VIA EMAIL AND HAND DELIVERY

Chair Smith and Port Commissioners
Board of Port Commissioners
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

Re: Comments on Final Environmental Impact Report for the San Diego Convention Center Phase III Expansion & Expansion Hotel Project & Port Master Plan Amendment and Related Approvals

Dear Chair Smith and Port Commissioners:

We write on behalf of the San Diego Coalition for A Better Convention Center ("Coalition") to provide comments on the Port’s Final Environmental Impact Report ("FEIR") for the San Diego Convention Center Phase III Expansion & Expansion Hotel Project & Port Master Plan Amendment ("Project"). Please accept these comments in addition to the Coalition’s comments on the Draft EIR ("DEIR") submitted June 29, 2012 (the FEIR and DEIR are together referred to as the “EIR”).

As noted in our previous comment letter, it was difficult to comment fully on the Project during the comment period for the DEIR, due to informational gaps in the DEIR and the number of issues associated with the proposed Project.¹ We submit these comments to bring to the Port’s attention our concerns about the FEIR before the Port decides whether to certify the EIR and approve the Project.

In general, many of the concerns raised in the Coalition’s comments on the DEIR have not been adequately responded to in the FEIR. Because the FEIR is 1,400 pages long and was published 10 days ago, the Coalition has not had adequate

¹ The Port provided the minimum public comment period of 45 days for the DEIR, and provided the minimum 10-day public-agency circulation period for the FEIR before today’s hearing to certify the EIR and approve the Project. (Pub. Resources Code §§ 21091(a), 21092.5(a).) 2572-0165
time to review and analyze it, but some of the key problems with the FEIR are addressed herein. Experts Matthew Hagemann and Daniel Smith have also provided responses to the Port’s response to their comment letters. These independent experts’ comments are attached hereto as Exhibits 1 and 2, respectively.

Based on our review of the EIR and supporting documents, we have concluded that the EIR does not comply with the basic requirements of CEQA and must be revised and recirculated for public and agency review. In addition, the draft Port Master Plan Amendment (“PMPA”) fails to comply with the California Coastal Act. Therefore, we urge the Port to prepare and circulate a revised Draft EIR for public and agency review and comment, to prepare and circulate a revised draft PMPA for public and agency review and comment, and to either deny or continue consideration to a future date all related proposed actions pending the legally necessary revisions to the EIR and PMPA.

I. THE PORT ADDED SIGNIFICANT NEW INFORMATION THAT REQUIRES RECIRCULATION OF THE EIR FOR PUBLIC REVIEW AND COMMENT

The Port made substantive changes to over 100 pages of the DEIR and to its technical appendices, yet failed to re-circulate the DEIR for public review and comment, as required by State law. The Port published these changes, in the FEIR, only ten days before the Port’s hearing to certify the EIR and approve the Project. Contrary to statements in the FEIR, many of the changes made to the DEIR constitute “significant new information” that requires the Port to recirculate the DEIR for additional public review and comment. The term “information” includes “changes in the project or environmental setting as well as additional data or other

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2 These include, but are not limited to, certification of the EIR and approval of the Findings of Fact and Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program, Port Master Plan Amendment, Ordinance Granting Amendment No. 1 to the Amended, Restated, and Combined Lease between the District and the San Diego Convention Center Corporation for the Convention Center Expansion Project, with conditions, and the Ordinance Authorizing a Support Agreement between the District and the City of San Diego for the Convention Center Expansion Project, with conditions, as set forth in the Port’s Special Meeting Agenda, Item #32, for September 19, 2012.

3 FEIR pp. 3-1 to 3-100 and technical appendices that follow (totaling 358 pages).

4 The FEIR was published on the Port’s website at approximately 5:30 p.m. on Friday, September 7, 2012, and the Port’s hearing on the FEIR is scheduled for 1:00 pm on Wednesday, September 19th.

information. New information is "significant" when its addition deprives the public of a meaningful opportunity to comment on substantial adverse impacts from projects or feasible mitigation measures that the project's proponents decline to adopt. Specifically, recirculation is required when the new information added shows: (1) a new significant environmental impact from the project or from a mitigation measure; (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; (3) a project alternative or mitigation measure, considerably different from those considered in the EIR, that would lessen the environmental impacts, but the project opponents refuse to adopt it; or (4) the draft EIR was so inadequate and conclusory that public comment was meaningless.

Here are some of the major changes in the EIR that constitute significant new information and require recirculation:

- The Project description has been revised to indicate that the Project will include a brackish water desalination and contamination treatment system capable of treating 140,000 gallons of pumped groundwater per day (the amount of water used by 400 households).

- The impacts analysis has been revised to indicate that the entire Project site is potentially contaminated and that the Project will be constructed on a closed landfill, requiring a regulated post-closure plan overseen by agencies not identified in the DEIR. The Project description now indicates that up to 17,500 cubic feet of soil (about 500 truckloads) would be excavated, and if contaminated would be disposed of at a Class I landfill located 3 to 4 hours from the Project site.

- The Sewer Capacity Study has been revised to indicate that wastewater flows from the Convention Center and surrounding facilities will be almost three times the flows predicted in the DEIR.

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6 CEQA Guidelines § 15088.5.
7 Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal. (1993) 6 Cal.4th 1112, 1129-130.
8 Id. at 1130; CEQA Guidelines § 15088.5(a).
9 FEIR p. 3-19.
10 Ibid. p. 3-19 (Convention Center) and 3-20 (hotel).
11 FEIR p. 6-242.
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requiring an upgrade to a 24-inch sewer main that itself might not be sufficient.\textsuperscript{12}

- The mitigation requirement to prepare a solid waste management plan for the Convention Center Expansion Project has been removed, because the City is allegedly exempt from this requirement.\textsuperscript{13} The FEIR also refuses to provide waste generation information for the Convention Center Expansion Project that was specifically requested in comments on the DEIR.\textsuperscript{14}

These and other changes in the EIR constitute significant new information that the public has not had an opportunity to review and comment upon. The EIR must be recirculated.

II. \textbf{THE FEIR DOES NOT ADEQUATELY EXPLAIN WHY THE PROJECT OBJECTIVES AND THE RANGE OF AVAILABLE PROJECT ALTERNATIVES ARE UNREASONABLY NARROW}

Contrary to a statement in the FEIR, the Port’s responses to comments about the overly narrow project objectives for the Convention Center Expansion Project do not “identify additional evidence” to support the project objectives.\textsuperscript{15} The FEIR provides no additional evidence or factual explanation to support the narrow scope of the project objectives and the chosen range of project alternatives based on those objectives. The FEIR makes two arguments, neither of which justifies the narrow scope of the project objectives. First, the FEIR dismisses statements in the 2009 ERA/AECOM report that,

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  \item 89% of lost business at the Convention Center could fit inside an expansion building as a “self contained event” and on a “self contained basis,” and
  \item Even though contiguous exhibit halls are preferred, the “consensus among interviewees” is that attendees would be willing to work with a noncontiguous space in San Diego.
\end{itemize}

\textsuperscript{12} FEIR, Chapter 3, revised Sewer Capacity Study (August 2012).
\textsuperscript{13} FEIR p. 6-69.
\textsuperscript{14} FEIR pp. 6-69 to 6-70.
\textsuperscript{15} FEIR p. 6-111 (referring to responses to comments I-8 through I-12, all but one of which simply states that no response is required, or refers to other responses).
\textsuperscript{2579-015}}
The Port simply responds that the 2009 report acknowledged the “market appeal” of a contiguous space, and that it did not conclude that 89% of lost business definitely would book a noncontiguous space. The Port fails to adequately address the statements made in the report or provide any evidence to refute them.

Second, the FEIR makes a legal argument that the Project is like those in other CEQA cases where courts upheld an agency’s rejection of off-site alternatives. The cases cited in the FEIR do not support the Port’s decision to initially reject consideration of off-site possibilities, and refuse to consider them as project alternatives in the DEIR, based primarily on the narrow scope of the project objectives. Most of the cases cited by the Port involved agencies that did give consideration in an EIR to off-site alternatives. The remaining cases did not involve disputes over the scope of project objectives, with one exception, a case which held that project objectives were not overly broad. Unlike those cases, the project objectives here are overly narrow and were purposefully written so as to preclude CEQA analysis of any off-site alternative. The Port has not provided a convincing argument otherwise.

The Port further explains its decision to reject consideration of off-site alternatives by first noting that constructing a stand-alone facility would require new kitchens, laundry facilities, receiving areas and truck docks, plus offices and support facilities. Project documents already indicate that the Expansion Project is designed to include a “back of house” area of over 28,000 square feet, including a 16,000 square-foot kitchen. 22 new truck docks will be added to the Expansion

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16 FEIR p. 6-103.
17 Ibid., pp. 6-108 to 6-110.
18 Jones v. Regents of the Univ. of Cal. (2010) 183 Cal.App.4th 818, 825-829 (agency considered off-site alternatives; petitioner had not challenged the scope of the project objectives and therefore could not bring that claim on appeal); Save San Francisco Bay Assn. v. San Francisco Bay Conservation and Devt. Commn. (1992) 10 Cal.App.4th 908, 921-922 (agency considered off-site alternatives and adequately analyzed them; the scope of the project objectives was not challenged); City of Long Beach v. Los Angeles Unified School Dist. (2009) 176 Cal.App.4th 889, 919 (agency analyzed off-site alternatives; decision to choose on-site alternative was supported by substantial evidence); Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School Dist. (1994) 24 Cal.App.4th 826 (same).
20 FEIR p. 6-250.
21 Ex. 3, Request for Water Supply Assessment, p. 4; see also Notice of Preparation of the EIR, p. 3 (Dec. 2010).
Project, and the Expansion Project will include offices and support facilities.\textsuperscript{22} The FEIR does not explain what additional facilities would be needed in a stand-alone expansion, and why it would be prohibitive to include them in an off-site project design.

The Port notes that the Project would not be as compatible with land uses near off-site alternatives because the Project would be closer to residences or would require the removal of marine terminal facilities or parks.\textsuperscript{23} However, the existing Project proposal would remove an existing park and would be located on a contaminated closed landfill site within a designated public accessway and view corridor. As explained below, the potential need to remove marine facilities has been overstated. There are incompatibilities inherent with all potential project sites, and this is not a good reason for completely failing to conduct an analysis of any off-site alternative.

The Port acknowledges that the Tailgate Park site was not deemed infeasible due to the presence of an active fault, stating that this was a factor but was not the primary consideration when determining the feasibility of the site.\textsuperscript{24} However, the only other feasibility factor noted in the DEIR is the economic/marketability conclusions in the 2009 ERA/AECOM report, which, as noted above, does not support a decision that a non-contiguous site is economically infeasible.\textsuperscript{25} Therefore, the City's reasons for rejecting this alternative as infeasible are not supported by substantial evidence.

