

September 26, 2019

Christopher Koontz, AICP
Planning Bureau Manager
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City of Long Beach
333 West Ocean Boulevard, Fifth Floor
Long Beach, California 90802

Dear Christopher Koontz:

Thank you for providing California Air Resources Board (CARB) staff the opportunity to comment on the Long Beach Cruise Terminal Improvement Project (Project) Recirculated Initial Study/Mitigated Negative Declaration (Recirculated IS/MND), State Clearinghouse No. 2019069085. The Project proposes to make improvements to the existing facilities at the Long Beach Cruise Terminal (Terminal) to accommodate a new and larger Carnival cruise vessel designated as the *Panorama*, which will replace the *Splendor*. The Project is located in the City of Long Beach (City), which is the lead agency for California Environmental Quality Act (CEQA) purposes.

CARB staff reviewed the IS/MND and provided comments to the City in a letter dated July 22, 2019.¹ CARB staff's comment letter (see Attachment A) expressed the following concerns regarding the conclusions of the air quality impact analysis presented in the IS/MND.

1. The City's use of the inappropriate assumption that the *Splendor* is not shore power capable under the Project's baseline condition.
2. Lack of fact-based documentation supporting the assumption that the *Panorama* would emit less air pollutants while in transit as a result of being more energy-efficient than the *Splendor*.
3. Carnival Cruise Line's (Carnival) lack of participation in the Port of Long Beach's (POLB) Green Flag Vessel Speed Reduction Program (VSRP).

The Recirculated IS/MND included more robust language to support the City's chosen baseline and modeling assumptions and potential participation in the POLB's Green

¹ California Air Resources Board, 2019. California Air Resources Board Staff Comments on the Long Beach Cruise Terminal Improvement Project Initial Study/Mitigated Negative Declaration (State Clearinghouse No. 2019069085). July 22, 2019. Accessible at: <https://ww3.arb.ca.gov/toxics/ttdceqalist/longbeachcruiseterminalimprovement.pdf>.

Flag VSRP. However, based on CARB staff's review of the Recirculated IS/MND, the City's revisions did not adequately address CARB staff's original comments for the reasons discussed below.

Inappropriate Baseline Assumption

The Recirculated IS/MND continues to assert that, under the Project's baseline condition, the *Splendor* must operate its auxiliary engines while at berth because it is not currently capable of connecting to shore power. This baseline assumption means that the *Splendor* would emit higher levels of air pollutants while at berth as compared to the proposed shore power capable *Panorama*. CARB staff continues to assert that this baseline assumption is misleading because Carnival would have to either retrofit the *Splendor* to be capable of plugging into shore power, substantially reduce the number of visits, or remove it from California service by the end of 2019 to comply with CARB's existing Vessels At-Berth Regulation, regardless of the Project. Carnival should have already started the process of making the *Splendor* shore power capable to meet the January 2020 At-Berth Regulation compliance deadline, approximately three months away. CARB staff continues to believe it is inappropriate to include the emissions from the *Splendor*'s auxiliary engines in the Project's baseline condition and that the City's baseline assumption could inappropriately lead the public to believe that the Project would result in a decrease in harmful air pollutant emissions while vessels are at berth.

The City claims the *Splendor*'s compliance with the Vessels At-Berth Regulation would not represent the existing baseline, but rather would constitute the "cherry-picking" of lower air pollutant emissions (Recirculated Appendix A, p. 35.). However, the City's assertion fails to consider the fact that the baseline required in Title 14, California Code of Regulations (CCR), Section 15125 is established to disclose publicly, as an informational document, the proposed Project's likely impacts on the environment beyond the baseline environmental conditions. The City cannot merely choose an existing baseline that yields the highest net reduction in air pollutant emissions, which is what has been done in the Recirculated IS/MND.

The City's failure to include the *Splendor*'s compliance with the Vessels At-Berth Regulation does not provide the fullest, most transparent picture of how the proposed Project will impact the air quality of surrounding areas, many of which are already heavily impacted by the air pollutants from activities at POLB. As the California Supreme Court succinctly found:

"...in appropriate circumstances an existing conditions analysis may take account of environmental conditions that will exist when the project begins

operations the agency is not strictly limited to those prevailing during the period of EIR preparation. An agency may, where appropriate, adjust its existing conditions baseline to account for a *major change in environmental conditions that is expected to occur before project implementation....*To the extent a departure from the 'norm[]' of an existing conditions baseline (Guidelines, 14125(a)) promotes public participation and more informed decision making by providing a more accurate picture of a proposed project's likely impacts, CEQA permits the departure."

