



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the
Board of Harbor Commissioners

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

HEARING DATE: JULY 11, 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 Board of Harbor Commissioners (Board) will again hear the International Longshore and Warehouse Union's (ILWU or appellant) appeal of Coastal Development Permit (CDP) No. 18-25 issued to APM Terminals (APMT or applicant), including conducting another public hearing on July 11, 2019. This is necessary due to the Los Angeles City Council's (City Council) veto of the Board's previous rejection of the ILWU's appeal of the Executive Director's issuance of that CDP.

The Executive Director issued this Level I CDP in January of 2019. It was placed on the January 24, 2019, agenda to be reported to the Board pursuant to the procedures of the Port Master Plan (PMP). It was pulled from that meeting's agenda on January 23, 2019, and subsequently placed on the agenda to be reported to the Board on February 21, 2019. The ILWU appealed issuance of CDP 18-25 pursuant to the PMP at that meeting. The appeal was set and began through a public hearing held on March 21, 2019. On April 16, 2019, the Mayor of Los Angeles requested the Board's deliberation and vote on the appeal be continued such that the parties could attempt to reconcile their differences. The matter was eventually set for the Board's deliberation and vote on June 20, 2019. The Board deliberated and voted 3-2 to deny the ILWU's appeal, finding that the CDP was issued in compliance with the PMP and the California

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Coastal Act (Coastal Act). City Council took jurisdiction of that action pursuant to Los Angeles City Charter §245 and on June 28, 2019, held their own hearing wherein they vetoed the Board's action pursuant to Council Motion 52A (Transmittal 1). The effect of that veto was to send the matter back to the Port of Los Angeles (Port or Harbor Department) to hold the appeal hearing again. The testimony and evidence of the initial appeal will be made a part of this remanded appeal to ensure a complete administrative record.

The PMP establishes policies and guidelines to direct the development of the Harbor Department's coastal zone. The PMP was originally adopted and certified in 1980 in conformance with the policies of the 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 Port of Hueneme, Port of Long Beach, Port of 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 development is 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 CDP.

By certifying the Harbor Department's PMP, the Coastal Commission transferred coastal permit jurisdiction relative to port development to the Harbor Department. The policies, procedures, and guidelines of the PMP have been certified by the Coastal Commission to be in conformance with the Coastal Act. Consistent with this, the PMP has established two CDP processes:

- Level II for major developments, which always have a public hearing; and
- Level I for minor developments, which have a public hearing only on request.

It is important to note that the PMP created two levels of CDPs as a method to administer the CDP process. The two different levels of CDPs created in the PMP

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create two paths a project can take to obtain a CDP granting permission to develop within the port's coastal zone. The two levels do not reflect different rights or abilities; rather, they relate solely to the size and scope of the proposed development and its impact on coastal resources. Where the impact on coastal resources is minor, a Level I permit is appropriate. The key difference between the two levels is the mandatory public hearing. Because Level I CDPs deal with development projects that have an insignificant impact on coastal resources, the Coastal Act allows their reporting to the public and the Board to be sufficient. However, when a member of the public appeals or when two Board members express an interest, a proposed development project then receives the same measure of public scrutiny as a Level II CDP (namely, a public hearing).

A Level II CDP indicates that a proposed project requires a public hearing because it meets any of the following conditions:

- 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, §30715 of the Coastal Act).

Coastal resources identified in Chapter 3 Coastal Resource Planning and Management Policies of the Coastal Act include: shoreline public access and recreation, lower cost visitor accommodations, terrestrial and marine habitat protection, visual resources, landform alteration, agricultural lands, commercial fisheries, industrial uses, water quality, offshore oil and gas development, transportation, development design, power plants, ports, and public works within the coastal zone.

“Environment,” under the California Environmental Quality Act (CEQA), means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The “environment” includes both natural and man-made conditions (CEQA Guidelines §15360). Environmental impacts do not include social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment (Pub. Res.

