THE PORT OF LOS ANGELES
425 S. Palos Verdes Street Post Office Box 151 San Pedro, CA 90733-0151 TEL/TDD 310 SEA-PORT www.portoflosangeles.org



July 6, 2016

Malcolm Dougherty
Director
California Department of Transportation
1120 "N" Street
Sacramento, CA 95814

Richard Corey
Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Robert Oglesby
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Panorea Avdis
Director
Governor's Office of Business and Economic Development (GO-Biz)
1325 "J" Street, Suite 1800
Sacramento, CA 95814

Submitted Electronically: http://www.casustainablefreight.org

**RE: PORT OF LOS ANGELES COMMENTS ON THE DRAFT CALIFORNIA SUSTAINABLE FREIGHT ACTION PLAN**

To the Interagency Partners:

On behalf of the City of Los Angeles Harbor Department, commonly referred to as the Port of Los Angeles (Port), we are pleased to have this opportunity to comment on the Draft California Sustainable Freight Action Plan (CSFAP or Plan) released by the Interagency Partners on May 3, 2016. We believe the CSFAP represents an important benchmark in the development of a comprehensive suite of state freight policies and programs. We recognize the amount of collaboration and effort that has gone into the Plan and we hope to support this effort through actions that we continue to undertake at the Port.

As the nation's largest gateway for containerized trade, the Port operates on the forefront of a constantly evolving shipping industry. The CSFAP is important to us because it can provide a clear message to freight system users about California's intention to improve our infrastructure, increase our competitiveness, and lead the shipping industry to reduce their air emissions. This is especially important given the profound changes occurring in the maritime shipping industry. For example, ultra-large container vessels are beginning to call at our terminals. Mergers and cargo alliances, whereby up to six companies can share space on a ship, are causing greater complexity in cargo sorting and handling. When these changes are combined with a port

drayage system that is not designed to optimize cargo flow, we have observed an increase in truck turn times. The problem becomes more pronounced with suboptimal allocation of equipment, especially chassis (the wheeled frames upon which containers are hauled). The resulting inefficiency is a source of frustration to the cargo owners, who ultimately suffer a loss in competitiveness. The CSFAP serves as an opportunity for the State to address these issues.

We must also enter a new phase in our emissions reduction efforts. The Port of Los Angeles views emissions reduction as a competitive imperative. For more than a decade the Port has been successful at reducing emissions generated as a result of moving millions of containers throughout the Southern California region and across the country. In fact, the Port, in collaboration with the Port of Long Beach, the South Coast Air Quality Management District, the California Air Resources Board (ARB) and the United States Environmental Protection Agency (USEPA) developed and adopted the Clean Air Action Plan (CAAP), which contained aggressive measures responsible for reducing diesel particulate matter emissions by shipping industry operators at the Port by 85% since 2005. We are currently in the process of updating the CAAP and intend to use the CSFAP to inform some of the measures in our plan. We believe the CAAP supports the goals, as set forth in the Governor's Executive Order (B-32-15), of maximizing freight efficiency, transitioning to zero emission and near-zero emission technologies, and increasing competitiveness of the California freight system. Furthermore, the CAAP serves as a model for how these objectives can be achieved most effectively through a collaborative and voluntary framework.

The following comments on the CSFAP reflect the Port's continued commitment to be America's premier trade gateway and an environmental leader:

**COMPETITIVENESS AS A POLICY OBJECTIVE**

The Executive Summary is the CSFAP's first opportunity to send a positive message to supply chain stakeholders. While it references the Executive Order's prioritization of freight efficiency and pollution reduction objectives, it treats competitiveness solely as derivative of the other two objectives. While we agree that efficiency and air emission reduction are competitive imperatives, the competitiveness of California's freight sector should in and of itself be a policy objective because of its extreme importance to the California economy and jobs. The best way to make this clear is to express the State's intention to support improvement in measures that are relevant to freight system users, including market share, velocity, reliability, and cost. Similarly, under the section describing Current Policy Drivers, the "Supporting economic competitiveness" driver can be more explicit about the State's overall goal to improve the competitive posture of the freight sector. Lastly, while the Port supports the vision articulated in the Plan, it could benefit from inclusion of the concept of competitiveness. For example, the vision should be to "[u]tilize a partnership of federal, State, regional, local and industry stakeholders to move freight in California on a modern, **competitive**, safe, integrated, and resilient system that continues to support California's economy and livability." Furthermore, the system should be "[t]ransporting freight **competitively**, reliably, and efficiently by zero emission equipment everywhere feasible…."

