COOPER WHITE & COOPER

August 13, 2014

Honorable Mayor and Members of the City Council
c/o Larry Herrera-Cabrera, City Clerk
City of Long Beach
333 West Ocean Blvd., Lobby Level
Long Beach, CA 90802

Re: **Appeal of Long Beach Board of Harbor Commissioners' Ordinance Approving New Operating Agreement with Metropolitan Stevedore Company and New Lease with Oxbow Energy Solutions, LLC ("Oxbow") dated June 23, 2014 (the "Petition")**

Dear Honorable Mayor and Members of the City Council:

This response to the appeal by Communities for a Better Environment, the Natural Resources Defense Council, and Sierra Club ("Petitioners") is submitted on behalf of Metropolitan Stevedore Company ("Metro"), a party to the proposed new Operating Agreement with the City of Long Beach (the "Agreement") that is one of the documents at the heart of the appeal. The decision by the Port of Long Beach Board of Harbor Commissioners ("Port") that approval of the Agreement and the new lease of the "Coal Shed" to Oxbow (the "Lease") is categorically exempt from review under the California Environmental Quality Act ("CEQA") is correct and Metro urges you to reject Petitioners' appeal and affirm the decision by the Port for the reasons set forth below.

Background

Metro has been providing stevedoring services at the Port of Long Beach since 1923, and has operated the dry bulk terminal at issue in the Agreement for over 50 years, since 1962. *See* Attachment A, Declaration of Michael Giove, ¶3. The Agreement replaces the current agreement under which Metro operates the dry bulk terminal, which otherwise would not terminate until 2016. *Id.* at ¶4. Although business terms of the Agreement may vary from those of the current agreement, the activities Metro will carry out at the terminal will not change; just as Metro has done at Pier G since such bulkhandling facilities were developed, Metro will continue to operate the terminal, which includes loading dry bulk cargo, including coal and petroleum coke, onto ships docked at the terminal. *Id.* at ¶6. In connection with the Agreement, Metro has agreed to perform certain repairs and maintenance of the facilities to ensure that the facilities can continue to be operated safely and efficiently. These repairs do not fundamentally alter the facilities, their purpose, or their capacities. *Id.* at ¶5.

201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO CA 94111
COOPER, WHITE & COOPER LLP
SAN FRANCISCO | WALNUT CREEK
PHONE 415.433.1900 FAX 415.433.5530
CWCLAW.COM

Petitioners cite a litany of environmental and economic impacts that they assert must be reviewed and analyzed under CEQA before the Agreement and Lease can be approved. From mining coal in Wyoming to disposal of wastes in China, Petitioners set forth a wide-ranging array of impacts that they believe arise out of the decision to enter into the Agreement and Lease, all of which they assert are significant. However, the issue before you is a much simpler question than that presented by Petitioners. It is not necessary to determine, for example, whether the threat of increased coal-dust fires along railroad tracks in the Powder River Basin has a sufficient causal link to the Agreement and Lease at Pier G in Long Beach so as to require CEQA review of the global economy by the City Council. The City Council can simply observe that the Agreement and Lease squarely fall within Categorical Exemption Class 1 for Existing Facilities and Categorical Exemption Class 2 for Replacement or Reconstruction, as applicable and as set forth in the CEQA Guidelines, 14 CCR §§15301 and 15302, as described more fully below. As such, the Port's action is proper and the appeal cannot be sustained.

The Categorical Exemption for Existing Facilities Applies

The purpose of CEQA is to ensure that governmental decision makers are informed about the significant environmental effects of governmental actions, including projects that require governmental approval, and that such significant environmental effects are avoided or mitigated when feasible. 14 CCR §15002. However, CEQA and its implementing regulations, the CEQA Guidelines, contain various exemptions. Among these are the "Categorical Exemptions" which are categories of common activities that have been determined to not have a significant effect on the environment and are exempt from the requirement for undergoing CEQA review or preparation of CEQA documentation. *See* 14 CCR §§15301 through 15333.

