

ATTACHMENT 7

Detailed Response of Harbor Department to the Issues on Appeal Raised by Phillips Steel Company

Ground for Appeal

The Project will be as close as 500 feet from Phillips' main location, as well as the MSC. The Project also contemplates closure of primary traffic arteries directly serving Long Beach, the Port, and Phillips, including but not limited to Fashion Avenue, 9th Street, and the Shoemaker Bridge to and from downtown Long Beach. Closure of these arteries, the related negative traffic impact on Anaheim Street, and use of Harbor Avenue as a primary construction artery will severely obstruct access to Phillips' business, and decimate the value of its properties and the related goodwill of this 100-year old Long Beach business.

...

The EIR failed to adequately analyze the traffic impacts on Phillips' business.

Response

While certain roadways would be closing with the implementation of the 12th Street configuration of the Project, neither Anaheim Street nor West 14th Street would be closing. Moreover, in the vicinity of the Phillips facilities, the north-south streets (Harbor Avenue, Caspian Avenue, Canal Avenue, and Santa Fe Avenue) will all remain open. Therefore, Phillips' employees and customers will still have direct access to each of Phillips' facilities during construction and operation of the Project.

Phillips refers to Harbor Avenue as being a "primary construction artery" for the Project. While Harbor Avenue is one of over a dozen roadways that would be used to access the construction site, it is not a "primary" access for purposes of the construction.

Moreover, as explained in Section 6.3.3 of the EIR, as a Special Condition of the Project, the Port will develop a Transportation Management Plan (TMP) to minimize construction impacts on the community. The Port would also work directly with businesses and contractors to identify and incorporate measures into the TMP that minimize impacts on business operations to the extent possible.

The comment suggests that the proposed street closures would negatively impact the traffic on Anaheim Street. Four intersections along Anaheim Street in the vicinity of the Project (Intersections 6, 9, 11 and 14) were studied in the EIR. The EIR demonstrates that, both during peak construction period (see EIR Table 3.5-11 on p. 3.5-27) and once the Project is operational (see Table 3.5-12 on p. 3.5-31), Anaheim Street will remain highly functional. The Project involves the removal of the one on-ramp and one off-ramp onto and off of the Shoemaker Bridge, as shown on Figure 1.8-1. As stated in the Final EIR (at page 11-13), it is possible that the Shoemaker ramps would be removed by

Caltrans as part of Interstate (I)-710 Corridor Project improvements, or by the City of Long Beach as part of the replacement for the Shoemaker Bridge.

Access from Phillips Steel Company to downtown Long Beach would continue to be available via Anaheim Street to I-710 to West Shoreline Drive; an alternate route would be via Anaheim Street over the Los Angeles River and south on Long Beach Boulevard or other arterial routes. As indicated in the Final EIR (page 11-14), the traffic impact analysis indicates that, with the Project, access between downtown Long Beach and the Westside would be maintained via the existing transportation system which provides sufficient interconnections such that no single roadway has an overwhelming volume of traffic.

Access from Phillips Steel Company to the Port of Long Beach would also continue to be available via Anaheim Street and the I-710, or via Anaheim Street Phillips previously indicated that the average time for customers to the Port is approximately 10 to 12 minutes (non-freeway). It would be expected that use of the I-710 route would require a similar or possibly shorter amount of time after the Shoemaker ramps have been removed, subject to traffic conditions.

A change in route is not a significant impact, in and of itself. These are public roads, not private roads, and being able to utilize the shortest route between two places is not something that is guaranteed.

Property values are economic issues beyond the scope of CEQA. Nonetheless, Phillips has submitted no evidence that supports the conclusion that there would be a serious impact to the value of the property it occupies or to its business goodwill. Presumably, Phillips will have greater public exposure if vehicular traffic along Anaheim Street increases.

At pages 11-11 through 11-15 of the Final EIR, the Master Response – Street Closures, Access to Downtown Long Beach, and Public Services Access contains additional detailed information regarding the street closures and related travel times.

