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Community Redevelopment Agency
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VIA E-MAIL AND U.S. MAIL

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Subject: Petition for Review of Hazardous Waste Facility Permit and Final Environmental Impact Report for Industrial Services Oil Company, Inc.
1700 South Soto Street, Los Angeles, CA
Adelante Eastside Redevelopment Project

Dear Messrs. Gin and Kou:

The Community Redevelopment Agency of the City of Los Angeles (Agency) submits this petition for review of the Final Hazardous Waste Facility Permit (Permit) Decision and final environmental impact report (FEIR) for the proposed expansion of the Industrial Services Oil Company, Inc. (ISOCI) facility located at 1700 South Soto Street in Los Angeles. The Agency, recognized as a responsible agency by DTSC under CEQA, operates the Adelante Eastside Redevelopment Project, pursuant to California Redevelopment Law (Health & Safety Code § 33000 *et seq.*). As such, the Agency shares local land use discretionary approval responsibilities with the Los Angeles Department of City Planning (DCP) and other City departments for projects, including the proposed ISOCI expansion, within the project area.

The Agency has asserted its rights at each stage of DTSC's permitting process by submitting detailed written comments relating to the proposed expansion of the hazardous waste facility. The Agency is submitting this petition given its planning and discretionary approval authority over the proposed project.



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INTRODUCTION

The Agency files this appeal in furtherance of its mission to prevent or eliminate physical, economic and social blight in Boyle Heights and the surrounding communities. The Agency is dismayed by the decision of the Department of Toxic Substances Control, a state agency, which disregards the Agency's reasoned determination that the proposed expansion of the ISOCI facility conflicts with the Agency's Adelante Eastside Redevelopment Plan and the Boyle Heights Community Plan. Instead, the Department has chosen to reserve to itself the right to reinterpret the Agency's Plans, ignoring the legitimate environmental, economic, and safety concerns of a disadvantaged area of the City of Los Angeles. In this appeal, we again clarify the many ways in which the proposed project violates valid and existing objectives of both Plans.

The Department should defer to the Agency concerning what its own Plan says, and recognize the Agency's expertise in land use related matters. The Department failed to insist that the ISOCI demonstrate good faith by filing and pursuing an application for a Local Land Use Permit with the City's Department of Building and Safety that the Department recognizes is required, and which in turn would trigger a significant increase in local public involvement and technical scrutiny of the proposed project. We request that the Department either reject the expansion of the ISOCI facility or defer final action on the permit until the community and local government have spoken through the Tanner Act and local land use process and a local land use permit is either granted or denied by the City.

Finally, the FEIR for the proposed project is inadequate in its assessment of potential risks of the proposed expansion, especially under upset conditions. The Department's certification of the FEIR, while not directly at issue in this appeal demonstrates a lack of understanding on transcendent local concerns like environmental justice, which are marginally addressed in the FEIR but have yet to be successfully mitigated.

We further request that the Department grant this petition for review in order to address several findings of fact and conclusions of law that are clearly erroneous and to address several important policy considerations that the decision documents do not adequately address. The Department will benefit from granting the petition for review in order to develop the administrative record and to allow a thorough briefing of the issues. In particular, granting the petition for review will allow the Department to adequately address the following:

- **Clearly erroneous findings of fact and conclusions of law concerning the incompatibility of the proposed project with the Redevelopment Plan.** The Agency is the authority on its Redevelopment Plan, not the Department. In accordance with sound principles of administrative law and the practice of deferring to a responsible agency's expertise, as reflected in CEQA Guideline 15086, the Department should defer to the Agency's reasoned conclusions about the relationship between the proposed project and the Redevelopment Plan. The Department has no authority to make land use decisions.

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- **Clearly erroneous findings of fact and conclusions of law concerning the analysis used to justify the Department's final permit decision.** There are several factual inaccuracies that have significant implications regarding the potential health risks to the community as discussed in the FEIR. These include, but are not necessarily limited to, inaccurate distances of hazardous chemicals from sensitive receptors, the thresholds used to determine acceptable health risks, the assessment of potential risks of the facility under upset conditions, and the infeasibility analysis in the statement of overriding considerations. Faulty analysis is being used to substantiate the basis for granting all or portions of the final permit.
- **Clearly erroneous finding of fact and conclusions of law concerning community outreach.** The fact sheet used in the initial outreach to the community regarding the ISOCI permit was misleading and did not accurately describe the proposed activities of ISOCI.
- **Important policy considerations implicated by processing the hazardous waste permit application without any assurance that the applicant will actually apply for or secure a local land use permit from the City.** The Department has acknowledged that a local land use permit is necessary and that the hazardous waste permit is not effective until the City approves one. ISOCI has had more than 10 years to apply for and attempt to secure a local land use permit from the City but has failed to do so. It is inappropriate for a state agency to spend limited time and resources on a proposed project when the applicant has failed to take the time to apply for a necessary land use permit.
- **Important policy considerations implicated by processing the hazardous waste permit application prior to the initiation of any Tanner Act proceedings.** The Department has acknowledged that the project is subject to the Tanner Act before the City may approve a local land use permit, assuming that ISOCI ever does submit an application to the City. As a general rule, the Department should not process an application until the Tanner process has at least been initiated and preferably after it is complete. ISOCI appears to be manipulating the system by circumventing the Tanner process until the Department's review is complete in an apparent attempt to constrain the scope of review if and when the Tanner process is initiated. The Department should specify in detail why it is appropriate to move forward with this particular application, given one of the Tanner Act's goals of coordinating hazardous waste and land use decisions. In any event, given the community opposition to this project, the Tanner proceedings are likely to result in modifications to the project that will require revisions to the hazardous waste permit, rendering the Department's permitting decision premature.
- **Important policy considerations implicated by approving a statement of overriding considerations prior to any analysis of the project pursuant to the Tanner Act.** The Department has concluded that overriding considerations warrant approval of the project despite it resulting in significant environmental impacts that cannot be mitigated. A statement of overriding considerations must be based on, among other things, a balancing of the projects "economic, legal, social, technological or other benefits"