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Code §21080(e)(2)). (See “Findings of Fact: Environmental Impacts” below for additional detail.)

The 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 CDPs 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

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application with the certified Plan and Coastal Act, and findings of fact and reasoning supporting the decision.

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.” (PMP §6.7.3)

B. APM Terminals CDP No. 18-25

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 2). 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)

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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). Further, 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.

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;
- installation of antenna poles; and
- compliance with engineering drawings for the Project.

These tasks are consistent with the types of projects that are issued Level I CDPs. Level I CDPs for similar scopes of work to CDP No. 18-25 have previously been issued for developments on container terminals. In fact, the Harbor Department issues roughly eleven 11 Level I CDPs a year, 55 since the PMP restatement in 2014, including four to container terminals. None of these were appealed or requested by the Board to be the subject of a public hearing.

The appellant has stated its belief that the Executive Director erred in issuing a Level I CDP to APMT because the results of the Project would not be minor, and has requested that the process restart as a Level II CDP. This request by the appellant rests on a misunderstanding of the Coastal Development Permit process and standards of

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review. As described above, the difference between the Level I and Level II CDP process is simply whether a public hearing is held automatically (as is the case for a Level II CDP) or if it is waived unless requested (which is the process for a Level I CDP). There is no higher standard of review for a Level II versus a Level I; there are no more stringent conditions that have to be met. A proposed project must be found to be consistent with the Coastal Act policies, whether its CDP follows the Level I or the Level II approval process.

Furthermore, due to the appeal of the Level I CDP by the appellant, the Board of Harbor Commissioners held a public hearing on March 21, 2019 in accordance with the Level II CDP process procedures. Therefore, the remedy proposed by the appellant has already occurred and will again on July 11, 2019.

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

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supports maximizing the use and efficient utilization of APMT's leasehold, 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 development plans should maximize the utilization of low-performing assets, environmentally contaminated facilities, and unused assets." (PMP §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 supports the addition of new automated 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 PMP. Further, this CDP advances all of the PMP's relevant policy goals as demonstrated below.

PMP §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.

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1. *Port Master Plan §7.2.1 Policy 1: Land Use (California Coastal Act §§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.” (Coastal Act §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. (Coastal Act §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.” (Coastal Act §30255). No fill is necessary to complete the Project, nor is any expansion of APMT’s leasehold necessary.

“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. (Coastal Act §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

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operations or activities of the Port and its tenants. (Coastal Act §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 §§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 §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.

D. The Project is Consistent with the Policies of the California Coastal Act; Other Proposed Standards are Outside the Scope of the Coastal Act

Chapter 3 of the Coastal Act states the policies which “shall constitute the standards by which the adequacy of local coastal programs, as provided in Chapter 6 (commencing with §30500), and the permissibility of proposed developments subject to the provisions of this division are determined. (Coastal Act, §30200)”

These policies concern:

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- Article 2 – Public Access
 - Access; recreational opportunities; posting
 - Development not to interfere with access
 - New development projects
 - Public facilities; distribution
 - Lower cost visitor and recreational facilities; encouragement and provision, overnight room rentals
 - Implementation of public access policies; legislative intent
- Article 3 – Recreation
 - Protection of certain water-oriented activities
 - Oceanfront land; protection for recreational use and development
 - Private lands; priority of development purposes
 - Upland areas
 - Recreational boating use; encouragement; facilities
- Article 4 – Marine Environment
 - Marine resources; maintenance
 - Biological productivity; waste water
 - Oil and hazardous substance spills
 - Diking, filling or dredging continued movement of sediment and nutrients
 - Commercial fishing and recreational boating facilities
 - Economic, commercial, and recreational importance of fishing
 - Construction altering natural shoreline
 - Water supply and flood control
- Article 5 – Land Resources
 - Environmentally sensitive habitat areas; adjacent developments
 - Prime agricultural land; maintenance in agricultural production
 - Lands suitable for agricultural use; conversion
 - Productivity of soils and timberlands; conversions
 - Archaeological or paleontological resources
- Article 6 – Development
 - Location, existing developed areas
 - Scenic and visual qualities
 - Maintenance and enhancement of public areas
 - Minimization of adverse impacts¹

