

## RECORD OF DECISION

As the Regulatory Division Chief for the Los Angeles District, I have reviewed the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the San Pedro Waterfront Project, Port of Los Angeles, California. 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 USACE will proceed as indicated herein.

**I. INTRODUCTION**

**a. Location:** The Los Angeles Harbor Department's (LAHD's) proposed San Pedro Waterfront Project (proposed Project) encompasses approximately 400 acres primarily along the west side<sup>1</sup> of the Main Channel in the Port of Los Angeles (POLA), in the City of Los Angeles, Los Angeles County, California. The proposed Project area is more specifically located in the San Pedro District of POLA, and is roughly bordered by Vincent Thomas Bridge on the north, Cabrillo Beach adjacent to San Pedro Breakwater on the south, the Main Channel on the east, and Harbor Boulevard, Crescent Avenue, Via Cabrillo Marina, and Shoshonean Road on the west (north to south: latitude 33° 44' 59.5" N, longitude 118° 16' 25.6" W and latitude 33° 42' 37" N, longitude 118° 17' 3" W, respectively).

**b. Brief Background and General Description:**

1. On 12 December 2006, the LAHD applied for a Department of the Army standard individual permit, which was amended by their submittals in March 2008 and in March, April, and May 2011.

2. The Corps and the LAHD prepared a joint EIS/EIR pursuant to the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). A Notice of Intent (NOI) to prepare an EIS/EIR was published in the Federal Register on 7 September 2005, and a joint Corps-LAHD scoping meeting was held on 11 October 2005 at the Los Angeles Harbor Hotel in San Pedro. Following substantial changes to the project, a new or

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<sup>1</sup> The exception is the proposed construction of the new Berth 240 Fueling Station on the east side of the Main Channel on Terminal Island.

supplemental NOI was published in the Federal Register on 22 December 2006, and another public scoping meeting was held on 23 January 2007 to obtain Project-related input from the public. A Notice of Availability of the Draft EIS/EIR for review and comment was published in the Federal Register on 22 September 2008, with a separate USACE public notice of the availability of the Draft EIS/EIR, receipt of application for a Department of the Army permit, and notice of a public hearing distributed by the USACE on the same date. A public hearing to solicit comments on the Draft EIS/EIR was held on 27 October 2008 at Crowne Plaza Hotel in San Pedro. The public review period for this document ended on 8 December 2008. 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 USACE and the U.S. Environmental Protection Agency (USEPA) on 25 September 2009. The USACE distributed a separate USACE public notice of the availability of the Final EIS/EIR and reminder of the receipt of a Department of the Army permit application, including the latest Project-related information, on 29 September 2009. Comments on the Final EIS/EIR, which included a draft general conformity determination, were received until 29 October 2009. All comments received on the Final EIS/EIR<sup>2</sup>, including the draft general conformity determination and responses to comments, are provided in Appendix B to this Record of Decision (ROD). The Los Angeles Board of Harbor Commissioners certified the EIR on 29 September 2009.

3. The proposed Project, as evaluated in the EIS/EIR, includes the following components:

- Promenade, Harbors, and Open Space:
  - Waterfront Promenade: A continuous promenade measuring approximately 30-feet wide would be constructed along the west side of the Main Channel through the Project area.
  - New Harbor Cuts: Three new harbors would be created - the North Harbor, Downtown Harbor, and 7th Street Harbor. The construction of the new harbors would require excavation of soil above the Mean High Water (MHW) line and dredging of sediment below the MHW line, prior to the removal of the existing bulkheads, to create approximately 7 acres of new open water along the west side of the Main Channel, with i) excavated material beneficially reused at available in-harbor sites, such as the Berth 200 Railyard, China Shipping Terminal Phase III, and Cabrillo Beach (nourishment), and the rest, at an approved off-site upland location, and ii) dredged material beneficially reused at available in-harbor sites, such as the Berth 200 Railyard, China Shipping Terminal Phase III, and Cabrillo Beach (nourishment), and the rest, depending on its suitability, disposed of at designated ocean disposal sites (LA-2 or LA-3) or

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<sup>2</sup> Includes comment letters and e-mails sent to the Los Angeles Board of Harbor Commissioners for their consideration during their Final EIR meeting on 29 September 2009.

at an approved off-site upland location.

- 7th Street Pier: The 7th Street Pier would be a public dock for short-term berthing of visiting vessels, located within the 7th Street Harbor, adjacent to the Los Angeles Maritime Museum.
  - Town Square: The Town Square would comprise approximately 0.79 acre in front of the historic San Pedro Municipal Ferry Building (existing Los Angeles Maritime Museum) at the foot of 6th Street and would incorporate a portion of the downtown promenade.
  - Downtown Civic Fountain: The Downtown Civic Fountain would be adjacent to the Town Square. The water feature would be designed to complement the civic setting of the adjacent San Pedro City Hall Building and the Town Square, and simulate the extension of the 7th Street Harbor to the San Pedro City Hall Building.
  - John S. Gibson Jr. Park: John S. Gibson Jr. Park is an existing 1.61-acre park located south of the 5th Street green. The proposed Project would maintain the existing memorials at the park and enhance their surroundings to highlight their historical and cultural significance with improved hardscaping, landscaping, lighting, and interpretive signage elements.
  - Fishermen's Park: The proposed Fishermen's Park would encompass approximately 3 acres within Ports O'Call.
  - Outer Harbor Park: The proposed Outer Harbor Park would encompass approximately 6 acres at the Outer Harbor and would be designed as an integral feature and complementary to the secure operations of the proposed Outer Harbor Cruise Terminals.
  - San Pedro Park: The proposed San Pedro Park would encompass 18 acres located north of 22nd Street, south of Crescent Avenue, and west of Sampson Way.
  - Warehouses Nos. 9 and 10 and associated backland area would be adapted for low-intensity community-serving commercial or educational reuse that would be incorporated as an integral element of San Pedro Park.
- New Development, Redevelopment, Cultural Attractions, and Modifications to Existing Tenants, including development of the new cruise terminals:
    - Cruise Terminals: The proposed Project would include upgrading Berths 45–47 for use as a cruise ship berth and constructing a new two-story terminal building (up to 100,000 square feet), and constructing a new cruise ship berth and two-story terminal building (up to 100,000 square feet) at Berths 49–50 in the Outer Harbor. The upgrades also include minor dredging and rock discharges along the berth slopes so the berths can bear the loads of larger, modern cruise ships.
    - Cruise Terminal Parking: The proposed upgrades to Berths 45–47 including terminal construction, the construction of a new cruise ship berth and terminal facility at Berths 49–50 in the Outer Harbor, and the projected increases in ship

calls and passengers at Berths 91–93 would require additional parking facilities. Structured and surface parking for the combined cruise ship facilities would be located in the Inner Harbor and some surface parking would be located in the Outer Harbor.

