

RECORD OF DECISION

As the District Engineer for the Los Angeles District, I have reviewed the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Berths 302-306 (APL) Container Terminal Project, Port of Los Angeles, California (Corps File No. SPL-2009-00226-TS). The EIS/EIR, prepared in compliance with the Council on Environmental Quality's *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* and U.S. Army Corps of Engineers (USACE or Corps) regulations at 33 C.F.R. Parts 320-332, assesses the impacts of implementing the proposed Project on the biological, physical, and socioeconomic environment. The EIS/EIR is hereby incorporated by reference. The Corps will proceed as indicated herein.

I. INTRODUCTION

a. Location: The Los Angeles Harbor Department's (LAHD's) proposed Berths 302-306 American Presidents Line (APL) Container Terminal Project (proposed Project) would encompass approximately 347 acres on Pier 300, including the 291-acre existing APL Container Terminal area and a 56-acre expansion area within the Port of Los Angeles (POLA), in the city and county of Los Angeles, California. Eagle Marine Services (EMS) is the operator of the APL Container Terminal. The proposed Project area is more specifically located on Terminal Island, and is roughly bordered by Pier 400 on the south, the Seaplane Lagoon on the north, Fish Harbor and Reservation Point to the west and the boundary between POLA and the Port of Long Beach to the east (33.7354° N latitude, -118.2466° W longitude).

b. Background and General Description:

1. On 25 June 2009, the LAHD applied for a Department of the Army standard individual permit, which was amended by additional information in June 2012.
2. The applicants' proposed Project includes activities that would require Department of the Army authorization pursuant to section 10 of the Rivers and Harbors Act. No discharge of dredged or fill material was proposed therefore, a section 404 Clean Water Act permit and section 404(b)(1) analysis are not required. Environmental review was conducted by the USACE pursuant to the National Environmental Policy Act (NEPA) and implementing regulations (40 CFR Part 1500 et seq., and 33 CFR Part 325 Appendix B), and the general conformity determination has been made pursuant to the General Conformity rule (40 CFR part 93, Subpart B). For efficiency, the Corps and the LAHD prepared a joint EIS/EIR pursuant to the NEPA, the aforementioned implementing regulations, and California Environmental Quality Act (CEQA). A Notice of Intent (NOI) to prepare an EIS/EIR was published in the Federal Register on 9 July 2009, and a joint Corps-LAHD scoping meeting was held on 5 August 2009 at the LAHD Board Hearing Room (425 South Palos Verdes Street, San Pedro, CA 90731). A Notice of Availability (NOA) of the Draft EIS/EIR for review and comment was published in the

Federal Register on 23 December 2011, with a separate Corps special public notice of the availability of the Draft EIS/EIR, receipt of application for a Department of the Army permit, and announcement of a public hearing distributed by the Corps on the same date. A joint public hearing to solicit comments on the Draft EIS/EIR was held with the LAHD on 19 January 2012 at the LAHD Board Hearing Room. The public review period for this document ended on 17 February 2012. Responses were prepared to all comments received and were fully considered in preparing the Final EIS/EIR. Notices of Availability of the Final EIS/EIR were published in the Federal Register by the Corps and the U.S. Environmental Protection Agency (USEPA) on 15 June 2012. The Final EIS/EIR was made available for 30 days from 15 June to 16 July 2012, and one comment letter from the U.S. EPA was received¹. A copy of the USEPA letter and the Corps response is provided in Appendix A to this Record of Decision (ROD). The Los Angeles Board of Harbor Commissioners certified the Final EIR and approved the proposed Project on 7 June 2012.

3. The proposed Project, as evaluated in the EIS/EIR, includes the following elements. The proposed Project would encompass approximately 347 acres and includes improvements to the existing 291-acre APL Container Terminal and an expanded area of 56 acres (items in **bold** denote elements requiring a Department of the Army Permit).

The proposed Project would:

- Modify the outbound gates associated with the main gate;
- Modify the terminal entrance lanes;
- Modify the Earle Street gate;
- **Install up to 4 new cranes at Berths 302-305 to be stowed and/or operating over waters of the U.S.;**
- Convert a portion of the existing dry container storage unit area to a refrigerated container unit (reefer) storage area equipped with plug-in electric power;
- Demolish and re-construct the roadability facility;
- Expand the Power Shop facilities by constructing and operating a separate two-story Power Shop Annex building (just north of the existing Power Shop), which would include tractor maintenance bays (first floor) and Marine Offices (second floor);
- Install utility infrastructure at various areas in the existing backlands (including the removal and installation of new light poles, utilities for a new “Meet and Greet” booth on backlands behind Berth 301, etc.);

¹ Includes comment letters and e-mails sent to the Los Angeles Board of Harbor Commissioners for their consideration during their Final EIR certification meeting on 7 June 2012.

- **Construct approximately 1,250 linear feet of concrete wharf over water to create Berth 306;**
- **Install up to 8 new cranes at Berth 306 to be stowed and/or operating over waters of the U.S.;**
- Install alternative maritime power (AMP) at Berth 306 (AMP facilities have previously been installed at Berth 302-305);
- **Dredge approximately 20,000 cubic yards (cy) of material from the Berth 306 vicinity; the dredge material would be disposed of at the Corps-approved Berth 243-245 confined disposal facility (CDF)²;**
- Develop approximately 41 acres of already-constructed³ but unimproved fill as container terminal backland with infrastructure that could support traditional operations, electric equipment operations, as well as potentially automated operations on the 41-acre Berth 306 backlands (a majority of the new infrastructure would be located adjacent to existing stations or substations near the reefer area of the existing backlands);
- Redevelop approximately 2 acres of the former Los Angeles Export Terminal (LAXT) conveyor right of way and approximately 7 acres of former LAXT backland behind Berth 301 into container terminal backland; and
- Develop approximately 2 acres of existing land northeast of the current main gate for a new out gate location.

Operation of the Berth 306 Backlands. The existing APL Container Terminal currently operates using “traditional” methods. Backland operations do not require Department of the Army authorization. Once containers have been off-loaded from a ship or received through the gates on trucks and trains, the containers are stored and moved around the backlands area of the terminal using mostly diesel-powered cargo-handling equipment. A foreseeable technology option to replace traditional backland operations at the APL Container Terminal is the use of an automated container handling system on the proposed Berth 306 41-acre backland area. Such a system would involve the use of semi-automatic dual hoist electric shore side gantry cranes (such as the proposed new cranes), Automated Guided Vehicles (AGVs), electric automated stacking cranes (ASCs), and semi-automated electric Landside Transfer Cranes (LTCs). Although it is not certain as to if or when use of an automated system would commence, for the purposes of

² The original project description of the Draft EIS/EIR described several dredged material disposal options, including: unconfined ocean disposal of suitable material at LA-2, disposal of suitable material at the Cabrillo Shallow Water Habitat Area, or disposal at the Berths 243-245 confined disposal facility (CDF). Following the close of the public comment period on the Draft EIS/EIR, the LAHD clarified that all dredged material would be disposed at the CDF and revised their Department of the Army permit application to reflect this preference.

³ The 41 acre backland area was constructed under the previously approved Port of Los Angeles Channel Deepening Project (Corps File No. SPL-2008-00662-AOA).

environmental review, the proposed Project assumes that the operation of the 41-acre backland area would transition from a traditional operation (i.e., transport of containers by mostly diesel-powered equipment) to an automated operation with mostly electric equipment during the lease term by 2027. However because automation is still date-uncertain, the EIS/EIR's air quality analysis assumed both use of diesel-powered equipment for all Project years and automation. Because the Berth 302-306 terminals are berth constrained, meaning the total throughput is limited by the number of ships that are able to berth at the facility, automation will not result in additional throughput beyond projections provided in the EIS/EIR.

Aspects of the proposed Project that require a Department of the Army permit consist of: dredging approximately 20,000 cy of sediment in navigable waters of the U.S.; installation of new in/over water structures including approximately 515 new 24-inch-diameter concrete piles and a 1,250-foot-long extension of the existing 4,000-foot-long concrete wharf deck at Berth 306; and 12 new gantry cranes. The proposed work and structures in or over navigable waters of the U.S. would require authorization pursuant to section 10 of the Rivers and Harbors Act (RHA). Dredged material disposal at the Berths 243-245 CDF is authorized by prior Department of the Army Permit (SPL-2008-00662-AOA) under section 10 of the RHA and section 404 of the Clean Water Act.

Excavated upland soils (if any) and dredged sediments would be beneficially reused outside of waters of the U.S. to the extent opportunities become available and are practicable at that time. Any soil or dredged material that cannot be beneficially reused and is not relatively free of contaminants would be disposed of at an approved off-site upland location or in waters of the U.S., subject to additional environmental review by the Corps and resource agencies.

Additional proposed Project activities the Corps has determined to be subject to our Federal control and responsibility include temporary access, staging, storage of equipment and materials within an approximately 100-foot-wide portion of the uplands along the shoreline necessary to undertake the in-water an over-water activities, and development of approximately 41 acres of land adjacent to Berths 306 as cargo backlands terminals. These activities would only occur as a result of Federal action, and are subject to our regulatory control and responsibility.

c. Purpose and Need:

1. The overall purpose of the proposed Project is to optimize the cargo-handling efficiency and capacity at the APL Container Terminal to accommodate projected long-term increases in volume of containerized goods shipped through this terminal and the POLA generally.

2. The proposed Project would meet a public need for economic growth in trade and import/export of goods, as well as a need for efficient cargo handling at the POLA. The needs for the proposed Project are to provide in-water, over-water and water-side facilities to

accommodate projected increases in ship calls and containerized cargo throughput, and to provide additional space for container storage and handling. The cargo industry is projected to grow in container volume during the next 10 to 20 years, with an increase in the size and number of ships that regularly call on the POLA. The infrastructure needed to serve these new, larger ships and to efficiently move containerized cargo is not currently available and is required for the POLA to accommodate demands in the cargo industry.

3. The applicant seeks to accomplish the above purpose and need by expanding the APL Container Terminal by constructing Berth 306 and developing the 41-acre backlands, and redeveloping the existing 291-acre container terminal. As discussed in Section 2.3 of the EIS/EIR, even with the proposed container throughput increases and similar expansion and optimization of other POLA container terminals, it is expected these terminals will not provide enough long-term capacity to fully meet the forecasted demand for container throughput. This deficit is expected to occur despite the recent downturn in cargo throughput associated with the global economic recession.

II. DECISION

For the reasons outlined below, the proposed Project, as described in LAHD's 25 June 2009 application for a Department of the Army permit as amended in June 2012, is the alternative that best meets the purpose and need of the project and will have the least impact on the human and natural environment. The Corps will ensure the commitments outlined below will be implemented as part of the Project design and construction.

Based upon a careful consideration of all the social, economic, and environmental evaluations contained in the EIS/EIR; the input received from other agencies, non-governmental organizations, and the public; and the factors and project commitments outlined below, it is my decision to issue a Department of the Army permit authorizing work and structures in navigable waters associated with the proposed Project. The proposed Project would be authorized and constructed in two phases⁴, with addition of four cranes at Berths 302-305 constructed during the first phase, and the balance of activities at all berths occurring during the second phase. The proposed Project includes the following regulated activities:

- i. Expansion of the existing APL container terminal by constructing a new 1,250-foot-long concrete wharf deck on top of approximately 515 new 24-inch-diameter concrete piles driven into place at Berth 306 immediately adjacent to the existing 4,000-foot-long wharf along Berths 302-305.
- ii. Installation and operation of an additional 12 new gantry cranes between Berths 302-306, with a total of eight (8) new cranes at Berth 306.

