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November 5, 2021

Via Email & Overnight Mail

Mayor Robert Garcia
Long Beach City Council
Monique De La Garza
City Clerk
Port of Long Beach
411 W. Ocean Blvd., 11th Floor
Long Beach, CA 90802
Email: cityclerk@longbeach.gov
Pablo.Rubio@longbeach.gov

Re: Appeal of Approval of World Oil Tank Installation Project and Initial Study/Negative Declaration (SCH: 2020100119)

Dear Mayor Garcia, Councilmembers, Ms. De La Garza:

We are writing on behalf of **Safe Fuel and Energy Resources California ("SAFER CA")** and Long Beach residents Nicholas Garcia, Sopha Sum, and Sophall Sum to appeal the Board of Harbor Commissioners' October 28, 2021 decision to approve a Harbor Development Permit (No. 19-066) and approval of the Final Initial Study/Negative Declaration ("IS/ND") for the World Oil Tank Installation Project ("Project"), proposed by Ribost Terminal, LLC dba World Oil Terminals ("Applicant"). The Project seeks to construct two new 25,000-barrel petroleum storage tanks at the existing World Oil Terminal owned by Applicant located at the Port.¹ The terminal is 261,000 square feet (about 6 acres) and contains seven existing petroleum tanks of various sizes totaling a capacity of 502,000 barrels.² The two tanks would provide additional storage capacity of petroleum for refining and distribution and would make two of its existing larger tanks available for lease by

¹ IS/ND, p. 2-1.

² IS/ND, p. 1-1.
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third-party vendors.³ The IS/ND estimates a 10 percent increase in truck trips, as well as an increase in average barrel throughput of fuel oil, but not of crude oil, over existing operations at the facility.⁴

We previously submitted comments, along with our technical consultant, emissions and air quality expert Dr. Phyllis Fox, on the Draft IS/ND on November 20, 2020. After the Port released a Staff Report with responses to comments, we submitted rebuttal comments to the Board of Harbor Commissioners ahead of its October 28, 2021 hearing. Those comments are attached to this appeal and are incorporated by reference herein.

I. APPELLANT CONTACT INFORMATION

This appeal is being filed on behalf of Safe Fuel and Energy Resources California (“SAFER CA”) and Long Beach residents Nicholas Garcia, Sopha Sum, and Sophall Sum.

All appellants request that the City contact them through their representative, as follows:

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However, in order to comply with Municipal Code requirements, we hereby provide the addresses and phone numbers of the individual appellants, as follows:

Nicholas Garcia
6765 Olive Ave.
Long Beach, CA 90805
(323) 855-9730

³ IS/ND, p. 2-4.

⁴ IS/ND, p. 2-6.
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Sopha Sum
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Sophall Sum
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SAFER CA advocates for safe processes at California refineries and fuel transport and distribution facilities to protect the health, safety, standard of life and economic interests of its members. For this reason, SAFER CA has a strong interest in enforcing environmental laws, such as CEQA, which require the disclosure of potential environmental impacts of, and ensure safe operations and processes for, California's fuel production, storage, and transport projects. Failure to adequately address the environmental impacts of renewable or traditional fuel and other refinery product transport, storage, and refining processes poses a substantial threat to the environment, worker health, surrounding communities and the local economy.

Refineries and fuel transport, storage, and distribution facilities are uniquely dangerous and capable of generating significant fires and the emission of hazardous and toxic substances that adversely impact air quality, water quality, biological resources, and public health and safety. Absent adequate disclosure and mitigation of hazardous materials and processes, refinery and fuel terminal workers and surrounding communities may be subject to chronic health problems and the risk of bodily injury and death. Additionally, rail transport of fuel and other refinery products has been involved in major explosions, causing vast economic damage, significant emissions of air contaminants and carcinogens and, in some cases, severe injuries and fatalities.

