

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT
RESPONSE TO COMMENTS
FINAL EIS/EIR AND DRAFT GENERAL CONFORMITY DETERMINATION FOR
THE PORT OF LONG BEACH MIDDLE HARBOR REDEVELOPMENT PROJECT

I. Introduction:

On April 3, 2009, the U.S. Army Corps of Engineers, Los Angeles District (USACE) published the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Port of Long Beach Middle Harbor Redevelopment Project. In addition, a draft general conformity determination pursuant to Section 176(c) of the Clean Air Act was included as an appendix to the Final EIS/EIR. The USACE circulated a public notice locally and simultaneously published a notification in the Federal Register soliciting comments on the Final EIS/EIR and draft general conformity determination. This document summarizes the comments received and provides responses in support of the Record of Decision regarding the issuance of a USACE permit authorizing the work in and over navigable waters of the U.S. associated with the project.

II. Comments Received:

Two comment letters were received during the 30-day comment period (3 April through 3 May 2009). Additional comments were submitted to the Port of Long Beach (POLB) as part of the 10-day review period under the California Environmental Quality Act, which were addressed by the POLB during the meeting of the Long Beach City Council on April 10, 2009, in which the EIR portion of the document was certified. This document only responds to comments submitted to the USACE in response to the public notice/Federal Register notice.

A. U. S. Environmental Protection Agency (EPA): EPA provided comments in a letter dated May 11, 2009 (EPA was granted additional time to respond to the notice at their request).

1. *Comment:* EPA acknowledges the compliance and enforcement requirements of the Mitigation and Monitoring Reporting Program (MMRP) that would be included as part of terminal lease agreements. We also appreciate the addition of Mitigation Measure AQ-25 that would reopen leases every five years to facilitate implementation of new feasible air quality mitigations. We commend the POLB for developing and committing in the Final EIS to Mitigation Measure AQ-29: Cumulative Air Quality Impact Reduction Program that would require the Project to provide \$5 million for the Schools and Related Sites Grant Program and \$5 million for the Healthcare and Seniors' Facility Grant Program. The EPA considers this ongoing program to be an innovative approach to

addressing the cumulative air quality impacts from the Project and from future projects at both the Ports of Long Beach and Los Angeles. We encourage the POLB to solicit input from community members as an integral part of the grant awards process.

Response: The comment is acknowledged.

2. *Comment:* The EPA apologizes for any confusion that may have resulted from our comment that the USACE and POLB should commit in the Final EIS and ROD to implement, in a timely manner, mitigation measures that exceed emission reduction measures in the San Pedro Bay Ports Clean Air Action Plan (CAAP). The intent was to ensure that CAAP measures are fully implemented on schedule and that mitigations that the Draft EIS described as going beyond the current CAAP measures are implemented as well. Our comment was provided in light of the significant air quality impacts from construction and operations of the proposed Project and the already degraded air quality in the South Coast Air Basin. We appreciate the revised language in the Final EIS identifying enforcement mechanisms for mitigation and the commitment to implement all identified measures regardless of changes or delays in the CAAP.

Response: The comment is acknowledged.

3. *Comment:* Thank you for clarifying in the response to comments that emissions from transport of 6.73 million cubic yards off fill material were included in the Draft EIS air quality analysis. According to the response to comments, emissions estimates were based on the assumption that these materials would originate from the Outer Harbor area over the course of the proposed Project. The EPA considers this to be a reasonable assumption. In the event fill originates from outside the Outer Harbor area, we recommend that air emissions not exceed the emissions estimates in the Final EIS.

Response: The comment is acknowledged. Fill material originating outside the Outer Harbor area would be subject applicable air quality requirements. Any significant exceedence of the emissions estimates used in the air quality analysis would likely require a supplemental analysis if those emissions are not accounted for in the environmental documentation for projects associated with those fill sources.

4. *Comment:* With regard to our recommendation that the Final EIS demonstrate general conformity with the applicable State Implementation Plan, we appreciate the USACE providing a draft general conformity determination for the proposed Project with the Final EIS. The EPA will review and comment on the draft determination separate from the Final EIS and will coordinate with the USACE, POLB, California Air Resources Board (CARB), and South Coast Air Quality Management District (SCAQMD), as appropriate.

Response: The comment is acknowledged. USACE has worked closely with EPA, SCAQMD, CARB, and the POLB in the completion of the final general conformity determination. SCAQMD provided a letter on October 15, 2009 endorsing the approach

taken in the final determination, which concluded that the Project would conform with the Clean Air Act.

5. *Comment:* The EPA recognizes and appreciates that the POLB committed in the Draft EIS to several mitigation measures that minimize disproportionate impacts to near-port communities; however, the Draft EIS and Final EIS both state that, even with mitigation, significant and unavoidable air quality and noise impacts would result in disproportionate impacts to environmental justice communities near the POLB. EPA's Draft EIS comment letter provided several additional mitigation recommendations for the POLB and USACE to consider in light of this finding of significant and unavoidable disproportionate impacts. Thank you for addressing these recommendations individually in the Final EIS response to comments. We were pleased to learn the POLB intends to consider a community outreach program to establish coordination with local community groups for creating jobs and providing training opportunities. We are willing and available to work with the POLB to development this program. In addition, we consider the Schools and Related Sites and the Healthcare and Seniors' Facility grant programs, described in Mitigation Measure AQ-29: Cumulative Air Quality Impact Reduction Program, to be an important step towards identifying and funding additional mitigation measures.

Response: The comment is acknowledged.

