



December 8, 2005

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

Robert Kanter, Ph.D.
Planning Division
925 Harbor Plaza
Port of Long Beach
Long Beach, CA 90802

Via Electronic Docket Service

Re: Comments on the DEIS/DEIR for the Long Beach LNG Import Project, FERC Docket No. CP04-58-000 et al., POLB Application No. HDP 03-079, SCH No. 2003091130

Dear Ms. Salas and Dr. Kanter:

We write on behalf of Santa Monica Baykeeper and Natural Resources Defense Council (NRDC) to strongly urge the Federal Energy Regulatory Commission (FERC) and the Port of Long Beach (POLB) to revise the draft Environmental Impact Statement/Environmental Impact Report (DEIS/DEIR) for the Long Beach LNG Import Project and allow the public sufficient time to provide written comments and testimony at a public hearing regarding the revised document.

Santa Monica Baykeeper, Inc. is a not-for-profit environmental organization with its office located in Marina del Rey, California. The group's mission is to protect and restore the Santa Monica Bay, San Pedro Bay, and adjacent waters through enforcement, fieldwork, and community action. NRDC is a national, non-profit, environmental organization with over one million members and activists nationwide, including over 102,500 California residents. NRDC's staff of lawyers, scientists, and environmental specialists is dedicated to protecting the environment and public health.

Introduction

The DEIS/DEIR was prepared to fulfill the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). NEPA has twin aims. "First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Baltimore Gas & Electric Co., v. NRDC*, 462 U.S. 87, 97 (1983); *Robertson v. Methow Valley Citizens Council.*, 490 U.S. 332 349-50 (1989) (an EIS

serves an “informational role” and provides a “spring board for public comment”). Similarly, the basic purpose of an EIR under CEQA, “is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made.” *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 564 (1990).

After carefully reviewing the DEIS/DEIR, it is apparent that the document fails to fulfill its role as an “informational document” under NEPA and CEQA. *See, e.g., Baltimore Gas & Electric*, 462 U.S. at 97; *Napa Citizens for Honest Government v. Napa County Board of Supervisors*, 91 Cal. App. 4th 342, 360 (2001). The project is proposed to provide a source of energy for the State of California. However, the DEIS/DEIR fails to accurately assess the state’s projected energy demand, and the question of whether alternatives to this project, such as renewable energy sources and increased efficiency, are available to meet the state’s demand. First and foremost, the DEIS/DEIR must be revised to evaluate these alternatives.

In addition, the DEIS/DEIR fails to adequately analyze the safety, water quality, air quality, and ocean noise impacts generated by the proposed project. Consequently, the DEIS/DEIR also fails to specify appropriate mitigation for these areas. In addition, for every category of impact, the DEIS/DEIR is deficient in its analysis of the project’s disproportionate effect on nearby communities, especially the communities of color and low-income communities already disproportionately burdened by the impacts of the many facilities at the Port.

1. Project Need, Purpose, and Alternatives Analysis

A fundamental deficiency of the DEIS/DEIR is the failure to adequately evaluate both the need for the project and alternatives for meeting this need. FERC and POLB have failed to ask whether California’s energy demands translate into a *need* to import LNG to meet its energy requirements. Instead, the DEIS/DEIR simply assumes this need. Adoption of renewables and energy efficiency can dramatically affect this equation. In September 2004, the California Public Utilities Commission (CPUC) adopted utility energy efficiency targets that will save power equivalent to five power plants—equivalent to the throughput of half an LNG terminal.

