

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Pettit, SBN 67128 Melissa LinPerrella, SBN 205019 Adriano Martinez, SBN 237152 Morgan Wyenn, SBN 270593 Natural Resources Defense Council 1314 Second Street, Santa Monica, CA 90401 TELEPHONE NO.: 310-434-2300 FAX NO.: 310-434-2399 ATTORNEY FOR (Name): EYCEJ, CCA and NRDC	FOR COURT USE ONLY  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N Hill Street MAILING ADDRESS: 111 N Hill Street CITY AND ZIP CODE: Los Angeles, CA 90017 BRANCH NAME: Central	
CASE NAME: East Yards vs. City of Los Angeles	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER: <b>BS143454</b> JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties<br>b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|---|--|

3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 20

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 7, 2013

*David Pettit*  
 (TYPE OR PRINT NAME)

*[Signature]*  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller  
Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

SHORT TITLE:

East Yards vs. City of Los Angeles

CASE NUMBER

BS 143454

**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

**This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.**

**Item I.** Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL \_\_\_\_\_ ☐ HOURS/ ☐ DAYS

**Item II.** Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

**Step 3:** In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Class actions must be filed in the Stanley Mosk Courthouse, central district.</li> <li>2. May be filed in central (other county, or no bodily injury/property damage).</li> <li>3. Location where cause of action arose.</li> <li>4. Location where bodily injury, death or damage occurred.</li> <li>5. Location where performance required or defendant resides.</li> </ol> | <ol style="list-style-type: none"> <li>6. Location of property or permanently garaged vehicle.</li> <li>7. Location where petitioner resides.</li> <li>8. Location wherein defendant/respondent functions wholly.</li> <li>9. Location where one or more of the parties reside.</li> <li>10. Location of Labor Commissioner Office</li> </ol> |
|---|---|

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

		<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
Auto Tort		Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
		Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/ Property Damage/ Wrongful Death Tort		Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
		Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
		Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
		Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.
			<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4. 1., 3. 1., 4.

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CASE NUMBER

Non-Personal Injury/Property  
Damage/Wrongful Death Tort

Employment

Contract

Real Property

Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels_____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

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CASE NUMBER

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above	
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.	
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.	
	Writ of Mandate (02)	<input checked="" type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.	
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.	
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.	
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.	
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.	
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.	
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.	
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.	
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.	
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.	
	Miscellaneous Civil Complaints	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
		Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
		Miscellaneous Civil Petitions	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition

SHORT TITLE:

East Yards vs. City of Los Angeles


CASE NUMBER

**Item III. Statement of Location:** Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

<b>REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.</b>  <input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input checked="" type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			<b>ADDRESS:</b> City of Los Angeles 200 N Spring Street Los Angeles, CA 90012
<b>CITY:</b> Los Angeles	<b>STATE:</b> CA	<b>ZIP CODE:</b>	

**Item IV. Declaration of Assignment:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: June 7, 2013

  
 (SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

1 David Pettit, SBN 67128  
2 Melissa Lin Perrella, SBN 205019  
3 Morgan Wyenn, SBN 270593  
4 Xiao Zhang, SBN 286388  
5 Natural Resources Defense Council  
6 1314 Second Street  
7 Santa Monica, CA 90401  
8 310/434-2300 • Fax 310/434-2399  
9 Attorneys for Petitioners/Plaintiffs  
10 East Yard Communities For Environmental  
11 Justice, Coalition For Clean Air, Century Villages  
12 at Cabrillo, Elena Rodriguez, Evelyn Deloris Knight,  
13 and Natural Resources Defense Council, Inc.

CONFIDENTIAL  
BY [illegible]  
[illegible]

Dept 1

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

12 EAST YARD COMMUNITIES FOR  
13 ENVIRONMENTAL JUSTICE, an unincorporated  
14 association; COALITION FOR CLEAN AIR, a non-  
15 profit corporation; CENTURY VILLAGES AT  
16 CABRILLO, a non-profit corporation; ELENA  
17 RODRIGUEZ, an individual; EVELYN DELORIS  
18 KNIGHT, an individual; and NATURAL  
19 RESOURCES DEFENSE COUNCIL, INC., a non-  
20 profit corporation,

21 Petitioners/Plaintiffs,

22 v.

23 CITY OF LOS ANGELES, a public entity; LOS  
24 ANGELES CITY COUNCIL, a public entity; CITY  
25 OF LOS ANGELES HARBOR DEPARTMENT, a  
26 public entity; LOS ANGELES BOARD OF  
27 HARBOR COMMISSIONERS, a public entity; and  
28 Does 1-100, Inclusive,

Respondents/  
Defendants,

CASE NO.: **BS 148454**

VERIFIED PETITION FOR WRIT OF  
MANDATE UNDER THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT;  
PETITION FOR WRIT OF MANDATE  
(C.C.P. 1085) FOR VIOLATIONS OF DUE  
PROCESS; COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF FOR VIOLATION OF  
CALIFORNIA GOVERNMENT CODE  
SECTION 11135.

REQUEST FOR JURY TRIAL

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BURLINGTON NORTHERN SANTA FE  
RAILWAY; BNSF RAILWAY COMPANY,

Real Parties in Interest  
to CEQA Causes of  
Action



1 Pursuant to California Code of Civil Procedure section 1094.5 and California Public  
2 Resources Code section 21000 et seq., Petitioners/Plaintiffs EAST YARD COMMUNITIES  
3 FOR ENVIRONMENTAL JUSTICE, COALITION FOR CLEAN AIR, CENTURY  
4 VILLAGES AT CABRILLO, ELENA RODRIGUEZ, EVELYN DELORIS KNIGHT, and  
5 NATURAL RESOURCES DEFENSE COUNCIL (collectively "Petitioners/Plaintiffs") bring  
6 this action on their own behalf, on behalf of their members, on behalf of the general public,  
7 and in the public interest in order to enforce the California Environmental Quality Act  
8 ("CEQA"), to enforce the California civil rights act embodied in California Government  
9 Code section 11135, and to protect air quality and public health in the Los Angeles area and  
10 beyond. Petitioners/Plaintiffs allege as follows:

### 11 INTRODUCTION

12 1. This is a case about environmental injustice. The case challenges the approval of a  
13 final environmental impact report ("FEIR") for a new intermodal railyard in Wilmington,  
14 California, four miles from the Port of Los Angeles ("Port") on land owned by the Port. The  
15 railyard, to be called the Southern California International Gateway ("SCIG"), is proposed to  
16 be built across the street from a high school, day care center and a comprehensive supportive  
17 housing community for homeless individuals, families, and veterans, including hundreds of  
18 children, in a low-income, minority neighborhood that is already suffering from very high  
19 levels of air pollution. The project proposes to add over a million new diesel truck trips and  
20 thousands of new train trips to this neighborhood, even though less polluting alternatives are  
21 available.

22 2. As early as 2005, neighbors of the proposed project site warned the Los Angeles  
23 Board of Harbor Commissioners that approval of the SCIG project would be an act of  
24 environmental racism. In approving the environmental impact report ("EIR") for the SCIG  
25 project, the Board of Harbor Commissioners have admitted in writing that the project's  
26 negative impacts, including dangerous air pollution and associated health impacts, will fall  
27 disproportionately on minority residents of Wilmington and neighboring West Long Beach.

28

1       3. Here is what the Board of Harbor Commissioners' Recirculated Draft Environmental  
2 Report ("RDEIR") says about the project:

3           Even after application of the proposed mitigation measures, considering the  
4 cancer risk from toxic air contaminants in the Port region, the Project will  
5 make a cumulatively considerable contribution to the significant health risk  
6 impact to the predominantly minority and low-income population in the Port  
7 region; this impact will constitute a disproportionately high and adverse effect  
8 on minority and low-income populations.

9 The Los Angeles City Council, in formally approving this RDEIR and the associated  
10 FEIR, has accepted this admission as true.

11       4. The new rail capacity that the SCIG project would provide will not be needed for 20  
12 years or more. Moreover, the project will create a net loss of jobs due to eviction of the  
13 businesses now on the project site. Petitioners/Plaintiffs have recommended to the Board of  
14 Harbor Commissioners and the City of Los Angeles ("City") that any needed additional rail  
15 capacity be built on existing docks or on land created, as the Port often does, through  
16 dredging and filling, away from local residents. But, as is so often the case in Los Angeles,  
17 the City has chosen to place the burden of the SCIG project in a heavily-minority economic  
18 sacrifice zone whose residents do not share in the project's gains.

19       5. The CEQA appeal process in this matter was also flawed because it was standardless,  
20 arbitrary and capricious, and because the Councilmember in whose district the SCIG project  
21 will be located failed to recuse himself from the CEQA appeal even though he had made  
22 several public statements in strong support of the SCIG project.

23       6. This lawsuit challenges the May 8, 2013 decision of the City of Los Angeles and the  
24 City Council of the City of Los Angeles to approve a Site Preparation and Access Agreement  
25 and Permit No. 901 with BNSF Railway Company ("BNSF") for the construction, operation  
26 and maintenance of the SCIG facility, and the decision to adopt the determination by the Los  
27 Angeles Harbor Department, through the Los Angeles Board of Harbor Commissioners, that  
28 the Project and the proposed 50-year lease were assessed in an EIR prepared in accordance

1 with CEQA, and all associated approvals, including the FEIR which was certified by the  
2 Board of Harbor Commissioners on March 7, 2013, collectively referred to as "SCIG" or the  
3 "Project".

4 **JURISDICTION AND VENUE**

5 7. This Court has jurisdiction over this matter pursuant to California Code of Civil  
6 Procedure sections 1085, 1094.5 and 1060, and California Public Resources Code sections  
7 21168, 21168.5 and 21168.9.

8 8. Venue is proper in this Court pursuant to California Code of Civil Procedure sections  
9 393 and 394 because Respondents/Defendants are located in the County of Los Angeles and  
10 the SCIG project is proposed to be built in the County. Los Angeles County Superior Court  
11 Rule 2.3(a) authorizes the filing of this Petition in the Central District of the Los Angeles  
12 County Superior Court.

13 9. This action was timely filed within 30 days of the City of Los Angeles' posting of its  
14 May 9, 2013 Notice of Determination under CEQA.

15 10. Petitioners/Plaintiffs have provided written notice of their intention to file this  
16 petition to Respondents/Defendants and other relevant agencies, in compliance with  
17 California Public Resources Code section 21167.5, and are including the notice and proof of  
18 service as Exhibit A hereto.

19 11. Petitioners/Plaintiffs have served the Attorney General with a copy of the present  
20 petition along with a notice of its filing, in compliance with California Public Resources  
21 Code section 21167.7, and are including the notice and proof of service as Exhibit B hereto.

22 12. Petitioners/Plaintiffs have complied with California Public Resources Code section  
23 21167.6 and Los Angeles County Superior Court Local Rule 3.232(d)(2)(i) by filing a notice  
24 that they are considering election to prepare the administrative record for this action. A copy  
25 of the notice is attached hereto as Exhibit C.

26 13. The maintenance of this action is for the purpose of enforcing important public  
27 policies of the State of California with respect to the protection of the environment and  
28 public participation under CEQA. The maintenance and prosecution of this action will

1 confer a substantial benefit upon the public by protecting the public from the environmental  
2 and other harms alleged in this Petition and Complaint. As such, Petitioners/Plaintiffs are  
3 entitled to the recovery of reasonable attorneys' fees under California Civil Procedure Code  
4 section 1021.5.

5 **PARTIES**

6 14. Petitioner/Plaintiff East Yard Communities For Environmental Justice ("EYCEJ") is  
7 a member-based organization that was established in 2002. It is a project of Social +  
8 Environmental Entrepreneurs, a non-profit corporation. With a base in Commerce, East Los  
9 Angeles, and Long Beach, EYCEJ's mission is to achieve a safe and healthy environment for  
10 communities that are disproportionately suffering the negative effects of industrial pollution.  
11 Today, EYCEJ has a database of over 350 community residents, many of whom are active  
12 and participate regularly in community outreach, education and civic engagement efforts.

13 15. Petitioner/Plaintiff Coalition for Clean Air ("CCA") is a California non-profit  
14 corporation with a membership of over 300 individuals throughout the state. CCA is the only  
15 statewide organization exclusively advocating for air quality in California, and has actively  
16 participated in proceedings related to the local, state and federal regulatory activities  
17 affecting air quality in the region. CCA's mission is to restore clean, healthy air to California  
18 by advocating for effective public policy and practical business solutions. CCA maintains  
19 offices in Fresno, Sacramento and Los Angeles

20 16. Petitioner/Plaintiff Century Villages at Cabrillo is a 27 acre homeless services  
21 community. It is 501(c)(3) nonprofit organization established in 1997, located on a former  
22 U.S. Naval housing site in West Long Beach. The site is directly adjacent to the truck route  
23 to and from the SCIG site; the main entrance to the Villages will see thousands trucks per  
24 day, at a rate of four trucks or more per minute, pass immediately in front of its entrance  
25 gate. The site is also on the other side of the Terminal Island Freeway from the SCIG site,  
26 just south of Cabrillo High School. The Villages provides housing to over 1,000 people each  
27 night, including veteran and non-veteran individuals, families, and children, in the Villages  
28 shelter, transitional housing, and permanent housing facilities. The Villages is planning to

1 expand its facilities on its current site to provide additional housing and services. The  
2 Villages also partners with other organizations to provide much-needed on-site services,  
3 including child care, food services, counseling, a Veterans Administration medical clinic,  
4 substance abuse treatment, and job training. Over half of the Villages' residents on any  
5 given day are African American or Latino.

6 17. Elena Rodriguez is a Hispanic woman resident of West Long Beach who lives less  
7 than half a mile east of the proposed SCIG site. She has lived at this residence for over ten  
8 years. She raised her two children in West Long Beach, her children attended schools in the  
9 area. Ms. Rodriguez has been concerned about the area's air pollution problems since her  
10 children were in elementary school, when they had to spend recess indoors because of poor  
11 air quality. Ms. Rodriguez has always been very active in her community, through both paid  
12 and volunteer positions with community organizations. She currently works as a community  
13 organizer for East Yard Communities for Environmental Justice, where she has worked for  
14 the past two and a half years. Before this position, she worked with the Long Beach Alliance  
15 for Children with Asthma, helping families cope with their children's asthma. She is also the  
16 founder of a community organization called Semillas de Esperanza (Seeds of Hope), that  
17 holds monthly meetings and works in the community on various social causes. She is very  
18 concerned about the negative health impacts that would be caused by the SCIG, for her and  
19 her community.

20 18. Evelyn Deloris Knight is a 79 year old African American woman, living in West  
21 Long Beach less than half a mile east of the proposed SCIG site. She was born and raised in  
22 Alabama, in a community started by former slaves named Africatown. She went to college  
23 and graduate school, and became a social worker in Long Beach. She has held leadership  
24 positions at various social services organizations over the years, including working with the  
25 People Coordinated Services of Southern California for 28 years. She is now retired, but  
26 continues to be very involved in her community, including training young people to be  
27 community organizers. In addition to her distinguished career, she also marched with Dr.  
28 Martin Luther King, Jr., in a march from Selma to Montgomery. After the adoption of the

1 Voting Rights Act, she helped people vote. Ms. Knight is very concerned about the negative  
2 impacts from the SCIG to the air that she and her family breathe. She lives close to the SCIG  
3 site, owns a house two doors down where some of her siblings live, and her nieces and  
4 nephews also live in the area; she is especially concerned about her niece who suffers from  
5 asthma.

6 19. Ms. Rodriguez and Ms. Knight are parties to the non-CEQA claims herein only.

7 20. Petitioner/Plaintiff Natural Resources Defense Council ("NRDC") is a not-for-profit  
8 membership corporation organized under the laws of the State of New York, with offices in  
9 Los Angeles, San Francisco, Chicago, New York, Washington, D.C., and Beijing. NRDC  
10 has approximately 500,000 members throughout the United States, including 120,000  
11 members in the State of California. Many of NRDC's members live near the Los Angeles  
12 and Long Beach ports and associated rail and truck routes. The health, well-being, and  
13 enjoyment of these members will be adversely affected by the SCIG project that  
14 Respondents/Defendants propose to build near the L.A. Ports. NRDC is dedicated to the  
15 preservation, protection, and defense of the environment, its wildlife, and natural resources.  
16 NRDC actively pursues effective enforcement of air quality rules and regulations, and the  
17 reduction of air pollution in Southern California on behalf of its members.

18 21. Defendant/Respondent City of Los Angeles is a public entity located in the County of  
19 Los Angeles and is the lead agency for the Project under CEQA. Defendant/Respondent Los  
20 Angeles City Council is an elected body within the City of Los Angeles and is responsible  
21 for hearing administrative appeals from decisions made by City departments.

22 Defendant/Respondent Los Angeles Harbor Department is an independent department of the  
23 City of Los Angeles. Defendant/Respondent Los Angeles Board of Harbor Commissioners  
24 is a public entity within the City of Los Angeles which governs the Los Angeles Harbor  
25 Department and whose members are appointed by the Mayor of Los Angeles and confirmed  
26 by the Los Angeles City Council.

1 22. Real Party in Interest BNSF Railway Company is the project proponent for the SCIG  
2 project. Burlington Northern Santa Fe Railway is listed as the real party in interest in the  
3 Notice of Determination filed by the City of Los Angeles for the SCIG project.

4 23. Petitioners/Plaintiffs do not know the true names of defendants DOES 1 through 100,  
5 inclusive, and therefore sue them by those fictitious names.. Petitioners/Plaintiffs are  
6 informed and believe, and on the basis of that information and belief allege, that each of  
7 those defendants was in some manner proximately responsible for the events and happenings  
8 alleged in this complaint and for Petitioners'/Plaintiffs' injuries.

9 **THE SCIG PROJECT AND THE SURROUNDING NEIGHBORHOOD**

10 **The Enormous Air Pollution Problem At And Near The Ports**

11 24. The Ports of Los Angeles and Long Beach ("Ports") are, collectively, the fifth busiest  
12 in the world, and handle over 40% of all containerized imports to the United States. Many of  
13 these imported goods arrive in 40-foot cargo containers that are carried from the ports to  
14 local railyards, warehouses, and distribution centers by diesel trucks. Freight leaving the  
15 SCIG project would travel by diesel-powered trains.

16 25. This heavy reliance on diesel power has come with a terrible price. Because of the  
17 confluence of diesel trucks, locomotives, ships and other cargo-moving equipment, the Los  
18 Angeles area Ports are the largest fixed sources of pollution in one of the most polluted air  
19 basins in the United States. The already high rates of asthma, lung cancer, cardio-respiratory,  
20 and other diseases are rising sharply in communities near the Ports and near the highways  
21 and railyards that serve the Ports.

22 26. The health problems associated with diesel particulate pollution are well known.  
23 Diesel particulates have been found to be human carcinogens by the State of California. The  
24 Ports are responsible for over 2,000 tons of diesel particulate emissions per year. There is no  
25 recognized safe level for these pollutants. Soot and black carbon from diesel particulates are  
26 also significant contributors to global warming.

27 27. In studies by California's South Coast Air Quality Management District  
28 ("SCAQMD") beginning in 1998, SCAQMD found that diesel particulates are the dominant

1 toxic air pollutant based on cancer risk in the SCAQMD's jurisdiction, accounting for an  
2 estimated 84% of the risk.<sup>1</sup> In its most recent version of the Multiple Air Toxics Study for  
3 the South Coast Air Basin, the SCAQMD determined that "[m]odeling analysis shows the  
4 highest risks from air toxics surrounding the port areas, with the highest grid cell risk about  
5 3,700 per million, followed by the area south of central Los Angeles where there is a major  
6 transportation corridor."<sup>2</sup>

7 28. In its Goods Movement Emissions Reduction Plan, the California Air Resources  
8 Board ("CARB") noted that goods movement-related air pollution can increase all-cause  
9 mortality, cardiopulmonary mortality, and lung cancer mortality in adults, infant mortality,  
10 hospital admissions for all pulmonary illnesses, chronic obstructive pulmonary disease,  
11 pneumonia, asthma, and all cardiovascular illnesses. It can also contribute to pre-term births  
12 and lower birth weight. Sensitive groups, including children and infants, the elderly, and  
13 people with heart or lung disease, can be at increased risk of experiencing harmful effects  
14 from exposure to air pollution. CARB found that goods movement-related pollution in  
15 California causes 62,000 cases per year of asthma and other lower respiratory symptoms.

16 29. CARB also found that people living in communities close to the source of goods  
17 movement-related emissions, such as ports, railyards, and inter-modal transfer facilities are  
18 likely to suffer greater health impacts and these impacts will likely add to an existing health  
19 burden.<sup>3</sup> Recent evidence also indicates that air pollution exposure can impair lung function  
20 growth in children. The long-term consequences of lower lung function can include shorter  
21 lifespan, as lung function peaks in young adulthood and declines thereafter; lung function is

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23 <sup>1</sup> The SCAQMD has jurisdiction over an area of 6,745 square miles, with a population of  
24 over 15 million. Its jurisdiction includes the Ports of Los Angeles and Long Beach, as well  
as several enormous railyards and intermodal facilities.

25 <sup>2</sup> SCAQMD, Final Report: Multiple Air Toxics Exposure Study in the South Coast Air Basin  
26 (MATES-III), 6-2 (Sept. 2008), *available at*  
27 <http://www.aqmd.gov/prdas/matesIII/Final/Document/aaa-covermates3.pdf>. The "major  
transportation corridor" referenced is one that is heavily used by diesel trucks carrying cargo  
containers to local railyards.

28 <sup>3</sup> CARB's Goods Movement Emissions Reduction Plan may be found at  
<http://www.arb.ca.gov/planning/gmerp/gmerp.htm>.



1 the most significant predictor of mortality in the elderly.<sup>4</sup> CARB has estimated that 3,700  
2 premature deaths occur every year in California as a result of pollution from the  
3 transportation of goods,<sup>5</sup> this is more than the number of people who die from homicide in  
4 California every year. CARB's Goods Movement Emissions Reduction Plan estimates the  
5 cost to society of the deaths, illnesses, hospitalizations, and lost work days caused by goods  
6 movement pollution as several billion dollars per year.

7 The SCIG Project In Context

8 30. An intermodal railyard is a facility at which cargo containers are transferred from, for  
9 example, a truck to a train, thus changing modes of transportation. BNSF owns and operates  
10 an intermodal railyard in and near Commerce, California, around 18 miles from the Ports,  
11 called the Hobart Yard ("Hobart"). Hobart handles intermodal and other traffic from the  
12 Port. The RDEIR for the SCIG project states (in Appendix G and elsewhere) that Hobart can  
13 handle all anticipated container traffic from the Port through 2046.

14 31. Recognizing that on-dock rail – the practice of building and loading trains on the  
15 docks and not in the community – is the cleanest and most efficient way to move cargo that  
16 does not have a local or regional destination, the Port has and is building more on-dock  
17 capacity. The Port recently built Pier 400 by dredge-and-fill and is projected to build a  
18 facility called Pier 500 in the same way. Petitioners/Plaintiffs have asked the Port to build  
19 any additional needed rail capacity on-dock.

20 32. Nonetheless, the SCIG project has powerful political supporters and so BNSF and the  
21 Port propose to build the SCIG intermodal project 4 miles from the Port and directly across  
22 the street from Cabrillo High School, Hudson Gardens, Hudson School (a K-8 school), a day  
23 care center and the Villages at Cabrillo, a facility supportive housing community for the for  
24 homeless, including hundreds of children, veterans – all of which are in the City of Long

25 \_\_\_\_\_  
26 <sup>4</sup> See Press Release, National Institutes of Health, New Research Shows Air Pollution Can  
27 Reduce Children's Lung Function (Sept. 8, 2004), available at <http://www.nih.gov/news/pr/sep2004/niehs-08a.htm>.

28 <sup>5</sup> CARB, Methodology for Estimating Premature Deaths Associated with Long-term  
Exposures to Fine Airborne Particulate Matter in California (Dec. 7, 2009) (Draft Staff  
Report), available at <http://www.arb.ca.gov/Research/Health/pm-mort/pm-mortdraft.pdf>.