Ground for Appeal

Phillips' employees and customers will be put at health risk by, among other things, NO₂ pollution, which is significant and cannot be mitigated by the Port's own admission.

Response

As Phillips notes, the EIR correctly noted that even with application of available mitigation measures, certain air quality impacts would remain significant and unavoidable.

With regard to the potential health effects of the Project from toxic air contaminants, the issue was addressed in Section 3.2 of the Draft EIR, particularly at pages 3.2-53 through 3.2-63. Draft EIR Table 3.2-24 shows that all modeled receptors in the Project

area would have less than significant cancer and non-cancer health impacts during construction and operation of the mitigated Project. Impacts from criteria pollutant concentrations associated with the Project are described at pages 3.2-40 through 3.2-45 for the construction period, and pages 3.2-49 through 3.2-52 for the operational period. The mitigated Project would produce significant NO₂ concentrations in certain areas near the Project site during both the construction and operational periods. The geographical extent of significant NO₂ impacts during the operational period of the Project with the refined boundary is shown in Figures 2.2-1 through 2.2-5 in response to Comment AQMD-5. A discussion of the types of health effects that may be associated with NO_x and NO₂ exposure is provided in the EIR on pages 3.2-48 and 3.2-49.

The predicted air quality impacts specific to the Phillips Steel Company's business locations were extracted from the EIR analysis, and are summarized here. The closest receptor points to this business that were evaluated by the dispersion model for the Draft EIR are located directly on the 1368 W. Anaheim Street location, and at the southwest and southeast corners of the 1545 W. Anaheim Street location. As explained below, the immediate area surrounding Phillips locations already has a high background level of NO₂.

Table 11.2-12 of the Final EIR shows the highest modeled criteria pollutant and health risk impacts at 1368 W. Anaheim Street associated with the mitigated Project. The table shows that the peak state and federal 1-hour NO₂ concentrations would exceed the thresholds during Project construction. All other criteria pollutant and health risk impacts during construction and operation would be less than the thresholds at this location. The peak state and federal 1-hour NO₂ impacts of 349 µg/m³ and 262 µg/m³, respectively, would occur during Phase 3 of construction. Emissions from Project construction would contribute only about 26 and 33 percent, respectively, to these impacts; the background concentration would contribute the remaining 74 and 67 percent.

Table 11.2-13 of the Final EIR shows the highest modeled criteria pollutant and health risk impacts at 1545 W. Anaheim Street associated with the mitigated Project. The table shows that the peak federal 1-hour NO₂ concentration would exceed the threshold during Project construction. All other criteria pollutant and health risk impacts during construction and operation would be less than the thresholds at this location. The peak federal 1-hour NO₂ impact of 247 µg/m³ would occur during Phase 3 of construction. Emissions from Project construction would contribute only about 29 percent to this impact; the background concentration would contribute the remaining 71 percent.

Moreover, these peak 1-hour predicted air pollutant concentrations are conservative and would occur very infrequently, if at all, because the analysis assumes all construction equipment would operate simultaneously during worst-case meteorological conditions (i.e., low wind speed, optimum wind direction, and very stable atmosphere), concurrent with the highest observed background concentration measured at the Superblock monitoring station over a 3-year period. Most of the 1-hour NO₂ concentrations during Project construction would be much lower than the peak values,

as evidenced by the much lower annual average NO₂ concentration, which is an average of all 1-hour concentrations during the worst-case year.

The modeled air pollutant impacts at Phillips' facilities during the operational phase of the Project were shown to be below the significance thresholds for all criteria pollutants. (See Tables 11.2-12 and 11.2-13 in the Final EIR at pp. 11-178-11-179.)

Furthermore, the Project may produce operational criteria pollutant and health impacts that are less than the values presented in the Draft and Final EIR by replacing many future drayage truck trips from the terminals served by the Pier B Rail Yard with rail transport. The potential air quality benefit associated with fewer drayage truck trips was not quantified in this EIR (although the impact of the additional rail transport was quantified).

