Deepwater Port License Application and the NEPA/CEQA Review Process

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What is the Deepwater Port Act and what are its licensing requirements?

The Deepwater Port Act of 1974, as amended, establishes a licensing system for ownership, construction, and operation of manmade structures beyond the U.S. territorial sea. The act promotes the construction and operation of deepwater ports as a safe and effective means of importing oil and natural gas into the U.S. and transporting oil and natural gas from the outer continental shelf, while minimizing tanker traffic and associated risks.

All deepwater ports must be licensed. The act requires a license applicant to submit detailed plans for its facility to the Secretary of Transportation. The act also requires the Secretary to designate an adjacent coastal state for consultation, and requires the consent of the governor of that state for license approval. The act also mandates compliance with the National Environmental Policy Act (NEPA). The intent of NEPA analysis is to provide the Maritime Administrator with information to consider in determining whether to approve, deny, or approve with conditions the deepwater port license application.

What are NEPA and the CEQA?

Congress passed NEPA in 1969 to address concerns about environmental quality. NEPA established a national policy for attaining harmony between people and nature, for promoting efforts to eliminate damage to the environment, and for better understanding of ecological systems and natural resources. NEPA contains two major objectives: (1) to ensure that federal agencies consider the potential environmental effects of proposed programs, projects, and actions before initiating them; and (2) to inform the public and to encourage and facilitate public involvement in federal agency activities that affect the quality of the human environment.

The environmental impact statement (EIS) is a detailed public document with the primary purpose of ensuring that the requirements and goals of NEPA are incorporated into programs and actions. The U.S. Coast Guard (USCG) and the Maritime Administration are the federal lead agencies for preparation of the deepwater port EIS.

The goal of the California Environmental Quality Act (CEQA) is to develop and maintain a high-quality environment now and in the future. The CEQA requires that public agencies identify the significant environmental effects of their actions and either (1) avoid those significant environmental effects, where feasible, or (2) mitigate those significant environmental effects, where feasible. These findings are presented in an environmental impact report (EIR). An EIR fulfills the State of California's environmental requirements similar to the way that an EIS fulfills federal environmental requirements. Where California is the adjacent coastal state to a proposed deepwater port, an EIR is required under the CEQA. The California State Lands Commission (CSLC) is the lead state agency for preparation of the deepwater port EIR.

Steps in the NEPA/CEQA Review Process

Because of the many similarities between an EIS and an EIR, the USCG (in coordination with the Maritime Administration) and the CSLC have agreed to cooperate in preparing a single document that satisfies both NEPA and the CEQA. Throughout this process, agencies analyze resource impacts ranging from air quality and threatened and endangered species to cultural resources and socioeconomic impacts. The EIS/EIR process includes the following steps:

• **Conduct public scoping.** The lead agencies ask the public to provide feedback on the proposed project, its potential environmental impacts, and analysis methods. Public scoping is critical for determining the issues that are discussed in the EIS/EIR and the way in which the study is conducted. The public scoping period begins when a Notice of Intent to prepare an EIS is published in the Federal Register, and when a Notice of Preparation of an EIR is filed with the California State Clearinghouse.

• **Prepare a Draft EIS/EIR.** Once the scoping process is complete, the lead agencies prepare a draft EIS/EIR. A notice of availability is published in the Federal Register when the draft EIS/EIR is available, and CSLC issues notices of availability and completion. The draft EIS/EIR in hard-copy or electronic format is distributed to agencies and interested parties that have requested copies. The draft EIS is also published on agency websites and placed in community libraries throughout the potentially affected regions. During the 45-day comment period following publication of the draft EIS/EIR, the lead agencies hold public meetings to provide citizens an opportunity to make comments, which are entered into the official record.

• **Prepare a Final EIS/EIR.** After the close of the comment period for the draft EIS/EIR, the lead agencies prepare a final EIS/EIR. Comments received during the draft EIS/EIR review period are made available in the public docket. The final EIS/EIR includes all comments and lead agency responses to the comments. A notice of availability of the final EIS/EIR is published in the Federal Register, and the CSLC issues notices of availability and completion.

• **Determine final approvals.** The deepwater port proposal must be in compliance with NEPA before the deepwater port license can be approved. Following the completion of the final EIS/EIR, there is a 30-day (or longer) public comment period, and federal agencies hold a final public hearing on the deepwater port license application. After the hearing, federal and state agencies and the Governor of California have 45 days to comment on the license application. The Maritime Administrator must issue the Record of Decision within 90 days after the final license hearing. For the final State of California approval, the CSLC holds a public hearing on certification of the EIR, files a notice of determination stating whether the project is approved under CEQA, and determines whether or not to grant a lease of state lands for the deepwater port's subsea pipelines.