1 Beach. The Project will add roughly one million new round-trip truck trips and nearly three  
2 thousand new train trips per year in this neighborhood. The Project would operate 24 hours  
3 each day, seven days per week, 360 days per year for fifty years; there would be no nighttime  
4 limits on truck or train traffic. The road adjoining the driveway to the Villages at Cabrillo  
5 will see four or more new diesel truck trips per minute, every hour, every day, for over 50  
6 years. Locomotives will move and idle next to a middle school and homes in West Long  
7 Beach. These new truck and train trips will produce air pollution, including deadly diesel  
8 particulate emissions, that vastly exceed the emissions now associated with the businesses on  
9 the SCIG site.

10 33. If SCIG is built, capacity at Hobart will be freed up to service other types of  
11 containers such as transloaded containers, a practice in which cargo is taken from, for  
12 example, 40-foot ocean cargo containers and moved into 53-foot containers for movement on  
13 trucks or by trains, regionally and across the country. According to the FEIR and other  
14 sources, capacity at Hobart that is freed up by operation of SCIG is expected to be taken up  
15 by new transloaded containers and other sources. The FEIR assumes that the capacity at  
16 Hobart is expected to increase to approximately 3,000,000 lifts per year. This reported  
17 1,300,000 lift increase at the existing Hobart yard is almost the same size as the proposed  
18 SCIG facility capacity. In future years, air emissions associated with Hobart and SCIG will  
19 be substantially higher than the neighboring communities now suffer.

20 34. The South Coast Air Basin ("Basin") is designated by US EPA under the federal  
21 Clean Air Act as nonattainment for the PM2.5 annual and 24-hour standards. EPA has also  
22 finalized a new, even more stringent annual standard for PM2.5 and 1-hour NO2. The Clean  
23 Air Act requires the Basin to attain the new annual PM2.5 limits by 2020, and the 24-hour  
24 PM2.5 standard must be attained by 2014. Significant reductions of diesel particulate matter  
25 and oxides of nitrogen are crucial to meeting this deadline.

26 35. As set out in the environmental justice section of the RDEIR, the residential  
27 neighborhoods near the SCIG site are mostly low-income communities of color. These  
28 communities have higher cancer risk and asthma rates than most areas of Southern

1 California. These community health problems will be exacerbated if SCIG is built.

2 **THE EIR PROCESS FOR THE PROJECT**

3 36. The Notice of Preparation for the Project was made public on October 31, 2005. The  
4 initial draft environmental impact report ("DEIR") was made public on September 23, 2011.  
5 Petitioners/Plaintiffs submitted extensive written and oral comments on the DEIR.

6 37. The RDEIR was circulated on September 27, 2012. Petitioners/Plaintiffs submitted  
7 written and oral comments on the RDEIR.

8 38. The FEIR was circulated on February 23, 2013. Petitioners/Plaintiffs provided  
9 written and oral comments on the FEIR, which was approved by the Los Angeles Board of  
10 Harbor Commissioners at a public hearing on March 7, 2013.

11 39. Petitioners/Plaintiffs appealed the March 7, 2013 decision of the Board of Harbor  
12 Commissioners to the Los Angeles City Council. On May 8, 2013, the City Council affirmed  
13 the decision of the Board of Harbor Commissioners.

14 40. The City of Los Angeles filed a Notice of Determination for the Project on May 9,  
15 2013. Petitioners/Plaintiffs sought mediation pursuant to California Public Resources Code  
16 section 21151(c), but the City rejected their request.

17 **THE APPEAL TO THE LOS ANGELES CITY COUNCIL**

18 41. California Public Resources Code section 21151(c) provides that:

19 If a nonelected decisionmaking body of a local lead agency certifies an  
20 environmental impact report, approves a negative declaration or mitigated  
21 negative declaration, or determines that a project is not subject to this division,  
22 that certification, approval, or determination may be appealed to the agency's  
23 elected decisionmaking body, if any.

24 42. The FEIR for SCIG was approved by the Los Angeles Board of Harbor  
25 Commissioners, a non-elected body, and Petitioners/Plaintiffs duly appealed that approval to  
26 the Los Angeles City Council, the elected body that confirms the Mayor's appointments to  
27 the Board of Harbor Commissioners.

28 43. Unlike, for example, the City of Long Beach, Los Angeles does not have any written

1 procedures for the conduct of an appeal under Section 21151(c), nor any written or other  
2 standards for the consideration and resolution of such an appeal.

3 44. In an appeal of an earlier decision by the Board of Harbor Commissioners in the  
4 TraPac matter, the appeal was first referred to a standing committee of the City Council.  
5 Here, however, the appeal was calendared for May 8, 2013 before the full City Council  
6 without any hearing in committee, despite several requests from Petitioners/Plaintiffs that the  
7 appeal be heard first by the appropriate committee.

8 45. There were eight appeals to the City Council regarding the SCIG project. A City staff  
9 report on the appeal was made available on or about May 3, 2013. Petitioners/Plaintiffs  
10 submitted a written response to the staff report on May 7, 2013. Other appellants submitted  
11 written responses on May 8, 2013, the day of the City Council hearing on the appeals. At the  
12 May 8 hearing, a Councilmember asked the City Attorney representative present whether the  
13 Council had to consider material submitted that day; he was told "no." From the remarks  
14 made by the Councilmembers at the May 8 hearing, it is unlikely that any of them read any  
15 part of the eight appeals or the underlying EIRs or comments on the EIRs.

16 46. Prior to the commencement of the appeal hearing on May 8, no reliable information  
17 had been given out by the City Clerk or anyone else about what procedures would be in place  
18 to hear public testimony at the hearing. The City Council Chambers, the hallway outside,  
19 and an overflow room were full of people. When the matter commenced, Council President  
20 Wesson announced that Port staff would make a presentation and then each appellant group  
21 would have 3 minutes to speak; other speakers would only have 1 minute and the two "sides"  
22 would be limited to a total of 25 minutes each. These rules, which were not voted on by the  
23 full Council, left many people unable to speak for or against the project.

24 47. The Los Angeles City Council operates in most cases on a ward courtesy system for  
25 development projects. This means that, in most cases, if the councilmember for the council  
26 district in which a project is proposed favors the project, the other councilmembers will vote  
27 in favor of it.

28 48. The SCIG project is proposed to be built in the 15th Council District, which is now

1 represented by Joe Buscaino. Prior to the May 8 hearing, Councilmember Buscaino made a  
2 number of public statements supporting the SCIG project and also appeared in a video  
3 promoting the project. Petitioners/Plaintiffs asked in writing that Councilmember Buscaino  
4 recuse himself from voting on their appeal, but he did not do so; he voted in favor of the  
5 project at the hearing.

6 49. The City Council vote on the appeal was 11-2, with Councilmembers Perry and Parks  
7 opposed.

8 **VIOLATIONS OF CIVIL RIGHTS OF THE MINORITY, LOW-INCOME NEAR-**  
9 **PROJECT RESIDENTS**

10 50. The RDEIR for the Project admits:

11 The proposed Project would have significant impacts related to aesthetics  
12 (AES-1), air quality (AQ-1, AQ-2, AQ-4, AQ-7), cultural resources (CR-2),  
13 land use (LU-4), and noise (NOI-6) that would remain significant after  
14 mitigation. With these unavoidable impacts, the Proposed Project would have  
15 new, significant effects with respect to minority and low-income populations.  
16 Those impacts would fall disproportionately on minority and low-income  
17 populations because the census block groups adjacent to the point of impact  
18 (the eastern edge of the Project site) constitute minority populations, and some  
19 (i.e., all or parts of census tracts 5727, 5728, 5729, and 5755) constitute low-  
20 income populations.

21 RDIER 6-11-6-12.

22 51. With respect to air quality, the RDEIR admits that, even after the proposed mitigation  
23 measures, significant impacts will remain—impacts that are disproportionately high on  
24 nearby minority and low-income populations. RDEIR, at 6-12-6-13. In particular (emphasis  
25 added):

26 Construction of proposed Project will generate emissions that exceed  
27 SCAQMD significance thresholds for VOC, CO, NOx, PM10 and PM2.5,  
28 representing a significant impact. In addition, these emissions combined with

1 emissions from other concurrent construction projects in the area will  
2 represent a cumulatively considerable contribution to a significant cumulative  
3 impact. The mitigation measures proposed in the RDEIR (MM AQ-1 through  
4 MM AQ-6) will fail to keep construction emissions below the significance  
5 thresholds. These emissions will constitute a disproportionately high and  
6 adverse effect on minority and low-income populations.

7 52. The mitigation measures proposed in the RDEIR (MM AQ-1 through MM AQ-3) will  
8 fail to keep construction-related emissions of NO<sub>2</sub> and PM<sub>10</sub> below the one-hour and annual  
9 significance thresholds (for NO<sub>2</sub>) and the annual threshold for PM<sub>10</sub>.

10 53. Operation of the project – expected to last until 2066 or later – will generate local,  
11 off-site ambient pollutant concentrations that exceed SCAQMD significance thresholds for 1-  
12 hour and annual NO<sub>2</sub>, 24-hour and annual PM<sub>10</sub>, and 24-hour PM<sub>2.5</sub>, representing  
13 significant impacts. In addition, Project operations combined with other past, present and  
14 reasonably foreseeable future projects in the area (possibly including the expansion of the  
15 adjacent railyard called the Intermodal Container Transfer Facility (“ICTF”) and enlargement  
16 and the widening of the I-710 freeway) will represent a cumulatively considerable  
17 contribution to a significant cumulative impact for ambient pollutant concentrations. The  
18 mitigation measures proposed in the RDEIR will fail to keep the 1-hour and annual NO<sub>2</sub>, 24-  
19 hour and annual PM<sub>10</sub>, and 24-hour PM<sub>2.5</sub> levels below significance levels. Again, these  
20 emissions will constitute a disproportionately high and adverse effect on minority and low-  
21 income populations.

22 54. Construction and operation of the proposed Project will also expose receptors to  
23 significant levels of toxic air contaminants resulting in increased cancer risk above the  
24 significance threshold for residential, occupational, sensitive, student and recreational  
25 receptors. In addition, Project construction and operational activities combined with other  
26 concurrent projects in the area will represent a cumulatively considerable contribution to a  
27 significant cumulative health risk impact. Even after application of the proposed mitigation  
28 measures, considering the cancer risk from toxic air contaminants in the Port region, the

1 Project will make a cumulatively considerable contribution to the significant health risk  
2 impact to the predominantly minority and low-income population in the Port region; this  
3 impact will constitute a disproportionately high and adverse effect on minority and low-  
4 income populations.

5 55. The State of California has defined "environmental justice" as: "the fair treatment of  
6 people of all races, cultures, and incomes with respect to the development, adoption,  
7 implementation, and enforcement of environmental laws, regulations, and policies." Cal.  
8 Government Code §. 65040.12(e). California has addressed this problem in part by enacting  
9 California Government Code section 11135(a), which states that:

10 No person in the State of California shall, on the basis of race, national origin,  
11 ethnic group identification, religion, age, sex, sexual orientation, color,  
12 genetic information, or disability, be unlawfully denied full and equal access  
13 to the benefits of, or be unlawfully subjected to discrimination under, any  
14 program or activity that is conducted, operated, or administered by the state or  
15 by any state agency, is funded directly by the state, or receives any financial  
16 assistance from the state.

17 56. The Port has received and continues to receive millions of dollars in state bond  
18 proceeds, including from state Proposition 1B. The proposed SCIG project will be built on  
19 land that the Port controls by a grant from the State to hold in trust for the people of the State.

20 57. Petitioners/Plaintiffs and others have made clear to the Board of Harbor  
21 Commissioners and the City Council that the siting of the SCIG project as planned is a civil  
22 rights violation. In full knowledge of the admissions in the RDEIR quoted herein, and  
23 without changing a word of those admissions, and with the conclusion in the RDEIR that  
24 SCIG is not needed to handle new capacity, the Board of Harbor Commissioners and City  
25 Council approved the project even though there are reasonable alternatives that avoid civil  
26 rights and environmental justice issues. These actions constitute intentional violations of  
27 and/or deliberate indifference to Petitioners'/Plaintiffs' members civil rights under California  
28 law.

## CEQA VIOLATIONS

### Incorrect Project Description

58. CEQA defines a project as “the whole of an action, which has a potential for resulting in either” a direct or “reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines § 15378 (a)(1).) The lead agency “must consider the whole of an action, not simply its constituent parts, when determining whether [a project] will have a significant environmental effect.” (CEQA Guidelines § 15003(h).) Nonetheless, the RDEIR pretends that operation of BNSF’s Hobart Yard is not a part of the SCIG project except when it suits Respondents/Defendants to do so, for example in calculating the CEQA air quality baseline to make it appear high. In fact, SCIG and Hobart are so closely related that they should be analyzed as one project and the project description should so provide.

59. Real Party in Interest BNSF owns and operates Hobart. Operation of SCIG will free up capacity at Hobart, roughly seven miles away – capacity that BNSF can fill any way it wants to. The RDEIR predicts that this freed-up capacity at Hobart will be increasingly filled by cargo from the Ports and surrounding areas. However, the truck and locomotive emissions associated with this new traffic to and from Hobart were not analyzed in the RDEIR, and the project description in the RDEIR does not include the changes to traffic at Hobart or the total increase in traffic when SCIG and Hobart are both operating as parts of the project that is analyzed in the RDEIR. Thus, the project description in the FEIR is incorrect, in violation of CEQA.

### Failure to Analyze The Project's Growth-Inducing Impacts

60. Construction and operation of SCIG will allow total traffic to the SCIG/Hobart complex to increase. However, the associated overall increase in air pollution and related public health impacts were not analyzed in the RDEIR, in violation of CEQA.

### Inconsistent Use of Hobart In The Baseline, Project, and No Project Alternatives

61. In calculation of traffic loads and associated air emissions, the RDEIR includes truck traffic associated with Hobart in the baseline and No Project Alternatives, but does not include truck traffic to Hobart that will occur after SCIG opens. Doing so artificially inflates



1 the CEQA baseline and depresses the analysis of future air emissions associated with the  
2 project so as to make the additional emissions associated with the Project appear smaller than  
3 they truly will be, in violation of CEQA.

4 Improper Analysis of the Effects of the Project

5 62. The RDEIR claims that air quality will improve if the Project is built. It makes this  
6 claim by taking credit for governmental measures that have nothing to do with SCIG and  
7 which will be in effect whether SCIG is built or not. The FEIR takes credit for regulatory  
8 requirements, fleet turnover, and other emissions controls that are already required of the  
9 Project in order to make the Project seem like an improvement to air quality. Given this, and  
10 the fact that SCIG, when operational, will add roughly one million truck trips and thousands  
11 of locomotive trips per year to its neighborhood, operation of SCIG will make local air  
12 quality worse than it would be if SCIG were not built. Not admitting this in the RDEIR is a  
13 violation of CEQA.

14 63. Moreover, the RDEIR failed to analyze the air quality effects and necessary  
15 mitigation, if any, of the truck and locomotive traffic at the Hobart Yard that will be enabled  
16 by operation of SCIG. This too is a violation of CEQA.

17 Failure To Consider Feasible Alternatives

18 64. The Port has built, and is building, substantial amounts of on-dock rail – facilities that  
19 are on the Port's docks and not in the surrounding neighborhoods that can handle containers  
20 to be loaded onto trains. The Port has also built, and has plans to build, useable land by  
21 dredging and filling in the harbor. To the extent that the extra capacity represented by SCIG  
22 is needed, that capacity can be handled by building additional on-dock rail facilities and  
23 associated tracks. However, the RDEIR and FEIR do not accept on-dock rail as a feasible  
24 alternative, in violation of CEQA.

25 65. The Port, the next-door Port of Long Beach, the South Coast Air Quality  
26 Management District, and the Southern California Association of Governments have been  
27 working on research and demonstration models of zero-emission container movement  
28 systems for years. CalTrans is now evaluating a catenary system to allow electrically-

1 powered trucks to haul cargo on the expanded I-710. Rather than commit to a deadline for  
2 use of a zero-emission container movement system at SCIG, the RDEIR and associated lease  
3 terms do not require the use of such systems. Zero-emission container systems are feasible to  
4 make the four-mile trip from the Port to the SCIG site but are not included as a Project  
5 alternative or as a mitigation measure, in violation of CEQA.

6 66. The United States Environmental Protection Agency ("EPA") regulates locomotive  
7 engines by assigning them to different "tiers" depending on their age and emissions profiles.  
8 Beginning in 2015, only Tier 4 locomotives will be legal to sell in the United States; these  
9 are roughly 90 percent cleaner than Tier 3 locomotives that are in service now. Despite the  
10 goals in the Ports' Clean Air Action Plan<sup>6</sup>, the RDEIR and associated lease do not require the  
11 use of Tier 3 or Tier 4 locomotives at SCIG, ever. Tier 3 engines are now widely available  
12 and Tier 4 engines will soon be; failure to require the use of such engines as a Project  
13 alternative or mitigation measure is a violation of CEQA.

14 *The RDER's Calculation Of Drayage Truck Emissions Is Arbitrary And Capricious.*

15 67. The RDEIR calculates air emissions from port-serving "drayage" trucks in a  
16 backwards way: it estimates the future number of "lifts," one lift being the movement of a  
17 cargo container from, say, a truck to a railcar, and then estimating the number of truck trips  
18 associated with each lift. This is called the "trip per lift" ratio and is usually around 2 at  
19 intermodal yards in the United States. The QuickTrip model which was generated for and  
20 used by the Port to estimate truck traffic based on cargo container throughput (see RDEIR at  
21 3.10-21), estimates 2.85 truck trips per lift. However, the RDEIR uses a factually-  
22 unsupported figure of 1.3 trips per lift. A memo from BNSF to the Port candidly states:  
23 "There is no empirical data to support the lower lift/truck trip ratio for SCIG as SCIG is the  
24 first rail intermodal facility design of its kind." This confirms the argument that  
25 Petitioners/Plaintiffs made in their comments (and that the South Coast Air Quality  
26 Management District made in its comments) that the trips per lift ratio in the RDEIR had no  
27

28 <sup>6</sup> See San Pedro Bay Ports, Clean Air Action Plan 2010 Update (Oct. 2010), available at  
<http://www.portoflosangeles.org/environment/caap.asp>.

1 empirical basis.

2 68. The consequence of the use of the unsupported trip per lift ratio of 1.3 instead of the  
3 customary 2.0 results in air emission estimates that should be roughly 50% higher than what  
4 the RDEIR reported. This is arbitrary and capricious within the meaning of CEQA and  
5 California Code of Civil Procedure section 1094.5.

6 69. Moreover, the RDEIR concludes that diesel truck-related pollution in the South Coast  
7 Air Basin will decrease because of SCIG, while Appendix G4 of the RDEIR shows just the  
8 opposite. Appendix G4 shows that lifts at Hobart will increase over the 2010 baseline, and in  
9 fact will almost double over the 2010 baseline by 2035 (assuming an equal share of  
10 international cargo going to SCIG and the adjacent ICTF railyard).

11 70. The arbitrary use of a low trip per lift ratio spills over into the health risk analysis in  
12 the RDEIR because that analysis is based on arbitrarily-low air emissions estimates. A  
13 rational projection of future air emissions associated with SCIG (and Hobart) would lead to  
14 substantially elevated cancer risk numbers.

15 *The FEIR Fails To Adopt All Feasible Mitigation Measures and the Operational Mitigation*  
16 *Measures Proposed In The RDEIR Are Inadequate*

17 71. CEQA requires that a project incorporate all reasonably feasible mitigation measures.  
18 The RDEIR fails to do this in numerous ways.

19 72. The only on-site mitigation required for PM 2.5 emissions is street-sweeping. This  
20 pathetic result ignores the availability of, for example, liquid natural gas ("LNG") trucks  
21 (that do not emit any diesel particulates), Tier 3 locomotives (many of which are already in  
22 BNSF's fleet), and Tier 3 locomotive conversions that limit diesel emissions to Tier 4 levels  
23 (in use now by Pacific Harbor Lines at the Port).

24 73. The RDEIR and associated lease do not contain any deadlines (as opposed to goals)  
25 for the use of mitigation measures such as zero-emission container movement systems and  
26 Tier 4 locomotives which will be available in 2015, before the Project begins operations.  
27 The RDEIR also fails to require, as a mitigation measure, satisfaction of the Port's Clean Air  
28 Action Plan (CAAP) Measure RL3, which specifies a goal that 95% of all locomotives

1 serving the ports by 2020 will be Tier 4. Nor does the RDEIR require maximizing on-dock  
2 rail, for example by building a new facility on dredge-and-fill land in the port, considered as  
3 a mitigation measure.

4 74. The RDEIR does not include, as project conditions or as mitigation measures, the key  
5 assumptions used in the air quality analyses, including the analyses of locomotive and truck  
6 emissions.

7 75. The RDEIR and associated lease do not contain or even discuss any mitigation  
8 measures for greenhouse gas ("GHG") emissions associated with SCIG, even though the  
9 RDEIR concludes that the Project's impacts on GHGs will be significant.

10 *Air Emissions From SCIG Will Impair Implementation Of The South Coast Air Quality*  
11 *Management District's State Implementation Plans for NOx, Particulate Matter and Ozone.*

12 76. The million new diesel truck trips and thousands of locomotive trips per year that the  
13 SCIG project will create will add to the PM 2.5 load in the South Coast region, which is  
14 already in non-attainment for PM 2.5 under the federal Clean Air Act, and will also increase  
15 ozone emissions as to which the South Coast is in non-attainment. As noted above, SCIG  
16 and Hobart-related diesel truck and train trips will increase, not decrease, if SCIG is built.

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

24 78. Moreover, although the FEIR claims that the SCIG project will comply with the 2007  
25 Air Quality Management Plan ("AQMP"), it argues that "CEQA does not require an  
26 examination of the AQMP's black box." FEIR at 2-596. The FEIR fails to explain how it  
27 can ignore this large gap in emissions reductions necessary to be developed to meet ambient  
28 air quality standards. CEQA requires projects to address this issue; it is inconsistent for the

1 Port to claim that the project would not conflict with the AQMP and at the same time allege  
2 that it need not examine the effect of the project on the "black box" which is crucial to  
3 attainment of federal ozone limits within the South Coast district.

4 79. The FEIR also admits that the emissions from SCIG project would, in and of  
5 themselves, create a violation of the National Ambient Air Quality Standard (NAAQS) for  
6 the 1-hour NO2 standard. This admission directly contradicts the claim that SCIG will not  
7 conflict with or obstruct implementation of an applicable air quality plan. The FEIR fails to  
8 require reasonable and adequate mitigation measures for NOx, PM2.5 or PM10. Under  
9 Public Resources Code section 21002.1(c), a project may only be approved if it is otherwise  
10 permissible under applicable laws and regulations. This project would violate the federal and  
11 California Clean Air Acts and cannot be legally approved.

12 *The Cumulative Impacts Analysis Is Flawed.*

13 80. The cumulative impacts analysis in the RDEIR ignores two big elephants in the room:  
14 the Hobart Yard and the I-710 expansion project. The problems arising from ignoring  
15 growth at Hobart have been described above.

16 81. I-710 is roughly one mile East of the SCIG site. CalTrans has proposed a massive  
17 expansion project in order to accommodate expected traffic increases in truck and auto traffic  
18 from the Ports of Los Angeles and Long Beach along the I-710.

19 82. Here is what the June, 2012 draft environmental impact report prepared for the I-710  
20 project says about the need for widening the I-710:

21 "TRANSPORTATION DEMAND. Combined port activity in the Study Area  
22 is expected to increase from the handling of 14 million annual twenty-foot  
23 equivalent units (TEUs) in 2008 to approximately 43 million annual TEUs in  
24 2035. After considering different port cargo growth scenarios, the projected  
25 43 million annual TEUs was the port cargo growth scenario adopted by the I-  
26 710 Corridor Project Committee in April 2009 to provide a conservative basis  
27 for the I-710 Corridor Project travel demand forecasting. This forecast is  
28 consistent with SCAG's recently adopted 2012 Regional Transportation

1 Plan/Sustainable Communities Strategy (RTP/SCS). The I-710 Corridor is,  
2 and is expected to remain, a primary route for trucks carrying containers to  
3 and from the ports. This indicates that the existing transportation problems on  
4 the I-710 mainline and other Study Area roadways will get worse, which in  
5 turn, have the potential to adversely affect the competitive position of the Los  
6 Angeles region in the global economy. By 2035, regional population is  
7 forecast to grow by 27 percent, and Study Area population is forecast to grow  
8 by 11 percent. Employment will follow a similar pattern, with regional growth  
9 of 27 percent and Study Area employment growth of only 7 percent. Growth  
10 will be lower in the Study Area because it is almost completely developed.  
11 Increases in population, employment, and goods movement between now and  
12 2035 will lead to more traffic on the I-710 freeway and on the streets and  
13 roadways within the Study Area as a whole.”<sup>7</sup>

14 83. Critically, for purposes of the case at bench, CalTrans, in deciding that the I-710  
15 needs to be expanded, has assumed that SCIG will be operational.<sup>8</sup> Thus, the claim in the  
16 FEIR that SCIG will reduce traffic on the I-710 is a sham.

