



## Legislation Text

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File #: 22-0026, Version: 1

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Recommendation to request that the City Council: (1) receive supporting documentation into the record and conduct a public hearing on two appeals of the Board of Harbor Commissioners' adoption of the Final Initial Study/Negative Declaration (IS/ND) for the World Oil Tank Installation Project (Project) filed pursuant to Long Beach Municipal Code Section 21.21.507 by Safe Fuel and Energy Resources California (SAFER CA) and Long Beach residents Nicholas Garcia, Sopha Sum, and Sophall Sum, and Earthjustice, Coalition for Clean Air, East Yard Communities for Environmental Justice, Communities for a Better Environment, Center for Biological Diversity, and Sierra Club - Angeles Chapter (collectively, "The Coalition"); and (2) adopt resolution denying the appeals and upholding the Board of Harbor Commissioners' adoption of the Final IS/ND for the Project.

Pursuant to Long Beach Municipal Code Section 21.21.507, the scope of the appeal hearing before the City Council is limited to whether the environmental determination for the World Oil Tank Installation Project (Project) was made in full compliance with the California Environmental Quality Act (CEQA). As set forth below and in the attached documents, the Harbor Department believes that the Board of Harbor Commissioners (Commissioners) fully complied with CEQA when it adopted the Final Initial Study (IS)/Negative Declaration (NO) for the Project. However, it will be up to the City Council to consider the appeals and determine whether the adoption of the Final IS/NO was proper and in accordance with CEQA.

If the City Council determines that the Harbor Commission's adoption of the Final IS/NO complies with CEQA, it must reject the appeals and affirm the Board of Harbor Commissioners' adoption of the Final IS/NO for the Project (see Attachment 1 for proposed resolution). Alternatively, if the City Council finds that the Harbor Commission's adoption of the Final IS/NO did not comply with CEQA, then it must uphold the appeals and direct the Harbor Commission to set aside the Project approval and conduct the appropriate CEQA analysis before reconsidering the Project.

### A. The Board of Harbor Commissioners' Action Being Appealed.

On October 28, 2021, the Harbor Commission held a public hearing to consider the adoption of the Final IS/NO, approve the Project and issue a Harbor Development Permit (Staff Report is provided as Attachment 2). The Commissioners voted unanimously (one commissioner absent) to adopt Resolution HD-3051 (Attachment 3), wherein it adopted the Final IS/NO as being fully compliant with CEQA. The Harbor Commission took that action at the conclusion of a public hearing during which the Harbor Department staff and a representative from World Oil Corporation, gave extensive presentations on the Project and the Final IS/NO (Attachment 4 and Attachment 5, respectively). Following the presentations, a total of 11

public speakers testified before the Board; 5 spoke in favor of the Project, and 6 spoke in opposition to one or more aspects of the Project. One Commissioner asked the City Attorney to respond to and provide perspective on the legality of some of the comments submitted to the Board of Harbor Commissioners prior to the public hearing. Commissioners expressed their support for World Oil Corporation and the Project. The full transcript of the hearing is provided as Attachment 6 to this staff report. The Board of Harbor Commissioners' questions and deliberations are set forth on pages 43-51 of the transcript.

## B. Summary of the World Oil Tank Installation Project.

In August 2019, the Harbor Department received a Harbor Development Permit application from World Oil Terminals (World Oil), operator of their privately-owned petroleum storage facility that has been located at 1405 Pier C Street in the Long Beach Harbor District since 1964. World Oil proposes to construct and operate two new 25,000-barrel-capacity petroleum storage tanks with foundations, pumps, and connections to existing pipelines to increase the efficiency of World Oil's operations with no increase in throughput due to limitations associated with the physical geometry of the site, physical limitations of the existing pipelines and truck loading racks, and permitted throughput limits. World Oil does not produce or refine crude oil or natural gas. The two new smaller tanks would replace two currently underutilized, larger tanks that store petroleum oil products transported to and from the World Oil refinery in South Gate.

Two larger tanks would then be available for lease to third-party vendors to store fuels transmitted via pipeline, as is currently done. There are no proposed improvements to the existing pipelines or truck loading racks or to third-party vendor facilities.

## C. Overview of the IS/NO and Public Input Process.

The IS/NO for the Project was prepared in accordance with the CEQA Guidelines (Title 14, Division 6, Chapter 3 of the California Code of Regulations). The Notice of Intent to Adopt and Availability of the Draft IS/NO was issued by the Port on October 7, 2020, for a 30-day review and comment period. On October 28, 2020, the Port issued a Notice of Extension of the Public Review and Comment Period extending the public review and comment period to November 20, 2020.