- Ports O'Call Redevelopment: The proposed Project would provide opportunities for redevelopment, as well as new commercial development, within Ports O'Call Village. The redevelopment and additional development, for a total of 375,000 square feet at Ports O'Call, would require an increase in parking spaces. Parking would be provided at a number of locations within POLA, including new parking structures along the bluff between Sampson Way and Harbor Boulevard near Ports O'Call.
- Southern Pacific Railyard Demolition: The 7-acre Southern Pacific Railyard between 7th Street and the S.P. Slip would be removed, at the bluff site, providing opportunities for proposed bluff site parking.
- Waterside Red Car Maintenance Facility: The proposed Project would construct an approximately 17,600 square foot facility at the existing Southern Pacific Railyard south of 7th Street near the proposed 13th Street pedestrian bridge and the proposed bluff parking structures. An approximately 20,000 square foot exterior service yard adjacent to the building would be required to provide a wash-down area for the trolley cars. Once completed, the temporary Waterfront Red Car Maintenance Facility at 22nd and Miner Streets would be removed.
- Ralph J. Scott Fireboat Museum: The proposed Project would construct an approximately 10,000-square-foot museum within a multi-level structure along the south side of existing Fire Station No. 112 and would be incorporated into the existing pile-supported plaza in the Downtown Harbor area.
- Demolition of Westway Terminal Facilities: The Westway Terminal located at Berth 70–71 would be demolished for potential future site of an institutional/research and development use.
- Tug Operations: The proposed Project would include lease renewals for both Crowley and Millennium. Dispatching of tugs varies from day to day, and the impacts associated with tugboat operations are or will be accounted for in the respective projects that utilize tugboats.
- Los Angeles Maritime Institute (LAMI): The proposed Project would include a new lease and the reuse of the Crowley Building in the Downtown Harbor area for LAMI.
- Jankovich & Son Fueling Station Decommissioning: Jankovich & Son fueling station currently located at Berth 74 along the west side of the Main Channel would be removed, decommissioned, and remediated.
- Berth 240 Fueling Station: A new fueling station would be developed at Berth 240 on Terminal Island (i.e., along the east side of the Main Channel).
- Mike's Fueling Station: All hazardous materials with flashpoints below 140

degrees Fahrenheit would be removed prior to operation of the proposed waterfront promenade.

- Catalina Express Terminal and S.S. Lane Victory: The proposed Project would include the permanent relocation of the Catalina Express Terminal berthing facilities from Berths 95-96 to the existing location of the S.S. Lane Victory at Berth 94. S.S. Lane Victory would be relocated to the North Harbor water cut and a 10,000-square foot visitor center would be built for the ship. Minor wharf/dock upgrades at Berths 93D and 95 would also occur to accommodate the Catalina Express relocation.
- **Transportation Improvements:**
  - Sampson Way would be expanded to two lanes in each direction and curve near the Municipal Fish Market to meet with 22nd Street in its westward alignment east of Miner Street. The proposed Project would also include an enhanced four-way intersection at Sampson Way and 7th Street to provide improved access to and along the waterfront.
  - Harbor Boulevard would remain in place at its current capacity with two lanes in each direction. Landscape and hardscape improvements are proposed along the east side and west side of Harbor Boulevard south of 7th Street, as well as in the median of Harbor Boulevard starting at the Swinford Street intersection, and would extend south to 22nd Street.
  - The Waterfront Red Car Line would be extended from its existing terminus near the intersection of Harbor Boulevard and Miner Street and 22nd Street to City Dock No. 1 (adjacent to Warehouse No. 1), to the Outer Harbor along Miner Street, and to Inner Cabrillo Beach along Shoshonean Road.

4. Aspects of the proposed Project that require a Department of the Army permit consist of: all work (dredging approximately 464,310 cubic yards [cy] of sediment in historic navigable waters of the U.S. and removing portions of the existing bulkheads to create three harbors, and dredging 3,330 cy of sediment to upgrade Outer Harbor Berths 45-47 and 49-50) and new structures installed in (e.g., piles, bulkheads, floats) and over (e.g., promenade, docks, piers) navigable waters of the U.S. along the Main Channel; the discharge of approximately 24,000 cy of fill material (rock) into approximately 3.0 acres of waters of the U.S. (along the slopes at Outer Harbor Berths 45-47 and 49-50 to stabilize them further against the loads they will bear from larger ships); the discharge of fill material (soil excavated above MHW associated with creation of the three new harbors) and/or dredged material at in-harbor sites, such as Cabrillo Beach (nourishment); the transport of dredged material for the purpose of disposal in ocean waters at USEPA-approved ocean disposal sites (LA-2 or LA-3)<sup>3</sup>. The above activities would

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<sup>3</sup> There could also be material beneficially reused at upland POLA locations, such as Berth 200 Railyard and China Shipping Terminal Phase III, and/or material disposed of at an approved off-site upland

require authorization pursuant to section 10 of the Rivers and Harbors Act (RHA), section 404 of the Clean Water Act (CWA), and, for transporting dredged material for purposes of disposing of it in ocean waters at LA-2 or LA-3, section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA).

5. Prior to removing the existing bulkheads, the LAHD has estimated that creation of the three new harbors along the west side of the Main Channel (i.e., North Harbor, Downtown Harbor, and 7th Street Harbor) would require soil excavation (i.e., material occurring above +4.8 feet Mean Lower Low Water [MLLW]<sup>4</sup>, which is relatively dry) and sediment dredging (i.e., material occurring below +4.8 MLLW, which is relatively wet) totaling approximately 600,000 cy. Upon removing the existing bulkheads, approximately 7 acres of navigable open water would be created by these three harbor cuts along the Main Channel. An additional approximately 3,330 cy of sediment would be dredged in the vicinity of Berths 45-47 and 49-50 in the Outer Harbor prior to discharging rock along the existing berth slopes to stabilize them in anticipation of the higher loads they will need to bear to service larger cruise ships. The discharge of approximately 24,000 cy of rock along these berths would temporarily impact approximately 3.0 acres of waters of the U.S. (i.e., approximately 2.43 acres of subtidal soft substrate would be covered by submerged rock, and approximately 0.57 acre of existing submerged rock would be covered by additional rock).

6. Excavated soils and dredged sediments would be beneficially reused to the extent opportunities become available and are practicable at that time (beach nourishment at Cabrillo Beach if material is of sufficient quality, upland reuse at Berth 200 Railyard and China Shipping Terminal Phase III, other potential in-harbor sites). Any dredged material that cannot be beneficially reused but qualifies for ocean disposal (relatively free of contaminants) would be transported and disposed of at the USEPA-designated LA-2 or LA-3 ocean disposal site. Any soil or dredged material that cannot be beneficially reused and is not relatively free of contaminants (i.e., for sediments, not qualifying for ocean disposal) would be disposed of at an approved off-site upland location.

**c. Purpose and Need:**

1. The purpose of the proposed Project under NEPA is to implement modifications to the existing San Pedro Waterfront primarily along the west side of the harbor's Main Channel to: (1) improve its accessibility and use without impeding the public's right to free navigation; these modifications would include increasing the open water area to provide a variety of waterfront uses such as berthing for visiting tall ships and other vessels, such as tugboats and

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location, but none of these activities would require Department of the Army authorization (no return water anticipated).

<sup>4</sup> MHW in POLA occurs at +4.8 MLLW.

other recreational, commercial, and port-related uses; and (2) use and increase the value<sup>5</sup> of deep-water berths to accommodate existing and projected growth in the cruise ship industry in the Port of Los Angeles.

