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SAN PEDRO AND PENINSULA HOMEOWNER'S COALITION

February 25, 2009

Via First Class Mail and Email

Sam A. Joumblat
Executive Director
Intermodal Container Transfer Facility Joint Powers Authority
P.O. Box 570
Long Beach, CA 90801-0570
info@ictf-jpa.org

Re: Notice of Preparation / Initial Study – ICTF Project

Dear Mr. Joumblat:

On behalf of The Natural Resources Defense Council (“NRDC”) and the undersigned, we hereby submit the following comments on the Notice of Preparation and Initial Study for the Intermodal Container Transfer Facility (“ICTF”) Project (the “Project”).

1. The EIR must not narrowly define project objectives.

We are concerned that the currently stated objectives of the Project may artificially limit the range of alternatives considered in the EIR. If the project objective is defined too narrowly, the subsequent analysis of alternatives in the EIR may be inadequate, for it is the project objective that guides the identification and consideration of alternatives. *See* CEQA Guidelines § 15124(b).

Here, one of the stated Project goals is to “continue to promote the direct transfer of cargo from port to rail with minimal surface transportation congestion and/or delays.” NOP at 3. However, the NOP appears to define “direct transfer” to exclude on-dock rail. For example, another Project goal is: “provide additional near-dock rail capacity and container throughput by increasing operation efficiencies consistent with the Ports’ Rail Master Plan Study and minimize surface transportation congestion and/or delays” NOP at 2.

A limitation on “direct transfer” to near-dock rail is not consistent with CEQA. As you know, CEQA requires that the EIR present reasonable alternatives “which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree attainment of the project objectives, or would be more costly.” CEQA Guidelines § 15126.6(b). We therefore expect that the EIR will incorporate a more accurate set of Project objectives that does not limit the range of alternatives to near-dock facilities, and which includes a reasonable range of alternatives, including but not limited to advanced container movement technologies.

2. The EIR must address a reasonable range of alternatives.

There are a number of alternatives which the EIR needs to evaluate. These include:

- Advanced technology container movement. The Port of Los Angeles is undertaking an RFP process for bids for advanced technology for containers, such as maglev. The EIR should take this into account.
- Electric drayage trucks. The Ports and the South Coast Air Quality Management District (the “District”) are working to develop electric drayage trucks. A prototype was rolled out last year at the Port of Los Angeles.
- On-dock rail. With sufficient new on-dock rail, expansion of ICTF may not be necessary.
- Use of the Port of Los Angeles Terminal Island Intermodal Facility and/or the Port of Long Beach Pier T Mole Expansion (also on Terminal Island) could adequately satisfy the ports’ rail infrastructure needs.
- Zero-emission fixed-guideway alternatives. See the February 17, 2009 letter from the District to the I-710 Technical Advisory Committee, a copy of which is enclosed with this letter for your reference.
- Alameda Corridor electrification. As you know, the Corridor was constructed with electrification in mind. Emissions from diesel locomotives leaving the ICTF facility could be reduced if the Corridor is electrified.
- SR 47 alternatives. The SR 47 truck freeway project is now in the EIR process. When considering the cumulative effects of the Project, the SR 47 projects and its alternatives should be considered. There are serious health risk issues posed by the routing and development of SR 47.
- The EIR should not be constrained by outmoded Ports Rail Master Plan Study.

3. The EIR must address all components of the Project, plus the cumulative impacts of the Project.

The EIR must provide a clear and accurate project description that addresses all of the project's components. *See County of Inyo v. City of Los Angeles*, 124 Cal.App.3d 1, 9 (1981) (“An accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”). Both the method of transportation of containers and the routes to be taken to move containers to the Project will have an effect on the physical environment and on the health of residents near the Project and associated roadways.

In addition, there will be environmental effects from the additional rail traffic contemplated in the NOP, and from the proposed new BNSF facility, if built (see NOP at 4). These impacts may be felt, for example, in communities near the Commerce railyards and in the Inland Empire that will see more train traffic due to the Project. These impacts must be analyzed in the EIR.