6. *Comment:* The EPA also recommended in our Draft EIS comment letter that the Ports of Long Beach and Los Angeles consider the development of a port-wide Health Impact Assessment (HIA). We recognize the level of effort that the POLB has put forth to identify potential Project impacts to the health of neighboring communities. We also are aware of the various port-area health studies referenced in your response to comments. The intent of EPA's recommendation was to encourage the POLB to work with the Port of Los Angeles and local health departments to conduct a port-wide HIA that would consider the cumulative health impacts of all POLB activities in the context of environmental justice communities. These communities may already be disadvantaged, underserved, and overburdened such that air pollution and other POLB impacts may cause disproportionate environmental effects. Based on the discussion during our April 6, 2009 phone call between the POLB, USACE and EPA, we understand that the POLB would be available to participate in future collaborative efforts to scope out a port-wide HIA. We appreciate the POLB's willingness to do so. The EPA is also pleased to report that the Port of Los Angeles, in the Channel Deepening Project Final EIS response to comments, has committed to working with EPA and others on a port-wide HIA as part of its April 2, 2008 TraPac Project Memorandum of Understanding.

Response: The comment is acknowledged. The POLB, Port of Los Angeles and USACE have recently participated in a meeting with the EPA and representatives of the local community regarding the development of a port-wide HIA.

7. *Comment:* The response to comments adequately discloses the acceptability of the Bolsa Chica mitigation agreement in the context of the *Compensatory Mitigation for*

Losses of Aquatic Resources: Final Rule, and clarifies the mitigation credit discrepancy by including the new Table 10.2 in the Final EIS. The response to comments also provides additional information describing expected recolonization of newly created open water, water column, and benthic habitats at the proposed Project site. We find the responses to our comments regarding consistency with goals of the Contaminated Sediment Task Force and the identification, handling and characterization of sediments for fill to be sufficient. We also recognize the POLB's willingness to consider sources of dredge material for fill other than the Outer Harbor area, and find this to be consistent with regional goals for beneficial reuse of dredge material. We encourage the POLB to coordinate with the Port of Los Angeles to consider whether it would be feasible and appropriate to beneficially reuse any of the approximately 804,000 cubic yards of surplus dredge materials from the proposed Channel Deepening Project, in the event a fill alternative is approved. This material is currently proposed for ocean disposal.

Response: The comment is acknowledged. Use of material from the Channel Deepening Project will depend on the future timing and logistical constraints of both projects.

8. *Comment:* The ROD should include additional language clarifying why the 315-Acre Alternative (Alternative 2) does not adequately meet the Project purpose and is not considered the least environmentally damaging practicable alternative (LEDPA). In our Draft EIS comment letter, the EPA stated that Alternatives 2 and 3 appeared to be practicable under the CWA Section 404(b)(1) Guidelines (Guidelines), which require applicants to clearly demonstrate that the Proposed Project represents the LEDPA. We recommended the Final EIS include a detailed discussion of the practicability of Alternatives 2 and 3, as well as a fifth possible alternative that we proposed.

Response: The discussion of the Alternatives 2 and 3 in the ROD and 404(b)(1) alternatives analysis have been expanded upon and clearly demonstrate that neither would be considered the LEDPA.

9. *Comment:* The draft Section 404(b)(1) alternatives analysis, provided as an appendix to the Final EIS, and the Final EIS discussion of alternatives considered but not carried forward sufficiently explain why Alternative 3 and the fifth alternative suggested by the EPA do not meet the Project purpose or meet the criteria of the LEDPA. However, new language further demonstrating the operational inefficiencies of Alternative 2 and the potential for environmental impacts from new Outer Harbor fill to occur in the absence of the proposed Project was not provided to EPA until May 5, and 11, 2009 (respectively), shortly before the close of the Final EIS comment period. Based on this language and information provided during our discussions with the POLB and USACE on April 6, 27, and May 11, 2009, the EPA acknowledges that Alternative 2 would not adequately meet the project purpose to increase container terminal efficiency to accommodate a portion of the predicted future cargo volumes and modern container vessels. We also understand that the proposed project would likely be the LEDPA if it avoids the adverse effects of new Outer Harbor fill by limiting fill to areas within existing POLB facilities, like Middle Harbor. The ROD and final alternatives analysis should

include the additional efficiency and Outer Harbor fill avoidance language provided on May 6 and 11, 2009 (respectively). Cost information provided with the efficiency language should be omitted or revised to clarify that it is not intended to support a CWA Section 404(b)(1) practicability determination. We recommend the Outer Harbor fill language in the ROD and alternatives analysis be revised to focus on avoidance that would result directly from the Project, in the context of the POLB's strategy for future growth projections.

Response: The comment is acknowledged. See response to comment no. 8, above.

B. Coalition for a Safe Environment (CFASE): CFASE submitted comments in a letter dated April 13, 2009.

1. *Comment:* CFASE would first like to comment on the POLB's failure to allow adequate public participation by limiting the public comment period to 10 days. It is impossible to review a more than 1500 page Final EIS/EIR and write our Environmental Justice Organization's concerns on all of the POLB's comments and proposed mitigation. We request an extension of an additional 60 days for public comment. The POLB sponsored White Paper on Environmental Justice prepared by the consulting firm Jones & Stokes identifies and recommends numerous recommendations that the POLB refused to adopt and incorporate which addressed and recommended increased public participation.

Response: USACE and the POLB have provided the opportunity for affected communities, individuals, organizations, and groups to participate in the EIS/EIR process by providing public notifications about preparation and availability of the EIS/EIR. USACE and the POLB have held public scoping meetings and public hearings to inform the public about the Project, the alternatives, and the associated impacts. Meetings were held in evening hours in surrounding communities in locations that were as close as practical to areas most affected by the Project. Overall, POLB and USACE provided for public participation throughout the review process in a manner consistent with, if not in excess of, the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The comment period relative to the Final EIR under CEQA is separate from the USACE's comment period for our public notice. USACE provided a 30-day comment period for submission of comments to the Final EIS and draft general conformity determination. The decision to implement the recommendations of referenced White Paper is entirely a matter for the POLB and the City of Long Beach and does not bear on the USACE permit decision.