**FREIGHT TARGETS**

As directed by the Executive Order, the CSFAP is to include measurable targets by which to evaluate and adjust the Plan over time. We would encourage ongoing review and development of these targets. For example, the current "System Efficiency Target" (freight-related GDP per CO2 equivalent) appears to be more of an "emission intensity" metric, rather than a "system efficiency" metric, and requires further analysis and clearer rationale. GDP growth is a function of multiple factors beyond ones that could be defined under "system efficiency." Therefore, achievement of the 25% increase in "system efficiency" may be heavily influenced by causally independent variables. Ultimately, we would recommend a revision that draws a tighter nexus between improvements in "freight efficiency" (as called for in the Executive Order) and the System Efficiency Target. Furthermore, "increased competitiveness" as identified in the Executive Order does not seem to be captured in the "Economic Growth Target", which as currently drafted is not a quantifiable target at all. We recommend that the System Efficiency and Economic Growth Targets should be revisited as the efficiency (State Agency Action 7) and competitiveness data work (State Agency Action 6.A) continues to mature.

**STATE AGENCY ACTIONS AND PILOT PROJECTS**

The Port is in favor of the following topics addressed in the CSFAP *(specifically in Section III: State Agency Action and Pilot Projects, and further detailed in Appendix C: State Agency Actions):*

- *State and Federal Transportation Funding (State Agency Actions 1 and 2, p. 17)*
  The Port is pleased with the focus on the need to identify state funding and direct federal funding to freight infrastructure. We support efforts to enact a freight transportation system funding package that supports both infrastructure investment and development/deployment of new technologies. Furthermore, we support efforts to direct federal Fixing America's Surface Transportation (FAST) Act funding through the Trade Corridors Improvement Fund (TCIF) program to support infrastructure investment in California's major freight corridors. Lastly, we encourage channeling of state cap-and-trade funds through the Goods Movement Emissions Reduction Program (GMERP) to fund emission reduction efforts.

- *Freight Infrastructure Planning and Investments (State Agency Action 3, pp. C-9-32)*
  Nationwide, there is an increased awareness of the need to invest in freight infrastructure. Beginning in 2013, the Port participated in the development of the California Freight Mobility Plan. This plan includes a 57-page project list which includes 77 billion dollars in freight infrastructure needed in the Los Angeles region alone. A list of priority projects is now required under the FAST Act. With respect to State Agency Action A.3, the Port recommends that the CSFAP be explicit about funding the project list identified in the California Freight Mobility Plan.

- *Freight Rail Actions (State Agency Action 3.E-J, p. C-19-32)*
  The CSFAP should incorporate directly the CFMP actions and projects (by reference) that pertain to the agency actions 3.E through 3.J.

*Inland Facility/Short-Haul Rail:* The Port, in conjunction with the Port of Long Beach, is currently working closely with the Union Pacific (UP) Railroad on a potential short-haul rail opportunity. While the effort has just gotten underway, we request the State assist the Ports in this effort.

*Freight Rail Efficiencies:* The Port's on-dock facilities cannot be used for transloaded international containers. This conclusion is based upon detailed studies and the current and future lack of capacity to accommodate transloaded containers. Furthermore, transloading is occurring throughout the Southern California region at logistics facilities that are located well beyond the on-dock railyards. A shift in loading of transload containers from the UP and Burlington Northern Santa Fe (BNSF) off-dock rail yards would result in significant increases in vehicle-miles travelled to back-haul containers, degrading operating conditions throughout Southern California. Presently, about 30% of containerized imports at the ports of Los Angeles and Long Beach (collectively known as the San Pedro Bay) are already being transloaded into 53-foot domestic containers at many regional facilities, and then drayed to the UP and BNSF off-dock rail yards. This operation will continue. The State should assist ports in developing on-dock rail infrastructure for international marine containers and a regional transloading strategy to facilitate anticipated growth in transloading activities for both international and domestic loads, including off dock rail yards to accommodate pure domestic and transloaded marine cargo.