SAFER CA supports the sustainable development of fuel resources in California. However, poorly planned refinery and fuel distribution facility projects can adversely impact the economic wellbeing of people who perform construction and maintenance work in refineries, port terminals, fuel distribution facilities, and the surrounding communities. Plant and terminal shutdowns caused by accidental toxic releases and infrastructure breakdowns have caused prolonged work stoppages. Such nuisance conditions and catastrophic events impact local communities and the natural environment and can jeopardize future jobs by

making it more difficult and more expensive for businesses to locate and people to live in the area. The participants in SAFER CA are also concerned about projects that carry serious environmental risks and public service infrastructure demands without providing countervailing employment and economic benefits to local workers and communities.

The members represented by the participants in SAFER CA live, work, recreate and raise their families in Los Angeles County, including the City of Long Beach. Accordingly, these people would be directly affected by the Project's adverse environmental impacts. The members of SAFER CA's participating unions may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants, and other health and safety hazards, that exist onsite.

II. GROUNDS AND EVIDENCE FOR APPEAL

We appeal the Board of Harbor Commissioners' approval of the HDP and IS/ND on the following grounds. The legal and factual grounds, as well as all supporting evidence, are contained in the prior comments submitted by SAFER CA and Dr. Fox, attached as Exhibits A and B, as well as the comments submitted on the Draft IS/ND by other commenters and attached as Exhibit C.

First, the Port failed to comply with CEQA when it failed to respond adequately to the vast majority of the comments we submitted on the Draft IS/ND, as well as failing to respond altogether to nearly all of the comments submitted by our technical expert, Dr. Phyllis Fox.⁵ The Port's responses to Dr. Fox's comments failed to address any of the specific, technical evidence she cited and instead simply directed the reader to its responses to comments by other commenters, most of which do not contain the same level of technical detail. Evidence of this egregious failure by the Port to uphold its duty to fully consider public comments can be seen in the attached Staff Report and Responses to Comments.⁶ Agencies are required to provide "detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made,

⁵ Comments submitted by SAFER CA and Dr. Fox on November 20, 2020 on the Draft IS/ND are attached and incorporated as **Exhibit A**. Comments submitted by SAFER CA and Dr. Fox on October 28, 2021 in rebuttal to the Port's responses to earlier comments are attached and incorporated as **Exhibit B**.

⁶ For the purposes of this appeal, we adopt and incorporate any and all issues raised in other comments submitted on the Draft IS/ND. The Port's Responses to Comments, which include all other comments, is attached hereto as **Exhibit C**.

that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful.”⁷ Comments raising significant environmental issues must be addressed in detail.⁸ Failure of a lead agency to respond to comments before approving a project frustrates CEQA’s informational purpose, rendering an EIR legally inadequate.⁹ “There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.”¹⁰

Second, the IS/ND is legally inadequate as it failed to provide substantial evidence to support its findings of no significant air quality, public health, and other impacts, as discussed in our comments. Additionally, the Port used flawed methodology in its analyses, resulting in underestimated impacts and unsupported conclusions, including the unsupported conclusion that the Project will have no significant impacts and requires no mitigation. Its conclusions, for example, that operational emissions are insignificant, omit any of the calculations or criteria supporting its conclusions—reviewers are left to accept, categorically and without question, the agency’s conclusory and unsupported statements. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.¹¹ The omission of information required by CEQA is a failure to proceed in the manner required by law.¹²

Third, substantial evidence supports a fair argument that the Project may result in potentially significant impacts. The IS/ND, therefore, is inappropriate and an EIR must be prepared,¹³ even if other substantial evidence supports the opposite conclusion.¹⁴ Here, the IS/ND itself provides substantial evidence of significant air quality impacts from Project VOC emissions, which by the Port’s own admission will

⁷ *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.4th 889, 904.

⁸ 14 Cal. Code Regs § 15088(c).

⁹ *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.4th 603, 615; *Rural Landowners Ass’n v. City Council* (1983) 143 Cal.3d 1013, 1020.

¹⁰ CEQA Guidelines, § 15088, subd. (c); *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; see *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124.