The text of the Categorical Exemption for Existing Facilities exempts "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." 14 CCR §15301. In this case, when the Port approved the Agreement and Lease to continue the current operations at the Pier G Dry Bulk Terminal, it was clearly an activity that fits squarely within such categorical exemption, as it is leasing and licensing existing public structures and facilities with negligible expansion of use beyond what already exists.

Petitioners argue that this exemption cannot be applicable because there will be an expansion in use beyond "negligible." They point to a business term in the Lease regarding a minimum tonnage of coal or "Guaranteed Minimum Annual Throughput" to be shipped. Petitioners argue that because there was no minimum tonnage of coal required to be shipped in prior agreements with Metro, this is evidence of an expansion in use that is beyond "negligible" and therefore the categorical exemption cannot apply. *See* Petition, p.4 ("Rather, a Minimum Tonnage of 1.7 million MT of coal is significantly more than the previous amount of coal required to be shipped, which was 0 MT. The difference between 0 MT per year and 1.7 million

MT per year is not a "minor alteration" nor is it "negligible."). This effort to misconstrue a revision in contract format as an actual increase in use is completely incorrect.

As an initial matter, even Petitioner's own appeal acknowledges that the prior agreement with Metro included a "Guaranteed Minimum Tonnage Dollar Equivalent" that established a minimum export amount that was the dollar value equivalent to a guaranteed minimum tonnage of bulk commodities shipped over a multiple-year period. *See* Petition, p.5. This previous minimum tonnage is actually larger, on an annual basis, than the minimum tonnage of coal to be shipped annually under the Lease. Declaration of Michael Giove, ¶7.

The minimum in the prior agreement applied to all bulk commodities that Metro loaded anywhere on Pier G, whereas the new 1.7 million MT minimum applies only to coal being shipped from the Coal Shed, so the two guaranteed minimums are not directly equivalent. Nevertheless, as the Coal Shed covered by the Lease was formerly included in the minimum under the existing agreement with Metro, the "new" 1.7 million MT minimum under the Lease is part and parcel of Metro's prior requirement. Thus, to suggest that the actual use is increasing, simply because the Agreement and Lease revised how certain payments were to be calculated, is nonsensical.

What matters for purposes of CEQA is the actual use, not contract terms describing how payments will be made for that use. *See Citizens for East Shore Parks v. California State Lands Commission*, 202 Cal.App.4th 549,558 (2011) ("*Citizens*"), citing the California Supreme Court decision *Communities for a Better Environment v. South Coast Air Quality Management District*, 48 Cal.4th 310 (2010) ("... a CEQA baseline must reflect the existing physical conditions in the affected area, that is the real conditions on the ground, rather than the level of development or activity that could or should have been present according to a plan or regulation.").

In this case, the actual use, the "real conditions on the ground" are loading and shipment of 1,543,538 MT of coal in 2013, with a high of 2,356,010 MT of coal in 1996, from the coal shed at Pier G. Declaration of Michael Giove, ¶8. The capacity of the existing facilities to handle bulk goods is not being increased as a result of the Agreement and Lease being approved by the Port. Therefore, the Categorical Exemption for Existing Facilities clearly applies here, as there will be "negligible or no expansion of use" beyond that existing prior to the Port entering into the Agreement and Lease. [1]

[1] Even if the parties to the Lease and Agreement wanted to increase the throughput of coal, there are practical limitations imposed by the capacity of the storage and loading equipment, as well as administrative limits such as permits that impose restrictions on the amount of material loaded.

Asphalt Parking Lots Clearly Fall Within Both Existing Facilities and Replacement and Reconstruction Definitions

Petitioners also argue that removal and replacement of 126,560 square feet of asphalt to be replaced with the exact same square footage of asphalt concrete is not a "minor alteration" and cannot fall within a Categorical Exemption. Petitioners state that the CEQA Guidelines provide examples of existing facilities as being such things as interior partitions, plumbing and electrical conveyances and "in no way contemplates the replacement of large quantities of asphalt as a 'minor alteration.'" *See* Petition, p.5.

