

OFFICE OF THE CITY ATTORNEY  
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Long Beach, CA 90802-4664

RESOLUTION NO. RES-09-0049

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AFFIRMING THE CERTIFICATION OF THE ENVIRONMENTAL IMPACT STATEMENT/ ENVIRONMENTAL IMPACT REPORT FOR THE MIDDLE HARBOR REDEVELOPMENT PROJECT (SCH No. 2004091010) BY THE BOARD OF HARBOR COMMISSIONERS AND MAKING CERTAIN FINDINGS

WHEREAS, on November 5, 2003, the Deputy Chief Harbor Engineer of the Long Beach Harbor Department submitted an application for a Harbor Development Permit (HDP) for the Port of Long Beach Middle Harbor Redevelopment Project (Project); and

WHEREAS, the Project concerns Piers D, E, and F and would rehabilitate or replace obsolete terminal facilities; provide deeper water at berths and in basins and channels; create new land; modernize marine terminal facilities; implement environmental controls, including the Port's Green Port Policy and Clean Air Action Plan; and expand the existing 294-acre site, consisting of the Pier E terminal, the Pier F terminal, 18 acres of underutilized land north of the Gerald Desmond Bridge and Ocean Boulevard, and the Berth E24 subsided oil area, into a single, modern 345-acre terminal; and

WHEREAS, in addition to the HDP, the Project would require the issuance of permits by the U.S. Army Corps of Engineers (USACE) authorizing work and structures in the navigable waters of the United States and the discharge of fill in those waters; and

WHEREAS, the City of Long Beach, acting by and through its Board of Harbor Commissioners (Board), is the lead agency for California Environmental Quality Act (CEQA) (Public Resources Code §§ 21000 *et seq.*) compliance for the Project, and USACE is the federal lead agency for National Environmental Policy Act (NEPA) (42

1 USC §§ 4341 *et seq.*) compliance for the Project; and

2 WHEREAS, the Board determined that because the Project could have a  
3 significant effect on the environment, an Environmental Impact Report (EIR) should be  
4 prepared to assess the environmental impacts associated with the construction and  
5 operation of the Project; and

6 WHEREAS, USACE determined that an Environmental Impact Statement  
7 (EIS) should be prepared to assess the environmental impacts associated with the  
8 issuance of the federal permits authorizing work and structures in the navigable waters of  
9 the United States and the discharge of fill in those waters; and

10 WHEREAS, the Board and USACE jointly prepared a combined Draft  
11 EIS/EIR in the interest of efficiency and to avoid duplication of effort; and

12 WHEREAS, USACE will consider approval of the EIS separate from the  
13 Board's consideration of the EIR; and

14 WHEREAS, a Notice of Preparation (NOP) of the Draft EIS/EIR was mailed  
15 to public agencies, organizations, and persons likely to be interested in the potential  
16 impacts of the proposed Project on December 19, 2005, and two public scoping meetings  
17 were thereafter held on January 30, 2006, and February 6, 2006, to gather public and  
18 agency comments concerning the preparation of the Draft EIS/EIR; and

19 WHEREAS, the Board and USACE thereafter jointly caused the Draft  
20 EIS/EIR to be prepared, which took into account the comments received on the NOP,  
21 described the Project, the environmental impacts resulting therefrom, and the proposed  
22 mitigation measures; and

23 WHEREAS, on May 19, 2008, the Draft EIS/EIR was circulated for public  
24 and agency review and comment; and

25 WHEREAS, public hearings were held on the Draft EIS/EIR on June 11,  
26 2008 and June 18, 2008, which hearings were noticed by publications in the Press-  
27 Telegram, a newspaper of general circulation, and by news releases in the Press  
28 Telegram, the Business Journal, and the Gazettes, as well as through letters, e-mail

1 blasts, postings on the City's website, and contacts with over 100 organizations; and

2 WHEREAS, the public comment period, as extended, closed on August 8,  
3 2008; and

4 WHEREAS, the comments received on the Draft EIS/EIR were reviewed,  
5 and full and complete responses thereto were prepared and distributed on April 2, 2009,  
6 in accordance with Public Resources Code section 21092.5; and

7 WHEREAS, the Final Environmental Impact Report (Final EIR) for the  
8 Project was presented to the Board for certification as having been completed in  
9 compliance with the provisions of CEQA and the State and local CEQA Guidelines; and

10 WHEREAS, the Board carefully reviewed and considered all environmental  
11 documentation comprising the Final EIR, including the Draft EIS/EIR and the comments  
12 and the responses thereto, and found that the Final EIR considers all potentially  
13 significant environmental impacts of the proposed project and is complete and adequate,  
14 and fully complies with all requirements of CEQA and the State and local CEQA  
15 Guidelines; and

16 WHEREAS, prior to action on the Project, the Board considered all  
17 significant impacts, mitigation measures, and Project alternatives identified in the Final  
18 EIR and found that all potentially significant impacts of the Project have been lessened or  
19 avoided to the extent feasible; and

20 WHEREAS, on April 13, 2009, the Board pursuant to Resolution No.  
21 HD-2498 certified the Final EIR, made certain findings and determinations relative  
22 thereto, adopted a statement of overriding considerations, adopted a mitigation  
23 monitoring and reporting program, approved the Project, adopted the application  
24 summary report for the Project and approved a HDP for the Project; and

25 WHEREAS, on April 23, 2009, the City of Riverside and the City of  
26 Commerce appealed the certification of the Final EIR by the Board pursuant to California  
27 Public Resources Code section 21151(c) and Long Beach Municipal Code section  
28 21.21.507; and

