionally, several yard tractor models offered by OEMs Kalmar Ottawa, BYD, and Orange EV qualify for CARB's Clean Off-Road Equipment Voucher Incentive Program (CORE) – an incentive program similar to HVIP.<sup>72</sup>

Again, these developments reveal that the Port's decision not to require zero-emission truck or cargo handling equipment technology for SCIG in 2013 was misplaced. *See* 2013 EIR at 38-39, 87; 2012 RDEIR at 2-16. As to zero-emission trucks, the Port rested its conclusion in part on the fact that only two demonstration projects were underway and none had been completed. *See* 2013 EIR at 2-29 to 2-30. But "substantial evidence" now shows that zero-emission truck technologies are being "commercialized for port needs" and that their availability will only accelerate in the near future. *See id.* at 2-33.

The 2013 EIR also pointed to the proposed I-710 Corridor project – which incorporated no firm commitments to zero-emission technologies – as further justification for the Port's infeasibility determination. *See id.* at 2-33 to 2-34. That justification has likewise disappeared. In March, EPA rejected the I-710 project proponents' attempt to use a vague and unenforceable clean truck mitigation measure as a means of avoiding a hot-spot analysis under the Clean Air Act.<sup>73</sup> EPA's letter, which effectively halted the project, underscores the need here for the Port to examine ways in which it might lessen SCIG's substantial, negative air and health impacts, including through the adoption of a zero-emission truck mitigation measure.

Rather than adopt such a measure in 2013, the Port instead required only "low-emission drayage trucks" (MM AQ-8), effectively requiring that, by 2026, 90 percent of all trucks calling at the SCIG facility be liquified natural gas or equivalent. 2013 EIR at 53; 2012 RDEIR at 3.2-93 to -94. The 2013 EIR similarly contemplated the use of liquified natural gas fueled (or equivalent) yard tractors. 2012 RDEIR at 2-16. Those measures are insufficient and outdated. As discussed above, zero-emission technologies are available for both trucks and yard tractors. Such vehicles have no tailpipe emissions, while

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<sup>69</sup> *Id.* at 22-24.

<sup>70</sup> *See generally* Technology Advancement Program: 2020 Annual Report and 2021 Priorities, *supra* n.43; *see also*, e.g., Port of L.A., Port of Los Angeles "Shore to Shore" Project (2020) <https://ww3.arb.ca.gov/msprog/lct/pdfs/polazanzeff.pdf>.

<sup>71</sup> *See*, e.g., Autocar Launches Electric Terminal Tractor, Heavy Duty Trucking (May 18, 2021), <https://www.truckinginfo.com/10143717/autocar-launches-electric-terminal-tractor>.

<sup>72</sup> Terminal Tractors, California Core, <https://californiacore.org/equipment-category/terminal-tractors/>.

<sup>73</sup> *See generally* EPA, Technical Response: Summary of Issues for the I-710 Highway Expansion Project and I-710 Clean Truck Program.

natural gas vehicles still emit NO<sub>x</sub>, criteria air pollutants, and other air toxics, and have significant greenhouse gas impacts.<sup>74</sup>

At every stage in its lifecycle – from extraction to production, transport, and combustion – natural gas imposes harms to communities and the climate.<sup>75</sup> New information reveals that natural gas infrastructure leaks at a higher rate than previously understood, contributing to large releases of methane.<sup>76</sup> Methane is a potent greenhouse gas “tens of times more powerful than carbon dioxide at warming the atmosphere.”<sup>77</sup> In the Los Angeles area specifically, events in recent years have revealed shockingly high rates of leakage from natural gas compressors and storage facilities.<sup>78</sup> And a recent study by CARB indicates that the real-world performance of natural gas vehicles results in tailpipe emissions above the certification standard and that, as vehicles age, their emission control systems deteriorate.<sup>79</sup> As such, the natural gas components of SCIG would contribute to higher greenhouse gas emissions and air quality impacts than previously disclosed. *See generally* 2012 RDEIR Appendix C1.

This new information regarding the climate impacts of natural gas vehicles indicates that SCIG’s air pollution contributions will be more severe than previously contemplated, requiring a subsequent EIR. Additionally, this information – and the substantial developments in zero-emission technology for locomotives, trucks, and cargo equipment discussed above – confirms that the Port must revise the Project and add mitigation measures that exclude the use of natural gas technology and require the use of zero-emission technology instead.

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<sup>74</sup> See CARB, *In-Use Emission Performance of Heavy Duty Natural Gas Vehicles* (2021), [https://ww2.arb.ca.gov/sites/default/files/2021-04/Natural\\_Gas\\_HD\\_Engines\\_Fact\\_Sheet.pdf](https://ww2.arb.ca.gov/sites/default/files/2021-04/Natural_Gas_HD_Engines_Fact_Sheet.pdf); ICF, *Comparison of Medium- and Heavy-Duty Technologies in California: Executive Summary* 8 (2019), [https://caletc.com/assets/files/ICF-Truck-Report\\_Final\\_December-2019.pdf](https://caletc.com/assets/files/ICF-Truck-Report_Final_December-2019.pdf).

<sup>75</sup> See Jill Johnston & Lara Cushing, *Chemical Exposures, Health, and Environmental Justice in Communities Living on the Fenceline of Industry*, *Current Env’t Health Reports* 48, 49-50 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7035204/>; see generally Philip J. Landrigan, M.D. et al., *The False Promise of Natural Gas*, *New Eng. J. Med.* 104 (2020), <https://www.nejm.org/doi/full/10.1056/NEJMp1913663>.

<sup>76</sup> Mason Inman, *The Gas Index* 4, 7, 9-12 (2020), <https://thegasindex.org/wp-content/uploads/2020/12/Gas-Index-report-2020-final.pdf?hsCtaTracking=17ccb21f-c72b-42fe-a465-fccbcc037407%7C0537ae90-a261-4dd1-a4bf-cfc78d6c4c69>.

<sup>77</sup> Climate & Clean Air Coal. and United Nations Env’t Programme, *Global Methane Assessment: Summary for Decision Makers* 8 (2021), <https://www.ccacoalition.org/en/resources/global-methane-assessment-summary-decision-makers>.

<sup>78</sup> See, e.g., *Los Angeles Utility Says Gas Plant Leaks Methane*, Associated Press (Aug. 26, 2020), <https://apnews.com/article/ca-state-wire-5851c8b4898b34091ede28182d27ae7a>.

<sup>79</sup> *In-Use Emission Performance of Heavy Duty Natural Gas Vehicles*, *supra* n.74.

#### 4. New clean air standards and commitments underscore the need to abandon SCIG

Like the 2013 EIR, the RDEIR plainly admits that SCIG will cause significant increases in air pollution. *See* RDEIR at 4, 25-27; 2013 EIR at 36-37. That is incompatible with a host of recently adopted clean air standards, plans, and policies designed to improve air quality in the South Coast Basin (the Basin) and better protect environmental justice communities. The revised EIR should discuss these new plans and disclose SCIG's inconsistency with them to the public.

To begin, SCIG will impede the attainment of national and state ambient air quality standards. The 2013 EIR confidently asserted that the 2007 Air Quality Management Plan (AQMP) included emission reduction measures designed to bring the Basin into attainment, and that SCIG was consistent with that Plan. *See* RDEIR at 3.2-96 to 3.2-97. But the Basin remains far from reaching attainment. It has yet to comply with the health standard for ozone "set more than 40 years ago . . . , or three stricter standards issued since"; SCAQMD has admitted that "it will not be possible to meet the least stringent of those standards by a 2022 deadline."<sup>80</sup> The Basin is likewise in nonattainment of both current and earlier health standards for PM.<sup>81</sup> Accordingly, the 2016 AQMP incorporates a variety of stringent regulatory actions and aggressive control measures for achieving emissions reductions, including measures for railyard and intermodal facilities and heavy-duty vehicles.<sup>82</sup> Above all, the AQMP "calls for a priority on maximizing emissions reductions utilizing zero-emission technologies wherever feasible and cost-effective."<sup>83</sup>

In accordance with AB 617, which was signed into law in 2017, SCAQMD has also developed a Community Emission Reduction Plan ("CERP") for Wilmington, West Long Beach, and Carson.<sup>84</sup> The goal of AB 617 is to address the disproportionate impacts of air pollution in environmental justice communities.<sup>85</sup> Based on community input and technical data, the CERP identifies ports, neighborhood truck traffic, and

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<sup>80</sup> Tony Barboza, *L.A. Began 2020 With a Clean-Air Streak But Ended With Its Worst Smog In Decades*, L.A. Times (Dec. 6, 2020), <https://www.latimes.com/california/story/2020-12-06/2020-la-air-quality-southern-california-pollution-analysis>.

<sup>81</sup> *See Revised Proposed 2016 State Strategy for the State Implementation Plan*, *supra* n.43, at 21-22; SCAQMD, *Final 2016 Air Quality Management Plan ES-1* (2016), <https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/final2016aqmp.pdf?sfvrsn=15>.