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against the unavoidable environmental risks. CEQA Guideline 15093. Considering that the project must be subject to the Tanner Act, the Department should not be willing to declare that the project's environmental impacts are outweighed by its benefits prior to the satisfaction of the Tanner Act. This issue does not solely address CEQA compliance. The Department's exercise of discretion in approving the permit, not just certifying the EIR, is undermined by failing to appropriately consider the project's negative economic, social and environmental impacts in light of the unavoidable significant environmental effects. ISOCI should not be granted a permit for expansion of its operations by the Department simply because the permit was fashioned by ISOCI in a manner that intimately linked the existing operation with the expansion. The project objectives used by ISOCI in the FEIR inherently violate the Boyle Heights Community Plan and the Adelante Eastside Redevelopment Plan, creating inherent adverse impacts that cannot be mitigated. The Department should take responsibility in addressing these adverse impacts even if the CEQA process did not due to ISOCI's manipulation of the process.

BACKGROUND

The ISOCI hazardous waste facility is located in an environmentally impacted area that is governed by the Adelante Eastside Redevelopment Plan and the Boyle Heights Community Plan. In addition to many goals for the area, these plans are designed to stimulate economic growth in the Boyle Heights community by, among other things, improving the quality of the environment and eliminating blight. The proposed expansion of the ISOCI facility directly conflicts with established goals and objectives of these plans and poses a threat to the health and safety of Boyle Heights residents and visitors. Issuance of this Permit by DTSC will create environmental hazards that the Agency believes will hinder revitalization rather than support the creation of safe places to live and work in a vibrant and attractive Boyle Heights community. DTSC should not issue this Permit until the community that will be impacted by the ISOCI facility has had an opportunity to participate in the review process through a Local Assessment Committee established pursuant to the Tanner Act, Health and Safety Code Section 25199, et seq.

The Agency submitted extensive comments on January 30, 2006 and February 13, 2006, respectively, on the numerous deficiencies resulting in inadequate noticing and public outreach to a primarily Spanish-speaking community, conflicts between the proposed project and applicable land use plans and policy of the Agency, and additional mitigation measures necessary to minimize adverse land use impacts. Additionally, the Agency also submitted extensive comments on the draft environmental impact report (DEIR), including the Health Risk Assessment, on April 11, 2006.

The Agency remains dissatisfied with DTSC's Response to Comments, the FEIR, and DTSC's course of action to approve all aspects of the permit proposed by ISOCI, believing that the environmentally superior alternative is clear: no expansion of the existing ISOCI facility. The issues discussed herein address fundamental defects in the Permit, the Response to



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Comments, the FEIR, and DTSC's course of action that involve clearly erroneous findings of fact and conclusions of law and raise important policy considerations, including whether a lead agency may ignore a responsible agency's determination about matters within its jurisdiction and whether redevelopment plans and community plans must be followed. Accordingly, pursuant to Title 22, California Code of Regulations section 66271.18(a), the Agency submits this petition for review to request that DTSC reverse its final Permit decision or stay issuance of the Permit in its entirety until ISOCI has submitted a local land use application to the City, been given a determination by the City and the Tanner Act community involvement process has been completed.

SPECIFIC REASONS JUSTIFYING GRANTING OF THE APPEAL

Following is a detailed discussion on the principal reasons supporting the petition, including how the proposed DTSC actions raise important and unresolved concerns relating to: (a) The Tanner Act Process, (b) Conflicts with the Adelante Eastside Redevelopment Plan, (c) Conflicts with the Boyle Heights Community Plan, (d) Inadequate Notice to Interested Parties and Public Outreach, (e) Environmental Justice, (f) Factual Inaccuracies, and (g) Mitigation Measures.

I. TANNER ACT PROCESS

ISOCI proposes to dramatically expand the operations at its facility by accepting many new classes of hazardous waste that are more toxic than currently accepted, including storing up to 250,000 gallons of hazardous waste in rail cars on rail spurs without proper containment. As the Agency noted in its comments, accepting these new wastes will pose considerable risk to the surrounding community because they include materials that are highly flammable, corrosive, and carcinogenic. A catastrophic accident could affect local residents as well as commuters on MetroLink.

DTSC acknowledges that the proposed expansion and modification of activities at the ISOCI facility will require issuance of a local land use permit including a CUP by the City of Los Angeles. See Response to Comments 4-84. A land use permit for the proposed expansion of the facility is required under Section 12.24-U,10 of the Los Angeles Municipal Code. The Agency understands that the Los Angeles Department of City Planning communicated to DTSC in a letter dated January 19, 2007 that any expansion or modification of activities at the ISOCI facility is subject to discretionary land use approvals by the City, including issuance of a Conditional Use Permit (CUP). Further, the Agency communicated to DTSC and ISOCI that any expansion or modification of activities at the ISOCI facility is subject to review for conformance with the Plan by the Agency, in a later dated Jan 30, 2007. New construction at the ISOCI facility will be part of the expansion. The construction will include the installation of new pads for drum storage areas. ISOCI will also be installing new tanks on existing pads. Both of these would constitute physical improvements to the property and so would require a local land use permit. There can be no dispute, then, that the proposed expansion and modification of activities at the ISOCI facility will require a "land use decision" as defined in Health & Safety Code Section 25199.1(e) and that is subject to the requirements of the Tanner Act. In fact, DTSC has included in the Permit a special condition that the Permit will not become

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effective until ISOCI has been granted a "local land use permit." See Permit, Section V, Special Condition 2.u.

The City may not issue a land use permit until the Agency has reviewed the permit application and determined that it conforms with the Redevelopment Plan for the Adelante Eastside Redevelopment Area. In fact, the City is required to withhold the issuance of a permit if the project does not meet the requirements of the Redevelopment Plan as determined by the Agency. See Redevelopment Plan § 521, p. 25.