⁴ Table 1.1 of the Final EIS/EIR identified two project phases that would overlap over a 2-year period, but changing economic conditions and other factors, may change the project schedule and could affect ultimate construction phasing; the current estimate is the first phase would be constructed from 2012-2014, with second phase of construction in 2013-2014.

- iii. Dredge approximately 20,000 cy of sediment to increase the depth at these berths from -50 feet Mean Lower Low Water (MLLW) to - 55 feet MLLW which includes two (2) feet of overdepth dredging to -57 (MLLW).
- iv. Dispose of dredged material in the Corps-approved Berths 243-245 CDF⁵.

To implement this decision, the Corps will proffer a Standard Individual Permit (SIP) for regulated activities pursuant to section 10 of the RHA (33 U.S.C. 403). The Project will be authorized in two phases due to the requirement for Clean Water Act section 401 Water Quality Certification for regulated project elements associated with Berth 306 but not for regulated project elements (four new cranes) at Berths 302-305.

III. ALTERNATIVES CONSIDERED

As part of the preparation of the EIS/EIR, the Corps and LAHD initially considered 23 alternatives, in addition to the LAHDs' proposed Project. Of these, 16 alternatives were not carried forward for detailed analysis based on early determinations by the Corps in coordination with LAHD that they were not feasible, would not be in the public interest, or would not accomplish the underlying purpose and need (Section 1.4 of the EIS/EIR).

Alternatives analyzed in the EIS/EIR included the applicants' preferred alternative (the proposed Project) and six other alternatives. The alternatives are summarized below and discussed in detail in the EIS/EIR.

Applicant's Preferred Alternative (proposed Project): This alternative involves land uses associated with goods movement and maritime commerce within the Project area. Specifically, the proposed Project elements align along three distinct categories:

- Modifications to existing infrastructure to improve efficiency of goods movement and support maritime commerce;
- New development including installation of infrastructure to support a new berth (Berth 306); and
- Transportation infrastructure improvements to improve cargo handling via trucks and rail.

Each of these is briefly described generally below and described in further detail in Chapter 2, Section 1.5 of the EIS/EIR.

Modifications to Existing Infrastructure

The proposed modifications to existing infrastructure are described in Chapter 1, Section 1.2 of the EIS/EIR and below. Improvements to the existing terminal would:

⁵ Dredged material disposal at the Berths 243-245 CDF is authorized by prior Department of the Army Permit (SPL-2008-00662-AOA) under section 10 of the RHA and section 404 of the Clean Water Act.

- *Modify the outbound gates associated with the main gate;*
- *Modify the terminal entrance lanes;*
- *Modify the Earle Street gate;*
- *Convert a portion of the existing dry container storage unit area to a refrigerated container unit (reefer) storage area equipped with plug-in electric power;*
- *Demolish and re-construct the Roadability facility;*
- *Expand the Power Shop facilities by constructing and operating a separate two-story Power Shop Annex building (just north of the existing Power Shop), which would include tractor maintenance bays (first floor) and Marine Offices (second floor); and*
- *Install utility infrastructure at various areas in the existing backlands (including the removal and installation of new light poles, utilities for a new “Meet and Greet” booth on backlands behind Berth 301, etc.).*

Proposed New Infrastructure

The proposed new infrastructure is described in Chapter 2 of the EIS/EIR and below. Proposed expansion-area components in/over/under water and in uplands include:

- Construct approximately 1,250 linear-feet of concrete wharf to create Berth 306;
- Install eight (8) new cranes on the new wharf at Berth 306 and four (4) new cranes among Berths 302-305;
- Install AMP along the new wharf at Berth 306;
- Dredge approximately 20,000 cy of sediment and dispose of this material at the Berths 243-245 CDF;
- Redevelop approximately two (2) acres of the former LAXT conveyor right of way and approximately seven (7) acres of former LAXT backland behind Berth 301 into container terminal backland; and
- Develop approximately two (2) acres of existing land northeast of the current main gate for a new out gate location.
- Develop approximately 41 acres of already constructed but unimproved fill as container terminal backland at Berth 306 with infrastructure that could support traditional operations, electric equipment operations, as well as potentially automated operations on these backlands (a majority of the proposed new infrastructure would be located adjacent to existing stations or substations near the reefer area of the existing backlands);

Under the proposed Project, the APL Container Terminal would operate at optimal throughput capacity by 2027. At optimal throughput capacity, the improved APL Container Terminal could handle approximately 3.2 million twenty-foot equivalent units (TEU) per year, which represents approximately 1,832,000 containers using a conversion factor of 1.75.⁶ EMS might operate the terminal at lower TEU volumes than those described; however, an estimate of throughput based on optimal terminal capacity ensures a conservative analysis in that all reasonably foreseeable Project operations are included. Additionally, ships not belonging to APL (third-party invitees) occasionally might use the terminal. By estimating throughput based on optimal terminal capacity, the potential for such third-party ship calls is accounted for in the analysis.

The proposed Project would be designed to accommodate 3.2 million TEUs by 2027. This compares to an existing throughput of approximately 1.1 million TEU's in 2009 (which represents the CEQA baseline) and a design capacity of the existing APL Container Terminal of 2.2 million TEUs (which represents the NEPA baseline).

Ship Operations: To accommodate an annual throughput of approximately 3.2 million TEUs in 2027, 390 annual ship calls and associated tugboat operations would be required. Normally, no more than three of the largest vessels would be berthed at the terminal wharf at one time; however, after construction of Berth 306, up to four vessels could be berthed at the same time. For the APL Container Terminal, one tug generally is required each for ship docking and undocking, for a total of two tugs per call, or 780 tug operations annually. In less than one percent of cases, two tugs are needed during docking/undocking due to equipment malfunction or by request of the ship's pilot. In these rare instances, up to four tugboat operations would be required for a single ship call. As occurs currently, tugboats would be able to dock at terminal facilities in between trips, reducing tug emissions associated with travel back to their docking facilities.

Truck Operations: Currently about 35 percent of APL cargo throughput passes through on-dock rail facilities, 11 percent through near-dock rail facilities, and the remaining 54 percent via truck to the local and regional markets (and off-dock rail facilities). Under the proposed Project, mode splits at the APL Container Terminal after year 2020 are expected to change slightly as throughput via the on-dock facility reaches its maximum capacity. The percentage of cargo passing through the on-dock rail facility at the APL Container Terminal is expected to decrease to approximately 32 percent by 2027. The maximum annual capacity of the current on-dock rail facility at the APL Terminal is estimated to be 1.04 million TEUs; and given rising levels of throughput expected at the terminal in years 2025 and 2027, on-dock throughput splits in years 2025 and 2027 would be slightly less than 35 percent. Specifically, the on-dock/near-dock/truck distribution delivery splits anticipated to occur at the terminal is 33/12/55 percent in year 2025, and 32/13/55 percent in year 2027.

⁶ The throughput conversion factor used here represents an APL specific conversion factor and is discussed in more detail in Chapter 1, Section 1.1.2.1 of the Draft EIS/EIR.

Based on the anticipated mode splits for the proposed Project, the design capacity throughput of 3.2 million TEUs in 2027 would require a total of 11,361 peak daily truck trips and 2,953 annual one-way-rail trip movements. Those trips would include cargo hauled entirely by truck (principally within southern California, with some trips to and from northern California, Arizona, Nevada, and Utah), and intermodal cargo bound for, or coming from, locations farther east. Of the approximately 2.17 million TEUs transported by trucks in 2027, approximately 405,000 TEUs (approximately 23 percent) would be intermodal cargo trucked to near dock railyards. Draying containers to near- and off-dock rail facilities could become necessary because all the containers on a train that is assembled in the on-dock railyards are bound for the same destination, meaning containers bound for other locations are hauled to near dock rail facilities to be grouped with containers from other terminals bound for that same destination. Trucks would haul those containers on public highways to and from off-site railyards, including the Union Pacific Carson ICTF, the Burlington Northern Santa Fe Hobart Yard in Vernon, and the Union Pacific East Los Angeles Yard. Local and national (minimal long-haul trips) containers would be hauled to and from the terminal gates by trucks.

More information on existing and future cargo-handling equipment, “traditional” vs. automated backlands, and rail operations is provided in Chapter 2, Section 2.5 of the EIS/EIR.

Alternative 1-No Project: Alternative 1 describes what would reasonably be expected to occur on the site if no LAHD or Federal action would occur. In this case, Alternative 1 involves not building any of the proposed Project facilities but would allow continued operations of the existing uses within the proposed Project area. Alternative 1 acknowledges some forecasted growth may occur in the existing berths (Berths 302-305). However, any other growth or development in accordance with the General Plan, Port Master Plan, or Port of Los Angeles Strategic Plan would be too speculative to assume in this environmental review process.

Under this alternative, LAHD would not issue any permits or discretionary approvals, and would not take further action to construct or permit the construction of any portion of the proposed Project. The Corps would not issue any permits or discretionary approvals for in/over/under water construction or installation of piles, wharves, cranes or dredging. This alternative would not allow implementation of the proposed Project or any other physical improvements associated with the proposed Project. The LAHD would not construct and develop additional backlands, wharves, or terminal improvements. No new cranes would be added, no gate or backland improvements would occur, and no infrastructure for AMP or automation would be provided. This alternative would not include any dredging, dredged material disposal, new wharf construction, or new cranes. The No Project Alternative would not include development of any additional backlands because the existing terminal is berth-constrained and additional backlands would not improve its efficiency.

Under this alternative, no construction- or operational impacts would occur. The existing APL Container Terminal would continue to operate as an approximately 291-acre container terminal. Based on the throughput projections, Alternative 1 would handle approximately

2,153,000 (or 2.15 million) TEUs by 2027, which would result in up to 286 annual ship calls at Berths 302-305 with associated 572 tugboat operations. In addition, this alternative would result in up to 7,273 average daily one-way truck trips⁷ (1,922,497 annual), including drayage, and up to 2,336 annual one-way rail trip movements. Cargo ships that currently berth and load/unload at Berths 302-305 would continue to do so.

Any future legally enacted Port-wide Clean Air Action Plan (CAAP) measure, such as a tariff change or emissions impact fee, would be applied to the No Project alternative, although generally applicable tariff changes that conflict with the terms of an individual operating lease would not apply. CAAP measures that would be implemented through a lease modification or mitigation measure also would not apply. In addition, any legally required measures, such as installation of AMP and associated infrastructure in compliance with CARB requirements, would be implemented separately as a related project.

The No Project Alternative would not preclude future improvements to the APL Container Terminal; however, any change in future use with the potential to significantly impact the environment or improvement would need to be analyzed in a subsequent environmental document.

Alternative 2-No Federal Action: The No-Federal-Action Alternative eliminates all of the project elements that would require a Department of the Army permit. This alternative includes only the activities and impacts likely to occur absent a Corps permit, but could include improvements that require a local action.

For purposes here, this alternative includes only the following elements:

- The conversion of a portion of the dry container storage unit area to storage for an additional 200 reefer units, and associated electrical infrastructure.
- Installation of utility infrastructure at various areas in the backlands (e.g., relocation of light pole and electrical line extensions to accommodate the converted reefer areas).

