

**CALIFORNIA COASTAL COMMISSION**

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TO: Senate Energy, Utilities and Communications Committee

FROM: Alison Dettmer, Manager, Energy and Ocean Resources Unit

SUBJECT: **California Coastal Commission Review of Liquefied Natural Gas (“LNG”) Receiving Terminals and Regasification Facilities**

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Currently there are three proposals to construct and operate LNG receiving terminals and regasification facilities in California. The Coastal Commission is the only State agency with siting authority over all three LNG proposals. Although the Coastal Act does not contain LNG-specific policies, its marine resource, water quality, geology, hazardous spill, visual, air, public access and recreation, commercial fishing, and coastal-dependent industrial facility policies apply to LNG proposals. Described briefly below is the Coastal Commission’s authority over and analysis of the environmental effects of LNG projects.

## **JURISDICTION**

### **Cabrillo Port and Clearwater Port**

The proposed Cabrillo Port and Clearwater Port LNG projects (both proposed to be sited in federal and state waters offshore of Ventura County) require issuance by the Coastal Commission of a coastal development permit and concurrence by the Coastal Commission with a consistency certification under the federal Coastal Zone Management Act (“CZMA”). Section 307 of the CZMA, 16 U.S.C. § 1456(c)(3)(A), provides that no federal agency can issue a license or permit for a project within or affecting a state’s coastal zone unless the state certifying agency concurs with the applicant’s certification of consistency with the state’s coastal zone management program. For these projects, the Coastal Commission is the state certifying agency for purposes of the CZMA. Both the Cabrillo Port and Clearwater Port projects require a federal permit (e.g., US Army Corps of Engineers) and/or license (e.g., US Maritime Administration) that trigger federal consistency review. The applicant must submit a statement to the Coastal Commission certifying that the proposed activity complies with California’s approved coastal management program and will be conducted in a manner consistent with such program. 15 CFR § 930.57(b). The certification must be accompanied by all necessary data and information, including an analysis of the project’s environmental effects and its consistency with the

enforceable policies of California's coastal management program (i.e., the Coastal Act), sufficient to support the applicant's consistency certification. 15 CFR § 930.57(a) and § 930.58.

Activities to be undertaken in state waters (e.g., pipe laying) also require the applicant to obtain from the Coastal Commission a coastal development permit. For the portion of the project that lies in state waters, the coastal development permit also serves as a consistency certification.

### **Port of Long Beach**

The Sound Energy Solutions' ("SES") proposal to construct and operate an onshore LNG receiving/re-gasification terminal is unique because the facility is to be located within the Port of Long Beach. This project requires certification by the Coastal Commission of an amendment to the Port of Long Beach Master Plan. The Port will submit a port master plan amendment to the Coastal Commission after it certifies under the California Environmental Quality Act a project-specific environmental impact report ("EIR"). In reviewing the amendment request, the Coastal Commission will analyze the proposed project's environmental effects and evaluate if the proposed siting of the LNG facility within the Port is consistent with the Coastal Act's Chapter 3 and Chapter 8 coastal resource protection and use policies. See Cal. Pub. Res. Code §§ 30200-30265.5, 30700-30721. If the Coastal Commission certifies the port master plan amendment, the Port then has the authority to grant SES a harbor district permit for the proposed development. However, Port approval of a harbor district permit for an energy facility, including an LNG terminal, can be appealed to the Coastal Commission. The SES proposal will also require a permit from the Federal Energy Regulatory Commission ("FERC"). That permit is subject to federal consistency review by the Coastal Commission.

## **REVIEWING AN LNG PROJECT UNDER THE COASTAL ACT**

The Coastal Act recognizes that major energy facilities, such as LNG terminals, may have significant adverse environmental effects, and may be found to be inconsistent with one or more Coastal Act policies. Public Resources Code Section 30260 provides for special consideration of coastal-dependent industrial development types that may otherwise be found inconsistent with one or more of the Coastal Act's resource protection and use policies. Coastal-dependent industrial facilities must be evaluated first under all applicable policies contained in Chapter 3 of the Coastal Act. If a proposed project is inconsistent with any Chapter 3 policy, Section 30260 provides for approval of coastal-dependent industrial developments under certain conditions. To approve the project under Section 30260, the Coastal Commission must find (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

Once an applicant submits a coastal development permit application and/or consistency certification, the Coastal Commission staff reviews the activity's environmental effects and assesses its conformity with the relevant policies of the Coastal Act (including Section 30260, if applicable). Review of a port master plan amendment is similar. Staff prepares a written recommendation to the Coastal Commission and a public hearing is scheduled and noticed. Up to the vote, the Coastal Commission can take written and verbal comments on a project proposal.

For a coastal development permit application, the Coastal Commission may approve the project as submitted, approve it with conditions, or deny the project. For a consistency certification, the Coastal Commission can concur in the consistency certification, concur with conditions, or object to the consistency certification. For a port master plan amendment, the Coastal Commission can approve the amendment as submitted or deny it (it cannot add conditions to an approval). The Coastal Commission's decisions must be accompanied by written legal findings.

A person aggrieved by a Coastal Commission action who participated in the Coastal Commission proceedings may seek judicial relief by filing a petition for administrative mandate. See Cal. Pub. Res. Code § 30801. In addition, if the Coastal Commission *objects* to a consistency certification, the applicant may appeal the decision to the United States Secretary of Commerce. The Secretary may override a Coastal Commission objection if the Secretary finds that the project is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. 16 U.S.C. § 1456(c)(3)(A). Actions by the Secretary of Commerce are subject to judicial review pursuant to the federal Administrative Procedures Act. 5 U.S.C. § 702.