

LEVEL I CDP NO. 18-25 PUBLIC HEARING STAFF REPORT

HEARING DATE: MARCH 21, 2019

**TO: HONORABLE MEMBERS OF
THE BOARD OF HARBOR COMMISSIONERS**

**RECOMMEND: FIND LEVEL I COASTAL DEVELOPMENT PERMIT NO. 18-25
WAS ISSUED IN COMPLIANCE WITH PORT MASTER PLAN
AND CALIFORNIA COASTAL ACT; DENY THE APPEAL OF
LEVEL I COASTAL DEVELOPMENT PERMIT NO. 18-25**

I. BACKGROUND

The Port Master Plan (PMP) establishes policies and guidelines to direct the development of the Port of Los Angeles (Port or Harbor Department). The PMP was originally adopted and certified in 1980 in conformance with the policies of the California Coastal Act (Coastal Act). The Coastal Act, enacted by the State Legislature in 1976, provides for the protection of California's coastline through the authorization of local coastal programs and port master plans to manage development in the coastal zone. The Coastal Act is administered by the California Coastal Commission (Coastal Commission) whose mission is to protect and enhance California's coast and ocean for present and future generations.

Chapter 8 of the Coastal Act presents the policies of the state that define coastal protection in the portions of the Ports of Hueneme, Long Beach, Los Angeles, and San Diego Unified Port District located within the coastal zone and govern the certification of port master plans. Under the Coastal Act, development activities within the coastal zone generally require a permit to ensure that the activities are consistent with the policies of the Coastal Act. A certified port master plan transfers coastal permit jurisdiction relative to port development from the Coastal Commission to the port authority, with limited appeal jurisdiction remaining with the Coastal Commission. Under the PMP, the permit required for development within the Harbor Department's coastal zone jurisdiction is called a Coastal Development Permit (CDP).

The PMP establishes two types of CDPs: Level I and Level II. A Level II CDP indicates that a proposed project requires a public hearing because it meets any of the following conditions:

SUBJECT: LEVEL I NO. 18-25 CDP PUBLIC HEARING STAFF REPORT

- it will involve significant coastal resources;
- it will cause major changes in land and/or water use and in the density or intensity of the use;
- it has the potential of creating significant environmental impacts that can or cannot be mitigated; or
- it is appealable to the California Coastal Commission (as identified in Chapter 8, Section 30715 of the Coastal Act).

The Board of Harbor Commissioners (Board) takes action on the approval or denial of a Level II CDP after the public hearing. All decisions of the Board relating to permit applications shall be accompanied by written conclusions about the consistency of the application with the certified PMP and the Coastal Act, as well as findings of fact and reasoning supporting the decision. If the vote of the Board is consistent with the staff recommendation, and not otherwise modified, the Board is deemed to have adopted the findings and conclusions recommended by the staff (PMP §6.7.1).

A Level I CDP does not require a public hearing because it is minor in nature, as it has met all of the following conditions:

- minimal coastal resources are involved;
- only minimal change in land and/or water use and in the density or intensity of the use of land and water area will occur; and
- there are no significant adverse environmental impacts.

In accordance with the PMP, the Executive Director is designated with the authority to approve or deny applications for Level I CDPs, but these CDPs only become effective when the permits are reported in writing to the Board.

While Level I CDPs do not require a public hearing because of their minimal impacts on the environment and coastal resources, the Executive Director's determination of approval or denial for a Level I CDP may be appealed to the Board. Upon appeal, the matter shall be promptly calendared for a public hearing before the Board.

A. Standard of Review for Coastal Development Permits

Approval of an application for a CDP (whether it follows the Level I or Level II approval process) shall be accompanied by specific findings of fact supporting the following legal conclusions. PMP §6.7.3 states:

“All decisions of the Board relating to permit applications shall be accompanied by written conclusions about the consistency of the application with the certified Plan and Coastal Act, and findings of fact and reasoning supporting the decision.