The FEIR's rationale for not considering the Tenth Avenue Marine Terminal Site as a feasible Project alternative is similarly flawed. The FEIR lists the facilities operating at the Tenth Avenue Marine Terminal, including refrigerated dock space, warehouses and sheds, a silo complex and a dock crane, and implies that these facilities would need to be removed to accommodate this alternative.\textsuperscript{26} The DEIR notes, however, that the Tenth Avenue Marine Terminal alternative site would only occupy the "northern corner" of the Marine Terminal.\textsuperscript{27} Aerial views of the Marine Terminal show that the dock space, warehouses and sheds, the silo complex and the dock crane are not located on the northern corner of the site, but

\textsuperscript{22} See Notice of Preparation, \textit{id}.
\textsuperscript{23} FEIR p. 6-251.
\textsuperscript{24} FEIR p. 6-254.
\textsuperscript{25} DEIR p. 7-5.
\textsuperscript{26} FEIR p. 6-256 to 6-257.
\textsuperscript{27} DEIR p. 7-6; see also ERA/AECOM report, rejected site alternative options 4 and 5.
would be left intact by the proposed Project alternative. The FEIR’s explanation that “remediation could be required” at the Tenth Avenue Marine Terminal lacks any supporting evidence. Finally, the alleged conflicts with the Port’s land use policies are overstated. Port Master Plan land use designations would need to be changed for the Proposed project site, just as they would for the Tenth Avenue Marine Terminal site. Moreover, the Port’s obligations to maintain maritime activities at the Marine Terminal would not be violated, as the vast majority of the Marine Terminal, the portion that includes structures, docks, and loading/unloading facilities, would remain unchanged.

The Port’s failure to consider the South Embarcadero Alternative Site is similarly unsupported. The FEIR’s explanation that the Embarcadero Marine Park South is now used for picnicking, concessions, and concerts, etc., followed by the explanation that the Expansion Project would provide a rooftop space with even greater recreational capacity, does not add up to an explanation for why the South Embarcadero Alternative Site “would likely not be politically feasible.” If anything, this explanation shows that the Port gave only passing consideration to potential off-site alternatives, without valid reasons for rejecting them.

The Port’s assertion that it used independent judgment in conducting the alternatives analysis is belied by an e-mail from the Port’s lead staff person for the EIR, sent April 25, 2012, less than three weeks before the DEIR was published. The staff person asked the City’s consultant for “any information” on alternatives that were considered but rejected, and the City’s consultant responded that his only source of information was the 2009 Mayor’s Citizens Task Force Report, where off-site alternatives were briefly considered but rejected. This indicates that the Port did not conduct a reasoned analysis of off-site Project alternatives, but instead adopted the City’s previous determinations, without further analysis. The EIR must be revised to incorporate Project alternatives that are not narrowly drawn to exclude any off-site alternatives to the Convention Center. Furthermore, the EIR should consider apparently feasible off-site alternatives, including the Tailgate Park site, Marine Terminal site, and South Embarcadero Alternative site.

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28 Ex. 4.
29 FEIR pp. 6-257 to 6-258.
30 FEIR pp. 6-258 to 6-259.
31 Ex. 5.
2572-015j
III. THE PORT IMPROPERLY REFUSED TO USE SIGNIFICANCE THRESHOLDS AND BASELINE METHODOLOGIES REQUESTED BY THE CITY

The City asked the Port to use the following methodologies, all of which the Port rejected for unexplained and improper reasons:

- The city made repeated requests, including in its comments on the Notice of Preparation before the DEIR was prepared, to analyze the “near term plus Project” traffic impacts as direct Project impacts, rather than cumulative impacts. The Port responded that it had followed the City’s established traffic impact standards and guidelines, except as to the definition of project versus cumulative traffic impacts, for which it used the “Sunnyvale” approach. Rejecting the City’s request ignores recent court determinations that a lead agency is allowed to use the City’s adopted approach to measuring traffic impacts.\(^\text{32}\)

- The City requested that its standards and guidelines be used for assessing impacts to biological and historical resources. The Port’s response is essentially that the Port is simply not required to use those thresholds, without explaining why its thresholds for biological and historical resources are more appropriate.\(^\text{33}\)

- The City requested that its adopted interim guidelines for estimating GHG emissions be used, rather than the Bay Area Air Quality Management District’s (BAAQMD) guidelines, which were recently ordered rescinded by a court. The Port responded that it did not need to use the City’s standards, and that the BAAQMD standards could still be relied upon because the court threw them out on CEQA grounds.\(^\text{34}\)

If an agency like the City submits comments on a draft EIR requesting that a particular methodology be used to assess impacts, the lead agency must provide a

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\(^{32}\) FEIR pp. 6-44, 6-86; see Neighbors for Smart Rail v. Exposition Metro Line Construction Authority (2012) 205 Cal.App.4th 552 (use of a future baseline for analyzing traffic impacts is appropriate if supported by substantial evidence).

\(^{33}\) FEIR p. 6-40.

\(^{34}\) FEIR p. 6-40, 6-43.

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reasoned, good faith response supported by factual information.\textsuperscript{35} Conclusory responses to comments from other agencies that criticize methodologies used to assess impacts are inadequate.\textsuperscript{36} Furthermore, a commenting agency’s recommendations and objections must be addressed in detail and the lead agency should explain its reasons for not accepting those suggestions.\textsuperscript{37} This is especially true when evidence is submitted tending to show that an impact might be significant, despite the standard used by the lead agency.\textsuperscript{38} If the agency does not change its methodology, it should respond by explaining the factual and policy basis for the standard used and why the project meets the standard.\textsuperscript{39} The Port has done a poor job of explaining why it rejected the City’s requests to use established standards that apply to all projects within the City’s jurisdiction. The Project is within City limits and the Port provided only conclusory responses to address the City’s requests.

IV. THE EIR’S CONCLUSIONS REGARDING POTENTIALLY SIGNIFICANT PROJECT IMPACTS LACK SUBSTANTIAL EVIDENCE AS REQUIRED BY CEQA; THE EIR FAILS TO INCORPORATE ALL FEASIBLE MITIGATION MEASURES NECESSARY TO REDUCE SUCH IMPACTS TO A LEVEL OF INSIGNIFICANCE

A. Aesthetic Impacts

The City commented that KOP 6 and KOP 7 are vantage points on the Harbor Drive pedestrian bridge that are not representative of the more sweeping views of the Bay and Coronado.\textsuperscript{40} The City attached photographs showing views from the bridge that show more waterfront than those depicted in KOP 6 and KOP 7, arguing that these views should not be characterized as “moderate,” as were KOP 6 and KOP 7. The FEIR responds by reiterating why KOP 6 and KOP 7 are

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\textsuperscript{35} Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners (2001) 91 Cal.App.4th 1344, 1367, 1371.
\textsuperscript{36} Id.
\textsuperscript{37} CEQA Guidelines, § 15088(c); People v. County of Kern (1976) 62 Cal.App.3d 761.
\textsuperscript{40} FEIR p. 6-58.
\end{flushleft}
considered moderate (i.e. "intervening elements"), but does not address why the more sweeping views from the bridge were not analyzed.\textsuperscript{41}

The EIR is incorrect and provides no evidence that the Project will have no effect on the existing designated Park Boulevard major view corridor. As the EIR notes, this view corridor requires a minimum width of 120 feet, and it is centered on the existing Park Boulevard right of way.\textsuperscript{42} The Project will realign Park Boulevard, and the new Expansion Project buildings will be situated where Park Boulevard once was.\textsuperscript{43} Therefore the designated view corridor must be redesignated along the realigned Park Boulevard.

The FEIR's response to comments about walling off views of key visual resources now visible from KOP 1 and KOP 2 is insufficient and not supported by any evidence.\textsuperscript{44} The EIR acknowledges that these are key visual resources that will be removed from view at these designated vista points, but concludes that the Project will "contribute to the urbanized nature of the existing vista area."\textsuperscript{45} The FEIR ignores the reduction in visual quality from the vista areas from the removal of key visual resources, implying that only the open-water views available from these areas are important. The EIR should be revised to find significant impacts on these existing views.

B. Air Quality Impacts

1. Impacts from disposal of contaminated soil have not been addressed

As noted in the Coalition's comments on the DEIR, the availability and capacity of suitable disposal facilities for contaminated soil that will likely need to be removed from the Project site must be analyzed. After reviewing cleanup reports and documents for similar nearby projects, it is even clearer that potentially significant impacts will occur and must be accounted for in the EIR.

\textsuperscript{41} FEIR pp. 6-58 to 6-60.
\textsuperscript{42} FEIR p. 6-215.
\textsuperscript{43} \textit{See} DEIR Figures ES-1, ES-2, and ES-3.
\textsuperscript{44} FEIR pp. 6-153 to 6-155.
\textsuperscript{45} \textit{Ibid.} p. 6-153.
\textsuperscript{2572-015j}
In 2006, Ninyo & Moore issued a report on the cleanup of hazardous waste discovered while constructing the Hilton hotel, adjacent to the Project site. The contamination was discovered in an area that had already been remediated. As a result, 55 large truckloads of excavated soil totaling 968 cubic yards (1,452 tons) were hauled to the Copper Mountain Landfill in Welton, Arizona, a Class I waste disposal facility. Similarly, a remediation plan was developed for the first Convention Center expansion project, also adjacent to the Project site. The remediation plan estimated that construction activities would expose 19,000 cubic yards (28,500 tons) of contaminated soil, and recommended treating the majority of this soil onsite, and exporting 2,500 cubic yards to a Class I hazardous waste disposal facility. In comparison to the Hilton hotel project, this would have equaled approximately 137.5 large truckloads of highly contaminated soil (two and a half times the number of trucks used for the Hilton hotel project).

There is no reason to think that this Project, which involves an expansion of the previous two projects, would have different results. The EIR refers to prior clean-up activities on the Project site that “may” reduce the amount of contaminated soil encountered. As Mr. Hagemann showed in the map provided with his comments on the DEIR, these remediated areas are limited, and the largest one is not on the Project site. The bulk of the Project work, including re-aligning Park Boulevard, constructing new Convention Center structures, constructing a new tower at the Hilton hotel, and upgrading the existing trunk sewer line along Harbor Drive, will not occur in the previously remediated areas and will instead occur in an area that once contained a City trash incinerator and is known to be contaminated with burn ash and residual waste from other industries, including the nearby rail yard and a former coal gasification plant. The EIR has been revised to indicate that approximately 17,100 cubic yards of soil will be exported from the Project site, and soil will also be imported. The EIR does not...

