NRDC
THE EARTH'S BEST DEFENSE

NATURAL RESOURCES DEFENSE COUNCIL

Camille M. Hazeur, Director
Mary N. Whigham Jones, Deputy Director
Marc Pentino, Lead Equal Opportunity Specialist
Departmental Office of Civil Rights
U.S. Department of Transportation
1200 New Jersey Ave.
Washington, D.C. 20590

June 7, 2013

Re: Complaint Pursuant to Title VI of the Civil Rights Act of 1964 and 49 Code of Federal Regulations part 21.

Dear Ms. Hazeur, Ms. Jones and Mr. Pentino:

Elena Rodriguez, Evelyn Deloris Knight, East Yard Communities for Environmental Justice, the Coalition for Clean Air, Century Villages at Cabrillo, and the Natural Resources Defense Council hereby file this Title VI complaint against the City of Los Angeles and the Board of Harbor Commissioners of the Port of Los Angeles. In response, The Department of Transportation ("DOT") Office of Civil Rights must promptly investigate this complaint. DOT must ensure that the City and Port of Los Angeles fully comply with their duties under Title VI of the Civil Rights Act of 1964 and DOT's Title VI implementing regulations. DOT may terminate or refuse to grant federal financial assistance to effectuate compliance. Complainants would like to participate meaningfully in the Title VI investigation and any compliance process. Please contact counsel for NRDC with any questions. Thank you for your attention.

Sincerely,

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Attorney for Elena Rodriguez, Evelyn Deloris Knight, East Yard Communities for Environmental Justice, Coalition for Clean Air, Century Villages at Cabrillo, and Natural Resources Defense Council

cc: Nancy Sutley, Council on Environmental Quality
Gina McCarthy, Environmental Protection Agency
Dianne Feinstein, United States Senate
Barbara Boxer, United States Senate
Eric Garcetti, City of Los Angeles Mayor-elect
Anthony Foxx, nominee for Secretary of United States Department of Transportation

I. INTRODUCTION

This is a civil rights complaint by Elena Rodriguez, Evelyn Deloris Knight, East Yard Communities for Environmental Justice ("EYCEJ"), the Coalition for Clean Air ("CAA"), Century Villages at Cabrillo ("The Villages"), and Natural Resources Defense Council ("NRDC") (collectively "Complainants") under Title VI of the Civil Rights Act of 1964 and 49 C.F.R. part 21, alleging knowing discriminatory disparate impacts on minority and low-income populations in connection with the Port of Los Angeles Board of Harbor Commissioners' ("Board") and the City of Los Angeles' ("City") approval of the Southern California Intermodal Gateway ("SCIG" or "Project") project. This Complaint is against the City and the Board. The Port of Los Angeles (the "Port") is a proprietary department within the City and is governed by the Board, whose members are appointed by the Mayor of Los Angeles and confirmed by the City Council.[1] The Port is responsible for conducting environmental review for the SCIG under the California Environmental Quality Act ("CEQA") and the Board is responsible for approving or disapproving the project on environmental grounds.[2] Under California law, the Los Angeles City Council has the authority to review an appeal from a Board decision made under CEQA.[3]

This complaint demonstrates that the City's and Board's actions constitute a prima facie violation of Title VI under the U.S. Department of Transportation's ("DOT") implementing regulations. The discriminatory actions took place on March 7, 2013, when the Board approved the SCIG project under CEQA, and on May 8, 2013, when the Los Angeles City Council denied the Complainants' appeal of the Board's decision.

The SCIG project is an intermodal railyard proposed to be built and operated by BNSF Railway Company. The SCIG will add one million diesel truck trips and thousands of diesel train trips every year to the neighboring Wilmington and West Long Beach areas. These are predominantly Hispanic, working-class communities that are already heavily affected by diesel particulate matter and other air pollution from existing sources, like the nearby Union Pacific Railroad yard and oil refineries. The West Long Beach neighborhood also includes two high schools, a middle school, two elementary schools, two child care centers, and a supportive housing complex for homeless veterans. The Port admits in its environmental review documents that the SCIG will cause significant harmful impacts even after mitigation, and these impacts will disproportionately fall on low-income and minority communities adjacent to the project. Knowing this, the Board and City approved the project anyway.

In the eight years since the SCIG was first proposed, Complainants and community groups have repeatedly commented on the Project's unacceptable health consequences. Complainants have also proposed viable, less discriminatory alternatives, such as locating the project on-dock, using

[1] LOS ANGELES, CAL., CITY CHARTER §§ 600, 650 (1999).
[2] *See* CAL. PUB. RES. CODE § 21000 et seq.
[3] *See* CAL. PUB. RES. CODE § 21151(c); CAL. CODE REGS. tit. 14 § 15090(b) (1997).

locomotives that meet U.S. EPA's Tier 4 emission requirements, using liquid natural gas ("LNG") trucks to carry cargo containers from the Port to the project, and transitioning to a zero-emission container movement system. The Port's environmental review documents also show that SCIG will not be needed, if at all, for at least three decades. Approval of SCIG when the Port admits that no additional capacity is needed and when less discriminatory alternatives exist forms a prima facie violation of Title VI.

II. JURISDICTION

A. The Complainants

Complainants are Elena Rodriguez, Evelyn Deloris Knight, East Yard Communities for Environmental Justice, the Coalition for Clean Air, Century Villages at Cabrillo, and Natural Resources Defense Council.

Elena Rodriguez is a Latina female resident of West Long Beach who lives less than half a mile east of the proposed SCIG site. She has lived at this residence for over ten years. She raised her two children in West Long Beach; her children attended schools in the area. Ms. Rodriguez has been concerned about the area's air pollution problems since her children attended elementary school, when they had to spend recess indoors because of poor air quality. Ms. Rodriguez has always been very active in her community, through both paid and volunteer positions with community organizations. She currently works as a community organizer for East Yard Communities for Environmental Justice, where she has worked for the past two and a half years. Before this position, she worked with the Long Beach Alliance for Children with Asthma, helping families cope with their children's asthma. She is also the founder of a community organization called Semillas de Esperanza (Seeds of Hope), that holds monthly meetings and works in the community on various social causes. She is very concerned about the negative health impacts that would be caused by the SCIG, for her and her community.

Evelyn Deloris Knight is a 79-year-old African-American woman, living in West Long Beach less than half a mile east of the proposed SCIG site. She was born and raised in Africatown, Alabama, which is a town founded by freed slaves. She went to college and graduate school, and became a social worker in Long Beach. She has held leadership positions at various social services organizations over the years, including working with the People Coordinated Services of Southern California for 28 years. She is now retired, but continues to be very involved in her community, including training young people to be community organizers. In addition to her distinguished career, she marched with Dr. Martin Luther King, Jr., in a march from Selma to Montgomery. After the adoption of the Voting Rights Act, she helped people vote. Ms. Knight is very concerned about the negative impacts from the SCIG to the air that she and her family breathe. She lives close to the SCIG site and owns a house two doors down where some of her siblings live. Her nieces and nephews also live in the area; she is especially concerned for her niece who suffers from asthma.

East Yard Communities for Environmental Justice is an unincorporated association, and a project of Social and Environmental Entrepreneurs, a 501(c)(3) corporation. EYCEJ is a member-based organization that was established in 2002. With bases in Commerce, East Los Angeles, and Long Beach, EYCEJ's mission is to achieve a safe and healthy environment for communities that are disproportionately suffering the negative effects of industrial pollution. Today, EYCEJ has a database of over 350 community residents, many of whom are active and participate regularly in community outreach, education and civic engagement efforts.

The Coalition for Clean Air, a statewide nonprofit organization, has worked to restore clean, healthy air to California since 1971. CAA targets the state's most damaging pollution sources by working with legislators and regulators – from local agencies to the White House – and collaborating with businesses, community groups and fellow advocates to provide innovative solutions that withstand political backlash. The Coalition for Clean Air's exclusive focus on California enables it to effectively address the state's acute air quality problems, as well as to use the state's distinctive position as a testing ground for the nation's environmental standards.

Century Villages at Cabrillo is a 27-acre homeless services facility. It is 501(c)(3) nonprofit organization established in 1997, located on a former U.S. Naval housing site in West Long Beach. The site is directly adjacent to the truck route to and from the SCIG site; the main entrance to the Villages will see thousands trucks per day, at a rate of four trucks per minute pass immediately in front of its entrance gate. The site is also on the other side of the Terminal Island Freeway from the SCIG site, just south of Cabrillo High School. The Villages provides housing to over 1,000 people each night, including veteran and non-veteran individuals, families, and children, in the Villages' shelter, transitional housing, and permanent housing facilities. The Villages also partners with other organizations to provide much-needed on-site services, including child care, food services, counseling, a Veterans Administration medical clinic, substance abuse treatment, and job training. Sixty-four percent of the short-term housing residents are African American and twenty-one percent are Latino.

Natural Resources Defense Council is a nonprofit organization dedicated to protecting the environment. As part of its missions, NRDC works to foster the fundamental right of all people to have a voice in decisions that affect their environment. NRDC seeks to break down the pattern of disproportionate environmental burdens borne by people of color and others who face social or economic inequities. Ultimately, NRDC strives to help create a new way of life for humankind, one that can be sustained indefinitely without fouling or depleting the resources that support all life on Earth.

B. Federal Financial Assistance

The Port and City accept federal grants from the DOT, so Title VI applies to their decisions to approve the SCIG. Title VI applies to "any program" for which the DOT authorizes "federal

financial assistance."[4] Under the DOT's Title VI regulations, "federal financial assistance" includes grants and loans of federal funds.[5] "Any program" is "all of the operations" of a local government department or local government that distributes federal funds, not just to operations that directly receive federal funding.[6]

The City and the Port receive federal grants from the DOT. In 2010, DOT awarded a $16 million TIGER II grant to the Port for its West Basin Railyard project.[7] The project, which the DOT grant will partially fund, began construction in January, 2013.[8] The discrimination occurred on March 7, 2013, during the Port's use of the TIGER II grant. Similarly, DOT and its agencies, including the Federal Transit Authority and the Federal Aviation Authority, award the City large amounts of funding.[9] DOT granted the City $48,897,450 in 2012 alone.[10] Thus, the Port and the City both receive federal financial assistance and must comply with Title VI.

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[4] 49 C.F.R. § 21.3(a) ("This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department.")

[5] 49 C.F.R. § 21.23(c). *See also* U.S. Dept. of Transp. V. Paralyzed Veterans of America, 477 U.S. 597, 605 (1986) ("Under[…] Title VI,[…] Congress enters into an arrangement in the nature of a contract with the recipient of the funds: the recipient's acceptance of the funds triggers coverage under the nondiscrimination provision.")

[6] 42 U.S.C. § 2000d-4a; *see also* 49 C.F.R. § 21.23(e).

[7] *See* U.S. DOT, CAPITAL GRANTS 1 (2010), *available at* http://www.dot.gov/sites/dot.dev/files/docs/TIGER_CAPITAL_GRANTS_2010.pdf; Press release, Port of Los Angeles, Port of Los Angeles Receives $16 Million Grant from Federal Government for Rail Project (Oct. 19, 2010), *available at* http://www.portoflosangeles.org/newsroom/2010_releases/news_102010_tigerII.asp.

[8] U.S. Dept. of Transp., Port of Los Angeles railyard upgrades to speed movement of goods, cut congestion and emission (Jan. 22, 2013), http://fastlane.dot.gov/2013/01/port-of-los-angeles-railyard-upgrades-speed-movement-of-goods.html; *see also* Press release, Port of Los Angeles, Port of Los Angeles Breaks Ground on $137.7 Million Railyard That Will Increase On-Dock Rail Efficiency, Reduce Congestion and Improve Environment (Jan. 16, 2013), http://www.portoflosangeles.org/newsroom/2013_releases/news_011613_b200.asp [hereafter "Port press release 2013"].

[9] *See* USAspending.gov (last accessed Feb. 20, 2013) (http://www.usaspending.gov/search?form_fields=%7B%22search_term%22%3A%22city+los+angeles%22%2C%22dept%22%3A%5B%226900%22%5D%2C%22spending_cat%22%3Anull%2C%22extent_competed%22%3Anull%2C%22recipient_duns%22%3A%5B%221288994600000%22%2C%221288994600%22%2C%220128780180%22%2C%2279925416%22%2C%22069928349%22%5D%2C%22psc_code%22%3Anull%2C%22naics_code%22%3Anull%2C%22fyear%22%3Anull%7D&sort_by=dollars&per_page=25).

[10] *See* http://www.usaspending.gov/explore?tab=By+Prime+Awardee&fiscal_year=all&typeofview=complete&federal_award_id=30601390702012; http://www.usaspending.gov/explore?tab=By+Prime+Awardee&fiscal_year=all&typeofview=complete&federal_award_id=30601310132012; http://www.usaspending.gov/explore?tab=

The City and the Port's duty to comply with Title VI extends to all of their operations, not just to ones that use federal funds. Title VI applies to "any program," which is Title VI and the DOT's implementing regulations define to include "all of the operations of" "a department, agency, special purpose district, or other instrumentality of a State or of a local government;" and "all of the operations of" "The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government.[11]

The joint final rule by 22 agencies incorporating the definition of "program or activity" and "program" note that Congress added the definition "to restore the prior consistent and long-standing executive branch interpretation and 'broad, institution-wide application' " of Title VI.[12] As applied,

> when State and local governmental entities receive financial assistance from a federal agency, the 'program or activity' or 'program in which discrimination is prohibited includes all of the operations of any State or local department or agency to which the federal assistance is extended. If, for example, a State or local agency receives federal assistance for one of many functions of the agency, all of the operations of the entire agency are subject to the nondiscrimination provisions of those regulations.[13]

Accordingly, the Port's acceptance of the Tiger II grant for the West Basin Railyard subjects all of the Port's operations to Title VI's restrictions. Similarly, the City's repeated acceptance of FTA and FAA funding subjects all of its operations to Title VI requirements as well. "Program or activity" has been interpreted to include an entire city, not just agencies within a city.[14] Therefore, the Port and City's decisions to approve the SCIG must comply with Title VI.

C. Timeliness of Complaint

By+Prime+Awardee&fiscal_year=all&typeofview=complete&federal_award_id=CA-95-X118-00; http://www.usaspending.gov/explore?tab=By+Prime+Awardee&fiscal_year=all&typeof view=complete&federal_award_id=CA-04-0208-01.

[11] 42 U.S.C. § 2000d-4a; 49 C.F.R. § 21.23(e).

[12] 68 Fed. Reg. 51334, 51336.

[13] *Id.*; *see also* S.Rep. No. 64, 100th Cong., 2d Sess. 16 (1987), *reprinted in* 1988 U.S.C.C.A.N. 18 (legislative history provides examples of how Title VI applies in a local government setting: "If federal health assistance is extended to a part of a state health department, the entire health department would be covered in all of its operations. If the office of a mayor receives federal financial assistance and distributes it to local departments or agencies, all of the operations of the mayor's office are covered along with the departments or agencies which actually get the aid.")

[14] *Bentley v. Cleveland County Bd. of County Com'rs*, 41 F.3d 600, 603-04 (10th Cir. 1994) (holding the Board of County Commissioners is subject to Title VI because the Board expressly sought and accepted federal funds and distinguishing *Schroeder v. City of Chicago*, 927 F.2d 957, 963 (7th Cir. 1991)).

A Title VI complaint to the DOT must be filed within 180 days of the discrimination.[15] The Los Angeles Board of Harbor Commissioners approved the SCIG project on March 7, 2013. Complainants appealed that decision to the City, and the City denied the appeal on May 8, 2013. The Board's approval and the City's denial of the appeal are acts of discrimination in violation of Title VI. The complaint is thus timely filed.

III. STATEMENT OF FACTS

A. The SCIG Intermodal Railyard

The SCIG project is an intermodal railyard with a proposed location in Wilmington, California, a predominantly minority community four miles from the Port. The $500 million project would occupy 185 acres and have the capacity to handle an estimated 2 million containers per year at full build-out. The project would begin construction in 2013 and operate under a 50-year lease from 2016 to 2066.[16]

The Project's location is directly adjacent to the West Long Beach community in Long Beach, California. In addition, the proposed project would be located directly adjacent to an elementary school, a high school, a day care center, a park, and a center for homeless veterans, and extremely close to residential neighborhoods. There are many other sensitive receptors in the project vicinity as well. The Project would cause significant environmental justice impacts, and the Port and City's decision to proceed in light of these flouts Title VI of the Civil Rights Act of 1964.

B. The Public Health Impact On The Neighboring Communities Will Be Severe

The South Coast Air Quality Management District ("SCAQMD"), the agency responsible for air quality in the Los Angeles region, expressed concern for the residents adjacent to this proposed facility. SCAQMD's comment letter on the final environmental impact report ("FEIR") states:

> The FEIR shows that the Proposed SCIG project will generate significant localized air quality impacts. Based on the FEIR, the Proposed SCIG project will exceed the applicable significance thresholds for NO2, PM10, and PM2.5 by up to 250%, 420%, and 80%, respectively. These NO2, PM10, and PM2.5 concentrations from the proposed project will impact residents, school children and other sensitive populations near the proposed railyard. In addition, the Environmental Justice section of the Recirculated Draft EIR [("RDEIR")] states that, "Because the area surrounding the proposed Project

[15] 49 C.F.R. § 21.11(b).
[16] Port of Los Angeles, Southern California International Gateway Project – Final Environmental Impact Report 1-8 (Feb. 2013), *available at* http://www.portoflosangeles.org/EIR/SCIG/FEIR/feir_scig.asp [hereafter "FEIR"].

site is predominantly minority and low-income, Impact AQ-4 *[localized NO2 and PM impacts]* would constitute a disproportionately high and adverse effect on minority and low-income populations." These pollutants are associated with chronic respiratory diseases such as asthma as well as declines in pulmonary function, especially in children.

The FEIR contain one mitigation measure for particulate emissions (sweeping). However, the FEIR does not contain any mitigation measures that commit to reducing operation NO2 impacts. The two largest source categories contributing to the NO2 impacts are heavy-duty trucks and locomotives.[17]

Complainants' comment letter to the Port point out the health impacts from these pollutants:

Most of the equipment that would be used to build SCIG and to transport freight to and from SCIG, including trucks, trains, ships, and cranes, are powered by diesel engines. These engines emit fine particulate matter (particles that are 2.5 microns or less in diameter or "PM2.5"), nitrogen oxides (NOx), and volatile organic compounds (VOCs) along with many other toxic chemicals.

Health effects of particulate matter: Numerous studies have documented a wide range of adverse health impacts from exposure to PM, including increased rates of respiratory illness and asthma, cardiovascular disease, heart attacks, strokes, emergency room visits, and premature death. Near-roadway exposure to particulate matter has also been linked to birth defects, low birth weights, and premature births. Emerging studies have shown a potential connection between exposure to fine PM and diabetes, as well as cognitive decline and other serious impacts to the brain.

Health effects of nitrogen oxides: NOx can have a toxic effect on the airways, leading to inflammation, asthmatic reactions, and worsening of allergies and asthma symptoms. In addition, NOx reacts with VOCs in sunlight to form ozone—also known as smog. This layer of brown haze contributes to decreased lung function and increased respiratory symptoms, asthma, emergency room visits, hospital admissions, and premature deaths. Ozone can also cause irreversible changes in lung structure, eventually leading to chronic respiratory illnesses, such as emphysema and chronic bronchitis.

Health effects of diesel exhaust: The soot in diesel exhaust—diesel PM—is especially toxic, not only because of the very small size of the soot particles *(see above),* but also because these particles contain roughly 40 different toxic air contaminants, 15 of which are recognized carcinogens. In fact, diesel PM itself has been identified as a carcinogen (cancer-causing agent) by the World Health Organization as well as the State of

[17] Letter from South Coast Air Quality Management District to Port of Los Angeles, Final Environmental Impact Report – Southern California International Gateway (SCIG) Project, Mar. 6, 2013, at 1-2 [hereafter "SCAQMD FEIR Comments"] (attached here as "Exhibit A").

> California, which lists it as a "Toxic Air Contaminant." Dozens of studies have shown a high risk of lung cancer for those in occupations with high diesel exposures, including rail workers, truck drivers, and miners. Recent studies of miners indicate that the most heavily exposed workers have a risk of lung cancer approaching that of heavy smokers; studies also show that elevated risks of lung cancer apply not only to workers but to the general population in areas with high levels of diesel PM (e.g., near freeways and busy freight corridors). Moreover, diesel pollution is estimated to contribute to more than half of the 9,200 premature deaths attributable to outdoor air pollution in California.
>
> People who live or go to school near ports, rail yards, distribution centers, freight roadways and other diesel "hot spots" face disproportionate exposure to diesel exhaust and associated health impacts, including increased risks of asthma and other respiratory effects, cancer, adverse birth outcomes, adverse impacts to the brain (including potentially higher risk of autism), heart disease, and premature death.
>
> Moreover, in addition to the huge impacts on residents and workers closest to the sources of emissions, freight operations pose a particularly acute threat to regional air quality. The South Coast Air Basin (SCAB), where the project area is located, consistently ranks near the top of the lists for the nation's most polluted air. Freight transport, including the operations at the Ports, greatly contributes to the persistent failure of the SCAB to meet clean air standards established by EPA.
>
> The ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the *single largest fixed sources of air pollution* in Southern California. Emissions from port-related sources, such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, adversely affect air quality in the local port area as well as regionally. Port sources also contribute to cancer risks.[18]

Andrea Hricko, a Professor of Clinical Preventive Medicine and Executive Director of the Community Outreach and Engagement Program at the University of Southern California Keck School of Medicine, notes that the Port failed to analyze these health impacts:

> The RDEIR fails to review research findings on the health effects of air pollution especially diesel exhaust on health. Included is NOT ONE STUDY showing the connection between exposure to diesel exhaust and lung cancer, not even mentioning in the document that the World Health Organization's International Agency for Research on Cancer declared in June 2012 that diesel exhaust is now recognized, without question, as

[18] Letter from NRDC, EYCEJ, CAA, et. al. to Port of Long Beach, Revised Draft Environmental Impact Report: Southern California International Gateway (SCIG) 3-7 (Nov. 12, 2012) [hereafter "NRDC RDEIR Comments"] (attached here as "Exhibit B"].

a cause of lung cancer. The words "lung cancer" do not appear in the main part of the RDEIR.

The RDEIR contains no discussion about the health impacts from proximity to traffic-related pollution. The location that the POLA has selected to build the BNSF SCIG could not be worse in terms of the potential for harming the health of toddlers, children, youth, adults, the middle-aged, the elderly and the sick, including those who already have asthma. Near-roadway health impacts are critical to consider because of this project's location. The BNSF SCIG will subject nearby residents, toddlers, and school children to the exhaust of thousands more trucks and more than a dozen more trains daily – and that rail yard will be located within 250 feet of a daycare center, 500 feet of a school playground, and ball field, and 1000 feet from multiple schools. We have already submitted dozens of scientific articles detailing research findings from USC, UCLA and elsewhere. This research on near-roadway exposure to diesel and other traffic related pollution continues to be ignored by POLA.[19]

Although the EIRs do not recognize the full extent of the impacts from the SCIG, the analyzed impacts will fall disproportionately on environmental justice communities adjacent to the project site,[20] which already face the most severe air pollution in the South Coast Air Basin. While air toxics risks generally continue to improve throughout the South Coast Air Basin, the most recent SCAQMD air toxics study notes that the areas downwind of the Ports and those impacted by the goods movement form exceptions to this positive trend in air quality.[21] SCAQMD explains that heightened risk in those areas correlates with increased container cargo moving through the ports and increases in goods movement.[22] SCAQMD estimates that the area with the maximum simulated cancer risk from toxic air compounds in the SCAB is the Ports, which have seen an increasing risk of over 800 in a million since 1999.[23] The areas near the Port, including Wilmington and the West Long Beach community adjacent to the SCIG, have air toxics risk

[19] Letter from Andrea Hricko MPH, to Port of Los Angeles, Serious Problems with POLA's Recirculated Draft Environmental Impact Report (RDEIR) and its Appendices for the BNSF SCIG Project; Request to Withdraw the Project or Issue Another Recirculated RDEIR (R-RDEIR?) (Nov. 13, 2012) (attached here as "Exhibit C").
[20] Port of Los Angeles, Southern California International Gateway Project – Recirculated Draft Environmental Impact Report 6-1 – 6-17 (Sept. 2012), *available at* http://www.portoflosangeles.org/EIR/SCIG/RDEIR/rdeir_scig.asp [hereafter "RDEIR"].
[21] SCAQMD, Final Report: Multiple Air Toxics Exposure Study in the South Coast Air Basin ES-4 – ES-5 (Sept. 2008), *available at* http://www.aqmd.gov/prdas/matesIII/Final/Document/aaa-covermates3.pdf [hereafter "MATES III"].
[22] *Id*.
[23] MATES III at 4-10; ES-4.

ranging from 1,100 to 3,700 in a million.[24] The SCIG will subject these communities to even more toxic air pollution.

