HONORABLE MAYOR AND CITY COUNCIL
July 14, 2015
Harbor Department Appeal Hearing

Attachment 1

Proposed Resolution for City Council

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AFFIRMING THE CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE MCC CEMENT FACILITY MODIFICATION PROJECT (SCH NO. 2011081098) BY THE BOARD OF HARBOR COMMISSIONERS AND MAKING CERTAIN FINDINGS

WHEREAS, the City of Long Beach, acting by and through its Board of Harbor Commissioners (Board), has authority over the City of Long Beach Harbor District, commonly known as the Port of Long Beach (Port); and

WHEREAS, MCC Terminal, Inc. (MCC) leases from the Long Beach Harbor Department (Harbor Department) a certain terminal property located at 1150 Pier F Avenue in the Harbor District on which MCC operates a cement import terminal; and

WHEREAS, MCC submitted an application for a Harbor Development Permit (HDP) for the MCC Cement Facility Modification Project (Project); and

WHEREAS, the Project consists of the installation of a new emission control system to capture and reduce emissions of nitrogen oxides from ship auxiliary engines at berth, construction of additional cement storage and truck loading silos and equipment on vacant property adjacent to the existing MCC cement terminal and upgrades to certain of the facilities and ship unloading equipment at the terminal; and

WHEREAS, the Harbor Department is the lead agency for California Environmental Quality Act (Public Resources Code Section 21000 *et seq*.) (CEQA) compliance for the Project, and the Board is the decision making body for the Harbor Department; and

WHEREAS, the Harbor Department determined that because the Project could have a significant effect on the environment, an environmental impact report (EIR)

should be prepared to assess the environmental impacts associated with the construction and operation of the Project; and

WHEREAS, on August 26, 2011, the Harbor Department mailed a CEQA Notice of Preparation (NOP), which indicated the Harbor Department's intent to prepare an EIR and application summary report for the Project, to public agencies, organizations and persons who requested notice or were likely to be interested in the potential impacts of the Project and also posted the NOP on the Harbor Department website, published it in the Long Beach Press-Telegram and emailed it to the Harbor Department contact list; and

WHEREAS, a scoping meeting for the Project was held on September 14, 2011, and eight written and two oral comments were received during the scoping period; and

WHEREAS, the Harbor Department thereafter caused a Draft EIR to be prepared, which took into account the comments received on the NOP and described the Project, the environmental impacts resulting therefrom, and the proposed mitigation measures; and

WHEREAS, on October 2, 2014, the Draft EIR was circulated for public and agency review and comment; and

WHEREAS, a public hearing was held on the Draft EIR on October 22, 2014, which hearing was noticed by publication in the Press-Telegram, a newspaper of general circulation, by news release in the Press-Telegram, by letter mailed to public agencies, organizations and persons who requested notice or were likely to be interested in the potential impacts of the Project, by email to the Harbor Department contact list and by posting on the Harbor Department website; and

WHEREAS, the public comment period closed on November 18, 2014; and

WHEREAS, the Harbor Department reviewed all comments received on the Draft EIR, including those received after the close of the public comment period, and prepared full and complete responses thereto which were posted on the Harbor

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Department website and distributed on April 27, 2015, in accordance with California Public Resources Code Section 21092.5; and

WHEREAS, on May 11, 2015, the Final EIR for the Project was presented to the Board, as the decision making body of the lead agency, for certification as having been completed in compliance with the provisions of CEQA and the state and local CEQA Guidelines; and

WHEREAS, the Board carefully reviewed and considered all environmental documentation comprising the Final EIR, including the Draft EIR and the comments and the responses thereto, and found that the Final EIR considers all potentially significant environmental impacts of the Project and is complete and adequate, and fully complies with all requirements of CEQA and the state and local CEQA Guidelines; and

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

WHEREAS, on May 11, 2015, the Board pursuant to Resolution No. HD-2807 certified the Final EIR, made certain findings and determinations relative thereto, adopted a statement of overriding considerations, a mitigation monitoring and reporting program and the application summary report, and approved the Project and the issuance of the HDP for the Project; and

WHEREAS, by letter dated May 22, 2015, Earthjustice on behalf of East Yard Communities for Environmental Justice and the Coalition for a Safe Environment appealed to the City Council, pursuant to Long Beach Municipal Section 21.21.507, the Board□s certification of the Final EIR for the Project; and by letter dated May 25, 2015, the Coalition for a Safe Environment, together with the California Kids IAQ, Community Dreams, California Safe Schools, Society for Positive Action, Del Amo Action Committee, Action Now, Apostolic Faith Center and California Communities Against Toxics, also appealed the Board□s certification of the Final EIR for the Project; and

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WHEREAS, on June 15, 2015, the Long Beach City Clerk issued notice to the appellants pursuant to Long Beach Municipal Code section 21.21.507 that their appeals would come before the Long Beach City Council on July 14, 2015 at 5:00 p.m.

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

Section 1. Based on its independent review and consideration of Resolution No. HD-2807, the Final EIR, the appeals filed by appellants and all written communications and oral testimony regarding the Project which have been submitted to and received by the Council, the City Council finds as follows:

1.1 The above recitals are true and correct.

1.2 The Final EIR for the Project has been completed in compliance with CEQA and the state and local CEQA Guidelines. The Board, having final approval authority over the Project, properly adopted and certified as complete and adequate the Final EIR, which reflected the independent judgment and analysis of the Board. The Board further certified that the Final EIR was presented to the Board and the Board reviewed and considered the information contained in it prior to approving the Project.

1.3 All grounds raised during the appeal process have been adequately addressed in the Final EIR. Attachments 7 and 9 to the staff report to the City Council fully address all issues raised by the appeal.

Section 2. Based on its independent review and consideration of the Final EIR, all grounds raised during the appeal process, all written communications and oral testimony regarding the appeal, the transcript of the May 11, 2015 Board meeting, the reports and presentations by City Staff, including the reports, written communications, and presentations by the Harbor Department, and the findings and determinations set forth above, the City Council of the City of Long Beach hereby:

2.1 Affirms the certification by the Board that the Final EIR for the Project has been completed in compliance with CEQA and the state and local CEQA

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Guidelines promulgated pursuant thereto, and denies the appeals filed by appellants.

2.2 Affirms the certification by the Board that the Final EIR was presented to the Board, that the Board reviewed and considered the information contained in it prior to approving the Project, and that the Final EIR reflects the Board's independent judgment and analysis.

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

2.4 Adopts and makes, to the extent required by law, the findings set forth in the Findings of Fact and Statement of Overriding Considerations for the Project attached as Exhibit "A" to Resolution No. HD-2807 of the Board, which is incorporated herein by reference as though set forth in full.

Section 3. The Harbor Department Director of Environmental Planning, whose office is located at 4801 Airport Plaza Drive, Long Beach, California 90815, is hereby designated as the custodian of the documents and other materials which constitute the record of proceedings upon which the City Council decision is based, which documents and materials shall be available for public inspection and copying in accordance with the provisions of the California Public Records Act (Cal. Government Code section 6250 *et seq.*).

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

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

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I hereby certify that the foregoing Resolution was adopted by the City Council of the City of Long Beach at its meeting of _____, 2015 by the following vote:

Ayes: Councilmembers: _____

_____

_____

_____

Noes: Councilmembers: _____

_____

Absent: Councilmembers: _____

_____

_____

City Clerk

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BJM:cao 06/29/15 #A15-01336

HONORABLE MAYOR AND CITY COUNCIL
July 14, 2015
Harbor Department Appeal Hearing

Attachment 2

Staff Report to Board of Harbor Commissioners

Port of Long Beach

4801 Airport Plaza Drive
Long Beach, CA 90815

Master

File Number: HD-15-243

File ID:	HD-15-243	**Type:**	Action Item	**Status:**	Passed
Version:	1	**Author:**		**In Control:**	Harbor Commission
				File Created:	04/24/2015
File Name:				**Final Action:**	05/11/2015

Title: The Board is asked to: (1) Receive and file this report from the staff and the Port's environmental consultants and carefully consider all written and oral comments received on this item, and if the Board concurs that the Final Environmental Impact Report for the MCC Cement Facility Modification Project (Final EIR) has been completed in compliance with the provisions of the California Environmental Quality Act (CEQA) and that the MCC Cement Facility Modification Project (Project) should be approve, (2) Adopt a resolution certifying the Final EIR and making certain findings, adopting a Statement of Overriding Considerations, a Mitigation Monitoring and Reporting Program and the Application Summary Report, and approving the Project and a Level III Harbor Development Permit. (Environmental Planning - H. Tomley)

Internal Notes: RESO. HD-2807

		Agenda Number:	1H.
Sponsors:		**Enactment Date:**	
Attachments:	MCC_Attachment_1_Resolution.pdf, MCC_Attachment_2_Executive Summary Table ES..pdf, MCC_Attachment_3_Part_1_Final_EIR_Apr2015_NO_Appendices.pdf, MCC_Attachment_3_Part_2_Final_EIR_Apr2015_Appendices_A-B_C.pdf, MCC_Attachment_4_Presentation.pdf, 5-11 MCC Hearing NRDC Response Letter, 5-11 MCC Hearing NRDC Comment Letters	**Document Number:**	RESO. HD-2807
Contact:		**Hearing Date:**	
Drafter:	mary.lewis@polb.com	**Effective Date:**	

History of Legislative File

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Harbor Commission	05/11/2015	approved as amended				Pass

Action Text: This Action Item was approved as amended

1 Harbor Commission 05/11/2015

Text of Legislative File HD-15-243

DATE: May 11, 2015

TO: Board of Harbor Commissioners

FROM: Heather A. Tomley, Director of Environmental Planning

SUBJECT: **Mitsubishi Cement Terminal, Inc. (MCC) Cement Facility Modification Project: (1) Receive and File Supporting Documentation Into the Record and Conduct a Public Hearing on the Project, and (2) Adopt a Resolution Certifying the Final EIR for the MCC Cement Facility Modification Project and Making Findings, Adopting a Statement of Overriding Considerations, a Mitigation Monitoring and Reporting Program and an Application Summary Report, and Approving the Project and Level III Harbor Development Permit #06-162**

Potential Action

The Board is asked to: (1) Receive and file this report from the staff and the Port's environmental consultants and carefully consider all written and oral comments received on this item, and if the Board concurs that the Final Environmental Impact Report for the MCC Cement Facility Modification Project (Final EIR) has been completed in compliance with the provisions of the California Environmental Quality Act (CEQA) and that the MCC Cement Facility Modification Project (Project) should be approve, (2) Adopt a resolution certifying the Final EIR and making certain findings, adopting a Statement of Overriding Considerations, a Mitigation Monitoring and Reporting Program and the Application Summary Report, and approving the Project and a Level III Harbor Development Permit. (Environmental Planning - H. Tomley)

Prior to taking this action, the Board is requested to carefully review and consider the Final EIR, including all the comments and responses to comments included in Section 10 of the Final EIR, as well as the attachments to this memorandum. For ease of reference, Table ES.7-1, which summarizes the environmental impacts of the Project and the corresponding mitigation and identifies whether or not the impacts remain significant after mitigation, is included as an attachment to this report. The Draft EIR was previously transmitted to the Board, and is now superseded by the Final EIR.

Background

Mitsubishi Cement Terminal, Inc. (MCC) has been an established tenant at the Port of Long Beach (Port) since 2002 and operates a cement import facility at 1150 Pier F Avenue. MCC's existing facility receives bulk cement and cement-like materials (including Portland cement, blast furnace slag, pozzolans, and fly ash) at Berth F208 via bulk cargo vessels. MCC stores the product in a warehouse and loading silos, and loads the product into customer trucks via three

truck loading racks. A variety of trucking companies transport the product from the truck loading racks to local and regional concrete batch plants. The MCC facility temporarily stopped operating in 2010 due to the economic slowdown and regional decline in demand for cement. To date, operations have not resumed, although it is a fully permitted facility and can resume operations at any time.

The facility has a South Coast Air Quality Management District (AQMD) permit that requires all ships unloading at the facility to use shore power. Because MCC charters and does not own the vessels that deliver cement to the facility, it does not have control over whether the vessels are equipped to connect to shore power. Nevertheless, MCC has worked with various charter companies and has negotiated commitments to equip some vessels to use shore power. However, even ships that are equipped to use shore power sometimes cannot unload the entirety of their cargo, because of the high electrical load needed to operate the ship's cranes to lift equipment into the vessel's hold to remove the last portion of cement from the hold.

In addition to limitations under the AQMD permit, the existing MCC facility has experienced inefficiencies associated with limited storage capacity and fluctuations in cement demand. Since cement deliveries to the MCC facility are ordered months in advance, changes in the demand for cement can occur after the order has been placed. There have been periods where the warehouse was full and ships calling at the facility could not unload upon arrival. The vessels had to wait at berth or at anchor until sufficient warehouse capacity was available for the ship to fully offload the entire ship load.

The Board of Harbor Commissioners approved the Reimbursable Work Order (RWO) for this project on March 21, 2011. On September 3, 2013, an amended RWO was approved by the Board. On October 2, 2014, the Board was transmitted a copy of the Draft EIR for their review. A second supplement to the RWO was approved by the Board on April 16, 2015.

Discussion of Current Issues

In 2006, MCC submitted an Application for a Harbor Development Permit (HDP) to the Port to modify its existing cement import facility located at 1150 Pier F Avenue, within the Port of Long Beach. The Proposed Project consists of installing an emission control system (DoCCS) to capture and reduce NOx emissions from ship auxiliary generators at berth; constructing four, 10,000 metric ton storage and truck loading silos; and upgrading existing facilities and ship unloading equipment. MCC is proposing to construct the additional cement storage silos and truck loading equipment in a vacant adjacent area at 1120 Pier F Avenue that was formerly used as the warehouse for Pacific Banana operations. The MCC site would increase in size from 4.21 acres to 5.92 acres. Additionally, as part of the project, MCC has applied to the AQMD to modify their AQMD permit to allow vessels that call at the MCC facility to use either shore power or the proposed DoCCS to control at-berth emissions when unloading cement.

The Port reviewed the Proposed Project and determined that an Environmental Impact Report (EIR) would be the appropriate level of environmental review. If the project is approved, the Port would issue an HDP and enter into a new lease with MCC. The AQMD permit modification is pending and will be considered by AQMD upon completion of the CEQA review

process.

The following proposed Project and alternatives were analyzed in the EIR:

Proposed Project. As proposed, the Project would have a maximum throughput of 4.16 million metric tons of throughput each year, delivered to the site by up to 99 bulk vessels and transported to local and regional concrete batch plants via an estimated 166,400 round-trip truck trips per year. Construction of the proposed Project would last approximately 2 to 3 years. The addition of 40,000 metric tons of storage capacity under the proposed Project would help to alleviate unloading delays during periods when the existing warehouse capacity is insufficient to accommodate cement from an arriving ship, as ships would be able to fully offload the entire cargo load (equal to about 40,000 metric tons). Accordingly, ships would spend less time at berth and move more efficiently through the Port.

Reduced Throughput Alternative. The Reduced Throughput Alternative would be the same as the proposed Project except that only two cement silos and one additional truck lane would be constructed for loading trucks beneath the two new silos. This alternative would provide an additional 20,000 metric tons of cement storage capacity. The reduced throughput alternative would have a maximum throughput of 3.3 million metric tons of cement per year. Operations would result in a maximum of 79 vessel calls per year. Under this alternative, the round-trip truck trips to the MCC facility would be about 133,120 per year. Construction of the proposed Project would last approximately 2 years.

No Project Alternative. The No Project Alternative considers what would reasonably be expected to occur at the site if the proposed Project was not constructed. Under this alternative, no construction and, consequently, no construction-related impacts, would occur. Cement storage capacity at the MCC facility would not be increased and the DoCCS at-berth emission control system would not be installed. The MCC facility could resume operating with no expansion and would generate operational impacts. Per the SCAQMD permit conditions for the facility, all vessels would be required to use shore-to-ship- power while unloading. Vessels that are unable to unload completely while using shore-to-ship power, because the equipment required for final unloading cannot be lowered into the hold without the vessel's auxiliary generators running to operate the ship's crane, would need to be diverted to another cement terminal to complete unloading. Vessels calling at the MCC facility could be unloaded more rapidly since the most efficient aspect of unloading would be accomplished at the MCC facility, while the least efficient aspects (i.e. final unloading) would occur elsewhere in most cases. However, because of the reduced tonnage of cement involved in each vessel unloading operation, there would be more vessel calls to the MCC terminal to provide the needed tonnage of cement. Under the No Project Alternative, the MCC facility would handle a maximum throughput capacity of approximately 2.2 million metric tons per year via an estimated 67 annual vessel calls and 89,856 annual round-trip truck trips.

Public Review

The Port issued a Notice of Preparation (NOP) and Initial Study (IS) for the proposed Project on August 26, 2011. The NOP/IS described the Project, potential environmental impacts of the

Project, solicited public input on environmental issues to be addressed in the EIR, and announced a public scoping meeting. The Port conducted one public scoping meeting on September 14, 2011, at the Long Beach City Hall Council Chambers. Eight written and two oral comments were received during the scoping period. The comments covered a variety of topics including ground transportation/traffic, air quality, health risk, and hazards and hazardous materials.

Subsequently, the Port released the Draft EIR on October 2, 2014, and held one public hearing on the Draft EIR on October 22, 2014, at the Long Beach City Hall Council Chambers. The public comment period ended November 18, 2014. A total of seven people spoke at the public hearing. In addition, a total of 21 agencies/individuals commented on the Draft EIR during the public review period. Port staff and environmental consultants have responded in writing to all comments received on the Draft EIR, and the responses were circulated more than 10 days prior to this hearing as required by CEQA (Public Resources Code § 21092.5(a)).

Environmental Impacts of the Project

The Final EIR identified certain potentially significant effects that could result from the Project. Although most potentially significant environmental impacts of the Project will be rendered less than significant through environmental controls and mitigation measures, the following Project impacts are considered to be significant and unavoidable:

1. Air Quality. Operational activities would produce levels of NOx and ambient PM emissions that exceed SCAQMD emission thresholds. The main sources of the emissions would occur from vessels and trucks used during proposed Project operational activities.
2. Global Climate Change. Construction of the Project would produce greenhouse gas emissions that would exceed the SCAQMD's interim threshold of significance for industrial projects.
3. Cumulative Biological Impacts. Disruption to local biological communities (increased offshore whale strikes and introduction of invasive species) by Project operations on a cumulative impact level.
4. Cumulative Air Quality and Global Climate Change. Construction and operation of the proposed Project would also result in significant and unavoidable air and greenhouse gas impacts on a cumulative impact level.

These impacts are described in more detail in the Final EIR and in the Findings of Fact, included as Exhibit A, to the resolution attached to this memorandum.

Mitigation

Environmental control measures and mitigation measures have been developed for the Project to reduce significant impacts to the extent feasible. These measures, which are set forth in the Mitigation Monitoring and Reporting Program included as Exhibit B to the resolution attached to this memorandum, will be made conditions of project approval.

In addition to the mitigation measures identified in the Draft EIR, staff worked with the applicant to strengthen existing measures and identify additional mitigation measures to address air and GHG comments received during the public review. These additional mitigation measures

include the following:

MM AQ-5: Participation in AMECS Emission Testing. After construction of the proposed project has been completed and operations have resumed at the MCC facility, MCC shall use its best effort to participate in the SCAQMD's AMECS demonstration project at the Port of Long Beach (Port). MCC's participation specifically pertains to Task 10 Durability Testing as described in Exhibit A to the contract between the City of Long Beach and the SCAQMD, approved by the Port of Long Beach Board of Harbor Commissioners on February 10, 2014 (the "AMECS Demonstration Testing"), if at such time, AMECS technology is undergoing Task 10 Durability Testing at the Port. If MCC participates in the testing of a vessel pursuant to the AMECS Demonstration Testing, the costs of testing will be borne as indicated in the contract, and no testing costs shall be borne by MCC (with the exception of in-kind staff time associated with coordinating the logistics of the testing). Additionally, if MCC participates in the AMECS Demonstration Testing, such vessel hoteling hours shall be exempt from the requirements of Project Environmental Control (EC AQ-2) - Shore to Ship Power/Cold Ironing, which requires OGVs that call at the MCC facility to use shore-to-ship power (cold-ironing) no less than 66 percent of the time (on an annual average) while at berth.

Mitigation Measure AQ-6: Periodic Technology Review. To promote new emission control technologies, MCC shall perform an investigation and submit a report to the POLB Chief Executive, every 5 years following the effective date of the new lease on any POLB-identified or other new emissions-reduction technologies that may reduce emissions at the MCC facility, including the feasibility of zero emissions and near-zero emissions technologies for cement delivery trucks and cement handling equipment (e.g. payloader). If the Periodic Technology Review demonstrates the new technology will be effective in reducing emissions and is determined through mutual agreement between the Port and MCC to be feasible, including but not limited to from a financial, technical, legal and operational perspective, MCC shall work with the Port to implement such technology.

Even with the additional mitigation measures, air quality and GHG impacts would remain significant and unavoidable.

Overriding Considerations

Port staff finds that there are specific overriding economic, legal, social, technological, and other benefits of the Proposed Project that outweigh the significant impacts and provide sufficient reasons for approving the Proposed Project. Therefore, a Statement of Overriding Considerations has been included as a component of the attached Resolution for the Board's review and consideration.

Financial Impact

The cost of preparing the environmental documents for this Project has been covered by an RWO payable by the applicant. The costs of project implementation and mitigation are borne solely by the applicant.

JW:s

Attachments:
(1) Resolution including Findings of Fact and Statement of Overriding Considerations
(2) Executive Summary Table (ES.7-1)
(3) MCC Final EIR
(4) Presentation

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
Geology, Groundwater, and Soils				
GEO-1: Project construction activities would not substantially alter the topography beyond that resulting from natural erosion and depositional processes.	Less than significant	None necessary.	Less than significant	
GEO-2: Project construction activities would not disturb or alter unique geologic features (e.g., paleontological resources) or geologic features of unusual scientific value.	No impact	None necessary.	No impact	
GEO-3: Project construction activities would not trigger or accelerate geologic processes such as erosion.	Less than significant	None necessary.	Less than significant	
GEO-4: Project construction activities would not render inaccessible known mineral (petroleum or natural gas) resources.	Less than significant	None necessary.	Less than significant	
GEO-5: Project construction activities would not contaminate soil or groundwater that creates a significant hazard to the public or the environment.	Less than significant	None necessary.	Less than significant	
GEO-6: Project operations would not be affected by ground rupture due to an earthquake at the site and attendant damage to structures, limiting their use due to safety considerations or physical condition.	No impact	None necessary.	No impact	
GEO-7: Project operations would not be affected by earthquake-induced ground motion (shaking) causing liquefaction, settlement, or surface cracks at the site and attendant damage to proposed structures, resulting in a substantial loss of use for more than 60 days or exposing the public to substantial risk of injury.	Less than significant	None necessary.	Less than significant	
GEO-8: Project operations would not expose people and structures to a greater than average risk of tsunamis or seiches.	Less than significant	None necessary.	Less than significant	

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
Air Quality				
AQ-1: Project construction activities would produce emissions that would not exceed SCAQMD emission significance thresholds.	Less than significant	None necessary.	Less than significant	
AQ-2: Project construction activities would result in offsite ambient air pollutant concentrations that would exceed a SCAQMD threshold of significance.	Significant	**MM AQ-1: Additional Fugitive Dust Controls.** The Project construction contractor shall implement additional dust control measures that achieve a 90 percent reduction in PM_{10}/$PM_{2.5}$ emissions from uncontrolled levels. The contractor shall document these measures in a dust control plan that is approved by the SCAQMD under the requirements of Rule 403. The contractor shall designate personnel to monitor the dust control program and shall order increased watering, as necessary, to ensure a 90 percent control level. Their duties shall include holiday and weekend periods when work may not be in progress. Additional measures to reduce fugitive dust shall include, but are not limited to, the following: • Apply water three times daily or as needed to areas where soil is disturbed. • Apply approved non-toxic chemical soil stabilizers according to manufacturer specifications to all inactive construction areas or replace groundcover in disturbed areas: • Provide temporary wind fencing around sites being graded or cleared. • Cover truck loads that haul dirt, sand, or gravel or maintain at least two feet of freeboard in accordance with Section 23114 of the California Vehicle Code.	Less than Significant	

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
		• Install wheel washers where vehicles enter and exit unpaved roads onto paved roads, or wash off tires of vehicles and any equipment leaving the construction site. • Suspend all soil disturbance activities when winds exceed 25 miles per hour as instantaneous gusts or when visible dust plumes emanate from the site and stabilize all disturbed areas. • Appoint a construction relations officer to act as a community liaison concerning onsite construction activity including resolution of issues related to PM_{10} generation. • Sweep all streets at least once a day using SCAQMD Rule 1186.1 certified street sweepers or roadway washing trucks if visible soil materials are carried to adjacent streets (recommend water sweepers with reclaimed water). and • Apply water three times daily, or non-toxic soil stabilizers according to manufacturers' specifications, to all unpaved parking or staging areas or unpaved road surfaces.		
AQ-3: The Project would generate operational emissions of NO_x that exceed a SCAQMD threshold of significance.	Significant	**MM AQ-2: Modernization of Delivery Truck Fleet.** No less than 90 percent of the trucks loading cement or cementitious material at the MCC facility shall be equipped with an engine that meets one of the following requirements: 1) is no more than five years old, based on engine model year ("5-Year Engine"); 2) has been designed or retrofitted to comply with federal and state on-road heavy-duty engine emissions standards	Significant and unavoidable	**EC AQ-1: Expanded Vessel Speed Reduction Program (VSRP)** - All OGVs that call at the MCC terminal shall comply with the expanded VSRP of 12 knots within 40nm of Point Fermin and the Precautionary Area (equal to CAAP measure OGV1). **EC AQ-2: Shore-to Ship Power/Cold Ironing**. OGVs that call at the MCC facility shall use shore-to-ship power (i.e., cold iron)

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
		(e.g. EPA 2010 engine emission standards or successor rules or regulations for on-road heavy duty diesel engines) for a 5-Year Engine ("Emission Equivalent Engine"); or 3) uses alternative engine technology or fuels demonstrated to produce emissions no greater than a 5-Year Engine ("Alternative Equivalent Engine"). The remaining 10 percent of the trucks shall comply with all applicable federal and state heavy-duty on-road truck regulations. In addition, all trucks loading cement or cementitious materials at the MCC facility shall be registered in the Port of Long Beach and Los Angeles Clean Truck Program Drayage Truck Registry and the CARB Drayage Truck Registry. Compliance with this 90 percent requirement shall be determined on a calendar year basis. Documentation of compliance, showing the following information, shall be submitted to the Port's Environmental Planning Division on an annual basis by January 31 following each year of operation: 1) truck vehicle identification number (VIN), 2) engine model year, 3) annual truck trips, and 4) if non-diesel technology, manufacturer engine standards. **MM AQ-5: Participation in AMECS Emission Testing.** After construction of the proposed project has been completed and operations have resumed at the MCC facility, MCC shall use its best effort to participate in the SCAQMD's AMECS demonstration project at the Port of Long		no less than 66 percent of the time at berth based on an annual average. The DoCCS shall be used for the portion of time at berth that OGVs are not using shore-to-ship power. MCC shall submit annual reports to the Port's Environmental Planning Division on or before January 31 of each year, demonstrating compliance with this environmental control measure for the previous calendar year. If an emergency event [as defined in California Air Resources Board's (ARB) At-Berth Regulation, Title 17, CCR Section 93118.3, subsection (c)(14)], prevents MCC from achieving the required annual average shore-to-ship power rate (equal to or greater than 66 percent), MCC may demonstrate compliance over a two-year period, so long as MCC submits documentation to the Port which describes the emergency event(s) and explains the basis for MCC's inability to demonstrate compliance using an annual average. The Port will review the documentation submitted by MCC and, if the Port determines that MCC made sufficient effort to comply with the environmental control, it will notify MCC in writing that use of the two-year average is acceptable. **EC AQ-3: Payloaders**. Wheeled loaders used for final unloading shall attain EPA nonroad Tier 4 emission standards for cargo-handling equipment (equal to CAAP measure CHE-1). **EC AQ-1 through EC AQ-3**

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
		Beach (Port). MCC's participation specifically pertains to Task 10 Durability Testing as described in Exhibit A to the contract between the City of Long Beach and the SCAQMD, approved by the Port of Long Beach Board of Harbor Commissioners on February 10, 2014 (the "AMECS Demonstration Testing"), if at such time, AMECS technology is undergoing Task 10 Durability Testing at the Port. If MCC participates in the testing of a vessel pursuant to the AMECS Demonstration Testing, the costs of testing will be borne as indicated in the contract, and no testing costs shall be borne by MCC (with the exception of in-kind staff time associated with coordinating the logistics of the testing). Additionally, if MCC participates in the AMECS Demonstration Testing, such vessel hoteling hours shall be exempt from the requirements of Project Environmental Control (EC AQ-2) – Shore to Ship Power/Cold Ironing, which requires OGVs that call at the MCC facility to use shore-to-ship power (cold-ironing) no less than 66 percent of the time (on an annual average) while at berth. **MM AQ-6: Periodic Technology Review**. To promote new emission control technologies, MCC shall perform an investigation and submit a report to the POLB Chief Executive, every 5 years following the effective date of the new lease on any POLB-identified or other new emissions-reduction technologies		

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
		that may reduce emissions at the MCC facility, including the feasibility of zero emissions and near-zero emissions technologies for cement delivery trucks and cement handling equipment (e.g. payloader). If the Periodic Technology Review demonstrates the new technology will be effective in reducing emissions and is determined through mutual agreement between the Port and MCC to be feasible, including but not limited to from a financial, technical, legal and operational perspective, MCC shall work with the Port to implement such technology.		
AQ-4: Project operations would result in offsite ambient air pollutant concentrations that exceed a SCAQMD threshold of significance.	Significant	**MM AQ-2, MM AQ-5, and MM AQ-6** **MM AQ-3: Diesel Particulate Filter for the DoCCS.** MCC shall participate in a demonstration project for integrating an active diesel particulate filter (DPF) system into the DoCCS. Within three (3) months after the start-up/initial use of the DoCCS to control emissions from a ship, MCC shall submit to the Port a proposed plan, budget, and schedule for the demonstration project that includes, but is not limited to, designing, procuring, permitting, installing, operating, and emissions testing of the DPF system. The Port shall review and approve MCC's proposal and the demonstration project shall commence within six (6) months of the Port's approval. As part of the demonstration project, MCC shall operate the combined DPF and DoCCS system for 1,000 hours and conduct emissions testing of the combined DPF and DoCCS system in a manner that is compliant with testing requirements for both the	Significant and unavoidable	

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
		SCAQMD and California Air Resources Board. The demonstration project shall be completed within two (2) years after installation and start-up of the DPF system. The demonstration project may be terminated after less than 1,000 hours of operation in the event that MCC determines, and the Port concurs, that the DPF is not compatible with MCC's equipment and operations, or the technology has not yet sufficiently advanced for this application. No later than six (6) months after the completion of the demonstration project, MCC shall provide a final report to the Port that includes a summary of the demonstration project, technical specifications and costs of the DPF system, emissions testing results, and a discussion of any operational considerations of adding the DPF system to the DoCCS. If it is determined through mutual agreement by MCC and the Port that the DPF system is compatible with MCC's equipment and operations, MCC shall permanently install the DPF and use the DPF whenever ships are treated with the DoCCS. Vessel hoteling hours associated with the testing of the DPF system shall be exempt from the requirements of project Environmental Control - Shore-to-Ship Power/Cold Ironing. This measure requires OGVs that call at the MCC facility to use shore-to-ship power (cold-ironing) no less than 66 percent of the time (on an annual average) while at berth. The total		

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
		number of OGV hoteling hours allowed by this exemption shall not exceed 1,000.		
AQ-5: Project operations would not create objectionable odors to sensitive receptors.	Less than significant	None necessary.	Less than significant	
AQ-6: Project operations would not expose receptors to significant levels of TACs.	Less than significant	None necessary.	Less than significant	
AQ-7: Project operations would not conflict with or obstruct implementation of the applicable AQMP.	Less than significant	None necessary.	Less than significant	
Cumulative Impact AQ-1: Project construction would produce cumulatively considerable contributions that would exceed SCAQMD emission significance thresholds.	Significant	**MM AQ-1** **MM AQ-4: Construction Equipment** – Construction contractors shall use construction equipment that achieves the equivalent of EPA Tier 4 non-road standards at a minimum by January 1, 2015.	Significant and unavoidable	
Cumulative Impact AQ-2: Project construction would produce cumulatively considerable construction contributions that would result in offsite ambient air pollutant concentrations that would exceed a SCAQMD threshold of significance.	Significant	**MM AQ-1 and MM AQ-4**	Significant and unavoidable	
Cumulative Impact AQ-3: Project operations would produce cumulatively considerable contributions of air emissions that would exceed a SCAQMD threshold of significance.	Significant	**MM AQ-2, MM AQ-5, and MM AQ-6**	Significant and unavoidable	
Cumulative Impact AQ-4: Project operations would produce cumulatively considerable contributions that would result in offsite ambient air pollutant concentrations that exceed a SCAQMD threshold of significance	Significant	**MM AQ-2, MM AQ-3, MM AQ-5, and MM AQ-6**	Significant and unavoidable	
Cumulative Impact AQ-5: The Project would not produce cumulatively considerable contributions of objectionable odors to sensitive receptors.	Less than significant	None necessary.	Less than significant	
Cumulative Impact AQ-6: The Project would not produce cumulatively considerable contributions of airborne cancer and non-cancer effects within the project region.	Less than significant	None necessary.	Less than significant	

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
Global Climate Change				
GCC-1: The Project would produce GHG emissions that exceed the SCAQMD interim annualized significant emissions threshold for industrial projects.	Significant	**MM GCC-1: Indirect GHG Emission Reduction/Avoidance.** MCC shall minimize the release of indirect GHG emissions through measures that reduce or avoid electricity consumption at the facility. Measures to reduce indirect GHG emissions from electricity generation shall include: 1) installation of low-energy demand lighting (e.g., fluorescent or light-emitting diode) in the existing office building, other facility buildings, and the existing and new exterior lighting, except where compatible energy efficient lighting is not available or its installation could compromise safety and 2) installation of approximately 1,000 square feet of solar panels on the existing office building, with the total amount to be determined based on available space and the additional weight that can be borne by the existing roof. Prior to the start of Project construction, MCC shall submit to the Port a proposed plan and schedule for implementing these two measures. The low-energy demand lighting and solar panels shall be installed no later than three (3) years from the start of Project construction. Once these installations have been completed, MCC shall prepare and submit to the Port a report detailing the number of existing lights replaced, number of new low-energy demand lighting installed, and the final total square feet of solar panels installed. The report also shall include a quantitative assessment of the amount of greenhouse gas emissions reduced	Significant and unavoidable	Air Quality **EC AQ-1 through AQ-3**.

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
		from each of the two measures and the amount of power generated from the solar panels in kilowatt-hours per year. **MM GCC-2: Energy Audit.** To identify future opportunities to reduce GHG emissions, commencing 2018 and every five years thereafter, MCC at its expense shall complete a site-specific energy audit using a qualified third party energy auditor. Both the energy auditor and the scope of the audit must be approved by the Port. This audit shall evaluate MCC's facility and operations to determine whether there are additional, cost-effective measures that would reduce overall power use. No later than six (6) months following completion of the energy audit, MCC shall submit a report to the Port that presents 1) the results of the audit and 2) a schedule for implementation of the feasible, cost-effective energy-efficiency or conservation measures identified in the report. **MM GCC-3: Funding Contributions to the POLB Greenhouse Gas Emissions Reduction Grant Program.** MCC shall provide a one-time lump sum contribution of $333,720 to the POLB GHG Emissions Reduction Grant Program. This fee is based on the following: 1) Project operations are estimated to increase CO_2e emissions from baseline conditions by as much as 22,248 metric tons at maximum design throughput of 4.58 million tons per year of cement and 2) the SCAQMD has established Rule 2702 (GHG Reduction Program), which offers GHG emission reductions at a rate		

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
		of $15 per metric ton of CO_2e. The Project-related cost would be based on: 22,248 metric tons CO_2e emissions x $15 per metric ton = $333,720. This contribution would be used to fund projects pursuant to the GHG Program, including, but not limited to, generation of green power from renewable energy sources; installation of urban forests and drought-tolerant community gardens; purchase of electric vehicles; lighting replacement with light-emitting diode fixtures; and energy-efficiency projects such as building insulation; and heating, ventilation, and air conditioning, and boiler replacements. This contribution may not be used to fund projects at MCC's project site. The timing of the payment pursuant to this mitigation measure shall be made by the later of the following two dates: 1) the date that MCC issues a Notice to Proceed or otherwise authorizes the commencement of construction on the construction contract or 2) the date that the Final EIR is conclusively determined to be valid, either by operation of PRC Section 21167.2 or by final judgment or final adjudication.		
GCC-2: The Project would not expose people or structures to a significant risk of loss, injury, or death involving flooding as a result of sea level rise.	Less than significant	None necessary.	Less than significant	

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
Hydrology and Water Quality				
WQ-1.1: Project construction activities would not result in violation of regulatory standards or guidelines.	Less than significant	None necessary.	Less than significant	
WQ-2.1: Project construction activities would not substantially alter water circulation.	Less than significant	None necessary.	Less than significant	
WQ-3.1: Project construction activities would not result in flooding that could harm people, damage property, or adversely affect biological resources.	Less than significant	None necessary.	Less than significant	
WQ-4.1: Project construction activities would not result in wind or water erosion that causes substantial soil runoff or deposition not contained or controlled onsite.	Less than significant	None necessary.	Less than significant	
WQ-1.2: Project operations would not result in violation of regulatory standards or guidelines.	Less than significant	None necessary.	Less than significant	
WQ-2.2: Project operations would not substantially alter water circulation.	Less than significant	None necessary.	Less than significant	
WQ-3.2: Project operations would not result in flooding that could harm people, damage property, or adversely affect biological resources.	Less than significant	None necessary.	Less than significant	
WQ-4.2: Project operations would not result in wind or water erosion that causes substantial soil runoff or deposition not contained or controlled onsite.	Less than significant	None necessary.	Less than significant	
Biological Resources and Habitat				
BIO-1.1: Project construction activities would not substantially affect any rare, threatened, or endangered species or their habitat.	Less than significant	None necessary.	Less than significant	
BIO-2.1: Project construction activities would not interfere with wildlife movement/ migration corridors.	Less than significant	None necessary.	Less than significant	
BIO-3.1: Project construction activities would not result in a substantial loss or alteration of marine habitat.	No impact	None necessary.	No impact	
BIO-4.1: Project construction activities would not substantially affect a natural habitat or plant community.	No impact	None necessary.	No impact	

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
BIO-5.1: Project construction activities would not substantially disrupt local biological communities.	Less than significant	None necessary.	Less than significant	
BIO-1.2: Project operations would not substantially affect any endangered, threatened, or rare species or their habitat.	Less than significant	None necessary.	Less than significant	
BIO-2.2: Project operations would not interfere with wildlife movement or migration corridors.	Less than significant	None necessary.	Less than significant	
BIO-3.2: Project operations would not substantially reduce or alter marine habitat.	No impact	None necessary.	No impact	
BIO-4.2: Project operations would not substantially affect a natural habitat or plant community.	Less than significant	None necessary.	Less than significant	
BIO-5.2: Project operations would not substantially disrupt local biological communities.	Less than significant	None necessary.	Less than significant	
Cumulative Impact BIO-5. Project operations would substantially disrupt local biological communities.	Significant	No feasible mitigation measures beyond compliance with existing federal, state and Port rules and regulations (e.g., tariffs, VSRP) are available to further lessen cumulatively significant and unavoidable impacts associated with invasive species introductions and offshore whale strikes.	Significant and unavoidable	**EC BIO-1: Expanded VSRP** – To reduce the potential for accidental whale strikes, OGVs that call at the MCC terminal shall comply with the expanded VSRP of 12 knots.
Ground Transportation				
TRANS-1.1: Project construction activities would not increase an intersection's V/C ratio or LOS in a manner that exceeds adopted performance standards.	Less than significant	None necessary.	Less than significant	None
TRANS-1.2: Project operations would not increase an intersection's V/C ratio or LOS in a manner that exceeds adopted performance standards.	Less than significant	None necessary.	Less than significant	
Vessel Transportation				
VT-1: Project operations would not result in an increase in vessel traffic that results in congestion within the harbor, nor would the ability for maritime commerce to operate efficiently and safely be exceeded.	Less than significant	None necessary.	Less than significant	None

Table ES.7-1. Summary of Environmental Impacts, Mitigation Measures, and Environmental Controls of the Proposed Project				
Impact	**Significance Before Mitigation**	**Mitigation**	**Significance After Mitigation**	**Environmental Controls**
Noise				
NOI-1.1: Project construction activities would not increase ambient noise levels by 3 dBA.	Less than significant	None necessary.	Less than significant	**EC NOI-1: Construction Equipment** - All construction equipment powered by internal combustion engines shall be properly muffled and maintained. **EC NOI-2: Idling Prohibitions -** Unnecessary idling of internal combustion engines near any noise sensitive areas shall be prohibited. **EC NOI-3: Equipment Location -** All stationary noise-generating construction equipment, such as air compressors and portable power generators shall be located as far as practical from any existing noise sensitive land uses.
NOI-2.1: Project construction activities would not exceed City of Long Beach Municipal Code maximum noise levels.	Less than significant	None necessary.	Less than significant	
NOI-1.2: Project operations would not generate noise that would increase ambient noise levels by 3 dBA.	Less than significant	None necessary.	Less than significant	
NOI-2.2: Project operations would not exceed City of Long Beach Municipal Code maximum noise levels.	Less than significant	None necessary.	Less than significant	
Hazards and Hazardous Materials				
HAZ-1.1: Project construction would not result in an accidental release of hazardous materials that would adversely affect the health and safety of the general public or workers.	Less than significant	None necessary.	Less than significant	
HAZ-1.2: Project operations would not result in an accidental release of hazardous materials that would adversely affect the health and safety of the general public or workers.	Less than significant	None necessary.	Less than significant	
Utilities and Service Systems				
UTIL-1.1: Project construction activities would not result in expansion of water, wastewater, storm drains, natural gas, or electrical utility lines or distribution infrastructure.	Less than significant	None necessary.	Less than significant	
UTIL-2.1: Project construction activities would not exhaust or exceed existing water, wastewater, or landfill capacities.	Less than significant	None necessary.	Less than significant	
UTIL-1.2: Project operations would not result in expansion of water, wastewater, storm drains, natural gas, or electrical utility lines or distribution infrastructure.	Less than significant	None necessary.	Less than significant	
UTIL-2.2: Project operations would not exhaust or exceed existing water supply, wastewater, or landfill capacities.	Less than significant	None necessary.	Less than significant	

HONORABLE MAYOR AND CITY COUNCIL
July 14, 2015
Harbor Department Appeal Hearing

Attachment 3

Harbor Commission
Resolution HD-2807

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

RESOLUTION NO. HD- 2807

A RESOLUTION OF THE BOARD OF HARBOR COMMISSIONERS OF THE CITY OF LONG BEACH CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE MCC CEMENT FACILITY MODIFICATION PROJECT (SCH NO. 2011081098) MAKING CERTAIN FINDINGS AND DETERMINATIONS RELATIVE THERETO; ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, A MITIGATION MONITORING AND REPORTING PROGRAM AND THE APPLICATION SUMMARY REPORT; AND APPROVING A HARBOR DEVELOPMENT PERMIT FOR THE MCC CEMENT FACILITY MODIFICATION PROJECT

WHEREAS, the City of Long Beach, acting by and through its Board of Harbor Commissioners (Board), has jurisdiction over the City of Long Beach's Harbor District, commonly known as the Port of Long Beach; and

WHEREAS, the City of Long Beach acting through the Board is the lead agency for California Environmental Quality Act (CEQA) (Public Resources Code §§ 21000 *et seq.*) compliance for the proposed MCC Cement Facility Modification Project (Project); and

WHEREAS, the Harbor Department determined that because the proposed Project could have a significant effect on the environment, an environmental impact report (EIR) needed to be prepared to assess the environmental impacts associated with the construction and operation of the proposed Project; and

WHEREAS, a Notice of Preparation (NOP) of the Draft EIR was mailed on August 26, 2011 to public agencies, organizations, and persons who requested notice or

were likely to be interested in the potential impacts of the proposed Project, posted on the Harbor Department website, published in the Long Beach Press-Telegram and emailed to the Harbor Department contact list, and a public scoping meeting was thereafter held on September 14, 2011, to gather public and agency comments concerning the preparation of the Draft EIR; and

WHEREAS, the Harbor Department thereafter caused the Draft EIR to be prepared, which took into account the comments received on the NOP, described the proposed Project and two alternatives to the proposed Project, the environmental impacts resulting from the proposed Project and the two alternatives, and the proposed mitigation measures for each alternative; and

WHEREAS, on October 2, 2014, the Draft EIR was circulated for public and agency review and comment; and

WHEREAS, a public hearing was held on the Draft EIR on October 22, 2014, which hearing was noticed by publication in the Press-Telegram, a newspaper of general circulation, and by news release in the Press-Telegram, as well as through a letter that was mailed to public agencies, organizations and persons who requested notice or were likely to be interested in the potential impacts of the proposed Project. Notice of the hearing also was sent by email to the Harbor Department contact list and posted on the Harbor Department website; and

WHEREAS, the public comment period closed on November 18, 2014; and

WHEREAS, the comments received on the Draft EIR, including those received after the close of the public comment period, were reviewed, and full and complete responses thereto were prepared and distributed on April 27, 2015, in accordance with Public Resources Code section 21092.5; and

WHEREAS, the Final EIR for the proposed Project was presented to the Board, as the decision making body of the lead agency, for certification as having been completed in compliance with the provisions of CEQA and the State and local CEQA Guidelines; and

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WHEREAS, the Board has carefully reviewed and considered all environmental documentation comprising the Final EIR, including the Draft EIR and the comments and the responses thereto, and has found that the Final EIR considers all potentially significant environmental impacts of the Project and is complete and adequate, and fully complies with all requirements of CEQA and the State and local CEQA Guidelines; and

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

WHEREAS, CEQA and the CEQA Guidelines provide that no public agency shall approve or carry out a project for which an EIR has been completed that identifies one or more significant effects of the project unless the public agency makes certain written findings for each of the significant effects, accompanied by a statement of facts supporting each finding; and

WHEREAS, CEQA and the CEQA Guidelines require that where an agency approves a project that would allow the occurrence of significant environmental effects which are identified in an EIR, but are not mitigated to a level of insignificance, the agency must state in writing the specific reasons supporting its action based on the Final EIR and/or other information in the record; and

WHEREAS, the Board has balanced the benefits of the Project against the unavoidable environmental impacts in determining to approve the Project, and has determined that any remaining unavoidable significant impacts are outweighed by specific economic, legal, social, technological or other benefits.

NOW, THEREFORE, the Board of Harbor Commissioners of the City of Long Beach resolves as follows:

Section 1. Certification. Based on its review and consideration of the Final EIR and all written communications and oral testimony regarding the Project submitted to

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and received by the Harbor Department, the Board certifies that the Final EIR has been completed in compliance with CEQA and the State and local CEQA Guidelines. The Board, having final approval authority over the proposed Project, finds that the Final EIR reflects the Board's independent judgment and analysis as lead agency under CEQA, and hereby adopts and certifies the Final EIR as complete and adequate. The Board further certifies that the Final EIR was presented to the Board and that the Board reviewed and considered the information contained in it prior to approving the Project.

Section 2. CEQA Findings and Statement of Facts. Pursuant to Public Resources Code section 21081 and CEQA Guidelines section 15091, the Board has reviewed, and hereby makes and adopts, the CEQA Findings of Fact for the Project, attached as and included in Exhibit "A," which is incorporated herein by reference as though set forth in full.

Section 3. Statement of Overriding Considerations. Pursuant to Public Resources Code section 21081 and CEQA Guidelines section 15093, the Board has reviewed and hereby makes and adopts the Statement of Overriding Considerations for the Project, attached as and included in Exhibit "A," which is incorporated herein by reference as though set forth in full.

Section 4. Mitigation Plan Approval. Although the Final EIR identifies certain significant environmental effects that would result from approval of the Project, certain environmental effects can feasibly be avoided or mitigated and will be avoided or mitigated by imposition of mitigation measures included in the Mitigation Monitoring and Reporting Program. Pursuant to Public Resources Code section 21081 and CEQA Guidelines section 15097, the Board hereby adopts and approves the Mitigation Monitoring and Reporting Program attached hereto as Exhibit "B," which is incorporated herein by reference as though set forth in full, including revised Mitigation Measure MM AQ-6: Periodic Technology Review set forth on Exhibit C which is incorporated herein by reference as though set forth in full. The Board further finds that the mitigation measures identified in the Mitigation Monitoring and Reporting Program are feasible, and

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specifically makes the environmental controls and mitigation measures included in the Final EIR and/or the Mitigation Monitoring and Reporting Program conditions of Project approval.