During the public review period, the Port received written comments from a total of eight agencies, groups/organizations, and individuals. Harbor Department staff and its consultant responded in writing to nearly 120 comments received on the Draft IS/NO; responses to each comment are provided in the Final IS/NO. The comments are included and fully addressed in the Final ISIND, Chapter 8 - Responses to Comments. The comments of the two appellants regarding the Draft ISIND and the responses to those comments are set forth in the Final ISIND at pages 8-27 to 8-109 (Earthjustice, et. al.) and pages 8-112 to 8-222 (SAFER CAI).

The Notice of Intent to Adopt and Notice of Public Hearing for the Final ISIND was issued on October 14, 2021, 14 days prior to the public hearing for the Board of Harbor Commissioners' consideration of the Final ISIND. The Final ISIND was made available electronically on the Port of Long Beach web site at [www.polb.com/ceqa](http://www.polb.com/ceqa).

At the public hearing on October 28, 2021, the Board of Harbor Commissioners adopted the Final ISIND in accordance with CEQA, after hearing the testimony from 11 members of the public.

#### D. Project Description, Summary of ISIND Analysis, and Conclusions Regarding the Project Impacts.

##### 1. Description of the Project.

The Project would provide for the construction and operation of two new internal floating roof petroleum storage tanks with 25-horsepower pumps approximately 60 feet in diameter and 56 feet tall, each with a capacity of 25,000 barrels within the existing 13-foot tall containment wall in the vacant northwest corner of the existing facility. Approximately 40 linear feet of piping would be installed to connect the new tanks to existing infrastructure at the facility such as the truck loading racks. A short electrical conduit connection would be required between the new tanks and the existing subpanel located just outside the containment wall to the north. The proposed two new smaller tanks would replace two currently underutilized, larger tanks that store petroleum oil product transported to and from the World Oil refinery in South Gate. Two larger tanks would then be available for lease to third-party vendors to store fuels transmitted via pipeline, as is currently done. There are no proposed improvements to existing pipelines, truck loading racks, or third-party vendor facilities.

##### 2. Summary of ISIND Analysis

The Harbor Department prepared an IS pursuant to CEQA to determine if the Project may have a significant effect on the environment. The IS concluded that there is no substantial evidence, in the light of the whole record, that any aspect of the Project would cause a significant environmental impact and no mitigation measures are required. Therefore, an NO was prepared.

#### E. Summary of Appeals and the Harbor Department's Responses to the Appeals.

Following the Board of Harbor Commissioners' adoption of the Final ISIND on October 28, 2021, two appeals were filed. The appeal of SAFER CA is included hereto as Attachment 7. The Harbor Department's detailed responses to the grounds to SAFER CA's appeal are provided as Attachment 8. The appeal filed by The Coalition is included as Attachment 9. The Harbor Department's detailed responses to The Coalition's appeal are provided as Attachment 10.

The majority of the issues raised in the two appeal letters were previously raised by the appellants during the CEQA process and addressed in the Final IS/ND. The following is a summary of the claims made in the appeals and the Harbor Department's responses to those claims. Background information on each of the appellants is also provided.

## Background

SAFER CA advocates for safe processes at California refineries and fuel transport and distribution facilities to protect the health, safety, standard of life, and economic interests of its members. SAFER CA has a strong interest in enforcing environmental laws, such as CEQA, and supports the sustainable development of fuel resources in California. SAFER CA is represented by Adams Broadwell Joseph & Cardozo.

The Coalition, comprised of Earthjustice, Coalition for Clean Air, East Yard Communities for Environmental Justice, Communities for a Better Environment, Center for Biological Diversity, and Sierra Club - Angeles Chapter are non-profit environmental organizations focused on environmental law, air quality issues, environmental justice, and other environmental issues.

## SAFER CA Appeal

SAFER CA claims that the Port failed to respond adequately to the vast majority of the comments submitted on the Draft ISIND, and failed to respond to all comments submitted by SAFER's technical expert. But unlike for an Environmental Impact Report (EIR), CEQA does not require a lead agency to provide written responses to comments on a proposed Negative Declaration; State CEQA Guidelines Section 15074(b) requires that the lead agency only consider any comments received on the ISIND prior to approving the project. The Port carefully considered all comments received, including those from SAFER CA and their technical expert on the Draft ISIND and nevertheless, provided in good faith, detailed and reasoned responses to the nearly 120 comments received. Each comment letter and the Port's detailed responses are included in the Final IS/ND. This more than meets the requirements under CEQA. Therefore, SAFER CA's argument has no merit and its appeal should be denied.