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46 Ex. 6, Excerpts from Report of Soil Excavation, Hilton Hotel Site, Former Campbell Shipyard, San Diego, California, pp. 4, 10, Table 2, and Appendix C (Sep. 11, 2006).
47 Ibid.
48 Ibid.
50 Ibid.
51 See Ex. 6, Figure 2 for a larger version of this map showing remediated areas.
52 Ex. 8, San Diego Unified Port District, A Historical Perspective of the Eight Avenue Tidelands Dump (1994).
53 FEIR p. 3-19 and 3-20.
2572-015]
explain why the exported soil cannot be reused on site. The new estimate of exported soil is not based on a hazardous waste characterization, as was done for the previous Convention Center expansion project, but on a rough estimate from the City based on engineering estimates. The EIR has been revised to indicate that if the exported soil is contaminated, it will be shipped to a Class I landfill in Welton Arizona or Kern County California, both 3 to 4 hours away. The revised emissions estimates for the Hotel project alone indicates that the 10,000 cubic yards of soil estimated to be exported from the site will require 500 truck trips. This means that the Convention Center Expansion Project, which will export 7,100 cubic yards of soil, would require 355 truck trips.

The Port has refused to address the impacts to traffic, air quality, human health, and greenhouse gas emissions associated with transporting soil that is likely contaminated with lead, polycyclic aromatic hydrocarbons, and dioxins to an appropriate landfill facility located several hours away. If even a portion of the soil excavated for the Project is contaminated and needs to be transported and disposed of in a Class I landfill, this will require a significant disposal effort involving hundreds of trucks carrying highly toxic materials to far-away disposal sites. Based on the Port’s experience with prior similar projects, this type of remediation effort should be expected, and encountering contamination will likely require more soil excavation than is currently projected. Yet, the EIR’s revised emissions calculations only estimate that haul trucks will travel a round-trip distance of 20 miles. The EIR also makes no provision for protecting public health associated with toxic air contaminants in dust from haul trucks. It also does not consider on-site soil remediation or other treatment and disposal alternatives to reduce soil toxicity and avoid transport to a Class I disposal site. What is more startling is that the EIR and the City’s correspondence about the Project acknowledges that visitors will still be allowed to access the promenade and waterfront areas during construction activities. This may have severe public health impacts that need to be addressed upfront in the EIR.

2. Feasible air-emissions reduction measures were improperly rejected

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54 FEIR pp. 6-241 to 6-242.
55 FEIR Chapter 3, attached emissions calculations for Expansion Hotel.
56 FEIR Chapter 3, attached emissions calculations for Expansion Hotel and SDCC Phase III Expansion.
57 FEIR p. 6-162; Ex. 9.
2572-016
The FEIR improperly rejects a suggestion made in comments on the DEIR, that the Project’s significant air pollutant emissions could be offset by purchasing emissions credits and offsets through established emissions banking programs in San Diego County. The FEIR concludes that because the majority of emissions associated with the Project are from mobile and area sources, these offsets or emissions credits would not be applicable and therefore would not be a feasible form of mitigation.\(^{58}\) This is an inadequate explanation, for two reasons. First, as the EIR acknowledges, the Project is not covered by the applicable SIP or the RAQS adopted by the San Diego Air Pollution Control District (SDAPCD). What this means is that the Project’s emissions are not entitled to rely on the air-emissions significance thresholds that have been established by the SDAPCD for emissions sources contemplated by the SIP and RAQS. Those thresholds are used to reduce and mitigate emissions from the anticipated growth assumptions in the SIP and RAQS. Because the Project does not fall within those growth assumptions, all of the Project’s emissions of the criteria pollutants for which the air basin is in non-attainment will necessarily create a significant impact on air pollution, and contribute to the existing violations of those air quality standards. In short, the Project cannot rely on SDAPCD’s significance thresholds, because those thresholds were not intended to cover growth beyond what was projected in the SIP and RAQS. The EIR’s conclusion that the only feasible mitigation for this problem is to seek an amendment to the SIP and RAQS does not address the concrete emissions reduction steps that could be taken prior to Project construction, including participation in SDAPCD’s emissions reductions credits (ERC) program.

Second, SDAPCD does have an ERC program for both mobile sources and stationary source emissions, as noted in footnote 140 of the Coalition’s comment letter on the DEIR. Stationary source ERC’s are banked pursuant to SDAPCD Regulation II, Rule 26, and mobile source ERC’s are banked pursuant to Regulation II, Rule 27. SDAPCD’s website indicates that participants in these ERC banking programs have banked 6.83 tons of mobile ERC’s for NOx, as well as a number of ERC’s for stationary sources.\(^{59}\) Even though the Project is outside the scope of emissions regulated under the SIP and RAQS, and will therefore necessarily have significant impacts on already impaired air quality in the area, the FEIR gives only passing consideration and then rejects the feasible mitigation measure of participating in SDAPCD’s ERC programs by purchasing ERC’s to offset the Project’s air quality impacts. The conclusion that the Project’s air quality impacts

\(^{58}\) FEIR p. 6-163.

are significant should apply to all air emissions for which the air basin is in non-
attainment, and the EIR should be revised to address feasible mitigation measures
to reduce those impacts.

C. Hazards and hazardous materials

1. Remediation of contamination will be required

There is no question that soil remediation, removal, and disposal of
hazardous waste will be required prior to developing the Project site, as it has been
for every previous project in the immediate vicinity. There is no reason to believe
that this Project will be different. First, consider the site’s history as a long-
standing dumping grounds for garbage and incinerator ash. In 1994, the Port
prepared a report on the history of the “Eight Avenue Tidelands Dump.”60 (Eighth
Avenue is now named Park Avenue and it runs through the Project site.) The
report describes the storied history of open burning and the dumping of garbage and
incinerator waste along the tidelands in the location of the Project site, from 1899
through the 1950’s:

[By 1907], substantial amounts of garbage and rubbish had
accumulated and were openly burned on the site... [In 1913] the
McGuire Incinerator was completed... The incinerator operation
quickly deteriorated and became subject to tremendous public
controversy... The City began to dispose of this accumulated rubbish
directly into the Bay. The Harbor Department frequently wrote letters
to the City and the Mayor protesting this tidelands dumping... [and]
threatened to pursue legal action... McGuire Incinerator was
completely inadequate to handle the amount of rubbish that was being
delivered... [In 1927] Mr. Duerr began dumping and burning rubbish
on tidelands adjacent to the incinerator facility. Airborne ashes and
partially incinerated debris from the tidelands dump were found as far
as Market and 32nd Street... [A court] ordered Mr. Duerr to cease
operations... [but] authorized Mr. Duerr to continue dumping 'until
such time as a new disposal plant is built...'... Mr. Duerr continued to
burn rubbish on tidelands... as land reclamation adjacent to the City
incinerator provided additional area to dump and burn rubbish... The
new Rubber Reduction Plant was built in 1934 and had immediate

60 Ex. 8.
2572-0165
operating problems... During an inspection, over 220 tons of rubbish were dumped and burned on tidelands... The Tidelands Dump became known as the 'Rat Farm'... In September of 1935, City Attorney... reported that the Tidelands Dump was undoubtedly a public nuisance... as residue from the incinerator was being dumped daily on the tidelands... [A]erial photographs suggest that open burning and tidelands dumping continued through the 1940's and possibly into the early 1950's.

Next, consider the history of projects in the immediate vicinity of this Project, all of which encountered hazardous waste, including burn ash, railyard-related waste, and other industrial waste:

- In 1987-1988, while routing electrical lines to the new Convention Center, San Diego Gas & Electric encountered "creosote, heavy metals, and petroleum hydrocarbons in the vicinity of Eighth Avenue." The ensuing cleanup "cost almost one million dollars before the new electrical lines could be installed."\(^{61}\)

- In 1989, the Metropolitan Transit Development Board received a Notice of Violation from the County of San Diego for improperly disposing of soil excavated during the realignment of railways near the Project site. The excavated soil and the site were assessed for contamination, and tens of thousands of tons of soil were treated to reduce their toxicity, and then disposed of in Class II landfills.\(^{62}\)

- By 1994, soil testing had revealed a large "Burn Ash Impacted Area" spanning much of the currently proposed Project site. "Because of the presence of burn ash contamination, the cost of excavation and construction projects in the Eighth Avenue vicinity [...] greatly increased."\(^{63}\) The Port "implemented a review program for proposed construction and maintenance projects on tidelands within the burn ash impact zone," to "minimize the disturbance of burn ash and to adequately provide for the health and safety of workers involved in these projects."\(^{64}\)

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\(^{61}\) Ibid. pp. 19-20.
\(^{62}\) Ibid. pp. 20-23 (report indicates that some of this waste should have been disposed in a Class I landfill, but was not).
\(^{63}\) Ibid., p. 15 and Figure 3.
\(^{64}\) Ibid. pp. 17-18.
“As plans were made to expand the existing San Diego Convention Center onto the adjacent parking lot, the [Port] foresaw that a site-wide investigation into the subsurface conditions at the proposed expansion site would be necessary.” It retained consultants to perform investigations of subsurface soil and groundwater contamination, which confirmed the presence of problematic contamination, trash, and burned debris in approximately 105,100 cubic yards of soil.\textsuperscript{65} A 253-page Remedial Action Plan was prepared, consisting of 135 pages of written analysis and 118 pages of references and appendices.\textsuperscript{66} The Remedial Action Plan included a detailed analysis of hazardous waste treatment options and alternatives, as well as a detailed analysis of construction-worker exposure to health risks.\textsuperscript{67} It noted that because the site included a closed solid waste disposal site, the project was subject to oversight and approval from the U.S. Environmental Protection Agency, California Integrated Waste Management Board, Department of Toxic Substances Control, and the San Diego County Department of Environmental Health.\textsuperscript{68} The recommended cleanup strategy was estimated to cost from two to three million dollars.\textsuperscript{69} The Remedial Action Plan, however, did not analyze the potential presence of dioxins and related dangerous compounds that are routinely found in burn ash materials, and it therefore concluded that some contaminated soil could be re-used onsite.\textsuperscript{70} The 1995 Remedial Action Plan was prepared before the EIR for the expansion project. Later reports note that in 1997 the final site closure workplan for the project was prepared, including closure of the former solid waste disposal facility once used for the disposal of burn ash and other waste.\textsuperscript{71} The closure plan included using layers of soil and two polyethylene geomembranes to “cap” the contamination in place. This closure area is now the portion of the currently proposed Project site that is labeled as “historic burn ash” area on DEIR Figure 4.7-1.