The site would continue to operate as an approximately 291-acre container terminal where containers are loaded on and unloaded from vessels, are temporarily stored on backlands, and where containers are transferred to and from trucks and rail cars. Based on the throughput projections, the No Federal Action Alternative would handle up to approximately 2,153,000 (or 2.15 million) TEUs by 2027, which would result in up to 286 annual ship calls at Berths 302-305 with associated 572 tugboat operations. In addition, this alternative would result in up to 7,273 daily one-way truck trips⁸ (1,922,497 annual) including drayage, and up to

⁷ Daily truck trips are the peak truck trips that can occur due to seasonal demands. The average annual truck trips reflect the sum of the daily trips as they fluctuate over a one-year period.

⁸ Daily truck trips are the peak truck trips that can occur due to seasonal demands. The average annual truck trips reflect the sum of the daily trips over a one-year period.

2,336 annual one-way rail trip movements. Cargo ships that currently berth and load/unload at Berths 302-305 would continue to do so.

Any future legally enacted Port-wide CAAP measure, such as a tariff change or emissions impact fee, would be applied to this alternative, although generally applicable tariff changes that conflict with the terms of an individual operating lease would not apply. CAAP measures that would be implemented through a lease modification or mitigation measure also would not apply. In addition, any legally required measures, such as installation of AMP and associated infrastructure in compliance with CARB requirements, would be implemented separately as a related project.

Alternative 3-Reduced Project - Four New Cranes: Under Alternative 3, the total terminal size would remain at approximately 291 acres (it would not provide for the development of the 41-acre backlands), which would be less than the proposed Project. Aside from the addition of four new cranes, this alternative would not include the addition or improvement of backland facilities, the construction of a new wharf, or the relocation and improvement of various gates and entrance lanes, or dredging.

Based on the throughput projections, TEU throughput under Alternative 3 would be less than the proposed Project, with an expected throughput of approximately 2.58 million TEUs by 2027. This would translate into approximately 338 annual ship calls at Berths 302-305 with associated 676 tugboat operations. In addition, this alternative would result in up to 8,725 daily truck trips⁹ (2,306,460 annual) including drayage, and up to 2,544 annual one-way rail trip movements.

Alternative 3 assumes implementation of existing and future legally required measures, such as the installation of AMP and associated infrastructure in compliance with California Air Resources Board (CARB) requirements, CAAP measures under the terms of the modified lease that would accompany this alternative, and any mitigation measure legally imposed under CEQA and NEPA. Under this alternative, mitigation measures would be applied to reduce emissions from ships, trucks, rail, yard tractors, and yard equipment.

Alternative 4-Reduced Project – No New Wharf: Under this alternative, six cranes would be added to the existing terminal and the 41-acre fill area would be developed as container yard backlands. EMS would, however, relinquish the 30 acres of backlands currently under a separate space assignment agreement with LAHD. EMS would not add the nine acres of land behind Berth 301 or the two acres at the main gate to its LAHD lease. Configuration of all other landside terminal components (i.e., Main Gate improvements) would be identical to the proposed Project. Because no new wharf would be constructed at Berth 306, the 41-acre backland area would be operated using traditional methods and not transition to use of automated equipment.

⁹ Daily truck trips are the peak truck trips that can occur due to seasonal demands. The average annual truck trips reflect the sum of the daily trips over a one-year period.

Under Alternative 4, the total acreage of backlands under this alternative would be 302 acres, which is less than the proposed Project. Based on the throughput projections, TEU throughput would be less than the proposed Project, with an expected throughput of approximately 2.78 million TEUs by 2027. This would translate into approximately 338 annual ship calls at Berths 302-305 with associated 676 tugboat operations. In addition, this alternative would result in up to 9,401 daily truck trips¹⁰ (2,485,050 annual) including drayage, and up to 2,563 annual one-way rail trip movements.

Alternative 4 assumes implementation of existing and future legally required measures, such as the installation of AMP and associated infrastructure in compliance with CARB requirements, CAAP measures under the terms of the modified lease that would accompany this alternative, as well as any mitigation measure legally imposed under CEQA and NEPA. Under this alternative, mitigation measures would be applied to reduce emissions from ships, trucks, rail, yard tractors, and yard equipment.

Alternative 5-No Space Assignment: Alternative 5 would improve the existing terminal, construct a new wharf (1,250 ft) creating Berth 306, add 12 new cranes to Berths 302-306, add 56 acres for backlands, wharfs, and gates improvements, construct electrification infrastructure in the backlands behind Berths 305-306, and relinquish the 30 acres currently on space assignment. Under this alternative, the EMS would likely invest in additional cargo handling equipment in the retained acreage to offset the loss of the space assignment. This alternative would be the same as the proposed Project, except that EMS would relinquish the 30 acres of backlands currently under space assignment. As with the proposed Project, the 41-acre backlands and Berth 306 under Alternative 5 would utilize traditional container operations initially and then potentially phase in electric automated operations. Dredging of approximately 20,000 cy of the Pier 300 Channel would occur, with the dredged material beneficially reused outside of Corps regulatory jurisdiction, and/or disposed of at an approved disposal site (i.e., Berths 243-245 CDF).

Under Alternative 5, the total gross terminal acreage would be 317 acres, which is less than the proposed Project. TEU throughput would be the same as the proposed Project, with an expected throughput of approximately 3,206,000 (or 3.2 million) TEUs by 2027. This would translate into approximately 390 annual ship calls at Berths 302-306 with associated 780 tugboat operations. In addition, this alternative would result in up to 11,361 daily truck trips¹¹ (3,003,157 annual) including drayage, and up to 2,953 annual one-way rail trip movements. Configuration of all other landside terminal components would be identical to the existing terminal.

Alternative 5 assumes implementation of existing and future legally required measures,

¹⁰ Daily truck trips are the peak truck trips that can occur due to seasonal demands. The average annual truck trips reflect the sum of the daily trips over a one-year period.

¹¹ Daily truck trips are the peak truck trips that can occur due to seasonal demands. The average annual truck trips reflect the sum of the daily trips over a one-year period.

such as the installation of AMP and associated infrastructure in compliance with CARB requirements, CAAP measures under the terms of any modification to the lease that would accompany this alternative, as well as any mitigation measure legally imposed under CEQA and NEPA. Under this alternative, mitigation measures would be applied to reduce emissions from ships, trucks, rail, yard tractors, and yard equipment.

Alternative 6-Proposed Project with Expanded On-Dock Railyard: This alternative would be the same as the proposed Project; however, LAHD would redevelop and expand the existing on-dock railyard. The current on-dock railyard can accommodate up to 64 five-platform double-track railcars (equivalent to nearly three full trains) and consists of eight sets of double tracks. Maximum throughput capacity through the facility is estimated to be approximately 1.04 million TEUs per year. The expansion of the on-dock facility under Alternative 6 would involve the addition of a ninth set of double tracks, and expand this component's throughput capacity to approximately 1.12 million TEUs per year. Under this alternative, approximately 10 acres of backlands would be removed from container storage for the railyard expansion.

Alternative 6 would improve the existing terminal, develop the existing 41-acre fill area as backlands, add 1,250 linear-feet of new wharf creating Berth 306, and dredge the Pier 300 Channel. Under this alternative, 12 new cranes would be added to the wharves along Berths 302-306, for a total of 24 cranes. As with the proposed Project, the 41-acre backlands and Berth 306 under Alternative 6 would utilize traditional container operations initially and then likely at some point phase in electric automated operations. Dredged material would be beneficially reused outside Corps regulatory jurisdiction, and/or disposed of at an approved disposal site (i.e., Berths 243-245 CDF).

Under Alternative 6, the total gross terminal acreage would be 347 acres. The TEU throughput would be the same as the proposed Project, with an expected throughput of approximately 3,206,000 (or 3.2 million) TEUs by 2027. This would translate into approximately 390 annual ship calls at Berths 302-306 with associated 780 tugboat operations. In addition, this alternative would result in up to 10,830 daily truck trips¹² (2,862,760 annual) including drayage, and up to 2,953 annual one-way rail trip movements. Configuration of all other landside terminal components would be identical to the existing terminal.

Alternative 6 assumes implementation of existing and future legally required measures, such as the installation of AMP and associated infrastructure in compliance with CARB requirements, CAAP measures under the terms of any modification to the lease that would accompany this alternative as well as any mitigation measure legally imposed under CEQA and NEPA. Under this alternative, mitigation measures would be applied to reduce emissions from ships, trucks, rail, yard tractors, and yard equipment.

¹² Daily truck trips are the peak truck trips that can occur due to seasonal demands. The average annual truck trips reflect the sum of the daily trips over a one-year period.

IV. EVALUATION OF ALTERNATIVES

The direct, indirect, and cumulative impacts associated with the proposed Project and the other alternatives are included in Chapters 3 and 4 of the EIS/EIR, respectively. Alternatives 3-6 were determined to be feasible under NEPA, and each alternative addressed the underlying purpose and need as described above because these alternative included elements that would improve cargo handling capacity and improve efficiency of goods movement. Alternative 1 was carried forward in the analysis as required by CEQA; similarly Alternative 2 was evaluated as required by NEPA. The evaluation of alternatives assessed under NEPA as well as Corps public interest regulations at section 33 CFR Part 320.4, is summarized below.

(1) Proposed Project: The proposed Project would impact the Los Angeles Harbor during construction of in- and over-water Project features, and during upland development or redevelopment activities described above. Water quality impacts during dredging, dredge material disposal, pile driving, wharf construction, crane installation, and backland development would be temporary and localized. Vessels and other equipment have the potential to leach or spill contaminants into the water, which is already degraded by high concentrations of copper and other contaminants, resulting in a potentially significant impact under NEPA. Similarly, while many of the biological resource impacts would be temporary and occur only during construction (e.g., removal or burial of organisms, turbidity, noise, nighttime lighting associated with dredging, and pile driving), associated beneficial reuse of material to the Berth 243-245 CDF, and wharf deck installation would permanently change conditions (e.g., new structures in and over navigable waters). However, the permanent changes, such as introduction of additional man-made structures and shading of the aquatic environment beneath the proposed 1,250-foot-long wharf at Berth 306 (there would be a decrease of uncovered/unshaded open water), would be consistent with conditions prevailing in the project area, as an active, industrialized container terminal and does not represent a loss of ecosystem function or a substantial disruption of marine biological communities in the Harbor as a whole. As such, long-term adverse effects on biological resources, except for the increased potential for introduction of non-indigenous species (NIS) from additional vessels visiting this container terminal, are not anticipated. The proposed Project best meets the forecasted increases in container throughput, container backland requirements and ship calls, and would allow for forecasted increases in ship size.

(2) Alternative 1 (No Project): While Alternative 1 would have fewer environmental impacts than the proposed Project, it would not support the projected long-term demands to accommodate increased container throughput and ship calls, or larger cargo ships. As such, it would not fulfill the project purpose and need. Specifically, it would not optimize use of deep-water berths at the APL Container Terminal to accommodate existing and projected growth in the maritime cargo industry in the POLA.

(3) Alternative 2 (No Federal Action): The No Federal Action Alternative would result in fewer environmental impacts than the proposed Project at the final out-year because its operational capacity and level of capital development would be lower. The reduced environmental impacts relative to the proposed Project would include less air quality impacts (no

construction of a new berth and reduced operational emissions), no impact to biological or water resources (no wharf construction, dredging or dredged material disposal), reduced impacts from ground traffic (lower throughput), and reduced noise impacts (related to fewer truck trips and less construction).

While Alternative 2 would have fewer environmental impacts than the proposed Project, it would not support the projected long-term demands to accommodate increased container throughput and ship calls, or larger cargo ships (when compared to the proposed Project Alternative 2 would have a reduction of 1,047,000 TEUs or over a 30% decrease in throughput). As such, it would not fulfill the project purpose and need. Specifically, it would not optimize the use of deep-water berths at the APL Container Terminal to accommodate existing and projected growth in the maritime cargo industry in the POLA.