SUBJECT: LEVEL I NO. 18-25 CDP PUBLIC HEARING STAFF REPORT

Approval of an application shall be accompanied by specific findings of fact supporting the following legal conclusions:

- a. That the development is in conformity with the certified Plan; and
- b. That either the development will have no significant adverse environmental impacts, or there are no feasible alternatives or mitigation measures, as provided in CEQA, which would substantially lessen any significant adverse impact that the development as finally proposed may have on the environment. If feasible mitigation measures are not available, the Board can adopt a statement of overriding considerations.” (Port Master Plan §6.7.3)

B. APM Terminals CDP No. 18-25

APM Terminals (APMT) operates a container terminal at Pier 400 on Terminal Island in the Port of Los Angeles. APMT’s terminal consists of 484 acres, or 28% of the 1,704 acres of container terminal property in the Port.

On November 5, 2018, the Harbor Department received an Application for Port Permit (APP) from APMT (Transmittal 1). This application was logged as APP #181108-176, which indicates that it was assigned a file number on November 8, 2018, and that it was the 176th permit application assigned a file number in 2018. The description for the proposed project (Project) states:

“The project seeks to modernize the APM Terminal. Modernization includes landside infrastructure changes necessary to effectively operate battery-electric powered equipment.

Infrastructure changes include installation of charging stations for the equipment, installation of permanent scaffolding to create a vertical racking system for the refrigerated containers, installation of traffic barriers and fencing for drayage hauler safety and the installation of some small antenna poles to enhance the existing Wi-Fi network.” (APP #181108-176, page 2)

Because the Project is located within the coastal zone under Harbor Department jurisdiction, staff of the Planning and Strategy Division evaluated the Project for its consistency with the PMP. Planning staff found the Project to be consistent with the PMP’s identified land use for the Project area (Container operations), and consistent with the goals and policies of the PMP (see Findings of Fact below). Planning staff found that it conformed to the requirements for a Level I CDP and recommended that the Executive Director issue APMT a Level I CDP, No. 18-25 (the 25th CDP recommended for approval in 2018).

SUBJECT: LEVEL I NO. 18-25 CDP PUBLIC HEARING STAFF REPORT

C. CDP No. 18-25 Permit Actions

The Executive Director issued Level I CDP No. 18-25 (Project) and agendized it to be reported at the Board of Harbor Commissioners Meeting on January 24, 2019. The item was pulled from the agenda on January 23, 2019 (Transmittal 2). The Level I CDP No. 18-25 was then agendized to be reported at the Board of Harbor Commissioners Meeting on February 21, 2019 (Transmittal 3).

At the February 21, 2019 Board Meeting, an appeal was lodged in opposition to the Executive Director's approval of the Level I CDP, in accordance with PMP §6.4.2. Following the PMP §6.5 guidelines, a public hearing was calendared for 8:30 a.m. on March 21, 2019. Public notice for this hearing was published in the Daily Breeze and on the Harbor Department's website on March 6, 2019, fifteen (15) days before the public hearing (Transmittal 4).

II. FINDING OF FACT: CONFORMITY WITH THE PORT MASTER PLAN AND THE CALIFORNIA COASTAL ACT

A. The Scope of the Project is Consistent with a Level I Coastal Development Permit

The PMP states that examples of Level I CDPs include, but are not limited to: minor grading, paving, lighting, fencing, installation of structures such as modular offices/buildings, storage buildings, restroom facilities, floating docks, and guard houses; demolition of wharves, buildings, tanks, or exterior equipment; removal of pipelines; and major building renovations (PMP §6.4.2). The tasks identified in APMT's Project description are as follows:

- installation of charging stations for equipment;
- installation of permanent scaffolding to create a vertical racking system for refrigerated containers;
- installation of traffic barriers and fencing; and
- installation of antenna poles.

These tasks are consistent with the types of projects that are issued Level I CDPs. For example, Level I CDPs for similar scopes of work to CDP No. 18-25 have previously been issued for developments on container terminals:

- CDP No. 15-03 to Eagle Marine (now Fenix Marine) for the installation of tuff grid fence, slide gate, and turnstiles;
- CDP No. 17-16 to APMT for the placement of an above-ground 2,000 gallon diesel exhaust fuel tank and the construction of a concrete berm around the perimeter of the tank;

SUBJECT: LEVEL I NO. 18-25 CDP PUBLIC HEARING STAFF REPORT

- CDP No. 18-08 to Eagle Marine for the demolition of the primary marine building and the relocation of a substation;
- CDP No. 18-09 to TraPac for the removal of a 1,000-gallon underground waste oil storage tank.