<sup>82</sup> *Final 2016 Air Quality Management Plan*, *supra* n.81, at 4-28 to 4-31.

<sup>83</sup> *Id.* at ES-6.

<sup>84</sup> SCAQMD, *Community Emissions Reduction Plan: Wilmington, Carson, West Long Beach* 1-1 to 1-2 (2019), <https://www.aqmd.gov/docs/default-source/ab-617-ab-134/steering-committees/wilmington/cerp/final-cerp-wcwlb.pdf?sfvrsn=8>.

<sup>85</sup> *Id.* at 1-1.

railyards as air quality priorities.<sup>86</sup> Altogether, the CERP sets emission reduction targets of 2,832-3,207 tons per year of NO<sub>x</sub>, 64 tons per year of volatile organic compounds, 11 tons per year of sulfur oxides, and 20 tons per year of diesel PM.<sup>87</sup>

Recent trends underscore the need for aggressive air pollution reduction, particularly in Port-adjacent communities. The year 2020 was one of Los Angeles's "smoggiest in decades," registering some of "the worst ozone pollution readings and highest number of bad air days since the mid-1990s."<sup>88</sup> Backlogs at the Port over the past several months have been forcing record numbers of container ships to wait at anchor,<sup>89</sup> causing a sharp increase in NO<sub>x</sub> and PM emissions with associated adverse health effects on local communities.<sup>90</sup> The Port has exacerbated that problem by delaying an emission-reduction program that would accelerate the shift away from diesel trucks.<sup>91</sup> "This is a moment when the region" – and the San Pedro Bay Ports in particular – "should be sprinting to adopt pollution-cutting policies."<sup>92</sup> Instead, the Port has chosen to revive the SCIG Project, which, if built, would be the tenth highest emitter of NO<sub>x</sub> in the region and could single-handedly bring the Basin out of attainment for the one-hour federal nitrogen dioxide (NO<sub>2</sub>) standard.<sup>93</sup> SCIG is plainly incompatible with the latest AQMP and the CERP for Wilmington, West Long Beach, and Carson.<sup>94</sup>

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<sup>86</sup> *Id.* at 3a-7, 3b-1.

<sup>87</sup> *Id.* at 5a-1.

<sup>88</sup> Barboza, *supra* n.80.

<sup>89</sup> Paul Berger, *Cargo Ships Are Again Idling Off Jammed Southern California Ports*, Wall St. J. (Aug. 17, 2021), <https://www.wsj.com/articles/cargo-ships-are-again-idling-off-jammed-southern-california-ports-11629229285> (noting that a record 40 ships waited at anchor in February 2021, compared to the "normal" number of "one, or none").

<sup>90</sup> CARB, *Emission & Health Impacts from Vessels at Anchor 1-2* (2021),

[https://ww2.arb.ca.gov/sites/default/files/2021-06/ogvcongestion\\_ada.pdf](https://ww2.arb.ca.gov/sites/default/files/2021-06/ogvcongestion_ada.pdf).

<sup>91</sup> *See Port of Long Beach Delays New Clean Truck Rate*, Ass'n Pac. Ports (Aug. 6, 2020),

<https://www.pacificports.org/port-of-long-beach-delays-new-clean-truck-rate/>; The Times Editorial Board, *Editorial: Port Pollution is Choking Southern California*, L.A. Times (Aug. 16, 2021),

<https://www.latimes.com/opinion/story/2021-08-16/editorial-port-pollution-choking-southern-california>.

<sup>92</sup> *Editorial: Port Pollution is Choking Southern California*, *supra* n.91.

<sup>93</sup> SCAQMD, *Proposed Rule 2306 – Indirect Source Rule for New Intermodal Facilities Working Group Meeting #1 Presentation 14-15* (July 28, 2021),

[http://www4.aqmd.gov/enewsletterpro/uploadedimages/000001/Laura/PR%202306/PR2306\\_WGM\\_1\\_FINAL.pdf](http://www4.aqmd.gov/enewsletterpro/uploadedimages/000001/Laura/PR%202306/PR2306_WGM_1_FINAL.pdf) (NO<sub>x</sub> figure is based on SCIG's 2035 NO<sub>x</sub> emissions as compared to 2020 emissions for NO<sub>x</sub> RECLAIM); *see also id.* at 15 (noting that during operation, SCIG's NO<sub>2</sub> emissions would exceed the applicable NAAQS by 325 percent).

<sup>94</sup> To the extent that federal conformity regulations apply here, SCIG violates them because it puts the South Coast Basin farther from ozone and PM attainment, not closer. *See* 42 U.S.C. § 7506(c)(1); 40 C.F.R. §§ 51.390(a), 51.851(a), (d); SCAQMD, Rule 1901: General Conformity (1994),

<https://www.aqmd.gov/docs/default-source/rule-book/reg-xix/rule-1901-general-conformity.pdf?sfvrsn=4>.



SCIG will likewise hinder progress towards new state and local policies designed to improve local air quality and address the climate crisis. For example, Executive Order B-32-15, issued by Governor Brown in 2015, calls for an “integrated action plan” that, among other things, “establishes clear targets to improve freight efficiency” and “transitions to zero-emission technologies.”<sup>95</sup> That plan – the California Sustainable Freight Action Plan, finalized in 2016 – targets the deployment of over 100,000 zero- and near-zero-emission freight vehicles by 2030 and identifies on-dock rail as the type of “large transformational infrastructure projects . . . that,” unlike near-dock facilities like SCIG, “could be critical to the development of a sustainable freight transport system.”<sup>96</sup> Executive Order B-30-15, also issued by Governor Brown in 2015, and Senate Bill 32, signed by Governor Brown in 2016, set a new 2030 goal of reducing greenhouse gas emissions by 40 percent from 2020 levels.<sup>97</sup> CARB’s 2017 Climate Change Scoping Plan, which implements that goal, reiterates the importance of the Sustainable Freight Action Plan and the acceleration of zero-emission technologies.<sup>98</sup> Los Angeles’s Green New Deal, launched by Mayor Garcetti in 2019, asserts that “[z]ero emission transportation and goods movement are cornerstones to improving our air quality, meeting our climate goals, and enhancing Angelenos’ quality of life” and calls for an 80 percent reduction of port-related greenhouse gas emissions by 2050.<sup>99</sup>

More recently, Executive Order N-79-20, issued by Governor Newsom in January 2021, establishes a statewide goal that 100 percent of in-state sales of new trucks be zero emission by 2035 and, further, that 100 percent of drayage trucks in the state be zero emission by 2035.<sup>100</sup> The California Zero-Emission Vehicle Market Development Strategy, released in February 2021, establishes an approach for achieving those goals, focusing on scale – decreasing transition costs and increasing private capital investments – and equity – “ensur[ing] that communities suffering most from a combination of economic, health, and environmental burdens are actively prioritized and directly benefit.”<sup>101</sup> These policies are echoed at the national stage, where President Biden has announced a new target for the United States to achieve a 50-52 percent

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<sup>95</sup> Cal. Exec. Order No. B-32-15 (July 17, 2015),

<https://www.ca.gov/archive/gov39/2015/07/17/news19046/index.html>.

<sup>96</sup> *California Sustainable Freight Action Plan*, *supra* n.7, at 10, 20; *see also id.* at E-4 (suggesting shifting away from near-dock rail projects like SCIG in favor of on-dock rail facilities).

<sup>97</sup> Cal. Exec. Order No. B-30-15 (April 29, 2015),

<https://www.ca.gov/archive/gov39/2015/04/29/news18938/index.html>; Chris Megerian & Liam Dillon, *Gov. Brown Signs Sweeping Legislation to Combat Climate Change*, L.A. Times (Sept. 8, 2016), <https://www.latimes.com/politics/la-pol-ca-jerry-brown-signs-climate-laws-20160908-snap-story.html>.

<sup>98</sup> CARB, *California’s 2017 Climate Change Scoping Plan* 35, 77, 104 (2017)

[https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping\\_plan\\_2017.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf).

<sup>99</sup> Mayor Eric Garcetti, *L.A.’s Green New Deal* 80 (2019),

[https://plan.lamayor.org/sites/default/files/pLAN\\_2019\\_final.pdf](https://plan.lamayor.org/sites/default/files/pLAN_2019_final.pdf).

<sup>100</sup> Cal. Exec. Order No. N-79-20 (Sept. 23, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf>.

<sup>101</sup> Cal. Gov. Office of Bus. & Econ. Dev., *California Zero-Emission Vehicle Market Development Strategy* 3, 6 (2021), [https://static.business.ca.gov/wp-content/uploads/2021/02/ZEV\\_Strategy\\_Feb2021.pdf](https://static.business.ca.gov/wp-content/uploads/2021/02/ZEV_Strategy_Feb2021.pdf).

reduction in greenhouse gas pollution from 2005 levels by 2030, rejoined the Paris Climate Agreement, and recognized the need to reduce carbon pollution in the transportation sector.<sup>102</sup> SCIG interferes with the accomplishment of these objectives.