The purpose of the project, as presented in the DEIS/DEIR, is narrowly focused on the importation of LNG from foreign sources. NEPA and CEQA prohibit such a narrow purpose because the “stated goal of a project necessarily dictates the range of ‘reasonable’ alternatives and an agency cannot define its objectives in unreasonably narrow terms.” *City of Carmel-by-the-Sea v. Dept. of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1995); see also CEQA Guidelines §15124(b). The assumption that California needs imported LNG leads to a foreshortened analysis of project alternatives, overlooking options with lesser environmental impact including energy efficiency and the use of renewable energy sources. The DEIS/DEIR must be revised to disclose and discuss these alternatives. The alternatives requirement has been described as the “heart” of an EIS. The EIS must evaluate a reasonable range of alternatives, in order to ensure a meaningful choice for decisionmakers. *Muckleshoot Indian Tribe v. United States Forest Service*, 376 F.3d 853 (9th Cir. 2004). Moreover, an EIS must evaluate alternatives that are capable of avoiding or substantially lessening project impacts. 40 C.F.R. §§1502.14, 1505.2; Cal. Pub. Res. Code §21002; CEQA Guidelines §15002(a)(3), §15021(a)(2), 15126.6. The DEIS/DEIR ignores or

rejects such alternatives that are capable of meeting the State's energy demand without the significant impacts that would result if the project is approved and implemented.

Ultimately, the DEIS/DEIR should show the public how the benefits of the project would justify the environmental, social, and national security burdens to be imposed by it. By failing to address other means of providing these benefits, the DEIS/DEIR fails as a legally-sufficient "informational document." More specifically, the public cannot determine whether a given impact, for example to water quality, is worth this cost because the study does not address whether the benefits of the project may be acquired in a different less-destructive manner. NEPA and CEQA aim to inform the public of these answers before public resources are affected.

2. Environmental Justice

Santa Monica Baykeeper and NRDC have significant concerns about the disproportionate impact the project would have on nearby minority and low-income communities. Executive Order 12898 requires federal agencies to identify and address disproportionately high and adverse human health or environmental impacts to these communities. The DEIS/DEIR analysis of this topic is incomplete on this issue because it is devoid of any meaningful analysis. (DEIS/DEIR at 4-72 to 4-76.)

The analysis only partially identifies such communities of concern. The analysis then improperly concludes that the minority community is not disproportionately affected by the project simply because all of the residents within a given census tract are affected equally. If such logic were correct, it would only take the presence of one non-minority or one non-low income resident in a given demographic unit to support the claim that "all residents are equally affected" and the subsequent fallacious conclusion that there is no disproportionate impact. Rather than stating a terse and unsupported assertion, the revised study should evaluate the increased health risks to be endured by these communities of concern, including at a minimum risks for asthma and cancer. The revised study should clearly identify and mitigate the cumulative health impacts caused to these communities.

In addition, the DEIS/DEIR fails to perform a complete income analysis of the area affected by the project. The DEIS/DEIR makes no finding as to the geographic extent of surrounding low-income communities, and makes no conclusion whether an income analysis is necessary. Although this is a necessary conclusion to reach under the Executive Order, such a conclusion was not made. (DEIS/DEIR at 4-75.) The FERC and POLB should revise the DEIS/DEIR by performing the complete analysis and reaching the required conclusion.

Finally, the analysis fails to recognize the principles laid out in the California Environmental Protection Agency's *Intra-Agency Environmental Justice Strategy*. Evaluation of compliance with this strategy is a logical component of CEQA analysis. Moreover, as discussed below, the area of the project's impact appears to be subject to debate. Should the FERC and POLB agree that safety concerns extend beyond the zone originally considered, the effect of this on communities of concern must also be considered in the revised study. Because of all of these issues, the environmental justice analysis is inadequate and must be revised.