- *Accelerating Use of Clean Vehicle and Equipment Technologies (State Agency Action 4, p., C-34-63)*
  In September 2015 the Port developed a white paper containing a plan to move toward the adoption of zero emission technologies at the Port of Los Angeles. The white paper contains information on various types of zero emission and near-zero emission technologies, the status of those technologies, proposed testing plans for future demonstrations, infrastructure planning, and a business case study. The paper concluded with a series of specific recommendations, including a goal of assisting in the purchase and demonstration of up to 200 zero emission vehicles at Port terminals by the year 2020. In order to accelerate the timeline for commercialization and deployment of those zero emission vehicles, significant funding assistance will be critical, and the Port is very supportive of additional funding opportunities for technologies, equipment, and infrastructure particularly in light of the Plan's call to deploy more than 100,000 freight vehicles and equipment statewide. This will place a much greater demand on the tenants and freight industry operators at the Port to increase their zero emission and near-zero emission technologies and commensurate funding will be needed.

- *Low Nitrogen Oxide (NOx) Engine Standard (State Agency Action 4.B.4, p. C-40)*
  The Port is in favor of the Low NOx Engine standard discussed in the CSFAP and requests that ARB establish a standard for Class 8 drayage trucks to be 90 percent cleaner than the current 2010 standard. In order for such an effort to be fair, we also

urge ARB to petition USEPA to establish a federal standard. This effort will assist the drayage truck operators operating in and around the Port in continuing to upgrade their existing fleet of clean trucks.

- *Ocean Going Vessels (State Agency Action 4.G, p. C-50-53)*
  While the Port is in favor of the State agencies advocating for more stringent International Maritime Organization standards and efficiency targets for ships, we feel that an effort should be placed on attracting the cleanest ships to our Port now. As you may know, Tier 3 ships are the cleanest ships per International Maritime Organization (IMO) regulations; however, these ships are just in the process of being constructed. Due to various factors, the Port does not foresee a sizeable amount of Tier 3 ships being available to service our Port in the near term. As more of these ships become available for deployment we recommend development of strategies to attract these ships to our Port, similar to the strategies contained in the Port's Environmental Shipping Index Program. Furthermore, we encourage joint advocacy at the federal and international levels to address the issue of transiting emissions.

- *At-Berth Regulations (State Agency Action 4.G.3, p. C-52)*
  The Port has worked with ARB for a number of years as the At-Berth Regulations have been implemented and revised. Additional revisions to the current regulations are still needed. We would suggest amending and expanding the current regulations to include capture and control systems for non-regulated ships. We also believe it will be necessary to assure that funding for shoreside emission reduction infrastructure are appropriately considered to handle future amendments to the At Berth Regulation.

- *Tier 5 Locomotive Emission Standard (State Agency Action 4.I, p. C-57)*
  The Port is in favor of encouraging cleaner locomotive technologies discussed in the CSFAP and requests that ARB petition USEPA to establish a new federal standard for locomotives. This effort will assist the railway operators continuing to upgrade their switching and line haul locomotives that service the Port.

- Competitiveness Data Development (State Agency Action 6.A, p. C-65)
  The Port is pleased to see this Action in the Plan. We believe the Plan should speak to competitiveness concerns of freight system users, including velocity, reliability, and cost. These are interrelated metrics that have meaning to our supply chain partners and we would support more explicit treatment of these performance measures in the final draft. We encourage a clear plan to fund the Governor's Office of Business and Economic Development efforts to develop competitiveness metrics and, once this work has matured, revision of the current "Economic Growth Target" of the Plan.

- *Freight Efficiency Strategy Development (State Agency Action 7, p. C-67)*
  The Port participated in the Freight Efficiency Strategies Development Group and appreciates the emphasis that the Interagency Partners placed on freight efficiency. We agree that additional work is needed and believe that additional learning from the San

Pedro Bay Supply Chain Optimization (SCO) working group can continue to be of value to this effort. In addition, work being generated by other groups, such as the port congestion recommendations from the US Department of Commerce's Advisory Committee on Supply Chain Competitiveness, should be considered. As the system efficiency work evolves, we believe it will be important to revisit and perhaps revise the "System Efficiency Target" as currently defined in the Plan. It will be important to develop an efficiency metric that best and accurately conveys progress on *both* supply chain and energy efficiency.