1 WHEREAS, on April 27, 2009, the City of Riverside and the City of  
2 Commerce received notice pursuant to Long Beach Municipal Code section 21.21.507  
3 that their appeals of the certification of the Final EIR would come before the Long Beach  
4 City Council on May 12, 2009; and

5 WHEREAS, on April 27, 2009, the Coalition for a Safe Environment and a  
6 coalition of groups consisting of the Center for Biological Diversity, Change to Win,  
7 Coalition for a Safe Environment, Communities for Clean Ports, East Yard Communities  
8 for Environmental Justice, International Brotherhood of Teamsters, Long Beach Coalition  
9 for a Safe Environment, Long Beach Community Partners Council, Theral Golden, Los  
10 Angeles Alliance for a New Economy, Natural Resources Defense Council and West  
11 Long Beach Association (CBD et al.) appealed the certification of the Final EIR by the  
12 Board pursuant to California Public Resources Code section 21151(c) and Long Beach  
13 Municipal Code section 21.21.507; and

14 WHEREAS, on April 28, 2009, CBD et al. and Coalition for a Safe  
15 Environment received notice pursuant to Long Beach Municipal Code section 21.21.507  
16 that their appeals of the certification of the Final EIR would come before the Long Beach  
17 City Council on May 12, 2009.

18 NOW, THEREFORE, the City Council of the City of Long Beach resolves as  
19 follows:

20 Section 1. Based on its independent review and consideration of  
21 Resolution No. HD-2498, the Final EIR, the appeals filed by the City of Riverside, the City  
22 of Commerce, the Coalition for a Safe Environment and CBD et al., and all written  
23 communications and oral testimony regarding the Project which have been submitted to  
24 and received by the Council, the City Council finds as follows:

25 1.1 Recitals. The above recitals are true and correct.

26 1.2 Scope of Appeal. California Public Resources Code Section  
27 21151(c) provides that if a nonelected decisionmaking body of a local agency certifies an  
28 environmental impact report, that certification may be appealed to the agency's elected

1 decisionmaking body, if any. Pursuant to Long Beach Municipal Code Section  
2 21.21.507, any person who appeared before the Board and objected to the Board's  
3 certification of the Final EIR may appeal that determination to the City Council. Following  
4 the hearing, the City Council may either (1) deny the appeal and affirm the certification of  
5 the Final EIR, or (2) grant the appeal, set aside the certification of the Final EIR and  
6 remand to the Board.

7 1.3 Certification. The Final EIR for the Project has been  
8 completed in compliance with CEQA and the State and local CEQA Guidelines. The  
9 Board, having final approval authority over the Project, properly adopted and certified as  
10 complete and adequate the Final EIR, which reflected the independent judgment and  
11 analysis of the Board. The Board further certified that the Final EIR was presented to the  
12 Board and the Board reviewed and considered the information contained in its prior to  
13 approving the Project.

14 1.4 The Challenges by Appellants Are Without Merit. All grounds  
15 raised during the appeal process have been adequately addressed in the Final EIR.  
16 Attachments 6, 8, 10, and 12 to the Staff Report to the City Council fully address the  
17 issues raised by the appeals.

18 Section 2. Based on its independent review and consideration of the  
19 Final EIR, all grounds raised during the appeal process, all written communications and  
20 oral testimony regarding the appeal, the transcript of the April 13, 2009 Board meeting,  
21 the reports and presentations by City Staff, the reports, written communications, and  
22 presentations by the Harbor Department, and the findings and determinations set forth  
23 above, the City Council of the City of Long Beach:

24 2.1 Affirms the certification by the Board that the Final EIR for the  
25 Project has been completed in compliance with CEQA and the State and local CEQA  
26 Guidelines promulgated pursuant thereto.

27 2.2 Affirms the certification by the Board that the Final EIR was  
28 presented to the Board, that the Board reviewed and considered the information

1 contained in it prior to approving the Project, and that the Final EIR reflects the Board's  
2 independent judgment and analysis.

3                   2.3 Affirms that the City Council has independently reviewed and  
4 considered the information contained in the Final EIR and that the Final EIR reflects the  
5 City's independent judgment and analysis.

6                   2.4 Adopts and makes, to the extent required by law, the findings  
7 set forth in the Findings of Fact and Statement of Overriding Considerations for the  
8 Project attached as Exhibit "A" to Resolution No. HD-2498 of the Board, which is  
9 incorporated herein by reference as though set forth in full.

10                   Section 3. The Harbor Department Director of Planning, whose office is  
11 located at 925 Harbor Plaza, Long Beach, California 90802, is hereby designated as the  
12 custodian of the documents and other materials which constitute the record of  
13 proceedings upon which the City Council decision is based, which documents and  
14 materials shall be available for public inspection and copying in accordance with the  
15 provisions of the California Public Records Act (Cal. Government Code section 6250 et  
16 seq.)

17                   Section 4. The Director of Planning shall file a notice of determination  
18 with the County Clerk of the County of Los Angeles and with the State Office of Planning  
19 and Research within five (5) working days after adoption of this resolution.

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

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1 I hereby certify that the foregoing Resolution was adopted by the City  
2 Council of the City of Long Beach at its meeting of May 12, 2009 by the  
3 following vote:

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5 Ayes: Councilmembers: Garcia, S. Lowenthal, DeLong,  
6 O'Donnell, Schipske, Andrews,  
7 Reyes Uranga, Gabelich, Lerch.  
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9 Noes: Councilmembers: None.  
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11 Absent Councilmembers: None.  
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17 City Clerk

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