DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA
THE SECRETARY'S DECISION ON
THE DEEPWATER PORT LICENSE APPLICATION
OF BHP BILLITON LNG INTERNATIONAL INC.

Washington, D.C. June 5, 2007

I. Introduction and Background

The Deepwater Port Act of 1974, as amended in 1984, 1996, and 2002 (hereinafter the Act),[1] establishes a licensing system for ownership, construction, and operation of deepwater ports located seaward of State territorial waters.[2] Deepwater ports, as the term has been amended, includes facilities which are used as terminals to transfer natural gas, usually received in the form of Liquefied Natural Gas (LNG) from LNG carriers to onshore storage facilities and pipelines.

Under the Act, persons seeking to own, construct, and operate deepwater ports must submit detailed applications to the Secretary of Transportation, who, by a delegation published on June 18, 2003 (68 Fed. Reg. 36496), "delegat[ed] to the Maritime Administrator his authority to issue, transfer, amend, or reinstate a license for the construction and operation of a deepwater port as provided for in the Deepwater Port Act, of 1974, as amended." Because this is a delegated authority, all references will continue to be to the Secretary. This delegation did not change the previous delegation of license processing functions to the U.S. Coast Guard (USCG), now part of the Department of Homeland Security,[3] and to the Maritime Administration (MARAD), made in 1997.[4]

On September 3, 2003, BHP Billiton LNG International Inc. (hereinafter BHP) – a wholly-owned subsidiary of BHP Holdings (Resources) Inc.– submitted to MARAD and the USCG an application for a license and all Federal authorizations required to own, construct, and operate a deepwater port, known as Cabrillo Port, off the coast of Ventura County, California.[5] The

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[1] 33 U.S.C. §§ 1501-1524. In January 2002 the Act was amended by Public Law No: 107-295, which, at section 106 amends the Act to cover the importation and transportation of natural gas (116 STAT. 2064 at 2086). The Act is codified at 33 U.S.C. §§ 1501 through 1524.

[2] 33 U.S.C. § 1501.

[3] The USCG has the additional statutory responsibility to approve operations manuals for deepwater ports. 33 U.S.C. § 1503(e)(1). The USCG retained the statutory and delegated authorities upon its transfer to the Department of Homeland Security (Department of Homeland Security Delegation Number: 0170, sec. 2. (75), March 3, 2003; Pub. L. 107-296, sec. 888).

[4] *See* 62 Fed. Reg. 11382 (1997); 49 CFR §1.46(s) and §1.66(aa).

[5] The application and related public comments and official actions may be viewed on the Department of Transportation's Docket Management System website at http://dms.dot.gov/search/ under docket number 16877.

application was initially deemed incomplete. After the submission of supplemental information, the application was deemed complete and a *Notice of Application* was published in the *Federal Register* on January 27, 2004.[6]

The proposed facility would be located in Federal waters approximately 13.9 miles offshore of Ventura County in 2,900 feet of water. The facility would consist of a floating storage and regasification unit (FSRU) that would store LNG in three Moss spherical tanks and two offshore pipelines to transport the natural gas to the existing Southern California Gas Company (SoCalGas) intrastate pipeline system.

Under section 1508 of the Act, the State of California was designated as the adjacent coastal state.[7] Under section 1508(b)(1), the Secretary may not issue a license without the approval of the Governor of each adjacent coastal state. Adjacent coastal state Governors must indicate their approval, approval with conditions, or disapproval of an application within 45 days of the last public hearing. If a Governor fails to transmit his or her approval, such approval is conclusively presumed under the Act.[8]

As required by section 1505 of the Act, the USCG and MARAD prepared an Environmental Impact Statement (EIS) for the project.[9] The USCG and MARAD held meetings to determine the scope of the EIS on March 15 and 16, 2004, in Oxnard and Malibu, respectively. A draft EIS (DEIS) was issued on October 29, 2004, and on January 5, 2005, a "stop clock" letter was issued to request that the applicant address data gaps identified during the Federal agency and public review of the DEIS. A re-circulated DEIS was issued and associated public hearings were held

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[6] 69 Fed. Reg. 3934 (2004).

[7] 33 U.S.C. § 1508(a)(1) provides that the Secretary must:

> [D]esignate as an "adjacent coastal State" any coastal State which (A) would be directly connected by pipeline to a deepwater port as proposed in an application, or (B) would be located within 15 miles of any such proposed deepwater port.

In addition, § 1508(a)(2) provides, in part:

> The Secretary shall, upon request of a State, and after having received the recommendations of the Administrator of the National Oceanic and Atmospheric Administration, designate such State as an "adjacent coastal State" if he determines that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State directly connected by pipeline to the proposed deepwater port.

[8] 33 U.S.C. § 1508(b)(1).

[9] Notice of Intent to Prepare EIS; Notice of Public Meeting; and Request for Public Comments published in the *Federal Register* on February 27, 2004, at 69 Fed. Reg. 9344. The complete text of the EIS is available on the Department of Transportation's Docket Management System website at http://dms.dot.gov/search/ under docket number 16877. In accordance with the National Environmental Policy Act, 42 U.S.C. §§ 4321 - 4347, the EIS addressed project alternatives and mitigation measures for the project.

on April 17, 18, and 19, 2006 in Santa Clarita, Malibu, and Oxnard, respectively.[10] On January 3, 2007, the Administrative Final EIS was delivered to the Federal agencies. On March 15, 2007, a "start clock" letter was issued to BHP in order to restart the application timeline, and the final EIS was issued. The final public hearing was held on April 4, 2007, in Oxnard.[11]

As noted above, under section 1508(b)(1) of the Act, adjacent coastal state Governors must indicate their approval, approval with conditions, or disapproval of an application within 45 days of the final public hearing. This period began upon completion of the last public hearing held on April 4, 2007.

By letter dated May 18, 2007,[12] the Governor of California, Arnold Schwarzenegger, indicated his disapproval of the project, citing concerns that the project as proposed would result in significant and unmitigated environmental impacts to air quality and marine life.

II. Decision

Because the Maritime Administration received timely disapproval of BHP's license application in accordance with section 1508(b)(1), the application is hereby denied and no further action will be taken on the application as submitted.

Dated: June 5, 2007

Sean T. Connaughton
Maritime Administrator
Washington, D.C.

[10] Notice of Availability of DEIS; Notice of Public Meeting; Request for Public Comments published in the *Federal Register* on November 5, 2004, at 69 Fed. Reg. 64578.

[11] Notice of Availability of Final EIS; Notice of Public Hearing; Request for Public Comments published in the *Federal Register* on March 15, 2007, at 72 Fed. Reg. 12257.

[12] Letter of Arnold Schwarzenegger, Governor of California, to Mr. Sean T. Connaughton, Maritime Administrator (May 18, 2007).