¹ California Coastal Act §30253 – Minimization of adverse impacts

New development shall do all of the following:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

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- Public works facilities
- Terms or conditions on sewage treatment plant development; prohibition
- Priority of coastal-dependent developments
- Article 7 – Industrial Development
 - Location or expansion
 - Tanker facilities; use and design
 - Oil and gas development
 - Refineries or petrochemical facilities
 - Thermal electric generating plants
 - Legislative findings and declarations; offshore oil transportation
 - Governor or designee; coordination of activities concerning offshore oil transport and refining; duties

Chapter 8 of the Coastal Act governs ports. While local coastal programs follow the Chapter 3 policies governing the standards of permissibility of development within their coastal zone jurisdictions, Article 2 of Chapter 8 sets out the much smaller list of policies of the state with respect to providing for port-related developments consistent with coastal protection:

- Protection of commercial fishing harbor space
- Diking, filling, or dredging water areas
- Fill
- Tanker terminals
- Location, design and construction of port-related developments.

An analysis of economic impacts is outside the scope of the standards of the Coastal Act policies for determining the permissibility of proposed developments, both for the specific set of policies governing port development and for the broader set of policies governing development in non-port areas. Therefore, the claim by the appellant that an evaluation of the Project for consistency with the Coastal Act must include an analysis of the economic impact of automation on the neighboring communities is not supported by the stated policies of the Coastal Act and is incorrect. In fact, it would be

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- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
 - (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.
 - (d) Minimize energy consumption and vehicle miles traveled.
 - (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

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improper to hold up the issuance of a CDP in order to complete such an analysis; it would abrogate the requirements and purpose of the Coastal Act.

E. The Project is Consistent with the PMP §7.0 Coastal Development Permit Policies; Other Proposed Standards are Outside the Scope of the PMP

The Coastal Development Permit policies of the PMP are clearly stated in PMP §7.0, and they refer back to the Chapter 3 and Chapter 8 policies of the Coastal Act cited above. The appellant and other commenters have asked that language elsewhere in the PMP be interpreted to support additional standards of review not found in PMP §7.0.

An analysis of economic impacts is outside the scope of the standards of the PMP §7.0 policies for determining the permissibility of proposed developments in consistency with the Coastal Act. Therefore, the request that the evaluation of the Project for consistency with the PMP must include an analysis of the economic impact of automation on the neighboring communities is not supported by the stated policies of the PMP and would be beyond the scope of authority conferred in the PMP by the Coastal Commission.

F. The Application for CDP 18-25 is Complete

The Harbor Department does not currently have a separate application form to apply for a Coastal Development Permit. There is instead a single application form called the Application for Port Permits (APP) that is required for any construction, repair, or demolition on port property; the leasing of any port property on a long- or short-term basis; or the hosting of an event on port property. Harbor Planning staff evaluate information submitted by applicants to determine a proposed project's consistency with the Coastal Act and the PMP. Staff deemed APMT's application complete, meaning that they had been provided with sufficient information necessary to determine the Project's consistency. While questions on APMT's application about job creation were not answered, those questions are not part of staff's Coastal Act consistency analysis, as any answers would be outside the scope of the Coastal Act policies guiding permissibility of port developments. Consequently, these questions have no bearing on CDP 18-25's consistency with the PMP and Coastal Act – they are immaterial to the analysis.