(4) Alternative 3 (Reduced Project-Four New Cranes and No New Wharf): Relative to the NEPA baseline, Alternative 3 would result in fewer environmental impacts than those estimated for the proposed Project. The decreased environmental impacts would result from reduced construction activities, as this alternative envisions crane installations only at existing berths, and reduced operational activity associated with the lower TEU throughput and corresponding ship, truck, and rail emissions. These reduced environmental impacts include fewer air quality impacts (less operational emissions), fewer biological or water resource impacts (no wharf construction), fewer ground traffic impacts (fewer truck trips), and fewer noise impacts (related to fewer truck trips).

While Alternative 3 would have reduced environmental impacts on aquatic resources compared to the proposed Project (only four new cranes would be added to service Berths 302-305), no new wharf, including concrete support piles and over-water wharf deck would be constructed at Berth 306, and no dredging or dredged material disposal would occur. Without the new wharf, aquatic resources (e.g., kelp and fouling communities) currently existing on rock rip rap at this site would remain and evolve over time. However, this alternative would result in a substantial reduction of 620,000 TEUs when compared to the proposed Project (approximately a 20% decrease in throughput) and, as a result, would not fully support the projected long-term increases in container throughput, the need for additional backlands and ship calls, or larger cargo ships. Although this alternative meets the minimum requirements of the project purpose and need, which is to optimize the use of deep-water berths at the APL Container Terminal to accommodate existing and projected growth in the maritime cargo industry in the POLA, when the relatively modest reduction in the direct and indirect environmental impacts is compared to the substantial reduction in throughput, selection of this alternative is not warranted.

(5) Alternative 4 (Reduced Project-Six New Cranes and No New Wharf): When compared against the NEPA baseline, Alternative 4 would result in fewer environmental impacts than those experienced under the proposed Project. The decreased environmental impacts would occur from fewer construction activities (e.g., no new wharf at Berth 306); reduced operational activity associated with the lower TEU throughput; and fewer direct ship, truck, and rail emissions.

While Alternative 4 would have reduced environmental impacts on aquatic resources than the proposed Project (a total of six new cranes would be added to service Berths 302-305), no new wharf, including concrete support piles and over-water wharf deck would be constructed at Berth 306, and no dredging or dredged material disposal would occur. Without the new wharf, aquatic resources (e.g., kelp and fouling communities) currently existing on rock rip rap at this site would remain and evolve over time. However, this alternative would result in a substantial reduction of 420,000 TEUs when compared to the proposed Project (approximately a 15% decrease in throughput) and, as a result, would not fully support the projected long-term increases in container throughput, the need for additional backlands and ship calls, or larger cargo ships. Although this alternative meets the minimum requirements of the project purpose and need, which is to optimize the use of deep-water berths at the APL Container Terminal to accommodate existing and projected growth in the maritime cargo industry in the POLA, when the relatively modest reduction in the direct and indirect environmental impacts is compared to the substantial reduction in throughput, selection of this alternative is not warranted.

(6) Alternative 5 (No Space Assignment): When compared against the NEPA baseline, Alternative 5 would result in approximately the same environmental impacts as those experienced under the proposed Project, because terminal operations would be similar. These environmental impacts include similar air quality impacts (the same operational throughput emissions), similar biological and water resource impacts (similar terminal footprint and the same throughput), similar ground traffic impacts (similar operational truck trips), and similar noise impacts (similar truck trips).

Alternative 5 would have similar environmental impacts on aquatic resources compared to the proposed Project (a total of 12 new cranes would be added to service Berths 302-306, the 1,250-foot-long wharf at Berth 306 would be constructed and 20,000 cy of dredging and dredged material disposal would take place), but the gross terminal acres would be 317 compared to the proposed Project (347 gross terminal acres) meaning this Alternative would reduce the area of backlands for container storage and the APL Container Terminal would remain berth limited. While Alternative 5 would address the project purpose and need and support the projected long-term demands to accommodate increased container throughput and ship calls, and larger cargo ships, this alternative would perpetuate inefficiencies in containerized goods movement at this terminal as a result of 30 acres of unused backlands. Although this alternative meets the requirements of the project purpose and need, which is to optimize the use of deep-water berths at the APL Container Terminal to accommodate existing and projected growth in the maritime cargo industry in the POLA, given the similarity of the direct and indirect environmental impacts and the inefficient movement in containerized goods, selection of this alternative is not warranted.

(7) Alternative 6 (Proposed Project with Expanded On-Dock Railyard): When compared against the NEPA baseline, Alternative 6 would result in approximately the same environmental impacts as those projected for the proposed Project, as the terminal operations would be similar. These environmental impacts include similar but slightly less air quality impacts (from fewer truck trips associated with drayage due to increased on-dock rail usage), the same biological or

water resource impacts, and similar but slightly fewer ground traffic impacts (slightly less operational truck trips).

Alternative 6 would have similar environmental impacts on aquatic resources compared to the proposed Project (a total of 12 new cranes would be added to service Berths 302-306, the 1,250-foot-long wharf at Berth 306 would be constructed and 20,000 cy of dredging and dredged material disposal would take place), and include additional on-dock rail on Berth 306. Alternative 6 would have somewhat reduced but significant and unavoidable air quality impacts during construction and operations. Unlike the proposed Project, this alternative would reduce the peak daily truck trips for the project in 2027 by approximately 531 per day (a 4.7% reduction), which equates to a reduction of approximately 40 pounds per day (or a 3.3% reduction) of NOx emissions compared to the proposed Project. While Alternative 6 would meet the purpose and need, reduce truck traffic and related NOx emissions in 2027 (as a result of additional on-dock rail), the near-term benefits of this alternative are fewer and a number of factors limit the overall percentage of on-dock rail use in the near term as described below.

First, not all intermodal cargo can be handled at on-dock rail yards. As described in Chapter 1 of the EIS/EIR, cargo at a marine terminal is sorted by destination. If enough cargo containers are bound for the same destination, a unit train to that destination would be built at the on-dock facility. If, however, there are containers bound for different destinations, they must be either stored in the terminal, resulting in delays, congestion and additional fees, or trucked to a near/off-dock rail facility to be combined with cargo from other marine terminals bound for that same destination. Other limiting factors include shipper and steamship line logistics (e.g., transloading, transportation costs, etc.) and railroad operations (e.g., equipment availability, train schedules, and contracts/arrangements with shippers). In questioning the need for near-dock rail, agency representatives and community members have proposed moving containers via “block swap” and “unsorted” trains from on-dock rail yards. Under these proposals, trains of unsorted containers would be moved via on-dock rail to some central sorting area outside the Port boundaries (likely the Inland Empire). However, such operations would be costly because it would increase the number of times a container is handled in the goods movement process and would likely result in additional regional traffic and emissions as some cargo would need to be trucked back into the region. Therefore, expanding the Berth 302-306 rail yard would not substantially increase the on-dock rail capacity or use of the expanded on-dock facility under this alternative.

Second, as discussed in Chapter 3.6 of the EIS/EIR even if on-dock rail capacity at Berth 302-306 could be increased, there are external constraints in the Terminal Island rail system. The Badger Avenue Bridge (the only rail crossing off of Terminal Island) currently has two tracks, which limits the number of daily rail crossings, and is not wide enough to accommodate expansion. In addition, it is a lift bridge and must open for passing vessel traffic, further limiting daily rail crossings. On Terminal Island, the main track crossovers and leads to the CP Mole (Pier 300) are currently highly constrained due to the existing width of grade separations which can only accommodate two tracks. To accommodate the anticipated cargo volumes, the Ports plan to expand existing and construct new on-dock rail yards and supporting infrastructure over

the next 10 to 15 years, and future on-dock rail would not be precluded by the proposed Project or alternatives that include backland development at Berth 306. However, these improvements would likely not be available until 2027 or thereafter. In the interim, the Ports will promote maximum use of the existing on-dock rail at marine terminals by encouraging tenants to schedule round-the-clock shifts and optimize labor rules; these operational efficiencies were included in proposed Project on-dock rail capacity analysis in the EIS/EIR. Therefore, while expanding the on-dock rail facility at the APL Container Terminal would result in additional on-dock rail use over the long term, additional on-dock rail at the APL Container Terminal would increase project costs substantially, provide minimal environmental benefits given external constraints on the rail system, and would not substantially reduce air quality impacts in the near term. Although this alternative meets the requirements of the project purpose and need, which is to optimize the use of deep-water berths at the APL Container Terminal to accommodate existing and projected growth in the maritime cargo industry in the POLA, given the similarity of the direct and indirect environmental impacts and the substantial increase in cost, selection of this alternative is not warranted.

V. IDENTIFICATION OF THE ENVIRONMENTALLY PREFERABLE ALTERNATIVE

The Environmentally Preferable Alternative is that alternative that would most closely fulfill the national environmental policy found in section 101 of NEPA. Essentially, it is the alternative that would cause the least damage to the biological and physical environment; it also means the alternative that would best protect, preserve, and enhance historic, cultural, and natural resources. Absent any consideration of the ability of alternatives to achieve the purpose and need of the proposed Project, I find that due to avoidance of aquatic resources associated with 20,000 cy of dredging with disposal in the approved Berths 243-245 CDF, installation of 12 new A-frame cranes, construction of a 1,250-foot-long wharf deck, development of 41-acres of new backlands, and work and construction of structures in and over navigable waters of the U.S., the No-Federal-Action Alternative (Alternative 2) is the Environmentally Preferable Alternative.

The reason for selecting the proposed Project over the No-Federal-Action Alternative (Alternative 2) or Alternatives 3, 4, 5 and 6 is based on the ability to achieve the project purpose optimizing the cargo-handling efficiency and capacity at Berths 302-306 (APL Container Terminal) to accommodate projected long-term increases in volume of containerized goods shipped through the POLA.

While Alternative 2 would be less environmentally damaging than the proposed Project from an aquatic ecosystem perspective (i.e., no wharf-associated work, no dredging, or in/over water structures, no backland development, no beneficial re-use of dredged material), the project purpose and need would not be met. This means Alternative 2 would not meet anticipated long-term forecasted cargo handling demands at the APL Container Terminal or within the POLA generally.

While Alternatives 3 and 4 would have reduced environmental impacts on aquatic resources than the proposed Project, however, these alternative would result in a substantial reduction in throughput when compared to the proposed Project (approximately a 15% to 20% decrease) and, as a result, would not fully support the projected long-term increases in container throughput, the need for additional backlands and ship calls, or larger cargo ships. Although these alternatives meet the minimum requirements of the project purpose and need, which is to optimize the use of deep-water berths at the APL Container Terminal to accommodate existing and projected growth in the maritime cargo industry in the POLA, when the relatively modest reduction in the direct and indirect environmental impacts is compared to the substantial reduction in throughput, selection of these alternatives is not warranted.

While Alternative 5 would similarly impact the environment and aquatic resources compared to the proposed Project, relinquishing use of existing backlands in lieu of development of Berth 306 would perpetuate inefficiencies in landside operations and goods movement to/from the APL Container Terminal. Therefore, selection of this alternative is not warranted.

While Alternative 6 would similarly impact the environment and aquatic resources compared to the proposed Project, addition of more on-dock rail capacity would not improve goods movement by rail due to existing external constraints on the rail system off Terminal Island, and substantial reductions in truck traffic and air quality emissions would not be realized in the short term. Therefore, selection of this alternative is not warranted.

