

May 8, 2007



Governor Schwarzenegger  
State Capitol Building  
Sacramento, CA 95814

**Re: BHP Billiton's Proposed Cabrillo Port LNG Deepwater Port Project**

Dear Governor Schwarzenegger:

This letter is submitted by the Environmental Defense Center (EDC) on behalf of the California Coastal Protection Network (CCPN), requesting that you **disapprove** BHP Billiton's proposed Cabrillo Port Liquefied Natural Gas (LNG) Project under the Deepwater Port Act. CCPN is a California public benefit corporation, dedicated to the protection of the California coast through education, research, and empowerment of public citizens. CCPN is headquartered in Santa Barbara, California and represents members throughout the State, including Santa Barbara, Ventura and Los Angeles Counties. EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California's south central coast.

CCPN and EDC urge you to disapprove the Cabrillo Port Project for the following reasons:

1. The two State agencies with authority to review the Project have voted to deny it for environmental, health and safety reasons;
2. The State has not certified the Environmental Impact Report (EIR) for the Project; therefore, information regarding Project impacts, mitigation measures and alternatives is not complete or accurate; and
3. The proposed Final EIR identified 20 Class I (significant and unavoidable) impacts to air and water quality, public safety, marine mammals, aesthetics, noise, recreation and agriculture.

This letter will address the Governor's authority and options under the Deepwater Port Act, and the reasons why the Governor should disapprove this Project.

**Governor Authority under the Deepwater Port Act**

The Deepwater Port Act (DPA, 33 U.S.C. §1501 *et seq.*) regulates proposals for deepwater ports (including LNG offloading, storage and regasification facilities) located

offshore, beyond State seaward boundaries. Under the DPA, the Secretary of Transportation may issue a license for a deepwater port if “the Governor of the adjacent coastal State or States, pursuant to section 9 of this Act [33 U.S.C. §1508], approves, or is presumed to approve, issuance of the license.” (33 U.S.C. §1503.)

Section 9 of the DPA provides:

The Secretary shall not issue a license without the approval of the Governor of each adjacent coastal State. If the Governor fails to transmit his approval or disapproval to the Secretary not later than 45 days after the last public hearing on applications for a particular application area, such approval shall be conclusively presumed. If the Governor notifies the Secretary that an application, which would otherwise be approved pursuant to this paragraph, is inconsistent with State programs relating to environmental protection, land and water use, and coastal zone management, the Secretary shall condition the license granted so as to make it consistent with such State programs.

(33 U.S.C. §1508(b)(1).)

Under the DPA, the deadline for the Governor to issue a decision on Cabrillo Port is May 21, 2007.

### **The Governor Should Disapprove the Cabrillo Port LNG Project**

As noted above, the Governor should disapprove the Cabrillo Port Project. On April 9, 2007, the California State Lands Commission (CSLC) denied BHP Billiton’s application for a pipeline lease through State waters due to the numerous significant impacts of the Project. In denying the Project, the CSLC cited serious concerns about air pollution and global warming, environmental justice, public safety, and impacts to marine life.<sup>1</sup> The CSLC found that the benefits of the Project did not outweigh the substantial impacts to the State or its residents. In addition, the CSLC found that BHP Billiton had failed to demonstrate a need for the Project.

Moreover, the CSLC voted not to certify the EIR due to the lack of an adequate analysis of Project impacts, mitigation measures and alternatives. The Commissioners also objected to the fact that the EIR failed to include an up-to-date assessment on the need for LNG, and failed to consider other alternatives.

On April 12, 2007, the California Coastal Commission (CCC) voted unanimously to deny the Project.<sup>2</sup> The CCC found that the Project was inconsistent with the California Coastal Management Program (CCMP), including the California Coastal Act, as well as State laws and regulations implementing the Clean Air Act. In voting against

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<sup>1</sup> See attached statements by State Controller John Chiang and Lt. Governor John Garamendi.

<sup>2</sup> See attached transcript of the CCC deliberations and statements made at the April 12, 2007, hearing.

the Project, the CCC registered concerns regarding the Project's effects on air quality, marine mammals and seabirds, public safety, global warming, and pipeline safety.