To the contrary, in addition to the first category of examples that Petitioner selectively cited, other "existing facilities" categories include existing highways and streets and similar facilities. 14 CCR §15301(c). Highways and streets are clearly examples involving large quantities of asphalt and paving materials. Caltrans regularly relies on the Class 1 categorical exemption for asphalt road repaving projects that are significantly larger than the 126,560 square feet of asphalt repaving contemplated by the Agreement. The table below presents a few examples of recent repaving projects for which Caltrans relied on the Class 1 categorical exemption:

Date	**Road/ Location**	**Length of Highway Repaved (miles)**	**Width of Highway Repaved**	**Total Square Feet**
September, 2011	Interstate 10 in Riverside County[2]	8.2 miles	Four 12' lanes with 3.5' to 10' shoulders	2,727,648 square feet (approx.)
August, 2007	Interstate 10 in Riverside County[3]	8.1 miles	Four 12' lanes with 8' to 10' shoulders	2,822,688 square feet (approx.)

[2] http://www.dot.ca.gov/hq/tpp/offices/opsc/docs/sample_pids/08-0K290K_Supp_PSSR.pdf

[3] http://www.dot.ca.gov/hq/tpp/offices/opsc/docs/sample_pids/08-0K140_CAPM_PR.pdf

Date	Road/ Location	Length of Highway Repaved (miles)	Width of Highway Repaved	Total Square Feet
August, 2007	Route 62 in San Bernardino County[4]	11.7 miles	Two 12' lanes with between 0-5' shoulders.	1,606,176 square feet (approx.)
September, 2011	Route 120 in Stanislaus County[5]	5.1 miles	Either two or four 12' lanes with 12' total shoulders	1, 292,544 square feet (approx.)
September, 2011	Highway 88 in Amador County[6]	5.1 miles	Two 12' lanes with between 0-5' shoulders.	700,128 square feet (approx.)

The 126,560 square feet of asphalt repaving in the Project is a tiny amount when compared to repaving projects of up to 2.8 million square feet carried out by Caltrans in reliance on the Class 1 exemption. Further, regular use of the exemption by Caltrans shows that asphalt repaving much greater than the scale contemplated by the Agreement clearly falls within the type and scope of project contemplated by the exemption, as understood and applied by California public agencies.

The primary purpose of the Agreement is to authorize continued operations and use of existing facilities for materials handling and storage. The maintenance work and the repaving are small components ancillary to this purpose. Indeed, the need for the repaving and maintenance simply underscores the length of time that these activities have continued at this location. The Class 1 exemption was intended to address precisely this circumstance.

Another categorical exemption provided is restoration or rehabilitation of deteriorated or damaged structures or facilities. *See* 14 CCR §15301(d). In addition, the CEQA Guidelines

[4] http://www.dot.ca.gov/hq/tpp/offices/opsc/docs/sample_pids/08-0J950_CAPM_PR.pdf

[5] http://www.dot.ca.gov/hq/tpp/offices/opsc/docs/sample_pids/10-0V680_.pdf

[6] http://www.dot.ca.gov/hq/tpp/offices/opsc/docs/sample_pids/10-0W600_.pdf

state that "[t]he types of 'existing facilities' itemized below are not intended to be all-inclusive of the types of project which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use." Replacing a deteriorated asphalt parking lot with a new asphalt concrete parking lot is squarely within the type of existing facility contemplated by this Class 1 categorical exemption.

Alternatively, the Class 2 categorical exemption "consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced." *See* 14 CCR 15302. Petitioners assert that this exemption cannot apply since asphalt is neither a structure nor a facility; nor do they believe the replacement is "minor." *See* Petition, p.6. Petitioners provide no authority for their assertion that asphalt is not a structure or facility or that this exemption only applies to minor replacement or reconstruction.