Ground for Appeal

The grounds for this appeal are that the Board did not proceed in the manner required by law, abused its discretion, and violated CEQA by failing to comply with its requirements. More specifically, the Board certified an EIR insufficient in scope, for a Project not adequately described, and not based on substantial evidence. Despite the written and oral comments of Phillips, Superior, and numerous other Westside businesses, the Final EIR, as certified, failed to adequately address the potential impacts of the Project on the Westside and its businesses, employees and residents. Phillips and Superior, who collectively employ over 200 people in indoor/outdoor facilities, are not called out in the Draft or Final EIR other than by way of the Port's responses to their comments. The EIR did not adequately address the significant negative environmental impact on those businesses posed by the 12th Street alternative. Furthermore, despite the fact that these businesses will be immediately adjacent to this mammoth project and its large rail system, the Final EIR contemplates no plan for acquisition, relocation or just compensation for these businesses.

Response

The Long Beach Municipal Code ("LBMC") section 21.21.507, subsection E.2. requires appellants to "specify in detail why the appellant contends that the environmental determination does not comply with CEQA." The articulated grounds set forth above do not meet this standard. The statements are conclusory and devoid of detail.

The EIR was prepared in full compliance with CEQA, and its conclusions are amply supported by substantial evidence. The geographic scope of the analysis is appropriate and was specifically tailored for each environmental topic. The EIR specifically included analysis of potential environmental impacts on properties in the immediate vicinity of the Project. For example, as described above, for air quality, potential ambient air emission impacts were determined on the basis of sensitive receptors at two of Phillips' locations. Similarly, for noise impacts, the Multi-Service Center – the closest sensitive receptor – was used to determine close range noise impacts. As set forth above, and in the EIR,

traffic impacts were assessed on roadways immediately adjacent to the Project as well as areas further away. Phillips has not identified any specific deficiency in the analysis.

Phillips is correct that the EIR does not assume that businesses completely outside of the Project site would be relocated or the underlying properties acquired. The EIR demonstrates there is no need to relocate the businesses. For example, the noise analysis demonstrated that there will be no significant off-site impacts at locations such as Phillips' businesses. During the operation of the Project, the localized air quality impacts of the Project are less than significant at the site of Phillips' operations. While the construction of the Project will have some temporary air quality impacts on Phillips' and other nearby businesses during peak periods, these are likely to be infrequent, and are generally consistent with the nature of the industrial uses in the area, including the adjacent General Industrial district, which is considered the City's "industrial sanctuary" district. According to the City's zoning code, this district is "where a wide range of industries that may not be desirable in other districts may locate. The emphasis is on traditionally heavy industrial and manufacturing uses." The uses permitted within this area are reasonably expected to generate, and be subject to, higher levels of air quality pollutants, as well as noise and vibration levels than properties elsewhere in the City. Given these factors, there is no plan to acquire off-site properties such as those occupied by Phillips.

Ground for Appeal

The CADOT comment recommended only the 9th Street alternative because it had the least impacts on "traffic flow and public safety."

Response

The California Department of Transportation (CADOT/Caltrans) recommended the 9th Street Alternative in their comment on the Draft EIR, because, in its opinion, "it has the least impacts on traffic flows and public safety in the vicinity compared to the 12th Street and 10th Street Alternatives." It should be noted that, as is shown in Tables 3.5-13, 3.5-15, and 3.5-17 of EIR Section 3.5 (Ground Transportation), significant impacts were not identified for any of the three build alternatives at the 18 street intersections, 2 segments of the I-710 freeway, and 4 Pacific Coast Highway segments analyzed, as compared with the CEQA baseline. As to public safety, the 12th Street, 10th Street, and 9th Street alternatives would result in removal of the at-grade rail crossing at 9th Street and Pico Avenue; this public safety improvement would be the same for each alternative. As stated in the Final EIR (at page 11-13), it is possible that the Shoemaker ramps would be removed by Caltrans as part of I-710 Corridor Project improvements, or by the City of Long Beach as part of the replacement for the Shoemaker Bridge. The removal of the Shoemaker Bridge ramps and closure of the 9th Street at-grade crossing is consistent with planned improvements to the I-710 Corridor Project. Recently, Caltrans indicated in a letter expressing support for the Pier B On-Dock Rail Support Facility Project and that the Pier B project objectives run in parallel to those of