As stated above, the issuance of CDP 18-25 was based upon a complete application submitted by AMPT. The decision of completeness is, per PMP §6.3.1, exclusive to the Executive Director. If the Project's description or any element of the

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Project was vague such that additional information was necessary it would have been requested. Instead, the Executive Director, acting within his exclusive PMP authority assisted by professional subject matter experts on staff, found the Project's description and supporting documents clear and complete.

Staff has reviewed the applications for CDPs issued by other jurisdictions, including the Coastal Commission, the City of Los Angeles, and the Port of Long Beach. Each of these applications requests information necessary to determine consistency with the Chapter 3 Coastal Act policies (for non-port locations) or the Chapter 8 Coastal Act policies (for ports). None of these application forms request information about job creation or any of the types of information about economic impacts that the appellant claims should be required to in order to determine if a development is consistent with the Coastal Act. Those inquiries are not included because they are outside of the required analysis and have no connection to a CDP's consistency with a Port Master Plan specifically or the Coastal Act generally.

G. Automation Projects Located in the Appropriate Planning Areas Have Been Found to be Consistent with the PMP and the Coastal Act

The Project requires a CDP for minor development work related to the operation of battery-electric powered equipment; the addition of automated equipment itself does not require a CDP. In fact, as noted above, the PMP encourages automated technology and the Board has previously found that the installation of automated container-handling equipment at a container terminal is entirely consistent with the PMP and the Coastal Act.

There are currently two existing automated container terminals operating within the San Pedro Bay Ports, both of which were found to be consistent with the Coastal Act: the Middle Harbor Terminal operated by Long Beach Container Terminal (LBCT) at the Port of Long Beach, and the TraPac terminal at the Port of Los Angeles. The Middle Harbor Terminal Redevelopment project at the Port of Long Beach was issued a Harbor Development Permit (their equivalent of a CDP) in April 2009. The project to add automated stacking cranes at the TraPac terminal was issued CDP 13-13 in November 2013 by the Board.

H. APMT is Responsible for Equipment Purchasing Decisions Under Permit No. 827

Permit No. 827 (Permit, Transmittal 3) is the agreement between the Harbor Department and APMT that provides the terms and conditions under which APMT may

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use and occupy premises at Pier 400. As between the Harbor Department and APMT, the Permit requires APMT to provide the equipment necessary to operate its facility.

Permit §2(d) and 4(a) respectively state, in pertinent part:

- 2(d) “[t]enant shall, at its own cost and expense, provide all tackle, gear and labor for the berthing and mooring of its vessels at the berths and shall provide, at its own expense, such appliances and employ such persons as it may require for the handling of goods, wares and merchandise for its use; provided, however, that nothing contained herein shall prevent Tenant from using such appliances as may be installed by City at the berths upon the payment to City of all applicable charges.”
- 4(a) “[t]enant shall use the premises for the docking and mooring of vessels owned, operated, or chartered by Tenant or vessels of Tenant’s customers and for the assembling, distributing, loading and unloading of goods, wares, merchandise on and from such vessels over, through and upon such premises and from and upon other vessels, as well as office, administrative and maintenance activities necessary thereto and for purposes incidental and related to the operation of a container terminal.”

APMT’s application for issuance of this Level I CDP seeks to effectuate its rights under §2(a) to provide the equipment necessary to operate the terminal and to undertake the uses permitted under §4(a). Under Permit No. 827, the Harbor Department cannot dictate the equipment APMT purchases to meet its obligations under the Permit.

I. Compliance with Shipping Act of 1984

Additional issues for the Board’s consideration stem from the United States Shipping Act of 1984 (Shipping Act) and its concern with discriminatory treatment. The Shipping Act’s purpose, in part, is to establish nondiscriminatory regulations for the common carriage of goods by water. The Act seeks to eliminate discriminatory treatment of shippers and carriers by making such discrimination illegal. In issuing the CDP for the Project the Executive Director was acting in accordance with the mandates of the Shipping Act of 1984.

The Shipping Act of 1984 states that:

- “A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and

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reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” 46 U.S.C. §41102(c).

