May 7, 2013

Via Electronic Mail

Members of the Los Angeles City Council
c/o City Clerk
Los Angeles City Council
200 N. Spring Street, Rm 395
Los Angeles, CA 90012

Re: Appeal of Southern California International Gateway project approval
Council File No. 13-0295-S1

Dear Members of the City Council:

This letter is written on behalf of East Yards Communities For Environmental Justice, Coalition For Clean Air, and the Natural Resources Defense Council to urge you to vote on May 8, 2013 to return to the Board of Harbor Commissioners (BHC) the final environmental impact report on the Southern California International Gateway (SCIG) project. We also ask you to reject the associated site preparation and access agreement and permit.

We believe that additional rail capacity at the Port of Los Angeles should be built on-dock, not in the local communities. The SCIG project will add one million diesel truck trips and thousands of diesel train trips every year to the Wilmington and West Long Beach neighborhoods. Diesel exhaust is a known carcinogen, and these predominantly Latino working class communities are already suffering under a high burden of air pollution from industrial facilities. We have attached to this email a map showing the location of the proposed projects and some of the nearby schools and other sites that will be affected by air pollution from the project.

NRDC and our colleagues believe that the SCIG project needs to be sent back to the Board of Harbor Commissioners (BHC) for additional work to reduce diesel pollution. Specifically, we think that the BHC needs to require the following:

- The BHC should develop a plan to build any needed additional rail capacity on-dock. The capacity represented by SCIG will not be needed for a decade or more, giving the BHC more than enough time to design a new on-dock facility and get it permitted and built.

If BNSF and the BHC are truly working in good faith toward the location currently being proposed, the project would include at minimum:

- All trucks serving SCIG be liquid natural gas (LNG)-fueled or equivalent in terms of diesel particulate emissions, beginning on the first day of operations. There are enough LNG trucks available in the market to make this feasible. Within five years of opening, the facility should...
go to a zero-emission container movement system; such systems are now under development by the Port, by the South Coast Air Quality Management District (SCAQMD) and by the Southern California Association of Governments (SCAG).

- All line-haul locomotives serving SCIG must meet US EPA’s Tier 4 PM emissions standards or better, beginning on the first day of operation. Beginning in 2020, all line-haul locomotives must meet EPA’s Tier 4 standards. Within five years of opening, the facility should go to a zero-emission freight system and develop a plan to deploy throughout the Los Angeles basin.

- Adequately, mitigate noise and light impacts to the nearby sensitive receptors. For example, soundproofing of classrooms and offsetting unmitigatable impacts.

- The $29 million in investment credit proposed to be given to BNSF (see May 3, 2013 memo from Michael Santana, page 5) should be rejected. BNSF had $3.4 billion in net operating income in 2012 and has claimed that it will build SCIG using its own funds. It should be held to that claim. To do otherwise would be an unlawful gift of public funds.

Here is why we make these claims:

The Port has been on notice since 2005 that putting a new railyard in Wilmington and West Long Beach violates principles of environmental justice. Dave Freeman, then President of the BHC, promised in 2005 that no diesel trucks would serve SCIG. Eight years have passed and the Port is going backwards on its claim to be green and progressive.

LNG trucks do not emit any diesel particulates. These trucks are available now and in fleet use by, for example, UPS, 99 Cents Stores, and Waste Management Inc. Ironically, one of the largest LNG fleets in California is operated by Cal Cartage, a trucking company that rents space on Port property and that will be put out of business because the SCIG project will take its site. BNSF, as a private company, has complete control over what vehicles enter its property and will not be affected by the pending United States Supreme Court decision in the *ATA v. City of Los Angeles* case.

The Port, SCAQMD and SCAG have been working on zero-emission container movement systems for years. The BHC needs to be technology-forcing and put a firm deadline – not just a goal – on the implementation of a zero emission system at SCIG to meet the Port’s clean air requirements.

Diesel locomotives account for a big portion of the diesel pollution that the Port’s EIR predicts. EPA issued regulations in March, 2008 providing that, as of 2015, all new locomotives must meet so-called Tier 4 standards. Tier 4 locomotives emit only one-third as much diesel pollution as the current Tier 3 locomotives that BNSF is operating. If SCIG opens in 2016, BNSF will have had eight years lead time to prepare for the Tier 4 requirement. While it may not be possible to have an all-Tier 4 fleet serving SCIG in 2016, it is possible to have an all-Tier 3 fleet in 2016, and it is reasonable to require an all-Tier 4 fleet four years later—twelve years after the EPA Tier 4 regulation came out.

