

CALIFORNIA STATE LANDS COMMISSION

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January 29, 2020

File Ref: SCH #2019060229

Jason Cashman
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Port of Stockton
2201 West Washington Street
Stockton, California 95203

Governor's Office of Planning & Research

JAN 30 2020

STATE CLEARINGHOUSE

VIA REGULAR & ELECTRONIC MAIL (jcashman@stocktonport.com)

Subject: Draft Environmental Impact Report (EIR) for the NuStar Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) Development and Vessel Service Project, San Joaquin County

Dear Mr. Cashman:

The California State Lands Commission (Commission) staff has reviewed the subject Draft EIR for the NuStar MOTEMS Development and Vessel Service Project (Project), which is being prepared by the Port of Stockton (Port). The Port, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses.

Commission Jurisdiction, Public Trust Lands, and Regulatory Authority

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; and 6306). For this Project, the City of Stockton, is trustee of sovereign tide and submerged lands granted by the Legislature pursuant to Chapter 1700, Statutes of 1965, with minerals reserved to the State. All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

The Commission also has regulatory authority over marine oil terminals and vessel operations in accordance with the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Pub. Resources Code, § 8750 et seq.), which established a

comprehensive approach for the prevention of and response to oil spills, and the Marine Invasive Species Act (Pub. Resources Code, § 71200 et seq.), which applies to shipping operations that involve vessels of 300 gross tons or larger, being of either United States or foreign registry, and capable of carrying ballast water into the coastal waters of the State. Through these statutes, the Commission adopts and enforces regulations including:

- Article 5. Marine Terminals Inspection and Monitoring (Cal. Code Regs., tit. 2, § 2300 et seq.)
- Article 5.3 Marine Terminals Personnel Training and Certification (Cal. Code Regs., tit. 2, § 2540)
- Article 5.5 Marine Terminals Oil Pipelines (Cal. Code Regs., tit. 2, § 2560)
- California Building Code (CBC), Chapter 31F—Marine Oil Terminals (Cal. Code Regs., tit. 24, § 3101F et seq., also known as MOTEMS)
- Article 4.5 Marine Invasive Species Control Fund Fee (Cal. Code Regs., tit. 2, § 2270 et seq.)
- Article 4.6. Ballast Water Regulations for Vessels operating within the Pacific Coast Region (Cal. Code Regs., tit. 2, § 2280 et seq.)
- Article 4.7. Performance Standards for the Discharge of Ballast Water for Vessels Operating in California Waters (Cal. Code Regs., tit. 2, § 2291 et seq.)
- Article 4.8. Biofouling Management to Minimize the Transfer of Nonindigenous Species from Vessels Arriving at California Ports (Cal. Code Regs., tit. 2, § 2298 et seq.)
- Article 4.9. Marine Invasive Species Act Enforcement and Hearing Process (Cal. Code Regs., tit. 2, § 2299.01 et seq.)

Project Description

The proposed Project's goal is to connect NuStar's existing facility to and upgrade an existing dock at the Port in order to receive renewable diesel by vessels, which will support broader California Low Carbon Fuel Standard goals for lower-emitting fuels. The key objectives of the Project include:

- Upgrade the existing Dock 10/11 to meet MOTEMS consistent with state seismic and safety regulations in order to receive vessels
- Connect NuStar's existing facilities at the Port to enable receipt of renewable diesel arriving by vessel, increasing the amount of renewable diesel transported to its existing terminal facility at the Port
- Update and renew the commercial terms in the NuStar lease with the Port consistent with the proposed Project
- Increase availability of renewable diesel to assist California in meeting greenhouse gas abatement targets, decreasing reliance on imported fossil fuels

Environmental Review

Commission staff requests that the Port consider the following comments on the Project's EIR.