17 84. In addition, the SCIG FEIR fails to analyze the cumulative impact of SCIG on the  
18 neighboring community given the planned expansion and higher (not lower) amount of  
19 traffic on the I-710, only a mile away.

20 *The No-Project Analysis Fails To Consider The Expanded I-710*

21 85. As described above, CalTrans is planning to expand the portion of the I-710 that is  
22 near the SCIG site. The community-preferred alternative and several other alternatives being  
23 studied for the I-710 project includes a zero-emission freight transport corridor. The RDEIR  
24

25 <sup>7</sup> See Draft Environmental Impact Report/Environmental Impact Statement and Section 4(f)  
26 Evaluation, I-710 Corridor Project (Executive Summary) 3 (June 2012), *available at*  
27 <http://www.dot.ca.gov/dist07/resources/envdocs/docs/710corridor/docs/710%20DEIR%20EIS%20Executive%20Summary%20final%20.pdf> [hereinafter “I-710 DEIR/EIS”].

28 <sup>8</sup> See I-710 DEIR/EIS (Cumulative Impacts) at 3.25-14 and 3.25-32, *available at*  
<http://www.dot.ca.gov/dist07/resources/envdocs/docs/710corridor/docs/Chapter%203/3.25%20Cumulative.pdf>.

1 for the SCIG project fails to consider, in its no-project analysis, the reductions in air pollution  
2 that will be attributable to the zero-emission container movement system on the expanded I-  
3 710. This error results in higher air emission numbers for the no-project case than are  
4 warranted, in violation of CEQA.

5 86. Moreover, if it is true, as Appendix G4 and other sections of the RDEIR suggest, that  
6 SCIG is not necessary to handle cargo capacity in the foreseeable future, the No Project  
7 alternative should have been chosen.

8 *The SCIG FEIR Violates CEQA By Piecemealing The SCIG/ICTF Expansion Projects*

9 87. Union Pacific Railroad and the ICTF Joint Powers Authority ("ICTF JPA") are  
10 planning an enormous expansion of the Union Pacific ICTF railyard that is immediately  
11 adjacent to the proposed SCIG project site and that would pollute the same neighborhoods,  
12 for the same reasons. The ICTF JPA is a joint powers authority formed by the cities and  
13 Ports of Long Beach and Los Angeles. The ICTF JPA's seven-member Governing Board  
14 includes two representatives from each port, a member of each city council, and a  
15 representative of the Los Angeles County Metropolitan Transportation Authority ("MTA").  
16 The City of Los Angeles holds four seats on the 13-member MTA Board.

17 88. The Notice of Preparation for the ICTF expansion project was made public by the  
18 ICTF JPA in January, 2009. It states that the ICTF expansion would increase the number of  
19 containers handled at the facility from an annual average of 725,000 to an estimated 1.5  
20 million. Truck trips would increase by 1.1 million trips per year—roughly the same number  
21 of trips that SCIG is expected to bring into the same neighborhoods. Like SCIG, ICTF  
22 would operate 24 hours per day, 7 days per week. The ICTF project will also increase the  
23 annual number of rail trips by roughly 4,700.

24 89. Under CEQA, the SCIG and ICTF projects share a common goal, are physically  
25 adjacent to each other, share common governance in part, and should be evaluated as one  
26 project for all purposes, including cumulative impacts. The failure of the FEIR to do so  
27 violates CEQA.

28

1 The FEIR's Treatment Of Global Climate Change Is Invalid

2 90. The RDEIR admits that:

3 "The proposed project would produce GHG operational emissions that would  
4 exceed the CEQA baseline levels when the project reaches its full capacity in  
5 2035 and beyond. However, operational emissions would be less than the  
6 baseline GHG emissions through 2023 before the SCIG facility throughput  
7 reaches its maximum capacity. Therefore, significant impacts under CEQA  
8 would occur for the proposed Project."

9 RDEIR at 3.6-30. However, the RDEIR claims that "the GHG emissions of construction and  
10 operation are significant and unavoidable." Id. at 3.6-31. The RDEIR also concludes that  
11 "The proposed Project would not conflict with State and local plans and policies adopted for  
12 the purpose of reducing GHG emissions." This is patently false because California's AB 32  
13 requires a reduction, not increase, in statewide GHG emissions. By failing to discuss how  
14 significant these impacts will be, and the extent to which they will frustrate and be  
15 inconsistent with State and local (including City of Los Angeles) policies adopted to reduce  
16 GHG emissions, the RDEIR violates CEQA. In particular, the conclusion in the RDEIR that  
17 the proposed project would not conflict with State and local plans and policies adopted for  
18 the purpose of reducing GHG emissions is not supported by substantial evidence.

19 91. In fact, there are feasible GHG mitigation measures that the RDEIR fails to analyze,  
20 foremost among which is implementation of zero-emission container movement between the  
21 Port and the SCIG site. This would eliminate tailpipe emissions, including CO2, from one  
22 million truck trips per year. Similarly, the RDEIR does not consider the purchase of State-  
23 approves emissions offsets to counteract some of the increase in GHG emissions due to the  
24 project.

25 The Traffic And Circulation Analyses In The FEIR Are Invalid

26 92. It is not clear what project year is used for analysis in the Transportation/Circulation  
27 section of the RDEIR (Section 3.10). In the few text mentions of a project year in Section  
28 3.10 of the RDEIR, it seems as though the project impacts were analyzed assuming either



1 that the project operates at capacity in an unspecified year, or that 2035 is the analysis year  
2 (which is also the year at which capacity is reached).

3 93. Additionally, the RDEIR states that the proposed Project trip generation was  
4 determined by using the proposed Project lifts (container trips) from the average weekday of  
5 the peak month of port operation at port buildout, the QuickTrip outputs, and adjustments for  
6 bobtail and container trips based on the rates shown in Table 3.10-21. RDEIR at 3.10-40.  
7 Although 'port buildout' is not described in RDEIR Section 3.10, it may be that this  
8 description means that the project trip generation assumes 2035 operations , (i.e. that the  
9 SCIG facility operates at capacity). Figure 3.10-6 contradicts this interpretation because the  
10 truck trip distribution percentages shown are described as being "determined by Baseline port  
11 intermodal demand" (RDEIR at 3.10-28); these values for trip distribution do not match any  
12 of the truck trip distribution percentages for years 2016, 2023, or 2035-2066 shown in  
13 Figures 4-2, 4-3, and 4-4 of the Cumulative Impacts Section of the RDEIR. It is therefore  
14 unclear and unsupportable that the analysis in Section 3.10 assumes 2035 truck volumes  
15 traveling along the same routes they would in the baseline year, even though different trip  
16 distributions were estimated for 2035.

17 94. The Traffic/Circulation section does not appear to account for local background  
18 conditions in future years when assessing project impacts. The RDEIR states that: "Impacts  
19 were assessed by quantifying differences between CEQA Baseline conditions and CEQA  
20 Baseline conditions plus the proposed Project." RDEIR at. 3.10-20. Similarly, values shown  
21 in the traffic data tables are for the baseline and "baseline plus proposed project." This  
22 analysis ignores changes in local conditions that will occur in the future by simply adding the  
23 project's incremental effects to the 2010 baseline, rather than accounting for 2035 or 2066  
24 background conditions. Thus, it appears that the analysis makes a distinction between two  
25 different kinds of impacts: those impacts determined by comparing the baseline to the future  
26 with project, and those project impacts determined by comparing the future without the  
27 project to the future with project. It is unclear why neither Section 3.10 nor 4.0 rely on the  
28 2010 baseline compared to the projections for future years to determine significant impacts.

1 Failure to explain this and to analyze transportation impacts using different baselines is a  
2 CEQA violation.

3 95. The analysis of traffic impacts relies on traffic counts collected for this study. Local  
4 jurisdictions provide guidelines for collecting traffic counts for traffic studies in the area. In  
5 the City of Los Angeles, the Los Angeles Department of Transportation Traffic Study  
6 Policies and Procedures governs this kind of work. However, here the traffic counts as  
7 described above do not conform with the City of Los Angeles methodology in at least two  
8 ways: 1) counts were not taken from 9–10 a.m. and 3–4 p.m, and 2) bicycle and pedestrian  
9 (including school children) volume counts were not included. It is unclear why there were no  
10 pedestrian or bicycle counts, especially given that at least six of the seven City of Los  
11 Angeles intersections examined have pedestrian crosswalks and sidewalks, and one  
12 intersection had a bike lane. Additionally, for all intersections, including those within the  
13 City of Long Beach and City of Carson, the counts do not conform to Los Angeles County  
14 guidelines as they were not taken on multiple days for the same intersections. Because only  
15 a single day of counts were collected at each intersection, it is not possible to determine  
16 whether the values collected are representative of the traffic conditions onsite because the  
17 day to day variability of traffic levels is unknown.

18 96. The RDEIR states that the traffic counts used to analyze Congestion Monitoring Plan  
19 (CMP) monitoring stations (freeways and arterials) are based on 2009 Caltrans data. These  
20 data are within two years of the modified baseline year (2010) but are not within two years of  
21 the RDEIR analysis (2012) and thus are suspect. In addition, the RDEIR did not study the  
22 San Gabriel to PCH intersection and instead treated it as a “highway ramp move.” This had  
23 the effect of ignoring this catastrophic impact of the proposed SCIG access on the Villages at  
24 Cabrillo.

25 97. The RDEIR uses an analysis of freeway ramps from “the Traffic Operations Report”  
26 prepared for the Pacific Coast Highway Bridge Replacement (#53-399) and SCIG Site  
27 Driveway Alternatives Project. It appears that the analysis year referenced is 2008. The raw  
28 traffic count data are not provided in the RDEIR, but the analysis outputs in Appendix G1 list

1 the "date" and "date performed" as Tuesday 1/29/2008, Wednesday 2/13/2008, Thursday  
2 10/14/2010, and Monday 10/18/2010. If these dates are the date the traffic counts were  
3 collected, while all of these dates are within two years of the baseline year (2010), the 2008  
4 dates are not within two years of the RDEIR analysis (2012) and are suspect.

5 *The Project's Effects On Bicycle And Pedestrian Uses Are Not Analyzed*

6 98. The RDEIR's evaluation of impacts states that the project "will not conflict with  
7 policies, plans or programs regarding public transit, bicycle or pedestrian facilities, or  
8 otherwise decrease the performance or safety of such facilities." RDEIR at 3.10-60.

9 However the RDEIR also states that although there are "currently no on-street bicycle  
10 facilities" on designated truck routes, the "City of Los Angeles Master Bike Plan identifies  
11 Pacific Coast Highway as a Class II designated bikeway that will include bicycle lanes in the  
12 future." RDEIR at 3.10-16. The RDEIR also states that Lomita Blvd and Anaheim Street  
13 are also designated as Class II bikeways and are in the five-year implementation plan as  
14 second highest priority components, although the Pacific Coast Highway is not included in  
15 the 5-year implementation plan.

16 99. An examination of the 2010 City of Los Angeles Bike Plan indicates that existing and  
17 proposed bikeways coincide with several of the SCIG proposed truck routes. The proposed  
18 truck route includes portions of the Pacific Coast Highway, Seaside Avenue, Anaheim Blvd.,  
19 and Harry Bridges Road that have existing or future bike lanes which are part of the City's  
20 planned "Backbone Bikeway Network." According to the City of Los Angeles Director of  
21 Planning, on July 1, 2010, 1.3 miles of bike lanes were installed along Anaheim Blvd from  
22 Henry Ford Ave to the Long Beach City limit (coinciding with a SCIG truck route), over two  
23 years before the RDEIR was completed.

24 100. Moreover, the Transportation/Circulation section of the RDEIR does not  
25 provide a technical evaluation of the project's impacts on bicyclists and pedestrians. The  
26 RDEIR states only that pedestrian crosswalks are present at intersections. The Federal  
27 Highway Administration ("FHWA") indicates that when heavy truck traffic increases,  
28 bicyclists are less comfortable riding on-street. When heavy truck traffic is present, the 2010

1 Los Angeles Bike Plan technical guidelines recommend considering additional width for bike  
2 lanes next to parallel parking and bicycle routes with a wide outside lane. This is consistent  
3 with FHWA indices of bikeway facility performance: with heavy truck traffic, the FHWA's  
4 Bicycle Compatibility Index worsens, leading to a worsening of the FHWA's bicycle level of  
5 service ("LOS"). Similarly, the 2010 Highway Capacity Manual includes a measure of  
6 bicycle LOS, which accounts for the proportion of heavy vehicle traffic, as well as overall  
7 motorized vehicle volumes. However, the RDEIR does not assess pedestrian or bicycle LOS.

8 101. Furthermore, the intersection traffic count information described in the  
9 RDEIR (described in Section 3.10 and used in estimates shown in Appendix G1) and posted  
10 in the DEIR (raw traffic count data in Appendix G3) does not include information about  
11 bicyclists and pedestrians at any location despite the LA DOT Traffic Study Policies and  
12 Procedures requirement that "the study intersection counts should also include vehicle  
13 classifications, pedestrian (including schoolchildren) volume counts, and bicycle counts"  
14 Bicycle counts on the intersection of E. Anaheim Blvd. and N. Henry Ford Ave. would be  
15 especially relevant, given their location in the City of Los Angeles and the presence of bike  
16 lanes along E. Anaheim Blvd.

17 102. Finally, even if the GPS enforcement system noted in the RDEIR is effective  
18 at restricting SCIG truck traffic to designated routes, traffic may be affected on nearby roads,  
19 if non-SCIG cars and trucks change their route to avoid traffic from SCIG trucks. This may  
20 affect bicyclists and pedestrians along non-truck routes, but was not analyzed in the RDEIR.

21 *The RDEIR Uses An Improper Baseline*

22 103. CEQA Guidelines 15125(a) provides:

23 An EIR must include a description of the physical environmental conditions in the  
24 vicinity of the project, as they exist at the time the notice of preparation is published,  
25 or if no notice of preparation is published, at the time environmental analysis is  
26 commenced, from both a local and regional perspective. This environmental setting  
27 will normally constitute the baseline physical conditions by which a lead agency  
28 determines whether an impact is significant. The description of the environmental

1 setting shall be no longer than is necessary to an understanding of the significant  
2 effects of the proposed project and its alternatives.

3 The notice of preparation in this case was published in 2005, and the original DEIR,  
4 published in September, 2011, purported to describe traffic and other conditions on the  
5 proposed SCIG site as of that date. However, the RDEIR, published roughly one year later,  
6 switched to a 2010 baseline.

7 104. The RDEIR's reasons for this change in baseline do not make sense, and the  
8 RDEIR does not analyze what difference, if any, this change in baseline made to the traffic  
9 and air quality analyses—even though it stands to reason that truck traffic on the site was  
10 higher in 2010 than in 2005 as economic conditions improved after the 2008 recession. A  
11 too-high baseline combined with too-low future traffic projections (because of the trips per  
12 lift problem discussed above) distorts and reduces the environmental impacts of a project and  
13 lessens the need for possibly expensive mitigation. Because of this, the RDEIR is inadequate  
14 and should have analyzed the difference between using a 2005 and 2010 baseline as it affects  
15 air quality and public health.

16 *The RDEIR Fails To Analyze The Risk Of Harm To Near-Highway And Near-Railyard*  
17 *Residents*

18 105. Dozens of studies have shown greatly increased pollutant levels and health  
19 impacts in close proximity to freeways, prompting the California Air Resources Board  
20 (CARB) to recommend in 2005 that local governments “[a]void siting new sensitive land  
21 uses within 500 feet of a freeway, urban roads with 100,000 vehicles/day, or rural roads with  
22 50,000 vehicles/day.” The rationale for that caution is summarized as follows: “In traffic-  
23 related studies, the additional non-cancer health risk attributable to proximity was seen  
24 within 1,000 feet and was strongest within 300 feet. California freeway studies show about a  
25 70% drop off in particulate pollution levels at 500 feet.” Additionally: “we recommend that  
26 land use agencies track the current assessment efforts, and consider limitations on the siting  
27 of new sensitive land uses in areas immediately downwind of ports.”

28 106. One recent study in the Los Angeles basin measured elevated air pollutants far

1 downwind, up to 2,000 meters and up to 600 meters upwind of a major freeway. The study,  
2 along Interstate 10, documented high concentrations of ultra-fine particulates, polycyclic  
3 aromatic hydrocarbons and nitric oxide at distances of 1,200 meters (roughly 4,000 feet) and  
4 farther downwind, especially during pre-sunrise hours when winds were low, humidity was  
5 high and there was a surface temperature inversion.

6 107. Correlations have also been found between living or working near a major  
7 roadway and asthma, respiratory disease, reproductive impacts, cancer, and lung disease.

8 108. The Air Quality and Health Risk analyses in the RDEIR fail to provide  
9 adequate detail about the significant public health threat to those residing in close proximity  
10 to the highways that will carry more diesel truck traffic due to this project. The bottom line  
11 on the air quality and health risk analyses is that they rest on the shaky foundation of the  
12 traffic studies, and cannot stand up to a rigorous analysis under CEQA.

13 *The Health Risk Analysis Is Flawed, Especially With Respect To Effects On Children*

14 109. The health risk analysis in the RDEIR depends for its validity on air emission  
15 estimates that are in turn based on the results of the traffic projections in the FEIR. Because,  
16 as discussed herein, those traffic projections are unrealistically and arbitrarily low, the health  
17 risk analysis is itself invalid.

18 110. In addition, the RDEIR fails to address the elevated health risks to children  
19 who will be in school near the project. Children are more sensitive to toxic air contaminants  
20 and ultrafine particles than adults due to their smaller lung capacity and higher respiration  
21 rate, but these facts were not used in the health risk analysis in the RDEIR.

22 111. There is a well-established understanding in the field of public health that  
23 children are disproportionately more susceptible to toxic exposures in their environment.  
24 Children and infants are uniquely at risk from air pollution both because of physiological  
25 susceptibility and greater relative exposure. Children often have greater exposures to  
26 environmental contaminants because of activities that involve contact with dirt, and because  
27 of hand-to-mouth behavior (e.g. they can be exposed to toxic heavy metals deposited from  
28 the air on soil). Compared to adults, children, on a body-weight basis, ingest more dust and

1 soil, and breathe more air. Children, who are actively engaged in outdoor physical activity,  
2 including sports activities, are affected by outdoor air pollution to a greater extent because  
3 intake of air increases during periods of increased physical activity. Also, when mouth  
4 breathing occurs as may be typical during physical exertion, the natural defenses of the body  
5 in the upper respiratory tract are bypassed, allowing direct deposition in the lungs of any  
6 environmental contaminants present in the air.

7 112. Children are more susceptible to adverse impacts from these exposures  
8 because for several reasons. Their bodies and brains are immature and still developing. The  
9 rapid development of a child's organ systems during embryonic, fetal and early newborn  
10 periods makes children vulnerable when exposed to environmental toxicants. They are more  
11 susceptible to certain cancers and reproductive problems and also have a longer expected  
12 lifetime in which to develop illness after an exposure. In fact, U.S. EPA applies a 10X  
13 factor for exposure among babies (0 to 2 years of age) to carcinogens that are mutagenic.  
14 The factor is adjusted to 3X for children ages 2-16. Constant lifetime exposures result in 1.7-  
15 fold adjustment factor. California issued even stronger guidance in 2009, confirming that  
16 infants and children are more sensitive to carcinogens than adults; and that increased  
17 susceptibility of the young is a scientifically justifiable assumption. The guidance provides  
18 age sensitivity factors, including a mean estimate of a nearly five-fold increase in lifetime  
19 cancer risk when the increased susceptibility of the fetus, infants and children are considered.

20 113. Infants and children are especially susceptible to the hazards of polycyclic  
21 aromatic hydrocarbons (PAHs), a class of known human mutagens, carcinogens, and  
22 developmental toxicants found in diesel exhaust. Greater lifetime cancer risks result from  
23 exposure to carcinogens at a young age. These substances are known to cross the placenta to  
24 harm the unborn fetus, contributing to fetal mortality, increased cancer risk and birth defects.  
25 Prenatal exposure to PAHs may also be a risk factor for the early development of asthma-  
26 related symptoms and can adversely affect children's cognitive development, with  
27 implications for diminished school performance. Exposure of children to PAHs at levels  
28 measured in polluted areas can also adversely affect IQ.

1 114. Despite this body of knowledge, the health risk analysis in the RDEIR does  
2 not properly analyze the potential health effects of the Project, particularly the effects on  
3 children.

4 *The Statement Of Overriding Considerations Is Inadequate*

5 115. There is not substantial evidence in the record to support the Statement of  
6 Overriding Considerations in the FEIR.

7 **FIRST CAUSE OF ACTION**

8 **(Writ of Mandate, California Civil Code Section 1085)**

9 116. Paragraphs 1 through 115 are incorporated by reference herein.

10 117. The CEQA appeal hearing conducted by the Los Angeles City Council on  
11 May 8, 2013 was arbitrary, capricious and standardless for the reasons set forth herein.

12 118. Moreover, the May 8, 2013 hearing deprived Petitioners/Plaintiffs of their due  
13 process right to a fair and unbiased tribunal in the quasi-judicial matter then before the Los  
14 Angeles City Council because Councilmember Buscaino declined to recuse himself even  
15 though he had publicly supported the SCIG project. This was highly prejudicial because the  
16 project is in Councilmember Buscaino's Council district and the City Council practices ward  
17 courtesy on most land use matters.

18 119. Petitioners/Plaintiffs have no adequate remedy at law for the issues raised in  
19 this Cause of Action. Petitioners/Plaintiffs are therefore entitled to issuance of a writ of  
20 mandate pursuant to California Civil Code section 1085 compelling the Los Angeles City  
21 Council to reverse its May 8, 2013 approval of the FEIR for the Project and to hold a new  
22 appeal hearing in which consistent and fair procedures are known sufficiently before the  
23 hearing to allow parties and the public to prepare, and in which Councilmember Buscaino  
24 does not participate nor attempt to influence others on how to vote.

25 **SECOND CAUSE OF ACTION**

26 **(Declaratory and Injunctive Relief, California Government Code Section 11135(a))**

27 120. Paragraphs 1 through 119 are incorporated by reference herein.

28 121. The Los Angeles Board of Harbor Commissioners and, through them, the Port



1 of Los Angeles receives substantial financial assistance from the State of California  
2 including, without limitation, funds from California Prop. 1B.

3 122. By taking the deliberate actions described herein, Respondents/Defendants  
4 have discriminated against Petitioners/Plaintiffs and their members on the basis of race,  
5 national origin, ethnic group identification and/or color, in violation of California  
6 Government Code section 11135(a).

7 123. Petitioners/Plaintiffs have no adequate remedy at law for the issues raised in  
8 this Cause of Action. Petitioners/Plaintiffs are therefore entitled to a declaratory judgment  
9 that the municipal approvals of SCIG project, as presently sited and designed, violate  
10 California Government Code section 11135(a); Petitioners/Plaintiffs are further entitled to  
11 temporary, preliminary and permanent injunctive relief enjoining construction and operation  
12 of the Project as the Project is currently sited and designed.

13 **THIRD CAUSE OF ACTION**

14 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

15 **VIOLATION OF CEQA – INCORRECT PROJECT DESCRIPTION**

16 124. Paragraphs 1 through 123 are incorporated by reference herein.

17 125. SCIG and Hobart are so closely related that they should be analyzed as one  
18 project and the project description should so provide. The new truck and locomotive  
19 emissions associated with Hobart that the FEIR predicts will occur as a result of the  
20 operation of SCIG were not analyzed in the RDEIR, and the project description in the  
21 RDEIR does not include the changes to traffic at Hobart or the total increase in traffic when  
22 SCIG and Hobart are both operating as parts of the project that is analyzed in the RDEIR.  
23 Thus, the project description in the FEIR is incorrect, in violation of CEQA.