B. The Project Advances the Goals of the Port Master Plan

The Project complies with all of the Goals of the certified Port Master Plan. Further, the CDP for the Project advances Goal 1: Optimize Land Use, and Goal 2: Increase Cargo Terminal Efficiency.

1. Port Master Plan §3.2.1 Goal 1: Optimize Land Use

Goal 1 states: "Development and the land uses designated on Port land should be compatible with surrounding land uses in order to maximize efficient utilization of land and minimize conflicts. Individual terminals within the Port should be compatible with neighboring Port tenants. When incompatible, port areas should be deliberately redeveloped or relocated to eliminate the conflict. Cargo handling facilities should be primarily focused on Terminal Island and other properties that are buffered from the neighboring residential communities of San Pedro and Wilmington. Non-water dependent use facilities should be eliminated from Port cargo-designated waterfront properties. Land use decisions should also take into consideration opportunities for Port tenants to grow and expand their business." (PMP §3.2.1)

The CDP for the Project, and the development activities it contains, are all to be located on APMT's leasehold as contemplated by Goal 1. The "container" land use designation of APMT's terminal found in the PMP supports the uses involved in the CDP as the entirety of the Project involves the movement of containerized ocean cargo. In upgrading this terminal through the provision of modern cleaner equipment, the CDP supports maximizing the use and efficient utilization of APMT's leasehold. APMT's investment in the terminal furthers the maximization of efficient utilization by intertwining modern clean technology with its operations, enabling cargo movement without inefficient fossil fuel use.

2. Port Master Plan §3.2.2 Goal 2: Increase Cargo Terminal Efficiency

Goal 2 states: "Cargo terminals should be utilized to their maximum potential in order to meet current and future needs of the Port's customers and region. The Port should develop and maintain the infrastructure necessary to support the terminals, while Port tenants should be encouraged to modernize their facilities and implement new technologies, including automated container terminal technology. Long-term

SUBJECT: LEVEL I NO. 18-25 CDP PUBLIC HEARING STAFF REPORT

development plans should maximize the utilization of low-performing assets, environmentally contaminated facilities, and unused assets.” (Port Master Plan §3.2.2)

The CDP for the Project, and the activity it contemplates, will help APMT reach both its current and future needs, both to move cargo efficiently and to meet mandatory emissions targets imposed by both the Clean Air Action Plan and California Air Resources Board today and into the future. The CDP also represents the addition of new technology to the terminal which Goal 2 specifically encourages.

C. The Project Advances the Policy Objectives of the Port Master Plan

The CDP for the Project complies with all of the Policies of the certified Master Plan. Further, this CDP advances all of the PMP’s relevant policy goals as demonstrated below.

Port Master Plan §7.1 directs the Board to “...use the provisions of the Plan, including these policies of general applicability, to determine if a development project is consistent with the Plan.” PMP §7.2 lists those policies.

1. Port Master Plan §7.2.1 Policy 1: Land Use (California Coastal Act Sections 30250, 30255, 30701, and 30220)

“Policy 1.1 – Develop new commercial or industrial projects within, contiguous with, or in close proximity to existing developed areas able to accommodate it with adequate public services.” (California Coastal Act Section 30250)

The Project is proposed to be developed within an existing industrial facility properly zoned and entitled for the purpose. The Project is consistent with both the PMP and Coastal Act as the Project is located within an existing development and does not necessitate the development of any additional land beyond APMT’s leasehold.

“Policy 1.2 – Protect coastal areas for port-related developments and water-dependent developments. (California Coastal Act Section 30255)”

The Project supports APMT’s use of its water-dependent container terminal and is sited entirely within the terminal’s boundaries which is the “coastal-dependent use[] [it] supports.” (California Coastal Act Section 30255). No fill is necessary to complete the Project, nor is any expansion of APMT’s leasehold necessary.