Finally, below are brief summaries of some of the key concerns many community members have with SCIG that may be raised at the hearing on May 8.
SCIG won’t create jobs. Because existing businesses on the SCIG site will be evicted, there will be a net loss of permanent jobs in the community that will not be offset by the new jobs created by the SCIG. The temporary construction jobs that would be created by the SCIG could be created in the same or greater numbers if the Port added new rail capacity on-dock instead of building the SCIG near communities.

SCIG won’t make the air cleaner. The comments from SCAQMD show why it is false to say that the SCIG would make the air cleaner. The air will be cleaner whether SCIG is built or not, thanks to changes in state and federal law that have nothing to do with SCIG. The air will be dirtier if SCIG is built. You can’t put a million new truck trips and thousands of new train trips in a community and say that the air will be cleaner. Attached to this letter you will find comment letters from us and from SCAQMD that go into this issue in detail.

SCIG won’t reduce traffic. Any traffic taken off the I-710 will just take another route into the local community. If SCIG would really make a major reduction in 710 traffic, CalTrans wouldn’t be spending more than $30 million in environmental review to try to expand it. The Port and BNSF claim that trucks would get to go to the SCIG instead of traveling up the 710 to BNSF’s Hobart Yard. However, the Port’s EIR shows that traffic at BNSF’s Hobart Yard is expected to increase in the future; that traffic will travel from the Ports up the 710 to Hobart, resulting in an increase of truck traffic on the 710, not a reduction.

Our bottom line is this: would you want your children or grandchildren to live next door to the SCIG, when this polluting project can be made so much better? This is a moral issue of whether the City should place the interests of a multi-billion dollar railyard company over the interests of children, veterans, and low-income communities of color who live near the SCIG site. We urge you to side with those who you are elected to serve and vote to send the SCIG EIR back to the Board of Harbor Commissioners to make the project better.

Thank you for your consideration.

Sincerely,

David Pettit
Senior Attorney
Natural Resources Defense Council

Counsel for Coalition for Clean Air, East Yard Communities for Environmental Justice, and the Natural Resources Defense Council

Enclosures
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
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.

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http://care.diabetesjournals.org/content/early/2011/11/03/dc11-1155.abstract.

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 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.

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

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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.

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 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. 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 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. 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

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16 The original DEIR assumed a trip per lift ratio of 1.33, again with no substantiation. DEIR App. C, page 2-2.
A COFC (container on flat car) 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 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 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

18 Average trips per lift in excess of two may be experienced through deadhead movements of chassis, containers, or bobtails.
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 lift rate 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:


The 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 operations22, (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.

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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 a significant 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\textsuperscript{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\textsuperscript{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.


\textsuperscript{24} Metro, \textit{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 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), 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. When heavy truck traffic is present, the 2010 Los Angeles Bike Plan technical

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26 Logrande, M.J., *Bicycle Plan Implementation Team Quarterly Report, Letter to Los Angeles City Council, 8/3/2011*, City 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 Compatibility 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. 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) 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.” 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.

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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  
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Theral Golden
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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
VIA EMAIL AND FIRST CLASS MAIL

March 4, 2013

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

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

Dear Mr. Cannon:

The undersigned organizations submit the following comments on the Port’s responses to comments included in the Final EIR (FEIR) in this matter.

Civil Rights Claims

The FEIR does not dispute a single fact offered to support the claims in our November 12, 2012 and January 31, 2012 comment letters. Instead, the Port claims that it is not subject to claims under Title VI of the Civil Rights Act of 1964 and under California Government Code Section 11135 because the proposed SCIG project is not funded with federal or state money. But this is incorrect because liability under those statutes depends on the existence of federal or state funding for any one function of the entity, which funding subjects all of the operations of an entity to those statutes. And to be clear, because of the remedies available under Title VI and Section 11135, the Port is leveraging all current and future federal and state funding against the SCIG project.

Air Quality

In our previous comment letters, we pointed out that the Port’s entire air quality analysis depends on an a very low assumed ratio of truck trips per container lift that is unsupported by comparison to any other railyard, even BNSF’s. The Port’s response is that a new wide-stacking
methodology will be used that will reduce the number of bobtail trips, that is, trips by a truck without a chassis.

This is unconvincing for two reasons. First, a truck with a chassis that drops a container off at the SCIG facility will have to go somewhere afterwards, whether it is attached to a chassis or not. Because of this it makes no sense to reduce the assumed number of truck trips by a factor related to a smaller number of bobtail trips, as the Port has done.

