



Legislation Text

File #: 22-1354, **Version:** 1

Recommendation to request that the City Council: (1) Receive the supporting documentation into the record and conduct a public hearing on one appeal of the Board of Harbor Commissioners' certification of the Final Environmental Impact Report (EIR) for the Deep Draft Navigation Feasibility Study and Channel Deepening Project (Project) filed pursuant to Long Beach Municipal Code Section 21.21.507 by Earthjustice, Center for Biological Diversity, East Yard Communities for Environmental Justice, Natural Resources Defense Council, Pacific Environment, Sierra Club, and West Long Beach Association (collectively, "Appellants"); and (2) Adopt resolution denying the appeal upholding the Board of Harbor Commissioners' certification of the Final EIR 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 analysis for the Deep Draft Navigation Feasibility Study and Channel Deepening Project (Project) was conducted 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 fully complied with CEQA when it certified the Final EIR for the Project, a component of the Final Integrated Feasibility Report (IFR) with Environmental Impact Statement (EIS)/Environmental Impact Report (IFR-EIS/EIR), a joint document between the Port of Long Beach (Port) and the U.S. Army Corps of Engineers Los Angeles District (USACE). However, it will be up to the City Council to consider the appeal and determine whether the certification of the Final EIR was proper and in accordance with CEQA.

If the City Council determines that the Board of Harbor Commissioner's certification of the Final EIR complies with CEQA, it must reject the appeal and affirm the Board of Harbor Commissioners' certification of the Final EIR for the Project (see Attachment 1 for proposed resolution). Alternatively, if the City Council finds that the Board of Harbor Commissioners' certification of the Final EIR did not comply with CEQA, then it must uphold the appeal and direct the Board of Harbor Commissioners 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 September 12, 2022, the Board of Harbor Commissioners held a public hearing to consider the adoption of a resolution to certify the Final EIR, adopt the Findings of Fact and Statement of Overriding Considerations and Mitigation Monitoring Reporting Program; approve the Project; and issue a Harbor Development Permit.

During the public hearing, Harbor Department staff gave a presentation on the Project and the Final EIR. Following the presentation, a total of five public speakers testified before the

Board; three spoke in favor of the Project, and two spoke in opposition to one or more aspects of the Project. Commissioners expressed their support for the Project and its benefits. The Board of Harbor Commissioners voted unanimously to adopt Resolution HD-3103, wherein it certified the Final EIR as being fully compliant with CEQA. Attachment 2 contains the Harbor Department's Staff Report to the Board of Harbor Commissioners. Attachment 3 contains the Board of Harbor Commissioners' Resolution (HD-3103). Attachment 4 contains the associated Findings of Facts and Statement of Overriding Considerations, and Attachment 5 contains the Mitigation Monitoring Reporting Program. The Harbor Department Staff PowerPoint Presentation slides are provided as Attachment 6. The full, certified transcript of the September 12, 2022 public hearing is provided as Attachment 7 to this staff report. The Board of Harbor Commissioners' questions and deliberations are set forth on pages 26-37 of the transcript.

B. Summary of the Deep Draft Navigation Feasibility Study and Channel Deepening Project.

The Final IFR-EIS/EIR is a joint document lead by the USACE. The USACE is the lead agency responsible for implementing the National Environmental Policy Act (NEPA), while the Port of Long Beach is responsible for implementing CEQA. The IFR-EIS/EIR documents the planning process conducted for the Project and identifies and evaluates alternatives to increase transportation efficiencies and improve safety for container and liquid bulk vessels calling at the Port. Currently, large container vessels must either ride the tides and enter and leave the West Basin and Pier J Basin only during high tides or to light load the vessel in order to ensure a shallower draft to safely enter and leave these areas of the Port. Liquid bulk vessels must enter and exit the two-mile long Approach Channel one at a time, which results in increased delays due to channel width limitations, and/or must delay entry during wave swells and other conditions or light load at the point of origin due to the current depth limitations along the Approach Channel.