Shoemaker Bridge Replacement and the I-710 Corridor projects, particularly the objectives which seek to improve efficiency and safety across modes of travel.¹

Furthermore, the 9th Street Alternative would not meet the overall Project purpose and need of achieving the objective of 30 to 35 percent on-dock rail use, which would be achieved by the Project.

Ground for Appeal

The Port's response to Phillips' comments finally acknowledged traffic impacts and predicted only 3-minute delays "subject to traffic conditions." The projected 3-minute delay makes no sense when the Shoemaker Bridge is being closed and other major arteries are either being eliminated or overburdened with congestion. Furthermore, "subject to traffic conditions" is inherently vague, and far from a scientific or even evidence-based response to Phillips' comment.

Response

The Final EIR includes a detailed explanation of the potential travel delays associated with the roadway modifications involved in the Project. While the certain existing travel routes from Phillips to the Port would no longer be available due to permanent road closures, access to the Port from alternate routes using I-710 would be available, as well as non-freeway routes. The Traffic Impact Analysis Report, provided in Appendix B of the Draft EIR, found that traffic impacts would not be considered significant. Alternate routes would potentially add less than 0.5 mile to the travel distance from Anaheim Street to the Port and could result in an increase of approximately 3 minutes in travel time. Based on roadway capacity and level of service that would result, the impact to traffic would not be considered significant.

Table 11.2-2 and the associated text on page 11-13 explains how the differences in travel time were determined in the Final EIR. It was based upon real time data collected through smart phones and compiled for Google Maps. The phrase "subject to traffic conditions" means just what it says. Traffic flow varies during peak periods and may be affected by traffic accidents, road construction or temporary street closures. As further explained in the Final EIR, the public is not guaranteed the shortest route between two points on public roadways, and an increase in travel time in and of itself is not a CEQA issue.

Ground for Appeal

Phillips' access to emergency services, including the closest major hospital, will suffer a severe negative impact which has not been adequately addressed. The response to Phillips' comments hedges the question. To say emergency responders are located "near," and "on all sides," is not supported by adequate evidence. As one example,

¹ Letter Dated March 5, 2018 from Carrie L. Bowen, District Director, Caltrans to Heather Tomley, Director of Environmental Planning, Port of Long Beach.

there has been insufficient study of traffic delays to Long Beach Memorial Medical Center from the Westside. Is this also a 3-minute delay “subject to traffic conditions,” like an overcrowded Anaheim Street and I-710? Minutes, which remain unknown and inadequately studied, make a material difference to the safety of Phillips’ customers, employees and the public in an emergency.

Response

As an initial point, emergency response times are not considered within the scope of environmental issues covered by CEQA unless a condition causes the need for additional infrastructure. Nonetheless, the Port provides the following information.

The Long Beach Police and Fire Departments have been very involved in the assessment of the Project impacts on emergency services. Fire Chief Mike DuRee testified before the Board of Harbor Commissioners that his Department had ample time to review and assess the proposed street closures and that they pose no significant impact to emergency response capability.

Emergency responders are located near the Pier 31 B Rail Yard, on all sides and include the JCCC at 1249 Pier F Avenue, supported by City and 32 federal partner agencies to provide quick and uniform response to emergencies at Port 33 (see Figure 3.7-1 of the Draft EIR). Hospitals located in Long Beach, Wilmington, and San Pedro would continue to be accessible from the Port via the Seaside Freeway and I-710.

The access routes to the closest hospital, St. Mary Medical Center, which is located less than 2 miles east of Phillips’ facility at 1368 W. Anaheim Street, would not change as a result of the Project.