In contrast, the proposed Project would meet the forecasted increases in cargo throughput, container ship calls, and provide sufficient additional on-dock rail and ground transportation improvements and fulfill the project purpose and need. For a more detailed analysis of the Project-specific and cumulative impacts associated with the alternatives, please refer to Sections 3 and 4 of the EIS/EIR, respectively.

VI. MEASURES TO AVOID AND MINIMIZE ENVIRONMENTAL HARM

The mitigation measures to avoid and minimize impacts to the environment are summarized in the Executive Summary and discussed in detail for each resource/issue impact in Section 3 of the EIS/EIR and the LAHD's Mitigation Monitoring and Reporting Plan (MMRP). It is recognized that the LAHD, as the local agency with continuing program responsibility over the entire project throughout its useful life, will implement, maintain, and monitor the full suite of mitigation measures identified in the 7 June 2012-certified EIR, and pursuant to the proposed Project's MMRP (LAHD, 2012). Special conditions and measures the Corps has determined enforceable and subject to our continuing program responsibility are included below and will be included in the permit.

The LAHD's MMRP which includes the entirety of mitigation measures described in the EIS/EIR can be found at the following web site:
http://www.portoflosangeles.org/environment/public_notices.asp.

Permit Conditions (Phase 1 Permit):

Phase 1 includes installation of four (4) new cranes over navigable waters of the United States on the existing wharf deck at Berths 302-305 in association with the Berths 302-306 American Presidents' Line [APL] Container Terminal Project.

Special Conditions:

1. Prior to initiating Phase 1 over navigable waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a complete set of final detailed construction plans showing all structures over navigable waters of the U.S. All plans shall be in compliance with the Final Map and Drawing Standards for the Los Angeles District Regulatory Division dated August 6, 2012. All plan sheets shall be signed, dated, and submitted on paper no larger than 11x 17 inches. No structures over navigable waters of the U.S. are authorized until the Permittee receives, in writing (by letter or e-mail), Corps Regulatory Division approval of the final detailed plans. The Permittee shall ensure that the authorized activity is built in accordance with the Corps-approved plans.
2. The Permittee shall clearly mark the limits of the workspace with flagging, containment booms, or similar means to ensure construction debris or other materials does not enter navigable waters of the U.S. Adverse impacts to navigable waters of the U.S. beyond the Corps-approved construction footprint (i.e., Berths 302-305) are not authorized. Such impacts could result in permit suspension and revocation, criminal penalties, and/or substantial, additional, compensatory mitigation requirements.
3. Within 45 calendar days of completion of authorized work over navigable waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a post-project implementation memo indicating the date authorized Phase 1 impacts to navigable waters of the U.S. ceased.
4. The permitted activity shall not interfere with the right of the public to free navigation on all navigable waters of the U.S. as defined by 33 C.F.R. Part 329.
5. No pile driving, wharf construction, discharge of dredged or fill material, dredging, or dredged material disposal is authorized by this permit.
6. No other structural modifications or work in, over or under navigable waters at Berths 302-306 are authorized by this permit.
7. Only clean construction materials suitable for use in the oceanic environment shall be used. The Permittee shall ensure no debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or placed where it may be washed by rainfall or runoff into navigable waters of the U.S. Upon completion of the project authorized herein, any and all excess material

or debris shall be completely removed from the work area and disposed of in an appropriate upland site.

8. The Permittee shall notify the Corps Regulatory Division project manager (Attn: Theresa Stevens, Ph.D.) and National Marine Fisheries Service (Attn: Bryant Chesney) of the date of commencement of Phase 1 project activities not less than 14 calendar days prior to commencing work, and shall notify the Corps of the date of completion of Phase 1 project activities at least five calendar days prior to such completion.
9. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps Regulatory Division, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
10. If a violation of any permit condition occurs, the violation shall be reported by the Permittee to the Corps Regulatory Division within twenty-four (24) hours. If the Permittee retains any contractors to perform any activity authorized by this permit, the Permittee shall instruct all such contractors that notice of any violations must be reported to the Permittee immediately.
11. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Regulatory Division Staff (Theresa Stevens, Ph.D. at 805-585-2146) and Corps' Archeology Staff within 24 hours (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861). The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.
12. To ensure navigational safety, the Permittee shall provide appropriate notifications to the Corps Regulatory Division (Attn: Corps File No. SPL-2009-00226-TS) and U.S. Coast Guard as described below:

Commander, 11th Coast Guard District (dpw)
TEL: (510) 437-2980
E-mail: d11LNM@uscg.mil
Website: <http://www.uscg.mil/d11/dp/LnmRequest.asp>

and

U.S. Coast Guard, Sector LA-LB (COTP)

TEL: (310) 521-3860

E-mail: guy.w.langman@uscg.mil

A) The Permittee shall notify the Corps Regulatory Division (Attn: Corps File No. SPL-2009-00226-TS), the U.S. Coast Guard, Commander, 11th Coast Guard District (dpw) and the U.S. Coast Guard, Sector LA-LB (COTP) (contact information shown above), not less than 14 calendar days prior to commencing work and as project information changes. The notification shall be provided by e-mail with at least the following information, transmitted as an attached Word or PDF file:

- 1) Project description including the type of operation (i.e. dredging, diving, construction, etc).
- 2) Location of operation, including Latitude / Longitude (NAD 83).
- 3) Work start and completion dates and the expected duration of operations. The Coast Guard needs to be notified if these dates change.
- 4) Vessels involved in the operation (name, size and type).
- 5) VHF-FM radio frequencies monitored by vessels on scene.
- 6) Point of contact and 24 -hour phone number.
- 7) Potential hazards to navigation.
- 8) Chart number for the area of operation.
- 9) Recommend the following language be used in the LNM: "Mariners are urged to transit at their slowest safe speed to minimize wake, and proceed with caution after passing arrangements have been made."

B) The Permittee and its contractor(s) shall not remove, relocate, obstruct, willfully damage, make fast to, or interfere with any aids to navigation defined at 33 C.F.R. chapter I, subchapter C, part 66. The Permittee shall ensure its contractor notifies the Eleventh Coast Guard District in writing, with a copy to the Corps Regulatory Division, not less than 30 calendar days in advance of operating any equipment adjacent to any aids to navigation that requires relocation or removal. Should any federal aids to navigation be affected by this project, the Permittee shall submit a request, in writing, to the Corps Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office (contact information provided above). The Permittee and its contractor are prohibited from relocating or removing any aids to navigation until authorized to do so by the Corps Regulatory Division and the U.S. Coast Guard.

C) Should the Permittee determine the work requires the temporary placement and use of private aids to navigation in navigable waters of the U.S., the Permittee shall submit a request in writing to the Corps Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office (contact information provided above). The Permittee is prohibited from establishing private aids to navigation in navigable waters of the U.S. until authorized to do so by the Corps Regulatory Division and the U.S. Coast Guard.

D) The COTP may modify the deployment of marine construction equipment or mooring systems to safeguard navigation during project construction. The Permittee shall direct questions concerning

lighting, equipment placement, and mooring to the appropriate COTP.

Permit Conditions (Phase 2 Permit):

Special Conditions:

1. Prior to initiating Phase 2 activities in or over navigable waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a complete set of final detailed construction plans showing all work and structures in waters of the U.S. All plans shall be in compliance with the Final Map and Drawing Standards for the Los Angeles District Regulatory Division dated August 6, 2012. All plan sheets shall be signed, dated, and submitted on paper no larger than 11x 17 inches. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps Regulatory Division approval of the final detailed plans. The Permittee shall ensure that the project is built in accordance with the Corps-approved plans.
2. The Permittee shall clearly mark the limits of the workspace with flagging, containment booms, or similar means to ensure construction debris or other materials does not enter navigable waters of the U.S. Adverse impacts to navigable waters of the U.S. beyond the Corps-approved construction footprint (i.e., Berths 302-306) are not authorized. Such impacts could result in permit suspension and revocation, criminal penalties, and/or substantial, additional, compensatory mitigation requirements.
3. Within 45 calendar days of completion of authorized work in and over navigable waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a post-project implementation memo indicating the date authorized Phase 2 impacts to navigable waters of the U.S. ceased.
4. The permitted activity shall not interfere with the right of the public to free navigation on all navigable waters of the U.S. as defined by 33 C.F.R. Part 329.
5. No other structural modifications or work in, over or under navigable waters at Berths 302-306 are authorized by this permit.
6. Only clean construction materials suitable for use in the oceanic environment shall be used. The Permittee shall ensure no debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the United States. Upon completion of the project authorized herein, any and all excess material or debris shall be completely removed from the work area and disposed of in an appropriate upland site.

7. The Permittee shall notify the Corps Regulatory Division project manager (Attn: Theresa Stevens, Ph.D.) and National Marine Fisheries Service (Attn: Bryant Chesney) of the date of commencement of Phase 2 project activities not less than 14 calendar days prior to commencing work, and shall notify the Corps of the date of completion of Phase 2 project activities at least five calendar days prior to such completion.
8. Within 30 calendar days of completion of the Phase 2 project activities authorized by this permit, the Permittee shall conduct a post-project survey indicating changes to structures and other features in navigable waters. The Permittee shall forward a copy of the survey to the Corps Regulatory Division and to the National Oceanic and Atmospheric Service for chart updating: Gerald E Wheaton, NOAA, Regional Manager, West Coast and Pacific Ocean, DOD Center Monterey Bay, Room 5082, Seaside, CA 93955-6711.
9. The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps Regulatory Division, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
10. If a violation of any permit condition occurs, the violation shall be reported by the Permittee to the Corps Regulatory Division within twenty-four (24) hours. If the Permittee retains any contractors to perform any activity authorized by this permit, the Permittee shall instruct all such contractors that notice of any violations must be reported to the Permittee immediately.
11. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Regulatory Division Staff (Theresa Stevens, Ph.D. at 805-585-2146) and Corps' Archeology Staff within 24 hours (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861). The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.
12. A pre-construction/dredging survey of the project area for *Caulerpa taxifolia* (Caulerpa) shall be conducted in accordance with the Caulerpa Control Protocol (see <http://swr.nmfs.noaa.gov/hcd/caulerpa/ccp.pdf>) not earlier than 90 calendar days prior to planned construction and not later than 30 calendar days prior to construction. The results of that survey shall be furnished to the Corps Regulatory Division, National Marine Fisheries Service (NMFS), and the California Department of Fish and Game (CDFG) at

least 15 calendar days prior to initiation of work in navigable waters. In the event that *Caulerpa* is detected within the project area, the Permittee shall not commence work until such time as the infestation has been isolated, treated, and the risk of spread is eliminated as confirmed in writing by the Corps Regulatory Division, in consultation with NMFS and CDFG.