2. *Comment:* CFASE recommended that the POLB establish a Port Community Advisory Committee and the Ports response that a separate advisory committee is not necessary is not appropriate, justified or acceptable. CFASE's recommendation is based on discussions with our City of Long Beach members, Long Beach public health advocacy organizations, Long Beach community organizations, Long Beach environmental organizations, Long Beach homeowners associations, Long Beach faith

based organizations and the Long Beach Greens. The Port of Los Angeles has had a successful Port Community Advisory Committee for over four years. The POLB did not hold one public meeting, hearing, publish any notice or request of interests from Long Beach residents nor establish a taskforce to determine the interest and feasibility. The POLB sponsored White Paper on Environmental Justice prepared by the consulting firm Jones & Stokes identifies and recommends the formation of a citizen's advisory committee. The POLB refused to adopt this recommendation.

Response: Although this issue is largely beyond the USACE's Federal control and responsibility, the response to comments to the Draft EIS/EIR (response CSE(A)-2, in particular), explains that the POLB has developed two programs to mitigate cumulative air quality and noise impacts from POLB operations, including the Middle Harbor Redevelopment Project: the Schools and Related Sites Program and the Healthcare and Seniors' Facilities Program. The programs: (1) establish eligibility criteria for potential applicants based on facility type and proximity to the SPBP; (2) provide metrics that will be used to assess a proposed project's air quality and noise impact mitigation potential based on established regulatory mitigation programs, recent scientific information on air quality and noise impacts, and the proven effectiveness of proposed education/outreach programs; and (3) explain how the POLB Board of Harbor Commissioners will choose among eligible proposals and approve funding. USACE and the POLB have provided the opportunity for affected communities, individuals, organizations, and groups to participate in the EIS/EIR process by providing public notifications about preparation and availability of the EIS/EIR. USACE and the POLB have held public scoping meetings and public hearings to inform the public about the Project, the alternatives, and the associated impacts. Meetings were held in evening hours in surrounding communities in locations that were as close as practical to areas most affected by the Project. Additionally, the ports, along with USACE, EPA and representatives of the local community have recently participated in discussions regarding development of a port-wide Health Impact Assessment.

3. *Comment:* The establishment of a POLB Community Advisory Committee and/or the creation of a new non-profit organization to administer public health, public safety, environmental and cumulative impacts mitigation is the best method for a successful public mitigation program. Long Beach public health advocacy organizations, community organizations, environmental organizations, homeowners associations, faith based organizations and the Long Beach Greens are better qualified to administer public mitigation program funds than the POLB Board of Harbor Commissioners who have no direct or appropriate public service experience nor past history.

Response: See response to comment no. 2, above. This issue is largely beyond the USACE's Federal control and responsibility.

4. *Comment:* The two proposed mitigation programs although a great step forward are not adequate to address all the unmitigated impacts described in these public comments. The proposed funding amount is not adequate to address and mitigate the numerous unmitigated issues described in these public comments. CFASE requests that

funding be based on a per-container fee or tariff and a bulk weight such as per ton, quantity unit charge or per volume such as per barrel.

Response: See response to comment no. 2, above. The mechanism by which the POLB funds these air quality mitigation programs is beyond the USACE's Federal control and responsibility.

5. *Comment:* The POLB did not provide any opportunity for additional and constructive public participation in the preparation of the Final EIS/EIR because the POLB never established one taskforce or committee or hold one public meeting or hearing to discuss specific public concerns in depth, public proposed mitigation, public proposed mitigation over-site, public proposed alternatives, public challenges to technical or scientific accuracy or completeness, or public proposed port modernization, optimization, efficiency or capacity. The Final EIS/EIR is strictly the POLB's staff opinion.

Response: Contrary to the assertions of this comment, USACE and the POLB have provided the opportunity for affected communities, individuals, organizations, and groups to participate in the EIS/EIR process by providing public notifications about preparation and availability of the EIS/EIR. USACE and the POLB have held public scoping meetings and public hearings to inform the public about the Project, the alternatives, and the associated impacts. Meetings were held in evening hours in surrounding communities in locations that were as close as practical to areas most affected by the Project. All comments received are considered in the completion of the environmental review and, for the USACE, the decision whether to issue a permit and the conditions that would be incorporated into the permit, if issued.

6. *Comment:* The response to comments to the Draft EIS/EIR that MagLev Technology is both physically impractical and financially infeasible is neither true nor factual. The Final EIS/EIR hides the details that one of the zero emission transport systems being reviewed is the MagLev Technology and the technology for a POLB demonstration project for a marine terminal to near-dock rail facility is the MagLev Technology. The POLB's staff failed to state the benefits of the MagLev or prepare a current and Electric/MagLev Technology and cost-benefits assessment. The POLB's staff has failed to mention in the Final EIR/EIS that American MagLev Technology Corporation has offered to build a MagLev Train Demonstration Project for cargo and container transport at the POLB to the ICTF at no cost to the POLB or the public. The only impediment now is the failure of the POLB to grant a 20-foot track right-of-way. Even if some parcels of land are not owned by POLB it does not condemn the proposal. Negotiations with land owners could easily be accomplished to get the necessary rights-of-way and approvals. Alternative routes could also be determined. A POLB terminal has already volunteered to place 400 containers day on the Maglev Train System. The POLB's discussion of construction, operation and maintenance costs failed to state that the POLB staff estimates are significantly higher than sponsors of proposed Maglev project's estimated costs. The POLB's discussion fails to state that all costs of construction, operation and maintenance would be paid by the terminal operators and not

the public. Accurate costs of construction, operation and maintenance would be determined and disclosed once a MagLev Train Demonstration Project was completed. Building a MagLev Train in the Alameda Corridor is completely feasible. There is nothing wrong with a MagLev Train operating from the POLB to the downtown rail yards. Containers and cargo would be unloaded the same way as existing containers and cargo. The public supports investment in new green clean electric MagLev Technology over the existing old, outdated, 19th Century air polluting container and cargo transportation systems. The public supports the development of a new green, clean electric Master Rail Plan for the future.