2. The needs for the proposed Project are to provide in-water and water-side facilities to accommodate growth in the cruise industry, to provide additional space for water-dependent marine facilities, and to increase public access to the water. The cruise industry is projected to grow in passenger volume during the next 10 to 20 years, with an increase in the size and number of ships that regularly call on POLA (see Section 1.3 in the EIS/EIR). The infrastructure needed to serve these new, larger ships is not currently available and is required for POLA to accommodate demands in the cruise industry. There is also a need to provide additional marine facilities for service craft, such as tugboats. And finally, there is a need to increase public access to the waterfront from both the landside, through creation of the promenade and various visitor-serving recreational opportunities, and from the waterside, in providing mooring locations for visitor-serving watercraft and temporary mooring for vessels using the landside facilities.

## II. DECISION

For the reasons outlined below, the proposed Project, as described in LAHD's 12 December 2006 application for a Department of the Army permit as amended in March 2008 and in March, April and May 2011, 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 that 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 Final EIS/EIR; the input received from other agencies, 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, discharges of fill material into waters of the U.S., and the transport of dredged material for the purpose of disposal in ocean waters at LA-2 or LA-3 associated with the proposed Project. The proposed Project would be constructed in two phases<sup>6</sup>, with Downtown Harbor<sup>7</sup> and 7<sup>th</sup>

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<sup>5</sup> Value can also be thought of as capacity.

<sup>6</sup> The EIS/EIR first identified two project phases that would overlap considerably over a 5-year period, but changing economic conditions and other factors, as mentioned in Section 1.5.4 of the Final EIS/EIR, have changed the project schedule and will affect ultimate construction phasing; the current estimate is the first phase would be constructed from 2011-2016, with second phase construction from 2018- 2030.

<sup>7</sup> Although not a regulated activity, displaced public parking at the proposed Downtown Harbor site would be provided at the 3<sup>rd</sup> Street Landing.

Street Harbor, including the associated facilities such as 7<sup>th</sup> Street Pier, and the relocation of Catalina Express, constructed during the first phase, with the balance of regulated activities occurring during the second phase. The proposed Project includes the following regulated activities:

- i. Dredging approximately 464,310 cy of sediment (material occurring below +4.8 feet MLLW) to create three harbors (i.e., North Harbor, 7<sup>th</sup> Street Harbor, and Downtown Harbor) along the west side of the Main Channel;
- ii. Dredging approximately 3,330 cy in the vicinity of Berths 45-47 and 49-50, and discharging fill material (approximately 24,000 cy of rock) into approximately 3.0 acres (131,000 square feet) of waters of the U.S.<sup>8</sup> to stabilize the slopes at Berths 45-47 and 49-50<sup>9</sup> associated with upgrading the wharves in the Outer Harbor to accommodate cruise ship operations;
- iii. Beneficially reusing qualifying excavated soil and dredged sediments at in-harbor sites, such as Cabrillo Beach (nourishment), and disposing of qualifying dredged material at USEPA-designated ocean sites (LA-2 or LA-3)<sup>10</sup>; and
- iv. Constructing numerous new structures in or affecting approximately 33 acres of navigable waters of the U.S. from approximately Vincent Thomas Bridge to Cabrillo Beach adjacent to the San Pedro Breakwater, including removing approximately 134,000 square feet of over-water structures and approximately 760 piles and installing approximately 1,110 piles and constructing approximately 256,000 square feet of promenade and floating docks and piers along the waterfront (primarily the west side of the Main Channel, and at Berth 240 on the east side on Terminal Island to develop a fueling station); removing approximately 2,000 square feet of over-water structures, installing approximately 510 piles, and constructing approximately 94,000 square feet of wharf deck and pier at Berths 45-47 and 49-50; removing approximately 1,000 linear feet of bulkheads and constructing approximately 3,100 linear feet of sheet-pile bulkheads; and adding approximately 70,000 square feet of rock protection along the edges of the new harbors (currently upland but will be below the high water line once the harbors are completed).

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<sup>8</sup> The approximately 3.0 acres of fill discharged into waters of the U.S. in the vicinity of the Outer Harbor berths would not convert water to dry land; rather, it would cover existing submerged rock (0.57 acre) and soft-bottom substrates (2.43 acres), and it is expected the affected areas would provide comparable functions and values within a few years.

<sup>9</sup> Reflects the quantities specified in LAHD's March, April, and May 2011 submittals amending their 12 December 2006 application for a Department of the Army permit and their March 2008 submittal.

<sup>10</sup> Material not beneficially reused in the upland portions of POLA, or qualifying for beneficial reuse at Cabrillo Beach or for ocean disposal will be disposed of at an approved off-site upland location; as noted, upland beneficial reuse and disposal are not regulated by the USACE (assuming there is no return water).

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 and over-water activities; redevelopment of approximately 8 acres of land adjacent to Berths 45-47 and 49-50 as cruise ship terminals; and redevelopment of approximately 9 acres at the Inner Harbor parking structure area to construct a combined parking structure. These activities would only occur as a result of Federal action, and are subject to our regulatory control and responsibility.

### III. ALTERNATIVES CONSIDERED

As part of the preparation of the Draft EIS/EIR, the Corps and LAHD initially considered ten alternatives, including the applicant's proposed Project (see Section 2.5). Of these, three alternatives (Alternative Cruise Ship Berth at Berths 66-67, Alternative Cruise Ship Berth at Berths 69-72, and Alternative Cruise Ship Berth at Berths 75-79) were not carried forward for detailed analysis based on early determinations by the USACE in coordination with LAHD that they were not feasible or practicable based on cost, would increase navigational risk, would be more environmentally damaging than the proposed Project, or would not meet the overall project purpose (see Section 2.5.2).

Alternatives analyzed in the Draft EIS/EIR included the proposed Project and six alternatives. The alternatives are summarized below and discussed in detail in the EIS/EIR and the Final Section 404(b)(1) Alternatives Analysis (Appendix A to this ROD).

Applicant's Proposed Project: The proposed Project involves a variety of land uses within the Project area. Specifically, the proposed Project elements align along three distinct categories:

- Public infrastructure;
- New Development, Redevelopment, Cultural Attractions, and Modifications to Existing Tenants, including development of the new cruise terminals; and
- Transportation Improvements.

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

#### *Public Infrastructure*

This alternative includes the development of the following public infrastructure elements:

- Waterfront Promenade

- New Harbor Water Cuts and 7th Street Pier
- Open Space and Parks.

This alternative would feature a 30-foot-wide continuous promenade extending throughout the entire proposed Project area along the west side of the Main Channel that would serve as a spur of the California Coastal Trail along the waterfront.

Three new harbors are proposed: the North Harbor, Downtown Harbor, and 7th Street Harbor. The North Harbor would include an approximately 5-acre water cut located at Berths 87–90 to accommodate the Crowley and Millennium tugboats and the historic S.S. Lane Victory naval ship. The Downtown Harbor would include an approximately 1.3-acre water cut to accommodate the Los Angeles Maritime Institute’s TopSail Youth Program vessels, Port vessels, and other visiting ships. The 7th Street Harbor would include an approximately 0.4-acre water cut for visiting public vessels near the Los Angeles Maritime Museum, including tall ships. The 7th Street Harbor would also feature the 7th Street Pier, a public dock for short-term berthing of visiting vessels.