Specific to Long Beach Memorial, the route from Phillips’ facilities would not be impaired by the Project. Based on existing routes, Long Beach Memorial is located approximately three miles northeast of Phillips’ 1368 W. Anaheim Street facility. Employees and emergency responders would continue to be able to head east on Anaheim Street approximately 850 feet to the northbound I-710 on-ramp and proceed to the Willow Street exit; or head east on Anaheim Street to Long Beach Boulevard and proceed north to Long Beach Memorial Medical Center. These are the most direct routes to Long Beach Memorial Medical Center and would not be expected to change as a result of construction or operation of the Project.

Ground for Appeal

Rather than submitting a revised Draft EIR and allowing an adequate notice and comment period, the Port has moved straight to a Final EIR. The Final EIR is difficult to follow, and contains over 50 “revised” and “updated” figures and tables, along with assorted “refinements” and “corrections.” This coupled with short notice of the hearing on the Final EIR has severely prejudiced the ability of Phillips and other negatively impacted local businesses to effectively respond to the Final EIR, including obtaining

their own experts and traffic analyses to rebut the Port's estimated 3-minute delay "subject to traffic conditions."

Response

The Port carefully considered the comments submitted on the Draft EIR and provided detailed responses to each comment. Some of the responses necessitate minor modifications to the Draft EIR text, tables, or figures. In addition, the Port refined the Project boundaries, where possible, to reduce the Project area and the corresponding property acquisitions necessary to implement the Project.

Implementing project refinements that help to reduce impacts during the CEQA review process is wholly consistent with the purpose of CEQA. CEQA Guideline 15004 indicates the environmental impact considerations are intended to influence a project's design. That is what occurred here. Table 10-A in the Final EIR on page 10-1 demonstrates that the Port was able to scale back the number of properties that would need to be acquired through these design refinements.

The revisions and corrections to the Draft EIR are clearly articulated in Section 10.2 of the Final EIR starting on page 10-4. Each one is precisely identified by Section, page, and line, and then described. Where corrected tables or figures were prepared, their specific location was identified.

That there were a number of changes is not unusual given the size of the Draft EIR and the complexity of the Project. Phillips has not identified any one of the changes that it was unable to understand. Moreover, it has not referenced any change or correction that would have triggered recirculation pursuant to CEQA Guideline section 15088.5. Specifically, there was no disclosure in the Final EIR that indicated that the Project will cause a significant new environmental impact, or that an already identified significant environmental impact would be significantly more severe than previously identified. Nor was a new mitigation measure or project alternative identified that would lessen the Project's significant environmental impacts.

Phillips has not suggested or demonstrated that the Draft EIR was "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (CEQA Guideline 15088.5(a)(4).)

Therefore, contrary to Phillips' suggestion, there was no reason for the Port to recirculate the Final EIR.

The Port also provided the required review period for the Final EIR. The Port complied with the 10-day notice requirement contained in Public Resources Code Section 21092.5(a) for all commenters, including Phillips, even though the requirement extends only to public agency commenters.

Ground for Appeal

According to CEQA and California law, an EIR and findings must be based on an adequately described project and sufficient evidence. The EIR took a blind eye to the impact on businesses adjacent to this giant rail system, including Phillips and Superior. There is no plan to relocate them, compensate them, or adequately mitigate the Project's severe environmental impact on their employees and customers. The Board's certification of the Final EIR and related Project approval should be reversed for this reason.

Response

The Port's CEQA Findings for the Project were extremely detailed; they consisted of 65 pages of well-organized factual findings with specific reference to the supporting evidence. The Findings are contained in Attachment 3 to the staff report. As explained above, the EIR for the Project did specifically address the Project's potential impacts to the nearby businesses. Phillips has not identified any specific factual finding that it claims is lacking in factual support, so it is not possible to respond further at this juncture.

The Port has explained above that there is no need to relocate Phillips' facilities.