Response: This issue is largely beyond the USACE's Federal control and responsibility. Responses CSE(A)-3, CSE(A)-4, CSE(B)-3, and SCAQMD-27 in the Final EIS/EIR, response to comments have addressed this issue.

7. Comment: The reference to ACTA staff's research and conclusions in the response to comments to the Draft EIS/EIR is not accurate. There are several Electric Train Technologies that do not use overhead wires. The Disneyland Monorail Train does not use overhead wires and there are several high speed trains that do not use overhead wires.

Response: See Response to Comment no. 6, above.

8. Comment: Contrary to the response to comments to the Draft EIS/EIR, CFASE did not request that all of Southern California's railways be electrified; only from the Ports of Long Beach and Los Angeles to the downtown East Los Angeles rail yards. This is POLB's intentional efforts to distort the facts. The cost for the short distance electrification retrofit would be reasonable and feasible. Future expansion outside Los Angeles could also be phased in. All costs could be paid by the terminal operators, not the City of Long Beach or the public.

Response: Please see Response to Comment no. 6, above.

9. Comment: The reference to the Alameda Corridor Use & Operating Agreement clause in the response to comments to the Draft EIS/EIR is just another blatant example of the railroad industry's political power and lobbying power for the political appointment of individuals to ACTA who are easily influenced to do whatever the railroad industry wants. The public's best interest was not the priority and was not taken into consideration. The railroad industry and their colleagues lobbied to give them exclusive rights in perpetuity and in today's world would never be accepted or approved by the public. We would further request that another independent legal review be made of this clause and the public's right to amend the agreement.

Response: Please see Response to Comment no. 6, above.

10. Comment: The reference to the Federal EPA standards for Tier 3 and 4 locomotives in the response to comments to the Draft EIS/EIR has absolutely nothing to

do with Alternative Electric Container Mover Systems. Tier 3 and Tier 4 locomotives do not reduce toxic air emission to non-significant as required by CEQA and NEPA. It is the railroad industry, petroleum industry, their contractors and subcontractors that have lobbied for these technologies to be used. USEPA supports 100% green, clean and non-polluting technologies. This Final EIS/EIR discussion and information is the 100% opinion and misinterpretation by POLB of the true facts.

Response: Please see Response to Comment no. 6, above.

11. *Comment:* The response to comments to the Draft EIS/EIR did not address CFASE's public comments regarding the use of the Advanced Cleanup Technologies - Advanced Maritime Emissions Control System (AMECS) on terminals and ships that have not been retrofitted. CFASE requested that the POLB purchase, rent or lease the AMECS at the Middle Harbor Terminal until such time all terminals have been converted to electric shore-power or used on un-retrofitted ships which would significantly reduce air emissions and protect public health. The environment and public should not be exposed to toxic emissions that can be feasibly mitigated. When the Middle Harbor is completed, the AMECS could be used at another of the 30-plus terminals.

Response: As stated in the response to comments to the Draft EIS/EIR, only ships that have retrofitted to use the electric-shore power system by 2015 will be permitted to call at the Project terminal. Therefore, it is not necessary to use an AMECS system for ships calling at the terminal. Furthermore this is a matter of terminal operations and cannot be practicably controlled or conditioned by the USACE.

12. *Comment:* The statement in the response to comments to the Draft EIS/EIR that an increased Alameda Corridor Usage Requirement Study would not provide information that could be used to increase the Project use of the Alameda Corridor is not true. At this time the POLB does not have a report or study that provides accurate information that discloses the number of trucks who are traveling short distances, medium distances or long distances, the age of trucks, the type or amount of cargo and containers, nor have they identified all destinations the POLB services in order to establish a maximum efficiency and usage of the Alameda Corridor. There is no information in the Final EIS/EIR that states that all project intermodal cargo would use the Alameda Corridor.

Response: This issue was fully addressed in the Final EIS/EIR and response to comment to the Draft EIS/EIR and furthermore is beyond the Corps' Federal control and responsibility.

13. *Comment:* The statement in the response to comments to the Draft EIS/EIR that non-intermodal cargo that must travel long distances cannot be transported by rail if there are no rail facilities in proximity to the destination is not justified. POLB conducted no study or assessment that identifies destinations that do not have rail or that can have rail built to accommodate rail service. Railroad line spurs are built all the time to accommodate new warehouse and distribution centers. CFASE has also commented on

the need for a new port and regional rail master plan that will meet future modernization, capacity and velocity needs, as well as environmental and public health protection requirements. POLB has proposed no new local ports or regional master plan planning process no supported the recommendation for a new master rail plan. The public supports the proposal for a new port and regional rail master plan that will meet future modernization, capacity & velocity needs, environmental and public health protection requirements.

Response: This issue was fully addressed in the Final EIS/EIR and response to comment to the Draft EIS/EIR and furthermore is beyond the Corps' Federal control and responsibility.

14. *Comment:* The claim in the response to comments to the Draft EIS/EIR that it is not economically infeasible to use the Advanced Maritime Emissions Control System (AMECS) is not true. POLB has not determined or calculated all the costs of public health care, environmental damage, damage to water resources, damage to wildlife habitats, global warming and climate change impacts. The POLB has not conducted nor participated in any comprehensive public cost assessment studies of its significant public and environmental impacts. The POLB has not conducted any assessment of the number of times and quantity ships that must wait outside the breakwater. The AMECS system can be moved to other POLS terminals that do not have electric shore power. The AMECS system could also be sold to another port should the POLB ever be 100 percent electrified after years of successful and valuable service.

Response: See Response to Comment 11, above.

