

OFFICE OF THE CITY ATTORNEY
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RESOLUTION NO. RES-14-0069

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3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH AFFIRMING THE
5 DETERMINATION BY THE BOARD OF HARBOR
6 COMMISSIONERS THAT THE APPROVALS OF THE
7 OPERATING AGREEMENT WITH METROPOLITAN
8 STEVEDORE COMPANY AND THE LEASE WITH OXBOW
9 ENERGY SOLUTIONS LLC ARE EXEMPT FROM THE
10 CALIFORNIA ENVIRONMENTAL QUALITY ACT AND
11 FURTHER DO NOT TRIGGER THE NEED FOR
12 ADDITIONAL ENVIRONMENTAL REVIEW PURSUANT TO
13 PUBLIC RESOURCES CODE SECTION 21166 AND
14 MAKING FINDINGS RELATING THERETO
15

16 WHEREAS, the Pier G dry bulk terminal (Terminal) within the Port of Long
17 Beach has been in operation for the export of dry bulk commodities since the early
18 1960's, and Metropolitan Stevedore Company (Metro) has provided the terminal
19 operating services at the Terminal since approximately 1962; and

20 WHEREAS, a large portion of the Terminal improvements and
21 infrastructure were installed prior to the 1970 enactment of the California Environmental
22 Quality Act (CEQA); and

23 WHEREAS, certain improvements were made to the Terminal following the
24 enactment of CEQA, and those improvements were reviewed in accordance with CEQA,
25 including the Pier G Bulk Facility Modification Project approved following the adoption of
26 a Negative Declaration in 1982, which project increased the annual throughput capacity
27 of the Terminal to 5 million metric tons of coal, 3.7 million metric tons of petroleum coke,
28 and 370,000 metric tons of white bulk commodities; and

1 WHEREAS, Metro currently provides terminal operating services at the
2 Terminal pursuant to a Preferential Assignment Agreement that originally became
3 effective April 1, 1981 and which has been updated and amended from time to time; and

4 WHEREAS, in 1992 the City of Long Beach, acting by and through its
5 Board of Harbor Commissioners (Board), adopted a Negative Declaration in accordance
6 with CEQA for the construction and operation of a coal shed (Coal Shed) at the
7 Terminal; and

8 WHEREAS, in anticipation of the construction of the Coal Shed and its
9 proposed lease to Metro, the Board in 1992 entered into an Amended and Restated
10 Preferential Assignment Agreement with Metro (Amended PAA) which included
11 Guaranteed Minimum Tonnage (GMT) payment requirements that were increased by
12 12,380,000 metric tons for a five year period (or 2,476,000 metric tons annually) after the
13 Coal Shed was completed; and

14 WHEREAS, the Harbor Department of the City of Long Beach has invested
15 over \$35 million in the initial construction of the Coal Shed and subsequent
16 improvements thereto; and

17 WHEREAS, Oxbow Carbon & Minerals, LLC currently operates the Coal
18 Shed pursuant to a subassignment with Metro that was approved most recently by the
19 Board in 2010; and

20 WHEREAS, Oxbow Carbon & Minerals, LLC, and its affiliates, including
21 without limitation Oxbow Energy Solutions LLC, are referred to hereinafter collectively as
22 "Oxbow"; and

23 WHEREAS, Oxbow is currently the only dry bulk commodities exporter
24 utilizing the Coal Shed, through which it exports primarily coal, along with a smaller
25 amount of petroleum coke; and

26 WHEREAS, Oxbow's annual combined throughput for the Coal Shed,
27 stated in metric tons, was 1,630,196 in 2012 and 1,569,644 in 2013; and

28 WHEREAS, based upon the first six months of 2014, the combined

1 throughput for the Coal Shed for 2014 will be approximately 1,724,016 metric tons; and

2 WHEREAS, during the last four years of Oxbow's operation of the Coal
3 Shed, the annual throughput of petroleum coke has been less than 100,000 metric tons;
4 and

5 WHEREAS, the existing permits and agreements relating to the Terminal,
6 including the Coal Shed, contain no cap or upper limit on the amount of coal that can be
7 exported through the Terminal; and

8 WHEREAS, the annual coal throughput of the Coal Shed has varied over
9 the years, but has been as high as approximately 2.35 million metric tons; and

10 WHEREAS, staff of the Harbor Department evaluated the current
11 arrangements with Metro and Oxbow and determined that the existing agreements
12 should be modified to increase the revenue to the Harbor Department and to require
13 Metro to complete certain maintenance, repairs and replacements at the Terminal; and