C. The Environmental Review Process

Complainants participated in the environmental review process for the project. The Port completed a "Draft Environmental Impact Report" ("DEIR") under the California Environmental Quality Act in September, 2011. Complainants and their allies jointly submitted comments on January 31, 2012, contesting, among other things, deficiencies in the project description, alternatives analysis, traffic study, air quality and health risk analysis, cumulative impacts analysis, and civil rights violations analysis. Based on Complainants' and others' comments, the Port released a Recirculated DEIR ("RDEIR") in September 2012. Complainants and allies again jointly submitted comments noting continuing deficiencies, including civil rights violations, failure to justify current need for the project, inadequate consideration of alternatives, and insufficient traffic analysis and baseline data. The Port released the Final EIR ("FEIR") in February, 2013 and certified the FEIR on March 7, 2013. The City denied Complainants' appeal of the Port's certification on May 8, 2013. The Port did not complete any National Environmental Policy Act analysis for this project.

IV. ARGUMENT

Approval of the SCIG is a textbook example of environmental injustice. As the Port's environmental analysis concedes, this poorly conceived project will disproportionately impact the low-income communities of color near this massive, polluting facility. Despite these admissions, the Board and City summarily dismissed the concerns over environmental injustice. The protections afforded by the Civil Rights Act of 1964 require that projects do not create disproportionate environmental burdens on minority communities. Through this complaint, we seek to remedy the dramatic consequences of allowing this project to proceed as currently conceived.

A. Approval Of The SCIG Project Is A Prima Facie Violation Of The Civil Rights Of The Environmental Justice Communities Near The Project

The Port and the City's actions constitute a prima facie case of disparate impact in contravention of the Civil Rights Act of 1964. Section 601 of Title VI provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.[25]

[24] MATES III at ES-4, ES-11.
[25] 42 U.S.C. § 2000d.

Section 602 of Title VI authorizes federal agencies to effectuate Section 601 by issuing rules, regulations, or orders.[26]

Section 21.5(b)(3) of DOT's Title VI implementing regulations prohibit actions that will have a discriminatorily disparate impact: "In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin . . . ."[27] The Supreme Court has upheld the validity of disparate impact regulations under Title VI.[28]

Under Title VI case law, a plaintiff establishes a prima facie case of disparate impact if the defendant's facially neutral practice causes a disproportionate adverse impact on a protected class.[29] Such a practice is prohibited unless the recipient can demonstrate a "substantial legitimate justification" for the conduct.[30] A recipient can show a "substantial legitimate justification" by demonstrating that the challenged act was "necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission."[31] If a recipient can sustain this burden, a complainant can still prove disparate impact by showing less discriminatory means would serve the same objective.[32]

The Board's decision to certify the FEIR and approve the SCIG is a prima facie violation of the civil rights of the environmental justice communities near the project. The Port admits that the construction and operation of the SCIG will create significant air quality impacts, which will disproportionately burden nearby minority and low-income populations.[33] The Port cannot show a "substantial legitimate justification" for the action, because by its own admission, the project will not be needed until 2046 or later.[34] Even if the Port and City could show a "substantial legitimate justification," approval of the SCIG still violates Title VI because viable, less discriminatory alternatives exist to achieve the Project's goals.

a. <u>Approval of the SCIG will create discriminatorily disparate burdens on the minority and low-income communities near the project.</u>

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[26] 42 U.S.C. § 2000d-1.
[27] 49 C.F.R. 21.5(b)(3).
[28] *See Alexander v. Sandoval*, 532 U.S. 275, 282 (2001) (assuming the validity of DOT and DOJ regulations that prohibit actions that cause disparate impacts for the purpose of deciding whether there is a private right of action to enforce those regulations).
[29] *Larry P. by Lucille P. v. Riles*, 793 F.2d 969, 892 (9th Cir. 1984); *see also Darensburg v. Metropolitan Transp. Com'n*, 636 F.3d 511, 519 (9th Cir. 2011).
[30] *New York Urban League, Inc. v. State of N.Y.*, 71 F.3d 1031, 1036 (2d Cir. 1995) (internal citations omitted).
[31] *Sandoval v. Hagan*, 7 F.Supp. 2d 1234, 1278 (M.D. Ala. 1998) (internal citations omitted).
[32] *Id*.
[33] RDEIR at 6-11–6-12.
[34] *See* RDEIR at G4-14

Construction and operation of the SCIG will create disparate impacts on environmental justice communities. The RDEIR frankly admits that the construction and operation of the SCIG will violate the civil rights of nearby minority and low-income residents:

> The proposed Project would have significant impacts related to aesthetics (AES-1), air quality (AQ-1, AQ-2, AQ-4, AQ-7), cultural resources (CR-2), land use (LU-4), and noise (NOI-6) that would remain significant after mitigation. With these unavoidable impacts, the Proposed Project would have new, significant effects with respect to minority and low-income populations. *Those impacts would fall disproportionately on minority and low-income populations because the census block groups adjacent to the point of impact (the eastern edge of the Project site) constitute minority populations, and some (i.e., all or parts of census tracts 5727, 5728, 5729, and 5755) constitute low-income populations*.[35]

In addition to these four census tracts, the RDEIR admits that most of the 41 census block groups within one mile of the proposed project, the area where significant and unavoidable impacts would occur, have predominantly minority populations.[36] Most of these 41 census block groups have over 95 percent minorities.[37]

With respect to air quality, the RDEIR admits that, even after the proposed mitigation measures, significant impacts will remain—impacts that disproportionately harm nearby minority and low-income populations.[38] In particular:

> Construction of proposed Project will generate emissions that exceed SCAQMD significance thresholds for VOC, CO, NOx, PM10 and PM2.5, representing a significant impact. In addition, these emissions combined with emissions from other concurrent construction projects in the area will represent a cumulatively considerable contribution to a significant cumulative impact. The mitigation measures proposed in the RDEIR (MM AQ-1 through MM AQ-6) will fail to keep construction emissions below the significance thresholds. These emissions will constitute a disproportionately high and adverse effect on minority and low-income populations.
>
> Construction of proposed Project will also generate off-site ambient pollutant concentrations that exceed SCAQMD significance thresholds for 1-hour and annual NO2, 24-hour and annual PM10, and 24-hour PM2.5 representing a significant impact. In addition Project construction activities combined with other concurrent construction projects in the area would also represent a cumulatively

[35] RDEIR at 6-11–6-12 (emphasis added).
[36] RDEIR at 6-3–6-6.
[37] RDEIR at 6-6.
[38] RDEIR at 6-12–6-13.

considerable contribution to a significant cumulative impact for ambient pollutant concentrations. The mitigation measures proposed in the RDEIR (MM AQ-1 through MM AQ-3) will fail to keep construction-related emissions of NO2 and PM10 below the one-hour and annual significance thresholds (for NO2) and the annual threshold for PM10. Again, these emissions will constitute a disproportionately high and adverse effect on minority and low-income populations.

Operation of the project – expected to last until 2066 or later – will generate local, off-site ambient pollutant concentrations that exceed SCAQMD significance thresholds for 1-hour and annual NO2, 24-hour and annual PM10, and 24-hour PM2.5, representing significant impacts. In addition, Project operations combined with other past, present and reasonably foreseeable future projects in the area (possibly including enlargement of the Intermodal Container Transfer Facility and the Interstate 710 widening) will represent a cumulatively considerable contribution to a significant cumulative impact for ambient pollutant concentrations. The mitigation measures proposed in the RDEIR will fail to keep the 1-hour and annual NO2, 24-hour and annual PM10, and 24-hour PM2.5 levels below significance levels. Again, these emissions will constitute a disproportionately high and adverse effect on minority and low-income populations.

Construction and operation of the proposed Project will also expose receptors to significant levels of toxic air contaminants resulting in increased cancer risk above the significance threshold for residential, occupational, sensitive, student and recreational receptors. In addition Project construction and operational activities combined with other concurrent projects in the area will represent a cumulatively considerable contribution to a significant cumulative health risk impact. Even after application of the proposed mitigation measures, considering the cancer risk from toxic air contaminants in the Port region, the Project will make a cumulatively considerable contribution to the significant health risk impact to the predominantly minority and low-income population in the Port region; this impact will constitute a disproportionately high and adverse effect on minority and low-income populations.

In a case similar to the present one, DOT made a preliminary judgment that planning to locate a highway through a predominantly black community is a prima facie violation of Title VI.[39] The court recounts that the state transportation agency planned a highway extension that would

[39] *N. Carolina Dept. of Transp. v. Crest St. Community Council Inc.*, 479 U.S. 6, 8 (1986) (this cases is about attorney's fees but contains details of the DOT decision.)

displace the community park, church, and many residents.[40] Based on those impacts, DOT conducted an investigation and met with representatives of both the complainant and the respondents.[41] The DOT Director of Civil Rights made a preliminary judgment that there was "reasonable cause to believe that the construction of the Expressway along the alignment proposed in the Draft [Environmental Impact Statement] would constitute a prima facie violation of Title VI and, in particular, Section 21.5(b3)(3) of [DOT's] Title VI regulation."[42]

Like the above case, the adverse impacts from the SCIG fall disproportionately on predominantly minority communities near the project. These impacts constitute evidence of a prima facie violation of DOT's Title VI regulations.

b. <u>There is no justification for approving the SCIG because the SCIG is not needed to accommodate projected operations at the Port.</u>

The City and the Port lack any "substantial legitimate justification" for approving the SCIG project as proposed. Construction and operation of a new intermodal railyard is not "necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission."[43] The RDEIR notes that one of the Port's priorities is to make sure its facilities can accommodate the anticipated growth in cargo through the region.[44] The Port repeatedly fails to identify any need for additional intermodal rail facility. The EIRs and BNSF Railway's own analysis admit that existing facilities can fully accommodate all anticipated cargo growth until at least 2046.[45]

The Port's claim that SCIG is needed to provide additional rail capacity is a bad-faith, false justification of BNSF's business decision. In the DEIR, the purported need for the SCIG project was to have capacity for forecasted direct rail shipments after the currently-planned on-dock rail system is maxed out in 2020.[46] This statement is contradicted by the Port's October 22, 2009

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[40] *Id.* at 8.
[41] *Id.* at 9.
[42] *Id.* (internal citations omitted, edits in original). Based on this determination, the DOT urged the parties to negotiate a resolution. The parties agreed on a Final Mitigation Plan, where the state transportation agency would mitigate the impact of the highway by moving the proposed right-of-way and modifying an interchange to preserve the community church and park, and develop a new park and community site in the same area. *Id.* at 9-10.
[43] <u>Sandoval v. Hagan</u>, 7 F.Supp. 2d 1234, 1278 (M.D. Ala. 1998) (internal citations omitted).
[44] RDEIR at ES-1.
[45] *See* RDEIR at G4-14; Memorandum from Russell J. Light, BNSF Railway Company to Los Angeles Harbor Department, November 28, 2012 at page 3 [hereafter "BNSF Memorandum"] (Attached here as "Exhibit D"). This memorandum was produced by the Port to Andrea Hricko of the University of Southern California on February 25, 2013.
[46] Port of Los Angeles, Southern California International Gateway Project – Draft Environmental Impact Report 2-4 (Sept. 2011), *available at* <u>http://www.portoflosangeles.org/EIR/SCIG/DEIR/_Cover_Page.pdf</u> [hereafter "DEIR"].

Port of Los Angeles Public Rail Workshop[47] study, which states that based on 2009 forecasts, existing capacity is enough to handle freight *until 2027* (Slide 24). This means that by 2020, the ports will be 5.6 TEU *under capacity*. By that forecast, no new capacity will be needed for 14 years. In another portion of the DEIR, the Port admits that the Southern California ports have sufficient capacity going forward: "The estimated demand for intermodal cargo capacity in the Los Angeles region can be accommodated by existing UP and BNSF intermodal facilities, especially in view of the planned capacity improvements [of BNSF's Hobart railyard]."[48] Complainants and other allies voiced these concerns in their comments in the DEIR. Complainants argued that the Port's capacity forecast was based on a confusing mass of projections that amounted to mere guesswork. In response, the Port drafted Appendix G4 with detailed projections in the RDEIR.

Appendix G4 in the RDEIR shows that SCIG is not needed because existing facilities can accommodate expected cargo growth. In Appendix G4, the Port admits that no new capacity (beyond the "modified maximum" for currently built facilities) will be needed to accommodate projected cargo demand, whether or not the SCIG project is constructed, through the year 2046 at the minimum. For example, on page G4-11, the 2035 "No Project" scenario shows "Additional BNSF Yard Capacity Needed" as zero (in red). On page G4-14, the 2046 "No Project" scenario, also shows the need for additional BNSF yard capacity as zero.

A memorandum from BNSF to the Port confirms the lack of need for new capacity. The memorandum asserts that BNSF's operational analysis justifies the Port's conclusion that if the SCIG is not built, BNSF's Hobart operation can still accommodate the cargo that would be handled by the SCIG for the life of the Project.[49] BNSF explains that "Further facility developments, technological and operational changes could be made to accommodate the demand projected in the 2009 Cargo Forecast," which predicts demand in the year 2066.[50] BNSF notes that those facility developments will allow the Hobart facility, under the No Project Alternative, to "exceed[] the capacity the Port has determined will be necessary."[51]

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[47] Port of Los Angeles, Intermodal Logistics & Ports of Los Angeles/Port of Long Beach Rail Infrastructure – Port of Los Angeles Public Rail Workshop (Oct. 2, 2009), at 24, *available at* http://portoflosangeles.org/pdf/Rail_Workshop_Presentation.pdf.

[48] DEIR at 8-2.

[49] BNSF Memorandum at 3, 4 ("The SCIG Draft EIR No Project Alternative assumes that BNSF will accommodate the international intermodal cargo that would be handled by SCIG at BNSF's Hobart operation and BNSF's operational analysis justifies this conclusion….These existing and future facility developments, combined with current and future operational means of enhancing capacity, will allow the Hobart facility, under the No Project Alternative, to handle at least 2.88 million lifts on strip tracks, and at least 3.1 million lifts in parking, exceeding the capacity the Port has determined will be necessary.")

[50] *Id*. at 4.

[51] *Id*.

Thus, by the Port and BNSF's own admission, there is no need to build this project for the next 33 years. BNSF confirms that its existing railyard can handle projected cargo forecasts for the entire life of the SCIG project. The Port has selectively used projections to make the case that capacity will be lacking, which have been contradicted by the Port's and BNSF's other projections. If the SCIG is built, the minority, low-income neighbors of the project will breathe dirty, polluted air for a minimum of 33 years for nothing. Without "substantial legitimate justification" for approving the project, the Port's and the City's approval violate the civil rights of the environmental justice communities near the project.

c. <u>If new capacity is needed, a non-discriminatory alternative could achieve the same objective.</u>

The purported need for the SCIG project is to have capacity for forecasted direct rail shipments after the currently-planned on-dock rail system is maxed out in 2020.[52] As discussed above, the RDEIR and BNSF admit that the SCIG is not needed, because there is no projected shortfall in rail capacity. If the Port would like to expand capacity beyond what is needed, an alternative project would achieve that goal without creating disparate environmental impacts on environmental justice communities.

The alternative project consists of three changes to the proposed SCIG:

- First, additional rail capacity must be built on-dock, which would keep harmful emissions away from residential areas and other sensitive uses.
- Second, all trucks serving the SCIG must be LNG-fueled or equivalent in terms of diesel particulate emissions, beginning on the first day of operations. Within five years, the SCIG should switch to a zero-emission container movement system, since the technology will be available during early life of the project.
- Third, all line-haul locomotives serving the SCIG must meet U.S. EPA's Tier 3 emissions standards or better, beginning the first day of operation. Beginning in 2015 or soon thereafter when Tier 4 locomotives are available, all line-haul locomotives must meet EPA's Tier 4 standards, unless BNSF can prove to the Port that it would be technically infeasible.

These measures taken together would significantly reduce the impact on minority neighborhoods in Wilmington and West Long Beach, and thus constitutes a viable, less discriminatory alternative.

1. On-dock rail. Increasing on-dock capacity is a viable option that would minimize harmful pollutant emissions in residential communities and near sensitive uses by eliminating drayage truck emissions. On-dock rail allows for containers to be loaded at the marine terminal by cranes, getting rid of the need to truck containers from the Ports to the railyard.

[52] DEIR at 2-4.

The DEIR recognizes the success of on-dock rail capacity in the past and potential for expansion: the Port of Los Angeles and the Port of Long Beach already have nine currently operating on-dock railyards, with two more permitted for construction, and a third proposed.[53] Four of these are at the Port of Los Angeles.[54] Both Ports have plans to expand existing on-dock railyards, and to construct new ones.[55] The Port relies on the 2006 San Pedro bay Rail Study Update, which notes two potential areas for additional on-dock rail that are in the conceptual planning stage: Terminal Island and the Port of Long Beach Tier T Mole expansion.[56] The February, 2013 draft program environmental impact report for the Port of Los Angeles Master Plan Update ("PMPU") also recognizes that "Redevelopment and expansion of on-dock rail on Terminal Island" is in the conceptual planning stage.[57] The PUMU lists both the Terminal Island on-dock rail facility and the Pier 500 fill and on-dock terminal as planned activities.[58]

Additionally, the Port can create new land for on-dock rail, an option that the FEIR mistakenly rules out as infeasible. In the past, the Port has created new land by dredging and filling the harbor, which it did for Pier 300/400 and now for Pier 500.[59] The Port can continue to dredge and fill to create new on-dock capacity. Thus, on-dock capacity, along with the use of Tier 4 locomotives and zero-emission trucks, constitute a viable alternative to the SCIG.

2. LNG trucks and zero-emission container movement system. Despite the fact that the SCIG requires trucks associated with the railyard to meet 2007 EPA standards, those trucks will still emit a large amount of toxic diesel exhaust into already overburdened minority neighborhoods. Starting on the first day of operations, all trucks serving the SCIG should be LNG-fuelled or equivalent in terms of diesel particulate emissions. LNG trucks do not emit diesel particulates. These trucks are available now and in fleet use by numerous companies, including UPS, 99 cent stores, and Waste Management, Inc. There are already enough LNG trucks in the market to make this feasible.

Within five years of opening, zero-emission technology will be viable. The Port has even committed in its 2012 Five-Year Strategic Plan to achieve "100% of the truck moves to proposed

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[53] DEIR at 1-9.
[54] Id.
[55] Id.
[56] Port of Los Angeles and Port of Long Beach, San Pedro Bay Ports Rail Study Update ES-10-ES-11 (Dec. 2006), *available at* http://www.portoflosangeles.org/DOC/REPORT_SPB_Rail_Study_ES.pdf.
[57] Los Angeles Harbor Department, Port of Los Angeles Master Plan Update Draft Program Environmental Impact Report 4-8 (Feb. 2013), a*vailable at* http://portoflosangeles.org/EIR/PMPU/DEIR/deir_pmpu.asp.
[58] Port of Los Angeles, Draft Port Master Plan 35 (Feb. 13, 2013), *available at* http://www.portoflosangeles.org/planning/pmp/PMP_Draft_2-20-13.pdf [hereafter "PMPU"].
[59] *See* Ronald D. White, "Ports of Los Angeles and Long Beach building at furious pace," Los Angeles Times (July 19, 2012), *available at* http://articles.latimes.com/2012/jul/19/business/la-fi-ports-projects-20120720; *see also* PMPU at 35.

and existing near-dock rail-yards by zero-emission trucks by 2020."[60] Thus, zero-emission trucks should be a required part of the SCIG project beginning in 2020.[61]

There is wide agreement with the Port's assessment that zero-emission technologies can be implemented by 2020. SCAQMD notes that that zero-emission technologies are being widely researched and tested:

> There are currently several research and demonstration programs being conducted by the Port of Los Angeles, South Coast Air Quality Management District, California Energy Commission, Environmental Protection Agency and the U.S. Department of Energy, to develop dedicated zero-emission trucks or hybrid electric trucks that will have zero-emission range. Such demonstrations are expected to be completed within the next several years and lay the foundation for commercialized products. The SCAQMD staff believes that the first generation of zero-emission trucks will be available within the next five years. [62]

Thus, SCAQMD recommends making the zero-emission mitigation measures and project conditions fully enforceable, with timeframes and consequences.[63]

The Southern California Association of Governments' ("SCAG") 2012 Regional Transportation Plan/Sustainable Communities Strategy also notes the promise and importance of zero-emission trucks. [64] SCAG explains that

> Wayside technology has been used for many decades to power electric buses, mining trucks, and rail systems. It is thus a particularly proven and promising technological approach to achieving zero-emission transport. If coupled with hybrid AER technologies

[60] FEIR, 2-32.

[61] Currently, the mitigation measures involving zero-emission technologies are illusory and do not require zero-emission technologies to ever be implemented. NRDC, EYCEJ, CAA, and other organizations discussed this in detail in their comments on the SCIG FEIR, dated March 4, 2013. For instance, under Mitigation Measure AQ-9, the Port need only review the feasibility of zero-emission technology in the future if there is a lease amendment or facility modification, which might never happen. Even if the Port does conduct a review, businesses only need to implement zero-emission technology if the Port determines that it is "feasible in terms of cost, technical and operational feasibility." Such criteria are undefined and would be subject to the Port's interpretation. Similarly, Mitigation Measure AQ-11 only requires BNSF to phase-in zero-emission drayage trucks and other vehicles after the Ports' "determination of technical and commercial feasibility," based on criteria like "commercially practicable" that are not further defined.

[62] SCAQMD FEIR Comments at 5.

[63] *See* Mitigation Measure AQ-9 and AQ-10, Project Condition AQ-11. Currently, the SCIG project's zero-emission commitments contain no timeframe or any consequences.

[64] Southern California Association of Governments, Regional Transportation Plan 2012-2035 at 75 (Apr. 2012), *available at* http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf.

currently in use for passenger cars and now being demonstrated for heavy trucks, wayside power could provide flexibility, range, and compatibility with current port, railyard, and warehouse operations.[65]

The regional milestones include deployment of zero and near-zero-emission trucks starting 2015, and full deployment for all regional transport starting in 2017.[66] This timeframe supports the feasibility of using zero-emission trucks at the SCIG, since operations will not begin until at least 2016.

Lastly, the nearby I-710 expansion project will also adopt zero-emission technologies, which supports viability of zero-emission trucks at the SCIG. All three of the project alternatives for the I-710 expansion include zero-emission vehicles. Zero-emission technologies will become available during the early life of the SCIG project and should be required to reduce disparate impacts on minority communities.

3. Tier 3 and Tier 4 Line-Haul Locomotives. Use of Tier 3 and Tier 4 line-haul locomotives at the SCIG is a viable, less discriminatory option. The Port notes that rail emissions are "a significant contributor to localized health risk," and that "locomotive emissions could be a dominant factor driving health risk in [specific areas near rail facilities]."[67] Over 11.5 percent of the particulate matter emissions from the SCIG over its 70 year lifetime will come from onsite locomotives.[68]

All line-haul locomotives serving the SCIG should meet Tier 3 emission standards or better by the first day of operation. BNSF already has enough Tier 3 locomotives in its fleet now to devote to the SCIG by Day 1. Thus, using Tier 3 engine technology is a viable alternative to using older engine models.

Tier 4 locomotives will be commercially available in 2015 pursuant to EPA regulations. Beginning as soon thereafter as possible, all line-haul locomotives serving SCIG should meet Tier 4 emissions standards. Emissions from Tier 4 line-haul locomotives are over 70 percent lower than the Tier 2 line-haul locomotives BNSF plans to use.[69] Tier 4 locomotive engines also emit one-third as much as Tier 3 locomotives do.

SCAQMD asserts in its comment letter to the Port that "achieving all Tier 4 at just SCIG is *clearly* feasible."[70] SCAQMD notes that Tier 4 locomotives are currently being tested: in

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[65] *Id.*
[66] *Id.*
[67] PORT OF LOS ANGELES AND PORT OF LONG BEACH, 2010 UPDATE SAN PEDRO BAY PORTS CLEAN AIR ACTION PLAN 154 (2010), *available at* http://www.cleanairactionplan.org/reports/documents.asp [hereafter "CAAP"].
[68] FEIR, Table C3-2-4, 3-15 to 3-16.
[69] CAAP at 154.
[70] SCAQMD FEIR Comments at 1-2.

August 2012, General Electric unveiled a Tier 4 prototype that is the result of a six-year, $400 million investment, followed by a two-year, $200 million investment toward research, design, and engineering to meet Tier 4 standards.[71] Tier 4 locomotives have also been purchased. The Board of Directors of Metrolink, the commuter rail system serving much of Southern California, committed in December 2012 to buy ten Tier 4 locomotives from Electro-Motive Diesel, with an option to buy 10 more.[72] Delivery is expected in 2015.[73]

Federal and local standards reflect the viability of Tier 4 locomotives. In 2008, US EPA finalized a rule prohibiting railroads from buying anything except Tier 4 locomotives starting in 2015.[74] In 2009, the California Air Resources Board ("CARB") adopted its "Staff Recommendations to Provide Further Locomotive and Railyard Emission Reductions," which identified as a high-priority goal the expeditious adoption of Tier 4 locomotives and 95 percent Tier 4 locomotives serving the ports by 2020.[75] Accordingly, SCAQMD adopted an emissions goal in 2010 that near-dock rail operations should have at least 95 percent Tier 4 locomotives by 2020.[76] Starting 2020, which is twelve years after the EPA Tier 4 regulations came out, Tier 4 locomotives will be a feasible option.