The replacement needs to be viewed in the context of the overall project and, clearly, when regarded in relation to the remainder of the operations contemplated by the Agreement, the replacement of the existing asphalt fits within the terms of this categorical exemption, located on the same site and having substantially the same purpose and capacity of the asphalt being replaced. Similarly, in *Dehne v. County of Santa Clara* (1981), 115 Cal.App.3d at 842, the Court of Appeal ruled that the Class 2 categorical exemption for replacement of existing structures at the same site applied to the reconstruction of large portions of a cement factory. Although the reconstructed facility would have the same output capacity of 1.6 million tons of cement per year, the manufacturing plant would be replaced nearly in its entirety, including the replacement of six cement kilns with one large cement kiln, the removal of five smokestacks, and the installation of new facilities to burn coal for energy, which was not previously possible. The challengers claimed that the project would change the "purpose and capacity" of the facility such that the categorical exemption would not apply. *Id.* at p.839.

The court rejected this argument, stating that the "same purpose and capacity" requirement "speaks only to the productive purpose and capacity of the old and new plants. It does not demand minute scrutiny of each of the individual components." *Id.* Thus, so long as the ultimate output product and capacity was the same, the reconstruction project had the same purpose and capacity for the purposes of the Class 2 exemption.

The *Dehne* court also rejected the argument that the project was too large to warrant application of the Class 2 exemption, finding the CEQA Guidelines make it clear that no size limitation was intended to apply to it. *Id.* at 841-42 ("We find no support for this contention, and, in the absence of any legislative pronouncement on the subject, believe it inappropriate for a court to determine when, if ever, a particular project should be deemed too large to qualify for this categorical exemption."). The court also cited *Union Oil Co. v. South Coast Regional Com.*, 92 Cal.App.3d 327, 329 (1979), in which use of the Class 2 exemption had been applied to the reconstruction of an entire port oil terminal.

Simply put, since the Class 2 exemption applies to the massive reconstruction projects in Dehne and Union Oil, it should certainly apply to the parking lot repaving here. Unlike Dehne and Union Oil, the Pier G approvals do not involve wholesale replacement of a facility, but only maintenance for and reconstruction of certain select components. The work does not increase the capacity of any of the structures and facilities covered under the Project, and clearly falls within the exemption.

Moreover, Pier G and the parking lots consist of structures and facilities as those terms are commonly understood and under CEQA. The Petitioners argue without citation to authority that the Dehne case does not apply here because the replacement of asphalt does not count as the replacement of a "structure" or "facility" under the Class 2 exemption. See Petition, p.7. This ignores the fact that the Categorical Exemption for "Existing Facilities" provides examples of existing facilities that clearly include replacement of asphalt, as discussed above, so by the plain language of the CEQA Guidelines, the asphalt parking lots are facilities. Furthermore, it would be unreasonable to find the CEQA exemptions would apply to the large-scale reconstruction of a cement factory (as in *Dehne*) and an entire dock (as in *Union Oil*) but not to the reconstruction of a parking lot within a pier facility. Accordingly, the Class 2 CEQA exemption was properly applied as a parking lot is a facility by the plain language of the term and the practice of California public agencies.

Existing Use of Facilities Has Already Been Determined Not to Have a Significant Environmental Impact

Moreover, the existing use of these facilities for coal exports has already been analyzed under CEQA and determined to create no significant environmental impact. In 1981, the Port specifically sought to increase the coal handling capacity of the bulkloading facilities at Pier G to 5 million MT per year. To increase the coal handling capacity to that level, significant modifications to the facility were required, including construction of a second shiploader, installation of new conveyors, expansion of supporting railyards, increasing dockside water depth by dredging and use of a cantilever bulkhead, as well as other supporting modifications. This project was approved, including assessment of environmental impacts under CEQA that resulted in a Negative Declaration, in 1982, a copy of which was submitted in Attachment 9, Additional Reference Documents, to the Harbor Department's submittal and recommendation to this Council, and construction was largely completed in 1985.