13. Prior to project dredging, a pre-project eelgrass survey shall be conducted in accordance with the Southern California Eelgrass Mitigation Policy (SCEMP) (<http://swr.nmfs.noaa.gov/hcd/eelpol.htm>) or the California Eelgrass Mitigation Policy (CEMP), as applicable. If the pre-project survey demonstrates eelgrass presence within the project vicinity, an eelgrass mitigation, monitoring, and reporting plan shall be submitted to the Corps and NMFS for review and approval in accordance with the Corps mitigation rule (33 CFR 332) and the SCEMP/CEMP, as applicable, prior to initiation of project dredging.
14. To ensure navigational safety, the permittee shall provide appropriate notifications to the Corps Regulatory Division (Attn: Corps File No. SPL-2009-00226-TS) and U.S. Coast Guard as described below:

Commander, 11th Coast Guard District (dpw)
TEL: (510) 437-2980
E-mail: d11LNM@uscg.mil
Website: <http://www.uscg.mil/d11/dp/LnmRequest.asp>

and

U.S. Coast Guard, Sector LA-LB (COTP)
TEL: (310) 521-3860
E-mail: guy.w.langman@uscg.mil

A) The Permittee shall notify the Corps Regulatory Division (Attn: Corps File No. SPL-2009-00226-TS), the U.S. Coast Guard, Commander, 11th Coast Guard District (dpw) and the U.S. Coast Guard, Sector LA-LB (COTP) (contact information shown above), not less than 14 calendar days prior to commencing work and as project information changes. The notification shall be provided by e-mail with at least the following information, transmitted as an attached Word or PDF file:

- 1) Project description including the type of operation (i.e. dredging, diving, construction, etc).
- 2) Location of operation, including Latitude / Longitude (NAD 83).
- 3) Work start and completion dates and the expected duration of operations. The Coast Guard needs to be notified if these dates change.
- 4) Vessels involved in the operation (name, size and type).
- 5) VHF-FM radio frequencies monitored by vessels on scene.
- 6) Point of contact and 24 -hour phone number.
- 7) Potential hazards to navigation.

- 8) Chart number for the area of operation.
- 9) Recommend the following language be used in the LNM: "Mariners are urged to transit at their slowest safe speed to minimize wake, and proceed with caution after passing arrangements have been made."

B) The Permittee and its contractor(s) shall not remove, relocate, obstruct, willfully damage, make fast to, or interfere with any aids to navigation defined at 33 C.F.R. chapter I, subchapter C, part 66. The Permittee shall ensure its contractor notifies the Eleventh Coast Guard District in writing, with a copy to the Corps Regulatory Division, not less than 30 calendar days in advance of operating any equipment adjacent to any aids to navigation that requires relocation or removal. Should any federal aids to navigation be affected by this project, the Permittee shall submit a request, in writing, to the Corps Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office (contact information provided above). The Permittee and its contractor are prohibited from relocating or removing any aids to navigation until authorized to do so by the Corps Regulatory Division and the U.S. Coast Guard.

C) Should the Permittee determine the work requires the temporary placement and use of private aids to navigation in navigable waters of the U.S., the Permittee shall submit a request in writing to the Corps Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office (contact information provided above). The Permittee is prohibited from establishing private aids to navigation in navigable waters of the U.S. until authorized to do so by the Corps Regulatory Division and the U.S. Coast Guard.

D) The COTP may modify the deployment of marine construction equipment or mooring systems to safeguard navigation during project construction. The Permittee shall direct questions concerning lighting, equipment placement, and mooring to the appropriate COTP.

15. For this permit, the term dredging operations shall mean: navigation of the dredging vessel at the dredging site, excavation of dredged material within the project boundaries, and placement of dredged material into a hopper dredge or disposal barge or scow.

16. Dredging authorized in this permit shall be limited to the areas defined in Figure 3 of the Berths 302-306 Sampling and Analysis Plan Report (July 2011). Approximately 20,000 cubic yards of dredged material are authorized for dredging from Berth 306 by the Permittee. No dredging is authorized in any other location under this permit.

17. For this permit, the maximum dredging design depth (also known as the project depth or grade) shall be -55 feet mean lower low water (MLLW), with a maximum allowable overdredge depth of -2 feet MLLW. No dredging shall occur deeper than -57 feet MLLW (dredging design depth plus overdredge depth) or outside the project boundaries.

18. At least 15 calendar days before initiation of any dredging operations authorized by this permit, the Permittee shall send a dredging and disposal operations plan to the Corps Regulatory Division and EPA, with the following information:

A) A list of the names, addresses and telephone numbers of the Permittee's project manager, the contractor's project manager, the dredging operations inspector, the disposal operations inspector and the captain of each tug boat, hopper dredge or other form of vehicle used to transport dredged material to the designated disposal site.

B) A list of all vessels, major dredging equipment and electronic positioning systems or navigation equipment that will be used for dredging and disposal operations, including the capacity, load level and acceptable operating sea conditions for each hopper dredge or disposal barge or scow to assure compliance with special conditions on dredging and disposal operations.

C) A detailed description of the dredging and disposal operations authorized by this permit. Description of the dredging and disposal operations should include, at a minimum, the following:

i) Dredging and disposal procedures for 20,000 cubic yards to be dredged from the project site.

ii) A schedule showing when the dredging project is planned to begin and end.

D) A pre-dredging bathymetric condition survey (presented as a large format plan view drawing), taken within thirty (30) days before the dredging begins, accurate to 0.5-foot with the exact location of all soundings clearly defined on the survey chart. The pre-dredge survey chart shall be prepared showing the following information:

i) The entire dredging area, the toe and top of all side-slopes and typical cross sections of the dredging areas. To ensure that the entire area is surveyed, the pre-dredge condition survey should cover an area at least 50 feet outside the top of the side-slope or the boundary of the dredging area, unless obstructions are encountered.

ii) The dredging design depth, overdredge depth and the side-slope ratio.

iii) The total quantity of dredged material to be removed from the dredging areas and the side-slope areas.

iv) Areas shallower than the dredging design depth shall be shaded green, areas between the dredging design depth and overdredge depth shall be shaded yellow, and areas below overdredge depth that will not be dredged shall be shaded blue. If these areas are not clearly shown, the Corps may request additional information.

v) The pre-dredging survey chart shall be signed by the Permittee to certify that the data are accurate and that the survey was completed within thirty (30) days before the proposed dredging start date.

F) A debris management plan to prevent disposal of large debris at all disposal locations. The debris management plan shall include: sources and expected types of debris, debris separation and retrieval methods, and debris disposal methods.

19. The Permittee shall not commence dredging operations unless and until the Permittee receives a Notice to Proceed, in writing, from the Corps Regulatory Division.

20. The Permittee shall maintain a copy of this permit on all vessels used to dredge, transport and dispose of dredged material authorized under this permit.

21. The Permittee shall ensure that the captain of any hopper dredge, tug or other vessel used in the dredging and disposal operations, is a licensed operator under USCG regulations and follows the Inland and Ocean Rules of Navigation or the USCG Vessel Traffic Control Service. All such vessels, hopper dredges or disposal barges or scows, shall have the proper day shapes, operating marine band radio, and other appropriate navigational aids.

22. The Permittee's contractor(s) and the captain of any dredge covered by this permit shall monitor VHF-FM channels 13 and 16 while conducting dredging operations.

23. Upon request, the Permittee and its contractor(s) shall allow inspectors from the Corps Regulatory Division, EPA, and(or) the USCG to inspect all phases of the dredging and disposal operations.

24. Upon request, the Permittee and its contractor(s) retained to perform work authorized by the permit or to monitor compliance with this permit shall make available to inspectors from the Corps Regulatory Division, EPA, and(or) the USCG the following: dredging and disposal operations inspectors' logs, the vessel track plots and all disposal vessel logs or records, any analyses of the characteristics of dredged material, or any other documents related to dredging and disposal operations.

25. The permitted activity shall not interfere with the public's right to free navigation on all navigable waters of the United States.

26. If a violation of any permit condition occurs, the violation shall be reported by the Permittee to the Corps Regulatory Division within twenty-four (24) hours. If the Permittee retains any contractors to perform any activity authorized by this permit, the Permittee shall instruct all such contractors that notice of any violations must be reported to the Permittee immediately.

27. When using a hopper dredge, water flowing through the weirs shall not exceed 10 minutes during dredging operations. The level that a hopper dredge can be filled shall not exceed the load line to prevent any dredged material or water from spilling over the sides at the dredging site or during transit from the dredging site to the disposal site. No hopper dredge shall be filled above this predetermined level. Before each hopper dredge is transported to the disposal site, the dredging site inspector shall certify that it is filled correctly.

28. When using a disposal barge or scow, no water shall be allowed to flow over the sides. The level that a disposal barge or scow can be filled shall not exceed the load line to prevent any dredged material or water from spilling over the sides at the dredging site. No disposal barge or scow shall be filled above this predetermined level. Before each disposal barge or scow is transported to the disposal site, the dredging site inspector shall certify that it is filled correctly.

29. The Permittee shall use an electronic positioning system to navigate at the dredging site. The electronic positioning system shall have a minimum accuracy and precision of +/- 10 feet (3 meters). If the electronic positioning system fails or navigation problems are detected, all dredging operations shall cease until the failure or navigation problems are corrected. Any navigation problems and corrective measures shall be described in the post-dredging completion report per Special Condition 30.

30. The Permittee shall submit a post-dredging completion report to the Corps Regulatory Division within 30 calendar days after completion of each dredging project to document compliance with all general and special conditions defined in this permit. The report shall include all information collected by the Permittee, the dredging operations inspector and the disposal operations inspector or the disposal vessel captain as required by the special conditions of this permit. The report shall indicate whether all general and special permit conditions were met. Any violations of the permit shall be explained in detail. The report shall further include the following information:

- A) Permit and project number.
- B) Start date and completion date of dredging and disposal operations.
- C) Total cubic yards disposed at the Corps-approved Berth 243-245 Confined Disposal Facility (CDF).
- D) Mode of dredging.
- E) Mode of transportation.
- F) Form of dredged material.
- G) Frequency of disposal and plots of all trips to the CDF.
- H) Tug boat or other disposal vessel logs documenting contact with the USCG before each trip to the CDF disposal site.
- I) Percent sand, silt and clay in dredged material.
- J) A certified report from the dredging site inspector indicating all general and special permit conditions were met. Any violations of the permit shall be explained in detail.
- K) A detailed post-dredging hydrographic survey of the dredging area. The survey shall show areas above the dredging design depth shaded green, areas between the dredging design depth and overdredge depth shaded yellow, areas below overdredge depth that were not dredged or areas that were deeper than the overdredge depth before the project began as indicated on the pre-dredging survey shaded blue, and areas dredged below the overdredge depth or outside the project boundaries shaded red. The methods used to prepare the post-dredging survey shall be the same methods used in the pre-dredging condition survey. The survey shall be signed by the Permittee certifying that the data are accurate.
- L) The post-dredging report shall be signed by a duly authorized representative of the Permittee. The Permittee's representative shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VII. DETERMINATIONS AND FINDINGS

a. Status of Other Authorizations and Legal Requirements:

(1) **Water Quality Certification:** The California Regional Water Quality Control Board (RWQCB) has indicated the Phase 1 project elements do not require water quality certification¹³. Phase 2 project elements *do* require water quality certification. The LAHD has applied for a section 401 Water Quality Certification for Phase 2 project elements (e.g., 20,000 cy of dredging, concrete pile and wharf deck installation at Berth 306) and is expected to complete the water quality certification process in November 2012.

Dredged material would be discharged and beneficially reused at the Berths 243-245 CDF, however these discharges were previously authorized by the Corps under section 10 of the RHA and section 404 of the Clean Water Act as part of the LAHD Channel Deepening project (Corps Permit No. SPL-2008-00662-AOA). Therefore, no further permit action is required by the Corps or RWQCB to authorize this discharge.

In light of water quality certification requirements for Phase 2 project elements, the Corps will issue a permit for Phase 1 activities (four new cranes at Berths 302-305) following execution of this ROD, and will issue a provisional permit for Phase 2 project elements.

(2) **Coastal Zone Management Act (CZMA) Consistency Determination:** On 16 July 2012, a Coastal Development Permit was issued to the Los Angeles Harbor Department under the certified Port Master Plan for the Project. On 26 July 2012, the California Coastal Commission Office of Federal Consistency concurred the Project is consistent with the CZMA due to its inclusion in the certified Port Master Plan.

