

LATHAM & WATKINS^{LLP}

FIRM / AFFILIATE OFFICES

Beijing	Moscow
Boston	Munich
Brussels	New York
Century City	Orange County
Chicago	Paris
Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Seoul
Houston	Shanghai
London	Silicon Valley
Los Angeles	Singapore
Madrid	Tokyo
Milan	Washington, D.C.

March 15, 2019

Los Angeles Board of Harbor Commissioners
Harbor Administration Building
425 S. Palos Verdes Street
San Pedro, CA 90731

c/o Director of Planning and Strategy
Harbor Department
425 S. Palos Verdes Street
San Pedro, CA 90731
P.O. Box 151
San Pedro, California 90733

Re: Level I Coastal Development Permit No. 18-25 (Agenda Item B)

Dear President Lee and Honorable Commissioners:

On behalf of our client, the Pacific Maritime Association, we ask that you deny the International Longshore and Warehouse Union Local 13's appeal of CDP No. 18-25.¹

APM Terminals' proposal to implement minor infrastructure improvements to modernize its operations and implement clean air cargo handling equipment is critical to the Port's future. Beyond the project's clear environmental benefits, the project is necessary to keep APM Terminals' Pier 400 and the Port competitive.

Local 13's appeal of the Level I CDP approved by the Executive Director is an attempt to frustrate existing Collective Bargaining Agreements and has nothing to do with the permit's consistency with the Port Master Plan and the Coastal Act. There simply is no proper basis to grant the appeal.

Granting the Appeal Would Undermine the Port's Efforts to Reduce Emissions. APM Terminals and all of Pacific Maritime Association's members have been challenged by the State, West Coast ports, the California Air Resources Board, AQMD, and communities surrounding

¹ Founded in 1949, Pacific Maritime Association's principal aim is to negotiate and administer maritime labor agreements with the International Longshore and Warehouse Union. This includes a coast-wide contract covering approximately 14,200 longshore, clerk and foreman workers at 29 ports along the West Coast, from Southern California to the Pacific Northwest.

LATHAM & WATKINS^{LLP}

ports to reduce toxic air contaminants and greenhouse gas emissions. Granting the appeal would undermine these efforts and plans, including the Port's own Clean Air Action Plan.

The Project is Consistent with the Port Master Plan and the Coastal Act. The Port's Executive Director found that the work proposed at Pier 400 qualifies for a Level I CDP and is consistent with the Port Master Plan and the California Coastal Act. The Executive Director's decision is correct. Two core Port Master Plan principals are: (1) modernization of existing facilities; and (2) minimization of environmental impacts. The permit allows APM Terminals to do both.

The Project is Exempt from CEQA Review. The project is simply installing limited infrastructure to facilitate the use of clean air cargo handling equipment and reduce drayage vehicle miles traveled within Pier 400. APM Terminals proposes installing electrical conduit, pouring concrete foundations on already paved areas for electric charging stations and scaffolding for refrigerated containers, and placing traffic barriers within Pier 400 to improve safety and reduce drayage miles traveled. These measures are clearly exempt from CEQA. Moreover, these measures will result in substantial air quality benefits.

Objections Based on Labor Issues are not part of the Coastal Development Permit Process. The Port Master Plan and the Coastal Act do not permit the denial of the APM Terminals Level I Permit based on labor issues. Moreover, the Collective Bargaining Agreement specifically permits implementation of the modernization measures APM Terminals proposes.

There is No Basis Under the Law to Grant the Appeal. The permit allows APM Terminals to deploy zero-emission and near zero-emission equipment. The permit will allow APM Terminals to reduce substantially the number of vehicle miles traveled by diesel-powered drayage haulers (i.e., semi-trucks) on Pier 400.