3. Safety

Another prominent deficiency of the DEIS/DEIR is its treatment of safety issues. As organizations dedicated to the protection of the environment and the promotion of safe and healthy communities for this and future generations, we cannot ignore the project's safety. Siting an LNG terminal in the densely populated Port area demands an especially cogent and careful analysis. Information from independent experts indicates that the safety analysis in the DEIS/DEIR is overly optimistic. For example, an expert hired by the California Public Utilities Commission concluded that a fire at the facility could harm persons and property within a three-mile radius of the project. This area includes downtown Long Beach and approximately 130,000 residents. The DEIS/DEIR completely fails to reconcile this vastly differing analysis of the project's safety. Moreover, as the California Energy Commission's motion to extend the comment deadline indicates, more than just one agency has serious concerns about the safety analysis. The approach taken by the DEIS/DEIR in analyzing the likelihood of a terrorist attack borders on cavalier, basing the purported risk of seven in one million on an admitted lack of underlying data. Recent statements by the federal Department of Defense indicate greater national security concerns than the DEIS/DEIR suggests. Another disturbing facet of the safety analysis is the vagueness of the mitigation plans, the details of which, like other areas of the DEIS/DEIR, are deferred after public review has occurred.

4. Water Quality

The one-page analysis of water quality impacts from operation of the Long Beach LNG Import project is deficient because it relies on an undetermined set of BMPs. (DEIS/DEIR at 4-31, 4-32.) It is not clear how implementation of this undefined set of BMPs will result in compliance with federal and state laws. Appendix B includes *examples of potential* BMPs that *might* be implemented; however, it states that “[f]inal BMPs to be developed before operation.” Thus, neither the public nor the reviewing agencies can reasonably determine that the proposed project will reduce water quality impacts to less than significant levels. Our experience with industrial facilities of the magnitude of the proposed project indicates that a grab-bag of BMPs, chosen by the discretion of the project developer, is not a sufficient guarantee that such a large project will meet water quality standards.

The most glaring error in the analysis is the lack of specification as to how the project will avoid significant impacts to water quality from stormwater runoff from the 25-acre site. While the DEIS/DEIR states that the owner will install “treatment controls such as on-site retention/detention basins and catch basin filters *where necessary* to remove pollutants from storm water before it enters the storm drain system[.]” it is impossible to determine (1) whether such basins or filters will be installed, and (2) if they will be sized and designed appropriately. (DEIS/DEIR at 4-32, emphasis added.) Without such specifications, water quality impacts are likely to be significant. The FERC and POLB should revise the study to require such specifications.

Another fundamental error of the DEIS/DEIR is its failure to require the owner to undergo routine, periodic stormwater monitoring. Instead, it appears that the operator *might* monitor stormwater when a BMP has failed in the operator's judgment. Again, our experience indicates that this option is rarely pursued when left to the discretion of the project operator. Given the millions of dollars spent on water

quality in the Port, the FERC and POLB should require mandatory stormwater monitoring in both dry-and wet-weather at regular intervals.

The proposed project's extensive use of dredging is likely to adversely affect both water quality and marine resources. One primary impact of dredging (and from some proposed construction activities that may be undertaken) is increased turbidity. Suspension of sediments, and especially suspension of contaminated sediments, poses a risk to water quality and marine organisms. On this issue, the DEIS/DEIR presents evidence that should lead the FERC and POLB to conclude that there is a significant impact from dredging. Specifically, when referencing transmissivity measurements (p. 4-26), the DEIS/DEIR presents evidence that sediments are likely to or will be suspended. In a separate statement, the DEIS/DEIR states that these sediments contain metals at significant levels and polychlorinated aromatic hydrocarbons at possibly significant levels. (p. 4-26.) The DEIS/DEIR appears to base the conclusion of insignificant impact on total suspended solids (TSS) concentrations measured far from the site. TSS measurements are notoriously imprecise, and the data are contradicted by the more accurate data on transmissivity. The DEIS/DEIR should be revised to reflect this and should specify appropriate mitigation for this significant impact.

The analysis of the proposed project's use of ballast water is equally problematic. The one paragraph devoted to the topic is not sufficient to address the billions of gallons of water per year the LNG vessels would take on. The revised study should fully analyze the impacts of ballast water usage. Common areas of inquiry include the temperature and location at which the water is discharged, the thermal impact of the discharge, the type of marine organisms to be withdrawn, the anticipated mortality to these organisms from both impingement and entrainment, the environmental significance of both the intake and discharge of the ballast water. Depending on the nature of the impacts, potential mitigation could include alterations to the design of the intake system to minimize impingement and entrainment as well as more defined discharge sites. The DEIS/DEIR should be revised to address ballast water and should specify appropriate mitigation for any significant impact.