The USACE issued the Final IFR-EIS/EIR in October 2021 and approved the Record of Decision pursuant to NEPA in July 2022, thereby completing the federal environmental review process. The Final IFR-EIS/EIR is available online on the USACE's website at:

[<https://www.spl.usace.army.mil/Missions/Civil-Works/Projects-Studies/Port-of-Long-Beach-Deep-Draft-Navigation-Study/>](https://www.spl.usace.army.mil/Missions/Civil-Works/Projects-Studies/Port-of-Long-Beach-Deep-Draft-Navigation-Study/)

C. Overview of the EIR and Public Input Process.

In accordance with State CEQA Guidelines, the Port issued a Notice of Preparation (NOP) for the Project on November 14, 2016. The NOP described the Project and potential environmental impacts, and solicited public input on environmental issues to be addressed in the EIR. On January 29, 2019, the Port issued an Amended Notice of Preparation to update the Project title from "Port of Long Beach Deep Draft Navigation Feasibility Study" to "Port of Long Beach Deep Draft Navigation Feasibility Study and Channel Deepening Project" to clarify that in addition to the feasibility study prepared by the USACE, channel deepening activities and related activities would occur, and previously proposed dredging in the Southeast Basin was being removed from the scope of the Project. A scoping meeting was

held on February 13, 2019, in the Port's Interim Administrative Offices. The USACE and the Port released a Notice of Availability of the IFR-EIS/EIR in the Federal Register on October 25, 2019; concurrently, the Port issued a Notice of Completion of an EIR pursuant to CEQA. The 45- day public comment period ended on December 9, 2019. Two joint USACE and Port public hearings were held on Wednesday, November 13, 2019, at the Port of Long Beach Administration Building. Comments on the Draft EIS/EIR were received from 11 agencies and individuals. Appendix O of the Final IFR-EIS/EIR contains all comments and recommendations received on the Draft IFR-EIS/EIR and a list of persons, organizations, and public agencies whom submitted comments. Responses to comments are also provided in Appendix O to the Final IFR-EIS/EIR. The USACE and Port considered each comment received and determined that no changes or revisions to the Draft IFR-EIS/EIR were necessary. No new significant environmental effects were identified, nor did any issues raised in the comments received necessitate recirculation of the Draft IFR-EIS/EIR. The Notice of Public Hearing and Notice of Availability for the Final EIR was issued on August 16, 2022, 27 days prior to the public hearing for the Board of Harbor Commissioners' consideration of the Final EIR. The Final EIR and its supporting documentation were made available electronically on the USACE's website and Port of Long Beach website at <https://www.polb.com/ceqa.>>.

At the public hearing on September 12, 2022, the Board of Harbor Commissioners certified the Final EIR in accordance with CEQA, after hearing the testimony from five members of the public. The day after certification of the Final EIR, a Notice of Determination (NOD) was filed with the Los Angeles County Clerk and California Office of Planning and Research in accordance with State CEQA Guidelines Section 15075.

D. Summary of EIR Analysis and Conclusions Regarding the Project Impacts.

1. Description of the Project.

The Project involves:

- Deepening the entrance to the Approach Channel through Queens Gate from a current depth of -76 feet to -80 feet mean MLLW;
- Bend-easing portions of the Main Channel to match the currently authorized depth of -76 feet MLLW;
- Construction of an approach channel and turning basin to Pier J South to a new depth of -55 feet MLLW;
- Deepening portions of the West Basin from a depth of -50 feet to -55 feet MLLW;
- Construction of a new electric substation at Pier J South to support electric dredging equipment to mitigate air quality impacts associated with construction activities.

In Section 4.2 of its CEQA Findings of Fact, the Board of Harbor Commissioners made factual findings regarding the various alternatives that were considered in the EIR (Attachment 4, pages 19-26). That analysis explains in detail why Alternative 3 was selected as the environmentally superior of the build alternatives and why it best meets the Project objectives.

2. Summary of Potential Unavoidable Impacts.

The Final EIR identified potentially significant impacts to air quality associated with construction of the Project. Construction emissions would exceed the South Coast Air Quality Management District (AQMD) daily thresholds of significance for Nitrogen Oxides (NO_x) in years 2024, 2025, 2026, and 2027, and particulate matter 2.5 microns or less (PM_{2.5}), carbon monoxide (CO), and volatile organic compounds (VOC) in 2025. In addition, during construction activities, the Project would generate offsite ambient air pollutant concentrations that would exceed the South Coast AQMD's threshold of significance for 1-hour nitrogen dioxide (NO₂) and 1-hour federal NO₂.

These environmental impacts are discussed in detail in the Final IFR-EIS-EIR and in the Board of Harbor Commissioners' Findings of Fact for the Project (Attachment 4).

3. Mitigation.

Mitigation measures and special conditions were developed for the Project to reduce significant impacts to the extent feasible. These measures, which are set forth in the Mitigation Monitoring and Reporting Plan (MMRP) adopted for the Project by the Board of Harbor Commissioners (see Attachment 5), were made conditions of the Project approval.