SCAQMD notes that under BNSF's existing plans, BNSF will have enough Tier 4 locomotives in its national fleet to have all Tier 4 locomotives in the South Coast Air Basin by 2020.[77] SCAQMD explains that the number of locomotives needed for the SCIG is small: 12 locomotives in 2020, which represents one percent of BNSF's national Tier 4 fleet.[78] The RDEIR states that BNSF's national fleet will have about 26.5 percent Tier 4 locomotives by 2020, equaling around 1,380 locomotives.[79] Assuming BNSF has one quarter the amount of line-haul locomotives in California as it does nationally, and that BNSF operates about 300 line-haul locomotives per day in the South Coast region, SCAQMD estimates that only 1,200 Tier 4 locomotives would be needed nationally in 2020.[80] This is well within the 1,380 locomotives that BNSF already plans to have by that time.[81]

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[71] *Id.*
[72] Press Release, Metrolink to buy newest, cleanest locomotives (Dec. 18, 2012), *available at* http://www.metrolinktrains.com/news/news_item/news_id/836.html.
[73] *Id.*
[74] *Id.*; RDEIR at 3.2-100.
[75] California Air Resources Board, Staff Recommendations to Provide Further Locomotive and Railyard Emission Reductions (September 2009) ES-4, *available at* http://www.arb.ca.gov/railyard/ted/drftrec090909.pdf.
[76] *Id.*; *see also* CAAP at 153.
[77] SCAQMD FEIR Comments at 4.
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*

Lastly, in its comments on the SCIG EIR, SCAQMD notes that requiring BNSF to commit to 95 percent Tier 4 locomotives by 2020 would not be unprecedented; rather, BNSF has previously committed to acquire cleaner locomotives years before the technology was developed.[82] Based on all of this, SCAQMD recommends requiring BNSF to achieve 95 percent Tier 4 by 2020 as a viable option that would significantly reduce harmful disparate impacts.[83]

V. REMEDIES

Title VI gives DOT the responsibility to ensure that recipients of federal funding from the DOT fully comply with Title VI's anti-discrimination mandate.

Under DOT regulations, in response to a written complaint, DOT must "make a prompt investigation" whenever the complaint "indicates a possible failure to comply with [the DOT's Title VI regulations]."[84] The investigation must consist of, where appropriate, "a review of the pertinent practices and policies of the recipient, the circumstance under which the possible noncompliance with [the DOT's Title VI implementing regulations] occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part."[85]

If the investigation indicates a failure to comply with the DOT's Title VI implementing regulations, the matter must be resolved by informal means if possible.[86] If there appears to be noncompliance, and the matter cannot be resolved by informal means, the DOT may effectuate compliance by "the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law."[87] Any action to suspend, terminate, or refuse to grant or continue federal funding must be "limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found."[88] Thus, the DOT can limit its funding restriction to the Port's federal funds.

In order to provide effective remedies for the City and the Port's discriminatory actions set forth in this Complaint, DOT should require the following as a condition of continuing to provide federal financial assistance to the Port:

1) Withdrawal of the City and the Port's approval of the SCIG project, since the SCIG will create disparate impacts and the Port has not shown that additional rail capacity is needed to meet projected demand;

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[82] *See* SCAQMD FEIR Comments at 3.
[83] SCAQMD FEIR Comments at 4.
[84] 49 C.F.R 21.11(c).
[85] *Id*.
[86] 49 C.F.R 21.11(d).
[87] 49 C.F.R 21.13(a).
[88] 49 C.F.R 21.13(c)(4).

2) Development of a plan to build any needed additional rail capacity on dock;

3) Bring a lawsuit to compel compliance with Title VI, if the above remedies are inadequate to settle the matter;

4) Suspend or refuse to grant or continue all federal funding that the Port is applying for or slated to receive, if the above remedies are inadequate to resolve the matter and end the unlawful discrimination;

5) Provide Complainants with copies of all documents related to the investigation, including but not limited to all correspondence to or from DOT throughout the course of the investigation, deliberation and disposition of this Complaint; and

6) Notify Complainants of, and meaningfully include Complainants in, any settlement negotiations or voluntary compliance negotiations with the DOT.

Thank you for your consideration of this Complaint.

David Pettit
Senior Attorney
Natural Resources Defense Council

Exhibit A

South Coast
Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

Via Email and U.S. Mail

March 6, 2013

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

Dear Mr. Cannon:

Final Environmental Impact Report
Southern California International Gateway (SCIG) Project

The South Coast Air Quality Management District (SCAQMD) staff appreciates the opportunity to comment on the Final Environmental Impact Report (FEIR) for the Southern California International Gateway (SCIG) Project. The SCAQMD staff previously submitted comments on the Draft Environmental Impact Report (DEIR) on November 30, 2011, January 19, 2012, February 1, 2012, and February 14, 2012 and on the Recirculated Draft Environmental Impact Report (RDEIR) on November 14, 2012.

The SCAQMD staff is concerned that the EIR does not fully describe the air quality and public health implications of the proposed SCIG project, or all feasible mitigation measures. The proposed Project will substantially increase truck and train activities close to, and generally upwind of, a community with residences, schools, and workplaces. The proposed Project is unlike other major port-infrastructure projects approved in recent years because of its location and close proximity to existing sensitive land uses. At full build out there will be 2 million truck trips and nearly 6,000 train trips annually moving cargo in and out of the SCIG site. There are substantial air emissions that will affect public health and potentially impede the ability for this region to achieve state and federal air quality standards.

The FEIR shows that the Proposed SCIG project will generate significant localized air quality impacts. Based on the FEIR, the Proposed SCIG project will exceed the applicable significance thresholds for NO_2, PM10, and PM2.5 by up to 250%, 420%, and 80%, respectively. These NO_2, PM10, and PM2.5 exceedances from the proposed project will impact residents, school children and other sensitive populations near the proposed rail yard. In addition, the Environmental Justice section of the Recirculated Draft EIR states that, "Because the area surrounding the proposed Project site is predominantly minority and low-income, Impact AQ-4 *[localized NO2 and PM impacts]* would constitute a disproportionately high and adverse effect on minority and low-income populations." These pollutants are associated with chronic respiratory diseases such as asthma as well as declines in pulmonary function, especially in children.

The FEIR contain one mitigation measure for particulate emissions (sweeping). However, the FEIR does not contain any mitigation measures that commit to reducing operational NO_2 impacts. The two largest source categories contributing to the NO_2 impacts are heavy-duty trucks and locomotives. As stated in previous comment letters to the Port of Los Angeles in the DEIR and RDEIR zero-emission container movement technologies and use of Tier 4 locomotives are feasible mitigation measures that must be included in the proposed Project.

Because of deficiencies in analysis and mitigation as described above and in the attachment, the EIR must be sent back to staff for revision. The SCAQMD staff appreciates the opportunity to comment on this important project. We look forward to working with the Port of Los Angeles on this and future projects. If you have any questions, please call me at (909) 396-3105.

Sincerely,

Susan Nakamura

Susan Nakamura
Planning Manager

Attachment

SN:PG:BB:VT:IM

Attachment A
Additional Comments on the Final EIR for
Southern California International Gateway (SCIG) Project

The following includes specific comments on the FEIR for the Proposed Southern California International Gateway (SCIG) Project.

Use of Tier 4 Line-Haul Locomotives is a Feasible Mitigation Measure

The Final EIR fails to address the need to mitigate the air quality impacts from line-haul locomotives. In the District comment letter on the DEIR and RDEIR, the SCAQMD staff specified that line-haul locomotives should meet the following requirements, consistent with the long-term goal of the Clean Air Action Plan (CAAP) measure RL-3:

1 By 2018, at least 25% of BNSF line-haul locomotives entering SCIG and other port properties shall be Tier 4.
2 By 2020, at least 95% of BNSF line-haul locomotives entering SCIG and other port properties shall be Tier 4.

The FEIR includes PC AQ-12 which does not commit to the RL-3 "goal" and further does not implement the RL-3"minimum requirement" for locomotives on port property: 50% Tier 4 by 2023. PC AQ-12 eviscerates RL-3 by allowing BNSF to reduce emissions anywhere in the four-county region, and by any means, in lieu of using Tier 4 locomotives at SCIG. This approach does not address the impacts to the community near and around the SCIG site, and does not require any number of Tier 4 locomotives.

Response to Comment 156-11 in the FEIR is non-responsive. The response states that "Tier 4 locomotives are expected to utilize a new, untested technology that simply does not currently exist at a size adequate for line-haul locomotive engines." The response includes opinions about the availability of locomotives in 2013 and 2015, but never addresses the availability of locomotives in 2018 or 2020, five years after the standard is implemented. Tier 4 locomotives are currently being tested. In August 2012, General Electric unveiled a prototype that is part of its Evolution Series Locomotives that meets the US EPA's Tier 4 emission standards. This engine technology is the result of an initial six-year $400 million investment, followed by a two-year, $200 million investment to research, design, and engineer locomotive engines to meet Tier 4 emission standards.

The issue is not whether Tier 4 locomotives are feasible today; the issue is feasibility early in the life of the project. Beginning in 2015, the railroads will not be able to buy anything but Tier 4 locomotives because they will be required by federal law. BNSF can route its cleanest locomotives to this region; it is doing this right now with Tier 2 locomotives. Data underlying the EIR analysis assumes a percentage of Tier 4 locomotives in the national fleet that would be sufficient to achieve 95% Tier 4 at SCIG by 2020. Finally, BNSF previously committed to acquire cleaner locomotives years before they were developed.

Response to Comment R156-11 states that "PC AQ-12 San Pedro Bay Ports CAAP Measure RL-3 is not quantifiable or feasible at this time and is not considered mitigation under CEQA to reduce an identifiable impact." *RL-3 is quantifiable.* The RDEIR used a fleet mix to quantify

locomotive emissions. Page 3.2-37 of the RDEIR states that, "SCIG line-haul locomotive emission factors were modeled using fleet forecasts through 2019 from the 1998 Fleet Average Agreement between CARB and the Class I railroads, and the EPA national locomotive fleet forecast for all years after 2019." Therefore, PC AQ-12 should be adopted as an enforceable mitigation measure that is required of the project in order to reduce significant impacts.

The fleet mix used to quantify emissions from the proposed project assumed a specific mix of locomotives for each Tier. Along with air dispersion files, the Lead Agency sent an Excel file to the SCAQMD staff titled "Loco EF.xls" which contains two spreadsheets with the locomotive fleet mix before 2020 and on and after 2020. For each locomotive Tier, there is a percentage of the fleet for each specific tier. For example, in 2023 the locomotive emissions are based on a fleet mix that includes 39.5% Tier 4 locomotives. The Lead Agency can revise these spreadsheets to reflect a fleet mix that includes 95% Tier 4 in 2020. Locomotive emissions can then be quantified emissions from implementation of RL-3.

Response to Comment R156-12 was non-responsive. The SCAQMD staff commented in its November 14, 2012 letter that the proposed SCIG facility will "handle between two and three trains per day in 2020, there will only be approximately 12 locomotives (four per train) serving SCIG in the South Coast Air Basin on any given day. These 12 locomotives represent less than 1% of BNSF's Tier 4 fleet." Response to Comment R156-12 focused on the number of locomotives that enter and leave California each day stating that "operating procedures require that many hundreds, if not thousands, of locomotives enter and leave California each day." The point of the SCAQMD's comment is that the number of locomotives needed for the proposed SCIG facility is very small (less than 1 percent) relative to BNSF's national locomotive fleet. The RDEIR states in its spreadsheets provided to SCAQMD staff, that the national fleet average will have approximately 26.5% Tier 4 locomotives in 2020. This equates to 1,380 locomotives.

California Air Resources Board staff has estimated that UP and BNSF would need a national pool of up to 5,000 Tier 4 interstate line haul locomotives to ensure that up to 1,200 Tier 4 interstate line haul locomotives will be able to operate in ***all of California*** — a ratio of about 4 to 1. http://www.arb.ca.gov/railyard/ted/drftrec090909.pdf. Thus, if we assume that BNSF operates 300 line haul locomotives per day in the four-county South Coast region, 1,200 Tier 4 locomotives would be needed nationally (i.e. less than the 1,380 assumed in EIR) to ensure all Tier 4 ***in the region***. Thus, achieving all Tier 4 at just SCIG is *clearly* feasible.

Zero Emission Container Movement

In the Master Response to Comments, the FEIR states a commitment to achieving "100% of the truck moves to proposed and existing near-dock rail-yards by zero-emission trucks by 2020." (FEIR, pg. 2-32.) Yet, when the Port actually approves a large-scale project with an implementation schedule that extends beyond 2020, it claims that the adoption of a mitigation measure requiring zero-emission trucks is infeasible. As indicated, a mitigation measure is feasible if it can be achieved in a reasonable period of time (CEQA Guidelines § 15364). Operation of the project would not begin until 2016 and full operation will not occur until 2035. (RDEIR, pg. 2-11.) Clearly, the 2020 timeframe identified by the Port is early on in the 2016-2035 implementation phase of project operation. Therefore, even if the Port were correct in

asserting that zero-emission trucks could not be deployed now, they certainly could be deployed within a reasonable time.

There are currently several research and demonstration programs being conducted by the Port of Los Angeles, South Coast Air Quality Management District, California Energy Commission, Environmental Protection Agency and the U.S. Department of Energy, to develop dedicated zero-emission trucks or hybrid electric trucks that will have zero-emission range. Such demonstrations are expected to be completed within the next several years and lay the foundation for commercialized products. The SCAQMD staff believes that the first generation of zero-emission trucks will be available within the next five years, well within the required timeframe.

The mitigation measures proposed for adoption in the RDEIR are inadequate to assure that zero-emission trucks will be required of the project through enforceable mitigation measures. Under CEQA, a mitigation measure must be "required in, or incorporated into, the project." (Pub. Res. Code § 21081(a); Guidelines § 15091(a).) They must also be "fully enforceable through permit conditions, agreements, or other measures." (*Federation of Hillside & Canyon Assoc. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.) The mitigation measures identified in the MMRP fall short of these principles. Mitigation Measures AQ-9 and AQ-10 do not require the evaluation and adoption of zero-emission technologies under a particular timeframe with consequences to ensure adoption and enforcement of the measures. For instance, MM AQ-9 simply requires the business to review the feasibility of an identified emissions-reductions technology and report back to the port at any time a lease amendment is required or a facility modification is occurring. (FEIR, pg. 2-10.) There is no indication as to when either of these events might occur, let alone by the 2020 timeframe identified by the Port for zero-emission trucks. Contrary to the response to comments, there is nothing in the mitigation measure that would actually require that advancements be implemented upon a five-year review because it is subject to "mutual agreement on operational feasibility and cost sharing." This is not a fully enforceable requirement. Similarly, MM AQ-10 simply identifies that a new improved technology could replace an existing measure. Again, there is no requirement that the zero emission technology be adopted with certainty in any given timeframe, let alone by 2020. Lastly, PC AQ-11 should be incorporated as a fully enforceable mitigation measure and not simply as a recommendation for inclusion in the agreement.

The Port Failed to Provide Sufficient Information to Support its Emissions Calculations and Modeling thus Depriving the Public of the Ability to Provide Informed Comment

In its November 14, 2012 comment letter, the District explained that from the information provided, "AQMD staff is unable to verify that the modeling analysis corresponds correctly to the emission calculation spreadsheets." (Comment 156-27.) Moreover, the Port failed to provide the necessary information to determine whether modifications had been performed in the databases. The District provided an example of how the spreadsheets, model inputs, and databases were NOT correlated. The District did not imply that this issue was present for only one particular example, but rather noted that "there are thousands" of sources for which the District was unable to correlate the data. Furthermore, the District explained: "Without the ability to review these calculations, the public and AQMD staff are unable to verify the validity of the modeling analysis." Moreover, Comment Letter 143, dated February 14, 2012, set forth in detail the inadequacies of the information provided to the District, and requested specific

information that was never provided. This is a serious CEQA violation warranting recirculation of the document after the needed information has been provided.

"[A] prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process." *Association of Irritated Residents v. County of Madera*, 107 Cal. App. 4th 1383, 1391 (2003). In this case, the District showed that the Port's analysis was *internally* contradictory. Therefore, the Port was obligated to explain why its analysis was indeed correct. The Port was required to provide "sufficient information and analysis to enable the public to discern the analytic route the agency traveled from evidence to action." *Id.* at 1397. It failed to do so.

The Port's response to this issue also failed to comply with CEQA. The Port simply responded to the District's specific example, in Comment 156-27, without addressing the numerous other cases in which the documents could not be correlated, or even providing a generic explanation which would explain the other cases. In response to the entire modeling comment letter, (Response 143) the Port simply said either that the comment relates to a recirculated portion, or the comment is general, and in either case does not require response. This is an affront to the integrity of the process. In responding to comments, "There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice." CEQA Guidelines Section 15088(c). Where the District's comment clearly indicated that the needed data was lacking for all the modeled sources, it is not a good faith response to simply address one source.

Indeed, without the needed data, the public has no way of knowing whether ANY of the emissions information—or the conclusions derived from that information—is correct. This represents a fundamental flaw in the document that renders it so "fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." CEQA Guidelines Section 15088.5(a)(4). The Port must provide the information needed to allow the public to verify the accuracy of the Port's calculations, and then recirculate the document to allow public comment. *Id.*

The Port's Responses to Comments Were Frequently Inadequate

In many cases, the Port attempts to completely avoid its obligation to respond to comments by citing CEQA Guidelines Section 15088.5(f)(2). (*See* responses to the District's November 30, 2011 comment letter (Response 68), January 19, 2012 comment letter (Response 81), and February 1, 2012 comment letter (Response 126).) This amounts to some 56 pages of comments which the Port claims it may simply ignore.

The Port relies on a CEQA Guideline that applies where only portions of a document are revised and recirculated. The Guideline states that "The lead agency need only respond to (i) comments received during the initial circulation period that relate to chapters or portions of the earlier EIR that were not revised and recirculated, and (ii) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated." The Port thus responds to *all* of the District's earlier comments as follows: "This comment refers to a

chapter or section of the DEIR that was recirculated. No response is necessary per CEQA Guidelines Section 15088.5(f)(2)."

The Port has ignored two key portions of Guideline Section 15088.5(f). First, in order for the lead agency to avoid responding to a comment, the relevant portion of the document must be *revised* as well as recirculated. Where the lead agency revises its analysis, it makes sense to require new comments to be filed on the revised analysis. However, where the lead agency does not revise the analysis, the original comment remains relevant and the lead agency must respond to it. Second, the cited Guideline specifically provides that "In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues." CEQA Guidelines Section 15088.5(f). Therefore, the Port brushes off all of the District's earlier comments at its peril. Where the comments remain pertinent, the Port must respond to them. The District hereby incorporates by reference its previous comments—which the Port ignored—dated November 30, 2011 (Comment 68), January 19, 2012 (Comment 81), February 1, 2012,(Comment 126), and February 14, 2012 (Comment 143).

Moreover, many of the other responses to comments are inadequate. For example, in Comment 143-1, the District had argued that the two-week extension of time to respond to modeling files was not adequate to allow for full review. The Port's response was that "The comment is general and does not refer to any specific section of the DEIR or RDEIR therefore no further response is required," citing Pub. Res. Code Section 21091(d) and CEQA Guideline 15204(a). Leaving aside the fact that neither the cited statute nor the guideline makes that statement, the District's comment applied to the *entire air quality analysis* and was not "general" because it clearly identified the subject of the comment. To say the comment is too general for response clearly is simply disingenuous. Moreover, the District commented that activity data was not provided, and without the activity data for the thousands of sources in the analysis, it is impossible to determine if modeled pollutant concentrations correspond to the values used in the DEIR. Comment 143-2. Again, the Port claims that it need not respond to this comment because it pertains to a recirculated section of the document—but the Port never provided much of the requested data. (Response 143-2) In response to the District's request for the needed data, the Port blithely asserts that "the comment is general" and thus does not require any response—even though the type of data sought is regularly provided by other CEQA lead agencies. (See "Technical Analysis is Not Documented and May Not Support Conclusions in Final EIR.")

Responses 156-6, 156-7, and 156-8, are also inadequate. The Port asserts in each of these Responses that Master Response 7 explains why ZECMS and Tier 4 line haul locomotives are not feasible mitigation measures. However, Master Response 7 fails to explain why Tier 4 line haul locomotives are not feasible for a railyard that will be in operation for many years after EPA's regulation requires *all* new locomotives to meet Tier 4 requirements. Response 156-11 purports to address this issue, but it simply ignores the EPA requirement and the EPA evaluations of feasibility, relying simply on the statement that the technology "does not currently exist at a size adequate for line-haul engines."

This statement applies the wrong legal test. The question is not whether a technology currently exists; it is whether it is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and

technological factors." Guidelines Section 15364. What is a reasonable period of time may vary depending on the length of time over which a project will be carried out. In this case, the project will be in existence for decades. Given the EPA requirement, the conclusion that Tier 4 locomotives are infeasible merely because the technology "does not *currently* exist" in adequate size is not based on substantial evidence.

The Port Uses the Wrong Legal Test for Determining Feasibility

Master Response 7 related to Zero Emissions Container Movement Systems, also applies the wrong legal test in determining feasibility**.** The Port states that "while zero emission technologies are promising, zero emission trucks and ZECMS have not yet proven, through demonstration and evaluation, to be feasible in Port operations." As noted above, the legal test is not whether the mitigation measure is feasible today; it is whether it is feasible in a reasonable period of time. Guidelines § Section 15364. As this project will last for several decades, a reasonable period of time would include a period of several years at least. The District's comment letters established that even allowing for the demonstration process described in the TIAX Report, zero emission technologies can be commercialized in time for use between the Ports and SCIG by 2016, with 100% deployment by 2020. (*See* Comment 156-8 and attachment B of letter 156.) The Port's response did not rebut this evidence, but merely called the comment speculative. It is not. It is the expert opinion of the District's Technology Advancement Office staff, which constitutes substantial evidence. CEQA Guidelines § 15384. Instead, the Port myopically insists that a ZECMS be "fully demonstrated" before it can be considered feasible. (Master Response 7, p. 2-32) This approach improperly ignores the fact that there is ample time to complete the demonstrations required during the period when the project becomes fully operational. It improperly requires that the project be capable of successful implementation today, rather than "within a reasonable period of time", which is the proper legal test.

The Port Uses an Improper Baseline for Criteria Pollutant Emissions

The Port fails to adequately respond to the District's comment that the Port should have used a floating baseline rather than a static "year 2010" baseline for criteria pollutant emissions to evaluate significance of criteria pollutant impacts. (Comment 156-26) This comment needs to be considered in conjunction with the more detailed comments regarding this issue that were filed on the DEIR. (Comments 68 and 81) Those comments incorporated the argument that using the static baseline of emissions in the year 2010 improperly credits the project with emission reductions that will occur anyway and are not due to the project. Thus, the issue purportedly discussed in Master Response 2 (Adopted Regulations) is really a part of the baseline issue. The Port has misunderstood our argument regarding the role of adopted regulations in the analysis.

Master Response 2 contends that the Port correctly included adopted regulations in its analysis of the project impacts. In other words, when the Port predicts the future emissions resulting from the Project, it assumes that the Project will comply with applicable regulations. We do not disagree with this proposition. We disagree, however, that those future emissions should be compared with a static baseline consisting of existing emissions as of 2010. What the Port has done is compare existing conditions, *before* the implementation of adopted but future effective regulations, with future conditions *after* implementation of adopted regulations, and pretended that the benefits of adopted regulations are due to the project, where in fact they would occur

anyway. This approach has the potential to obscure significant adverse impacts of the project. The District's November 30, 2011, and January 19, 2012 letters explained the problems with this approach —yet as discussed above, the Port simply ignored these comment letters.

The Port's approach is analogous to a case where a facility emits 1000 tons per year in 2010, but in the future, due to adopted rules, its emissions will go down to 500 tons. The facility proposes a modification that will increase its future emissions to 750 tons per year. By comparing the future emissions (750 tons per year) with 2010 emissions (1000 tons per year) it appears that the modification provides an environmental benefit, where actually it results in a 250 ton per day emissions increase. In the unique area of air quality, if activity remains constant, emissions will go down in the future due to adopted rules and fleet turnover. To discern the true impacts of the Project, the Port needs to use a future baseline which would evaluate emissions in the future with the project compared to emissions in the future without the Project. The Port should use a 2010 baseline as well, and consider impacts to be significant if they are significant using either baseline.

The Port argues that it did in fact perform an analysis of the comparison between the Project and the no-project alternative. (Master Response 1 p. 2-14) However, it did not use this as one of the baselines for determining significance. Moreover, as noted elsewhere in these comments, the District has serious questions about the correctness of the Port's analysis, and has been deprived of the information needed to judge that correctness.

The Port's Responses Improperly Limit its Own Legal Authority

In Response 156-18, the Port addresses the District's request that the Port as lead agency limit access to the SCIG rail yard to only locomotives that meet Tier 2 engine rebuild or above emission levels. The Port's response never claims this would be technically, economically, or operationally infeasible. Instead, the response merely snipes at the District by arguing that the District lost a case in which it was held that federal preemption precluded the regulations at issue. The response neglects to mention that the Ninth Circuit Court of Appeals held that if the rules had been approved by EPA into the State Implementation Plan, they would generally not be preempted. The District and CARB have submitted the rules to EPA for inclusion in the state implementation plan. The response essentially says that the Port has no legal ability to require the railroads to comply with such a measure. We find it difficult to believe that this response reflects the "independent judgment" of the Port (CEQA Guidelines Section § 15084(e).