Section 5. No Significant New Information Added to Draft EIR. The information provided in the various reports submitted in connection with the proposed Project and in the responses to comments on the Draft EIR, the information added to the Final EIR, and the evidence presented in written and oral testimony at public hearings on the Project and the Draft EIR, do not constitute significant new information that would require recirculation of the Draft EIR pursuant to Public Resources Code section 21092.1 and CEQA Guidelines section 15088.5.

Section 6. Conformity with Port Master Plan. The Board finds on the basis of the whole record before it that the Project is in conformity with the Port Master Plan and consistent with the goals and objectives of the plan.

Section 7. Location and Custodian of Record of Proceedings. The Director of Environmental Planning of the Long Beach Harbor Department, whose office is located at 4801 Airport Plaza Drive, Long Beach, California 90815, is hereby designated as the custodian of the documents and other materials which constitute the record of proceedings upon which the Board's decision is based, which documents and materials shall be available for public inspection and copying in accordance with the provisions of the California Public Records Act (Government Code §§ 6250 *et seq.*).

Section 8. Notice of Determination. The Director of Environmental Planning shall file a notice of determination with the County Clerk of the County of Los Angeles and with the state Office of Planning and Research within five (5) working days after this approval.

Section 9. Approval of the Project, Adoption of Application Summary Report and Approval of Harbor Development Permit. The Board hereby approves the Project (identified as Alternative 1 in the Final EIR), adopts the Application Summary Report, and approves a Level III Harbor Development Permit for the Project pursuant to

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the California Coastal Act, the certified Port Master Plan, and Article XII, Section 1215 of the Long Beach City Charter.

Section 10. Certification, Posting and Filing. The Secretary of the Board shall certify the passage of this Resolution by the Board, shall cause the same to be posted in three (3) conspicuous places in the City of Long Beach, and shall cause a certified copy of this Resolution to be filed forthwith with the City Clerk, at which time it shall take effect.

I hereby certify that the foregoing Resolution was adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of May 11, 2015, 2015 by the following vote:

Ayes: Commissioners: Egoscue, Bynum, Farrell, Dines, Drummond

Noes: Commissioners: _____

Absent: Commissioners: _____

Not Voting: Commissioners: _____

Secretary

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

BJM:cao 05/13/15 #A11-02063

MCC Cement Facility Modification Project

Findings of Fact and Statement of Overriding Considerations

Prepared By

The Port of Long Beach
4801 Airport Plaza Drive
Long Beach, CA 90815

With Assistance From

leidos

April 2015

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MCC Cement Facility Modification Project

Findings of Fact and Statement of Overriding Considerations

Prepared by The Port of Long Beach
4801 Airport Plaza Drive
Long Beach, CA 90815

With assistance from
Leidos, Inc.

April 2015

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MCC CEMENT FACILITY MODIFICATION PROJECT
FINDINGS OF FACT and STATEMENT OF OVERRIDING CONSIDERATIONS

1.0 INTRODUCTION

These Findings of Fact have been prepared on behalf of the City of Long Beach acting by and through its Board of Harbor Commissioners (POLB or Port) in its capacity as lead agency pursuant to the California Environmental Quality Act (CEQA) to support a decision on the MCC Terminal, Inc. Cement Facility Modification Project (Project or proposed Project). Section 21081 of the California Public Resources Code and Section 15091 of the CEQA Guidelines provide that no public agency shall approve or carry out a project for which an environmental impact report (EIR) has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

1. Changes or alterations have been required in, or incorporated into, the project, which avoid or substantially lessen the significant environmental effects as identified in the Final EIR.

2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

3. Specific economic, legal, social, technological, or other considerations, including provisions of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

Additionally, the lead agency must not approve a project that will have a significant effect on the environment unless it finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the unavoidable adverse environmental effects. (Pub. Res. Code § 21081(b); 14 Cal. Code Regs. § 15093.). The Statement of Overriding Considerations set forth below identifies the specific overriding economic, legal, social, technological, or other benefits of the project that outweigh the significant environmental impacts identified in the Final EIR.

2.0 MCC CEMENT FACILITY MODIFICATION PROJECT

2.1 Project Objectives

CEQA requires that an EIR state the objectives of a proposed Project to explain the reasons for project development and why this particular solution is being recommended. Additionally, the project objectives are instrumental in determining which alternatives should be considered in the EIR.

The objectives of the proposed Project are to:

1. Upgrade existing facilities to improve operational efficiency and provide 40,000 metric tons of additional storage capacity to meet future cement demand in the Los Angeles region;

2. Install an emission control system (DoCCS) to reduce at-berth NOx emissions from ship auxiliary generator engines when vessels are not using shore-to-ship power; and

3. Modify the SCAQMD air permit for Bulk Cement Ship Unloading, which currently requires shore-to-ship power ("cold-ironing") for ships at berth, to allow either shore-to-ship power or venting on-vessel generators to the DoCCS NOx emission control equipment.

2.2 Project Overview

MCC Terminal, Inc. (hereinafter "MCC") is proposing modifications to its facility located on Pier F at 1150 Pier F Avenue, within the Port. MCC's existing facility receives bulk cement and cement-like materials (including Portland cement, blast furnace slag, pozzolans, and fly ash) at Berth F208 via bulk cargo vessels. MCC stores the product in a warehouse and loading silos and loads the product onto customer trucks via three truck loading racks. A variety of trucking companies may transport the product from the truck loading racks to local and

regional concrete batch plants. Berth F208 occupies the southern portion of the Project site and has a total wharf length of 550 feet.

The proposed Project would consist of:

- Installing an emission control system (DoCCS) to capture and reduce NOx emissions from ship auxiliary generators at berth;
- Constructing additional storage capacity on an adjacent lot consisting of 40,000 metric tons of storage and loading silos; and
- Upgrading existing facilities and ship unloading equipment.

MCC is proposing to construct the additional cement storage silos and truck loading equipment in the location formerly used as the warehouse for Pacific Banana operations. The warehouse was demolished in 2011 due to its failure to meet fire and building codes.

The four, 10,000 metric ton silos that would be installed as part of the proposed Project would provide additional cement storage capacity. This additional capacity would alleviate delays in unloading ships during periods when the existing warehouse capacity is insufficient to accommodate cement from an arriving ship. This is important because cement deliveries from overseas to the MCC facility are ordered months in advance. Therefore, if the demand for cement changes suddenly, it is possible that available warehouse capacity at the facility could be less than the cement volume carried by the ship. Under these conditions, the ship would be required to wait either at berth or at anchor until sufficient warehouse space becomes available to unload the entire ship. The addition of 40,000 metric tons of storage capacity would help to alleviate unloading delays since ships would be able to fully offload the entire cargo load (equal to about 40,000 metric tons). Accordingly, ships would spend less time at berth and move more efficiently through the Port.

A new cement unloader would be added, the larger existing unloader would be upgraded, and the smaller existing unloader would be decommissioned. The new cement unloaders would be connected to the existing warehouse and new cement silos via new piping. The current 4.21-acre site would be enlarged to 5.92 acres. If the project is approved, the Port would issue a Harbor Department Permit and enter into a new lease.

MCC would operate under a new lease with the Port that would include environmental controls imposed pursuant to the Port's Green Port Policy, Clean Air Action Plan (CAAP), Vessel Speed Reduction Program (VSRP), and best management practices (BMPs) for environmental protection. MCC would be required to acquire and comply with several regulatory permits and approvals if the Project is approved for implementation.

3.0 CEQA FINDINGS

The Findings of Fact are based on information contained in the Final EIR for the proposed Project, as well as information contained within the administrative record. The administrative record includes, but is not limited to, the Project application, Project staff reports, Project public hearing records, public notices, written comments on the Project, proposed decisions and findings on the Project, and all other documents relating to the agency decision on the Project. When making CEQA findings required by Public Resources Code Section 21081(a), a public agency shall specify the location and custodian of the documents or other material, which constitute the record of proceedings upon which its decision is based. The Director of Environmental Planning of the Long Beach Harbor Department, whose office is located at 4801 Airport Plaza Drive, Long Beach, CA 90815, is designated as the custodian of the documents and other materials which constitute the record of proceedings upon which the Board's decision is based, which documents and materials shall be available for public inspection and copying in accordance with the provisions of the California Public Records Act (Government Code 6250 *et seq.*).

The Draft EIR addresses the Project's potential effects on the environment, and was circulated for public review and comment pursuant to the CEQA Guidelines. Comments were received from a variety of public agencies, organizations, and individuals. The Final EIR contains copies of all comments and recommendations received on the Draft EIR, a list of persons, organizations and public agencies commenting on the Draft EIR, responses to comments received during the public review, and changes/clarifications to the Draft EIR. This section provides a summary of the environmental effects of the Project that are discussed in the Final EIR, and

provides written findings for each of the significant effects, which are accompanied by a brief explanation of the rationale for each finding.

The Draft EIR utilized the 2006 level of operations at the existing MCC facility as the baseline environmental conditions. The justification for that selection was set forth both in the Notice of Preparation of the Draft EIR, and in the Draft EIR itself in Section 3.0.2. The selection was further explained in Response to Comment NRDC-3. The Board of Harbor Commissioners hereby finds that that the selection of the 2006 operational levels as the baseline is appropriate given the fact that MCC has an existing facility that went through prior CEQA review and is fully permitted. The facts and explanations set forth in the Draft EIR in Section 3.0.2, in the Final EIR, and in the Response to Comment NRDC-3 are hereby adopted as the facts supporting this finding. The chosen baseline is fully compliant with CEQA and the CEQA Guidelines.

3.1 Environmental Impacts of the Proposed Project

Less Than Significant Impacts

The Final EIR determined that some impacts in the following environmental resource areas would be less-than-significant prior to mitigation if the proposed Project were implemented:

1. Geology, Groundwater, and Soils;
2. Air Quality (certain impacts only);
3. Global Climate Change (certain impacts only);
4. Hydrology and Water Quality;
5. Biological Resources and Habitat (certain impacts only);
6. Ground Transportation;
7. Vessel Transportation;
8. Noise;
9. Hazards and Hazardous Materials; and
10. Utilities and Service Systems.

Significant Impacts That Will Be Mitigated to Less Than Significant Levels

The Final EIR determined that some impacts in the following environmental resource area would be significant but feasibly mitigated to less than significant with adoption of mitigation measures if the proposed Project were implemented:

1. Air Quality (certain impacts only).

Significant and Unavoidable Impacts

The Final EIR determined that some impacts in the following environmental resource areas would be significant and unavoidable if the proposed Project were implemented:

1. Air Quality (certain impacts only);
2. Global Climate Change (certain impacts only); and
3. Biological Resources and Habitat (certain impacts only).

3.2 Findings Regarding Environmental Impacts Determined to be No Impact or Less Than Significant

The Board of Harbor Commissioners hereby finds that the following environmental impacts of the Project are less than significant or have been determined to have no impact. Under CEQA, no mitigation measures are required for impacts that are less than significant (14 Cal. Code Regs. □15126.4(a)(3)).

Resource Area	Impact	Board Finding
Geology, Groundwater, and Soils	**GEO-1**: Project construction activities would not substantially alter the topography beyond that resulting from natural erosion and depositional processes.	This impact will be less than significant because the project site topography is relatively flat and the grade would be restored such that the final elevation is similar to baseline conditions.
Geology, Groundwater, and Soils	**GEO-2**: Project construction activities would not disturb or alter unique geologic features or geologic features of unusual scientific value.	The Project will have no impact on such resources as they do not exist on the site.
Geology, Groundwater, and Soils	**GEO-3:** Project construction activities would not trigger or accelerate geologic processes such as erosion.	This impact will be less than significant because runoff of soil during Project construction would be controlled by use of BMPs, as required by either the General Construction Activity Stormwater Permit or a site-specific SWPPP for the Project, issued by the RWQCB. This would minimize the amount of soil runoff and deposition into the harbor.
Geology, Groundwater, and Soils	**GEO-4:** Project construction activities would not render inaccessible known mineral (petroleum or natural gas) resources.	The Project site is underlain by the Wilmington Oil Field and several oil wells are located adjacent to the project site. Project construction and operations would not affect production from these oil wells. Petroleum reserves beneath the site could also be accessed from remote locations, using directional (or slant) drilling techniques. Therefore, for the reasons described in Final EIR Section 3.1.2.3, impacts will be less than significant.
Geology, Groundwater, and Soils	**GEO-5:** Project construction activities would not contaminate soil or groundwater that creates a significant hazard to the public or the environment.	This impact will be less than significant because the contractor would remediate and/or dispose of undocumented oil field equipment and/or contaminated soil and groundwater encountered during construction in accordance with all federal, state, and local regulations.
Geology, Groundwater, and Soils	**GEO-6:** Project operations would not be affected ground rupture due to an earthquake at the site and attendant damage to structures, limiting their use due to safely considerations or physical condition.	The impacts associated with seismically-induced ground surface rupture would not occur, since there are no known active of potentially active faults within the Project area.
Geology, Groundwater, and Soils	**GEO-7:** Project operations would not be affected by earthquake-induced ground motion (shaking) causing liquefaction, settlement, or surface cracks at the site and attendant damage to proposed structures, resulting in a substantial loss of use for more than 60 days or exposing the public to substantial risk of injury.	This impact will be less than significant because construction would be conducted in accordance with the City s Building Code Requirements, which would limit the severity of consequences from severe seismically-induced ground movement during operations.
Geology, Groundwater, and Soils	**GEO-8:** Project operations would not expose people and structures to a greater than average risk of tsunamis or seiches.	Impacts due to seismically induced tsunamis and seiches are typical for the entire California coastline. However, because proposed structures would be located a minimum of 16 to 18 feet above MLLW, which is 5 to 7 feet above maximum likely wave action, tsunami-induced flooding would be unlikely at the Project site. Therefore, for the reasons described in Final EIR Section 3.1.2.3, impacts will be less than significant.
Air Quality	**AQ-1:** Project construction activities would produce emissions that would not exceed SCAQMD emission significance thresholds.	This impact will be less than significant because emissions from Project construction or combined construction and operational activities would remain below all SCAQMD emission significance thresholds.

Resource Area	Impact	Board Finding
Air Quality	**AQ-5:** Project operations would not create objectionable odors to sensitive receptors.	This impact will be less than significant because the distance between Project emission sources and sensitive receptors would be far enough to allow for adequate dispersion of these emissions to below objectionable odor levels. Moreover, the level of ammonia slip emissions produced during ship hoteling would not exceed the odor threshold.
Air Quality	**AQ-6:** Project operations would not expose receptors to significant levels of TACs.	This impact is less than significant because the maximum cancer risk from Project operations would be less than the significance threshold of 10 in one million. The cancer burden and non-cancer chronic and acute health effects of the Project are also below the thresholds of significance.
Air Quality	**AQ-7:** Project operations would not conflict with or obstruct implementation of the applicable AQMP.	This impact will be less than significant because the proposed Project would comply with the 2012 AQMP emission reduction measures that are designed to bring the SCAB into attainment of the national and state ambient air quality standards. It would not conflict with or obstruct implementation of the SIP.
Air Quality	**Cumulative Impact AQ-5:** The Project would not produce cumulatively considerable contributions of objectionable odors to sensitive receptors.	This impact will be less than cumulatively considerable because the distance between proposed Project emission sources and sensitive receptors would be far enough to allow for adequate dispersion of these emissions to below objectionable odor levels.
Air Quality	**Cumulative Impact AQ-6:** The Project would not produce cumulatively considerable contributions of airborne cancer and non-cancer effects within the project region.	This impact will be less than cumulatively considerable because emissions of TACs from Project operations would produce only minor increases in airborne cancer and non-cancer effects. The Project's incremental contribution to cancer and non-cancer risks would be below significance thresholds.
Global Climate Change	**GCC-2:** The Project would not expose people or structures to a significant risk of loss, injury, or death involving flooding as a result of sea level rise.	This impact will be less than significant because the project terminal and wharf would remain higher than projected SLR at the project site. SLR would occur at a slow enough rate that there would be ample time to respond to incremental changes in sea level and therefore to implement adaptations.
Hydrology and Water Quality	**WQ-1.1:** Project construction activities would not result in violation of regulatory standards or guidelines.	Runoff of construction-related contaminants from Project construction would be regulated by standard BMPs, such as sediment barriers, sedimentation basins, and site contouring, during these activities. Adherence to BMPs would minimize runoff of contaminants dissolved in water and adsorbed on soil particles, in compliance with the State General Permit for Stormwater Discharges Associated with Construction Activity (Water Quality Order 2009-0009-DWQ, as amended by 2010-0014 DWQ and 2012-0006-DWQ) and a Project-specific SWPPP. Therefore, for the reasons described in Final EIR Section 3.4.2.3, impacts will be less than significant.

Resource Area	Impact	Board Finding
Hydrology and Water Quality	**WQ-2.1:** Project construction activities would not substantially alter water circulation.	Site grading would result in minor changes in topography and drainage patterns that would not substantially alter water movement at the Project site. Therefore, for the reasons described in Final EIR Section 3.4.2.3, impacts will be less than significant.
Hydrology and Water Quality	**WQ-3.1:** Project construction activities would not result in flooding that could harm people, damage property, or adversely affect biological resources.	Project site elevations would remain generally the same as a result of Project construction, and runoff would be directed to storm drains. This impact will be less than significant because flooding would not be increased by Project construction.
Hydrology and Water Quality	**WQ-4.1:** Project construction activities would not result in wind or water erosion that causes substantial soil runoff or deposition not contained or controlled onsite.	Construction activities would generally not accelerate natural processes of wind and water erosion resulting in soil runoff or deposition that could not be contained or controlled onsite through implementation of BMPs to control runoff. This impact will be less than significant because runoff from general construction activities would have short-term, localized impacts on water quality.
Hydrology and Water Quality	**WQ-1.2:** Project operations would not result in violation of regulatory standards or guidelines.	Existing regulatory controls for runoff and storm drain discharges, as implemented by the Port's Stormwater Program, are designed to reduce impacts to water quality. The MCC facility operator would be required to implement pollution control measures in compliance with the Port's Stormwater Program. Although the presence of regulatory standards or requirements cannot be assumed to result in less than significant impacts, results from past stormwater monitoring indicate that operation of the Project is not expected to result in significant impacts on water quality. Therefore, for the reasons described in Final EIR Section 3.4.2.3, impacts will be less than significant.
Hydrology and Water Quality	**WQ-2.2:** Project operations would not substantially alter water circulation.	This impact will be less than significant because surface water at the Project site would be directed to flow across paved, impermeable surfaces and through surface drains toward the waters of the harbor.
Hydrology and Water Quality	**WQ-3.2:** Project operations would not result in flooding that could harm people, damage property, or adversely affect biological resources.	Impacts will be less than significant because the likelihood of flooding would not be increased by operations at Project facilities. The Project site is not located within a 100-year or 500-year flood zone. Project operations would not increase the potential for flooding on site.
Hydrology and Water Quality	**WQ-4.2:** Project operations would not result in wind or water erosion that causes substantial soil runoff or deposition not contained or controlled onsite.	This impact will be less than significant because the Project site would be paved with minimal exposed soil surfaces. The paved surface area would minimize potentials for erosion and soil runoff from the Project site during operations.

Resource Area	Impact	Board Finding
Biological Resources and Habitat	**BIO-1.1:** Project construction activities would not substantially affect any rare, threatened, or endangered species or their habitat.	Construction activities would result in no loss of individuals or habitat for rare, threatened, or endangered species. Site improvements and temporary construction effects (noise, vibration, and activity disturbance) would be unlikely to affect any special status species or other MBTA covered species because of their distance from the Project site or transient occurrence in the vicinity. No substantial haul outs for marine mammals occur within the Project area. Therefore, for the reasons described in Final EIR Section 3.5.2.3, impacts will be less than significant.
Biological Resources and Habitat	**BIO-2.1:** Project construction activities would not interfere with wildlife movement/ migration corridors.	This impact will be less than significant because construction would have little, if any, effect on wildlife movement or migration corridors.
Biological Resources and Habitat	**BIO-3.1:** Project construction activities would not result in a substantial loss or alteration of marine habitat.	No in-water construction activities would occur for the proposed Project. Therefore, there would be no impact on marine habitat.
Biological Resources and Habitat	**BIO-4.1:** Project construction activities would not substantially affect a natural habitat or plant community.	The Project site has already been fully developed. There are no existing natural habitat or plant communities on or near the site. Therefore, there would be no impact on such resources.
Biological Resources and Habitat	**BIO-5.1:** Project construction activities would not substantially disrupt local biological communities.	Terrestrial animals and water-associated birds that may be present in the vicinity would be expected to move from work areas to undisturbed locations within the Project area or vicinity. This effect would be temporary, with wildlife reoccupying areas after disturbance or construction is completed. Runoff of pollutants or sediment from construction would be minimized through use of project-specific SWPPP and BMPs, and the low concentrations that may enter harbor waters would not substantially disrupt marine communities. Accidental spills from equipment during construction are unlikely to occur, and any small spills would be cleaned up immediately, resulting in only localized effects. Therefore, for the reasons described in Final EIR Section 3.5.2.3, impacts will be less than significant.
Biological Resources and Habitat	**BIO-1.2:** Project operations would not substantially affect any endangered, threatened, or rare species or their habitat.	This impact will be less than significant because operational activities would result in no loss of individuals or habitat for rare, threatened, or endangered species, and underwater sound from Project-related vessels would affect few, if any, marine mammals.
Biological Resources and Habitat	**BIO-2.2:** Project operations would not interfere with wildlife movement or migration corridors.	This impact will be less than significant because operational activities associated with the proposed Project would have little, if any, effect on wildlife movement or migration.

Resource Area	Impact	Board Finding
Biological Resources and Habitat	**BIO-4.2:** Project operations would not substantially affect a natural habitat or plant community.	Runoff from facility upgrades and the minimal increase in vessel traffic from Project operations would have less than significant impacts on aquatic habitats, EFH, or natural communities. Operations would have no impacts on natural habitat or communities, such as eelgrass beds, salt marsh, or freshwater wetlands. Therefore, for the reasons described in Final EIR Section 3.5.2.3, impacts will be less than significant.
Biological Resources and Habitat	**BIO-5.2:** Project operations would not substantially disrupt local biological communities.	This impact will be less than significant because operations would not substantially disrupt local biological communities as a result of the runoff of contaminants, hazardous materials spills, or increased vessel traffic.
Ground Transportation	**TRANS-1.1:** Project construction activities would not increase an intersection's V/C ratio or LOS in a manner that exceeds adopted performance standards.	This impact will be less than significant because the low levels of construction traffic associated with transportation of equipment, materials, and temporary construction workers would not substantially increase the V/C ratio or LOS of any intersection.
Ground Transportation	**TRANS-2.1:** Project construction would not increase a CMP monitoring location V/C ratio such that it violates the CMP standards.	This impact will be less than significant because incremental project-related construction traffic would be below CMP standards.
Ground Transportation	**TRANS-1.2:** Project operations would not increase an intersection's V/C ratio or LOS in a manner that exceeds adopted performance standards.	This impact will be less than significant because intersections would continue to operate at acceptable V/C ratios and LOS during Project operations.
Ground Transportation	**TRANS-2.2:** Project operations would not increase a CMP monitoring location V/C ratio such that it violates the CMP standards.	This impact will be less than significant because incremental project-related traffic during operations would be below CMP criteria and thresholds in accordance with appropriate Metro CMP procedures for evaluating freeway impacts.
Vessel Transportation	**VT-1:** Project operations would not result in an increase in vessel traffic that results in congestion within the harbor, nor would the ability for maritime commerce to operate efficiently and safely be exceeded.	The Project would increase the total number of vessels calling at the terminal by 1 additional vessel call every 5 to 6 days (i.e., addition of less than one project-related vessel per day). Project impacts on vessel transportation safety would not increase vessel traffic such that there would be congestion in the harbor or exceed the ability of maritime commerce to operate efficiently and safely. Therefore, for the reasons described in Final EIR Section 3.7.2.3, impacts will be less than significant.
Noise	**NOI-1.1:** Project construction activities would not increase ambient noise levels by 3 dBA.	Impacts will be less than significant because construction activities would not expose noise sensitive land uses to an increase in noise of 3 dBA or more above the ambient noise level.
Noise	**NOI-2.1:** Project construction activities would not exceed City of Long Beach Municipal Code maximum noise levels.	Impacts will be less than significant because Project construction activities would not result in noise that exceeds LBMC maximum noise levels at sensitive receptor sites.

Resource Area	Impact	Board Finding
Noise	**NOI-1.2:** Project operations would not generate noise that would increase ambient noise levels by 3 dBA.	Impacts will be less than significant because operational activities would not expose noise sensitive land uses to an increase in noise that is 3 dBA or more above the ambient noise level.
Noise	**NOI-2.2:** Project operations would not exceed City of Long Beach Municipal Code maximum noise levels.	Future increases in traffic noise levels would not be significantly influenced by the Project. Therefore, Project-related traffic would not result in noise levels that would exceed the maximum thresholds allowed by the LBMC. Therefore, for the reasons described in Final EIR Section 3.8.2.3, impacts will be less than significant.
Hazards and Hazardous Materials	**HAZ-1.1:** Project construction would not result in an accidental release of hazardous materials that would adversely affect the health and safety of the general public or workers.	This impact will be less than significant because the Project would ensure implementation of standard BMPs, proper use and storage of hazardous materials and petroleum products, and proper removal of ACMs, lead-based paint, and PCBs, in accordance with applicable federal, state, and local regulations.
Hazards and Hazardous Materials	**HAZ-1.2:** Project operations would not result in an accidental release of hazardous materials that would adversely affect the health and safety of the general public or workers.	The use of the robust cement containment infrastructure and implementation of standard BMPs, established in a site-specific SWPPP, would reduce impacts associated with accidental release of hazardous materials during operations. Therefore, for the reasons described in Final EIR Section 3.9.2.3, impacts will be less than significant.
Utilities and Service Systems	**UTIL-1.1:** Project construction activities would not result in expansion of water, wastewater, storm drains, natural gas, or electrical utility lines or distribution infrastructure.	This impact will be less than significant because Project construction activities would result in minimal demands on municipal utilities and service systems, including water services, wastewater, and solid waste.
Utilities and Service Systems	**UTIL-2.1:** Project construction activities would not exhaust or exceed existing water, wastewater, or landfill capacities.	This impact will be less than significant because the proposed Project would result in minimal demands on municipal utilities/service systems during construction activities, including water services, wastewater, and solid waste, that would not exceed existing capacities.
Utilities and Service Systems	**UTIL-1.2:** Project operations would not result in expansion of water, wastewater, storm drains, natural gas, or electrical utility lines or distribution infrastructure.	This impact will be less than significant because the minimal increase in the number of new workers and increased terminal utility demands would not be substantial relative to the existing and projected regional electrical and natural gas supplies.
Utilities and Service Systems	**UTIL-2.2:** Project operations would not exhaust or exceed existing water supply, wastewater, or landfill capacities.	This impact will be less than significant because Project operations would represent minimal increases in demands on water supply, wastewater treatment, and solid waste disposal that would not exceed existing capacities.

3.3 Findings Regarding Environmental Impacts Determined to be Mitigated to Less Than Significant Levels

The EIR identified a potentially significant effect that could result from the proposed Project. However, the Port finds for the potentially significant impact defined in this section, based upon substantial evidence in the record, that changes or alterations have been required or incorporated into the proposed Project that avoid or

substantially lessen the significant effect as identified in the EIR. As a result, adoption of the mitigation measure set forth below would reduce the identified significant effect to a less than significant level.

3.3.1 Air Quality

As discussed in Final EIR Section 3.2.2.3, there would be one significant impact to air quality that would be mitigated to less than significant as a result of a mitigation measure that has been incorporated into the proposed Project. The impact and mitigation measure are discussed below.

Impact AQ-2: Project construction activities would result in offsite ambient air pollutant concentrations that would exceed a SCAQMD threshold of significance.

On a peak day, construction of the proposed Project prior to mitigation would result in PM_{10} and $PM_{2.5}$ emissions that exceed SCAQMD thresholds. As a result, unmitigated emissions from Project construction would produce significant impacts on ambient 24-hour PM_{10} and $PM_{2.5}$ levels.

Finding

Mitigation has been incorporated into the Project that avoids or substantially lessens its significant environmental effect as identified in the Final EIR. This change is set forth in **Mitigation Measure AQ-1** below.

> **Mitigation Measure AQ-1: Additional Fugitive Dust Controls.** The proposed Project construction contractor shall implement additional dust control measures that would increase PM10/PM2.5 emission reductions from 61 to 90 percent compared to uncontrolled levels. The contractor shall document these measures in a dust control plan that is approved by the SCAQMD under the requirements of Rule 403. The contractor shall designate personnel to monitor the dust control program and shall order increased watering, as necessary, to ensure a 90 percent control level. Their duties shall include holiday and weekend periods when work may not be in progress.
>
> Additional measures to reduce fugitive dust shall include, but are not limited to, the following:
>
> - Apply water three times daily or as needed to areas where soil is disturbed;
> - Apply approved non-toxic chemical soil stabilizers according to manufacturer specifications to all inactive construction areas or replace groundcover in disturbed areas;
> - Provide temporary wind fencing around sites being graded or cleared;
> - Cover truck loads that haul dirt, sand, or gravel or maintain at least two feet of freeboard in accordance with Section 23114 of the California Vehicle Code;
> - Install wheel washers where vehicles enter and exit unpaved roads onto paved roads, or wash off tires of vehicles and any equipment leaving the construction site;
> - Suspend all soil disturbance activities when winds exceed 25 miles per hour as instantaneous gusts or when visible dust plumes emanate from the site and stabilize all disturbed areas;
> - Appoint a construction relations officer to act as a community liaison concerning onsite construction activity including resolution of issues related to PM_{10} generation;
> - Sweep all streets at least once a day using SCAQMD Rule 1186.1 certified street sweepers or roadway washing trucks if visible soil materials are carried to adjacent streets (recommend water sweepers with reclaimed water); and
> - Apply water three times daily, or non-toxic soil stabilizers according to manufacturers specifications, to all unpaved parking or staging areas or unpaved road surfaces.

Rationale for Finding

Implementation of **Mitigation Measure AQ-1** would reduce the emissions from proposed Project construction from unmitigated levels. With this mitigation measure, peak daily emissions generated by Project construction would produce less than significant emissions of PM_{10} and $PM_{2.5}$. As a result, mitigated emissions from proposed Project construction would produce less than significant impacts on ambient pollutant levels.

3.4 Findings Regarding Significant Environmental Impacts that Cannot be Mitigated to a Less Than Significant Level

The EIR identified certain potentially significant effects that could result from the proposed Project. The Port finds for each of the significant impacts identified in this section, based upon substantial evidence in the record, that changes or alterations have been required or incorporated into the proposed Project that substantially lessen the significant effects as identified in the Final EIR. However, even with adoption of the mitigation measures set forth below, Project impacts are not reduced below a level of significance and remain significant and unavoidable.

3.4.1 Air Quality

As discussed in Final EIR Section 3.2, there would be two significant impacts to air quality as a result of the proposed Project during operations that would remain significant and unavoidable.

Impact AQ-3: The Project would generate operational emissions of NOx that exceed a SCAQMD threshold of significance.

During a peak day of activity, Project operations would produce levels of NO_x emissions that exceed SCAQMD daily emission thresholds. These levels would represent significant air quality impacts.

Finding

The Board of Harbor Commissioners hereby finds that changes or alterations have been incorporated into the Project that substantially lessen the significant environmental effect identified in the Final EIR. This change is set forth in **Mitigation Measures AQ-2, AQ-5,** and **AQ-6** below.

> **Mitigation Measure AQ-2: Modernization of Delivery Truck Fleet.** No less than 90 percent of the trucks loading cement or cementitious material at the MCC facility shall be equipped with an engine that meets one of the following requirements: 1) is no more than five years old, based on engine model year ("5-Year Engine"); 2) has been designed or retrofitted to comply with federal and state on-road heavy-duty engine emissions standards (e.g. EPA 2010 engine emission standards or successor rules or regulations for on-road heavy duty diesel engines) for a 5-Year Engine ("Emission Equivalent Engine"); or 3) uses alternative engine technology or fuels demonstrated to produce emissions no greater than a 5-Year Engine ("Alternative Equivalent Engine"). The remaining 10 percent of the trucks shall comply with all applicable federal and state heavy-duty on-road truck regulations. In addition, all trucks loading cement or cementitious materials at the MCC facility shall be registered in the Port of Long Beach and Los Angeles Clean Truck Program Drayage Truck Registry and the CARB Drayage Truck Registry. Compliance with this 90 percent requirement shall be determined on a calendar year basis. Documentation of compliance, showing the following information, shall be submitted to the Port's Environmental Planning Division on an annual basis by January 31 following each year of operation: 1) truck vehicle identification number (VIN), 2) engine model year, 3) annual truck trips, and 4) if non-diesel technology, manufacturer engine standards.
>
> **Mitigation Measure AQ-5: Participation in AMECS Emission Testing.** After construction of the proposed project has been completed and operations have resumed at the MCC facility, MCC shall use its best effort to participate in the SCAQMD's AMECS demonstration project at the Port of Long Beach (Port). MCC's participation specifically pertains to Task 10 Durability Testing as described in Exhibit A to the contract between the City of Long Beach and the SCAQMD, approved by the Port of Long Beach Board of Harbor Commissioners on February 10, 2014 (the "AMECS Demonstration Testing"), if at such time, AMECS technology is undergoing Task 10 Durability Testing at the Port.

If MCC participates in the testing of a vessel pursuant to the AMECS Demonstration Testing, the costs of testing will be borne as indicated in the contract, and no testing costs shall be borne by MCC (with the exception of in-kind staff time associated with coordinating the logistics of the testing). Additionally, if MCC participates in the AMECS Demonstration Testing, such vessel hoteling hours shall be exempt from the requirements of Project Environmental Control (EC AQ-2) □ Shore to Ship Power/Cold Ironing, which requires OGVs that call at the MCC facility to use shore-to-ship power (cold-ironing) no less than 66 percent of the time (on an annual average) while at berth.

Mitigation Measure AQ-6: Periodic Technology Review. To promote new emission control technologies, MCC shall perform an investigation and submit a report to the POLB Chief Executive, every 5 years following the effective date of the new lease on any POLB-identified or other new emissions-reduction technologies that may reduce emissions at the MCC facility, including the feasibility of zero emissions and near-zero emissions technologies for cement delivery trucks and cement handling equipment (e.g. payloader). If the Periodic Technology Review demonstrates the new technology will be effective in reducing emissions and is determined through mutual agreement between the Port and MCC to be feasible, including but not limited to from a financial, technical, legal and operational perspective, MCC shall work with the Port to implement such technology.

Rationale for Finding

Since the majority of daily unmitigated NO_x emissions from proposed Project operations would occur from on-road cement delivery trucks and OGVs transiting the SCAB outer waters, mitigation of Project NO_x emissions focuses on these two source types.

Regarding OGVs, the Project air quality analysis assumes that unmitigated OGVs that call at the Project terminal in the future would have main engines that comply with the MARPOL Annex VI Tier 1 NO_x standard. Conversion of main engines in OGVs that meet either MARPOL Annex VI Tier 2 or Tier 3 NO_x emission limits would reduce NO_x emissions from the engines of Project OGVs by about 15 or 80 percent, respectively (Ports of Los Angeles and Long Beach 2010). The implementation years for these Tier 2/3 NO_x standards are 2011/2016. The CAAP proposes measures that would reduce NO_x emissions from OGV main engines by 1) encouraging the introduction of new OGVs with cleaner Tier 2 and 3 engines at a rate that is faster than what would occur from natural fleet turnover (measure OGV5) or 2) retrofitting main engines of OGVs in the existing fleet (measure OGV6).

MCC does not own the OGVs that call at the project terminal and they have no active charter party agreements or dedicated fleet. The international fleet of ships used to transport cement also transport other bulk products. Thus, they are not exclusively used for cement or exclusively designated to deliver to one port. Therefore, few ships have visited the terminal more than once. Due to this lack of control over the OGV fleet that calls on the terminal, it would be difficult to facilitate implementation of CAAP measure OGV5 or OGV6 on these vessels. Retrofitting or replacing an existing OGV main engine to reduce NO_x emissions also would not be feasible, as successful demonstration of these techniques are still in a process of development and evolution (Ports of Los Angeles and Long Beach 2012, 2013, and 2014). Due to the high cost of engine retrofits, the cost-effectiveness (in dollars spent per mass of NO_x reductions) of such a measure would be too high to implement. Therefore, implementation of measures to reduce NO_x emissions from proposed OGV main engines is deemed infeasible.

It is expected that soon after completion of construction, newer OGVs that comply with the MARPOL Annex VI Tier 2/3 NO_x standards would enter the project OGV fleet. As a result, they would generate correspondingly lower NO_x emissions and impacts compared to those presented in the Project air quality analysis. In addition, the proposed Project includes use of an innovative at-berth emission control technology (DoCCS) that would reduce NO_x emissions from ships at berth that are not in shore power mode by approximately 88.9 percent from uncontrolled levels. The DoCCS would help to reduce OGV NO_x emissions.

Regarding cement delivery trucks, the air quality analysis uses average NO_x emission rates that would occur from the POLB CTP truck fleet as a whole beginning in year 2015 to define NO_x emissions for the unmitigated Project truck fleet. This future POLB CTP truck fleet would include older vehicles whose NO_x emissions have increased with time due to usage and performance deterioration compared to newer vehicles. The intent of

Mitigation Measure AQ-2 is that 90% of the truck fleet would go above and beyond the Clean Trucks Program and current federal and state on-road emission standards by the engine being no older than five years old. Replacing these older vehicles with newer and lower emitting ones would help to mitigate NO_x emissions from the truck fleet as a whole. **Mitigation Measures AQ-5 and AQ-6** require assessments of technologies that may be appropriate in the future for mitigating NO_x emissions, including alternative at-berth emission control technologies and zero emission and near-zero emission technologies for cement delivery trucks. The applicability and effectiveness of future technologies for mitigating NO_x emissions cannot be quantified at this time, but they will be evaluated as part of the periodic assessments as specified in the mitigation measures.

Impact AQ-4: Project operations would result in offsite ambient air pollutant concentrations that exceed a SCAQMD threshold of significance.

The proposed Project's operational emissions would result in maximum ambient offsite concentrations of 1-hour NO_2, 24-hour PM_{10} and $PM_{2.5}$, and annual PM_{10} that would exceed the SCAQMD significance thresholds. The maximum ambient offsite concentration of all other pollutants would be less than significant prior to mitigation.

Finding

The Board of Harbor Commissioners hereby finds that changes or alterations have been incorporated into the project that substantially lessen the significant environmental effect identified in the Final EIR. Implementation of **Mitigation Measure AQ-2** would reduce Project operational emissions of NO_x and correspondingly NO_2.This measure also would reduce combustive DPM emissions from the proposed cement delivery trucks. An additional change to the proposed Project to reduce DPM emissions from project vessel operations is set forth in **Mitigation Measure AQ-3** below.

> **Mitigation Measure AQ-3: Diesel Particulate Filter for the DoCCS.** MCC shall participate in a demonstration project for integrating an active diesel particulate filter (DPF) system into the DoCCS. Within three (3) months after the start-up/initial use of the DoCCS to control emissions from a ship, MCC shall submit to the Port a proposed plan, budget, and schedule for the demonstration project that includes, but is not limited to, designing, procuring, permitting, installing, operating, and emissions testing of the DPF system. The Port shall review and approve MCC's proposal and the demonstration project shall commence within six (6) months of the Port's approval. As part of the demonstration project, MCC shall operate the combined DPF and DoCCS system for 1,000 hours and conduct emissions testing of the combined DPF and DoCCS system in a manner that is compliant with testing requirements for both the SCAQMD and California Air Resources Board. The demonstration project shall be completed within two (2) years after installation and start-up of the DPF system.
>
> The demonstration project may be terminated after less than 1,000 hours of operation in the event that MCC determines, and the Port concurs, that the DPF is not compatible with MCC's equipment and operations, or the technology has not yet sufficiently advanced for this application.
>
> No later than six (6) months after the completion of the demonstration project, MCC shall provide a final report to the Port that includes a summary of the demonstration project, technical specifications and costs of the DPF system, emissions testing results, and a discussion of any operational considerations of adding the DPF system to the DoCCS. If it is determined through mutual agreement by MCC and the Port that the DPF system is compatible with MCC's equipment and operations, MCC shall permanently install the DPF and use the DPF whenever ships are treated with the DoCCS.
>
> Vessel hoteling hours associated with the testing of the DPF system shall be exempt from the requirements of project Environmental Control - Shore-to-Ship Power/Cold Ironing. This measure requires OGVs that call at the MCC facility to use shore-to-ship power (cold-ironing) no less than 66 percent of the time (on an annual average) while at berth. The total number of OGV hoteling hours allowed by this exemption shall not exceed 1,000.

In order to avoid speculation, implementation of **Mitigation Measure AQ-3** was not quantified, but the measure would reduce PM emissions from Project operations. **Mitigation Measures AQ-5 and AQ-6** require assessments of technologies that may be appropriate in the future for mitigating NO_x and PM emissions, including alternative at-berth emission control technologies and zero emission and near-zero emission technologies

for cement delivery trucks. The applicability and effectiveness of future technologies for mitigating NO_x and PM cannot be quantified at this time, but they will be evaluated as part of the periodic assessments as specified in the mitigation measures. Impacts of mitigated emissions of NO_x and PM would continue to exceed the SCAQMD ambient significance thresholds for 1-hour NO_2, 24-hour PM_{10} and $PM_{2.5}$, and annual PM_{10}. Since there are no other feasible mitigation measures, these ambient impacts from proposed Project operations would remain significant and unavoidable.

Rationale for Finding

No additional feasible mitigation measures are available to further reduce NO_2, $PM_{2.5}$, and PM_{10} emissions during project operations. Therefore, emissions would remain above the significant impact thresholds.

3.4.2 Global Climate Change

As discussed in Final EIR Section 3.3, there would be one significant impact on global climate change as a result of the proposed Project during construction and operation. This impact would remain significant and unavoidable.

GCC-1: The Project would produce GHG emissions that exceed the SCAQMD interim annualized significant emissions threshold for industrial projects.

An individual project does not generate enough GHG emissions by itself to significantly influence global climate change. Thus, the issue of global climate change is, by definition, a cumulative impact, such that an appreciable impact on global climate change would only occur when GHG emissions from a project combine with GHG emissions from other manmade activities on a global scale.

Emissions of GHG associated with Project construction and operational activities would be 22,248 metric tons of CO_2e per year. These emissions would exceed the SCAQMD interim significance threshold of 10,000 metric tons of CO_2e per year and therefore would be significant.

Finding

The Board of Harbor Commissioners hereby finds that changes or alterations have been incorporated into the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. These changes are set forth in **Mitigation Measures GCC-1, GCC-2, and GCC-3** below.

> **Mitigation Measure GCC-1: Indirect GHG Emission Reduction/Avoidance.** MCC shall minimize the release of indirect GHG emissions through measures that reduce or avoid electricity consumption at the facility. Measures to reduce indirect GHG emissions from electricity generation shall include: 1) installation of low-energy demand lighting (e.g., fluorescent or light-emitting diode) in the existing office building, other facility buildings, and the existing and new exterior lighting, except where compatible energy efficient lighting is not available or its installation could compromise safety and 2) installation of approximately 1,000 square feet of solar panels on the existing office building, with the total amount to be determined based on available space and the additional weight that can be borne by the existing roof.
>
> Prior to the start of Project construction, MCC shall submit to the Port a proposed plan and schedule for implementing these two measures. The low-energy demand lighting and solar panels shall be installed no later than three (3) years from the start of Project construction. Once these installations have been completed, MCC shall prepare and submit to the Port a report detailing the number of existing lights replaced, number of new low-energy demand lighting installed, and the final total square feet of solar panels installed. The report also shall include a quantitative assessment of the amount of greenhouse gas emissions reduced from each of the two measures and the amount of power generated from the solar panels in kilowatt-hours per year.
>
> **Mitigation Measure GCC-2: Energy Audit.** To identify future opportunities to reduce GHG emissions, commencing 2018 and every five years thereafter, MCC at its expense shall complete a site-specific energy audit using a qualified third party energy auditor. Both the energy auditor and the

scope of the audit must be approved by the Port. This audit shall evaluate MCC's facility and operations to determine whether there are additional, cost-effective measures that would reduce overall power use. No later than six (6) months following completion of the energy audit, MCC shall submit a report to the Port that presents 1) the results of the audit and 2) a schedule for implementation of the feasible, cost-effective energy-efficiency or conservation measures identified in the report.

Mitigation Measure GCC-3: Funding Contributions to the POLB Greenhouse Gas Emissions Reduction Grant Program. MCC shall provide a one-time lump sum contribution of $333,720 to the POLB GHG Emissions Reduction Grant Program. This fee is based on the following: 1) Project operations are estimated to increase CO_2e emissions from baseline conditions by as much as 22,248 metric tons at maximum design throughput of 4.58 million tons per year of cement and 2) the SCAQMD has established Rule 2702 (GHG Reduction Program), which offers GHG emission reductions at a rate of $15 per metric ton of CO_2e. The Project-related cost would be based on: 22,248 metric tons CO_2e emissions x $15 per metric ton = $333,720.

This contribution would be used to fund projects pursuant to the GHG Program, including, but not limited to, generation of green power from renewable energy sources; installation of urban forests and drought-tolerant community gardens; purchase of electric vehicles; lighting replacement with light-emitting diode fixtures; and energy-efficiency projects such as building insulation; and heating, ventilation, and air conditioning, and boiler replacements. This contribution may not be used to fund projects at MCC's project site.

The timing of the payment pursuant to this mitigation measure shall be made by the later of the following two dates: 1) the date that MCC issues a Notice to Proceed or otherwise authorizes the commencement of construction on the construction contract or 2) the date that the Final EIR is conclusively determined to be valid, either by operation of PRC Section 21167.2 or by final judgment or final adjudication.

Due to the difficulty of determining the specific extent of each proposed mitigation measure in reducing GHG emissions, the analysis did not quantify the effects of implementing **Mitigation Measures GCC-1 through GCC-3**. Implementation of these measures would result in lower Project GHG emissions compared to unmitigated levels, although mitigated net GHGs from the Project would exceed the SCAQMD interim significance threshold of 10,000 metric tons of CO_2e per year. Since there are no other feasible mitigation measures, emissions of GHGs from the proposed Project would remain significant and unavoidable.

Rationale for Finding

The Final EIR has thoroughly disclosed the potential GHG emissions associated with the proposed Project. The Port has expended considerable effort to identify all feasible measures to mitigate proposed GHG emissions. It would be technologically and economically infeasible to implement any additional measures beyond those described above. Therefore, impacts on global climate change would be significant and unavoidable.

3.5 Cumulatively Considerable Impacts

CEQA Guidelines (Section 15130) require an analysis of the Project's contribution to significant and unavoidable cumulative impacts. Cumulative impacts include "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts" (CEQA Guidelines, Section 15355).

The discussion below identifies cumulatively significant and unavoidable impacts. The Board of Harbor Commissioners has determined that certain proposed mitigation measures and/or alternatives that may reduce these impacts below significance are infeasible in light of specific economic, legal, social, technological, and other considerations and, therefore, have not been incorporated into the Project. The evidence of such infeasibility is explained below and within the administrative record.

3.5.1 Air Quality

Cumulative Criteria Pollutants Impacts

This impact represents the potential of the proposed Project to contribute, in conjunction with other cumulative projects, to significant mass emissions or ambient offsite concentrations of criteria pollutants.

Finding

With regard to **Impacts AQ-1 and AQ-2,** peak daily Project construction activities would produce mitigated emissions that would not exceed the SCAQMD regional and ambient emission thresholds. Any activity that occurs concurrently in the vicinity of the proposed Project's construction would contribute additional air emissions to the proposed Project emissions and could cumulatively exceed these pollutant thresholds. As a result, given the large number of reasonably foreseeable projects, emissions from construction of the proposed Project would produce cumulatively considerable impacts to regional and localized pollutant levels. Implementation of **Mitigation Measure AQ-1** would reduce Project construction activities cumulative contributions to criteria pollutants levels, but not to below significance. The Board of Harbor Commissioners hereby finds that additional changes or alterations have been incorporated into the Project that avoid or substantially lessen the Project's cumulative contributions to criteria pollutants level from construction activities identified in the Final EIR. This change is set forth in **Mitigation Measure AQ-1**, above, and **Mitigation Measure AQ-4** below.

> **Mitigation Measure AQ-4: Tier 4 Standards for Nonroad Construction Equipment** Starting Jan. 1, 2015, construction contractors shall use construction equipment that achieves EPA Tier 4 nonroad equivalent standards at a minimum.

With regard to **Impact AQ-3**, annual average daily operational activities for the proposed Project, with implementation of **Mitigation Measures AQ-2**, **AQ-5, and AQ-6** would produce emissions that would exceed the SCAQMD regional NO_x threshold. As a result, all pollutant emissions from operation of the proposed Project (other than SO_2 emission reductions), in combination with existing and future related projects would produce cumulatively considerable and unavoidable contributions to regional pollutant levels.

With regard to **Impact AQ-4**, peak daily operational activities for the proposed Project, with implementation of **Mitigation Measures AQ-2, AQ-3, AQ-5, and AQ-6** would produce emissions that would exceed the SCAQMD ambient air quality significance thresholds for NO_2 and PM_{10}. Considering the numerous, nearby, cumulative projects causing additional emissions impacts, Project operations would produce cumulatively considerable impacts to localized levels of all pollutants.