SUBJECT: LEVEL I NO. 18-25 CDP PUBLIC HEARING STAFF REPORT

“Policy 1.3 – The Port is encouraged to modernize and construct necessary facilities within the boundaries of the Port in order to minimize or eliminate the necessity for future dredging and filling to create new ports in new areas of the state. (California Coastal Act Section 30701)”

The Project will modernize APMT’s operation through efficient high tech machinery. In doing so, the Project heeds the Coastal Act’s “...encourage[ment] to modernize and construct necessary facilities within their boundaries...” to avoid the need to dredge and fill or create new ports within the state.

“Policy 1.4 – Coastal areas and waters in the Port suitable for water-oriented recreational activities shall be protected for such uses where they do not interfere with commercial or hazardous operations or activities of the Port and its tenants. (California Coastal Act Section 30220)”

The Project is located entirely within APMT’s existing container terminal. Consequently, it will have no impact upon any of the Port’s recreational facilities and/or locations.

2. *PMP § 7.2.2 Policy 2: Location, Design, and Construction of Development (California Coastal Act Sections 30707, 30708, 30211, 30212, 30212.5, and 30223)*

“Policy 2.1 – Locate, design, and construct port-related projects to (1) minimize substantial adverse impacts, (2) minimize potential traffic conflicts between vessels, (3) prioritize the use of existing land space for port purposes, including, but not limited to, navigational facilities, shipping industries, and necessary support and access facilities, (4) provide for other beneficial uses including, but not limited to, recreation and wildlife habitat uses, to the extent feasible, and (5) encourage rail service to port areas and multicompany use of facilities. (California Coastal Act Section 30708)”

The effect of the Project will not only minimize adverse impacts, it will reduce the impact of APMT’s operations on the environment through modern, less polluting equipment. This simultaneously aligns with both the Harbor Department’s Clean Air Action Plan and the California Air Resources Board’s clean air mandates. Further, the Project provides support for both the new cleaner equipment and the core operations of the terminal.

SUBJECT: LEVEL I NO. 18-25 CDP PUBLIC HEARING STAFF REPORT

III. FINDINGS OF FACT: ENVIRONMENTAL IMPACTS

Pursuant to state California Environmental Quality Act (CEQA) Guidelines Section 15060(a), the Harbor Department as the Lead Agency deemed the application complete and began the environmental review process. The Lead Agency (i.e., the Harbor Department) then determined, pursuant to state CEQA Guidelines Section 15061 that the activity is a project and is subject to CEQA. Pursuant to CEQA Guidelines Section 15060, Harbor Department Environmental Management Division staff conducted a preliminary review of the Project, using the environmental checklist as established through the State CEQA Guidelines, to determine if potential adverse environmental impacts were identified.

Based on this preliminary review, the Harbor Department has not identified any potentially adverse environmental impacts associated with the proposed Project. The Project would likely provide an air quality benefit due to increased use of electrification as well as a reduction in vehicle miles traveled on the terminal. The Project would not result in an increase in capacity for the terminal, so it is not growth-inducing; and with no increase in capacity, there is no potential to adversely impact traffic or congestion. Further, there are no improvements or construction in the water that could pose a potential adverse impact to a biological resource in the water or adversely impact water quality. The Project and new equipment has presented no new safety concerns that would require an increased presence of police or fire resources. The equipment further does not increase the noise levels at the site as it is not additional equipment but rather, replacement equipment. The addition of electric charging stations, WiFi antennas, vertical reefer stacking, etc., is equipment that arrives assembled and requires no construction other than securing the equipment onto the facility. There are no additional noise levels associated with the proposed new equipment and no new trucks trips which tend to be the biggest contributors to noise at a container terminal.