This response completely ignores the Port's market participant authority, which it has so vigorously defended in the courts. In its brief in opposition to petition for certiorari to the U.S. Supreme Court in *American Trucking Associations v. City of Los Angeles,* Case Number 11-798, the Port argued at page 12: "the essence of the market participant doctrine concerns whether a state is acting in a proprietary fashion as an owner of property or is engaged in regulation. As [the Supreme] Court stated in Boston Harbor: 'When a State owns and manages property…it must interact with private participants in the marketplace. In so doing, the State is not subject to pre-emption…because preemption doctrines apply only to state *regulation.*'" (*Emphasis in original*.) Therefore, if the Port believes it is preempted from requiring a particular feasible mitigation under CEQA, it should consider whether in its capacity as a landlord, it can require certain emission reduction measures acting as a market participant.

Inconsistent use of Hobart in the Baseline, No Project, and Proposed Project

As we identified in our November 14, 2012 comment letter, CEQA obligates a lead agency to analyze the whole of an action with the potential for resulting in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines § 15378(a). Here, the Port has chosen to evaluate SCIG as part of a system that includes Hobart for only a limited portion of the analysis, namely the baseline and the no project alternative and meanwhile chose to ignore full activity at Hobart when analyzing the impacts of the project. As a result, the project looks artificially beneficial to regional air quality, a position which is untenable and defies common sense.

BNSF, in their November 28, 2012 letter to the Port, identifies that the Hobart rail yard is one of the largest intermodal rail yards in the United States and currently receives half of its cargo from the ports and the remainder from domestic and transload cargo from various points in Southern California. (Pg. 1.) With the SCIG project, only 5% of international intermodal cargo will pass through Hobart. Thus, SCIG would clearly allow for Hobart to receive and deliver a greater volume of domestic and transload cargo, unless one were to assume that one of the largest intermodal rail yards in the country would operate well below capacity.

However, instead of analyzing the potential impacts associated with a greater percentage of domestic and transload activity in Hobart, with originating and destination points throughout Southern California, rather than the fixed distance to the Port, the RDEIR claims that any such change at Hobart is unrelated to the project. Specifically, the Port claims, "future changes associated with rail and vehicular traffic outside the rail routes between the Ports and Hobart would not be caused by the proposed project and are beyond the geographic scope of the impact analysis." (SCIG Final EIR, pg. 2-18.) The Port and BNSF claim that this is because SCIG and Hobart are simply accommodating growth that is occurring irrespective of the Project.

This position advanced by the Port and BNSF is similar to a builder of tract homes claiming that the population of Southern California will grow irrespective of the decision to build homes in a given location and thus the impacts of building those homes need not be evaluated. Clearly that argument would run counter to CEQA. For similar reasons, the Port's position is equally untenable. This logic fails to take into account that the SCIG project does impact where that growth will occur and also controls the resultant pattern on the rail transportation network. Thus, even if cargo growth is unrelated to SCIG, it cannot be ignored that SCIG is controlling the flow of that cargo by increasing capacity near the ports and allowing for an increased capacity at Hobart. The direct and indirect impacts of that increased capacity at SCIG and Hobart must be analyzed as part of the same project. By not analyzing the impacts at Hobart, the RDEIR fails to analyze the whole of the project and therefore underestimates project impacts, in direct violation of CEQA. (*See, Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal. App. 4th 629, 637-41.) It is particularly important that the FEIR analyze the potentially significant physical impact on the environment from the increased domestic transload activity because, as BNSF acknowledges, it is likely that any potential physical changes at Hobart will not require any discretionary approval requiring CEQA review. As a result, this is the only opportunity to mitigate those impacts.

In their letter, BNSF also states that increases at Hobart in the past have not resulted in changes in demand for intermodal rail movements. By way of example, they claim that the year with the highest activity thus far, 2007, which had 1.37 million lifts was accommodated by improvements to the system. However, the growth projection is 2.9 million lifts at Hobart, without SCIG. BNSF seems to acknowledge that this growth would likely require actual facility developments and technological advances. (BNSF letter, pg. 4.) The discussion of the no project alternative in the RDEIR does not contain sufficient evidence to establish that Hobart would definitely be developed to accommodate such growth in international cargo and domestic transload activity rather than have the increased cargo growth dispersed amongst other rail yards in the rail transportation network. In other words, the RDEIR does not explain why the projected growth must come to Hobart, with or without SCIG, rather than travel to other rail yards that may or may not be located within the South Coast Air Basin. It would seem that, at the very least, SCIG is assisting in ensuring that growth will be targeted in this already highly impacted area within the Basin. It must be remembered that while the international cargo travels a distance between the ports and Hobart that is approximately 24 miles, the domestic and transload cargo travels to and arrives from points throughout the region and would thus have greater air quality emissions associated with that greater distance.

Before the Port decides to approve a project that will help ensure that future growth in cargo is directed towards this region, that the impacts of that decision are fully analyzed and mitigated to the greatest extent feasible.

Lastly, Appendix G4 of the EIR shows that while Hobart will have capacity to handle extra domestic and transload containers, other rail yards will be at or over capacity in future years. Given the capacity constraints at other yards, the newly opened capacity at Hobart would allow for additional activity and shifting of containers to a less congested facility.

Locomotive Activity Along the San Pedro Branch Line Adjacent to Sensitive Receptors

The SCAQMD staff is disappointed with the Lead Agency's response. The proposed Project will increase locomotive activity on the San Pedro Branch Line in an area that is adjacent to sensitive receptors including homes and schools. The SCAQMD staff understands that the Lead Agency did not find a significant impact and under CEQA is not obligated to implement mitigation. However, the SCAQMD staff strongly encourages the Lead Agency to consider measures to reduce the exposure of diesel exhaust to residents, students, and other sensitive populations by avoiding whenever possible locomotive activities along this track during times when children are expected to be outside, including lunch periods, recesses, and other times that the school district may identify. In addition, the Lead Agency could place signs notifying train personnel that there are school children and to limit unnecessary idling. In addition, there should be strict monitoring and enforcement of locomotive activity along this line to ensure that idling is kept to a minimum and does not exceed estimates in the EIR.

Technical Analysis May Not Support Conclusions in Final EIR

As we previously expressed in our comment, without the ability to review these calculations, the public and SCAQMD staff are unable to verify the validity of the modeling analysis. We are particularly concerned by this because the modeled concentrations provided in the modeling output files and databases do not correspond to the values presented in the text of the Final EIR

and its appendices. For example, in Table 3.2-28 of the EIR, the max NO2 1-hour modeled concentration is reported as 745 $\mu g/m^3$ for the state standard and 518 $\mu g/m^3$ for the federal standard. From the modeling files provided to SCAQMD staff, the 1-hour NO2 concentration at the maximum offsite receptor for the mitigated project is 1,157 $\mu g/m^3$ (at a receptor located at 386100E, 3738950N). It is unclear to SCAQMD staff how the reported 745 $\mu g/m^3$ correlates to the modeled 1,157 $\mu g/m^3$. This difference in values represents a substantial difference in the severity of the reported impact.

This misreporting of results goes beyond potential typographic errors within the text of the EIR. The below example details the impact of missing emission calculations for the reported 1-hour No Project emission rate for Cal Cartage cargo handling equipment (the source name is CCBASE). Of the hundreds of emission sources modeled in the EIR for the No Project alternative, CCBASE is the largest contributor to NO2 impacts at Hudson Elementary School, representing approximately 45%.

In the file titled 'No Project – Criteria Concentration.accdb', emission rates are listed for each modeled source. These emission rates are used to determine the modeled pollutant concentrations by multiplying the emission rate by a dispersion factor found in a file titled 'Dispersion Factor – other.accdb'. The dispersion factor multiplied by the emission rate should equal the final modeled concentration used to determine the significance of air quality impacts. SCAQMD staff is able to correlate these calculated concentrations with the reported concentrations found within the 'No Project – Criteria Concentration.accdb' file. However, the emission rates in this file cannot be correlated with any emission calculation spreadsheets.

For example, the emission rate for CCBASE for 1-hour NOx is listed as 2.759 grams per second. This is equivalent to 525.535 pounds per day as shown in the equation below.

*525.535 lb/day = 2.759 g/s * 60 s/min * 60 min/hr *24 hr/day / 453.59 g/lb*

Because this source of emissions is tied to the operating hours of Cal Cartage (76 hours per week), the average pounds per day should only be approximately 237.719 pounds per day as shown below.

*237.742 lb/day = 525.535 lb/day * 76 operating hours/week / 168 total hours/week*

Given the above analysis, SCAQMD staff expects to find the value of 237.742 lb/day within the emission calculation spreadsheets provided with the EIR. We could not find this value in any spreadsheet. The most likely value we could identify was in the '2035 Avg&Peak Daily' worksheet within the spreadsheet titled 'Summary NP Annual & Peak Emissions_All Years_06.26.12.xls'. Within this table is listed the "Total Peak Daily Emissions [lb/day]" for all existing businesses on the SCIG site. Cell Z16 lists the emission rate for cargo handling at Cal Cartage as 36.308 lb/day. SCAQMD staff believes this is the correct table to use as the sum of emissions from all cargo handling equipment from this table is equivalent to the value of 50.54 shown in Table C1.2-NP-22 from Appendix C1.

This rate of 36.308 lb/day is approximately 6.5 times lower than the rate of 237.742 lb/day listed above. Without any further information, SCAQMD staff concludes that the No Project emissions from the single largest source at Hudson Elementary are substantially overestimated thus making the No Project alternative concentrations appear much worse than they should. To be clear, these mismatches between emission calculations and modeled emissions appear to be systematic throughout the entire modeling analysis for all alternatives and SCAQMD staff must conclude that the air quality significance impacts are not adequately supported by the information provided in the EIR or its supporting files.

Proposed ICTF Project Not Adequately Addressed in Cumulative Impact Analysis

The ICTF rail yard is located adjacent to the proposed SCIG project to the north and is proposing to expand its operations to handle up to 1.5 million containers per year (NOP released January 2009). While the cumulative impacts of adding SCIG and expanding ICTF were quantitatively treated in the Draft EIR, the Recirculated Draft EIR removed this analysis. It is not clear that the cumulative air quality analysis from the Draft EIR would still be valid given the updated baseline year and the use of a floating baseline in the Recirculated Draft EIR. The minimal treatment of this significant cumulative impact in the Recirculated Draft EIR potentially diminishes the severity of the impacts that this local community will experience.

Further, conclusory statements in the Recirculated Draft EIR cumulative impacts chapter do not provide meaningful disclosure for the public or decision makers regarding the severity of the impact of these two substantial rail yards being located adjacent to one another, and residences and schools. For example, the EIR relies on statements like those found on page 4-28 to determine significance "*Although there is no way to be certain if a cumulative exceedance of the thresholds would happen for any pollutant without performing dispersion modeling of the other projects, previous experience indicates that cumulative air quality impacts would be likely to exceed the thresholds for NO_x, could exceed the thresholds for PM_{10} and $PM_{2.5}$, and would be unlikely to exceed the thresholds for CO.*" While the Draft EIR attempted to demonstrate the severity of these impacts, the Recirculated (and hence Final) EIR omit this consideration. Decision makers and the public need to know the severity of this cumulative impact when considering the feasibility of mitigation and whether the benefits of the project outweigh the impacts.

Student Exposures

The EIR presents potential carcinogenic health risks for student populations based on a set of exposure parameters that are not appropriately conservative. While Figures 3.2-10, 11, and 12 in the EIR show risks with residential exposures for the identified school sites, the exposures for students are limited to 6 years, 6 hours per day, and 180 days per year within Table 3.2-35. This exposure period is less than the minimum 9-year exposure duration recommended by Cal-EPA Guidance, and is also lower than the typical exposures experienced by students adjacent to the proposed project. Hudson Elementary is in fact a K-8 school, and students from this school are likely to attend Cabrillo High School just next door that has similar impacts. Students also frequently stay at schools for longer periods for extra-curricular activities in the afternoons or during the summer. The HRA should report student risks that at minimum account for these realistically longer exposures, if not using a residential exposure typical applied to sensitive land uses.

Exhibit B

NATURAL RESOURCES DEFENSE COUNCIL
EAST YARD COMMUNITIES FOR ENVIRONMENTAL JUSTICE
COALITION FOR CLEAN AIR
SAN PEDRO AND PENINSULA HOMEOWNERS COALITION
LONG BEACH ALLIANCE FOR CHILDREN WITH ASTHMA
COMMUNITY DREAMS
COALITION FOR A SAFE ENVIRONMENT
CALIFORNIA KIDS IAQ
COMMUNITIES FOR A BETTER ENVIRONMENT
ENDOIL/COMMUNITIES FOR CLEAN PORTS
WEST LONG BEACH ASSOCIATION
URBAN AND ENVIRONMENTAL POLICY INSTITUTE, OCCIDENTAL COLLEGE
SAN PEDRO DEMOCRATIC CLUB
GREATER LONG BEACH INTERFAITH COMMUNITY ORGANIZATION

VIA EMAIL AND HAND DELIVERY

November 12, 2012

Mr. Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731

Re: Revised Draft Environmental Impact Report: Southern California International Gateway (SCIG)

Dear Mr. Cannon:

This letter is written on behalf of the Natural Resources Defense Council, East Yard Communities for Environmental Justice, Coalition for Clean Air, San Pedro and Peninsula Homeowners Coalition, Long Beach Alliance for Children with Asthma, Community Dreams, Coalition For A Safe Environment, California Kids IAQ, Communities for a Better Environment, EndOil/Communities for Clean Ports, West Long Beach Association, Urban and Environmental Policy Institute, Occidental College, San Pedro Democratic Club, and the Greater Long Beach Interfaith Community Organization. We appreciate the opportunity to present our concerns about the SCIG project and the current revised SCIG draft environmental impact report (RDEIR). In our view, the RDEIR shows that the project is not needed until 2046 at the earliest and will violate the civil rights of the environmental justice communities that surround the project site. Our detailed comments follow.

I. CONSTRUCTION AND OPERATION OF SCIG WILL VIOLATE THE CIVIL RIGHTS OF THE ENVIRONMENTAL JUSTICE COMMUNITIES NEAR THE PROJECT

A. Approval Of SCIG Will Be An Intentional Decision To Disproportionately Harm The Low Income, Minority Communities Near The Project

The RDEIR frankly admits that the construction and operation of SCIG will violate the civil rights of nearby minority and low-income residents.

> The proposed Project's individual impacts are described for each resource in Chapter 3, and contributions to cumulative impacts in Chapter 4. The proposed Project would have significant impacts related to aesthetics (AES-1), air quality (AQ-1, AQ-2, AQ-4, AQ-7),cultural resources (CR-2), land use (LU-4), and noise (NOI-6) that would remain significant after mitigation. With these unavoidable impacts, the Proposed Project would have new, significant effects with respect to minority and low-income populations. *Those impacts would fall disproportionately on minority and low-income populations because the census block groups adjacent to the point of impact (the eastern edge of the Project site) constitute minority populations, and some (i.e., all or parts of census tracts 5727, 5728, 5729, and 5755) constitute low-income populations*.

RDIER 6-11–6-12 (emphasis added).

With respect to air quality, the RDEIR admits that, even after the proposed mitigation measures, significant impacts will remain—impacts that are disproportionately high on nearby minority and low-income populations. RDEIR 6-12–6-13. In particular:

> Construction of proposed Project will generate emissions that exceed SCAQMD significance thresholds for VOC, CO, NOx, PM10 and PM2.5, representing a significant impact. In addition, these emissions combined with emissions from other concurrent construction projects in the area will represent a cumulatively considerable contribution to a significant cumulative impact. The mitigation measures proposed in the RDEIR (MM AQ-1 through MM AQ-6) will fail to keep construction emissions below the significance thresholds. These emissions will constitute a disproportionately high and adverse effect on minority and low-income populations.
>
> Construction of proposed Project will also generate off-site ambient pollutant concentrations that exceed SCAQMD significance thresholds for 1-hour and annual NO2, 24-hour and annual PM10, and 24-hour PM2.5 representing a significant impact. In addition Project construction activities combined with other concurrent construction projects in the area would also represent a cumulatively considerable contribution to a significant cumulative impact for ambient pollutant concentrations. The mitigation measures proposed in the RDEIR (MM AQ-1 through MM AQ-3) will fail to keep construction-related emissions of NO2 and

PM10 below the one-hour and annual significance thresholds (for NO2) and the annual threshold for PM10. Again, these emissions will constitute a disproportionately high and adverse effect on minority and low-income populations.

Operation of the project – expected to last until 2066 or later – will generate local, off-site ambient pollutant concentrations that exceed SCAQMD significance thresholds for 1-hour and annual NO2, 24-hour and annual PM10, and 24-hour PM2.5, representing significant impacts. In addition, Project operations combined with other past, present and reasonably foreseeable future projects in the area (possibly including the ICTF enlargement and the I-710 widening) will represent a cumulatively considerable contribution to a significant cumulative impact for ambient pollutant concentrations. The mitigation measures proposed in the RDEIR will fail to keep the 1-hour and annual NO2, 24-hour and annual PM10, and 24-hour PM2.5 levels below significance levels. Again, these emissions will constitute a disproportionately high and adverse effect on minority and low-income populations.

Construction and operation of the proposed Project will also expose receptors to significant levels of toxic air contaminants resulting in increased cancer risk above the significance threshold for residential, occupational, sensitive, student and recreational receptors. In addition Project construction and operational activities combined with other concurrent projects in the area will represent a cumulatively considerable contribution to a significant cumulative health risk impact. Even after application of the proposed mitigation measures, considering the cancer risk from toxic air contaminants in the Port region, the Project will make a cumulatively considerable contribution to the significant health risk impact to the predominantly minority and low-income population in the Port region; this impact will constitute a disproportionately high and adverse effect on minority and low-income populations.

B. The Public Health Impact On The Neighboring Communities Will Be Severe

Most of the equipment that would be used to build SCIG and to transport freight to and from SCIG, including trucks, trains, ships, and cranes, are powered by diesel engines. These engines emit fine particulate matter (particles that are 2.5 microns or less in diameter or "PM2.5"), nitrogen oxides (NOx), and volatile organic compounds (VOCs) along with many other toxic chemicals.

Health effects of particulate matter: Numerous studies have documented a wide range of adverse health impacts from exposure to PM, including increased rates of respiratory illness and asthma, cardiovascular disease, heart attacks, strokes, emergency room visits, and premature

death.[1] Near-roadway exposure to particulate matter has also been linked to birth defects, low birth weights, and premature births.[2] Emerging studies have shown a potential connection between exposure to fine PM and diabetes, as well as cognitive decline and other serious impacts to the brain.[3]

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[1] Kuenzli, N., M. Jerrett, W.J. Mack, B. Beckerman, L. LaBree, F. Gilliland, D. Thomas, and H.N. Hodis. "Ambient Air Pollution and Atherosclerosis in Los Angeles," *Environmental Health Perspective* 113 (February 2005):201-6.

Miller, K.A., D.S. Siscovick, L. Sheppard, K. Shepherd, J.H. Sullivan, G.L. Anderson, and J.D. Kaufman. "Long-term Exposure to Air Pollution and Incidence of Cardiovascular Events in Women," *New England Journal of Medicine* 1:356 (February 2007):447-58.

Hoffman, B., S. Moebus, S. Mohlenkamp, A. Stang, N. Lehman, D. Dragano, A. Schmermund, M. Memmesheimer, K. Mann, R. Erbel, and K.-H. Jockel. "Residential Exposure to Traffic Is Associated With Coronary Atherosclerosis," *Circulation*, published online July 16, 2007, DOI:10.1161 / CIRCULATIONAHA.107693622.

Pope, C.A., J.B. Muhlestein, H.T. May, D.G. Renlund, J.L. Anderson, and B.D. Horne. "Ischemic Heart Disease Events Triggered by Short-term Exposure to Fine Particulate Air Pollution," *Circulation* 114 (December 5):20062443-8.

Schwartz, J., D. Slater, T.V. Larson, W.E. Person, and J.Q. Koenig. "Particulate Air Pollution and Hospital Emergency Room Visits for Asthma in Seattle," *American Review of Respiratory Disease* 147 (April 1993):826-31.

Jerrett, M., R.T. Burnett, R. Ma, C.A. Pope, D. Krewski, K.B. Newbold, G. Thurston, Y. Shi, N. Finkelstein, E.E. Calle, and M.J. Thun. "Spatial Analysis of Air Pollution and Mortality in Los Angeles," *Epidemiology* 16 (November 2005):727-36.

Mustafic, H., et al. "Main Air Pollutants and Myocardial Infarction: A Systematic Review and Meta-analysis," *JAMA*, February 15, 2012.

Wellenius, G.A., et al. "Ambient Air Pollution and the Risk of Acute Ischemic Stroke," *Archives of Internal Medicine*, Vol. 172, No. 3, February 13, 2012.

[2] Ritz, B., M. Wilhelm, and Y. Zhao. "Air Pollution and Infant Death in Southern California, 1989–2000," *Pediatrics* 118 (August 2000):493-502.

Ritz, B., and M. Wilhelm. "Residential Proximity to Traffic and Adverse Birth Outcomes in Los Angeles County, California, 1994–1996," *Environmental Health Perspectives* 111 (February 2003):207-16.

Wilhelm, M., and B. Ritz. "Local Variations in CO and Particulate Air Pollution and Adverse Birth Outcomes in Los Angeles County, California, USA," *Environmental Health Perspectives* 113 (September 2005):1212-21.

[3] Volk, H. "Residential Proximity to Freeways and Autism in the CHARGE Study," *Environmental Health Perspectives,* 2010. Available online December 16, 2010, DOI: 10.1289/ehp.1002835, at http://dx.doi.org.

Anderson, Z.J., et al. "Diabetes Incidence and Long-Term Exposure to Air Pollution: A Cohort Study," *Diabetes Care*, November 10, 2011; 10.2337/dc11-1155. http://care.diabetesjournals.org/content/early/2011/11/03/dc11-1155.abstract.

Calderón-Garcidueñas, L., et al. "Neuroinflammation, Hyperphosphorylated Tau, Diffuse Amyloid Plaques, and Down-Regulation of the Cellular Prion Protein in Air Pollution Exposed Children and Young Adults," *Journal of Alzheimer's Disease*, Vol. 28, No. 1, 2012. Available at:

Health effects of nitrogen oxides: NOx can have a toxic effect on the airways, leading to inflammation, asthmatic reactions, and worsening of allergies and asthma symptoms.[4] In addition, NOx reacts with VOCs in sunlight to form ozone—also known as smog. This layer of brown haze contributes to decreased lung function and increased respiratory symptoms, asthma, emergency room visits, hospital admissions, and premature deaths.[5] Ozone can also cause irreversible changes in lung structure, eventually leading to chronic respiratory illnesses, such as emphysema and chronic bronchitis.[6]

Health effects of diesel exhaust: The soot in diesel exhaust—diesel PM—is especially toxic, not only because of the very small size of the soot particles *(see above),* but also because these particles contain roughly 40 different toxic air contaminants, 15 of which are recognized carcinogens.[7] In fact, diesel PM itself has been identified as a carcinogen (cancer-causing agent) by the World Health Organization as well as the State of California,[8] which lists it as a "Toxic Air Contaminant." Dozens of studies have shown a high risk of lung cancer for those in occupations with high diesel exposures, including rail workers, truck drivers, and miners. Recent studies of miners indicate that the most heavily exposed workers have a risk of lung cancer

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http://iospress.metapress.com/content/vux3g01201610607/?p=2437bdf11554408d8cc9060c28d77f1c&pi=82.
Weuve, J., et al. "Exposure to Particulate Air Pollution and Cognitive Decline in Older Women," *Archives of Internal Medicine*, Vol. 172, No. 3, February 13, 2012.

[4] Davies, R.J., C. Rusznak, M.A. Calderon, J.H. Wang, M.M. Abdelaziz, and J.L. Devalia. "Allergen-Irritant Interaction and the Role of Corticosteroids," *Allergy* 52, (Suppl. 38) (1997):59–65.
Davies, R.J., C. Rusznak, and J.L. Devalia. "Why Is Allergy Increasing?—Environmental Factors," *Clinical & Experimental Allergy* 28, (Suppl. 6) (1998):8–14.

[5] U.S. Environmental Protection Agency. *Provisional Assessment of Recent Studies on Health and Ecological Effects of Ozone Exposure*, Washington, D.C., EPA/600/R-09/101, 2009.

[6] Hodgkin, J.E., D.E. Abbey, G.L. Euler, and A.R. Magie. "COPD Prevalence in Nonsmokers in High and Low Photochemical Air Pollution Areas," *Chest* 86 (1984):830-838.
Abbey, D.E., F. Petersen, P.K. Mills, and W.L. Beeson. "Long-term Ambient Concentrations of Total Suspended Particulates, Ozone, and Sulfur Dioxide and Respiratory Symptoms in a Nonsmoking Population," *Archives of Environmental Health* 48 (1993):33–46.