The Board hereby finds that changes or alterations have been incorporated into the Project that minimize the significant cumulative environmental effect identified in the Final EIR. Specific legal, economic, and technical considerations make additional mitigation measures infeasible. As such, cumulative criteria pollutants impacts from the Project construction and operation would remain significant after consideration of all feasible mitigation measures.

Rationale for Finding

Due to its large population, substantial numbers of emission sources, and geographical/ meteorological conditions that inhibit atmospheric dispersion, the SCAB experiences degraded air quality. As stated in Section 3.2 of the Final EIR, the region presently does not attain the NAAQS or CAAQS for O_3, PM_{10}, and $PM_{2.5}$, and does not attain the CAAQS for NO_2. However, the 2012 AQMP predicts attainment of all NAAQS within the SCAB, including $PM_{2.5}$ by 2014 and O_3 by 2023. The pollutant nonattainment conditions within the Project region are considered to be cumulatively significant.

Construction activities resulting from some of the cumulative and related projects (e.g., Middle Harbor Terminal Redevelopment Project, Pier G Terminal Redevelopment Project, Inner Harbor Turning Basin Dredging Project, Baker Cold Storage Facility, and Eagle Rock Aggregates Terminal Project) would add to the emission levels and ambient concentrations around the Ports due to their construction schedules, which overlap with that of this proposed Project.

Any activity that occurs concurrently in the vicinity of proposed Project terminal operations would add to the significant ambient concentration impact of air pollutants from Project operations. As a result, impacts from mitigated Project operations would produce cumulatively considerable and unavoidable impacts to regional NO_x, NO_2, and PM_{10} emissions levels. Operational activities resulting from some of the cumulative and related projects such as the Middle Harbor Terminal Redevelopment Project, Pier G Terminal Redevelopment Project, and Pier B On-Dock Rail Support Facility would add to the ambient concentrations around the Ports due to their overlapping construction and operation schedules, which overlap with the operation of the proposed Project.

The Final EIR has thoroughly disclosed potential criteria pollutant emissions and associated cumulative impacts due to the Project and it has expended considerable effort to identify all feasible measures to mitigate these impacts. It would be technologically and economically infeasible and outside of the control of the Project terminal tenant to implement any additional measures beyond those described above. Therefore, after mitigation, Project cumulative impacts to criteria pollutant levels from construction and operations would be significant and unavoidable.

3.5.2 Biota and Habitats

As discussed in Final EIR Section 3.5, there would be two significant cumulative impacts on biota and habitat as a result of the proposed Project during operation. These impacts would be significant and unavoidable.

Cumulative Impact BIO-1: Impacts to Rare, Threatened, or Endangered Species or Their Habitat

Whale strikes outside the Port as a result of a cumulative increase in vessel traffic associated, in part, with the proposed Project are a possibility, and considered to be cumulatively significant.

Finding

The Project-related increase in vessel traffic would add to the cumulative potential for whale strikes, primarily within shipping lanes outside of the harbor, resulting in a cumulatively considerable effect. Although the proposed Project would result in only a small increase in vessel traffic, the incremental contribution of the Project s operations to the incidence of migrating whale strikes is considered potentially significant and unavoidable.

Rationale for Finding

Vessel speed is a primary factor related to the severity of injury or mortality to whales. While the potential for serious injury to whales is reduced by the Port s VSRP (**EC BIO-1**), there is no feasible mitigation to fully eliminate the risk of whale strikes outside the Port.

Cumulative Impact BIO-5: Disruption of Local Biological Communities

This impact represents the potential of the proposed Project in conjunction with other cumulative projects to cause a cumulatively considerable disruption of local biological communities from the introduction invasive species, as well as from whale strikes.

Finding

The Project-related increase in vessel traffic would add to the cumulative potential of introducing invasive species in the harbor via vessel hulls, resulting in a cumulatively considerable effect. Historically, invasive species have been introduced by vessel traffic primarily via ballast water discharges and detachment from vessel hulls. Ballast water discharges are now regulated, which has significantly reduced the potential for introduction of invasive exotic species. The potential for introduction of exotic species via vessel hulls is reduced by using antifouling paints and periodic cleaning of hulls to minimize frictional drag from growth of organisms. However, due to the lack of a proven technology, no feasible mitigation measures are available, beyond existing regulations, to completely prevent introduction of invasive species via ballast water and/or vessel hulls. The Board hereby finds that specific technological considerations make mitigation measures that would reduce these impacts to less than significant levels infeasible.

Rationale for Finding

Cumulative marine terminal projects (e.g., Middle Harbor Redevelopment Project and Pier G Terminal Redevelopment Project) that involve vessel transport of cargo into and out of the harbor would increase vessel traffic in harbor waters. Vessel traffic historically introduced invasive exotic species into the harbor through ballast water discharges and via their hulls. Regulation of ballast water discharges and use of antifouling hull paints have significantly reduced the potential for introduction of invasive exotic species on present and reasonably foreseeable projects. While exotic species are present in the harbor, there is no evidence that these species have disrupted the biological communities in the harbor. Biological baseline studies conducted in the harbor continue to show the existence of diverse and abundant biological communities. However, absent the ability to eliminate completely the introduction of new species through ballast water or on vessel hulls, it is possible that additional invasive exotic species could become established in the harbor, even with these control measures.

3.6 Finding Regarding Responses to Comments on the Draft EIR

The Board of Harbor Commissioners finds that information added to the EIR after public notice of the availability of the Draft EIR for public review, but before certification merely clarifies or makes minor modification to an adequate EIR and does not require recirculation.

Recirculation is required only when "significant" new information is added to an EIR after public review and comment on the draft EIR but before certification. (PRC § 21092.1) Not all new information added to an EIR is "significant." According to the CEQA Guidelines, new information added to an EIR is significant only if "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such effect (including a feasible project alternative) that the project's proponents have declined to implement." (14 C.C.R. § 15088.5). Examples of significant new information include: (1) a new significant impact of the project or from a new mitigation measure proposed to be implemented; (2) a substantial increase in the severity of an environmental impact for which no mitigation measures are added which reduce the impact to a level of insignificance; or (3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project proponent declines to adopt it. Based on these standards, there is no reason to recirculate the Draft EIR. Although some new information has been added to the Final EIR in response to comments, none of the information would require recirculation. No new impacts for the proposed Project have been identified, the severity of the impacts identified in the Draft EIR are not substantially increased over what is described in the document, and no feasible alternatives or mitigation measures were identified that would clearly lessen the environmental impacts of the Project.

4.0 ALTERNATIVES TO THE PROPOSED PROJECT

CEQA Guidelines Section 15126.6 requires that an EIR examine alternatives to a project in order to explore a reasonable range of alternatives that meet most of the basic project objectives, while reducing the severity of potentially significant environmental impacts. CEQA Guidelines Section 15126.6(a) states:

> *An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.*

The alternatives were also assessed in accordance with CEQA Guidelines Section 15126.6(f) which states:

> *The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the Project. Of those alternatives, the EIR need*

examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project.

Several alternatives were considered during preparation of this EIR, including alternative equipment upgrades and locations. However, only three alternatives meet most of the proposed Project's objectives and have been selected to be carried forward for detailed analysis (Section 4.2). Alternatives considered but not carried forward are addressed in Section 4.1.

4.1 Alternatives Considered but Not Carried Forward for Analysis

The screening process used in the EIR to evaluate a reasonable range of alternatives was based on the Project's objectives (Section 1.3). Screening criteria were also used to determine feasibility in accordance with the Port's legal mandates under the state Tidelands Trust and the Long Beach City Charter. The Port is one of only five locations in the State identified in the California Coastal Act (CCA) for the purposes of international maritime commerce. These mandates identify the Port and its facilities as an essential element of the national maritime industry. Port activities should be water dependent and give highest priority to navigation, shipping, and necessary support facilities to accommodate the demands of foreign and domestic waterborne commerce.

Alternatives that are remote or speculative, or the effects of which cannot be reasonably predicted, need not be considered (CEQA Guidelines, Section 15126[f][2]). Alternatives may be eliminated from detailed consideration in an EIR if they fail to meet most of the project objectives, are infeasible, or do not avoid any significant environmental effects (CEQA Guidelines, Section 15126.6[c]). The following alternatives were considered but not carried forward for analysis in the EIR. Additional details regarding the rationale for decisions to eliminate alternatives from detailed analysis are included in Final EIR Section 1.7.1. Those alternatives are:

- Relocate the MCC facility to another West Coast port;
- Use other existing facilities at Southern California ports;
- Upgrade cement unloading equipment and construct additional capacity without the DoCCS; and
- Install only the DoCCS.

4.2 Alternatives Analyzed in the Draft EIR

The alternatives carried forward for detailed analysis include:

- Proposed Project (Alternative 1);
- Reduced Throughput Alternative (Alternative 2); and
- No Project Alternative (Alternative 3).

Final EIR Chapter 4 presents a comparison of the proposed Project to the alternatives that were considered during preparation of the Final EIR. The three alternatives are summarized in Table 4.2-1. Table 4.2-2 summarizes the results of the impact analysis for the proposed Project and alternatives.

Table 4.2-1. Summary of Proposed Project and Alternatives Operations

	Proposed Project (Alternative 1)	Reduced Throughput Alternative (Alternative 2)	No Project Alternative (Alternative 3)
Project Site Acreage	5.92	5.92	4.21
Total Throughput – Short Tons (Metric Tons) in millions	4.58 (4.16)	3.7 (3.3)	2.5 (2.2)
Annual Vessel Calls	99	79	67
Annual Truck Trips (Round Trip)	166,400	133,120	89,856
Peak Hour Trips (Passenger Car Equivalents)[a]	132	108	72
Notes:			

[a] Trip generation adjusted to account for heavy trucks in the traffic stream by applying a PCE factor of 2.0. Each truckload of cement requires two truck trips (one inbound and one outbound).Trips based on a 6 day work week

Table 4.2-2. Comparison of Impact Significance by Alternative

Environmental Resource Area	Proposed Project (Alternative 1)	Reduced Throughput Alternative (Alternative 2)	No Project Alternative (Alternative 3)
Geology, Groundwater, and Soils	Less than significant	Less than significant	Less than significant
Air Quality and Health Risk	Significant and unavoidable	Significant and unavoidable	Significant and unavoidable
Global Climate Change	Significant and unavoidable	Significant and unavoidable	Less than significant
Hydrology and Water Quality	Less than significant	Less than significant	Less than significant
Biological Resources and Habitats	Cumulatively significant and unavoidable	Cumulatively significant and unavoidable	Cumulatively significant and unavoidable
Ground Transportation	Less than significant	Less than significant	Less than significant
Marine Transportation	Less than significant	Less than significant	Less than significant
Noise	Less than significant	Less than significant	Less than significant
Hazards and Hazardous Materials	Less than significant	Less than significant	Less than significant
Utilities and Service Systems	Less than significant	Less than significant	Less than significant

4.3 Findings for Alternatives Analyzed

Project Objectives

The objectives of the proposed Project are to:

1. Upgrade existing facilities operated by MCC to improve operational efficiency and provide 40,000 metric tons of additional storage capacity to meet future cement demand in the Los Angeles region;
2. Install an emission control system (DoCCS) to reduce at-berth NO_x emissions from ship auxiliary generator engines when vessels are not using shore-to-ship power; and
3. Modify the SCAQMD air permit for Bulk Cement Ship Unloading, which currently requires shore-to-ship power ("cold-ironing") for ships at berth, to allow either shore-to-ship power or venting to NO_x emission control equipment.

4.3.1 Proposed Project (Alternative 1)

The proposed Project would install an emission control system (DoCCS) to capture and reduce NOx emissions from ship auxiliary generators at berth; construct additional storage capacity on an adjacent lot consisting of 40,000 metric tons of storage and loading silos; and upgrade existing facilities and ship unloading equipment. The four, 10,000 metric ton silos that would be installed as part of the proposed Project would provide additional storage capacity. This additional capacity would alleviate delays in unloading ships during periods when the existing warehouse capacity is insufficient to accommodate cement from an arriving ship. Accordingly, ships would spend less time at berth and move more efficiently through the Port. A new cement unloader would be added, the larger existing unloader would be upgraded, and the smaller existing unloader would be decommissioned. The new cement unloaders would be connected to the existing warehouse and new cement silos via new piping.

The proposed Project involves constructing up to four cement storage and loading silos, with one new truck lane under each pair of silos, the DoCCS, and upgraded unloading equipment. Project construction would occur in phases and would include pavement removal at the former Pacific Banana site, as well as preparation of the Project site for construction, wharf improvements, and DoCCS installation. The MCC terminal could operate as new

silos and other improvements are constructed. Although the timing of full build-out would depend on market demand, full build-out is forecasted to occur in 2015 following completion of site preparation. A slight delay in the timing of full build-out would not alter the findings of the impact analyses presented in the Final EIR.

When completed, the Project would consist of one consolidated dry-bulk (cement) facility to offload cement from marine vessels at Berth F208 and load trucks for the transport of bulk cement to batch plants in the Los Angeles region. One additional longshoreman and one contractor would be required to operate the additional truck lanes and DoCCS, respectively. After the Project is constructed, the MCC facility is expected to operate 24 hours a day, 6 days a week.

When optimized at maximum throughput capacity, the MCC facility would be able to accommodate a maximum throughput of approximately 4.6 million short tons (4.2 million metric tons) of cement (AECOM 2012). However, the maximum permitted limit for truck loading under MCC's SCAQMD permit is 3.8 million short tons. MCC does not propose to change this permit limit. As a conservative assumption, based on the maximum capacity throughput, Project operations would result in 99 vessel calls per year. All vessel-offloading activities associated with the Project would occur at Berth F208. Under the proposed Project, the annual truck trips to and from the MCC facility would increase to 166,400, with an estimated 132 peak hour passenger car equivalent (PCE) trips.

MCC would operate under a new lease with the Port that would include environmental controls imposed pursuant to the Port's Green Port Policy, Clean Air Action Plan (CAAP), Vessel Speed Reduction Program (VSRP), and best management practices (BMPs) for environmental protection. MCC would be required to acquire and comply with several regulatory permits and approvals.

Finding

The Board hereby finds that while the proposed Project is not the environmentally superior alternative, it is the alternative that best meets the Project objectives of improving operational efficiency and providing 40,000 metric tons of storage capacity. For the reasons set forth in the Statement of Overriding Considerations (Section 5.0), the benefits of the proposed Project justify its approval.

Facts in Support of Finding

The proposed Project would upgrade existing facilities operated by MCC to improve operational efficiency and storage capacity; install an emission control system (DoCCS) to reduce at-berth NO_x emissions when vessels are not using shore-to-ship power; modify the SCAQMD air permit for Bulk Cement Ship Unloading to allow either shore-to-ship power or venting to NO_x emission control equipment; and implement environmental controls, including the Port's Green Port Policy and CAAP, to accommodate a portion of future cement demand in the Los Angeles region. This approach is consistent with the Coastal Zone Management Act (CZMA) and the California Coastal Act (CCA) that encourage modernization of existing facilities within existing Port boundaries.

4.3.2 Reduced Throughput Alternative (Alternative 2)

The Reduced Throughput Alternative would be the same as the proposed Project except that only two cement silos and one additional truck lane would be constructed for loading trucks beneath the two new silos. Both silos would be constructed at the same time. Construction would occur over an 18-month period and is anticipated to be completed in 2015 (i.e., build-out year). Similar to the proposed Project, this alternative would include demolition or relocation of existing subsurface utilities and construction of new utility mains and lines; installation of the DoCCS; upgrades to the cement unloading equipment (including the addition of a new 882 short ton [800 metric ton] per hour unloader and extension of wharf rails); and construction of backland support facilities and infrastructure. However, the two silos that would be installed for the Reduced Throughput Alternative would provide only 20,000 metric tons of additional cement storage capacity. Similar to the proposed Project, an additional longshoreman and one contractor would be required to operate the additional truck loading lane and DoCCS.

Similar to the proposed Project, the Reduced Throughput Alternative would be expected to operate 24 hours a day, 6 days a week. At maximum capacity, the MCC facility would handle approximately 3.7 million short tons

(3.3 million metric tons) of cement per year (AECOM 2012). Operations would result in a maximum of 79 vessel calls per year. All vessel offloading activities would occur at Berth F208. Under this alternative, the annual truck trips to and from the MCC facility would increase to 133,120 with an estimated 108 peak hour PCE trips. The Reduced Throughput Alternative, by virtue of lower throughput and build-out, would have fewer and less substantial adverse environmental impacts than the proposed Project, although the magnitude of the differences between the two alternatives in impacts is small. For this reason, exclusive of the No Project Alternative, Alternative 2 is considered the environmentally superior alternative.

Finding

The Board hereby finds that although the Reduced Throughput Alternative (Alternative 2) is the environmentally superior alternative, it would not meet the overall Project purpose and need of increasing container terminal efficiency and provide sufficient storage of 40,000 metric tons to accommodate a portion of future cement demand in the Los Angeles region. Therefore, the Board finds that the Reduced Throughput Alternative is infeasible relative to fulfilling the overall Project purpose and need and will not be adopted in lieu of the proposed Project.

Facts in Support of Finding

The Reduced Throughput Alternative would be similar to the proposed Project except that only two cement silos and one additional truck lane would be constructed for loading trucks beneath the two new silos. The elimination of two cement silos and an additional truck lane would reduce storage capacity compared to the Project. The Reduced Throughput Alternative would include upgrades to existing facilities, installation of the DoCCS, and modification to the SCAQMD air permit, as would occur under the proposed Project. However, this alternative would provide for only 20,000 metric tons of the additional 40,000 metric ton storage capacity and, consequently, would not support the efficient unloading of arriving ships and managing of cement throughput at the facility. Overall, the Reduced Throughput Alternative would be less environmentally damaging than the Project; however, it would not meet the overall Project purpose and need of increasing storage capacity to 40,000 metric tons to accommodate the future cement demand in the Los Angeles region.

3.3 No Project Alternative (Alternative 3)

The No Project Alternative considers what could occur at the Project site if the proposed Project was not constructed. Under this alternative, no construction and, consequently, no construction-related impacts, would occur. There would be no reinforcement of the wharf or extension of the rails for the unloader. The equipment would not be upgraded, no new unloader would be installed, no additional silos would be constructed, and the DoCCS would not be installed. Cement storage capacity at the MCC facility would not be increased. The MCC facility could resume operating with no expansion and would generate operational impacts; ships would perform unloading activities; facility equipment would handle bulk cement; and trucks would transport the cement product to outlying distribution facilities. Facility throughput would be limited by truck loading capacity being confined to the existing three truck loading lanes.

The No Project Alternative assumes the existing SCAQMD permit for Bulk Cement Ship Unloading would not be modified and MCC s Stipulated Order for Abatement from the SCAQMD would not be reinstated. Therefore, all vessels would be required to use shore-to-ship- power while unloading according to existing SCAQMD permit conditions for the facility. Many vessels are unable to unload completely while using shore-to-ship power because the equipment required for final unloading (payloader) cannot be lowered into the hold without the vessel s auxiliary generators running to operate the ship s crane. Those vessels would need to be diverted to another cement terminal to complete unloading. It is assumed that vessels would, on average, be unable to unload the final 20 percent of their cargo at the MCC facility, and would have to move to another cement terminal to complete unloading. Therefore, each nominal 42,000 metric ton vessel would only be able to unload an estimated 33,600 metric tons at the MCC facility, with the balance being unloaded elsewhere.

Under the No Project Alternative, vessels calling at the MCC facility could be unloaded more rapidly since the most efficient aspect of unloading (the pneumatic removal of easily accessible cement using the existing 800 metric ton per hour and 120 metric ton per hour unloaders) would be accomplished at the MCC facility, while the least efficient aspects (in-hold equipment and manual unloading) would occur elsewhere in most cases. Therefore, the time involved in each vessel unloading would be considerably shorter than during baseline op-

erations. However, because of the reduced tonnage of cement involved in each vessel unloading operation, there would be more vessel calls to the MCC terminal for any given annual amount of cement shipped by truck.

Under the No Project Alternative, it is assumed that the MCC facility would handle a maximum throughput capacity of approximately 2.5 million short tons per year (2.2 million metric tons per year). An estimated 67 vessel calls per year would occur under this alternative, taking account of the assumed 20 percent of cargo, on average, that could not be unloaded at the MCC facility because of the shore-to-ship power requirement. Annual truck trips would be 89,856, and operations would result in an estimated 72 peak hour PCE trips. Impact determination associated with the No Project Alternative would be largely the same as those for Alternatives 1 and 2 (Table 4.2-2 above and Table 4.3-1 in the EIR), with the exception that impacts to global climate change would be reduced to less than significant. However, the magnitude of the impacts would be less in several areas. (Table 4.3-2 in the EIR.) Of the three alternatives analyzed, the No Project Alternative is the environmentally superior alternative.

Finding

The Board hereby finds that the No Project Alternative would be environmentally superior. However, it is infeasible and will not achieve any of the Project objectives. Therefore, this alternative will not be adopted in lieu of the proposed Project.

Facts in Support of Finding

Under the No Project Alternative, the MCC facility would not be able to accommodate the projected increase of future cement demand in the Los Angeles region. Under this alternative, existing site conditions would constrain the ability of the MCC terminal to function as an efficient Port facility. Additionally, without the installation of the DoCCS system, modifications to the SCAQMD permit for Bulk Cement Ship Unloading, and provisions for additional cement storage capacity, the current inefficiency of dry-bulk (cement) movement through the site s existing terminal would continue.

5.0 STATEMENT OF OVERRIDING CONSIDERATIONS

CEQA requires a public agency to balance the benefits of a proposed project against its unavoidable, adverse environmental impacts in determining whether to approve the project.

Section 15093 of the State CEQA Guidelines provides the following:

(a) *CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered acceptable.*

(b) *When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the Final Environmental Impact Report (Final EIR) but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.*

(c) *If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, finding required pursuant to Section 15091.*

5.1 PROJECT SIGNIFICANT IMPACTS

The proposed Project would result in significant unavoidable impacts related to air quality, global climate change, and biological resources and habitat.

5.1.1 Air Quality

During a peak day of activity, Project operations would produce levels of NO_x emissions that exceed SCAQMD daily emission thresholds. Proposed Project operational emissions would result in maximum ambient offsite concentrations of 1-hour NO_2, 24-hour PM_{10} and $PM_{2.5}$, and annual PM_{10} that would exceed the SCAQMD significance thresholds. Even with application of all feasible mitigation, these peak daily operational emissions and 1-hour NO_2, 24-hour PM_{10} and $PM_{2.5}$, and annual PM_{10} operational concentrations would remain in excess of SCAQMD thresholds, and would represent Project-specific and cumulative significant and unavoidable air quality impacts. Project construction would produce cumulatively considerable contributions of air emissions, even with application of all feasible mitigation, and would cause significant and unavoidable air quality impacts.

5.1.2 Global Climate Change

As described in Section 3.3 of the Draft EIR, construction and operation of the proposed Project would generate GHG emissions of 22,248 metric tons of CO_2e per year. These emissions would exceed the SCAQMD interim significance threshold of 10,000 metric tons of CO_2e per year and therefore would be significant.

5.1.3 Biological Resources and Habitat

The Project-related increase in vessel traffic would increase the cumulative potential for whale strikes. Although the proposed Project would result in only a small increase in vessel traffic, the incremental contribution of the Project's operations to the incidence of migrating whale strikes is considered potentially significant and unavoidable. The proposed Project also would add to the cumulative potential of introducing invasive species in the harbor, resulting in a cumulatively considerable effect. No feasible mitigation measures are available to completely prevent whale strikes or the introduction of invasive species from vessel calls. New technologies are being explored, and if methods become available in the future, they would be implemented as required at that time through federal and state regulations. Therefore, as provided in the findings for Cumulative Impacts BIO-1 and BIO-5, the potentials for whale strikes and introduction of invasive species via project-related vessel traffic are significant, unavoidable impacts.

5.2 OVERRIDING CONSIDERATIONS

The proposed Project offers numerous benefits that outweigh the unavoidable adverse environmental effects of the Project. The Board recognizes that significant and unavoidable impacts will result from implementation of the Project, as discussed above. Having (1) adopted all feasible mitigation measures and environmental controls, (2) recognized all significant, unavoidable impacts, and (3) balanced the benefits of the Project against the Project's significant and unavoidable impacts, the Board finds that there are specific overriding economic, legal, social, technological, or other benefits of the proposed Project that outweigh those impacts and provide sufficient reasons for approving the proposed Project. These overriding considerations justify adoption of the Project and certification of the Final EIR. Those reasons are as follows:

Fulfills Port legal mandates and objectives. The proposed Project would fulfill the Port's mandates under the Tidelands Trust to promote and develop commerce, navigation and fisheries, and other uses of statewide interest and benefit including industrial and transportation uses. The CCA acknowledges the importance of the State's industrial ports and emphasizes the importance of developing port infrastructure within the existing port footprints.

> *"Existing ports" shall be encouraged to modernize and construct necessary facilities within their boundaries in order to minimize or eliminate the necessity for future dredging and filling to create new ports in new areas of the state."* *Chapter 8, Article 1*

The CCA attempts to balance the need for and importance of industrial ports with the desire to maintain and improve access to coastal resources. Consistent with this theme, the proposed Project provides needed port improvements within the boundaries of an existing industrial port so as to minimize, or prevent, the need to develop other areas of the coast.

The CCA identifies the Port as an essential element of the national maritime industry and obligates the Port to modernize and construct necessary facilities to accommodate deep-draft vessels and the demands of foreign

and domestic waterborne commerce in order to preclude the necessity for developing new ports elsewhere in the state. Furthermore, the CCA provides that the Port should give highest priority to the use of existing land space within harbors for Port purposes, including, but not limited to navigational facilities, shipping industries and necessary ancillary and access facilities. The proposed Project meets these requirements as a coastal cement receiving, storage, and distribution facility in the Port. By modernizing the existing cement import facility, upgrading equipment, and constructing new silos, the proposed Project contributes to the anticipated growth in cement demand and long-term construction concrete needs of the Los Angeles region. The proposed Project also provides a reliable and competitively priced source of concrete essential to the construction of new roadway infrastructure projects and other development projects that are anticipated to occur in the Los Angeles region.

The proposed project is consistent with the development goals of the Port Master Plan (PMP) and relevant CCA policies in Chapter 3 and Chapter 8.

Implements the San Pedro Bay Clean Air Action Plan (CAAP). In developing the San Pedro Bay Ports CAAP, the Ports established a series of principles and goals designed to reduce air emissions and related health impacts while allowing Port development to continue. The CAAP committed the Ports, with the assistance of their agency partners (the technical working group or TWG, comprised of representatives from CARB, SCAQMD, and the USEPA) to establish San Pedro Bay Standards to define targets for reduction of Port-related air impacts, specifically air quality and health risk impacts. The Port has worked with the Applicant to ensure that the proposed Project includes all applicable CAAP measures, existing regulations, and, in some areas, exceeds compliance with applicable CAAP measures.

Participates in a demonstration project for installing a diesel particulate filter (DPF) on the DoCCS. The Applicant shall participate in a demonstration project for integrating an active DPF system into the DoCCS (Mitigation Measure AQ-2). The demonstration of the DPF will determine the feasibility of additional PM emission reductions on the DoCCS technology and provide an opportunity to advance and diversify this type of PM control technique for at-berth emission reduction technologies for dry bulk vessels.

Contributes to the Port's Greenhouse Gas Emissions Reduction Grant Program. The Applicant shall provide financial contributions to the Port's GHG Emissions Reduction Grant Program with a one-time lump sum contribution of $333,720. This measure is beneficial to the community as a whole, as it addresses the proposed Project's long-term operational impacts associated with air quality and GCC.

Contributes to a stable supply of cement for the region. The proposed Project would facilitate the importation and storage of cement to help create a more reliable local supply of cement for the Los Angeles region in order to meet forecasted regional cement demands. Portland cement is the primary ingredient in the production of concrete, and therefore, is essential to all types of construction. If the MCC facility was not modernized or expanded, some bulk cement shipments would be diverted to other West Coast ports with existing facilities. Diverting cargo to other West Coast ports, other than POLA, would result in bulk cement needing to be transported back to the Los Angeles area by less efficient land-based transportation, resulting in increases in cost and air emissions.

An adequate local supply of cement is crucial to maintaining a strong regional economy. Bulk cement, such as the type imported at the MCC terminal, is required for a wide variety of important applications in the construction industry, ranging from highway building and large infrastructure projects (such as the improvements to the Gerald Desmond Bridge) to commercial and residential construction to industrial applications (such as oil and gas wells). Because cement is a key construction material, cement consumption levels will broadly reflect levels of construction spending.[1] In the past, major cement shortages had a significant negative impact on the local and national economy due to cost overruns or inability to complete projects because of rising construction costs and lack of materials supply. California's consumption of cement exceeds its in-state production, so ensuring adequate supply is important for a robust local and state economy.

California has experienced cement shortfalls within the last decade. California's share of total U.S. consumption exceeds 20%. California was among the earliest states to report tight supplies in the 2005-2006 time frame.[2] Although cement production peaked during this time as well, the commodity was in seriously short supply primarily due to the demand for cement caused by housing construction. Hurricanes Katrina and Rita

in 2005 also aggravated cement supply problems due to the need for cement for repair work.[3] When there are significant shortages in one region, supply migrates to that region and thus the shortage tends to ripple through to other regions, broadening the impacts.[4]

In a survey conducted by the National Association of Home Builders in October 2005, 8 percent of respondents cited cement shortage as among the top concerns.[5] In 2005, the Portland Cement Association said cement supplies remained tight in 35 states, including California.[6] Nationwide, the cement shortage was most acutely felt in the sunbelt states, from Florida to California.[7]

When construction projects are cancelled or delayed, there is a ripple effect throughout the state s economy. Studies show that construction jobs are desirable, providing some the highest wages and compensation in California.[8] When California workers lose construction jobs, and as a result are either unemployed or are forced to take a lower paying job, a net decrease in consumer spending power (and related sales tax) and income taxes results. To the extent that loss of construction jobs (and loss of related tax revenues) can be mitigated by ensuring a reliable local supply of construction materials, it benefits the local and state economies, which, in turn, benefits the Port.

In California, cement shortages are likely to return as infrastructure and residential construction return to pre-Recession levels. Imported cement will continue to serve a key role in meeting the state s demand for cement, and MCC s contribution to imported supply is important to the local and state economy.

The Port finds that there are specific considerations associated with the proposed Project that serve to override and outweigh the Project s significant environmental impacts. The Project will allow the Port to meet its legal mandates to accommodate growing international commerce, while promoting the CAAP and the Port s GHG Emissions Reduction Grant Program. In addition, the Project will contribute to a stable supply of cement for the region. The Board hereby finds that the benefits of the proposed project outweigh the significant and unavoidable environmental impacts of the Project, which are therefore considered acceptable.

[1] Hendrik G. van Oss. "USGS Minerals 2004 Yearbook: Cement." P. 16.4. http://minerals.usgs.gov/minerals/pubs/commodity/cement/cemenmyb04.pdf (last accessed April 22, 2015).
[2] Ed Sullivan. "Cement Shortage Assessment Update." June 8, 2004. http://cement.org/Shortage%20Update.pdf (last accessed April 22, 2015).
[3] Kent Hoover. "Effort to repeal estate tax for good is victim of Hurricane Katrina." September 7, 2005. www.bizjournals.com/sanfrancisco/stories/2005/09/12/smallb2.html?page=2 (last accessed April 22, 2015).
[4] Ed Sullivan. "Cement Shortage Assessment." May 13. 2004. http://cement.org/Cement%20Shortage%20Flash%20Rpt.pdf (last accessed April 22, 2015).
[5] David Pittman. "Cement shortage could get severe producer says." February 15, 2005. http://tucsoncitizen.com/morgue2/2005/02/15/21528-cement-shortage-could-get-severe-producer-says/ (last accessed April 22, 2015).
[6] Id.
[7] Jim Carlton. "Spreading Cement Shortages Delay Projects, Increase Prices." August 9, 2004. http://www.wsj.com/articles/SB109200765372886075 (last accessed April 22, 2015).
[8] CalTrans. "Construction Aggregate Supply Limitations; Estimates of Economic Impact." 2007. http://www.dot.ca.gov/hq/construc/GoCalifornia/closeout_reports/A1-a-6.pdf (last accessed April 22, 2015).

MCC Cement Facility Modification Project

Mitigation Monitoring and Reporting Program

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April 2015

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MCC CEMENT FACILITY MODIFICATION PROJECT
MITIGATION MONITORING AND REPORTING PROGRAM

INTRODUCTION

This Mitigation Monitoring and Reporting Program (MMRP) fulfills the requirements of California Public Resources Code Section 21081.6 and CEQA Guidelines Section 15097. As stated in Public Resources Code Section 21081.6(a)(1):

> *The public agency shall adopt a reporting or monitoring program for the changes made to the project, or conditions of approval, adopted in order to mitigate or avoid significant effects on the environment.*

The Port of Long Beach (POLB or Port) is the lead agency for the proposed MCC Terminal, Inc. Cement Facility Modification Project (proposed Project or Project) under CEQA and, therefore, responsible for administrating and implementing the MMRP.

The primary purpose of the MMRP is to ensure that the mitigation measures identified in the Final Environmental Impact Report (EIR) are implemented to reduce or avoid identified environmental effects and to appropriately assign the mitigation responsibilities for implementing the proposed Project. The mitigation measures listed in the MMRP will be adopted by the POLB Board of Harbor Commissioners as a condition of the primary Project approval.

CEQA GUIDELINES

CEQA Guidelines Section 15097 explains the requirements of Public Resources Code Section 21081.6(a) regarding mitigation monitoring and reporting. Mitigation is defined in CEQA Guidelines Section 15370 as a measure that:

- Avoids the impact altogether by not taking a certain action or parts of an action;
- Minimizes impacts by limiting the degree or magnitude of the action and its implementation;
- Rectifies the impact by repairing, rehabilitating, or restoring the impacted environment;
- Reduces or eliminates the impact over time by preservation and maintenance activities during the life of the project; and
- Compensates for the impacts by replacing or providing substitute resources or environments.

Mitigation measures and environmental controls (ECs) provided in this MMRP were identified in EIR Chapter 3 (Environmental Setting and Project Impacts) as feasible and effective in mitigating Project-related environmental impacts.

POLB MMRP APPROACH

For each adopted mitigation measure and EC, the MMRP identifies the following:

- Required action;
- When the action is required to be taken;
- Agency or entity responsible for the action;
- Agency responsible for tracking the action;
- Submittal date;
- Person verifying implementation;
- Attachments required to verify implementation; and
- Comments made by verifying personnel.

The POLB has the primary responsibility for ensuring that the Project's mitigation measures are implemented. When Project work is undertaken by the Applicant's contractors, the pertinent mitigation measures will be included in the terms and conditions of the contractor's contracts. The Applicant will undertake regular inspections of the job site to ensure that contractors are implementing the mitigation measures and ECs associated with the Project and complying with their respective contracts. POLB officials will conduct periodic inspections of the job site to verify the mitigation measures and ECs are being implemented. The Port's project manager will be responsible for ensuring completion of the mitigation measures and ECs that are the responsibility of the Port, and will verify the Applicant's compliance with the mitigation measures and ECs that are the responsibility of the Applicant.

MITIGATION MONITORING AND REPORTING PROGRAM PROCEDURES

The POLB's designated environmental monitor will track and document compliance with the Project's mitigation measures and ECs, note any problems that may result, and take appropriate action to remedy problems. Specific responsibilities of the POLB are listed below.

- Coordination of all mitigation and EC monitoring activities;
- Management of the approval and filing of monitoring or permit compliance reports;
- Maintenance of records concerning the status of all approved mitigation measures and ECs;
- Reviewing and recommending acceptance and certification of implementation documentation; and
- Acting as a contact for interested parties or surrounding property owners who wish to register complaints.

MITIGATION AND MONITORING REPORTING PLAN CHECKLIST

The MMRP is organized in a checklist format, with each mitigation measure and EC on a separate page. A summary of all of the proposed Project's mitigation measures is provided on the cover page to the checklist, followed by a summary of the Project's ECs. The Applicant will submit the appropriate attachment to the agency responsible for tracking the action (POLB Environmental Planning Division). By his or her signature, the POLB Environmental Planning Division representative verifies that each mitigation measure and EC has been implemented.

MCC CEMENT FACILITY MODIFICATION PROJECT
MITIGATION MONITORING AND REPORT PLAN CHECKLIST

Summary of Mitigation Measures
AIR QUALITY
Mitigation Measure AQ-1: Additional Fugitive Dust Controls. The Project construction contractor shall develop and implement dust control methods that shall achieve control levels in a SCAQMD Rule 403 dust control plan; and designate personnel to monitor the dust control program and order increased watering, as necessary, to ensure a 90 percent control level.
Mitigation Measure AQ-2: Modernization of Delivery Truck Fleet. No less than 90 percent of the trucks loading cement or cementitious material at the MCC facility shall be equipped with an engine that meets one of the following requirements: 1) is no more than five years old, based on engine model year; 2) has been designed or retrofitted to comply with federal and state on-road heavy-duty engine emissions standards for a 5-Year Engine or 3) uses alternative engine technology or fuels demonstrated to produce emissions no greater than a 5-Year Engine. Documentation of compliance with this measure shall be submitted annually to the Port's Environmental Planning Division.
Mitigation Measure AQ-3: Diesel Particulate Filter for the DoCCS. MCC shall participate in a demonstration project for integrating an active diesel particulate filter (DPF) system into the DoCCS.
Mitigation Measure AQ-4: Construction Equipment. Construction contractors shall use construction equipment that achieves the equivalent of EPA Tier 4 non-road standards at a minimum by January 1, 2015.
Mitigation Measure AQ-5: Participation in AMECS Emission Testing. MCC shall use its best effort to participate in the SCAQMD's AMECS demonstration project at the Port of Long Beach (Port).
Mitigation Measure AQ-6: Periodic Technology Review. MCC shall perform an investigation and submit a report every 5 years following the effective date of the new lease on any POLB-identified or other new emissions-reduction technologies that may reduce emissions at the MCC facility, including the feasibility of zero emissions and near-zero emissions technologies for cement delivery trucks and cement handling equipment.
GLOBAL CLIMATE CHANGE
Mitigation Measure GCC-1: Indirect GHG Emission Reduction/Avoidance. MCC shall minimize the release of indirect GHG emissions through measures that reduce or avoid electricity consumption at the facility.
Mitigation Measure GCC-2: Energy Audit. To identify future opportunities to reduce GHG emissions, commencing 2018 and every five years thereafter, MCC at its expense shall complete a site-specific energy audit using a qualified third party energy auditor.
Mitigation Measure GCC-3: Funding Contributions to the POLB Greenhouse Gas Emissions Reduction Grant Program. MCC shall provide a one-time lump sum contribution of $333,720 to the POLB GHG Emissions Reduction Grant Program.

Summary of Environmental Controls
AIR QUALITY AND GLOBAL CLIMATE CHANGE
Environmental Control Measure AQ-1: Expanded Vessel Speed Reduction Program (VSRP). All ocean-going vessels (OGVs) that call at the MCC terminal shall comply with the expanded VSRP of 12 knots from 40 nm, that is, from Point Fermin to the Precautionary Area (equal to CAAP measure OGV1).
Environmental Control Measure AQ-2: Shore-to-Ship Power/Cold Ironing. OGVs that call at the MCC facility shall use shore-to-ship power (i.e., cold iron) no less than 66 percent of the time at berth based on an annual average. The DoCCS shall be used for the portion of time at berth that OGVs are not using shore-to-ship power. MCC shall submit annual reports to the Port's Environmental Planning Division on or before January 31 of each year, demonstrating compliance with this environmental control measure for the previous calendar year. If an emergency event [as defined in California Air Resources Board's (ARB's) At-Berth Regulation, Title 17, CCR Section 93118.3, subsection (c)(14)], prevents MCC from achieving the required annual average shore-to-ship power rate (equal to or greater than 66 percent), MCC may demonstrate compliance over a two-year period, so long as MCC submits documentation to the Port which describes the emergency event(s) and explains the basis for MCC's inability to demonstrate compliance using an annual average. The Port would review the documentation submitted by MCC and, if the Port determines that MCC made sufficient effort to comply with the environmental control, it would notify MCC in writing that use of the two-year average is acceptable.
Environmental Control Measure AQ-3: Payloaders. Wheeled loaders used for final unloading shall attain EPA non-road Tier 4 emission standards.
BIOLOGICAL RESOURCES AND HABITAT
Environmental Control Measure BIO-1: Expanded VSRP. To reduce the potential for accidental whale strikes, OGVs that call at the MCC terminal shall comply with the expanded VSRP of 12 knots. (Same as EC AQ-1 above.)
NOISE
Environmental Control Measure NOI-1: Construction Equipment. All construction equipment powered by internal combustion engines shall be properly muffled and maintained.
Environmental Control Measure NOI-2: Idling Prohibitions. The idling of internal combustion engines near any noise-sensitive areas shall be prohibited during Project construction.
Environmental Control Measure NOI-3: Equipment Location. All stationary noise-generating construction equipment, such as air compressors and portable power generators, shall be located as far as practical from any existing noise-sensitive land uses.