4. The EIR must present an accurate environmental baseline.

Under CEQA, the baseline conditions for determining “significant impacts” are those local and regional conditions that exist when the NOP is made available for review. *See* CEQA Guidelines, §15125(a) (an EIR must describe the “physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published . . . 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.”). Here, neither the local nor regional conditions in the vicinity of the Project area appear to have been adequately described in the NOP; see NOP at 3-4. .

For instance, the EIR must include a detailed analysis of the current levels of noise, air pollution, light pollution, vibration, as well as traffic conditions, and make a realistic comparison of the environmental impacts of the proposed Project versus the existing conditions. In addition, the EIR must contain documentation to support baseline numbers and sufficient analysis to explain and justify the estimated truck trips, yard activities, locomotive trips, and other activities that will be generated by the proposed Project. We have found, for example in the SR 47 project, that sloppy work in modeling can greatly complicate and delay a project.

In addition, the local and regional environmental conditions in the vicinity of the proposed Project site must be described and analyzed. Local schools, a shelter for veterans, churches, parks, and residential neighborhoods must be recognized and impacts on them analyzed and discussed.

5. The scope of analysis in the EIR must address local as well as regional effects.

Just as the environmental baseline must address the local as well as the regional context, CEQA requires that the EIR analyze the local and regional environmental impacts of a proposed project. “The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the *full* environmental context.” CEQA Guidelines § 15125(c) (emphasis added). The Project may lead to an additional 1.5 million truck trips per year though the West

Long Beach and surrounding neighborhoods. There may also be effects on nearby freeways such as the I-405 and I-710. In addition, a substantial increase in rail traffic is proposed; this increase will have effects on the physical environment in the Inland Empire as well as locally.

Moreover, we are concerned that given the fact that the ports expect at least a tripling of cargo throughput over the next two to three decades, it is unrealistic to suggest that the proposed Project would replace truck traffic on the I-710 with rail transport. Rather, the more realistic view—and the one that should be reflected in the EIR—is that this increase in throughput (if it occurs) will lead to additional traffic on the I-710 and I-405, as part of a significant increase in goods movement and thus air pollution and health impacts in the Southern California region.

6. The EIR should address all feasible measures to mitigate the project's environmental impacts.

Under CEQA, all feasible mitigation measures must be considered and implemented to reduce environmental impacts to a level of insignificance. *See* CEQA Guidelines § 15126.4. To that end, the EIR for this project should adopt all applicable mitigation measures identified in the Ports' Clean Air Action Plan and the Ports' Clean Trucks Plans. Additionally, the EIR should address electrification of the Alameda Corridor and Alameda Corridor East, since maximizing use of the Alameda Corridor is both a goal and foreseeable result of this project.

One important issue to be considered and analyzed is the enforceability of proposed mitigation measures. The existing ICTF facility has not been well-maintained, and so attention should be given to whether and why the operators of ICTF can be trusted to carry out any proposed mitigation measures in the future.

7. The EIR must address all reasonably foreseeable future impacts.

The EIR must address and analyze all significant direct and indirect impacts caused by the Project, which include all reasonably foreseeable impacts. *See* CEQA Guidelines §§ 15126, 15358. As noted above, there are outstanding proposals to expand the I-710, SR-47, and to build a huge new intermodal facility for BNSF next to the ICTF site – all with the same objective: to increase throughput at the Ports.

Under CEQA, it is improper segmentation of this Project to examine only a discrete component of a much larger project. *See* CEQA Guidelines § 15130. The environmental effects of a potential future expansion must be considered where, as here, the expansion “is a reasonably foreseeable consequence of the initial project; and the future expansion . . . will be significant in that it will likely change the scope or nature of the project or its environmental effects.” *Laurel Heights Improvement Ass'n of San Francisco, Inc. v. Regents of the Univ. of California*, 47 Cal.3d 376, 396 (1988). The potential expansion of this Project and the SCIG project to create a super yard meets these two requirements, and must be addressed in the EIR. Furthermore, if expansion to create a super yard would entail increased capacity, the effects of such increased capacity must be taken into account.