Mitigation measures to reduce impacts to air quality associated with the Project would include the required use of an electric dredge; use of construction-related harbor craft that meet at least United States Environmental Protection Agency (USEPA) Tier 3 marine engine standards; use of off-road construction equipment that meet USEPA Tier 4 Final engine emission standards; and application of best management practices by maintaining construction equipment according to manufacturers specifications and limiting idling to five minutes.

After the implementation of all feasible mitigation measures to reduce the impacts to air quality associated with the Project, significant air quality impacts are expected to remain. 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. The Project would offer overriding economic, legal, social, technological, and other benefits that outweigh the unavoidable adverse environmental effects of the undertaking and provide important reasons for approving the Project.

D. Summary of the Appeal and the Harbor Department's Response to the Appeal. Following the Board of Harbor Commissioners' certification of the Final EIR on September 12, 2022, one appeal was filed. Appellants appeal is included hereto as Attachment 8. The Harbor Department's detailed responses to the grounds to Appellants' appeal are provided as Attachment 9.

Many of the issues raised in the appeal letter were previously raised by Appellants during the CEQA process and addressed in the Final EIR. The issues in the appeal are presented in a

conclusory manner with no supporting evidence that the environmental determination does not comply with CEQA. The following is a summary of the claims made in the appeal by Appellants and the Harbor Department's responses to those claims. Background information on Appellants is also provided.

Background

Appellants are comprised of Earthjustice, Center for Biological Diversity, East Yard Communities for Environmental Justice, Natural Resources Defense Council, Pacific Environment, Sierra Club, and West Long Beach Association. These organizations focus on environmental law and environmental issues in areas such as, air quality, water quality, public health, and environmental justice.

Summary of Appeal Issues

Appellants contend that the scope of the Project is improperly narrow and that the Project is an "expansion project" that will introduce additional large ships to expand the Port's capacity to process more cargo than it currently handles, leading to increased impacts of shipping traffic and other environmental effects. Appellants have submitted no evidence that supports their conclusion that the Project or introduction of large ships will expand the Port's capacity to process more cargo than it currently handles leading to increased environmental impacts.

The Project entails dredging various areas of the Port to improve channel depths and widths to accommodate the global fleet of large vessels to enter and depart the Port safely and more efficiently. Projecting the numbers and types of vessels in the future would require pure speculation, and any analysis would not provide reliable or meaningful information to the public or decisionmakers. Furthermore, any hypothetical change in the vessel fleet would not alter the capacities of the marine terminals. The Project would not result in increased terminal capacity and vessel trips required to transport forecasted cargo because the Project does not include any changes to Port marine terminals that will increase capacity or their operations. To increase capacity or alter operations, marine terminal infrastructure would require improvements, which would require project-specific environmental review, during which the potential environmental impacts associated with the operation of vessels, as well as other goods movement-related sources such as trucks, rail locomotives, harbor craft, and cargo-handling equipment, would be evaluated as appropriate in accordance with CEQA. Therefore, vessel operations are not part of the scope of the environmental evaluation. As such, the efficiencies afforded by the Project would not influence or alter marine terminal capacities or operations. Generally, the deployment of large container vessels filled to their capacities allows for more efficient transport of goods, requiring fewer trips to and from the Port, which would result in fewer air emissions from ocean-going vessels, as demonstrated in the Port's annual emissions inventories as early as 2010 (available online at www.polb.com/emissions <<http://www.polb.com/emissions>> and incorporated herein by reference).

The Appellants also assert that impacts to air quality and health risk are insufficiently analyzed and addressed. The Final IFR-EIS/EIR adequately discloses the potential air

emissions associated with the Project in full compliance with CEQA. As previously discussed, marine terminal operational activities are not a component of the Project, and the Project would not change or “expand” operations at the marine terminals to require more cargo-handling equipment, rail, and/or truck visits. The EIR appropriately does not analyze emissions from speculative potential changes in future operations or expansion of Port operations.

The Appellants suggest that impacts to greenhouse gas emissions and global climate change are insufficiently addressed because the Project would increase the Port’s capacity for import of crude oil resulting in more oil production, refining, coal exports, and freight transportation thereby increasing greenhouse gas emissions above CEQA levels of significance. The Project does not include any modifications to existing liquid bulk terminals, storage, transmission, or refinery capacities all of which are beyond the scope of the Project. Supply of and demand for oil, gas, and other energy resources fluctuates over time, and those factors are not significantly impacted or influenced by the Project. This ground for appeal should be denied because the Appellants have provided no evidence that the Project would increase the Port’s capacity for import of crude oil or increase greenhouse gas emissions above CEQA levels of significance.