24 **FOURTH CAUSE OF ACTION**

25 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

26 **VIOLATION OF CEQA – FAILURE TO ANALYZE GROWTH-INDUCING**  
27 **IMPACTS**

28 126. Paragraphs 1 through 125 are incorporated by reference herein.

1 127. Construction and operation of SCIG will allow total traffic to the  
2 SCIG/Hobart complex to increase. However, the associated overall increase in air pollution  
3 and related public health impacts were not analyzed in the RDEIR, in violation of CEQA.

4 **FIFTH CAUSE OF ACTION**

5 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

6 **VIOLATION OF CEQA – INCONSISTENT TREATMENT OF HOBART YARD**

7 128. Paragraphs 1 through 127 are incorporated by reference herein.

8 129. In calculation of traffic loads and associated air emissions, the RDEIR  
9 includes truck traffic associated with Hobart in the baseline and No Project Alternatives, but  
10 does not include truck traffic to Hobart that will occur after SCIG opens. Doing so  
11 artificially inflates the CEQA baseline and depresses the analysis of future air emissions  
12 associated with the project so as to make the additional emissions associated with the Project  
13 appear smaller than they truly will be, in violation of CEQA.

14 **SIXTH CAUSE OF ACTION**

15 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

16 **VIOLATION OF CEQA – IMPROPER ANALYSIS OF EFFECTS OF THE**

17 **PROJECT**

18 130. Paragraphs 1 through 129 are incorporated by reference herein.

19 131. The RDEIR claims that air quality will improve if the Project is built. It  
20 makes this claim by taking credit for governmental measures that have nothing to do with  
21 SCIG and which will be in effect whether SCIG is built or not. Given this, and the fact that  
22 SCIG, when operational, will add roughly one million truck trips and thousands of  
23 locomotive trips per year to its neighborhood, operation of SCIG will make local air quality  
24 worse than it would be if SCIG were not built. Not admitting this in the RDEIR is a violation  
25 of CEQA.

26 132. Moreover, the RDEIR failed to analyze the air quality effects and necessary  
27 mitigation, if any, of the truck and locomotive traffic at the Hobart Yard that will be enabled  
28 by operation of SCIG. This too is a violation of CEQA.

1 **SEVENTH CAUSE OF ACTION**

2 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

3 **VIOLATION OF CEQA – FAILURE TO CONSIDER FEASIBLE ALTERNATIVES**

4 133. Paragraphs 1 through 132 are incorporated by reference herein.

5 134. The Port has built, and is building, substantial amounts of on-dock rail –  
6 facilities that are on the Port's docks and not in the surrounding neighborhoods that transfer  
7 cargo containers directly onto trains. The Port has also built, and has plans to build, useable  
8 land by dredging and filling in the harbor. To the extent that the extra capacity represented by  
9 SCIG is needed, that capacity can be handled by building additional on-dock rail facilities  
10 and associated tracks. However, the RDEIR and FEIR do not accept on-dock rail as a  
11 feasible alternative, in violation of CEQA.

12 135. The Port, the next-door Port of Long Beach, the South Coast Air Quality  
13 Management District, and the Southern California Association of Governments have been  
14 working on research and demonstration models of zero-emission container movement  
15 systems for years. CalTrans is now evaluating a catenary system to allow electrically-  
16 powered trucks to haul cargo on the expanded I-710. Rather than commit to a deadline for  
17 use of a zero-emission container movement system at SCIG, the RDEIR and associated lease  
18 terms do not require the use of such systems. Zero-emission container systems are feasible to  
19 make the four-mile trip from the Port to the SCIG site but are not included as a Project  
20 alternative, in violation of CEQA.

21 136. The United States EPA regulates locomotive engines by assigning them to  
22 different "tiers" depending on their age and emissions profiles. Beginning in 2015, only Tier  
23 4 locomotives will be legal to sell in the United States; these are roughly 90 percent cleaner  
24 than Tier 3 locomotives that are in service now. Despite the goals in the Port's Clean Air  
25 Action Plan, the RDEIR and associated lease do not require the use of Tier 3 or Tier 4  
26 locomotives at SCIG, ever. Tier 3 engines are now widely available and Tier 4 engines will  
27 be available in 2015; failure to include the use of such engines as a Project alternative is a  
28 violation of CEQA.

**EIGHTH CAUSE OF ACTION**

**(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

**VIOLATION OF CEQA – FAILURE TO REQUIRE FEASIBLE MITIGATION**

137. Paragraphs 1 through 136 are incorporated by reference herein.

138. The RDEIR and associated lease do not contain any deadlines (as opposed to goals) for the use of mitigation measures such as zero-emission container movement systems and Tier 4 locomotives which will be available in 2015. The RDEIR also fails to require, as a mitigation measure, satisfaction of the Port's Clean Air Action Plan Measure RL3, which specifies a goal that 95% of all locomotives serving the ports by 2020 will be Tier 4. Nor does the RDEIR require maximizing on-dock rail, for example by building a new facility on dredge-and-fill land in the port, considered as a mitigation measure.

139. The RDEIR does not include, as project conditions or as mitigation measures, the key assumptions used in the air quality analyses, including the analyses of locomotive and truck emissions.

140. The RDEIR and associated lease do not contain or even discuss any mitigation measures for greenhouse gas emissions associated with SCIG, even though the RDEIR concludes that the Project's impacts on GHGs will be significant.

141. These and other feasible mitigation measures are available for the Project but were not included in the FEIR, such as: building additional on-dock rail capacity, use of 100 percent liquefied natural gas (LNG) trucks serving the Project from the day it opens, use of a zero-emission container movement system, and use of only Tier 3 or Tier 4 locomotives. By failing to include these mitigation measures, the City and Board of Harbor Commissioners violated CEQA

142. In addition, many of the mitigation measures in the FEIR are unenforceable and otherwise ineffective. For example, Mitigation Measure AQ-8, Mitigation Measure AQ-9, Mitigation Measure AQ-10, Project Condition AQ-11 and Project Condition AQ-12, among others, are deferred, inadequate and uncertain and consequently may not result in actual emission reductions, all in violation of CEQA.

1 **NINTH CAUSE OF ACTION**  
2 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**  
3 **VIOLATION OF CEQA – ARBITRARY AND CAPRICIOUS CALCULATION OF**  
4 **TRUCK EMISSIONS**

5 143. Paragraphs 1 through 142 are incorporated by reference herein.

6 144. The RDEIR calculates air emissions from port-serving “drayage” trucks in a  
7 backwards way: it estimates the future number of “lifts,” one lift being the movement of a  
8 cargo container from, say, a truck to a railcar, and then estimating the number of truck trips  
9 associated with each lift. This is called the “trip per lift” ratio and is usually around 2 at  
10 intermodal yards in the United States. The QuickTrip model which was generated for and  
11 used by the Port to estimate truck traffic based on cargo container throughput (*see* RDEIR at  
12 3.10-21), estimates 2.85 truck trips per lift. However, the RDEIR uses a factually-  
13 unsupported figure of 1.3.

14 145. The consequence of the use of the unsupported trip per lift ratio of 1.3 instead  
15 of the customary 2.0 results in air emission estimates that should be roughly 50% higher than  
16 what the RDEIR reported. This is arbitrary and capricious within the meaning of CEQA.

17 146. Moreover, the RDEIR concludes that diesel truck-related pollution in the  
18 South Coast Air Basin will decrease because of SCIG, while Appendix G4 of the RDEIR  
19 shows just the opposite. Appendix G4 shows that lifts at Hobart will increase over the 2010  
20 baseline, and in fact will almost double over the 2010 baseline by 2035 (assuming an equal  
21 share of international cargo going to SCIG and the adjacent ICTF railyard).

22 147. The arbitrary use of a low trip per lift ratio spills over into the health risk  
23 analysis in the RDEIR because that analysis is based on arbitrarily-low air emissions  
24 estimates. A rational projection of future air emissions associated with SCIG (and Hobart)  
25 would lead to substantially elevated cancer risk numbers. Not recognizing this in the FEIR  
26 violates CEQA.

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**TENTH CAUSE OF ACTION**

**(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

**VIOLATION OF CEQA – IMPAIRMENT OF ACHIEVING CLEAN AIR ACT**

**REQUIREMENTS**

148. Paragraphs 1 through 147 are incorporated by reference herein.

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

150. Moreover, although the FEIR claims that the SCIG project will comply with the 2007 AQMP, it argues that “CEQA does not require an examination of the AQMP’s black box.” FEIR at 2-596. The FEIR fails to explain how it can ignore this large gap in emissions reductions necessary to be developed to meet ambient air quality standards. CEQA requires projects to address this issue; it is inconsistent for the Port to claim that the project would not conflict with the AQMP and at the same time alleges that it need not examine the effect of the project on the “black box” which is crucial to attainment of federal ozone limits within the South Coast district.

151. The FEIR also admits that the emissions from SCIG project would, in and of themselves, create a violation of NAAQS for 1-hour NO2. This admission directly contradicts the claim that SCIG will not conflict with or obstruct implementation of an applicable air quality plan. The FEIR fails to require reasonable and adequate mitigation measures for NOx, PM2.5 or PM10. Under California Public Resources Code section 21002.1(c), a project may only be approved if it is otherwise permissible under applicable laws and regulations. This project would violate the federal and California Clean Air Acts and cannot be legally approved.

1 **ELEVENTH CAUSE OF ACTION**

2 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

3 **VIOLATION OF CEQA – FLAWED CUMULATIVE IMPACT ANALYSIS**

4 152. Paragraphs 1 through 151 are incorporated by reference herein.

5 153. The cumulative impacts analysis in the RDEIR ignores the Hobart Yard and  
6 the I-710 expansion project. The problems arising from ignoring growth at Hobart have been  
7 described herein.

8 154. I-710 is roughly one mile East of the SCIG site. CalTrans has proposed a  
9 massive expansion project in order to accommodate expected traffic increases in truck and  
10 auto traffic from the Ports of Los Angeles and Long Beach along the I-710. CalTrans, in  
11 deciding that the I-710 needs to be expanded, has assumed that SCIG will be operational.  
12 Thus, the claim in the FEIR that SCIG will reduce traffic on the I-710 is a sham. In addition,  
13 the FEIR fails to analyze the cumulative impact of SCIG on the neighboring community  
14 given the planned expansion and higher amount of traffic on the I-710.

15 **TWELFTH CAUSE OF ACTION**

16 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

17 **VIOLATION OF CEQA – FLAWED NO PROJECT ANALYSIS**

18 155. Paragraphs 1 through 154 are incorporated by reference herein.

19 156. CalTrans is planning to expand the portion of the I-710 that is near the SCIG  
20 site. The community-preferred alternative for the I-710 project includes a zero-emission  
21 freight transport corridor in the middle of the I-710 right of way. The RDEIR for the SCIG  
22 project fails to consider, in its no-project analysis, the reductions in air pollution that will be  
23 attributable to the zero-emission container movement system on the expanded I-710. This  
24 error results in higher air emission numbers for the no-project case than are warranted, in  
25 violation of CEQA.

26 157. Moreover, if it is true, as Appendix G4 and other sections of the RDEIR  
27 suggest, that SCIG is not necessary to handle cargo capacity in the foreseeable future, the No  
28 Project alternative should have been chosen.

1 **THIRTEENTH CAUSE OF ACTION**

2 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

3 **VIOLATION OF CEQA – PIECEMEALING**

4 158. Paragraphs 1 through 157 are incorporated by reference herein.

5 159. Union Pacific Railroad and the Intermodal Container Transfer Facility Joint  
6 Powers Authority (“ICTF JPA”) are planning an enormous expansion of the Union Pacific  
7 ICTF railyard that would be immediately adjacent to the SCIG project and that would pollute  
8 the same neighborhoods. The ICTF JPA is a joint powers authority formed by the cities and  
9 Ports of Long Beach and Los Angeles. The ICTF JPA’s seven-member Governing Board  
10 includes two representatives from each port; a member of each city council, and a  
11 representative of the Los Angeles County Metropolitan Transportation Authority. The City  
12 of Los Angeles holds four seats on the 13-member MTA Board.

13 160. The Notice of Preparation for the ICTF expansion project was made public by  
14 the ICTF JPA in January, 2009. It states that the ICTF expansion would increase the number  
15 of containers handled at the facility from an annual overage of 725,000 to an estimated 1.5  
16 million. Truck trips would increase by 1.1 million trips per year—roughly the same number  
17 of trips that the SCIG is expected to bring into the same neighborhoods. Like the SCIG, the  
18 ICTF would operate 24 hours per day, 7 days per week. The ICTF project will also increase  
19 the annual number of rail trips by roughly 4,700.

20 161. Under CEQA, the SCIG and ICTF projects share a common goal, are  
21 physically adjacent to each other, share common governance in part, and should be evaluated  
22 as one project for all purposes, including cumulative impacts. The failure of the FEIR to do  
23 so violates CEQA.

24 **FOURTEENTH CAUSE OF ACTION**

25 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

26 **VIOLATION OF CEQA – GREENHOUSE GAS EMISSIONS ASSOCIATED WITH**  
27 **THE PROJECT**

28 162. Paragraphs 1 through 161 are incorporated by reference herein.



1 163. The RDEIR admits that: "The proposed project would produce GHG  
2 operational emissions that would exceed the CEQA baseline levels when the project reaches  
3 its full capacity in 2035 and beyond. However, operational emissions would be less than the  
4 baseline GHG emissions through 2023 before the SCIG facility throughput reaches its  
5 maximum capacity. Therefore, significant impacts under CEQA would occur for the  
6 proposed Project."

7 164. However, the RDEIR also concludes that "The proposed Project would not  
8 conflict with State and local plans and policies adopted for the purpose of reducing GHG  
9 emissions." This is patently false because California's AB 32 requires a reduction, not  
10 increase, in statewide GHG emissions. By failing to discuss how significant these impacts  
11 will be, and the extent to which they will frustrate and be inconsistent with State and local  
12 (including City of Los Angeles) policies adopted to reduce GHG emissions, the RDEIR  
13 violates CEQA. In particular, the conclusion in the RDEIR that the proposed project would  
14 not conflict with State and local plans and policies adopted for the purpose of reducing GHG  
15 emissions is not supported by substantial evidence.

16 165. In fact, there are feasible GHG mitigation measures for construction and  
17 operation-related GHG emissions that the RDEIR fails to analyze, foremost among which is  
18 implementation of zero-emission container movement between the Port and the SCIG site.  
19 This would eliminate tailpipe emissions, including CO2, from one million truck trips per  
20 year. Similarly, the RDEIR does not consider the purchase of State-approved emissions  
21 offsets that will directly benefit local residents and that will counteract some of the increase  
22 in GHG emissions due to the project.

### 23 **FIFTEENTH CAUSE OF ACTION**

24 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

### 25 **VIOLATION OF CEQA – FLAWED TRAFFIC AND CIRCULATION ANALYSES**

26 166. Paragraphs 1 through 165 are incorporated by reference herein.

27 167. The traffic and circulation analyses, as described herein, are arbitrary,  
28 capricious, inconsistent with the City's own guidelines, not based on empirical data,

1 confusing, and not presented in a way that is accessible to the reader. As such, these analyses  
2 violate CEQA.

### 3 **SIXTEENTH CAUSE OF ACTION**

4 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

#### 5 **VIOLATION OF CEQA – FLAWED BICYCLE AND PEDESTRIAL ANALYSES**

6 168. Paragraphs 1 through 167 are incorporated by reference herein.

7 169. The bicycle and pedestrian analyses, as described herein, are arbitrary,  
8 capricious, inconsistent with the City's own guidelines, not based on empirical data,  
9 confusing, and not presented in a way that is accessible to the reader. As such, these analyses  
10 violate CEQA.

### 11 **SEVENTEENTH CAUSE OF ACTION**

12 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

#### 13 **VIOLATION OF CEQA – IMPROPER BASELINE**

14 170. Paragraphs 1 through 169 are incorporated by reference herein.

15 171. The notice of preparation in this case was published in 2005, and the original  
16 DEIR, published in September, 2011, purported to describe traffic and other conditions on  
17 the proposed SCIG site as of that date. However, the RDEIR, published roughly one year  
18 later, switched to a 2010 baseline.

19 172. The RDEIR's reasons for this change in baseline do not make sense, and the  
20 RDEIR does not analyze what difference, if any, this change in baseline made to the traffic  
21 and air quality analyses—even though it stands to reason that truck traffic on the site was  
22 higher in 2010 than in 2005 as economic conditions improved after the 2008 recession. A  
23 too-high baseline combined with too-low future traffic projections (because of the trips per  
24 lift problem discussed above) distorts and reduces the environmental impacts of a project and  
25 lessens the need for possibly expensive mitigation. Because of this, the RDEIR is inadequate  
26 and should have analyzed the difference between using a 2005 and 2010 baseline as it affects  
27 air quality and public health.

28

1 **EIGHTEENTH CAUSE OF ACTION**

2 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

3 **VIOLATION OF CEQA – NO NEAR-HIGHWAY ANALYSIS**

4 173. Paragraphs 1 through 172 are incorporated by reference herein.

5 174. The Air Quality and Health Risk analyses in the RDEIR fail to provide  
6 adequate detail about the significant public health threat to those residing in close proximity  
7 to the highways that will carry more diesel truck traffic due to this project. The bottom line  
8 on the air quality and health risk analyses is that they rest on the shaky foundation of the  
9 traffic studies, and cannot stand up to a rigorous analysis under CEQA.

10 **NINETEENTH CAUSE OF ACTION**

11 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

12 **VIOLATION OF CEQA – FLAWED HEALTH RISK ANALYSIS**

13 175. Paragraphs 1 through 174 are incorporated by reference herein.

14 176. The health risk analysis in the RDEIR depends for its validity on air emission  
15 estimates that are in turn based on the results of the traffic projections in the FEIR. Because,  
16 as discussed herein, those traffic projections are unrealistically and arbitrarily low, the health  
17 risk analysis is itself invalid.

18 177. In addition, the RDEIR fails to address the elevated health risks to children  
19 who will be in school near the project. Children are more sensitive to toxic air contaminants  
20 and ultrafine particles than adults due to their smaller lung capacity and higher respiration  
21 rate, but these facts were not used in the health risk analysis in the RDEIR.

22 **TWENTIETH CAUSE OF ACTION**

23 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

24 **VIOLATION OF CEQA – INADEQUATE STATEMENT OF OVERRIDING**

25 **CONSIDERATIONS**

26 178. Paragraphs 1 through 177 are incorporated by reference herein.

27 179. There is not substantial evidence in the record to support the Statement of  
28 Overriding Considerations adopted by the Board of Harbor Commissioners and affirmed by

1 the City Council.

2 180. CEQA requires that prior to approving a project with significant  
3 environmental impacts, a lead agency must make a finding, supported with substantial  
4 evidence in the record, that "Specific economic, legal, social, technological, or other  
5 considerations....make infeasible the mitigation measures or project alternatives identified in  
6 the final EIR." CEQA Guidelines §§ 15091 (a), (b). CEQA prohibits a lead agency from  
7 approving a project without first eliminating or substantially lessening significant  
8 environmental impacts. CEQA Guidelines § 15092.

9 181. CEQA requires that a lead agency prepare a statement of overriding  
10 considerations, supported by substantial evidence, which balances the project benefits against  
11 the unavoidable significant impacts. CEQA Guidelines § 15093. Many of the project  
12 benefits identified by the City are not supported by substantial evidence. For example, the  
13 Statement of Overriding Considerations claims that the project would "help meet the  
14 demands of current and anticipated containerized cargo from the San Pedro Bay ports and  
15 provide space to collect and combine cargo units bound for common destinations to be  
16 transported by rail." FEIR at 108. However, the EIR repeatedly asserts that the project is not  
17 needed to accommodate growth because the existing Hobart facility can handle all projected  
18 growth. The claims regarding project benefits from implementation of the San Pedro Bay  
19 Clean Air Action Plan, removal of truck trips from the I-710, and job creation, among others,  
20 are also not supported by substantial evidence in the record.

21  
22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioners/Plaintiffs pray for judgment as set forth below:

24 A. For a writ of mandate to be issued under the seal of this Court commanding the City  
25 of Los Angeles and the Los Angeles Board of Harbor Commissioners to set aside their  
26 certification of the FEIR in this matter and to set aside all Project approvals and associated  
27 leases and permits, including, without limitation, the Site Preparation and Access Agreement  
28 and Permit No. 901 with BNSF Railway Company (BNSF) for the construction, operation

1 and maintenance of the Southern California International Gateway (SCIG) facility and the  
2 FEIR for the Project, and requiring the City and the Board of Harbor Commissioners to  
3 conduct a full, legally adequate CEQA review process and prepare a legally adequate EIR for  
4 the Project;

5 B. For a judgment that the FEIR is inadequate as a matter of law and the City of Los  
6 Angeles and the Los Angeles Board of Harbor Commissioners violated CEQA by approving  
7 and certifying the FEIR;

8 C. For a judgment that the failure of the City of Los Angeles and the Los Angeles Board  
9 of Harbor Commissioners to prepare, consider, and approve or certify an adequate EIR on the  
10 Project is arbitrary and capricious;

11 D. For a judgment that the results of the May 8, 2013 appeal hearing before the Los  
12 Angeles City Council must be set aside and a new, fair hearing with agreed-on procedures be  
13 held, if necessary, after a new EIR is completed;

14 E. For a judgment that the approval of the SCIG project, as currently designed and sited,  
15 violates California Government Code section 11135 and must be enjoined;

16 F. For temporary, preliminary and permanent injunctive relief halting construction and  
17 operation of the Project and effectuating the declaratory judgments rendered herein;

18 G. For Petitioners/Plaintiffs' fees and costs, including reasonable attorneys' and expert  
19 witness fees, as authorized by California Code of Civil Procedure section 1021.5 and any  
20 other applicable provisions of law; and

21 H. For such other relief as this Court deems just and proper.  
22

### 23 DEMAND FOR TRIAL BY JURY

24 Petitioners/Plaintiffs demand trial by jury of all causes of action properly triable by  
25 jury.  
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28

1 Respectfully submitted,

2  
3 Dated: June 7, 2013

4 NATURAL RESOURCES DEFENSE COUNCIL

5   
6 \_\_\_\_\_  
7 DAVID PETTIT

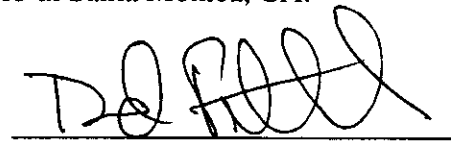
8 Attorney for Petitioners/Plaintiffs  
9 East Yard Communities For Environmental  
10 Justice, Coalition For Clean Air, Century Villages  
11 at Cabrillo, Elena Rodriguez, Evelyn Deloris  
12 Knight, and Natural Resources Defense Council,  
13 Inc.  
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**VERIFICATION**

I, DAVID PETTIT, declare as follows:

I am the Attorney for the Natural Resources Defense Council. I have read the foregoing Petition for Writ of Mandate and know its contents. The facts alleged in the Petition for Writ of Mandate are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on the 7<sup>th</sup> day of June, 2013 at Santa Monica, CA.

A handwritten signature in black ink, appearing to read 'D. Pettit', written over a horizontal line.

David Pettit, Attorney  
Natural Resources Defense Council

# **Exhibit A**





NATURAL RESOURCES DEFENSE COUNCIL

City of Los Angeles  
200 N. Spring St.  
Los Angeles, CA 90012

Los Angeles City Council  
200 N. Spring St., Suite 360  
Los Angeles, CA 90012

Los Angeles Harbor Department  
425 South Palos Verdes Street  
San Pedro, CA 90731

Los Angeles Board of Harbor Commissioners  
425 South Palos Verdes Street  
San Pedro, CA 90731

June 7, 2013

Re: Notice of Commencement of CEQA Litigation Challenging Approval of the Southern California International Gateway Project (Council File Nos. 13-0295, 13-0295-S1 through 13-0295-S8, and 13-0398)

Dear Sir/Madam:

This letter is to notify you that East Yard Communities for Environmental Justice, Coalition for Clean Air, Century Villages at Cabrillo, Elena Rodriguez, Evelyn Deloris Knight, and Natural Resources Defense Council, Inc., intend to file suit against the City of Los Angeles, City Council of Los Angeles, City of Los Angeles Harbor Department, and Los Angeles Board of Harbor Commissioners for failing to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in approving the above-referenced Southern California International Gateway Project and certifying the EIR for the Project (L.A. City Council File Nos. 13-0295, 13-0295-S1 through 13-0295-S8, and 13-0398). This notice is given pursuant to Public Resources Code section 21167.5.