The Town Square would be developed as a 0.79-acre public plaza located in front of the Los Angeles Maritime Museum at the foot of 6th Street, and would accommodate approximately 170 people for formal seating arrangements. The Town Square would be adjacent to the Downtown Civic Fountain, a water feature designed to complement the civic setting of the nearby San Pedro City Hall Building, Maritime Museum, and Town Square. Approximately 27 acres of new parks would also be integrated throughout the proposed Project, including the approximately 3-acre Fishermen’s Park in Ports O’Call, and San Pedro Park, an 18-acre “central park” designed to include an informal amphitheatre for harbor viewing, waterfront events, and concerts with lawn seating for approximately 3,000 people north of 22nd Street. The Outer Harbor Park would be developed as an approximately 6-acre park near Berths 45-50, and would be designed to maximize harbor views (such as of Angel’s Gate lighthouse), facilitate public access to the water’s edge, and encourage special events. The park would be integrated with the proposed Outer Harbor cruise terminals, and would segregate park visitors from secure areas of the cruise terminals in compliance with the future security plan for the terminals.

#### *Existing and Proposed New Development*

This alternative includes modifications to existing tenants and new development as detailed in the Project Overview Table (Table 2-2, following page 18 in Chapter 2, Project Description) of the EIS/EIR. The modifications to existing development and new development are included below.

- Demolish the Southern Pacific Railyard — remove the 7-acre S.P. Railyard between 7th Street and the S.P. Slip, at the bluff site, to provide opportunities for the proposed bluff

site parking structures.

- Waterfront Red Car Maintenance Facility—locate a 17,600 square foot Waterfront Red Car Maintenance Facility with 20,000 square foot exterior Red Car service yard at the existing S.P. Railyard south of 7th Street near the proposed 13th Street pedestrian bridge and the proposed bluff parking structures.
- Ralph J. Scott Fireboat Museum—build a 10,000-square-foot multi-level display structure to house the Ralph J. Scott Fireboat on the south side of existing Fire Station No. 112.
- Demolish Westway Terminal Facilities—demolish the Westway Terminal located at Berth 70–71 for potential future site of an institutional/research and development use.
- Crowley and Millennium Tugboats—renew the leases for both Crowley and Millennium.
- LAMI—renew the lease for LAMI and reuse Crowley building in the Downtown Harbor area for LAMI activities.
- Relocate S.S. Lane Victory—relocate the S.S. Lane Victory from Berth 94 to the North Harbor water cut and build 10,000 square foot visitor center for the ship.
- Decommission Jankovich & Son fueling station—remove, decommission, and remediate Jankovich & Son fueling station currently located at Berth 74.
- New fueling station at Berth 240—develop a new fueling station at Berth 240 on Terminal Island, which would include three bulk storage tanks.
- Mike’s Fueling Station—remove all hazardous materials with flashpoints below 140 degrees Fahrenheit prior to operation of the proposed waterfront promenade.
- Relocate Catalina Express—relocate the Catalina Express Terminal berthing facilities from Berths 95-96 to the existing location of the S.S. Lane Victory at Berth 94, which would include the construction of new floating docks. Minor wharf/dock upgrades at Berths 93D and 95 would also occur to accommodate the relocation.
- Reuse of Warehouses 9 & 10—adapt Warehouses 9 & 10 and associated backland areas for low-intensity community-serving commercial or educational reuse to compliment the proposed San Pedro Park.

#### *Transportation Infrastructure Improvements*

Transportation infrastructure improvements are described in detail in Chapter 3.11 of the EIS/EIR and are summarized below.

- Sampson Way would be expanded to two lanes in each direction and would curve near the Municipal Fish Market to meet with 22nd Street in its westward alignment east of Minor Street.
- Sampson Way would be accessed by an enhanced four-way intersection at 7th Street. Access to Sampson Way from Harbor Boulevard via 6th Street would be eliminated to accommodate the proposed Town Square.

- As part of the proposed Project, Harbor Boulevard would remain in place at its current capacity with two lanes in each direction. However, mitigation measures have been identified to relieve traffic congestion, which entail removing on-street parking along Harbor Boulevard and restriping to add a third lane in each direction north of 7th Street. While these mitigation measures are available, LAHD may decide not to adopt them. The provision of three lanes both northbound and southbound on Harbor Boulevard would increase speeds and would not contribute to a pedestrian-friendly environment along Harbor Boulevard. Proposed enhancements would be consistent with design standards for the Community Redevelopment Agency Pacific Corridor and the City of Los Angeles Planning Department Community Design Overlay. The Waterfront Red Car line would be extended along the waterfront with stops at the Inner Harbor Cruise Terminal, City Dock No. 1, Cabrillo Beach, and the Outer Harbor Terminal. The proposed Project also now includes a signalized pedestrian crossing or pedestrian bridge across Harbor Boulevard at 9th Street and 13th Street.
- Surface parking would be located at San Pedro Park, adjacent to the Town Square and Acapulco Restaurant, Berths 78–83 and existing surface parking at Berths 73–77, and the Outer Harbor. Parking structures would be built as part of the proposed Project in two areas: within the Inner Harbor Cruise parking area, and at the bluffs along Sampson Way and Harbor Boulevard, across from Ports O'Call. The Ports O'Call parking structures would be reduced in height so they would not block views from Harbor Boulevard. The rooftops of the parking structures along the bluff near Ports O'Call between Sampson Way and Harbor Boulevard would be developed with green rooftops and solar panels to minimize visual disruption toward the waterfront.

Alternative Development Scenario 1 (Alternative 1): Alternative 1 is an alternative development scenario that reduces the number of total cruise berths compared to the proposed Project (to two in the Inner Harbor and one in the Outer Harbor), changes the location of the Waterfront Red Car Museum and Maintenance Facility to occupy Warehouse No. 1, reduces Harbor Boulevard at 7th Street/Sampson Way to one lane southbound, provides a roundabout to prevent northbound traffic along Harbor Boulevard at 13th Street, constructs a two-way roadway extending Crescent Street from Miner Street to Sampson Way, and makes other minor modifications. The remaining elements of Alternative 1 are the same as described under proposed Project.

Alternative Development Scenario 2 (Alternative 2): Alternative 2 is an alternative development scenario that has a similar cruise terminal configuration as the proposed Project, but locates the parking for the Outer Harbor Terminals at the Outer Harbor instead of shuttling passengers from the Inner Harbor. Additionally, this alternative reduces Harbor Boulevard at Sampson Way to one lane southbound, provides a roundabout to prevent northbound traffic along Harbor Boulevard at 13th Street, and constructs a two-way roadway extending Crescent Street from Miner Street to Sampson Way (similar to Alternative 1). It also routes the

promenade along Shoshonean Road rather than along the seaward side of Salinas de San Pedro Salt Marsh. The remaining elements of Alternative 2 are the same as described under the proposed Project.

Alternative Development Scenario 3 (Alternative 3): As with Alternative 1, Alternative 3 is an alternative development scenario that provides a similar cruise ship berth and parking configuration as Alternative 1, a reduction in development in Ports O'Call, and reduction of Harbor Boulevard to one lane in each direction south of 7th Street with a greenbelt in the median, and no roadway extending Crescent Street between Miner Street and Sampson Way. The remaining elements of Alternative 3 are the same as described under the proposed Project.