[7] Diesel exhaust contains the following toxic constituents: acetaldehyde, acrolein, aniline, antimony compounds, arsenic, benzene, beryllium compounds, biphenyl, bis[2-ethylhexyl]phthalate, 1,3-butadiene, cadmium, chlorine, chlorobenzene, chromium compounds, cobalt compounds, cresol isomers, cyanide compounds, dioxins and dibenzofurans, dibutylphthalate, ethyl benzene, formaldehyde, hexane, inorganic lead, manganese compounds, mercury compounds, methanol, methyl ethyl ketone, naphthalene, nickel, 4-nitrobiphenyl, phenol, phosphorus, POM including PAHs and their derivatives, propionaldehyde, selenium compounds, styrene, toluene, xylenes.
www.oehha.ca.gov/public_info/facts/dieselfacts.html;
www.oehha.ca.gov/air/toxic_contaminants/html/Diesel%20Exhaust.htm.

[8] www.oehha.ca.gov/prop65/prop65_list/files/P65single021712.pdf;
http://press.iarc.fr/pr213_E.pdf.

approaching that of heavy smokers; studies also show that elevated risks of lung cancer apply not only to workers but to the general population in areas with high levels of diesel PM (e.g., near freeways and busy freight corridors).[9] Moreover, diesel pollution is estimated to contribute to more than half of the 9,200 premature deaths attributable to outdoor air pollution in California.[10]

People who live or go to school near ports, rail yards, distribution centers, freight roadways and other diesel "hot spots" face disproportionate exposure to diesel exhaust and associated health impacts, including increased risks of asthma and other respiratory effects, cancer, adverse birth outcomes, adverse impacts to the brain (including potentially higher risk of autism), heart disease, and premature death.[11]

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[9] Silverman, D.T., et al. "The Diesel Exhaust in Miners Study: A Nested Case-Control Study of Lung Cancer and Diesel Exhaust," Journal of the National Cancer Institute, Vol. 104, No. 11, June 6, 2012, www.oxfordjournals.org/our_journals/jnci/press_releases/silvermandjs034.pdf.

[10] Personal communication, Alvaro Alvarado, California Air Resources Board, March 2012.

[11] Kim, J., et al. "Traffic-Related Air Pollution and Respiratory Health: East Bay Children's Respiratory Health Study," *American Journal of Respiratory and Critical Care Medicine* 2004;170:520-526.
McConnell, R., et al. "Childhood Incident Asthma and Traffic-Related Air Pollution at Home and School," *Environmental Health Perspectives* 2010; 118(7):1021-1026.
Van Vliet, P., M. Knape, et al. "Motor Vehicle Exhaust and Chronic Respiratory Symptoms in Children Living Near Freeways," *Environmental Research* 1997; 74(2):122-32.
Appatova, A.S., et al. "Proximal Exposure of Public Schools and Students to Major Roadways: A Nationwide U.S. Survey," *Journal of Environmental Planning and Management* 2008; 51(5):631-646.
Nicolai, T., D. Carr, S.K. Weiland, H. Duhme, O. Von Ehrenstein, C. Wagner, and E. von Mutius. "Urban Traffic and Pollutant Exposure Related to Respiratory Outcomes and Atopy in a Large Sample of Children," *European Respiratory Journal* 2003;21:956–963.
Brunekreef, B.; N.A. Janssen, J. de Hartog, H. Harssema, M. Knape, and P. van Vliet. "Air Pollution From Truck Traffic and Lung Function in Children Living Near Motorways," *Epidemiology* 1997; 8(3):298-303.
Duhme, H., S.K. Weiland, et al. "The Association Between Self-Reported Symptoms of Asthma and Allergic Rhinitis and Self-reported Traffic Density on Street of Residence in Adolescents," *Epidemiology* 1996; 7(6):578-582.
Edwards, J., S. Walters, et al. "Hospital Admissions for Asthma in Preschool Children: Relationship to Major Roads in Birmingham, United Kingdom," *Archives of Environmental Health* 1994; 49(4):223-227.
Gauderman W.J., et al. "Childhood Asthma and Exposure to Traffic and Nitrogen Dioxide," *Epidemiology* 2005; 16:737-743.
McConnell, R., Berhane K, Yao L, Jerrett M, Lurmann F, Gilliland F, et al. 2006. Traffic, susceptibility, and childhood. *Environ Health Perspect* 2006; 114(5):766-772.
Gauderman WJ et al. Effect of exposure to traffic on lung development from 10 to 18 years of age: a cohort study. *Lancet* 2007; 369(19561): 571-7.

Moreover, in addition to the huge impacts on residents and workers closest to the sources of emissions, freight operations pose a particularly acute threat to regional air quality. The South Coast Air Basin (SCAB), where the project area is located, consistently ranks near the top of the lists for the nation's most polluted air. Freight transport, including the operations at the Ports, greatly contributes to the persistent failure of the SCAB to meet clean air standards established by EPA. In fact, the SCAQMD has determined that freight movement poses a seriously risk to attainment of air quality standards.

The ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the *single largest fixed sources of air pollution* in Southern California. Emissions from port-related sources, such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, adversely affect air quality in the local port area as well as regionally. Without substantial control of emissions from port-related sources, it will not be possible for this region to attain federal ambient air quality standards for ozone. Port sources also contribute to cancer risks.[12]

Wilhelm et al.. Environmental Public Health Tracking of Childhood Asthma Using California Health Interview Survey, Traffic, and Outdoor Air Pollution Data. *Environmental Health Perspectives* 2008;116(8):1254-1260.
Meng et al.. Are Frequent Asthma Symptoms Among Low-Income Individuals Related to Heavy Traffic Near Homes, Vulnerabilities, or Both? AEP 2008; 18(5):343-350.
Venn et al. Living Near A Main Road and the Risk of Wheezing Illness in Children. *American Journal of Respiratory and Critical Care Medicine* 2001; 164:2177-2180.
Lin, Munsie, Hwang, Fitzgerald, and Cayo.. Childhood Asthma Hospitalization and Residential Exposure to State Route Traffic. *Environmental Research, Section A* 2002; 88:73-81.
English P., Neutra R., Scalf R. Sullivan M. Waller L. Zhu L. Examining Associations Between Childhood Asthma and Traffic Flow Using a Geographic Information System. *Environmental Health Perspectives* 1999; 107(9):761-767.
van Vliet et al.. Motor exhaust and chronic respiratory symptoms in children living near freeways. *Environmental Research* 1997; 74:12-132.
Pearson et al.. Distance-weighted traffic density in proximity to a home is a risk factor for leukemia and other childhood cancers. *Journal of Air and Waste Management Association* 2000; 50:175-180.
Raaschou-Nielsen, O., Hertel, O., Thomsen, B.L., & Olsen, J.H. Air Pollution from traffic at the residence of children with cancer. *Am J Epidemiol* 2001; 153:433-443.
Knox and Gilman. Hazard proximities of childhood cancers in Great Britain from 1953-1980. *Journal of Epidemiology and Community Health* 1997; 51:151-159.
Hoek, Brunekreef, Goldbohn, Fischer, van den Brandt. Association between mortality and indicators of traffic-related air pollution in the Netherlands: a cohort study. *Lancet* 2002; 360(9341):1203-9.
Finkelstein et.al. Traffic Air Pollution and Mortality Rate Advancement Periods. *Am J Epidemiol* 2004; 160:173-177.
Gan, W. Q. Changes in Residential Proximity to Road Traffic and the Risk of Death from Coronary Heart Disease. *Epidemiology* 2010; 21(5):642-649.
[12] SCAQMD, Revised Draft 2012 Air Quality Management Plan, at IV-A-37, *available at* http://www.aqmd.gov/aqmp/2012aqmp/RevisedDraft/appIV-A.pdf (emphasis added).

C. Approval Of SCIG Will Violate State Civil Rights Law

The Port is rushing to build a project that will not be needed until 2046, by the Port's own analysis, and that can be built elsewhere with minimal air pollution—in full knowledge that the project will have a disparate and more devastating impact on neighboring minority, low income populations.

As we noted in our comment letter on the first DEIR, the State of California has defined "environmental justice" as:

> For the purposes of this section, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

Government Code Sec. 65040.12(e). California has addressed this problem in part by enacting Government Code 11135(a), which states that:

> No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

Here, the Port receives bond proceeds and other funds from the State and proposed project will be on land that the Port was given by the State to hold in trust for the people of the state—thus triggering the provisions of Section 11135. The RDEIR, by its own words, shows a flat-out violation of this state civil rights law.

D. Approval Of SCIG Will Violate Federal Civil Rights Law

The Port of Los Angeles receives funding from the federal Department of Transportation (DOT), including TIGER funds, and the City of Los Angeles receives an enormous amount of funding from DOT. Future DOT funds for the Port and the City will be at risk under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-7, if SCIG is approved.

DOT Title VI implementing regulations prohibit any agency that receives DOT funding from taking actions that will have a discriminatorily disparate impact. *E.g.*, 49 C.F.R. 21.5(b)(3) ("In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of

race, color, or national origin . . . .").[13] Persons who believe they have been subjected to discrimination may file a written complaint with the Transportation Secretary no later than 180 days within the date of the alleged discrimination. *Id*. at 21.11(b).

The Secretary must "make a prompt investigation." *Id*. at 21.11(c). This investigation "will include, where appropriate, a review of the pertinent practice and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part." *Id*. The regulations encourage DOT to try to settle complaints informally but, failing that, to refuse or end funding or take certain other steps. 49 C.F.R. 21.13. If SCIG is approved as proposed, we intend to file an administrative complaint under Title VI against the Port and the City.

II. THE RDEIR ADMITS THAT THE SCIG PROJECT IS NOT NEEDED UNTIL 2046 OR LATER

The civil rights and environmental justice impacts of the proposed project are thrown into even sharper focus by the admission in Appendix G4 of the RDEIR that that no new capacity (beyond the "modified maximum" for the currently built facilities) will be needed to accommodate projected cargo demand, whether or not the SCIG project is constructed, through the year 2046 at the minimum.

For example, on page G4-6, a projection using 2010 baseline conditions with projected 2035 cargo volume levels, the RDEIR shows "Additional BNSF Yard Capacity Needed" as zero (in red). Page G4-11, the 2035 "No Project" scenario, also shows zero for additional BNSF yard capacity needed. Indeed at page G4-14, the 2046 "No Project" scenario, the need for additional BNSF yard capacity is again zero.

Thus, by the Port's own admission, there is no need to build this project for the next 34 years. If it is build, the low-income, minority neighbors of the project will be breathing dirty, polluted air for 34 years for nothing.

III. THE ALTERNATIVES ANALYSIS IS AGAIN FLAWED

The RDEIR has added text to the DEIR's dismissal of the on-dock and zero emission container movement alternatives but has not altered the DEIR's conclusions. This is an error, particularly since the SCIG project will not be needed until 2046, if then.

On-dock rail. The RDEIR does not discuss the alternative of building new on-dock intermodal capacity by creating new land by dredging and filling in the harbor, as the Port has done in the

[13] See also federal Executive Order 12898, which provides in part that: "Pursuant to Title VI of the Civil Rights Act, agencies must ensure that programs or activities receiving federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin."

past for Pier 300/400 and is doing now for the Pier 500 project.[14] If the political will were there, the needed capacity, if any, could be built on new or extended land in the harbor. If the Port disputes this, it needs to show why in its CEQA review of SCIG.

Zero emission container movement. The RDEIR now recognizes the substantial work that the Ports of Los Angeles and Long Beach, the South Coast Air Quality Management District, and the Southern California Association of Governments have done to create a zero emission container movement system for imports and exports to and from the Los Angeles ports. But still the RDEIR does not analyze the possibility of requiring—not just hoping for—a progressive requirement for zero emission container movement to and from SCIG beginning when the project begins operation. A similar, graduated program worked to clean up the diesel truck fleet at the Port of Los Angeles[15] and can work at SCIG also, especially given the long time-frame in which the facility is planned to operate.

IV. THE TRAFFIC PROJECTIONS IN THE RDEIR ARE SIGNIFICANTLY LOW BECAUSE THEY ARE BASED ON AN ARBITRARY AND UNSUPPORTED TRIP PER LIFT RATIO

The truck traffic projections in the RDEIR are skewed to be very low because the Port chose to use a fanciful and unsupported "trip per lift" ratio. This ratio measures how many truck trips are associated with each "lift," or movement of a cargo container between a truck and a railcar. For example, a ratio of 2 means that there are two truck trips per every container lift—typically one to deliver the container, and a second to drive back to the Port or somewhere else off site.

The RDEIR states that truck trips per lift at the SCIG will be substantially less than they are currently at the Hobart-Commerce yard—1.3 vs. 2.1, or a 54% reduction from current conditions. RDEIR, p. 3.10-26.[16] Simply put, if the RDEIR had used a realistic 2.1 ratio, the truck traffic projections would have been 61.5% higher, with accompanying increases in diesel pollution. But it did not.

The RDEIR justifies the reduced ratio on the basis that, under the proposed Project conditions, containers would be moved directly on and off bare chassis, and that these operations would minimize bobtail (tractors with no chassis) generation from the proposed Project site, which ostensibly accounts for 0.826 truck trips per lift at existing intermodal sites, and therefore result in fewer overall truck trips per intermodal lift. RDEIR, p. 3.10-25. Assuming a high TEU volume but relatively few trips per lift allows the RDEIR to simultaneously justify the facility as providing regional benefits in terms of trucks removed from I-710 while projecting no local traffic impacts—a clear logical and practical impossibility.

The description of SCIG's proposed operations seems to imply that a container on flatcar

[14] See http://articles.latimes.com/2012/jul/19/business/la-fi-ports-projects-20120720/2 re: Pier 500.
[15] See http://www.portoflosangeles.org/ctp/idx_ctp.asp.
[16] The original DEIR assumed a trip per lift ratio of 1.33, again with no substantiation. DEIR App. C, page 2-2.

(COFC) arrangement will be used. COFC typically involves dray drivers arriving empty with a truck and chassis, picking up a container transferred from rail and leaving the intermodal yard. Delivery of a container in a COFC arrangement would involve leaving the yard with an empty truck and chassis or a bobtail if the chassis was left at the yard. In a California Air Resources Board (CARB) report[17] on Hobart-Commerce's diesel mitigation efforts, intermodal operations are described as follows:

> BNSF gathers and delivers containers and some truck trailers on rail, and transfers containers and other freight from and onto rail cars with cargo handling equipment.

This description is consistent with COFC being the dominant freight handling method at Hobart-Commerce. It is possible that existing trailer on flatcar (TOFC) movements at Hobart-Commerce will be completely eliminated at SCIG. In a TOFC arrangement, a dray driver arrives with a bobtail, a container with chassis or a semi-trailer is unloaded from rail and attached to the driver's vehicle. Delivery of a container or a semi-trailer in a TOFC arrangement would involve dropping off a chassis with container or a semi-trailer and leaving the yard with a bobtail. The container with chassis or the semi-trailer would be loaded on rail for delivery.

Fundamentally, however, using a container on flatcar (COFC) as opposed to trailer on flatcar (TOFC) approach does not necessarily reduce trips per lift, and the RDEIR presents no evidence that it will. Instead, the RDEIR premises its analysis on the (unsupported) assumption that fewer bobtails will be generated; however, it does not allow for the possibility that additional chassis would be generated instead. If containers transferred to rail directly on and off chassis replace trailers that were previously transferred to rail on and off bobtails, empty chassis must replace bobtails that were previously generated. The RDEIR fails to recognize this.

The switch to COFC will only result in reduced trips per lift if deadhead (i.e. non-revenue or empty) movements to and from the SCIG or onsite at SCIG are minimized. Several authors have noted that reducing deadhead drayage movements would increase operating efficiency [4, 5]. However, most drayage trips are undertaken by independent owner-operators (IOOs) that have no incentive to balance container movements or to arrive precisely when a container is required to be loaded. Their rates are typically based on a trip that involves arriving empty and picking up a loaded container, or vice versa. Because IOOs rates are based on empty arrival, every intermodal lift translates to about one roundtrip, or two trips per lift, consistent with the 2.1 figure at the Hobart Commerce yard.[18]

Moreover, based on recent literature, typical values for trips per lift are approximately two. In a study[19] of intermodal yards in the Chicago area, McGuckin and Christopher found average trips per lift at 10 sites to equal 2.4. Only one site experienced less than 2 trips per lift. A consultant

[17] http://www.arb.ca.gov/railyard/hra/drftmitplanbnsfhob.pdf, page 1.
[18] Average trips per lift in excess of two may be experienced through deadhead movements of chassis, containers, or bobtails.
[19] McGuckin, N. and E. Christopher, *Intermodal Truck Traffic: Description and Results of a Survey in Chicago.* ITE Journal, 2000. 70(12): 38-41.

for Environ has noted[20] that their experience was that rates range between 0.9 and 1.2 round trips per lift (i.e. 1.8 – 2.4 trips per lift), consistent with McGuckin and Christopher. A memorandum included in Appendix G1 from the original DEIR also discussed trip rates, reporting counts from the existing Intermodal Container Transfer Facility (ICTF) operated by Union Pacific Railroad. Trip rates per lift for ICTF range between 1.90 – 2.01.11. A traffic study for a proposed new BNSF intermodal railyard near Gardner, Kansas proposes a 2.4 trip per left ration for 2010, when that project was expected to commence operations.[21]

In sum, the RDEIR selected an unjustified and arbitrary trips per lift number, and thus the projection of future project-related truck trips is too low by a factor of 60% or more. Because the air quality and health risk analyses are each based on the RDEIR's traffic projections, they are invalid as well.

V. THE RDEIR USES A CEQA BASELINE THAT IS FIVE YEARS LATER THAN THE BASELINE USED IN THE DEIR, BUT THE EFFECT OF THIS CHANGE IS NOT ANALYZED

CEQA Guidelines 15125(a) provides:

> An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

The notice of preparation in this case was published in 2005, and the original DEIR, published in September, 2011, purported to describe traffic and other conditions on the proposed SCIG site as of that date.

However, the RDEIR, published roughly one year later, switched to a 2010 baseline on the theory that:

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[20] Lindhjem, C. *Intermodal Yard Activty and Emissions Evaluation*. 2008; Available from: http://www.epa.gov/ttnchie1/conference/ei17/session11/lindhjem_pres.pdf.

[21] See page 11 in Appendix A of the Traffic Technical Report (Attachment A to this comment letter) prepared in support of a NEPA environmental assessment for the proposed Gardner, Kansas project; see also http://www.scribd.com/doc/17299099/NEPA-Review-Draft-Environmental-Assessment-for-the-BNSF-Inter-Modal-Facility-Proposed-by-BNSF-Railway-Company-Near-Gardner-In-Johnson-County-Kansas for the entire EA including the Traffic Technical Report (Appendix C).

> [T]he time that has elapsed between the release of the NOP and the release of the Draft EIR is long enough such that 2005 is no longer an appropriate baseline to use for the purpose of this analysis… The year 2010 was selected based on a complete data set that was readily available and accessible for the entire calendar year when this revised analysis was initiated in early 2012.

RDEIR, Appendix H, p. H-2. Of course, one year of the elapsed time cited is due to the Port's decision to publish a legally indefensible DEIR in 2011 and then take a year to recirculate it. The RDEIR does not analyze what difference, if any, this change in baseline made to the traffic and air quality analyses—even though it stands to reason that truck traffic on the site was higher in 2010 than in 2005 as economic conditions improved after the 2008 recession. A too-high baseline combined with too-low future traffic projections (because of the trips per lift problem) distorts and reduces the environmental impacts of a project and lessens the need for possibly expensive mitigation. Because of this, the RDEIR is inadequate and should have analyzed the difference between using a 2005 and 2010 baseline as it affects air quality and public health.

VI. THE RDEIR INCORRECTLY STATES THAT AIR QUALITY AND HEALTH RISK WILL IMPROVE BECAUSE OF SCIG, WHEN IN FACT ANY IMPROVEMENTS WILL HAPPEN WHETHER SCIG IS BUILT OR NOT

The South Coast Air Quality Management District commented on the original SCIG DEIR and said, in part, that CEQA requires a determination of significant impacts that does not inaccurately credit the project with unrelated improvements in air quality that will occur anyway, and that would be even greater without the project. For example, the California Air Resources Board has enacted a rule to make diesel powered trucks in the drayage industry near California ports and railyards cleaner, and so port-serving trucks will be less polluting whether SCIG is built or not. So if we look at a future year and say that, without the project, diesel particulate emissions in the area will be 1000 pounds per year, and then 1.5 million new truck trips are added, there is no way that these new truck trips will make particulate matter emissions less than 1000 pounds. In fact, they will make the number higher and make the air dirtier than it otherwise would have been.

The RDEIR repeats this error in its calculation of cancer risk associated with the project at Table C3-7-4 (page C3-65) which shows a negative cancer risk (i.e., lower risk) because of the project. Whatever the cancer risk will be without SCIG, it will be greater with SCIG—but the RDEIR does not recognize this. Instead, we are presented with spurious negative risk numbers.

VII. THE TRAFFIC AND CIRCULATION ANALYSES IN THE RDEIR ARE INVALID

A. The Project Year Analysis

It is not clear what project year of analysis is used in the Transportation/Circulation section of the RDEIR (Section 3.10). The analysis in this section compares baseline traffic volumes to the baseline plus project traffic volumes, essentially focusing on the project's contribution to traffic volumes, or the incremental contribution. The project's estimated completion date is 2016, it is

estimated to reach capacity in 2035 (RDEIR, p. 3.10-31), and its estimated lifetime is through 2066 (RDEIR Appendix H). Appendix G1 provides an intersection level of service analysis in the baseline year, 2016, 2023, 2035, and 2046 (the project lifetime that was used in the DEIR), but not 2066. Appendix G4 provides intermodal rail analysis in 2010, 2016, 2020, 2023, 2030, 2035, and 2046.

In the few text mentions of a project year in Section 3.10 of the RDEIR, it seems as though the project impacts were analyzed assuming either that the project operates at capacity in an unspecified year, or that 2035 is the analysis year (which is also the year at which capacity is reached). For example, in a description of the analysis of rail activity, the proposed project is characterized by activities in 2035. RDEIR, pp. 3.10-32, 3.10-53.

Additionally, the RDEIR states that the proposed Project trip generation was determined by using the proposed Project lifts (container trips) from the average weekday of the peak month of port operation at port buildout, the QuickTrip outputs, and adjustments for bobtail and container trips based on the rates shown in Table 3.10-21. RDEIR, p. 3.10-40. Although 'port buildout' is not described in RDEIR Section 3.10, it may be that this description means that the project trip generation assumes 2035 operations[22], (i.e. that the SCIG facility operates at capacity). Figure 3.10-6 contradicts this interpretation because the truck trip distribution percentages shown are described as being "determined by Baseline port intermodal demand" (RDEIR, p. 3.10-28); these values for trip distribution do not match any of the truck trip distribution percentages for years 2016, 2023, or 2035-2066 shown in Figures 4-2, 4-3, and 4-4 of the Cumulative Impacts Section of the RDEIR. It is therefore unclear and unsupportable that the analysis in Section 3.10 seems to assume 2035 truck volumes traveling along the same routes they would in the baseline year, even though different trip distributions were estimated for 2035.

B. Treatment of Local Conditions In The Project Year

The Traffic/Circulation section does not appear to account for local background conditions in future years when assessing project impacts. The RDEIR states that: "Impacts were assessed by quantifying differences between CEQA Baseline conditions and CEQA Baseline conditions plus the proposed Project." RDEIR, p. 3.10-20.

Similarly, values shown in the traffic data tables are for the baseline and 'baseline plus proposed project.' This analysis ignores changes in local conditions that will occur in the future by simply adding the project's incremental effects to the 2010 baseline, rather than accounting for 2035 or 2066 background conditions.

[22] Page 4.61 of the RDEIR states that "as described in Section 1.1.5, at port build out the total San Pedro Bay container capacity is estimated to be 39.4 million TEUs", while page 1-21 of the RDEIR (in Section 1.1.5.2) states that "the results show cargo volumes increasing from approximately 34.6 million TEUs in 2030 to approximately 39.4 million TEUs by the year 2035, thereby reaching the capacity of the Port terminals. Accordingly, the 2009 forecast predicts that 2035 is the last year in which the Ports will accommodate the actual demand." Thus, the quote from page 3.10-40 of the RDEIR also indicates a 2035 'at capacity' analysis of the project increment.

Conversely, Section 4.0 of the RDEIR analyzes the cumulative effects of the project in the context of future changes in local conditions. RDEIR p. 4-61. The analyses of cumulative impacts at intersections and freeway monitoring stations each have two parts. In the first part of each analysis, the 2010 baseline is compared to future years with the project for 2016, 2023, 2035, 2046, and 2066, yielding estimates of significant impacts. In the second part of each section, the future year without the project is compared to the future year with the project for the same years, yielding no estimates of significant impacts. This is discussed in more detail below.

Part 1: Here, the 2010 baseline is compared to future years with the project. 'Significant impacts' are noted for several intersections and freeway locations (see Tables 4-7 through 4-11 for intersection analysis and Tables 4-22 through 4-26 for freeway analysis). Section 4.0 mentions the findings of significant impacts at several locations for intersections (TRANS-2): Cumulative impacts are shown to occur at two intersections in 2016, at two locations in 2023, at three locations in 2035, and at eight locations in 2046 and 2066. RDEIR, p. 4-70. And in reference to highway traffic (TRANS-4), the past, present, and reasonably foreseeable future projects would add traffic to the freeway system and at the CMP monitoring stations, resulting in significant cumulative impacts to monitoring stations operating at LOS F or worse. RDEIR, p. 4-82.