Mitigation Measure AQ-1: Additional Fugitive Dust Controls	
Required Action: Mitigation Measure AQ-1: Additional Fugitive Dust Controls. The Project construction contractor shall implement additional dust control measures that achieve a 90 percent reduction in $PM_{10}/PM_{2.5}$ emissions from uncontrolled levels. The contractor shall document these measures in a dust control plan that is approved by the SCAQMD under the requirements of Rule 403. The contractor shall designate personnel to monitor the dust control program and shall order increased watering, as necessary, to ensure a 90 percent control level. Their duties shall include holiday and weekend periods when work may not be in progress. Additional measures to reduce fugitive dust shall include, but are not limited to, the following: • Apply water three times daily or as needed to areas where soil is disturbed; • Apply approved non-toxic chemical soil stabilizers according to manufacturer specifications to all inactive construction areas or replace groundcover in disturbed areas; • Provide temporary wind fencing around sites being graded or cleared; • Cover truck loads that haul dirt, sand, or gravel or maintain at least two feet of freeboard in accordance with Section 23114 of the California Vehicle Code; • Install wheel washers where vehicles enter and exit unpaved roads onto paved roads, or wash off tires of vehicles and any equipment leaving the construction site; • Suspend all soil disturbance activities when winds exceed 25 miles per hour as instantaneous gusts or when visible dust plumes emanate from the site and stabilize all disturbed areas; • Appoint a construction relations officer to act as a community liaison concerning onsite construction activity including resolution of issues related to PM_{10} generation; • Sweep all streets at least once a day using SCAQMD Rule 1186.1 certified street sweepers or roadway washing trucks if visible soil materials are carried to adjacent streets (recommend water sweepers with reclaimed water); and • Apply water three times daily, or non-toxic soil stabilizers according to manufacturers specifications, to all unpaved parking or staging areas or unpaved road surfaces.	
When Required: Daily during all construction activities.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirement in new lease agreement. **Action (ii):** Applicant to include requirements in Project construction specifications and bid process. **Action (iii):** Applicant shall routinely verify that the dust control program is monitored; non-toxic chemical soil stabilizers are applied; wind fencing is provided; trucks hauling dirt, sand, or gravel are either covered or maintain at least two feet of freeboard; wheel washers are installed or tires are washed prior to leaving construction site; and soil disturbance activities are suspended when winds exceed 25 mph or when dust plumes are visible; and subsequently provide a written report to POLB Environmental Planning Division on a quarterly basis during construction.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Mitigation Measure AQ-2: Modernization of Delivery Truck Fleet	
Required Action: Mitigation Measure AQ-2: Modernization of Delivery Truck Fleet. No less than 90 percent of the trucks loading cement or cementitious material at the MCC facility shall be equipped with an engine that meets one of the following requirements: 1) is no more than five years old, based on engine model year ("5-Year Engine"); 2) has been designed or retrofitted to comply with federal and state on-road heavy-duty engine emissions standards (e.g. EPA 2010 engine emission standards or successor rules or regulations for on-road heavy duty diesel engines) for a 5-Year Engine ("Emission Equivalent Engine"); or 3) uses alternative engine technology or fuels demonstrated to produce emissions no greater than a 5-Year Engine ("Alternative Equivalent Engine"). The remaining 10 percent of the trucks shall comply with all applicable federal and state heavy-duty on-road truck regulations. In addition, all trucks loading cement or cementitious materials at the MCC facility shall be registered in the Port of Long Beach and Los Angeles Clean Truck Program Drayage Truck Registry and the CARB Drayage Truck Registry. Compliance with this 90 percent requirement shall be determined on a calendar year basis. Documentation of compliance, showing the following information, shall be submitted to the Port's Environmental Planning Division on an annual basis by January 31 following each year of operation: 1) truck vehicle identification number (VIN), 2) engine model year, 3) annual truck trips, and 4) if non-diesel technology, manufacturer engine standards.	
When Required: Daily during all operational activities.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include these requirements in new lease agreement. **Action (ii):** POLB Environmental Planning Division shall verify compliance with Mitigation Measure AQ-2 annually, and take appropriate corrective actions should Applicant be in non-compliance.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Mitigation Measure AQ-3: Diesel Particulate Filter for the DoCCS	
Required Action: Mitigation Measure AQ-3: Diesel Particulate Filter for the DoCCS. MCC shall participate in a demonstration project for integrating an active diesel particulate filter (DPF) system into the DoCCS. Within three (3) months after the start-up/initial use of the DoCCS to control emissions from a ship, MCC shall submit to the Port a proposed plan, budget, and schedule for the demonstration project that includes, but is not limited to, designing, procuring, permitting, installing, operating, and emissions testing of the DPF system. The Port shall review and approve MCC's proposal and the demonstration project shall commence within six (6) months of the Port's approval. As part of the demonstration project, MCC shall operate the combined DPF and DoCCS system for 1,000 hours and conduct emissions testing of the combined DPF and DoCCS system in a manner that is compliant with testing requirements for both the SCAQMD and California Air Resources Board. The demonstration project shall be completed within two (2) years after installation and start-up of the DPF system. The demonstration project may be terminated after less than 1,000 hours of operation in the event that MCC determines, and the Port concurs, that the DPF is not compatible with MCC's equipment and operations, or the technology has not yet sufficiently advanced for this application. No later than six (6) months after the completion of the demonstration project, MCC shall provide a final report to the Port that includes a summary of the demonstration project, technical specifications and costs of the DPF system, emissions testing results, and a discussion of any operational considerations of adding the DPF system to the DoCCS. If it is determined through mutual agreement by MCC and the Port that the DPF system is compatible with MCC's equipment and operations, MCC shall permanently install the DPF and use the DPF whenever ships are treated with the DoCCS. Vessel hoteling hours associated with the testing of the DPF system shall be exempt from the requirements of project Environmental Control AQ-2 - Shore-to-Ship Power/Cold Ironing. This measure requires OGVs that call at the MCC facility to use shore-to-ship power (cold-ironing) no less than 66 percent of the time (on an annual average) while at berth. The total number of OGV hoteling hours allowed by this exemption shall not exceed 1,000.	
When Required: Six months after Port's approval of MCC's DPF system proposal that shall be submitted within three months of start-up/initial use of the DoCCS. The DPF system shall operate for 1,000 hours and the demonstration project shall be completed within two years after installation.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirements in new lease agreement. **Action (ii):** POLB Environmental Planning Division shall verify compliance with Mitigation Measure AQ-3 and take appropriate corrective actions should Applicant be in non-compliance.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Mitigation Measure AQ-4: Construction Equipment	
Required Action: Mitigation Measure AQ-4: Construction Equipment. Construction contractors shall use construction equipment that achieves the equivalent of EPA Tier 4 non-road standards at a minimum by January 1, 2015.	
When Required: Daily during all construction activities.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirement in new lease agreement. **Action (ii):** Applicant to include requirements in Project construction specifications and bid process. **Action (iii):** Applicant shall routinely inspect construction-related equipment and verify that the contractor is using construction equipment that achieves the equivalent of EPA Tier 4 non-road standards, and subsequently provide a written report to POLB Environmental Planning Division on a quarterly basis during construction.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Mitigation Measure AQ-5: Participation in AMECS Emission Testing	
Required Action: Mitigation Measure AQ-5: Participation in AMECS Emission Testing. After construction of the proposed Project has been completed and operations have resumed at the MCC facility, MCC shall use its best effort to participate in the SCAQMD's AMECS demonstration project at the Port of Long Beach (Port). MCC's participation specifically pertains to Task 10 Durability Testing as described in Exhibit A to the contract between the City of Long Beach and the SCAQMD, approved by the Port of Long Beach Board of Harbor Commissioners on February 10, 2014 (the "AMECS Demonstration Testing"), if at such time, AMECS technology is undergoing Task 10 Durability Testing at the Port. If MCC participates in the testing of a vessel pursuant to the AMECS Demonstration Testing, the costs of testing will be borne as indicated in the contract, and no testing costs shall be borne by MCC (with the exception of in-kind staff time associated with coordinating the logistics of the testing). Additionally, if MCC participates in the AMECS Demonstration Testing, such vessel hoteling hours shall be exempt from the requirements of Project Environmental Control (EC AQ-2) "Shore to Ship Power/Cold Ironing, which requires OGVs that call at the MCC facility to use shore-to-ship power (cold-ironing) no less than 66 percent of the time (on an annual average) while at berth.	
When Required: During SCAQMD's AMECS demonstration project at the Port and after construction of the proposed Project has been completed and operations have resumed at the MCC facility.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): Applicant to participate in SCAQMD's AMECS demonstration project as described above. **Action (ii):** POLB Real Estate Division to include requirements in new lease agreement. **Action (iii):** POLB Environmental Planning Division shall track the progress and findings of the demonstration project and evaluate the applicability of the findings to the MCC operations.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Mitigation Measure AQ-6: Periodic Technology Review	
Required Action: Mitigation Measure AQ-6: Periodic Technology Review. To promote new emission control technologies, MCC shall perform an investigation and submit a report to the POLB Chief Executive, every 5 years following the effective date of the new lease on any POLB-identified or other new emissions-reduction technologies that may reduce emissions at the MCC facility, including the feasibility of zero emissions and near-zero emissions technologies for cement delivery trucks and cement handling equipment (e.g. payloader). If the Periodic Technology Review demonstrates the new technology will be effective in reducing emissions and is determined through mutual agreement between the Port and MCC to be feasible, including but not limited to from a financial, technical, legal and operational perspective, MCC shall work with the Port to implement such technology.	
When Required: Every five years following the effective date of the new lease for the duration of the new lease.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirements in new lease agreement. **Action (ii):** Applicant shall perform a technology review and submit a report every 5 years commencing from the effective date of the new lease. **Action (iii):** POLB Environmental Planning Division shall review the report and evaluate the feasibility of emissions control technologies for MCC operations. POLB Environmental Planning Division also may provide suggestions and recommendations for specific technologies to be evaluated in the next review. **Action (iv):** As appropriate, Applicant will work with the Port to implement technologies that are determined, through the review process, to be applicable and effective at reducing emissions to MCC operations.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Mitigation Measure GCC-1: Indirect GHG Emission Reduction/Avoidance	
Required Action: Mitigation Measure GCC-1: Indirect GHG Emission Reduction/Avoidance. MCC shall minimize the release of indirect GHG emissions through measures that reduce or avoid electricity consumption at the facility. Measures to reduce indirect GHG emissions from electricity generation shall include: 1) installation of low-energy demand lighting (e.g., fluorescent or light-emitting diode) in the existing office building, other facility buildings, and the existing and new exterior lighting, except where compatible energy efficient lighting is not available or its installation could compromise safety and 2) installation of approximately 1,000 square feet of solar panels on the existing office building, with the total amount to be determined based on available space and the additional weight that can be borne by the existing roof. Prior to the start of Project construction, MCC shall submit to the Port a proposed plan and schedule for implementing these two measures. The low-energy demand lighting and solar panels shall be installed no later than three (3) years from the start of Project construction. Once these installations have been completed, MCC shall prepare and submit to the Port a report detailing the number of existing lights replaced, number of new low-energy demand lighting installed, and the final total square feet of solar panels installed. The report also shall include a quantitative assessment of the amount of greenhouse gas emissions reduced from each of the two measures and the amount of power generated from the solar panels in kilowatt-hours per year.	
When Required: The proposed plan and schedule for implementation shall be submitted prior to the start of construction, and the plan shall be implemented no later than three (3) years from the start of project construction.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirements in new lease agreement. **Action (ii):** POLB Environmental Planning Division shall verify compliance with Mitigation Measure GCC-1 and take appropriate corrective actions should Applicant be in non-compliance.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Mitigation Measure GCC-2: Energy Audit	
Required Action: Mitigation Measure GCC-2: Energy Audit. To identify future opportunities to reduce GHG emissions, commencing 2018 and every five years thereafter, MCC at its expense shall complete a site-specific energy audit using a qualified third party energy auditor. Both the energy auditor and the scope of the audit must be approved by the Port. This audit shall evaluate MCC's facility and operations to determine whether there are additional, cost-effective measures that would reduce overall power use. No later than six (6) months following completion of the energy audit, MCC shall submit a report to the Port that presents 1) the results of the audit and 2) a schedule for implementation of the feasible, cost-effective energy-efficiency or conservation measures identified in the report.	
When Required: Commencing in 2018 and every five years thereafter.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirements in new lease agreement. **Action (ii):** POLB Environmental Planning Division shall verify compliance with Mitigation Measure GCC-2 and take appropriate corrective actions should Applicant be in non-compliance.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Mitigation Measure GCC-3: Funding Contributions to the POLB Greenhouse Gas Emissions Reduction Grant Program	
Required Action: Mitigation Measure GCC-3: Funding Contributions to the POLB Greenhouse Gas Emissions Reduction Grant Program. MCC shall provide a one-time lump sum contribution of $333,720 to the POLB GHG Emissions Reduction Grant Program. This fee is based on the following: 1) Project operations are estimated to increase CO_2e emissions from baseline conditions by as much as 22,248 metric tons at maximum design throughput of 4.58 million tons per year of cement and 2) the SCAQMD has established Rule 2702 (GHG Reduction Program), which offers GHG emission reductions at a rate of $15 per metric ton of CO_2e. The Project-related cost would be based on: 22,248 metric tons CO_2e emissions x $15 per metric ton = $333,720. This contribution would be used to fund projects pursuant to the GHG Program, including, but not limited to, generation of green power from renewable energy sources; installation of urban forests and drought-tolerant community gardens; purchase of electric vehicles; lighting replacement with light-emitting diode fixtures; and energy-efficiency projects such as building insulation; and heating, ventilation, and air conditioning, and boiler replacements. This contribution may not be used to fund projects at MCC's project site. The timing of the payment pursuant to this mitigation measure shall be made by the later of the following two dates: 1) the date that MCC issues a Notice to Proceed or otherwise authorizes the commencement of construction on the construction contract or 2) the date that the EIR is conclusively determined to be valid, either by operation of Public Resources Code (PRC) Section 21167.2 or by final judgment or final adjudication.	
When Required: The timing of the payments pursuant to **Mitigation Measures GCC-3** shall be made by the later of the following two dates: (1) the date that MCC issues a Notice to Proceed or otherwise authorizes the commencement of construction on the construction contract or (2) the date that the EIR is conclusively determined to be valid, either by operation of PRC Section 21167.2 or by final judgment or final adjudication.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirements in new lease agreement. **Action (ii)**: POLB Environmental Planning Division shall verify compliance with Mitigation Measure GCC-3 and take appropriate corrective actions should Applicant be in non-compliance.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Environmental Control Measure AQ-1: Expanded VSRP	
Required Action: Environmental Control Measure AQ-1: Expanded VSRP. All OGVs that call at the MCC terminal shall comply with the expanded VSRP of 12 knots from 40 nm, that is, from Point Fermin to the Precautionary Area (equal to CAAP measure OGV1).	
When Required: During all operational activities when Project-related OGVs are approaching or departing from the Port.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirement in new lease agreement. **Action (ii)**: Applicant shall provide POLB Environmental Planning Division with compliance documentation for Environmental Control Measure AQ-1 on an annual basis. The documentation shall be submitted within 30 days of the completion of each operational year. **Action (iii)**: POLB Environmental Planning Division shall verify compliance with Environmental Control Measure AQ-1 on an annual basis, and take appropriate corrective actions should Applicant be in non-compliance.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Environmental Control Measure AQ-2: Shore-to-Ship Power/Cold Ironing	
Required Action: Environmental Control Measure AQ-2: Shore-to-Ship Power/Cold Ironing. OGVs that call at the MCC facility shall use shore-to-ship power (i.e., cold iron) no less than 66 percent of the time at berth based on an annual average. The DoCCS shall be used for the portion of time at berth that OGVs are not using shore-to-ship power. MCC shall submit annual reports to the Port's Environmental Planning Division on or before January 31 of each year, demonstrating compliance with this environmental control measure for the previous calendar year. If an emergency event [as defined in California Air Resources Board's (ARB's) At-Berth Regulation, Title 17, CCR Section 93118.3, subsection (c)(14)], prevents MCC from achieving the required annual average shore-to-ship power rate (equal to or greater than 66 percent), MCC may demonstrate compliance over a two-year period, so long as MCC submits documentation to the Port which describes the emergency event(s) and explains the basis for MCC's inability to demonstrate compliance using an annual average. The Port would review the documentation submitted by MCC and, if the Port determines that MCC made sufficient effort to comply with the environmental control, it would notify MCC in writing that use of the two-year average is acceptable.	
When Required: Daily during all operational activities.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirements in new lease agreement. **Action (ii)**: POLB Environmental Planning Division shall verify compliance with Environmental Control Measure AQ-2 and take appropriate corrective actions should Applicant be in non-compliance.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Environmental Control Measure AQ-3: Payloaders	
Required Action: Environmental Control Measure AQ-3: Payloaders. Wheeled loaders used for final unloading shall attain EPA non-road Tier 4 emission standards.	
When Required: During all operational activities.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirements in new lease agreement. **Action (ii):** At least 30 days prior to the start of operation, Applicant shall provide POLB Environmental Planning Division with a list of the wheeled loaders to be used during Project operations, including all documentation demonstrating compliance with EPA Tier 4 emission standards. **Action (iii)**: On an annual basis, Applicant shall provide POLB Environmental Planning Division with an updated list of the wheeled loaders to be used during Project operations, including all documentation demonstrating compliance with EPA Tier 4 emission standards. The updated list shall be submitted within 30 days of the completion of each operational year. **Action (iv)**: POLB Environmental Planning Division shall verify compliance with Environmental Control Measure AQ-3 and take appropriate corrective actions should Applicant be in non-compliance.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Environmental Control Measure BIO-1: Expanded VSRP	
Required Action: Environmental Control Measure BIO-1: Expanded VSRP. To reduce the potential for accidental whale strikes, OGVs that call at the MCC terminal shall comply with the expanded VSRP of 12 knots.	
When Required: During all operational activities when Project-related OGVs are approaching or departing from the Port.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirement in new lease agreement. **Action (ii)**: Applicant shall provide POLB Environmental Planning Division with compliance documentation for Environmental Control Measure BIO-1 on an annual basis. The documentation shall be submitted within 30 days of the completion of each operational year. **Action (iii)**: POLB Environmental Planning Division shall verify compliance with Environmental Control Measure BIO-1 on an annual basis, and take appropriate corrective actions should Applicant be in non-compliance.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Environmental Control Measure NOI-1: Construction Equipment	
Required Action: Environmental Control Measure NOI-1: Construction Equipment. All construction equipment powered by internal combustion engines shall be properly muffled and maintained.	
When Required: During all construction activities.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirement in new lease agreement. **Action (ii):** At least 30 days prior to construction, Applicant shall provide signed contracts with all construction contractors to POLB Environmental Planning Division. The contracts shall specify the requirement to properly muffle and maintain all construction equipment powered by internal combustion engines. **Action (iii):** POLB Environmental Planning Division shall verify that all construction-related contracts specify that construction equipment powered by internal combustion engines shall be properly muffled and maintained. **Action (iv):** Applicant shall routinely inspect construction-related equipment and verify that the contractor is properly muffling and maintaining all construction equipment powered by internal combustion engines, and subsequently provide a written report to POLB Environmental Planning Division on a quarterly basis during construction.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Environmental Control Measure NOI-2: Idling Prohibitions	
Required Action: Environmental Control Measure NOI-2: Idling Prohibitions. The idling of internal combustion engines near any noise-sensitive areas shall be prohibited during Project construction.	
When Required: During all construction activities.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirement in new lease agreement. **Action (ii):** At least 30 days prior to construction, Applicant shall provide signed contracts with all construction contractors to POLB Environmental Planning Division. The contracts shall specify that the idling of internal combustion engines near any noise-sensitive areas is prohibited during Project construction. **Action (iii):** POLB Environmental Planning Division shall verify that all construction-related contracts specify that idling of internal combustion engines near any noise-sensitive areas is prohibited during all construction activities. **Action (iv):** Applicant shall routinely inspect construction-related equipment and verify that the contractor is prohibiting the idling of internal combustion engines near any noise-sensitive areas, and subsequently provide a written report to POLB Environmental Planning Division on a quarterly basis during construction.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

Environmental Control Measure NOI-3: Equipment Location	
Required Action: Environmental Control Measure NOI-3: Equipment Location. All stationary noise-generating construction equipment, such as air compressors and portable power generators, shall be located as far as practical from any existing noise-sensitive land uses.	
When Required: During all construction activities.	
Agency or Entity Responsible for Action: Applicant.	
Agency Responsible for Tracking: POLB Environmental Planning Division.	
Action (i): POLB Real Estate Division to include requirement in new lease agreement. **Action (ii):** At least 30 days prior to construction, Applicant shall provide signed contracts with all construction contractors to POLB Environmental Planning Division. The contracts shall specify that all stationary noise-generating construction equipment shall be located as far as practical from any existing noise-sensitive land uses. **Action (iii):** POLB Environmental Planning Division shall verify that all construction-related contracts specify that all stationary noise-generating construction equipment shall be located as far as practical from any existing noise-sensitive land uses. **Action (iv):** Applicant shall routinely inspect construction-related equipment and verify that the contractor has located stationary noise-generating construction equipment as far as practical from any existing noise-sensitive land uses, and subsequently provide a written report to POLB Environmental Planning Division on a quarterly basis during construction.	
Submittal Date:	
Verified By:	**Title:**
Attachments:	
Comments:	

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Revised Mitigation Measure MM AQ-6: Periodic Technology Review

To promote new emission control technologies, MCC shall perform an investigation and submit a report to the POLB Chief Executive, every five years following the effective date of the new lease, on any POLB-identified or other new emissions-reduction technologies that may reduce emissions at the MCC facility, including the feasibility of zero emissions and near-zero emissions technologies for cement delivery trucks and cement handling equipment (e.g. payloader). The Port will conduct a similar, independent investigation, simultaneously, and will present new, emissions-reduction technologies to MCC. If the Periodic Technology Review demonstrates the new technology will be effective in reducing emissions and is determined by the Port to be feasible, including but not limited to from a financial, technical, legal and operational perspective, MCC shall work with the Port to implement such technology.

HONORABLE MAYOR AND CITY COUNCIL
July 14, 2015
Harbor Department Appeal Hearing

Attachment 4

PowerPoint from May 11, 2015 Harbor Commission Hearing

MCC Cement Facility Modification Project

Port of LONG BEACH
The Green Port

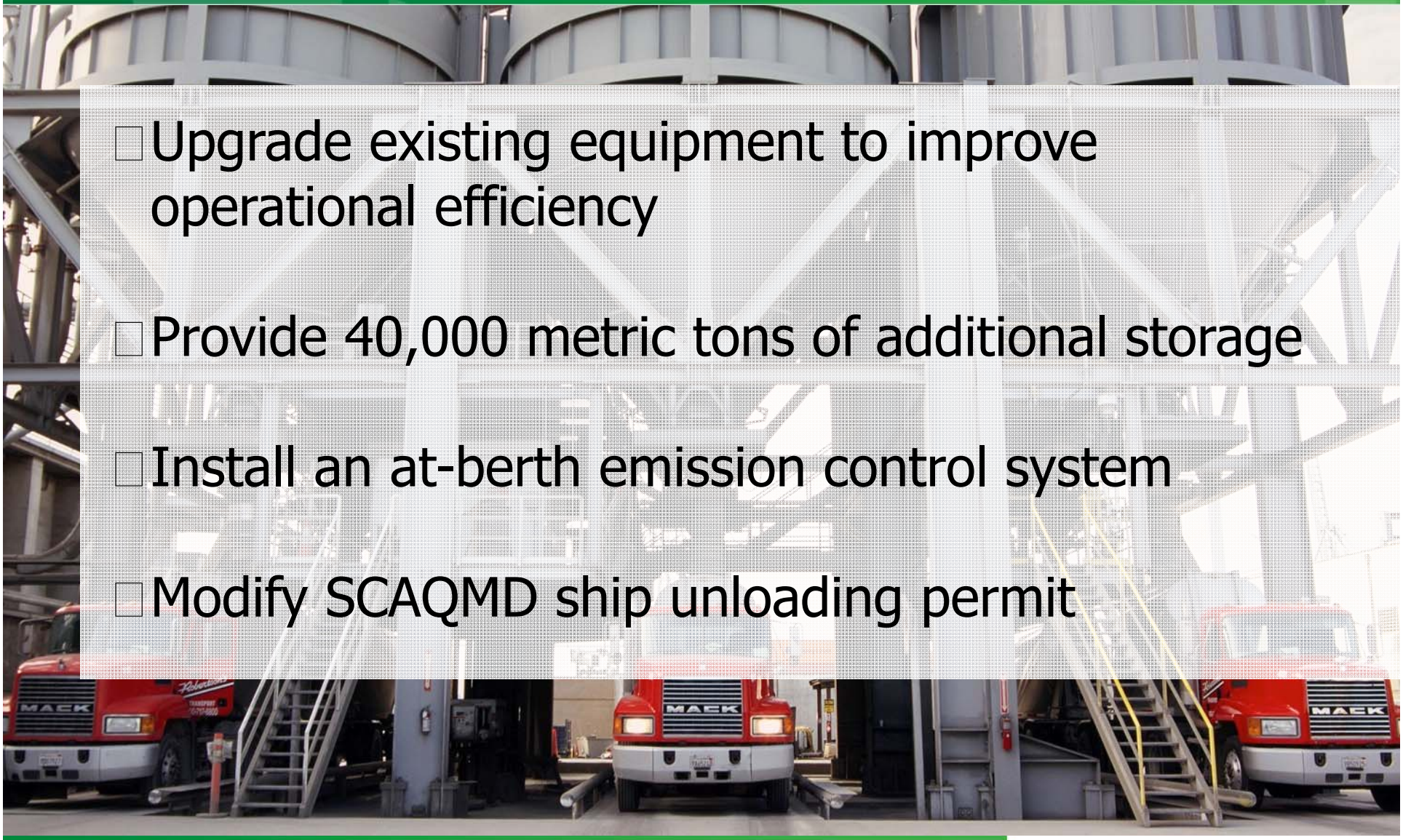
Final Environmental Impact Report/Application Summary Report
May 11, 2015

Project Location

Background

- SCAQMD Operating Permits
- Shore Power Requirement
- Limited Cement Storage

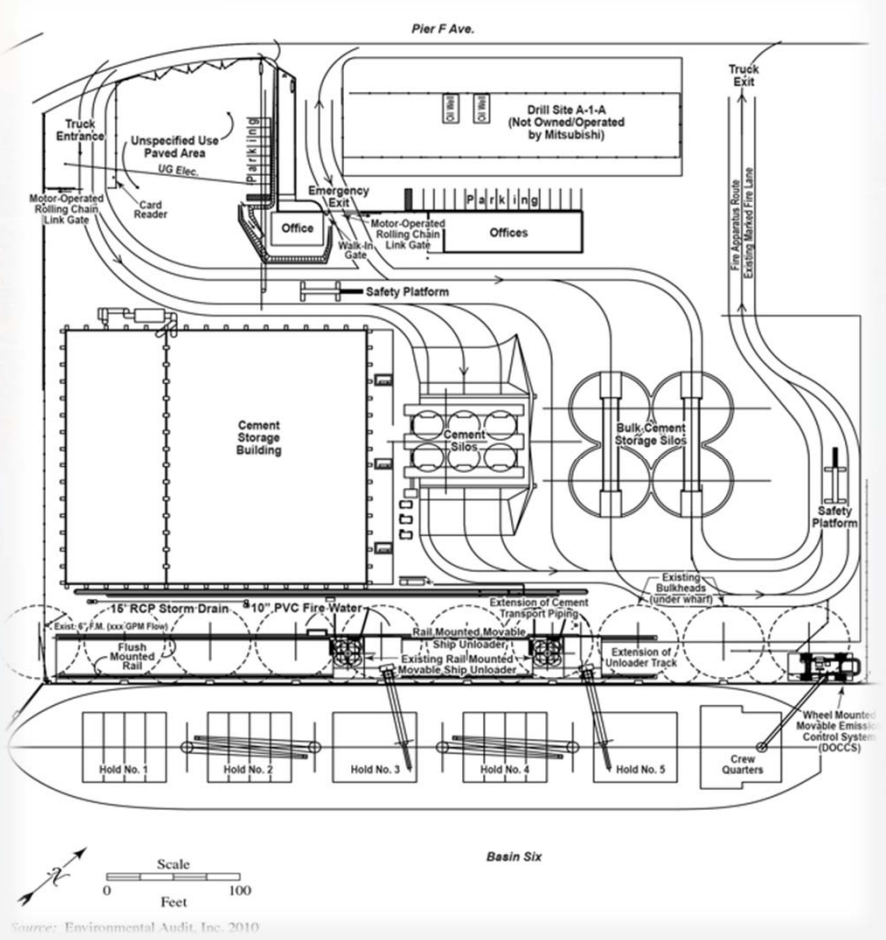
Project Objectives



- Upgrade existing equipment to improve operational efficiency
- Provide 40,000 metric tons of additional storage
- Install an at-berth emission control system
- Modify SCAQMD ship unloading permit

Project Description

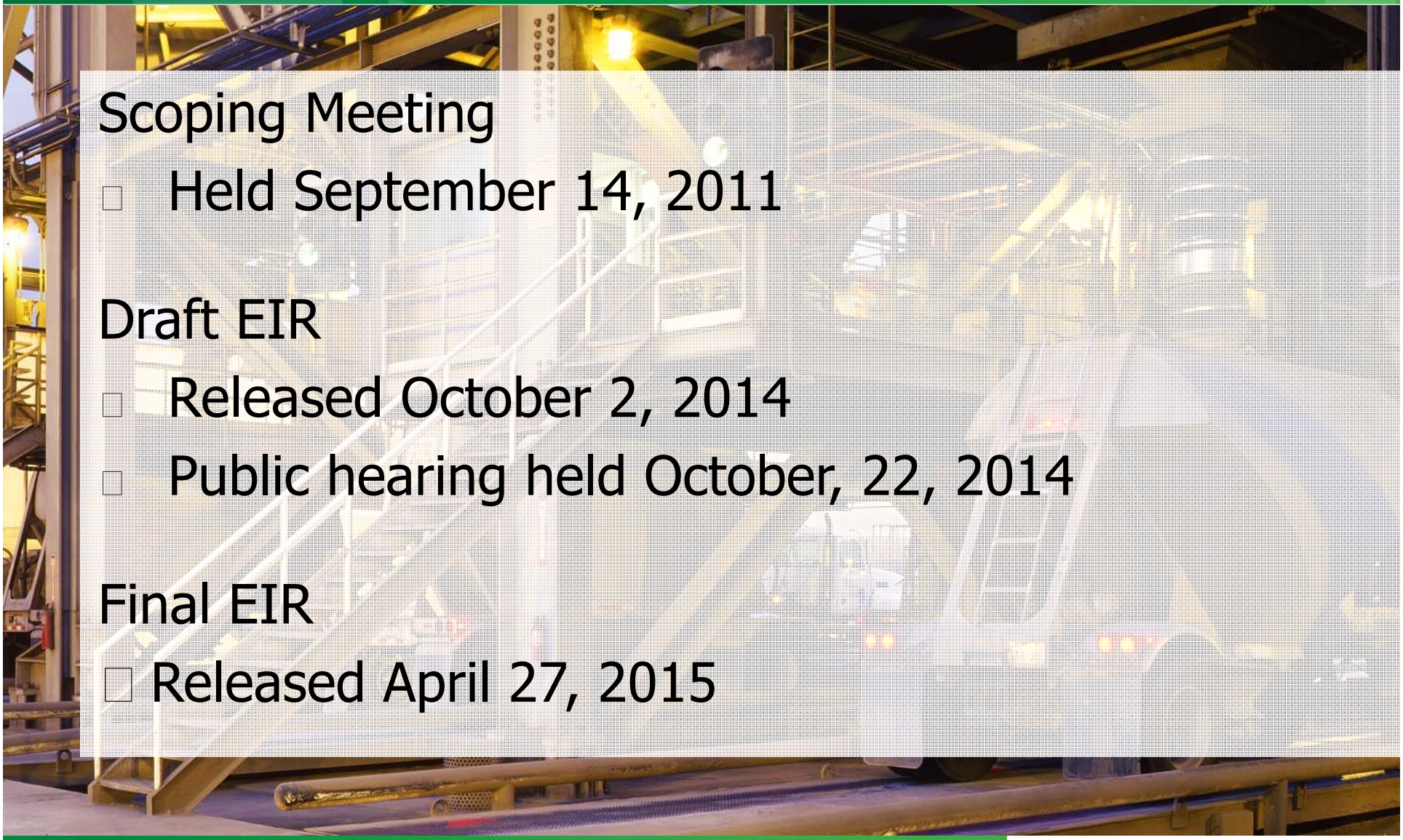
- Install Dock-Side Catalytic Control System (DoCCS)
- Construct additional storage
- Upgrade cement unloading equipment and landside structures



Significant Impacts □Proposed Project

- □Air Quality
- □Global Climate Change
- □Biological Resources

CEQA Process & Public Comment



Scoping Meeting

- Held September 14, 2011

Draft EIR

- Released October 2, 2014
- Public hearing held October, 22, 2014

Final EIR

- Released April 27, 2015

Staff Recommendation

- Certify the Final Environmental Impact Report, Application Summary Report, Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program.
- Approve the MCC Facility Modification Project and a Level III Harbor Development Permit

Attachment 5

Transcript of May 11, 2015 Harbor Commission Hearing

HEARING HD-15-243

MITSUBISHI CEMENT FINAL EIR

PUBLIC HEARING

MAY 11, 2015

~oOo~

PORT OF LONG BEACH

4801 AIRPORT PLAZA DRIVE

LONG BEACH, CA 90815

PAGES: 88

JOB NO. 14307

REPORTED BY: JUSTUS BALENTINE

CSR NO. 13859

LONG BEACH, CALIFORNIA, MONDAY, MAY 11, 2015

(6:00 P.M.)

MR. DRUMMOND: I'd like to open the public hearing for the MCC Cement Facility Modification Environmental Impact Report application summary report to receive public comments in accordance with the California Environmental Quality Act, the California Coastal Act, and the Port Master Plan. Those in the audience wishing to comment on this project are encouraged to fill out a speaker card located on the table at the entrance to the boardroom. I would also like to announce to those in attendance, that to make our presentation as accessible as possible, we have a sign language interpreter and a Spanish translation service available. If there is anyone here who would like to use either of these services, please let us know. At this time I would like Heather Tomley, Director of Environmental Planning, to summarize the project.

MS. TOMLEY: Thank you very much, President Drummond and commissioners. This evening I will present for your consideration a brief summary of the major aspects of the facility modification project proposed by Mitsubishi Cement Company, or MCC. Tonight we're asking that the board of harbor commissioners certify the final environmental impact report and application summary report and to approve the

proposed MCC facility modification project.

The proposed project is located at MCC's existing cement import facility at 1150 Pier F Avenue in the southeast harbor planning district. Adjacent to the facility is the former Pacific Banana site, which is currently vacant, and proposed to be leased to MCC for the proposed project. At its facility MCC receives bulk cement by ship, stores the product in a warehouse and loading silos, and loads the product onto customer trucks for delivery to local and regional concrete batch plants. The existing facility has cement throughput limits in their A.Q.M.D. permit, specifically a ship unloading limit of 8.76 million metric tons per year, and truck loading limit of 3.81 million short tons per year.

The proposed project being considered today would not modify those permitted unloading and loading limits. In addition, the existing A.Q.M.D. permit per ship unloading includes a requirement that all vessels use shoreside electricity instead of their auxiliary engines while unloading at berth. However, not all vessels that call at the facility are able to use shore power the entire time at berth. Further, there's a need for additional storage capacity at the facility to minimize inefficiencies due to irregular ship deliveries and fluctuations in cement demand. Since cement deliveries to the facility are ordered months in

advance, changes in the demand for cement can occur after the order has been placed.

There have been periods where the warehouse was full and ships calling at the facility could not unload upon arrival. As a result, those vessels had to wait at berth or anchor until sufficient warehouse capacity was available for the ship to offload the entire shipload.

The objectives of the proposed project are to upgrade the existing facility, to improve operational efficiencies, and to provide 40,000 metric tons of additional storage capacity to meet future demand for cement in the Los Angeles region, to install an emission control system, known as the dockside catalytic control system, or D.O.C.C.S., to reduce at berth nitrogen oxide emissions from ships' auxiliary engines when vessels are not using shore-to-ship power, and to modify the permit issued by A.Q.M.D. for bulk cement ship unloading, which currently requires shore-to-ship power for ships at berth.

The modification would allow either the use of shore-to-ship power, or capture and treatment of emissions from the ship's auxiliary engine by the DOCCS NOX emission control equipment. The proposed project calls for the following modifications to the existing cement import facility. First, installing the dockside catalytic control system, or D.O.C.C.S., which is a moveable, at-berth emission

control system consisting of a crane arm and capture hood or bonnet, this system is designed to remove at least 90 percent of NOX emissions from vessels while at berth.

Second, constructing additional storage consisting of four 10,000 metric ton direct-loading concrete silos and two new truck lanes beneath the silos; and third, upgrading the ship's cement unloading equipment and other landside structures. The existing cement unloader would be upgraded and new cement unloader would be installed. The dockside crane rail for the unloader will be extended and the wharf structure and backlands will be reinforced. The wharf structure improvements do not involve any in-water work.

Based on a capacity study commissioned by the port, the maximum throughput for the facility -- the maximum throughput the facility could accommodate after the proposed modifications is approximately 4.2 million metric tons of cement, which would be associated with 99 vessel calls per year and 166,400 annual truck trips. To clarify; this throughput is greater than the truck loading limit in the A.Q.M.D. permit; however, to be conservative, this maximum throughput capacity was used for the analysis.

The EIR identified impacts that were significant and unavoidable even after mitigation was applied. These impacts are first to air quality. Operational air emissions on a project in a cumulative impact level would exceed the

regional A.Q.M.D. daily thresholds of significance for NOX, and ambient thresholds for NO2, PM10 and PM2.5. Construction air emissions on a cumulative impact level would also exceed A.Q.M.D. thresholds. Mitigation measures such as the modernization of the truck fleet, demonstration of the diesel particulate filter for the at berth emission control system, and use of tier four construction equipment will reduce project impacts, but they will remain significant and unavoidable.

Second, to global climate change. The total annualized greenhouse gas emissions generated from the proposed project construction and operation would be above the A.Q.M.D. significance threshold of ten thousand metric tons carbon dioxide equivalent per year for industrial land uses. Mitigation measures such as indirect greenhouse gas emission reduction and avoidance measures such as the installation of solar panels and energy-efficient lighting, energy audits, and contribution to the port's Greeenhouse Gas Mitigation Grant Program in the amount of $333,720 will be required for the proposed project, but impacts will remain significant and unavoidable.

And third, to biological resources. Disruption to biological communities on a cumulative impact level would occur in regards to invasive species and offshore whale strikes. No feasible mitigation measures are available

beyond compliance with existing federal state and port rules and regulations. Therefore, the cumulative impacts to biological resources will be significant and unavoidable. The port conducted a public scoping meeting on September 14th, 2011, at the Long Beach City Hall Council chambers. On October 2nd, 2014, a draft EIR was distributed for various government agencies, organizations, and individuals for a 45-day public review period. A public hearing was held on October 22nd, 2014, at the Long Beach City Council chambers, and at the conclusion of the public comment period, 21 comment letters were received and a total of seven people spoke at public hearing. Responses to the comments received on the draft EIR have been included in the final EIR and minor changes have been made to the document itself to refine and clarify some of the assumptions in the analysis and to modify and include additional mitigation measures.

Additional mitigation measures that were added to the final EIR were including participation in the demonstration testing of the AMECS system and inclusion of periodic technology reviews to investigate new emission reduction technologies, including zero emission cement delivery trucks and cement handling equipment. In addition, since Thursday of last week, the port has received an additional 12 comment letters which have been provided to the board for consideration. Of the letters received, ten

expressed support for approval of the project, one provided clarification from the Long Beach Water Department that none of their facilities are in conflict with the proposed construction, and one submitted by several organizations including N.R.D.C. provided additional comments on the project.

In response to that letter, port staff and attorneys prepared written responses which were delivered to the board and the commenters just prior to this hearing. There are a few points I want to highlight. In response to the comment that the baseline year should be 2011, the port disagrees. In 2011 operations at the facility were at a temporary hiatus. The facility, however, was previously evaluated under CEQA, is fully permitted, and is currently leased to MCC. It's not appropriate or necessary to re-evaluate the previously analyzed and authorized operation.

In addition, the EIR could have used the permitted capacity of the facility as the baseline; however, to be conservative, we used the actual activity during the last full year of operation prior to the economic downturn, which was much less than the permitted limit. In response to the comment that MCC should increase their contribution to the greenhouse gas mitigation fund, I first want to make note that an incorrect number was referenced in the comment letter.

The proposed project would produce 22,248 metric tons of CO2 equivalents emissions during construction and operations, not the 29,755 tons identified in the letter. As for the determination of the contribution to the greenhouse gas mitigation program, the calculation is consistent with all previous projects that have contributed to the program. In addition, the one-time contribution is appropriate because the projects that would be funded through the grant program will be ongoing in nature and are anticipated to provide continued benefits.

In response to the comment regarding the port's role in the periodic technology review process, the port currently has a very active technology review process through our technology advancement program where we evaluate emerging technologies, conduct demonstrations, and move technologies towards agency verification. The port will therefore be very invested in the technology review process that will occur as a part of the five-year reopener. The letter provided suggested language for the periodic technology review mitigation measure. We as port staff agree with some, but not all, of the suggested language. Specifically, we agree with the changes except for the addition of the final sentence, which we believe is unnecessary and unclear.

We believe that the most successful technology implementation will occur only with the full cooperation of

the tenant and that it's not appropriate to specify a breach of the lease at this time. In addition, it's premature to speculate on the final language in the lease which will be presented at a duly-noticed meeting and finalized by the court with opportunity for members of the public to provide comment. And finally, under their proposed language, it is unclear of who will make the final determination of what is feasible and, therefore, if MCC is somehow in breach of the lease. Only the port can make that determination.

Therefore, we are asking the board to take action to certify the final environmental impact report and allocation summary report, adopt a resolution, including findings of fact, statement of overriding considerations, and mitigation and monitoring and reporting program, and approve the MCC facility modification project and a level-three harbor development permit. Thank you very much.

I'd like to introduce Bud Biggs with MCC who will be providing further information on that proposed project.

MR. BIGGS: Good evening, and thank you for the opportunity to speak to you tonight. First, I'd like to give you a little bit of information about our company. It's headquartered in Henderson, Nevada. We supply portland cement and especially cement products to California, Nevada, and Arizona. We have a manufacturing facility, the Cushenbury facility, in Lucerne Valley, California, and the

import terminal up here in Long Beach. The existing facility is 4.21 acres, we have two backroom unloaders, an 800 metric ton unloader that runs on rails, and a 300 metric ton unloader that's on rubber tires.

The rubber tire unloader was purchased because we couldn't get to the fifth hull with the large unloader when we first started operation. We had to turn the ship in order to get to the fifth hull, so we purchased the small unloader on rubber tires so it could fit between the building and the ship and get into the fifth hull, and we reduced our unloading time from seven days to five days. We have a storage facility that's about 52,000 metric tons and three loadout bays.

The modernization project is a new, upgraded unloading system, new emissions control technology, additional storage and truck loading, and a new land lease. Control -- we need to control ship emissions when we can't cold iron, and that's where we use the dock system, and this will improve terminal operations efficiencies. Emission technology, we started cold ironing in 2005. We found a way to hook up to the dry dock breaker on the ship, and unfortunately because that dry dock breaker cannot take enough power to operate the cranes, we can only cold iron about 80 percent of the time. When they have to use the cranes, we have to put the material to clean out the whole

end of the hull, we have to unplug. In 2009 we won the Clean Air Action award for that innovation. The DOCCS system will be used when ships cannot be cold ironed. The dock site catalytic control system is a hood-over-ship stack to capture the auxiliary engine exhaust. We'll reduce on NOX by 95 percent, and we'll do a demonstration project with the diesel particulate filter to capture the particulates.

By the dock system, it's best suited for our facility. We have space constraints. Our moving equipment, our unloaders, are on rails and our truck routing is very tight. We will still primarily control with cold ironing. The DOCCS system is a small footprint; it's mobile and has familiar components. Just like all of our unloaders, everyone is familiar with the operation. Part of the project will be to upgrade the 800 metric ton vacuum unloader to bring it to current standards and make it more efficient.

We'll replace the small unloader with another 800 metric ton unloader. In order to do that we need to extend the rails and we'll have to strengthen the berth to put the rails in. The backland upgrades will be stone columns and three to four hundred piles under the foundation of the silos. The new loading facilities will be four, 10,000 metric ton silos that you see on your right. Each silo is 160 foot tall and 60 foot in diameter and they'll be placed on the 1.71 acre site adjacent to the existing facility that

was the Pacific Banana facility.

There will be two truck loading lanes underneath those silos so that the material will go right from the ship to the silos and loaded right from those silos into the truck. The existing facility takes the material from the ship to the warehouse, and then has to be transferred from the warehouse into the existing truck loadouts. It would be built in phases and the first phases will be to strengthen the berth so that we can extend those rails and bring in ships while we are doing the backland improvements.

This shows the -- our permitted throughput and our actual throughput and where our CEQA review line -- or baseline is, and the actual EIR tongueage that was used to calculate our emissions. The project will improve our operational efficiency. Cement shipments are arranged months in advance and demand can decline quickly. This will give us the advantage of a surge into the warehouse so we will not have to keep ships at berth or anchor in order to unload them.

During high demand, truck queues can be very long and this should help diminish that time or eliminate it. Greater storage capacity will avoid the mismatch between ships and trucks. Upgraded unloaders will cut ship unloading time. We all know that in 2006 when demand outstripped domestic production, the prices escalated and shortages

delayed important projects. The Portland Cement Association has predicted in 2016, Southern California will need imports; we believe that's true. There are already imports coming into Northern California. We believe that in late 2016 or early 2017 we will be importing cement. We need to modernize to meet the demand of all the needed construction.

Before we go to questions, I would like to have our attorney Jocelyn Thompson address the new technology.

MS. THOMPSON: Good evening, commissioners. My name is Jocelyn Thompson and I'm with the Law Firm of Alsten & Bird, and I've been assisting Mitsubishi with this project for a number of years, and as I believe as Bud said at the outset, we're absolutely delighted to be here today. It's been a long process and we appreciate all the time that your staff has put into this. The reason I'm addressing you is the -- with respect to the proposed changes to AQ6 that were discussed by staff. This is a very troubling last-minute change. We became aware of this about 40 minutes ago, and while it appears to be just a few words changing an existing condition, it has some pretty profound implications.

It's takes a condition that we wrestled with internally already, a condition that requires a review of available technologies on a five-year cycle. We were convinced by staff several months ago to accept this because there was some mutual discussion that was represented in that

condition, so we would have some dialogue about whether technology is feasible to incorporate on regular five-year intervals, but the changes that are being discussed today would take away that dialogue and that mutuality and leave this condition completely open-ended. There is no boundary in terms of added costs that could be imposed. There is no benchmark with respect to the cost in relation to the rent already being charged, or with respect to the amount of pollution that would be avoided.

And while the EIR does identify some impacts that are described as significant after mitigation, I'm sure that the board has been looking at the document and it's in the air quality appendix, Appendix A, you would see that the off-site impacts that are considered significant go offsite a few hundred feet. So what we're doing with this condition, the changes that are proposed today, is injecting an tremendous amount of uncertainty into this investment. To address an impact that affects the street in front of the facility in terms of PM10 and PM2.5 emissions. That's the extent of the PM10 and PM2.5 significant impacts.

And the uncertainty really can't be overlooked here. We're talking about a company that's already invested a tremendous amount in innovative emission controls. You -- this board has awarded Mitsubishi Cement one of the clean air awards for its innovation in cold ironing, cold ironing

before anybody else, cold ironing a noncaptive fleet. It's a company willing to make investments. Mitsubishi came forward and proposed the air quality condition that will require its fleet to turnover every five years, so the trucks will never be older than 5 years old from an emissions equivalency, and there is a fair amount of uncertainty to inject into this.

But the question is how much uncertainty can a company bear when looking at making an investment of tens of millions of dollars? The first technology review under this condition would occur just about the time it's completed construction, and for a company to be looking at this magnitude of investment and not know whether it's going to have to change its equipment immediately following start up is really untenable. It's my understanding that this condition has not been imposed by your board previously. I've been working on CEQA projects for about 30 years and I've never seen a board compelled to have an evergreen condition like this that would put an applicant at risk of being told to change his operations every five years.

So I don't believe that this is necessary for CEQA defensibility, and I think before your board changes the direction on what has previously been a standard condition, I urge you to explore it outside the context of this project, because if it's one thing that business cannot stand, it's uncertainty. Thank you.

MR. DRUMMOND: Thank you. I would now like to invite comments from the public. If there are any persons wishing to speak in favor of or opposition to this project, please make your presentations brief, to the point, and no more than three minutes long. Please avoid duplication of comments by preceding speakers. Speakers should, if at all possible, provide written copies of their comments to the Board so these comments can be accurately recorded. I will be calling by name the speakers that filled out a public speaker card for this project. If you need a card, raise your hand and we'll get one for you. Now, before we proceed -- no, I'm going to go right ahead with the speakers.

The first is Dave Walker with the Boys & Girls Club of Long Beach. Mr. Walker.

MR. WALKER: Good evening, President Drummond, commissioners. My name is David Walker and I'm here on behalf of the Boys & Girls Club of Long Beach to let you know MCC has been a really loyal supporter and great public citizen in our community. They've helped us with the families that are living near the port of Long Beach. We want the company to be successful because they have already shown to reinvest in the community, and we of course want to encourage them to be successful so more jobs can be created in the City of Long Beach. Thank you.

MR. DRUMMOND: Thank you, Mr. Walker. Next is Mike

Crehen. Mr. Crehen.

MR. CRAYHOUND: Hi, I'm Mike Crehen, president of the harbor association, industry and commerce, and we are expressing strong support for the adoption of the final EIR. This is a clear example of business bringing a community outlook to the community they're in. Cement -- I'm an engineer by training and cement is going to be a very huge aspect of our growing community and having the ability to come in with an efficient, more efficient system than they already have, will help reduce the environmental impacts that might otherwise hinder us. Thank you.

MR. DRUMMOND: Thank you. Next is Levi Javier, Harbor association of industry and commerce. Mr. Javier.

MR. JAVIER: Good evening, commissioners. My name is Levi Javier, I'm a second vice president for H.A.I.C. I'm in strong support of this particular project. This is a green project. This project is also in tune with the modernization that's taking place with cold ironing, but also with Middle Harbor and the Gerald Desmond Bridge. Please support this project. Thank you.

MR. DRUMMOND: Thank you. Next is a Amy Grat, International Trade Education Programs.

MS. GRAT: Good evening, harbor commissioners, members of the port staff, and members of the community. My name is Amy Grat. I'm CEO of International Trade and

Education programs and I'm here to express my support for the Mitsubishi Cement modernization project. My organization focuses on connecting young people to careers in the maritime trade, transportation, and logistics industry. For our students to graduate job-ready and college prepared, we need not only excellent schools, which Long Beach has, but we also need the support of industry employers. We need career role models and mentors. We need companies to open their doors to interns and entry-level graduates.

I'm here today to express support for Mitsubishi Cement because they have shown themselves to be supporters of the community through investments of ours and many other nonprofits. They have also been mentors to our Cabrillo High School students, and if this modernization project goes through, they will be in an excellent position to support the creation of more good jobs and internships in the harbor area. Thank you very much for your consideration of this project.

MR. DRUMMOND: Next, Bruce Haymon of L.A.M.I.

MR. HAYMON: That's supposed to be for public comment.

MR. DRUMMOND: Oh, for public comment. Thank you very much. I'll move to the next one. Jill Morgan, International Business Association.

MS. MORGAN: Good evening, commissioners. My name

is Jill Morgan and I'm a current board member and past president of the Long Beach International Business Association, a committee of the Long Beach Chamber of Commerce, and I'm also a Long Beach resident and business owner. I'm representing the I.B.A. and the chamber tonight speaking in support of the Mitsubishi modernization project. The IBA and chamber hopes to see the board certify this EIR tonight and approve this important project. When an award-winning company like Mitsubishi Cement wants to spend 40 million to expand its services for such an important commodity, like cement, a solid economic indicator of its own, it's something we should all really be excited about.

And the EIR clearly pointed out the benefits of this project. The environmental mitigations are significant, the dockside emission control system improvements and efficiency, and improved utilization of underused water-front property increasing value of public trust lands for Californians through projects like this is exactly what we like to see this board taking action on, so again we hope to see the board certify this EIR tonight and approve this important project. Thank you very much.

MR. DRUMMOND: Thank you. Michelle Grubbs, P.S.M.A.

MS. GRUBBS: Good evening, commissioners, President Drummond. My name is Michelle Grubbs. I'm the Vice President of the Pacific Merchant Shipping Association which

represents marine terminal operations and ocean carriers on the west coast. As you well know, California ports have a significant nationwide impact. More than three million jobs across the country are linked to California public ports. What I'd like to remind everyone tonight, not only about the value of containerized cargo, but also about the importance the bulk commodities that flows through the ports. One specific commodity that we're discussing here tonight is cement. Cement is used in every facet of construction; bridges, highways, marine terminals, dams. Without an adequate supply of concrete, projects get delayed, jobs are postponed. The availability of cement is vital to be able to start construction.

In Southern California we have many, many projects that you as commissioners have dealt with right now, infrastructure projects that will need cement: The Gerald Desmond Bridge, the 710 Freeway, the new Civic Center, and the port administration building. We must be prepared to ensure that a supply of cement is available for those projects, for hundreds of projects across Southern California. I respectfully request that you approve the project and certify the EIR tonight. Thank you.

MR. DRUMMOND: Thank you. Stacy Jones.

MS. JONES: Good evening, commissioners and President Drummond. I'm a resident of the port area and also

work here in Long Beach and I'm in favor of the Mitsubishi modernization project at the port of Long Beach and port facility for the following key four reasons:

It will enhance the competitive supply of cement in the region helping to keep construction costs down. It will handle the product efficiently utilizing environmental sound measures without increasing throughput. It's introducing clean technologies to reduce air emissions, and finally they're making an investment, an investment in the port, investment in this region to help grow our economy, and for those reasons I urge you to vote in favor of certification of this project EIR. Thank you.

MR. DINES: Thank you. Elizabeth Warren, Future Ports.

MS. WARREN: Good evening, President Drummond, fellow commissioners, port staff. Thank you for the opportunity to speak tonight. I'm Elizabeth Warren. I'm the director of Future Ports and on behalf of Future Ports, I'm here to express our strong support as well for the Mitsubishi project as it was submitted earlier. This project will ensure that there is an adequate supply of cement, fulfill the demands for the port and its regional building and infrastructure projects. We agree with the comments of everyone earlier and I said I'm not going to read all my comments because I want to make sure we have time for

everyone, but the supply of cement, it's not -- we don't have enough. We're going to be using all that cement on construction projects, on bridges, rail yards, piers, freeways. The investment in this clean facility, the investments that MCC has made to reduce greenhouse gas emissions, the dockside emission control system, this is a win-win project and we really want to see the board approve this project this evening.

So I have a letter that I'll submit to Ms. Tomley and we'll get that letter in for you, but we do want to make sure that we get this project approved. We'd love to see the port support this project this evening. Thank you.

MR. DRUMMOND: Thank you. Next, Danielle Leben, N.R.D.C.

MS. Leben: Good evening, commissioners. My name is Danielle Leben and I'm a legal fellow at the Natural Resources Defense Counsel, N.R.D.C. First, we want to thank port staff for their explanations and responses to our comments and concerns. We're particularly thankful for the language modification and the FEIR regarding the port's participation in the periodic technology review, but I'm here to express our concerns with the likely environmental effects of Mitsubishi's Cement terminal, if it's approved.

First, the construction and operation of the terminal will result in over 20,000 tons of CO2 annually,

exceeding the E.P.A significance thresholds. The port proposed for MCC to pay for these emissions in one lump-sum payment accounting for one year of emissions. We strongly suggest that the port should contribute to the port Greenhouse Gas Emissions Reduction grant program on a yearly basis in order to offset these emissions and the effects they will have on local communities and air quality. Since the terminal will emit high quantities of greenhouse gas on an annual level, the contributions should be made annually as well.

Additionally, the production of cement, the commodity that will be imported and handled by the terminal, is a significant source of greenhouse gas emissions, amounting to almost five percent of global emissions. The final environmental impact report should include an analysis of the induced demand for cement and mitigation measures that address the impact. In addition, we are particularly disappointed at the port's failure to include an environmental justice analysis subsection in the FEIR. The port is located in very close proximity to several disproportionately overburdened communities including Wilmington and Long Beach.

The FEIR pointed out that levels of particulate matter from the terminal will exceed A.Q.M.D. limits, which will directly affect the residents of these neighborhoods.

In addition, the FEIR estimates that over 165,000 truck trips will originate by the terminal and then pass by these communities on the 710 or other adjacent freeways.