Alternative Development Scenario 4 (Alternative 4): Alternative 4 is an alternative development scenario that would eliminate the proposed North Harbor and modify the location of the associated uses that would have been moved to the North Harbor (i.e., tugboats, S.S. Lane Victory). Alternative 4 would also eliminate the Outer Harbor Cruise Terminals. The remaining elements of Alternative 4 are the same as described under the proposed Project.

No-Federal-Action Alternative (Alternative 5): The No-Federal-Action Alternative eliminates all of the project elements that would require a Department of the Army permit or other substantial federal interest such as property or funding. Under this alternative, the existing supertanker berth at Berths 45–47 could continue to be used on occasion by visiting cruise ships and other large vessels, as occurs under existing conditions.

None of the following project elements would be constructed under Alternative 5 because they would require the involvement of the USACE for federal permitting purposes:

- three harbors (North Harbor, Downtown Harbor, 7th Street Harbor) and the 7th Street Pier,
- Outer Harbor cruise berths and terminals, and
- waterfront promenade constructed over water (i.e., Ports O'Call, City Dock No. 1, and the salt marsh/Cabrillo Beach Waterfront Youth Camp promenade—the promenade in the vicinity of the salt marsh/Cabrillo Beach Waterfront Youth Camp would be constructed along Shoshonean Road as described in Alternative 2, and would not require a federal permit.)

The open space project elements that are the same under Alternative 5 as those described for the proposed Project include: Downtown Civic Fountain, John S. Gibson Jr. Park, Town Square, S.P. Slip (working promenade), Fishermen's Park, Outer Harbor Park, San Pedro Park, Warehouses Nos. 9 and 10, and pedestrian and waterfront access linkages.

The following new development and existing tenants' project elements would change under Alternative 5, as compared to the proposed Project:

- **Cruise Ship Berths.** The three existing cruise berths in the Inner Harbor at the existing terminal would remain. None of the wharf work proposed under the proposed Project or the other alternatives would occur for Alternative 5. The existing terminal at Berth 91 would be demolished, and a new 200,000-square-foot terminal would be developed to serve Berths 91 and 87. Alternative 5 does not include new cruise ship berths or upgrading the existing berths in the Outer Harbor. Therefore, Alternative 5 is a reduction of two berths in the Outer Harbor when compared to the proposed Project.
- **Parking for Cruise Ships.** The Inner Harbor parking would be located at Berths 91-93 and would consist of 3,525 spaces (reduced from 4,600 spaces). These spaces would be located in one new 3-level parking structure covering 4.3 acres (reduction of one 4.8-acre structure compared to the proposed Project). The footprint, siting, and design would be identical to Alternative 4 and the same as the northern-most structure planned for the proposed Project; however, there would be no fourth level. Parking needs would be met by spaces provided in the structure and surface parking areas at the Cruise Center. This parking would be dedicated to the Catalina Express Terminal and the Inner Harbor Cruise Terminals (similar to Alternative 3). This alternative would not include Outer Harbor parking for cruise ship purposes.
- **Outer Harbor Parking.** Similar to Alternative 4, this alternative would provide approximately 60 surface parking spaces to support the 6-acre Outer Harbor Park.
- **Catalina Express.** Under a separate environmental review process for the China Shipping Project, Catalina Express would relocate from Berth 96 to Berth 95 just north of the S.S. Lane Victory and would construct floating docks. Under Alternative 5, Catalina Express would remain in this location north of the S.S. Lane Victory and would not relocate to a permanent location at the S.S. Lane Victory site at Berth 94 (nor would the associated wharf/dock upgrades at Berths 93D or 95 occur).
- **Tugboats.** The Crowley and Millennium tugboat operations would be relocated to Berths 70-71 (at the existing Westway Terminal site) because the North Harbor would not be developed as part of Alternative 5. The existing building at Westway Terminal would be converted for office uses for the tugboat operations, and an additional building or expansion of the existing building may be required for the tugboat operations at this location. No in-water or over-water work that requires a permit from the USACE would be necessary.
- **LAMI.** Under Alternative 5, LAMI would remain in its existing location; the institute would not be relocated to the renovated Crowley Building.
- **S.S. Lane Victory.** Because Alternative 5 does not include the development of the North Harbor, the S.S. Lane Victory would remain at Berth 94.

- Jankovich Fueling Station. The Jankovich fueling station operations would continue on a hold-over lease in their existing location in Ports O'Call. The promenade would be constructed on the west side of the existing Jankovich leasehold.
- Fishermen's Park. This park cannot be constructed in the vicinity of Jankovich fueling station should the fueling station remain in operation at its current location.
- Berth 240 Fueling Station. The development of a new fueling station at Berth 240 would not occur under this alternative.
- Ralph J. Scott Fireboat Museum. The Ralph J. Scott would remain in its original proposed location in the Downtown Harbor area near the Fireman's Plaza. Alternative 5 would not include any of the harbor cuts in the Downtown Harbor area.

The remaining new development and existing tenants' project elements are the same under Alternative 5 as those described for the proposed Project and would include: S.P. Railyard demolition, Westway Terminal demolition, all of the Ports O'Call redevelopment and parking project elements, Waterfront Red Car Museum and Maintenance Facility location at 13th Street bluff site, and Mike's fueling station. Finally, all of the transportation improvements' project elements for Alternative 5 are the same as those described for the proposed Project.

No Project Alternative (Alternative 6): Alternative 6 describes what would reasonably be expected to occur on the site if no LAHD or Federal action would occur. In this case, Alternative 6 involves no building of any of the proposed Project facilities and continued operations of the existing uses within the proposed Project area, but acknowledges some forecasted growth in the existing cruise operations at the Inner Harbor cruise berths and terminals, and construction and operation of the existing entitled projects within the proposed Project area (i.e., Waterfront Enhancement Project, Cabrillo Way Marina, China Shipping Terminal, demolition of Westway Terminal). 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 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 USACE would not issue any permits or discretionary approvals for dredge or fill activities, ocean transport or disposal of dredged material, or construction of wharves, promenade, bulkheads, piles, or docks. This alternative would not allow implementation of the proposed Project or other physical improvements associated with the proposed Project. Under this alternative, no construction impacts would occur. No environmental controls beyond those imposed by local, state, and Federal regulatory agencies would be implemented.

The following related projects and reasonably foreseeable actions would occur even if the proposed Project were not approved:

- The Town Square project elements would be constructed as described in the approved Waterfront Enhancements Project (LAHD 2006).
- Warehouses Nos. 9 and 10 would remain vacant after Crescent Warehouse operations vacate the premises, as planned under a separate project.
- The cruise ship facilities would continue to operate with three berths in the Inner Harbor. The cruise operations would be brought under Clean Air Action Plan compliance as leases renew.
- Catalina Express would relocate to Berth 95 as a result of the approved China Shipping (Berths 97-109) Terminal Project, which displaces Catalina Express from Berth 96.
- Catalina Express would continue to share parking with the existing cruise ship parking lots.
- The Ralph J. Scott Fireboat would remain in its existing location.
- Jankovich fueling station would continue operations in its current location in Ports O'Call on a hold-over lease.
- Mike's fueling station would continue operations in its existing location.
- The 22nd Street/Miner Street lot would be constructed as described in the approved Waterfront Enhancements Project.
- Demolition of Westway Terminal would occur under a separate action under the oversight of the Department of Toxic Substances Control.
- Harbor Boulevard and Sampson Way would remain in their existing configurations.
- Landscaping improvements would not occur along the west side of Harbor Boulevard.
- The Waterfront Red Car Line would continue to operate along its existing alignment with no expansion.