Part 2: Here, the future year without the project is compared to the future year with the project for the same years, yielding no estimates of significant impacts for intersections or highway traffic. The closing discussion of both intersection and freeway project impacts appears to rely only on the latter analysis as it closes with a discussion of finding no significant impacts in reference to intersections (TRANS-2): "Accordingly, the proposed Project would not make a cumulatively considerable contribution to asignificant cumulative impact at other locations…. there would be no residual cumulative impacts. (RDEIR, p. 4-81)."

And in reference to highway traffic (TRANS-4): "the proposed Project would not make a cumulatively considerable contribution to a significant cumulative impact…. there would be no residual cumulative impacts." RDEIR, p. 4-83.

In addition, the RDEIR executive summary also does not indicate any transportation cumulative impacts for the proposed project alternative. RDEIR, p. ES-87. This is consistent with the idea that: "Cumulative impacts were assessed by quantifying differences between future Baseline conditions and future conditions with the proposed Project to determine the Project's contribution to the cumulative impact." RDEIR, p. 4-61.

Thus, it appears that the analysis makes a distinction between two different kinds of impacts: those impacts determined by comparing the baseline to the future with project, and those project impacts determined by comparing the future without the project to the future with project. It is unclear why neither Section 3.10 nor 4.0 rely on the 2010 baseline compared to the projections for future years to determine significant impacts. Failure to explain this and to analyze transportation impacts using different baselines is a CEQA violation.

C. Traffic Count Data

The analysis of traffic impacts relies on traffic counts collected for this study. Local jurisdictions provide guidelines for collecting traffic counts for traffic studies in the area. In the City of Los Angeles, the LA DOT Traffic Study Policies and Procedures[23] state that traffic counts should be collected in 15-minute intervals during the hours of 7:00 a.m. to 10:00 a.m. and 3:00 p.m. to 6:00 p.m., unless LADOT specifies other hours. The study intersection counts should also include vehicle classifications, pedestrian (including school children) volume counts, and bicycle counts. The traffic study should not use any traffic counts (for intersections and roadway segments) that are more than two years old. Additionally, unless otherwise required, all traffic counts should generally be taken when local schools or colleges are in session, on days of good weather, on Tuesdays through Thursdays during non-Summer months, and should avoid being taken on weeks with a holiday.

For intersection analysis in the Cities of Long Beach and Carson, the RDEIR states that guidelines from the 2010 Los Angeles County Congestion Management Plan[24] are used to determine the LOS. This document also provides guidelines for collecting traffic count data, reflecting similar principles as the City of Los Angeles guidelines: Traffic counts included in the local jurisdiction's Highway Monitoring Report must be less than one year old as of May 31 of each monitored (odd-numbered) year. Traffic counts must be taken on Tuesdays, Wednesdays or Thursdays (these need not be consecutive days). Traffic counts must exclude holidays, and the first weekdays before and after the holiday. Traffic counts must be taken on days when local schools or colleges are in session. Traffic counts must be taken on days of good weather, and avoid atypical conditions (e.g., road construction, detours, or major traffic incidents). Traffic counts must be taken on two days and a third day of counts may be required (see Section A.7 Acceptable Variation of Results). Traffic counts must be taken for both the AM and PM peak period. Unless demonstrated otherwise by actual local conditions, peak period traffic counts will include the periods 7–9 AM and 4–6 PM. The local agency must contact MTA if current conditions prevent the collection of representative count data during the required period (for example, major construction lasting over a year).

The section on acceptable variation of results referred to above states that: "Compare the two AM period counts. Do the same for the PM data. The volume to capacity (V/C) computations resulting from the two days of traffic counts should not vary more than 0.08 for either peak hour period. Please note the following: Report the average V/C ratio for the two days of counts if the variation in V/C is less than 0.08, and the average V/C ratio is less than or equal to 0.90 (LOS A-E). If the V/C ratios vary more than 0.08 and the resulting V/C ratio is at LOS F, a third day of counts is required for the respective peak period. In reporting LOS using three days of counts, take either the average of the three counts, or exclude the most divergent V/C and take the average of the two remaining days' counts.

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[23] LA DOT, *Traffic Study Policies and Procedures, May 2012*, City of Los Angeles Department of Transportation, Editor. 2012.

[24] Metro, *2010 Congestion Management Program*, Los Angeles County Metropolitan Transportation Authority, Editor.

The City of Los Angeles traffic study guidelines apply to non-CMP intersections, but the document does not specifically note their application to CEQA analysis. The Los Angeles County traffic study guidelines apply to traffic studies evaluating CMP monitoring stations and the document notes that traffic studies are generally required of projects that prepare an EIR. However, both guidelines provide an indication of traffic count methods that are considered valid in the local jurisdictions.

The RDEIR analysis includes intersections, CMP freeway monitoring stations, freeway ramps, and existing uses.

Intersections

The RDEIR states that: "Existing truck and automobile traffic along study roadways and intersections, including automobiles, port trucks, and other truck and regional traffic not related to the Port, was determined by taking vehicle turning movement classification counts (classification by size of vehicle) at 25 study locations. For all analysis locations, A.M. (6:00 – 9:00 A.M.), Mid-day (1:00 – 4:00 P.M.) and P.M. (4:00 – 6:00 P.M.) period traffic volumes were counted in February 2012 and are presented in Appendix G." (RDEIR page 3.10-7)

The only intersection traffic count information provided in Appendix G of the RDEIR are the peak passenger car equivalents and V/C ratios used to determine LOS in Appendix G1 (pp. G1-1 – G1-948). In other words, a count methodology is not provided, nor are raw data counts provided in the RDEIR, both of which are critical to review and understand the traffic analysis in the RDEIR.

Appendix G3 of the DEIR does provide raw traffic count data for intersections (pp. G3-111 – G3-155), but it was not revised with the RDEIR (it is only available with the DEIR) and does not include any 2012 data. An examination of the traffic counts in Appendix G3 indicates that counts were taken during times ranging from 2005 to 2010, with several occurring during the summer (there are dates in June, July and August), and at least one count occurring on a Saturday during a holiday week (July 10, 2010). Counts of bike/pedestrian traffic are not provided.

Updated intersection count data was obtained from the Port in October, 2012. While the SCIG RDEIR features 24 study intersections (p. 3.10-11), updated data for only 18 intersections was provided. Whether data for the additional six intersections was not updated or simply was not included is unclear. The six missing intersections, which are all located in the City of Los Angeles, are:

- Henry Ford Ave / Pier A Way / SR-47/103 Ramps
- Harry Bridges Blvd / Broad Ave
- Harry Bridges Blvd / Avalon Blvd
- Harry Bridges Blvd / Fries Ave
- Harry Bridges Blvd / King Ave
- Harry Bridges Blvd / Figueroa St

For the 18 updated data counts, the RDEIR used the same procedure in gathering data counts, regardless of whether the intersection was located in the City of Los Angeles, City of Long Beach, or City of Carson. Traffic counts for each intersection were taken on a single day in fifteen minute increments for the hours between 7–9 a.m., 1–3 p.m., and 4–6 p.m. They were taken within the last two days of February or the first day of March 2012 (Tuesday through Thursday) in sunny weather. Counts were broken down by vehicle classification based on size, with passenger vehicles, bobtail trucks, chassis only trucks, container trucks, and other trucks all accounted for separately.

The traffic counts as described above thus do not conform with the City of Los Angeles methodology (specified in LA DOT Traffic Study Policies and Procedures) in two ways: 1) counts were not taken from 9–10 a.m. and 3–4 p.m, and 2) bicycle and pedestrian (including school children) volume counts were not included. It is unclear why there were no pedestrian or bicycle counts, especially given that at least six of the seven City of Los Angeles intersections have pedestrian crosswalks and sidewalks, and one intersection had a bike lane. Even if no pedestrians used any of these facilities during the duration of the vehicle count study, this should have been noted.

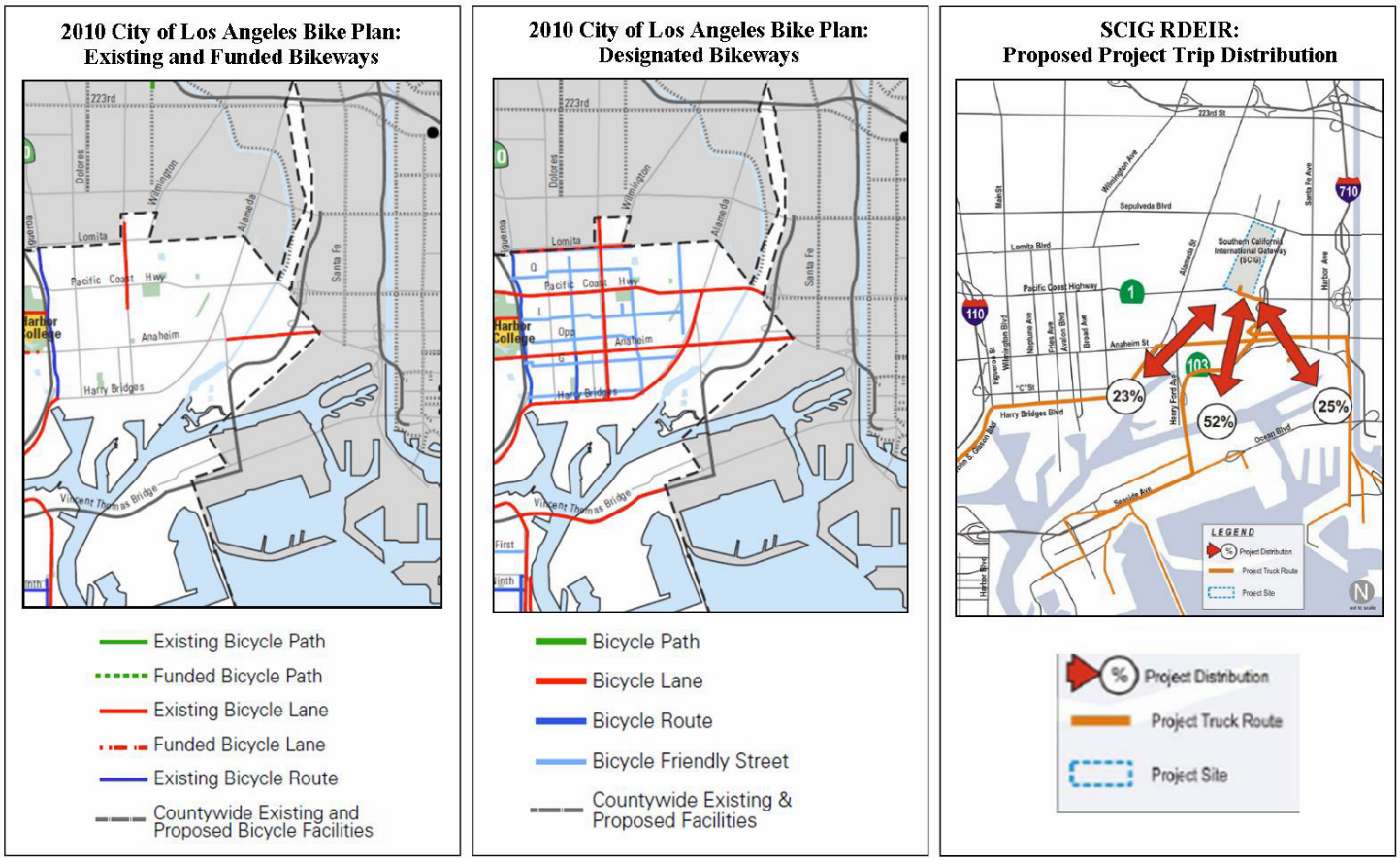

Figure 1: Bikeways and SCIG truck routes. The bike plan maps on the left and at center are from Appendix D of the Los Angeles 2010 Bike Plan. SCIG project truck routes on the right are from Figure 3.10-6 in the RDEIR.

Additionally, for all intersections, including those within the City of Long Beach and City of Carson, the counts do not conform to Los Angeles County guidelines as they were not taken on multiple days for the same intersections. Because only a single day of counts were collected at each intersection, it is not possible to determine whether the values collected are representative of the traffic conditions onsite because the day to day variability of traffic levels is unknown. None of the traffic counts included the mid-day peak period; although mid-day counts are not generally required by either guideline, it would have provided a more comprehensive picture of traffic conditions at each of the intersections in light of the RDEIR statement that regional traffic occurring during the A.M. and P.M. peak hours is mainly due to commute trips, school trips and other background trips; while the peak hour for port related truck traffic generally occurs during the mid-day peak hour. RDEIR p. 3.10-7.

CMP Freeway Monitoring Stations

The RDEIR states that the traffic counts used to analyze Congestion Monitoring Plan (CMP) monitoring stations (freeways and arterials) are based on 2009 Caltrans data. These data are within two years of the baseline year (2010) but are not within two years of the RDEIR analysis (2012).

Freeway Ramps

The RDEIR uses an analysis of freeway ramps from "the Traffic Operations Report prepared for the Pacific Coast Highway Bridge Replacement (#53-399) and SCIG Site Driveway Alternatives Project (see Appendix G1)" (page 3.10-13 of the RDEIR). From pages G1-948 to G1-983 in the RDEIR Appendix G1, it appears that the analysis year referenced is 2008. The raw traffic count data are not provided in the RDEIR, but the analysis outputs in Appendix G1 list the "date" and "date performed" as Tuesday 1/29/2008, Wednesday 2/13/2008, Thursday 10/14/2010, and Monday 10/18/2010. If these dates are the date the traffic counts were collected, we note that while all of these dates are within two years of the baseline year (2010), the 2008 dates are not within two years of the RDEIR analysis (2012), and two issues arise in relation to the October 2010 dates.

First, Monday the 10/18/2010 is not a Tuesday, Wednesday, or Thursday, as specified in both the City of Los Angeles guidelines and in the Los Angeles County CMP guidelines. The analyses that list 10/18/2010 as the "date" or "date performed" are described in Appendix G1 of the RDEIR as follows: The multilane highway analysis of PCH: e/o SR-103 NB Ramp, PCH: w/o E Rd Ramp, (all described as City of Long Beach & Wilmington); the basic freeway segments analysis of SR-103 NB: n/o NB PCH On Ramp, SR-103 NB: s/o NB PCH Off Ramp, SR-103 SB: n/o SB PCH Off Ramp, SR-103 SB: s/o SB PCH On Ramp, (all described as City of Long Beach & Wilmington).

Second, Thursday 10/14/2010 is the Thursday following a Federal holiday (Columbus Day was on Monday October 11, 2010), which is not recommended by the City of Los Angeles guidelines. The analyses that list 10/18/2010 as the "date" or "date performed" are described in Appendix G1 of the RDEIR as follows: The freeway weaving analysis of SB-103:SB 103-

EBSR-1&WBSR1-SB 103, NB 103: NB SR103-WBSR1&EBSR1-NBSR103 (all described as City of Long Beach and Wilmington).

Existing Uses

The RDEIR states that trip generation count data for existing businesses are from 2012. However, raw traffic counts were not provided. The traffic counts obtained from the Port in October, 2012 did not include driveway counts, so it is not possible to evaluate the methodology used.

VIII. PROJECT EFFECTS ON BICYCLE AND PEDESTRIAN USES ARE NOT ANALYZED

The RDIER's evaluation of impacts states that the project "will not conflict with policies, plans or programs regarding public transit, bicycle or pedestrian facilities, or otherwise decrease the performance or safety of such facilities" RDEIR at 3.10-60. However the RDEIR also states that although there are "currently no on-street bicycle facilities" on designated truck routes, the "City of Los Angeles Master Bike Plan identifies Pacific Coast Highway as a Class II designated bikeway that will include bicycle lanes in the future." RDEIR at 3.10-16. The RDEIR also states that Lomita Blvd and Anaheim Street are also designated as Class II bikeways and are in the five-year implementation plan as second highest priority components, although the Pacific Coast Highway is not included in the 5-year implementation plan.

An examination of the 2010 City of Los Angeles Bike Plan[25] indicates that existing and proposed bikeways coincide with several of the SCIG proposed truck routes. The proposed truck route includes portions of the Pacific Coast Highway, Seaside Avenue, Anaheim Blvd, and Harry Bridges Road that have existing or future bike lanes which are part of the City's planned "Backbone Bikeway Network." According to the City of Los Angeles Director of Planning, on July 1, 2010, 1.3 miles of bike lanes were installed along Anaheim Blvd from Henry Ford Ave to Long Beach City limit (coinciding with a SCIG truck route)[26], over two years before the RDEIR was completed.

Moreover, the Transportation/Circulation section of the RDEIR does not provide a technical evaluation of the project's impacts on bicyclists and pedestrians. The RDEIR states only that pedestrian crosswalks are present at intersections. The Federal Highway Administration (FHWA) indicates that when heavy truck traffic increases, bicyclists are less comfortable riding on-street[27] When heavy truck traffic is present, the 2010 Los Angeles Bike Plan technical

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[25] Los Angeles Department of City Planning, *2010 Bicycle Plan: A Component of the City of Los Angeles Transportation Element, Council File No. 10-2385-S2, CPC-2009-871-GPA*, Department of City Planning, Editor. 2011: City of Los Angeles.

[26] Logrande, M.J., *Bicycle Plan Implementation Team Quarterly Report, Letter to Los Angeles City Council, 8/3/2011*, Dity of Los Angeles Department of City Planning, Editor. 2011. A portion of this bike lane is clearly visible on Google Street View for the address 1760 E. Anaheim Street, Los Angeles, CA.

[27] FHWA, *The Bicycle Compatability Index: A Level of Service Concept, Implementation*

guidelines recommend considering additional width for bike lanes next to parallel parking and bicycle routes with a wide outside lane[28] This is consistent with FHWA indices of bikeway facility performance: with heavy truck traffic, the FHWA's Bicycle Compatibility Index (BCI) worsens, leading to a worsening of the FHWA's bicycle level of service (LOS). Similarly, the 2010 Highway Capacity Manual (HCM)[29] includes a measure of bicycle LOS, which accounts for the proportion of heavy vehicle traffic, as well as overall motorized vehicle volumes. However, the RDEIR does not assess pedestrian or bicycle level of service.

Furthermore, the intersection traffic count information described in the RDEIR (described in Section 3.10 and used in estimates shown in Appendix G1) and posted in the DEIR (raw traffic count data in Appendix G3) does not include information about bicyclists and pedestrians at any location despite the LA DOT Traffic Study Policies and Procedures requirement that "the study intersection counts should also include vehicle classifications, pedestrian (including schoolchildren) volume counts, and bicycle counts"[30] Bicycle counts on the intersection of E. Anaheim Blvd and N Henry Ford Ave would be especially relevant, given their location in the City of Los Angeles and the presence of bike lanes along E Anaheim Blvd.

Finally, even if the GPS enforcement system noted in the RDEIR is effective at restricting SCIG truck traffic to designated routes, traffic may be affected on nearby roads, if non-SCIG cars and trucks change their route to avoid traffic from SCIG trucks. This may affect bicyclists and pedestrians along non-truck routes, but was not analyzed in the RDEIR.

IX. INCORPORATION OF FIRST LETTER

We incorporate herein by reference the contents of the comment letters on the original DEIR submitted by NRDC and others on January 31, 2012 and February 1, 2012, as well as all the documents cited herein.

X. REQUEST FOR TIME TO REVIEW ADDITIONAL STUDIES

Should the Port or Real Party produce any new studies or documents in response to this or other comments on the RDEIR, we request adequate time to review and respond to such studies or documents before the hearing on the final EIR.

Manual, *FHWA-RD-98-095*, Federal Highway Administration, Editor. 1998.

[28] Los Angeles Department of City Planning, *2010 Bicycle Plan: Technical Design Handbook, Council File No. 10-2385-S2, CPC-2009-871-GPA*, Department of City Planning, Editor. 2011: City of Los Angeles.

[29] Transportation Research Board, *Highway Capacity Manual 2010*. 2010: Washington, D.C.

[30] LA DOT, *Traffic Study Policies and Procedures, May 2012*, City of Los Angeles Department of Transportation, Editor. 2012, page 6.

XI. CONCLUSION

The fundamental question for the Harbor Commission, City Council and the Mayor is whether they want to participate in violating the civil rights of the residents of the predominantly Latino working class neighborhood near the Port by approving a project that will be not be needed, by the RDEIR's own account, until 2046 or later. The answer should be obvious to everyone.

Thank you for your attention to this letter.

David Pettit
Senior Attorney
Natural Resources Defense Council

Angelo Logan
Executive Director
East Yard Communities for Environmental Justice

Joe Lyou
Executive Director
Coalition for Clean Air

Dr. John Miller, MD, FACEP
President
San Pedro and Peninsula Homeowners Coalition

Jessica Tovar, MSW
Project Manager
Long Beach Alliance for Children with Asthma

Ricardo Pulido
Executive Director
Community Dreams

Jesse N. Marquez
Executive Director
Coalition For A Safe Environment

Drew Wood
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California Kids IAQ

Maya Golden-Krasner
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Communities for a Better Environment

Gisele Fong, PhD
Executive Director
EndOil/Communities for Clean Ports

Theral Golden
Vice President
West Long Beach Association

Martha Matsuoka
Assistant Professor
Urban and Environmental Policy Institute, Occidental College

David Greene
President
San Pedro Democratic Club

Patrick Kennedy
Executive Director
Greater Long Beach Interfaith Community Organization

cc (via email):

The Honorable Antonio Villaraigosa
The Honorable Kamala Harris, California Attorney General
U.S. EPA Administrator Lisa Jackson
U.S. EPA Region IX Administrator Jared Blumenfeld
Members of the California Air Resources Board
Members of the Port of Los Angeles Board of Harbor Commissioners
Members of the California State Lands Commission
Members of the City of Long Beach City Council
Members of the South Coast Air Quality Management District Governing Board
Dr. Elaine Chang, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Peter Greenwald, South Coast Air Quality Management District

Exhibit C

Community Outreach and Engagement Program
University of Southern California - Keck School of Medicine
Southern California Environmental Health Sciences Center
2001 N. Soto Street, MC 9237
Los Angeles, CA 90089

Director: Andrea Hricko, MPH

November 13, 2012

To: Mr. Chris Cannon
Director of Environmental Management
Port of Los Angeles
Los Angeles, CA

Re**: Serious Problems with POLA's Recirculated Draft Environmental Impact Report (RDEIR) and its Appendices for the BNSF SCIG Project; Request to Withdraw the Project or to Issue Another Recirculated RDEIR (R-RDEIR?)**

Dear Mr. Cannon:

We respectfully request that the Port of Los Angeles consider our concerns detailed below concerning the Recirculated Draft Environmental Impact Report (RDEIR) and its Appendices for the BNSF Southern California International Gateway Project (BNSF SCIG). Please note that the outreach and engagement program of our Center aims to ensure that public officials understand the health impacts of exposure to air pollution, particularly as they relate to close proximity to traffic-related pollution.