In fact, SCIG is inconsistent with the Port's own Clean Air Action Plan 2017 Update (Update). The Update recognizes that "residents nearest the Ports still face higher pollution-related health risks than the rest of the Southern California population," including high cancer risks, high asthma rates, and increased mortality.<sup>103</sup> Faced with these realities, and the state and local initiatives discussed above, the Update reaffirms its earlier commitments to reductions of criteria pollutants and sets a goal of reducing greenhouse gas emissions from port-related sources to 40 percent below 1990 levels by 2030 and to 80 percent below 1990 levels by 2050.<sup>104</sup> In terms of reduction strategies, the Update acknowledges the benefits of, and reasserts a commitment to, "[m]aximizing on-dock rail where possible."<sup>105</sup> And for near-dock rail yards, the Update expresses support for Tier 5 locomotives and discusses the need for rapid adoption of zero-emission technologies, committing to a zero-emission goal for all terminal equipment by 2030 and for all drayage trucks by 2035 and identifying short-haul truck trips to and from near-dock railyards as a "prime candidate for early introduction of zero-emissions trucks."<sup>106</sup> Most recently, a resolution adopted by the Port regarding implementation of the Clean Truck Fund Rate set a "Zero Emissions Commitment," "direct[ing] staff to take all feasible actions to accelerate deployment of [zero-emission] trucks by prioritizing the testing, demonstration and deployment of [zero-emission] equipment, and supporting infrastructure in accordance with the 2017 CAAP Update and the 2035 goal for [zero-emission] drayage trucks serving" the Port.<sup>107</sup>

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<sup>102</sup> Press Release, The White House, *Fact Sheet: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies* (Apr. 22, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

<sup>103</sup> *Clean Air Action Plan 2017*, *supra* n.3, at 20-22.

<sup>104</sup> *Id.* at 25; *see also id.* at 26 (noting that greenhouse gas emission reduction strategies can also help reduce criteria pollutants).

<sup>105</sup> *Id.* at 73.

<sup>106</sup> *Id.* at 30, 33, 47, 51-52. The Update claims that zero- and near-zero emissions trucks "are not yet commercially available," *id.* at 33, but that claim is both outdated and erroneous. *See supra* section I.A.3.

<sup>107</sup> Port of L.A., Res. No. 21-9845, at 4 (June 17, 2021), [https://kentico.portoflosangeles.org/getmedia/dec83fb7-fef8-4b9b-a869-cc428a537bb5/Item-7\\_Environmental\\_CTP-2021-Clean-Truck-Fund-Rate\\_Board-Report](https://kentico.portoflosangeles.org/getmedia/dec83fb7-fef8-4b9b-a869-cc428a537bb5/Item-7_Environmental_CTP-2021-Clean-Truck-Fund-Rate_Board-Report); Port of L.A., Minutes for Regular Board Meeting of June 17, 2021, at 12-13 (June 17, 2021), [https://doc-10-bk-apps-viewer.googleusercontent.com/viewer/secure/pdf/3nb9bdfcv3e2h2k1cmql0ee9cvc5l0le/beqem9t8b1flu6uebv08iv6mekceou1t/1629948900000/lantern/\\*/ACFrOgA0GQLJsBpLKMhpriSInYC0WXgDRrtsQbQyvmL0JPqHavII7owMKEPVRw\\_NY6Z-IQhVHvLy31AJJyq1yG01Os8XIn4iFqem\\_tmFsvlRaMwGK7P73YpX90ExBH03QBp8fi5DQqIAtJ8GMx3k?print=true](https://doc-10-bk-apps-viewer.googleusercontent.com/viewer/secure/pdf/3nb9bdfcv3e2h2k1cmql0ee9cvc5l0le/beqem9t8b1flu6uebv08iv6mekceou1t/1629948900000/lantern/*/ACFrOgA0GQLJsBpLKMhpriSInYC0WXgDRrtsQbQyvmL0JPqHavII7owMKEPVRw_NY6Z-IQhVHvLy31AJJyq1yG01Os8XIn4iFqem_tmFsvlRaMwGK7P73YpX90ExBH03QBp8fi5DQqIAtJ8GMx3k?print=true) (indicating approval of Res. No. 21-9845).



Many of the above plans and policies also stress the importance of equitable climate solutions and centering the needs of environmental justice communities. For example, CARB’s 2017 Climate Change Scoping Plan lays out a strategy for “institutionalizing environmental justice and social equity” grounded in transparency, integration, monitoring, research, and enforcement.<sup>108</sup> Los Angeles’s Green New Deal lists “a responsibility to deliver environmental justice and equity” as one of four key principles and sets two related targets: (1) “[i]mprov[ing] the raw scores of CalEnviroScreen indicators of L.A. communities in the top 10% by an average of 25% by 2025; and 50% by 2035,” and (2) [r]educ[ing] the number of annual childhood asthma-related emergency room visits in L.A.’s most contaminated neighborhoods to less than 14 per 1,000 children by 2025; and 8 per 1,000 children by 2035.”<sup>109</sup> President Biden’s actions likewise prioritize environmental justice, recognizing that all families and communities deserve clean air and water — “especially those places too often left out and left behind.”<sup>110</sup> SCIG threatens to undermine these goals.

## **B. The RDEIR ignores the interrelationship between the air quality analysis and other sections of the 2013 EIR**

The ambient air pollutant concentration analysis is the foundation of much of the Port’s environmental impact analysis of SCIG. Thus, when the Port issued a revised offsite ambient air pollutant concentration analysis, as it did in the RDEIR, it should have also issued revisions to those sections of the EIR that rely on or relate to the ambient air quality analysis. See *Preserve Wild Santee v. City of Santee*, 148 Cal. Rptr. 3d 310, 332 (Cal. Ct. App. 2012) (noting that whatever steps an agency “takes to remedy the EIR’s deficiencies in one . . . area[] could affect” other areas of the EIR). Even though the writ explicitly required that the Port reconsider particular sections of its EIR, it did not limit the Port’s discretion to revise the EIR more broadly; at a minimum, the Port must also assess whether the revised analyses of those sections revealed deficiencies in other areas. See *San Franciscans for Reasonable Growth v. City & Cnty. of San Francisco*, 258 Cal. Rptr. 267, 275 (Cal. Ct. App. 1989). This assessment is missing from the RDEIR.

For one, the Port should have reexamined its selected mitigation measures in light of the updated offsite ambient air quality analysis. Agencies have a duty under CEQA not to “approve a project as proposed if there are feasible . . . mitigation measures that would substantially lessen any significant effects that the project would have on the environment.” Cal. Code Regs. tit. 14, § 15021(b). The RDEIR confirmed the 2013 EIR’s conclusion that SCIG will have significant environmental impacts. See generally RDEIR at 4-9. CEQA thus obligates the Port to evaluate mitigation measures and implement all measures that are feasible that would mitigate or prevent any of these significant impacts. See, e.g., *King & Gardiner Farms, LLC v. Cnty. of Kern*, 259 Cal.

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<sup>108</sup> *California’s 2017 Climate Change Scoping Plan*, *supra* n.98, at 96-97.

<sup>109</sup> *L.A.’s Green New Deal*, *supra* n.99, at 8, 24.

<sup>110</sup> *Fact Sheet: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target*, *supra* n.102.

Rptr. 3d 109, 140 (Cal. Ct. App. 2020). As the RDEIR provides updated assessments about SCIG's significant effects, it should also include updated assessments about mitigation measures that could reduce them. This is true especially because the substantial passage of time has affected the range of available mitigation options. *See supra* sections I.A.2, I.A.3. Indeed, certain mitigation measures that the Port concluded were infeasible in 2013 have become feasible since then, and the Port had a duty to evaluate this.

In fact, the Superior Court, in ordering the Port to revise its air quality impacts analysis to comply with CEQA's mandate, simply assumed that the Port would update its analysis of mitigation measures on remand. Opinion & Order on Petitions for Writ of Mandate, *Fast Lane Transp., Inc. v. City of Los Angeles*, No. CIV. MSN14-0300, 100 (Mar. 30, 2016, Cal. Super. Ct.) (hereinafter "Superior Court Opinion") ("Once the full extent of the impacts of SCIG on air quality is known, when the Port reconsiders mitigation measures then, given the age of the TIAX (2011) and CALSTART (2012) reports, it will, no doubt, again canvass the field to determine if sufficient progress has occurred to make such alternative technology 'feasible' within the meaning of CEQA." (emphasis added)). The Superior Court again displayed its understanding of the Port's obligation to reconsider mitigation measures on remand when it declined to consider a challenge to the Port's response to a proposed measure regarding air filters in schools, concluding that "this issue will likely be revisited if and when the air quality impacts analysis is revised." *Id.* at 110. In reviewing the Superior Court's decision, the Court of Appeals said nothing to undermine the Port's continuing obligation to update related sections of the EIR when the mandated "correction of inadequacies in the FEIR's analysis of air quality impacts" reveals or creates inadequacies in those sections. *City of Long Beach v. City of Los Angeles*, 228 Cal. Rptr. 3d 23, 48 (Cal. Ct. App. 2018).

