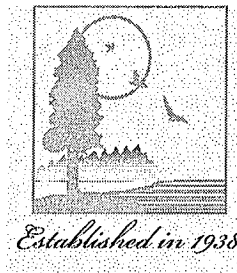


**CALIFORNIA STATE
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July 19, 2016

File Ref: G 05-03

Ms. Heather Tomley
Director of Environmental Planning
Port of Long Beach
4801 Airport Plaza Drive
Long Beach, CA 90815

Dear Ms. Tomley:

The California State Lands Commission staff commends the Port of Long Beach and their staff for its excellent work in developing its draft Community Impact Study. This study identifies the direct impacts of Port-related operations on the local community and mitigation measures to assuage these impacts. As you know, California port operations have varying degrees of impacts on the environment and the communities surrounding their operations, but are restricted in how they can mitigate these impacts off of port property. Not only is the Port taking a proactive approach to fund projects that maximize the environmental benefits to neighboring communities and leverage limited Port funds, but it applied the complex legal limitations accurately to design a framework to identify appropriate mitigation projects, consistent with applicable law.

As background, the Port manages state sovereign tide and submerged lands within its jurisdiction subject to its legislative trust grant, the state Constitution, and the common law Public Trust Doctrine. The trust grant, state Constitution, and Public Trust Doctrine all limit how and where the Port can spend its public trust revenues. This limitation is particularly important when spending port dollars off of port property for community mitigation projects. Ports may conduct discretionary mitigation that is not CEQA-mandated, such as offsetting impacts from general port operations or impacts that accumulated over the years, but only under certain conditions. Those conditions are: 1) that port operations are directly responsible for the impacts being mitigated; 2) there is a nexus between the direct impacts and the proposed mitigation; 3) the proposed mitigation is proportional to the impacts; and 4) the mitigation cannot be inconsistent with the Public Trust Doctrine or the ports overall management responsibilities for its granted public trust lands.

As mentioned above, the Port may only expend trust revenues off of port property when they are mitigating for direct port impacts. Direct impacts are impacts from land within the Port's jurisdiction as well as impacts from port-related sources, such as cargo vessels, originating from or destined for the port. The port cannot use public trust revenues to mitigate impacts associated with third-party operations on non-port property, such as container storage yards or warehouses. These uses may negatively affect the community but the impacts cannot

Ms. Heather Tomley

July 19, 2016

Page 2

be directly attributed to the port. Activities by third parties on property not under the Port's jurisdiction are the responsibility of local, state and federal government bodies.

The Port's Community Impact Study analyzes four key resource areas that are most strongly associated with community impacts outside the Port's jurisdiction, including air quality, traffic, noise, and water quality. Through a "CEQA-like analysis", the Study, using a science-based approach, provides a sound legal justification for expending public trust funds for certain categories of mitigation projects located off of Port property by demonstrating a direct nexus between Port operations and those environmental impacts and quantifying the proportion attributable to Port operations. Importantly, the Study appropriately focuses on the direct impacts of the Port's operations and proposes potential mitigation strategies that avoid, minimize, rectify or reduce the impacts over time.

Commission staff supports the Port mitigating direct environmental and health-related impacts. However, we understand that the draft Study is a framework for identifying and analyzing proposed mitigation projects. Each proposed project that the Port seeks to fund must be carefully analyzed on its own merits and determined to be consistent with the body of law governing the use of Port funds. We would like to remind the Port that there is a long history of court decisions prohibiting the use of public trust funds for municipal functions and emphasizing the Port's fiduciary duties to trust assets. Because of these complex legal restrictions, Port staff involved Commission staff early and sought input as the study evolved. This early engagement and collaboration is beneficial and contributed to a document with strong legal justification that should help guide the Port in funding appropriate mitigation projects in accordance with applicable laws. We anticipate the study will be valuable to the Port in identifying projects that alleviate cumulative environmental impacts of port operations in a manner that is consistent with the public trust.

Commission staff acknowledges that developing effective and appropriate mitigation is a complicated endeavor and the Port may still find challenges when selecting specific projects to fund. In the future, Commission staff may comment on specific proposed expenditures of the Port's public trust funds and would like to continue to be a resource to the Port as it proceeds with the grant funding process.

We appreciate that the Port consulted Commission staff early and often, and we look forward to the substantial environmental and other benefits the Port's mitigation efforts will achieve. Overall, the draft Study appears to provide a model approach for developing a framework for identifying appropriate projects for mitigating port impacts.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheri Pemberton", with a large, sweeping flourish extending to the right.

SHERI PEMBERTON
Chief, External Affairs Division