



# CITY OF LONG BEACH

DEPARTMENT OF PLANNING AND BUILDING

333 West Ocean Boulevard - 5th Floor

Long Beach, CA 90802

(562) 570-6194

FAX (562) 570-6068

04 AUG -6 PM 3:21

## APPLICATION FOR APPEAL

An appeal is hereby made to Your Honorable Body from the decision of the

( ) Zoning Administrator on the 2 day of AUGUST 19 2004.

( ) Planning Commission

(X) HARBOR COMMISSION

APPELLANT:

CALIFORNIA EARTH CORPS  
NATURAL RESOURCES DEFENSE COUNCIL  
COALITION FOR CLEAN AIR

APPLICANT: PORT OF LONG BEACH / ARMY CORPS OF ENG.

Project address: PIER J

Permits requested: ENVIRONMENTAL IMPACT REPORT

Project description: PIER J EXPANSION PROJECT EIR/ETS

Reason for appeal: EIR fails to establish the proper BASELINE, fails to consider priority toxicants, fails to adequately mitigate adverse impacts

Your appellant herein respectfully requests that Your Honorable Body reject the decision of the ( ) Zoning Administrator or ( ) Planning Commission and ( ) approve or ( ) deny this application.

(X) HARBOR COMMISSION

Signature of Appellant: [Signature]

Print name of Appellant: DON MAY | MELISSA LIN PERELLA

Mailing Address: 4927 MINTURN AVENUE | 1314 SECOND STREET

Phone No. (562) 630-1491 | LANEWOOD 90712 | Santa Monica 90401

Note: Please be sure to review the filing instructions on the reverse side of this form. A filing fee may be required. \$

(213) 630-1192 | Todd Campbell, Coalition for Clean Air  
523 W. 6th, 10th Fl, LA 90014

### STAFF USE ONLY

Counter Staff: \_\_\_\_\_ Case No. \_\_\_\_\_ Date: \_\_\_\_\_

Filing Fee Required: ( ) Yes ( ) No Application complete: ( ) Yes ( ) No

RECEIVED  
CITY CLERK  
LONG BEACH, CALIF.

04 AUG -6 PM 3: 27

## FILING INSTRUCTION

- I. These instructions apply only when **appealing a denial**. Appeal of Conditions of Approval shall be considered a **denial**.

The following materials shall accompany this appeal:

### A. Filing fees:

1. Appeal to **PLANNING COMMISSION**  
(See current fee schedule)
2. Appeal to **CITY COUNCIL**  
(See current fee schedule)
3. Appeal by an Aggrieved Person not having an interest in the project (not the Applicant)  
(No fee required)

### B. Sets of plans:

1. For **PLANNING COMMISSION**: Ten (10) sets of reduced (11" X 17") plans.
2. For **CITY COUNCIL**: Twenty-eight (28) sets of reduced (11" X 17") plans.

### C. Photographs:

Ten (10) sets of mounted color copied photographs.

- II. When the Appellant (Aggrieved Person) is not the Applicant, the Appellant is not required to file the above materials. The Applicant of the Case shall be required to file the above materials.



# CITY OF LONG BEACH

DEPARTMENT OF PLANNING AND BUILDING

333 West Ocean Boulevard - 5th Floor • Long Beach, CA 90802

(562) 570-6194

FAX (562) 570-6068

*City of In Beach Harbor Commission*

## APPLICATION FOR APPEAL

RECEIVED  
CITY CLERK  
LONG BEACH, CALIF.  
03 AUG - 1 PM 2:11

An appeal is hereby made to Your Honorable Body from the decision of the  
(-) Zoning Administrator on the 21 day of July 19 2003 agenda # 10  
(-) Planning Commission Harbor Commission

APPELLANT: Diana Mann

APPLICANT: Carnival Corporation on Pier 5, 231 Woodsrow Way  
Long Beach, CA 90802

Project address: Pier 5

Permits requested: approval of an amendment to Harbor

Project description: Development Permit HDP #00-023  
for doc expansion

Reason for appeal: We are concerned that the proposed  
expansion is designed to accommodate additional  
ships rather than simply to provide for passenger  
convenience. Full EIR is needed

Your appellant herein respectfully requests that Your Honorable Body reject the decision of the ( )  
Zoning Administrator or ( ) Planning Commission and ( ) approve or ( ) deny this application.