One issue left unexplored by the DEIS/DEIR involves invasive species. When disturbed, the alga *Caulerpa taxifolia* rapidly spreads, posing a threat to the marine environment. This particular invasive species has risen to an issue of statewide importance, and appropriate mitigation measures should be taken if an investigation determines that it is present at the construction site. The final EIS/EIR should report on the existence of this species and whether any measures are necessary.

On the positive side, the proposed project specifies the use of a closed-cycle freshwater system for use in the vaporization process. Such a closed-cycle system avoids unnecessary usage of fresh water and undue impacts to water quality. We appreciate the attention to water quality and supply concerns on this specific facet of the project.

5. Air Quality

The South Coast Air Basin, in which the Port of Long Beach is located, consistently has the worst air quality in the nation and is the only Air Basin consistently designated as an "extreme" nonattainment area under the recently revoked federal ozone (smog) standard. It is also designated as a "severe"

nonattainment zone under the new ozone standard. In addition, the communities adjacent to the Port of Long Beach—Long Beach and Wilmington—have some of the highest toxic and cancer risks in the Basin, according to a recent study by the South Coast Air Quality Management District. Accordingly, air quality impacts of this project and the mitigation of those impacts are of utmost concern to our organizations. The DEIS/DEIR has several significant flaws, which result in a considerable understatement of air quality impacts and health risks. In addition, the DEIS/DEIR fails to consider feasible mitigation measures to help offset those risks.

First, there is little discussion in the DEIS/DEIR of the quality of the fuel that would be imported through the facility and no discussion of limiting the Wobbe Index (WI) number for that fuel. A recent white paper from the Natural Gas Council¹ explains that the single most important gas quality indicator of potential emission and safety impacts in end-user equipment is the WI. The WI of natural gas in this area has traditionally been low. Southern California Gas Company (SCG) has stated that its system average higher heating value (HHV) and WI are 1020 Btu/scf and 1332 Btu/scf, respectively. As you know, the higher the WI of a fuel, the higher the smog-forming NO_x emissions that are created. For example, emission tests of hot gas conducted at two local universities on a microturbine demonstrated that increasing the HHV from 1015 to 1138 Btu/scf increased NO_x by 20%. This is of significant concern in the South Coast Air Basin, given our status as the smoggiest region in the nation. It becomes more significant when you consider that this project would have the potential to supply ten percent of Southern California's natural gas. Accordingly, it should be a requirement that all LNG imported through this facility must have a heating index no higher than 1,332 BTU/scf, which is the average level in the South Coast Air Basin.

Second, the DEIS/DEIR assumes that during hotelling LNG ships would use boil-off LNG to heat their boilers and produce steam for propulsion engines, with the remainder of the fuel used being residual fuel oil. Nevertheless, the DEIS/DEIR itself also acknowledges that the use of such a "dual-fuel" system will not be required, but will be utilized only "to the maximum extent consistent with safe, reliable operation" (DEIS/DEIR at 4-112) and "if [the ships] are equipped to do so" (*id.* 4-1116). Since there is no requirement that a dual fuel system be used, NEPA and CEQA require a more environmentally conservative analysis in the DEIS/DEIR that assumes that all LNG ships will run solely on the dirtier residual fuel oil.

Third, the analysis of ship emissions is further understated because the DEIS/DEIR only considers ship emissions 27 nautical miles from the site, or to the border of the South Coast Air Basin. *Id.* at 4-114. The California Air Resources Board defines coastal waters as 60 miles from the shore—more than twice the distance considered in the DEIS/DEIR. This arbitrary cut-off at 27 miles to the end of the air basin is improper under CEQA and NEPA. Both statutes require that an EIR/EIS analyze all direct and indirect effects of the Project, including those that are "further removed in distance, but ... reasonably foreseeable." *See e.g.*, CEQA Guidelines §§15358, 15126. Moreover, this arbitrary cut-off results in a significant understatement of emissions from the project. As the DEIS/DEIR itself shows, LNG ships will, by far, be the largest source of emissions from the project. The fact that the DEIS/DEIR leaves out half of these emissions is a serious flaw.