Appellants also claim that impacts to endangered species are insufficiently analyzed and addressed. The Final IFR-EIS/EIR demonstrates that the potential environmental impacts to endangered species associated with construction of the Project have been fully analyzed, while Appellants’ claims are conclusory and devoid of specific evidence that the Project will contribute to increased risks to endangered species.

Appellants contend that the Final EIR failed to analyze and mitigate the Project’s environmental justice impacts. This ground for appeal should be denied because CEQA does not explicitly require the evaluation of Environmental Justice, and there are no specific thresholds of significance for environmental justice. Rather, CEQA requires a lead agency to exercise its own best judgment to “balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian.” In accordance with CEQA, the Statement of Overriding Considerations for the Project details the balance of specific economic, legal, social, technological, or other benefits, including region-wide and statewide environmental benefits of the Project against its unavoidable environmental risks. The EIR also acknowledges that the greatest cumulative impact on the air quality of the regional air basin would be the incremental addition of pollution associated with the use of construction-related heavy-duty equipment and trucks. As described in the EIR cumulative impacts discussion, the Port will contribute a total of \$146,753 to the Community Grants Program to address the cumulative impacts to air quality associated with construction of the Project. The EIR was prepared in full accordance with CEQA. Therefore, this Ground for Appeal should be denied.

Appellants argue that the Final EIR failed to analyze and mitigate the Project’s environmental indirect and cumulative impacts associated with “several expansion projects”. LBMC Section

21.21.507, subsection E.2, requires appellants to “specify in detail why the appellant contends that the environmental determination does not comply with CEQA.” Appellants do not point to or reference any specific projects to support their claim. Nonetheless, the Final IFR-EIS/EIR includes discussion of existing container facilities and infrastructure at the Port, as well as the Port’s capital improvement projects that have been approved pursuant to CEQA and/or NEPA. These projects, including the Middle Harbor Redevelopment Project, Gerald Desmond Bridge Replacement Project, Pier B On-Dock Rail Support Facility Project, the Pier G & J Terminal Development Project are not dependent on, or a consequence of the Channel Deepening Project. The Project will merely provide for dredging of various areas of the Port to allow for improvements to channel depths to accommodate large vessels, the mix of which the Port has no control of influence over, entering and departing the Port safely and more efficiently. The Project itself will not influence cargo throughput or capacity. This ground for appeal should be denied.

Appellants assert that Project does not mitigate the externalities of expanded freight activities resulting from the Project; the Project only identified mitigation measures stemming from construction. This ground for appeal should be denied because Appellants’ claim is conclusory and devoid of evidence. They provide no factual support to their claim. It would be speculative to evaluate potential impacts associated with future vessel activities and marine terminal operations. Furthermore, there are no land-side improvements or modifications associated with the Project that would facilitate increased capacity. The Project’s environmental impacts and discussion of all applicable and all feasible mitigation measures associated with construction activities defined in the scope of the Project are adequately detailed in the Final IFR-EIS/EIR, the Findings of Fact/Statement of Overriding Considerations, and Mitigation Monitoring Reporting Plan-prepared in accordance with CEQA. Section 15126.4(a)(4) of the State CEQA Guidelines requires that “[t]here must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest.” There is no nexus between the marine terminals’ activities for goods movement activities such as the operation of trucks, cargo-handling equipment, harbor craft, and ocean-going vessels at berth and the construction activities occurring as part of the Project.

City Council action on this matter is requested on November 15, 2022, in order to respond to the appeal.

If the appeal is denied, there would be no financial impact. Should the City Council sustain the appeal, the Project could not move forward and would be jeopardized. The navigational and safety challenges associated with the existing channel constraints would continue. The perpetuation of the existing conditions involving the use of smaller ships to make more trips to transport goods, and large vessels having to light-load, lighter, and wait for high tide in order to maneuver into and out of the Port, anchor in the Harbor, rather than berth at a dock, would continue, and potentially worsen over time with the industry trend toward expanded use of large vessels, negating the increased efficiencies associated with the deployment of large cargo vessels that would result in fewer vessel calls and potentially reduced air

emissions from ocean-going vessels at the Port.

Approve recommendation.

[Enter Body Here]

MARIO CORDERO,
EXECUTIVE DIRECTOR