The Port itself also contemplated that a wider range of feasible mitigation options would be available by the present time. For example, it assumed that zero-emission and Tier 4 technology would be more widely available in 2020, and so set (unenforceable) project conditions in the 2013 EIR accordingly, including a goal that "[a]ll drayage trucks operating at the SCIG facility shall be 100% zero emissions by the end of 2020," and that the locomotive fleet "meet a minimum performance requirement of an emissions equivalent of at least 50 percent Tier 4 line-haul locomotives . . . when operating on port properties by 2023." 2012 RDEIR at 3.2-99-100; *see also* Superior Court Opinion at 108.

Yet the RDEIR makes clear that the Port did not even conduct a limited reassessment of mitigation measures, let alone "canvass the field," Superior Court Opinion at 108, to determine if there are mitigation options that have become feasible or appropriate since 2013. The only mitigation measure that the Port currently incorporates in the RDEIR's offsite ambient air quality analysis is on-site street sweeping. The Port projects that this measure will reduce PM pollution but will not

bring any of SCIG's ambient air pollution impacts below the standard of significance. See RDEIR at 107. Nonetheless, the Port refused – despite the passage of time and its updated conclusions about ambient air pollution impacts – to analyze whether other feasible mitigation measures could be implemented to lessen these significant effects. Cal. Code Regs. tit. 14, § 15021(b). For example, the RDEIR failed to analyze whether the zero-emission and Tier 4 technology goals described above could be translated into enforceable mitigation measures. As detailed in section I.A.3, the answer is yes.

In sum, the Port should consider the need for new mitigation measures, reassess the feasibility of mitigation measures, and analyze all proposed mitigation measures that might now be appropriate and feasible.

Other sections of the 2013 EIR that the Port did not revisit in the RDEIR must be updated as well. Just as the Port should have updated the models and data underlying its offsite ambient air quality analysis when revising that section, *infra* section II.A, it should also have revised related sections that relied on the same models and data for their conclusions. Cf. *San Franciscans for Reasonable Growth*, 258 Cal. Rptr. at 275. For example, the Health Risk Assessment in the 2013 EIR analyzed “individual lifetime cancer risk, chronic noncancer hazard index, and acute noncancer hazard index” as well as “the effects of particulate matter on premature death (mortality) and disease (morbidity)” as a result of “Project emissions and human exposure to the emissions.” 2012 RDEIR at 3.2-28. The Port included this assessment “to provide information on the association of [diesel] PM and ambient PM exposure with adverse health effects – a topic of increasing concern to citizens, regulatory agencies, and other entities.” *Id.* In doing so, it relied on the same emissions projections and dispersion models as the offsite ambient air quality analysis. Compare 2012 RDEIR at C3-31 (employing USEPA AERMOD dispersion model version 09292 for 2012 Health Risk Assessment), *with id.* at 3.2-66 (using same version of dispersion model to predict ambient pollutant concentrations in 2012 air quality analysis); see also RDEIR Tech. App'x at 13 (indicating reliance on same dispersion modeling as 2013 EIR).

The Port inappropriately failed to revise the Health Risk Assessment when revising the offsite ambient air quality analysis in the RDEIR. In fact, the RDEIR includes “supplemental information” about the local health effects of significant air quality impacts, while insisting that this information does not constitute a “new impact assessment” or require revision of the 2013 EIR's health risk assessment. See RDEIR at 24, 26. That is incorrect.

Not only are the emissions factors and dispersion models underlying the inputs of the Health Risk Assessment now outdated; so, too, are the guidelines and methodology that govern this critical component of the EIR. The 2013 EIR's Health Risk Assessment was prepared in accordance with, among other methodologies, the “Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk

Assessments” from 2003 and SCAQMD’s Supplemental Guidelines for Preparing Risk Assessments from 2002. 2012 RDEIR at C3-1; RDEIR at 7, 114-15. But the Office of Environmental Health Hazard Assessment issued a revised Guidance Manual in 2015 that “reflects advances in the field of risk assessment along with explicit consideration of infants and children.”<sup>111</sup> The 2015 Guidance incorporates “updates [to] health effects values, exposure pathway variates (e.g., breathing rates),” and new data or variables in the tiered risk assessment.<sup>112</sup> And SCAQMD issued updated Supplemental Guidelines for Preparing Risk Assessments in 2016, 2018, and 2020.<sup>113</sup> That the Port’s Health Risk Assessment—a topic it notes is “of increasing concern to citizens, regulatory agencies, and other entities,” 2012 RDEIR at 3.2-28—is based on outdated information and methodologies indicates that it is “insufficient” and must be updated to comply with CEQA. *Save the Agoura Cornell Knoll v. City of Agoura Hills*, 259 Cal. Rptr. 3d 707, 737 (Cal. Ct. App. 2020) (quoting *Gray v. County of Madera*, 85 Cal. Rptr. 3d 50, 64 (Cal. Ct. App. 2008)).

In addition, many studies have come out in the last ten years that provide new information about the impacts of railyards on respiratory health and other health indicators.<sup>114</sup> The EIR should—but does not—account for this new information and disclose the full extent of the negative health impacts that SCIG would bring to the community.<sup>115</sup>

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<sup>111</sup> Cal. Off. Env’t Health Hazard Assessment, *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments* (Feb. 2015),

<https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf>.

<sup>112</sup> *Id.*

<sup>113</sup> SCAQMD, *AB2588 and Rule 1402 Supplemental Guidelines (Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics “Hot Spots” Information and Assessment Act)* (Oct. 2020), [ab-2588-supplemental-guidelines.pdf](https://www.scaqmd.gov/ab-2588-supplemental-guidelines.pdf) ([aqmd.gov](https://www.scaqmd.gov)).

<sup>114</sup> See, e.g., Kristen N. Arthur et al., *Health-Predictive Social-Environmental Stressors and Social Buffers Are Place Based: A Multilevel Example from San Bernardino Communities*, *J. of Primary Care & Community Health* (2019); Rhonda Spencer-Hwang et al., *Experiences of a Rail Yard Community: Life Is Hard*, 77(2) *J. Env’t Health* 8-17 (2014); Rhonda Spencer-Hwang et al., *Respiratory Health Risks for Children Living Near a Major Railyard*, 40(5) *J. Community Health* 1015-23 (2015); Rhonda Spencer-Hwang et al., *Association of major California freight railyards with asthma-related pediatric emergency department hospital visits*, 13 *Preventive Med. Reps.* 73-79 (2019),

<https://www.sciencedirect.com/science/article/pii/S2211335518302626?via%3Dihub>; Andrea Hricko et al., *Global Trade, Local Impacts: Lessons from California on Health Impacts and Environmental Justice Concerns for Residents Living near Freight Rail Yards*, 11(2) *J. Env’t Rsch. & Public Health* 1914-41 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3945577/>.

<sup>115</sup> In fact, a recent analysis by SCAQMD showed that cancer risk in West Long Beach is already one of the highest in the region. Data from an air monitor in close proximity to the SCIG site demonstrated a cancer risk in West Long Beach above 700 in a million, with most of the risk attributed to diesel exhaust. SCAQMD, *MATES V Multiple Air Toxics Exposure Study* 2-65 (Aug. 2021), <http://www.aqmd.gov/home/air-quality/air-quality-studies/health-studies/mates-v>. SCIG would exacerbate these already serious health risks for residents by adding to the diesel pollution burden.

And, critically, the COVID-19 pandemic has changed the calculus for evaluating health risks to residents. Long-term exposure to air pollution makes people more vulnerable to complications and death from COVID-19.<sup>116</sup> That neighborhoods with high proportions of Black and Latinx residents experience disproportionately high levels of air pollution may thus explain why these groups have suffered disproportionately from the COVID-19 pandemic.<sup>117</sup> Indeed, a recent study found that Los Angeles neighborhoods with the worst air pollution have experienced a 60 percent increase in mortality from COVID-19 compared to Los Angeles neighborhoods with the best air quality.<sup>118</sup>

The Port must update the Health Risk Assessment for SCIG to reflect the latest information about baseline pollutant concentrations, methodologies for predicting ambient pollutant concentrations, and the health impacts of railyard air pollution.