As explained in comments submitted to DTSC by other commenters, the Tanner Act establishes a detailed process to ensure community involvement in significant land use decisions involving hazardous waste facilities. An integral part of the Tanner Act is Health & Safety Code 25199.7(d), which provides for appointment of a local assessment committee that is representative of the surrounding community and which can advise the local agency in considering the local land use application: See Laidlaw Environmental Services v. County of Kern (1996) 44 Cal.App.4th 346, 349 n.2. The local assessment committee primarily advises the local agency as to conditions necessary to protect human health and the environment that may be acceptable to the community, as well as providing a voice to community concerns.

The January 19, 2007 letter from the Department of City Planning states that ISOCI filed a conditional use permit application on August 1, 1996, but that ISOCI took no action to obtain the CUP after correspondence with the Department of City Planning in March 1997. In the Response to Comments, DTSC states that "the City terminated all proceedings on the CUP application on December 20, 2004 due to lack of activity." See Response to Comments 4-91. The Agency understands the City Planning Department also informed ISOCI that it would be necessary to file a new CUP application. ISOCI has not done so, nor has ISOCI explained its delay in filing a new CUP application and its failure to make any progress toward obtaining a local land use permit.

ISOCI filed a Notice of Intent dated 12/3/95, which was sent to Franklin Eberhard at the Department of City Planning. The CUP application was filed by ISOCI on August 1, 1996 so the NOI was filed at least 90 days prior, as required by Health and Safety Code Section 25199.7(a):

"25199.7(a): At least 90 days before filing an application for a land use decision for a specified hazardous waste facility project with a local agency, the proponent shall file a notice of intent to make the application with the Office of Permit Assistance in the Office of Planning and Research and with the applicable city or county. The notice of intent shall specify the location to which the notice of intent is applicable and shall contain a complete description of the nature, function, and scope of the project. The Office of Permit Assistance shall immediately notify affected state agencies of the notice of intent. The local agency shall publish a notice in a newspaper of general circulation in the area affected by the proposed project, shall post notices in the location where the proposed project is located, and shall notify, by a direct mailing, the owners of contiguous property, as shown in the latest equalized assessment roll. A notice of intent filed with a local



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agency shall be accompanied by a fee which shall be set by the local agency in an amount equal to the local agency's cost of processing the notice of intent and carrying out the notification requirements of this subdivision. A notice of intent is not transferable to a location other than the location specified in the notice and shall remain in effect for one year from the date it is filed with a local agency or until it is withdrawn by the proponent, whichever is earlier."

In addition to the NOI itself, the statute requires payment of the fee (see above). Documents from the Department of City Planning indicate that there was no activity on the CUP application after March 12, 1997 (approximately 7.5 months after it was submitted) and the application was finally terminated on December 20, 2004. City documents in the file regarding the CUP process indicate that a fee must be paid when the NOI is submitted that will cover the costs of processing the NOI and carrying out the public notice requirements of HSC 25199.7. The fee could have been paid initially, but no record of payment has been found at this time. There are receipts in the file for the newspaper public notice that was sent out after the NOI was submitted, but no documents indicating that ISOCI paid the City for those costs or that the City requested payment. If ISOCI let its application sit idle after 7.5 months, one might assume that no fee was paid beyond the initial fee. If the fee was not paid, then the Tanner Act requirements set forth in Sections 25199.7 (c) and (d) would not have been triggered. They are relevant now.

The Agency is deeply concerned that DTSC has made a final decision regarding the Permit based on the FEIR before the community that will be impacted by the facility has had an opportunity to participate in the Tanner Act community involvement process. A primary objective of the Tanner Act is to facilitate coordination between DTSC's decision-making about hazardous waste issues and local decision-making about land use issues. The Act encourages the CEQA process and the Tanner Act community involvement process to occur simultaneously. This has not been the case, thus, a stay in DTSC's permit decision is necessary to allow for the community involvement process to effectively take place. The Tanner Act contains the recommendations of the Hazardous Waste Management Council (HWMC), a task force that was created to develop improvements for siting and permitting hazardous waste management facilities and which issued a Final Hazardous Waste Management Plan in 1984.

Two of the HWMC's major concerns with the permitting process were "[a] lack of coordination . . . between state and local permitting agencies for hazardous waste management facilities" and "[i]nadequate opportunities for public involvement." See Hazardous Waste Management Plan, p. 17. Accordingly, the HWMC expressed its belief that "the state and local permitting processes must be clearly defined and coordinated" and recommended that an integrated permitting process be developed in which local and state agencies could jointly review permit applications to improve the coordination of overall decision-making on proposed hazardous waste facility projects. See *id.*, pp. 20-22. The provisions of the Tanner Act reflect the importance of coordination in the permitting process. Among other things, Health & Safety Code § 25199.3(b) provides that "[a] public agency may consolidate, with other public agencies,

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public meetings and hearings permitted or required by law or regulation for the issuance of a permit or the making of a land use decision for a hazardous waste facility project.”

It is especially important for the community to be able to have meaningful input into the land use review for the proposed expansion and modification of activities at the ISOCI facility because it will affect the future health and safety of greater Boyle Heights. Members of the community have already expressed opposition to the project. In March 2006, the Boyle Heights Neighborhood Council voted unanimously to oppose the proposed expansion of the ISOCI facility and joined in Comments 2-1 through 2-19 submitted by the Agency. See Comment 44. On March 28, 2006, the Adelante Eastside Project Area Committee, which provides advice to the Agency, also voted to oppose the proposed expansion. See Comment 14-27. Numerous local residents separately submitted comments to DTSC expressing concern about or opposition to the project, and Los Angeles City Councilman Jose Huizar recently re-iterated his strong opposition to expansion of the ISOCI facility.