\textsuperscript{65} Ex. 7, pp. 3-9 to 3-10.
\textsuperscript{66} See Excerpts of the Remedial Action Plan, \textit{ibid}.
\textsuperscript{67} \textit{Ibid}.
\textsuperscript{68} \textit{Ibid.}, p. 3-1.
\textsuperscript{69} \textit{Ibid.}, Table 6-2, 6-4.
\textsuperscript{70} \textit{Ibid.}, pp. 2-12, 3-7, 6-3.
\textsuperscript{71} Ex. 11, Excerpt from South Embarcadero Redevelopment Program 2 EIR Hazardous Materials Evaluation, Campbell Shipyard and Fifth Avenue Landing, pp. 28-29 (2000).
• In 2000, a hotel project was proposed on a portion of the current Project site. Although the project was never constructed, an EIR was prepared that included an investigation of potential soil and groundwater contamination. The report reviewed historical aerial photos and fire insurance maps, as well as previous remediation studies, and concluded that contaminated soil may present risks to human health and threaten the environment. It recommended a human health and ecological risk assessment for the entire site, and an approved health and safety plan for all soil excavation associated with the proposed project.

• During construction of the Hilton hotel in 2006, a 200 square-foot area of pooled, free-floating contamination was discovered during site grading in an area that was previously presumed not to be contaminated. A health and safety plan was immediately prepared and 55 large truckloads of contaminated soil were excavated and hauled to a Class I hazardous waste disposal facility in Arizona.

Given the history of this site and surrounding sites, it is almost certain that contamination exists that will threaten human health and the environment. Moreover, this project will involve the modification of a closed solid waste disposal facility. Accordingly, as with the first Convention Center expansion, the California Environmental Protection Agency, California Integrated Waste Management Board (IWMD), and San Diego County Department of Environmental Health (DEH) must be contacted in order to designate a Lead Enforcement Agency (LEA), develop a site remediation and closure plan, and oversee the process of modifying the closed site. The DEH has specific guidelines in its Site Assessment and Mitigation Manual with an appendix that applies to burn ash dump sites.

An approved remedial action plan and health and safety plan based on a human health and ecological risk assessment will be necessary for this Project site prior to construction. Yet the FEIR pretends that the necessity for these precautions is still only a possibility. This is inadequate given the site’s history. The FEIR revises mitigation measure MM-HAZ-1b to state that a Site Remedial

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72 Ex. 11.
73 Ibid., pp. 54-55.
74 Ex. 6, p.2.
75 Ibid.
76 See Ex. 7, p. 3-1.
77 See Ex. 1, Comments of Matthew Hagemann, Exhibit A.
Action Workplan and a Community Health and Safety Plan will only be required "if the event hazardous materials are determined to be present."\textsuperscript{78} The presence of hazardous materials, in turn, will be determined under MM-HAZ-1a. As explained below, neither of these mitigation measures is sufficient to reduce the potential for significant human health and ecological impacts to a less-than-significant level.

2. Revised mitigation measures are still inadequate

In response to comments about the likelihood of widespread contamination and the need for remediation on the Project site, the FEIR revises DEIR Figure 4.7-1 to show the "approximate location of possible contaminated soil" as covering the entire Project site, but retains the depiction of a smaller area within the project site labeled "approximate location of historic burn ash material."\textsuperscript{79} Mitigation measure MM-HAZ-1a has not been changed, and still states that "a Phase II ESA shall be prepared by the Project Applicant for the portion of the Project site located in Figure 4.7-1."\textsuperscript{80} The minor revision to Figure 4.7-1 does not instill confidence that the impacts of hazardous materials will be adequately mitigated. First, it is not clear that a Phase II ESA must be conducted for the entire Project site. MM-HAZ-1a actually suggests the opposite, that only a portion of the site must be investigated. Revised Figure 4.7-1 and MM-Haz-1a can be interpreted as only requiring a Phase II ESA on the "portion of the Project site" labeled as the "historic burn ash" area, not the entire site.

The revisions to Figure 4.7-1 not only fail to make clear that the Phase II must cover the entire site, but they mislead the reader into thinking that the extent of burn ash contamination on the Project site is limited. Multiple documents, many of which were allegedly reviewed when preparing the EIR, state that burn ash from the City's incinerator was "deposited directly into the tidelands" or mixed with trash and hydraulic fill material and used to fill the entire area beneath and around the Convention Center.\textsuperscript{81} These reports state that the Fifth Avenue Landing and former Campbell Shipyard sites, where the Project will be constructed, were created with "hydraulically-placed fill and waste disposal material derived from an incineration facility operated by the City of San Diego during the early 1900's."\textsuperscript{82}

\textsuperscript{78} FEIR pp. 6-136 to 6-137.
\textsuperscript{79} FEIR Chapter 3, revised Figure 4.7-1.
\textsuperscript{80} FEIR p. 3-49.
\textsuperscript{81} E.g., Ex. 7, p. ES-1; Ex. 11, p. 11.
\textsuperscript{82} Ex. 11, p 11.
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One report also notes that burn ash materials are regulated as hazardous and that the Project site is a regulated post-closure waste disposal facility subject to oversight and regulation by the California Environmental Protection Agency.\textsuperscript{83} As early as 1994, the Port had commissioned a study concluding that the burn-ash area extends far beyond that shown in the EIR.\textsuperscript{84} The burn-ash area identified in Figure 4.7-1 is only that portion of the previous Convention Center expansion project that underwent remediation in the form of capping contamination in place.\textsuperscript{85} Not only did the Phase I study commissioned for this Project fail to identify the larger burn-ash area, but in response to comments the FEIR fails to acknowledge it as well. Figure 4.7-1 must be revised to disclose the significant new information reflecting that burn ash is likely present in fill on the majority, if not all, of the Project site.

Moreover, MM-HAZ-1a does not commit to testing for dioxins and related chemicals. As noted above, the 1995 Remedial Action Plan for the first Convention Center expansion project analyzed lead and poly aromatic hydrocarbons in burn ash, but did not analyze whether it contained dioxins and furans, which are commonly found in burn ash. The Remedial Action Plan did, however, recommend that those compounds be tested for, and explained the human health and ecological risks associated with those chemicals:

During the previous investigative studies performed at the former burn ash site, the presence of certain compounds such as polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated-dibenzo-p-furans, phenols and cyanide, were not investigated. The “Burn Ash Sites” section of the San Diego County Site Assessment and Mitigation (SA/M) Manual recommends that burn ash materials be tested for these contaminants to consider their impact (if any) on human health and ecological risk. The toxicity of some of these compounds can be more critical than that of the compounds considered in this [Remedial Action Plan]. It is recommended that the onsite burn ash materials be tested for these compounds... The presence of these compounds may have an impact on public health and safety, and the environment.\textsuperscript{86}

\textsuperscript{83} Ex. 7, pp. ES-1 and ES-2.
\textsuperscript{84} Ex. 8, Figure 3.
\textsuperscript{85} Ex. 6, Figure 2.
\textsuperscript{86} \textit{Ibid.}, pp. 7-2 to 7-3.
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One year later, a report was issued with the results of soil testing from excavated soil at the project site. The report did not include testing for dioxins and related compounds, as suggested in the Remedial Action Plan.\footnote{Ex. 12, Excerpt from Subsurface Investigation Report, Harbor Drive Depression, San Diego Convention Center, pp. v and 7-1 (1996).} In fact, none of the previous remedial studies conducted on or around the Project site has tested for dioxins or furans.

The Port appears to take the same position for this Project. The Coalition submitted specific comments about the risks of dioxins and related contaminants, yet the FEIR does not address these compounds or indicate that the Port will require testing for them.\footnote{FEIR pp. 2-425 to 2-426.} Instead, the FEIR notes repeatedly that the DEIR "identified the potential contamination related to burn ash," and quotes the DEIR's statement that burn ash is associated with lead and poly aromatic hydrocarbons.\footnote{E.g. FEIR p. 6-425.} This is insufficient. Dioxins are toxic chemicals and potent carcinogens, and they are associated with burn ash and dump debris from municipal incinerator sites, particular those that fail to fully combust waste, as occurred in San Diego. Dioxins "are a class of chemical contaminants that are formed during combustion processes, including waste incineration, forest fires or backyard trash burning. The highest environmental concentrations are usually found in soil. . . . Its high toxicity and persistence in the environment have led the EPA to treat dioxins—a family of 75 chemically related compounds—as a major health threat."\footnote{See Ex. 13, p.2.}

The DTSC, IWMB, and DEH are charged with overseeing the investigation, waste characterization, and cleanup of hazardous waste associated with former municipal incinerators. Yet the EIR does not list them as responsible agencies, nor does it indicate that any of these agencies were consulted for purposes of preparing the EIR, or that IWMB or DEH were even given a chance to review the EIR.\footnote{See DEIR pp. 1-2 to 1-3, 8-3 to 8-4; FEIR p. 6-4.} DTSC has recently overseen cleanups of sites that were held municipal incinerators similar to those that operated on the Project site.\footnote{Ex. 13, exhibit pp. 3-7.} DTSC has requested that a health risk assessment be undertaken for this Project and has indicated that its comments have not been addressed.\footnote{FEIR p. 6-13.} DEH's Site Assessment Manual recommends testing for dioxins and furans "if evidence suggests that these constituents would
likely be present from the type of waste combusted, and/or the site is located in an urban area with a number of sensitive receptors nearby and where there is a higher risk to human health and safety."94 There is a strong likelihood of dioxins in the extensive burn ash area on the Project site, and the Project site is in an urban area where there is a higher risk to human health and safety.

CEQA requires that public agencies adopt "feasible" mitigation measures that must "actually be implemented as a condition of development."95 "When the success of mitigation is uncertain, an agency cannot reasonably determine that significant effects will not occur."96 Moreover, evidence of past failures to monitor and enforce protective measures constitutes substantial evidence that adverse impacts may occur from similar projects.97 Here, there is evidence that the Port and the City disregarded suggested soil testing for dioxins and furans when it constructed the previous Convention Center expansion, and it has similarly refused to commit to such testing and remediation for this Project, despite substantial evidence of potentially significant impacts. The Port has failed to adopt feasible mitigation measures to offset potentially significant Project impacts to human and ecological health, and has provided no explanation why. The EIR must be revised and recirculated to address this flaw.

D. Hydrology/water quality impacts

1. Impacts of the groundwater desalination and contamination treatment system are not disclosed, analyzed, or mitigated

The FEIR disagrees that the Project will include a proposed wastewater treatment system, characterizing it instead as a "groundwater filtration system."98 The Port revised its Project description to include this system, which was not mentioned in the DEIR but which will apparently filter 140,000 gallons per day (gpd) to "achieve low concentrations of salt and remove any possible contaminants."

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98 FEIR p. 6-112.
Water not used by plants after irrigation is proposed to be discharged into San Diego Bay.\textsuperscript{99}

The proposed system is designed to treat wastewater that would otherwise be discharged to the City's sewer system and treated at the City's wastewater treatment plant before being discharged to the Bay. The fact that the water is groundwater that seeps into the Convention Center and is pumped out on a regular basis does not make it different from other forms of wastewater that the City must dispose of. "Filtration" is a form of wastewater treatment, and therefore the proposed system is, in fact, a wastewater treatment system.