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The scope of the Port's RDEIR is impermissibly narrow. The Port takes an overly cramped interpretation of its CEQA obligations, ignoring that the "perimeters" of the court's writ of mandate "do not necessarily mark the boundaries" of those obligations, *Cnty. of Inyo*, 139 Cal. Rptr. at 409, and that CEQA requires a subsequent EIR when substantial changes in circumstances occur or new information becomes available regarding a proposed project, *see* Cal. Pub. Res. Code § 21166(b), (c). Such changes and information are present here. Since the Port's certification of the original EIR in 2013, rail capacity and cargo projections have changed; commercial and residential uses at and near the project site have shifted; zero-emission technologies for locomotives, drayage trucks, and cargo handling equipment have significantly advanced; and a slew of local, state, and federal policies and plans have been implemented to spur more drastic cuts in local and global air pollution. These developments, along with other changes to the data, assumptions, and guidelines used to inform the 2013 EIR's conclusions regarding mitigation measures, environmental impacts, and public health harms, require a revised, subsequent EIR. More significantly, they reveal that SCIG is not only dirtier than originally predicted but wholly unnecessary. We urge the Port to reject the Project.

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<sup>116</sup> Xiao Wu et al., *Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis*, 6 *Science Advances* 45 (2020), <https://projects.iq.harvard.edu/covid-pm>.

<sup>117</sup> Jonah Lipsitt et al., *Spatial analysis of COVID-19 and traffic-related air pollution in Los Angeles*, 153 *Env't Int'l* 106531 (Aug. 2021), <https://doi.org/10.1016/j.envint.2021.106531>.

<sup>118</sup> *Id.*

## II. The RDEIR's Revised Ambient Air Quality and Cumulative Impact Analyses are flawed

Even within the sections of the 2013 EIR that the Port *did* revise, the Port's analyses are inadequate for several reasons, as discussed below.

### A. The RDEIR's Offsite Ambient Air Pollutant Concentration Analysis is inaccurate and misleading because it relies on a 2010 baseline and outdated information

Under CEQA, the significance of a proposed project's environmental impacts is evaluated by comparing the project and its alternatives to baseline conditions. Cal. Code Regs. tit. 14, § 15125. When selecting baseline conditions, the most important consideration is that the baseline be "realistic." See *Communities for a Better Env't v. SCAQMD*, 226 P.3d 985, 993 (Cal. 2010). While CEQA Guidelines suggest that the agency should consider baseline environmental conditions as those "at the time the notice of preparation is published," Cal. Code Regs. tit. 14, § 15125(a)(1), California courts have made clear that "the date for establishing baseline cannot be a rigid one," *Save Our Peninsula Comm. v. Monterey Cnty. Bd. of Supervisors*, 104 Cal. Rptr. 2d 326, 345 (Cal. Ct. App. 2001). When "existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational." Cal. Code Regs. tit. 14, § 15125(a)(1). In fact, CEQA *requires* that an agency diverge from the general guideline of setting baseline conditions at the time the notice of preparation was published if doing so would be misleading, as "the baseline for CEQA analysis *must* be . . . the real conditions on the ground." *Communities for a Better Env't*, 226 P.3d at 993 (quoting *Save Our Peninsula Comm.*, 104 Cal. Rptr. 2d at 326) (emphasis added).

The Port recognized the importance of an up-to-date baseline in the 2013 EIR when it changed the project baseline for SCIG from 2005 to 2010. 2012 RDEIR at 3.2-28. While noting the standard baseline relies on conditions "as they exist at the time the notice of preparation is published," which in that case was 2005, the Port explained that "with the passage of seven years . . . and changes in conditions over this period, the existing environmental setting is best reflected by a 2010 baseline year." *Id.*

Yet, confusingly, the Port did not update the baseline in the RDEIR. See RDEIR at 17-26, 119-24; RDEIR Tech. App'x at 14. Even more than from 2005 to 2010, air quality conditions in 2010 no longer reflect "the existing environmental setting" in 2021. Many changes, including the implementation of new air quality standards and initiatives, the increased availability of clean technology, the increased prevalence of higher efficiency vehicles, adjusted traffic projections, and changes in the entities operating at the proposed SCIG site have changed the emissions landscape in the South Coast Air Basin.

See *supra* section I.A.2-4. While the region still suffers from poor air quality and has yet to reach attainment of federal standards for ozone or particulate matter, concentrations of various pollutants have changed over the past decade.

California's most recent emissions models reflect these changes. The Port derived baseline conditions for the 2013 EIR (and those that apply in the present RDEIR as well) for emissions from land-based mobile sources from three models that have since been superseded: EMFAC2011, CARB CHE Calculator (2007a), and OFFROAD2007. 2012 RDEIR at 3.2-13. CARB acknowledged in 2019 that "EMFAC2014 and EMFAC2017" no longer "accurately estimate future transportation emissions" unless they are updated with new assumptions to account for the impact of new air pollution regulations.<sup>119</sup> If those more current models from 2014 and 2017 no longer accurately estimated emissions of mobile sources in 2019, it is even more misleading for the Port to have relied on a model for baseline conditions that is unchanged from 2011. In April of 2021, CARB released its most recent emission inventory model, EMFAC2021.<sup>120</sup> The Port should have employed this recent data to estimate "the existing environmental setting" for the proposed SCIG Project.

These changes in emission rates have in turn altered ambient air pollutant concentrations, rendering the 2010 baseline data obsolete. Recent data confirm that ambient air pollutant concentrations of relevant pollutants have decreased since 2010.<sup>121</sup> In one example, baseline concentrations of NO<sub>2</sub> at the Wilmington Monitoring Station have decreased by approximately 22 percent since 2010. The baseline federal one-hour concentration from 2010 (on which the Port continues to rely in the RDEIR) was 142 µg/m<sup>3</sup>, RDEIR Tech. App'x at 16, while the Port's own September 2020 Air Quality Monitoring Report shows that the most recent federal one-hour concentration was 111 µg/m<sup>3</sup>.<sup>122</sup> The inaccurate 2010 baseline reflecting an artificially high level of baseline

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<sup>119</sup> CARB, *Vehicle Adjustment Factors to Account for the SAFE Vehicle Rule Part One* (Nov. 20, 2019), [https://www.arb.ca.gov/msei/emfac\\_off\\_model\\_adjustment\\_factors\\_final\\_draft.pdf](https://www.arb.ca.gov/msei/emfac_off_model_adjustment_factors_final_draft.pdf).

<sup>120</sup> See CARB, *Availability of CARB's EMFAC2021 Technical Document & a Model Update (v1.0.1)* (Apr. 30, 2021), <https://content.govdelivery.com/accounts/CARB/bulletins/2d48287>.

<sup>121</sup> The Port cannot claim an absence of more recent air pollution data. In fact, multiple new community air quality monitors in the Wilmington/Carson/West Long Beach Area are generating significant amounts of new data about air pollutant concentrations in the areas neighboring SCIG that the Port could and should have employed to make its analysis accurate and complete. See Port of Long Beach, *Air Quality Monitoring program at the Port of Long Beach: Annual Summary Report Calendar Year 2020* (June 2021), <https://monitoring.cleanairactionplan.org/wp-content/uploads/2021/06/POLB-2020-Annual-Monitoring-Report-FINAL-Total.pdf> (documenting ambient concentrations of air pollutants including nitrogen dioxide, ozone, carbon monoxide, sulfur dioxide, and particulate matter at receptors in the Port of Long Beach over the course of 2020); SCAQMD, *AB 617 Community Air Monitoring Plan (CAMP) for the Wilmington / Carson / West Long Beach Community* (Apr. 2019), [http://www.aqmd.gov/docs/default-source/ab-617-ab-134/camps/wcwlw\\_camp.pdf?sfvrsn=6](http://www.aqmd.gov/docs/default-source/ab-617-ab-134/camps/wcwlw_camp.pdf?sfvrsn=6).

<sup>122</sup> See Port of L.A., *Air Quality Monitoring Program at the Port of Los Angeles: Year Fifteen Data Summary 24* (2020), <https://monitoring.cleanairactionplan.org/wp-content/uploads/2020/10/POLA-15th-Annual->



pollution infects the rest of the Port's analysis because every significance determination relies on it. *See* RDEIR at 18 (calculating significance of NO<sub>2</sub> pollution impacts by comparing sum of baseline concentrations and modeled future concentrations with SCAQMD thresholds). Similar flaws likely infect the Port's analysis of other pollutants.

These flaws prevent the Port's analysis from accurately reflecting SCIG's impacts. The RDEIR's determination of impact significance relies on baseline conditions data in various ways. First, the agency evaluates whether the Project is likely to cause significant ambient air pollution by comparing projected air pollutant concentrations with the 2010 baseline concentrations. For PM, the agency assesses the significance of ambient air pollution impacts by evaluating whether the incremental increase in expected concentrations of PM from baseline concentrations exceeded the significance thresholds set by SCAQMD. *See* RDEIR at 17. For NO<sub>2</sub>, the Port determined the significance of ambient air pollution impacts by evaluating whether the sum of baseline concentrations and expected concentrations of NO<sub>2</sub> exceeded the significance thresholds set by SCAQMD. *Id.* at 18.<sup>123</sup> In both cases, the use of an artificially high baseline will lead to results that underestimate the Project's impacts and, consequently, mislead the public and decision-makers.