Accordingly, the Governor should also deny approval of the Cabrillo Port LNG Project. The Project is clearly in violation of State coastal policies and programs. The Project would result in excessive levels of smog to communities in Ventura and Los Angeles Counties, would create safety risks from potential releases of LNG and natural gas, would degrade our precious coastal and marine environment – so critical to our State's recreation and tourism economy - and would contribute *over 22 million tons of greenhouse gas emissions per year*.<sup>3</sup> As many speakers pointed out at the CSLC and CCC hearings, this Project would interfere with California's ability to comply with recent State laws and policies requiring reductions in greenhouse gas emissions and increases in clean, renewable energy supplies.

If the Governor decides to approve the Project over the objections of the State agencies, he must notify the Secretary of any inconsistencies with State programs relating to environmental protection, land and water use, and coastal zone management. (33 U.S.C. §1508(b)(1).) In this case, the proposed Final EIR identifies several unavoidable impacts to the environment, land and water use, and coastal resources.<sup>4</sup> In addition, the CCC - the State's designated agency responsible for enforcement and implementation of the California Coastal Act and CCMP - has determined that the Project is inconsistent with State coastal zone management programs.

The full extent of the Project's inconsistency with State programs, however, is unknown. There is no certified EIR for the Project, and the CSLC found that the environmental review failed to adequately assess the Project's impacts. Therefore, it would not be possible for the Governor to identify all of the Project's inconsistencies or for the Secretary to condition the Project so as to comply with State programs. (33 U.S.C. § 1508(b)(1).)

Accordingly, the Governor should disapprove the Project. The full magnitude of the Project's environmental impacts is unknown, but information presented thus far confirms that the Project will result in significant unavoidable impacts that are not outweighed by any purported benefits.

Denying the Project will not adversely affect the State's welfare. As the CSLC and CCC determined, there is no pressing need for this Project and there are other options for satisfying the State's energy demand. Increases in conservation, efficiency and

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<sup>3</sup> Rick Heede, Climate Change Services, *LNG Supply-Chain Emissions: Australia to Offshore Ventura* (April 2006), attached hereto.

<sup>4</sup> Final Environmental Impact Statement/Environmental Impact Report for the Cabrillo Port Liquefied Natural Gas Deepwater Port, March 2007 (State Clearinghouse No. 2004021107, CSLC EIR No. 727). CCPN, EDC and other parties identified additional impacts that would be significant and unavoidable; see attached comment letter.

renewable energy supplies should be adequate to meet our projected demand.<sup>5</sup> Even if additional natural gas supplies are required, this Project would not be operational for a number of years, and domestic sources are available to provide our State with sufficient energy pending further increases in renewable supplies. Finally, if LNG is a required component of our State's energy portfolio, there are other LNG proposals that should be considered before this Project is approved.<sup>6</sup> For example, there are other LNG technologies that are capable of significantly reducing impacts to air and water quality, marine resources and views.<sup>7</sup>

In conclusion, we respectfully urge the Governor to disapprove the Cabrillo Port LNG Project. Please support a clean energy future for the State, one that will reduce greenhouse gas emissions, minimize our reliance on foreign sources of energy, and increase our renewable energy portfolio.

Thank you for your consideration.

Sincerely,

Linda Krop  
Chief Counsel

cc: Susan Jordan, CCPN

Atts: Statements by Lt. Governor Garamendi and Controller Chiang, April 9, 2007  
Transcript of CCC deliberations on April 12, 2007  
EDC/CCPN comment letter to the CSLC, dated April 4, 2007  
EDC/CCPN comment letter to the CCC, dated April 6, 2007  
*LNG Supply-Chain Emissions: Australia to Offshore Ventura*, Rick Heede,  
Climate Change Services, April 2006  
*Does California Need Liquefied Natural Gas? The Potential for Energy Efficiency  
and Renewable Energy to Replace Future Natural Gas Demand*, Tam  
Hunt, Community Environmental Council, April 2006

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<sup>5</sup> Tam Hunt, Community Environmental Council, *Does California Need Liquefied Natural Gas? The Potential for Energy Efficiency and Renewable Energy to Replace Future Natural Gas Demand* (April 2006), attached hereto.

<sup>6</sup> Sempra's Costa Azul LNG Project in Baja California is near completion and is intended to provide natural gas to California. The CSLC and Federal Regulatory Commission are already preparing an EIS/EIR for the North Baja Expansion Project that would supply California with natural gas from this project.

<sup>7</sup> For example, eliminating the need for an offshore storage and regasification facility could significantly reduce Project impacts. In addition, using ambient air vaporization and selective catalytic reduction would greatly reduce air pollution impacts. Despite the fact that other LNG proposals incorporate these measures, the EIR failed to analyze them as alternatives to the proposed Project.