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November 20, 2009

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David Pettit  
Director, Southern California Air Program  
Natural Resources Defense Council  
1314 Second Street  
Santa Monica, CA 90401

RE: **November 16, 2009 Appeal Under Municipal Code Section 21.21.507**

Dear Mr. Pettit:

As you know, the Board of Harbor Commissioners approved the Stipulation of Settlement (the "ATA Settlement") with the American Trucking Associations ("ATA") on October 19, 2009. The Federal District Court signed the Order of Voluntary Dismissal ("Court Order") on October 20 and the Court Order was entered on October 21.

The Court Order states that "[h]aving considered the Stipulation of Settlement, the Court finds that the Motion [for voluntary dismissal with prejudice] should be granted." The Court retained "exclusive jurisdiction and venue to enforce the terms of the Stipulation of Settlement" which provides as follows:

"Within fifteen (15) business days following entry of the Order on this stipulation for dismissal, the Long Beach Defendants **shall make available** at the Port, on its internet website, and by electronic mail to all motor carriers that have executed a Concession Agreement with the Port of Long Beach, **the Registration [] Agreement to all licensed motor carriers wishing to provide drayage services at the Port of Long Beach.**

The Long Beach Defendants agree that the filing by a carrier of a signed and complete Registration [] Agreement becomes effective as of the day of filing and supersedes any Concession Agreement an individual carrier may previously have executed with the Port." (emphasis added)

In order to give effect to the registration agreements as mandated by the Court Order, the Board adopted a resolution on November 2, 2009 ("Resolution") to allow access to the port by trucks dispatched under a registration agreement. On November 16, the Board approved first reading of an ordinance to the same effect ("Ordinance"). Significantly, registration agreements have already been filed with the Port by licensed motor carriers pursuant to the ATA Settlement.

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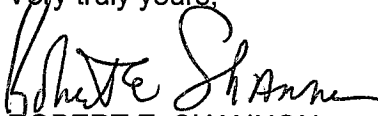
On November 16, the NRDC and others filed an appeal under Municipal Code Section 21.21.507 regarding the Board's approval of (1) the ATA settlement, and (2) the Resolution, asserting that the Board did not comply with the California Environmental Quality Act in connection with the approvals ("the Appeal"). During the Board's consideration of the Ordinance on November 16, you also commented that you would file a similar appeal if the Ordinance is approved.

The Appeal is hereby rejected for the following reasons. First, the Appeal conflicts with the express terms of the Court Order in which the Federal District Court retains exclusive jurisdiction and venue. The Supreme Court has consistently held that the Supremacy Clause of the United States Constitution renders invalid any state or local authority in conflict with a federal court order. *See, for example, United States v. American Telephone and Telegraph Company*, 552 F. Supp. 131 (D.C. D.C. 1982), *aff'd* 460 U.S. 1001 (1983).

In addition, the Appeal is untimely. Municipal Code Section 21.21.507 requires that an appeal must be filed within ten business days. The Board approved the ATA Settlement on October 19. The ATA Settlement and the Court Order encompass the Resolution and the Ordinance which are necessary for implementation of the Court Order. The Appeal was not filed until November 16 -- more than ten business days later.

Finally, were you to file an appeal of the Ordinance, that appeal would be rejected for the same reasons.

Very truly yours,



ROBERT E. SHANNON,  
City Attorney

RES:DTH:kdh  
A09-03119

cc: Mayor and Members of the City Council  
Port of Long Beach Board of Harbor Commissioners  
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Suzanne Frick, Assistant City Manager  
Distribution (see attached)

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