The FEIR concludes that "[n]o potentially significant impacts have been identified with installation and use of the groundwater filtration system," but the EIR completely fails to analyze the potential impacts of installing and operating the system.\textsuperscript{100} It appears from the Port's responses to comments that the Port's consultants tested the water quality of the pumped groundwater for basic information about its pH and salt content, to determine its suitability for irrigating.\textsuperscript{101} Because the DEIR did not include any information about the known history of toxicity and contaminants in the groundwater, or the existing prohibition on discharging that water into the Bay, it follows that the Port has not tested or analyzed these potentially toxic and harmful constituents in the water, or determined how to treat them using the proposed wastewater treatment system. In fact, there is no evidence that any such testing has occurred. The Port's response that "if" the water cannot be filtered and desalinated it will not be used for irrigation is not an adequate response to the Coalition's concerns about potential impacts related to the proposed treatment system. The treatment system is admittedly part of the proposed Project and its environmental impacts must be analyzed in the EIR.

The desalination and filtration plant will be designed to treat 140,000 gallons per day, or 4.2 million gallons per month.\textsuperscript{102} An average household in San Diego uses 10,472 gallons per month, which means that the Project's desalination and filtration system will daily process an amount of water equivalent to that used by 400 homes.\textsuperscript{103} Desalination systems, including those that treat brackish

\textsuperscript{99} Ibid. p. 6-114.
\textsuperscript{100} Ibid. p. 6-113.
\textsuperscript{101} FEIR p. 6-198.
\textsuperscript{102} FEIR p. 6-112.
\textsuperscript{103} Ex. 14.
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groundwater, produce a waste product ("brine") that contains highly concentrated amounts of salts and chemicals, and is classified as an industrial waste by the U.S. Environmental Protection Agency.\textsuperscript{104} Due to the problems associated with disposing brine, desalination systems often require their own CEQA review documents.\textsuperscript{105} The FEIR provides no explanation or analysis for how and where the brine will be disposed of. Moreover, desalination systems use large amounts of energy. The Project's proposed desalination system will require much more energy than two 110-horsepower pumps that will be used to lift and distribute the treated water, which are included in the FEIR's revised emissions calculations.\textsuperscript{106} In response to our comments on the DEIR, the FEIR takes the first step of disclosing that the Project will involve desalination and a contaminant-reduction system for pumped groundwater, but it does not take the required next step of attempting to analyze the impacts associated with this Project component.

2. Construction dewatering water

The FEIR's responses to comments about how and where it will discharge construction-related groundwater ("dewatering water") are inconsistent and uninformative. In one comment, the Port agrees that the discharge of construction-related groundwater falls under the existing SDRWQCB regulation of groundwater discharges at the Convention Center, and cannot rely on a general dewatering permit, as stated in the DEIR.\textsuperscript{107} Several pages later, however, the Port indicates that its construction dewatering water would fall under the SDRWQCB's general permit for construction-related groundwater extraction and discharge into all of San Diego Bay.\textsuperscript{108} The Project cannot rely on this general permit -- it is subject to an existing, specific permit from the SDRQCB, for which the Convention Center has received numerous violations, fines, and cease and desist orders from the SDRWQCB.\textsuperscript{109} The EIR fails to even discuss this existing permit, let alone explain how construction dewatering will comply with the permit.

\textsuperscript{104} Ex. 14.
\textsuperscript{105} Ex. 15, Cover pages and introductions for two desalination-plant EIR's.
\textsuperscript{106} FEIR Chapter 3, attached emissions re-calculations; FEIR p. 6-165.
\textsuperscript{107} FEIR p. 6-200.
\textsuperscript{108} \textit{Ibid.} pp. 6-201 to 6-203.
\textsuperscript{109} See Coalition's comments on DEIR.
\textsuperscript{2572-015j}
F. Land use, recreation, and public access impacts

1. The Project will not provide a Class I Bikeway

SANDAG commented that the promenade that runs through the Project site has been designated as the route for the regional Bayshore Bikeway, which needs to connect from the waterfront through the Project site to the Harbor Drive undercrossing just south of Park Boulevard.\(^\text{110}\) SANDAG commented that the Project’s failure to provide a Class I bikeway is inconsistent with regional plans. The Port responded that the Project does not include a dedicated bike path but that bicycling is permitted now and will continue to be permitted in some fashion.\(^\text{111}\) The Port acknowledged, however, that its Port Master Plan (“PMP”) requires Class I bikeways to be provided along promenades where feasible, consistent with SANDAG’s Bayshore Bikeway system, and that such bikeways “shall include a minimum paved width of 8 feet separated from vehicular roadways.” This is similar to the legal definition of a Class I Bikeway, which is a bike path that “[p]rovides a completely separated right of way for the exclusive use of bicycles and pedestrians with crossflow by motorists minimized.”\(^\text{112}\)

The FEIR does not explain whether or how the proposed Project will comply with SANDAG’s regional bikeway plan or the Port Master Plan, both of which call for the Project to provide a Class I Bikeway through the Project site. The City also pointed out that the Barrio Lagoon/Harbor 101 Community Plan calls for bikeways along streets such as Harbor Drive, to link surrounding communities and open spaces, and provide greater public access.\(^\text{113}\) The Project’s design drawings for the realigned Park Boulevard show multiple traffic lanes and narrow, interrupted sidewalks that will not easily accommodate bicyclists, let alone constitute a Class I Bikeway.\(^\text{114}\) Because the Project will realign and redesign Convention Way and Park Boulevard as it passes through the Project site, and will install new utility lines from Park Boulevard along Harbor Drive to the Harbor Drive undercrossing, there are ample opportunities to incorporate the planned bikeways into the Project design. The EIR should be revised to require the provision of a Class I Bikeway, or explain why one is not feasible and provide alternative bicycle access mitigation measures. It is not enough for the EIR to acknowledge that a Class I Bikeway is

\(^{110}\) FEIR p. 6-32.

\(^{111}\) Ibid.

\(^{112}\) Streets and Highways Code § 890.4; Caltrans Highway Design Manual, Chapter 1000 (2006).

\(^{113}\) FEIR p. 6-89.

\(^{114}\) Ex. 16. 2572-015.
required, yet conclude that bicycle access will simply “continue to be permitted” on the Project site.

2. Rooftop park

As noted in the FEIR, the existing open space between the Hilton hotel and the Convention Center, as well as the public restrooms at the existing water transport center, were required as conditions for the construction of the Hilton hotel and Convention Center expansion, and are incorporated into the Coastal Development Permits, Urban Design and Signage Guidelines, and Public Access Program.\textsuperscript{115} The Port maintains that the removal of these amenities will be offset by the proposed rooftop park.\textsuperscript{116} Put simply, existing open space along the Bay front cannot be replaced by building a park on the roof of a building. Yet another concern with this proposal, beyond those expressed in the numerous comments that the Port has already received on this topic, is that new elevators at the Expansion Project may not serve as feasible ways for the public to access the rooftop park and replacement restrooms. Convention Center staff indicated to the EIR consultant that the existing external elevators at the Convention Center are often out of service, due to vandalism and other causes.\textsuperscript{117} Therefore, elevators that are proposed to serve as the public’s method for accessing the rooftop park and restrooms do not appear to be a practical, feasible method of access on all days. The EIR should be revised to address this problem.

3. Embarcadero Marina Park South (EMPS)

One recent case discusses why a lead agency cannot make broad statements such as those made by the Port in the DEIR, about the “relatively small addition of visitors” and “expected light use” of the EMPS,\textsuperscript{118} without providing substantial evidence to support those conclusions.\textsuperscript{119} The Port has failed to provide any evidence other than broad statements and speculation about park impacts. It must actually analyze the likelihood of service impacts and facilities degradation that will occur at the EMPS, both during construction and operation of the Project.

\textsuperscript{115} FEIR pp. 6-341 to 6-342.
\textsuperscript{116} See Ex. 17, e-mails confirming that waterfront restrooms will be removed.
\textsuperscript{117} Ex. 18.
\textsuperscript{118} DEIR p. 4.11-15.
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4. Neither the PMPA nor the Project conforms to the policies of the California Coastal Act

Contrary to the project list attached to the proposed PMPA, both the Convention Center Expansion Project and the Hotel Project are "appealable" to the California Coastal Commission. Projects that qualify as "appealable" are those that include hotels, shopping facilities, waste water treatment facilities, and marina-related facilities. Moreover, the relocation of the water transit center is part of the Expansion Project, not a stand-alone project. Accordingly, the PMPA project list should be revised to treat these two projects as one. The FEIR provides broad responses to the Coalition's comments on why the Project is not compatible with the policies of the Coastal Act, but the Coalition disagrees, maintaining its position that the Project directly contradicts many of those policies.

5. Public access impacts and feasible mitigation in the form of a pedestrian bridge are ignored

The FEIR improperly concludes that a new pedestrian bridge over Harbor Drive does not need to be considered as a potential mitigation measure to which the City should commit, because "the Draft EIR did not identify any significant public-access related impacts." The DEIR did, however, identify significant parking impacts that will have a significant effect on public access to the Project site and to the coast. An e-mail from the City's consultant related to the proposed pedestrian bridge indicates that the City decided not to commit to building the bridge, in part because the City concluded that the bridge would not be needed for mitigation. The significant and unavoidable impacts on coastal access caused by the Project's reduction in current parking spaces, increase in parking demand, and failure to provide new parking spaces to offset that increased demand, require the

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120 Pub. Resources Code §§ 30714, 30715; see also Ex. 19, California Coastal Commission's findings for original Convention Center project, p. 6 (March 4, 1985) ("if the convention center were to be modified to include any of the categories of development enumerated in Section 30715, then the project would be appealable to the Commission").

121 See Coastal Commission Regulations, 14 Cal. Code Regs. § 13053.4 ("functionally related developments" should be considered together to the "maximum extent feasible").

122 FEIR p. 6-124.

123 DEIR p. 4.12-44 ("parking is considered a public access issue for the Proposed Project, and a discussion of parking supply and demand is provided below followed by an impact determination"); 4.12-49 (impacts related to parking deficits would remain significant and unavoidable, after implementation of parking management plans).

124 See Exhibit 16 to Coalition's DEIR Comment Letter. 2572-015)
City to consider and commit to feasible mitigation measures, including the pedestrian bridge.