General Comment

1. Commission staff cannot comment on the technical details or regulatory compliance of the proposed Project as presented in the Draft EIR, since the proposed Project is creating a "new" marine oil terminal (MOT) per MOTEMS. Documentation currently available to Commission staff is preliminary and pending review at this time.
2. The Draft EIR assessments appear to: (a) take a significantly different approach to CEQA evaluation of an MOT project than the Commission's historic MOT EIRs (i.e., no focus on operational safety and risk of accidents assessment), and (b) rely heavily on built aspects of the proposed new MOT (i.e., through reference to MOTEMS which is a building standard and does not specifically address terminal siting or operational requirements), but minimally discuss the operational or marine environmental aspects of the proposed new MOT (e.g., lacking reference to the Commission and Department of Fish and Wildlife MOT oil spill prevention and response and marine invasive species statutes and regulations).
3. *Section 1.2, Agency Roles and Responsibilities.* Table 1 states "*Because CSLC must consider approving the MOTEMS for the proposed Project, CSLC is a responsible agency as well as a trustee agency.*" This statement inaccurately describes the Commission's roles and responsibilities for this Project, including failure to articulate all of the Commission's involvement or oversight (i.e., granted lands, building code enforcement, operations regulations). For MOTEMS purposes, "approving" is not correct terminology, as the Commission's Marine Environmental Protection Division enforces compliance and the Commission would not approve the project, as determinations about MOTEMS compliance are ministerial in nature, therefore the Commission is not a permitting authority or responsible agency. Other agencies missing from this section having regulatory authority for operations of the new MOT include the California Office of the State Fire Marshal and California Department of Fish and Wildlife, Office of Spill Prevention and Response.
4. The Draft EIR should formally reference MOTEMS by its legal citation: California Code of Regulations, title 24, section 3101F et seq.
5. Typically, the Draft EIR environmental impact sections begin with the statement "*For the purposes of ... analysis, the study area is defined as the project site (the terminal, pipeline route, and Dock 10/11) and immediately surrounding areas.*" However, the physical boundaries of the proposed Project and delineating attributes of the Project's CEQA evaluation boundary are unclear, including but not limited to, consideration of NuStar's Port of Stockton lease boundary, the Berth 10/11 structural boundary, NuStar's operational boundaries, multi-use area boundaries shared with other operators, and vessel footprint boundaries. Establishing a common understanding of the proposed Project's physical boundaries is critical to evaluating CEQA compliance, as well as jurisdictional authorities and regulatory compliance.

Geology/Soils

6. *Impact GEO-1*. This section cites that Project improvements would adhere to seismic design parameters from the 2016 CBC. The CBC (Cal. Code Regs., tit. 24) is revised on a triennial code cycle with date-delineated editions (e.g., 2016 CBC, 2019 CBC). This Project may need to comply with the 2019 CBC (not the 2016 CBC) based on the authorities having jurisdictions.

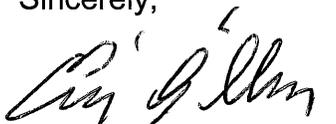
Hazards and Hazardous Materials

7. It appears that the potential interactions with and impacts to surrounding areas and waters (including oil spill, fire and explosion potential) are inadequately addressed, including preparation and consideration of a project/site-specific risk and hazards analysis. A formal Risk and Hazards Analysis is required to identify the hazards associated with operations at the proposed new MOT, including but not limited to, consideration of assessed magnitude of potential oil spill releases and consequences, terminal and vessel operations, equipment failure, operating errors (human and organizational errors for system safety), and external factors. The multi-use functionality of Berth 10/11, as well as the surrounding Port of Stockton activities (e.g., fertilizer storage, gantry crane storage and operations), heightens the importance of this hazards analysis. Therefore, an up-to-date Risk and Hazards Analysis should be prepared for this new MOT, which identifies mitigation measures to be implemented.

Thank you for the opportunity to comment on the Draft EIR for the Project. As a trustee and regulatory agency, Commission staff requests that you consider our comments prior to certification of the EIR. Please send copies of future Project-related documents, including electronic copies of the certified Final EIR, Mitigation Monitoring and Reporting Program, and Notice of Determination when they become available.

Please refer questions concerning environmental review to Sarah Mongano, Senior Environmental Scientist, at (916) 574-1889 or sarah.mongano@slc.ca.gov. For questions concerning the MOTEMS review, please contact Avinash Nafday, Senior Engineer, Petroleum Structures, at (562) 499-6316 or avinash.nafday@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
S. Mongano, Commission
A. Nafday, Commission
K. Oliver, Commission
J. Fabel, Commission