#### IV. EVALUATION OF ALTERNATIVES

The direct, indirect, and cumulative impacts associated with the proposed Project and the other alternatives are included in the Final EIS/EIR. The evaluation of alternatives assessed under NEPA and the Section 404(b)(1) Guidelines is summarized below.

(1) Proposed Project: The proposed Project would impact the Los Angeles Harbor during bulkhead removal associated with creating three harbors along the west side of the Main Channel, transporting and discharging dredged material at LA-2 or LA-3 that would be generated by creating the harbors and by upgrading Outer Harbor Berths 45-47 and 49-50 to service two Freedom/Voyager class cruise ships simultaneously, possibly beneficially reusing dredged and/or excavated material at Cabrillo Beach (nourishment), discharging rock along the slopes of Berths 45-47 and 49-50 in the Outer Harbor to stabilize them against higher loads, and installing piles, docks, wharves, bulkheads, and promenade along the Main Channel (mostly along the west side, except for Berth 240 on Terminal Island) from Vincent Thomas Bridge to

Cabrillo Beach adjacent to the San Pedro Breakwater. Water quality impacts would be mostly temporary and localized; although the additional larger vessels could leach contaminants into the harbor environment, which is already experiencing high concentrations of copper and other contaminants. Similarly, while many of the biological resource impacts would be temporary during construction activities (removal, burial, turbidity effects, noise, construction lighting associated with dredging and any associated beneficial reuse of material to nourish Cabrillo Beach; rock discharges; and removing and replacing/driving piles, bulkheads, and wharves piers, and docks), others would be permanent changes in conditions (installed new structures in and over navigable waters). However, the permanent changes, such as introduction of additional hard surfaces and shading of the aquatic environment, would be consistent with conditions prevailing in the project area, as an active, industrialized port. In addition, there would be a net increase of uncovered/unshaded open water of approximately 1.5 acres. As such, long-term adverse biological effects, except for the slightly increased potential for introduction of non-native species from the additional vessels visiting POLA, are not anticipated. The proposed Project would be practicable to construct in light of the overall project purpose. It would be able to meet the forecasted increases in passenger throughput, cruise ship calls, and cruise ship size, and provide sufficient additional open water area to provide a variety of waterfront uses, such as berthing for visiting tall ships and other vessels, such as tugboats, and other recreational, commercial, and port-related uses.

(2) Alternative Development Scenario 1: While Alternative 1 would have fewer environmental impacts than the proposed Project (only Berths 45-47 would be upgraded for cruise operations), it would not support the projected increases in long-term demands to accommodate the increased numbers of passengers and cruise ship calls and larger cruise ships. As such, it would not meet the overall project purpose; specifically it would not increase the value of deep-water berths to accommodate existing and projected growth in the cruise ship industry in POLA.

(3) Alternative Development Scenario 2: Alternative 2 would result in similar environmental impacts as the proposed Project (both would construct two Outer Harbor berths). While it would route the promenade along Shoshonean Road instead of along the seaward side of Salinas de San Pedro Salt Marsh, the latter impacts are minor because the promenade would be elevated, which would minimize shading of aquatic habitats, and it would cross over the salt marsh's inlet where is it unvegetated. Because of space limitations along Shoshonean Road, it would also be very difficult logistically to route it along Shoshonean Road. While it might be practicable to construct and would meet the overall project purpose, the environmental damage from Alternative 2 is essentially the same as the proposed Project. The applicant prefers the latter because the promenade would be located immediately adjacent to open water, which better meets their objective of increasing the public's access to the waterfront from the landside.

(4) Alternative Development Scenario 3: While Alternative 3 would have fewer environmental impacts than the proposed Project (only Berths 45-47 would be upgraded for cruise operations), it would not support the projected increases in long-term demands to accommodate the increased numbers of passengers and cruise ship calls and larger cruise ships. As such, it would not meet the overall project purpose; specifically it would not increase the value of deep-water berths to accommodate existing and projected growth in the cruise ship industry in POLA.

(5) Alternative Development Scenario 4: While Alternative 4 would have fewer environmental impacts than the proposed Project (there would not be any Outer Harbor berth upgrades), it would not support the projected increases in long-term demands to accommodate the increased numbers of passengers and cruise ship calls and larger cruise ships. It would also not create the North Harbor cut, which represents approximately 5 of the approximately 7 acres of open water area proposed along the Main Channel by the proposed Project. As such, it would not meet the overall project purpose. Specifically, it would not increase the value of deep-water berths to accommodate existing and projected growth in the cruise ship industry in POLA, nor would it substantially increase the open water area to provide a variety of waterfront uses such as berthing for visiting tall ships and other vessels, such as tugboats, and other recreational, commercial, and port-related uses.

(6) No-Federal-Action Alternative: While Alternative 5 would have fewer environmental impacts than the proposed Project (there would not be any Outer Harbor berth upgrades or promenade, dock, pile, pier, or bulkhead construction), it would not support the projected increases in long-term demands to accommodate the increased numbers of passengers and cruise ship calls and larger cruise ships. It would also not create any of the harbor cuts proposed by the LAHD. As such, it would not meet the overall project purpose. Specifically, it would not increase the value of deep-water berths to accommodate existing and projected growth in the cruise ship industry in POLA, nor would it increase the open water area to provide a variety of waterfront uses, such as berthing for visiting tall ships and other vessels, such as tugboats, and other recreational, commercial, and port-related uses.

(7) No Project Alternative: While Alternative 6 would have fewer environmental impacts than the proposed Project (there would not be any Outer Harbor berth upgrades or promenade, dock, pile, pier, or bulkhead construction), it would it would not support the projected increases in long-term demands to accommodate the increased numbers of passengers and cruise ship calls and larger cruise ships. It would also not create any of the harbor cuts proposed by the LAHD. As such, it would not meet the overall project purpose. Specifically, it would not increase the value of deep-water berths to accommodate existing and projected growth in the cruise ship industry in POLA, nor would it increase the open water area to provide a variety of waterfront uses such as berthing for visiting tall ships and other vessels, such as tugboats, and other recreational, commercial, and port-related uses.

## **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 overall purpose of the proposed Project, I find that due to avoidance of aquatic resources associated with discharging rock fill into approximately 3.0 acres of Outer Harbor waters in the vicinity of Berths 45-47 and 49-50, beneficial reuse and/or aquatic disposal of dredged and excavated material (e.g., nourishment of Cabrillo Beach), and construction of structures in and over navigable waters of the U.S., the No-Federal-Action Alternative (Alternative 5) is the Environmentally Preferable Alternative.