Second, a document produced to us on February 25, 2013 enclosing a memo from BNSF concerning the truck trip per lift ratio candidly states: “There is no empirical data to support the lower lift/truck trip ratio for SCIG as SCIG is the first rail intermodal facility design of its kind.” This confirms the argument that we made in our comments (and that the South Coast Air Quality Management District made in its comments) that the trips per lift ratio in the RDEIR had no empirical basis. It is not legally sufficient in an EIR to just make numbers up.

Last, the FEIR is still pretending that development of SCIG will not free up space for transload and other activities at BNSF’s Hobart yard. The Port relies on a November 28, 2012 memo from BNSF (a copy is attached to this letter) that asserts that the Hobart facility alone can handle all future projected demand: “Further facility developments, technological and operational changes could be made to accommodate the demand projected in the 2009 Cargo Forecast.” But this proves too much: if Hobart could handle all projected cargo, including direct intermodal and transload, there would be no need to build SCIG. The consequence of the Port’s sleight of hand regarding Hobart is that Hobart is accounted for in the CEQA baseline but future emissions associated with Hobart are not accounted for in the projected future air quality analyses in the RDEIR or the FEIR.

Mitigation And Alternatives To The Proposed Project

The Port is missing a huge opportunity to be technology forcing in the way that U.S. EPA is under the Clean Air Act. The EPA sets emission standards and it is up to industry to meet them within certain time periods. The Port could do the same for the SCIG project, but instead is taking the easy way out. Indeed, in the face of admittedly serious air pollution, the FEIR only

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1 Memorandum from Russell J. Light, BNSF Railway Company to Los Angeles Harbor Department, November 28, 2012 at page 4. This memorandum was produced by the Port to Andrea Hricko of USC on February 25, 2013.
2 RDEIR 3.2-14.
3 Revised Appendix C at C2-5 (train trips associated with Hobart), C2-7 (truck trips).
4 SCIG operations are projected to exceed SCAQMD thresholds for 1 hour and annual NO2, 24 hour and annual PM10, and 24 hour PM2.5. FEIR at page 3.2-74. PM2.5 is a known carcinogen and NO2 is a precursor to ozone, or smog.
includes one mitigation measure with a firm deadline: street sweeping inside the project. The FEIR refers to the air quality impacts as “unavoidable,” although this is clearly not the case.

**Cleaner locomotives.** The FEIR repeatedly claims that requiring Tier 4 locomotives (the cleanest now being manufactured) is not feasible because no such locomotive is now in service. However, in December, 2012, MetroLink ordered 10 Tier 4 locomotives, with an option to buy 10 more, from Electro-Motive Diesel; see http://www.railwayage.com/index.php/mechanical/locomotives/emd-gets-metrolink-tier-4-locomotive-order.html. Delivery is expected in 2015. If MetroLink can take this step, BNSF and the Port can too. In addition, there are other ways to reduce locomotive idling and long-haul emissions, but the FEIR does not commit to any of them.

**On-dock rail.** The FEIR claims that creating new land for on-dock rail is not feasible. However, the draft program environmental impact report for the Port of Los Angeles Master Plan Update (PMPU) that was just published in February, 2013, refers to the Terminal Island On-Dock Rail Redevelopment project, described as “Redevelopment and expansion of on-dock rail on Terminal Island” as being in the conceptual planning stage—meaning that it has not been rejected as infeasible. Indeed, the Master Plan Update describes this project as one of the anticipated and future projects at the port.

The same document describes this project as in the conceptual planning stage: ‘Increased On-Dock Rail Usage, Port of Los Angeles and Port of Long Beach,” the purpose of which is: “ACTA, Port, and Port of Long Beach program with shipping lines and terminal operators to consolidate intermodal volume of the neighboring terminals to create larger trains to interior points, thereby reducing need for truck transportation. “

Finally, the FEIR responds to the comment that the Port can create new land by dredging and filling as it is contemplating with Pier 500 by saying that Pier 500 is not being considered. However, the PMPU describes Pier 500 as in the conceptual planning process, and the Port’s Terminal Island Land Use Plan, dated January 11, 2012, states in its summary of the three planning options presented that “[a]ll options assume that Pier 500 is created by adding fill south of Pier 400 as previously planned.”

