



# Memorandum

## H-1

May 12, 2009

THE HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

### RECOMMENDATION:

The Harbor Department respectfully requests that the City Council: (1) receive the supporting documentation into the record and conduct a hearing on the four subject appeals in accordance with Long Beach Municipal Code Section 21.21.507; and (2) uphold the Board of Harbor Commissioners' certification of the Final Environmental Impact Report for the Middle Harbor Redevelopment Project ("FEIR") by approving the attached City Council resolution (Attachment 1). The FEIR was transmitted to the City Council under separate cover on April 2, 2009.

### DISCUSSION:

#### A. The Board of Harbor Commissioners Action Being Appealed.

On April 13, 2009, the Harbor Commission unanimously adopted Resolution No. HD-2498 (Attachment 3), wherein it certified the FEIR as fully compliant with the California Environmental Quality Act (CEQA). That action was taken at the conclusion of a hearing that lasted approximately six hours. A total of 51 speakers presented testimony during the hearing; 30 spoke in favor of the Project and 21 spoke in opposition to at least some aspect of the Project. In addition, the Harbor Department staff and technical experts from the EIR consulting team, including SAIC, provided detailed testimony regarding the project, including the green technology that will be at the core of this redeveloped terminal. During the hearing, the Commissioners had an extensive opportunity to ask questions and discuss the key issues, and also had an extensive exchange with a representative from the South Coast Air Quality Management District (SCAQMD). The Commissioners voted to amend one mitigation measure and to add a new measure to address the concerns of SCAQMD. A copy of the full transcript from that meeting is attached (Attachment 13).

#### B. Summary of the Middle Harbor Project and Its Green Components.

The Middle Harbor Redevelopment Project (Project) involves Piers D, E, and F. Piers D and E were constructed in the 1940s, and Pier F in the 1960s. Because the basic configuration of the Piers has not changed since their construction, these facilities must be brought into the 21<sup>st</sup> Century and made compliant with the Harbor Department's Green Port Policy and Clean Air Action Plan (CAAP). This will be done through the

implementation of a total of 30 air quality mitigation measures, as well as 12 other mitigation measures and various environmental control measures that have been incorporated into the design of the Project. The Project will provide for the implementation of the two key measures recommended in the California Air Resources Board's Climate Change Scoping Plan for the "goods movement" industry: (1) Ship Electrification at Ports, and (2) Goods Movement Efficiency Measures. This Project accomplishes the first measure by requiring that 100% of the ships calling on the terminal cold iron (use shore-side electric power) by 2014. It accomplishes the second measure by enhancing the efficiency of the terminal, most notably through the construction of an on-dock railyard to allow cargo to move out of the area by rail rather than truck. The reconfiguration of the wharf and slip areas will allow ships to be loaded and unloaded more efficiently, and obsolete, polluting cargo-handling equipment will be replaced with the next generation of clean technology equipment.

In addition to the numerous environmental controls and mitigation measures incorporated into the Project, the Harbor Department has also developed two programs to mitigate the potential cumulative air quality and noise impacts of projects in the port area. The programs are designed to (1) reduce emissions (e.g., by funding school bus diesel particulate filters) and (2) reduce exposure of sensitive populations to air emissions and noise impacts directly (e.g., by funding high-efficiency particulate air filters, noise berms, etc.) and indirectly (through prevention, education, and outreach programs). The programs are designed for populations that have been identified by state and local air agencies as particularly sensitive to air pollutants – school-age children, senior citizens, and persons with respiratory illnesses.

The *Schools and Related Sites Guidelines for the Port of Long Beach Grant Program* is open to schools, preschools, and daycare centers where large numbers of children spend a significant portion of their waking hours. The *Healthcare and Seniors Facility Program Guidelines for the Port of Long Beach Grant Program* is geared to direct mitigation for hospitals, healthcare facilities, retirement homes, senior centers, and convalescent homes and create opportunities for prevention, education, and outreach programs to help children, senior citizens, and people with respiratory illnesses in areas determined to be most affected by cumulative air impacts near the ports. These measures are designed to supplement source reduction measures in the near term when cumulative impacts are predicted to be highest. FEIR Mitigation Measure AQ-29 (Cumulative Air Quality Impact Reduction Program) provides funding for each of the above programs in the amount of \$5 million for a total of \$10 million.