The baseline is also a critical datapoint for assessing the impacts of the "No Project Alternative." "The purpose of describing and analyzing a 'No Project Alternative' is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving it." Cal. Code Regs. tit. 14, § 15126.6(e)(1). The RDEIR projects air quality impacts under the "No Project Alternative" by modeling emissions based on "what is likely to happen at the site over time . . . without additional approvals" on top of 2010 baseline conditions. 2012 RDEIR at 3.2-39-40; RDEIR at 2 (referring to Chapter 5 of 2013 EIR for features of "No Project Alternative"). If the "No Project Alternative" conditions rely on artificially high estimates of ambient air pollution, such as the federal one-hour NO<sub>2</sub> concentration of 142 µg/m<sup>3</sup> – which was accurate in 2010, versus the more recent concentration of 111 µg/m<sup>3</sup>, which reflects conditions today – the impacts of the status quo will be inflated, rendering unreliable any comparison to project alternatives. The use of outdated information for these critical inquiries distorts all of the revised ambient air pollution analysis' conclusions.

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[Monitoring-Report-May-2019-April-2020.pdf](#) (Table 4-10 reflects that the three year average of the 98th percentile one-hour nitrogen dioxide concentration between 2017 and 2020 at the Wilmington Community Station was 0.059 ppm, which is equivalent to 111 µg/m<sup>3</sup>); *see also* RDEIR Tech. App'x at 14 ("Background concentrations are equivalent to those used in the 2013 Final EIR from the Wilmington Monitoring Station.").

<sup>123</sup> The South Coast Air Basin is currently in attainment of the 1-hour federal NO<sub>2</sub> standard, but the proposed SCIG Project alone could bring the Basin into nonattainment. *See Proposed Rule 2306 –Working Group Meeting #1 Presentation 28-29, supra* n.93, at 14-15. The South Coast Air Basin is in extreme non-attainment for ozone, and nitrous oxides are ozone precursors. *See id.* SCIG would be the tenth highest emitter of nitrous oxides. *Id.*

Of “special concern” when analyzing ambient air pollution is the impact of that pollution on “sensitive members of the population,” including “children, the elderly, and the acutely and chronically ill.” 2012 RDEIR at 3.2-15. As described above, the list of sensitive receptors that the Port employs in the present RDEIR is taken directly from the 2013 EIR, despite the fact that this list is also outdated and contains multiple inaccuracies. *See supra* pp. 9-10. In yet another instance, the Port’s sloppy and incomplete approach to revising the EIR deprives the public of a full understanding of the locations and magnitude of the Project’s impacts.

In addition to the use of outdated baseline conditions, the Port further erred by employing only those models of future emissions that it developed for the 2013 EIR. *See* RDEIR at 21 (“No emissions were recalculated for any Project Scenario.”). These models evidently no longer reflect the most accurate predictions of future emissions based on current data. While those projections “were calculated using the latest available data, assumptions, and emissions factors at the time [the 2013 EIR] was prepared,” the Port acknowledged that “[f]uture studies might use updated data, assumptions, and emission factors that are not currently available.” 2012 RDEIR at 3.2-44.

Updated data, assumptions, and emissions factors now exist, but the Port failed to employ them. For example, EMFAC2011 no longer “accurately estimate[s] . . . transportation emissions.”<sup>124</sup> The new EMFAC2021 model “reflects CARB’s current understanding of statewide and regional vehicle activities, emissions, and recently adopted regulations such as Advanced Clean Trucks (ACT) and Heavy Duty Omnibus regulations.”<sup>125</sup> In 2017, OFFROAD2017 superseded CARB’s 2007 model for off-road emissions, OFFROAD2007 – which the Port nevertheless still uses as the basis for projected emissions in the RDEIR.<sup>126</sup> In 2017, the EPA revised AERMOD, the air dispersion modeling system used in the 2013 EIR, to address various issues with the former version.<sup>127</sup> For example, the revisions incorporated a new low-wind option to address the model version’s tendency to overpredict under low-wind speed conditions.<sup>128</sup> Yet, again, the RDEIR’s ambient pollutant concentration analysis stubbornly relies on the old AERMOD model. *See* RDEIR at 20.

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<sup>124</sup> *Vehicle Adjustment Factors to Account for the SAFE Vehicle Rule Part One, supra* n.119.

<sup>125</sup> CARB, *Availability of CARB’s EMFAC2021 (v1.0.0 Model)* (Jan. 15, 2021), <https://content.govdelivery.com/accounts/CARB/bulletins/2b62927>.

<sup>126</sup> CARB, *OFFROAD2017 – Orion (v1.0.0 Model)*, [https://www.arb.ca.gov/orion/?\\_ga=2.144826292.1215387562.1626200553-391297984.1623426622](https://www.arb.ca.gov/orion/?_ga=2.144826292.1215387562.1626200553-391297984.1623426622).

<sup>127</sup> *See* Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter, 82 Fed. Reg. 5182 (Jan. 17, 2017).

<sup>128</sup> *See id.* at 5185.

The RDEIR's Offsite Ambient Air Pollutant Concentration is also inaccurate and misleading because it relies on outdated assumptions about meteorological conditions. *See id.* (describing that "the Revised Draft EIR results are based on all the same assumptions used in the 2013 Final EIR – the same modeling codes, the same meteorological data, the same monitored background data, and the same source inputs."). "Meteorological conditions can . . . have a significant influence on regional air pollution levels from one year to the next."<sup>129</sup> For instance, exceptionally strong Santa Ana winds and record-breaking wildfires dramatically influenced ambient air pollutant concentrations in the Port of Long Beach in 2020.<sup>130</sup> "[M]eteorological parameters are continuously measured at all four [monitoring] stations" in the vicinity of the Port (and are available in real time on the San Pedro Ports' Clean Air Action Plan website),<sup>131</sup> so there is no reason that the Port could not have analyzed ambient air pollutant concentration impacts using recent and accurate meteorological data, instead of data from almost a decade ago, 2012 RDEIR at 3.2-1.

The Port circumvents its obligation to "find out and disclose all that it reasonably can" by turning a blind eye to this publicly available information when revising its ambient air pollutant concentration analysis. Cal. Code Regs. tit. 14, § 15144. This deeply flawed analysis must be revised.

**B. The RDEIR's Offsite Ambient Air Pollutant Concentration Analysis' selection of benchmark years is inadequate, inaccurate, and misleading**

The RDEIR fails to support its decision to retain the Benchmark Years from the 2013 EIR. The 2013 EIR estimated average daily criteria pollutant emissions in five benchmark years: 2016, 2023, 2035, 2046, and 2066. *City of Long Beach*, 228 Cal. Rptr. 3d at 482. Although the Court of Appeal required the Port to revise its analysis to include information about the frequency and duration of significant air pollution impacts, *id.*, the Port lazily addressed this simply by importing the emissions and benchmark years from the 2013 EIR into its allegedly revised analysis in 2021, *see* RDEIR at 2. The Port also incorporated air pollutant concentration estimates for two interpolated analysis years: 2020 and 2030. *Id.* at 3. As in 2013, the Port's analysis violates CEQA.

To begin, the Port merely mentions in a footnote that "Benchmark Year 2016 is assumed to be the first year of operations for the purposes of the 2013 Final EIR." RDEIR at 20 n.4. That is wholly irrational. While it was reasonable to assume 2016 to be the first year of operations for purposes of the 2013 EIR, 2016 came and went – without the start of construction, let alone operation, of SCIG. Five more years have passed. It no longer makes any sense to assume 2016 will be the first year of operations, or to use two more Benchmark Years – 2020 and 2023 – that likewise have either already passed or are

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<sup>129</sup> *See Air Quality Monitoring Program: Year Fifteen Data Summary*, *supra* n.122, at 2.

<sup>130</sup> *See Annual Summary Report Calendar Year 2020*, *supra* n.121, at 37-40.

<sup>131</sup> *See id.* at 1.

likely to pass before SCIG (if approved) becomes operational. The Port's illogical decision to retain an old set of Benchmark Years undermines much of the value of the air quality analysis.

Next, the Port claims that its RDEIR responds to the failings the Court of Appeal identified by modeling emissions as they are expected to occur over the course of six "Benchmark years," "thereby portraying the forecasted progression of concentration impacts over the entire lifespan of the Project, consistent with the requirements of the Writ." RDEIR at 3. But the *choice* of years matters. The court required the Port to "disclose the frequency of occasions or the estimated length of time during which ambient pollutant will remain at heightened levels," providing sufficient detail that a neighbor could understand "how bad air quality will be, if the railyard is constructed, at any point or for how long in the future." *City of Long Beach*, 228 Cal. Rptr. 3d at 487. The RDEIR's reliance on a set of outdated Benchmark Years calculated in 2013 prevents neighbors from learning of SCIG's impacts or, worse, misleads them. Interested members of the public might realize that these numbers facially do not make sense because they include predictions for years that have already passed for a project that has not yet been approved. Or, worse, they could interpret these data incorrectly to represent historical data. In either case, the misleading selection of Benchmark Years deprives the public of the very thing the Court of Appeals found missing in the 2013 EIR: "sufficient information to foster informed public participation and reasoned decision making." *Id.* at 488.