14 WHEREAS, staff of the Harbor Department presented to the Board for
15 consideration a new Operating Agreement with Metro and a new Lease with Oxbow that
16 would extend the term of the existing occupancies, modify the rent and other financial
17 terms of the agreements to increase the income to the Harbor Department, create a
18 direct leasing relationship between the Harbor Department and Oxbow for the Coal Shed,
19 and require Metro to complete certain specified maintenance, repairs and replacements
20 at the Terminal; and

21 WHEREAS, the new agreements do not require changes in the operation
22 of the Terminal or the Coal Shed and do not affect the capacity of the Terminal or the
23 Coal Shed; and

24 WHEREAS, the Harbor Department Director of Environmental Planning
25 determined that the Board's approvals of the Operating Agreement and the Lease were
26 categorically exempt pursuant to Sections 15301 and 15302 of the CEQA Guidelines
27 adopted by the Secretary of the California Natural Resources Agency and found at Title
28 14 of the California Code of Regulation Section 15000 and following, and that with

1 respect to the Lease there is no significant new information that would require additional
2 environmental review pursuant to Public Resources Code Section 21166 and CEQA
3 Guidelines Section 15162; and

4 WHEREAS, on May 27, 2014, the Board approved the first reading of
5 Ordinance No. HD-2188 which approved the Operating Agreement with Metro and the
6 first reading of Ordinance No. HD-2187 which approved the Lease with Oxbow and found
7 the approvals of the agreements to be categorically exempt from CEQA and that the
8 approval of the Lease did not trigger the need for additional environmental review under
9 Public Resources Code Section 21166 and CEQA Guidelines Section 15162; and

10 WHEREAS, on June 9, 2014, the Board approved the second reading of
11 Ordinance No. HD-2188 which approved the Operating Agreement with Metro and the
12 second reading of Ordinance No. HD-2187 which approved the Lease with Oxbow and
13 made the same CEQA determinations and findings; and

14 WHEREAS, on June 23, 2014, Earthjustice on behalf of Communities for a
15 Better Environment, the Natural Resources Defense Council and the Sierra Club
16 (Appellants) appealed the Board's CEQA determinations for the Operating Agreement
17 and Lease to the City Council pursuant to Long Beach Municipal Code Section
18 21.21.507; and

19 WHEREAS, on July 28, 2014, Appellants received notice that the appeal
20 would come before the Long Beach City Council on August 19, 2014; and

21 WHEREAS, the appeal was placed upon the agenda of the City Council,
22 and Appellants and other interested parties had notice and an opportunity to be heard in
23 a public hearing held on August 19, 2014; and

24 WHEREAS, the City Council has carefully considered the documentation
25 and testimony submitted in favor of and in opposition to the appeal.

26 NOW THEREFORE, the City Council of the City of Long Beach resolves as
27 follows:

28 Section 1. The City Council hereby finds and determines that the

1 approvals of the Operating Agreement and the Lease are categorically exempt from the
2 provisions of CEQA in accordance with CEQA Guidelines Sections 15301 and 15302 for
3 the reasons stated in the staff report to the City Council, the documents attached to the
4 staff report, the Additional Reference Documents provided by compact disc, and the
5 presentation by City staff during the hearing. The actions by the Board relating to the
6 Operating Agreement and the Lease fit within CEQA Guidelines Sections 15301 and
7 15302, and Appellants' arguments to the contrary are without merit. In addition, none of
8 the exceptions contained in CEQA Guidelines Section 15300.2 apply. Specifically, there
9 is not a reasonable possibility of a significant effect on the environment due to unusual
10 circumstances, nor will approval of the new Operating Agreement or the Lease result in
11 any significant cumulative impacts. The Council finds this to be the case regardless of
12 whether the "fair argument" or substantial evidence" standard applies. Appellants have
13 not met their burden under either standard.

14 Section 2. The City Council further finds and determines that even if the
15 Lease was not exempt from CEQA, the requirement for environmental review under
16 Public Resources Section 21166 and CEQA Guidelines Section 15162 would not be
17 triggered for the following reasons:

18 (a) There are no changes proposed to the Pier G Coal Shed or its
19 operations which would result in any new or substantively more severe impacts
20 compared to the Coal Shed as described in the 1992 Negative Declaration. The only
21 changes proposed to the Terminal are minor maintenance, repairs and replacements to
22 existing facilities. In addition, the "Environmental Covenants" that are attached as Exhibit
23 B and made part of the Lease are all designed to improve the environmental impacts of
24 the existing operation. While the Lease does contain a finance term relating to a GMT,
25 the GMT is an economic term that guarantees the Port certain minimum wharfage and
26 shiploading fees as part of the minimum annual compensation for the Coal Shed. During
27 the first five years of the Lease, the GMT is based on an estimated throughput of 1.7
28 million metric tons of coal. This volume is consistent with recent throughput figures and

1 is substantially less than both the GMT originally imposed in connection with the Coal
2 Shed and the highest annual throughput for the Coal Shed. A GMT provision is very
3 commonly used in agreements with port tenants and throughout the industry generally. It
4 is not a penalty clause and does not mandate or cause any level of throughput. It is only
5 an economic term of the agreement. The referenced GMT is within the capacity of the
6 existing facility and attaining that throughput requires no physical modification of the
7 facility. Therefore, that level of throughput remains within the scope of the 1992 Negative
8 Declaration.