- “A marine terminal operator may not give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person.” 46 U.S.C. §41106(2).

Under the Shipping Act, a “marine terminal operator” means “a person engaged in the United States in the business of providing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of Title 49 U.S. Code. The Harbor Department is a “marine terminal operator” under the Shipping Act and, therefore, subject to the two prohibitions noted above. *See Plaquemines Port, Harbor & Terminal Dist. v. Federal Maritime Commission* (D.C. Cir. 1988) 838 F.2d 536. *See also* 46 C.F.R. §525.1(c)(13) (“A marine terminal operator includes, but is not limited to, terminals owned or operated by states and their political subdivisions. . . .”)

As a “marine terminal operator” the Harbor Department may not discriminate against any terminal. As noted above, the Harbor Department has issued 55 Level I CDPs since the restatement of the PMP certified by the California Coastal Commission in 2014. The Board has never reversed the Executive Director’s issuance of a Level I CDP. 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;
- 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.

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III. FINDINGS OF FACT: ENVIRONMENTAL IMPACTS

Pursuant to state California Environmental Quality Act (CEQA) Guidelines §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 §15061 that the activity is a project and is subject to CEQA. Pursuant to CEQA Guidelines §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 nor the new equipment has presented any 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

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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 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. The Project contemplates the use of 5GHz WiFi. 5GHz WiFi is a short range networking system that operates in the five-gigahertz radio band; it can run faster but with shorter range than the default 2.4GHz WiFi radio band used by most devices. There exists no evidence in the record demonstrating any possible negative effect of 5GHz WiFi upon the birds due to this Project. The appellant has expressed concern over potential health impacts of 5G cellular technology. The "G" in 5G cellular stands for "generation", not the radio frequency, and describes a different technology than that contemplated in the Project. There also exists no evidence in the record demonstrating any possible negative effect of 5G cellular technology upon the birds due to this Project.

It should be noted that under CEQA and the CEQA Guidelines, economic effects without any demonstrated physical effect on the environment are not environmental impacts and need not be discussed. (Pub. Res. Code §21080(e)(2); CEQA Guidelines § 15064(e), 15064(f)(6), and 15382.) No evidence has been submitted or otherwise exists in the record that shows any physical impacts to the environment will result in relationship to the economic impact of this Project. Therefore, it cannot be said that this Project will have any impact upon the environment based upon various assertions made by individuals without any evidence demonstrating such a physical effect on the environment will occur based on perceptions of the Project's economic impact.

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 further review under CEQA pursuant to state CEQA Guidelines 15061(b)(2). The Project has been found to be so 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

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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 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 §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

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§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. BUSINESS, FINANCIAL, AND OPERATIONAL RESPONSES

Every proposed project's consistency with the Coastal Act and the PMP is determined impartially and independently by staff based upon the policies and procedures of the Coastal Act, and the PMP, and does not involve standards of review outside the scope of these two documents, as discussed above. The business case supporting a proposed development is also outside the scope of the standards of review under the Coastal Act and PMP, and it has not entered into staff's impartial analysis of this proposed Project's consistency. However, given that the appellant and commenters have argued against the Project based upon claims they have made about the business, financial, and operational models of container terminals at the ports of Los Angeles and Long Beach, these claims need to be addressed and corrected where mistaken.

Comparisons between terminals at the ports of Los Angeles and Long Beach must include an evaluation of the terminal properties' sizes, configuration, capital investment, throughput capacity, and other considerations. Without public financial data and detailed financial and economic analysis, assertions about any one container terminal relative to its competitors can be misleading. Specifically, in this instance comparing APMT to LBCT, two terminals with different infrastructure, different investment schemes, and different business models, is not advisable. For example, LBCT cost approximately \$1.5 billion to construct, while APMT cost approximately \$460 million, which will have an impact on the relative prices charged by the ports for the leasing of these two terminals.