The Port might respond that 2016 and 2020 are merely placeholders for the first and fourth year of SCIG operations, and that a reader could simply stagger the projections for those years based on the actual expected start of SCIG operations. This is not a viable response to the Port's oversight. To begin, it is entirely unclear when SCIG might be built, if at all. If it were built, it would not be fully operational until 2025 at the earliest. *See* 2012 RDEIR at 2-11. Moreover, the data that the Port employs in its offsite ambient air quality analysis for those years do not merely reflect SCIG's expected emissions in each of those years (which must now be adjusted), but also reflect independent ambient air quality conditions. While the baseline remains constant at a fixed point in time, the "No Project Alternative" accounts for changes that are "likely to happen at the site over time, . . . allow[ing] for growth at the proposed project site that would occur without additional approvals." *Id.* at 3.2-40. One sentence in the RDEIR's description of its emissions compilations belies the inconsistency in this mixed-timeline approach: "Year 2016 *was* the assumed opening year and first year of operations for the Project; year 2023 *is* the expected implementation of CARB's Bus and Truck Rule." RDEIR Tech. App'x at 8 (emphasis added). Thus, simply transposing the 2016 projections onto 2022, for example, would result in grossly inaccurate conclusions.

To put this more concretely, take the Benchmark Year 2023. The RDEIR's data account for projected emissions reductions beginning in 2023 as a result of the

“expected implementation of CARB’s Bus and Truck Rule.” *See id.* at 9-10. Compliance with the Bus and Truck Rule is still anticipated for 2023.<sup>132</sup> If a reader were to believe that the ambient air quality estimates for Benchmark Year 2023 actually reflected projections for year 2032 (assuming a 2025 start date instead of a 2016 one), those estimates would inaccurately include information related to the Bus and Truck Rule’s implementation specific to 2023. The only way to accurately provide the public and other stakeholders with the necessary information to understand the expected frequency and timing of heightened ambient air pollution, as the court required, is to update these projections in relation to the Project’s current anticipated timeline.

Even if the Port reasonably selected the Benchmark Years it employed in the revised ambient air quality analysis, which it did not, the selection of just six years to analyze impacts over SCIG’s 50-year lifespan is insufficient. The 2013 EIR’s model forecasted one worst-case scenario across that same lifespan, preventing the public from knowing exactly when and how long that scenario would last. While the RDEIR’s revised model now shows six data points instead of just one, it still fails to “set[.]... forth sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.” *Berkeley Keep Jets Over the Bay Committee v. Board of Port Comm’rs*, 111 Cal. Rptr. 2d 598 (Cal. Ct. App. 2001). Though readers will now see, for example, that the Project is likely to produce NO<sub>2</sub> and PM emissions causing significant impacts during Benchmark Years 2035 and 2046, they lack any information about what those pollutant concentrations will look like during the 11-year gap between those years.

And of course, the predicted impacts that the Port does include are unreliable given that three of these benchmark years will have come and gone by the time the Project begins, and that the analyses underlying them are riddled with flaws. *See supra* sections II.A, II.B.

### **C. The RDEIR’s Ambient Air Pollution Analysis does not comply with the California Supreme Court’s decision in *Friant Ranch***

In *Friant Ranch*, the California Supreme Court recently clarified what it takes for an agency to comply with CEQA when discussing the likely health effects of a proposed project’s air quality impacts. 431 P.3d at 1163-66. There, the Court held that an EIR’s discussion of the health impacts of a project was insufficient when it provided “only a general description of symptoms that are associated with exposure to the ozone, particulate matter, carbon monoxide, and nitrogen oxide, and the discussion of health impacts regarding each type of pollutant [was] at most a few sentences of general information.” *Id.* at 1164. Specifically, the Court faulted the agency for “fail[ing] to

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<sup>132</sup> *See Truck and Bus Regulation Engine Requirements Timeline*, CARB, [https://ww3.arb.ca.gov/msprog/truckstop/azregs/dmvmreg.htm?utm\\_medium=email&utm\\_source=go\\_vdelivery](https://ww3.arb.ca.gov/msprog/truckstop/azregs/dmvmreg.htm?utm_medium=email&utm_source=go_vdelivery).

indicate the concentrations at which such pollutants would trigger the identified symptoms.” *Id.* at 1164. The court emphasized that, to “allow the public to make an informed decision,” “CEQA instead requires that the EIR have made a reasonable effort to discuss relevant specifics regarding the connection between two segments of information already contained in the EIR, the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce.” *Id.* at 1165.

The RDEIR fails to comply with the California Supreme Court’s dictates in *Friant Ranch*. Its analysis of the health impacts of the Project’s projected NO<sub>2</sub> concentration impacts is “limited to qualitatively describing the types of adverse health effects associated with exposure to NO<sub>2</sub> concentrations exceeding SCAQMD significance thresholds.” RDEIR at 73-74. Similarly, the entire sum of new information in the RDEIR describing the health effects of PM<sub>10</sub> and PM<sub>2.5</sub> is the following:

The main conclusions of these agencies are that health effects associated with PM exposure include mortality, increased hospital admissions for cardiopulmonary causes, acute and chronic bronchitis, asthma attacks and emergency room visits, respiratory symptoms, and days with some restriction in activity. These adverse health effects have been reported primarily in infants, children the elderly, and those with pre-existing cardiopulmonary disease. CARB and SCAQM also classify the portion of PM<sub>10</sub> produced by diesel engine exhaust (diesel particulate matter, or DPM) as a toxic air contaminant exhibiting carcinogenic effects.

RDEIR at 115.

This is precisely the type of “general description” that the Court found inadequate in *Friant Ranch*. 431 P.3d at 1164. The RDEIR includes, dispersed in various places throughout, “the general health effects associated” with exposure to NO<sub>2</sub> and PM “and the estimated amount[s] of [those] pollutant[s] the project will likely produce.” 431 P.3d at 1165. But the Port fails to “make a reasonable effort to discuss . . . the connection between [these] two segments of information already contained in the EIR” in order to “allow the public to make an informed decision.” *Id.* The bare minimum that the Port could have – but did not – do is to clearly articulate this connection. For example, the Port could have explained (but did not) that the Project is likely to cause the described health effects (including asthma, cardiovascular disease diabetes, and more) in the residential areas immediately east of the Project site and the Terminal Island Freeway for the entire 50-year project period. *See* RDEIR at 73. But this type of specific and accessible information describing the likely health effects that SCIG is likely to cause is entirely missing from the RDEIR.

The California Supreme Court in *Friant Ranch* qualified that “if it is not scientifically possible to do more than has already been done to connect air quality effects with potential human health effects, the EIR itself must explain why, in a manner reasonably calculated to inform the public of the scope of what is and is not yet known about the Project’s impacts.” *Id.* at 1165. The Port tries to exploit that leeway, asserting that it is not presently possible to “accurately quantify local health effects associated” with exposure to the SCIG Project’s expected pollutant concentrations. RDEIR at 7, 27, 73, 114. But it does not explain why that is so, nor articulate “what limited translation [of health effects to quantities of pollutants emitted by the project] is, in fact, possible.” *Id.* And, as noted above, the information necessary to draw a connection between SCIG’s impacts and likely health effects exists already in the RDEIR, but the Port failed to unite them.

#### **D. The RDEIR’s Revised Cumulative Impact Analysis is also riddled with flaws**

The Court of Appeals held in 2018 that the Port “must make a good faith and reasonable disclosure of the cumulative impacts before the [EIR] may be approved.” *City of Long Beach*, 228 Cal. Rptr. 3d at 45. The RDEIR’s revised cumulative impact analysis falls short of this mandate in several ways. First, it relies on the RDEIR’s revised ambient air quality model. The inaccurate and misleading assumptions underlying that analysis, *see supra* sections II.A, II.B, thus infect the cumulative impact analysis as well. In particular, the ambient air quality analysis’ use of a 2010 baseline for a project that won’t be operational before 2025 at the earliest renders practically useless the significance determinations for both the SCIG project alone and the cumulative impacts of SCIG and the ICTF Expansion. The RDEIR thus does not satisfy the court’s writ because it continues to deprive the public of any useful information about the two projects’ combined impacts. *See City of Long Beach*, 228 Cal. Rptr. 3d at 45.

Second, the Port’s cumulative impact analysis falls short because it fails entirely to assess the cumulative impacts of SCIG alongside other projects that have been planned and/or built since 2013. For example, the RDEIR’s cumulative impact analysis lacks any consideration of the combined effect of SCIG with the expansion of the Marathon Petroleum Refinery in Wilmington, which abuts it.<sup>133</sup> *See generally* 2012 RDEIR at 4-5-4-22; RDEIR at 8 (explaining that revised cumulative impact analysis does not consider projects other than the ICTF Expansion Project). This glaring oversight virtually ensures that community members and decision-makers will be kept in the dark about SCIG’s cumulative environmental and health impacts.