¹ White Paper on Natural Gas Interchangeability and Non-Combustion End Use, NGC+ Interchangeability Work Group, February 28, 2005

Fourth, in light of the significant understatement of LNG ship emissions, the health risk assessment is flawed. Indeed, once emissions from the full 60 miles from the coastal boundary to the site are considered and the DEIS/DEIR conservatively assumes that all of these ships will use residual fuel oil, it is likely that the project will be found to pose a significant health risk to nearby residents. In addition, the South Coast Air Quality Management District updated its risk assessment procedures in July 2005. The DEIS/DEIR analysis should be redone in compliance with these updated procedures.

Fifth, the DEIS/DEIR fails to consider and adopt adequate measures to mitigate the operational air quality impacts of the project. The Port of Long Beach recently adopted its "Green Port Policy," which includes goals such as implementing cold-ironing. Accordingly, stringent mitigation should be a priority for all new terminals, including the current project. Nevertheless, the DEIS/DEIR fails to consider or adopt measures requiring the following:

- (1) *The cold-ironing of LNG ships.* Cold-ironing involves retrofitting the ship and wharf so that a ship can "plug in" to electric power instead of idling its diesel engines. The Port of Long Beach recently concluded that cold-ironing is a feasible technology that can be cost-effective, mostly because it removes up to a ton of pollution per day per ship that plugs in. Cold-ironing has been used by the Navy for years and most recently is being used successfully at the China Shipping terminal at the Port of Los Angeles. P&O Nedlloyd (now part of Maersk Line) has committed to cold-iron at least 80% of its ships at Berths 206-209 at the POLA and the new BP crude oil facility at the Port of Long Beach has also committed to cold-iron its ships. This project should have the same requirement.
- (2) *The use of the cleanest feasible fuel in auxiliary and propulsion engines.* The DEIS/DEIR includes a mitigation measure that states "where such use meets all vessel safety requirements in accordance with the SOLA treaty or other international, federal, or state requirements, ships calling at the terminal that do not use LNG boil-off gas in the main engines for hotelling power would use fuels such as the CARB's #2 diesel, gas-to-liquid diesel, biofuels, or a marine distillate fuel...in the ship's auxiliary power generator motors, or would use exhaust treatment technology." *Id.* 4-116. This mitigation measure, however, is unenforceable, undefined, and may result in little to no emission reductions. First, it only applies "where such use meets" various international, federal and state requirements, which means it may never apply. Second, there is a vast difference in emissions from the use of the fuels listed. For example, CARB #2 diesel has a sulfur content of only 50 ppm and is substantially cleaner than marine distillate fuels, which can have a sulfur content as high as 20,000 ppm. If the latter fuel is used, which is entirely allowable under this measure, it will result in little, if any, emission reductions. Third, this measure only applies while the ships are hotelling, not while they are within coastal waters. This measure should be changed to *require* the use of the *cleanest fuel*, specified by sulfur content (2,000 ppm sulfur content or lower), in all *auxiliary and propulsion engines* while the ships are at berth and in coastal waters.

- (3) *Mitigation measures for the use of tugboats.* The DEIS/DEIR proposes no measures to mitigate emissions from the diesel tugboats that will constantly be used to move the LNG ships to and from the terminal. Tugboats should be required to use fuel with a content of 15 ppm sulfur or less, be repowered and retrofit with an emissions control device, and be equipped to cold-iron when not in use.

Finally, several residents of Long Beach have raised concerns that the fuel that will be imported to the facility will have high levels of hydrogen sulfite and mercury. We request that the FEIR make clear whether and in what amounts these toxics will be present in the fuel and, if they will, what safety precautions will be taken to ensure that these toxics are not released into the air.