Granting the appeal would not only be contrary to the Executive Director's findings under the Port Master Plan and Coastal Act, it would put the Port at odds with the obligations and goals set by the Port itself and other government agencies to reduce the Port's air quality impacts on neighboring communities. The introduction of zero-emission and near zero-emission equipment and substantial reduction in miles traveled by semi-trucks at Pier 400 will have a quantifiable beneficial impact on the environment and residents living around the Port. This is consistent with the Port Clean Air Action Plan's requiring a shift from diesel-powered cargo handling equipment to zero-emission or near-zero emission cargo handling equipment. The Level I CDP is also consistent with the Air Resources Board's mandate that all mobile cargo handling equipment be zero-emission by 2030 and the permit is consistent with the South Coast Air Quality Management District's directives to reduce the Port's emissions and its effects on surrounding communities.

For these reasons and as detailed below, we respectfully request that the appeal be denied.

A. The Scope of Work Is Consistent With A Level I Coastal Development Permit

APM Terminals' proposed physical work is entirely consistent with the work permitted by Level I Coastal Development Permits under the Port Master Plan.

In adopting the Port Master Plan, the Port established a streamlined process for Level I Coastal Development Permits. This streamlined process is an efficient mechanism for the Port to approve minor infrastructure and modernization projects similar to what APM Terminals proposes. Local 13's appeal of the permit for reasons wholly unconnected to the work under the permit itself is concerning because it threatens to interfere with the Port's and its tenants' ability to implement needed improvements efficiently and cost effectively.

If approval for such improvements is denied, then Pacific Maritime Association's members and the Port's tenants may not be able to operate efficiently, may not be able to meet their obligations under their leases or further the Port's compliance with the Port Master Plan, and may not be able to fulfill their obligations under the Port Clean Air Action Plan and similar regulatory documents. It is untenable to have situations where the Port's tenants are obligated to take actions under their lease and regulations to reduce emissions but are blocked from doing so in a timely and efficient manner due to baseless appeals.

Because APM Terminals' proposal is consistent with a Level I Coastal Development, the Executive Director properly approved the permit after finding the work was consistent with the Port Master Plan and the Coastal Act.

1. The Permit Is Consistent with the Port Master Plan

Substantial evidence supports the Executive Director's determination that the permit is consistent with the Port Master Plan.

The Port Master Plan contains numerous policies directed at modernization and efficiency. For example: (1) "[d]evelopment and the land uses designated on Port land should be compatible with surrounding land uses in order to maximize efficient utilization of land," (Goal 1, section 3.3.1); (2) "[p]ort tenants should be encouraged to modernize their facilities and implement new technologies, including automated container terminal technology," (Goal 2, section 3.3.2); (3) the "Port is encouraged to modernize and construct necessary facilities within the boundaries of the Port," (Policy 1.3, section 7.2.1); and (4) a major objective of the Port Master Plan is to "allow the Port to adapt to changing technology." (Objectives, section 1.3)

The permit allows APM Terminals to modernize Pier 400 and use the existing space efficiently. By using existing space efficiently, the Port is not pressured to fill more tidelands or otherwise expand beyond its existing footprint.

The Port Master Plan is also focused on reducing the Port's environmental impacts. (See section 7.2.2. [port projects should "minimize substantial adverse impacts...."].) There is no question that the project will improve environmental conditions at the Port. The project will replace diesel-powered equipment with zero-emission or near zero-emission equipment. The

project will substantially reduce the number of vehicle miles traveled by drayage carriers on Pier 400, thereby reducing the amount of emissions and related impacts on surrounding residents.

2. The Permit Is Consistent With the Coastal Act

The Coastal Act also promotes the modernization of commercial port facilities in a manner that reduces environmental impacts and minimizes energy consumption and vehicles miles traveled. (See Coastal Act sections 30701(b), 30708(a), and 30253(d).) As the permit allows APM Terminals to modernize its operations, avoid emissions, and reduce vehicle miles traveled, the permit is consistent with the Coastal Act.