Local property owners and businesses also submitted comments to DTSC. Curtis D. Williams, on behalf of the University of Southern California, expressed concern about risks to human health and the environment from the proposed expansion and modification of activities at the ISOCI facility. See Comments 3-1 through 3-4. Given the facility's history of noncompliance with environmental laws and the proximity of the USC Health Sciences campus to the facility, USC objected to issuance of the Permit. Dennis A. Roach, on behalf of 2550 Olympic, LLC, expressed concern about the safety of storing hazardous waste in rail cars, the public notice, and DTSC's public participation process. See Comments 6-1 through 6-4. In particular, 2550 Olympic, LLC objected to issuance of the Permit before a local assessment committee had been formed under the Tanner Act, through which local property owners could participate in the review process. See Comment 6-4. Fabric & Fabric, a business located at 2700 East Washington Boulevard, expressed opposition to the project due to concern about risks to human health, including increased cancer risk. See Comment 8.

As the lead agency, DTSC should have coordinated its evaluation of hazardous waste issues associated with the project and opportunities for public participation with the Tanner Act process. By seeking to issue this Permit before ISOCI has filed a new land use application with the City, DTSC is undermining the community involvement process that is required by the Tanner Act and acting in a manner contrary to the intent of the Tanner Act. This does not allow DTSC to consider input from a local assessment committee, which would likely include local property owners and other community representatives.

ISOCI is aware that it will have to obtain a land use permit from the City to proceed with the proposed expansion of its facility. It appears that ISOCI is purposefully delaying submitting a new permit application to the City, however, in order to reduce the impact of the community involvement process required by the Tanner Act. Such behavior falls far short of good faith participation in the permitting process. When a permit application eventually is submitted, the Agency expects that community input received through the Tanner Act process may require substantial modifications to the project in order to receive approval. As a result, DTSC is spending resources to rush through issuance of a permit for a project that likely will change.



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The Agency understands that DTSC cannot require ISOCI to submit a new application for a local land use permit, which would trigger requirements relating to the community involvement process of the Tanner Act. However, DTSC's failure to insist that ISOCI demonstrate good faith by filing and pursuing a new application for a land use permit is contrary to established policy. Waiting to make a final permit decision will enable DTSC to permit only those aspects of the ISOCI operation that are found to be consistent with local land use laws and objectives and will eliminate the need for further amendment of the final DTSC permit. The importance of local land use considerations requires that DTSC not issue the Permit until ISOCI has demonstrated that it is making progress towards obtaining necessary land use approvals. The Agency requests that DTSC not issue this Permit, and at the least refrain from issuing the Permit until ISOCI has filed a new land use application and the Boyle Heights community has had sufficient opportunity to participate in the land use review process required by the Tanner Act.

II. CONFLICTS WITH THE ADELANTE EASTSIDE REDEVELOPMENT PLAN

The ISOCI facility is located within the Project Area described by the Redevelopment Plan for the Adelante Eastside Redevelopment Area. The Redevelopment Plan is premised on improving environmental quality and the quality of life for those who live in, work in and visit the Project Area to revitalize the local economy through the prevention and elimination of blight. Section 521 of the Redevelopment Plan provides that no land use permit shall be issued in the Project Area "from the date of adoption of this Plan unless and until the application therefore has been reviewed by the Agency and determined to be in conformance with this Plan . . ." See Redevelopment Plan § 521, p. 25. As explained in Comment 2-2, the Redevelopment Plan was prepared by the Agency and adopted by the Los Angeles City Council on March 30, 1999. Therefore, the Agency must determine that the proposed expansion of the ISOCI facility conforms with the Redevelopment Plan in order for the City to issue a land use permit.

In its Response to Comment 2-10, DTSC claims that the project will be in conformance with the Redevelopment Plan because the City granted "deemed-to-be-approved" conditional use authority to existing hazardous waste facilities in 1988 by enacting Ordinance 163,620. This is a clearly erroneous legal conclusion. As noted in Comment 2-12, the existing ISOCI facility has never been evaluated through the Agency's permitting process. Any expansion or modification of operations at the facility is not "deemed-to-be-approved" by the Agency or the City at large and must be evaluated separately from Ordinance 163,620.

The Redevelopment Plan requires that the Agency review any development plan concerning the Project Area:

"All development plans (whether public or private) shall be submitted to the Agency for approval and architectural review. All development in the Project Area must conform to this Plan, applicable design guidelines, and all applicable federal, State and local laws, and must receive the approval of the appropriate public agencies."

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See Redevelopment Plan § 408.4, p. 15. ISOCI never submitted the development plan for the proposed expansion of the facility to the Agency or the City of Los Angeles.

As explained in the Agency's comments submitted in February 2006, the proposed expansion and modification of the ISOCI facility will adversely impact the environment and is not likely to be found in conformance with the Redevelopment Plan. Specifically, the proposed expansion and modification of the ISOCI facility conflicts with a number of the goals, objectives, and specific requirements of the Redevelopment Plan, as discussed below. As noted in Comment 2-3, Agency staff believe that continued operation without expansion is the most prudent course of action for DTSC.

a. Environmental Quality

One of the general objectives of the Redevelopment Plan is to "improve the quality of the environment, promote a positive image for the area, and provide a safe and secure environment" by developing safeguards, programs, and controls for the prevention and elimination of noise, air pollution, and other environmental hazards. See Redevelopment Plan, p. 2, Objective #5. In Comment 2-8, the Agency explained that ISOCI's proposed expansion and modification of its facility presents an environmental hazard to the community, including harmful air pollution, and thus does not conform with Section 106 of the Redevelopment Plan. DTSC disputes this inconsistency by attempting to reinterpret the objectives of the Redevelopment Plan. The Agency prepared the Redevelopment Plan and thus is the appropriate entity to interpret its objectives.