Yours truly,

David Pettit  
Senior Attorney  
Natural Resources Defense Council

## **Exhibit B**



NATURAL RESOURCES DEFENSE COUNCIL

Kamala Harris  
Attorney General  
State of California  
1300 I Street  
Sacramento, CA 95814

June 7, 2013

Re: Notice of Filing CEQA Litigation:  
East Yards Communities For Environmental Justice v. City of Los Angeles- et al

Dear Attorney General Harris:

Enclosed please find a copy of the Petition for Writ of Mandate and Complaint for Injunctive Relief in the above-entitled action. The petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt.

Very truly yours,

David Pettit  
Senior Attorney  
Natural Resources Defense Council

1 David Pettit, SBN 67128  
2 Melissa Lin Perrella, SBN 205019  
3 Morgan Wyenn, SBN 270593  
4 Xiao Zhang, SBN 286388  
5 Natural Resources Defense Council  
6 1314 Second Street  
7 Santa Monica, CA 90401  
8 310/434-2300 • Fax 310/434-2399  
9 Attorneys for Petitioners/Plaintiffs  
10 East Yard Communities For Environmental  
11 Justice, Coalition For Clean Air, Century Villages  
12 at Cabrillo, Elena Rodriguez, Evelyn Deloris Knight,  
13 and Natural Resources Defense Council, Inc.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

EAST YARD COMMUNITIES FOR  
ENVIRONMENTAL JUSTICE, an unincorporated  
association; COALITION FOR CLEAN AIR, a non-  
profit corporation; CENTURY VILLAGES AT  
CABRILLO, a non-profit corporation; ELENA  
RODRIGUEZ, an individual; EVELYN DELORIS  
KNIGHT, an individual; and NATURAL  
RESOURCES DEFENSE COUNCIL, INC., a non-  
profit corporation,

Petitioners/Plaintiffs,

v.

CITY OF LOS ANGELES, a public entity; LOS  
ANGELES CITY COUNCIL, a public entity; CITY  
OF LOS ANGELES HARBOR DEPARTMENT, a  
public entity; LOS ANGELES BOARD OF  
HARBOR COMMISSIONERS, a public entity; and  
Does 1-100, Inclusive,

Respondents/  
Defendants,

CASE NO.:

VERIFIED PETITION FOR WRIT OF  
MANDATE UNDER THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT;  
PETITION FOR WRIT OF MANDATE  
(C.C.P. 1085) FOR VIOLATIONS OF DUE  
PROCESS; COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF FOR VIOLATION OF  
CALIFORNIA GOVERNMENT CODE  
SECTION 11135.

REQUEST FOR JURY TRIAL

1 BURLINGTON NORTHERN SANTA FE  
2 RAILWAY; BNSF RAILWAY COMPANY,

3 Real Parties in Interest  
4 to CEQA Causes of  
5 Action

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1 Pursuant to California Code of Civil Procedure section 1094.5 and California Public  
2 Resources Code section 21000 et seq., Petitioners/Plaintiffs EAST YARD COMMUNITIES  
3 FOR ENVIRONMENTAL JUSTICE, COALITION FOR CLEAN AIR, CENTURY  
4 VILLAGES AT CABRILLO, ELENA RODRIGUEZ, EVELYN DELORIS KNIGHT, and  
5 NATURAL RESOURCES DEFENSE COUNCIL (collectively "Petitioners/Plaintiffs") bring  
6 this action on their own behalf, on behalf of their members, on behalf of the general public,  
7 and in the public interest in order to enforce the California Environmental Quality Act  
8 ("CEQA"), to enforce the California civil rights act embodied in California Government  
9 Code section 11135, and to protect air quality and public health in the Los Angeles area and  
10 beyond. Petitioners/Plaintiffs allege as follows:

#### 11 INTRODUCTION

12 1. This is a case about environmental injustice. The case challenges the approval of a  
13 final environmental impact report ("FEIR") for a new intermodal railyard in Wilmington,  
14 California, four miles from the Port of Los Angeles ("Port") on land owned by the Port. The  
15 railyard, to be called the Southern California International Gateway ("SCIG"), is proposed to  
16 be built across the street from a high school, day care center and a comprehensive supportive  
17 housing community for homeless individuals, families, and veterans, including hundreds of  
18 children, in a low-income, minority neighborhood that is already suffering from very high  
19 levels of air pollution. The project proposes to add over a million new diesel truck trips and  
20 thousands of new train trips to this neighborhood, even though less polluting alternatives are  
21 available.

22 2. As early as 2005, neighbors of the proposed project site warned the Los Angeles  
23 Board of Harbor Commissioners that approval of the SCIG project would be an act of  
24 environmental racism. In approving the environmental impact report ("EIR") for the SCIG  
25 project, the Board of Harbor Commissioners have admitted in writing that the project's  
26 negative impacts, including dangerous air pollution and associated health impacts, will fall  
27 disproportionately on minority residents of Wilmington and neighboring West Long Beach.

28

1       3. Here is what the Board of Harbor Commissioners' Recirculated Draft Environmental  
2 Report ("RDEIR") says about the project:

3           Even after application of the proposed mitigation measures, considering the  
4 cancer risk from toxic air contaminants in the Port region, the Project will  
5 make a cumulatively considerable contribution to the significant health risk  
6 impact to the predominantly minority and low-income population in the Port  
7 region; this impact will constitute a disproportionately high and adverse effect  
8 on minority and low-income populations.

9 The Los Angeles City Council, in formally approving this RDEIR and the associated  
10 FEIR, has accepted this admission as true.

11       4. The new rail capacity that the SCIG project would provide will not be needed for 20  
12 years or more. Moreover, the project will create a net loss of jobs due to eviction of the  
13 businesses now on the project site. Petitioners/Plaintiffs have recommended to the Board of  
14 Harbor Commissioners and the City of Los Angeles ("City") that any needed additional rail  
15 capacity be built on existing docks or on land created, as the Port often does, through  
16 dredging and filling, away from local residents. But, as is so often the case in Los Angeles,  
17 the City has chosen to place the burden of the SCIG project in a heavily-minority economic  
18 sacrifice zone whose residents do not share in the project's gains.

19       5. The CEQA appeal process in this matter was also flawed because it was standardless,  
20 arbitrary and capricious, and because the Councilmember in whose district the SCIG project  
21 will be located failed to recuse himself from the CEQA appeal even though he had made  
22 several public statements in strong support of the SCIG project.

23       6. This lawsuit challenges the May 8, 2013 decision of the City of Los Angeles and the  
24 City Council of the City of Los Angeles to approve a Site Preparation and Access Agreement  
25 and Permit No. 901 with BNSF Railway Company ("BNSF") for the construction, operation  
26 and maintenance of the SCIG facility, and the decision to adopt the determination by the Los  
27 Angeles Harbor Department, through the Los Angeles Board of Harbor Commissioners, that  
28 the Project and the proposed 50-year lease were assessed in an EIR prepared in accordance

1 with CEQA, and all associated approvals, including the FEIR which was certified by the  
2 Board of Harbor Commissioners on March 7, 2013, collectively referred to as "SCIG" or the  
3 "Project".

4 **JURISDICTION AND VENUE**

5 7. This Court has jurisdiction over this matter pursuant to California Code of Civil  
6 Procedure sections 1085, 1094.5 and 1060, and California Public Resources Code sections  
7 21168, 21168.5 and 21168.9.

8 8. Venue is proper in this Court pursuant to California Code of Civil Procedure sections  
9 393 and 394 because Respondents/Defendants are located in the County of Los Angeles and  
10 the SCIG project is proposed to be built in the County. Los Angeles County Superior Court  
11 Rule 2.3(a) authorizes the filing of this Petition in the Central District of the Los Angeles  
12 County Superior Court.

13 9. This action was timely filed within 30 days of the City of Los Angeles' posting of its  
14 May 9, 2013 Notice of Determination under CEQA.

15 10. Petitioners/Plaintiffs have provided written notice of their intention to file this  
16 petition to Respondents/Defendants and other relevant agencies, in compliance with  
17 California Public Resources Code section 21167.5, and are including the notice and proof of  
18 service as Exhibit A hereto.

19 11. Petitioners/Plaintiffs have served the Attorney General with a copy of the present  
20 petition along with a notice of its filing, in compliance with California Public Resources  
21 Code section 21167.7, and are including the notice and proof of service as Exhibit B hereto.

22 12. Petitioners/Plaintiffs have complied with California Public Resources Code section  
23 21167.6 and Los Angeles County Superior Court Local Rule 3.232(d)(2)(i) by filing a notice  
24 that they are considering election to prepare the administrative record for this action. A copy  
25 of the notice is attached hereto as Exhibit C.

26 13. The maintenance of this action is for the purpose of enforcing important public  
27 policies of the State of California with respect to the protection of the environment and  
28 public participation under CEQA. The maintenance and prosecution of this action will



1 confer a substantial benefit upon the public by protecting the public from the environmental  
2 and other harms alleged in this Petition and Complaint. As such, Petitioners/Plaintiffs are  
3 entitled to the recovery of reasonable attorneys' fees under California Civil Procedure Code  
4 section 1021.5.

5 **PARTIES**

6 14. Petitioner/Plaintiff East Yard Communities For Environmental Justice ("EYCEJ") is  
7 a member-based organization that was established in 2002. It is a project of Social +  
8 Environmental Entrepreneurs, a non-profit corporation. With a base in Commerce, East Los  
9 Angeles, and Long Beach, EYCEJ's mission is to achieve a safe and healthy environment for  
10 communities that are disproportionately suffering the negative effects of industrial pollution.  
11 Today, EYCEJ has a database of over 350 community residents, many of whom are active  
12 and participate regularly in community outreach, education and civic engagement efforts.

13 15. Petitioner/Plaintiff Coalition for Clean Air ("CCA") is a California non-profit  
14 corporation with a membership of over 300 individuals throughout the state. CCA is the only  
15 statewide organization exclusively advocating for air quality in California, and has actively  
16 participated in proceedings related to the local, state and federal regulatory activities  
17 affecting air quality in the region. CCA's mission is to restore clean, healthy air to California  
18 by advocating for effective public policy and practical business solutions. CCA maintains  
19 offices in Fresno, Sacramento and Los Angeles

20 16. Petitioner/Plaintiff Century Villages at Cabrillo is a 27 acre homeless services  
21 community. It is 501(c)(3) nonprofit organization established in 1997, located on a former  
22 U.S. Naval housing site in West Long Beach. The site is directly adjacent to the truck route  
23 to and from the SCIG site; the main entrance to the Villages will see thousands trucks per  
24 day, at a rate of four trucks or more per minute, pass immediately in front of its entrance  
25 gate. The site is also on the other side of the Terminal Island Freeway from the SCIG site,  
26 just south of Cabrillo High School. The Villages provides housing to over 1,000 people each  
27 night, including veteran and non-veteran individuals, families, and children, in the Villages  
28 shelter, transitional housing, and permanent housing facilities. The Villages is planning to

1 expand its facilities on its current site to provide additional housing and services. The  
2 Villages also partners with other organizations to provide much-needed on-site services,  
3 including child care, food services, counseling, a Veterans Administration medical clinic,  
4 substance abuse treatment, and job training. Over half of the Villages' residents on any  
5 given day are African American or Latino.

6 17. Elena Rodriguez is a Hispanic woman resident of West Long Beach who lives less  
7 than half a mile east of the proposed SCIG site. She has lived at this residence for over ten  
8 years. She raised her two children in West Long Beach, her children attended schools in the  
9 area. Ms. Rodriguez has been concerned about the area's air pollution problems since her  
10 children were in elementary school, when they had to spend recess indoors because of poor  
11 air quality. Ms. Rodriguez has always been very active in her community, through both paid  
12 and volunteer positions with community organizations. She currently works as a community  
13 organizer for East Yard Communities for Environmental Justice, where she has worked for  
14 the past two and a half years. Before this position, she worked with the Long Beach Alliance  
15 for Children with Asthma, helping families cope with their children's asthma. She is also the  
16 founder of a community organization called Semillas de Esperanza (Seeds of Hope), that  
17 holds monthly meetings and works in the community on various social causes. She is very  
18 concerned about the negative health impacts that would be caused by the SCIG, for her and  
19 her community.

20 18. Evelyn Deloris Knight is a 79 year old African American woman, living in West  
21 Long Beach less than half a mile east of the proposed SCIG site. She was born and raised in  
22 Alabama, in a community started by former slaves named Africatown. She went to college  
23 and graduate school, and became a social worker in Long Beach. She has held leadership  
24 positions at various social services organizations over the years, including working with the  
25 People Coordinated Services of Southern California for 28 years. She is now retired, but  
26 continues to be very involved in her community, including training young people to be  
27 community organizers. In addition to her distinguished career, she also marched with Dr.  
28 Martin Luther King, Jr., in a march from Selma to Montgomery. After the adoption of the

1 Voting Rights Act, she helped people vote. Ms. Knight is very concerned about the negative  
2 impacts from the SCIG to the air that she and her family breathe. She lives close to the SCIG  
3 site, owns a house two doors down where some of her siblings live, and her nieces and  
4 nephews also live in the area; she is especially concerned about her niece who suffers from  
5 asthma.

6 19. Ms. Rodriguez and Ms. Knight are parties to the non-CEQA claims herein only.

7 20. Petitioner/Plaintiff Natural Resources Defense Council ("NRDC") is a not-for-profit  
8 membership corporation organized under the laws of the State of New York, with offices in  
9 Los Angeles, San Francisco, Chicago, New York, Washington, D.C., and Beijing. NRDC  
10 has approximately 500,000 members throughout the United States, including 120,000  
11 members in the State of California. Many of NRDC's members live near the Los Angeles  
12 and Long Beach ports and associated rail and truck routes. The health, well-being, and  
13 enjoyment of these members will be adversely affected by the SCIG project that  
14 Respondents/Defendants propose to build near the L.A. Ports. NRDC is dedicated to the  
15 preservation, protection, and defense of the environment, its wildlife, and natural resources.  
16 NRDC actively pursues effective enforcement of air quality rules and regulations, and the  
17 reduction of air pollution in Southern California on behalf of its members.

18 21. Defendant/Respondent City of Los Angeles is a public entity located in the County of  
19 Los Angeles and is the lead agency for the Project under CEQA. Defendant/Respondent Los  
20 Angeles City Council is an elected body within the City of Los Angeles and is responsible  
21 for hearing administrative appeals from decisions made by City departments.  
22 Defendant/Respondent Los Angeles Harbor Department is an independent department of the  
23 City of Los Angeles. Defendant/Respondent Los Angeles Board of Harbor Commissioners  
24 is a public entity within the City of Los Angeles which governs the Los Angeles Harbor  
25 Department and whose members are appointed by the Mayor of Los Angeles and confirmed  
26 by the Los Angeles City Council.

27  
28

1 22. Real Party in Interest BNSF Railway Company is the project proponent for the SCIG  
2 project. Burlington Northern Santa Fe Railway is listed as the real party in interest in the  
3 Notice of Determination filed by the City of Los Angeles for the SCIG project.

4 23. Petitioners/Plaintiffs do not know the true names of defendants DOES 1 through 100,  
5 inclusive, and therefore sue them by those fictitious names.. Petitioners/Plaintiffs are  
6 informed and believe, and on the basis of that information and belief allege, that each of  
7 those defendants was in some manner proximately responsible for the events and happenings  
8 alleged in this complaint and for Petitioners'/Plaintiffs' injuries.

9 **THE SCIG PROJECT AND THE SURROUNDING NEIGHBORHOOD**

10 **The Enormous Air Pollution Problem At And Near The Ports**

11 24. The Ports of Los Angeles and Long Beach ("Ports") are, collectively, the fifth busiest  
12 in the world, and handle over 40% of all containerized imports to the United States. Many of  
13 these imported goods arrive in 40-foot cargo containers that are carried from the ports to  
14 local railyards, warehouses, and distribution centers by diesel trucks. Freight leaving the  
15 SCIG project would travel by diesel-powered trains.

16 25. This heavy reliance on diesel power has come with a terrible price. Because of the  
17 confluence of diesel trucks, locomotives, ships and other cargo-moving equipment, the Los  
18 Angeles area Ports are the largest fixed sources of pollution in one of the most polluted air  
19 basins in the United States. The already high rates of asthma, lung cancer, cardio-respiratory,  
20 and other diseases are rising sharply in communities near the Ports and near the highways  
21 and railyards that serve the Ports.

22 26. The health problems associated with diesel particulate pollution are well known.  
23 Diesel particulates have been found to be human carcinogens by the State of California. The  
24 Ports are responsible for over 2,000 tons of diesel particulate emissions per year. There is no  
25 recognized safe level for these pollutants. Soot and black carbon from diesel particulates are  
26 also significant contributors to global warming.

27 27. In studies by California's South Coast Air Quality Management District  
28 ("SCAQMD") beginning in 1998, SCAQMD found that diesel particulates are the dominant

1 toxic air pollutant based on cancer risk in the SCAQMD's jurisdiction, accounting for an  
2 estimated 84% of the risk.<sup>1</sup> In its most recent version of the Multiple Air Toxics Study for  
3 the South Coast Air Basin, the SCAQMD determined that "[m]odeling analysis shows the  
4 highest risks from air toxics surrounding the port areas, with the highest grid cell risk about  
5 3,700 per million, followed by the area south of central Los Angeles where there is a major  
6 transportation corridor."<sup>2</sup>

7 28. In its Goods Movement Emissions Reduction Plan, the California Air Resources  
8 Board ("CARB") noted that goods movement-related air pollution can increase all-cause  
9 mortality, cardiopulmonary mortality, and lung cancer mortality in adults, infant mortality,  
10 hospital admissions for all pulmonary illnesses, chronic obstructive pulmonary disease,  
11 pneumonia, asthma, and all cardiovascular illnesses. It can also contribute to pre-term births  
12 and lower birth weight. Sensitive groups, including children and infants, the elderly, and  
13 people with heart or lung disease, can be at increased risk of experiencing harmful effects  
14 from exposure to air pollution. CARB found that goods movement-related pollution in  
15 California causes 62,000 cases per year of asthma and other lower respiratory symptoms.

16 29. CARB also found that people living in communities close to the source of goods  
17 movement-related emissions, such as ports, railyards, and inter-modal transfer facilities are  
18 likely to suffer greater health impacts and these impacts will likely add to an existing health  
19 burden.<sup>3</sup> Recent evidence also indicates that air pollution exposure can impair lung function  
20 growth in children. The long-term consequences of lower lung function can include shorter  
21 lifespan, as lung function peaks in young adulthood and declines thereafter; lung function is  
22

---

23 <sup>1</sup> The SCAQMD has jurisdiction over an area of 6,745 square miles, with a population of  
24 over 15 million. Its jurisdiction includes the Ports of Los Angeles and Long Beach, as well  
as several enormous railyards and intermodal facilities.

25 <sup>2</sup> SCAQMD, Final Report: Multiple Air Toxics Exposure Study in the South Coast Air Basin  
26 (MATES-III), 6-2 (Sept. 2008), *available at*  
27 <http://www.aqmd.gov/prdas/matesIII/Final/Document/aaa-covermates3.pdf>. The "major  
transportation corridor" referenced is one that is heavily used by diesel trucks carrying cargo  
containers to local railyards.

28 <sup>3</sup> CARB's Goods Movement Emissions Reduction Plan may be found at  
<http://www.arb.ca.gov/planning/gmerp/gmerp.htm>.

1 the most significant predictor of mortality in the elderly.<sup>4</sup> CARB has estimated that 3,700  
2 premature deaths occur every year in California as a result of pollution from the  
3 transportation of goods,<sup>5</sup> this is more than the number of people who die from homicide in  
4 California every year. CARB's Goods Movement Emissions Reduction Plan estimates the  
5 cost to society of the deaths, illnesses, hospitalizations, and lost work days caused by goods  
6 movement pollution as several billion dollars per year.

7 *The SCIG Project In Context*

8 30. An intermodal railyard is a facility at which cargo containers are transferred from, for  
9 example, a truck to a train, thus changing modes of transportation. BNSF owns and operates  
10 an intermodal railyard in and near Commerce, California, around 18 miles from the Ports,  
11 called the Hobart Yard ("Hobart"). Hobart handles intermodal and other traffic from the  
12 Port. The RDEIR for the SCIG project states (in Appendix G and elsewhere) that Hobart can  
13 handle all anticipated container traffic from the Port through 2046.

14 31. Recognizing that on-dock rail – the practice of building and loading trains on the  
15 docks and not in the community – is the cleanest and most efficient way to move cargo that  
16 does not have a local or regional destination, the Port has and is building more on-dock  
17 capacity. The Port recently built Pier 400 by dredge-and-fill and is projected to build a  
18 facility called Pier 500 in the same way. Petitioners/Plaintiffs have asked the Port to build  
19 any additional needed rail capacity on-dock.

20 32. Nonetheless, the SCIG project has powerful political supporters and so BNSF and the  
21 Port propose to build the SCIG intermodal project 4 miles from the Port and directly across  
22 the street from Cabrillo High School, Hudson Gardens, Hudson School (a K-8 school), a day  
23 care center and the Villages at Cabrillo, a facility supportive housing community for the for  
24 homeless, including hundreds of children, veterans – all of which are in the City of Long

25 \_\_\_\_\_  
26 <sup>4</sup> See Press Release, National Institutes of Health, New Research Shows Air Pollution Can  
27 Reduce Children's Lung Function (Sept. 8, 2004), *available at* <http://www.nih.gov/news/pr/sep2004/niehs-08a.htm>.

28 <sup>5</sup> CARB, Methodology for Estimating Premature Deaths Associated with Long-term  
Exposures to Fine Airborne Particulate Matter in California (Dec. 7, 2009) (Draft Staff  
Report), *available at* <http://www.arb.ca.gov/Research/Health/pm-mort/pm-mortdraft.pdf>.

1 Beach. The Project will add roughly one million new round-trip truck trips and nearly three  
2 thousand new train trips per year in this neighborhood. The Project would operate 24 hours  
3 each day, seven days per week, 360 days per year for fifty years; there would be no nighttime  
4 limits on truck or train traffic. The road adjoining the driveway to the Villages at Cabrillo  
5 will see four or more new diesel truck trips per minute, every hour, every day, for over 50  
6 years. Locomotives will move and idle next to a middle school and homes in West Long  
7 Beach. These new truck and train trips will produce air pollution, including deadly diesel  
8 particulate emissions, that vastly exceed the emissions now associated with the businesses on  
9 the SCIG site.

10 33. If SCIG is built, capacity at Hobart will be freed up to service other types of  
11 containers such as transloaded containers, a practice in which cargo is taken from, for  
12 example, 40-foot ocean cargo containers and moved into 53-foot containers for movement on  
13 trucks or by trains, regionally and across the country. According to the FEIR and other  
14 sources, capacity at Hobart that is freed up by operation of SCIG is expected to be taken up  
15 by new transloaded containers and other sources. The FEIR assumes that the capacity at  
16 Hobart is expected to increase to approximately 3,000,000 lifts per year. This reported  
17 1,300,000 lift increase at the existing Hobart yard is almost the same size as the proposed  
18 SCIG facility capacity. In future years, air emissions associated with Hobart and SCIG will  
19 be substantially higher than the neighboring communities now suffer.

20 34. The South Coast Air Basin ("Basin") is designated by US EPA under the federal  
21 Clean Air Act as nonattainment for the PM2.5 annual and 24-hour standards. EPA has also  
22 finalized a new, even more stringent annual standard for PM2.5 and 1-hour NO2. The Clean  
23 Air Act requires the Basin to attain the new annual PM2.5 limits by 2020, and the 24-hour  
24 PM2.5 standard must be attained by 2014. Significant reductions of diesel particulate matter  
25 and oxides of nitrogen are crucial to meeting this deadline.

26 35. As set out in the environmental justice section of the RDEIR, the residential  
27 neighborhoods near the SCIG site are mostly low-income communities of color. These  
28 communities have higher cancer risk and asthma rates than most areas of Southern

1 California. These community health problems will be exacerbated if SCIG is built.

2 **THE EIR PROCESS FOR THE PROJECT**

3 36. The Notice of Preparation for the Project was made public on October 31, 2005. The  
4 initial draft environmental impact report ("DEIR") was made public on September 23, 2011.  
5 Petitioners/Plaintiffs submitted extensive written and oral comments on the DEIR.