6. Ocean Noise

As acknowledged in the DEIS/DEIR, both the construction phase and the ongoing operations phase of the proposed project will generate considerable underwater noise. (DEIS/DEIR at 4-36, 4-37.) Noise has quickly become a ubiquitous form of marine pollution, especially in the coastal waters of developed countries. Intense underwater sound is generated by ship traffic, oil exploration, seismic air guns, underwater explosives, high-powered sonar, anti-predator devices, shoreline and offshore development, and a host of other commercial, military, and industrial sources. It is now understood that humans threaten a broad range of species through the introduction of acoustic energy into the oceans and seas.

Over the last ten years, an accumulating body of evidence has shown that the energy generated by these sources of noise can kill and physically injure marine mammals, fish, and other ocean life. Noise pollution can cause marine mammals to abandon their habitat or alter their behaviors, and can mask natural sounds, such as the calls of mates and predators, that may be critical for them to hear. Several dramatic and widely-reported mass beaked whale strandings in recent years associated with high-energy sonar have shown that noise pollution can also cause more direct mortality of marine mammals. Studies also suggest that intense noise may cause similar effects, including habitat abandonment, in a variety of commercially harvested species of fish and may be linked to giant squid and snow crab mortality.

Because of their known sensitivity to sound, marine mammals have been the focus of much of the current research. The acute effects of acoustic pollution on marine mammals are varied and include:

- mortality or serious injury caused by hemorrhaging of tissues in lungs, air cavities, or other structures of the body;
- mortality or serious injury caused by the possible formation of nitrogen bubbles in the bloodstream, leading to embolism;
- stranding in shallow water or beaching caused by these or other effects, such as aversive reactions;
- temporary or permanent loss of hearing, which impairs an animal's ability to communicate, avoid predators, and detect and capture prey;

- avoidance behavior, which can lead to abandonment of habitat or migratory pathways, energetic consequences, and disruption of mating, feeding, nursing, or migration;
- aggressive (or agonistic) behavior, which can result in injury;
- masking of biologically meaningful sounds, such as the call of predators or potential mates; and
- declines in the availability and viability of prey species, such as fish and shrimp.²

Sources of noise most relevant to this project include commercial ship traffic and construction activities. The chief source of noise on most commercial vessels is the ship's propeller, which at a certain speed causes the water around it to cavitate, producing loud, broadband noise. In many parts of the world – and especially in the Northern hemisphere where shipping is heaviest – that noise dominates the low frequencies below 600 Hz.³ The acoustic energy produced by a ship generally increases in proportion to its size, its load, its speed, and its age, and ships can produce underwater sounds in the range of 190 dB. Among the leading sound producers are the oil tanker and bulk dry ship, which, though responsible for less than eight percent of the total number of vessels in the world commercial fleet, account for approximately one-half of the gross tonnage.⁴

Unfortunately, the same frequencies occupied by vessel noise are also used by many marine species, including the baleen whales, most of which are already listed under various international agreements as vulnerable, threatened, or endangered. The concern is that shipping noise may have long-term, population-level impacts on these species, which, given what is known of their sound production and ecology, are thought by some specialists to rely on low-frequency sound for communication over vast distances.⁵

Because of the importance of undersea noise to marine mammals, fish, and other marine resources, it is imperative that the DEIS/DEIR for this project incorporate the rigorous, objective analysis demanded by NEPA and CEQA with respect to these impacts. Unfortunately, the DEIS/DEIR fails to meet this standard. Instead, the DEIS/DEIR reduces analysis of ocean noise impacts to a mere paragraph, summarily concluding that local marine resources have acclimated to such noise and thus no significant impact will occur. The complexity of this topic demands a much more exacting study involving the study of potential LNG ship routes, frequency of LNG deliveries, and the local marine ecology.