Signature of Appellant: Diana Mann see attached

Print name of Appellant: DIANA MANN

Mailing Address: 621 Manila Avenue, Long Beach CA 90814

Phone No. 562-494-2889

Note: Please be sure to review the filing instructions on the reverse side of this form. A filing fee may be required.

=====STAFF USE ONLY=====

Counter Staff: \_\_\_\_\_ Case No. \_\_\_\_\_ Date: \_\_\_\_\_

Filing Fee Required: ( ) Yes ( ) No Application complete: ( ) Yes ( ) No



## Surfrider Foundation

**Surfrider Foundation**  
P.O. Box 30165  
Long Beach, CA 90853

***Re: Carnival Cruise Ship Dock Expansion***

August 1, 2003

To the Mayor and Council,

Pursuant to PRC, Section 21151, subdivision C, we hereby appeal to the City Council the July 21 decision of the Harbor Commission to expand the Carnival Cruise ship dock without an environmental impact report. Port Sprawl has grave environmental impacts to our entire city. These impacts must be evaluated before any project is approved.

The following organizations join our appeal:

**Oceana**  
Erin Simmons  
Post Office Box 14320  
San Francisco, CA 94114-0320

**Bluewater Network**  
Teri Shore, Randy Zurcher  
311 California St. suite 510  
San Francisco, CA 94104

**The Sierra Club**  
Gordon LaBedz  
621 Manila Avenue  
Long Beach, CA 90814

**California Earth Corps.**  
Don May  
4927 Minturn Avenue  
Lakewood CA 90712

Sincerely,

Diana Mann

### **In addition to the increase of air pollution**

#### **Cruise Ship Pollution in one week**

210,000 gallons of sewage

1,000,000 gallons of gray water

25,000 gallons of oily bilge water

130 gallons of hazardous wastes

16,000 lbs. Of garbage

**CALIFORNIA EARTH CORPS**  
**4927 Minturn Avenue**  
**Lakewood, CA 90712**  
**(562) 630-1491**

July 31, 2003

Diana Mann  
Long Beach Surfrider

Re: Port of Long Beach Board of Harbor Commissioners  
July 21 Meeting Item 6, Carnival Cruise Terminal Expansion

Dear Ms. Mann:

I have reviewed the Settlement Agreement and believe that the proposed expansion of the Carnival Cruise Terminal exceeds the limits delineated in the Settlement Agreement. I understand that you appeared at the July 31, 2003 Board meeting and opposed Item 6, the approval of an Amendment of Harbor Development Permit HDP #00-023, requesting instead that a full EIR was required and should have been prepared. Under CEQA, there are only four alternatives available for a Permit Amendment: to certify an EIR, to approve a Negative Declaration or Mitigated Negative Declaration or to determine that the Amendment is not subject to this division of CEQA. Under PRC Sec. 21151 Subdivision (c ), you may appeal this action of the Board of Harbor Commissioners to the Long Beach City Council under any of these alternative actions.

I have attached the opinion of CBA Attorney Doug Carstens, who represented Surfrider on this issue, should there be any question. Or if California Earth Corps may be of assistance in any way in assuring that your appealate rights are upheld, please do not hesitate to ask.

Sincerely,



Don May, President  
California Earth Corps

Attachment: DPC letter

**CHATTEN-BROWN & ASSOCIATES**

3250 OCEAN PARK BOULEVARD

SUITE 300

SANTA MONICA, CALIFORNIA 90405

[www.cbearthlaw.com](http://www.cbearthlaw.com)

TELEPHONE: (310) 314-8040  
FACSIMILE: (310) 314-8050

E-MAIL:  
[DRC@CBAEARTHLAW.COM](mailto:DRC@CBAEARTHLAW.COM)

July 31, 2003

Don May  
California Earth Corps  
4927 Minturn  
Lakewood, California 90712

RE: Public Resources Codes Section 21151 Subdivision (c)

As we discussed, Public Resources Codes section 21151 subdivision (c) provides:

"If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration; or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any."