Further, as you know, CEQA requires that an EIR address growth-inducing effects of a proposed project. *See* CEQA Guidelines § 15358(a)(2). Here, the NOP makes clear that this Project is intended to enable the Ports to accommodate anticipated growth in containerized cargo. Where a project will enable growth that itself implicates environmental impacts, those impacts must be considered in the EIR, even if such impacts will occur “later in time.” CEQA Guidelines § 15358(a)(2). The proposed ICTF expansion is intended to facilitate the accommodation of growth up to 300 percent at the ports in the next two to three decades. Thus, the EIR must address environmental impacts of growth at the ports and related increased container movement.

8. The EIR must contain a comprehensive health risk assessment.

This proposed Project will generate a tremendous amount of diesel exhaust from trucks, yard equipment and locomotives. Recent health risk assessments for the existing ICTF facility and the SR-47 project, as well as the AQMD’s MATES III study, have shown dramatically the plight of people who live near the ICTF project. Given this, a formal health risk assessment should be completed that evaluates the health risk not only from activities at and near the Project site, but also from the trucks that would deliver containers to the Project and trains that will use the Project site. The HRA must also assess the cumulative risk from other sources in the region, including the cumulative risk posed from the growth at the Ports that this Project will enable.

9. Environmental justice impacts must be considered in the EIR.

The proposed Project Site is located near two low-income communities of color: west Long Beach and Wilmington. According to the 2000 census, Latinos, African-Americans, Asians, and other non-white ethnicities represent over 85% of the population in these communities. However, the NOP does not make clear that the EIR will assess and mitigate environmental justice impacts.

The California Air Resources Board recently observed that “[t]he Californians who live near ports, rail yards, and along high traffic corridors are subsidizing the goods movement sector with their health.” *See* CALIFORNIA AIR RESOURCES BOARD, DRAFT EMISSION REDUCTION PLAN FOR PORTS AND INTERNATIONAL GOODS MOVEMENT IN CALIFORNIA, Chapter 5, at1, (Dec. 1, 2005). Wilmington and west Long Beach are already burdened by all three of those pollution sources—including the Port of LA, Port of Long Beach, the 710 freeway, the Terminal Island Freeway, and the existing ICTF facility, addition to the nearby refineries. Of particular concern in this area are the adverse health effects of diesel emissions. The EIR must consider and implement mitigation measures to eliminate all environmental justice impacts implicated by the proposed Project, taking into account impacts introduced by the Project itself as well as cumulative impacts that arise from existing and foreseeable future sources of air, light, and noise pollution—including any growth at the port that this project will enable.

10. The EIR must consider the effects of climate change on the Project, and the effect of the Project on climate change.

As the California Attorney General and many others (including the most recent port-related DEIS/DEIRs from the Port of Los Angeles and the United States Army Corps of Engineers) have recognized, CEQA requires an analysis of the global warming impacts of a

project. California has long rejected the argument that environmental analysis can be ignored if the contributions of a project to a large scale problem are small. See, e.g., *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692 (1990); *LAUSD v. City of Los Angeles*, 58 Cal.App.4th 1019, 1025 (1997); *Communities for a Better Environment v. Cal Resources Agency*, 103 Cal.App.4th 98, 120 (2002); and *Massachusetts v. EPA*, 127 S.Ct. 1438, 1457 (2007).

Here, with proper modeling, the additional CO₂ emissions caused by the proposed increase of truck and train traffic associated with the Project can be estimated. Moreover, the potential effects of global warming such as an increase in sea levels and an increase in temperature may have an effect on the Project can and should be considered. At minimum, the EIS should analyze the effect of the Project on compliance with AB32, California Executive Order S-3-05 (which requires all State agencies to “consider and implement strategies to reduce their greenhouse gas emissions”), and the global warming / climate change action plan prepared by the Villaraigosa administration in May, 2007.