The *GHG Emission Reduction Program Guidelines* address the cumulative greenhouse gas (GHG) impacts of the Project. This program will generate green power from renewable energy sources, enhance goods movement efficiency, install cool roofs to reduce building cooling loads and the urban heat island effect, upgrade buildings for operational efficiency, plant trees for biological sequestration of CO<sub>2</sub>, install energy-

saving lighting, and purchase renewable energy certificates (RECs). As a condition of approval of the Project, the Harbor Commission directed \$5 million to this program to be used for GHG reductions in addition to those achieved through Project mitigation measures such as Mitigation Measures AQ-5, AQ-7a, and AQ-9 through AQ-28. Implementation of Mitigation Measures AQ-5, AQ-7a, AQ-12, and AQ-13 alone would reduce Project emissions of CO<sub>2</sub>e by 16 to 18% from unmitigated levels, depending on the Project year. Although not quantified in this analysis, implementation of Mitigation Measures AQ-9 through AQ-11, and AQ-14 through AQ-28 would further reduce Project GHG emissions. Together, these measures, have a high probability of offsetting all project incremental GHG emission increases.

One concern raised by the State of California Department of Justice was that *GHG* program funding might be used for mitigation or compliance with regulations that was otherwise required. To assure the Department of Justice that this money would be used exclusively for additional mitigation, the *GHG Emission Reduction Program Guidelines* were amended on April 20, 2009 (Attachment 14). With this clarification, the Department of Justice did not appear at the April 13 certification hearing and did not appeal the Board's action.

Because technology is always changing, this Project includes a measure to keep the terminal operations at the forefront of the Harbor Department's Green Port movement – a mitigation measure (AQ-25) that requires that the lease be renegotiated every five years to incorporate the cleanest equipment. The Harbor Department has never before included such a requirement in a terminal lease.

### C. Overview of the EIR and Public Input Process.

The certification of the FEIR was the culmination of an environmental review process that began in 2005, when the Harbor Department issued its Notice of Preparation for the EIR in cooperation with the U.S. Army Corps of Engineers (USACE). Two public meetings were held in 2006 on the EIR to get input from other agencies and the public regarding the scope of the EIR.

Taking into account the comments received during the scoping process, the Draft EIR was released in May 2008, and two public hearings were held on the Draft EIR. The Draft EIR was circulated for over 80 days (only 45 days are required by CEQA), so that the public would have ample time to submit comments and questions. A total of 584 individual comments and 66 comment letters were received by Harbor Department staff and the environmental consultants responded in writing to each comment. Those responses are set forth in Chapter 10 of the FEIR. Staff and the consultants carefully reviewed all of the materials and concluded that the responses were complete and accurate, and that the Final EIR fully complies with all legal requirements, including CEQA, the State CEQA Guidelines, and the local CEQA guidelines. Based upon this

record, the Harbor Commission adopted a resolution certifying the FEIR, making certain findings, adopting a Statement of Overriding Considerations, adopting a Mitigation Monitoring and Reporting Program, and approving a Level III Harbor Development Permit (Attachment 2).

#### D. Summary of the EIR Conclusions Regarding the Project Impacts.

Although most potentially significant environmental impacts of the Project will be rendered insignificant through project design features, environmental controls, and the imposition of mitigation measures, some Project impacts remain significant and unavoidable. The unavoidable impacts likely to be of key concern to the City Council are as follows::

##### 1. Air Quality.

Despite the imposition of mitigation measures, Project construction activities would result in emissions onsite and offsite, resulting in ambient air pollutant concentrations that exceed SCAQMD emission significance thresholds. The operation of the Project would produce offsite impacts that exceed SCAQMD ambient thresholds of significance for 1-hour and annual NO<sub>2</sub>. However, air quality modeling demonstrates that the offsite impacts do not represent disproportionately high and adverse impacts on minority or low-income populations, as those impacts occur almost exclusively in highly industrial areas.

##### 2. Greenhouse Gas Emissions.

Project construction and operation would produce GHG emissions that would exceed the CEQA threshold. Despite the imposition of 30 mitigation measures, which include the offsite GHG mitigation program, and a goal of carbon neutrality, these impacts would likely remain significant.