- *Drayage Truck Optimization (State Agency Action 7.A.5, p. C-72)*
  The Port is currently working on drayage optimization via the aforementioned SCO, and also via a CEC funded project. For the latter, the Port will be expanding and improving the United States Department of Transportation (USDOT) Los Angeles Freight Advanced Traveler Information System (FRATIS) currently being demonstrated in the San Pedro Bay. This expansion also entails the integration of real-time truck travel and terminal turn times via an automated mobile smart device application. Thus, for this particular State action, it is recommended that at least for the San Pedro Bay, the State agencies continue to assist the ports in deployment of these systems and possibly others developed via the San Pedro Bay SCO effort.

- *Freight Intelligent Transportation System Enhancements (State Agency Action 7.B, p. C-74)*
  For this particular Intelligent Transportation System (ITS) deployment, pursuant to Drayage Truck Optimization, "ITS Enhancements" should also apply to seaports.

- *Regional Workforce Development Initiatives (State Agency Action 8.A, C-78)*
  We applaud the Interagency Partners for including workforce development in the Plan. Specialized attention to the job creation and workforce development needs associated with the Plan are critical. For example, there are approximately 7,000 longshore workers, 1,100 clerks, 400 foremen, and 7,000 longshore casuals employed in the San Pedro Bay. These are the workers that handle information and computer systems, as well as operate and maintain cargo handling equipment at all the terminals at the Port of Los Angeles. The impact of the Plan on longshore work, as well as work all along the supply chain, should be carefully considered.

- *Expediting Project Delivery (State Agency Action 9, p. 18)*
  We support coordination between the Office of Planning and Research (OPR) and freight stakeholders to identify strategies to expedite the delivery of projects identified as meeting the objectives of the Plan. We would add that SB 743 guidelines, as currently structured by OPR, will likely delay the delivery of freight infrastructure projects. SB 743 guidelines should be considered as part of this coordination framework.

- *Advanced Technology for Truck Corridors (Southern California) (p. 19, D-3-5)*

The Port supports this pilot project and encourages the State to identify funding to advance the implementation of this program. The Los Angeles Metropolitan Transportation Authority (MTA), in partnership with the Southern California Association of Governments (SCAG), Caltrans District 7, the City of Los Angeles, the County of Los Angeles, Gateway Cities Council of Governments, the Port of Los Angeles, the Port of Long Beach, and the South Coast Air Quality Management District, submitted "the Los Angeles/Gateway Freight Technology Program" as part of the original solicitation for pilot project ideas. We appreciate the selection of the project as one of three statewide pilot project concepts. The components of this program related to Connected Vehicle Technology, Arterial Smart Corridors, Freeway Smart Corridors, and Zero and Near-Zero Emission Technology elements support the overall objectives of the Governor's Executive Order.

The Port is not in favor of the following topic addressed in the CSFAP:

- *Freight Hub Facility Data Collection and Potential Regulation (State Agency Action 4.C.1, p. C-41)*
  According to the Plan, the collection of freight hub data will "support planning efforts for source/sector specific rulemakings, incentives, enforceable agreements, freight facility performance targets, or other approaches." As recently as June 20, the Air Resources Board testified at an Assembly Information Hearing on the CSFAP that they will pursue an "emissions performance target for freight facilities like rail yards and ports." The potential development of rules and regulations around an "emissions performance target," especially if applied to a large seaport as a single "freight hub or facility" remains a concern for the Port. Historically, we have worked in cooperation with ARB on the implementation of regulations that apply to mobile sources used for goods movement throughout the state. We believe a collaborative, voluntary approach will continue to be the most effective means for controlling emissions from goods movement activities. As such, we are concerned that a facility cap or performance target – as a rule, regulation, or as a measure in the State Implementation Plan – would diminish the effectiveness of our historic partnership and fundamentally run counter to the objectives of the Executive Order. A freight hub, facility-based cap, or freight facility performance targets approach will have serious negative effects on maritime commerce and injure the State's freight competitiveness, directly in conflict with the goals of Governor Brown's Executive Order B-32-15 to improve freight transportation efficiency and increase competitiveness of California's freight system.