Under this provision, we believe it is possible to appeal the decisions of the Board of Harbor Commissioners of the Port of Long Beach to the City Council of the City of Long Beach. (See also *Vedanta Soc. of Southern California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517, 526-529.)

Please contact us if you have any questions.

Sincerely,



Douglas P. Carstens

RESOLUTION NO. C-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AFFIRMING THE DETERMINATION BY THE BOARD OF HARBOR COMMISSIONERS THAT THE APPLICATION BY CARNIVAL CORPORATION TO MODIFY AN EXISTING WHARF IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND MAKING FINDINGS RELATING THERETO

WHEREAS, The Board of Harbor Commissioners of the City of Long Beach ("Board") at its meeting of November 13, 2000 certified that the Final Environmental Impact for the Carnival Cruise Lines Relocation Project was completed in accordance with the provisions of the California Environmental Quality Act and state and local guidelines, made certain findings and determination relative thereto, adopted a statement of overriding considerations, adopted a mitigation monitoring and reporting program, and approved the project and harbor development permit (the "Approval"); and

WHEREAS, the City of Long Beach, acting by and through its Board of Harbor Commissioners ("City"), issued a Harbor Development Permit to Carnival Corporation ("Carnival") pursuant to the Approval; and

WHEREAS, Carnival thereafter built the Project, including an 1,100 foot wharf (the "wharf"); and

WHEREAS, on June 20, 2003, Carnival filed an application to widen the wharf at one interval which is sixty (60) feet in length and fifty (50) feet in width to allow safer access to ship's stores and baggage doors for all classes of vessels; and

WHEREAS, the Director of Planning and Environmental Services of the Harbor Department ("Director") determined that the proposed modification to the wharf was an immaterial change to the project and issued a letter dated July 1, 2003 so stating to

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 interested persons including Surfrider Foundation, The Sierra Club, and California Earth  
2 Corps; and

3 WHEREAS, by letter dated July 14, 2003, Surfrider Foundation objected to  
4 such proposed modification; and

5 WHEREAS, the Director referred Carnival's proposed modification to the  
6 Board; and

7 WHEREAS, the Director, in accordance with Section 15301 of guidelines  
8 adopted by the Secretary of the California Resources Agency, determined that the minor  
9 alteration of the wharf proposed by Carnival is categorically exempt;

10 WHEREAS, on July 28, 2003, the Board adopted Harbor Department  
11 Resolution HD-2613, which, among other things, finds and determines that the proposed  
12 modification to the wharf is categorically exempt from the California Environmental Quality  
13 Act; and

14 WHEREAS, on August 1, 2003, Diana Mann appealed that determination to  
15 the City Council pursuant to Public Resources Code Section 21151(c) on behalf of  
16 Surfrider Foundation, Oceana, Bluewater Network, The Sierra Club and California Earth  
17 Corps. (The "Appellants"); and

18 WHEREAS, the appeal was placed upon the City agenda of the City Council  
19 and Appellants had notice and an opportunity to be heard.

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

22 Section 1. The City Council hereby finds and determines that Carnival's  
23 proposed modification to the wharf is categorically exempt from the provisions of the  
24 California Environmental Quality Act, all in accordance with Section 15301 of the guidelines  
25 adopted by the Secretary of the California Resources Agency.

26 . Sec. 2. The City Council further finds and determines that the proposed  
27 modification will not facilitate an expansion in use of the facility beyond that currently  
28 existing and that there is no substantial evidence in the record that the proposed

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200



1 modification may have a significant effect on the environment.

2 Sec. 3. Based on the above findings and determinations, the City Council  
3 affirms the determination of the Board of Harbor Commissioners that the proposed wharf  
4 modification is categorically exempt from the California Environmental Quality Act.