15. *Comment:* The claim in the response to comments to the Draft EIS/EIR that it is not inappropriate to perform the CFASE requested Public Health Survey and that Health Risk Assessments are all that is needed is not true. Health Risk Assessments provide a limited amount of public health information and are significantly not accurate. They absolutely are not precise. HRAs information is calculated based on computer model developed using statewide health data. No local public health data of the POLB's surrounding communities nor transportation corridor communities is included in the model, therefore there is no accurate data on local impacts. HRAs are only a rough estimate, which is significantly underestimating public health impacts. CFASE would also like to request that a Health Impact Assessment (HIA) be conducted which is another excellent type of public health study that would meet our cumulative public health impacts assessment and information requirements. CFASE would additionally like to request that the POLB allocate \$250,000 to conduct a Middle Redevelopment Harbor Project HIA and a port-wide HIA. HRAs provide information only on potential cancer deaths and are based primarily on exposure to diesel air pollution. They do not tell your how many people died of cancer or will get cancer due to long term exposure to VOCs from diesel fuel or other petroleum fuels. Diesel truck drivers, fuel station attendants, locomotive engine operators, engineers, mechanics and fenceline residents who die or get leukemia, lymphoma or myeloma are not counted, assessed or even mentioned in a HRA. People who died of an acute asthma attack or

COPD due to the increased or cumulative exposure to diesel fuel emissions are not counted. HRAs do not tell you how many people have asthma, bronchitis, sinusitis, allergies etc. A Public Health Survey would identify the number of all public health impacted residents and workers, the types of public health problems, the distribution of health problems, the seriousness of the health problem and the socioeconomic impact. An accurate Public Health Baseline could be established by which an accurate Health Risk Assessment could be performed. As of this time, neither the POLB nor any governmental regulatory or public health agency can tell you this information as important as it is. Governmental agencies have failed to provide adequate protection of public health by intentionally avoiding additional public health studies. The public is aware of this fact and that is why the public and POLB impacted communities have the right to request that POLB conduct additional health studies. It is the railroad industry, petroleum industry, their contractors and subcontractors that have lobbied against all and any additional public health studies. It is also a historical fact that POLB Board of Harbor Commissioners has never supported any new proposed public health studies or legislation that would involve the Ports and Goods Movement Industry.

Response: While there are acknowledged limitations of HRAs, as stated in the response to comments to the Draft EIS/EIR (CSE(A)-8, CSE(B)-12, CSE(B)-14) the Project HRA used methods approved by the Office of Environmental Health Hazard Assessment (OEHHA), CARB, and the SCAQMD. The HRA protocols from these agencies do not require the types of studies that the comment requests to validate HRA results and are entirely consistent with the requirements of NEPA. Performing the requested survey and studies to validate the Project HRA would provide inconclusive results, due to the variety of exposure assumptions for residential areas. Furthermore, the POLB has developed two programs to mitigate cumulative air quality and noise impacts from POLB operations, including the Middle Harbor Redevelopment Project: the Schools and Related Sites Program and the Healthcare and Seniors' Facilities Program. The programs: (1) establish eligibility criteria for potential applicants based on facility type and proximity to the SPBP; (2) provide metrics that will be used to assess a proposed project's air quality and noise impact mitigation potential based on established regulatory mitigation programs, recent scientific information on air quality and noise impacts, and the proven effectiveness of proposed education/outreach programs; and (3) explain how the POLB Board of Harbor Commissioners will choose among eligible proposals and approve funding. Finally, the ports, along with USACE, EPA and representatives of the local community have recently participated in discussions regarding development of a port-wide HIA. The HIA is in the early stages and does not bear on the decision regarding the issuance of a USACE permit to authorize construction activities associated with the Project.

16. *Comment:* The discussion in the response to comments to the Draft EIS/EIR of atmospheric deposition of pollutants at the POLB was a limited discussion. The discussion was based primarily on other out-of-state studies. POLB has conducted no research to learn about the chemical composition of truck break dust, tire rubber, engine blow-by, container paint, deposition mechanisms and actual concentrations at the POLB. The POLB is required to accurately assess its aerial deposition and propose appropriate

mitigation. The POLB does not know if its proposed mitigation will reduce aerial deposition to non-significance.

Response: Extensive studies regarding the expected emissions of atmospheric pollutants have been conducted for the proposed project utilizing the accepted standards and methods, including the significance thresholds established by SCAQMD. It is acknowledged that construction-related emissions of VOCs, CO, NO_x, PM₁₀ and PM_{2.5} will remain significant even with mitigation. All feasible control measures, specifically Mitigation Measures AQ-1 through AQ-29, will be implemented and will greatly reduce emissions, including those determined to be within the USACE's scope of analysis under NEPA. Additionally, the USACE has completed a general conformity determination per the requirements of Section 176(c) of the Federal Clean Air Act. The methodology has been developed in close coordination with EPA, CARB and SCAQMD. The determination found the portion of the project associated with the USACE Federal action would be in conformance with the Federal Clean Air Act.

17. *Comment:* The 10-in-a-million cancer risk threshold adopted by the POLB, even if consistent with the guidelines of the OEHHA, CARB and SCAQMD is not acceptable to the public. HRAs are absolutely not precise and the threshold established is just an adopted best guess. The public did not vote to approve this threshold nor did residents volunteer to die so that the POLB, railroad industry and WalMart can maximize its profits. The POLB has the authority to adopt a lower risk threshold that provides maximum public protection. CFASE requests that the POLB identify any person of the public who is willing to die for the POLB, the railroad industry, its tenants or any big box retailer. Governmental regulatory agencies have failed to provide adequate protection of public health by intentionally negotiating a threshold acceptable to the railroad industry and petroleum industry. The public is aware of this fact and that is why the public and POLB impacted communities have the right to request that POLB establish a standard that results in no public deaths or risks due to cancer. It is the railroad industry, petroleum industry, their contractors and subcontractors that have lobbied against a lower risk threshold.

Response: See Response to Comment 16, above.