Freight is well known to be the most serious contributor to poor air quality and corresponding health risks. An environmental analysis -- excuse me, an environmental justice analysis should have been done to address these issues and provide mitigation measures. The port continuously touts its commitment to be the green port. We believe there are important steps the port still needs to take to bring this project close to being acceptable as a green port project, and we encourage you to take them before approving the project today. We want to thank Heather Tomley and the port staff for all of their hard work on the project and for meeting with us to discuss our concerns. Thank you.

MR. DRUMMOND: Thank you. Next is John Schafer, Piledrivers' Local 2375. Mr. Schafer.

MR. SCHAFER: Good evening. My name is John Schafer. I'm Piledrivers' 2375, which is based in Wilmington, California. Our full title is the Piledrivers Bridge, Dock, and Wharf builders. We look forward to not only supporting this project and encourage you to approve the environmental impact report, but we understand the importance that it's going to play in our work rebuilding the infrastructure of California, including the Gerald Desmond

Bridge, the Schuyler Hein Bridge, Middle Harbor. Having this commodity so close to these jobs and the jobs that are going to need to be done in both federal and state legislature, to get our infrastructure back to work, to include more jobs, jobs that pay good, jobs that have benefits, jobs that have pensions.

Maybe it was the last time I was here we were talking about the project stabilization agreement. While this doesn't have that, we encourage Mitsubishi Cement to talk to the other dealings that go forward, but in the interim, we think this is a critical juncture in order to improve businesses, improve the environment through better jobs, that people can then encourage small businesses, that people can then encourage local hires. Sometimes you have to invest before you see the benefits immediately. In the long term, we're all better off, therefore I encourage you to improve this environmental impact.

Before I leave, carpenters and piledrivers if you could stand up for a second. These are the support that we have for this project. Again, thank you very much.

MR. DRUMMOND: Thank you. Next will be Karin Quintana, followed by Scott Duncan. If you could please move toward the front of the room if you're next following Karin.

MS. QUINTANA: Good evening. I'm Karen Quintana and

I'm on the Board of directors for the Los Angeles Customs Brokers and Freight Forward Association. We represent 300 member companies and that is about 6,000 employees that facilitate goods movements through the ports of Los Angeles and the ports of Long Beach, and international trade matters. It's a job multiplier. The expansion of this operation will further maximize the assets of the Port of Long Beach, increasing direct jobs at the terminal operation and helping support other jobs by providing cement, one of the basic ingredients in both commercial and residential construction to the local economy. Our ports are an asset and they aid the financial health of the region, so the Los Angeles Customs Broker and Freight Forward Associate supports this and we ask for your support as well. Thank you.

MR. DINES: Thank you. Scott Duncan with the microphone, followed by Stan Thompson, who will be next. Mr. Duncan.

MR. DUNCAN: Evening. My name is Scott Duncan. I'm here on behalf of Duncan Shoe Maker and Associates and the Board of Governor's Appellate Club of Los Angeles and Long Beach, and very briefly summarize what a lot of the other speakers have said. There's going to be contractors and developers all throughout the Southern California region and expanded western region going to be dependent on the throughput of this material in order to fulfill their

contracts for infrastructure development as well other projects. Also, with regards to employment, every ship employs directly at least 30 people. These are good paying, high-paying jobs, union jobs. In addition, there's an array of independent contractors, vendors, suppliers, truck drivers, that also benefit from the expanded activity at the facility. So we do support the Mitsubishi project, and we hope you'll approve it. Thank you very much.

MR. DRUMMOND: Thank you. Next is Stan Tomsic with Port Tech, followed by January Hower.

MR. TOMSIC: Thank you, President Drummond and all the commissioners. My name is Stan Tomsic. I'm Executive Director of Port Tech, which is a commercialization center and incubation program which is dedicated to creating sustainable technologies for ports worldwide. The organization brings together entrepreneurs, strategic partners, and investors to accelerate innovation, advance new technologies, and create economic opportunities. We promote and facilitate the development of technologies that enable enterprises to meet their environmental, energy, safety, security, and transportation goals. Port Tech applauds Mitsubishi Cement's Corporation on its effort and continued commitment to improving efficiency while meeting the highest standards of environmental protection through the implementation of shore-to-ship power, emission control

systems for ship auxiliary generators, and reduce idle wait times for trucks and ships.

Port Tech looks forward to assisting Mitsubishi Cement with its efforts to identify, review, and implement where feasible, new emission control technologies, including zero emissions and near-zero emissions vehicles and equipment such as cement delivery trucks and cement handling equipment. We support Mitsubishi's efforts and the passage of this project. Thank you.

MR. DRUMMOND: Thank you. Next is Jan Hower of the Long Beach Camerata Singers, followed by Bill Baxter.

MS HOWER: Good evening, President Drummond and commissioners. As he said, my name is Jan Hower and I'm President of the Board of Directors for Long Beach Camerata Singers. I'm here to support the Mitsubishi Cement terminal project. Their project will bring in needed cement to be used in construction projects including the port's. Also, Mitsubishi has been supportive of the arts in Long Beach, including the Long Beach Camerata Singers, and we do hope you'll give them your support. Thank you very much.

MR. DRUMMOND: Thank you. Next is Bill Baxter, southwest regional council of carpenters and carpenters' local, Local 630, Long Beach, followed John Cruikshank.

MR. BAXTER: Good evening, President Drummond, port commissioners and port staff. I address you tonight to

support this project. There's good jobs here and what better way than to bring this valuable project then through the great port of Long Beach. I would ask for your support in this project so MCC can go forward and I would also ask that MCC be encouraged by the board to work with all the different trades. Thank you.

MR. DRUMMOND: Thank you. John Cruikshank, Harbor Association Industry of Commerce, followed by Ron Miller.

MR. KIRSHANK: Good evening, commissioners and President Drummond. John Cruikshank, immediate past president of the Harbor Association Industry of Commerce. It wasn't mentioned, but the Harbor Association is considered the voice of the ports and harbors with roughly a hundred companies and about 400,000 employees represented by our organization. I'm also a -- run a small engineering business in the port of Los Angeles. The reason I'm here today is I'm in support of the Mitsubishi Cement final EIR certification.

One item that wasn't brought up but is important as an engineer, that as cement prices stay low or be more available, we can actually do more projects in and around the port and keeping down the prices keeps people working and keeps projects affordable, not just for the port, but for all the people and contractors that do the business in and around the port. So I'm in strong support of the project and thank you for your time.

MR. DRUMMOND: Thank you. Next is Ron Miller representing the L.A./Orange County Building Trade. Mr. Miller.

MR. MILLER: Good evening, Mr. President, board members. I'm Rob Miller, executive secretary of the L.A./Orange County Building and Construction Trade Council. We represent 140,000 hard-working men and women in L.A. and Orange County, many thousands that live in your area. It's not in my nature to stand up here and speak against a project, so I won't be doing that tonight, but being that we have a great partnership with the City of Long Beach, the Harbor Commission, we've negotiated billions of dollars worth of work with everybody here, we've started -- we're on the verge of starting some pre-apprenticeship programs in the college. We work with community groups. We're going to be putting your local constituents to work into our apprenticeship programs and training them for a future for construction, and we spend thousands of dollars training them also.

We would like you to urge Mitsubishi to sit down with the building trades and work with us to see how we can put those folks to work. We realize with the billions of dollars of construction work we have in L.A. and Orange County coming at us, there's going to be a shortage in cement. We realize that an added supply will bring the cost

down and keep construction costs low. That's to our benefit so we can build more. We just want to be part of the game and schedule -- it's all about schedule. So if you're using the best trained work force around, your job will come in on time and under budget. Thank you very much.

MR. DRUMMOND: Thank you, Mr. Miller. Next will be John Schafer, Piledrivers' Local 2375, followed by Scott Curtz from the business community. Oh, John already spoke. Scott Curtz followed by Jessie Marquez. Scott Kurtz from the business community.

MR. KURTZ: Thank you, President Drummond, members of the harbor commission. My name is Scott Kurtz. I'm a former president and current board member of the Harbor Association of Industry in Commerce. I'm also a current member of the Los Angeles County Business Federation, or Bizfed as most people know it, and I manage the departmental sciences company by trade. That being said, I want you to know that these comments are my own as a member of the business community.

The demand for cement in California as you've already heard is projected to exceed supply beginning in 2016. This project is designed to help meet that demand and continue the critical supply of cement flowing to our important construction projects throughout the region. I strongly support the certification of this EIR. It's

comprehensive and well-written. Most importantly, it continues that high standard for sustainable development at the port of Patent Beach. Mitsubishi Cement has been a leader in the environment in the port as you've already heard, and I had a bunch of those things written on my notes, but I'm going to forego them since you've heard about what a good steward they've been of the environment. That being said, because of those commitments and their contributions to environmental improvement and the economic vitality of the region, I support the certification of EIR and the MCC project and I hope the harbor commission will do likewise.

MR. DRUMMOND: Thank you. Next will be Mr. Marquez, followed by Sandy Cajas. Mr. Marquez is from the coalition for safe environment. Mr. Marquez.

MR. MARQUEZ: President Drummond, members of the commission. Thank you very much for this opportunity. I'm also an L.A. and Long Beach harbor resident, lifetime. I'm here to speak against the project as proposed because I do not believe it has enough -- I've held the job position of manufacturing engineer, quality engineer, quality project engineer, test technician, test department manager, production manager, as well as division auditor. I've also served on a patent application and review committee. So I did a preliminary patent search for the docks, and I could not find any U.S. issued patent or any pending application on

the document system.

I also did a patent review of the AMECS system and I found five issued U.S. patents. I printed out copies; I read and reviewed every one including all drawings, the docks, as is currently patents and illustrated and documented, violates all five of those patents. You will be never be able to build and operate the document system legally. That's one issue that has to be dealt with that was not disclosed in the EIR. The other issues deals with the effectiveness of the DOCCS system as compared to the AMECS, Advanced Maritime Emission Control System. AMECS has been tested on over 70 ships here at the port of Long Beach. Fifty-three of those ships were part of a CARB test protocol requirement. 34 of those were bulk-loading ships. It has passed every one of them.

The AMECS technology has had a CARB approved test protocol. A.C.T.I. has completed and submitted all documentation in compliance to that test protocol and every test that is conducted. It has passed every single test. It is also more comprehensive in emissions. It will capture, treat, scrub, as compared to the DOCCS. The DOCCS is an inferior technology. Why invest in inferior technology that will never equal the AMECS system. It will never be built, it will take up the five years if it could be built, but that's an issue that needs to be seriously looked at.

Another comment made in the F.A.R.R. was regarding the building of zero-emission, near zero-emission and other types of technology that could be used at that facility such as trucks. Well, I did an internet search of zero-emission trucks, near zero-emission trucks, anything like that that could be used at this facility and what I found is that there does exist a C.N.G. cement mixer truck, for example, a natural gas cement mixer truck, a hybrid diesel fuel electric mixer truck. I also found drums battery operated and electric operated, so there's seriously a problem when port staff cannot even do basic research to validate the availability of new technology.

MR. DRUMMOND: Thank you, Mr. Marquez.

MR. MARQUEZ: Thank you.

MR. DRUMMOND: Next is Sandy Cajas from the regional Hispanic Chamber of Commerce, followed by Jocelyn Thompson.

MS. Cajas: Good evening, President Drummond and members of the harbor commission. My Name is Sandy Cajas. I am president of the Regional Hispanic Chamber of Commerce based here in the City of Long Beach. The Regional Hispanic Chamber of Commerce is in support of the project. It is of special importance to the Regional Hispanic Chamber of Commerce, and it will provide an additional supply of cement here in Southern California. Many of our members are construction companies that will rely on the available supply

of cement to build roads, building a new infrastructure.

In 2007, there was a worldwide shortage of cement and projects were delayed which meant jobs were lost or delayed. It is vital to our membership that we have an adequate supply of cement so that we can keep moving jobs forward. Like the port of Long Beach, our members have just been through the greatest economic recession since the great depression. Our members are emerging stronger than ever before, but we need this project to move forward so we can continue to grow our businesses and ensure we can provide new jobs to our community. This project, please help move it forward. Thank you very much.

MR. DRUMMOND: Thank you. Next is Jocelyn Thompson of Alston & Bird for Mitsubishi, and that will be followed by Tommy Faavae.

MS. THOMPSON: Thank you, Mr. Chairman. I spoke a few minutes ago, so I'll just take about 30 seconds here. I wanted to correct a misunderstanding from Mr. Marquez's remarks. The trucks that serve the Mitsubishi terminal are not the cement mixer trucks. Those are the ones that go out to the job sites where you've already combined the cement with the aggregate and water, et cetera. Those are not the trucks that come to this terminal. The trucks that come to this terminal are the dry bulk trucks, so that's not relevant information.

Secondly, with respect to the DOCCS versus the AMECS, please keep in mind that the front line for Mitsubishi Cement is cold ironing. It has achieved cold ironing on the order of 80 percent of the at berth hours in 2007. That's a terrific thing; that's what you awarded them the Clean Air Action award for. So what we're talking about here with the DOCCS is a system that will be suitable to the Mitsubishi site, which is a space-constrained site. It will be wheel-mounted so it can be maneuverable with all the other mobile equipment, and that it can be moved away from dockside when it is not in use, so the loaders that are on rails and all the other equipment can maneuver through.

So it is the best solution for this site, and frankly, one size does not fit all. You know you have a lot of tenants, a lot of different configurations, and a lot of different equipment setups. So I think we can only celebrate that there will be more than one choice that your tenants will be able to use in the future. There have been some discussion about traffic. In the EIR it explains that because job sites start early in the day, the traffic at this particular facility is weighted to very early morning hours. We're talking before dawn. So that does help alleviate any traffic concerns associated with the number of trips per day, that the maximum that would be seen at the facility.

And finally, there has been a lot of mention today

about cement supply. It's important for your board to know that during the recession, there has been a substantial change in the amount of cement production capacity in the state of California. Cement is a heavy material. You don't really want to transport it long distances if you don't have to, so it's usually manufactured regionally. However, in the recession there was one plant that completely closed. There have been two more plants that ceased manufacturing cement clinker, which is the stuff that's used to grind up into the powder. Those two latter facilities are still grinding, but not they're not manufacturing the cement. So we've seen the total number of cement manufacturing facilities in California go from 11 to 8 as a result of the latest recession, so that makes this all the more vital just to supply the existing demand. Thank you.

MR. DRUMMOND: Next is Tommy Faavae followed by Morgan Wyenn. Mr. Faavae is with I.B.E.W. Local 11.

MR. Faavae: Good evening, President Drummond, fellow commissioners and port staff, and the public that is here today. My name is Tommy Faavae with the I.B.E.W. Local 11. You know, we're in full support of the project moving forward on the final EIR. You know, our goal is to ensure that there's local jobs being created out of this. And, you know, we've made a commitment to put Long Beach residents to work to this project, and for future projects to come up in

the near future. We believe in your green port policy because our own higher standard of the IBEW is to ensure more green technologies which Mitsubishi is going to provide on this project, the newest technologies, and, you know, a lot of the infrastructure that is built today here at the port of Long Beach and the port of L.A. is done by good Union contractors.

So we urge your support moving this final EIR forward. Thank you.

MR. DRUMMOND: Thank you. I made a -- you're Morgan Wyenn?

MS. Wyenn: Yes.

MR. DRUMMOND: Good. You're up. And you're going to be followed by Anatello Blockman. Thank you. And you're with N.R.D.C.

MS. Wyenn: Yes.

MR. DRUMMOND: Thank you.

MS. Wyenn: Yes, correct. Good evening. My name is Morgan Wyenn. I'm an attorney at Natural Resources Defense Council, the N.R.D.C. I actually wasn't planning on speaking, but I just wanted to address really quickly this periodic review mitigation that was raised and is new, proposed today. I'm just touching on it very quickly. This idea of periodic review of technology is a really common concept at the port. Counsel for MCC said a few moments ago

that she wasn't aware of any project that had done this, but the port of L.A. also does it regularly, most famously the gate project and you know the Skate Project (phonetic) is the center of a huge litigation and one of the issues there is whether their periodic review technology language is even strong enough. So this is not a new concept per se here at the ports, and really the language is very straightforward. It just says that the port can identify feasible new technologies and work with the tenants to implement them when deemed feasible.

And like you, I talk to the port staff all the time about new technologies and the status of them and we all know that the port takes even longer than sometimes we would like to deem these technologies feasible. The process is often long, very thorough, and to deem them feasible they need proved -- to demonstrate them and be deemed cost effective. So I think this concern that the port will willy-nilly adopt a new technology that is not cost effective and create all this uncertainty, goes against the port's practice for over a decade only deeming new technology feasible after a very thorough investigation, and also just to point out the obvious here, the port wants to keep its tenants.

It's not going to willy-nilly adopt new things and create uncertainty, the port wants to create good solid relationships. So I would urge the port to adopt new

technologies quicker than they actually do. I'm not worried about them actually moving faster and creating any other uncertainty. And I just wanted to point out that concerns by the tenant that the port doing investigation of new technologies and working with them to implement them, any concerns about that raises a red flag for us because really this new language will just have the Port do what the tenant is already committing to do, identifying new technologies and implement them when feasible.

So if the tenant is concerned that the port is doing that, it makes me worried that the tenant wasn't -- maybe not as concerned about doing that themselves, when really they're committed to do that under the current EIR. So if there's any concerns by the board or questions about this, there's not a huge rush. If the port wants to take more time, push it to the next week and look at it further, it's an important issue so we urge you to make sure you've thought through it fully. Thank you.

MR. DRUMMOND: Thank you. I believe I misread. Is it Angelo Logan, correct, Angelo, East Yard L.E.J.

MR. LOGAN: Yes. Hello, President Drummond and members of the board. My name is Angelo Logan. I'm with East Yard Communities for Environmental Justice and a resident of Long Beach. I want to urge the commission to stay committed to the mission and values of the green port,

and as you know, this particular project has a number of significant impacts that don't fall under that criteria. So I want to urge you to really think about meeting that goal, meeting that vision of a real green port. To that end I'd like to ask the board to table this item, to move to not certify and finalize the EIR, but give ample time to go back and discuss and open up the dialogue on a number of issues.

The first is emission control technology. We need to get real clarity on that. We may be missing a window of opportunity to really reduce toxic emissions, not just near the site, but often to the local communities downtown and West Long Beach. The other is the greenhouse emission mitigation measure. I think we can really get to a point where everyone is happy on that mitigation measure. The other is on the laborer's side, making sure you reach out to our brothers and sisters in the building trade, so we can get real good jobs for residents in Long Beach to make this project the project that it can be and a good project for Long Beach.

MR. DRUMMOND: Thank you. And the last speaker is Dennis Lord. Mr. Lord.

MR. LORD: Thank you, Mr. President, commission members, staff. Dennis Lord, sole proprietor of P.I.C. Services and a resident of Long Beach. You have my previous letter of support dated November 10th, it's in the EIR, and I

have not wavered from that position. We all want a strong economy and we want a good air quality, and on the economic side it takes energy and it takes product. Tonight you have an opportunity to address the product side of that equation and I encourage you to do so.

At the same time, the port with it's theme of being the green port has the opportunity to settle the questions and improve upon this terminal's air quality emission footprint, and I do strongly encourage you to take positive action to support Mitsubishi in their quest to be a partner with the port of Long Beach. Thank you very much.

MR. DRUMMOND: Thank you. Now we move to commissioners. Commissioners, questions or comments? Commissioner Egoscue.

MS. EGOSCUE: Thank you, President Drummond. I actually have a lot of questions. I don't know if you would like to have the other commissioners go first and I can wait or if you would like me to start.

MR. DRUMMOND: Why don't you lead off.

MS. EGOSCUE: So my first question and perhaps is the most complicated is we walked in and received a letter dated today and -- we did receive a lot of letters today, but this one is pretty significant. Mr. Marquez is the top of the letter and it talks about in various points there are allegations that staff felt to disclose and the final EIR

failed to include a list of items, and I would like -- I know that you probably have not had time to draft a response, just going through them and it is a pretty significant list of allegations here and, you know, not a question but more of a comment, as a commissioner I take this responsibility very seriously and I read these documents; I read the draft and the final EIR, I read all the responses and comments. I read the comment this morning, I'm reading the new revised mitigation measure, and I find it very difficult to receive a letter of this sort of volume walking in today at 6:00 and being able to fully analyze it, so I want you to percolate on that for a little bit and I'll get back.

Going to the revised mitigation measure AQ6, which we're talking about today, I believe the commissioners all have a copy of it now. I have a couple of questions. The -- MCC has indicated through their counsel that they object to this last minute change and I was wondering, Heather, if you can talk us through why this was made and a little more rounded out on that.

MS. TOMLEY: Sure. Absolutely. So this has been a topic of conversation for quite a long time. The periodic technology review clause has been a topic of much interest for a long time. This is something that we started putting into our leases several years ago, probably on the scale of five or six years ago we started putting this into documents

around the time that we did the updates to the Clean Air Action plan, and this really is an opportunity for us to enter into these long-term leases to be able to discuss periodic developments in technologies that could provide additional emission reductions and reduce impacts from operations.

And so this gives us an opportunity every five years, coupled with the financial reopener, to have those discussions. The language that's being proposed here is providing a little bit more articulation to what the port's role is in that process. It specifically identifies that the port will conduct a similar independent investigation of technologies at the same time that MCC would be doing an evaluation of technologies. This is something that we would do anyway as past of our due diligence through the lease negotiations, but this articulates that a little bit more clearly in this language.

We also have agreed to -- or we're recommending the language that says "through mutual agreement by the port and MCC" to instead say "That the port would do the determination of what's feasible and in terms of what's limited to financial, technical, legal, and operational perspective." We go through this process on our technology advancement program working very closely with technology developers, with port operators that are doing demonstrations of technologies,

the regulatory agencies that each -- EPA and CARB both have verification processes that they go through to evaluate technologies. A.Q.M.D. also evaluates technologies through the permit process which their DOCCS system, which is proposed here, would be going through the A.Q.M.D. permit process.

So we work carefully with all these different agencies and what we would be doing is evaluating all of these technologies as far as they are feasible from that perspective: Does it make economic sense? Can it be implemented without adverse impacts to the operations? Is it technically sound? And what we would do is make that determination as we're discussing the technologies and what can be implemented with MCC.

MS. EGOSCUE: I appreciate that explanation. I'm looking at this memo to the Board of Harbor Commissioners from you dated today, and I'm looking in particular at Item No. 4 that -- where you reference your partial agreement to N.R.D.C.'s request for a more active role. Is this -- just to clarify for my purposes, is this new mitigation measure in response to this portion of the memo? Do you know where I am?

MS. TOMLEY: Yes. So the memo that was submitted to the board this -- just prior to this hearing, Item No. 4 is in response to the letter that we received from N.R.D.C. and

other groups and item four references -- item four in their letter that was specific to this language.

MS. EGOSCUE: And so my specific language, Heather -- forgive me for not being clear is that this item four, as you say that references N.R.D.C.'s item four in their letter, is your revised mitigation measure that you're presenting in response, is this your agreement, staff's agreement to points made in N.R.D.C.'s letter?

MS. TOMLEY: Yes.

MS. EGOSCUE: And I would also like to note that it wasn't just N.R.D.C. that wrote that letter, that there was a broad coalition of commenters and groups that at least for purposes of this commission, we take very seriously. So for purposes of the comments, there were a lot more comments that were made that didn't come out probably as a function of the three minutes and the limitation on the time, but one of the comments that keeps sort of rising to the top at least purposes of this hearing is the environmental justice issue and the failure for the final EIR to take that into consideration.

Can you discuss for purposes of the record and for the clarification that I'm seeking personally, why we are not seeing a -- any kind of revision or response on that front, please?

MS. TOMLEY: Right. So environmental justice

sections are included in NEPA documents which means that the project includes a federal component. This project does not include a federal component, and under CEQA, environmental justice sections are not required. The project, in addition, is located in the outer harbor area. It's about two miles away from the communities, so it does have a little bit of a remoteness compared to some other projects that would occur in other areas of the port. The air quality section that's included in the document in addition, the cumulative air quality impacts that were identified to the local communities and the region cover the types of effects that would be identified through an environmental justice section, and so we feel that we have adequately covered the same information that would be provided.

MS. EGOSCUE: All right. So in other words the -- I mean, I guess I -- I, in particular, want to understand a little bit more. So there's not a legal requirement to do this type of analysis; however, you feel that your analysis or staff's analysis being presented to the board is sufficient for purposes of addressing potential concerns that would be addressed by this analysis, or am I taking that too far?

MS. TOMLEY: No, I think that's a fair characterization. The analysis that we've done in the cumulative air quality section presents this same type of

information that would be presented in an environmental justice section.

MR. CAMERON: Just to add onto that, I think Heather hit that spot on. I think you're right too. It's not required under CEQA, but I think we all know this board has acknowledged, we have acknowledged through other studies that we have -- our communities surrounding the ports and corridors are environmental justice communities. In fact, the board over a year ago in collaboration with our city and some of the communities were participating in just looking at that, $300,000 was approved for the west side livability plan.

To go on about Heather's point about the analysis, it's really a qualitative in terms of how you roll everything up from the variety of sections that she has alluded to, and I think the most important thing to stress here is we've exhausted all feasible mitigation for this project, and even if we were to have that qualitative discussion, that discussion we had with environmental justice, additional mitigation would not be coming about from that type of analysis, and that's traditionally what we've seen in joint documents that we have done that require that component, so I just wanted to clarify that.

I think it's a good point that's been made and it's not to say that we're belittling it, I think it's just you

can include the section. The data is in there and analysis is in there and, frankly, the mitigation is in there as well.

MS. EGOSCUE: That goes to one of -- and I appreciate your comments, Rick. That goes to something that's sort of an overall comment or question that I have that I'll get to in just a minute because I have one more that I think I need to touch on. I find the actual comment by the community groups, and I'm going to refer to them as community groups because I think they're a mix of, quite frankly, environmental groups and community groups and interests, and there is a sense that the port should consider and the harbor commissioners should consider this sort of life cycle of the product, and I did my own analysis and I'm of course relying upon port staff as a commissioner should, but I find that the interesting citation in this memo, again, going to your memo, and also in particular to the response to comments regarding the life cycle and how far this analysis should go is particularly interesting and this leads me to my final question for now anyway, and President, I really appreciate -- and fellow commissioners this opportunity.

The -- in reading through the comments and reading through the documents, this is, from my perspective, an expansion. I know it's been called a modernization of an existing facility. There are a lot of benefits to this project. There are obviously also pursuant to CEQA some

impacts that are going to be mitigated if this board chooses to approve this, and that is something that I think I tend to remind myself as I'm going through this, that this is an expansion, this is a CEQA action. It does not limit this board, nor should it, in requiring other conditions, so to speak -- I'm not going to call them mitigation measures, but other best practices at the facilities and other context, and it's actually something that your staff does reference in terms of the lease and moving forward and other items.

This port is under green port policy. This board was -- charged the staff to conduct all of their business practices accordingly. We have inherited this policy, we have reaffirmed our commitment to this policy and I would just say that I think there is -- signaling to my fellow commissioners I think there is an opportunity to have a approach with the EIR that is legal and is sound, especially in light of the feasibility of moving forward with certain requirements, and at the same time, also directing staff accordingly for future negotiations or conversations with MCC.

So anyway, with that, if I can -- if I have any other additional comments, but I think that's more than enough for now. Thank you very much.

MR. DRUMMOND: Thank you, Commissioner. Thank you for your diligence and your skill. Commissioner Bynum.

MS. BYNUM: Welcome everybody and thank you for your comments. I think they were helpful. And thank you, Commissioner Egoscue, for helping to clarify that because I think it's important that everybody understand what the change is. My main point coming into this meeting was exactly that, AQ6 and what that would look like and how much leeway the port would have to be able to weigh in to some extent on this.

One of the concerns for us as a board that we have been committed to environmental sustainability, that we have a history of doing that. It's important that we continue as a leader being able to move those kinds of things along. Having said that though, I recognize that our tenants -- we are in the business of commerce with our tenants; we are a port, and again, I've said these things a lot in these meetings. These things are not mutually exclusive. I think both approaches can be dealt with and I think we can find some opportunity to be able to take a look at that more, so I'm -- I think we're willing to work with MCC. We have language in there that speaks to the feasibility from a legal, technical, financial, and operational standpoint. I don't think we will take that lightly at all. Certainly we will work through that, but I agree with Commissioner Egoscue in her comment that this is an opportunity to be able to look at ways in which we can continue to be a good partner in

commerce but at the same time be able to move our sustainable efforts forward, so I just wanted to say that.

I appreciate the staff put some work into that and has the new language in there. Like I said, that was a main point for me, but I'll leave my comments to that for now.

MR. DRUMMOND: Thank you. Vice President Dines.

MR. DINES: Thank you, Mr. President. I also want to thank everyone for showing up this evening and for your testimony. I really want to thank Heather and her staff for the great work you've done here, especially for bringing us forward the revised AQ6. That means a lot to me and answers a lot of questions and makes me feel very comfortable moving forward at this time. I think it's important that when we look at the mitigation measures that are brought forward here, we're talking about best available technology, we're talking about today. We're not necessarily talking about the future, but we're talking about in the context of the environmental impact report in front of us. The staff has done their job, I believe this is a complete EIR and I believe this is a project that we should move forward on.

So with that -- I'm sorry. I'll actually defer Commissioner Farrell-Harrison.

MR. DRUMMOND: Commissioner Farrell-Harrison.

MS. FARRELL-HARRISON: Thank you. Actually, Heather, if I could ask you a couple of questions. I concur

with the commissioners this evening that this is an important project and we are indeed in the business of enhancing commerce responsibly, so I do have concerns about the issues that have been brought forth tonight. Thank you everyone for your participation in this hearing tonight because this is what democracy is all about, right? It's about hearing about both sides and hearing about how different items that a governing body will impact different constituency groups. I think what I'm struggling with tonight and this particular project is mostly two things: One, the technology, because I do believe this is a very worthwhile project and so the project has merits from a pure business standpoint.

What I'd like to see is a stronger bridge to addressing some of the environmental concerns raised in the EIR and also raised by the N.R.D.C. and some of the community groups. What I'm struggling with, have we gone far enough? And to that end, I have a couple of questions: One being with the technology components, the letter that we received just as we were walking in, from Jesse Marquez and that coalition has a lot of discussion about the difference between the two technologies, the DOCCS versus the AMECS, and so I'd like to understand better -- and if we don't have a handle on it, that's fine in terms of knowing the AMECS technology to this degree, but is there any chance that the use of the AMECS technology primarily would reduce the

emissions or the impact from significant to less than significant?

MS. TOMLEY: No. The vessel activity is not just what happens at berth. There's transiting and maneuvering emissions that are also associated with impacts from vessels at the project and the AMECS technology or the DOCCS technology or the shore power which, again, will be the preferred methodology for controlling emissions. All of those treat at-berth emissions. They don't address the emissions that occur as we track the vessel from the edge of the South Coast Air Base and boundary which is one hundred miles off the coast. So there are emissions that are associated with those activities which we try to address through programs like low-sulfur distillate fuel and vessel speed reduction, participation in our green ship program and other strategies like that, but there are still impacts associated with those other types of activities associated with vessels.

MS. FARRELL-HARRISON: Do you have a sense of what the potential reduction in emissions would be, NOX or other forms between the different technologies?

MR. CAMERON: I think the most important point, Commissioner, is for the AMECS project. As much as -- and this board actually has a little over a year ago invested in a round two demonstration for the AMECS under the technology

advancement program as Heather has alluded to. Right now the AMECS has not been verified by CARB. It has gone through it and the A.C.T.I folks have submitted -- or the A.E.G., that's the company now -- has submitted their final report to CARB for container ships. Even though they did the dockside testing on dry bulk at Pier G, a lot of that data, it fell under a different program, so really the agencies, and this is important to who verifies and when it comes down to this, it's A.Q.M.E. but more importantly for purposes of mobile sourcing in state, it's CARB, and right now that technology has not been verified.

Therefore, it is not a feasible mitigation, and so as much as we would like to see them cross the finish line, we want alternative technologies for cold ironing and we want to have the flexibility for our tenants. Right now it is not. I think the caveat here with the dock system is really that's going to be A.Q.M.D. to verify that through their permit process for stationary source permit.

MS. FARRELL-HARRISON: And so is it safe to say neither technology has received the full blessing of A.Q.M.D. or CARB? Is that what you're saying?

MR. CAMERON: On the DOCCS. I believe that's correct. They're going through different -- one is going through the permit process as part of the technology. I defer to the applicant on that when it comes to the DOCCS

system. What I'm discussing with you is AMECS today and the status of where we know they are. Now, one of the mitigation measures that's before you today is for the applicant, MCC, to participate in our phase two, to continue to further that technology, get variations on multiple vessels. So there is that mitigation, what I call the middle ground at this point in time. We're kind of caught a little bit here. I don't know if MCC wants to respond to the Commissioner?

MS. FARRELL-HARRISON: Well, I had one more question on this issue and I guess I'd like to know since DOCCS is such a big part of the mitigation measure, if you will, for when it's not appropriate or convenient or just the vessel size and complexity doesn't allow for the cold ironing to happen, DOCCS is the alternative that's being proposed. So what kind of due diligence has staff done on this system? I guess I don't want to go into this thinking, well, DOCCS is going to handle it. Let me not worry too much about AMECS and whether it is superior or not because it still hasn't been fully vetted, but neither has DOCCS been fully vetted, and I don't know how much staff research has been done or should be done on it.

MR. CAMERON: I think we're relying upon the air history. The agency that's responsible for the station and permit and the ones the applicant first went to A.Q.M.D. for the revised permit with this system. I would refer to

A.Q.M.D. in terms of what types of information they're relying upon. A.Q.M.D. doesn't do things willy-nilly, per se. I'm sure this system has been vetted for their purposes for their permit. We're relying on that.

MS. FARRELL-HARRISON: Was the permit approved? Has that permit been approved?

MR. CAMERON: No. We're the CEQA lead agency. So in this particular case with these modifications -- at some point in time whatever that time frame is, when the A.Q.M.D. board considers the revised or the new permit, they will utilize this environmental document if the board requires certification on things.

MS. TOMLEY: One thing I do want to point out is the technology that's being utilized by the DOCCS system is standard technology, so that catalytic reduction is commonly used for reduction of emissions from stationary source applications. So this isn't entirely experimental. This is proven technology that would be used in this application.

MS. FARRELL-HARRISON: Thank you. And I did have a question about the grants and a calculation for the grants.

MS. TOMLEY: Okay.

MS. FARRELL-HARRISON: So another issue that has been raised is, you know, the one-time grant, if you will, arguably recurring impacts and there's mentions in staff's report -- or the response to the N.R.D.C. issues that there's

a formula, the $15 per metric ton of CO2. That's based on the A.Q.M.D. Rule 2702. Can you tell me more about that, how old is this rule, has this dollar amount been changed or revised, and is there -- is that a -- is there any other measure that can be used, or is that just a guideline that we've been using and that we continue to use?

MR. CAMERON: Commissioner, that's a great question. These programs came out of the Middle Harbor project. They weren't specific ties, they were individual programs, but the board at that time adopted these programs and there was the three programs; one was for school, one for health care, and the other was for (inaudible). And for each of those programs, we developed those guidelines of cooperation with the variety of agencies. In fact, we have an advisory committee that we have a variety of stakeholders, including those agencies.

We were looking for guidelines already existing for us to utilize. For the G.H.G., this was the one we felt was consistent within the region and that we would go ahead and use this for that purpose. These programs, if something new came about, if there was a recommendation for a better methodology for a higher number that had been used, that had been vetted through some other guidelines, we'd be more than happy to review those and in some cases, modify the guidelines. To date that hasn't happened, at least to my

knowledge that these comments that were received, therefore, we're sticking with the separately approved programs that have those guidelines and right now that's the best way I can respond to that question.

I believe it's consistent with something used in the region as a state-required force, a recommendation of something that has been vetted, we'd be more than happy to consider it, but it hasn't happened yet.

MS. FARRELL-HARRISON: We're the leaders, we're the green port.

MS. TOMLEY: I think we have to re-explain. I think we have no reason to feel it's not an appropriate level. It is the level that is used by A.Q.M.D. and their process. It's consistent with what we've applied for our other projects that have had greenhouse gas mitigation impacts and we have been able to be successful in securing enough funding to have meaningful projects in the community to reduce greenhouse gas emissions.

MS. FARRELL-HARRISON: But there's nothing precluding us from doing two years or requesting two years or one year that's reoccurring and in five years another reinvestment at the time that we have the conversation. I guess what I'm getting at is it's a guideline, but we're the green port and we set precedent, and do we feel this is enough and is there a tier structure?

At some point when we're approving projects that have significant impacts that haven't been completely mitigated, there is a cumulative effect, if you will, and through a lot of folks that are here tonight but there are constituents that aren't here tonight, you know, children, and the folks who are disabled and the folks who are impacted and sick by the air quality issues and, you know, folks who suffer from asthma, and I'm just not sure that I understand the rationale behind the $15 per metric ton, but I'm not sure if we've gone far enough and so I'd like to see if there are other ways that we can enhance the grants.

MR. CAMERON: Commissioner, are you asking -- are you asking staff to look at it now for this project or are you asking staff to -- for the future?

MS. FARRELL-HARRISON: Both.

MS. TOMLEY: You're asking now, personally I would -- I don't think we can give an answer now. We would have to go back, do our research, have the discussions when it comes to looking for that next level is that you're referring to in the direction you'd be giving us, and then we'd have to tie it back to the findings and M.M.R.P. and everything else, so on one end I believe that I believe we have not to date, by any of the commenters -- and this went out for the appropriate review time. I understand exactly what you're saying, but in light of where we are with the

project and how those guidelines and mitigation grants have been around and how we developed them, it would be really for us to go back and probably revise those mitigation grant programs, come back to you individually, and then bring this back before you with whatever changes we recommended at that time.

MS. FARRELL-HARRISON: Other grant programs, they are four or five years old. Is that fair to say?

MR. CAMERON: Well, if you go back to Middle Harbor, I guess '09. Those grant mitigation programs were adopted in '09. In fact, in 2012 the board adopted a fourth program and that was Z.E., zero emissions; those are on the board. So I guess it's not -- I don't think we can go back, huddle, and come back with an answer for you to make a recommendation. In fact, I wouldn't even know where to start. We'd have to go back and update those guidelines, because the project is not developing the program, the project is participating in separate programs. So I don't want to make it complicated, but I'm trying to respond to your question for clarification. If it was -- this is what we have today, this is what staff relied upon. There was no new information provided to the review period or anything else that we know about, this is what staff relies upon.

If it's staff direction beyond that to go and ramp it up, we would definitely do that and bring it back to the

board for your consideration. I know it's a tough one, but I want to give you --

MS. FARRELL-HARRISON: I understand, and I guess my point is -- and I'll move on for another commissioner if they have additional questions or comments, but if the $15 per metric ton was established back in 2009 -- I'm not sure what the guideline was, released by A.Q.M.D. or, you know, when we started to implement it with our grant programs. If it was 2009, that's six years ago. Things have changed and I do think there is an annual aspect to what we do. And it's not a one time and you throw ssome solar panels on a facility and that's it. The impact has been mitigated because these things do have a cumulative effect. So I would like for staff to come back at some point with something that establishes not just the one-time grant -- but even if it's 25 cents per metric ton, but something reoccurring and ongoing that we can look back to and know that we left a legacy improving the environment, that's more than just a one-time grant in participation in one project for one year.

MR. CAMERON: Understood. And we'll definitely come back to the board with more publication and get some more feedback so we can go back and analyze. If we did that, we'd probably want to go back and look at all the programs collectively. I don't know if -- I do know that we have

periodically looked at those guidelines and updated the guidelines, so to say this is a six-year-old number, I don't know. I think Heather and I are kind of looking at each other because we would have to go back and figure that out to respond to you whether it was two years ago, three years ago, or six years ago.

MS. FARRELL-HARRISON: I'm just throwing things out there for consideration.

MR. DRUMMOND: Commissioner Bynum.

MS. BYNUM: Yes. Excuse me. Just one quick question regarding the technology. So we've been talking AMECS and DOCCS. I was wondering have we had situations within the contract in the past where we presume one kind of technology is a new technology, but in the process of working through that project we discovered other new technologies that were employed that went beyond what was original presumed?

MS. TOMLEY: I can't think of specific examples of that, but I think some of the things we've tried to incorporate into this document to help with that concern, we do have them participating and a demonstration of the AMECS, the port-funded AMECS demonstration. We also have them demonstrating the use of a diesel particulate filter on the DOCCS system to address diesel emissions from the vessels as well, and we also have the periodic technology review

language which provides the opportunity every five years to look at what's being done out there and evaluate if there are appropriate feasible technologies that could be appropriate going forward.

MR. CAMERON: Commissioner, I think I understand your question; I think Heather is right on with that. I would add that if you look at Middle Harbor and just look at that project, what we analyze in that project was the 2009 going to be a -- you know, still have some diesel combustion within the fence line. As you know very well, that is not going to be the case when it opens up both in phase one and phase two. So after the EIR was certified, the tenant at that time, and it was a couple of years later, they decided that they wanted to go ahead and, for efficiency purposes, and also to meet their standards and EIR, which was to electrify RTGs at that time.

They actually decided they were going to ramp it up. In fact, they went beyond that, they got rid of the UTRs and they have the AGBs. So I would say, yes, I think there are those opportunities after and I think it goes back into the specifics about what the staff has recommended. What our role is, what it always has been, and what it will continue to be is that we'll be the facilitator even after these -- if you were to certify before the approval of the project, we're always going to find opportunities for working with our

tenants, whether it's through incentives, whether it's through working with regulatory agencies. I can probably name a handful of other terminals that have gone well beyond because the technology all the sudden comes up and/or they have a good opportunity through good incentives put out there for them to maximize that opportunity.

MS. BYNUM: That's good. I would hope that there is new technology being developed all the time. I know we got in a discussion about just those two, but I would presume that in that review periodically would give us that ability to be able to take a look at that --

MR. SLANGERUP: Can I make a comment as well? Just a supplement. You know, we have a mechanism called the Clean Air Action Plan. We're currently contemplating version 3.0 of that, and with the two prior versions, it introduced not only policy, but also introduced practices and technology applications that have defined the success we've had with the Clean Air Action Plan and program which has been stellar. So I have tremendous confidence that CAAP 3.0 will open up a whole new opportunity for quantifying technologies that we know are on the list now. This is not limited to but includes the next generation of zero-emission devices including heavy-duty vehicles and other transport equipment, so we -- I don't think you have to be concerned about the mechanism. The mechanism is there and our practice of using

that is very, very advanced.

MS. BYNUM: Great. Thank you.

MR. DRUMMOND: Commissioner Egoscue.

MS. EGOSCUE: I appreciate the comments. I have a question for our counsel, Mr. Holzhaus, and it says as a result of what commissioner -- I guess I need to get used to your new hyphenated Farrell-Harrison -- said, so I need to know what's appropriate at this point. Is it appropriate to have other motions that are related but not exactly on point to the EIR that would direct staff as a logical outgrowth of the comments that are made by the commissioners and let me just give you where my thought process is going -- mitigation requirements of the questions my fellow commissioner had regarding the 15 cents -- the dollars -- it would be great to be 15 cents, I'm sure MCC would think so -- the 15 dollars -- of having it being ongoing. That's generally in the context of CEQA is somewhat, I assume, better addressed in things such as leases and other agreements for an ongoing -- mitigation measures tends to be as the final EIR proposes.

So is it appropriate during this meeting to have multiple motions that could take the EIR on its own and then have further direction and including having the staff come back and report on the use of the standard for greenhouse mitigation.

MR. Holzhaus: There would be two motions in any

event. The first would be a receive and file and making various findings regarding comments, et cetera; and the second would be the adoption of the resolution which includes various steps including the adoption of the mitigation measures and finding overriding considerations. Beyond those two, several additional motions are possible. You could amend the mitigation measures, if that's what you wish to do, bearing in mind, of course, that at some point the project won't bare the freight and it's up to the project proponent whether they go ahead or not given the amended mitigation measures.

Once the -- I think for clarity, those first two motions need to be handled first. Once you're beyond that stage and you have an approved EIR, you can give instructions to staff either at this meeting or in future meetings regarding what you'd like to see in terms of lease negotiations, et cetera, and it's possible to have closed sessions to advise the negotiators of the lease, et cetera, for anything that comes back subsequent to the approval of the project and the EIR.

MR. DRUMMOND: Thank you, Mr. Holzhaus. Ms. Egoscue, anything further?

MS. EGOSCUE: Not at this time. Thank you, President Drummond.

MR. DRUMMOND: I want to compliment the staff and

the attorney's office on this revised mitigation measure MMAQ-6 periodic technology review. This concept of bringing it back every five years I think is brilliant. I think any less than that, technology is changing too rapidly, we would be constantly reviewing everything all the time if we had anything less than that. I also would like to ask staff kind of in the future look at incentives to help with that. I think we have to, in my opinion, retain leadership in the green movement. That's my opinion.

MS. TOMLEY: Just to make a quick comment related to that. Our technology advancement program does provide up to $1,500,000 a year, which is the commitment that the board made under the Clean Air Action Plan, but we have made commitments further than that. The board has approved commitments further than that for other larger-scale projects like the AMECS demonstration, the overhead catenary Project, and so we have put our own funding to help supporting moving these projects forward.

MR. DRUMMOND: Thank you. Commissioners, are we ready for a motion? Commissioner Dines.

MR. DINES: Thank you, Mr. President, and I appreciate all the comments and questions from my fellow board members. I would like to first make a motion to receive and file this report from staff in the port's environmental consultants, as well as make a motion to adopt

a resolution certifying the final EIR and making certain findings adopting a statement of overriding conditions and mitigation monitoring reporting program and the application summary report and approving the project as a level-three harbor developing program.

MR. Holzhaus: Commissioners, I recommend taking those up in sequence. Vote on first the receive and file, and then the related findings regarding the adequacy of the CEQA compliance, and then the separate vote on the resolution.

MR. DRUMMOND: Let's begin with the first then.

MR. DINES: I think we need a second.

MS. BYNUM: Second.

MR. DRUMMOND: We have a motion to second. Any comments?

MS. EGOSCUE: I have a request. So in terms of the questions that were raised regarding the $15 issues or $15 grant per ton, you're saying that that would be -- that could be an offline directive to staff or request for staff to review and in the context of another project or just or CAAP plan or green port policy or another project to come back with some recommendations, but if we wanted to build it into tonight's action, what was your advice on that?

MR. Holzhaus: The mitigation monitoring plan is adopted as part of the resolution, so if you're changing the

dollar amount tonight, you'd have to make an amendment to the mitigation monitoring plan to that effect. If you're making it prospective from tonight, that could be handled as a separate discussion after adoption of the resolution.

MS. EGOSCUE: After staff has done their research and explored has different alternatives, then they would come back -- so I don't imagine that would be appropriate for tonight without getting some feedback from --

MR. Holzhaus: Correct. It could essentially be a request for staff to investigate the issue and report back at a future board meeting, because it's not agendized for action tonight specifically, the related action for future project.

MS. EGOSCUE: Thank you.

MS. TOMLEY: Can I ask a question? Sorry, that was me. The revised language for AQ6, I'm wondering if that's part of the motion as well?

MR. Holzhaus: That's part of the resolution, so --

MS. TOMLEY: Okay.

MR. DRUMMOND: We have a motion to second. Any further comment? Call for the question. All in favor say "Aye."

MS. EGOSCUE: Aye.

MS. FARRELL-HARRISON: Aye.

MR. DRUMMOND: Aye.

MR. DINES: Aye.

MS. BYNUM: Aye.

MR. DRUMMOND: Any nays? Good. Then Commissioner Dines, continue.

MR. DINES: Then we need to vote on the -- I'm sorry, on the resolution itself, adopting -- certifying the final EIR. That first motion was a receive and file, and the second vote, the city attorney instructed us to make two separate votes.

MR. Holzhaus: That's correct. The second motion as I understand it is to adopt a resolution with a modified AQ6 as described to the board tonight.

MR. DRUMMOND: That's correct. Is there a second?

MS. BYNUM: Second.

MR. DRUMMOND: This motion to second. Any further discussion. Calls for the question. All of those in favor, say "Aye."

MS. FARRELL-HARRISON: Aye.

MS. EGOSCUE: Aye.

MR. DINES: Aye.

MS. BYNUM: Aye.

MR. DRUMMOND: Aye. It's unanimous. Commissioner Dines.

MR. DINES: Thank you, Mr. President. The EIR has now been certified, the final EIR has now been certified. I

did want to talk a little bit about a lot of the discussion that's happened. As I mentioned earlier, the best available technology was included in the EIR and staff, thank you again for making a presentation, saying what was available and what was not available. I think moving forward is important so no one wastes a large amount of capital investing in emission control systems, that before an actual lease is signed, a long-term lease is signed on this property, that this is visited again.

So I would like to make a motion to direct staff to include in any lease negotiated with MCC for a terminal on Pier F and MCC adhere to the port's green port policy and to use the best alternative technology to control ships' emissions. If I could get a second, I'd like to expand on that a little bit.

MS. EGOSCUE: I'll second you.