G. Traffic and parking impacts

1. The FEIR’s partial disclosure of its attendance assumptions reveals flaws that result in significantly underestimated traffic and parking impacts

The Port did not provide the appendices to DEIR Appendix H-1, the Transportation and Circulation Impact Study (“TCIS”), either in the DEIR posted on the Port’s website or the DEIR provided on a compact disc to the Coalition. During the public comment period on the DEIR, the Coalition sent the Port a written request for all documents referenced in the DEIR—other than those available online—and the Port responded by providing a compact disc of documents, but it did not include the TCIS appendices. In its comments on the DEIR, both the Coalition and the City pointed out that the TCIS appendices were omitted from the DEIR and not made readily available for public review. The FEIR notes that the TCIS appendices were available by specific request, and the Port received no such request, although the Coalition’s requested all documents referenced in the DEIR.\(^{125}\) Later, the FEIR states that a request for DEIR references would have covered the TCIS appendices, but the Coalition did not specifically request the TCIS appendices.\(^{126}\) These statements are inconsistent. The Port should have made the TCIS appendices available for public review, at the very least as part of the FEIR. On September 11th, after learning that the Port had not made the TCIS appendices available as part of the FEIR, the Coalition sent the Port a specific written request for the TCIS appendices, asking if they could be made available right away due to the short 10-day comment period on the FEIR. The Port made the documents available on Thursday, September 13th, giving the Coalition three business days before the Port’s scheduled hearing on the FEIR to review and analyze the appendices.

The FEIR indicates that the “Project Trip Generation Technical Memorandum,” an important appendix to the TCIS, is provided as Attachment B to Chapter 6 of the FEIR, but this is not the case.\(^{127}\) Attachment B is a four-page

\(^{125}\) FEIR p. 6-56.
\(^{126}\) FEIR p. 6-149.
\(^{127}\) FEIR pp. 6-186, 6-442.
“Transportation Analysis Scope Memorandum,” not the Trip Generation Technical Memorandum. The Trip Generation Technical Memorandum is important for purposes of reviewing the adequacy of the EIR, because it explains the “assumptions and methodologies” used to calculate Project-related traffic and parking impacts.\textsuperscript{128} Failure to make this memorandum readily available as part of the EIR undermined the public’s ability to review and comment on the adequacy of the traffic and parking analysis.

The FEIR only summarized some of the methodology by which Project traffic and parking demands were estimated.\textsuperscript{129} Reviewing this limited data along with the DEIR, the FEIR, and the TCIS reveals that the Project’s estimated traffic and parking demand is seriously flawed. First, the EIR makes an improper assumption about the number of local attendees that will utilize the expanded Convention Center. Although the TCIS acknowledges that the “proportion of local and non-local attendees can have a significant effect on both the trip generation and parking demand for an event,” it uses only one year of data, from 2010, to estimate that 29% of Convention Center attendees will be local attendees and 71% will be from out of town.\textsuperscript{130} Using an accurate proportion of local to non-local attendees is important because local attendees are likely to drive their personal vehicles, whereas non-local attendees are likely to walk or take a shuttle to the Convention Center.\textsuperscript{131} Underestimating the proportion of local attendees, therefore, results in underestimating the number of vehicles driving to and from the Convention Center and requiring parking.

The TCIS assumes that because 29% of Convention Center attendees in 2010 were local attendees, and 71% were non-local, this will be the same proportion of attendees who will use the expanded Convention Center. It then assumes that 76% of local attendees will drive their personal vehicles, while 0% of non-local attendees will do so (only 5% would take a taxi or rental car).\textsuperscript{132} The rest of the traffic and parking analysis hinges on these numbers. Yet the FEIR acknowledges that 2010 was not a typical year for Convention Center attendance:

“While the total number of events hosted by the SDCC went down in Year 2010 as compared to the eight-year average (232 events

\textsuperscript{128} TCIS, DEIR Appendix H-1, p. 15.
\textsuperscript{129} FEIR p. 6.
\textsuperscript{130} DEIR App. H-1, p. 19.
\textsuperscript{131} Ibid.
\textsuperscript{132} Ibid., App. H-1, p. 20.
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averaged annually as compared to 165 events hosted in 2010), the total number of National / State Convention & Trade Shows (by far the highest daily attended events) went up from 55 events hosted annually to 62 in 2010.\textsuperscript{133}

National / state conventions and trade shows, along with corporate events, are the events that bring out-of-town attendees to the Convention Center (called “primary” events). Local trade shows, consumer shows, meetings and community events (local or “secondary” events) are the events that bring local attendees.\textsuperscript{134} The FEIR provides tables showing that in 2010, the number of secondary events at the Convention Center dropped dramatically compared to prior years.\textsuperscript{135} The Coalition confirmed this data with readily available attendance data provided in the 2005 through 2010 Convention Center Annual Reports:

- 2005: 169 local events bringing 366,108 local attendees (47% of all attendees)
- 2006: 210 local events bringing 438,829 local attendees (46% of all attendees)
- 2007: 153 local events bringing 366,617 local attendees (37% of all attendees)
- 2008: 167 local events bringing 348,067 local attendees (35% of all attendees)
- 2009: 177 local events bringing 322,879 local attendees (37% of all attendees)
- 2010: 99 local events bringing 229,166 local attendees (29% of all attendees)\textsuperscript{136}

Contrary to the FEIR’s statement that attendance data is not readily available, the Convention Center apparently collects very detailed attendance data for years.\textsuperscript{137} Even if one includes the record-low local attendance rate in 2010, the average proportion of local attendees between 2005 and 2010 was 38% and the average proportion of out-of-town attendees was 62%. These are the more accurate and correct proportions, and using them in the TCIS rather than the 2010 data would result in approximately 422 more average daily traffic trips, with 178 more cars travelling to the Convention Center during the peak A.M. traffic hour and 195 more

\textsuperscript{133} FEIR p. 6-146.
\textsuperscript{134} See ibid. p. 6-144 to 6-145.
\textsuperscript{135} FEIR p. 6-147 (in 2010 the Convention Center hosted only 99 secondary events, compared to an annual average of 166 such events between 2003 and 2010).
\textsuperscript{136} Ex. 20, Excerpts from San Diego Convention Center Corporation’s Annual Reports, 2005-2010, and Excerpts from Convention Center Attendance Forecasts, 2005-2011.
\textsuperscript{137} Ibid.
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cars leaving the Convention Center during the peak P.M. traffic hour. This is a 30% increase in the number of car trips that will result from the Convention Center Expansion Project. The EIR's reliance on 2010 Convention Center attendance data, which is not representative of typical attendance data, caused the expected traffic and parking demand associated with the Expansion Project to be significantly underestimated. This skews the Project's impacts on traffic and parking, and results in fewer mitigation measures to offset those impacts than should be imposed, including fewer intersection upgrades, less money for Caltrans freeway improvement projects, and a higher-than-appropriate trigger attendance number for implementing transportation management and parking management plans.

The second flaw in the EIR's traffic analysis is the assumption that less than 2% of non-local attendees will access the Convention Center from outside of downtown San Diego by taxi or rental car, and 12% would take shuttles. These conclusions are based on significant underestimates of how many attendees stay outside of downtown San Diego, and unrealistic projections about how they access the Convention Center:

- The EIR assumes that only 4.6% of non-local attendees will stay in hotels outside of downtown San Diego, based on "hotel occupancy data." First, this data is almost certainly wrong. In August, the City Auditor issued a report verifying that the Convention Center's downtown hotel occupancy data, as set forth in AECOM's 2010 report, is not based on direct evidence and is likely overstated by about one third. Appendix B of the TCIS confirms that it was this flawed data, which is based on blocks of rooms booked for conventions rather than those actually occupied, was used as the basis for the traffic study. A more reliable estimate is that 22% of non-local attendees stay in hotels outside of downtown. In a report describing the results of 629 interviews with non-local Convention Center attendees in 2008, 10% reported staying in Mission Valley and 12% in oceanfront areas like La Jolla, Mission Bay, Pt. Loma, Del Mar, and

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138 See Ex. 20 (preliminary recalculation of TCIS figures based on the average proportion of local to non-local attendees from 2005 to 2010).
139 FEIR p. 6-443; DEIR App. H-1, p. 20, Table 3.4, fn. 2.
140 Ex. 21.
2572-018
Coronado.\footnote{Ex. 23.}

- The EIR assumes that less than 2% of non-local attendees will drive a rental car or take a taxi to the Convention Center from outside of downtown.\footnote{FEIR p. 6-443; DEIR App. H-1, pp. 20, 26 (7% of non-local attendees would take a taxi/rental car; 25% them would come from outside of downtown/Lindbergh Field/ Harbor Island).} This cannot be the case. If 12% of non-local attendees reported staying in coastal areas that are not served by shuttles and are more difficult to travel to using public transit, it is almost certain that those attendees use rental cars or taxis. The estimate that less than 2% of non-local attendees will stay outside of downtown San Diego and will use rental cars or taxis is disproportionate to the 22% of non-local attendees who reported staying outside of downtown.

- The EIR does not actually account for traffic trips associated with rental cars. Although rental cars were grouped together with taxis for purposes of estimating non-local attendees' modes of travel, the final traffic trip calculation treats them all as taxis that come and go within the same hour.\footnote{FEIR 6-443 (all car trips by non-local attendees listed as "taxi"); DEIR App. H-1, p. 24 (total trip generation includes cars driven by local attendees [1400 trips per day] and taxis, which come and go within the same hour, but not rental cars).} In essence the EIR completely disregards the fact that many convention-goers are likely to drive rental cars to the Convention Center.