In summary, after reviewing the RDEIR, we note that:

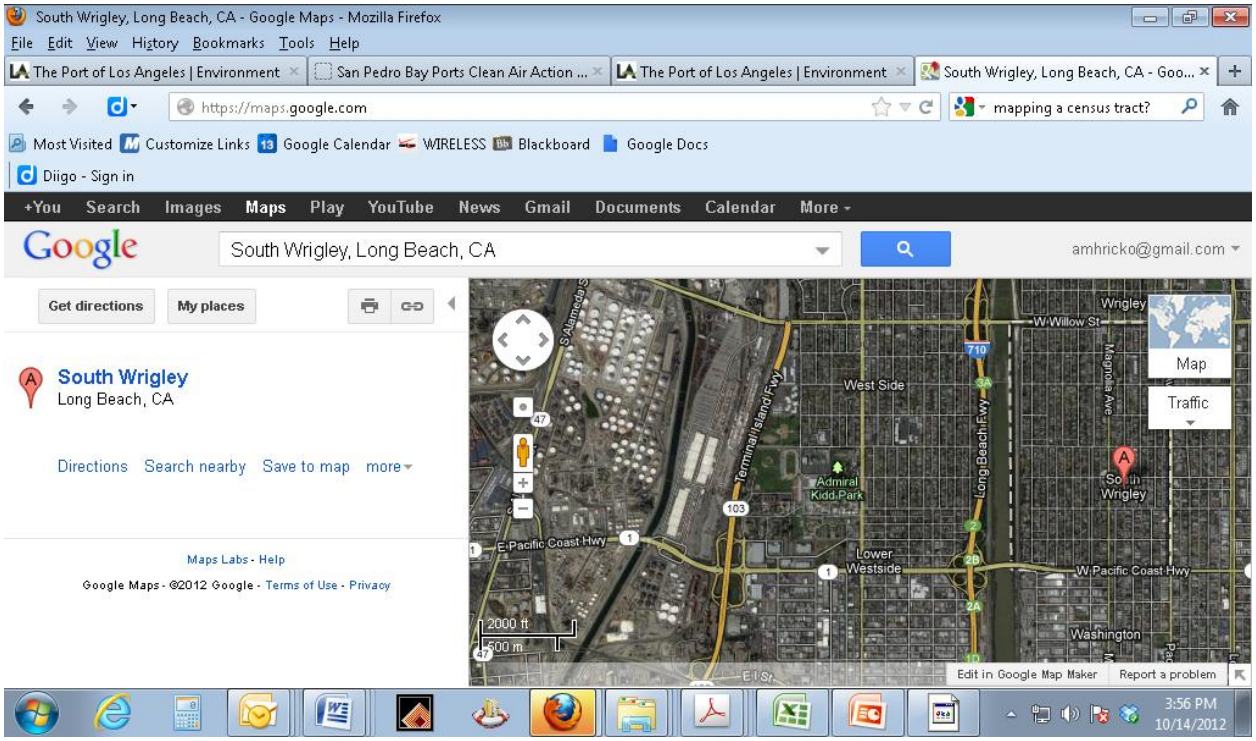
R146-1

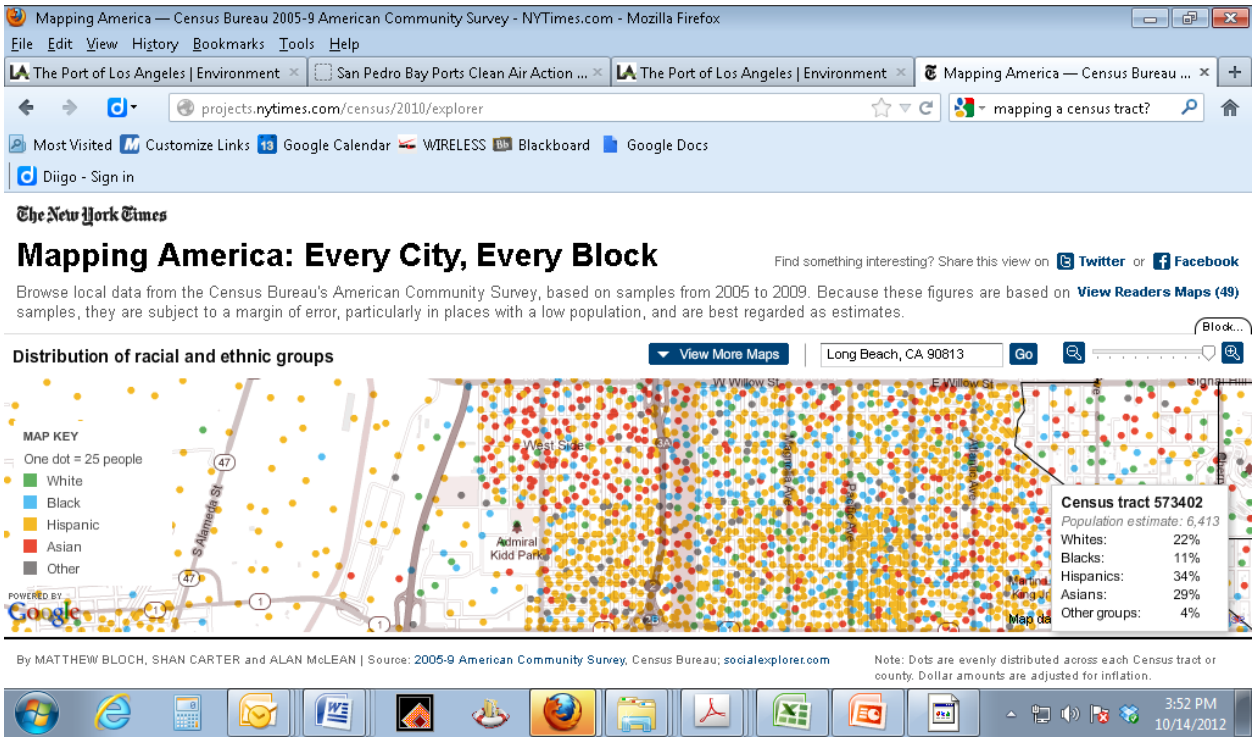
- After building the BNSF SCIG rail yard, the region will suffer increased air pollution from NO_2 and other pollutants.

R146-2

- After building the BNSF SCIG rail yard facility, significant health impacts from air pollution will remain on lower-income, minority communities – which the POLA/BSNF in the RDEIR admits for the very first time, and which identifies four census tracts immediately east of the proposed facility as disproportionately impacted communities. See the area called "West Side" in the Google map below, which includes these these four census tracts.

R146-2





From the map above produced by the *New York Times*, it is clear that the area above Admiral Kidd Park on the West Side of Long Beach has many Asians, Hispanics and

R146-2 Blacks and many fewer Whites. This is an extremely diverse, lower income community – as documented in great detail in NOP comments submitted by NRDC and USC in 2005.

- R146-3 The RDEIR fails to review research findings on the health effects of air pollution, especially diesel exhaust on health. Included in the DEIR and RDEIR is NOT REFERENCE TO A STUDY showing the specific connection between exposure to diesel exhaust and lung cancer, despite this issue having been raised in the comments on the NOP and again in the DEIR – and despite new internationally recognized conclusions on this issue.
- R146-4 The RDEIR still fails to carefully examine – and does not mitigate – the wide range of health impacts on children, pregnant women, and the elderly from living in close proximity to traffic related air pollution, despite all of the data and research findings from USC/UCLA and others that have been previously presented to the Port as part of this proceeding. We request that ALL previous submissions to the POLA (from AQMD, USC, NRDC and others) from the NOP/DEIR/and RDEIR) be specifically considered as part of the final record of this proceeding.
- R146-5 The RDEIR still fails to appropriately address or mitigate the health impacts of ultrafine particles from this project, which the Ports said they would begin to control as part of the San Pedro Bay Ports CAAP, adopted in 2006. We request that all previous submissions to the POLA that pertain to health effects of ultrafine particles (including submissions as part of the record for the NOP, the DEIR, and the RDEIR) be considered as part of the final record in this proceeding. This is the language that appeared in the 2006 CAAP (see below, from http://www.polb.com/civica/filebank/blobdload.asp?BlobID=3465), language which has somehow "disappeared" in the CAAP 2010 update:

> Second, we think we need to recognize that ultrafine particles are probably the most damaging of the fossil-fuel related air pollutants to human health. Accordingly, we propose that the staffs of the two Ports be directed to work with the USC Research Group on Ultrafine Particles to present the results and suggested next steps to the two Commissions no later than July 1, 2007. In addition, our new Technology Advancement Program must include ways to eliminate emissions of ultrafine particles, which in reality, in our view, means moving towards carbon-free fuels.

- R146-6 The RDEIR continues to deceptively claim that air quality will be improved because an alleged "1.3 or even as many as 1.5 million truck trips" "will be removed from the I-710 Freeway" when the BNSF SCIG is fully operational," while its own hired consulting firm documents in the RDEIR's Appendix G4 that there will be even more transloaded truck trips with imported goods from the Ports traveling up the I-710 to the BNSF Hobart Yard after the SCIG is fully operational because BNSF is planning a huge expansion of the Hobart Yard. This means more air pollution for residents along the I-710 and more air pollution for residents in City of Commerce, where the BNSF Hobart Yard is located. Please see Hricko "Transload Report" from DEIR comments and Hricko written and verbal comments submitted to POLA as part of the RDEIR hearing.
- R146-7 The RDEIR and POLA still fail to adequately seek a more health protective alternative site to construct a rail yard which has been suggested by dozens of groups, including on on-dock harbor/port property in Wilmington or Long Beach, which would not create such

R146-7

significant health impacts on the nearby communities – a request first put forward in 2005 and submitted again and again and again and again by community, environmental, environmental justice, government and public health experts.

R146-8

- In the RDEIR, POLA still fails to carefully examine zero-emission alternatives for trucks, instead continuing to allow diesel-fueled trucks as part of the new project, despite claims made in the CAAP about the need for carbon-free fuels.

R146-9

- The RDEIR fails to examine the impacts that servicing and load testing hundreds more locomotives from the BNSF SCIG each month will create at the Sheila Maintenance Facility in City of Commerce, arguing that such "off site impacts" of SCIG do not have to be counted in the DEIR/RDEIR. This is incomprehensible to this reviewer, since the Sheila Yard and residents surrounding it will suffer serious impacts as a result of increasing the number of locomotives serviced at that yard – on behalf of the BNSF SCIG. These serious impacts on the City of Commerce residents must be counted in the future project impacts of the RDEIR. Note that serious concerns were raised in Hricko comments submitted for the DEIR about the potential use of the Sheila Yard and the additional emissions that this would create. The calculations this commenter submitted as part of DEIR comments were not mentioned in the RDEIR (See previous comments and Table I).

R146-10

- The RDEIR includes a presentation by Constantinos Sioutas, engineering professor at UdddddSC, that shows that freeway sound walls impact the dispersion of ultrafine particles, but then the RDEIR neglects to estimate how the sound walls suggested in this RDEIR would impact exposure of residents and school children to UFPs.[i]

R146-11

- The RDEIR fails to explain why a 50-year lease should be offered to BSNF Railway, when BNSF has been a "bad neighbor" to local communities throughout California (e.g, BNSF San Bernardino, BNSF Hobart, Commerce, and more). The Port of LA is well aware of the concerns of these communities, as well as protests against BNSF for the diesel air pollution that it is not controlling in these rail yard communities. See the following:

Search Results

1. Long Beach Press-Telegram-Nov 8, 2012

SCIG Wilmington *railyard* battle continues as Long Beach area residents ... such as the Long Beach Area Chamber of *Commerce* said that the ... *http://www.pres stelegram.com/news/ci_21959602/scig-wilmington-railyard-battle-continues-long-beach-area*

2. **Cancer risk rises for those near *rail yards* - Los Angeles Times**

articles.latimes.com/2007/may/25/local/me-smog25

May 25, 2007|*Janet Wilson* | Times Staff Writer. Residents who live in the shadow of Southern California's booming *rail yards* face cancer risks from soot as **...**

Agency to detail *rail yard* risks - Los Angeles Times

articles.latimes.com/2007/may/23/local/me-air23

Agency to detail *rail yard* risks. May 23, 2007|*Janet Wilson* | Times Staff Writer. New data about the potential health risks of living near Southern California's **...** *Rail yards*: Clean-up plan prompts contempt allegation | Breaking ...

R146-11

*Rail yard clean up plan prompts contempt charge… www.pe.com/.../20120214-**rail**-**yards**-clean-up-plan-prompts-contem...*

Feb 14, 2012 – Railroads contend that including *rail yards* in a pollution clean-up plan violates a d2007 court order. **...** *rail yard* in Colton. BY DAVID *DANELSKI* **...**

- **Pollution by *railroads* in state is targeted - The Orange County Register**

www.ocregister.com/articles/bernardino-323594-child-breathing.html

Oct 25, 2011 – By DAVID *DANELSKI* / THE PRESS-ENTERPRISE. SAN BERNARDINO -- Estela Hernandez stood outside the bustling BNSF *Railway yard* in **...**

- neighborhood cancer risk from diesel exhaust of all *rail yards* in **...**

- **Judge Rejects Rule Intended to Limit *Train-Yard* Pollution - redOrbit**

www.redorbit.com › News › Business

Judge Rejects Rule Intended to Limit *Train-Yard* Pollution. May 3, 2007. Repost This. By David *Danelski*, The Press-Enterprise, Riverside, Calif. May 3–A federal **...**

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R146-11

Community members speak out against *BNSF's* proposed Los ...

Natural Resources Defense Council (blog)-Oct 19, 2012

The proposal is for the *BNSF* Railway Company to build a new rail yard ... cargo around the yard together emit a lot of harmful *diesel* pollution, ...

Additional details follow.

1. **THE RDEIR CONTAINS NO RESEARCH FINDINGS ABOUT THE LINKS BETWEEN DIESEL EXHAUST EXPOSURE AND LUNG CANCER.**

The RDEIR fails to review research findings on the health effects of air pollution, especially diesel exhaust on health. Included is NOT ONE STUDY showing the connection between exposure to diesel exhaust and lung cancer, despite this issue having been raised in the comments on the NOP and again in the DEIR.

The RDEIR fails to demonstrate an understanding of the lung cancer risks of diesel exhaust exposure, not even mentioning in the document that the World Health Organization's (WHO)'s International Agency for Research on Cancer [IARC] declared in June 2012 *[during the time of redoing the RDEIR for the BNSF SCIG]* that diesel exhaust is now recognized, without question, as a cause of lung cancer. The words "lung cancer" do not appear in the main part of the RDEIR.

R146-12

The IARC action on diesel and lung cancer occurred during the time that the RDEIR was being developed – and still no mention of diesel exhaust causing lung cancer in the RDEIR.

In June 2012, diesel exhaust was named a Class I carcinogen ("causes human lung cancer") by the World Health Organization's International Agency for Research on Cancer (IARC). This landmark decision was reported all over the world. The RDEIR simply ignores the most current information from IARC. *(See press release and scientific article attached to these comments.*[ii] We note that there were 10 "observers" at the IARC meeting, one of whom represented the American Association of Railroads. *http://monographs.iarc.fr/ENG/Meetings/vol105-participants.pdf.*

The failure for Environ to include any of the scientific studies showing that diesel engine exhaust causes lung cancer is intriguing in light of the fact that BNSF has hired Environ International in the past on diesel issues to argue that " … the approach adopted by California for quantifying [diesel] cancer risk is not valid." *See Environ memo to BNSF, attached.* [iii] As noted in comments on the DEIR, this is a perceived conflict of interest between Environ and BNSF in terms of Environ having been hired to conduct the DEIR/RDEIR. *(Note that at least one author of the Environ memo on quantifying cancer risk is also on the Environ team for the BNSF SCIG DEIR/RDEIR).* In addition, the failure for the DEIR/RDEIR to include the scientific research findings showing that diesel engine exhaust causes lung cancer is also intriguing in light of the fact that BNSF actually hired another consulting firm to try to refute claims that diesel engine exhaust causes cancer or any other chronic effects. See Center for Environmental Toxicology

memo attached.[iv] Could the "opinions" of BNSF or Environ be influencing the factual content of the DEIR? All one can say for sure is that this commenter (Hricko) has consistently requested (in both NOP and DEIR comments) that the EIR include scientific documentation that diesel causes cancer – but still, no information on research findings (nor the IARC conclusion) has made it into the RDEIR.

IARC statement:

R146-12

IARC: DIESEL ENGINE EXHAUST CARCINOGENIC

Lyon, France, June 12, 2012 -- After a week-long meeting of international experts, the International Agency for Research on Cancer (IARC), which is part of the World Health Organization (WHO), today classified diesel engine exhaust as **carcinogenic to humans (Group 1)**, based on sufficient evidence that exposure is associated with an increased risk for lung cancer.

Background
In 1988, IARC classified diesel exhaust as *probably carcinogenic to humans (Group 2A)*. An Advisory Group which reviews and recommends future priorities for the IARC Monographs Program had recommended diesel exhaust as a high priority for re-evaluation since 1998.

There has been mounting concern about the cancer-causing potential of diesel exhaust, particularly based on findings in epidemiological studies of workers exposed in various settings. This was re-emphasized by the publication in March 2012 of the results of a large US National Cancer Institute/National Institute for Occupational Safety and Health study of occupational exposure to such emissions in underground miners, which showed an increased risk of death from lung cancer in exposed workers (1).

Evaluation
The scientific evidence was reviewed thoroughly by the Working Group and overall it was concluded that there was *sufficient evidence* in humans for the carcinogenicity of diesel exhaust. The Working Group found that diesel exhaust is a cause of lung cancer (*sufficient evidence*) and also noted a positive association (*limited evidence*) with an increased risk of bladder cancer (Group 1).

R146-13

2. **THE RDEIR CONTAINS NO DISCUSSION ABOUT THE EXTREMELY HIGH LEVELS OF ELEMENTAL CARBON AS A MARKER FOR DIESEL PARTICULATE MATTER ALREADY MEASURED IN THE IMPACTED NEIGHBORHOOD ADJACENT TO THE PROPOSED RAILYARD.**

The DEIR and RDEIR fail to mention the many years of study by the AQMD of air pollution near Hudson School, adjacent to the BNSF SCIG, which show that this area has the highest levels of EC ever measured by the AQMD, as described in detail in the USC submission for the BNSF SCIG NOP.

R146-14

3. **The RDEIR CONTAINS NO DISCUSSION ABOUT HEALTH IMPACTS FROM PROXIMITY TO TRAFFIC-RELATED POLLUTION.** First and foremost, the location that the POLA has selected to build the BNSF SCIG could not be worse in terms of the potential for harming the health of toddlers, children, youth, adults, the middle-aged, the elderly and the sick, including those who already have asthma.

R146-14

Near-roadway health impacts are critical to consider because of this project's location. We have been raising serious health and environmental justice concerns about the BNSF SCIG project since 2005, noting that it will subject nearby residents, toddlers and school children to the exhaust of thousands more trucks and more than a dozen more trains daily – and that the rail yard would be located within 250 feet of a daycare center, 500 feet of a school playground and ball field, and 1000 feet from multiple schools. We have already submitted for the BNSF SCIG record dozens of scientific articles detailing research findings from USC, UCLA and elsewhere on the health effects of ultrafine particles and on the impacts of living or going to school in close proximity to heavy traffic. This research on near-roadway exposure to diesel and other traffic related pollution continues to be simply ignored by POLA and its consulting firm Environ International in terms of the need to reduce near roadway pollution.

R146-15

Three of the USC papers (Gauderman, McConnell, Jerrett) on health effects of children living in close proximity to traffic-related pollution are cited in the References, but these papers are not discussed in the RDEIR nor is there mention of this whole body of near-roadway and health effects research in the DEIR nor in the RDEIR. There is a "slight" mention of this issue when the RDEIR mentions the CARB land use guidelines, which specify that schools should not be built "within 1000 feet of a rail yard" – but these guidelines are "twisted" in the RDEIR so that BNSF/ENVIRON/POLA argue that if the SCIG is built, no schools should be built nearby! This is the ultimate of being disenguous… to claim that building this polluting rail yard nears homes and schools is "fine," but after it is built, no schools or homes should locate nearby.

R146-16

> The proposed Project site is within 1,000 feet of Hudson Elementary and Cabrillo High School, Hudson Park, a Buddhist temple, and residential areas in West Long Beach (Table 3.8-1). The North Lead Track runs less than 1,000 feet from Stephens Middle School and residential uses in the Upper Westside Neighborhood of Long Beach. The

If near roadway impacts cannot be reduced to protective levels by mitigation measures, then the Port should abandon its proposal to build the BNSF SCIG project in this location. *See attachments and comments and documents submitted in 2005 and 2011 by NRDC and USC.*

4. **THE RDEIR ADMITS FOR THE FIRST TIME THAT LOWER-INCOME MINORITY RESIDENTS LIVING AND GOING TO SCHOOL NEAR THE RAIL YARD WILL BE DISPROPORTIONATELY IMPACTED.**

R146-17

The census tracts east of the project, as carefully documented by both USC and NRDC in those groups' 2005 BNSF SCIG NOP comments, consist of lower-income minority residents – along with multiple schools, daycare centers, community gardens and parks. It is not a location where a polluting rail yard should ever have been considered. *See comments submitted on the NOP in 2005.* We note, however, that the 2011 BNSF SCIG DEIR failed to reflect any of these concerns. They were noted only after public comments on the DEIR again pointed them out. After six years of community, EJ,

R146-17

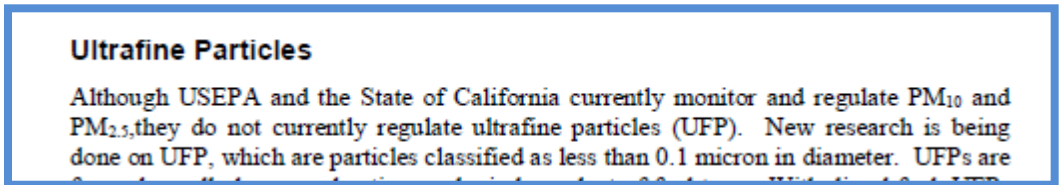
environmental and academic groups urging an examination of EJ concerns, the RDEIR finally admits that the proposed rail yard would violate EJ principles and disproportionately impact nearby residents.

We ask the following question: *Who from the POLA/BNSF/Environ can possibly explain how/why these significant impacts on lower-income minority communities in the RDEIR were not identified previously in the DEIR? What has statistically changed in this document? Where can one find the new justifications? Had community/environmental/ public health/government organizations not weighed in on criticizing the analysis in the DEIR, would these impacts have simply been ignored? Was the previously DEIR somehow concealing the impacts? We note that Andrea Hricko of USC asked the Port of L.A. Environmental Management Division for a redlined version to see what changes had been made in the thousands of pages of the RDEIR and its Appendices, but the request was denied.*

5. **ALTHOUGH THE RDEIR HAS ADDED NEW INFORMATION ABOUT THE POTENTIAL HEALTH EFFECTS OF ULTRAFINE PARTICLES, A COMPLETELY INCORRECT STATEMENT HAS BEEN ADDED TO THE RDEIR CLAIMING THAT THAT "ULTRAFINE PARTICLES ARE ADDRESSED BY STANDARDS FOR PM2.5 AND PM10." ULTRAFINE PARTICLES ARE MEASURED BY PARTICLE NUMBER CONCENTRATION AND PM2.5 AND PM10 ARE MEASURED BY MASS. The statement added is completely incorrect and makes a mockery of the science by those who have developed this RDEIR at POLA and Environ.**

R146-18

Please see that the DEIR contained the following correct first sentence in the two paragraphs it had about ultrafine particles:



Ultrafine Particles

Although USEPA and the State of California currently monitor and regulate PM_{10} and $PM_{2.5}$,they do not currently regulate ultrafine particles (UFP). New research is being done on UFP, which are particles classified as less than 0.1 micron in diameter. UFPs are

In the RDEIR, that first sentence has been replaced with the following completely erroneous statement. "*Ultrafine particles are addressed by standards for PM2.5 and PM10, and are addressed by using toxicity factors for DPM (RDEIR, p. 3.2-10).*" **This statement in the RDEIR is absolutely incorrect.** *(See 2011 report by ICF International to Gateway Cities Council of Governments, pages 17-18, at http://gatewaycog.org/publications/2-FINAL_Task%202b3-ultrafine_particle_report_100611.pdf and attached. Also see comments submitted by USC http://www.arb.ca.gov/research/apr/past/05-317.pdf to the NOP and DEIR. S ee powerpoint presentation by Costas Sioutas.*[v] *Pls see http://www.arb.ca.gov/research/ apr/past/05-317.pdf*

R146-19

The trucks that BNSF will employ to bring millions of containers to the SCIG will be diesel-fueled, and their emissions of ultrafine particles and other pollutants remain of serious concern, as noted in numerous scientific articles published by USC and UCLA. We note that the CAAP adopted in 2006 stated that the Ports' *"... new Technology*

Advancement Program must include ways to eliminate emissions of ultrafine particles, which in reality, in our view, means moving towards carbon-free fuels." In the proposed BNSF SCIG project, nothing is being done to reduce, eliminate or mitigate the emissions and impacts of ultrafine particles.

R146-19

Levels of UFPs measured by USC Engineering program (Sioutas et al) were already higher in the census tracts next to the TI Freeway and the BNSF proposed SCIG. Ironically, the RDEIR cites this study in the RDEIR, but apparently does not understand what its finding were! *See power point by Sioutas in attachments* cited earlier.

Also please note that after-treatment devices for trucks do not solve the UFP problem.[vi]

6. **POLA, BNSF AND ENVIRON CONTINUE TO CLAIM THAT AIR QUALITY WILL BE IMPROVED AFTER THE BSNF SCIG IS OPERATIONAL BECAUSE "1.3 MILLION TRUCK TRIPS WILL BE TAKEN OFF THE I-710" AS A RESULT OF THE BNSF SCIG RAIL YARD PROJECT**. THE RDEIR ADMITS FOR THE FIRST TIME THAT THIS IS SIMPLY NOT TRUE, IN ITS APPENDIX G4. BY 2035, THE SCIG WILL BE FULL AND SO WILL THE HOBART YARD, WHICH WILL HAVE THOUSANDS OF TRANSLOADED CONTAINERS COMING INTO HOBART FROM THE PORTS OF L.A. AND LONG BEACH INCLUDING ON THE I-710 FREEWAY.

R146-20

Since 2005, BNSF has provided conflicting information on its capacity and what it expects to do with the Hobart Yard if the SCIG is built. BNSF has provided completely inconsistent information on capacity and expansion plans in (a) its reports to the California Air Resources Board about its capacity at the Hobart Yard and the number of lifts; (b) in the DEIR, and (c) in the RDEIR, making it impossible for the public to understand where the truth lies. Every time BNSF's claims about the Hobart Yard are challenged by outsiders, the team of POLA/BNSF/Environ comes up with a new scenario to explain what BNSF's plans are.

April 2011. What BNSF told the California Air Resources Board (CARB): BNSF told the ARB in May 2011 that its capacity at the Hobart Yard is 1.5 million TEUs. The railroad also told the ARB in January 2011 that the actual number of lifts in 2010 was only 1,090,000. *(See http://www.arb.ca.gov/railyard/commitments/suppcomceqa070511.pdf p. A-8.)* BNSF did NOT tell CARB that it planned a major expansion *(email communication between the author and CARB).*

September 2012. What BNSF is now saying in the RDEIR for the scenario if the SCIG is NOT built… It claims that the Hobart Yard would reorganize to handle only international 40-foot containers. There is NO mention of expansion plans.

BNSF would handle the additional intermodal traffic expected from future increases in cargo volumes at its Hobart/Commerce railyard in East Los Angeles, approximately 24 miles north of the Ports. BNSF would undertake physical and operational changes at the Hobart/ Commerce Yard to allow the facilities to handle 8,000-foot trains and the associated increased volume of containers. BNSF would re-organize its Southern California operations to handle primarily international (i.e., port) cargo at Hobart/Commerce and shift domestic cargo currently occupying a share of Hobart's capacity to other regional intermodal facilities.