In its Response to Comment 2-8, DTSC erroneously concludes that the Redevelopment Plan encourages additional industrial development because it includes objectives to promote industrial development. The most relevant industrial objective is to "encourage the development of an industrial environment that positively relates to adjacent land uses, including an emphasis on the development of ... industrial operations that are environmentally safe..." See Redevelopment Plan, p. 2, Objective #21. The proposed expansion of the hazardous waste facility's operations is not environmentally safe, does not positively relate to residential and commercial land uses, and thus does not meet this objective. A second industrial objective is to "provide for the conservation of existing industrial uses." See Redevelopment Plan, p. 2, Objective #20. Maintaining the ISOCI facility with its existing operations and no expansion or modification conforms with this objective.

DTSC states that the Redevelopment Plan "suggests that it considers only old, deteriorated structures as blight that should be eliminated." DTSC provides no citation to any specific part of the Plan to support this inaccurate statement. The Agency is responsible for the prevention and elimination of physical and economic blight in the Boyle Heights community and beyond, and does not share the narrowly defined view of blight articulated by DTSC. The ISOCI facility may contribute to blight even if it is not deteriorated because its proposed expanded operations will create environmental hazards and discourage redevelopment of the immediate vicinity.

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In its Response to Comment 2-8, DTSC notes that the portion of Los Angeles in which ISOCI is located is identified as generally suitable for off-site hazardous waste management facilities in the Los Angeles County Hazardous Waste Management Plan (LACHWMP). This does not nullify the conflict between the project and the Redevelopment Plan's objective to improve the quality of the environment. The Agency is unaware of any reason why the objectives of the Redevelopment Plan are subject to the LACHWMP. Further, the LACHWMP criteria uses the lack of environmentally sensitive areas as part of its justification for siting but senior housing and a new primary center as well as potential residential units at the Sears site were not considered when the LACHWMP was created.

As discussed below, the Sears Tower property at the corner of Olympic Boulevard Soto Street is envisioned as a future regional commercial center and is a centerpiece of the Boyle Heights Community Plan. DTSC claims that other industrial uses are located closer to the Sears site than the ISOCI facility. However, DTSC fails to distinguish between heavy industrial use that creates environmental hazards, such as the ISOCI facility, and other more compatible light industrial uses. DTSC also claims that noise impacts associated with the project are expected to be less than significant based on the Draft EIR's evaluation of noise impacts. The Draft EIR failed to evaluate cumulative noise impacts, however. The increase in truck traffic to and from the facility, which is expected to double, constitutes a significant noise impact as well as a significant increase in risks due to accidents involving trucks carrying the vastly expanded set of wastes proposed by the facility.

DTSC does not dispute that the project would have significant, unmitigated air quality impacts. Instead, DTSC argues that feasible mitigation measures are not available and that ISOCI's contribution to NOx emissions is small when compared to pollution from other sources. The project's air quality impacts are significant precisely because they cannot be mitigated. The proposed expansion of the facility conflicts with this objective because it will diminish the quality of the environment and does not include mechanisms to increase controls for the prevention and elimination of air pollution.

In its Response to Comments, DTSC asserts that the environmental hazards associated with ISOCI's proposed operations are less than significant. This legal conclusion is clearly erroneous and based on inaccurate factual findings. As explained by the Agency and other commenters, the evaluation of environmental hazards is flawed because the Health Risk Assessment is deficient in a number of respects. For example, in Comment 14-5, the Agency pointed out that the cancer risks posed by the proposed expansion exceed the normal regulatory threshold of 1 in a million used by DTSC and EPA. In its Response to Comment 14-5, DTSC states that the cancer risks do not exceed significance thresholds established by the South Coast Air Quality Management District. The Agency believes it is improper for DTSC to arbitrarily select a less protective regulatory threshold for evaluating incremental cancer risks for this project. As a result, the Health Risk Assessment underestimates cancer risk to the Boyle Heights Community.

The Health Risk Assessment also underestimates the cancer risk from benzene and other toxic compounds in the hazardous wastes that ISOCI proposes to accept. The Health Risk

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Assessment arbitrarily selects low benzene levels, even when compared with prior statements by ISOCI, and arbitrarily selects a more benign mixture of wastes to evaluate than the facility may potentially receive. A competent Health Risk Assessment would find risks more than 1 in 100,000 for lifetime risk of cancer. DTSC acknowledges that a spill of hazardous wastes containing certain chemicals could generate significant impacts on the surrounding community. However, DTSC's claim that the mitigation measures in the Permit are sufficient to reduce hazard impacts to less than a significant level is unsupported by any technical analysis.

The Health Risk Assessment fails to adequately evaluate risks from failure and upset scenarios, routine and accidental releases of new waste streams, and risks from mobile sources. As one obvious example, storage of highly toxic, flammable, and carcinogenic waste in 10 rail cars without adequate containment could, in an earthquake, result in derailment and subsequent fires or spills that would overwhelm the community. The Agency believes that a new Health Risk Assessment should be prepared that accurately evaluates risk to people who live and work in the community.

The health risk analysis used in the FEIR is based on a farther distance of sensitive receptors than is used by DTSC. This was pointed out by the Agency in Comment No. 14-26 stating that there were two schools located at a closer distance. In the Response to Comments, see Response 14-26, DTSC does not address this distance but simply comments that since the Agency did not disclose the specific location of these schools then no further analysis is offered. The use of .75 miles as the closest sensitive receptors is a factual inaccuracy and was used in the analysis of health risks. DTSC needs to alter the permit to account for this inaccuracy and failure to fully assess and thus fully mitigate the risk to sensitive receptors. This can be done by granting a permit only for existing operations and not allowing any ISOCI expansion.

Contrary to DTSC's assertions, the proposed expansion of the ISOCI facility directly conflicts with the objective of the Redevelopment Plan to "improve the quality of the environment, promote a positive image for the area, and provide a safe and secure environment." In fact, the proposed expansion of the ISOCI facility will create significant environmental hazards, impose air pollution and significant cancer risk on the surrounding community, and harm the area's image by expanding polluting heavy industrial use.

b. Housing

One of the housing objectives of the Redevelopment Plan is to "promote the development of sound residential neighborhoods through mechanisms such as ...sensitive mixed-use and in-fill housing rehabilitation and development." See Redevelopment Plan, p. 3, Objective #14. In Comment 2-9, the Agency noted that the Draft EIR does not analyze exposure of sensitive receptors in 750 households that will be located at the proposed Olympic/Soto Mixed-Use development near the ISOCI facility.