There have been other modifications made to the Pier G facilities and equipment since that time, including the construction of the Coal Shed, which have been for the purpose of further improving the bulkloading facilities, especially for coal, petroleum coke and sulphur. Such additional modifications, and any incremental increase in coal handling capacity that might have resulted, have also undergone environmental review under CEQA with a resulting determination that there was no significant impact. *See, for example*, Negative Declaration by Port dated February 4, 1985, for Port Development Permit HDP-84169 (construction of sulphur storage and prilling facility); Negative Declaration adopted by Port on July 21, 1986, for Port Development

Permit HDP-86047 (construction of petroleum coke storage and loading facilities); Negative Declaration adopted by Port on May 21, 1990, for Port Development Permit HDP-90022 (improvements to petroleum coke storage and conveyor facilities); Negative Declaration adopted by Port on November 23, 1992, for Port Development Permit HDP-91046 (construction of Coal Shed); Negative Declaration adopted by Port on July 28, 1997, for Port Development Permit HDP-97042 (construction of new buildings and water treatment system), all of which were submitted in Attachment 9 to the Harbor Department's submittal.

As such, the Port's decisions to proceed with improvements to increase Pier G's bulkhandling facilities to their present state were final many years ago, and now carry a legal presumption that such approved uses create no significant environmental impact as was determined in the applicable environmental review documentation. *See Snarled Traffic Obstructs Progress v. City & County of San* Francisco, 74 Cal.App.4th 794, 797 (1999)("[a]s a general rule, once a negative declaration is issued or an [environmental impact report] is completed, that decision is protected by concerns for finality and presumptive correctness"). Petitioners' opportunity to object to or appeal the CEQA determinations regarding the existing use of Pier G pursuant to the Operating Agreement and the Lease have been barred as no appeal was commenced within the time periods set forth for such actions. *Public Resources Code §§ 21167, 21167(c).* Thus, the City Council can rely on its prior determinations that no significant environmental impact has been created by the approved current uses.

Speculative Impacts Need Not Be Considered

The Petitioners argue further that the Lease allows the Executive Director of the Port to increase the minimum tonnage after the first five years. *See* Petition, p.4 ("That means that in year 6, the Executive Director could potentially require a minimum of 10 million MT of coal to be shipped through Pier G under his sole and absolute discretion. That is not 'negligible.'"). Any suggestion of what the Executive Director might or might not require for minimum tonnage five years from now is speculation, as such a decision will involve review of many factors as they exist at that time, not as they exist currently. Equipment capabilities, permit limitations, impacts on other businesses utilizing the Port and a host of other variables will all need to be taken into account. An environmental impact that is speculative is not reasonably foreseeable and does not need to be considered. *See* 14 CCR §15064(d)(3).

Furthermore, the Executive Director does not have the "discretion" to set the minimum tonnage at a level greater than the capacity of the facility's shiploading equipment. As discussed above, the Port upgraded the Pier G coal handling capacity to 5 million MT per year in a significant construction project that was approved in 1982, with completion of construction in approximately 1985. Other development projects have also been completed at Pier G since that date, as discussed above, which have not substantially increased the facility's capacity to load coal, although some incremental gains may have been achieved. Therefore, the Executive Director could not unilaterally require 10 million MT of coal be shipped and would, instead,

need to undertake physical changes to the facility or its equipment that would require further CEQA review at that time.

Long List of Alleged Indirect Impacts Do Not Need To Be Reviewed

Petitioners also assert that a host of indirect effects, economic as well as environmental, must be reviewed because these effects were not analyzed under CEQA previously. *See* Petition, p.11 ("This includes the direct, indirect, and cumulative impacts of coal export on public health, public safety, economics, marine health, public investment, and climate change."). Petitioners provide no authority for their assertion that such a vast universe of remote impacts must be reviewed under CEQA, and the CEQA Guidelines negate that assertion. *See* 14 CCR 15131(a) ("Economic or social effects of a project shall not be treated as significant effects on the environment.").[7]