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<sup>133</sup> SCAQMD, *Tesoro Los Angeles Refinery Integration & Compliance Project FEIR* (May 2017), [http://www.aqmd.gov/docs/default-source/ceqa/documents/permit-projects/2017/tesorolaric/tesoro\\_feir.pdf](http://www.aqmd.gov/docs/default-source/ceqa/documents/permit-projects/2017/tesorolaric/tesoro_feir.pdf).



Third, like the ambient air quality analysis, the cumulative impact analysis makes predictions based on benchmark years that do not make sense. Two of the years included (2016 and 2020) have already come and gone. Neither the ICTF Expansion nor the SCIG project has been approved, let alone constructed. Thus, the Port should have staggered the relevant timelines forward to provide sufficient information for meaningful review of the projects' likely cumulative impacts. Even using the old, outdated timeline, the cumulative impacts analysis extends through 2046/2066, even though the lifespan of the ICTF Expansion is only through 2035.

Finally, the RDEIR continues to omit analyses essential to a good faith disclosure of cumulative impacts. For one, the RDEIR's cumulative impact analysis focuses exclusively on those pollutants that the Port anticipates will cause significant ambient air pollution impacts under the SCIG project alternatives alone. *See* RDEIR at 122. This focus is in error and undermines the purpose of a cumulative impacts analysis. The CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." Cal. Code Regs. tit. 14, § 15355. The significance threshold for cumulative impacts under CEQA does not depend on the significance of one independent environmental effect; instead, cumulative impacts are "significant when a project's incremental effect on other projects' effects is 'cumulatively considerable.'" *City of Long Beach*, 228 Cal. Rptr. 3d at 43 (quoting Cal. Code Regs. tit. 14, § 15130(a)). By analyzing only those pollutants that the Port already found to be significant under the SCIG project alone, *see* RDEIR at 122, the Port precluded a cumulative impacts analysis of other pollutants, including carbon monoxide and sulfur dioxide, that could have cumulatively significant air pollution impacts if both SCIG and the ICTF expansion projects were considered together.

Moreover, even in the Port's analysis of NO<sub>2</sub> (one of the pollutants whose impacts are expected to be significant under the SCIG Project alone), the Port omits an analysis of the potential for cumulatively significant exceedances of the state one-hour standard. Key to the cumulative impact analysis is the recognition that "there is a possibility that concentrations below the significance thresholds attributable to the Project, and, separately, the ICTF Expansion project could combine such that, when added to the value of the monitored background, they could give rise to significant cumulative impacts." RDEIR at 132. While the Port, recognizing this, analyzed the potential for independently insignificant concentrations of NO<sub>2</sub> to result in cumulatively significant effects under the *federal* NO<sub>2</sub> one-hour standard, *see id.*, it apparently declined to consider such a possibility for the *state* NO<sub>2</sub> one-hour standard, *see id.* ("There are no overlapping exceedances by both projects of the 1-hour NO<sub>2</sub> state standard. . . . [N]o additional analysis of the combined effect of the SCIG Project and the ICTF Expansion Project is required.").

The Port's attempt to comply with the court's writ of mandate is woefully inadequate. Rather than undertake a true reassessment of SCIG's air quality and cumulative impacts, the Port makes barely any updates to the 2013 EIR's analyses. The result is a flawed, misleading document that violates both CEQA and the court's order. The Port must revise the RDEIR to rectify the many shortcomings identified above.

### III. The public process surrounding the RDEIR is inadequate

EIRs are the "heart of CEQA," and serve the twin goals of environmental protection and informed self-government. *Citizens of Goleta Valley v. Bd. of Supervisors*, 801 P.2d 1161, 1167 (Cal. 1990) (citation omitted). Because EIRs are "document[s] of accountability," the CEQA process must be "scrupulously followed" to allow the public to "know the basis on which its responsible officials either approve or reject environmentally significant action and the public, being duly informed, can respond accordingly." *See Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 764 P.2d 278, 282 (Cal. 1988).

The public process for the RDEIR to date has fallen short of these goals. The Port did not conduct a scoping meeting or otherwise reach out to community stakeholders to seek input on the timing or content of the RDEIR—even though SCIG is a project of statewide, regional, or areawide significance given its significant effects on local, state, and global air pollution. *See* Cal. Code Regs. tit. 14, § 15082(c)(1) (scoping meetings are required for projects of statewide, regional, or areawide significance); *id.* § 15206(b) (a project triggers the scoping requirement if it "has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located" and would, for example, "interfere[e] with the attainment or maintenance of state or national air quality standards"); *supra* pp. 5, 19-23, 32-37. Indeed, staff at NRDC and EYCEJ contacted the Port about the RDEIR and were provided no updates.

The Port then released the RDEIR without warning and in the middle of a global pandemic, posing numerous challenges for public engagement. The Port has since agreed to extend the 45-day public comment period, but by only about six weeks, despite multiple requests for significantly longer extensions. *See* Cal. Code Regs. tit. 14, § 15105(a) (allowing for longer review periods when "unusual circumstances" arise).<sup>134</sup>

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<sup>134</sup> *See also* Paul Rosenberg, *Specter of Racism Haunts SCIG Railyard Project*, Random Lengths News (June 24, 2021), <https://www.randomlengthsnews.com/archives/2021/06/24/scig-racism-railyard/34236?v=7516fd43adaa> (noting that AQMD requested an extension of "at least one month, if not more" and "community members asked for extensions of 120 days or more"). NRDC, EYCEJ, and the Villages submitted a joint letter on June 11, 2021 asking the Port to delay the public comment period until the pandemic subsides or, alternatively, to extend it by an additional 45 days.

And while the Port held a virtual public hearing on June 15, an in-person hearing is vital to ensuring robust public participation—a point that many commenters also made during the virtual hearing.<sup>135</sup> SCIG will adversely affect low-income communities and communities of color who may lack the resources to access virtual forums.<sup>136</sup> The COVID-19 pandemic further exacerbates those hurdles, as it has caused many residents in these communities to suffer life-threatening health impacts, the loss of loved ones, and increased childcare responsibilities, financial instability, and food insecurity. In short, and consistent with CEQA’s emphasis on “informed self-government” and our previous requests, the Port should hold an in-person hearing on the RDEIR and/or extend the public comment period until the COVID-19 pandemic subsides.

After preparing a revised, subsequent EIR consistent with the many concerns outlined above, the Port should recirculate that document and likewise provide a public comment period of at least 90 days and hold an in-person hearing. *See* Cal. Code Regs. tit. 14, § 15088.5.

#### **IV. Conclusion**

SCIG’s environmental and public-health harms are severe, its purported benefits overstated. The Port should reject this dirty, unnecessary, and racist project once and for all. If, however, it continues to advance the project, the Port must undertake a broad revision of the 2013 EIR and prepare a subsequent EIR to fully assess these environmental and public-health harms. That is particularly so given the numerous changes and developments that have occurred over the last decade. The Port must also rectify the errors in the ambient air quality and cumulative impact analyses identified above. The Port should recirculate a draft of the revised, subsequent EIR for a public comment period of at least 90 days and hold an in-person public hearing.

Respectfully submitted,

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<sup>135</sup> *Id.* The letter submitted by NRDC, EYCEJ, and the Villages on June 11 also requested an in-person hearing.

<sup>136</sup> As one Long Beach resident testified during the virtual hearing, “Many of my friends and peers who live in Long Beach and Carson and areas surrounding the prospective project area were not notified. In addition, people are disadvantaged at this time from speaking their opinion, because not everyone has Internet access, or has knowledge utilizing [Zoom] and other platforms.” *Id.*; *see also* 2019 *Community Health Assessment*, *supra* n.20, at 89 (finding that 13.7% of Latinx households and 11.2% of Black households in Long Beach lacked internet access as of 2015).

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## Index of Attachments

The exhibits listed below are accessible via this link: [https://nrdc1-my.sharepoint.com/:f:/g/personal/jbaird\\_nrdc\\_org/EoLK-jDhM8xMtni9iq6CvdIBu5RiWZOjmO0XUctrNcwcIg](https://nrdc1-my.sharepoint.com/:f:/g/personal/jbaird_nrdc_org/EoLK-jDhM8xMtni9iq6CvdIBu5RiWZOjmO0XUctrNcwcIg). We ask that these exhibits be added to the administrative record. If you have any trouble accessing the link or exhibits, please contact Jessie Baird at [jbaird@nrdc.org](mailto:jbaird@nrdc.org).

Ex. No.	Document
1	Opinion & Order on Petitions for Writ of Mandate, <i>Fast Lane Transp., Inc. v. City of Los Angeles</i> , No. CIV. MSN14-0300 (Mar. 30, 2016, Cal. Super. Ct.)
2	<i>City of Long Beach v. City of Los Angeles</i> , 228 Cal. Rptr. 3d 23 (Cal. Ct. App. 2018)
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