MR. DINES: Thank you, Commissioner Egoscue. So I think when we look at, again, what's available today, this is what we have to work with our EIR, but before we go and see MCC invest $40,000,000 and build this terminal out, which I support, I think it's important that we take into consideration all the comments made tonight; and if there is a better technology, a better available technology at the time that we negotiate a lease, that we bring it in at that point. And I think that should address the concerns of those

who have spoken here tonight against this project, but it would also support all the comments made in support. So we do build this project, but we build it right, and make sure that we keep setting the example of leading as the green port.

I think it was mentioned earlier that when you look at the EIR, this was brought forward that you're going to look at best practices and the best technology available, and I don't think this is any different here. So instead of just doing this every five years, let's do this right when the lease is negotiated.

MR. SLANGERUP: President Drummond, may I make a comment?

MR. DRUMMOND: Yes, please.

MR. SLANGERUP: Just for clarification, do you mean using the words "best available technology?"

MR. DINES: Best available technology.

MR. SLANGERUP: Thank you.

MR. DRUMMOND: Did you have something to say?

MS. THOMPSON: Yes, Mr. President. May I speak to the motion?

MR. DINES: You may. Please speak brief.

MS. THOMPSON: I will. The first thing I'd like to do is pierce this idea of "best." What we need is most suitable, because every terminal is different and every cargo

is different and the ships that are served are different, and if you look at the EIR itself, it will show you that the AMECS system that keeps coming up today won't work on this site. This is in your EIR that you've now certified at Page 10-78.

MR. DRUMMOND: Thank you.

MS. THOMPSON: That's a footprint that your staff is prepared to show you what will work on this site.

MR. DRUMMOND: Thank you. Commissioner Egoscue.

MS. EGOSCUE: Thank you for your comment, Ms. Thompson. The motion, I believe, did not mention any use of any technology.

MR. DINES: That's correct. I never mentioned the word AMECS.

MS. EGOSCUE: Thank you.

MR. DRUMMOND: Now there's Commissioner Bynum.

MS. BYNUM: So I'm trying to understand how that is not similar to the language that we already have in the revised mitigation measure. We say "the port will conduct a similar independent investigation simultaneously and will present new emissions technology to MCC. If the review demonstrates effect in reducing emissions, it's determined by the port to be feasible, MCC shall work with the port to implement such technology." That covers that issue as far as I'm concerned. I don't -- to say that -- I mean, I think

it's a redundancy that we don't need.

This is a clarification that I think has a higher level response of accountability from MCC and it also holds our port staff more accountable to be able to work through that process.

MS. EGOSCUE: May I respond to the commissioner?

MR. DRUMMOND: Commissioner Egoscue.

MS. EGOSCUE: I think what's important to me as someone who supported the motion in making the second is that we are not constrained by the CEQA process with this motion, that the EIR has been certified, that is done. So this is an attempt to fulfill -- at least in my mind, this is an attempt to fulfill the mandates of the green port policy to the utmost. This is a lease negotiation that we are discussing, not an EIR, and that is a very important distinction for me personally. I can understand how you can argue that that mitigation measure would address this; however, I think there is a significant distinction to be made in terms of today.

Maybe we could not have done something more in the context of the EIR, it may not have been wise under that process, but how and when we direct staff regarding the lease is not similarly constrained. So that would be my response to your comment.

MS. BYNUM: So if I could just ask for some more clarification then. Thank you, Commissioner Egoscue. We're

talking about this language go into the lease.

MS. EGOSCUE: We are simply directing the staff --

MS. BYNUM: Staff to put more direct language in?

MR. DINES: To discuss -- and I don't know Vice President Dines, if you would like to repeat your motion.

MS. BYNUM: I'm not clear what we're doing.

MS. EGOSCUE: I think that's fair.

MR. DINES: Thank you, Commissioners. As far as AQ6, AQ6 has nothing to do with the motion. AQ6 is a mitigation amendment to the EIR. The EIR has passed. What I'm directing staff to do is when they go in to negotiate the lease, that they take a look and make sure that the green port policy is adhered to, as well as we use MCC -- or have MCC use the best available technology at that time. That is not today as we pass the EIR, that is when the lease is negotiated. That's what I'm requesting the staff -- it has nothing to do with AQ6, which is saying every five years, take a look at it.

I'm saying when you negotiate the lease, that's when you take a look. That way MCC is protected from making -- if there is better technology available, then they're not investing in a technology that's not obsolete or one we wouldn't have them use because it wouldn't be in compliance with the green port policy.

MR. DRUMMOND: Mr. Rubin.

MR. Rubin: Yes. President Drummond, members of the board, as managing director responsible for lease negotiations, I'd just like to throw out some thoughts for your consideration. We have dealt with this issue before and it always comes down to the question of what is best available technology. And it is in the context of the EIR that was just certified through some language that dealt with is something feasible or not feasible, and I believe the amended language to that section allowed port staff to independently make that determination. It would be unclear to me and my staff without further direction how we wouldn't interpret the direction to ensure that a lease includes best available technology. That is very subjective, or maybe the environmental staff here can clarify it and it's not as ambiguous as I may think.

MR. DINES: Mr. Rubin, if I could, I think perhaps the environmental staff would be the ones to work with directly on this. If we go back to 2006, the first green lease that set a precedent in this port was set by I.T.S., and since then, that is what's taken this port to be the real green port, because we want to hold our tenants to the highest standard. So I'm comfortable if the environmental group can work directly with you on this and they can give more clarification on what at that time is the best available technology.

MR. CAMERON: I need to get back to Commissioner Bynum for her question and a question and a little bit from -- and a little bit to what was just provided to the board in terms of direction or how others in the department would be supporting our real estate division in its negotiation with MCC. I believe at the end of the day it's about a timing issue. Everything we discussed during the hearing is about an objective process and program that we have to go through technology advancement demonstrations and everything associated with that. It's everything that is in the modified AQ6; it's about timing. So between now and whenever the negotiations start with MCC and whatever comes up before the board, we would take that same objective approach and look like whatever is available at that time.

So if something comes up in the next three months, I think that would be the approach that we would work with real estate and say yes, this does pass muster under feasibility under the guidelines that we used. So I think it's about a timing, and so if it's three months or six months or twelve months, I think we would take that same process that we would do whether it's the five-year reopener under the AQ6 that this port has adopted.

MR. DRUMMOND: Thank you.

MR. CAMERON: So I think in -- my clarification is we have an objective process that looks for feasible

technologies to the concerns of the applicant and frankly that we hold true before we present anything to the board, individually or through any type of EIRs as was just stated in that hearing. So I think it's about a timing and I think we would work with the real estate staff when it comes for whatever that criteria is and process is for doing that with the applicant or at that point with the leasee.

MR. DRUMMOND: Commissioners, any further discussion? We have a motion to second?

MR. DINES: Motion to direct staff to include in any lease negotiated with MCC for a terminal on Pier F that MCC adhere to the port's green port policy and to use the best available technology to capture ship's emissions.

MS. BYNUM: One more question, sorry. Can you read the last part of that please. "MCC will" --

MR. DINES: "Adhere to the port's green port policy and use the best available technology to capture ships' emissions."

MS. BYNUM: So I'm assuming then that that discussion about what the best available technology is takes place between the port and MCC?

MR. CAMERON: Correct, Commissioner. We don't necessarily use "back" per se, but the term is interchangable to some degree. However, we use it under the guidelines of the technology advancement, so yes.

MS. BYNUM: I know it's a nuance, but we're still -- from my perspective, we're still not changing anything. We're having the discussion we need to have about technologies and new technologies that are appropriate and to your point, Steve, I think you're right saying it's timing. I think timing will dictate what technologies are available that work and are feasible for the tenant.

MR. CAMERON: Working with them through the lease process as we have always done. And it is about -- and I would agree to the comment from the applicant or their attorney, it is, and that's the main tenant of our clean air action plan and our policy is we want our technology neutral and we want to be fuel neutral, and we want to find strategies and technologies to get us over the finish line whether it's portwide, overall programs and initiatives, or from how an individual terminal needs to customize something, and we do that for every project, so it would be the same thing for this lease. We're not going to just have some type of technology that doesn't fit within the context of our operation.

MS. BYNUM: Okay. It would be a wash for me.

MR. DRUMMOND: Then I'll call for the question. All the those in favor, signify by saying "Aye."

MS. BYNUM: Aye.

MR. DINES: Aye.

MS. FARRELL-HARRISON: Aye.

MS. EGOSCUE: Aye.

MR. DRUMMOND: Aye. Unanimously. Commissioner Egoscue.

MS. EGOSCUE: I have one more item to address, Commissioner Farrell-Harrison's issue about A.Q.M.D.'s rule 2702. Can I just have -- if I don't need to make a motion, but Rick, can you come up to the podium and discuss with me what the timing would be to bring back to the board this analysis regarding this rule. To answer her question, it was amended -- established in 2009, amended in 2010. It may be for purposes of how we do things a little bit in need of an analysis; however, I think what we're trying to avoid, Rick, is that even though this rule was applied to the Middle Harbor, it was applied tonight, that maybe in the future it might make sense to have something else.

So can you tell me what the process is for timing or do my fellow commissioners have any response to a possible motion on that, or if it's necessary at first.

MR. CAMERON: I'd like to answer it in two parts. Number one, the first part is we're not sure. I couldn't go back in a quick fashion and respond back to when it was updated, so one of the first things I'd like to do is go back and provide the board a quick information item and just the status of those programs and a little bit more details that

came out of the questions in terms of what existed today, and the second part of that would be in that same memo. I would like some time with my staff and others in the department to think about what's out there, give you a quick fix and give you a time frame, if that's fair, and I would propose that we work with a chief executive in terms of the time whether it's a study session or what fashion we would bring it back before the board in terms of other recommendations or at least get board's feedback on what staff would be proposing, probably do a study session and then -- some time after that.

I don't think it would take that long and maybe give us a couple of weeks, to get back to you with that information item, and within that we have a milestone time frame to bring some of that study session and maybe something for the board to consider.

MS. FARRELL-HARRISON: With that said, I would ask the board consider a motion this evening to memorialize this. I would recommend a motion that -- to direct the chief executive to return to the board within -- what would be reasonable, 60 days?

MR. CAMERON: Sure.

MS. EGOSCUE: With recommendations and a potential revision to the per metric ton grant amount for projects where there are significant impacts that cannot be mitigated, that are significant and unavoidable. Is that motion clear?

MR. DINES: It's clear.

MS. EGOSCUE: I'll second it. Do you understand it, President Drummond?

MR. DRUMMOND: No, I don't. Can you help, please?

MS. FARRELL-HARRISON: So the conversation that we've been having on the 15 dollar per metric ton relates to our greenhouse gas grants that we provide for projects where there are environmental impacts. Some are not mitigated. There are many environmental impacts that were mitigated in tonight's EIR, but there were other that were significant and unavoidable and were not mitigated sufficiently, so some of the air quality ones, also some of the bio-related environmental impacts to marine life were not mitigated and with the proposals that were brought forth tonight in the EIR, so with that I do feel the 15 dollars per metric ton is antiquated; it hasn't been updated. It also doesn't take into account reoccurring impacts of what we're recommending.

We have multi-year leases. Some of our leases go decades, multiple decades in many cases, and our grant programs are typically for the one year. It's a one-time grant that will be provided to mitigate some of the project items, and I don't think that that's sufficient because the impacts to the community are lasting and significant and so I think I read in the EIR was it ten per million cases of

cancer potentially? Is that --

MR. CAMERON: Well, now we're going from G.H.D. to health risks.

MS. FARRELL-HARRISON: Okay. So I'll keep it to the air quality -- but the point being, can we look at reoccurring grants or grants that are more than one time or grants that are higher than 15 dollars or a tiered impact if a project has a cumulative in addition to some of the singular effects, but let's revisit this policy. It looks like it's six years old at a minimum.

MR. CAMERON: Well, I think it's a good time. I appreciate the board's motion and direction of the staff to get this cleared up. We can come back and do that. I think it is important that we have that study session then, because I don't think -- we could go dust off old memos about the history of those programs, but each of the programs is unique, and I think the board needs to appreciate each of the programs. If we're going to discuss this, we might as well discuss it as a whole and understand the unique -- some of the rationale related to the development of those and who helped develop those and where those guidelines came from.

Then we can move forward and figure out what is that next level, maybe there is something the board would like to adopt as an agency. So I think that might be better, have a little bit of that background and history and study guides on

some of the uniqueness about each of those programs and then go from there, maybe a study session with feedback after we provide that would be good within 60 days.

MR. DRUMMOND: I'm still not clear. What I'm looking for in my mind is a nexus between a fee on a project and what's being accomplished. Commissioner Egoscue, can you help me?

MS. EGOSCUE: Yes. So let's talk about the memo from staff from today and talking particularly about Item No. 3, which is N.R.D.C. and others, other communities groups made a request for an increase in the greenhouse gas emissions reduction grant. Are you with me, are you following?

MR. DRUMMOND: I'm with you.

MS. EGOSCUE: So the next page, staff responds appropriately at the top of that page, that the actual amount, the 15 dollars per metric ton is based upon an established rule, 2702.

MR. DRUMMOND: Good.

MS. EGOSCUE: Okay. So during the context the conversation the EIR, we had conversations whether or not this board should continue to rely upon that. We decided in the context of the EIR that it was appropriate for tonight; however, we would like to direct staff to bring back a study session and analysis as to whether or not it's appropriate to

move forward.

MR. DRUMMOND: Very good, very good. I'm with you. Very good. And there was a second on that?

MS. FARRELL-HARRISON: Yes, there is.

MR. DRUMMOND: A motion to second. Any further discussion? Calls for the question. All those in favor signify by saying "Aye."

MS. EGOSCUE: Aye.

MS. FARRELL-HARRISON: Aye.

MR. DINES: Aye.

MS. BYNUM: Aye.

MR. DRUMMOND: Aye.

Now, I believe that concludes the hearing. I want to thank everyone who came specifically for this. It was certainly arduous, but I think we worked through it well. Thank you very much.

(Whereupon the proceedings were concluded.)

I, Justus Balentine, CSR. NO. 13859, Certified Shorthand Reporter for the State of california, do hereby certify;

That said proceedings were taken down by me in shorthand at the time and place therein named and were thereafter transcribed by means of computer-aided transcription; and the same is a true, correct and complete transcript of said proceedings.

I further certify that I am not of counsel nor attorney for any of the parties hereto or in any way interested in the events of this cause and that I am not related to any party hereto.

WITNESS my hand this 20th day of May, 2015.

Justus Balentine

Attachment 6

Appeal Dated May 22, 2015
By Earthjustice

EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

May 22, 2015

Via Messenger

Honorable Mayor and Members of the City Council
c/o Poonam Davis, City Clerk
City of Long Beach California
333 West Ocean Blvd., Lobby Level
Long Beach, CA 90802
(562) 570-6101
cityclerk@longbeach.gov

Re: Appeal of Long Beach Board of Harbor Commissioners' Approval of MCC Cement Terminal and Final Environmental Impact Report (HD-15-243)

Dear Honorable Mayor and Members of the City Council:

On behalf of East Yard Communities for Environmental Justice and the Coalition for a Safe Environment (collectively "Health Groups"), we write to appeal the approval of the Mitsubishi Cement Facility Modification Project ("MCC Terminal Project" or "Project") by the Port of Long Beach Board of Harbor Commissioners ("Port"). The Board approved the Project and accompanying Final Environmental Impact Report ("FEIR") on May 11, 2015 despite receiving public comments prior to its approval highlighting serious inadequacies in the Project's environmental review under the California Environmental Quality Act ("CEQA").

This letter serves as the formal appeal of the Port's approval of the Project and FEIR.[1] After careful review of the Port's decision, we have determined that the Port's approval of the Project does not comply with CEQA. The legal inadequacies of the Port's FEIR under CEQA were previously described in November 8, 2014 and May 8, 2015 comment letters submitted with attachments to the Board, and verbal comments were also provided by representatives of Health Groups. These previously submitted comments are incorporated herein by reference, and the written comments are attached hereto. Given the CEQA violations at issue, as explained in more detail below, we respectfully request that the City Council remand the Project back to the Port to address existing deficiencies in the Project's environmental review.

CEQA compliance by the Port is critical to curtailing the negative impacts of the Port's operations. Freight activities in the region have already saddled the Southern California air basin and its residents with among the worst air quality in the country. Air pollution from the Port's activities disproportionately impact the Port's overburdened residential neighbors. Greenhouse gas emissions resulting directly and indirectly from Port activities are also contributing to

[1] See Long Beach Mun. Code § 21.21.507; Pub. Res. Code § 21151(c).

climate change, which severely threatens California's environment, water resources and economy.

The MCC Terminal Project will add to existing environmental and public health impacts from Port activities. Rather than transparently disclose the full extent of these impacts and identify feasible, superior mitigation measures to stem the project's adverse impacts, the Port has instead selected an inaccurate and out-of-date baseline that artificially shrinks the impacts discussed in the FEIR. The Port also omits certain impacts from its discussion, and fails to properly consider available, feasible mitigation measures that are most effective in reducing the project's significant air pollution and greenhouse gas emissions. All of these failures are violations of CEQA.

I. PROJECT BACKGROUND

The MCC Terminal Project expands the current operations at the Project site. The purpose of the expansion is to increase the annual import of cement from outside of the U.S. to meet a projected increase in demand for cement and concrete within the U.S. The footprint of the current facility, which has been inactive for four years, covers 4.21 acres and includes six cement silos, with an existing SCAQMD permit that limits ship unloading throughput to 9.66 million short tons per year and truck loading throughput to 3.8 million short tons per year.[2]

For nearly two-thirds of the MCC Terminal's lease at Pier F, which began in 2002, the Terminal has experienced little to no activity. In 2006, the facility through-put was approximately 1.5 million short tons of cement from 35 ship visits, resulting in 53,067 truck trips.[3] The facility's activity dramatically declined thereafter. In 2010, operations at the MCC Terminal ceased entirely. No cement imports have been handled at the MCC Terminal since. At the time of the Notice of Preparation ("NOP") of an EIR for the project, in 2011, no operations occurred at the Terminal.

The MCC Terminal Project will expand "existing facilities" at the MCC Terminal, Inc.'s facility at Pier F to provide "40,000 metric tons of additional storage capacity to meet future cement demand" in the Los Angeles region. Expansion will increase the footprint to 5.92 acres, and add four additional cement silos.[4] The Project would not modify the permitted unloading and loading limits.[5] The MCC Terminal at full build-out would be able to accommodate a maximum annual throughput of approximately 4.58 million short tons (4.16 million metric tons) of cement.[6] The Project also includes plans to upgrade existing facilities and ship equipment and install an emission control system referred to as "DoCCS" to capture NOx emissions from ship auxiliary generators at berth.

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[2] FEIR at 1-1.

[3] Id. at 1-5.

[4] Id. at 1-5.

[5] Ibid.

[6] Id. at 1-11.

The FEIR estimates that the Project will result in 29,755 tons of CO2 emissions annually from operation of the facility, over 166,000 truck trips annually, and significant levels of annual average daily NOx emissions, among other impacts.[7] The FEIR identifies the main contributors are on-road trucks and ocean-going vessels ("OGV"). As explained below, the use of a different, more accurate baseline would reveal that estimated impacts are even greater than described.

II. THE PORT'S CEQA BASELINE IS ARBITRARY AND INACCURATE.

The baseline under CEQA is defined as "the existing physical conditions in the affected area as they exist at the time the notice of preparation is published."[8] A project's environmental impacts are then measured against these "existing conditions." Pursuant to this definition, the proper baseline year for the MCC Terminal Project is 2011, the year that the Notice of Preparation ("NOP") for this Project was published. In 2011, no operations were occurring at the Terminal and none were planned prior to the approval of the current expansion project. Yet the baseline year chosen by the Port in the Project FEIR is 2006, the last year of significant activity at the facility. This activity is historical at best, and cannot reasonably be said to reflect "existing physical conditions" at the project area. The selection of the year 2006 as the FEIR's baseline inflates the level of activity at the facility by reflecting operational levels that have not occurred in nearly ten years. The Project's impacts are consequently and unlawfully minimized in the FEIR's discussions.

The FEIR's discussion of project impacts is rendered arbitrary and inadequate because it does not discuss project impacts measured against prevailing existing conditions during which no activities occurred at the site. In the FEIR, the Port defended its approach to selecting the baseline by claiming that "actual operating conditions in 2006" is "a representative year of operations prior to the economic recession."[9] The Port further argued that 2006 is a "conservative" baseline, because conditions in 2006 "were less intense than what is permitted under the SCAQMD permits."[10] In deciding not to use 2011 as a baseline year, the Port explained that "[u]tilization of 2011 NOP levels is inappropriate because it would ignore the fact the Project site is developed with an existing cement facility that is currently leased to MCC and fully permitted to operate."[11]

The Port completely misconstrues CEQA baseline law here. The baseline for an agency's environmental analysis under CEQA must be the actual existing physical conditions rather than hypothetical conditions that could have existed under applicable permits.[12] Case law makes clear that the permitted level of activity at the facility or historic levels of activity do not determine the

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[7] Id. at 3.2-22-3

[8] Cal. Code Regs, tit. 14 § 15126.2, subd.(a).

[9] FEIR at 3.0-3.

[10] Ibid.

[11] Ibid.

[12] *Communities For A Better Env't v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal. 4th 310, 320-22.

baseline.[13] Indeed, the year 2006 simply cannot reasonably be stated to reflect "representative" operations at the facility. This is especially true given that, throughout the majority of Mitsubishi's lease at Pier F, no operations have occurred at the facility.

The Port prefers to use an inflated baseline reflecting activities that *might* have continued past 2006 under different circumstances. But the law clearly prohibits this. Indeed, if CEQA permitted this approach, lead agencies could pick any favorable activity scenario from a historical record in order to shrink the considered impacts of a proposed project. In depicting "existing physical conditions," the baseline must capture "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."[14] Lead agencies are not permitted to "turn back the clock and insist upon a baseline that exclude[s] existing conditions."[15]

Proper CEQA review hinges on the selection of a realistic baseline that gives "the public and decision makers the most accurate picture practically possible of the project's likely impacts."[16] An accurate, realistic baseline here must capture the MCC Terminal's inactivity, which reflects the status of the facility for the last nine years. A 2011 baseline year would achieve this legal requirement. A baseline that covers a range of years between 2007 and 2014 might also achieve this legal requirement. A singular 2006 baseline, however, is grossly misleading and violates basic precepts of CEQA law.

III. MITIGATION IN THE PROJECT FEIR IS INSUFFICIENT.

CEQA requires that agencies refrain from approving projects that will harm the environment, unless feasible mitigation measures have been adopted that would substantially lessen the significant environmental effects of such projects.[17] The Port must also do all it can to protect port-adjacent residents from localized toxic threats.[18] But the Port fails to meet these requirements, despite the fact that, together with the Port of Los Angeles, the Port of Long Beach is the single largest fixed source of air pollution in Southern California and the regional air basin (the South Coast Air Basin or "SCAB") consistently ranks near the top of the lists for the nation's most polluted air.

The FEIR's Air Quality, Global Climate and Health Risk mitigation discussions are legally

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[13] Ibid.

[14] *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 321.

[15] *Citizens for East Shore Parks v. California State Lands Com.* (2011) 202 Cal.App.4th 549, 559.

[16] *Neighbors for Smart Rail v. Exposition Metro Line Const. Auth.* (2013) 57 Cal.4th 439, 449 (2013), *reh'g denied* (Sept. 18, 2013).

[17] *S. Cnty. Citizens for Smart Growth v. Cnty. of Nevada* (2013) 221 Cal. App. 4th 316, 326; see also CEQA § 15126.4(a)(1); Public Res. Code §§ 21002, 21081; Guidelines §§ 15002, 15021, 15091; *Citizens of Goleta Valley v. Board of* Supervisors (1990) 52 Cal.3d 553, 565.

[18] Ibid; see also Pub. Res. Code § 21083.

insufficient because they ignore feasible mitigation options that have been raised with the Port in public comments for inclusion. These omitted measures would address emissions from port-related sources, such as marine vessels, trucks and cargo handling equipment, which adversely affect air quality both in the local port area and in the region. These omitted measures would also help protect the Port's residential neighbors from health burdens created by Port activities. In ignoring these measures, the Port's FEIR violates the fundamental purposes of CEQA, which include identifying "ways that environmental damage can be avoided or significantly reduced"; preventing "significant, avoidable damage to the environment" and disclosing "to the public the reasons why [an] ... agency approved the project in the manner the agency chose if significant environmental effects are involved."[19]

a. "Ocean Going Vessel" Pollution Mitigation Is Inadequate.

Ocean Going Vessels ("OGVs") are the main contributors to NOx emissions for the Project.[20] The FEIR admits that "the net increase in mitigated average daily NOx emissions from total proposed operations would continue to exceed the SCAQMD daily NOx emission threshold."[21] The FEIR also states that there are no feasible mitigation measures to reduce the average daily NOx emissions below significant and unavoidable levels.[22] Yet the Port ignores and fails to discuss familiar and available mitigation options for NOx emissions, instead choosing to concede to the Project's significant NOx impacts, which can damage the respiratory tract and the body's immune system, increasing a person's susceptibility to infection. Specifically, the FEIR improperly rejects Advanced Maritime Emissions Control Systems ("AMECS") as a feasible mitigation measure that would minimize significant adverse impacts from NOx. The FEIR also fails to identify increased reliance on shore side power as a feasible mitigation measure.

1. FEIR Fails to Consider AMECS, a Superior Mitigation Measure to DoCCS.

The Dockside Catalytic Control System ("DoCCS") identified in the FEIR for OGV NOx mitigation is an inadequate alternative. The finding by the agency that all feasible mitigation measures have been adopted must be supported by substantial evidence in the record.[23] Substantial evidence does not support the FEIR's reliance on DoCCs as the primary mitigation measure available to address OGV NOx emissions.

There are several problems with DoCCS. First, its effectiveness is uncertain and the Port has committed to only its short-term use via a "demonstration." Information about DoCCS is not fully disclosed, further underscoring uncertainty around the measure. For example, the FEIR does not describe how DoCCS is powered. If it runs off of a diesel-powered engine or generator,

[19] Cal. Code Regs. tit. 14, § 15002
[20] FEIR at 3.2-23.
[21] Id. at 3.2-24.
[22] Ibid.
[23] Pub. Res. Code § 21081.5.

the emissions produced by the mechanism must be accounted for in the CEQA analysis, and mitigated. Moreover, the demonstration will take a minimum of 3 years to install, *after* the Project begins operation. The FEIR also admits that, while a diesel particulate filer will be integrated into DoCCS, "due to the uncertainties associated with the application of the [diesel particulate filter or "DPM"] technology to unmodified existing marine technologies, a specific level of DPM emissions control is not provided at this time."[24]

AMECS is a superior alternative to shore power than DoCCS. The FEIR provides that the MCC Terminal "shall use its best effort to participate in the SCAQMD's AMECS demonstration project at the Port."[25] But the record before the Port shows that AMECS is more feasible than DoCCS for *immediate use*. The AMECS system uses a sleeve to capture and remove airborne emissions from the auxiliary engines and auxiliary boilers of ocean going vessels at berth. With a diesel particulate filter already built into the mechanism, AMECS would not have to be retrofitted pending lengthy demonstrations and approvals, as DoCCS will require. AMECS is currently being tested at the Port of Long Beach and CARB verification is likely imminent. In addition to reducing NOx by 99+ percent, a rate higher than DoCCS, AMECS also reduces DPM by 97.5 percent, SO2 by 98.5 percent and VOCs by 99.5 percent.

To meet its obligations under CEQA, the Port must consider AMECS as an immediately implementable mitigation measure for OGV NOx pollution. The Port tries to have it both ways by arguing AMECS cannot be required until verification, while also arguing that DoCCS, which is surely much further from verification and developmental delays than AMECS, provides a sufficient alternative. Because of the life-saving potential of AMECS, it is appropriate to remand the decision back to the Harbor Commission.

2. FEIR Fails To Consider Stronger Shore Side Power Mitigation Measure.

The FEIR commits to using only sixty-six percent shore power as a mitigation measure for OGV NOx pollution.[26] This is the same shore power capacity used by the MCC Terminal in its last year of operation in 2006, over eight years ago. Technological advances in shore power now make increased shower power capacity not only feasible, but highly effective in reducing NOx. Indeed, the FEIR's reliance on outdated shore power assumptions reveals an inadequate consideration of currently available and more effective shore side power mitigation measures.

The SCAQMD permit for the MCC Terminal requires that shore power be used during unloading,[27] and shore power is scheduled to be installed in all of the Port's docks by the time this Project is operational, as asserted in the Port's Clean Air Action Plan.[28] Increasing numbers

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[24] FEIR at 3.2-27.

[25] FEIR at 3.2-24.

[26] Ibid.

[27] Id. at 1-4.

[28] *See* San Pedro Bay Ports, Clean Air Action Plan 2010 Update (Oct. 2010), *available at* http://www.portoflosangeles.org/environment/caap.esp at ES-5.

of vessels are equipped with the technology to plug into shore power. Further, MCC has worked in the past "with various charter companies and...negotiated commitments to equip some vessels to use shore-side-power."[29] This suggests that it would be feasible to continue negotiating commitments to equip additional vessels, if not all incoming vessels, with this capacity.[30] Arguments by MCC that ships cannot unload the entirety of their cargo using shore-to-ship power are not supported by substantial evidence. The Port's failure to consider current information about shore-to-ship power is arbitrary and violates CEQA.

b. Truck Pollution Mitigation Is Inadequate.

The Project is estimated to increase freight truck trips by 166,400 trucks. This is a conservative estimate in light of the FEIR's flawed baseline. Nevertheless, the FEIR explains that these types of on-road trucks trips are one of the main contributors to the persistent failure of the SCAB to meet clean air standards established by the U.S. Environmental Protection Agency and California Air Resources Board.[31] On-road trucks are also a main contributor to the project's cancer risks.[32] Many of these trucks will travel on the I-710 freeway, where schools, businesses and homes lie within close proximity and are already disproportionately burdened by air pollution by the freeway, port operations and other regional sources. Because these types of freight operations pose a particularly acute threat to regional air quality, the importance of mitigation related impacts cannot be overstated.

The FEIR identifies "modernization of the delivery truck fleet" for mitigation addressing truck pollution but this measure does not reduce emissions in any meaningful way. Under the terms of the measure, MCC must only comply with one of three options: use trucks five years old or less; use truck engines with years 2007 or newer (which meets the Port's existing Clean Truck Program standard and is not a mitigation measure); or use an alternative cleaner technology.[33] The mitigation measure also requires that only ninety percent of the fleet adhere to one of these options. As a result, close to 167,000 truck trips may ignore these requirements altogether, which falls below the Port's Clean Truck Program which applies to 100 percent of the heavy duty truck fleet.

At the same time, the FEIR fails to identify or describe several arguably superior feasible mitigation measures for truck pollution. The FEIR concludes that "no other measures are feasible to reduce daily NOx emissions from proposed operations, except the proposed

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[29] FEIR at 1-4.

[30] Moreover, to the extent legitimate, current information supports concerns exist about the use of shore to ship power, alternatives exist, such as hybrid and electric payloaders, which have been available since 2013. These can be used by MCC as an alternative to diesel powered payloaders to further reduce emissions. (See, e.g., John Deere website: http://www.forconstructionpros.com/product/10243562/john-deere-944k-644k-diesel-electric-hybrid-loaders.)

[31] FEIR at 3.2-22.

[32] Id. at 3.2-30.

[33] Id at 3.2-24 (MM AQ-2).

modernization plan."[34] But additional feasible mitigation measures include implementation of zero to near-zero emissions truck technology to reduce emissions both within the project area and from the hundreds of thousands of trips extending outside the Port's immediate borders along corridors lined with residential communities. These technologies are already available on the market and include zero emission electric plug-in battery trucks, near zero emission natural gas (CNG or LNG) trucks, and plug-in hybrid/diesel battery trucks. The FEIR relies on outdated reports, such as a 2011 Roadmap for Moving Forward with Zero Emission Technologies at the Ports of Long Beach and Los Angeles.

Given the speed of new developments in low-emitting car and truck technology, the Port's failure to consider updated information regarding the availability of mitigation measures for freight pollution is arbitrary and capricious. The FEIR's "Periodic Technology Review" mitigation measure, which defers consideration of new emission-control technologies until five years after the effective date of the MCC Terminal's new lease, does not remedy the Port's failure. The Periodic Technology Review measure fails to evaluate the feasibility now of existing zero or near-zero technologies, much less commit to their robust use. Nor does the measure require, in any specific terms, commitments by MCC to fully modernize its fleets with these zero or near-zero technologies at subsequent dates.

c. The FEIR's Greenhouse Gas Mitigation Is Inadequate.

The MCC Terminal Project will produce a net increase of 22,248 metric tons of CO2 annual emissions, which doubles even artificially inflated baseline levels. The self-identified "Green Port" should not approve projects that increase GHG emissions when California policy explicitly mandates dramatic reductions in GHG emissions state-wide by 2020 and 2030. Nevertheless, this is what the Port does, and the mitigation measures proposed in the FEIR are entirely insufficient. The FEIR GHG mitigation measures discussion overlooks numerous measures that can be implemented to reduce GHG emissions more effectively than those proposed. These include, but are not limited to, zero or near-zero emission cement trucks, using shore-side power or equivalent technology one hundred percent of the time, implementing proposed solar panels and low energy lighting immediately, rather than waiting three years as currently proposed, and considering the use of electric cranes and payloaders.[35]

IV. THE SCOPE OF IMPACTS CONSIDERED IS IMPROPERLY NARROW.

A project under CEQA is "an activity which may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment."[36] In analyzing the MCC Terminal's environmental impacts, the FEIR must include an analysis of reasonably foreseeable direct and indirect physical changes resulting from the project. This includes human health and environmental justice impacts on neighboring communities, as well

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[34] Ibid.

[35] Id. at 3.3-10.

[36] Pub. Res. Code § 21001(d).

as induced demand in the cement market, life cycle emissions and traffic impacts outside of the Port's literal borders. In failing to perform these analyses, the FEIR is legally inadequate.

a. The FEIR Failed to Analyze and Mitigate Environmental Justice Impacts.

The presence of large, urban residential neighborhoods on the Port's borders brings into sharp focus the adverse impacts of the Project's air pollution emissions. Air pollution emitted from Port operations and related freight activities in and out of the Port, such as NOx, which can cause permanent damage to the human respiratory tract and the body's immune system, have contributed to high levels of asthma and other chronic breathing problems in these communities.[37] Pier F, where the project is located, is in close proximity to west Long Beach and Wilmington, as well as to San Pedro and Harbor City, which collectively are home to hundreds of thousands of residents.[38] Notably, many of these residents are low-income communities of color. According to the 2010 U.S. census, Latinos, African-Americans, Asians, and other non-white ethnicities represent over seventy-five percent of the population of these communities.[39]

The California Attorney General has recognized that "human beings are an integral part of the environment" to be considered under CEQA.[40] "An agency is required to find that a 'project may have a significant effect on the environment if, among other things, '[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly[.]'...Specific provisions of CEQA and its Guidelines require that local lead agencies consider how the environmental and public health burdens of a project might specifically affect certain communities."[41] Where the environmental impacts will cause substantially disproportionate effects on a community, corresponding analysis and mitigation measures are warranted.

Given the existing impacts of the Port on environmental justice communities near the Project, studies, mitigation measures and an environmental justice-centered analysis are crucial to understand additional impacts posed by the project. Indeed, the FEIR admits that even after mitigation measures, daily NOx emissions, 1-hour NO2 emissions, 24-hour PM10 and PM2.5 emissions, and annual PM10 emissions would exceed significance thresholds.[42] In addition, the FEIR states that "impacts of NO2, PM10 and PM2.5 from Project operations could contribute to one or more of the public health effects mentioned [which include asthma, bronchitis, lung

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[37] See, e.g., Long Beach Community for Children with Asthma, Report to the Community (2008), available at http://www.rampasthma.org/wp-content/uploads/2008/06/Long-Beach-Alliance-for-Children-with-Asthma.pdf.

[38] Information available at http://www.census.gov/#.

[39] Ibid.

[40] See AG Memo "Environmental Justice at the Local and Regional Level" (2014), available at http://cchealth.org/hazmat/hmc/pdf/2014-0123-Environmental-Justice.pdf.

[41] Ibid.

[42] FEIR at 3.2-25, 26.

diseases, etc.]...These effects could occur throughout Project operation."[43] The adverse health effects of diesel emissions, which will be increased by the construction and operation of the project, are of particular concern.

The Port's neighboring residents already bear a disproportionate share of the emission impacts from goods movement and are already overburdened by environmental hazards generated by the Ports of Long Beach and Los Angeles, traffic on the 710 and Terminal Island Freeways, the Intermodal Container Transfer Facility, as well as the several nearby refinery operations. Indeed, people who live or go to school near ports, rail yards, distribution centers, freight roadways and other diesel "hot spots" face disproportionate exposure to diesel exhaust and associated health impacts, including increased risks of asthma and other respiratory effects, cancer, adverse birth outcomes, adverse impacts to the brain (including potentially higher risk of autism), heart disease, and premature death.[44]

Accordingly, the FEIR must analyze the environmental justice impacts of the proposed Project and suggest mitigation measures to reduce the potential harm that may be disproportionately caused. Many Port projects in the past have included environmental justice considerations.[45] There is no excuse to avoid this obligation under CEQA for this Project.

b. The FEIR Failed to Analyze Life Cycle of Cement and Induced Demand in Cement Market.

The FEIR does not consider the life cycle of cement in its analysis of project impacts. Failure to include an analysis of the life cycle of cement – from manufacturing to transportation to use – has resulted in an enormous underestimation of the negative impacts of the project, including air quality, health risk, climate change and cumulative impacts. Cement is a significant source of global CO2 emissions and accounts for five percent of global emissions worldwide. The cement industry currently accounts for five percent of global CO2 emissions and been growing at an annual rate of 2.5 percent, which is projected to persist.[46] Production of a single ton of cement requires about 400 pounds of coal and generates nearly a ton of CO2.[47] Greenhouse gas emissions that occur as a result of freight shipments of cement from foreign locations to the Port only add to cement's total life cycle emissions. Not only does this project result in direct on-site impacts, but its indirect impacts are far-reaching. Yet the FEIR discloses

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[43] Id. at 3.2-28.

[44] Kim, J., et al. "Traffic-Related Air Pollution and Respiratory Health: East Bay Children's Respiratory Health Study," *American Journal of Respiratory and Critical Care Medicine.*2004; 170: 520-526.

[45] See, e.g., Port of Long Beach Middle Harbor Redevelopment Project Final Impact Statement/Environmental Impact Report (2009).

[46] Madeleine Rubenstein, "Emissions from the Cement Industry," *Climate Matters*, May 9, 2012 (http://blogs.ei.columbia.edu/2012/05/09/emissions-from-the-cement-industry/); "Climate Change 2007: Working Group III: Mitigation of Climate Change," *IPCC 4th Assessment Report: Climate Change 2007 7.4.5.1 Cement* (http://www.ipcc.ch/publications_and_data/ar4/wg3/en/ch7s7-4-5.html).

[47] Ibid.

none of these impacts.

Further, the FEIR states that "according to the forecast for Spring 2014, the U.S. cement market is expected to grow ... by ten percent during 2015 and 2016."[48] The project is explicitly facilitating this growth by seeking to meet this projected increase in demand for cement. Accordingly, the induced demand is an indirect impact of the project, and must be analyzed under CEQA. An EIR must "discuss the ways in which the proposed project could foster economic or population growth."[49] This includes growth-inducing impacts.[50] The FEIR makes no mention of the induced demand that results from the facility expansion and renewed operations at the facility, however. These omissions are unlawful.

c. The FEIR Failed to Properly Analyze Direct, Indirect and Cumulative Traffic Impacts.

The majority of the 166,400 truck trips identified as resulting from the Project will be delivering cement to off-site customer locations through the neighboring underprivileged communities of Long Beach and Wilmington on the 710 Freeway, as well as through San Pedro, Harbor City and other nearby communities. The impacts of these trucks on these neighboring communities and their already vulnerable residents – including NOx emissions, GHG emissions, traffic congestion, community noise impacts, and related human health impacts is not disclosed in the FEIR – must be considered in the FEIR.

The scope of the FEIR's traffic and truck related considers impacts occurring only within three miles of the project site.[51] Health Groups have determined that as many as ninety percent of the truck destinations will extend beyond the three mile radius studied in the FEIR, however. The FEIR lacks substantial evidence supporting the three mile scope of traffic considerations. Where three miles has been deemed an acceptable geographic scope for traffic impacts in other cases, the FEIRs in those cases contained "exhaustive lists" detailing the likely travel patterns and intersections facing expected direct impacts.[52] In contrast, the FEIR for the Project here falls far short of providing this level of information to justify the scope of traffic impacts studied; an exhaustive list here would, in fact, reveal that a majority of the traffic and freight impacts of the Project extend beyond the immediate geography of the Port. Moreover, the cumulative impacts of the Project's traffic impacts with traffic congestion anticipated from other nearby projects such as Kaiser Permanente Hospital Expansion Projects, Inglewood Hollywood Park Redevelopment Project, the proposed Inglewood Football Stadium and Carson Football Stadium

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[48] FEIR at 1-4.

[49] Guidelines § 15126.2(d).

[50] *David v. Mineta* (2002) 302 F.2d 1104 [failure to analyze growth-inducing impacts of Project renders FEIR inadequate]; *City of Davis v. Coleman* (1975) 521 F.2d 661 [accord].

[51] See Traffic Study for Mitsubishi Cement Facility Modification Project (2010) "Congestion Management Program for Los Angeles County, Arterial Monitoring Station Analysis and Freeway Mainline Monitoring Station Analysis."

[52] See, e.g., City of Long Beach v. Los Angeles Unified Sch. Dist. (2009) 176 Cal. App. 4th 889, 909.

are also unaddressed in the FEIR. Consequently, the direct and indirect environmental impacts of the project are not adequately analyzed, in violation of CEQA.

V. THE PROJECT SHOULD INCLUDE A PROJECT LABOR AGREEMENT REQUIRING 100 PERCENT UNION JOBS ASSOCIATED WITH CONSTRUCTION.

This expansion project will result in very few operational jobs. Thus, it is vital that any construction jobs created at the facility have a union component to ensure construction workers are protected from the significant environmental harms during construction. To this end, the Port should include a Project Labor Agreement that ensures all workers are trained and affiliated with a union as part of the Project.

Conclusion

For the foregoing reasons, the Port's approval of the MCC Cement Facility Project does not comply with CEQA. The City Council should accordingly remand the Project back to the Port to address existing deficiencies in the Project's environmental review.

Date: May 22, 2015

Respectfully submitted,

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Encls.

ATTACHMENT

Natural Resources Defense Council * East Yard Communities for Environmental Justice
San Pedro and Peninsula Homeowners Coalition * Communities for a Better Environment
South Bay 350 Climate Action * Nicoal Sheen* Coalition for Clean Air * Theral Golden
Coalition For A Safe Environment * California Kids IAQ * Community Dreams
Apostolic Faith Center * EndOil/Communities for Clean Ports

November 18, 2014

Heather A. Tomley
Director of Environmental Planning
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Long Beach, CA 90801
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Re: Draft Environmental Impact Report: MCC Cement Terminal

Dear Ms. Tomley,

On behalf of the Natural Resources Defense Council, East Yard Communities for Environmental Justice, San Pedro and Peninsula Homeowners Coalition, Communities for a Better Environment, South Bay 350 Climate Action, Nicoal Sheen, Coalition for Clean Air, Theral Golden, Coalition for a Safe Environment, California Kids IAQ, Community Dreams, Apostolic Faith Center, and EndOil/Communities for Clean Ports, we submit these comments on the Draft Environmental Impact Report (DEIR) for the MCC Terminal, Inc. Cement Facility Modification Project (MCC, Project) currently being planned at the Port of Long Beach. As discussed further below, we have major concerns regarding several aspects of the DEIR, which we believe renders the DEIR to be flawed and, thereby, in violation of CEQA. We are also concerned that the proposed Project seems to be a step backwards in terms of the Port's leadership on cleaning up port operations.

Further, the commodity at the center of this Project is a significant source of global CO2 emissions. Cement plants account for five percent of global emissions worldwide,[1] and production of just one ton of cement requires about 400 pounds of coal and generates nearly a ton of CO2.[2] This Project aims to annually import millions of tons of cement from outside of the U.S. in order to meet a projected increased demand for cement and concrete within the U.S. Because of the severe effects that cement and concrete production have on the environment, it is

[1] Elisabeth Rosenthal, "Cement Industry is at the Center of Climate Change Debate," *The New York Times*, Oct. 26, 2007. (http://www.nytimes.com/2007/10/26/business/worldbusiness/26cement.html?_r=0).
[2] Madeleine Rubenstein, "Emissions from the Cement Industry," *Climate Matters*, May 9, 2012 (http://blogs.ei.columbia.edu/2012/05/09/emissions-from-the-cement-industry/); "Climate Change 2007: Working Group III: Mitigation of Climate Change," *IPCC 4th Assessment Report: Climate Change 2007 7.4.5.1 Cement* (http://www.ipcc.ch/publications_and_data/ar4/wg3/en/ch7s7-4-5.html).

even more critical that MCC and the Port do everything in their power to ensure that this Project achieves as much emission reductions as possible.

I. The Baseline Used in the DEIR is Arbitrary and Violates CEQA

The CEQA Guidelines specifically dictate that the baseline for an EIR should be "a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced..."[3] Although the DEIR admits that the baseline is typically "the physical conditions of the project site and area at the time of the publication of a Notice of Preparation for an EIR, which was in 2011 for the MCC project,"[4] the Port chose to set 2006 as the baseline year, claiming that it was "the last representative year of operations at the MCC terminal prior to the economic recession."[5]

This is a clear violation of CEQA. CEQA Guidelines state that the baseline must represent conditions at the time of the Notice of Preparation (NOP) or when the environmental analysis commences in order to provide a most accurate description of the environmental effects that the project will have. The Statute has been interpreted to allow for some flexibility, but not to the extent demonstrated in this case.[6] CEQA does not provide the lead agency with the authority to choose whatever year is most convenient to the lead agency to downplay the impacts from the project. 2006 was nearly a decade ago, and, further, using it as the baseline year does not provide the most accurate description of the impacts of the project, but rather is a more confusing and misleading approach.

There is no clear description of current activities at the MCC terminal, other than the fact that "the terminal has not operated since October 2011." By establishing the baseline in 2006 instead of the time of the NOP, the DEIR increased baseline vessel visits from 0 to 35, and truck trips from 0 to 53,067. This discrepancy directly affects the determination of whether the Project will have significant impacts on air quality, health, GHG emissions, and other environmental factors, all of which are important conclusions which play a key role in the adoption of mitigation and the decision of whether to approve the Project. Further, the DEIR applies the baseline figures as standards for future operations at the Port.[7] In other words, the incorrect baseline infects the entire DEIR.

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[3] CEQA § 15125(a).
[4] DEIR at 3.2-13.
[5] DEIR at 3.2-13.
[6] *See Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310; *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 445 ("a departure from the norm [of using existing conditions can only] be justified by substantial evidence that an analysis based on existing conditions would tend to be misleading or without informational value to EIR users"); *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552.
[7] E.g., 66% cold ironing (DEIR at 3.2-18, 3.3-10); 62% compliance with the old VSRP that has since been extended (DEIR at 3.2-14); "the small net change in the number of employees that

The California Appellate and Supreme Courts have consistently held that "the baseline for CEQA must be '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." *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 321. Here, the Port used a baseline reflecting the level of activity that could have been present, had the terminal stayed in operation. But courts have specifically mentioned that this is not within the authority of the lead agency. Additionally, the Appellate Court held that lead agencies are not permitted to "essentially turn back the clock and insist upon a baseline that exclude[s] existing conditions." *Citizens for East Shore Parks v. California State Lands Com.* (2011) 202 Cal.App.4th 549, 559. By establishing 2006 as the baseline year, the Port is doing exactly what the courts have said was a violation of CEQA, namely reverting to a time that excludes existing conditions.

In addition, in an effort to downplay the Project's projected emissions, in the DEIR, the Port applied "emission factors to [2006] activities that would equate to operating conditions in 2015" to the baseline.[8] Consequently, the baseline does not merely take the exact data from 2006, it bolsters those numbers by applying 2015 emission standards levels. This results in inaccurate figures and a faulty comparison for the air quality and health risk section and the global climate section. This method for procuring a baseline is entirely unfounded. CEQA is somewhat flexible in its rules for determining a baseline year, but nowhere in the language of the statute does it permit an agency to choose one year for the baseline and apply emission standards, or any other standards, from a different year. This is a clear violation of CEQA. The baseline year must be the year in which the NOP was written, 2011, or the year in which the environmental assessment began. Either way, it is not permissible to apply emission standards from a non-baseline year to the baseline year.

II. The DEIR Failed to Analyze the Induced Demand in the Cement Market Caused by the Project

The DEIR states that "according to the forecast for Spring 2014, the U.S. cement market is expected to grow...by ten percent during 2015 and 2016."[9] The Project is fostering and facilitating this growth, and it is, thereby, an indirect impact of the Project, which is required to be analyzed, according to CEQA.