² For a review of research on impacts of undersea noise, see, e.g., NRC, *Ocean Noise and Marine Mammals*; and Evans, P.G.H. and L.A. Miller, eds., Proceedings of the Workshop on Active Sonar and Cetaceans at the European Cetacean Society's 17th Annual Conference (2004).

³ NRC, *Ocean Noise and Marine Mammals*.

⁴ *Id.*; see also McCarthy, E., "Has Ambient Noise from Shipping Increased?" Presentation to the National Research Council Committee on Potential Impacts of Ambient Noise in the Ocean on Marine Mammals (2001). The NRC report suggests a correlation may exist generally between increases in tonnage and the rise of ambient vessel noise.

⁵ See, e.g., Croll, D., C.W. Clark, A. Acevado, B. Tershy, S. Flores, J. Gedamke, and J. Urbán, "Only male fin whales sing loud songs," *Nature* 417 (2002): p. 809; Payne, R., and D. Webb, "Orientation by Means of Long-Range Acoustic Signaling in Baleen Whales," *Annals of the New York Academy of Sciences* 188 (1971): pp. 110-41.

Insufficient Baseline Data

Both NEPA and CEQA mandate that “significant environmental impacts” must be calculated by comparing the projected future impacts of the proposed project to the present level of impacts at a location without that project. For example, CEQA Guideline 15125 mandates:

An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published or ... at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.

See also CEQA Guideline 15126.2 (same). An EIS must employ a similar baseline under NEPA. With respect to ocean noise, however, the DEIS/DEIR fails to provide an adequate baseline against which underwater noise impacts may be judged.

Nowhere in the DEIS/DEIR does the document discuss current ocean noise levels impacting marine mammal populations in the area, either quantitatively or even qualitatively. The DEIS/DEIR cannot analyze the impacts of noise from the proposed project without discussing how the project’s noise generation will interact with these baseline conditions.

Without setting forth and assessing the levels of undersea noise currently impacting the marine resources of the project area, the DEIS/DEIR cannot properly analyze the additive effect of the noise to be contributed by the proposed project. Nor can the DEIS/DEIR come to valid conclusions about the significance of expected noise impacts, absent an understanding and discussion of baseline conditions. Its finding that noise impacts on marine resources will be insignificant is therefore not supported. It is not enough to talk generally about impacts of noise without engaging in a project-specific analysis of noise levels and impacts. The DEIS/DEIR must be revised to speak meaningfully to the issue of undersea noise and marine resources in order to satisfy CEQA and NEPA’s call for a “full and fair discussion of significant environmental impacts.” 40 C.F.R. § 1502.1.

Cumulative Impacts of Ocean Noise

As part of an EIS’s “full and fair discussion of significant environmental impacts,” 40 C.F.R. § 1502.1, the document must take account of the “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future significant actions.” *Id.* § 1508.7. CEQA contains similar cumulative effects requirements. Here, the DEIS/DEIR fails to address ocean noise in its cumulative effects analysis. It is left without explanation why this topic was not addressed.

Mitigation Measures for Ocean Noise

In addition to an insufficient analysis of the project’s ocean noise regular and cumulative impacts, the DEIS/DEIR fails to identify appropriate mitigation measures. The revised study must specify appropriate

mitigation measures during construction and operation of the project.

Conclusion

The decision to construct and operate California's first LNG import facility should not be taken lightly. Under NEPA and CEQA, the decision must not be made without first ensuring that both the public and decisionmakers have the information they need to make an informed choice about the project. For all the reasons discussed in this letter, the DEIS/DEIR that has been produced for this project fails to satisfy this standard. We therefore strongly recommend that the FERC and POLB revise this document accordingly and allow the public sufficient time to provide written comments and testimony at a public hearing regarding the revised document.

Thank you for your consideration of these comments.

Sincerely,

/s/ Tracy J. Egoscue
Tracy J. Egoscue
Executive Director
Santa Monica Baykeeper

/s/ Cara A. Horowitz
Cara A. Horowitz
Project Attorney
Natural Resources Defense Council