The reason for selecting the proposed Project over the No-Federal-Action Alternative (Alternative 5) is based on the ability to achieve the overall project purpose of increasing the value of deep-water berths to accommodate existing and projected growth in the cruise ship industry in POLA and increasing the open water area to provide a variety of waterfront uses, such as berthing for visiting tall ships and other vessels, such as tugboats, and other recreational, commercial, and port-related uses. While the No-Federal-Action Alternative would be less environmentally damaging from an aquatic ecosystem perspective than the proposed Project (i.e., no discharges of dredged or fill material into waters of the U.S., other wharf-associated work or structures, no promenade, dock, pile, pier, or bulkhead construction, no beneficial reuse and/or disposal of dredged and excavated material), the overall project purpose would not be met (i.e., it would not meet anticipated long-term forecasted cruise ship industry needs, nor would it increase open water to provide a variety of water-front uses). In contrast, the proposed Project would be able to meet the forecasted increases in passenger throughput, cruise ship calls, and cruise ship size, and provide sufficient additional open water area to provide a variety of waterfront uses, such as berthing for visiting tall ships and other vessels, such as tugboats, and other recreational, commercial, and port-related uses. For a more detailed analysis of the project-specific and cumulative impacts associated with the above alternatives, please refer to Sections 3 and 4, respectively, of the EIS/EIR.

## **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. 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 29 September 2009-certified EIR,

pursuant to the proposed Project's Mitigation Monitoring and Reporting Program (MMRP) (LAHD, 2009). Mitigation measures the USACE has determined enforceable and subject to our continuing program responsibility are included in this ROD.

## VII. DETERMINATIONS AND FINDINGS

### a. Status of Other Authorizations and Legal Requirements:

(1) **Water Quality Certification:** Before proceeding with the proposed Project, the LAHD will need to obtain a section 401 Water Quality Certification from the LARWQCB.

(2) **Coastal Zone Management Act (CZMA) Consistency Determination:** Before proceeding with the proposed Project, the LAHD will need to obtain California Coastal Commission approval of the project-specific Port Master Plan Amendment.

(3) **Compliance with Section 106 of the National Historic Preservation Act (NHPA):** The Corps contacted the Native American Heritage Commission (NAHC) on 13 January 2009, to request information about traditional cultural properties, such as cemeteries and sacred places, in the proposed Project area. According to NAHC's 15 January 2009 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. In June 2009, 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 in June 2009. However, the LAHD provided to us a copy of 16 September 2009 e-mail correspondence from Ms. Felicia Sheerman on behalf of the Gabrielino Band of Mission Indians to the Los Angeles Board of Harbor Commissioners stating her tribe's belief that a Native American monitor is needed for the proposed Project. On 29 September 2009, the Los Angeles Board of Harbor Commissioners certified the EIR, which included a Mitigation Measure (CR-3, Stop Work If Unanticipated Cultural Resources Are Identified During Ground Disturbing Activities) pertaining to circumstances that would prompt the LAHD to consult with Native Americans, such as the Gabrielino Band of Mission Indians. This Mitigation Measure is included in the MMRP for the proposed Project and is considered part of its design.

The Corps consulted the latest version of the National Register of Historic Places (NRHP), and four listed resources are located within the proposed Project's area of potential effects (APE). These include the U.S.S. Lane Victory, Ralph J. Scott historic fireboat, Municipal Warehouse No. 1, and San Pedro Municipal Ferry Building/LA Maritime Museum. Five others are potentially eligible for listing: Vincent Thomas Bridge, Municipal Fish Market, Westway Terminal Building,

Bethlehem Shipyard, and Mexican Hollywood. With respect to the NRHP-listed resources, the proposed Project includes the relocation of the U.S.S. Lane Victory from its current location to the proposed North Harbor, construction of a museum for the preservation of the Ralph J. Scott historic fireboat near the proposed Downtown Harbor water cut, and a potential relocation of the Red Car Museum and maintenance facility into Warehouse No. 1. While no changes are proposed for the NRHP-listed San Pedro Municipal Ferry Building/LA Maritime Museum, potential changes to the berths near this resource would occur. While no effect is anticipated to most of these resources, proposed Project activities have the potential to adversely affect "Mexican Hollywood" (located in the vicinity of the Cruise Center in the Inner Harbor), which is recommended as eligible for listing on the NRHP under Criteria A and D. Therefore, the Corps consulted with the State Historic Preservation Officer and Advisory Council on Historic Preservation to address these adverse effects. As part of the consultation, the Corps prepared a Memorandum of Agreement (MOA) and a Historic Properties Treatment Plan to address the adverse effects to Mexican Hollywood. The draft MOA and Historic Properties Treatment Plan were sent to the State Historic Preservation Office and the Advisory Council on Historic Preservation on 3 September 2010, and the MOA was signed and executed by all parties on 15 April 2011 (included as Appendix D to this ROD).

(4) Compliance with the Federal Endangered Species Act (ESA): The California least tern (*Sterna antillarum browni*) and the California brown pelican (*Pelecanus occidentalis californicus*) are known to forage in the vicinity of the proposed Project area. During the proposed construction activities, there is the potential that the above species may be affected by increased noise and activity associated with the proposed Project in the western portion of the Port of Los Angeles. However, based on detailed biological information in the EIS/EIR (Section 3.3, Appendix E.6), the USACE has determined that the proposed activity would not affect federally listed endangered or threatened species, or their critical habitat (there is no designated critical habitat in POLA). California brown pelican is no longer federally listed under the ESA, and this species is more commonly found and forages in other parts of POLA such as the breakwaters. Regarding California least tern, the proposed Project's mitigation activities affecting Salinas de San Pedro Salt Marsh area would not occur until shortly after the California least tern nesting season concludes at the end of August, and turbidity would be monitored and managed during construction activities in this area to prevent adverse turbidity-related effects to sensitive resources in the vicinity of Inner Cabrillo Beach. Our preliminary "no effect" determination was included in our 29 September 2009 public notice for the Final EIS/EIR, and there was no formal response from the U.S. Fish and Wildlife Service. No response was expected because the USACE previously (15 April 2009) discussed this preliminary determination with U.S. Fish and Wildlife Service's Christine Medak, the main staff person for the Los Angeles Harbor area, and she agreed no effect to California least tern is expected if, as proposed, the mitigation area activities were to occur outside of the California least tern nesting season. Therefore, the USACE has determined neither formal nor informal consultation under

section 7 of the ESA is required, and that the Federal action associated with the proposed Project would not affect either species.

(5) Compliance with the Magnuson-Stevens Fishery Conservation and Management Act: The 22 September 2008 public notice announcing the availability of the Draft 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 Appendix E.9 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 excavation and dredging, and construction/repair/ modification/replacement of various in-water and over-water structures, as well as potential disposal at LA-2 or LA3 or approved in-harbor disposal sites or even beach nourishment (Cabrillo Beach), should they become available. Most project impacts would be short-lived and would not substantially impact existing biotic resources. The exception is the discharges of rock onto soft bottom and existing rock in the vicinity of the Outer Harbor berths, which in the case of soft bottom would result in habitat conversion; although research of these types of impacts in port settings indicates that comparable biological functions return to the affected areas within a few years.

Temporary impacts during construction would include increases in noise, turbidity, vibration, and lighting. Fuel spills during construction are also possible, but would be expected to be small in scale and affect few biological resources. Invasive species could also be introduced (e.g., ballast water exchange, hull fouling) during construction, but there is no proven technology that currently exists that could totally prevent introductions via vessel hulls, equipment, or ballast water. While the proposed Project includes the construction of over-water structures (e.g., promenade and wharves) and a small amount of conversion of soft bottom to hard substrate habitat, the proposed Project would result in a net increase of approximately 7 acres of open water habitat within the Project area by creating three new harbors and uncovering water areas occupied by docks and other structures. While new docks and other structures, including the promenade, would be added that would shade aquatic habitat, the proposed Project would result in a net increase in uncovered, marine open water of approximately 1.5 acres.