SAFER CA asserts that the IS/NO fails to provide substantial evidence to support its findings of no significant air quality, public health, and other impacts and the methodology used to update the air emissions modeling is inadequate and flawed; conclusions of no significant impact were unsupported by evidence. The Final IS/NO discloses and discusses construction and operations-related emissions calculated using regulatory agency-approved guidance, methodologies, and significance thresholds which are adequately disclosed and provided in the Final IS/NO. SAFER CA has not demonstrated why the methods and significance thresholds are not appropriate for analyses under CEQA. As such, appeal on this ground should be denied.

SAFER CA complains that there is substantial evidence that the Project may result in

potentially significant impacts and an EIR must be prepared, even if other substantial evidence supports the opposite conclusion. The IS/NO was prepared in full compliance with CEQA, and specifically included analysis of the potential environmental impacts associated with construction and operation of the Project and with consideration given to all comments received on the Draft IS/NO. The Port's conclusions in the IS/NO were conducted using federal (U.S. EPA), state (California Air Resources Board [CARB], Office of Environmental Health Hazard Assessment [OEHHA]), or regional (South Coast Air Quality Management District [SCAQMD])-approved and/or recommended guidance and methodologies. SAFER CA has not presented a fair argument that there is substantial evidence that the Project will result in a significant environmental impact. SAFER CA's referenced demonstration studies and industry journal articles referred to as "substantial evidence" have not been vetted or approved by any regulatory agency, such as the South Coast Air Quality Management District (SCAQMD), for use in estimating potential future emissions from storage tanks or discreet fugitive sources, such as new petroleum tanks or for establishing thresholds of significance in CEQA analyses. This ground for appeal should be denied.

SAFER CA alleges that the Project's Volatile Organic Compounds (VOC) emissions exceed SCAQMD's offset threshold for its New Source Rule and claim to have provided evidence supporting a fair argument that the Project will have substantial unmitigated air quality impacts from emissions. The Final IS/NO clearly indicates that it does not rely on emissions offsets to reduce or mitigate VOC emissions under CEQA. The Project's operations and construction-related emissions, including VOCs are well below the SCAQMD emissions significance thresholds and therefore do not require mitigation. VOC emissions offsets are specifically discussed in the IS/NO as a requirement of the SCAQMD for permitting the new tanks, not as CEQA mitigation. This ground for appeal should be denied.

SAFER CA argues the Port did not comply with CEQA by not providing evidence to support its conclusions and did not allow the public an opportunity to independently review the Project's potential impacts. The Port fully complied with CEQA by identifying all Project-related documents and reference materials in the IS/NO, all of which are therefore part of the administrative record, kept on file, and available for public review upon request in accordance with the California Public Records Act (PRA). In response to two PRA requests, all Project-related materials and correspondence were provided to SAFER CA. As such, this ground for appeal should be denied.

SAFER CA claims that the ISIND is in violation of CEQA by relying on mitigation measures disguised as project design features. SAFER CA is incorrect in their claim that the construction emissions assumed the use of Tier 4 Final construction equipment. The Final ISIND includes the air quality emissions modeling run using the State developed model 'CalEEMod' that clearly shows that no mitigation measures were applied in the emissions modeling assuming an unmitigated average fleet of Tier 3 offroad diesel engine standards-not a mitigated Tier 4 fleet. The emission estimates associated with construction activities are well-below the CEQA significance thresholds; therefore no mitigation measures are required. However, consistent with the Port's Clean Air Action Plan, the Port would impose a Special

Condition in the Project's Harbor Development Permit requiring construction equipment used for the Project to meet Tier 4-Final off-road engine standards, not as a mitigation measure under CEQA.

## The Coalition Appeal

The Coalition takes issue with the Port's responses to their technical expert's comments on the Draft ISIND as being inadequate and that the Port provided no response to multiple other studies, such as the SCAQMD-sponsored "FluxSense" study, in the same level of detail as The Coalition's technical comments. CEQA does not require a lead agency to provide written responses to comments on a proposed Negative Declaration; CEQA only requires that the lead agency consider any comments received on the

ISIND prior to approving the project. As required under CEQA, the Port carefully considered each of the comments received. Some of the comments necessitated clarification and insignificant modifications of the Draft ISIND, all of which are articulated in the Final IS/ND. In addition, the Port prepared, in good faith, detailed reasoned responses to each of The Coalition's comments on the Draft IS/ND. This is more than what is required under CEQA. Therefore, this ground for appeal should be denied.