  We also have concerns regarding the implementation of such a rule or regulation. For example, the Port is a landowner, leasing land to companies that perform terminal operations, and does not have direct agreements with shipping lines or ocean-going vessel owners. We do not own or operate the equipment that moves cargo in and out of the Port; therefore, our ability to mandate certain emissions reduction strategies or controls is very limited.

Practical implementation problems also include how to define the activities for which the freight hub is legally accountable, and the need to align the responsibility for compliance with the freight hub's ability (or lack thereof) to control the emissions-producing equipment and operations. At present, it appears that the CSFAP proposes to view the freight system in segments and focus on emissions and/or efficiencies within each segment. We request that the term "freight hub" and "freight facility performance targets" be better defined and we would oppose these concepts if implemented as regulation over the entire seaport, or worse, the two ports of Los Angeles and Long Beach, as a single "freight hub" or "facility".[1]

Furthermore, ARB currently collects data for freight-related on- and off-road mobile sources. The proposed program suggests that the state may use the emissions data specifically attributable to each "freight hub" to support an eventual regulatory plan that will be used to develop the emissions inventories for Air Quality Management Plans and State Implementation Plans in the future. Because "freight hub" is not defined, other than to identify examples of freight hubs such as seaports and airports, we feel the concept is ambiguous and could encompass activities that purport to hold the Port responsible for emissions that the Port does not control.

There are legal authority issues with a freight hub, facility-based cap, and now the freight facility performance target approach because each of these treats a seaport as an indirect source under an Indirect Source Review Program. ARB is prohibited from regulating indirect sources or requiring air districts to regulate them. (42 U.S.C. § 7410(a)(5)(D)(i); Health and Safety Code, §§ 39002, 40414, 40440, 40468, 40717.5(c)). ARB's freight hub or facility-based cap approach is also an unlawful land use measure. (42 U.S.C. § 7431; Cal. Health and Safety Code, § 40414.) The air quality authority conferred on ARB and the air districts is expressly precluded from infringing on land use authority. (Cal. Health and Safety Code, § 40717.5(c).) The Cities of Los Angeles and Long Beach, and not ARB or local air districts, are the public agencies with the legal responsibility to manage their seaports within their jurisdictional boundaries for public trust purposes including maritime commerce, navigation, fisheries and water-dependent public uses. Moreover, the freight hub, facility-based cap, and freight facility performance targets approach would unlawfully require the Port to regulate emissions outside of its

[1] The San Pedro Bay in Southern California is a single bay divided into two ports that are owned separately by the Cities of Los Angeles and Long Beach each receiving separate Tidelands grants from the State of California and operated as separate ports of Los Angeles and Long Beach. Unlike some other U.S. Ports in other parts of the United States in which an agency both owns the port land and operates the port operations, called "operating ports," the Ports of Los Angeles and Long Beach are "landlord ports" that lease the land to marine terminal operators. It is the marine terminal operators that operate the marine terminals, have contracts with shipping lines, railroads, logistics companies and other parties in the goods movement chain. Each terminal is operated separately and has different contracts with its own contract parties. The ports do not own, operate or control through contracts, the actual mobile sources used in goods movement. International and Federal preemption apply to the ports' ability to regulate goods movement mobile sources. The ports are also not U.S. air regulatory agencies and lack authority to regulate mobile source or stationary source emissions.

jurisdictional boundaries and regulate vessels subject to the international MARPOL Treaty. (U.S Const.. art. 6, cl. 2; 33 U.S.C. §§1901 et seq.)

We request that the final plan exclude the freight hub, facility-based cap, and freight facility performance targets approach, as well as any other iteration of these concepts.

We thank you again for the opportunity to comment on the CSFAP and look forward to continuing our work with each of your Agencies and supporting you on our shared goals. As signatory to the comment letters from the California Association of Port Authorities (CAPA) and southern California regional agencies, we reiterate our support for the positions expressed in those comments and incorporate them by reference. If you have any questions or would like to discuss the comments raised in this letter please contact me at (310) 732-3456.

Sincerely,

EUGENE D. SEROKA
Executive Director

cc: Mayor Eric Garcetti
Board of Harbor Commissioners