

Things Not So Clear on Environmental Clearance at the Ports



■ TRADE AND TRANSPORTATION
By **Thomas O'Brien**

The last few months have seen some significant progress on the approval of new projects at the San Pedro Bay ports. In early April, the Port of Los Angeles announced an agreement with a coalition of environmental and community groups which would allow for an expansion of the Trapac terminal. The proposal includes new on-dock rail facilities, deeper berths, and improvements to Harry Bridges Boulevard. It also allows for a tripling of container cargo throughput. The Los Angeles Board of Harbor Commissioners certified the Final Environmental Impact Report in December of 2007; but the project was appealed by the coalition. The April agreement however allows for a \$50 million community benefits package to mitigate the environmental impacts of port-related projects like this expansion. It also formalizes the review process for future projects for the groups involved in the appeal. Trapac officials are happy if only because the agreement removes the uncertainty which had surrounded the terminal's future. Trapac's lease with the Port expired in 2002 and the company has lost business in the intervening years to facilities with greater capacity and newer facilities. It will now have a new 30-year lease.

On the heels of the Trapac agreement, China Shipping - also at the Port of LA - released the Draft Environmental Impact Report (EIR) on the later phases of an expansion that began in 2001. This document is an update of a 2006 report that has since been modified in the wake of the ports' Clean Air Action Plan. If approved, China Shipping gets a new 40-year lease and, like Trapac, expanded facilities to accommodate a tripling in cargo throughput.

There are a number of other projects in the environmental review pipeline at both the Los Angeles and Long Beach Ports. The Port of Los Angeles has issued Notices of Preparation (NOP) for EIRs on the developments of the Wilmington and San Pedro Waterfronts. Another NOP was issued in 2005 for the Southern California Intermodal Gateway (SCIG) project, a near dock-facility to be operated by BNSF.

In Long Beach, projects undergoing the environmental review process include the Port's new administration building, a marine terminal at Pier S, and the Middle Harbor Redevelopment Project. The latter involves the consolidation of two cargo terminals. Environmental review of this project began in 2001 but the Port called for another look at it in light of new port policies developed in 2005.

A renewed focus on the environmental impacts of port-related operations, exemplified by the 2005 Green Ports Policy and 2006 Clean Air Action Plan,

means that the ports are much more interested in getting the environmental impact review right the first time around to avoid further appeals and litigation. The courts have been successfully used to delay projects where the environmental community deems the EIR inadequate. The China Shipping expansion in 2001 is a prime example.

But there are other complexities that extend the process. Many of these projects require the cooperation of multiple agencies just to get to the EIR stage. The SCIG project, for example, is to be operated by BNSF on land owned by the State of California, administered by the Los Angeles Harbor Department, with portions of the facility in the cities of Los Angeles, Carson and Long Beach. At least those are all located within the same State. Pity the poor Port Authority of New York and New Jersey which has two states involved.

Federal funding triggers a parallel review under the Federal National Environmental Policy Act (NEPA). Environmental review might require a permit from the Army Corps of Engineers for dredging or filling; the US Fish and Wildlife Service if rare or endangered species are involved; or the US Department of Transportation for projects impacting publicly-owned parks, recreation areas or refuges. That is why you'll see state Environmental Impact Reports alongside federal Environmental Impact Statements; and each may have multiple versions: draft, supplemental, final.

The process is lengthy and cumbersome, but community and environmental groups, along with their elected representatives, would argue that environmental review has to be as thorough as possible given 30 and 40-year long terminal leases. If communities get their say only when leases are renewed, then they want to be certain to address impacts that may come years or decades down the road.

For their part, terminal operators and ports are concerned about rules that change mid-stream. For example, will the review process be changed by the Trapac agreement? They are also concerned with conditions of approval that are so strict that they preclude the adoption of new technologies or other solutions that can have beneficial impacts. Some would argue that current environmental reviews emphasize cold ironing (shore side power for ships) at the expense of lower cost solutions that can bring about the same results.

Opponents of port expansion should keep in mind that a longer process doesn't always translate into a better mitigation plan. It is also worth noting that the status quo does little to improve the environment. And terminal operators should remember that, when affected communities have confidence in the process, they will be more likely to support new projects. Addressing key concerns up front might go a long way toward avoiding delays at the other end. That benefits all parties.

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