18. *Comment:* The conclusion in the response to comments to the Draft EIS/EIR that there are no viable opportunities in Wilmington for Wetlands Restoration is not true. Cal Poly Pomona students prepared a Wetlands Restoration Concept Study of Pier A West and came to the conclusion that wetlands restoration was feasible. They provided an overview and comparison of other similar degraded, destroyed and lost wetlands and discussed wetlands restoration and sustainability opportunities. This information was provided to the POLB, POLB staff attended the public presentations, and it is not acknowledged in the Draft or Final EIS/EIR. In addition, various other Wetlands Restoration sites have been identified in Long Beach by various non-profit conservation and environmental organizations. The Los Angeles River and Dominguez Channel watersheds provide several opportunities. The CFASE-proposed Wetlands Restoration Mitigation is appropriate POLB mitigation. Although this project will not result in

wetland losses the current existing terminals when built in the past did destroy hundreds of acres of natural wetlands that were never mitigated. POLB has destroyed approximately 1,000 acres of wetlands in its jurisdiction and held under the Public Trust Doctrine. The POLB has intentionally never held public meetings, hearings or established any task force or committee to ensure that protection and restoration of wetlands would be included in the POLB Master Plan and that a Wetlands Mitigation Fund be established for that purpose. City of Long Beach residents and City of Los Angeles Wilmington community residents supports Pier A West be restored to natural wetlands. Restoration would also significantly restore and enhance port and coastal water quality and wildlife habitats. Pier A West is the ideal location for wetland restoration since 100 percent of the wetlands were previously destroyed in order to conduct the past and current private business profit-making operations. The land is located in the City of Los Angeles and not the City of Long Beach. The approximate 60 acres of land is physically located in the City of Los Angeles community of Wilmington which is the most negatively and significantly impacted by POLB business operations. The Port of Los Angeles and the Board of Harbor Commissioners have also expressed an interest in financially investing a joint POLA/POLB Wetlands Restoration Project at Pier A West. The Wilmington community would never support the building of another container terminal. The POLB would have to get permits from the City of Los Angeles before it could build anything. The current Pier A West remediation cost of more than \$50 million could almost be cut in half if the land was restored to its previous natural wetlands state. City of Long Beach residents and City of Los Angeles Wilmington Community residents do not support any further investment in the expansion of the POLB. Past POLB financial investments and credits for Wetlands Restoration in Bolsa Chica in the City of Huntington Beach and Los Baquitos Lagoon in the City of San Diego provided no biological mitigation benefits to the City of Long Beach or its residents. CFASE estimates that the POLB provided a minimum of \$40 million dollars to these other rich communities with multi-million dollar mansions bordering the wetlands to have a beautiful pristine coastal view with restored wetlands. City of Long Beach and Wilmington residents did not vote to have other rich cities' communities' coastal wetlands restored.

Response: The Project would not impact wetlands is providing mitigation to offset impacts to open water and benthic habitat through a combination of open water creation within the project itself and the purchase of credits at the Bolsa Chica Mitigation Bank. The purchase of credits is in accordance with the interagency agreement among the Corps, EPA, U.S. Fish & Wildlife Service, National Marine Fisheries Service and the ports of Los Angeles and Long Beach. Requiring mitigation for historic wetland impacts, most of which occurred prior to the establishment of the Clean Water Act, is inappropriate and inconsistent with USACE policy.

19. *Comment:* CFASE's request for the establishment for a Marine Fish Hatchery to restore fish populations in San Pedro Bay is justified because every new POLB development project, terminal expansion project, dredging project and business operations results in the loss and degradation of fish populations, biological habits and nesting grounds. The existing setting did not account for the thousands of water acres

lost, destroyed or degraded and did not mitigate or restore the past or current POLB development, expansion or operations impacts. The reference to the 1980 MEC Analytical Systems study occurred after the POLB decimated over 90% of the pre-existing fish population. Aerial deposition on POLB waters and coastal tidelands has also not been quantified, assessed or mitigated.

Response: As stated in Section 3.4.2.3 of the Draft EIS/EIR, the Project's impact on fish populations is less than significant and does not require mitigation. Moreover, baseline studies of the harbor since the mid 1980s have not shown a decrease in fish populations (MEC Analytical Systems, Inc. 2002) that would need to be augmented through use of a fish hatchery. The comment does not provide any additional substantive information to support its claims to the contrary.

20. *Comment:* The determination that POLB truck traffic on freeways is not regarded as an environmental impact for purposes of NEPA or CEQA analysis and does not need to be mitigated via the establishment of an Off-Port Property Transportation Infrastructure Mitigation Trust Fund is not correct. POLB diesel trucks do not create equal impacts as other public or commercial vehicles. POLB diesel trucks' weight, number of truck trips, frequency of travel over the same routes, infrastructure damage, number of truck-involved accidents, truck breakdowns, air, land and water pollution on public freeways, highways, streets and bridges with cargo and containers has been increasing every year. The standard container length used to be 20 feet. It is now 40 feet, with 53-foot containers commonly being used. The average weight load has also increased with container size. The cost of public vehicle insurance has increased due to increasing truck accidents. The cost of public health care due to truck accidents has also increased. The degradation, maintenance, restoration or replacement of public infrastructure costs due to increasing POLB diesel truck usage has also been increasing exponentially. The vehicle fuel tax does not compensate for the degradation, maintenance, restoration or replacement of public infrastructure caused by POLB truck traffic. The POLB has failed to consider or adequately assess the environmental, public health, public safety, biological, socioeconomic impacts and appropriate mitigation. Reference to other regional or statewide efforts does not release the POLB of its CEQA and NEPA analysis and mitigation requirements.

Response: Many of the effects described in the comment are beyond the USACE's scope of analysis under NEPA; however, as described in the EIS/EIR, the Project would result in construction-related adverse impacts to specific local intersections. Implementation of the mitigation measures Trans-1.1 (a through e) would reduce these impacts below significance. In addition, the project would result in impacts to highway segments that would remain significant even with mitigation. Mitigation Measure TRANS-2.1 addresses POLB participation in a fair-share based program to address freeway congestion. The POLB has also funded studies on improving the I-710 corridor and will implement improvements to mitigate adverse impacts to specific intersections identified in the EIS/EIR. See also the response to comments to the Draft EIS/EIR (Response CBD-65, in particular).