In its Response to Comment 2-9, DTSC claims that no significant impacts to sensitive populations are expected. However, DTSC did not evaluate exposure to sensitive populations located at the site of the proposed Olympic/Soto Mixed-Use development. In addition, as

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explained above, DTSC used a less protective threshold for calculating cancer risk in the Health Risk Assessment. Expansion of the ISOCI facility will impose significant cancer risk on nearby sensitive populations and discourage people from living in the proposed Olympic/Soto Mixed-Use development. For these reasons, the project conflicts with objective #14 of the Redevelopment Plan.

c. Commercial Retail Shopping

The Redevelopment Plan's commercial objectives include to "increase the supply and improve the quality of commercial retail shopping opportunities." See Redevelopment Plan, p. 4, Objective #17. In Comment 2-10, the Agency stated that the proposed Olympic/Soto Mixed-Use development near the ISOCI facility will include 575,000 feet of commercial retail space, that the impact of increased truck and rail traffic to and from the ISOCI facility (along with potential exposure to hazardous materials in transit) on the proposed development was not analyzed in the Draft EIR, and that the proposed expansion thus conflicts with this commercial objective.

In its Response to Comment 2-10, DTSC states that the proposed Olympic/Soto Mixed-Use development is mentioned in the Draft EIR. The Draft EIR does not sufficiently analyze potentially significant impacts on the proposed Olympic/Soto Mixed-Use development, however, nor is there any indication that off-street truck loading facilities will be screened by landscaping, as required by Section 514 of the Redevelopment Plan. DTSC glosses over these deficiencies by stating that increased traffic from the proposed development will be much greater than increased traffic associated with the ISOCI facility's proposed expansion. Even if this is correct, it is clear that the proposed expansion does not further the Redevelopment Plan's objective of increasing the supply and improving the quality of commercial retail shopping opportunities.

d. Industrial Development

One of the industrial objectives of the Redevelopment Plan is to "encourage the development of an industrial environment that positively relates to adjacent land uses, including an emphasis on the development of ... industrial operations that are environmentally safe..." See Redevelopment Plan, p. 2, Objective #21. In Comment 2-11, the Agency explained that a hazardous waste processing and storage facility does not positively relate to nearby residential and commercial uses and that the Draft EIR did not adequately assess the impact on other land uses.

Section 503.3 of the Redevelopment Plan provides that areas designated as industrial "shall be maintained, developed, or used for Industrial uses, consistent with the applicable Community Plan . . ." See Redevelopment Plan § 503.3, p. 19. As explained below, more intense industrial use in a transitional area, as proposed by ISOCI, is inconsistent with the Boyle Heights Community Plan.

In its Response to Comment 2-11, DTSC states that the Redevelopment Plan encourages additional industrial development within Subarea 3. As explained earlier, DTSC fails to

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distinguish between more intense industrial use that creates environmental hazards, such as the proposed expansion of the ISOCI facility, and other more compatible light industrial uses. DTSC also ignores the requirement discussed above that industrial uses must be consistent with the applicable Community Plan. The facility's proposed expanded and modified operations are not "environmentally safe," and the project thus does not conform with the industrial objectives of the Redevelopment Plan.

e. Incompatible Uses

The Redevelopment Plan provides that "[n]o use or structure . . . that would be incompatible with the surrounding areas or structures, shall be permitted in any part of the Project Area." See Redevelopment Plan § 516, p. 23. In addition, one of the objectives of the Redevelopment Plan is to create "an attractive and pleasant environment in the Project Area," and plans are required to give consideration to amenities to enhance the aesthetic quality of the Project Area. See Redevelopment Plan § 520, p. 24. The presence of additional tanker trucks carrying hazardous waste to and from the ISOCI facility and related noise and odors from the facility would diminish the aesthetic quality of the Boyle Heights community and is incompatible with commercial and residential use at the proposed Olympic/Soto Mixed-Use development. It is precisely this sort of imposition of undesirable land uses that creates the adverse economic as well as environmental consequences that prevents communities such as Boyle Heights from eliminating blight from their midst. The Agency reminds DTSC that this sort of insensitive decision-making with respect to hazardous waste facilities gave rise to the Environmental Justice movement.

For the reasons discussed above, the proposed expansion of the ISOCI facility conflicts with a number of the goals, objectives, and specific requirements of the Redevelopment Plan. These conflicts constitute a potentially significant impact on land use that should be evaluated in the FEIR. The Agency requests that DTSC amend the Permit to require that ISOCI obtain a determination from the Agency that the proposed expansion and modification of the ISOCI facility conforms with the Redevelopment Plan before the Permit can become effective, and recirculate a new EIR that evaluates the impacts from conflicts between the project and the Redevelopment Plan as well as measures to mitigate those impacts.

III. CONFLICTS WITH THE BOYLE HEIGHTS COMMUNITY PLAN

The Boyle Heights Community Plan is one of 35 community plans that comprise the Land Use Element of the City's General Plan. The community plans are intended to "guide development in order to create a healthful and pleasant environment." See BHCP II-2. The Boyle Heights Community Plan identifies as issues the need to provide more affordable housing, a lack of convenient shopping services in portions of the community, and the need to provide buffers between residential and industrial uses. See id., I-5 to I-7. The Community Plan envisions economic development that will generate jobs for the community, a commercial corridor and regional commercial center, extension of the MetroRail Red Line with three stops in Boyle Heights, a general shift toward less intensive industrial use to improve environmental quality, and increased commercial and residential use. See id., I-2 to I-4. The proposed expansion of

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the ISOCI facility conflicts with a number of objectives and policies set forth in the Community Plan.