Metro disagrees that it is necessary to review this parade of alleged impacts to determine which have been reviewed before, which have not, which are too remote to be considered, etc. For purposes of CEQA, the impacts of the proposed project, in this case the loading of ships at Pier G under the Lease and the Agreement, are to be compared to the baseline of the actual environmental conditions at the time of the CEQA determination, meaning the current uses of those facilities, which are the same. This is true regardless of how those actual environmental conditions came to exist or whether those conditions had ever been reviewed under CEQA. *See Citizens, supra, at 559.* Even if Petitioners were able to establish some measure of causation between their long list of indirect environmental effects and shipment of coal through the Port, those impacts would be true for the current use, as well. Only changes from the baseline -- the current use -- are to be evaluated for significance under CEQA. Petitioners cannot "turn back the clock" and insist on comparison to a baseline that excludes existing conditions, whether or not those conditions were previously reviewed under CEQA. *Riverwatch v. County of San Diego* (1999)76 Cal.App.4th 1428 (finding that even an illegal mining operation was part of the existing use for purposes of establishing a baseline).

In an oft-cited California Court of Appeal decision involving the Existing Facilities exemption, plaintiff petitioner contended that issuance of a medical waste permit to an on-going facility that previously did not require such a permit could not be exempted from CEQA review under the Existing Facilities categorical exemption because the facility had never been subject to CEQA review. The Court of Appeal rejected this argument, adopting reasoning by the

---

[7] Metro also points out the significant challenges that would be posed if this very wide-ranging set of national and global environmental and economic impacts were to be addressed in all future CEQA reviews by the Port of not just the environmental impacts of Port facilities, but also of the products being shipped through the Port's facilities. As noted by the California Supreme Court, common sense is an important consideration at all levels of CEQA review. *See Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal.4th 155 (2011).

California Supreme Court on a different exemption, to state that the question is limited to what is the "existing facility" at the time of the agency's determination that it is exempt, regardless of whether that existing facility had previously been subject to CEQA review, and that there was no need to examine past CEQA compliance. The Court allowed the use of the Existing Facilities exemption in that case. *Bloom v. McGurk*, 26 Cal.App.4th 1307 (1994). Similarly here, the issue is whether there is a change from the existing use, not whether there are alleged indirect and cumulative impacts that were not considered when the Port issued its Negative Declaration in 1982 for the project to increase the coal loading capacity of Pier G to 5 million MT per year.

Furthermore, Petitioners assert that the CEQA analysis must take into account the entire lifecycle of the coal being shipped, including extraction, transportation, combustion, and disposal of the combustion waste. Almost all of these impacts are far away from Pier G and all would occur whether the Lease and Agreement are approved or whether the coal is shipped through other ports. Such "lifecycle" impacts need not be considered under CEQA. When the California Natural Resources Agency amended the CEQA Guidelines to address analysis and mitigation of greenhouse gas emissions in December 2009, the Final Statement of Reasons for Regulatory Action ("FSOR") explained that the term "lifecycle" had been removed from Appendix F, Energy Conservation, because it was confusing and could refer to emissions beyond those that could be considered an "indirect effect" of a project. "CEQA only requires analysis of impacts that are directly or indirectly attributable to the project under consideration." The FSOR goes on to provide the example of emissions from manufacturing of materials to be used in a project as "lifecycle" impacts that need not be considered because those emissions are not "caused by" the project under consideration. Likewise, the impacts of the entire lifecycle of the coal from extraction to combustion are not "caused by" the Agreement or the Lease. http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf (p.71).

"Significant Effect" Exception Does Not Apply Here

The Petitioners also argue that even if the project otherwise qualifies, the CEQA Guidelines state that "a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." 14 CCR §15300.2(c). This involves two distinct inquiries: whether the project presents unusual circumstances and whether there is a reasonable probability that a significant environmental impact will result from those unusual circumstances. *Voices for Rural Living v. El Dorado Irrigation District* (2012) 209 CA 4th 1096; *Banker's Hill, Hillcrest, Park W. . Community Preservation Group v. City of San Diego*, (2006) 140 CA4th 249, 261. "A negative answer to either question means the exception does not apply." *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 CA4th 786, 800. There are no unusual circumstances here, much less any significant environmental impacts resulting from unusual circumstances. Petitioners repeat their arguments discussed above regarding alleged increases in coal shipped and replacement of asphalt as evidence of the significance of the impacts, which are

incorrect but, in any event, are not "unusual circumstances" for on-going operation of an existing facility.