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5 Mitigation measure AQ-7. See FEIR page 3.2-74. The reductions in PM 2.5 expected from street sweeping are tiny: see revised Appendix C at C2-15 – C2-16.
6 FEIR at 3.2-79 – 3.2-80. See also FEIR at 3.2-82, explaining that the project will expose receptors to significant levels of toxic air contaminants.
8 Id. at 4-8.
9 Id. at 4-56.
10 Id. at 4-4. The PMPU also notes that creation 18 acres of additional fill at Berth 300 is proposed. Id. at ES-14.
12 Id. at 9. In addition, the proposed plan selected in this study states: “The Pier 500 area is shown on the proposed Plan as described in the earlier Land Use Plan, with an addition of 200 acres, two berths, and a new on-dock rail yard.” Id. at 17–18.
This information, from the Port’s most current planning document, shows that creating new on-dock rail facilities, including by fill, is not infeasible.

**Zero Emissions Container Movement.** Many agree, even the Port of Los Angeles, that zero emissions technologies are necessary to address regional challenges to protect the health and welfare of residents. FEIR at 2-34. The FEIR’s Response to Comments notes “[t]he I-710 Corridor Project DEIR is in draft form and has not been finalized. The Corridor Project DEIR identified a proposed project and five alternatives for evaluation in the DEIR, of which only two include zero-emission vehicles.” FEIR at 2-390. This statement is incorrect in that the revised EIR/EIS for the I-710 will include three alternatives, all of which include zero emissions vehicles. Thus, the FEIR’s statement that “It would not be appropriate for the RDEIR No Project Alternative to assume that the zero-emission alternatives of the I-710 Corridor Project DEIR would be selected for approval in that project” is unfounded. All of the project proposals that actually construct an expanded highway for the I-710 will include a zero emissions component in the recirculated EIR.

Moreover, the EIR argues that “[i]n its 2012 Regional Transportation Plan/Sustainable Communities Strategy (RTP), SCAG has identified the SCIG project as potentially playing a key role in addressing the growth of high-density truck traffic (SCAG, 2012).” RDEIR at 3.2-97. The Port of Los Angeles cherry-picks this statement out of the RTP but ignores the discussion in the RTP that, even with projected future turnover of equipment, “greater advancements in technology are needed to meet regional attainment objectives.” 2012 RTP Goods Movement Report, at 40. In fact, the same RTP articulates 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 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.

2012 RTP Goods Movement Report, at 45. The FEIR’s failure to effectively address this issue despite the significant comments from the environmental justice, environmental, and air quality agencies demonstrates the lack of foresight and a willingness to miss an opportunity to truly implement the necessary technology shift needed to actually attain state and federal clean air standards.

Finally, the EIR cannot seek refuge from its failure to truly implement zero emissions technologies through the fact that it “recogniz[es] the potential future promise of ZECMS, [and] the RDEIR includes a mitigation measure that zero-emissions technology advancements be implemented, when proven to be feasible, upon a five-year review (MM AQ-9) and /or substituted for other equivalent new technology (MM AQ-10).” FEIR, at 2-29. The actual mitigation measures referred to, MM AQ-9 and MM AQ-10, do not require that these technologies ever “be implemented” as the Port of Los Angeles. In fact MM AQ-9 requires the following:
The Port shall require the business to review, in terms of feasibility, any Port-identified or other new emissions-reduction technology, and report to the Port. Such technology feasibility reviews shall take place at the time of the Port’s consideration of any lease amendment or facility modification for the Project site. If the technology is determined by the Port to be feasible in terms of cost, technical and operational feasibility, the business shall work with the Port to implement such technology.

RDEIR, at 3.2-104.

This mitigation is illusory for two reasons. First, there may not be a lease amendment or facility modification triggering such mitigation measure. Even the five year trigger that the Port of Los Angeles built in as partial consideration is so vague as to be meaningless because the requirement for implementation of new technologies is “subject to mutual agreement on operational feasibility and cost sharing.” RDEIR, at 3.2-104. Second, the mitigation measure simply requires the business, BNSF, to “work with the Port to implement such technology.” RDEIR, at 3.2-104. Had the Port of Los Angeles truly intended to implement these technologies, it would simply require that the measures “be implemented.” This lack of clarity, timelines, and internal consistency renders the mitigation measure and the analysis invalid. Thus, we agree with the South Coast Air Quality Management District that “a demonstration program for zero emission technologies is not a strong enough commitment. Zero emission technologies are feasible early in the life of the project and would mitigate significant impacts.” FEIR, at R-45C-60-4.