The Coalition argues that the ISIND provided a cancer risk analysis but failed to address the severe underestimation of cancer-causing vacs found in the scientific studies submitted by The Coalition. The Coalition also asserts that using a general significance threshold for vacs as a tool, the Port's conclusion that the Project's 200,000 pounds of lifetime vac emissions could not have any significant impact on nearby communities is based on flawed analysis and incomplete information. The studies referenced by The Coalition as evidence of the underestimation of vac emissions are just that-studies. They have not been approved by any regulatory agency for use in determining the significance of environmental impacts under CEQA. The ISIND discusses that the health risk assessment (HRA) was conducted using SCAQMD and aEHHA methodologies and guidelines. The ISIND included a conservative, worst-case scenario, HRA assuming the storage of gasoline in the new tanks, rather than crude oil, as recommended by the SCAQMD, because the vapor pressure of gasoline is higher than that for crude oil. This means that there is more potential for known toxic VOCs that comprise gasoline to be emitted into the air. The estimated cancer health risk associated with the operation of the new tanks for the maximum exposed sensitive receptor (schools, residences, senior care facilities, day care facilities, and hospital) is 1.5 people in ten million, well below the CEQA maximum incremental cancer risk significance threshold of 10 in one million. Therefore, this ground for appeal should be denied.

The Coalition asserts that the Port must not consider the ISIND for approval until amendments to the SCAQMD's Rule 1178 for "Further Reductions of VOC Emissions from Storage Tanks at Petroleum Facilities" is finalized in March 2022. There is no legal requirement under CEQA, or otherwise, to assume that a project must comply with a proposed amendment to a rule or regulation that has not yet been adopted, or suspend a

project until the rulemaking is complete. As such, the appeal on this ground should be denied.

The Coalition claims the Port's analysis ignored key cumulative impacts of emissions at the World Oil Terminal, connected refinery operations facilitated by the Project, and nearby storage tanks, and did not analyze the Project's existing impacts of the existing infrastructure at the World Oil Terminal, or impacts of the COVID-19 pandemic-related 2020 emissions referenced by the Port in a Response to Comment in the Final IS/ND. The World Oil Terminal facility is a petroleum product storage facility, not a refinery. Processes at refineries and storage facilities elsewhere are not influenced by the storage capacity at World Oil. The ISIND clearly and adequately demonstrates that the Project would not exceed any project-specific significance thresholds for any environmental issues, including those which may cause adverse effects on humans. Pursuant to CEQA, the incremental effects of the Project would be minor and would not be cumulatively considerable. Since the impacts from the Project are not considered to be cumulatively considerable, the Project has no potential for generating significant adverse cumulative impacts. Also, there is no requirement under CEQA to account for or evaluate the impacts of the COVID-19 global pandemic on data referenced or used in an analysis for the purpose of determining a project's impact on the environment, or on a proposed project. Therefore, the appeal on this ground should be denied.

The Coalition also complains that the Port did not adequately consult with the California Coastal Commission (CCC) on their concerns that the ISIND failed to show the Project would "withstand" storm events and flooding "exacerbated by sea level rise." The Coalition also reference the CCC staff letter to the Port prior to the Board's consideration of the Final ISIND, dated October 26, 2021-2 days before the Board's public hearing to consider adoption of the Final IS/ND. The Port did, in fact, consult with CCC staff on the World Oil project on multiple occasions. The Final ISIND incorporates discussion of the potential effect of sea level rise and inundation on the Project using data provided in the Ocean Protection Council's 2018 State of California's Sea Level Rise Guidance, as requested by CCC staff. While CEQA requires the evaluation of a project's foreseeable incremental contribution of a project's greenhouse gas emissions to climate change, CEQA does not require an evaluation of localized environmental effects, such as sea level rise, on a project. In addition, the CCC staff letter submitted to the Port on October 26, 2021, clearly states that CCC staff was not providing any comments pertaining to the CEQA analysis, but rather, providing comments to address the Coastal Act and Port Master Plan (PMP) consistency analysis in the Application Summary Report prepared in the ISIND for issuance of a Harbor Development Permit. The Coalition has not provided any specific factual finding that the Port did not adequately consult with the CCC, nor how the Port's consultation with CCC is inadequate pursuant to CEQA. The appeal on this ground should be denied.