September 2012: But then the RDEIR adds that Hobart will be expanded *whether or not SCIG is constructed* – and that if SCIG is constructed it will handle a mix of domestic, transloaded and international cargo. See Box below for quotation from RDEIR. Also please see DEIR and RDEIR public hearing written and verbal comments from Hricko.

1998; CARB, 2005). Furthermore, BNSF represents that the expansion of Hobart/Commerce Yards will occur whether or not SCIG is constructed; the difference would be whether the facility would handle primarily domestic and transloaded cargo (if SCIG is built) or a mixture of domestic, transloaded, and international cargo (if SCIG is not built) (BNSF, 2012).

R146-20

wide-span cranes, addition of 250 wheeled parking spaces on property currently owned by or otherwise available to BNSF, and an additional 3,700 container stacking spaces under the wide-span cranes. The operational changes and the approved expansions would allow Hobart/Commerce to handle approximately 3 million lifts (5.4 million TEUs) per year by 2035, which is approximately 1 million lifts more than its existing capacity. The Port independently undertook engineering analyses of the Hobart/Commerce Yard that confirmed BNSF's representations of the potential to expand capacity at these facilities (AECOM, 2012).

Direct and transloaded intermodal cargo is forecasted to continue to grow in accordance

September 2012. This is what BNSF is still claiming: that 1.5 million trucks will (somehow) be taken off the I-710 freeway and that as a result, traffic congestion and air pollution will be reduced.

September 2012. The Cambridge Systematics analysis shows in Appendix G4 of the RDEIR that as the SCIG gets built up and is has more capacity to operate, more and more trucks will be transferred from Hobart Yard to the SCIG. Please refer to previous comments by Hricko to the RDEIR at its hearing.

By 2020, the *I-710 freeway will have at least as many trucks from the Ports heading to the Hobart Yard than it had in 2016 – it is just that they will have been transloaded. Statements by BNSF that the SCIG will remove 1.5 million trucks from the I-710 Freeway*

R146-20

are based on completely faulty assumptions that are not borne out by the RDEIR's Appendix G4.

7. **REQUEST BY BNSF FOR A 50 YEAR LEASE**

This should not be granted because all indications are that BNSF has not been a "good neighbor" in the following communities in California: Barstow (highest diesel emissions calculated in the state); Commerce: high diesel emissions and calculated high diesel cancer risk for residents; San Bernardino: highest diesel cancer risk in the state! See HRAs for rail yards at: http://www.arb.ca.gov/railyard/hra/hra.htm. It would be incomprehensible to agree to a 50-year lease for a company with such a bad record of community exposure. In addition, BNSF has a significant history of hazardous materials contamination – in fact, according to its own Annual Report – with more than 200 contamination sites!

R146-21

In addition, the UP ICTF JPA has found it impossible to demand a reduction in current emissions at the UP ICTF, which has a 50 year lease. We do not need to repeat that experience with another 50 year lease for the adjacent BNSF SCIG. As technologies change, and we learn more about the health effects of pollution, we need to be able to ACT to reduce exposures. A 50-year lease reduces the ability of the Port of L.A. to protect residents once new research surfaces. 50 years ago we did not know that diesel exhaust causes lung cancer, that ultrafine particles were more dangerous than PM2.5 and PM10 (we didn't even know about the health effects of those pollutants)!

8. **OTHER PUBLIC HEALTH CONCERNS**

Public health statement:
There is growing evidence of the high levels of air pollutants emitted from major highways, motorways, and freeways. These specific pollutants include: ultrafine particulates (UFP), black carbon (BC) (a marker for diesel exhaust), oxides of nitrogen (NOx), and carbon monoxide (CO). People living or otherwise spending substantial time close to busy roads and freeways, especially within approximately 300 meters are exposed to these pollutants more so than persons living at a greater distance, even compared to living on busy urban streets. New studies show that during the early morning, elevated levels of exposure to ultrafine particles may extend to 1 ½ miles from a freeway.

R146-22

Key studies/ research about elevated levels of pollutants near freeways:

The following study compared previous measurements of ultrafine particles in urban environments with those made on Interstate 710 freeway in Los Angeles. Particle number concentration and size distribution in the size range from 6 to 220nm, as well as concentrations of carbon monoxide (CO) and black carbon (BC), were measured. These data may be used to estimate exposure to ultrafine particles in the vicinity of highways.

Yifang Zhu, William C. Hinds, Seongheon Kim, Si Shen, Constantinos Sioutas. Study of ultrafine particles near a major highway with heavy-duty diesel traffic. Atmospheric Environment 36 (2002) 4323–4335.

The concentration and size distribution of ultrafine particles in the vicinity of major highways measured at night in Los Angeles 30 m downwind from the freeway were found to be 80% of previous daytime measurements. Discrepancy between changes in traffic counts and particle number concentrations is apparently due to the decreased temperature, increased relative humidity, and lower wind speed at night. Particle size distributions change more dramatically during the daytime. These data may be used to help estimate exposure to ultrafine particles in the vicinity of major highways.

Yifang Zhu, Thomas Kuhn, Paul Mayo, William Hinds. Comparison of Daytime and Nighttime Concentration Profiles and Size Distributions of Ultrafine Particles near a Major Highway. Environmental Science Technology, 2006. 40, 2531-2536.

Researchers have observed a wide area of air pollutant impact downwind of a freeway during pre-sunrise hours in both winter and summer seasons. This has important exposure assessment implications since it demonstrates extensive roadway impacts on residential areas during pre-sunrise hours, when most people are at home.

Shishan Hu, Scott Fruin, Kathleen Kozawa, Steve Mara, Suzanne E. Paulson, Arthur M. Winer. A wide area of air pollutant impact downwind of a freeway during pre-sunrise hours. Atmospheric Environment 43 (2009) 2541–2549.

R146-22 Emissions from tire wear, brake wear and resuspended road dust should not be overlooked in assessments of vehicle emissions and their impact on human health. These non-combustion vehicle emissions are becoming an increasingly large proportion of total vehicle emissions, and they contain chemical compounds, such as trace metals and organics that may contribute to human health impacts.

Health Effects Institute. 2009. Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects. Chapter 3.

Review articles on both emissions and health effects of traffic-related pollution: *Health Effects Institute. 2009. Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects (full report).*

Brugge D, Durant J, Rioux C. Near-highway pollutants in motor vehicle exhaust: A review of epidemiologic evidence of cardiac and pulmonary health risks. Environmental Health, 2007. 6:23.

Question: Will the project result in adverse health impacts for those residents living in close proximity to the project and for school children and staff of the schools within close proximity of the project?

Public health statement: There is a growing body of evidence documenting the health hazards of exposure to the traffic-related pollutants, including elevated risk for development of asthma and reduced lung function in children who live near major

highways, and increasing risk of cardiac and pulmonary injury and mortality near major highways.

Local exposure to traffic on a freeway has adverse effects on children's lung development, which is independent of regional air quality, and which could result in important deficits in attained lung function in later life. Although both local exposure to freeways and regional air pollution has been found to have detrimental, and independent, effects on lung-function growth, pronounced deficits in attained lung function at age 18 years were recorded for those living within 500 meters of a freeway.

W. James Gauderman, Hita Vora, Rob McConnell, Kiros Berhane, Frank Gilliland, Duncan Thomas, Fred Lurmann, Edward Avol, Nino Kunzli, Michael Jerrett, John Peters. Effect of exposure to traffic on lung development from 10 to18 years of age: a cohort study. The Lancet, 2007. Volume 369, Issue 9561, Pages 571-577.

R146-22

This study examined the relationship of local traffic-related exposure and asthma and wheeze in southern California school children (5-7 years of age). Residential exposure was assessed by proximity to a major road and by modeling exposure to local traffic-related pollutants. Residence within 75 m of a major road was associated with an increased risk of lifetime asthma, prevalent asthma and wheeze. These results indicate that residence near a major road is associated with asthma.

McConnell R, Berhane K, Yao L, Jerrett M, Lurmann F, Gilliland F, Künzli N, Gauderman J, Avol E, Thomas D, Peters J. Traffic, susceptibility, and childhood asthma. Environ Health Perspect. 2006 May;114(5):766-72.

There is sufficient evidence to support that asthma is more common among children growing up in close proximity to the highest traffic-related pollutants. There is sufficient evidence that asthmatic children living in "hot spots" of traffic-related pollution experience more symptoms and exacerbations. … The aggregate evidence for cardiovascular mortality points strongly toward a causative role for traffic-related pollution. See:

Health Effects Institute. 2009. Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects. Chapter 4.

Also see: Selected review articles on the health effects of traffic-related pollution:
Health Effects Institute. 2009. Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects.

Brugge D, Durant J, Rioux C. Near-highway pollutants in motor vehicle exhaust: A review of epidemiologic evidence of cardiac and pulmonary health risks. Environmental Health, 2007. 6:23.

R146-22

The following review article highlights the scientific results from the EPA's five academic centers investigating the health impacts of Ultrafine Particulate Matter and trafficrelated impacts. It contains within it the toxicological pathways of inhaled particulate matter and the cardiovascular and respiratory health endpoints.

Fanning E, Froines J, Utell M, Lippmann M, Oberdorster G, Frampton M, Godleski J, and Larson T. Particulate Matter (PM) Research Centers (1999-2005) and the Role of Interdisciplinary Center-Based Research. Environmental Health Perspectives, 2009, 117 (2).

R146-23

The text below identifies a key study about the inability of after-treatment devices to solve the UFP problem: An article by Biswas et al,[1] reporting on a study at USC Engineering Department, states that after-treatment devices on heavy duty diesel trucks significantly reduce the mass emission rates but not necessarily the number-based particle emissions – and some studies show that aftertreatment technology can increase the formation of UFPs. This clearly means that PM2.5 cannot be used as a surrogate for UFPs, as has been done in the RDEIR. See quote from Biswas (2009) below:

> *"The after-treatment devices significantly reduce the mass emission rates (McGeehan et al., 2005), but not necessarily the number-based particle emissions (Biswas et al., 2008). Several studies have shown that under certain conditions, enhanced formation of ultrafine particles occurs for vehicles equipped with after-treatment by heterogeneous nucleation ([Biswas et al., 2008], [Kittelson et al., 2006] and [Vaaraslahti et al., 2004]).*"[2]

A 2006 presentation by Constantinos Sioutas at the AQMD conference on ultrafine particles described what his USC research found in a study of the Caldecott Tunnel in Berkeley, CA.[3] That study was specifically designed to look at what has happened with ultrafine particle number concentrations and PM mass since the addition of aftertreatment devices to heavy duty diesel trucks. His power point presentation states:

> *"Our recent studies at the Caldecott tunnel showed that while PM mass emitted by LDV and HDV decreased by 50-70% over the past 7 yrs in California, particle numbers increased by 2-3 fold."*[4]

He continues:

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[1] Biswas, S, Verma V, Schauer JJ, and Sioutas C. Chemical speciation of PM emissions from heavy-duty diesel vehicles equipped with diesel particulate filter (DPF) and selective catalytic reduction (SCR) retrofits. Atmospheric Environment. Volume 43, 2009, 1917–1925. NOTE: this paper is in the Appendix.

[2] Ibid.

[3] Geller, M.D., Sardar, S., Fine, P.M. and Sioutas, C. Measurements of particle number and mass concentrations and size distributions in a tunnel environment. Environmental Science and Technology 39, 8653–8663

[4] Presentations by Sioutas at the AQMD meeting can be found at these URLs: http://www.aqmd.gov/tao/Ultrafine_Presentations/Pre-Conference_1_Coustas.pdf and https://www.aqmd.gov/tao/Ultrafine_Presentations/Session2_2_Sioutas.pdf

R146-23

"*Particle traps remove non-volatile soot particles but not always the precursors of the smaller semi-volatile particles. Also, the reduction of the larger, non-volatile particles from the exhaust may increase the formation-emission of the smaller, semi-volatile PM.*

Additional studies that how illustrate what happens to ultrafine particles versus PM mass from heavy duty diesel vehicles are in the literature.[5] Reviewers with an understanding of this scientific literature will be able to determine that using PM2.5 as a surrogate for UFPs is inappropriate. **As a result, the conclusions in the RDEIR about low levels of UFPs in 2035 when the expansion is completed are not based on sound science.**

9. **CONCLUSION:**

R146-24

We request that the Port of L.A. withdraw the RDEIR because of glaring errors and lack of key information – or that it issue a NEW recirculated, recirculated DEIR (RRDEIR) and hold an additional public hearing**.**

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[5]See, e.g.,

(a) Harish C. Phuleria, Rebecca J. Sheesley, James J. Schauer, Philip M. Fine, and Constantinos Sioutas. Roadside measurements of size-segregated particulate organic compounds near gasoline and diesel-dominated freeways in Los Angeles, CA. Atmospheric Environment, Volume 41, Issue 22, July 2007, Pages 4653-*4671;*

(b) Zhi Ning, Andrea Polidori, James J. Schauer, Constantinos Sioutas Chemical speciation of PM emissions from heavy-duty diesel vehicles equipped with diesel particulate filter (DPF) and selective catalytic reduction (SCR) retrofits. Atmospheric Environment, Volume 43, Issue 11, April 2009, Pages 1917-1925.

(c) Subhasis Biswas, Vishal Verma, James J. Schauer, Constantinos Sioutas; Emission factors of PM species based on freeway measurements and comparison with tunnel and dynamometer studies. Atmospheric Environment, Volume 42, Issue 13, April 2008, Pages 3099-3114.

(d) Subhasis Biswas, Leonidas Ntziachristos, Katharine F. Moore, Constantinos SioutasParticle volatility in the vicinity of a freeway with heavy-duty diesel traffic. Atmospheric Environment, Volume 41, Issue 16, May 2007, Pages 3479-3493.

(e) Zhi Ning, Andrea Polidori, James J. Schauer, Constantinos Sioutas. Atmospheric Environment, Volume 41, Issue 16, May 2007, Pages 3479-3493; and

(f) Subhasis Biswas, Leonidas Ntziachristos, Katharine F. Moore, Constantinos Sioutas. Emission factors of PM species based on freeway measurements and comparison with tunnel and dynamometer studies. Atmospheric Environment, Volume 42, Issue 13, April 2008, Pages 3099-3114.

Sincerely yours,

Andrea Hricko, USC

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[i] Sound wall citation attached.
[ii] Articles cited attached.
[iii] Environ memo attached
[iv] Center for Toxicology memo attached
[v] Sioutas power point presentation attached.

Exhibit D

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TO: Los Angeles Harbor Department

FROM: Russell J. Light, BNSF Railway Company

DATE: November 28, 2012

SUBJECT: Southern California International Gateway (SCIG) Project

With this memorandum, BNSF reiterates in summary fashion information previously furnished to the Los Angeles Harbor Department (LAHD) during the preparation of the Draft Environmental Impact Report for the SCIG Project.

1. Regardless of whether the SCIG project is built, BNSF Hobart Railyard will continue to handle domestic cargo as it currently does in accordance with market demand.

The Hobart railyard is currently one of the largest intermodal railyards in the United States, situated on approximately 245 acres. In 2010 Hobart handled 1.09 million containers and trailers, of which approximately half were international cargo received/delivered directly from/to the Ports of Los Angeles and Long Beach. The remainder was domestic cargo originating/terminating from/to various points throughout the Southern California region, including from UPS, FedEx, USPS, and transloaders.

If the SCIG project is approved, BNSF anticipates the Hobart railyard will continue to receive/deliver domestic cargo, including transload cargo from/to local transload warehouses, in the amounts it does now, plus growth in these volumes based on market demand. If the SCIG project is approved, BNSF anticipates the Hobart railyard would continue to receive/deliver up to 5% of the direct international intermodal cargo volume to/from the Ports. The SCIG Draft EIR No Project Alternative does not include domestic intermodal cargo because regardless of whether SCIG is built, all of BNSF's domestic intermodal cargo will continue to be handled as it is today by BNSF's network of facilities and is not impacted by SCIG.

2. Construction of SCIG will not generate demand for additional capacity at Hobart.

BNSF is not aware of any currently unmet demand for cargo transportation that would be generated as a result of moving direct intermodal international cargo from Hobart to SCIG. All Southern California domestic cargo requiring rail transport is already being transported by rail. There is no latent demand for rail transport that is not being served.

Cargo growth, as reasonably forecasted by the experts in the adopted Southern California Air Quality Management Plan's Regional Transportation Plan, not railyard capacity, creates the

potential for an environmental impact. BNSF does not believe that latent railyard capacity or rail mainline capacity causes intermodal rail cargo volumes to increase or the capacity of the Ports to increase, but rather responds to and accommodates existing and reasonably foreseeable market-driven demand. For example, the Alameda Corridor, which became operational in 2002, continues to be utilized significantly under its maximum capacity despite its ability to handle greater volumes. Similarly, Hobart has increased capacity through a variety of means, but demand for intermodal rail movements have followed the economy and volume at Hobart has actually decreased since these capacity improvements were made, as discussed further in Section 4 below. Based on clear, real-world evidence, as opposed to hypotheses sometimes posed by persons not expert in goods movement economics or operations, railyard capacity, in and of itself, does not "induce" demand for additional freight to utilize the Ports. Instead, cargo volumes handled by rail are driven by market demand and respond to such factors as growth in the volume of cargo handled by the Ports, which in turn can be caused by factors such as the size of the local market, overall economic growth and shipper selection of the Ports.

3. Increases in available railyard capacity in the past have not resulted in changes in demand for intermodal rail movements.

By way of illustration, operations at Hobart, in the period from 2007 through 2011, demonstrate how increased intermodal rail capacity does not result in increased demand. The year 2007 was the high volume mark at Hobart, with a lift (unit) count of 1.37 million. That volume was accommodated, among other methods, by implementing process changes that improved the velocity of traffic moving through the facility. For example, BNSF added approximately 5,600 feet of strip track and additional parking, all of which added to the capacity of the facility. Additional operational and process improvements have been, and continue to be, realized through implementation of BNSF's Intermodal Yard Operations Tool, which manages stacking and parking operations, intermodal, crane and hostler crews. Further operational and process improvements are realized with the transition from a "wheeled" operation to a "live lift" operation. In addition, the process change of reducing "free time" by 24 hours, implemented in 2006, resulted in a 25% increase in parking capacity. Despite these capacity enhancements, the following 2 years showed a decline in volume, with lift counts ranging from 400,000 to 300,000 fewer lifts than the peak, followed by a slow ramp up in volume to 2011. Thus, any premise that creating latent capacity at Hobart by constructing a near-dock facility would cause volumes to shift to Hobart from other sites or appear somehow in the marketplace is misplaced.

Today, international cargo flows move from the San Pedro Bay Ports up the I-710 by truck approximately 24 miles to Hobart. Construction of SCIG will allow approximately 95% of those flows to move only 4 miles to SCIG. Southern California generated domestic cargo flows move today along numerous routes throughout the Southern California region, including the I-710, I-10, the I-5 and other east/west feeders, which routing is beyond the control of BNSF. These cargo flows will continue to access Hobart as they do today. With respect to the I-710 traffic, without SCIG, cargo would continue flowing up the I-710 from the Ports to transload or consumption points throughout the Southern California region, PLUS all of BNSF's share of international cargo would continue to move from the San Pedro Bay Ports up the I-710 to Hobart. In the alternative, with respect to the I-710 traffic with SCIG, cargo would continue to flow up the I-710 from the Ports to transload or consumption points throughout the Southern

California region, BUT approximately 5% of BNSF's share of international cargo would flow up the I-710 from the Ports to Hobart.

4. BNSF Commerce Maintenance Facility (Sheila Mechanical Railyard) activity levels are not projected to change as a direct result of the opening of SCIG.

The BNSF Sheila Mechanical Railyard is a locomotive mechanical shop facility located in Commerce, California supporting BNSF's operations in Southern California. Operations at the Sheila Railyard include locomotive fueling, locomotive maintenance and rail car inspection and repair. Locomotive maintenance refers to locomotive repairs, load testing, and periodic maintenance of parts, components, mechanical and electrical systems as needed and as required by the Federal Railroad Administration (FRA). Maintenance does not necessarily occur each time a locomotive arrives in the Basin, but rather is performed at any of BNSF's maintenance locations throughout the country based on the particular locomotive's miles travelled and/or time elapsed as required by the FRA.

If the SCIG project is approved, the Sheila yard would continue to provide locomotive and rail car support for BNSF's operations in Southern California, including the SCIG facility, because locomotive maintenance activities and rail car inspections and repairs would not be conducted at SCIG. Activity levels at the Sheila yard would not substantially change as a result of the SCIG project being approved. In fact, all locomotive maintenance and rail car inspections and repairs in the South Coast Basin that will be required once the Project is built are already occurring in the Basin. The SCIG locomotives are not additional locomotives but are the locomotives currently, and in the future if the SCIG project is not built, originating and/or terminating at Hobart moving international cargo trains to and from Hobart. The SCIG locomotives will continue to be maintained at the Sheila Commerce Shop as they are today, based on miles travelled and/or time elapsed as required by the FRA, or if they suffer a malfunction. There are no additional locomotives that will be provided maintenance at the Sheila Commerce Shop as a direct result of the SCIG project.

5. The SCIG Draft EIR No Project Alternative assumes that BNSF will accommodate the international intermodal cargo that could be handled by SCIG at BNSF's Hobart operation and BNSF's operational analysis justifies this conclusion.

The SCIG Draft EIR No Project Alternative assumes that BNSF will accommodate the international intermodal cargo that would be handled by SCIG at BNSF's Hobart operation and BNSF's operational analysis justifies this conclusion.

Based on the San Pedro Bay Ports 2009 Cargo Forecast, the Port has determined that in the year 2066, the demand for off-dock rail capacity at Hobart will be approximately 2.8 million lifts. On an ongoing basis, BNSF, in the ordinary course of its business, pursues capacity enhancements to accommodate growth at its intermodal yards, whether through technology, facility development or operational means. With respect to Hobart, BNSF has already pursued and will continue to pursue enhancements such as those made during the 2007-2011 timeframe, as described in number 3 above. BNSF is also using its internal "Best Way" process to identify the best practices at all BNSF intermodal facilities and implementing them across BNSF's intermodal network to improve service, and increase capacity and productivity. Finally, the incorporation of

new technologies such as automated gate systems (AGS) and GPS-equipped railcars and locomotives and cargo handling equipment have further enhanced the throughput and velocity of equipment moving through the facility. With these facility developments and operational enhancements, the Hobart facility is currently configured to handle 1.78 million lifts on the existing strip tracks, and to accommodate 2.15 million lifts in parking areas.

Further facility developments, technological and operational changes could be made to accommodate the demand projected in the 2009 Cargo Forecast. For example, BNSF could construct additional tracks. 250 wheeled parking spaces could be constructed on property currently owned by or otherwise available to BNSF. With respect to future operational changes, additional switching support, increased stacking, additional cargo handling equipment and manpower would enhance the strip track and parking turn times, thereby further increasing capacity. All of the foregoing may be implemented without discretionary permitting. BNSF, in determining Hobart will be capable of handling the forecasted growth in international and domestic cargo, used the same factors POLA used in its Rail Study, unless BNSF's experience at Hobart and other intermodal yards indicated a refinement of a Rail Study factor.

These existing and future facility developments, combined with current and future operational means of enhancing capacity, will allow the Hobart facility, under the No Project Alternative, to handle at least 2.88 million lifts on strip tracks, and at least 3.1 million lifts in parking, exceeding the capacity the Port has determined will be necessary.

6. Construction of SCIG will accommodate growth rather than induce growth of intermodal rail movements and BNSF's rail network is elastic enough to handle all anticipated demand.

The Project is a growth-accommodating rather than growth-inducing project. As discussed earlier, construction of SCIG will not generate any new rail trips from Hobart to the state boundary. As discussed previously, the trains that are now handling international cargo from Hobart will, once SCIG is constructed, arrive and depart, four miles from the ports, at SCIG. Instead of originating at Hobart, these SCIG trains will pass by Hobart. This is merely a change in the point of origination.

7. Hobart and Sheila yards' operations are separately the subject of health risk assessments and environmental analyses under the June 2005 ARB/Railroad Statewide Agreement, Particulate Emissions Reduction Program and California Rail Yards, and the environmental impacts of Hobart were recently studied in the publicly released 2011 Functional Equivalent Document by CARB for the Revised 2010 Commitments for Four High-Priority Railyards.

The operating activities within the Hobart and Sheila yards' operations are separately accounted for in the health risk assessments and emission inventories developed pursuant to the June 2005 ARB/Railroad Statewide Agreement, Particulate Emissions Reduction Program and California Rail Yards by and among BNSF, Union Pacific Railroad Company and the California Air Resources Board. In addition, the Hobart yard's environmental impacts were recently separately studied by CARB in the publicly released 2011 Functional Equivalent Document by CARB for the Revised 2010 Commitments for Four High-Priority Railyards.

8. Capacity for cargo growth in Southern California is driven by marine terminal capacity and market demand.

Limiting factors on international cargo growth in Southern California are marine terminal capacity and market demand. The system of trackage in southern California is designed and built to accommodate anticipated rail activity in the region, now and in the future.

Yours truly,

Russell J. Light

Russell J. Light
Senior General Attorney
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