CEQA specifically states that "a project means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."[10] The Guidelines state that an EIR must "discuss the ways in which the proposed project could foster economic or population growth or the construction of additional housing

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would occur between the baseline and proposed Project," as concerning GHG emissions from employee commuting (DEIR at 3.3-9).

[8] DEIR at 3.2-13.

[9] DEIR at 1-4.

[10] CEQA § 21065

either directly or indirectly, in the surrounding environment."[11] Courts have consistently held that an EIR is inadequate if it fails to analyze the Project's growth-inducing impacts.[12]

III. The DEIR Failed to Analyze the Life Cycle Impacts of the Project

Because the Project is facilitating growth in the cement market and thereby this growth is an indirect impact of the Project, the Port must accordingly also analyze the increased impacts resulting from the life cycle of this market increase. This includes manufacturing, transportation, and use.

This life cycle analysis is all the more important because cement is particularly polluting: cement manufacturing is extremely energy intensive and, consequently, emissions intensive.[13] The cement industry currently accounts for 5% of global CO2 emissions and has been growing at an annual rate of 2.5%, a rate which is projected to persist.[14] In order "to produce cement, limestone and other clay-like materials are heated in a kiln at 1400°C and then ground" and combined with gypsum to form cement.[15] The extreme heat necessary to fire the kiln requires the equivalent of about 400 pounds of coal,[16] and generates almost a ton of CO2.[17] In addition, when limestone is heated, it releases CO2 directly, accounting for nearly half of all emissions from cement production.[18] It is critical that the Port include an analysis of these harmful impacts from imported cement from the initial production phase through the distribution phase. Failure to do so likely led to a gross underestimation of the negative impacts of the Project, including to air quality, health risk, global climate change, and cumulative impacts.

IV. The Mitigation Measures Included in the Air Quality and Health Risk, and Global Climate Sections of the DEIR are Inadequate and Violate CEQA

With regard to mitigation measures, CEQA requires that

> An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of

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[11] Guidelines § 15126.2(d).
[12] *David v. Mineta* (2002) 302 F.3d 1104; *City of Davis v. Coleman* (1975) 521 F.2d 661.
[13] Elisabeth Rosenthal, "Cement Industry is at the Center of Climate Change Debate," *The New York Times*, Oct. 26, 2007. (http://www.nytimes.com/2007/10/26/business/worldbusiness/26cement.html?_r=0).
[14] *See* Rubenstein note 2.
[15] *Id.*
[16] Most commonly, it is coal being used to heat the kilns that melt the limestone that forms cement. Most sources, including worldcoal.org, globalcement.com, the IPCC (http://www.ipcc.ch/publications_and_data/ar4/wg3/en/ch7s7-4-5.html), and others, list coal as the main material used in cement production. Although there have been several small initiatives to reform the cement industry, little progress has been made. This kind of information is precisely what could have been included in the DEIR, to provide an accurate understanding of the impacts of facilitating the growth of this dirty commodity.
[17] *See* note 10
[18] *See* Rubenstein note 2.

energy[19]...Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.[20]

The mitigation measures in the Air Quality and Health Risk section of the DEIR, as well as the Global Climate section, are inadequate, they fail to account for the severity of the hazardous effects that the Project is likely to have on local populations, ignore other feasible mitigation, and they lack enforcement mechanisms, in violation of CEQA.

A. The Mitigation Measures Failed to Account for the Impacts Resulting from the Life Cycle of Cement

In addition to failing to analyze the negative impacts from the increased growth in the cement industry caused by the Project, and the life cycle of the increased levels of imported cement, the DEIR also failed to identify any mitigation measures to reduce such impacts. There are several ways to reduce the emissions caused by cement manufacturing, including using less carbon-intensive fuels to heat the kiln, energy efficiency measures to reduce the overall demand for fuel, replacing limestone with other materials and using blended cement, and carbon capture and storage.[21] Using these methods can reduce CO2 emissions from cement by 40%.

MCC has the responsibility to ensure that the millions of tons of cement that it will be importing through its terminal at the Port are produced using the most environmentally sound methods. Further, the Port should do everything it can to ensure that the best environmental policies are being implemented for all the commodities imported at its terminals. If cement must be imported, it should be manufactured using a low-emissions and environmentally sound process.

B. The Fugitive Dust Controls Are Not Adequate to Address Cement Dust

The DEIR explains that "the main contributors to...significant PM10 and PM2.5 impacts would be cement dust generated from the truck loaders and trucks driving along the east side of the terminal (road dust)."[22] This is particularly worrisome, as studies have found that prolonged exposure to cement dust can cause allergic reactions, eye and lung irritation, and cancer.[23] Cement dust is extremely toxic and the Project should focus on ensuring that as little cement dust as possible is released into the air. Similar to the Port's measures to keep petroleum coke and coal enclosed to reduce exposure to the harmful dust, the Port should apply a similar approach to keeping cement dust enclosed as well. This includes enclosing the cement as it is unloaded from the ships, as cement ships release huge amounts of dust while they are being unloaded.[24]

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[19] CEQA § 15126.4(a)(1).
[20] CEQA § 15126.4(a)(2).
[21] *See* Rubenstein note 2.
[22] DEIR at 3.2-26.
[23] Cement Hazards and Controls Health Risks and Precautions in Using Portland Cement, *Construction Safety Association of Ontario*, available at: http://www.elcosh.org/document/1563/d000513/Cement%2BHazards%2Band%2BControls%2BHealth%2BRisks%2Band%2BPrecautions%2Bin%2BUsing%2BPortland%2BCement.html?show_text=1
[24] DEIR at 3.2-24.

In addition, the DEIR explains some measures that include application of significant amounts of water to dust covered areas. The water used to remove the cement dust would then become polluted and a plan for disposing of the water in an environmentally safe manner is critical, such as putting in place effective storm water and wastewater treatment measures.

C. The Mitigation Measures for Ocean Going Vessels are Not Adequate

The DEIR states that Ocean Going Vessels (OGVs) are the main contributors to NOx emissions for the Project, but that

> MCC does not own the OGVs that would call at the project terminal and they have no active charter party agreements or dedicated fleet. Due to this lack of control over the project OGV fleet, it would be difficult to facilitate implementation of CAAP measure OGV5[25] or OGV6[26] on these vessels. Retrofitting or replacing an existing OGV main engine to reduce NOx emissions also would not be feasible, as successful demonstration of these techniques are still in a process of development and evolution (Ports of Los Angeles and Long Beach 2012, 2013, and 2014). Due to the high cost of engine retrofits, the cost to implement (in dollars spent per mass of NOx reductions) of such a measure would not be effective. Therefore, implementation of measures to reduce NOx emissions from proposed OGV main engines is deemed infeasible.[27]

MCC's lack of ownership of the OGVs, however, does not excuse implementing 100% shore power as a mitigation. Regardless of whether MCC can control the vessels, the SCAQMD permit for the terminal requires that shore power be used during unloading.[28] The Port is likely to install shore power in all of its docks by the time this Project is operational, as promised in the CAAP[29] and increasing numbers of vessels are equipped with the technology to plug into shore power. MCC cannot claim that they are permitted to violate their SCAQMD permit and CARB regulations and operate with increased emissions because the ships with which they are contracting to do continuous business are not within their control. MCC is perfectly capable of adding a clause in their import contracts that requires vessels to comply with the CAAP measures and the SCAQMD permit in an effort to reduce emissions, as demonstrated in the past

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[25] OGV5 is a CAAP measure that seeks to maximize the number of vessels meeting the IMO NOx limit of 3.4g/kW-hr that visit the ports. *See* http://www.cleanairactionplan.org/civica/filebank/blobdload.asp?BlobID=2532.

[26] OGV6 is a CAAP measure that seeks to encourage demonstration and deployment of cleaner OGV engine technologies. *See* http://www.cleanairactionplan.org/civica/filebank/blobdload.asp?BlobID=2532.

[27] DEIR at 3.2-23.

[28] DEIR at 1-4.

[29] *See* San Pedro Bay Ports, Clean Air Action Plan 2010 Update (Oct. 2010), *available at* http://www.portoflosangeles.org/environment/caap.esp at ES-5.

when "MCC...worked with various charter companies and...negotiated commitments to equip some vessels to use shore-side-power."[30]

Additionally, if it was found to be "infeasible" to comply with CAAP OGV5 and OGV6, the DEIR should have included alternative mitigation measures to ensure that emissions from OGVs are reduced. The DEIR admits that "the net increase in mitigated average daily NOx emissions from total proposed operations would continue to exceed the SCAQMD daily NOx emission threshold. Since there are no other feasible mitigation measures, the mitigated average daily NOx emissions from Project operations would be significant and unavoidable."[31] This is unacceptable. As discussed below, the AMECS technology, with which the Port is very familiar, is an available and feasible mitigation measure that should be adopted to mitigate the Project's significant NOx impacts.

1. The Port Should Implement the AMECS Instead of the DoCCS

The CARB Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port Regulation, passed in 2007, states that: "vessel fleet operators visiting [California] ports [have] two options to reduce at-berth emissions from auxiliary engines: 1) turn off auxiliary engines and connect the vessel to some other source of power, most likely grid-based shore power; or 2) use alternative control technique(s) that achieve *equivalent emission reductions*." (emphasis added). The Dockside Catalytic Control System that the DEIR proposes be installed and used as an alternative to grid-based shore power is not an adequate alternative and should not be approved for several reasons.

a. DoCCS Does Not Achieve "Equivalent Emission Reductions"

The DEIR states that "MCC has applied to the SCAQMD to modify its existing SCAQMD permit to allow vessels that call at the MCC facility to either use shore-to-ship electricity or use the proposed DoCCS at-berth emission control system when unloading. The proposed control system would capture NOx emissions from the generators of ships that cannot use shore-to-ship power and process the exhaust through a selective catalytic NOx reductions system."[32]

When ships use grid-based shore power, all air pollution is eliminated by 95%.[33] This includes emissions of NOx, SO2, DPM, and VOCs. Therefore, since DoCCS only focuses on reducing NOx emissions, the technology is inferior, inadequate, and cannot be considered to achieve "equivalent emission reductions" to grid-based shore power. In addition, even if the regulation were only focusing on NOx emissions, DoCCS only reduces NOx emissions by less than 90%, as compared with 100% from shore-side power or 99%+ from other control techniques, such as the AMECS. Approval and use of DoCCS instead of shore-side power or another alternative would be a clear violation of CEQA.

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[30] DEIR at 1-4.
[31] DEIR at 3.2-24.
[32] DEIR at 1-5.
[33] POLB website, Shore Power: http://www.polb.com/environment/air/shorepower.asp.

In addition, the DEIR does not explain how DoCCS is powered. If it runs off of a diesel-powered engine or generator, then the emissions produced by the mechanism will have to be accounted for in the CEQA analysis, and mitigated.

b. AMECS is a Significantly Better Alternative

Advanced Maritime Emissions Control System (AMECS) is a significantly better alternative to shore power than DoCCS. The system uses a sleeve to capture and remove airborne emissions from the auxiliary engines and auxiliary boilers of ocean going vessels at berth. A diesel particulate filter is already built into the mechanism, so it would not have to be retrofitted pending lengthy demonstrations and approvals, like the DoCCS DPF. AMECS is currently being tested at the Port of Long Beach and our understanding is that CARB verification is imminent. If verified, it will function as an excellent option for the MCC terminal when shore-side power cannot be used. It reduces DPM by 97.5%, NOx by 99+%, SO2 by 98.5%, and VOCs by 99.5%. The Port website specifically refers to AMECS as a potential alternative to shore-side power in the near future.[34] By the time this Project is operational, AMECS will most likely be CARB-verified, and even if it is not, it is still available for use at the Port. There is no reason for MCC to use a significantly inferior emissions reduction system like DoCCS, when AMECS is available and truly complies with the regulation.

c. The DPF for the DoCCS is Inadequate

The DEIR proposes a demonstration of a DPF on the DOCCS. While we appreciate the effort to capture PM emissions from the OGVs, we have several concerns with this initiative. First, this in and of itself illustrates why the AMECS would be a superior approach, since the AMECS reduces PM without the needed of an additional filter, especially a filter with unknown effectiveness.

Second, the DEIR admits that "due to the uncertainties associated with the application of the DPF technology to unmodified existing marine technologies, a specific level of DPM emissions control is not provided at this time."[35] PM emissions from ships is a major public health problem; we need more certainty to protect the local community and the region than is provided by the DPF. It would be one thing if there was not another technology available, but because the AMECS is proven and much more certain, it is unreasonable and arbitrary to do a DPF demonstration on the DoCCS instead of just use the AMECS.

Third, the DPF will take a minimum of 3 years to install, *after* the Project begins operation. This is an unnecessary and unacceptable delay, especially because the AMECS could be implemented much sooner. Fourth, the DEIR does not include a plan of how to address PM emissions from OGVs if the DPF demonstration fails.[36] This is unacceptable. Fifth, the DEIR states that no other feasible mitigation exists,[37] but we know that to be incorrect: the AEMCS is available.

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[34] POLB website: http://www.polb.com/environment/air/shorepowerfaq.asp#faq10.
[35] DEIR at 3.2-26.
[36] *See* DEIR at 3.2-27.
[37] DEIR at 3.2-27–28.

D. The Mitigation Measures for Reducing Truck Emissions Are Inadequate

The DEIR explains that the Project exceeds SCAQMD's levels of significance for air pollution, and one of the main contributors are on-road trucks.[38] On-road trucks are also a main contributor to the Project's cancer risk.[39] Many of these trucks will likely travel on the 710 freeway, where schools, businesses, and homes lie within close proximity and are already disproportionately burdened by air pollution from the 710 freeway, port operations, and other regional sources.

To really mitigate this problem, the Project should commit to the implementation of zero emissions truck technology, to reduce emissions both within the project borders and from the hundreds of thousands of truck delivery trips that will be made. Frustratingly, the DEIR does not even list zero emission trucks as an option. Given the technologies that are already available in the market, there is no reason that the Project should not commit to a phase-in of a zero emissions truck fleet. This project, which will not commence construction until 2015 at the earliest, has a moral obligation, as well as a duty under CEQA, to implement this life-saving technology.

Instead of the kind of commitment to zero emission technology that we need to meet federal air standards and reduce health impacts on the local community, the Port included MM AQ-2, "modernization of the delivery truck fleet," which states,

> No less than 90% of the trucks loading cement or similar materials at the MCC facility shall be equipped with an engine that meets the following requirements: 1) is no older than five years, based on engine model year or emission equivalent engine; 2) complies with current federal and state on-road emission standards (EPA 2007 Heavy-Duty Highway Rule standards or successor rules or regulations) for that model year; or 3) uses equivalent or better alternative engine technology or fuels with emissions which shall not exceed levels equivalent to the current federal and state on road emission standards for that model year. Trucks also may operate with alternative non-diesel engine technologies or fuels, but their emissions shall not exceed levels equivalent to the current federal and state on-road emission standards for that model year.[40]

This measure does not pro-actively reduce emissions in any meaningful way. Under MM AQ-2, "modernization" of the truck fleet could be met by merely adhering to the existing Port Clean Truck Program and state standards. Because of the word "or" in this measure, MCC needs to only comply with one of the three options provided: trucks 5 years old or less, trucks engine year 2007 or newer (which is the existing Clean Truck Program), ***or*** an alternative cleaner technology. Further, MM AQ-2 requires that only 90% of the fleet adhere to one of the three options. This leaves 10% of the fleet, or close to 17,000 trucks trips, to ignore these requirements altogether. This is of course less than the existing Clean Truck Program, which applies to 100% of the heavy duty truck fleet. The DEIR explains that the Clean Truck Program requires "all" trucks to meet

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[38] DEIR at 3.2-22.
[39] DEIR at 3.2-30.
[40] DEIR at 3.2-24.

the 2007 engine standards.[41] Further, the DEIR states that "[t]he heavy-duty trucks used during Project operations would comply with [the Clean Truck] Program."[42] This is obviously in conflict with the actual language of MM AQ-2, which requires that only 90% of the trucks comply with the Clean Truck Program.

To add insult to injury, it is our understanding that cement trucks rarely last more than five years because of the heavy loads that they consistently carry, thus the requirement to equip the terminal with only trucks that are five years old or less would likely occur regardless of any efforts to reduce emissions. If our understanding is correct, then it makes MM AQ-2 even less meaningful.

In addition, in the Global Climate section of the DEIR, MCC admits that "MCC only owns diesel-powered trucks and procuring... lower emitting trucks [including 'delivery trucks powered with alternative fuels such as liquid propane gas or compressed natural gas'[43]] for purposes of project GHG mitigation would have a very high cost per mass of GHG reduction. Therefore, no other measures are feasible to further reduce GHGs from the operation of proposed cement delivery trucks."[44] This is unacceptable, and an unacceptable definition of feasibility. The Port has committed to reducing Port emissions and moving forward with zero emission trucks as promised in the CAAP, and this is an excellent opportunity for the Port to act on that commitment.

The key issue over the past several years has been whether zero emission trucks are a feasible mitigation, and fortunately, that day has come. If the Port has any doubts about feasibility, the Port could opt to do a phase-in over time, which worked very well under the Clean Truck Program. While phasing in zero-emissions technology may take some time, this Project provides an excellent opportunity to catalyze development in this area so that the Port can meet its CAAP commitments and adequately mitigate the negative impacts under CEQA.

E. The Mitigation Measures for Reducing Greenhouse Gases are Inadequate

The Project will produce a net increase of CO2e that is more than double baseline levels, which the DEIR identifies as a significant impact. The fact that emissions are estimated to increase by 22,248 metric tons annually over even the 2006 levels is unacceptable. This is especially worrisome given that we believe the Port used an inflated, incorrect baseline. The "Green Port" should not be *increasing* greenhouse gas emissions, when every local, state, federal, and international policy is directed at *reducing* climate-change emissions.

1. The DEIR's Summary of Climate Change Science is Incorrect

Also unacceptable is the DEIRs summarization of climate change science. The DEIR states that "[s]cientific evidence indicates a correlation between increasing global temperatures over the

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[41] DEIR at 3.2-13.
[42] DEIR at 3.2-13.
[43] DEIR at 3.3-10.
[44] DEIR at 3.3-10.

past century and the worldwide proliferation of greenhouse gas (GHG) emissions by mankind."[45] The problematic word here is "correlation." The reality is that there is a broad consensus by the International Panel on Climate Change and others that GHG emissions are *causing* climate change; there is not just a mere *correlation*. To be candid, it is surprising that the Port would misrepresent this important fact.

2. Examples of Additional Feasible Mitigation Measures

The mitigation measures proposed in the DEIR are entirely insufficient. There are numerous mitigation measures that the Port can implement to further lower emissions from the Project. Some of these include zero emissions trucks, using shore power or equivalent technology 100% of the time, and life cycle changes. One additional example is to implement the proposed solar panels and low energy lighting that is discussed under GCC-1 immediately, rather than wait 3 years.[46]

a. Electric Cranes and Payloaders

A further example is that the Port should utilize electric cranes and payloaders. Throughout the DEIR, it is repeatedly mentioned that MCC is not required to implement the best available technologies because it cannot control the ships with which it contracts to import cement. With respect to the use of shore power, the DEIR states,

> even ships that are equipped to use shore-to-ship power sometimes cannot unload the entirety of their cargo while using shore-to-ship power. In particular, because of the high electrical load, some ships are unable to operate their cranes from shore-to-ship power to lift the equipment necessary to remove the last cement from the vessel's hold into and out of the vessel. They must then start the shipboard generators to complete unloading. MCC was only able to achieve approximately 66 percent average shore-to-ship power use in 2006.[47]

The Project's commitment to use 66% shore power, which it accomplished eight years ago, in 2006, is wholly inadequate. Statistics from 2006 cannot be used as a reference point for ships in the future, considering the immense amount of progress that has been made and continues to be made in terms of technology, and climate policy and regulations since then.

In addition, there are available alternatives for ships that are unable to unload the entirety of their cargo while using shore to ship power. Hybrid and electric payloaders have been available since 2013, and MCC can use them as an alternative to diesel powered payloaders to further reduce emissions.[48] If cement vessels require specific cranes that have not yet been updated to produce

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[45] DEIR at 3.3-1.
[46] DEIR at 3.3-10.
[47] DEIR at 1-4.
[48] John Deere website: http://www.forconstructionpros.com/product/10243562/john-deere-944k-644k-diesel-electric-hybrid-loaders.

low or no emissions, the terminal should at least commit to using AMECS when shore power does not provide enough power.

b. Funding the GHG Reduction Grant Program Based on a Formula Using the Correct Project Baseline

Finally, the Port could contribute more funds to the Port GHG Emissions Reduction Grant Program. The grant allocation formula should be based on the proper baseline (the conditions at the time of the NOP), rather than the arbitrary 2006 baseline. This would result in a more appropriate amount of funding going into this critical Grant Program.

F. The Public Health Impacts from this Project are Unacceptable

The DEIR admits that even after the proposed mitigation measures, significant impacts will remain.[49] The health effects from this Project are severe, especially from particulate matter. Numerous studies have documented a wide range of adverse health impacts from exposure to PM, including increased rates of respiratory illness and asthma, cardiovascular disease, heart attacks, strokes, emergency room visits, and premature death. Near-roadway exposure to particulate matter has also been linked to birth defects, low birth weights, and premature births. Emerging studies have shown a potential connection between exposure to fine PM and diabetes, as well as cognitive decline and other serious impacts to the brain.

The DEIR states that "if PM10 emissions accumulate in the respiratory system, they can aggravate health problems such as asthma, bronchitis and other lung diseases. Children, the elderly, exercising adults and those suffering from asthma are especially vulnerable to adverse health effects of PM10."[50] But "these ambient impacts from proposed Project operations would remain significant and unavoidable."[51]

In addition, although DoCCS, if approved, will purportedly reduce emissions of NOx by 88.9%[52], the NOx emissions that will still be released from the Project site, which will be running 24 hours a day, 6 days per week in close proximity to adjacent communities, is significant. Simultaneously, NOx will be emitted during truck loading and transporting of cement, which will also be in operation 24 hours per day.[53] The DEIR specifically states that "the main contributors to most pollutant emissions are on-road trucks, although OGV transiting the SCAB outer waters would be the largest source of NOx emissions."[54] NOx also causes significant health effects.

NOx can have a toxic effect on the airways, leading to inflammation, asthmatic reactions, and worsening of allergies and asthma symptoms. In addition, NOx reacts with VOCs in sunlight to

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[49] DEIR at 3.2-22, 3.2-26.
[50] DEIR at 3.2-28.
[51] DEIR at 3.2-28.
[52] DEIR at 3.2-18.
[53] DEIR at 3.2-22.
[54] DEIR at 3.2-22.

form ozone—also known as smog. This layer of brown haze contributes to decreased lung function and increased respiratory symptoms, asthma, emergency room visits, hospital admissions, and premature deaths. Ozone can also cause irreversible changes in lung structure, eventually leading to chronic respiratory illnesses, such as emphysema and chronic bronchitis.[55]

With regard to NO2, the DEIR admits that "the worst case NO2 background concentration…is at approximately 91% of the SCAQMD significance threshold" and "the off-site 1-hour NO2 exceedances could still have health impacts on persons located within or near exceedance areas…Moreover, it is important to note that the worst-case NO2 background concentration is itself very close to the SCAQMD threshold. Thus even minor additional increases in NO2 emissions from the Project could cause an exceedance of the standard."[56] But, again, the DEIR concludes that "since there are no other feasible mitigation measures, these ambient impacts from proposed Project operations would remain significant and unavoidable."[57]

This Project will produce continuous, toxic emissions during construction and operation of the terminal, yet not enough has been done to ensure that PM, NOx, and NO2 emissions are reduced to safe levels.

G. The DEIR Fails to Analyze Environmental Justice

Attorney General Kamala B. Harris writes that "CEQA centers on whether a project may have a significant effect on the physical environment. Under CEQA, human beings are an integral part of the 'environment.' An agency is required to find that a 'project may have a *significant effect on the environment* if, among other things, '[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly[.]'…Specific provisions of CEQA and its Guidelines require that local lead agencies consider how the environmental and public health burdens of a project might specifically affect certain communities."[58] Although a section on Environmental Justice is not explicitly required by CEQA, when the environmental impacts will cause substantially disproportionate effects on a community, the Attorney General suggests that an analysis and mitigation measures are warranted.

Construction and operation of the Project is likely to violate the civil rights of the environmental justice communities near the Project, and studies, mitigation measures and an environmental justice-centered analysis are necessary, at minimum.

The ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the single largest fixed sources of air pollution in Southern California. Emissions from port-related sources, such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, adversely affect air quality in the local port area as well as regionally. Freight operations pose a particularly acute threat to regional air quality. The

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[55] DEIR at 3.2-25.
[56] DEIR at 3.2-28.
[57] DEIR at 3.2-28.
[58] Attorney General Kamala D. Harris, 'Environmental Justice at the Local and Regional Level Legal Background,' *State of California DOJ*, May 8, 2012.

South Coast Air Basin (SCAB), where the project area is located, consistently ranks near the top of the lists for the nation's most polluted air. Freight transport, including the operations at the Ports, greatly contributes to the persistent failure of the SCAB to meet clean air standards established by EPA. In fact, the SCAQMD has determined that freight movement poses a serious risk to attainment of air quality standards.

People who live or go to school near ports, rail yards, distribution centers, freight roadways and other diesel "hot spots" face disproportionate exposure to diesel exhaust and associated health impacts, including increased risks of asthma and other respiratory effects, cancer, adverse birth outcomes, adverse impacts to the brain (including potentially higher risk of autism), heart disease, and premature death.[59]

The DEIR admits that even after mitigation measures, daily NOx emissions, 1-hour NO2 emissions, 24-hour PM10 and PM2.5 emissions, and annual PM10 emissions would exceed significance thresholds.[60] In addition, the DEIR states that "impacts of NO2, PM10 and PM2.5 from Project operations could contribute to one or more of the public health effects mentioned [which include asthma, bronchitis, lung diseases, etc.]...These effects could occur throughout Project operation."[61] Pier F is located in close proximity to west Long Beach and Wilmington, both low-income communities of color. According to the 2010 U.S. census, Latinos, African-Americans, Asians, and other non-white ethnicities represent over 75% of the population of these communities.[62] These residents, as CARB recognizes, already "bear a disproportionate share of the emission impacts from goods movement"[63] and are *already* overburdened by environmental hazards generated by the Ports of Long Beach and Los Angeles, traffic on the 710 and Terminal Island Freeways, the ICTF, as well as the several nearby refinery operations. Of particular concern in this respect are the adverse health effects of diesel emissions, which will be increased by the construction and operation of the proposed Project. The DEIR must therefore analyze the environmental justice impacts of the proposed Project and suggest mitigation measures to reduce the potential harm that may be disproportionately caused.

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[59] Kim, J., et al. "Traffic-Related Air Pollution and Respiratory Health: East Bay Children's Respiratory Health Study," *American Journal of Respiratory and Critical Care Medicine.*2004; 170: 520-526.

[60] DEIR at 3.2-25, 26.

[61] DEIR at 3.2-28.

[62] Information available at http://www.census.gov/#.

[63] *See* California Air Resources Board, *Proposed Emission Reduction Plan for Ports and International Goods Movement in California*, Ch. 5, at 1 (March 21, 2006).

H. Conclusion

In conclusion, we believe that the DEIR fails to comply with both the spirit and the letter of CEQA. We urge the Port to recirculate a new DEIR, remedying the current DEIR's many problems, as outlined above.

Thank you for consideration. Please do not hesitate to contact Morgan Wyenn at the Natural Resources Defense Council, at mwyenn@nrdc.org or (310) 434-2300, if you have any questions or would like further information.

Sincerely,

Danielle Leben
Legal Fellow
Natural Resources Defense Council

Morgan Wyenn
Staff Attorney
Natural Resources Defense Council

mark! Lopez
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ATTACHMENT

Apostolic Faith Center * California Kids IAQ * Coalition For A Safe Environment
Coalition For Clean Air * Community Dreams
East Yard Communities for Environmental Justice
Natural Resources Defense Council * South Bay 350 Climate Action

May 8, 2015

Long Beach Board of Harbor Commissioners
Port of Long Beach
4801 Airport Plaza Drive
Long Beach, CA 90815

Re: Comments on the MCC Cement Terminal Final Environmental Impact Report

To the Board of Harbor Commissioners,

On behalf of the Natural Resources Defense Council, Apostolic Faith Center, California Kids IAQ, Coalition for a Safe Environment, Coalition for Clean Air, Community Dreams, East Yard Communities for Environmental Justice, and South Bay 350 Climate Action Group, we submit these comments on the Final Environmental Impact Report (FEIR) for the MCC Terminal, Inc. Cement Facility Modification Project (MCC, Project) currently being planned at the Port of Long Beach. We appreciate the Port's response to our previous comments and the further explanation and changes made to address some of our concerns. However, we still have serious concerns about the Project and we believe there are several additional measures the Port could implement to reduce the Project's negative impacts. For example, as lead agency, we urge the Port to participate more significantly in the mitigation measures by, among other efforts, contributing to the GHG Emissions Reduction Grant Program and taking a more active role in the Periodic Technology Review. We are thankful for the opportunity to express our continuing concerns about the Project.

As noted in our previous comments, the commodity at the center of this Project is a significant source of global CO2 emissions. Cement plants account for five percent of global emissions worldwide,[1] and production of just one ton of cement requires about 400 pounds of coal and generates nearly a ton of CO2.[2] This Project aims to annually import

[1] Elisabeth Rosenthal, "Cement Industry is at the Center of Climate Change Debate," *The New York Times*, Oct. 26, 2007, *available at* http://www.nytimes.com/2007/10/26/business/worldbusiness/26cement.html?_r=0.

[2] Madeleine Rubenstein, "Emissions from the Cement Industry," *Climate Matters*, May 9, 2012 (http://blogs.ei.columbia.edu/2012/05/09/emissions-from-the-cement-industry/);

millions of tons of cement to meet a projected increased demand for cement and concrete within the U.S. The Final EIR reports that Project construction and operation will emit almost 30,000 CO2e tons annually.[3] Because of the severe effects that cement and concrete production have on the environment, MCC and the Port should do everything in their power to reduce the Project emissions as much as possible.

I. 2011 Is a More Appropriate Baseline Year for the FEIR

We fully understand the amount of flexibility afforded to the lead agency in choosing a baseline year for an accurate air quality assessment, but courts have set limits on this flexibility and we firmly believe that 2011, the year in which the NOP was released, would serve as a more appropriate baseline year under CEQA. Considering that the objective of CEQA is to assess significant environmental impacts, it would be more appropriate to assess the impacts that would occur from the Project in comparison to the impacts if the terminal were to remain in its current state (i.e., its state at the time the NOP was released). Our previous comments did not suggest that the baseline should assume that the existing facility had "essentially been abandoned."[4] We merely recommended that the baseline be set at the levels of operation from 2011, the year in which the NOP was released, whether those figures were low or high.

The year 2006 was almost 10 years ago, more than double the total amount of time that MCC operated the facility. MCC acquired the lease for the terminal in 2001, and only operated "normally" (as the Port uses that term) until 2006.[5] According to the Port, by 2008 annual shipcalls had dropped by 91%, after which the facility was almost nonoperational for two years until operations ceased entirely in 2011.[6] MCC has been in control of the facility for almost fifteen years, ten of which consisted of little to no activity. Therefore, 2011 was not just "a temporary lull in operations" as the EIR asserts, but rather a fair representation of the existing conditions of the facility that should serve as the CEQA baseline.[7]

II. The FEIR Should Have Included An Environmental Justice Analysis

Projects that are likely to have a significant effect on surrounding low-income communities are encouraged to conduct an environmental justice analysis. Other recent Port of Long Beach projects such the Pier S Marine Terminal and Backchannel Improvement Project and the Middle Harbor Redevelopment Project, as well as Port of Los Angeles projects such as the YTI Container Terminal Improvements Project and the

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"Climate Change 2007: Working Group III: Mitigation of Climate Change," *IPCC 4th Assessment Report: Climate Change 2007 7.4.5.1 Cement* (http://www.ipcc.ch/publications_and_data/ar4/wg3/en/ch7s7-4-5.html).

[3] FEIR at 3.3-12.

[4] *Id.* at 10-49.

[5] *Id.* at 10-45 ("Combined Responses to Comments").

[6] *Id.*

[7] *Id.* at 10-48

Southern California International Gateway Project each included an environmental justice section.

The ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the single largest fixed sources of air pollution in Southern California. Emissions from port-related sources, such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, adversely affect air quality in the local port area as well as regionally. Freight operations pose a particularly acute threat to regional air quality. The South Coast Air Basin (SCAB), where the project area is located, consistently ranks near the top of the lists for the nation's most polluted air. Freight transport, including the operations at the Ports, greatly contributes to the persistent failure of the SCAB to meet clean air standards established by EPA. In fact, the SCAQMD has determined that freight movement poses a serious risk to attainment of air quality standards. People who live or go to school near ports, rail yards, distribution centers, freight roadways and other diesel "hot spots" face disproportionate exposure to diesel exhaust and associated health impacts, including increased risks of asthma and other respiratory effects, cancer, adverse birth outcomes, adverse impacts to the brain (including potentially higher risk of autism), heart disease, and premature death.[8] Considering the fact that the Project predicts over 166,000 truck trips annually, the majority of which would be driving past the underprivileged communities of Long Beach and Wilmington on the 710 freeway, the environmental justice impacts of these trips should have been analyzed, along with targeted mitigation measures.

The FEIR admits that even after mitigation measures, daily NOx emissions, 1-hour NO2 emissions, 24-hour PM10 and PM2.5 emissions, and annual PM10 emissions would exceed significance thresholds.[9] In addition, the FEIR states that "impacts of NO2, PM10 and PM2.5 from Project operations could contribute to one or more of the public health effects mentioned [which include asthma, bronchitis, lung diseases, etc.]...These effects could occur throughout Project operation."[10] Pier F is located in close proximity to west Long Beach and Wilmington, both low-income communities of color. According to the 2010 U.S. census, Latinos, African-Americans, Asians, and other non-white ethnicities represent over 75% of the population of these communities.[11] These residents already bear a disproportionate share of the emission impacts from goods movement and are *already* overburdened by environmental hazards generated by the Ports of Long Beach and Los Angeles, traffic on the 710 and Terminal Island Freeways, the ICTF, as well as the several nearby refinery operations. Of particular concern in this respect are the adverse health effects of diesel emissions, which will be increased by the construction

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[8] Kim, J., et al. "Traffic-Related Air Pollution and Respiratory Health: East Bay Children's Respiratory Health Study," *American Journal of Respiratory and Critical Care Medicine*.2004; 170: 520-526.

[9] FEIR at 3.2-25, 26.

[10] *Id.* at 3.2-28.

[11] Information available at http://www.census.gov/#.

and operation of the proposed Project.[12] Therefore, the FEIR should have analyzed the environmental justice impacts of the proposed Project and suggested mitigation measures to reduce the potential harm that may be disproportionately caused.

III. MCC Should Increase Its Contribution to the POLB GHG Emissions Reduction Grant Program

As referenced above, cement production is a significant source of global greenhouse gas emissions. In addition to the 29,755 tons released annually reported by the Final EIR,[13] the Project will also indirectly result in the release of great quantities of CO2 and CO2e by increasing demand and production. Just the emissions reported in the EIR alone would exceed the SCAQMD interim significance threshold on an annual basis.[14] We appreciate MCC's contribution to the GHG Emissions Reduction Grant Program, but we believe that the contribution amount is unacceptably low. An increased contribution or an annual contribution would better offset the emissions directly and indirectly caused by the Project, and demonstrate a true commitment by MCC and the Port to reducing GHG emissions and a greener future.

The GHG emissions reported in the EIR total 29,755 tons *annually* for the life of the terminal; it makes no sense for the contribution to the GHG Emissions Reduction Grant Program to be based on the emissions from only one of those years. The contribution to the GHG Emissions Reduction Grant Program should either be annually, calculated based on the annual emissions, or, alternatively, in one lump sum but calculated to account for the emissions that will occur *annually*, throughout the entire period of operations. Further, if the Project Applicant is unwilling to contribute this amount, the Port can contribute additional funds; after all, it is the Port's responsibility to make sure this Project is properly mitigated under CEQA.[15]

IV. The Port Should Play a More Active Role in the Periodic Technology Review

We appreciate the addition of mitigation measure AQ-6 to address the need for integration of new, cleaner technologies as they become available and their implementation feasible, in the near future. However, we believe that the Port must articulate its commitment to play a more active role in this effort.

CEQA requires that "a lead agency shall not approve a project if the agency finds any feasible alternatives or mitigation measures *within its power* which would substantially

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[12] "Multiple Air Toxics Exposure Study IV (MATES IV)," *South Coast Air Quality Management District* (April 2, 2015), *available at* http://www.aqmd.gov/home/library/air-quality-data-studies/health-studies/mates-iv.
[13] FEIR at 3.3-12
[14] *Id.* at 3.3-9.
[15] CEQA Guidelines § 15126.4(a)(2).

lessen or avoid any significant effect the project would have on the environment."[16] [emphasis added.] This prescribes that mitigation measures must include those that the applicant can implement as well as mitigation measures that the lead agency has the power to enforce.

The Port is well equipped to play a lead role in investigating and identifying new emissions reduction technologies that may reduce emissions at the MCC facility.[17] These new technologies would include a potential alternative to DoCCS that is more effective at reducing criteria pollutants, zero emissions trucks, and zero emissions and near-zero emissions technologies for cement handling equipment. The Port, as lead agency, should take an active role in the Periodic Technology Review, in order to ensure that the most efficient and lowest-emissions technologies are being used for the Project. Our understanding is that Port staff indeed intends to do so, but has simply not memorialized that commitment into the language of the mitigation measure.

CEQA requires that all mitigation measures are "fully enforceable through permit conditions, agreements, or other legally binding instruments."[18] Therefore, the Port should articulate in detail its commitment to be involved in the Periodic Technology Review in the language of the mitigation measure in the FEIR.

Further, requiring the implementation of a technology only if MCC mutually agrees to it essentially gives MCC veto power over a determination of feasibility; this renders the entire mitigation measure ineffective. Accordingly, we suggest the following changes to the language of the mitigation measure:

> To promote new emission control technologies, MCC shall perform an investigation and submit a report to the POLB Chief Executive, every 5 years following the effective date of the new lease, on any POLB-identified or other new emissions-reduction technologies that may reduce emissions at the MCC facility, including the feasibility of zero emissions and near-zero emissions technologies for cement delivery trucks and cement handling equipment (e.g. payloader). **The Port will conduct a similar, independent investigation, simultaneously, and will present new, emissions-reduction technologies to MCC.** If the Periodic Technology Review demonstrates the new technology will be effective in reducing emissions and is determined ~~through mutual agreement between~~ **by** the Port ~~and MCC~~ to be feasible, including but not limited to from a financial, technical, legal and operational perspective, MCC shall work with the Port to implement such technology. **Failure to implement identified feasible emissions reduction technology is a breach of MCC's lease.**[19]

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[16] CEQA Flowchart, *California Natural Resources Agency* (May 8, 2015), http://resources.ca.gov/ceqa/flowchart/la_mmrp.html.
[17] FEIR at 10-63 (Combined Responses to Comments).
[18] CEQA § 15126.4(a)(2); *see also* CEQA § 15126.4(a)(1)(A).
[19] *See* FEIR at 10-63 (Combined Responses to Comments).

V. The FEIR Should Analyze the Induced Demand For Cement Caused by the Project

This Project is fostering and facilitating growth and inducing demand, and that induced demand is, thereby, an indirect impact of the Project, which is required to be analyzed under to CEQA. CEQA specifically states that "a project means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."[20] The Guidelines state that an EIR must "discuss the ways in which the proposed project could foster economic or population growth or the construction of additional housing either directly or indirectly, in the surrounding environment."[21] Regardless of whether there are other cement facilities in the region, this facility, which is expected to import up to 4.58 million short tons of cement annually, will undoubtedly impact economic growth.[22]

The Port must accordingly also analyze the increased impacts resulting from the life cycle of this induced growth. This includes manufacturing, transportation, and use. This life cycle analysis is all the more important because cement is particularly polluting: cement manufacturing is extremely energy intensive and, consequently, emissions intensive.[23] The cement industry currently accounts for 5% of global CO2 emissions and has been growing at an annual rate of 2.5%, a rate which is projected to persist.[24]

In addition to failing to analyze the impacts from the induced growth caused by the Project, and the life cycle of the increased levels of imported cement, the FEIR also failed to identify any mitigation measures to reduce such impacts. There are several ways to reduce the emissions caused by cement manufacturing, including using less carbon-intensive fuels to heat the kiln, energy efficiency measures to reduce the overall demand for fuel, replacing limestone with other materials and using blended cement, and carbon capture and storage. Using these methods can reduce CO2 emissions from cement by 40%.

MCC has the responsibility to ensure that the millions of tons of cement that it will be importing through its terminal at the Port are produced using the most environmentally sound methods. Further, the Port should do everything it can to ensure that the best environmental policies are being implemented for all the commodities imported at its terminals. If cement must be imported, it should be manufactured using a low-emissions and environmentally sound process.

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[20] CEQA § 21065.
[21] CEQA Guidelines § 15126.2(d).
[22] FEIR at 1-11.
[23] *See* Rosenthal, note 1
[24] *See* Rubenstein, note 2

VI. Conclusion

We strongly encourage the Board of Harbor Commissioners to make the changes outlined in this letter to reduce the negative impacts of the Project and accurately analyze the Project's impacts as required by CEQA. The current flaws with this Project undermine the Port's leadership and intentions to be "The Green Port." We believe the Port can and should do better. Thank you for your consideration.

Sincerely,

Danielle Leben
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Natural Resources Defense Council

Morgan Wyenn
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Natural Resources Defense Council

Fabiola Lao
Deputy Policy Director
Coalition for Clean Air

mark! Lopez
Director
East Yard Communities for Environmental Justice

Joe Galliani
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Jesse N. Marquez
Executive Director
Coalition For A Safe Environment

Drew Wood
Executive Director
California Kids IAQ

Ricardo Pulido
Executive Director
Community Dreams

Pastor Alfred Carrillo
Apostolic Faith Center

Attachment 7

Detailed Response of Harbor Department to State Ground for Appeal By Earthjustice

ATTACHMENT 7

HARBOR DEPARTMENT'S RESPONSE TO APPEAL SUBMITTED BY EARTHJUSTICE ON BEHALF OF EAST YARD COMMUNITIES FOR ENVIRONMENTAL JUSTICE AND COALITION FOR A SAFE ENVIRONMENT

This document contains the detailed response of the Long Beach Harbor Department ("Port") to the appeal of the environmental determinations made by the Long Beach Board of Harbor Commissioners ("Board") pursuant to the California Environmental Quality Act ("CEQA") in connection with approving the project and certifying the Final Environmental Impact Report ("Final EIR") for the MCC Cement Facility Modification Project ("Project") in the Port of Long Beach. The appeal was filed by Earthjustice on behalf of East Yard Communities for Environmental Justice and Coalition for a Safe Environment ("Appellants"). For the reasons set forth below, each of the grounds for appeal should be rejected.

I. APPELLANTS' CONTENTION THAT THE BASELINE MUST BE BASED UPON 2011 ACTIVITY LEVELS WHEN THE FULLY ENTITLED AND PREVIOUSLY CEQA REVIEWED FACILITY WAS NOT IN OPERATION IS WITHOUT MERIT.

Appellants misapply CEQA and the applicable case law when they attempt to argue that the Port used the wrong baseline in the Final EIR. As Appellants previously acknowledged in their comments on the Draft EIR for the Project, the Port has flexibility in choosing a baseline. (Attachment 1 to Appellants' Appeal Letter, page 2.) Appellants also acknowledge that there is an existing permitted cement facility on the site and that it should not be assumed that the existing facility has been "essentially abandoned." (Attachment 2 to Appellants' Appeal Letter, page 2.) Yet "abandoned" is the effect Appellants are arguing for, since, as Appellants know, the facility was in a temporary hiatus in 2011 and had no operational activities beyond site maintenance. Given that the existing facilities are fully permitted, have been fully studied under CEQA, and are currently leased to MCC– which continues to make all required rental payments – it would be contrary to CEQA to assess the modifications to the facility as if they were resulting in a totally new facility that had not previously been analyzed under CEQA and had not been permitted by both the Port and the South Coast Air Quality Management District ("SCAQMD"). Once a project has been assessed under CEQA and approved, later modifications to the project do not trigger the reassessment of the previously studied and authorized operations. (See legal authorities outlined in Final EIR starting at page 10-49.)

As explained in detail in both the Draft EIR and the Final EIR, the Port could have used the authorized capacity of the facility as the baseline. However, in order to be conservative, the Port chose instead to utilize the activities of the last full year of operation prior to the economic downturn. The Port did not use hypothetical operation levels but *actual* levels of activities.

The Port's decision to use this baseline was clearly articulated in the Notice of Preparation for the Project ("NOP"). No one took issue with this approach which is significant since the purpose of the NOP is to receive feedback to help properly define the scope of the analysis to be undertaken in the EIR.

Appellants seem to suggest that the Port should ignore the fact that the facility has operated as an on-going cement import terminal since the 1990's (following certification of a full EIR) when the facility was leased to MCC's predecessor, Lucky Cement. The fact that operations at MCC were affected by both the economic recession and the need to amend the SCAQMD permits in the five-year period before the issuance of the NOP should not lead to an artificial baseline that ignores MCC's existing facilities and entitlements.

The existing MCC facility, without the approved modifications, is a fully permitted and entitled facility that on any day, without prior approvals of any kind, can operate up to its maximum permitted level of 8.76 million metric tons per year for ship unloading and 3.45 million metric tons per year for truck loading, which is the same capacity MCC had in 2011 when the NOP for the terminal modifications was released. Although the facility is allowed to operate at this maximum level, it has never done so. Instead, the throughput at the facility always has been lower than the maximum permitted level, varying from 1.4 million metric tons in 2006 to zero by 2011 when regional construction was at a near standstill and the facility operation was temporarily suspended.

The EIR utilized 2006 as the baseline year because that was the last full year of normal operations before the recession. The years between 2007 and 2011 were clearly not "normal" for the facility. By 2007, the recession had caused a drop in ship calls and truck trips by over 31 percent and 28 percent respectively, compared to 2006 levels. By 2008, the annual ship calls had dropped by 91 percent and the truck trips by 81 percent compared to the 2006 pre-recession levels. Ship arrivals stopped in December 2008, and only a small number of truck trips occurred in 2009 and 2010 (2 percent and 1.6 percent of the 2006 pre-recession truck trip levels, respectively). Thus, none of these years could be considered to reasonably reflect the operation of the existing facility.

From this information, the Port needed to decide the appropriate activity level to use for the baseline. Although Appellants argue that an inflexible "date of the NOP" approach to the baseline is required, CEQA provides much more flexibility to a lead agency. Using the NOP date for the terminal modifications, which involve certain limited modifications to an existing facility, would have the effect of treating the existing, fully entitled cement facility--that was itself subject to prior CEQA review--as if it did not exist. CEQA Guidelines Section 15125(a) only states that the NOP year will "normally" constitute the baseline. Thus, the Guidelines themselves do not dictate the baseline, but allow flexibility. As explained in *Cherry Valley Pass Acres & Neighbors v. City of Beaumont*, 190 Cal.App.4th 316, 336-337 (2010):

> In using the word "normally," section 15125, subdivision (a) of the Guidelines necessarily contemplates that physical conditions at other points in time may constitute the appropriate baseline or environmental setting. (*Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1277–1278 [119 Cal.Rptr.2d 402].) Though the baseline conditions are generally described as the existing physical conditions in the affected area, or the real conditions on the ground (*CBE, supra*, 48 Cal.4th at p. 321), the date for establishing baseline cannot be a rigid one. Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods (*id*. at pp. 327–328, *quoting Save Our Peninsula*, *supra*, 87 Cal.App.4th at p. 125). Environmental conditions may also change during the period of environmental

> review, and temporary lulls or spikes in operations that happen to occur during the period of review should not depress or elevate the baseline. (*CBE*, *supra*, at p. 328.) Accordingly, neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence. [Citation.] (*Ibid*., internal quotations omitted.)

In *Communities for a Better Environment v. South Coast Air Quality Management District*, 48 Cal.4th 310 (2010) ("*CBE*"), the California Supreme Court observed:

> Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence.

(48 Cal.4th at 336; *accord*, *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, 57 Cal.4th 439, 510 (2013) [plurality opinion - court acknowledged that an agency's discretion in selecting the baseline even extends so far as to the omission of an existing conditions analysis altogether if the use of such a baseline would be misleading or without informational value].)

Courts have recognized that the existing conditions may properly consist of historically achieved activity levels. For instance, in *Cherry Valley Pass Acres*, *supra*, the court ruled that the EIR's use of the full allocation under an adjudicated groundwater basin as the baseline for water usage was appropriate even though actual water use was much less. The court reasoned that the entitlement existed at the time environmental review commenced and closely approximated historic water usage on the site. The California Supreme Court recently cited *Cherry Valley Pass Acres* with approval, noting that "a water allocation approximating the property's recent historical use constituted a realistic measure of existing conditions." (*Neighbors for Smart Rail*, *supra*, 57 Cal.4th at 450.)