[Emphasis added]²

The Project proponent must seek a federal consistency certification from the California Coastal Commission (CCC) for its activities involving the disposal of dredged materials at the LA-2 Ocean Dredge Material Disposal Site. Obtaining a federal consistency certification from the CCC can take months to acquire.³ Due to the processing time to receive certification from the CCC, the actual implementation of the Project will very likely occur sometime in mid-2020, at the earliest, well after the *Splendor* should have come into compliance with the Vessels At-Berth Regulation.⁴ The final approval of the Project in mid-2020 will not occur until well after the *Splendor* has been operating in full compliance with the Vessels At-Berth Regulation. Given this, it would be of no informational value to include the *Splendor*'s current emission levels that are not compliant with the Vessels At-Berth Regulation. Therefore, CARB staff requests, again, that the City include the *Splendor*'s emission levels when it is fully compliant with the Vessels At-Berth Regulation in the baseline for the IS/MND's air quality impact analysis for the proposed Project.

Lack of Substantial Evidence to Support Vessel Emission Rates

Carnival and the City continue to assert that the vessel engine energy use of the larger 133,300 gross ton *Panorama* (161,652 daily kWh) is less than the vessel engine energy use of the smaller 113,300 gross ton *Splendor* (332,161 daily kWh). This represents a 51 percent reduction in vessel energy use. The Recirculated IS/MND explains that the difference in energy consumption between the *Splendor* and *Panorama* is primarily attributable to vessel age and more efficient and modern diesel engines.

² *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 452-453

³ <https://www.coastal.ca.gov/fedcd/guidecd.pdf>.

⁴ It's also not clear if this project is specifically called out in any of the **PMP documents** currently certified by the Coastal Commission. If it has not been specifically called out, then there is an argument that the project needs approval (either as a PMP amendment or CDP) from the Coastal Commission pursuant to Public Resources Code section 30715, subdivision (a). If the Coastal Commission has to act on a PMP amendment to include this project in the POLB PMP or issue a CDP for the project, the effective date of final approval may not occur until the end of 2020 or early 2021, given the typical review periods at the Coastal Commission.

CARB staff continues to urge the City and Carnival to release the source of the data supporting the energy consumption of the *Splendor* and *Panorama* as presented in Appendix B of the Recirculated IS/MND. By doing so, the engine energy use versus vessel speed data for the propulsion engines, as well as engine energy use data for the auxiliary engines for both the *Splendor* and *Panorama*, can be confirmed. Without citation to substantial evidence, there is currently no legal basis to support the conclusory finding of the Recirculated IS/MND, that the project would not result in a significant adverse environmental impact.⁵

Port of Long Beach Green Flag Vessel Speed Reduction Program

In response to CARB staff comments on the IS/MND regarding Carnival's participation in POLB's Green Flag VSRP, Carnival stated that it is currently completing a study to evaluate the feasibility of participating in the Green Flag VSRP. According to the Recirculated IS/MND, the feasibility study is expected to be completed prior to the City's approval of the Project. If the City approves the feasibility study, the City will integrate the findings of the study into a Condition of Approval VSR agreement with Carnival. It is unclear what is specifically being analyzed in the feasibility study. Therefore, CARB staff urges the City to either participate in POLB's Green Flag VSRP or participate in an alternative program that achieves equal or greater air pollutant emission reductions.

Recommendations

Based on the remaining deficiencies in the Recirculated IS/MND, CARB staff urges the City to revise the air quality analysis and release a revised IS/MND for public review and comment. Should the revised IS/MND find, after adequately addressing the deficiencies noted in this letter, that the Project may have a significant and unavoidable impact on the environment, the City must prepare and circulate a draft Environmental Impact Report for public review, as required by CEQA.

⁵ "In reviewing an agency's compliance with CEQA... the courts' [evaluate whether the lead agency prejudicially abused its discretion where] [s]uch an abuse is established 'if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.'[Citation omitted]" (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 426.) Therefore, a lead agency must support its MND and required findings that there is no possibility that the project may have an adverse impact on the environment with substantial evidence.

Christopher Koontz, AICP
September 26, 2019
Page 5

If you have questions, please contact Stanley Armstrong, Air Pollution Specialist, at (916) 440-8242 or via email at stanley.armstrong@arb.ca.gov.

Sincerely,



Richard Boyd, Chief
Risk Reduction Branch
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cc: See next page.