(3) **Compliance with Section 106 of the National Historic Preservation Act (NHPA):** The Corps consulted the latest version of the National Register of Historic Places (NRHP), and no listed resources are located within the proposed Project's Area of Potential Effect (APE). The Corps also contacted the Native American Heritage Commission (NAHC) on 7 December 2011, to request information about traditional cultural properties, such as cemeteries and sacred places, in the proposed Project area. According to NAHC's 8 December 2011 written response, their record search of the Sacred Lands file failed to indicate the presence of Native American cultural resources in the immediate Project area. On 12 December 2011, the Corps sent written correspondence to individuals identified on the NAHC's list of Native American tribes and individuals interested in consulting on development projects, to determine whether any of them had information about traditional cultural properties within the proposed Project area. No response was received by the Corps from any of the individuals contacted. On 22 February 2012, the Corps contacted the State Historic Preservation Officer (SHPO) with our determination that the proposed Project has no effect on historic properties. Concurrence with Corps

¹³ Personal communication with Michael Lyons, Los Angeles Regional Water Quality Control Board (electronic mail dated 28 June 2012).

determination was received from the SHPO on 2 May 2012.

(4) Compliance with the Federal Endangered Species Act (ESA): The California least tern (*Sterna antillarum browni*) is known to forage in the vicinity of the proposed Project area. During the proposed construction activities, which would take place in/over water for a period of approximately 22 months, there is potential for effects on the California least tern as a result of increased noise and activity associated with the proposed Project. Specifically, the proposed Project would have indirect effect on the Seaplane Lagoon, which is an area used by the California least tern for foraging. However, based on detailed biological information in the EIS/EIR (see Section 3.3), the Corps determined the proposed activity may affect but would not likely adversely affect federally listed endangered California least tern, or designated critical habitat for this species (note: there is no designated critical habitat for California least tern or any other species within the POLA). Turbidity would be monitored and managed during construction and dredging activities in the Project area to prevent adverse turbidity-related effects to sensitive resources in the vicinity of the Seaplane Lagoon. Our determination was included in our 23 December 2011 public notice for the EIS/EIR and in an informal consultation letter to the U.S. Fish and Wildlife Service (FWS) dated 16 December 2011. The FWS concurred with the Corps' determination by electronic mail dated 30 January 2012.

(5) Compliance with the Magnuson-Stevens Fishery Conservation and Management Act: The Corps' 16 December 2011 letter and 23 December 2011 public notice announcing the availability of the EIS/EIR initiated the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act with the National Marine Fisheries Service (NMFS). As more fully discussed in the EFH assessment (see Section 3.3 and Appendix F in the EIS/EIR), substantial reductions in managed fish species or EFH are not expected. The proposed activities would temporarily impact areas designated as EFH due to periodic, short-term dredging and construction of various in/over water structures at Berth 306. Construction-related impacts would be temporary and would not substantially impact existing biotic resources.

Temporary impacts during construction would include increases in noise, turbidity, vibration, and lighting. Fuel and hazardous materials spills during construction are also possible, but would be expected to be small in scale, remedied quickly, and affect few biological resources. Invasive species could also be introduced through ballast water discharges or as a result of hull fouling during construction, but there is no proven technology that currently exists that could prevent introductions via vessel hulls, other equipment, or ballast water. The proposed Project includes the construction of over-water structures (i.e., a 1,250-foot-long wharf deck) and additional man-made substrate habitat (i.e., 515 new concrete piles) resulting in approximately 2.7 acres of new over-water shade along the 41-acre backlands in a rectangular configuration. While the new wharf and support piles would be constructed in/over existing rock rip rap, these project features are considered permanent structures for the purpose of this analysis, and the resultant shade impact is long-term but not expected to adversely affect aquatic ecosystem functions at the project site.

Overall, the Corps determined the proposed activities may affect but would not have a substantial adverse effect on EFH or federally managed fisheries in California waters. In a letter, dated 16 February 2012, NMFS disagreed with the Corps' determination and indicated effects on EFH and managed species would be individually and cumulatively adverse. NMFS also provided two conservation recommendations to avoid, minimize, mitigate, or otherwise offset adverse effects to EFH. One conservation recommendation was to prepare a compensatory mitigation plan in cooperation with NMFS, the Corps, and other resource agencies addressing impacts associated with the additional 2.7 acres of wharf shade. The second was to notify NMFS of the commencement of dredging and disposal operations not less than 14 calendar days prior to commencing work, and notify NMFS of the completion date of these operations at least five calendar days prior to such completion. These notifications would allow NMFS an opportunity to monitor the impacts to EFH. In a letter dated 28 February 2012, the Corps responded to NMFS agreeing to provide a response to the conservation recommendations at least 10 days in advance of the Corps' final action of the Project. In a letter dated 2 May 2012, the Corps provided a detailed response to NMFS which addressed all issues raised in NMFS 16 February 2012 letter, including the two conservation recommendations: (1) prepare a mitigation plan to address impacts to federally managed species and EFH as a result of 2.7 acres of new shade; and (2) notify NMFS in advance of initiation of in-water construction activities and in advance of completion of in-water construction activities. In summary, the Corps disagreed with NMFS recommendation to require mitigation for shade impacts for several reasons, including prior mitigation using 71.5 credits from the Bolsa Chica mitigation bank, eelgrass mitigation within the Seaplane Lagoon associated with the Channel Deepening project which included creation of the 41-acre [backland] area, and the finding that the proposed new wharf shade does not represent a substantial loss of ecosystem function or a substantial disruption of marine biological communities in the Project area or the Harbor as a whole, but agreed to include conservation recommendation No. 2 as a condition of the Department of the Army permit. NMFS did not elevate the Corps' decision to eliminate the first conservation measure and, as a result, the Corps has satisfied the requirements for coordination under Magnuson-Stevens Fishery Conservation and Management Act.

(6) Compliance with Section 176(c) of the Clean Air Act: The EIS/EIR included a General Conformity evaluation in accordance with SCAQMD Rule 1901 and 40 CFR 93 subpart J, and section 176(c) of the Clean Air Act. The general conformity evaluation began by conducting an applicability analysis in which the calculated Federal action emissions are compared to the general conformity *de minimis* thresholds; this applicability analysis is present in Appendix E1.2 in the EIS/EIR. This analysis demonstrated a general conformity determination is not necessary because, although Project construction would require Federal action (i.e., issuance of a Department of the Army permit for activities proposed in and over navigable waters and waters of the U.S.), the Federal action's direct and indirect emissions would be below specified *de minimis* thresholds (40 C.F.R. 93.153(b)). Comments on the applicability analysis were considered fully before the Corps finalized the ROD for the Federal action. The final applicability analysis was published as part of the Final EIS/EIR on 15 June 2012 for review until 16 July 2012. The Corps received one comment on the Final EIS/EIR from the U.S. EPA. The EPA did not dispute the findings in the EIS/EIR with respect to general

conformity, or the responses to comments on the EIS/EIR, but emphasized that despite the LAHDs' commitments to reduce air quality and resultant public health impacts through mitigation measures, these issues remain significant.

(7) Compliance with the Section 103 of the Marine Research, Protection and Sanctuaries Act (aka: Ocean Dumping Act): In July 2011, the USEPA and other members of the Contaminated Sediment Task Force/Dredged Material Management Team agreed the LAHD had adequately tested and evaluated sediment to be dredged in association with the proposed Project (AMEC 2011). While some of the dredged material could qualify for ocean disposal, the applicant revised their proposal in response to the sediment test findings and now proposes to beneficially reuse all of the material generated during phase one of the proposed Project in the Berths 243-245 CDF . Therefore, Section 103 authorization is not required for the proposed disposal of dredged material.

b. Public Interest Review: I find that my decision to issue a permit associated with the proposed Project for the Berths 302-306 (APL) Container Terminal Project, as prescribed by regulations published in 33 C.F.R. Parts 320 to 332, is not contrary to the public interest. While I considered all the public interest factors listed in 33 C.F.R. § 320.4, the discussion that follows focuses on those factors relevant to the proposed Project. During the EIS/EIR comment period, there was opposition to several aspects of the proposed Project. In evaluating these comments, the Corps worked with the applicant to modify and strengthen mitigation measures, such as more frequent lease measure review and modification (if needed), additional restrictions on truck idling, notifying NMFS preceding both the commencement and conclusion of all construction, dredging, and disposal operations, and disposal of all dredged material in an approved in-harbor CDF. As summarized in Section 3 in the EIS/EIR, under NEPA, the Federal action associated with the LAHD's proposed Project would not result in significant adverse effects to aesthetic and visual resources, most biological resources, cultural resources, geology or geological resources, ground water and soils, hazards and hazardous materials, land use, marine transportation and navigation, public services and utilities, or water quality/sediments and oceanography. In addition, after mitigation, project-specific adverse effects would be less than significant with respect to ground transportation and noise.

However, relative to the NEPA baseline¹⁴, significant and unavoidable (even with mitigation) adverse impacts would be expected to air quality and meteorology (construction and operational exceedances of air quality standards, cancer and non-cancer health risks), and biology (potential for vessels to introduce non-indigenous species that would disrupt native biological communities). However, many of these impacts would occur beyond the Corps' statutory authorities under section 10 of the RHA to require effective mitigation. Project impacts and mitigation beyond the Corps statutory authority would still be subject to the LAHD's authority,

¹⁴ Briefly, the NEPA baseline is the set of conditions expected to occur onsite in the absence of Federal action. For some resource issues, such as air quality, conditions can change over time, and therefore, the NEPA baseline is not a static baseline. Sections 1 and 2 of the EIS/EIR provide additional NEPA baseline discussion.

as the local agency with continuing program and responsibility over the Project throughout its useful life.

Project-specific significant and unavoidable impacts would also be cumulatively significant impacts, as discussed in Chapter 4 of the EIS/EIR. Because the federal action associated with the proposed Project would contribute air emissions to the area, and due to the non-attainment status of air quality in the Los Angeles Basin, the proposed Project would have a cumulatively considerable impact on air quality. The potential for introduction of non-indigenous species to the Los Angeles Harbor during project operations (which could and would occur in the absence of a Department of the Army permit) would also contribute considerably to a cumulatively significant impact. In addition, aesthetics and noise that would be less than significant with respect to Project-level impacts but would contribute considerably to a cumulatively significant impact.

Some of the Project-specific and cumulatively significant and unavoidable impacts would have disproportionately high and adverse effects on minority and/or low-income populations, specifically air quality or meteorology, and greenhouse gases, and noise. However, for the reasons discussed in Chapter 5 of the EIS/EIR, impacts to the following resources would not primarily affect minority and/or low-income populations and therefore are not considered disproportionately high and adverse effects on minority and/or low-income populations: aesthetics; biology; cultural resources; geology; ground transportation; groundwater and soils; hazards and hazardous materials; land use; marine transportation; recreation; public services and utilities; and water quality, sediments, and oceanography.

While there would be significant and unavoidable impacts as a result of the proposed Project, some with disproportionate high and adverse effects on minority and/or low-income populations related to air quality, as described in Chapter 5 (Environmental Justice) and Chapter 7 (Socioeconomics) of the EIS/EIR, the proposed Project would also provide socioeconomic benefits to the region in the form of good movement and new jobs. As discussed in Chapter 7 of the EIS/EIR, the proposed Project is expected to generate approximately 3,370 direct and indirect jobs during the two year construction period. Over the long term, the project is estimated to generate approximately 2,756 permanent jobs by 2015 and approximately 3,885 permanent jobs by 2027, related to expansion of the APL terminal.