In *Fairview Neighbors v. County of Ventura*, 70 Cal.App.4th 238 (1999), the court likewise allowed permitted levels of truck traffic that had been previously attained by an existing mining operation to serve as the baseline for the proposed expansion of the mine even though truck traffic had declined from the historic, permitted levels. In reaching this decision, the court reasoned that "[d]iscussing the possible environmental effects of the project based on actual traffic counts would have been misleading and illusory. . . ." (70 Cal.App.4th at 243.)

The baseline proposed by Appellants would essentially disregard the existing cement facility, MCC's investment therein, the existing lease held by MCC, the existing entitlements for the facility, the numerous prior approvals from both the Port and SCAQMD for the operation of facility, and the prior CEQA review that was conducted in advance of those approvals. As previously stated, Appellants' suggested baseline would treat the existing facility as if it had been shuttered and abandoned.

Such treatment is both factually and legally incorrect, especially in light of the prior CEQA review of the facility. A prior full EIR was prepared for this facility. The Port prepared a Draft EIR for the original construction and operation of the terminal (then referred to as the Lucky Cement terminal) in August 1987 (Draft EIR SCH No. 87042211). The EIR did not include any limits on throughput or truck trips. The Final EIR was prepared in December 1987, and was certified by the Board of Harbor Commissioners on January 11, 1988. There was no legal challenge to the EIR.

Following the certification of the above-referenced EIR, on April 19, 1988, the SCAQMD, acting as a responsible agency, issued permits for all of the stationary source facilities and activities at the terminal. Prior to issuing the permits, the SCAQMD Engineering Division conducted a detailed analysis of the precise equipment and facilities that were being proposed. (See, e.g., Application Processing and Calculations for Application No. 152672, dated 2-25-1988 and 4-6-88.) Once that process was concluded, in reliance on the EIR and the further engineering analysis, SCAQMD issued permits on April 19, 1988, for the construction and operation of the various components of the terminal, including the ship unloading system (Application No. 155337) and the storage and truck loading system (Application No. 152672). The ship unloading permit, in Condition 4, included a cap of 24,000 metric tons per day, which equates to 8.76 million metric tons per year, on the ship unloading system. (See Permit issued per Application No. 155337, Condition No. 4.) The throughput limit placed on truck loading was 5,760 metric tons per day, or 2,102,400 metric tons per year. (Permit issued per Application 152672, Condition No. 2.) There were no legal challenges to these permits.

With the detailed engineering for the terminal completed, the project proceeded back to the Board of Harbor Commissioners for the issuance of Harbor Development Permit (HDP) No. 87-015 for the construction and operation of the cement terminal. On February 21, 1989, the Board approved the permit and expressly incorporated the SCAQMD's conditions of operation, including the throughput limits set forth above. (HDP 87-015, Special Condition No. 1.) The cost of the original improvements (applicant funded) was estimated to be $7 million.

Later in 1989, the Port entered into the original lease for the facility with Lucky Cement. The lease assumed (and set minimum rent based upon the assumption) that over the first five years of operation, the annual throughput for the terminal would increase to 750,000 metric tons. The leasehold interest was transferred from Lucky Cement to MCC in 2001. In 2002, the lease was extended. The expiration date for the lease is now June 13, 2022. MCC currently pays $27,508 a month in rent, and pays tariff and related fees based upon an assumed minimum throughput of 500,000 metric tons of cement per year.

After the facility had operated for over a decade, MCC proposed to improve the facility by, among other things, increasing its truck loading capacity. On April 7, 2003, the Port issued for public review a Negative Declaration for the improvements, which consisted of: (1) the installation of two additional conveying blowers; (2) construction of one additional truck load-out station with two 500-ton bins; (3) modification of the existing load-out bins increasing their capacity from 250 tons to 400 tons each; (4) the construction of a 70-foot truck scale and dust collector; (5) the installation of a truck vacuum-type cleaning facility; and (6) the installation of electrical infrastructure to support the modifications. The Board of Harbor Commissioners adopted the Negative Declaration on June 16, 2003, and issued HDP No. 02-110 for the

modifications. There was no legal challenge to the Negative Declaration or the HDP. As modified, the facility had the capacity to load a maximum of approximately 224 trucks per day, compared to 135 trucks per day in the prior condition. For the improved facility, the SCAQMD increased the trucking operation to 1,000,000 metric tons per year. (See Permit No. F72816, Condition No. 4.) The improvements were estimated to cost MCC an additional $1.79 million.

In 2006, MCC applied to SCAQMD for a modification of its truck loading operating permit. The modifications dealt with equipment only, and therefore required no amendments to the HDP. MCC proposed to replace its standard polyester non-pleated bags with spun bond polyester bags in baghouse DC-2, DC-3, and DC-21 in order to increase its truck loading throughput capacity with no corresponding increase in emissions. It proposed to increase the truck loading throughput from 1,000,000 tons per year to 3,800,000 tons per year. MCC provided a detailed engineering package to SCAQMD, including emission calculations. SCAQMD conducted a CEQA review and concluded the change was exempt from CEQA and modified MCC's permit accordingly. On September 19, 2006, SCAQMD issued Permit F84160, increasing the limit on material loaded into trucks to no more than 333,333 short tons per month, with an annual cap of 3,800,000 short tons (3.45 million metric tons). SCAQMD's CEQA determination and permit issuance were not challenged.

The prior EIR, the prior Negative Declarations, and all of the other documents referenced in this response are available for review in the office of the Director of Environmental Planning at the Harbor Department's offices, located at 4801 Airport Plaza Drive, Long Beach, California 90815.

The current SCAQMD permits are as follows:

Appl_Nbr	Permit_Nbr	Issued_Date	Permit_Status	Eq_Type	Equip_Description	Appl_Date	Appl_Status
542115	G21137	10/24/2012	ACTIVE	Basic	BULK LOAD/UNLOAD CEMENT	8/17/2012	PERMIT TO OPERATE GRANTED
542116	G21138	10/24/2012	ACTIVE	Basic	CEMENT MARINE LOADING & UNLOADING	8/17/2012	PERMIT TO OPERATE GRANTED
456215	F84161	9/19/2006	ACTIVE	Control	BAGHOUSE, AMBIENT TEMP (>500 SQ FT)	4/21/2006	PERMIT TO OPERATE GRANTED
456213	F84986	11/2/2006	ACTIVE	Control	BAGHOUSE, AMBIENT TEMP (>500 SQ FT)	4/21/2006	PERMIT TO OPERATE GRANTED
456214	F84987	11/2/2006	ACTIVE	Control	BAGHOUSE, AMBIENT TEMP (>500 SQ FT)	4/21/2006	PERMIT TO OPERATE GRANTED
413208	F60019	4/18/2003	ACTIVE	Basic	I C E (50-500 HP) EM ELEC GEN-DIESEL	3/20/2003	PERMIT TO OPERATE GRANTED
396203	F48896	2/9/2002	ACTIVE	Control	BAGHOUSE, AMBIENT TEMP (>500 SQ FT)	1/16/2002	PERMIT TO OPERATE GRANTED

Source: SCAQMD
FIND http://www3.aqmd.gov/webappl/fim/prog/eqlist.aspx?fac_id=131160

Thus, as it stands today, and as it stood as of the 2011 date of the NOP, MCC has the right to operate up to the maximum levels permitted by the SCAQMD permits, namely, 8.76 million metric tons per year for ship unloading, and 3.45 million metric tons per year for truck loading. SCAQMD confirmed these facts in the comment letter it submitted on this Draft EIR.

Given that all of the approvals to construct the existing facility underwent prior CEQA review, the baseline for the EIR could have been established at those levels of operation. As explained in *Practice Under The California Environmental Quality Act*, 2d Ed., Section 12.23 (2014):

> When an agency is evaluating a proposed change to a project that has previously been reviewed under CEQA, the agency must apply CEQA's standards limiting the scope of subsequent environmental review. 14 Cal Code Regs § 15162; *Abatti v. Imperial Irrig. Dist.* (2012) 205 Cal.App.4th 650; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 542; *Temecula Band of Luiseño Mission Indians v. Rancho Cal. Water Dist.* (1996) 43 Cal.App.4th 425, 437; *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1477. Under these standards, once an EIR has been certified or a negative declaration adopted for a project, further CEQA review is limited. *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310. These standards apply whether or not the project has been constructed. *Benton v. Board of Supervisors, supra*. In effect, "the baseline for purposes of CEQA is adjusted such that the originally approved project is assumed to exist." Remy, Thomas, Moose, & Manley, Guide to CEQA, p. 207 (11th ed. 2007).

Thus, this EIR could have used the full capacity of this facility as the baseline and been fully compliant with CEQA. However, as explained in the Final EIR, the full capacity of the facility had not been reached following the above-described terminal improvements. In order to be conservative, the Port chose not to treat the SCAQMD permit limitations as the baseline. Instead, the Port chose to use *actual* 2006 activity levels - the last full year of operations at the terminal prior to the economic recession.

The cases cited by Appellants do not support the suggestion that the baseline should assume that the existing facility has essentially been abandoned. For example, in *CBE*, the California Supreme Court held that the hypothetical operational capacity stated in a permit, which had not been the subject of CEQA review, could not be used as the baseline. The court disallowed the use because it was hypothetical. The levels had never been reached during the prior operations. The court also distinguished situations such as the case here where the existing facility at issue had been subject to prior CEQA analysis and what was proposed was a modification to the previously approved facility. (Id. at 326.) Unlike CBE, the Port did not use a hypothetical baseline, but rather used the actual operational levels from the last full year of operation at the facility prior to the economic recession. This Project is clearly a "modification project" in a circumstance where the existing project had undergone full CEQA review.

Moreover, in *CBE*, the court expressly acknowledged the need for flexibility in situations such as this, where operating levels vary over time or as a result of economic conditions. The court held that a temporary lull in operations should not be used to depress the baseline. (Id. at 328.)

The other two cases cited by Appellants, *Neighbors for Smart Rail, supra*, and *Pfeiffer v. City of Sunnyvale City Council*, 200 Cal.App.4th 1552 (2011), likewise dealt with situations involving hypothetical future baselines. Here, there is nothing hypothetical about the 2006 operational levels. Those were the actual levels of operation in 2006.

Citizens for East Shore Parks v. California State Lands Comm., 202 Cal.App.4th 549 (2011), also fails to support Appellants' position. Appellants selectively quote language from that case which has no application here. In context, the "turn back the clock" reference quoted in the appeal letter relates to *Riverwatch v. County of San Diego*, 76 Cal.App.4th 1428 (1999). As reiterated in *Citizens for East Shore Parks*, the court in *Riverwatch* upheld the county's chosen baseline

which included illegal development that had occurred at a mining operation. The challenger had argued that the illegal structures should not be assumed in the baseline. The court noted that the challenger could not "essentially turn back the clock and insist upon a baseline that excluded existing conditions." (202 Cal.App.4th at 559.) The reference to "existing conditions" relates to the illegal development that had occurred. Moreover, the court warned against drawing distinctions between physical structures and their use. The court described such distinctions as "illusory" since the marine terminal at issue in that case was built and exists for a specific use - "use and structure, in other words, being hand in glove."

A case that is more on point is *Cherry Valley Pass Acres & Neighbors, supra*. In that case, the court held that the developer's adjudicated right to draw 1,484 acre-feet per year of groundwater could be used as the baseline even though the developer's actual use had dropped to 50 acre-feet per year after it had ceased operating the egg farm located on the property. The court emphasized that the actual usage in the past had been close to the maximum permitted, and was therefore not "hypothetical." Moreover, the court held that the developer's legal entitlement to draw its full allocation of water was also not "hypothetical." Here, the baseline utilized in the EIR was based upon actual operations, not hypothetical operations. Through its existing permits and lease, MCC currently has the right to operate the facility to the extent permitted by the SCAQMD throughput limitations. It could resume operations at any time it wishes to do so. It has invested nearly $9 million into the existing facilities, and is paying rent on those facilities as if they were in full operation. To suggest that the facility be treated as abandoned for the purposes of the baseline is factually and legally wrong.

II. APPELLANTS' CLAIM THAT MITIGATION IMPOSED ON THE PROJECT IS INSUFFICIENT IS ERRONEOUS.

Contrary to Appellants' assertion, the Final EIR evaluated all potentially significant environmental impacts of the Project and, for those impacts found to be significant, included all feasible mitigation measures that the Port was able to identify after a thorough search. The Port's search process was extensive and included evaluation of all mitigation measures suggested by commenters on the Draft EIR and the Final EIR; however, as explained below, no measures other than those already imposed on the Project were found to be feasible at this time.

A. Ocean Going Vessel Mitigation is Adequate.

1. AMECS is not a Feasible Mitigation Measure.

Appellants mischaracterize the "DoCCS" as a mitigation measure and then erroneously assert that "AMECS" is a feasible mitigation measure that should be used in its place. As explained in more detail below, the Board appropriately evaluated the "DoCCS" as a component of the Project proposed by MCC (not a mitigation measure), and the Board's conclusion that "AMECS" is not currently a feasible mitigation measure is supported by substantial evidence. Although "AMECS" is a promising technology undergoing demonstration testing, it is not currently commercially available for use by MCC.

First, it is important to clarify that the Dockside Catalytic Control System ("DoCCS") is not a mitigation measure selected by the Port. The Project that MCC requested the Port to review and consider under CEQA *included* the DoCCS as an integral component. Because MCC is not able

to use shore power 100% of the time a ship is at berth, MCC proposed a modification to its facility that would include the DoCCS as an alternative to shore power. As the CEQA lead agency, the Board was required to determine whether the proposed Project with the DoCCS would result in any significant environmental effects, and if it did, to incorporate all feasible mitigation measures.

Appellants' assertion that "the Port has committed to only [the DoCCS] short-term use via a 'demonstration'" is flat out wrong. The MCC Project can go forward only if the DoCCS is permitted by the SCAQMD and installed and operational at the facility. If the SCAQMD does not issue a permit to construct for the DoCCS, then MCC will be required to seek approval from the Port to modify the Project, which will necessitate additional CEQA review. The CEQA analyses assume operation of the DoCCS and include all emissions from its operation in the air emission calculations.

Appellants appear to confuse the timing for use of the DoCCS with the timing for the demonstration of the diesel particulate filter ("DPF"). There is no demonstration testing of the DoCCS. Rather, the DoCCS must begin operations immediately. Only the DPF will undergo demonstration testing, and there is a slight time gap before the DPF demonstration is required. Mitigation Measure AQ-3 ("MM AQ-3") requires MCC to test a DPF as an "add-on" to the DoCCS. Pursuant to MM AQ-3, MCC must submit a complete plan for the demonstration test of the DPF no later than three (3) months after the initial use of the DoCCS and, once the plan is approved by the Port, complete 1,000 hours of testing. The purpose of the DPF is to reduce particulate matter emissions when the DoCCS is in use. Although the DPF will undergo demonstration testing, the DoCCS must be available for use throughout this time period.

Appellants contend that the Port should implement the Advanced Maritime Emissions Control System ("AMECS") instead of the DoCCS. As explained in detail in the Final EIR at page 10-66, the barge-mounted AMECS is still undergoing demonstration and is not commercially available. In addition, the business model for how the AMECS technology will be deployed and the long-term costs of implementing the AMECS technology are not yet understood. Until the AMECS is proven to achieve emission reduction levels recognized by the California Air Resources Board ("CARB") and is commercially available for use on dry bulk vessels, the AMECS is not a feasible mitigation measure or project alternative.

The Port has been working with Advanced Cleanup Technologies, Inc. ("ACTI") since 2006 on the demonstration of the AMECS technology in the Port. The AMECS has gone through several generations and modifications since 2006. The previous generation of the AMECS was wharf-mounted, often referred to as the "sock on a stack" consisting of a "bonnet" lifted by a crane placed over the smokestacks to capture emissions, and an emissions treatment system which included a wet scrubber for PM emissions. In 2008, emissions tests of the AMECS were conducted on two dry bulk vessels at the Port of Long Beach. CARB issued a letter on December 15, 2008 stating that the AMECS was estimated to achieve particulate matter emissions reductions of 93-98 percent and oxides of nitrogen emissions reductions of at least 95 percent. With caveats relating to the overall reduction of the hoteling emissions, CARB staff indicated in the letter that they expect the AMECS to be capable of meeting the requirements of the Regulation to Reduce Emissions from Diesel Auxiliary Engines on Ocean-Going Vessels While At-Berth in a California Port (CARB, 2008).

However, since 2008, ACTI has modified the AMECS wet scrubber emission treatment technology (changed to an active diesel particulate filter or DPF technology), and more recently, the platform from which it operates (a wharf-based system to a system mounted on a barge that uses a direct connection to a vessel's exhaust outlets).

Currently, there is only one AMECS unit—a prototype—that recently underwent demonstration and emissions testing on container vessels. ACTI has not yet commercialized the AMECS, and should it be commercialized, the new commercial unit will need to undergo the testing and approval process required by CARB as a viable alternative to the use of electrical shore power. On February 10, 2014, the Long Beach Board of Harbor Commissioners approved an agreement between the Port and SCAQMD to demonstrate the AMECS's performance and conduct emissions testing on various vessels. Under the agreement, ACTI is required to conduct demonstration and emissions testing of the AMECS on ships of varying types including dry bulk, liquid bulk, tankers, car carriers, and container vessels for a certain number of hours. The demonstrations and emissions testing are expected to take at least 6 months after the test plan is approved by CARB. It is not known at this time when the test plan will be approved and when emissions testing will commence. Because the AMECS has not yet undergone the required CARB demonstration and testing for dry bulk vessels, and until it becomes available as a commercialized system, the AMECS cannot be considered feasible for use on the MCC Project.

Although it is not feasible to replace the DoCCS with the AMECS technology for the Project, it might be possible to test the AMECS technology on a dry bulk vessel at the MCC facility if the timing of the AMECS testing and MCC facility operations overlap. Therefore, in response to comments on the Draft EIR, the Port added Mitigation Measure AQ-5 in the Final EIR as a Project mitigation measure to require that MCC participate in AMECS emission testing if certain conditions are met. The new measure is as follows:

> **Mitigation Measure AQ-5: Participation in AMECS Emission Testing.** After construction of the proposed project has been completed and operations have resumed at the MCC facility, MCC shall use its best effort to participate in the SCAQMD's AMECS demonstration project at the Port of Long Beach (Port). MCC's participation specifically pertains to Task 10 Durability Testing as described in Exhibit A to the contract between the City of Long Beach and the SCAQMD, approved by the Port of Long Beach Board of Harbor Commissioners on February 10, 2014 (the "AMECS Demonstration Testing"), if at such time, AMECS technology is undergoing Task 10 Durability Testing at the Port.
> If MCC participates in the testing of a vessel pursuant to the AMECS Demonstration Testing, the costs of testing will be borne as indicated in the contract, and no testing costs shall be borne by MCC (with the exception of in-kind staff time associated with coordinating the logistics of the testing). Additionally, if MCC participates in the AMECS Demonstration Testing, such vessel hoteling hours shall be exempt from the requirements of Project Environmental Control (EC AQ-2) – Shore to Ship Power/Cold Ironing, which requires OGVs that call at the MCC facility to use shore-to-ship power (cold-ironing) no less than 66 percent of the time (on an annual average) while at berth.

In addition, and also in response to comments on the Draft EIR, the Port imposed a new mitigation measure that would require periodic review of new technologies to reduce emissions

at the MCC facility. At the May 11 Harbor Commission hearing on the Project, the Board further strengthened this new mitigation measure. The new measure now provides as follows:

> **Mitigation Measure AQ-6: Periodic Technology Review**. To promote new emission control technologies, MCC shall perform an investigation and submit a report to the POLB Chief Executive, every 5 years following the effective date of the new lease on any POLB-identified or other new emissions-reduction technologies that may reduce emissions at the MCC facility, including the feasibility of zero emissions and near-zero emissions technologies for cement delivery trucks and cement handling equipment (e.g. payloader). The Port will conduct a similar, independent investigation, simultaneously, and will present new, emissions-reduction technologies to MCC. If the Periodic Technology Review demonstrates the new technology will be effective in reducing emissions and is determined by the Port to be feasible, including but not limited to from a financial, technical, legal and operational perspective, MCC shall work with the Port to implement such technology.

DoCCS is a currently available alternative to shore power that will help reduce at-berth emissions. Although it does not achieve the same emission reductions as shore power, it is the best option available at this time to maximize emissions reductions from dry bulk vessels that cannot use shore power 100% of the time at the berth. In those instances when shore power cannot be used, the DoCCS will be required to capture as much NOx as possible. In addition, MCC will be required to test the DPF to determine whether it can further reduce at berth emissions of particulate matter. There are no other feasible control measures currently available.

Appellants state that the AMECS is superior because it can achieve greater emissions reductions than the DoCCS and "is more feasible than DoCCS *for immediate use*." This statement is incorrect. MCC has already acquired the DoCCS, which sits on the MCC terminal available for use as soon as the SCAQMD issues appropriate permits, which can occur only after this CEQA review process is complete. In contrast, the only AMECS available is one prototype currently used for the demonstration testing. Regarding emissions reductions, both systems utilize selective catalytic reduction technology for the NOx emission control. While the EIR conservatively indicated a NOx emission reduction level for the DoCCS based upon the minimum performance standard of the control equipment, it is reasonable to assume that once the system is fully optimized, the NOx emission reduction performance of the two systems will be similar. In addition, if the DPF demonstration is successful, the particulate emission control of the two systems may be similar.

Even if the air quality analysis in the Final EIR assumed installation of the AMECS at the highest emissions performance alleged in comments on the Draft EIR, it would not change the significance conclusions of the Final EIR. With respect to the mass emissions thresholds, the estimated emissions from the Project with mitigation are significant only for annual average NOx; emissions of VOC, CO, SOx, PM10 and PM2.5 all are less than significant and so would require no further mitigation under CEQA. See Final EIR Table 3.2-11. With respect to NOx, only the ship emissions during hotelling ("Ships – Hoteling Aux Sources") would be affected by switching from the DoCCS to the AMECS. As shown on Table 3.2-11, this is 14.6 pounds per day out of a total of 618.6 pounds per day for the Project with mitigation. Thus, only a small

portion of the Project's emissions would be avoided by assuming the AMECS in lieu of the DoCCS, and the Project would remain significant for annual average NOx mass emissions.

With respect to ambient air quality, use of the AMECS would not affect the ambient air quality analysis for two reasons. First, the 1-hour NOx analysis, which was determined to be significant, was based on ship arrival at the dock with assist tugs (Final EIR Appendix A-2, Section 3.1 item 2 on page A-2-2). This step occurs before the at-berth emissions control technology can be employed, so, as with the DoCCS, the AMECS would not be employed and no change to 1-hour ambient air quality analysis would occur. Second, the PM analysis, which was determined to be significant, showed the main source contributors to be the onsite on-road truck dust (road dust) and truck loading emissions (Final EIR page 3.2-27). These sources would not be controlled by either the DoCCS or the AMECS. Therefore, use of the AMECS would have no effect on reducing road dust emissions.

2. The Final EIR Was Not Required to Add an Additional Shore-Side Power Mitigation Measure.

Appellants argue that the minimum requirement of 66% shore power in the Final EIR is inadequate. However, as explained in the Final EIR, 100% shore power is not feasible at the MCC facility because MCC does not own or control the diverse fleet of dry bulk vessels that call at its facility, the vast majority of which have not been retrofitted to allow connection to shore power. In addition, as also explained in the Final EIR, the 66% requirement is an "anti-backsliding" measure designed to ensure that MCC uses shore power at least as frequently as it did in the past. It does not limit MCC's future use of shore power, which may exceed 66%.

When MCC took over the lease to the facility, it inherited the facility SCAQMD permit to operate for Bulk Cement Ship Unloading, which included a condition that all ships had to use shore power while unloading. To comply with its SCAQMD permit, MCC has successfully designed and implemented a specialized cold ironing connection, through the dry-dock connection of the ship, to power critical ship systems (i.e., on-board lights, ventilation, and instrumentation) while the ship is being unloaded.

In most cases in the past, ships have not been able to receive sufficient electrical power through the dry-dock breaker to operate the on-board cranes. The on-board cranes serve two necessary roles in the cement unloading process. Initially, the ship uses the on-board cranes to open the holds. Later, during the unloading process, the ships use their on-board cranes to transfer the payloader or "power squeegee" from the dock to a hold, and then from hold to hold to complete the unloading process.

When unloading, the pneumatic unloader (Kovako or van Aalst) removes the majority of the cement from a ship's hold. For final cleanout, the payloader, a modified front end loader, must be lifted into a hold, where it pushes the remaining cement together so that the pneumatic unloader can reach it more efficiently. The ship's on-board crane is used to lift the payloader from the dock into the hold, and thereafter from hold to hold as each hold goes through the cleanout phase. For many of the ships, MCC has been able to cold iron up until the point that the ship's crane is needed to lift the payloader. Since the ships are infrequent callers that have not been retrofitted for shore power, MCC has had to connect the ships to shore power through a circuit breaker designed to be used when the ship is in dry dock. Most of these breakers have a

very limited electrical capacity and are not capable of receiving enough power through their dry-dock breakers to run the crane to lift the payloader.

MCC is not able to change standard ship industry design criteria for dry-dock breakers on ships owned by countless companies in international trade; therefore, it is expected that the limitations on dry-dock breaker capacity that have been noted in the past will continue for the foreseeable future. As such, it is expected that ship auxiliary engines will continue for the foreseeable future to operate for short periods to supply power to operate the cranes. For this reason, cold ironing cannot be achieved 100% of the time at this facility. SCAQMD has acknowledged the inability to cold iron 100% of the time at berth and has allowed MCC to use limited on-vessel generators during unloading under an Order for Abatement from 2005 to 2010 while MCC worked toward an alternative method to control emissions from ships that are not able to use shore power. As part of the Project, MCC has identified the DoCCS for use when ships are unable to cold-iron and has submitted an application for a modification to its existing SCAQMD permit to allow vessels that call at the MCC facility to either use cold-ironing or the DoCCS at-berth emission control system when unloading. The SCAQMD permit modification is pending and will be considered for approval upon completion of the CEQA review process.

MCC does not own the ships that are used to transport cement to the Long Beach terminal, and so does not have the ability to retrofit them to be compatible with shore power. Ships of the class used to transport cement to the Long Beach terminal are not dedicated to cement; they are chartered by many diverse parties to transport a variety of bulk products around the world. The ships were not designed or built to cold iron, and their owners have not retrofitted them to do so. Also, because it is an international fleet used to transport many bulk products to many ports, very few ships have visited the terminal multiple times, giving MCC no leverage to insist that the ship owners retrofit their ships.

In 2006, MCC succeeded in getting a clause added to charter party agreements that says the ship captains will cooperate with cold ironing. This language provides that ships will receive shoreside electrical power, and "will use this power throughout the time the vessel is berthed," providing exceptions to this requirement only where shore power capacity is insufficient to supply the required load; there is a breakdown in shore power supply; or during a vessel emergency event. This clause does not change the fact that most ships were not designed or constructed to cold iron, and the international bulk transport fleet of ships of the relevant size (owned by many different shipping companies) has not been retrofitted to be compatible with shore power. Therefore, significant barriers to shore power are expected to continue in the future.

Appellants state that the Port is likely to install shore power in all of its docks by the time this Project is operational. This statement is not correct. The Port committed in the CAAP to outfit all its *container terminals* with shore power infrastructure by 2014, and that commitment has been completed. MCC's terminal is a dry bulk terminal, not a container terminal, and is not part of the CAAP commitment. In addition, the MCC facility is not subject to the CARB At-Berth Regulation which only applies to passenger, container, and refrigerated cargo vessels and is not applicable to dry bulk cement vessels.

Although MCC may be able to use shore power more frequently than it did in the past, Environmental Control measure EC AQ-2 insures that its shore power usage will not be less than it was during prior operations (i.e., 66% shore power). In addition, when shore power is not feasible, MCC must use the DoCCS which may include the additional benefits of the DPF if that demonstration is successful.

B. The Final EIR's Truck Mitigation Is Adequate.

Appellants argue that the Port has not gone far enough with truck mitigation for this Project because it did not require zero or near-zero emission trucks. Appellants also erroneously suggest that these technologies are already available in the market and that there is no reason that the Project should not require them now. However, Appellants have provided no information about the availability of such trucks for use in connection with MCC's operations. As explained below, such zero emissions trucks remain in the testing phase and are not currently feasible for cement delivery in connection with the MCC terminal.

Through the CAAP and the Clean Trucks Program, the Port has worked consistently over the last decade to reduce emissions from trucks serving the San Pedro Bay Ports. In connection with this Project, the Port has gone a step further by imposing Mitigation Measure MM AQ-2 which requires MCC to go above and beyond the Clean Trucks Program and current federal and state on-road emission standards. MM AQ-2 requires that 90% of the trucks calling at the MCC facility have engines no more than five years old (or the equivalent). The remaining 10% must meet the Clean Trucks Program and state and federal requirements. In response to Appellants' comments on the Draft EIR and to clarify the intent of this measure, the language in the Final EIR was revised to read as follows:

> **Mitigation Measure AQ-2: Modernization of Delivery Truck Fleet**. No less than 90 percent of the trucks loading cement or cementitious material at the MCC facility shall be equipped with an engine that meets one of the following requirements: 1) is no more than five years old, based on engine model year ("5-Year Engine"); 2) has been designed or retrofitted to comply with federal and state on-road heavy-duty engine emissions standards (e.g. EPA 2010 engine emission standards or successor rules or regulations for on-road heavy duty diesel engines) for a 5-Year Engine ("Emission Equivalent Engine"); or 3) uses alternative engine technology or fuels demonstrated to produce emissions no greater than a 5-Year Engine ("Alternative Equivalent Engine"). The remaining 10 percent of the trucks shall comply with all applicable federal and state heavy-duty on-road truck regulations. In addition, all trucks loading cement or cementitious materials at the MCC facility shall be registered in the Port of Long Beach and Los Angeles Clean Truck Program Drayage Truck Registry and the CARB Drayage Truck Registry. Compliance with this 90 percent requirement shall be determined on a calendar year basis. Documentation of compliance, showing the following information, shall be submitted to the Port's Environmental Planning Division on an annual basis by January 31 following each year of operation: 1) truck vehicle identification number (VIN), 2) engine model year, 3) annual truck trips, and 4) if non-diesel technology, manufacturer engine standards.

In addition to Mitigation Measure AQ-2, another mitigation measure, MM AQ-6, has been included that requires MCC to participate in periodic technology reviews that expressly include

zero emission and near-zero emission technologies for cement delivery trucks. Appellants are incorrect to the extent they suggest zero and near-zero technologies are not part of this review process.

While zero-emissions technologies are promising, there are currently no zero emission technologies available in the marketplace to replace the types of cement delivery trucks used at the MCC facility. Appellants are simply incorrect when they assert that such vehicles are "readily available."

Because the development and testing of many of these technologies are still in the early stages, the timeline for commercial viability is speculative at this time. The phase-in of cleaner diesel-fuel heavy-duty trucks under the Port's Clean Trucks Program was possible because trucks meeting the 2007 EPA on-road heavy-duty engine emission standards were known to be readily available at the time the program was implemented. In sharp contrast, zero and near-zero emissions trucks are still in development.

The ports of Long Beach and Los Angeles Technology Advancement Program (TAP) works along with other interested parties and the air regulatory agencies (U.S. Environmental Protection Agency, California Air Resources Board, and South Coast Air Quality Management District) to partner with technology providers to fund the demonstration of emissions reduction technologies in port operations. In July 2011, the two Ports' Harbor Commissions met jointly to consider the staff report entitled "Roadmap for Moving Forward with Zero Emission Technologies at the Ports of Long Beach and Los Angeles." (Zero Emissions Roadmap Report) and directed staff to expand the TAP guidelines to consider and potentially fund early stage zero-emission technology projects. An expansion of the guidelines facilitates the opportunity for promising, early stage zero emission technologies to potentially participate in the TAP since the TAP previously focused on near-term technologies ready for commercial deployment following an in-use demonstration in port applications.

Several small-scale zero emission and near zero emission truck demonstration projects have been conducted as part of the TAP. In 2013, under the TAP, International Rectifier developed a prototype plug-in hybrid electric vehicle (PHEV) from a conventional diesel-fueled Class 8 drayage truck. The PHEV will be deployed into drayage operations to evaluate the vehicle's performance and durability under various payloads and scenarios. To support the demonstration, International Rectifier has developed duty-cycle simulator software with a display unit to guide the driver through pre-loaded duty cycles representing various driving states, such as transient and creep modes. The duty-cycle simulator will be used to establish the baseline performance of the conventional diesel-fueled truck to compare and evaluate the PHEV's performance. In-service demonstration is expected to start Fourth Quarter 2015.

The TAP is also engaged in the development and demonstration of an all-electric battery drive system for Class 8 trucks applications. Transportation Power, Inc. (TransPower), with additional funding provided by the U.S. Department of Energy and California Energy Commission, developed an advanced electric propulsion system, ElecTruck™ designed to meet or exceed diesel truck performance standards while producing zero emissions. Under the Port's TAP, TransPower is currently working to integrate the ElecTruck™ drive system into at least seven Navistar ProStar® trucks by Fall 2015 and work with drayage truck operators to demonstrate and

evaluate the performance of the all-electric trucks in Port drayage operations over a 12-month demonstration period.

As part of the TransPower project, Total Transportation Services, Inc. (TTSI), a drayage truck operator, conducted a test of an initial prototype all-electric vehicle in 2011-2012, which successfully hauled a loaded container weighing 52,000 pounds over the Gerald Desmond Bridge and Vincent Thomas Bridge. In addition, one year of operational and performance testing of a second "pilot" truck in actual drayage operations was conducted in the Los Angeles area from late 2013 through November 2014. This testing information helped identify areas where the electric drive system required improvements to enhance system reliability and has been used to develop an updated drive system that will undergo additional testing.

Also through the TAP, POLA and POLB provided funding towards the demonstration and testing of a hydrogen fuel cell powered Class 8 truck by Vision Industries. The *Tyrano*, is powered by a lithium-ion battery that is charged on-board by a hydrogen fuel cell generator. The truck was demonstrated in mid-2012 and achieved a range of 200 drayage miles on a single tank of hydrogen. However, on October 20, 2014, the LA Business Journal reported that Vision Industries Corporation, which did business as Vision Motor Corps., filed for bankruptcy despite receiving millions in grant money from local, state, and federal agencies. The article stated that the largest impediment to marketability of the company's product was the difficulty in getting the hydrogen fuel that powers the trucks.

Additionally, there are three new TAP projects that have received management approval and will be brought to the Port's Board of Harbor Commissioners for approval in the near future. These projects include TransPower Electric Drayage Infrastructure and Improvement (EDII) which involves the building of battery charging infrastructure and improving batteries and engines; Department of Energy/SCAQMD Zero Emission Cargo Transport project which focuses on battery-electric trucks with fuel cell range extenders; and the U.S. Hybrid On-Board Charger for Zero Emission Cargo Transport project to develop an on-board charging system for electric trucks.

Notwithstanding these efforts, there are still no zero emission trucks proven and available for MCC usage. Although there are several testing programs underway, it remains entirely uncertain when or if such trucks will become available.

C. The Greenhouse Gas Mitigation Measures in the Final EIR are Sufficient.

Appellants assert that the greenhouse gas mitigation measures in the Final EIR are inadequate and then go on to include several suggestions. As indicated below, however, all of their suggested measures were already evaluated in the Final EIR, which explained why the measures are not feasible and/or cannot be implemented in the manner suggested by Appellants.

> **Zero/near-zero emissions cement trucks**: Such trucks are in the development stage and are not currently available. See pages 10-68 and 10-69 for the detailed explanation.
>
> **100% shore side power or equivalent**: MCC is unable to use shore power 100% of the time, and there is no equivalent technology currently available for use with dry bulk vessels. See pages 10-59 to 10-63 for the detailed explanation.

Immediate implementation of solar panels and low energy lights: As explained in the Final EIR (page 10-72), the Project entails backland construction and dock work. Due to construction logistics, it would be impractical to begin installation of solar panels and lighting before this fundamental work on the site is completed. Likewise, it is not practical or safe to conduct the installation concurrent with the site preparation work. MCC must submit a plan for implementation of these measures before it can start construction on the project, and the backland and dock work is estimated to take approximately 18 months. In light of the realities of commencing the backland and dock work, it is not realistic or practical to require the *immediate* installation of the solar panels and low voltage lighting. Therefore, the "no later than three (3) years from the start of Project construction" requirement in Mitigation Measure GCC-1 is reasonable.

Electric cranes and payloaders: Appellants again suggest, but provide no evidence, that electric payloaders or cranes are available commercially for this application. Research during the project design and to respond to a similar comment on the Draft EIR has not identified any electric equipment that would meet the operational needs of the facility. See Final EIR at pages 10-72 to 10-73 for additional information.

IV. THE SCOPE OF IMPACTS CONSIDERED IN THE FINAL EIR WAS PROPER.

A. The Final EIR Was Not Required to Separately Analyze Environmental Justice Impacts.

Previously, in comments on the Draft EIR, a commenter suggested that an environmental justice analysis was legally required. (Final EIR, pages 10-41 to 10-42.) The Final EIR explained in detail that CEQA does not require a separate environmental justice analysis. (Final EIR, pages 10-75 to 10-76). Appellants do not dispute or take issue with this conclusion. Instead, Appellants seem to argue that from a policy standpoint, the Port should have mandated the preparation of such an analysis. This is contrary to CEQA, which expressly states that CEQA is not to be interpreted so as to impose procedural or substantive requirements beyond those expressly stated by the Legislature or in the CEQA Guidelines. (Pub. Res. Code 21083.1.) Prior projects that Appellants cite as containing environmental justice sections were joint CEQA and National Environmental Policy Act ("NEPA") documents. Unlike CEQA, NEPA requires a separate environmental justice analysis.

Even though the Final EIR does not contain a separate section titled "Environmental Justice," the Final EIR fully and completely discloses the impacts of the Project on all communities surrounding the Port. The Final EIR also discloses the possible health effects of the Project and applies all feasible mitigation measures to reduce the impacts. As a practical matter, there are no additional measures that could have been added to the Project even if the Final EIR had included a separate environmental justice section.

B. CEQA Does Not Require an Analysis of the Life Cycle of Cement or the Type of Induced Demand Analysis that Appellants Describe.

Appellants suggest that the EIR was required to analyze the "life cycle" of the cement that will be transported through the MCC facility. Appellants cite no authority to support the scope of

this request; nor does such authority exist.[1] CEQA instead requires a good faith effort to reasonably disclose localized impacts associated with a project and cautions against attempting to assess speculative or uncertain impacts.

The facility modification involved in this Project does not encompass the manufacturing or use of cement beyond any minor amounts used in the construction. The impacts associated with the manufacturing and use of cement would occur with or without the modifications to the MCC terminal. See, e.g., *Friends of the Eel River v. Sonoma County Water Agency*, 108 Cal.App.4th 859, 876 (2003) (court observes that "when a project relies on an arrangement that predates the project and is authorized in a different proceeding, the project's EIR [need not] consider the significant impacts of this prior arrangement."). In other words, the market for cement will be met with or without the modification of the MCC terminal. Thus, neither the manufacturing or ultimate use of the cement could fairly or reasonably be considered impacts of the terminal modifications.

More fundamentally, the analysis requested by Appellants would require the Port to examine the impacts of manufacturing activities that generally take place outside California and outside of the United States, which is plainly beyond the scope of CEQA. The purpose of CEQA is to analyze projects' environmental impacts within the State of California. For instance, PRC § 21000 states: "The Legislature finds and declares as follows: (a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern. . . . (c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state. . . . [and] (g) It is the intent of the Legislature that all agencies of the state government which regulate activities or private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian."

Nothing in CEQA requires the far-reaching analysis urged by Appellants here. Instead, CEQA specifically requires that analysis be focused on impacts within a relatively localized project area. CEQA Guidelines section 15125, which addresses the environmental setting, states: "An EIR must include a description of the physical environmental conditions in the vicinity of the project . . . from both a local and regional perspective."

A significant effect on the environment is defined as a "substantial adverse change in the physical conditions which exist in the area affected by the proposed project." CEQA Guidelines § 15002(g);[2] see also, CEQA Guidelines § 15126.2 ("In assessing the impact of a proposed project on the environment, the Lead Agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time [environmental review commences]," noting that the discussion should include "relevant specifics of the area"

[1] Along those lines, it is important to keep in mind that CEQA is not to be interpreted "in a manner which imposes procedural or substantive requirements beyond those explicitly stated in [the statute] or in the [CEQA] guidelines." PRC § 21083.1. The California Supreme Court has likewise cautioned that CEQA "must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement." *Laurel Heights Improvement Association v. Regents of University of California*, 6 Cal.4th 1112, 1132 (1993) and *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 576 (1990).

[2] *Accord*, CEQA Guidelines § 15382.

and the "resources involved."). The scope of review certainly does not extend to impacts beyond the borders of California (over which the Legislature of this State has no jurisdiction), especially ones that are not directly or indirectly caused by a project, as is the case here. Any analysis of such impacts would be speculative and beyond the reasonable, good faith disclosure standard established by CEQA. CEQA Guidelines §§ 15064(d)(3), 15088(c), 15144, 15145, 15151, 15204(a); *Save Tara v. City of West Hollywood*, 45 Cal.4th 116, 133 (2008); *Save Round Valley Alliance v. County of Inyo*, 157 Cal.App.4th 1437, 1450-1454 (2007).

The genesis of the obligation to analyze GHG emissions in CEQA documents is the California Global Warming Solutions Act of 2006 or "AB 32." The focus of AB 32 is on "statewide greenhouse gas emissions," which are expressly limited to "the total annual emissions of greenhouse gases in the state." Health & Safety Code Section 38505(m). [Emph. add.] The mandate of AB 32 is to reduce the "in state" GHG emissions to their 1990 level by 2020. Health & Safety Code Section 38550.

The CEQA Guidelines were amended in 2010 to address GHG emissions. CEQA Guidelines § 15064.4 requires a lead agency to "make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project." When assessing the significance of GHG impacts, CEQA Guidelines § 15064.4(b) states that a lead agency should consider, among others, "[t]he extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions." In regard to plans for the reduction of GHG emissions, CEQA Guidelines § 15183.5 states that such plans must, among others, "[q]uantify greenhouse gas emissions . . . resulting from activities within a defined geographic area," and "[i]dentify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within [that] geographic area."

In *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal.4th 155 (2011), the California Supreme Court cautioned against reliance on "life cycle" studies associated with a particular product, such as plastic or paper bags. The court noted that while such studies may be a useful guide for the decision-maker when a project entails substantial production or consumption of a product, when "increased use of the product is an indirect and uncertain consequence, and especially when the scale of the project is such that the increase is plainly insignificant, the product 'life cycle' must be kept in proper perspective and not allowed to swamp the evaluation of actual impacts attributable to the project at hand." 52 Cal.4th at 175. The court went on to conclude that the environmental impacts discernible from the life cycles of plastic and paper bags would not be significantly impacted by a plastic bag ban in the City of Manhattan Beach.

Similarly here, it simply cannot be shown that the modifications to the MCC facility would create any measureable or predicable impact on cement manufacturing or usage. Just as the purported increased use of shopping bags was uncertain, any presumption regarding increased use or manufacturing of cement in Asia is likewise speculative.

Further, and tellingly, the Governor's Office of Planning & Research ("OPR") and the Natural Resources Agency specifically rejected the notion of requiring the type of global analysis of GHG emissions urged by Appellants here when adopting CEQA Guidelines on that topic, noting that "the phrase 'associated with' in the preliminary draft [of CEQA Guidelines § 15064.4] was

replaced by 'resulting from' to conform to the existing CEQA law that requires analysis only of impacts caused by the project. This change is also necessary to avoid an implication that a 'life-cycle' analysis is required." April 13, 2009 letter from Cynthia Bryant, Director of OPR to Natural Resources Secretary Mike Chrisman.

In short, the impacts of cement manufacturing and use are separate and divorced from the terminal modification here at issue. Nothing in CEQA mandates the far-reaching and limitless analysis urged by Appellants here. Appellants essentially have restated the same arguments that were raised in comments on the Draft EIR. The Final EIR fully addressed these comments. (Final EIR, pages 10-53 to 10-56.)

Regarding induced growth, Appellants note the forecasted growth in the U.S. cement market and suggest that the modifications to the MCC cement facility will actually cause increased demand for and usage of cement materials, and that therefore the EIR should have assessed the growth inducing effects of the terminal modifications. However, contrary to Appellants' claim, the potential for growth inducement effects from the facility modifications were assessed properly in Section 5.3 of the Final EIR on pages 5-2 to 5-3. That section explains that the terminal modifications have an extremely low impact on population, which Appellants do not dispute. The potential for indirect growth-inducing impacts on the cement market is addressed in Section 5.3.3. Therein, the Final EIR explains that the production and use of cement tends to be regional rather than international. It is only when local supply is not sufficient to meet the demand that additional cement is needed from outside of the region.

The Final EIR explains that the terminal improvements involve modification of an existing facility to improve operational efficiency and storage capacity. The terminal modifications involve no increase in the throughput limitations currently imposed upon the facility by SCAQMD. While the terminal modifications facilitate the storage capacity for a local supply of cement, this supply is not a driving force for usage of the cement in the region. Appellants present no evidence, and the Port has found none, to suggest that disapproval of the terminal modifications would have any impact on the number of projects that get constructed in the region. Moreover, the MCC terminal is one of many cement terminals on the West Coast. Just within California, there are 11 terminals and 10 manufacturing plants. (See PCA, California Cement Industry, CA Cement Production.)

More fundamentally, the planning and construction of infrastructure, commercial projects and residential development is in response to population growth. It is not controlled by the method by which any one type of building material (e.g., cement) is transported to the general area. While a temporary shortage of a building material may cause inconvenience or temporary delays in construction schedule, it is speculative to suggest that a project that helps to normalize local supplies of a building material will actually induce the construction of a project that is not otherwise warranted.

C. The Final EIR Properly Analyzed Direct, Indirect, and Cumulative Traffic Impacts.

Appellants' statement that the traffic analysis considered only the impacts within three miles of the Project is incorrect. As explained below, the scope of the traffic analysis was designed to evaluate all intersections and roads that could be significantly impacted by traffic from the

Project. The Project-related traffic distribution is based on a review of previous MCC customers, the location of known ready mix plants in the region, the potential market area for cement, and probable travel routes of these customers to/from the MCC facility.

As the distribution of Project-related traffic on the regional roadway network extends outward from the Project site, the number of Project trips at any particular intersection or road or freeway segment decreases as traffic disperses through the region. Once the analysis expands outward to locations where it uncovers no significant impacts, there is no need to continue the detailed analysis. Although in this particular case that point may be approximately three miles from the Project site, that scope was not selected arbitrarily.

Likewise, the analytical methods and significance thresholds used in the traffic study were not selected arbitrarily. The traffic study applied City of Long Beach traffic study policies to local streets and the 2010 Congestion Management Program for Los Angeles County (Metro 2010) ("CMP") to freeway and regional arterial facilities.

The geographic scope of the traffic study and selection of specific locations for analysis were based on the location of the Project site in the context of the surrounding local and regional roadway systems and the potential for Project traffic to create significant impacts. The intersections chosen for analysis are all-way stop controlled and are not freeway ramp terminals. None showed any significant effects from the Project.

Although the annual Project trips are estimated to be 166,400, the net new peak hour truck trips are 38 (or 76 passenger car equivalents). This number, which is the standard measure of traffic impacts in CEQA documents, is relatively small compared to existing traffic already on regional streets and highways. When these peak hour trips are added to the trips already on the regional roadway network, the traffic study shows that the new trips do not trigger any significant impacts. See Final EIR at page 3.6-12.

An analysis of the nearest CMP arterial monitoring locations at Pacific Coast Highway & Santa Fe Avenue and Pacific Coast Highway & Alameda Street showed that the number of Project trips during the highest peak hour would be below the threshold of 50 trips and would not require further analysis at CMP arterial locations in accordance with the CMP. In addition, three CMP freeway monitoring locations nearest to the project site were also studied. These included I-710 between Pacific Coast Highway and Willow Street, I-710 between I-405 and south of Del Amo Boulevard, and I-110 between Wilmington Avenue and south of C Street. Project traffic at these three locations also did not meet CMP threshold of 150 trips per direction for analysis; therefore, no further analysis was required.

As mentioned above, beyond the locations examined in detail in the traffic study, Project related trips will disperse over the wider regional area resulting in even fewer trips at any particular intersection or roadway or freeway segment beyond those analyzed in the Project traffic study, with the result that Project traffic impacts will be even lower at these more distant locations. Because the locations analyzed in detail showed no significant impacts from the Project, any analysis of other locations farther from the Project site would show even less impact.

For the cumulative analysis, the results of the traffic study also showed no impacts at any study location. For the reasons set forth above, analysis of additional, more distant locations similarly would have found no significant impact.

V. APPELLANTS' REQUEST THAT THE PROJECT INCLUDE A PROJECT LABOR AGREEMENT REQUIRING 100 PERCENT UNION JOBS ASSOCIATED WITH CONSTRUCTION IS NOT A CEQA ISSUE.

Whether the Project is constructed with union or non-union workers has no bearing on the adequacy of the Final EIR. It is a policy issue that is outside of the scope of this appeal.