##### 3. Ground Transportation.

Additional traffic generated by construction activities and the operation of the Project would have significant impacts on certain highway locations in the study area. Because Caltrans has exclusive jurisdiction over the highway segments impacted by Project traffic, the Harbor Department has no authority on its own to implement any improvements to mitigate the impacted highway segments. However, if Caltrans either adopts a fair share based program to collect funds for mitigation, or otherwise obtains the funds needed to improve the impacted highway segments, the Harbor Department has committed to paying its fair share contribution into that program. This contribution would be in addition to the \$5 million the Harbor Department has already committed to the I-710 Corridor EIS/EIR process. Because the Harbor Department cannot guarantee

that Caltrans will implement a fair share program for the impacted highway segments, the regional cumulative impact on these highway segments would remain significant.

#### 4. Noise.

Project construction activities would increase ambient noise levels by over three dBA and would exceed City of Long Beach Municipal Code maximum noise levels. Due to the difficulty in mitigating noise from construction impacts, the project would result in a significant impact due to pile-driving activities. Mitigation measure NOI-1.1a has been modified to add that temporary noise barriers also will be placed between noise-generating construction equipment and Cesar Chavez School. In addition, the Project control dealing with notification has been modified to ensure that the Harbor Department would coordinate with schools and other affected agencies to ensure construction activities would not substantially interfere with facility operations. Incorporation of these changes to the mitigation measure and project control, however, would not reduce noise impacts during construction below the level of significance.

#### 5. Overriding Considerations.

Because the EIR concluded that even after mitigation, significant environmental impacts of the project remained, the Harbor Commission adopted a Statement of Overriding Considerations identifying the numerous benefits of the Project that outweigh its unavoidable adverse environmental effects. These benefits include:

- Fulfillment of Port legal mandates and objectives.
- Diversion of containers from trucks to trains.
- Optimization of energy efficiency in building/construction/operation.
- Implementation of the San Pedro Bay Clean Air Action Plan (CAAP).
- Reduction of criteria pollutants from terminal operations below current levels.
- Reduction of estimated health risk from terminal operations below current levels.
- Creation of thousands of new jobs during the life of the project.
- Efficient accommodation of increased throughput.
- Improvements to critical firefighting/safety facilities at Long Beach Fire Department Stations 15 and 20.

E. Summary of the Four Appeals and the Harbor Department's Responses to the Appeals.

Because of the highly technical nature of the appeals and the responses, the Harbor Department has worked with its environmental consultants and legal counsel to prepare a point-by-point response to each specific item raised. The appeal letters and the detailed responses are submitted as Attachments 5 -12. The following is a summary of the key issues on appeal.

1. City of Riverside Appeal (Attachments 5-6).

The City of Riverside claims that the rail impact analysis contained in the Final EIR is flawed and the Project will create traffic and air quality impacts at grade crossings in Riverside, and states that the Project should mitigate the impacts by "fair-share contributions to a regional solution." Riverside made these same points in commenting on the Draft EIR, and in the letter it submitted to the Harbor Commission at the April 13 certification hearing before the Board of Harbor Commissioners. These concerns were fully addressed in the Final EIR responses to comments. In particular, the EIR uses the same standard methodology as that used by Riverside County in its own grade separation projects. Moreover, a detailed analysis of the Project's impacts at grade crossings in Riverside showed that trains from the Project resulted in an average vehicle delay of only 5-6 seconds per vehicle in the peak traffic hour. The cumulative impact analysis yielded an average delay of 24 seconds per vehicle in the peak traffic hour. According to the Highway Capacity Manual, a delay of less than 35 seconds at a signalized intersection translates to a level of service (LOS) C, which is an acceptable level of service that requires no mitigation. The Project and cumulative Project impacts of 5-6 and 24 seconds, respectively, result in less than significant impacts.

2. City of Commerce Appeal (Attachments 7-8).

The City of Commerce's appeal reiterated concerns it submitted on the Draft EIR about the study area and the alleged failure to analyze the effects of truck and train traffic in Commerce. The Final EIR provided detailed responses to Commerce's concerns. The traffic study area used in the EIR is comprehensive, and identifies the potentially significant traffic impacts related to the Project. The Project does not have the potential to result in significant impacts at intersections in Commerce. Responses to comments in the Final EIR provided additional information about estimated Project truck volumes in Commerce during the peak traffic hour, including 22 northbound and 16 southbound truck trips at Atlantic Boulevard. This is well below the Los Angeles County Congestion Management Program (CMP) threshold of 150 trips in a single direction. According to the CMP, only projects with trip estimates exceeding the 150-trip threshold must be analyzed. Regarding train impacts, the Class I rail corridors are grade-separated in Commerce, therefore, the Project will not result in any train impacts at grade crossings

in Commerce. Furthermore, the air quality analysis included Commerce and found that the impacts would be less than significant there.