Nonattainment Status and the SCAQMD Ports Backstop Rule

Diesel pollution is a killer, as the FEIR recognizes. The million new diesel truck trips per year that the SCIG project will create will add to the PM 2.5 load in the South Coast region, which is already in non-attainment for PM 2.5 under the federal Clean Air Act, and will also increase ozone emissions as to which the South Coast is in non-attainment.

The FEIR claims that “[t]he proposed Project would not conflict with or obstruct implementation of an applicable air quality plan.” While the FEIR alleges that it will create regional benefits, it provides an overly rosy picture of SCIG’s impact on meeting ambient air quality standards. For example, the FEIR alleges that “[t]he Project assists in the attainment of ‘black box’ goals, in part, by MM AQ-9 (Periodic Review of New Technology and Regulation) and MM AQ-10 (Substitution of New Technology), RDEIR, p. 3.2-94).” FEIR, at 2-596. But as articulated above, these mitigation measures are illusory and toothless.

Moreover, although the FEIR claims that the SCIG project will comply with the 2007 AQMP, it argues that “CEQA does not require an examination of the AQMP’s black box.” FEIR, at 2-596. The FEIR fails to explain how it can ignore this large gap in emissions reductions necessary to

14 FEIR at 3.2-97.
be developed to meet ambient air quality standards. CEQA requires projects to address this issue; it is inconsistent for the Port to claim that the project would not conflict with the AQMP and at the same time allege that it need not examine the effect of the project on the “black box” which is crucial to attainment of federal ozone limits within the South Coast district.

The FEIR also admits that the emissions from SCIG project would, in and of themselves, create a violation of the National Ambient Air Quality Standard (NAAQS) for 1-hour NO2. This admission directly contradicts the claim that SCIG will not conflict with or obstruct implementation of an applicable air quality plan. Under Public Resources Code Section 21002.1(c), a project may only be approved if it is otherwise permissible under applicable laws and regulations. This project would violate the federal Clean Air Act and cannot be legally approved.

Finally, as the Air District and others are aware through the District’s recent decision to adopt a port backstop measure (over Port objections) as part of its 2012 Air Quality Management Plan, if a local air quality region remains in non-attainment status for too long, the consequence can be the cutoff of all federal transportation funding everywhere in the region, in addition to other onerous conditions on stationary sources. Regardless of whether Port staff believes that the health and welfare of people in the basin and economic consequences for failing to meet ambient air quality standards fall under CEQA’s ambit, it is a real issue that the Port must consider in deciding whether to go forward with this project as planned.

Thank you for your consideration of this letter.

David Pettit
Senior Attorney
Natural Resources Defense Council

Angelo Logan
Executive Director
East Yard Communities for Environmental Justice

Patricia Ochoa
Deputy Policy Director
Coalition for Clean Air

Maya Golden-Krasner
Staff Attorney
Communities for a Better Environment

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15 RDEIR at 3.2-74: SCIG operations “would also exceed the NAAQS for 1-hour NO2.”
John Cross
President
West Long Beach Association

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

Patrick Kennedy
Executive Director
Greater Long Beach Interfaith Community Organization

Gisele Fong, PhD
Executive Director
EndOil/Communities for Clean Ports
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
Senior General Attorney
RJL/wg
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 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 NO2, PM10, and PM2.5 by up to 250%, 420%, and 80%, respectively. These NO2, 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 NO₂ impacts. The two largest source categories contributing to the NO₂ 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
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/drftree090909.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 technologically, 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 µg/m³ for the state standard and 518 µg/m³ 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 µg/m³ (at a receptor located at 386100E, 3738950N). It is unclear to SCAQMD staff how the reported 745 µg/m³ correlates to the modeled 1,157 µg/m³. 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.

\[
525.535 \text{ lb/day} = 2.759 \text{ g/s} \times 60 \text{ s/min} \times 60 \text{ min/hr} \times 24 \text{ hr/day} / 453.59 \text{ g/lb}
\]

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.

\[
237.742 \text{ lb/day} = 525.535 \text{ lb/day} \times 76 \text{ operating hours/week} / 168 \text{ total hours/week}
\]

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 NOx, could exceed the thresholds for PM10 and PM2.5, 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.
Neighborhood at Risk

BNSF’s proposed “SCIG” rail yard*

Union Pacific proposes doubling the volume at its adjacent “ICTF” rail yard.

* Image is a rendering from the BNSF website. Labels added by CCA, Jan. 2012.