21. *Comment:* The POLB is obfuscating its responsibility in neglecting to include requirements in its lease agreements with its tenants to prevent negative environmental, public health, public safety, biological habitat and socio-economic impacts from containers that have not been decontaminated or sanitized. Since POLB containers have not been decontaminated or sanitized, they are having significant environmental, public health, public safety, biological habitat and socio-economic impacts that are required to have a CEQA and NEPA analysis and be mitigated. The West Nile Virus in the West Coast is an example of vector-borne crisis that probably originated from a port container. In 2007/2008 a Wilmington child was hospitalized at the Long Beach Memorial Hospital for months with West Nile Virus. The POLB has made no assessment of the number of containers that are stored at off-port property and never returned to their place of origin. The POLB is wrong in its statement that existing federal, state and local environmental and land use laws regulate and control safe operation and storage of containers. There is no known law, rule, regulation or requirement for the decontamination and sanitization of containers because the POLB has failed to conduct any CEQA or NEPA analysis that has identified this as a problem even though CFASE has requested such a study and mitigation.

Response: Response CSE(A)-13 in the response to comments to the draft EIS/EIR addressed these issues. The comment does not provide any specific evidence or information regarding the container-related contamination or disease. Furthermore, the condition of the containers is that pass through the POLB, let alone the disposition of those that are stored off the POLB, is beyond the USACE's Federal control and responsibility.

22. *Comment:* The POLB has failed to identify or recommend new lease terms and conditions that the Long Beach Board of Harbor Commissioners should seriously consider and approve. The failure of the POLB to include a CEQA and NEPA analysis has resulted in the Board of Harbor Commissioners not knowing that there is an environmental and public impact problem.

Response: The Final EIS/EIR describes the various mitigation measures in the MMRP that would be incorporated into future lease agreements between the POLB and its tenants. The USACE does not have any control or authority over the lease agreements between the POLB and its tenants. See also Response CSE(A)-13 in the response to comments to the draft EIS/EIR.

23. *Comment:* It is not infeasible and impractical to build a permanent parking structure on Pier B. The current limited parking lot land use is wasteful, when intermodal land space is desperately needed and a higher priority. Imported cars can be easily be driven into a parking structure or even moved to an off-port property storage area. The cost does not entirely have to be borne by Toyota. The POLB could fund this project from its traditional profits as a POLB infrastructure enhancement project. The public supports this use of POLB public funds. The proposed UP ICTF and BNSF SCIG are not independent of the Middle Harbor Redevelopment Project. The Middle Harbor Redevelopment Project will in fact send thousands of trucks with cargo and containers to

both facilities. The POLB has provided no information stating that it will not use the ICTF or SCIG. Currently every POLB container terminal utilizes the UP ICTF.

Response: See response to Comment 6, above.

24. *Comment:* The use of AMECs or the Clean Air Logix's Witmar Dual Voltage Cold Ironing System are viable technologies that can be used at the Middle Harbor Terminal until final build-out and easily transferred to other POLB terminals where significant toxic air emissions are being released. POLB also has the option to lease or rent them for shorter time periods.

Response: This operational issue is beyond the USACE's Federal control and responsibility. See responses to comments CSE(A)-7 and CBD-23 in the Final EIS/EIR.

25. *Comment:* The POLB has not conducted any assessment or study that indicates that Pier F locomotives using the ALECs is not viable. The POLB staff has only made generalizations. ALECS does not require that they be completed stationary. ALECS could be easily be modified to allow some movement and travel distance.

Response: This operational issue is beyond the USACE's Federal control and responsibility. See also response CSE(B)-26 in the Final EIS/EIR.

26. *Comment:* The use of the Vycon Electric Regen System on RTGs is a viable technology that can be used at the Middle Harbor Terminal until final build-out and easily transferred to other POLB terminals where significant toxic air emissions are being released by non-electric RTGs. POLB also has the option to lease or rent them for shorter time periods.

Response: See Response to Comment 24, above.

27. *Comment:* The claim that Electric-Powered Drayage Trucks are not a proven technology is not true. The Port of Los Angeles has successfully demonstrated that Electric Drayage Trucks are feasible for short haul trips and as yard hostlers. Continued support of this technology would greatly expand its distance and drayage capabilities. The use of Electric Drayage Trucks would have immediate and significantly local emissions reductions.

Response: This operational issue is beyond the USACE's Federal control and responsibility.

28. *Comment:* The POLB is required by CEQA and NEPA to include in the Final EIS/EIR a comprehensive assessment of Green House Gases (GHG) and a mitigation plan. POLB's statement that they will develop a plan is not satisfactory and does not comply with CEQA and NEPA requirements.

Response: Estimated GHG emissions resulting from the Project were fully disclosed and described in the EIS/EIR. In an effort to address the impacts of GHG emissions from the Project, the POLB has committed to implementing mitigation measure AQ-28 (GHG Emission Reduction Program), which would provide \$5 million towards GHG reduction measures including, but not limited to, generation of green power from renewable energy sources, ship electrification, goods movement efficiency measures, cool roofs to reduce building cooling loads and the urban heat island effect, building upgrades for operational efficiency, tree planting for biological sequestration of CO₂, energy-saving lighting, and purchase of renewable energy certificates (RECs). GHG emissions from the Project would exceed those under the NEPA baseline; however, there are no Federal standards or thresholds for determining significance of GHGs.

29. *Comment:* The POLB has a legal CEQA and NEPA responsibility to include in the cumulative impact assessment all projects that have been identified during the NOP/NOI and Draft EIS/EIR process that the POLB omitted/or and neglected to research. POLB is not allowed to randomly select which projects to include or not include, especially when it has not completed any assessment on the project. Reliance on other governmental regulatory research or studies does not relinquish the responsibility of the POLB to conduct its own independent research.