3. Center for Biological Diversity, et al. Appeal (Attachments 9-10).

This appeal was filed by the following groups/persons: Center for Biological Diversity, Change to Win, Coalition for a Safe Environment, Coalition for Clean Air, Communities for Clean Ports, East Yard Communities for Environmental Justice, International Brotherhood of Teamsters, Long Beach Coalition for A Safe Environment, Long Beach Community Partners Council, Theral Golden, Los Angeles Alliance for a New Economy, Natural Resources Defense Council and West Long Beach Association. It raises 14 issues, each of which is thoroughly addressed in the Harbor Department's Response, which is Attachment 10.

The highlights of the appeal and the responses are as follows:

- San Pedro Bay Standards to be adopted pursuant to the Clean Air Action Plan (CAAP). Appellants contend this Project should be shelved until the Standards are approved by all of the air agencies involved in the Technical Working Group. The San Pedro Bay Standards are a voluntary and unprecedented effort included in the CAAP to quantify the impact of the entire maritime industry. The Project is consistent with the draft Standards but the Standards are still under peer review by the Port's partners, the federal Environmental Protection Agency, the California Air Resources Board and the South Coast Air Quality Management District. There is no legal or policy reason not to move forward with clean terminal projects such as Middle Harbor which will facilitate achievement of the San Pedro Bay Standards.
- World-Wide GHG Analysis. Appellants believe that GHG emissions should be calculated on a life-cycle basis and include every emission that has any type of relationship to the project (e.g., ship travel all the way to country of origin). The EIR's analysis was properly based on California-based emissions consistent with the approved protocols for doing GHG analysis and AB 32.
- Sea Level Rise. Appellants want more analysis in the EIR regarding how the potential rise in sea level would affect the Project. The EIR adequately addresses the rise. The time frame for the potential rise is a century, the materials submitted by Appellants do not show flooding on the Project site. Moreover, the types of impacts, even if there is flooding, are economic, not environmental.
- \$5 Million GHG Emission Reduction Program. Appellants contend it is not sufficiently tied to the Project and may not provide new mitigation. The detailed analysis on this issue demonstrates it is directly tied to the Project's impacts, and at the request of the Department of Justice, the Harbor Commission has adopted a clarification to ensure that this program pays for new reductions and does not

become a substitute for otherwise required measures (Attachment 14). Collectively, the GHG measures have a high probability of offsetting all Project incremental GHG emissions.

- Noise. There are a series of technical issues, such as single noise event measurements, that have no application to this type of project.
- The appeal also raises traffic issues that duplicate the appeals of the Cities of Riverside and Commerce, NEPA issues that are not relevant to the City Council's determination, and two new issues (recirculation and pre-determination) that were never raised before the Harbor Commission and are without merit.

#### 4. Coalition for a Safe Environment Appeal (Attachments 11-12).

The Coalition for a Safe Environment appeal primarily reiterated concerns it submitted on the Draft EIR about the inadequacies of the EIS/EIR analysis. The appeal addresses 41 issues (Grounds), each of which is thoroughly addressed in the Harbor Department response, in Attachment 12.

The highlights of the appeal and the responses are as follows:

- Public Comment Period and Participation. The appeal suggests that the Port limited public comment periods and participation. There were ample opportunities over a four year period for affected communities, individuals, organizations, and groups to participate in the EIS/EIR process. The Port held public scoping meetings and public hearings to inform the public about the Project, the alternatives, and the associated impacts. Meetings were held in evening hours in surrounding communities in locations that were as close as practical to areas most affected by the Project. Public notices were published in four local newspapers, including the Press-Telegram, Downtown and Grunion Gazettes, and the Long Beach Business Journal. In addition, approximately 125 local agencies and organizations were contacted, including service groups, community groups, local businesses and business organizations, and local health organizations. Additionally, increased access to project information and increased opportunity for public involvement was provided through presentation of project information on the Port's website.
- Health Risk Assessment. The appeal indicates that the Project Health Risk Assessment (HRA) was inadequate. The Project HRA used methods widely accepted and approved by the regulatory agencies that set guidelines for risk analysis (including OEHHA, CARB, and the SCAQMD). These methods include redundant conservative assumptions and inputs and ensure overestimations of predicted risks. These methods provide results that are appropriate for CEQA purposes.