5 Sec. 4. The Harbor Department Director of Planning , whose office is located  
6 at 925 Harbor Plaza, Long Beach, California 90802, is hereby designated as the custodian  
7 of the documents and other materials which constitute the record of proceedings upon  
8 which the City Council's decision is based, which documents and materials shall be  
9 available for public inspection and copying in accordance with the provisions of the  
10 California Public Records Act (Cal. Government Code Sec. 6250 et seq.)

11 Sec. 5. The Director of Planning shall file a notice of determination with the  
12 County Clerk of the County of Los Angeles and with the State Office of Planning and  
13 Research.

14 Sec. 6. This resolution shall take effect immediately upon its adoption by the  
15 City Council, and the City Clerk shall certify to the vote adopting this resolution.

16  
17 I hereby certify that the foregoing Resolution was adopted by the City

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 Council of the City of Long Beach at its meeting of \_\_\_\_\_, 2003 by the following  
2 vote:

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
City Clerk

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

DH:dmp  
8/6/03  
C-11\CARNIVAL.RES

Larry Herrera

08/06/2004 04:12 PM

To: Linda Ramsay/CH/CLB@CLB  
cc: Jerry Miller/CH/CLB@CLB, Christine Shippey/CH/CLB@CLB,  
Merianne Nakagawa/CH/CLB@CLB  
Subject: Appeal of Harbor Commission EIR Pier J Expansion Project

Linda,

The Charles Gale provided me with a copy of the subject appeal by Don May, Melissa Lin Perella and Todd Campbell of the Harbor Commissions certification of an EIR for the Pier J Project. A PDF copy of the appeal form is attached.

This is similar to the appeal of the Carnival Cruise project last August 19, 2003, and it requires that the City Council hear the appeal under the California Environmental Quality Act section 21151 (c).

As the Harbor Commission decision was rendered August 2, 2003, the appeal period expires on August 12, 2003. Given this scenario, it has been suggested that the appeal be heard by the City Council on September 7, 2004.

Mr. Gale advises me that the City Clerk must notice the appellants 14 days prior to the hearing. For a meeting of September 7th, notices would have to be sent before August 24, 2004.

We are prepared to issue the required notice, subject to the appeal filing period expiration and any necessary coordination by your office, the City Attorney, and the Harbor Department.

Thank you.

Larry



Appeal of Habor Commission Decision 080604.pdf

3



OFFICE OF THE CITY ATTORNEY  
Long Beach, California

ROBERT E. SHANNON  
City Attorney

HEATHER A. MAHOOD  
Assistant City Attorney

PRINCIPAL DEPUTIES

Barbara D. de Jong  
Dominic Holzhaus  
Michael J. Mais  
Belinda R. Mayes

DEPUTIES

Gary J. Anderson  
Alan D. Bennett  
Christina L. Checchi  
Randall C. Fudge  
Charles M. Gale  
Michelle Gardner  
Everett L. Glenn  
Donna F. Guin  
Monte H. Machit  
Lisa Peskay Malmsten  
James N. McCabe  
Barry M. Meyers  
Susan C. Oakley  
J. Charles Parkin  
Carol A. Shaw

August 19, 2003

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
CALIFORNIA

RE: Appeal of Harbor Department Determination that Carnival Corporation's  
Application to Modify an Existing Wharf is Categorically Exempt under  
the California Environmental Quality Act

**Background**

In November 2000, the Board of Harbor Commissioners certified the Environmental Impact Report ("EIR") for the Carnival Cruise Lines Relocation Project (the "Project"). The Project included construction of a 1,100 foot wharf for berthing one cruise ship at a time, a ship berthing area with a water depth of 30 feet, a five-story parking structure, a 40,000 square foot passenger terminal, access roads and landscaping. The wharf is supported by approximately 300 concrete piles. At its extremities, the wharf consists of a narrow catwalk with bollards for tying up the vessels. The midsection of the 1,100 foot wharf consists of a concrete deck approximately 420 feet long and 50 feet wide used for loading and offloading baggage and supplies.