2. **The Port lacks substantial evidence that re-striping downtown streets to add new traffic lanes is feasible mitigation**

The Port did not properly coordinate with Caltrans or the City to develop feasible traffic mitigation measures for the Project. An example of one of the Project’s significant traffic effects is at the intersection of G and 16th Streets, just before the on-ramp to eastbound State Route (“SR”) 94.\footnote{SR 94 is a major commuter route used by those in eastern San Diego and the southern San Diego Bay. \url{http://www.dot.ca.gov/dist11/departments/planning/pdfs/tcs/08_SR_94TCS_Urban.pdf}} Here, G Street is a three-lane eastbound street with parallel parking on both sides.\footnote{DEIR p. 4.12-6.} One block later, it turns into the three-lane SR 94 on-ramp. Traffic from Project operations is expected to increase currently existing traffic delays at this intersection by 77% (16.5
seconds) during the evening rush hour, which would degrade the level of service ("LOS") from LOS C to LOS D.\textsuperscript{147} Over the next few years while the Project is being constructed, other planned projects are expected to degrade traffic conditions at this intersection to LOS E. The Project will add a 19.2-second traffic delay, degrading the intersection to an unacceptable LOS F condition.\textsuperscript{148} The proposed mitigation for this significant traffic impact is mitigation measure MM-C-TRAN-2b, which requires the Project Applicant to “restripe the eastbound G Street approach to include a fourth through lane,” prior to the issuance of occupancy permits for the Project.\textsuperscript{149}

Caltrans commented that this mitigation measure will have a direct effect on the SR 94 eastbound on-ramp, requiring Caltrans’ review and approval.\textsuperscript{150} This is obviously the case because G Street transitions directly into the three-lane SR 94 on-ramp just one block later. Caltrans also warned that the configuration of the on-ramp “may not support a new lane” on G Street, which indicates that the proposed mitigation measure might not be feasible.\textsuperscript{151} Caltrans has raised the same concern with proposed mitigation measure MM-C-TRAN-3c, which requires the Project Applicant to re-stripe 11th Avenue to add a fourth northbound lane, just before it transitions into SR 163. The City made similar comments: “The DEIR needs to provide information to show the feasibility of [restriping city streets as mitigation], and disclose how many metered and/or unmetered parking spaces would be lost or bus stops affected by the proposed restriping.”\textsuperscript{152}

The Port has not addressed Caltrans’ and the City’s concerns. Instead of consulting with the agencies and making a further evaluation and disclosure of whether the mitigation is feasible and what collateral effects it may have on parking availability and public transit stops, the FEIR first states that the mitigation measures only require a “fair share” payment.\textsuperscript{153} The proposed mitigation is not a fair-share payment; as stated in the DEIR and the Mitigation Monitoring and Reporting Program ("MMRP"), these mitigation measures require the Project Applicant to physically construct the intersection improvements prior to

\textsuperscript{147} DEIR p. 4-12-29 (existing delay is already 21.5 seconds).
\textsuperscript{148} \textit{Ibid}. p. 5-37, 5-48 to 5-50.
\textsuperscript{149} \textit{Ibid}. p. 5-53 to 5-54.
\textsuperscript{150} FEIR p. 6-9.
\textsuperscript{151} \textit{Ibid}.
\textsuperscript{152} FEIR p. 6-51.
\textsuperscript{153} \textit{Ibid}. p. 6-10.
2572-015}
occupying the Project. This is in contrast to the proposed mitigation for freeway impacts, which requires fair-share payments to Caltrans.

The FEIR also draws the conclusion that because the proposed mitigation measures were listed in the 2006 EIR for the Downtown Community Plan, they must be feasible.\footnote{\textit{Ibid.} pp. 6-10; 6-51.} Even if the 2006 EIR contemplated that measures like these might be undertaken by future developers, the Port has not followed the proper procedures to incorporate those findings into the EIR for this Project.\footnote{See CEQA Guidelines § 15150.} Furthermore, in reviewing the 2006 EIR for the Downtown Community Plan, only one of the six currently proposed intersection-improvement measures is listed as a “potential” improvement: the addition of a fourth lane at G and 17th Street.\footnote{Ex. 24, Excerpt from Final EIR for the Downtown Community Plan, pp. 5.2-46 to 5.2-52 (2006), obtained at: \texttt{http://www.ccde.com/planning/environmental-documents.html}} As discussed above, Caltrans is concerned about whether this particular measure is feasible, and the 2006 EIR does not analyze whether this “potential” proposed improvement is compatible with the nearby freeway on-ramp configuration. The potential mitigation measures listed in the 2006 EIR do not include the current proposals to add new through-lanes at the intersections of Front and Beech, Front and Cedar, 10th and A, and 11th and A, or adding second turn lane at Imperial and 19th.\footnote{\textit{Ibid.}; DEIR pp. ES-52 to ES-55, MM-C-TRAN-2a, -2b, -3a, -3b, -3c, and 3f (re-stripe Front Street where it intersects Cedar and Beech Streets; G Street at 17th Street; 10th and 11th Avenues at A Street; and Imperial Avenue at 19th Street); FEIR p. 6-11 (one left-turn lane contemplated in the 2006 EIR has already been installed; this Project would add an additional left turn lane).} Therefore, the FEIR incorrectly concludes that the proposed mitigation measures were approved and found feasible in the 2006 EIR.

Finally, the Port’s proposed traffic mitigation calls for the Project Applicant to re-stripe portions of five downtown streets in order to add a new lane at six intersections, which is no insignificant undertaking.\footnote{\textit{Ibid.}} The EIR does not indicate how many total blocks will need to be re-stripped for the mitigation measures to be effective, or address the problems associated with removing downtown parking and interfering with bus stops, bikeways, etc.\footnote{This is likely because the Port decided not to conduct a roadway segment analysis, and opted instead for an intersection-based impact analysis. (DEIR p. 4.12-19.)} Practically speaking, at least one block before and after each intersection will need to be re-stripped, and likely more.\footnote{With the exception of the Imperial Avenue/19th Street intersection, which only contemplates a left-hand turn lane.}

\footnote{2872-016j}
Adding a new lane of traffic will eliminate the parallel parking that is currently available on both sides of these streets. The 2006 EIR for the Downtown Community Plan found that the benefits of re-stripping road segments to add new traffic lanes could be overridden by conflicts with pedestrian or bicycle activities. The Port has not provided substantial evidence that these mitigation measures are feasible, and it must revise and recirculate the EIR and provide an appropriate analysis of feasibility and collateral impacts.

3. Caltrans is not properly identified as a responsible agency, and the EIR is inadequate for Caltrans’ required approvals

The FEIR fails to acknowledge that Caltrans is a responsible agency and that the Project Applicant will need to obtain Project-related approvals from Caltrans. First, Caltrans has indicated that it must review and approve (if feasible) the re-stripping of G Street and 11th Avenue, because these mitigation measures will have a direct impact on freeway on-ramps under Caltrans jurisdiction. Second, Caltrans will need to approve any work performed within a State right-of-way. As indicated by Caltrans, if Caltrans must approve mitigation projects, then the Project Applicant is required to provide the appropriate CEQA documentation. The FEIR concludes that no such approvals will be required for “direct project impact mitigation,” and the Project applicant will not “be responsible” for implementing these measures, but this is contrary to the language of both the DEIR and the Mitigation Monitoring and Reporting Program (“MMRP”).

Analyzing the potential impacts of implementing widespread traffic improvements

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161 Ex. 24, Excerpt from Final EIR for the Downtown Community Plan, p. 5.2-51 (all potential four-lane intersection re-stripping improvements would remove parking); DEIR pp. 4.12-5 to 4.12-6 (Front Street, 10th and 11th Avenues, and G Street all have parallel parking on both sides of the street). Ex. 24, p. 5.2-61 (conflicts with pedestrian or bicycle activities could override traffic benefits of some potential intersection upgrades).
162 See DEIR pp. 1-2 to 1-3.
163 FEIR p. 6-9 (as discussed above, the Port’s response to this comment is inadequate because it fails to acknowledge that the City will directly undertake mitigation measures MM-C-TRAN-2b and -3c for the Project).
164 FEIR, p. 6-9 (Comment B-9).
165 FEIR p. 6-12.
166 FEIR pp. 6-10 to 6-12.
167 FEIR pp. ES-53 and ES-54 (MM-C-TRAN-2b and -3c both indicate that the Project Applicant must undertake the mitigation measures prior to Project occupancy); FEIR p. 5-48 and 5-49 (same language in MMRP).
cannot be done separately from this EIR.\textsuperscript{169} As discussed earlier in these comments and in the Coalition’s comments on the DEIR, this problem extends to other areas in the EIR, including the SDRWQCB’s need to approve discharge permits from the Project’s irrigation system, and the responsibility for a hazardous waste Lead Enforcement Agency such as DEH or DTSC to approve a post-closure modification and remediation plan for the portion of the site that is a closed landfill. The Port must include in its EIR information and analysis related to environmental impacts that are anticipated by responsible agencies as to matters within their expertise or jurisdiction.\textsuperscript{170}

The Port, acting as lead agency, must identify and analyze the potential impacts of constructing lane additions and traffic signals, which are required as traffic mitigation prior to Project occupancy. The EIR must also provide enough analysis for Caltrans to rely on it as a responsible agency tasked with approving some of these mitigation projects. The EIR does not include such analysis, and the FEIR improperly discounts Caltrans’ comments. The Port has an obligation to conduct the level of CEQA analysis requested by responsible agencies.\textsuperscript{171} The EIR should be revised and recirculated to include Caltrans as a responsible agency and to review and potentially mitigate the effects of the required traffic mitigation measures.

4. The FEIR does not explain why its traffic counts were significantly lower than Caltrans’ traffic counts

Caltrans commented that three of the DEIR’s traffic counts for freeway intersections (on- and off-ramps) are from 25% to over 50% lower than previous traffic counts conducted by Caltrans at those same intersections.\textsuperscript{172} The Port’s only response to this critique is that the Port conducted its own peak-hour intersection traffic counts on March 1, 2011, which was the only data used to establish the traffic baseline.\textsuperscript{173} The Port does not attempt to explain why its intersection traffic counts were so much lower than Caltrans’ traffic counts for those same

\textsuperscript{170} Pub. Resources Code § 21080.4(a); CEQA Guidelines §§ 15082 15096(b)(2).
\textsuperscript{171} Save San Francisco Bay Assn. v. San Francisco Bay Conservation and Dev’t Commn. (1992) 10 Cal.App.4th 908 (lead agency has a duty to produce a comprehensive CEQA document that can be relied upon by responsible agencies).
\textsuperscript{172} Ibid. p. 6-9.
\textsuperscript{173} Ibid. p. 6-8.
intersections. Caltrans also commented that the DEIR’s traffic counts for five of the seven analyzed freeway segments on Interstate 5 are 20% to 25% lower than traffic counts conducted by Caltrans on those same freeway segments.174 The Port notes that its freeway traffic-count data was obtained from Caltrans’ “PeMS” website for March 1, 2011, when the intersection counts were conducted,175 but the FEIR does not attempt to explain why the traffic counts on that day were so much lower than Caltrans’ previous traffic counts.

5. The proposed Event Transportation Management Plan lacks measurable standards

The Port’s proposed mitigation measure for significant traffic and parking impacts during large events is an Event Transportation Management Plan (ETMP), a draft of which is attached as an appendix to the TCIS. Although the ETMP contains proposed measures and actions, it lacks any specific performance criteria or measurable standards to show that traffic and parking impacts are mitigated. The ETMP will be finalized in the future, but as proposed this mitigation measure does not meet CEQA’s standards.176

6. Parking impacts are underestimated

The existing environmental conditions related to parking-space deficits discussed in the EIR appear to be underestimated. The EIR includes a table of “Max Capacity Dates” in 2010 at the Convention Center parking lot, which notes that the lot reached full capacity on 17 days in 2010. As described above, 2010 saw significantly fewer local events, and therefore the total number of days when the parking lot reached capacity is necessarily lower than in typical years, because local attendees are much more likely to drive cars to the Convention Center. Also, the table shows that on half of those 17 days (8 days), Convention Center attendees “did not have access” to between 350 and 700 Marriott stalls daily.177 The Marriott hotel has a contractual right to use hundreds of parking stalls that are not even sufficient for its own peak use in the Convention Center parking garage, and it will rely on those parking spaces to accommodate events at its newly expanded facilities. Thus, stalls that are typically available for use by Convention Center attendees will likely

174 FEIR p. 6-6.
175 FEIR p. 6-8; DEIR p. 4.12-3.
177 FEIR, Transportation Event Management Plan, Table entitled “Max Capacity Dates 2010.”
no longer be available in the near future. The existing parking conditions reported
in the EIR do not reflect a typical attendance year, and cumulatively the Marriott
expansion and the Convention Center Expansion Project will significantly tax
parking resources.