6 37. The RDEIR was circulated on September 27, 2012. Petitioners/Plaintiffs submitted  
7 written and oral comments on the RDEIR.

8 38. The FEIR was circulated on February 23, 2013. Petitioners/Plaintiffs provided  
9 written and oral comments on the FEIR, which was approved by the Los Angeles Board of  
10 Harbor Commissioners at a public hearing on March 7, 2013.

11 39. Petitioners/Plaintiffs appealed the March 7, 2013 decision of the Board of Harbor  
12 Commissioners to the Los Angeles City Council. On May 8, 2013, the City Council affirmed  
13 the decision of the Board of Harbor Commissioners.

14 40. The City of Los Angeles filed a Notice of Determination for the Project on May 9,  
15 2013. Petitioners/Plaintiffs sought mediation pursuant to California Public Resources Code  
16 section 21151(c), but the City rejected their request.

17 **THE APPEAL TO THE LOS ANGELES CITY COUNCIL**

18 41. California Public Resources Code section 21151(c) provides that:

19 If a nonelected decisionmaking body of a local lead agency certifies an  
20 environmental impact report, approves a negative declaration or mitigated  
21 negative declaration, or determines that a project is not subject to this division,  
22 that certification, approval, or determination may be appealed to the agency's  
23 elected decisionmaking body, if any.

24 42. The FEIR for SCIG was approved by the Los Angeles Board of Harbor  
25 Commissioners, a non-elected body, and Petitioners/Plaintiffs duly appealed that approval to  
26 the Los Angeles City Council, the elected body that confirms the Mayor's appointments to  
27 the Board of Harbor Commissioners.

28 43. Unlike, for example, the City of Long Beach, Los Angeles does not have any written



1 procedures for the conduct of an appeal under Section 21151(c), nor any written or other  
2 standards for the consideration and resolution of such an appeal.

3 44. In an appeal of an earlier decision by the Board of Harbor Commissioners in the  
4 TraPac matter, the appeal was first referred to a standing committee of the City Council.  
5 Here, however, the appeal was calendared for May 8, 2013 before the full City Council  
6 without any hearing in committee, despite several requests from Petitioners/Plaintiffs that the  
7 appeal be heard first by the appropriate committee.

8 45. There were eight appeals to the City Council regarding the SCIG project. A City staff  
9 report on the appeal was made available on or about May 3, 2013. Petitioners/Plaintiffs  
10 submitted a written response to the staff report on May 7, 2013. Other appellants submitted  
11 written responses on May 8, 2013, the day of the City Council hearing on the appeals. At the  
12 May 8 hearing, a Councilmember asked the City Attorney representative present whether the  
13 Council had to consider material submitted that day; he was told "no." From the remarks  
14 made by the Councilmembers at the May 8 hearing, it is unlikely that any of them read any  
15 part of the eight appeals or the underlying EIRs or comments on the EIRs.

16 46. Prior to the commencement of the appeal hearing on May 8, no reliable information  
17 had been given out by the City Clerk or anyone else about what procedures would be in place  
18 to hear public testimony at the hearing. The City Council Chambers, the hallway outside,  
19 and an overflow room were full of people. When the matter commenced, Council President  
20 Wesson announced that Port staff would make a presentation and then each appellant group  
21 would have 3 minutes to speak; other speakers would only have 1 minute and the two "sides"  
22 would be limited to a total of 25 minutes each. These rules, which were not voted on by the  
23 full Council, left many people unable to speak for or against the project.

24 47. The Los Angeles City Council operates in most cases on a ward courtesy system for  
25 development projects. This means that, in most cases, if the councilmember for the council  
26 district in which a project is proposed favors the project, the other councilmembers will vote  
27 in favor of it.

28 48. The SCIG project is proposed to be built in the 15th Council District, which is now

1 represented by Joe Buscaino. Prior to the May 8 hearing, Councilmember Buscaino made a  
2 number of public statements supporting the SCIG project and also appeared in a video  
3 promoting the project. Petitioners/Plaintiffs asked in writing that Councilmember Buscaino  
4 recuse himself from voting on their appeal, but he did not do so; he voted in favor of the  
5 project at the hearing.

6 49. The City Council vote on the appeal was 11-2, with Councilmembers Perry and Parks  
7 opposed.

8 **VIOLATIONS OF CIVIL RIGHTS OF THE MINORITY, LOW-INCOME NEAR-**  
9 **PROJECT RESIDENTS**

10 50. The RDEIR for the Project admits:

11 The proposed Project would have significant impacts related to aesthetics  
12 (AES-1), air quality (AQ-1, AQ-2, AQ-4, AQ-7), cultural resources (CR-2),  
13 land use (LU-4), and noise (NOI-6) that would remain significant after  
14 mitigation. With these unavoidable impacts, the Proposed Project would have  
15 new, significant effects with respect to minority and low-income populations.  
16 Those impacts would fall disproportionately on minority and low-income  
17 populations because the census block groups adjacent to the point of impact  
18 (the eastern edge of the Project site) constitute minority populations, and some  
19 (i.e., all or parts of census tracts 5727, 5728, 5729, and 5755) constitute low-  
20 income populations.

21 RDIER 6-11-6-12.

22 51. With respect to air quality, the RDEIR admits that, even after the proposed mitigation  
23 measures, significant impacts will remain—impacts that are disproportionately high on  
24 nearby minority and low-income populations. RDEIR, at 6-12-6-13. In particular (emphasis  
25 added):

26 Construction of proposed Project will generate emissions that exceed  
27 SCAQMD significance thresholds for VOC, CO, NOx, PM10 and PM2.5,  
28 representing a significant impact. In addition, these emissions combined with

1 emissions from other concurrent construction projects in the area will  
2 represent a cumulatively considerable contribution to a significant cumulative  
3 impact. The mitigation measures proposed in the RDEIR (MM AQ-1 through  
4 MM AQ-6) will fail to keep construction emissions below the significance  
5 thresholds. These emissions will constitute a disproportionately high and  
6 adverse effect on minority and low-income populations.

7 52. The mitigation measures proposed in the RDEIR (MM AQ-1 through MM AQ-3) will  
8 fail to keep construction-related emissions of NO<sub>2</sub> and PM<sub>10</sub> below the one-hour and annual  
9 significance thresholds (for NO<sub>2</sub>) and the annual threshold for PM<sub>10</sub>.

10 53. Operation of the project – expected to last until 2066 or later – will generate local,  
11 off-site ambient pollutant concentrations that exceed SCAQMD significance thresholds for 1-  
12 hour and annual NO<sub>2</sub>, 24-hour and annual PM<sub>10</sub>, and 24-hour PM<sub>2.5</sub>, representing  
13 significant impacts. In addition, Project operations combined with other past, present and  
14 reasonably foreseeable future projects in the area (possibly including the expansion of the  
15 adjacent railyard called the Intermodal Container Transfer Facility (“ICTF”) and enlargement  
16 and the widening of the I-710 freeway) will represent a cumulatively considerable  
17 contribution to a significant cumulative impact for ambient pollutant concentrations. The  
18 mitigation measures proposed in the RDEIR will fail to keep the 1-hour and annual NO<sub>2</sub>, 24-  
19 hour and annual PM<sub>10</sub>, and 24-hour PM<sub>2.5</sub> levels below significance levels. Again, these  
20 emissions will constitute a disproportionately high and adverse effect on minority and low-  
21 income populations.

22 54. Construction and operation of the proposed Project will also expose receptors to  
23 significant levels of toxic air contaminants resulting in increased cancer risk above the  
24 significance threshold for residential, occupational, sensitive, student and recreational  
25 receptors. In addition, Project construction and operational activities combined with other  
26 concurrent projects in the area will represent a cumulatively considerable contribution to a  
27 significant cumulative health risk impact. Even after application of the proposed mitigation  
28 measures, considering the cancer risk from toxic air contaminants in the Port region, the

1 Project will make a cumulatively considerable contribution to the significant health risk  
2 impact to the predominantly minority and low-income population in the Port region; this  
3 impact will constitute a disproportionately high and adverse effect on minority and low-  
4 income populations.

5 55. The State of California has defined "environmental justice" as: "the fair treatment of  
6 people of all races, cultures, and incomes with respect to the development, adoption,  
7 implementation, and enforcement of environmental laws, regulations, and policies." Cal.  
8 Government Code §. 65040.12(e). California has addressed this problem in part by enacting  
9 California Government Code section 11135(a), which states that:

10 No person in the State of California shall, on the basis of race, national origin,  
11 ethnic group identification, religion, age, sex, sexual orientation, color,  
12 genetic information, or disability, be unlawfully denied full and equal access  
13 to the benefits of, or be unlawfully subjected to discrimination under, any  
14 program or activity that is conducted, operated, or administered by the state or  
15 by any state agency, is funded directly by the state, or receives any financial  
16 assistance from the state.

17 56. The Port has received and continues to receive millions of dollars in state bond  
18 proceeds, including from state Proposition 1B. The proposed SCIG project will be built on  
19 land that the Port controls by a grant from the State to hold in trust for the people of the State.

20 57. Petitioners/Plaintiffs and others have made clear to the Board of Harbor  
21 Commissioners and the City Council that the siting of the SCIG project as planned is a civil  
22 rights violation. In full knowledge of the admissions in the RDEIR quoted herein, and  
23 without changing a word of those admissions, and with the conclusion in the RDEIR that  
24 SCIG is not needed to handle new capacity, the Board of Harbor Commissioners and City  
25 Council approved the project even though there are reasonable alternatives that avoid civil  
26 rights and environmental justice issues. These actions constitute intentional violations of  
27 and/or deliberate indifference to Petitioners'/Plaintiffs' members civil rights under California  
28 law.

## CEQA VIOLATIONS

### Incorrect Project Description

58. CEQA defines a project as “the whole of an action, which has a potential for resulting in either” a direct or “reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines § 15378 (a)(1).) The lead agency “must consider the whole of an action, not simply its constituent parts, when determining whether [a project] will have a significant environmental effect.” (CEQA Guidelines § 15003(h).) Nonetheless, the RDEIR pretends that operation of BNSF’s Hobart Yard is not a part of the SCIG project except when it suits Respondents/Defendants to do so, for example in calculating the CEQA air quality baseline to make it appear high. In fact, SCIG and Hobart are so closely related that they should be analyzed as one project and the project description should so provide.

59. Real Party in Interest BNSF owns and operates Hobart. Operation of SCIG will free up capacity at Hobart, roughly seven miles away – capacity that BNSF can fill any way it wants to. The RDEIR predicts that this freed-up capacity at Hobart will be increasingly filled by cargo from the Ports and surrounding areas. However, the truck and locomotive emissions associated with this new traffic to and from Hobart were not analyzed in the RDEIR, and the project description in the RDEIR does not include the changes to traffic at Hobart or the total increase in traffic when SCIG and Hobart are both operating as parts of the project that is analyzed in the RDEIR. Thus, the project description in the FEIR is incorrect, in violation of CEQA.

### Failure to Analyze The Project's Growth-Inducing Impacts

60. Construction and operation of SCIG will allow total traffic to the SCIG/Hobart complex to increase. However, the associated overall increase in air pollution and related public health impacts were not analyzed in the RDEIR, in violation of CEQA.

### Inconsistent Use of Hobart In The Baseline, Project, and No Project Alternatives

61. In calculation of traffic loads and associated air emissions, the RDEIR includes truck traffic associated with Hobart in the baseline and No Project Alternatives, but does not include truck traffic to Hobart that will occur after SCIG opens. Doing so artificially inflates

1 the CEQA baseline and depresses the analysis of future air emissions associated with the  
2 project so as to make the additional emissions associated with the Project appear smaller than  
3 they truly will be, in violation of CEQA.

4 *Improper Analysis of the Effects of the Project*

5 62. The RDEIR claims that air quality will improve if the Project is built. It makes this  
6 claim by taking credit for governmental measures that have nothing to do with SCIG and  
7 which will be in effect whether SCIG is built or not. The FEIR takes credit for regulatory  
8 requirements, fleet turnover, and other emissions controls that are already required of the  
9 Project in order to make the Project seem like an improvement to air quality. Given this, and  
10 the fact that SCIG, when operational, will add roughly one million truck trips and thousands  
11 of locomotive trips per year to its neighborhood, operation of SCIG will make local air  
12 quality worse than it would be if SCIG were not built. Not admitting this in the RDEIR is a  
13 violation of CEQA.

14 63. Moreover, the RDEIR failed to analyze the air quality effects and necessary  
15 mitigation, if any, of the truck and locomotive traffic at the Hobart Yard that will be enabled  
16 by operation of SCIG. This too is a violation of CEQA.

17 *Failure To Consider Feasible Alternatives*

18 64. The Port has built, and is building, substantial amounts of on-dock rail – facilities that  
19 are on the Port's docks and not in the surrounding neighborhoods that can handle containers  
20 to be loaded onto trains. The Port has also built, and has plans to build, useable land by  
21 dredging and filling in the harbor. To the extent that the extra capacity represented by SCIG  
22 is needed, that capacity can be handled by building additional on-dock rail facilities and  
23 associated tracks. However, the RDEIR and FEIR do not accept on-dock rail as a feasible  
24 alternative, in violation of CEQA.

25 65. The Port, the next-door Port of Long Beach, the South Coast Air Quality  
26 Management District, and the Southern California Association of Governments have been  
27 working on research and demonstration models of zero-emission container movement  
28 systems for years. CalTrans is now evaluating a catenary system to allow electrically-

1 powered trucks to haul cargo on the expanded I-710. Rather than commit to a deadline for  
2 use of a zero-emission container movement system at SCIG, the RDEIR and associated lease  
3 terms do not require the use of such systems. Zero-emission container systems are feasible to  
4 make the four-mile trip from the Port to the SCIG site but are not included as a Project  
5 alternative or as a mitigation measure, in violation of CEQA.

6 66. The United States Environmental Protection Agency ("EPA") regulates locomotive  
7 engines by assigning them to different "tiers" depending on their age and emissions profiles.  
8 Beginning in 2015, only Tier 4 locomotives will be legal to sell in the United States; these  
9 are roughly 90 percent cleaner than Tier 3 locomotives that are in service now. Despite the  
10 goals in the Ports' Clean Air Action Plan<sup>6</sup>, the RDEIR and associated lease do not require the  
11 use of Tier 3 or Tier 4 locomotives at SCIG, ever. Tier 3 engines are now widely available  
12 and Tier 4 engines will soon be; failure to require the use of such engines as a Project  
13 alternative or mitigation measure is a violation of CEQA.

14 *The RDER's Calculation Of Drayage Truck Emissions Is Arbitrary And Capricious.*

15 67. The RDEIR calculates air emissions from port-serving "drayage" trucks in a  
16 backwards way: it estimates the future number of "lifts," one lift being the movement of a  
17 cargo container from, say, a truck to a railcar, and then estimating the number of truck trips  
18 associated with each lift. This is called the "trip per lift" ratio and is usually around 2 at  
19 intermodal yards in the United States. The QuickTrip model which was generated for and  
20 used by the Port to estimate truck traffic based on cargo container throughput (see RDEIR at  
21 3.10-21), estimates 2.85 truck trips per lift. However, the RDEIR uses a factually-  
22 unsupported figure of 1.3 trips per lift. A memo from BNSF to the Port candidly states:  
23 "There is no empirical data to support the lower lift/truck trip ratio for SCIG as SCIG is the  
24 first rail intermodal facility design of its kind." This confirms the argument that  
25 Petitioners/Plaintiffs made in their comments (and that the South Coast Air Quality  
26 Management District made in its comments) that the trips per lift ratio in the RDEIR had no  
27

28 <sup>6</sup> See San Pedro Bay Ports, Clean Air Action Plan 2010 Update (Oct. 2010), *available at*  
<http://www.portoflosangeles.org/environment/caap.asp>.

1 empirical basis.

2 68. The consequence of the use of the unsupported trip per lift ratio of 1.3 instead of the  
3 customary 2.0 results in air emission estimates that should be roughly 50% higher than what  
4 the RDEIR reported. This is arbitrary and capricious within the meaning of CEQA and  
5 California Code of Civil Procedure section 1094.5.

6 69. Moreover, the RDEIR concludes that diesel truck-related pollution in the South Coast  
7 Air Basin will decrease because of SCIG, while Appendix G4 of the RDEIR shows just the  
8 opposite. Appendix G4 shows that lifts at Hobart will increase over the 2010 baseline, and in  
9 fact will almost double over the 2010 baseline by 2035 (assuming an equal share of  
10 international cargo going to SCIG and the adjacent ICTF railyard).

11 70. The arbitrary use of a low trip per lift ratio spills over into the health risk analysis in  
12 the RDEIR because that analysis is based on arbitrarily-low air emissions estimates. A  
13 rational projection of future air emissions associated with SCIG (and Hobart) would lead to  
14 substantially elevated cancer risk numbers.

15 The FEIR Fails To Adopt All Feasible Mitigation Measures and the Operational Mitigation  
16 Measures Proposed In The RDEIR Are Inadequate

17 71. CEQA requires that a project incorporate all reasonably feasible mitigation measures.  
18 The RDEIR fails to do this in numerous ways.

19 72. The only on-site mitigation required for PM 2.5 emissions is street-sweeping. This  
20 pathetic result ignores the availability of, for example, liquid natural gas ("LNG") trucks  
21 (that do not emit any diesel particulates), Tier 3 locomotives (many of which are already in  
22 BNSF's fleet), and Tier 3 locomotive conversions that limit diesel emissions to Tier 4 levels  
23 (in use now by Pacific Harbor Lines at the Port).

24 73. The RDEIR and associated lease do not contain any deadlines (as opposed to goals)  
25 for the use of mitigation measures such as zero-emission container movement systems and  
26 Tier 4 locomotives which will be available in 2015, before the Project begins operations.  
27 The RDEIR also fails to require, as a mitigation measure, satisfaction of the Port's Clean Air  
28 Action Plan (CAAP) Measure RL3, which specifies a goal that 95% of all locomotives



1 serving the ports by 2020 will be Tier 4. Nor does the RDEIR require maximizing on-dock  
2 rail, for example by building a new facility on dredge-and-fill land in the port, considered as  
3 a mitigation measure.

4 74. The RDEIR does not include, as project conditions or as mitigation measures, the key  
5 assumptions used in the air quality analyses, including the analyses of locomotive and truck  
6 emissions.

7 75. The RDEIR and associated lease do not contain or even discuss any mitigation  
8 measures for greenhouse gas ("GHG") emissions associated with SCIG, even though the  
9 RDEIR concludes that the Project's impacts on GHGs will be significant.

10 *Air Emissions From SCIG Will Impair Implementation Of The South Coast Air Quality*  
11 *Management District's State Implementation Plans for NOx, Particulate Matter and Ozone.*

12 76. The million new diesel truck trips and thousands of locomotive trips per year that the  
13 SCIG project will create will add to the PM 2.5 load in the South Coast region, which is  
14 already in non-attainment for PM 2.5 under the federal Clean Air Act, and will also increase  
15 ozone emissions as to which the South Coast is in non-attainment. As noted above, SCIG  
16 and Hobart-related diesel truck and train trips will increase, not decrease, if SCIG is built.

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

24 78. Moreover, although the FEIR claims that the SCIG project will comply with the 2007  
25 Air Quality Management Plan ("AQMP"), it argues that "CEQA does not require an  
26 examination of the AQMP's black box." FEIR at 2-596. The FEIR fails to explain how it  
27 can ignore this large gap in emissions reductions necessary to be developed to meet ambient  
28 air quality standards. CEQA requires projects to address this issue; it is inconsistent for the

1 Port to claim that the project would not conflict with the AQMP and at the same time allege  
2 that it need not examine the effect of the project on the "black box" which is crucial to  
3 attainment of federal ozone limits within the South Coast district.

4 79. The FEIR also admits that the emissions from SCIG project would, in and of  
5 themselves, create a violation of the National Ambient Air Quality Standard (NAAQS) for  
6 the 1-hour NO2 standard. This admission directly contradicts the claim that SCIG will not  
7 conflict with or obstruct implementation of an applicable air quality plan. The FEIR fails to  
8 require reasonable and adequate mitigation measures for NOx, PM2.5 or PM10. Under  
9 Public Resources Code section 21002.1(c), a project may only be approved if it is otherwise  
10 permissible under applicable laws and regulations. This project would violate the federal and  
11 California Clean Air Acts and cannot be legally approved.

12 *The Cumulative Impacts Analysis Is Flawed.*

13 80. The cumulative impacts analysis in the RDEIR ignores two big elephants in the room:  
14 the Hobart Yard and the I-710 expansion project. The problems arising from ignoring  
15 growth at Hobart have been described above.

16 81. I-710 is roughly one mile East of the SCIG site. CalTrans has proposed a massive  
17 expansion project in order to accommodate expected traffic increases in truck and auto traffic  
18 from the Ports of Los Angeles and Long Beach along the I-710.

19 82. Here is what the June, 2012 draft environmental impact report prepared for the I-710  
20 project says about the need for widening the I-710:

21 "TRANSPORTATION DEMAND. Combined port activity in the Study Area  
22 is expected to increase from the handling of 14 million annual twenty-foot  
23 equivalent units (TEUs) in 2008 to approximately 43 million annual TEUs in  
24 2035. After considering different port cargo growth scenarios, the projected  
25 43 million annual TEUs was the port cargo growth scenario adopted by the I-  
26 710 Corridor Project Committee in April 2009 to provide a conservative basis  
27 for the I-710 Corridor Project travel demand forecasting. This forecast is  
28 consistent with SCAG's recently adopted 2012 Regional Transportation

1 Plan/Sustainable Communities Strategy (RTP/SCS). The I-710 Corridor is,  
2 and is expected to remain, a primary route for trucks carrying containers to  
3 and from the ports. This indicates that the existing transportation problems on  
4 the I-710 mainline and other Study Area roadways will get worse, which in  
5 turn, have the potential to adversely affect the competitive position of the Los  
6 Angeles region in the global economy. By 2035, regional population is  
7 forecast to grow by 27 percent, and Study Area population is forecast to grow  
8 by 11 percent. Employment will follow a similar pattern, with regional growth  
9 of 27 percent and Study Area employment growth of only 7 percent. Growth  
10 will be lower in the Study Area because it is almost completely developed.  
11 Increases in population, employment, and goods movement between now and  
12 2035 will lead to more traffic on the I-710 freeway and on the streets and  
13 roadways within the Study Area as a whole.”<sup>7</sup>

14 83. Critically, for purposes of the case at bench, CalTrans, in deciding that the I-710  
15 needs to be expanded, has assumed that SCIG will be operational.<sup>8</sup> Thus, the claim in the  
16 FEIR that SCIG will reduce traffic on the I-710 is a sham.

17 84. In addition, the SCIG FEIR fails to analyze the cumulative impact of SCIG on the  
18 neighboring community given the planned expansion and higher (not lower) amount of  
19 traffic on the I-710, only a mile away.

20 *The No-Project Analysis Fails To Consider The Expanded I-710*

21 85. As described above, CalTrans is planning to expand the portion of the I-710 that is  
22 near the SCIG site. The community-preferred alternative and several other alternatives being  
23 studied for the I-710 project includes a zero-emission freight transport corridor. The RDEIR  
24

25 <sup>7</sup> See Draft Environmental Impact Report/Environmental Impact Statement and Section 4(f)  
26 Evaluation, I-710 Corridor Project (Executive Summary) 3 (June 2012), *available at*  
27 <http://www.dot.ca.gov/dist07/resources/envdocs/docs/710corridor/docs/710%20DEIR%20EIS%20Executive%20Summary%20final%20.pdf> [hereinafter “I-710 DEIR/EIS”].

28 <sup>8</sup> See I-710 DEIR/EIS (Cumulative Impacts) at 3.25-14 and 3.25-32, *available at*  
<http://www.dot.ca.gov/dist07/resources/envdocs/docs/710corridor/docs/Chapter%203/3.25%20Cumulative.pdf>.

1 for the SCIG project fails to consider, in its no-project analysis, the reductions in air pollution  
2 that will be attributable to the zero-emission container movement system on the expanded I-  
3 710. This error results in higher air emission numbers for the no-project case than are  
4 warranted, in violation of CEQA.