- Establish a Port Community Advisory Committee (PCAC). The appeal suggests that the Harbor Department failed to involve the public in the process or to establish a Port of Long Beach Community Advisory Committee (PCAC) and/or a new Non-Profit Community Mitigation Organization. The Harbor Department has actively reached out to the community in connection with this Project, and there has been substantial community participation at all stages of the CEQA process. Moreover, the Harbor Department is recommending that a Mitigation Program Advisory Group (MPAG), composed of a Long Beach community member, an air quality regulatory agency representative, and an industry representative selected by the Executive Director, be formed to advise the Port on projects proposed pursuant to the Schools and Related Sites Program, the Healthcare and Senior Facilities Program, and the GHG Emission Reduction Program.
- Mitigation Programs. The appeal infers that the proposed mitigation programs are inadequate to address public and environmental impacts. This is not correct since the application of project-specific mitigation measures results in an overall reduction in health-risk and priority pollutants emissions from existing conditions. In addition, the FEIR Mitigation Measure AQ-29 will further mitigate Project cumulative health impacts to the surrounding communities by requiring the Project to provide funding in support of the *Schools and Related Sites Guidelines for the Port of Long Beach Grant Programs* and *Healthcare and Seniors Facility Program Guidelines for the Port of Long Beach Grant Programs* in the amount of \$5 million each. The distribution of these funds to potential applicants and projects will be determined through a public evaluation process and by approval of the Harbor Commission.
- Alternative Technologies. The appeal requests the use of emerging technologies, including zero and near-zero low carbon fuel, Maglev, AMECS, electric-powered drayage trucks, and advanced locomotive emission control systems. These are not proven technologies but are topics of research for the Harbor Department's Technology Advancement Program. If the TAP process determines that an emission control technology is feasible, it will be promoted in the future. Additionally, the FEIR includes Mitigation Measure AQ-25 that requires the terminal tenant in 2015 and every five years afterward to review new air quality technological advancements for the purpose of implementing new feasible mitigation measures.

TIMING CONSIDERATIONS:

City Council action on this matter is requested on May 12, 2009, to respond to these appeals in a timely manner.

FISCAL CONSIDERATIONS:

If the appeals are rejected, there should be no additional fiscal impact. Should the City Council sustain the appeals, then the City would forgo significant harbor revenue opportunities and the region would lose the many job opportunities that construction and operation of this project would create.

Respectfully submitted,



ROBERT KANTER

Managing Director, Environmental Affairs and Planning  
Harbor Department



RICHARD D. STEINKE

Executive Director  
Harbor Department

Attachments:

- Attachment 1 – Proposed Resolution for City Council
- Attachment 2 – Staff Report to Board of Harbor Commissioners, with Attachments.
- Attachment 3 – Harbor Commission Resolution HD-2498
- Attachment 4 – Power Point from April 13, 2008 Hearing
- Attachment 5 – City of Riverside Appeal, with Attachments
- Attachment 6 – Response to the City of Riverside Appeal
- Attachment 7 – City of Commerce Appeal, with Attachments
- Attachment 8 – Response to the City of Commerce Appeal
- Attachment 9 – Center for Biological Diversity, et al. Appeal  
(Attachments available on Legistar)
- Attachment 10 – Response to the Center for Biological Diversity Appeal
- Attachment 11 – Coalition for a Safe Environment Appeal, with Attachments
- Attachment 12 – Response to the Coalition for a Safe Environment Appeal
- Attachment 13 – Transcript of April 13, 2009 Harbor Commission Meeting
- Attachment 14 – Harbor Commission Resolution HD-2500

Previously delivered:

Final Environmental Impact Statement/Environmental Impact Report for the Middle Harbor Redevelopment Project (SCH#2004091010) (also available on Legistar)