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September 26, 2019

Page 6

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Attachment A

July 22, 2019

Christopher Koontz, AICP
Planning Bureau Manager
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City of Long Beach
333 West Ocean Boulevard, Fifth Floor
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Dear Christopher Koontz:

Thank you for providing California Air Resources Board (CARB) staff the opportunity to comment on the Long Beach Cruise Terminal Improvement Project (Project) Initial Study/Mitigated Negative Declaration (IS/MND), State Clearinghouse No. 2019069085. The Project proposes to make improvements to the existing facilities at the Long Beach Cruise Terminal (Terminal) to accommodate a new and larger Carnival cruise vessel designated as the *Panorama*, which will replace the *Splendor*. The Project is located in the City of Long Beach (City), which is the lead agency for California Environmental Quality Act (CEQA) purposes.

Based on several deficiencies, CARB staff does not believe there is sufficient data available in the published materials to support the less than significant impact conclusion for air quality in the IS/MND. We sought an extension of the comment deadline to discuss these issues with the City before submitting a formal comment letter, but that request was summarily denied.

The use of existing emissions from the *Splendor* while at berth as a CEQA baseline is misleading to decision makers and the public because it fails to provide an accurate picture of the proposed project's likely air quality impacts.¹ This conclusion is based on an incorrect assumption that the new *Panorama* (which will be ready to connect to shore-based electrical power and turn off its auxiliary engines at berth) would achieve significant emission reductions at berth relative to the vessel it is replacing, the smaller *Splendor* (which is not currently equipped to plug in). This is a false comparison because Carnival Cruise Lines (Carnival) would have to either retrofit the *Splendor* to plug in to shore power or remove it from California service by the end of 2019 to comply with CARB's existing Vessels At Berth Regulation, regardless of the Project. This statewide Regulation defines the baseline for covered vessels at berth, including the Carnival fleet.

¹ *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 454.

Christopher Koontz, AICP
July 22, 2019
Page 2

On January 1, 2020, the Carnival fleet must connect at least 80 percent of its vessel visits to shore power and reduce the auxiliary engine power at berth by at least 80 percent, on an annual basis. Compliance with this stepped-up requirement (from 70 percent in 2019 to 80 percent in 2020) will further reduce emissions of all criteria, toxic, and climate pollutants, regardless of which vessels are calling at the Terminal.

We recognize that the in-transit and maneuvering emissions of one pollutant, oxides of nitrogen (NO_x), may be lower for the *Panorama* than the *Splendor* because the new *Panorama* uses main engines certified to the relatively cleaner Tier 2 emission standards. However, the IS/MND indicates that the engines on the *Panorama* must be more efficient than the *Splendor*, without providing fact-based documentation to support that assertion, which affects the relative air pollutant emissions of the vessels. As a result, without citation to substantial evidence to support this conclusory finding, there is currently no legal basis to support the City's assertion that the energy output (161,652 daily kilowatt hours (kWh)) of the larger 133,300 gross ton *Panorama* is less than the energy output (332,161 daily kWh) of the smaller 113,300 gross ton *Splendor* and, thus, wouldn't result in a significant adverse environmental impact.²

The IS/MND also assumes that the *Panorama* would travel at speeds ranging from 4.1 to 16.5 knots within 40 nautical miles from the Terminal. The City should require Carnival to participate in the Port of Long Beach's Green Flag Program that reduces vessel speeds to 12 knots or less within 40 nautical miles of the terminal to reduce air pollution. If Carnival has air pollutant emissions testing data that shows the *Panorama* can achieve similar emission reduction benefits at speeds higher than 12 knots, Carnival should make that data available to the public for review.

With the inaccurate assumptions about the use of shore power at berth, and incomplete material on vessel engine efficiency and the effects of the *Panorama*'s speed on emissions, the IS/MND and Appendix on air quality do not provide the necessary substantial evidence to determine whether the Project would result in a net increase or a net decrease in emissions of each air pollutant, or the magnitude of the change.

CARB staff urges the City to revise the air quality analysis and release a revised IS/MND for public review and comment. Should the recirculated IS/MND find, after adequately addressing the deficiencies noted in this letter, that the Project may have a

² "In reviewing an agency's compliance with CEQA...the courts' [evaluate whether the lead agency prejudicially abused its discretion where].... [s]uch an abuse is established 'if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.'[Citation omitted]" (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426.) Therefore, a lead agency must support its MND and required findings that there is no possibility that the project may have an adverse impact on the environment with substantial evidence.

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Page 4

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Page 3

significant and unavoidable impact on the environment, the City must prepare and circulate a draft Environmental Impact Report for public review, as required by CEQA.

If you have questions, please contact Stanley Armstrong, Air Pollution Specialist, at (916) 440-8242 or via email at stanley.armstrong@arb.ca.gov.

Sincerely,



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