5 86. Moreover, if it is true, as Appendix G4 and other sections of the RDEIR suggest, that  
6 SCIG is not necessary to handle cargo capacity in the foreseeable future, the No Project  
7 alternative should have been chosen.

8 *The SCIG FEIR Violates CEQA By Piecemealing The SCIG/ICTF Expansion Projects*

9 87. Union Pacific Railroad and the ICTF Joint Powers Authority ("ICTF JPA") are  
10 planning an enormous expansion of the Union Pacific ICTF railyard that is immediately  
11 adjacent to the proposed SCIG project site and that would pollute the same neighborhoods,  
12 for the same reasons. The ICTF JPA is a joint powers authority formed by the cities and  
13 Ports of Long Beach and Los Angeles. The ICTF JPA's seven-member Governing Board  
14 includes two representatives from each port, a member of each city council, and a  
15 representative of the Los Angeles County Metropolitan Transportation Authority ("MTA").  
16 The City of Los Angeles holds four seats on the 13-member MTA Board.

17 88. The Notice of Preparation for the ICTF expansion project was made public by the  
18 ICTF JPA in January, 2009. It states that the ICTF expansion would increase the number of  
19 containers handled at the facility from an annual average of 725,000 to an estimated 1.5  
20 million. Truck trips would increase by 1.1 million trips per year—roughly the same number  
21 of trips that SCIG is expected to bring into the same neighborhoods. Like SCIG, ICTF  
22 would operate 24 hours per day, 7 days per week. The ICTF project will also increase the  
23 annual number of rail trips by roughly 4,700.

24 89. Under CEQA, the SCIG and ICTF projects share a common goal, are physically  
25 adjacent to each other, share common governance in part, and should be evaluated as one  
26 project for all purposes, including cumulative impacts. The failure of the FEIR to do so  
27 violates CEQA.

28

1 *The FEIR's Treatment Of Global Climate Change Is Invalid*

2 90. The RDEIR admits that:

3 "The proposed project would produce GHG operational emissions that would  
4 exceed the CEQA baseline levels when the project reaches its full capacity in  
5 2035 and beyond. However, operational emissions would be less than the  
6 baseline GHG emissions through 2023 before the SCIG facility throughput  
7 reaches its maximum capacity. Therefore, significant impacts under CEQA  
8 would occur for the proposed Project."

9 RDEIR at 3.6-30. However, the RDEIR claims that "the GHG emissions of construction and  
10 operation are significant and unavoidable." Id. at 3.6-31. The RDEIR also concludes that  
11 "The proposed Project would not conflict with State and local plans and policies adopted for  
12 the purpose of reducing GHG emissions." This is patently false because California's AB 32  
13 requires a reduction, not increase, in statewide GHG emissions. By failing to discuss how  
14 significant these impacts will be, and the extent to which they will frustrate and be  
15 inconsistent with State and local (including City of Los Angeles) policies adopted to reduce  
16 GHG emissions, the RDEIR violates CEQA. In particular, the conclusion in the RDEIR that  
17 the proposed project would not conflict with State and local plans and policies adopted for  
18 the purpose of reducing GHG emissions is not supported by substantial evidence.

19 91. In fact, there are feasible GHG mitigation measures that the RDEIR fails to analyze,  
20 foremost among which is implementation of zero-emission container movement between the  
21 Port and the SCIG site. This would eliminate tailpipe emissions, including CO<sub>2</sub>, from one  
22 million truck trips per year. Similarly, the RDEIR does not consider the purchase of State-  
23 approves emissions offsets to counteract some of the increase in GHG emissions due to the  
24 project.

25 *The Traffic And Circulation Analyses In The FEIR Are Invalid*

26 92. It is not clear what project year is used for analysis in the Transportation/Circulation  
27 section of the RDEIR (Section 3.10). In the few text mentions of a project year in Section  
28 3.10 of the RDEIR, it seems as though the project impacts were analyzed assuming either

1 that the project operates at capacity in an unspecified year, or that 2035 is the analysis year  
2 (which is also the year at which capacity is reached).

3 93. Additionally, the RDEIR states that the proposed Project trip generation was  
4 determined by using the proposed Project lifts (container trips) from the average weekday of  
5 the peak month of port operation at port buildout, the QuickTrip outputs, and adjustments for  
6 bobtail and container trips based on the rates shown in Table 3.10-21. RDEIR at 3.10-40.  
7 Although 'port buildout' is not described in RDEIR Section 3.10, it may be that this  
8 description means that the project trip generation assumes 2035 operations , (i.e. that the  
9 SCIG facility operates at capacity). Figure 3.10-6 contradicts this interpretation because the  
10 truck trip distribution percentages shown are described as being "determined by Baseline port  
11 intermodal demand" (RDEIR at 3.10-28); these values for trip distribution do not match any  
12 of the truck trip distribution percentages for years 2016, 2023, or 2035-2066 shown in  
13 Figures 4-2, 4-3, and 4-4 of the Cumulative Impacts Section of the RDEIR. It is therefore  
14 unclear and unsupportable that the analysis in Section 3.10 assumes 2035 truck volumes  
15 traveling along the same routes they would in the baseline year, even though different trip  
16 distributions were estimated for 2035.

17 94. The Traffic/Circulation section does not appear to account for local background  
18 conditions in future years when assessing project impacts. The RDEIR states that: "Impacts  
19 were assessed by quantifying differences between CEQA Baseline conditions and CEQA  
20 Baseline conditions plus the proposed Project." RDEIR at. 3.10-20. Similarly, values shown  
21 in the traffic data tables are for the baseline and "baseline plus proposed project." This  
22 analysis ignores changes in local conditions that will occur in the future by simply adding the  
23 project's incremental effects to the 2010 baseline, rather than accounting for 2035 or 2066  
24 background conditions. Thus, it appears that the analysis makes a distinction between two  
25 different kinds of impacts: those impacts determined by comparing the baseline to the future  
26 with project, and those project impacts determined by comparing the future without the  
27 project to the future with project. It is unclear why neither Section 3.10 nor 4.0 rely on the  
28 2010 baseline compared to the projections for future years to determine significant impacts.

1 Failure to explain this and to analyze transportation impacts using different baselines is a  
2 CEQA violation.

3 95. The analysis of traffic impacts relies on traffic counts collected for this study. Local  
4 jurisdictions provide guidelines for collecting traffic counts for traffic studies in the area. In  
5 the City of Los Angeles, the Los Angeles Department of Transportation Traffic Study  
6 Policies and Procedures governs this kind of work. However, here the traffic counts as  
7 described above do not conform with the City of Los Angeles methodology in at least two  
8 ways: 1) counts were not taken from 9–10 a.m. and 3–4 p.m., and 2) bicycle and pedestrian  
9 (including school children) volume counts were not included. It is unclear why there were no  
10 pedestrian or bicycle counts, especially given that at least six of the seven City of Los  
11 Angeles intersections examined have pedestrian crosswalks and sidewalks, and one  
12 intersection had a bike lane. Additionally, for all intersections, including those within the  
13 City of Long Beach and City of Carson, the counts do not conform to Los Angeles County  
14 guidelines as they were not taken on multiple days for the same intersections. Because only  
15 a single day of counts were collected at each intersection, it is not possible to determine  
16 whether the values collected are representative of the traffic conditions onsite because the  
17 day to day variability of traffic levels is unknown.

18 96. The RDEIR states that the traffic counts used to analyze Congestion Monitoring Plan  
19 (CMP) monitoring stations (freeways and arterials) are based on 2009 Caltrans data. These  
20 data are within two years of the modified baseline year (2010) but are not within two years of  
21 the RDEIR analysis (2012) and thus are suspect. In addition, the RDEIR did not study the  
22 San Gabriel to PCH intersection and instead treated it as a “highway ramp move.” This had  
23 the effect of ignoring this catastrophic impact of the proposed SCIG access on the Villages at  
24 Cabrillo.

25 97. The RDEIR uses an analysis of freeway ramps from “the Traffic Operations Report”  
26 prepared for the Pacific Coast Highway Bridge Replacement (#53-399) and SCIG Site  
27 Driveway Alternatives Project. It appears that the analysis year referenced is 2008. The raw  
28 traffic count data are not provided in the RDEIR, but the analysis outputs in Appendix G1 list

1 the "date" and "date performed" as Tuesday 1/29/2008, Wednesday 2/13/2008, Thursday  
2 10/14/2010, and Monday 10/18/2010. If these dates are the date the traffic counts were  
3 collected, while all of these dates are within two years of the baseline year (2010), the 2008  
4 dates are not within two years of the RDEIR analysis (2012) and are suspect.

5 *The Project's Effects On Bicycle And Pedestrian Uses Are Not Analyzed*

6 98. The RDEIR's evaluation of impacts states that the project "will not conflict with  
7 policies, plans or programs regarding public transit, bicycle or pedestrian facilities, or  
8 otherwise decrease the performance or safety of such facilities." RDEIR at 3.10-60.  
9 However the RDEIR also states that although there are "currently no on-street bicycle  
10 facilities" on designated truck routes, the "City of Los Angeles Master Bike Plan identifies  
11 Pacific Coast Highway as a Class II designated bikeway that will include bicycle lanes in the  
12 future." RDEIR at 3.10-16. The RDEIR also states that Lomita Blvd and Anaheim Street  
13 are also designated as Class II bikeways and are in the five-year implementation plan as  
14 second highest priority components, although the Pacific Coast Highway is not included in  
15 the 5-year implementation plan.

16 99. An examination of the 2010 City of Los Angeles Bike Plan indicates that existing and  
17 proposed bikeways coincide with several of the SCIG proposed truck routes. The proposed  
18 truck route includes portions of the Pacific Coast Highway, Seaside Avenue, Anaheim Blvd.,  
19 and Harry Bridges Road that have existing or future bike lanes which are part of the City's  
20 planned "Backbone Bikeway Network." According to the City of Los Angeles Director of  
21 Planning, on July 1, 2010, 1.3 miles of bike lanes were installed along Anaheim Blvd from  
22 Henry Ford Ave to the Long Beach City limit (coinciding with a SCIG truck route), over two  
23 years before the RDEIR was completed.

24 100. Moreover, the Transportation/Circulation section of the RDEIR does not  
25 provide a technical evaluation of the project's impacts on bicyclists and pedestrians. The  
26 RDEIR states only that pedestrian crosswalks are present at intersections. The Federal  
27 Highway Administration ("FHWA") indicates that when heavy truck traffic increases,  
28 bicyclists are less comfortable riding on-street. When heavy truck traffic is present, the 2010



1 Los Angeles Bike Plan technical guidelines recommend considering additional width for bike  
2 lanes next to parallel parking and bicycle routes with a wide outside lane. This is consistent  
3 with FHWA indices of bikeway facility performance: with heavy truck traffic, the FHWA's  
4 Bicycle Compatibility Index worsens, leading to a worsening of the FHWA's bicycle level of  
5 service ("LOS"). Similarly, the 2010 Highway Capacity Manual includes a measure of  
6 bicycle LOS, which accounts for the proportion of heavy vehicle traffic, as well as overall  
7 motorized vehicle volumes. However, the RDEIR does not assess pedestrian or bicycle LOS.

8 101. Furthermore, the intersection traffic count information described in the  
9 RDEIR (described in Section 3.10 and used in estimates shown in Appendix G1) and posted  
10 in the DEIR (raw traffic count data in Appendix G3) does not include information about  
11 bicyclists and pedestrians at any location despite the LA DOT Traffic Study Policies and  
12 Procedures requirement that "the study intersection counts should also include vehicle  
13 classifications, pedestrian (including schoolchildren) volume counts, and bicycle counts"  
14 Bicycle counts on the intersection of E. Anaheim Blvd. and N. Henry Ford Ave. would be  
15 especially relevant, given their location in the City of Los Angeles and the presence of bike  
16 lanes along E. Anaheim Blvd.

17 102. Finally, even if the GPS enforcement system noted in the RDEIR is effective  
18 at restricting SCIG truck traffic to designated routes, traffic may be affected on nearby roads,  
19 if non-SCIG cars and trucks change their route to avoid traffic from SCIG trucks. This may  
20 affect bicyclists and pedestrians along non-truck routes, but was not analyzed in the RDEIR.

21 *The RDEIR Uses An Improper Baseline*

22 103. CEQA Guidelines 15125(a) provides:

23 An EIR must include a description of the physical environmental conditions in the  
24 vicinity of the project, as they exist at the time the notice of preparation is published,  
25 or if no notice of preparation is published, at the time environmental analysis is  
26 commenced, from both a local and regional perspective. This environmental setting  
27 will normally constitute the baseline physical conditions by which a lead agency  
28 determines whether an impact is significant. The description of the environmental

1 setting shall be no longer than is necessary to an understanding of the significant  
2 effects of the proposed project and its alternatives.

3 The notice of preparation in this case was published in 2005, and the original DEIR,  
4 published in September, 2011, purported to describe traffic and other conditions on the  
5 proposed SCIG site as of that date. However, the RDEIR, published roughly one year later,  
6 switched to a 2010 baseline.

7 104. The RDEIR's reasons for this change in baseline do not make sense, and the  
8 RDEIR does not analyze what difference, if any, this change in baseline made to the traffic  
9 and air quality analyses—even though it stands to reason that truck traffic on the site was  
10 higher in 2010 than in 2005 as economic conditions improved after the 2008 recession. A  
11 too-high baseline combined with too-low future traffic projections (because of the trips per  
12 lift problem discussed above) distorts and reduces the environmental impacts of a project and  
13 lessens the need for possibly expensive mitigation. Because of this, the RDEIR is inadequate  
14 and should have analyzed the difference between using a 2005 and 2010 baseline as it affects  
15 air quality and public health.

16 *The RDEIR Fails To Analyze The Risk Of Harm To Near-Highway And Near-Railyard*  
17 *Residents*

18 105. Dozens of studies have shown greatly increased pollutant levels and health  
19 impacts in close proximity to freeways, prompting the California Air Resources Board  
20 (CARB) to recommend in 2005 that local governments “[a]void siting new sensitive land  
21 uses within 500 feet of a freeway, urban roads with 100,000 vehicles/day, or rural roads with  
22 50,000 vehicles/day.” The rationale for that caution is summarized as follows: “In traffic-  
23 related studies, the additional non-cancer health risk attributable to proximity was seen  
24 within 1,000 feet and was strongest within 300 feet. California freeway studies show about a  
25 70% drop off in particulate pollution levels at 500 feet.” Additionally: “we recommend that  
26 land use agencies track the current assessment efforts, and consider limitations on the siting  
27 of new sensitive land uses in areas immediately downwind of ports.”

28 106. One recent study in the Los Angeles basin measured elevated air pollutants far

1 downwind, up to 2,000 meters and up to 600 meters upwind of a major freeway. The study,  
2 along Interstate 10, documented high concentrations of ultra-fine particulates, polycyclic  
3 aromatic hydrocarbons and nitric oxide at distances of 1,200 meters (roughly 4,000 feet) and  
4 farther downwind, especially during pre-sunrise hours when winds were low, humidity was  
5 high and there was a surface temperature inversion.

6 107. Correlations have also been found between living or working near a major  
7 roadway and asthma, respiratory disease, reproductive impacts, cancer, and lung disease.

8 108. The Air Quality and Health Risk analyses in the RDEIR fail to provide  
9 adequate detail about the significant public health threat to those residing in close proximity  
10 to the highways that will carry more diesel truck traffic due to this project. The bottom line  
11 on the air quality and health risk analyses is that they rest on the shaky foundation of the  
12 traffic studies, and cannot stand up to a rigorous analysis under CEQA.

13 *The Health Risk Analysis Is Flawed, Especially With Respect To Effects On Children*

14 109. The health risk analysis in the RDEIR depends for its validity on air emission  
15 estimates that are in turn based on the results of the traffic projections in the FEIR. Because,  
16 as discussed herein, those traffic projections are unrealistically and arbitrarily low, the health  
17 risk analysis is itself invalid.

18 110. In addition, the RDEIR fails to address the elevated health risks to children  
19 who will be in school near the project. Children are more sensitive to toxic air contaminants  
20 and ultrafine particles than adults due to their smaller lung capacity and higher respiration  
21 rate, but these facts were not used in the health risk analysis in the RDEIR.

22 111. There is a well-established understanding in the field of public health that  
23 children are disproportionately more susceptible to toxic exposures in their environment.  
24 Children and infants are uniquely at risk from air pollution both because of physiological  
25 susceptibility and greater relative exposure. Children often have greater exposures to  
26 environmental contaminants because of activities that involve contact with dirt, and because  
27 of hand-to-mouth behavior (e.g. they can be exposed to toxic heavy metals deposited from  
28 the air on soil). Compared to adults, children, on a body-weight basis, ingest more dust and

1 soil, and breathe more air. Children, who are actively engaged in outdoor physical activity,  
2 including sports activities, are affected by outdoor air pollution to a greater extent because  
3 intake of air increases during periods of increased physical activity. Also, when mouth  
4 breathing occurs as may be typical during physical exertion, the natural defenses of the body  
5 in the upper respiratory tract are bypassed, allowing direct deposition in the lungs of any  
6 environmental contaminants present in the air.

7 112. Children are more susceptible to adverse impacts from these exposures  
8 because for several reasons. Their bodies and brains are immature and still developing. The  
9 rapid development of a child's organ systems during embryonic, fetal and early newborn  
10 periods makes children vulnerable when exposed to environmental toxicants. They are more  
11 susceptible to certain cancers and reproductive problems and also have a longer expected  
12 lifetime in which to develop illness after an exposure. In fact, U.S. EPA applies a 10X  
13 factor for exposure among babies (0 to 2 years of age) to carcinogens that are mutagenic.  
14 The factor is adjusted to 3X for children ages 2-16. Constant lifetime exposures result in 1.7-  
15 fold adjustment factor. California issued even stronger guidance in 2009, confirming that  
16 infants and children are more sensitive to carcinogens than adults; and that increased  
17 susceptibility of the young is a scientifically justifiable assumption. The guidance provides  
18 age sensitivity factors, including a mean estimate of a nearly five-fold increase in lifetime  
19 cancer risk when the increased susceptibility of the fetus, infants and children are considered.

20 113. Infants and children are especially susceptible to the hazards of polycyclic  
21 aromatic hydrocarbons (PAHs), a class of known human mutagens, carcinogens, and  
22 developmental toxicants found in diesel exhaust. Greater lifetime cancer risks result from  
23 exposure to carcinogens at a young age. These substances are known to cross the placenta to  
24 harm the unborn fetus, contributing to fetal mortality, increased cancer risk and birth defects.  
25 Prenatal exposure to PAHs may also be a risk factor for the early development of asthma-  
26 related symptoms and can adversely affect children's cognitive development, with  
27 implications for diminished school performance. Exposure of children to PAHs at levels  
28 measured in polluted areas can also adversely affect IQ.

1 114. Despite this body of knowledge, the health risk analysis in the RDEIR does  
2 not properly analyze the potential health effects of the Project, particularly the effects on  
3 children.

4 *The Statement Of Overriding Considerations Is Inadequate*

5 115. There is not substantial evidence in the record to support the Statement of  
6 Overriding Considerations in the FEIR.

7 **FIRST CAUSE OF ACTION**

8 **(Writ of Mandate, California Civil Code Section 1085)**

9 116. Paragraphs 1 through 115 are incorporated by reference herein.

10 117. The CEQA appeal hearing conducted by the Los Angeles City Council on  
11 May 8, 2013 was arbitrary, capricious and standardless for the reasons set forth herein.

12 118. Moreover, the May 8, 2013 hearing deprived Petitioners/Plaintiffs of their due  
13 process right to a fair and unbiased tribunal in the quasi-judicial matter then before the Los  
14 Angeles City Council because Councilmember Buscaino declined to recuse himself even  
15 though he had publicly supported the SCIG project. This was highly prejudicial because the  
16 project is in Councilmember Buscaino's Council district and the City Council practices ward  
17 courtesy on most land use matters.

18 119. Petitioners/Plaintiffs have no adequate remedy at law for the issues raised in  
19 this Cause of Action. Petitioners/Plaintiffs are therefore entitled to issuance of a writ of  
20 mandate pursuant to California Civil Code section 1085 compelling the Los Angeles City  
21 Council to reverse its May 8, 2013 approval of the FEIR for the Project and to hold a new  
22 appeal hearing in which consistent and fair procedures are known sufficiently before the  
23 hearing to allow parties and the public to prepare, and in which Councilmember Buscaino  
24 does not participate nor attempt to influence others on how to vote.

25 **SECOND CAUSE OF ACTION**

26 **(Declaratory and Injunctive Relief, California Government Code Section 11135(a))**

27 120. Paragraphs 1 through 119 are incorporated by reference herein.

28 121. The Los Angeles Board of Harbor Commissioners and, through them, the Port

1 of Los Angeles receives substantial financial assistance from the State of California  
2 including, without limitation, funds from California Prop. 1B.

3 122. By taking the deliberate actions described herein, Respondents/Defendants  
4 have discriminated against Petitioners/Plaintiffs and their members on the basis of race,  
5 national origin, ethnic group identification and/or color, in violation of California  
6 Government Code section 11135(a).

7 123. Petitioners/Plaintiffs have no adequate remedy at law for the issues raised in  
8 this Cause of Action. Petitioners/Plaintiffs are therefore entitled to a declaratory judgment  
9 that the municipal approvals of SCIG project, as presently sited and designed, violate  
10 California Government Code section 11135(a); Petitioners/Plaintiffs are further entitled to  
11 temporary, preliminary and permanent injunctive relief enjoining construction and operation  
12 of the Project as the Project is currently sited and designed.

13 **THIRD CAUSE OF ACTION**

14 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

15 **VIOLATION OF CEQA – INCORRECT PROJECT DESCRIPTION**

16 124. Paragraphs 1 through 123 are incorporated by reference herein.

17 125. SCIG and Hobart are so closely related that they should be analyzed as one  
18 project and the project description should so provide. The new truck and locomotive  
19 emissions associated with Hobart that the FEIR predicts will occur as a result of the  
20 operation of SCIG were not analyzed in the RDEIR, and the project description in the  
21 RDEIR does not include the changes to traffic at Hobart or the total increase in traffic when  
22 SCIG and Hobart are both operating as parts of the project that is analyzed in the RDEIR.  
23 Thus, the project description in the FEIR is incorrect, in violation of CEQA.

24 **FOURTH CAUSE OF ACTION**

25 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

26 **VIOLATION OF CEQA – FAILURE TO ANALYZE GROWTH-INDUCING**

27 **IMPACTS**

28 126. Paragraphs 1 through 125 are incorporated by reference herein.

1 127. Construction and operation of SCIG will allow total traffic to the  
2 SCIG/Hobart complex to increase. However, the associated overall increase in air pollution  
3 and related public health impacts were not analyzed in the RDEIR, in violation of CEQA.

4 **FIFTH CAUSE OF ACTION**

5 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

6 **VIOLATION OF CEQA – INCONSISTENT TREATMENT OF HOBART YARD**

7 128. Paragraphs 1 through 127 are incorporated by reference herein.

8 129. In calculation of traffic loads and associated air emissions, the RDEIR  
9 includes truck traffic associated with Hobart in the baseline and No Project Alternatives, but  
10 does not include truck traffic to Hobart that will occur after SCIG opens. Doing so  
11 artificially inflates the CEQA baseline and depresses the analysis of future air emissions  
12 associated with the project so as to make the additional emissions associated with the Project  
13 appear smaller than they truly will be, in violation of CEQA.

14 **SIXTH CAUSE OF ACTION**

15 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

16 **VIOLATION OF CEQA – IMPROPER ANALYSIS OF EFFECTS OF THE**

17 **PROJECT**

18 130. Paragraphs 1 through 129 are incorporated by reference herein.

19 131. The RDEIR claims that air quality will improve if the Project is built. It  
20 makes this claim by taking credit for governmental measures that have nothing to do with  
21 SCIG and which will be in effect whether SCIG is built or not. Given this, and the fact that  
22 SCIG, when operational, will add roughly one million truck trips and thousands of  
23 locomotive trips per year to its neighborhood, operation of SCIG will make local air quality  
24 worse than it would be if SCIG were not built. Not admitting this in the RDEIR is a violation  
25 of CEQA.

26 132. Moreover, the RDEIR failed to analyze the air quality effects and necessary  
27 mitigation, if any, of the truck and locomotive traffic at the Hobart Yard that will be enabled  
28 by operation of SCIG. This too is a violation of CEQA.