The EIR’s parking demand estimate for Convention Center attendees is
based on the car-trip generation estimates described above, and is then
extrapolated to the entire Convention Center.178 The EIR concludes that 2,320
parking spaces will be used by local and non-local attendees at the Convention
Center, including the existing Convention Center and the Expansion Project, during
an event that averages 14,900 attendees.179 In other words, less than 16% of all
Convention Center attendees will require parking. The data used to reach this
conclusion is not disclosed in the EIR or the TCIS. The TCIS appendices, which the
Coalition received from the Port only days before the public hearing on the FEIR,
indicate that this figure has been significantly underestimated, in part because it
relies on the same flawed attendance assumptions that were used to calculate the
estimated Project traffic.

The Urban Land Institute (ULI) publishes well-respected and often-used
sources for estimating the parking demand associated with various land uses.
ULI’s parking analysis methodology is often used in CEQA documents, including for
large convention centers and arenas. The Shared Parking report published by ULI
contains a detailed 10-page analysis of convention center parking demands,
including a comparison of the recorded parking patterns at three large convention
centers (Anaheim, Indianapolis, and Los Vegas).180 The report concludes that an
estimated 5.5 parking spaces per thousand square feet of leasable area (exhibit
halls and meeting rooms) is a conservative but accurate parking demand estimate
for convention center attendees (not including employees) during an 85th percentile
attendance event.181 Here, the entire Convention Center including the expansion
will have 745,850 square feet of exhibit halls and 220,200 square feet of meeting
rooms, for a total of 966,050 square feet of leasable space.182 Using the ULI ratio of
5.5 parking spaces per 1,000 square feet, the estimated parking demand for
Convention Center attendees, not including employees or non-attendee retail
shoppers, is 5,313 parking spaces.

179 Ibid.
180 Ex. 25, Excerpt from ULI’s Shared Parking report (2006).
181 Ibid.
182 DEIR p. 3-7.
2572-015]
The Convention Center will only have 2,094 parking spaces available for both attendees and employees.\textsuperscript{183} This is less than 40% of the parking demand for convention attendees alone, using the ULI method. That great a disparity cannot be explained away. The Convention Center will undoubtedly have more than the 224-space deficit predicted in the EIR.

7. The Port has not shown why providing a new parking structure is infeasible

The City, the Coalition, the San Diego Padres, and others requested that the Project provide adequate parking for all components of the Project, including the Convention Center expansion, retail shops, and the hotel expansion. The Port responded that the parking deficit that will result from the Project has been deemed “significant and unavoidable,” and the only proposed mitigation measure is to implement parking management plans for large events.\textsuperscript{184} The Port’s explanation for why a new parking structure is infeasible is that it “poses severe problems at the waterfront and Project site, the primary issue being the lack of available space.”\textsuperscript{185} The FEIR also notes that:

Parking off-site was considered, but several issues were taken into consideration including land ownership, the nearby availability of parking off-site in the downtown area, and the availability of alternative modes of transportation such as mass transit, walking, shuttles, taxis, and bicycling. Thus, even with the loss of parking on-site, access to the site would be maintained.\textsuperscript{186}

This conclusion, that “access to the site would be maintained,” contradicts the EIR’s finding of a “significant and unavoidable” public access impact related to parking. If the impact is in fact lessened by the availability of downtown parking or public transit opportunities, the EIR should have disclosed and analyzed this, not merely indicated that these thoughts were taken into “consideration.”

\textsuperscript{183} DEIR App. H-1, pp. 124-125 (1,129 spaces available in Convention Center parking lot and 965 available in Hilton hotel parking lot).
\textsuperscript{184} FEIR p. 6-86.
\textsuperscript{185} FEIR pp. 6-232 to 6-233.
\textsuperscript{186} FEIR p. 6-392.
2572-015]
The Port suggests that the Coalition must identify a suitable location for a new parking structure, and that a new parking structure may have impacts of its own, implying that the Port need not give any consideration to mitigation measures that themselves may have environmental impacts.\textsuperscript{187} The Port should have considered enhancing the existing ground-level parking lot at the Tailgate Park site and/or adjacent parking lots, such as restriping those existing parking stalls or constructing a multi-story parking structure. The Port should have also investigated whether a new parking structure could be built in the northern corner of the Marine Terminal site (both of these sites were rejected as off-site Project alternatives). The Port should have considered the option of adding more parking spaces to the existing Hilton hotel parking garage, for example by adding another level of parking and then proportionately reducing the amount of above-garage space that will be occupied by the hotel expansion. The proposed Parking Management Plan indicates that there are a number of existing parking lots nearby the Project site. The Port should have considered the option of increasing the parking capacity of those lots, as feasible mitigation to offset its determination of a significant impact. The Port lacks substantial evidence to show that this impact is unavoidable.

H. Impacts to utilities

The FEIR indicates that the 15-inch sewer main (or “trunk line”) serving the Project site will need to be upgraded to a 24-inch line.\textsuperscript{188} The City’s Public Utilities Department commented that the EIR should analyze whether the proposed upgrade will be sufficient to accommodate all of the facilities in the vicinity of the Project that utilize or will utilize the trunk line.\textsuperscript{189} The City also commented that the Convention Center’s peak wastewater flows should be representative of the peak flows that occur during major conventions such as Comic Con. The City commented that the peak flow during such events has been recorded as at least 0.75 million gallons per day (“mgd”), whereas the DEIR indicated that wastewater flows from the existing Convention Center are only 0.017 mgd.\textsuperscript{190} In response, the FEIR indicates that the project engineer determined that all surrounding facilities’ wastewater flows as well as peak flows from the Convention Center can be accommodated by a 24-inch sewer line upgrade, and therefore no changes to the EIR are required. The FEIR also states that the Preliminary Sewer Capacity Study

\textsuperscript{187} FEIR p. 6-233.
\textsuperscript{188} FEIR p. 6-64.
\textsuperscript{189} FEIR p. 6-80.
\textsuperscript{190} Ibid. 2572-015]
attached to the DEIR did use peak flows from a major event at the Convention Center, and concludes that minor revisions were made to one page of the DEIR to reflect this.\footnote{FEIR pp. 6-80 to 6-81 (the City’s Sewer Design Guidelines require flows to have a d/D ratio of less than 0.75).}

In reality, attached to the FEIR is a significantly revised Sewer Capacity Study that incorporates the City’s comments and reaches substantially changed conclusions about the amount of wastewater that will be generated by the Project and surrounding facilities. The revised Sewer Capacity Study concludes that a 24-inch trunk line upgrade will definitely be required, and that the estimated total sewer flows in the trunk like will have a “d/D” (depth of flow to pipe diameter) ratio of 0.74, which is the absolute maximum flow allowed in a 24-inch sewer trunk line.\footnote{FEIR, Revised Preliminary Sewer Study (August 2012).} The new study revised the predicted sewer flows in the Harbor Drive sewer main from 2.002 mgd to 5.846 mgd, nearly a three-fold increase.\footnote{Ibid., p. 12.} The revised study changed all previous estimates of wastewater flows: (1) it used peak flows measured at the Convention Center during the 2007 Comic Con event rather than flows measured during one week in 2011\footnote{Convention Center schedules indicate that during this week there were two overlapping conventions that would have drawn no more than 12,000 attendees at any given time. (See ibid. p. 4 [flows were measured from March 23 to April 1, 2011]; Ex. 20 [2011 attendance by month shows two conventions during that time totaling a maximum of 12,000 attendees].) Using the peak flows from Comic Con or another large convention is a more accurate estimate of peak flows at the Convention Center. 2572-015)}; (2) it reduced the estimated wastewater from the Convention Center Expansion Project by 50%, only using the estimated daily flow of running new plumbing fixtures continuously for a four period, rather than the eight-hour period previously used; and (3) it added an estimate of flows from Petco Park, the Ballpark Village project, and the Marriott Marina Hotel Expansion project, all of which use or will use the Harbor Drive sewer trunk line.

The Port’s response to the City’s comments fails to inform the City and the public of the significant re-calculation of sewer flows in the newly revised Sewer Capacity Study. These changes are buried in a technical appendix to the FEIR and are not disclosed in the text of the FEIR itself. The changes made to the Sewer Capacity Study constitute significant new information requiring recirculation of the EIR for public review and comment. The Port—in response to the City’s comments about using true peak flows from the Convention Center and considering
surrounding cumulative wastewater flows—has revised its wastewater calculations so that they just meet the required d/D ratio for a 24-inch sewer main.

The public is entitled to a sufficient period of time to review these changes and comment upon their accuracy and potential environmental impacts. For example, the FEIR proposes to upgrade the Harbor Drive sewer trunk line for 1,255 feet, until it transitions to the existing 24-inch trunk line that continues down Harbor Drive.\textsuperscript{195} This transition point was the downstream limit of the analysis in the Sewer Capacity Study.\textsuperscript{196} The EIR must address the likelihood that downstream contributions to the predicted 0.74 d/D ratio expected at the Project site will greatly exceed the 0.75 d/D ration design limit for sewer mains, between the Project site and the City’s wastewater treatment plant. In other words, the Project in combination with other sewer flows may result in the need to upgrade the 24-inch line to a larger diameter line, which would have impacts beyond the Project site analyzed in the EIR. Also, the revised Sewer Capacity Study does not include basic information, such as the calculations it used, which are referred to as “Appendix III” but are not attached to the study.\textsuperscript{197}

V. CONCLUSION

On a procedural level, significant new information has been added to the EIR without an opportunity for public review and comment. Therefore, State law requires the Port to recirculate a Draft EIR. On a substantive level, the EIR is inadequate because it does not address many of the significant concerns raised during the public comment period on the DEIR. The EIR fails to provide substantial evidence to support its conclusions about existing environmental conditions, severity of environmental impacts, and the feasibility of mitigation measures, as required by CEQA.

\textsuperscript{195} FEIR, Revised Preliminary Sewer Study, pp. 4, 14 (August 2012).
\textsuperscript{196} Ibid. p. 4.
\textsuperscript{197} Ibid. p. 12.
Sincerely,

[Signature]

Tanya A. Gulessarian  
Ellen L. Trescott

ELT:ljl

Attachments