9 (b) The circumstances under which the Coal Shed will continue to operate
10 have not changed substantially compared to the circumstances that existed in 1992 such
11 that any new or substantially more severe environmental impacts would result from the
12 Lease. As a result of the Port's Clean Air Action Plan, emissions from activities at the
13 Port have decreased substantially. Since 2005, there has been an 81% drop in
14 particulate matter, a 54% drop in NOX emissions, an 88% drop in SOX emissions and a
15 24% drop in greenhouse gas (GHG) emissions. See Air Emissions Inventory – 2012
16 (Starcrest Consulting Group, LLC, July 2013), posted at
17 [www.polb.com/environment/airquality/emissions inventory documents](http://www.polb.com/environment/airquality/emissions%20inventory%20documents).

18 (c) There is no “new information” that would trigger the “new information”
19 prong of Section 21166. Such “new information” must be “of substantial importance,
20 which was not known and could not have been known with the exercise of reasonable
21 diligence at the time the previous . . . negative declaration was adopted. . . .” (CEQA
22 Guideline 15162(a)(3).) The City Council finds that no such new information has been
23 presented. As referenced in the Harbor Department's detailed response to the appeal,
24 there is substantial evidence that the information that Appellants allege is new, in fact, is
25 not new and was reasonably available at the time the 1992 Negative Declaration was
26 adopted.

27 Section 3. Based on the above findings and determinations, the City
28 Council affirms the determinations of the Board that (1) the approvals of the Operating

1 Agreement and the Lease are categorically exempt from CEQA and do not require
2 additional environmental review, and (2) the approval of the Lease does not result in the
3 need for any subsequent environmental review pursuant to Public Resources Code
4 Section 21166 or CEQA Guidelines Section 15162.

5 Section 4. The City Council further finds and determines that the ongoing
6 use of the existing structures and facilities at the Terminal is also exempt from CEQA
7 pursuant to CEQA Guideline 15261(a) since a large portion of the Terminal was
8 developed prior to the enactment of CEQA. In addition, the City Council finds and
9 determines that the improvements to the Terminal that have been made since then have
10 been assessed pursuant to CEQA, and those assessments, which were not challenged in
11 court and are final and conclusive, determined that the improvements did not create any
12 new significant environmental impacts.

13 Section 5. The City Council further finds and determines that the appeal
14 of the Board's CEQA determinations is without merit and is hereby rejected. All grounds
15 raised in the appeal were adequately addressed in the documents provided to the City
16 Council and in testimony during the public hearing in this matter.

17 Section 6. The Harbor Department Director of Environmental Planning,
18 whose office is located at 4801 Airport Plaza Drive, Long Beach, California 90815, is
19 hereby designated as the custodian of the documents and other materials which
20 constitute the record of proceedings upon which the City Council's decision is based,
21 which documents and materials shall be available for public inspection and copying in
22 accordance with the provisions of the California Public Records Act (Cal. Government
23 Code Sec. 6250 et seq.).

24 Section 7. The Harbor Department Director of Environmental Planning
25 shall file a notice of exemption as to both the Operating Agreement and the Lease with
26 the County Clerk of the County of Los Angeles and with the State Office of Planning and
27 Research, and with regard to the Lease, shall further file a notice of determination
28 relating to the findings under Public Resources Code Section 21166 and CEQA

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1 Guidelines Section 15162. These notices shall lift the stay imposed on the prior notices
2 issued for the Operating Agreement and the Lease by reason of the filing of the appeal in
3 accordance with Long Beach Municipal Code Section 21.21.507.F.

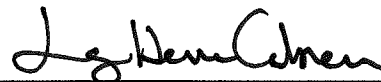
4 Section 8. This resolution shall take effect immediately upon its adoption
5 by the City Council, and the City Clerk shall certify to the vote adopting this resolution.

6 I hereby certify that the foregoing Resolution was adopted by the City
7 Council of the City of Long Beach at its meeting of August 19, 2014 by the following vote:

8
9 Ayes: Councilmembers: Gonzalez, Lowenthal, Price, O'Donnell,
10 Mungo, Andrews, Uranga, Austin,
11 Richardson.

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13 Noes: Councilmembers: None.

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15 Absent: Councilmembers: None.

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19 _____
20 City Clerk

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28 BJM:cao A14-00217 (08/19/14)
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