As noted in Comment 2-16, the Community Plan designates the Sears site at the corner of Olympic Boulevard and Soto Street as a Major Opportunity Site and as a future regional commercial center. See id., I-5 and I-8. The Community Plan notes that challenges to redeveloping the Sears site are the hostile pedestrian environment created by heavy truck traffic at the Olympic/Soto intersection carrying goods to and from the industrial sector, and poor auto access due to the heavy traffic and street width. See id., I-6. The proposed expansion of the ISOCI facility will double the amount of truck traffic to and from the facility. The additional tanker trucks carrying hazardous waste presumably will travel on Soto Street, creating a polluting eyesore visible to businesses located at the Sears site, as well as exposing the community to hazardous materials in transit. The proposed expansion will hinder successful commercial redevelopment of the Sears site, which is a centerpiece of the Community Plan.

In its Response to Comment 2-16, DTSC notes that other industrial uses are located closer to the Sears site than the ISOCI facility. As explained earlier, DTSC fails to distinguish between more intense industrial use that creates environmental hazards, such as the proposed expansion of the ISOCI facility, and other more compatible light industrial uses. DTSC also fails to note the cumulative impact on the proposed Olympic/Soto Mixed-Use development of even more truck traffic on an already busy street.

Industrial objectives of the Community Plan include encouraging and providing opportunities for new industrial uses that generate intensive employment and improving the quality of industrial developments. See id., III-5. As noted in Comment 2-16, it is the City's policy that "a transition of industrial uses be developed, where feasible, from intensive uses to less intensive uses in those areas adjacent to residential uses." See id., III-6. Examples of less intense existing industrial uses in the community, such as distribution, manufacturing, and assembly industries, are described in the Community Plan. See id., I-7. By proposing more intense industrial use in a transitional area that will be only a quarter-mile from the nearest residents, ISOCI's project violates the City's policy, and the proposed expansion of the facility will not generate intensive employment or otherwise advance either of the industrial objectives.

DTSC's Response to Comment 2-16 does not address the Agency's point that the project violates the City's policy to support a transition to less intensive industrial uses. DTSC correctly notes that the ISOCI facility is an existing industrial land use and thus is consistent with the Community Plan's objective to preserve designated industrial lands for industrial uses. The proposed expanded operations at the facility, however, are not consistent with other objectives and policies of the Community Plan, as discussed above.

Another issue identified in the Community Plan is the need to provide buffers between residential and industrial uses. See id., I-7. Generally, the more polluting an industrial use, the larger the buffer that will be necessary to provide adequate mitigation. The proposed expansion of the ISOCI facility will increase environmental hazards and thus require a larger buffer



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between the facility and nearby residents, jeopardizing the opportunity for sensitive receptors such as children and seniors to live at the proposed mixed-use redevelopment at the Sears site.

The proposed expansion of the ISOCI facility conflicts with the Air Quality Element of the City's General Plan. The Air Quality Element notes that major contributors to Los Angeles smog include trucks and large stationary sources such as petroleum industries. See Air Quality Element, III-2. Objective 4.2 of the Air Quality Element is to reduce vehicle trips and vehicle miles traveled associated with land use patterns, and it is the City's policy to promote more transit-oriented and mixed-use development. See id., IV-3. The proposed Olympic/Soto Mixed-Use development is the type of environmentally responsible redevelopment encouraged by the Agency, but as explained above, the proposed expansion of the ISOCI facility will impede the success of this mixed-use development and thus conflicts with this objective. The proposed expansion of the ISOCI facility will entail a doubling of truck and rail traffic, which will increase emission of smog precursors and diminish air quality. The Air Quality Element also includes a City policy to require that air quality impacts be considered in the review and approval of all discretionary projects. See id. The evaluation of air quality impacts in the Health Risk Assessment is deficient, in part because risk from mobile sources is not considered, and the Permit does not require sufficient measures to mitigate air quality impacts from the facility on the surrounding community, which already is disproportionately exposed to environmental hazards.

For the reasons discussed above, the project conflicts with a number of aspects of the Boyle Heights Community Plan and the Air Quality Element of the General Plan. These conflicts constitute potentially significant impacts on land use and air quality that are not addressed in the FEIR. The Agency requests that DTSC amend the Permit to require that ISOCI obtain a determination from the Agency that the proposed expansion and modification of the ISOCI facility is consistent with the Community Plan before the Permit can become effective, and recirculate a new EIR that evaluates the impacts from conflicts between the project and the Community Plan as well as measures to mitigate those impacts.

IV. INADEQUATE NOTICE TO INTERESTED PARTIES AND PUBLIC OUTREACH

DTSC's public participation process for this Permit has been and remains flawed. Few if any community members participated in the 1995 public scoping meeting and, as the Agency noted in Comment 2-6, a number of stakeholders never received copies of the Notice of Preparation that was prepared and issued in 1995. The Agency did not receive a copy of the Notice of Preparation even after the City adopted the Redevelopment Plan in 1999. DTSC's Response to Comment 2-6 blames the City and the Agency for not informing DTSC of the creation of the Agency or adoption of the Redevelopment Plan. As the lead agency, however, DTSC bears responsibility for contacting all stakeholders and conducting public outreach:

Major stakeholders, including local property owners, also did not receive notice of the project. For example, MJW Investments, Inc., the owner of the 26-acre Olympic/Soto site, did not receive notice of the proposed expansion of the ISOCI facility until it was contacted by Environmental Audits, Inc., according to DTSC.



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Even if stakeholders received the Notice of Preparation, it did not accurately describe the project. The Agency explained in Comment 2-4 that the Notice of Preparation for this project was issued by DTSC in 1995 and does not describe the same project that is evaluated in the Draft EIR. In short, the project description has substantially changed during the 12 years since the Notice of Preparation was prepared. DTSC acknowledges this in its Response to Comment 2-4, but contends that the basic description and environmental conditions have not changed sufficiently to warrant recirculation of the DEIR. To the contrary, environmental conditions surrounding the project have changed significantly over the past decade, including changes subsequent to adoption of the Redevelopment Plan in 1999. DTSC should have prepared a new Notice of Preparation in 1999 and circulated it to the Agency and all other stakeholders.