The Project site is in the vicinity of the seasonal nesting grounds used by the California least tern. The California least tern, *Sternula antillarum browni*, is a subspecies of least tern that breeds primarily in bays of the Pacific Ocean within a very limited range in Southern California, in San Francisco Bay and in northern regions of Mexico. This bird is a federally and state listed endangered subspecies that has nested at this location since Pier 400's construction in 1996. Industrial uses and on-site construction at Pier 400 have not adversely impacted nesting in the past. The Project does not change this in any way especially considering the very minor nature of this Project's proposed construction element. The Harbor Department has processed at least 30 APPs for various types of construction projects and facility modifications at the APM Terminal since approximately 2003, none of which disturbed or threatened the birds. Activities that could potentially impact breeding success are typically associated with the creation of new perching opportunities for raptors, or increasing noise or night lighting at the nesting site. In-water work that could impede foraging opportunities or

SUBJECT: LEVEL I NO. 18-25 CDP PUBLIC HEARING STAFF REPORT

degrade water quality could also hinder the birds' success. The Project does not create new structures for perching and does not increase noise or lighting. The Project has no in-water or wharf work so it will not impact foraging opportunities. Further, there are no new structures being proposed that would impede wildlife migratory patterns in any way.

Upon determination that the activity is subject to CEQA and completion of preliminary review pursuant to State CEQA Guidelines 15060, the Director of the Environmental Management Division conducted a review of the Project to determine if it is categorically exempt from the requirements of CEQA pursuant to state CEQA Guidelines 15061(b)(2). The Project has been found to be exempt under the following City of Los Angeles CEQA Guidelines:

- Article III, Class I (1) – *Interior or exterior alterations involving remodeling or minor construction where there be negligible or no expansion of use.* Modifications to the facility to accommodate the Project are minor in nature as the site is an already developed and operating container terminal. The Harbor Department reviewed the recently prepared Terminal Rail and Capacity Analysis for Pier 400 which determined that the facility is berth constrained. The analysis concluded that the “wharf capacity is less than the container yard (CY) capacity, and thus is the governing capacity.” As a result, the proposed facility modifications are not growth-inducing nor is there any potential for throughput expansion with the existing berth configuration. The Project does not propose any alterations to the existing berths as part of this project; therefore, throughput cannot increase from the Project.
- Article III, Class 1 (32) – *Installation, maintenance or modification of mechanical equipment and public convenience devices and facilities which are accessory to the use of the existing structures or facilities and involve negligible or no expansion of use.* The installation of WiFi antennas, reefer racks, traffic barriers and fencing and the removal of overhead road signs and their pilings at an existing industrial facility does not create an adverse environmental impact but these project components are necessary to allow the new equipment to operate safely at the site.
- Article III, Class 1 (12) – *Outdoor lighting and fencing for security and operations.* The current facility has existing lighting and extensive fencing for security purposes. Alterations to existing fencing are necessary to safely secure the area being utilized. Other on-site fencing improvements may be needed as the Project progresses. No new lighting is necessary.
- Article III, Class 3 (5) – *Water main, sewage, electrical, gas and other utility extensions of reasonable lengths to serve already approved construction.* The existing facility has an existing utility infrastructure in place. The Project needs to connect the existing electrical power to the

DATE: MARCH 21, 2019

PAGE 10 OF 10

SUBJECT: LEVEL I NO. 18-25 CDP PUBLIC HEARING STAFF REPORT

new electric charging stations that will be needed to charge the equipment. The charging stations arrive fully assembled and need only to be secured onto the site. There are no construction activities related to the charging stations.

State CEQA Guidelines Section 15300.2 established exceptions to when a Notice of Exemption may not be utilized for a proposed project. The Harbor Department has reviewed the exceptions which include the following: the creation of a cumulative impact, the creation of a significant effect on the environment, damage to a scenic highway, a project located on a hazardous waste site as defined by Government Code Section 65962.5; and, projects that may cause a significant change or harm to a historic resource. None of the exceptions apply to the proposed Project so consequently the Notice of Exemption is the appropriate CEQA documentation.

IV. CONCLUSION

Harbor Department staff recommends the Board of Harbor Commissioners:

- **FIND LEVEL I COASTAL DEVELOPMENT PERMIT NO. 18-25 WAS ISSUED IN COMPLIANCE WITH THE PORT MASTER PLAN AND THE CALIFORNIA COASTAL ACT; DENY THE APPEAL OF LEVEL I COASTAL DEVELOPMENT PERMIT NO. 18-25**
- **ADOPT THE FINDINGS OF FACT CONTAINED IN THIS PUBLIC HEARING STAFF REPORT**