**The Application**

In April 2003, Carnival commenced operations at the new terminal. In June 2003, Carnival filed an application with the Harbor Department to modify the wharf by expanding the existing concrete deck by 60 feet in length by 50 feet wide. During their initial operations at the facility, Carnival determined that this modification would enhance the safety and

Honorable Mayor and City Council  
August 19, 2003  
Page 2

efficiency of loading and unloading baggage and supplies. This proposed modification would not change the overall length of the 1,100 foot wharf, would only widen part of the midsection and would not permit more than one cruise ship to be accommodated at the wharf at a time.

On July 28, 2003, the Board of Harbor Commissioners found that the proposed extension would not intensify the use of the facility and that it will improve the safety and operations of a currently permitted facility. The Board therefore found that the proposed modification to the wharf was categorically exempt from the California Environmental Quality Act ("CEQA") and approved Carnival's application. Harbor Department Resolution No. HD-2163.

### **The Appeal**

On August 1, 2003, Surfrider Foundation, joined by Oceana, Bluewater Network, The Sierra Club and California Earth Corps (the "Appellants"), filed an appeal pursuant to Section 21151(c) of CEQA. Section 21151(c) provides that if a nonelected decision making body, such as the Board of Harbor Commissioners, makes a CEQA determination, that determination is appealable to the agency's elected decision making body, the City Council. The Appellants claim that another EIR should be prepared before Carnival can modify the existing wharf as proposed.

### **The Issue Before The City Council**

The issue before the City Council is whether the Board of Harbor Commissioners was correct in finding that Carnival's proposed wharf modification is categorically exempt from CEQA.

### **The Legal Standard**

CEQA provides that certain categories of projects will be exempt from CEQA because they have been determined not to have a significant effect on the environment. Section 21084. These "categorical exemptions" are listed in the CEQA regulations, commonly known as the Guidelines. More than one categorical exemption may apply to a particular project.

For example, the Guidelines exempt from CEQA

"minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." Guidelines Section 15301.

The existing wharf is approximately 1,100 feet long and the proposed modification would not change the length of the wharf. The existing wharf can be used by only one cruise ship

Honorable Mayor and City Council  
 August 19, 2003  
 Page 3

at a time and there will be no expansion of that use if the proposed modification is made. The existing concrete deck for handling baggage and supplies is approximately 420 feet long. The proposed alteration would add approximately 60 feet of deck supported by 11 piles (less than 4% of the number of piles driven for the existing wharf). The alteration will not result in more baggage or supplies; the same baggage and supplies will be handled in a less constricted area, improving safety and efficiency.

The Appellants argue that another environmental impact report is required to consider the impacts of Carnival's proposed modification to the wharf. An environmental impact report is required for any local agency approval which may have a significant effect on the environment based on substantial evidence. CEQA Section 21151(a); Guidelines Section 15064. A significant effect in this context is a substantial, or potentially substantial, adverse change in the environment. CEQA Section 21151(b).

The Appellants have not identified any substantial adverse change in the environment that may result from the modification of the existing wharf proposed by Carnival. The Application for Appeal merely mentions a concern that "the proposed expansion is designed to accommodate additional ships." As discussed above, the wharf is not being extended to accommodate additional ships, only widened in a 60 foot area to be used for handling existing volumes of baggage and supplies.

#### **Possible City Council Actions**

Based on the current record, it is recommended that the City Council concur in the determination by the Board of Harbor Commissioners that the proposed modification of the wharf by Carnival is categorically exempt from CEQA. If the City Council concurs in this determination, the appropriate action would be to adopt the attached resolution, affirming the action taken by the Board of Harbor Commissioners and making independent findings.

If the City Council disagrees with the determination that the proposed modification is categorically exempt, the appropriate action would be to reverse the determination of the Board of Harbor Commissioners and send the matter back to the Harbor Department for further CEQA analysis.

Very truly yours,

ROBERT E. SHANNON, City Attorney

BY   
 DOMINIC HOLZHAUS,  
 Principal Deputy

DH:dmp