



**City of Long Beach**  
*Working Together to Serve*

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney

**DATE:** July 1, 2015  
**To:** Mayor and City Council Members  
**FROM:** Charles Parkin, City Attorney *CP*  
**SUBJECT:** Appeal From the Harbor Commission Certification of the MCC Cement Facility Modification Project Final Environmental Impact Report

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**BACKGROUND**

On May 11, 2015, the Board of Harbor Commissioners (Board) certified that the Final Environmental Impact Report for the MCC Cement Facility Modification Project (Final EIR) complies with the California Environmental Quality Act (CEQA). At the same meeting, the Board also approved the project analyzed and evaluated in the Final EIR.

By letter dated May 22, 2015, Earthjustice on behalf of East Yard Communities for Environmental Justice and the Coalition for a Safe Environment appealed the Board's certification of the Final EIR. By letter dated May 25, 2015, the Coalition for a Safe Environment, jointly with 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 certification of the Final EIR. The appeals will be heard by the City Council on July 14.

**PROCEDURES FOR APPEAL**

Section 21.21.507 of the Municipal Code governs this appeal. Essentially, persons or entities that participated in the proceedings before the Board had the opportunity through May 25 to appeal the Board's certification of the Final EIR to the City Council. Appeals must list all grounds and specify in detail why the Board's actions do not comply with CEQA, and these grounds must have been raised before the Board. An appellant also is required to submit with the appeal all documentation upon which the appellant relies.

The procedures for the July 14 hearing are as follows. First, the Harbor Department will present a brief staff report. Then the appellants will present their appeals. The Harbor Department and MCC Terminals, Inc., the Project applicant, will then respond to the appeals, and finally the appellants will have an opportunity for rebuttal. The appellants collectively will have a total of 30 minutes to present to the City Council and, within the total time allotted to them, can divide their time as they choose between presentation and rebuttal and between the individual appellants. The Harbor

Department and MCC Terminals Inc., also will have a total of 30 minutes to respond to the appeals and can divide the time as they choose.

These presentations will be followed by an opportunity for public comment and City Council deliberations.

### **SCOPE OF THE APPEAL**

Since the Long Beach Charter provides that the Board has final decision making authority over the project for which the Final EIR was certified, the City Council does not have the legal authority to approve or reject the Project or to make any changes to the Project. The only issue on appeal is whether the Board complied with CEQA when it certified the Final EIR.

### **LEGAL STANDARD FOR CITY COUNCIL DETERMINATION**

It will be the duty of the City Council on appeal to consider whether the Board complied with CEQA in certifying the Final EIR. When the City Council considers whether the Board complied with CEQA, it does so "de novo," meaning that the Council must consider the facts before it and make its own determination. It does not have to give deference to the determinations made by the Board.

It will be the duty of the City Council to consider the adequacy of the Final EIR in light of its purpose as set forth by Law:

The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided. (CEQA Section 21002.1(a).)

The CEQA regulations, known as the CEQA Guidelines, further explain this purpose as follows:

An EIR is an informational document which will inform public agency decision makers and the public generally of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. (CEQA Guidelines Section 15121(a).)

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be

exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure. (CEQA Guidelines Section 15151.)

### **OPTIONS AVAILABLE TO THE CITY COUNCIL**

The City Council has two options in considering this appeal:

1. Deny the appeal and approve the resolution affirming the Board's certification of the Final EIR and making related findings; or
2. Grant the appeal and direct the Harbor Department to proceed with appropriate CEQA review before the Harbor Department reconsiders the MCC Cement Facility Modification Project.

cc: Patrick H. West, City Manager  
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Board of Harbor Commissioners  
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