Petitioners also briefly allege that Greenhouse Gas ("GHG") emissions from coal are an "unusual circumstance", but fail to address the fact that the longstanding and current use of the facility is to load coal onto ships for transport, so it is hardly unusual to simply continue to do so under the Lease and Agreement. In addition, Public Resources Code section 21084(b) states: "A project's greenhouse gas emissions shall not, in and of themselves, be deemed to cause an exemption adopted pursuant to subdivision (a) to be inapplicable if the project complies with all applicable regulations or requirements adopted to implement statewide, regional, or local plans consistent with Section 15183.5 of Title 14 of the California Code of Regulations."

Conclusion

Metro has a long history of working with and at the Port of Long Beach and looks forward to continuing that relationship in the future. Metro urges the Mayor and City Council to deny this Petition and uphold the Port's correct determination that the Agreement and Lease are categorically exempt from CEQA review.

Very truly yours,

Kristen Thall Peters

Attachments:
A. Declaration of Michael Giove

Attachment A

DECLARATION OF MICHAEL F. GIOVE

I, Michael F. Giove, hereby declare:

1. I am the Chief Operating Officer ("COO") of Nautilus International Holding Corporation ("Nautilus"). I am making this declaration in connection with the response of Metropolitan Stevedore Company ("Metro") to the petition for appeal filed by Communities for a Better Environment, the Natural Resources Defense Council, and the Sierra Club of the approval of Metro's new Operating Agreement ("New Operating Agreement") with the City of Long Beach (the "City") for shiploading activities at Pier G and an associated Lease ("New Lease") by the City with Oxbow Energy Solutions, LLC ("Oxbow"). The facts in this declaration are true, and are stated based on my own personal knowledge.

2. As COO of Nautilus, I am responsible for all operational functions of Metro Ports, the cargo group of Nautilus, including the operations of its subsidiary, Metro, at the Port of Long Beach. I am familiar with the operations of Metro at the Port of Long Beach, Pier G, under that certain Second Amended and Restated Preferential Assignment Agreement (the "Current Agreement"). I am also familiar with the terms of the New Operating Agreement that was approved on June 23, 2014 that is intended to replace the Current Agreement.

3. Metro has been providing terminal operations and stevedoring services at the Port of Long Beach since 1923. Metro began operating at the Pier G dry bulk terminal in 1962 and has operated the primary shiploading facility at Berths 212-215, Pier G since that time.

4. Metro currently provides terminal operations services at Pier G under the Current Agreement. The Current Agreement will be terminated early by the applicable parties with Metro entering into the New Operating Agreement with the City and Oxbow entering into a New Lease with the City. Absent early termination, the Current Agreement would not expire until 2016.

5. Prior to approval of the New Operating Agreement, the Port provided a list of repair and maintenance activities that it requested be addressed, and which Metro has addressed, has issued work orders to address, or will address in undertaking its obligations under the New Operating Agreement. None of these activities involved fundamental alterations of the facilities or equipment and will not increase their loading capacity; rather, these activities were intended to assure that facilities and equipment were in proper repair and could continue to be used safely and efficiently now and into the future.

6. Metro's activities at Pier G are fundamentally the same under the Current Agreement and the New Operating Agreement: there will be no change of use or capacity. Metro operates the wharf, ship loaders, and various conveyor systems to load dry bulk commodities such as coal, petroleum coke and soda ash onto ships. Metro does not own the commodities being loaded, nor the ships. One distinction between the Current Agreement and the New Operating Agreement is that, under the Current Agreement, Metro subleases an approximately 5.4-acre pad and coal shed (the "Coal Shed") to Oxbow for stockpiling Oxbow's coal as it is offloaded from railroad cars, to be loaded onto ships by Metro. Under the New Operating Agreement, Metro no longer leases or is assigned that Coal Shed, which will, instead, be leased directly to Oxbow by the City. The terms of