B. The Permit Is Exempt From CEQA

Pier 400 is a 484-acre shipping facility and is the largest single proprietary terminal in the world. (See attached photographs.) Pier 400 can accommodate 8,000 wheeled and 17,000 grounded containers. Pier 400 also contains a 40-acre on-dock rail facility with over five miles of working track that can accommodate four double stack trains. This is the built environment in which the minor infrastructure work is going to occur.

All work under the permit will take place within the existing Pier 400 paved areas. The permit would allow APM Terminals to pour concrete paving for scaffolding and charging stations and run utilities to support them. In the context of a 484-acre operating terminal, this work is exempt under multiple CEQA exemptions. These include exemptions for the repair and maintenance of existing facilities (Guideline section 15301), new construction of small structures (Guideline section 15303), and infill development (Guideline section 15332), among others.

Given the nominal amount of work that will occur within the existing 484-acre operating terminal and the environmental benefits that the project will have vis-à-vis the reduction in emissions, it is manifest why the Executive Director appropriately determined that the permit and project are exempt from CEQA.

C. ILWU's Existing Contract Contemplated and Allows For Modernization

The Pacific Maritime Association worked closely with the ILWU to facilitate modernization in the parties' Collective Bargaining Agreements. These agreements could not be clearer.

- "It is recognized that the introduction of new technologies, including fully mechanized and robotic-operated marine terminals, necessarily displaces traditional longshore work and workers, including the operating, maintenance and repair, and associated cleaning of stevedore cargo handling equipment."
- "The parties recognize robotics and other technologies will replace a certain number of equipment operators and other traditional longshore classifications. It is agreed that the jurisdiction of the ILWU shall apply to the maintenance and repair of all present and forthcoming stevedore cargo handling equipment in accordance with Sections 1.7 and 1.71 and shall constitute the functional

LATHAM & WATKINS^{LLP}

equivalent of such traditional ILWU work.” (Section 1.72 at p. 9 of the 2014-2019 Pacific Coast Longshore Contract Document.)

Moreover, the right to modernize has been confirmed by the jointly appointed arbitrator of waterfront disputes for the Pacific Maritime Association and ILWU:

- “...the quid pro quo in 2008 was that the Union would secure new terminal facilities as maintenance and repair sites along with such work on new automated and longshore equipment which was a huge gain for the Union which in turn agreed to reinforce the Employers’ right to utilize automated container handling equipment...” (See Arbiter’s Decision 2010 Decision, C-05-10 at p. 9)

The right of Pacific Maritime Association’s members to deploy technology driven productivity has allowed ILWU’s members to realize significant financial benefits. These benefits to ILWU members included higher pensions (more than \$95,000/year), increased wages (average of \$183,000/year), guarantee pay of a 40-hour week even if 40 hours not worked, retraining program funding, and expanded health benefits at no cost to employees.

This has been the deal. The deal has allowed West Coast ports, including the Port of Los Angeles, to remain competitive and has allowed ILWU members to share in the growth Pacific Maritime Association’s members have realized as a result of their investment in modern, clean, and technologically forward equipment. Now Local 13 is trying to obstruct the parties’ deal by appealing the permit. We respectfully ask that the Port not be a party to this inappropriate action and that the Board deny the appeal.

* * *

The Port’s Executive Director correctly determined that the permit was consistent with the Port Master Plan, consistent with the Coastal Act, and was exempt from CEQA. There is no evidence in the record to the contrary.

Granting the appeal would be an abuse of discretion. The appeal should be denied.

Very truly yours,



George J. Mhlsten
of LATHAM & WATKINS LLP

cc: Mr. Eugene D. Seroka, Executive Director, Port of Los Angeles
Ms. Janna B. Sidley, General Counsel, Port of Los Angeles
Mr. James C. McKenna, President & CEO, Pacific Maritime Association
Mr. Craig E. Epperson, SVP, General Counsel & Secretary, Pacific Maritime Association
Mr. Erich P. Wise, Flynn, Delich & Wise