The Coalition claims that the Port did not properly address risks of disasters from earthquakes, fires, and tsunamis, nor did the ISIND consider whether further mitigation, such as a secondary containment system, would be necessary. In accordance with CEQA, the Final IS/ND includes an evaluation of the potential adverse effects involving rupture of a known earthquake fault, seismic ground shaking or ground failure, including liquefaction and

the Project features that would reduce the effects of statics and seismic settlement at the Project site. The risks from potential fires were determined to be less than significant; engineering controls such as fire extinguishing equipment, deluge fire suppression systems, and foam fire suppression systems are installed on all existing tanks and would be installed on the two new tanks. As required by CEQA, the ISIND evaluates whether the additional tanks would exacerbate existing conditions in the event of a tsunami. The tanks would be installed within the existing containment wall that would continue to offer the same level of adequate tsunami protection as they do for the existing tanks. The new tanks would not change the level of protection that the containment wall provides. In addition, the Project would be subject to existing in-place emergency response and evacuation systems within the Port, and provided in World Oil's existing Spill Prevention, Control, and Countermeasures (SPCC) Plan as required by federal regulation. The Coalition suggests that the ISIND did not consider if a secondary containment system would be necessary. It is important to emphasize that the existing approximately 13-foot tall containment wall thoroughly described in the ISIND, in and of itself, is a secondary containment system in place as part of World Oil's SPCC Plan. This ground for appeal should be denied.

The Coalition alleges that the Port failed to examine adequately risks posed by thousands of barrels of hazardous sludge that the Project would produce and failed to disclose the current treatment load at the Vernon facility and describe how the waste would be handled if the Vernon facility had insufficient capacity to accept thousands of barrels of additional waste. The ISIND clarifies that the proposed Project's sludge tank bottom quantities would produce approximately 1,500 barrels of sludge tank bottom quantities per tank every 10 years over the approximate 50-year service life and discloses U.S. Ecology Vernon facility's capacity of one million gallons with an additional 400,000-gallon equivalent of container storage, which is adequate for the Project's projected waste production quantity. The amount of 1,500 barrels or 63,000 gallons of sludge tank bottom quantity that is generated every ten years accounts for approximately 4.5 percent of the overall capacity of the U.S. Ecology Vernon facility every year. The Project's contribution to the U.S. Ecology Vernon facility would not generate an excessive amount of hazardous waste compared to existing conditions. The Project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of sludge bottoms and impacts are less than significant and no mitigation is required. Therefore, the appeal on this ground should be denied.

The Coalition contends that preparation of an EIR is required because expert comments provided by The Coalition and CCC Staff demonstrate a disagreement with the Port's scientific analysis. The conclusions in the IS/NO that the Project would not have an adverse effect on the environment are amply supported by substantial evidence based on regulatory agency-approved and/or recommended guidance and methodologies.

The Coalition's referenced demonstration studies and industry journal articles, which The Coalition identified as "substantial evidence," have not been vetted or approved by any regulatory agencies for use in estimating potential future emissions from storage tanks or discreet fugitive sources, such as new petroleum tanks, or for establishing thresholds of



significance in CEQA analyses.

As discussed above, the CCC letter submitted to the Port on October 26, 2021, clearly states that CCC staff was not providing any comments pertaining to the CEQA analysis of the IS/NO, but rather, provide comment addressing the Coastal Act and PMP consistency analysis included in the IS/NO. CCC staff, in their comments to the Port on the Draft IS/NO, did not provide any scientific evidence that the Project would exacerbate sea level rise. Rather, the CCC staff's comments related to the evaluation of sea level rise on the Project, which is not required by CEQA. CEQA, rather, requires the evaluation of a project's foreseeable incremental contribution of the project's greenhouse gas emissions to climate change, which is clearly evaluated in the Final IS/NO and found to be less than significant. The appeal on this ground should be denied.

City Council action on this matter is requested on January 4, 2022, to respond to the appeals.

If the appeals are rejected, there would be no financial impact. Should the City Council sustain the appeals, the Project could not move forward; there would be less storage for marine fuel blending, and the region would lose the job opportunities that construction of the World Oil Tank Installation Project would create.

Approve recommendation.

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