11. The EIR should contain a discussion of whether the Project makes economic sense in view of current and projected economic conditions.

Cargo throughput at the ports of Los Angeles and Long Beach has declined significantly, calling into question whether the proposed project is necessary. A February 23, 2009 article in the Journal of Commerce states: “Los Angeles, the nation's largest container port, reported a 6 percent drop in volume in 2008 and neighboring Long Beach, the second-largest port, was down 11.2 percent. The bleeding is expected to get worse this year, with Long Beach's volume down 23 percent in January and Los Angeles down 10 percent for the month.” Accordingly, the EIR should assess the need for a project of this magnitude in light of the current economic downturn.

Moreover, the Ports’ joint Rail Study Update (December 2006) calls into question whether any additional rail projects are needed at this time. The Study concluded that additional rail infrastructure on Terminal Island or near dock rail facilities like SCIG or the UP Expansion are needed because the ports’ rail infrastructure will reach capacity between 2010 and 2015. But this conclusion was based on the faulty assumption of near exponential growth at the ports (the Rail Study Update assumed a nearly 500% increase in TEU throughput between 2000 and 2030).

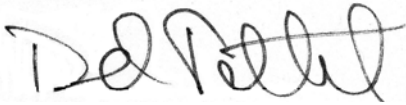
Further, as noted above, even if additional rail infrastructure is needed to accommodate increased trade after the current economic downturn, the EIR should consider whether the Port of Los Angeles Terminal Island Intermodal Facility or the Port of Long Beach Pier T Mole Expansion (also on Terminal Island) could adequately satisfy the ports’ rail infrastructure needs. Given that both of these projects are located on port property and further in distance from sensitive receptors than the current project, either of these Terminal Island projects would likely be preferable from an environmental and public health standpoint to the currently proposed project. Moreover, the Rail Study Update determined that one of these two rail projects could accommodate the ports’ rail infrastructure needs through 2020. Given that this determination was based on faulty growth assumptions, either of the Terminal Island projects could very well accommodate any future growth at the ports well past 2020—making the proposed UP Expansion unnecessary. And given

the ports' stated commitment to increasing on-dock rail, the Terminal Island projects would be a preferable alternative.

The EIR must reassess whether there is a pressing need for the proposed project and if so, whether there are other less environmentally damaging alternatives. The ports' own Rail Study Update clearly indicates that such alternatives exist.

Thank you for your consideration of these comments.

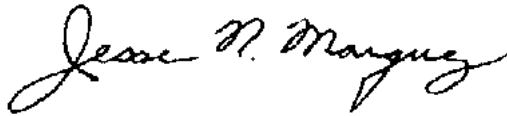
Sincerely,



David Pettit
Senior Attorney
Natural Resources Defense Council



Colleen Callahan
Manager of Air Quality Policy and Advocacy
American Lung Association in California



Jesse N. Marquez
Executive Director
Coalition For A Safe Environment



Candice Sung Kim
Senior Campaign Associate
Coalition for Clean Air



Ryan Wiggins
Campaign Associate
Communities for Clean Ports



Angelo Logan
Executive Director
East Yard Communities for Environmental
Justice



Frank O'Brien
Executive Director
Harbor Watts EDC



Elina Green, MPH
Consultant
Long Beach Alliance for Children with Asthma



Kathleen Woodfield
Vice President
San Pedro and Peninsula Homeowner's Coalition

Sam A. Joumblat
February 25, 2009
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Attachment

cc: Dr. Geraldine Knatz
Tom Russell
Councilwoman Janice Hahn
Richard Steinke
Dominic Holzhaus
Barry Wallerstein
Susan Nakamura
Andrea Hricko