Response: Chapter 2 of the EIS/EIR provides a comprehensive listing of actions considered in the assessment of cumulative effects. The specific approved or pending actions identified in Final EIS/EIR Table 2.1-1 were selected because they represent related (i.e. large scale container terminal) projects that would be growth-inducing, are expected to generate potential impacts concurrently with the Project, and have publicly available information on the project descriptions and impact evaluations. The comment does not identify specific actions that were omitted.

30. *Comment:* The reliance on an outdated POLB forecasts and the failure to accept public comments regarding decreasing future cargo volumes has resulted in a failure to adequately justify the investment of public funds in the Middle Harbor Redevelopment Project. Not only are 2007 and 2008 low growth rate years, so is the current 2009 year and projections for 2010. There is no recent study that discloses any significant future growth for the POLB. The POLB has no proof from any of its tenants of any anticipated significant growth.

Response: Section 1.3.1.2 of the EIS/EIR addresses the long-term forecasts for cargo. Regardless of low growth rates in recent years due to the economic conditions, the POLB's projections for future container throughput growth are based on long-term demographic and economic trends for the U.S. and its trading partners, which account for fluctuating market demands over an extended period of time. Overall, market demand is expected to increase throughput over the term of the Project until the maximum physical capacity of the Middle Harbor container terminal is reached.

31. *Comment:* The POLB fails to understand that noise levels do not have to exceed state or Federal standards to be a public nuisance or cause sleep or rest

deprivation. The POLB has conducted no studies of residents living near the POLB and POLB freight transportation corridors to determine if they are having a noise impact. The POLB operating 24/7 would provide no public respite period. The POLB has failed to provide any public noise mitigation such as the free installation of sound proof glass with an STC rating of 55 or higher.

Response: As described in Final EIS/EIR Section 3.9.1.2, the specified three dBA increase in ambient noise levels is an industry standard criterion for the threshold of audibility that is widely used in the environmental review process by local agencies. Numerous mitigation measures would be implemented during construction to reduce noise impacts in the immediate vicinity of the POLB. Nevertheless, as discussed in Section 3.9 of the EIS/EIR, significant noise impacts from construction-related activities (including those within the USACE's scope of analysis) would remain. All feasible measures to control construction-related noise impacts have been incorporated into the project through the MMRP.

32. *Comment:* Although the POLB references USCG and IMO vessel routes and the Regulated Navigation Areas they failed to disclose the furthest distance from shore a ship could travel that could be adopted or required to protect sea mammals, which then could be made into a POLB mitigation measure. The statement that an increase in collisions would result from any changes is not the facts. Any change in vessel routes or spacing requirements would be made public record and all vessels and shipping companies would be advised. The POLB also fail to acknowledge that these routes were established more than 50 years ago before new GPS and other modern navigational technologies were invented and are now mandatory for use. They also failed to determine if a slower vessel speed would be of benefit. The POLB could petition and request a revision of ship vessel routes and although it may not happen overnight, it would be recognized as a legitimate and responsible mitigation measure.

Response: The off-shore operation of ocean going vessels is not within the USACE's Federal control and responsibility. Section 3.6.1.2 of the EIS/EIR provides a complete discussion of vessel traffic relative to the Project.

33. *Comment:* The POLB is obfuscating its responsibility in neglecting to include requirements in its lease agreements with its tenants to prevent negative environmental, public health, public safety, biological habitat and socioeconomic impacts from off-port property tenant activities such as offsite chassis assembly & storage yards, offsite container & cargo inspection facilities, fumigation facilities and offsite truck staging, parking and storage areas. The POLB has made no assessment of the categories of off-port property tenant business activities. The POLB has failed to conduct any CEQA or NEPA analysis that has identified these issues and impacts as a problem even though CFASE has requested such a study and mitigation.

Response: The USACE does not have any control or authority of the lease agreements between the POLB and its lease-holders, let alone the off-port business activities of those lease-holders.

34. *Comment:* The reference to recently developed Port complex models for predicting tsunami wave height, flooding and impacts contradicts recently published USC studies which describe significant potential impacts and financial consequences.

Response: As stated in Section 3.1 of the EIS/EIR, impacts due to seismically induced tsunamis are typical for the entire California coastline and would not be increased by construction activities. However, because the Project elevation is located within 10 to 16 feet above MLLW, there is a risk of coastal flooding due to tsunamis and seiches. Regardless, the likelihood of such an occurrence is extremely low. As a result, impacts would be less than significant under NEPA. No additional information as been provided to the USACE that would contradict the findings in Section 3.1 of the EIS/EIR.

35. *Comment:* The POLB sponsored White Paper on Environmental Justice prepared by the consulting firm Jones & Stokes identifies and recommends numerous recommendations that the POLB refused to adopt and incorporate into the Final EIS/EIR and mitigation measures. Due to the POLB's intentional 10-day limited public comment period this Environmental Justice Organization is unable to identify, list and describe each good recommendation.

Response: See response to Comment 1, above. USACE provided a 30-day comment period for the Final EIS/EIR.

36. *Comment:* The CFASE additionally incorporates previous submitted public comments into these. However, due to the POLB's intentional 10-day limited public comment period this Environmental Justice Organization is unable to identify each applicable comment, discrepancy, clarification and challenge.

Response: Previously submitted comments were addressed in the response to comments to the Draft EIS/EIR. USACE provided a 30-day comment period for the Final EIS/EIR.

37. *Comment:* CFASE additionally incorporates the majority of findings and recommendations of the SCAQMD and the EPA. However, due to the POLB's intentional 10-day limited public comment period this Environmental Justice Organization is unable to identify each applicable comment, discrepancy, clarification and challenge.

Response: The comment is noted; however it lacks any specificity as to which findings and recommendations are referred to. USACE provided a 30-day comment period for the Final EIS/EIR.