Furthermore, as noted in Comment 2-1, the Agency never received a Notice of Preparation for the EIR, nor did it receive an administrative draft or screencheck draft of the Draft EIR, a courtesy that customarily is extended to responsible agencies under the CEQA Guidelines. DTSC's Response to Comment 2-1 provides no explanation for not providing these documents to the Agency.

As noted in other comments, DTSC also did not conduct effective outreach to the Spanish-speaking communities in Boyle Heights and beyond, did not translate key permit and environmental review documents into Spanish, provided inaccurate fact sheets, and did not make the complete record available in a timely manner. DTSC's failure to provide proper notice to interested parties and stakeholders, including the Agency, demonstrates the importance the Tanner Act community involvement process to provide the community surrounding the ISOCI facility with an opportunity to participate in the land use review. The Agency requests that DTSC not issue the Permit until adequate public outreach has been conducted and the Tanner Act community involvement process has begun.

V. ENVIRONMENTAL JUSTICE

In Comment 2-15, the Agency expressed its concern that the project appears to violate EPA's environmental justice policy because the Draft EIR does not evaluate its impact on the surrounding community, which already is exposed to nearby facilities that handle hazardous waste. The Agency explained that the number of such facilities within one-half mile of the ISOCI facility meets the type of criteria that triggers environmental justice issues with EPA. In its Response to Comment 2-15, DTSC states that "28 properties within the area of ISOCI were identified as known or suspected of contamination." Although it is unclear what DTSC means by "the area of ISOCI," the number of properties demonstrates that the ISOCI facility may have a disproportionately high and adverse human health and environmental impact on the Boyle Heights community.

In its Response to Comment 2-15, DTSC states that it has determined the project will pose no significant health issues – an erroneous conclusion – and that "any land use planning issues are handled by the local government." The Agency is not satisfied that DTSC adequately evaluated health impacts on the Boyle Heights community. For example, the FEIR fails to evaluate the impacts from a catastrophic release of hazardous waste from rail cars at or near



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the facility, underestimates the significance of cancer risk from the proposed operations, and does not include sufficient cumulative impacts analysis to address environmental justice concerns. As DTSC is aware, local land use decisions affect the health and safety of a community for decades. This is all the more reason why DTSC should refrain from issuing the Permit until the Boyle Heights community has had sufficient opportunity to participate in the land use review process required by the Tanner Act.

VI. FACTUAL INACCURACIES

The various documents and analyses upon which DTSC is basing the proposed action contain material flaws. We have previously cited the failure of the DTSC and its environmental consultant to accurately identify sensitive receptors near the ISOCI facility. The nearest sensitive receptors are not 0.75 miles from the ISOCI facility, as is stated in the FEIR. They include:

- The Hostetter Playground, an open-air LAUSD youth recreational facility, is 0.31 miles from the hazardous waste facility
- The Dana Primary Center, an LAUSD facility, is located 0.38 miles from the hazardous waste facility
- The Colonia Jess Lopez residential complex, a senior housing facility, is located 0.39 miles from the hazardous waste facility. It is directly adjacent to Rio Vista residential development, another senior housing facility.
- The Sears Olympic and Soto development site, slated for mixed-use development (including housing), is located approximately 850 feet - less than a ¼ mile - from the ISOCI facility.

Also, the Fact Sheet issued in December 2005 by DTSC is flawed and inaccurate. This fact sheet is misleading in that it fails to adequately describe the proposed activities, which ISOCI plans to conduct once the permit is granted. Specifically, the fact sheet:

- Does not disclose that the facility plans to accept and manage up to 380 RCRA hazardous waste codes, including cyanide-containing wastes and ignitable hazardous wastes.
- Does not explain that any of the 380 RCRA waste codes may be stored in unprotected rail cars on the rail spur for up to one year
- Does not explain that the rail spur has an inadequate containment system that cannot contain the entire volume of a rail car in the event of a catastrophic release from one or more rail cars



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- Provides an unrealistic picture of the facility's compliance and enforcement history with the hazardous waste regulations. ISOCI has been listed in the past by US EPA as a high priority violator and has a lengthy record of noncompliance. The fact sheet leads the public to believe that only a few minor violations have occurred.
- Inaccurately describes the health risks posed by the proposed operations as "well within health risk limits", when in fact, the Health Risk Assessment concludes that nearby residents and workers will be subjected to cancer risks higher than the standard significance thresholds of one in a million.

VII. MITIGATION MEASURES

In Comments 2-18 and 2-19, the Agency explained that the environmentally superior alternative is continued operation of the existing facility as it stands with no expansion, and the Agency proposed several mitigation measures to reduce land use impacts. DTSC has not adopted any of these mitigation measures to date, including complete enclosure of the facility's operations and no extended storage of hazardous waste in rail cars. As a result, the proposed expansion of the ISOCI facility will conflict with established goals and objectives of the Adelante Eastside Redevelopment Plan and the Boyle Heights Community Plan and poses a threat to the health and safety of Boyle Heights residents and visitors. As a responsible agency with discretionary approval authority over the proposed project, the Agency believes these are significant and adverse impacts.

VIII. CONCLUSION

For all the reasons discussed above, the Agency urges DTSC to grant this petition for review. The issues raised by the Agency address fundamental defects in the Permit, the Response to Comments, the FEIR, and DTSC's course of action that involve clearly erroneous findings of fact and conclusions of law, and raise important land use and policy considerations. The Agency requests that DTSC exercise its discretion to reverse its final Permit decision or stay issuance of the Permit in its entirety until ISOCI submits a new land use application to the City and the Tanner Act community involvement process has begun.

Sincerely,

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Eastside Project Planner



CRA/LA

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