Pricing between the Harbor Department and its tenants (and the Port of Long Beach and its tenants as well) takes into account a variety of factors that drive volume and job creation, and also reflects historical decisions based upon the timing of compensation resets and the economic conditions that were prevailing when those decisions were made. Terminals have a minimum annual guarantee (MAG), an annual base rent owed to the Harbor Department, and each terminal's MAG per acre is calculated differently, depending on the individual permit. The current average MAG within the Port of Los Angeles is approximately \$175,000 per acre. The Harbor Department has made advances over the past five years to improve pricing at its terminals. APMT's MAG will be \$185,000 per acre at the end of its current 5-year

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compensation period in 2022, as the MAG will continue to increase with the Consumer Price Index (CPI).

From a competitive standpoint, the San Pedro Bay ports have lost 20 percent of their market share since 2002. Competing ports on the US East Coast, US Gulf Coast, Western Canada, and Mexico operate on a lower cost basis than the San Pedro Bay ports. The PMP specifically encourages container terminals to improve their operational efficiencies, including through the use of automated technologies. One element of operational efficiencies is the reduction of truck turn times to increase velocity and volume. A perimeter delivery system such as envisioned by APMT's Project will result in a reduction of truck turn times, and is a necessary element in allowing APMT to reach its studied terminal capacity of 3.3 million twenty-foot-container-equivalent units (TEU) as identified in APMT's Environmental Impact Report (EIR). APMT's actual container volume in CY 2018 was only 2.2 million TEU, and APMT believes that meeting POLA's requirements to grow their business, drive efficiencies, and meet environmental goals can best be approached through their automation project.

The Harbor Department does not dictate how terminal operators manage their terminal operations; nor is the Harbor Department involved in the agreements between terminal operators and labor unions. The Harbor Department's obligation when evaluating CDPs is solely to evaluate consistency with the Coastal Act and the PMP. This is what the Harbor Department did when approving the TraPac CDP 13-13 for its automation program. The addition of automated terminals at the Port of Los Angeles and the Port of Long Beach has not led to the reduction of jobs at the two ports. After 10 years of stagnation, the Port of Los Angeles has registered three consecutive years of over 9 million TEUs and is poised to break its fiscal-year TEU record. This continued growth has led to an increase in ILWU jobs, even as growth has not kept pace with overall US growth due to a continuing loss of market share to less expensive and more efficient ports.

APMT's Project is allowed under its permit with the Harbor Department and its agreement with the ILWU. The Harbor Department does not dictate a terminal's mode of operation or its labor staffing choices. The Project supports the PMP's environmental and efficiency goals. Therefore, the Project is wholly aligned with the Harbor Department's environmental and business goals.

V. CONCLUSION

Staff has made the following findings of fact regarding the consistency of the Project approved in CDP 18-25 with the Coastal Act and the PMP:

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- the scope of the Project is consistent with a Level I CDP;
- the Project advances the goals of the PMP;
- the Project advances the policy objectives of the PMP;
- the Project is consistent with the policies of the California Coastal Act, while other proposed standards are outside the scope of the Coastal Act;
- the Project is consistent with the §7.0 CDP policies of the PMP, while other proposed standards are outside the scope of the PMP;
- the application for CDP 18-25 is complete;
- automation projects located in the appropriate planning areas have been found to be consistent with the PMP and the Coastal Act;
- Permit No. 827 establishes AMPT as the party responsible to purchase equipment for its authorized activities;
- the Shipping Act of 1984 prohibits discriminatory treatment of CDP 18-25;
- the Harbor Department has not identified any potentially adverse environmental impacts associated with the proposed Project; and
- 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 and has found it to be categorically exempt from further review under CEQA pursuant to state CEQA Guidelines 15061(b)(2).

Harbor Department staff therefore recommends that 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**

TRANSMITTALS:

1. City Council Motion 52A
2. APP #181108-176
3. Permit No. 827