1 **SEVENTH CAUSE OF ACTION**

2 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

3 **VIOLATION OF CEQA – FAILURE TO CONSIDER FEASIBLE ALTERNATIVES**

4 133. Paragraphs 1 through 132 are incorporated by reference herein.

5 134. The Port has built, and is building, substantial amounts of on-dock rail –  
6 facilities that are on the Port's docks and not in the surrounding neighborhoods that transfer  
7 cargo containers directly onto trains. The Port has also built, and has plans to build, useable  
8 land by dredging and filling in the harbor. To the extent that the extra capacity represented by  
9 SCIG is needed, that capacity can be handled by building additional on-dock rail facilities  
10 and associated tracks. However, the RDEIR and FEIR do not accept on-dock rail as a  
11 feasible alternative, in violation of CEQA.

12 135. The Port, the next-door Port of Long Beach, the South Coast Air Quality  
13 Management District, and the Southern California Association of Governments have been  
14 working on research and demonstration models of zero-emission container movement  
15 systems for years. CalTrans is now evaluating a catenary system to allow electrically-  
16 powered trucks to haul cargo on the expanded I-710. Rather than commit to a deadline for  
17 use of a zero-emission container movement system at SCIG, the RDEIR and associated lease  
18 terms do not require the use of such systems. Zero-emission container systems are feasible to  
19 make the four-mile trip from the Port to the SCIG site but are not included as a Project  
20 alternative, in violation of CEQA.

21 136. The United States EPA regulates locomotive engines by assigning them to  
22 different "tiers" depending on their age and emissions profiles. Beginning in 2015, only Tier  
23 4 locomotives will be legal to sell in the United States; these are roughly 90 percent cleaner  
24 than Tier 3 locomotives that are in service now. Despite the goals in the Port's Clean Air  
25 Action Plan, the RDEIR and associated lease do not require the use of Tier 3 or Tier 4  
26 locomotives at SCIG, ever. Tier 3 engines are now widely available and Tier 4 engines will  
27 be available in 2015; failure to include the use of such engines as a Project alternative is a  
28 violation of CEQA.



1 **EIGHTH CAUSE OF ACTION**

2 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

3 **VIOLATION OF CEQA – FAILURE TO REQUIRE FEASIBLE MITIGATION**

4 137. Paragraphs 1 through 136 are incorporated by reference herein.

5 138. The RDEIR and associated lease do not contain any deadlines (as opposed to  
6 goals) for the use of mitigation measures such as zero-emission container movement systems  
7 and Tier 4 locomotives which will be available in 2015. The RDEIR also fails to require, as  
8 a mitigation measure, satisfaction of the Port's Clean Air Action Plan Measure RL3, which  
9 specifies a goal that 95% of all locomotives serving the ports by 2020 will be Tier 4. Nor  
10 does the RDEIR require maximizing on-dock rail, for example by building a new facility on  
11 dredge-and-fill land in the port, considered as a mitigation measure.

12 139. The RDEIR does not include, as project conditions or as mitigation measures,  
13 the key assumptions used in the air quality analyses, including the analyses of locomotive  
14 and truck emissions.

15 140. The RDEIR and associated lease do not contain or even discuss any mitigation  
16 measures for greenhouse gas emissions associated with SCIG, even though the RDEIR  
17 concludes that the Project's impacts on GHGs will be significant.

18 141. These and other feasible mitigation measures are available for the Project but  
19 were not included in the FEIR, such as: building additional on-dock rail capacity, use of 100  
20 percent liquefied natural gas (LNG) trucks serving the Project from the day it opens, use of a  
21 zero-emission container movement system, and use of only Tier 3 or Tier 4 locomotives. By  
22 failing to include these mitigation measures, the City and Board of Harbor Commissioners  
23 violated CEQA

24 142. In addition, many of the mitigation measures in the FEIR are unenforceable  
25 and otherwise ineffective. For example, Mitigation Measure AQ-8, Mitigation Measure AQ-  
26 9, Mitigation Measure AQ-10, Project Condition AQ-11 and Project Condition AQ-12,  
27 among others, are deferred, inadequate and uncertain and consequently may not result in  
28 actual emission reductions, all in violation of CEQA.

1 **NINTH CAUSE OF ACTION**

2 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

3 **VIOLATION OF CEQA – ARBITRARY AND CAPRICIOUS CALCULATION OF**  
4 **TRUCK EMISSIONS**

5 143. Paragraphs 1 through 142 are incorporated by reference herein.

6 144. The RDEIR calculates air emissions from port-serving “drayage” trucks in a  
7 backwards way: it estimates the future number of “lifts,” one lift being the movement of a  
8 cargo container from, say, a truck to a railcar, and then estimating the number of truck trips  
9 associated with each lift. This is called the “trip per lift” ratio and is usually around 2 at  
10 intermodal yards in the United States. The QuickTrip model which was generated for and  
11 used by the Port to estimate truck traffic based on cargo container throughput (*see* RDEIR at  
12 3.10-21), estimates 2.85 truck trips per lift. However, the RDEIR uses a factually-  
13 unsupported figure of 1.3.

14 145. The consequence of the use of the unsupported trip per lift ratio of 1.3 instead  
15 of the customary 2.0 results in air emission estimates that should be roughly 50% higher than  
16 what the RDEIR reported. This is arbitrary and capricious within the meaning of CEQA.

17 146. Moreover, the RDEIR concludes that diesel truck-related pollution in the  
18 South Coast Air Basin will decrease because of SCIG, while Appendix G4 of the RDEIR  
19 shows just the opposite. Appendix G4 shows that lifts at Hobart will increase over the 2010  
20 baseline, and in fact will almost double over the 2010 baseline by 2035 (assuming an equal  
21 share of international cargo going to SCIG and the adjacent ICTF railyard).

22 147. The arbitrary use of a low trip per lift ratio spills over into the health risk  
23 analysis in the RDEIR because that analysis is based on arbitrarily-low air emissions  
24 estimates. A rational projection of future air emissions associated with SCIG (and Hobart)  
25 would lead to substantially elevated cancer risk numbers. Not recognizing this in the FEIR  
26 violates CEQA.

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1 **ELEVENTH CAUSE OF ACTION**

2 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

3 **VIOLATION OF CEQA – FLAWED CUMULATIVE IMPACT ANALYSIS**

4 152. Paragraphs 1 through 151 are incorporated by reference herein.

5 153. The cumulative impacts analysis in the RDEIR ignores the Hobart Yard and  
6 the I-710 expansion project. The problems arising from ignoring growth at Hobart have been  
7 described herein.

8 154. I-710 is roughly one mile East of the SCIG site. CalTrans has proposed a  
9 massive expansion project in order to accommodate expected traffic increases in truck and  
10 auto traffic from the Ports of Los Angeles and Long Beach along the I-710. CalTrans, in  
11 deciding that the I-710 needs to be expanded, has assumed that SCIG will be operational.  
12 Thus, the claim in the FEIR that SCIG will reduce traffic on the I-710 is a sham. In addition,  
13 the FEIR fails to analyze the cumulative impact of SCIG on the neighboring community  
14 given the planned expansion and higher amount of traffic on the I-710.

15 **TWELFTH CAUSE OF ACTION**

16 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

17 **VIOLATION OF CEQA – FLAWED NO PROJECT ANALYSIS**

18 155. Paragraphs 1 through 154 are incorporated by reference herein.

19 156. CalTrans is planning to expand the portion of the I-710 that is near the SCIG  
20 site. The community-preferred alternative for the I-710 project includes a zero-emission  
21 freight transport corridor in the middle of the I-710 right of way. The RDEIR for the SCIG  
22 project fails to consider, in its no-project analysis, the reductions in air pollution that will be  
23 attributable to the zero-emission container movement system on the expanded I-710. This  
24 error results in higher air emission numbers for the no-project case than are warranted, in  
25 violation of CEQA.

26 157. Moreover, if it is true, as Appendix G4 and other sections of the RDEIR  
27 suggest, that SCIG is not necessary to handle cargo capacity in the foreseeable future, the No  
28 Project alternative should have been chosen.

1 **THIRTEENTH CAUSE OF ACTION**

2 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

3 **VIOLATION OF CEQA – PIECEMEALING**

4 158. Paragraphs 1 through 157 are incorporated by reference herein.

5 159. Union Pacific Railroad and the Intermodal Container Transfer Facility Joint  
6 Powers Authority (“ICTF JPA”) are planning an enormous expansion of the Union Pacific  
7 ICTF railyard that would be immediately adjacent to the SCIG project and that would pollute  
8 the same neighborhoods. The ICTF JPA is a joint powers authority formed by the cities and  
9 Ports of Long Beach and Los Angeles. The ICTF JPA’s seven-member Governing Board  
10 includes two representatives from each port; a member of each city council, and a  
11 representative of the Los Angeles County Metropolitan Transportation Authority. The City  
12 of Los Angeles holds four seats on the 13-member MTA Board.

13 160. The Notice of Preparation for the ICTF expansion project was made public by  
14 the ICTF JPA in January, 2009. It states that the ICTF expansion would increase the number  
15 of containers handled at the facility from an annual overage of 725,000 to an estimated 1.5  
16 million. Truck trips would increase by 1.1 million trips per year—roughly the same number  
17 of trips that the SCIG is expected to bring into the same neighborhoods. Like the SCIG, the  
18 ICTF would operate 24 hours per day, 7 days per week. The ICTF project will also increase  
19 the annual number of rail trips by roughly 4,700.

20 161. Under CEQA, the SCIG and ICTF projects share a common goal, are  
21 physically adjacent to each other, share common governance in part, and should be evaluated  
22 as one project for all purposes, including cumulative impacts. The failure of the FEIR to do  
23 so violates CEQA.

24 **FOURTEENTH CAUSE OF ACTION**

25 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

26 **VIOLATION OF CEQA – GREENHOUSE GAS EMISSIONS ASSOCIATED WITH**  
27 **THE PROJECT**

28 162. Paragraphs 1 through 161 are incorporated by reference herein.

1 163. The RDEIR admits that: "The proposed project would produce GHG  
2 operational emissions that would exceed the CEQA baseline levels when the project reaches  
3 its full capacity in 2035 and beyond. However, operational emissions would be less than the  
4 baseline GHG emissions through 2023 before the SCIG facility throughput reaches its  
5 maximum capacity. Therefore, significant impacts under CEQA would occur for the  
6 proposed Project."

7 164. However, the RDEIR also concludes that "The proposed Project would not  
8 conflict with State and local plans and policies adopted for the purpose of reducing GHG  
9 emissions." This is patently false because California's AB 32 requires a reduction, not  
10 increase, in statewide GHG emissions. By failing to discuss how significant these impacts  
11 will be, and the extent to which they will frustrate and be inconsistent with State and local  
12 (including City of Los Angeles) policies adopted to reduce GHG emissions, the RDEIR  
13 violates CEQA. In particular, the conclusion in the RDEIR that the proposed project would  
14 not conflict with State and local plans and policies adopted for the purpose of reducing GHG  
15 emissions is not supported by substantial evidence.

16 165. In fact, there are feasible GHG mitigation measures for construction and  
17 operation-related GHG emissions that the RDEIR fails to analyze, foremost among which is  
18 implementation of zero-emission container movement between the Port and the SCIG site.  
19 This would eliminate tailpipe emissions, including CO2, from one million truck trips per  
20 year. Similarly, the RDEIR does not consider the purchase of State-approved emissions  
21 offsets that will directly benefit local residents and that will counteract some of the increase  
22 in GHG emissions due to the project.

## 23 **FIFTEENTH CAUSE OF ACTION**

24 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

### 25 **VIOLATION OF CEQA – FLAWED TRAFFIC AND CIRCULATION ANALYSES**

26 166. Paragraphs 1 through 165 are incorporated by reference herein.

27 167. The traffic and circulation analyses, as described herein, are arbitrary,  
28 capricious, inconsistent with the City's own guidelines, not based on empirical data,

1 confusing, and not presented in a way that is accessible to the reader. As such, these analyses  
2 violate CEQA.

3 **SIXTEENTH CAUSE OF ACTION**

4 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

5 **VIOLATION OF CEQA – FLAWED BICYCLE AND PEDESTRIAL ANALYSES**

6 168. Paragraphs 1 through 167 are incorporated by reference herein.

7 169. The bicycle and pedestrian analyses, as described herein, are arbitrary,  
8 capricious, inconsistent with the City's own guidelines, not based on empirical data,  
9 confusing, and not presented in a way that is accessible to the reader. As such, these analyses  
10 violate CEQA.

11 **SEVENTEENTH CAUSE OF ACTION**

12 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

13 **VIOLATION OF CEQA – IMPROPER BASELINE**

14 170. Paragraphs 1 through 169 are incorporated by reference herein.

15 171. The notice of preparation in this case was published in 2005, and the original  
16 DEIR, published in September, 2011, purported to describe traffic and other conditions on  
17 the proposed SCIG site as of that date. However, the RDEIR, published roughly one year  
18 later, switched to a 2010 baseline.

19 172. The RDEIR's reasons for this change in baseline do not make sense, and the  
20 RDEIR does not analyze what difference, if any, this change in baseline made to the traffic  
21 and air quality analyses—even though it stands to reason that truck traffic on the site was  
22 higher in 2010 than in 2005 as economic conditions improved after the 2008 recession. A  
23 too-high baseline combined with too-low future traffic projections (because of the trips per  
24 lift problem discussed above) distorts and reduces the environmental impacts of a project and  
25 lessens the need for possibly expensive mitigation. Because of this, the RDEIR is inadequate  
26 and should have analyzed the difference between using a 2005 and 2010 baseline as it affects  
27 air quality and public health.

28

1 **EIGHTEENTH CAUSE OF ACTION**

2 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

3 **VIOLATION OF CEQA – NO NEAR-HIGHWAY ANALYSIS**

4 173. Paragraphs 1 through 172 are incorporated by reference herein.

5 174. The Air Quality and Health Risk analyses in the RDEIR fail to provide  
6 adequate detail about the significant public health threat to those residing in close proximity  
7 to the highways that will carry more diesel truck traffic due to this project. The bottom line  
8 on the air quality and health risk analyses is that they rest on the shaky foundation of the  
9 traffic studies, and cannot stand up to a rigorous analysis under CEQA.

10 **NINETEENTH CAUSE OF ACTION**

11 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

12 **VIOLATION OF CEQA – FLAWED HEALTH RISK ANALYSIS**

13 175. Paragraphs 1 through 174 are incorporated by reference herein.

14 176. The health risk analysis in the RDEIR depends for its validity on air emission  
15 estimates that are in turn based on the results of the traffic projections in the FEIR. Because,  
16 as discussed herein, those traffic projections are unrealistically and arbitrarily low, the health  
17 risk analysis is itself invalid.

18 177. In addition, the RDEIR fails to address the elevated health risks to children  
19 who will be in school near the project. Children are more sensitive to toxic air contaminants  
20 and ultrafine particles than adults due to their smaller lung capacity and higher respiration  
21 rate, but these facts were not used in the health risk analysis in the RDEIR.

22 **TWENTIETH CAUSE OF ACTION**

23 **(Writ of Mandate, California Public Resources Code Sections 21168 and 21168.5)**

24 **VIOLATION OF CEQA – INADEQUATE STATEMENT OF OVERRIDING**

25 **CONSIDERATIONS**

26 178. Paragraphs 1 through 177 are incorporated by reference herein.

27 179. There is not substantial evidence in the record to support the Statement of  
28 Overriding Considerations adopted by the Board of Harbor Commissioners and affirmed by



1 the City Council.

2 180. CEQA requires that prior to approving a project with significant  
3 environmental impacts, a lead agency must make a finding, supported with substantial  
4 evidence in the record, that "Specific economic, legal, social, technological, or other  
5 considerations....make infeasible the mitigation measures or project alternatives identified in  
6 the final EIR." CEQA Guidelines §§ 15091 (a), (b). CEQA prohibits a lead agency from  
7 approving a project without first eliminating or substantially lessening significant  
8 environmental impacts. CEQA Guidelines § 15092.

9 181. CEQA requires that a lead agency prepare a statement of overriding  
10 considerations, supported by substantial evidence, which balances the project benefits against  
11 the unavoidable significant impacts. CEQA Guidelines § 15093. Many of the project  
12 benefits identified by the City are not supported by substantial evidence. For example, the  
13 Statement of Overriding Considerations claims that the project would "help meet the  
14 demands of current and anticipated containerized cargo from the San Pedro Bay ports and  
15 provide space to collect and combine cargo units bound for common destinations to be  
16 transported by rail." FEIR at 108. However, the EIR repeatedly asserts that the project is not  
17 needed to accommodate growth because the existing Hobart facility can handle all projected  
18 growth. The claims regarding project benefits from implementation of the San Pedro Bay  
19 Clean Air Action Plan, removal of truck trips from the I-710, and job creation, among others,  
20 are also not supported by substantial evidence in the record.

21  
22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioners/Plaintiffs pray for judgment as set forth below:

24 A. For a writ of mandate to be issued under the seal of this Court commanding the City  
25 of Los Angeles and the Los Angeles Board of Harbor Commissioners to set aside their  
26 certification of the FEIR in this matter and to set aside all Project approvals and associated  
27 leases and permits, including, without limitation, the Site Preparation and Access Agreement  
28 and Permit No. 901 with BNSF Railway Company (BNSF) for the construction, operation

1 and maintenance of the Southern California International Gateway (SCIG) facility and the  
2 FEIR for the Project, and requiring the City and the Board of Harbor Commissioners to  
3 conduct a full, legally adequate CEQA review process and prepare a legally adequate EIR for  
4 the Project;

5 B. For a judgment that the FEIR is inadequate as a matter of law and the City of Los  
6 Angeles and the Los Angeles Board of Harbor Commissioners violated CEQA by approving  
7 and certifying the FEIR;

8 C. For a judgment that the failure of the City of Los Angeles and the Los Angeles Board  
9 of Harbor Commissioners to prepare, consider, and approve or certify an adequate EIR on the  
10 Project is arbitrary and capricious;

11 D. For a judgment that the results of the May 8, 2013 appeal hearing before the Los  
12 Angeles City Council must be set aside and a new, fair hearing with agreed-on procedures be  
13 held, if necessary, after a new EIR is completed;

14 E. For a judgment that the approval of the SCIG project, as currently designed and sited,  
15 violates California Government Code section 11135 and must be enjoined;

16 F. For temporary, preliminary and permanent injunctive relief halting construction and  
17 operation of the Project and effectuating the declaratory judgments rendered herein;

18 G. For Petitioners/Plaintiffs' fees and costs, including reasonable attorneys' and expert  
19 witness fees, as authorized by California Code of Civil Procedure section 1021.5 and any  
20 other applicable provisions of law; and

21 H. For such other relief as this Court deems just and proper.

22

23 **DEMAND FOR TRIAL BY JURY**

24 Petitioners/Plaintiffs demand trial by jury of all causes of action properly triable by  
25 jury.

26

27

28

1 Respectfully submitted,

2  
3 Dated: June 7, 2013

4 NATURAL RESOURCES DEFENSE COUNCIL

5   
6 \_\_\_\_\_  
7 DAVID PETTIT

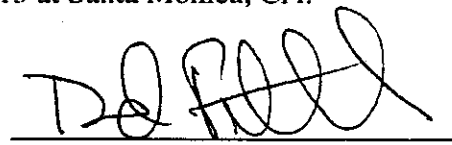
8 Attorney for Petitioners/Plaintiffs  
9 East Yard Communities For Environmental  
10 Justice, Coalition For Clean Air, Century Villages  
11 at Cabrillo, Elena Rodriguez, Evelyn Deloris  
12 Knight, and Natural Resources Defense Council,  
13 Inc.  
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**VERIFICATION**

I, DAVID PETTIT, declare as follows:

I am the Attorney for the Natural Resources Defense Council. I have read the foregoing Petition for Writ of Mandate and know its contents. The facts alleged in the Petition for Writ of Mandate are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on the 7<sup>th</sup> day of June, 2013 at Santa Monica, CA.

A handwritten signature in black ink, appearing to read 'D. Pettit', written over a horizontal line.

David Pettit, Attorney  
Natural Resources Defense Council

## **Exhibit C**

1 David Pettit, SBN 67128  
2 Melissa Lin Perrella, SBN 205019  
3 Morgan Wyenn, SBN 270593  
4 Xiao Zhang, SBN 286388  
5 Natural Resources Defense Council  
6 1314 Second Street  
7 Santa Monica, CA 90401  
8 310/434-2300 • Fax 310/434-2399  
9 Attorneys for Petitioners/Plaintiffs  
10 East Yard Communities For Environmental  
11 Justice, Coalition For Clean Air, Century Villages  
12 at Cabrillo, Elena Rodriguez, Evelyn Deloris Knight,  
13 and Natural Resources Defense Council, Inc.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

12 EAST YARD COMMUNITIES FOR  
13 ENVIRONMENTAL JUSTICE, an unincorporated  
14 association; COALITION FOR CLEAN AIR, a non-  
15 profit corporation; CENTURY VILLAGES AT  
16 CABRILLO, a non-profit corporation; ELENA  
17 RODRIGUEZ, an individual; EVELYN DELORIS  
18 KNIGHT, an individual; and NATURAL  
19 RESOURCES DEFENSE COUNCIL, INC., a non-  
20 profit corporation,

19 Petitioners/Plaintiffs,

20 v.

21 CITY OF LOS ANGELES, a public entity; LOS  
22 ANGELES CITY COUNCIL, a public entity; CITY  
23 OF LOS ANGELES HARBOR DEPARTMENT, a  
24 public entity; LOS ANGELES BOARD OF  
25 HARBOR COMMISSIONERS, a public entity; and  
26 Does 1-100, Inclusive,

25 Respondents/  
26 Defendants,

CASE NO.:

**NOTICE RE: PREPARATION OF  
RECORD OF ADMINISTRATIVE  
PROCEEDINGS**

[CCP § 1085 (§ 1094.5); California  
Environmental Quality Act ("CEQA")]

1 BURLINGTON NORTHERN SANTA FE  
2 RAILWAY; BNSF RAILWAY COMPANY,

3 Real Parties in Interest  
4 to CEQA Causes of  
5 Action

1 TO THE CITY OF LOS ANGELES, LOS ANGELES CITY COUNCIL, LOS  
2 ANGELES BOARD OF HARBOR COMMISSIONERS, CITY OF LOS ANGELES  
3 HARBOR DEPARTMENT (collectively "Respondents/Defendants"):

4 PLEASE TAKE NOTICE that, pursuant to Public Resources Code section  
5 21167.6(a), Petitioners/Plaintiffs East Yard Communities For Environmental Justice,  
6 Coalition For Clean Air, Century Villages at Cabrillo, Elena Rodriguez, Evelyn Deloris  
7 Knight, and Natural Resources Defense Council, Inc. request that Respondents/Defendants  
8 certify the record of administrative proceedings before Respondents/Defendants concerning  
9 the decision to approve the Southern California International Gateway Project.

10 Pursuant to Public Resources Code section 21167.6(b)(2) and Los Angeles County  
11 Superior Court Local Rule 3.232(d)(2)(i), Petitioners/Plaintiffs hereby notify  
12 Respondents/Defendants that they are considering electing to prepare the record of  
13 administrative proceedings, subject to certification by Respondents/Defendants. Pursuant to  
14 Local Rule 3.232(d)(1)-(2), Petitioners/Plaintiffs will make their final determination about  
15 whether to elect to prepare the record after receiving Respondents/Defendants' preliminary  
16 notification of the estimated cost, estimated range for the number of pages, customary charge  
17 for copying per page, and any other estimated reasonable costs that will be charged for a  
18 copy of the record.

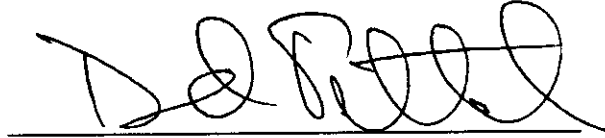
19  
20 Dated: June 7, 2013

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1 Respectfully submitted,  
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4 NATURAL RESOURCES DEFENSE COUNCIL

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6

7 DAVID PETTIT

8  
9 Attorney for Petitioners/Plaintiffs  
10 East Yard Communities For Environmental  
11 Justice, Coalition For Clean Air, Century Villages  
12 at Cabrillo, Elena Rodriguez, Evelyn Deloris Knight,  
13 and Natural Resources Defense Council, Inc.  
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