¹¹ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.

¹² *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

¹³ CEQA Guidelines § 15064 subd. (f), (h).

¹⁴ *See No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.
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exceed SCAQMD's offset threshold for its New Source Review Rule,¹⁵ triggering the Air District's offset requirement. Furthermore, Dr. Fox's comments provide an abundance of substantial evidence, found in both Exhibits A and B attached to this appeal, supporting fair arguments that the Project will have significant, unmitigated air quality impacts from emissions of construction, operation, fugitive sources, and increased facility capacity, all of which the Port failed to disclose and mitigate, in violation of CEQA.

Fourth, numerous instances can be found throughout the entire IS/ND demonstrating the Port's deliberate disregard for its legal obligation to comply with CEQA, particularly the aspects of the statute regarding public participation and disclosure of supporting documents. Instead of providing evidence to support its conclusions and to allow the public an opportunity to independently review the Project's potential impacts, the Port offered conclusory statements in its responses to comments, claiming that it coordinated with SCAQMD, for example, "to ensure that all new piping component fugitive VOC emissions are included in the emissions estimate."¹⁶ An agency's assurances that it has "ensured" the accuracy of a project's estimated impacts ignores the public participation requirement of CEQA.

In another blatant dismissal of its duties under CEQA, the Port relied on hidden studies to revise impact analyses of air quality for the Final IS/ND. Though the Applicant filed a new Permit to Construct/Permit to Operate with the Air District upon which most of the Final IS/ND's revised conclusions were based, the Port neglected to make the permit application available, yet again precluding any meaningful public review of its analyses. In its evaluation of operational emissions, its revised calculations, using an updated—though still clearly inadequate—modeling software included none of the estimation parameters or other details necessary to evaluate the completeness and accuracy of the calculations. Projects adversely affecting the environment have the potential to impact everyone, and CEQA therefore provides a mechanism by which to scrutinize the work done by lead and responsible agencies, so that all who stand to be affected by a project's impacts may invest in safeguarding it.

The IS/ND contains several more violations, as outlined in our comment letters, demonstrating that the Port improperly relied on mitigation measures

¹⁵ "The facility's existing potential to emit is above the SCAQMD New Source Review Rule VOC offset threshold of 4 tons per year; therefore, the new tank emissions were required to be offset." Draft IS/ND, p. 4-9.

¹⁶ *Id.*

disguised as design features in an effort to make impacts appear less significant than they are. Construction emissions, for example, are calculated assuming the use of Tier 4 Final construction equipment—which, as Dr. Fox pointed out, “is universally considered to be mitigation”—before the Port ultimately imposes a “Special Condition” intended to reduce construction emissions, but which it claims is not a mitigation measure. The IS/ND also suggested the use of emission reduction credits (“ERCs”) to offset VOC emissions, disregarding Dr. Fox’s prior comments explaining that ERCs are not valid mitigation. Nevertheless, the IS/ND improperly claims that none of them are mitigation. This is another violation of CEQA, which prohibits the use of mitigation measures disguised as project features.¹⁷


A negative declaration is, by definition, a declaration that the Project needs no mitigation because it will not result in any impacts. If any measures are imposed to avoid adverse impacts, even if the agency chooses to call them by another name, their very existence invalidates the preparation of an ND. An EIR must be prepared.

III. ACTION BEING REQUESTED

We respectfully request that the Council overturn the Board’s approval of the Harbor Development Permit and approval of the IS/ND and require that an EIR be prepared in which all Project impacts are 1) properly analyzed using appropriate methodology, 2) in compliance with the disclosure and public participation requirements of CEQA, and 3) fully disclosed and mitigated before being recirculated for the statutorily mandated public review and comment period.

Thank you for your consideration of this appeal. We reserve the right to submit additional comments and evidence to the Council prior to the hearing on this appeal, and in response to any new evidence or staff report prepared by the Port.

Sincerely,



Kendra Hartmann

Attachments
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¹⁷ *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 658.
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