Project operations, which are not subject to the Corps continuing program control and responsibility, would emit toxic air contaminant (TAC) emissions that could adversely affect public health. A health risk assessment (HRA) evaluated three different types of health effects: individual lifetime cancer risk, acute noncancer hazard index (e.g., temporary irritation to the eyes, nose, throats, and lungs), and chronic noncancer hazard index (e.g., emphysema). Individual lifetime cancer risk is the additional chance for a person to contract cancer after a lifetime of exposure (in this case 70 years for a resident and 40 years for a worker) to proposed Project or alternative emissions. Cancer-related health risk impacts under NEPA are less than significant. However, residential and occupational health risk would be significant and unavoidable under CEQA. The residential receptors are "liveaboards" in the Wilmington marinas and to a lesser extent, "liveaboards" in Fish

Harbor.

With regard to air quality, a particular issue of concern is health risk to the local communities, San Pedro and Wilmington, which both have minority populations, and in the case of Wilmington, a low-income population concentration as well. The health risk assessment found that, prior to mitigation, the proposed Project's contribution would be less than significant (i.e., less than 10 in a million additional cancer risk) for residential, occupational, and recreational receptors compared to the NEPA baseline (i.e., incremental increases do not exceed 10 in a million for these receptors). The proposed Project's contribution to chronic health risk would be less than significant for all receptors. However, the acute hazard index would be significant for occupational and residential receptors. The significantly affected residential receptors are limited to "liveaboards" in Fish Harbor. In short, much of the health risks associated with the proposed Project would affect individuals living or working in close proximity to the APL Terminal. This contrasts with the No Federal Action Alternative (i.e., the NEPA baseline). Under the No Federal Action Alternative, the same receptors would be similarly affected, as would sensitive receptors, and there would be significant chronic and acute hazards, but the health risks would be localized in the Inner Harbor. As discussed in the EIS/EIR, the maximum NEPA cancer risk increment associated with the unmitigated proposed Project is predicted to be 7 in a million (7×10^{-6}), at both a residential and an occupational receptor. This risk value does not exceed the significance criterion of 10 in a million, and would not be considered a significant impact under NEPA.

The acute hazard index is a ratio of the short-term average concentrations of TACs in the air to established referenced exposure levels. An acute hazard index below 1.0 indicates that adverse noncancer health effects from short term exposure are not expected. The combined TACs from construction and operations would result in significant acute hazard index impacts under NEPA for the proposed Project and all alternatives, with the exception of Alternative 1 under CEQA, and no impact for Alternative 2 under NEPA. Mitigation measures **MM AQ-1 through MM AQ-23** would reduce the acute health risk impact from construction and operations for residential receptors to below significance but impacts would remain significant and unavoidable after mitigation for occupational receptors.

The chronic hazard index is a ratio of long-term average concentrations of TACs in the air to established referenced exposure levels. A chronic hazard index below 1.0 indicates that adverse noncancer health effects from long-term exposure are not expected. Chronic hazard index impacts under NEPA would be less than significant under the proposed Project and all Alternatives, and there would be no impact under NEPA for Alternative 2. The proposed Project would implement 23 appropriate and practicable air quality mitigation measures, as described in the EIS/EIR during construction and operations to reduce air quality impacts and related public health impacts over the life of the project. The mitigation measures range from payment of \$4.2 million to the Port Communities Mitigation Trust Fund for mitigation and grant projects; requirements to use best available engine technologies as they become available; technology improvements and upgrades as they become available for on- and off-road equipment as well as ocean-going vessels; vessel speed reduction; additional truck idling restrictions; dust control; use of alternative maritime power for

ships at berth; use of energy efficient technologies in new buildings; recycling; and tree planting. With implementation of the mitigation measures, most direct and indirect air quality impacts and resultant public health impacts would be substantially reduced.

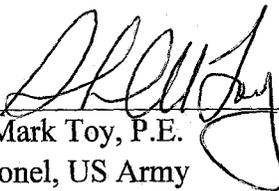
When the extent and permanence of the expected benefits and detrimental effects of the proposed work and structures would have on the public and private uses to which the area is suited are considered, in light of the substantial mitigation measures in the EIS/EIR that would be implemented to avoid and minimize environmental impacts, the Corps has determined that issuance of a Department of the Army Permit with the above special conditions, as prescribed by regulations published in 33 C.F.R. Parts 320 to 332 is not contrary to the public interest.

VIII. CONCLUSION

For the reasons outlined above, the proposed Project is the alternative that best meets the purpose and need of the project and will have the least impact on the human and natural environment, including navigable waters of the U.S. The Corps will ensure that the commitments outlined above will be implemented as part of the project design and construction.

Based upon a careful consideration of all the social, economic, and environmental evaluations contained in the EIS/EIR; the input received from other agencies, organizations, and the public; and the factors and project commitments outlined above, it is my decision to issue a Department of the Army permit authorizing structures and work in the proposed Project pursuant to section 10 of the Rivers and Harbors Act.

DATED: 5 SEP 2012



R. Mark Toy, P.E.
Colonel, US Army
Commander and District Engineer

APPENDIX A

COMMENTS ON FINAL EIS/EIR AND RESPONSE TO COMMENTS

Comment: See following pages for U.S. EPA comment letter.

Response: Comments on air quality emissions and public health impacts are noted. Since the close of the public comment period for the EIS/EIR, the LAHD provided clarification to the Corps on various project elements, and provided a revised permit application indicating no unconfined ocean disposal of dredged material would occur. All dredged material from the Project would be disposed at the Berths 243-245 CDF. Therefore, no unconfined ocean disposal would take place at LA-2 and no dredged material would be discharged at the Cabrillo Shallow Water Habitat Area.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

July 16, 2012

Theresa Stevens
U.S. Army Corps of Engineers
Los Angeles District – Regulatory Division, North Coast Branch
2151 Alessandro Drive, Suite 110,
Ventura, California 93001

Subject: Final Environmental Impact Statement/Environmental Impact Report for
Proposed Berths 302-306 (APL) Container Terminal Project, at the Port of
Los Angeles, Los Angeles County, CA (CEQ # 20120189)

The U.S. Environmental Protection Agency (EPA) is providing comments on the subject Final Environmental Impact Statement (FEIS). Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. Our comments are also prepared under the authority of, and in accordance with, Section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA) and Section 10 of the Rivers and Harbors Act (RHA), and the provisions of the Federal Guidelines promulgated at 40 CFR 230 under Section 404(b)(1) of the Clean Water Act.

EPA reviewed the Draft Environmental Impact Statement (DEIS) for Proposed Berths 302-306 (APL) Container Terminal Project and provided comments on February 23, 2012. We rated the document EO-2, Environmental Objections – Insufficient Information. We based this on significant emissions, discussed in the DEIS, of volatile organic compounds, carbon monoxide, nitrogen oxides, particulate matter, both 10 microns or less and 2.5 microns or less, and exceedences of federal, State and local standards for nitrogen dioxide and particulate matter. While the FEIS clarified many other matters raised in our comments, these significant issues remain.

In response to our comments, the Port stated its intention to deploy zero tailpipe emission drayage trucks, once a technology proves to be feasible, and highlighted the demonstration steps the Port has identified in *Technology Status Report – Zero Emission Drayage Trucks*¹ (p. 2-28). EPA notes the Port of Los Angeles' Strategic Plan² contains added detail in an objective to:

¹ *Technology Status Report – Zero Emission Drayage Trucks, prepared for the Ports of Los Angeles and Long Beach, June 2011.*

² Strategic Plan 2012 to 2017, The Port of Los Angeles
< http://www.portoflosangeles.org/pdf/strategic_plan_2012_lowres.pdf >

Develop an action plan to be completed by the end of 2014, with a goal of increasing zero emission trucks to 50% of the drayage fleet or 100% of the trucks calling at the near dock rail yards by the end of FY 2019/20.

We understand the Port's concerns about placing individual tenants at a competitive disadvantage, and recognize the importance of cost effective freight transport. We agree that Port-wide deployment of zero tailpipe emission trucks is preferable to deployment on a terminal by terminal basis; however, we encourage the Port to offer a voluntary opportunity for the lessee (APL) or other tenants to participate in early deployment of zero-emission drayage trucks, following their successful demonstration.

The South Coast Air Quality Management District's *2007 Air Quality Management Plan*³ relies on new technology for 26% reduction of the nitrogen oxides and 9% reduction of the volatile organic compounds necessary to meet the 2024 attainment goal for the 1997 8-hour ozone standard. Additionally, the *2012-2035 Region Transportation Plan/Sustainable Communities Strategy* relies on zero- or near-zero-emissions freight corridors to demonstrate conformity with the 2007 Air Quality Management Plan. Consequently, the continued leadership of the Port of Los Angeles is critical to meeting the Region's clean air goals.

We are pleased to learn that the Port of Los Angeles would provide \$4.2 million in additional funding for mitigation and grant projects through the Port Communities Mitigation Trust Fund. Since schools have been a focus of past mitigation efforts, recent EPA guidelines⁴ could inform future mitigation. We are also pleased to learn about the Port-Wide Project Labor Agreement that seeks to train and hire local residents residing within 10 miles of the Port. This should help the community most affected by the project impacts to increase its share of project benefits.

We commend the Port of Los Angeles for its Environmental Ship Index Program, which provides incentives to bring cleaner ocean-going container vessels to the Port. We look forward to learning about the results of the program.

We thank the Corps and the Port of Los Angeles for incorporating a discussion of the vessel general permit requirements into the FEIS and for shortening the periodic review of new technology and regulations from seven to five years.

In responding to our water quality comments related to sediment, the FEIS emphasizes coordination with the Southern California Dredge Materials Management Team (SC-DMMT), which is composed of federal and State agencies. Section 1.5.2.1 of the FEIS also raises an alternative of ocean disposal of dredged material at Berth 306. As discussed by the SC-DMMT and indicated in our comments on the DEIS, only the eastern half of the proposed dredging area off Berth 306 is suitable for unconfined ocean disposal. The western half contains hotspots which would not be suitable for ocean disposal.

³ This plan is the EPA-approved federal State Implementation Plan for the South Coast Air Basin.

⁴ State School Environmental Health Guidelines, Revised Draft 2/8/2012.

< <http://www.epa.gov/schools/ehguidelines/downloads/ehguidelines-draft.pdf> >; and School Siting Guidelines, October 3, 2011, < <http://www.epa.gov/schools/siting/download.html> >

We appreciate the opportunity to review this FEIS. When the Record of Decision has been signed, please send one hard copy and one electronic copy to the address above (mail code: CED-2). If you have questions, please contact me at (415) 972-3843 or have your staff contact Tom Kelly at kelly.thomasp@epa.gov.

Sincerely,


for Enrique Manzanilla, Director
Communities and Ecosystems Division

cc: Christopher Cannon, Port of Los Angeles
Cindy Miscikowski, Los Angeles Board of Harbor Commissioners
Rick Cameron, Port of Long Beach
Susan E. Anderson Wise, Port of Long Beach Harbor Commissioners
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Hassan Ikrhata, Southern California Association of Governments
Juan Acosta, BNSF Railway
Lanny Schmid, Union Pacific Railroad
Martin Tuttle, Caltrans
Bimla Rhinehart, California Transportation Commission
Alan Hicks, U.S. Department of Transportation, Maritime Administration
Gene Seroka, APL

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