Overall, the proposed activities may adversely affect but would not have a substantial adverse effect on EFH or federally managed fisheries in California waters. In a letter, dated 8 December 2008, NMFS agreed there would be adverse effects to EFH and provided four conservation recommendations to avoid, minimize, mitigate, or otherwise offset adverse effects to EFH. One conservation recommendation was to prepare a more detailed Habitat Mitigation and Monitoring Plan (HM&MP) in cooperation with NMFS and other resource/regulatory agencies addressing the proposed aquatic habitat expansion (establishment) and restoration activities at Salinas de San Pedro Salt Marsh. The second was to route the promenade along Shoshonean

Road (i.e., behind the salt marsh and Cabrillo Youth Camp) instead of along the seaward side/water's edge of Salinas de San Pedro Salt Marsh to minimize effects to this resource. The third was to conduct pre-project and post-project eelgrass surveys and for any mitigation to be implemented pursuant to the Southern California Eelgrass Mitigation Policy; with two follow-up annual surveys to ascertain whether changes in hydrology and/or sedimentation are affecting additional eelgrass. The fourth was to conduct a Caulerpa survey and eradicate any observed Caulerpa pursuant to the Caulerpa Control Protocol. Since that time, the applicant has further investigated the specific activities needed at the Outer Harbor berths, and identified submerged soft bottom and hard substrate areas that would be affected by discharges of rock fill (i.e., 2.43 acres of soft substrate, 0.57 acre of existing rock substrate). In light of this additional information, pursuant to 50 C.F.R. 600.920(l), the Corps requested reinitiation of EFH consultation with the NMFS. This reinitiation request was included in the 29 September 2009 public notice announcing the availability of the Final EIS/EIR and draft general conformity determination. NMFS responded by e-mail correspondence on 28 October 2009 they did not have additional conservation recommendations. The Corps responded to NMFS on 14 December 2010 agreeing to three of the conservation recommendations (1., 3., and 4.), but determining the second conservation recommendation (routing the promenade along Shoshonean Road) is impracticable in light of logistics and the minor EFH effect that would be avoided. On 20 December 2010, NMFS responded that our response was sufficient to conclude EFH consultation and they do not object to issuance of a Corps permit without this conservation recommendation (2.). To address the first conservation recommendation, the applicant prepared a draft HM&MP that the Corps reviewed and coordinated with NMFS and other resource and regulatory agencies on it prior to finalizing the document; implementation of the HM&MP would be included as a special condition of the Department of the Army permit. Similarly, the third (eelgrass surveys) and fourth (Caulerpa survey and eradicate any observed Caulerpa) conservation recommendations would be included as special conditions in the Department of the Army permit.

(6) Compliance with Section 176(c) of the Clean Air Act: The Final EIS/EIR included a draft general conformity determination (see Section 3.2 and Appendix D.7), pursuant to section 176(c) of the Clean Air Act. A general conformity determination is necessary because proposed Project construction would require Federal action (i.e., issuance of a Corps permit for activities proposed in and over navigable waters and waters of the U.S.) and not all the Federal action's direct and indirect emissions would be below specified de minimis thresholds (40 C.F.R. 93.153(b)). Pursuant to the general conformity regulations (40 C.F.R. Part 93 Subpart B), general conformity determinations do not have to be included in the EIS and can be separately noticed, but the draft general conformity determination for the Federal action associated with the proposed Project was included in the Final EIS/EIR in this case. Comments on the draft general conformity determination as well as other comments on the Final EIS/EIR, which were provided during the 30-day public review period, were considered fully before the Corps made a final general conformity determination and finalized the ROD for the Federal action. The draft

general conformity determination was published as part of the Final EIS/EIR on 29 September 2009 for review until 29 October 2009. The only comments on it were from USEPA Region IX. They were concerned that the Corps was offsetting project emissions with voluntary/unenforceable emissions reductions that have occurred as a result of the recession; they were also concerned that the emissions estimates required updating because of the project's schedule changes; they also stated that they favored a general conformity determination based on the proposed Project's inclusion in the 2007 Air Quality Management Plan (AQMP) as a better way to demonstrate conformity; and they wanted the Corps and LAHD to provide written commitments from implementing parties for mitigation measures. As requested, the Corps contacted the South Coast Air Quality Management District (SCAQMD) about obtaining a letter confirming that the 2007 AQMP, together with the 2007 State Strategy, provides the Corps with a basis upon which to make a positive conformity determination for the proposed Project's Federal action's emissions under 40 C.F.R. 93.158(a)(5)(i)(B) (i.e., written commitment for SIP revision to accommodate emissions from the Project). The SCAQMD's response letter, dated 4 January 2011, and coordinated with USEPA Region IX and the California Air Resources Board, was sent to the Corps and utilized to prepare the final general conformity determination, which is included in Appendix C to this ROD. The final general conformity determination also notes proposed Project schedule changes, but as already noted in Section 1.5.4 of the Final EIS/EIR, economic or market conditions and other factors were anticipated to affect the construction schedule, which could require future environmental review; specifically, it stated, "Ultimate phasing would be subject to change based on financing, developer response to a request for proposals, and length of time required to gain property entitlements, which may require additional environmental analysis". Regarding the mitigation measures commitment, the LAHD has already committed to these measures through the certification of the EIR and the associated MMRP; and they are the appropriate local agency, having continuing program responsibility throughout the proposed Project's life, to ensure these mitigation measures are implemented, maintained, and enforced. Within 30 days, the Corps will place a notice in a daily newspaper of general circulation in the South Coast Air Basin announcing the availability of the final general conformity determination.

(7) Compliance with the Ocean Dumping Act: In March 2009, the USEPA and other members of the Contaminated Sediment Task Force/Dredged Material Management Team agreed that all the soil and sediment at the Downtown and 7th Street Harbor cut locations (146,012 cy) would be suitable for beneficial reuse; with a portion eligible for reuse in the aquatic environment (e.g., Cabrillo Beach) and the rest in upland areas (Weston 2009). While some of the dredged material could qualify for ocean disposal, the applicant seeks to beneficially reuse all of the material generated during phase one of the proposed Project in upland areas (e.g., Berth 200 Railyard, China Shipping Terminal Phase III) or at Cabrillo Beach (nourishment). The applicant understands that if they want to pursue ocean disposal of any of the material generated by the North Harbor cut (approximately 442,000 cy) or Outer Harbor

dredging (approximately 3,330 cy) under phase two of the proposed Project, they will need to submit a specific request to the Corps, including an evaluation of the material pursuant to criteria outlined in the *Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual* (OTM) (USEPA and USACE, 1991), and get concurrence from USEPA Region IX to allow material to be disposed of at LA-2 or LA-3, pursuant to section 103 of the Marine Protection, Research, and Sanctuaries Act.

**b. Section 404(b)(1) Compliance:** Detailed preliminary discussion of compliance with the Section 404(b)(1) Guidelines was provided in Appendix Q of the Final EIS/EIR. Appendix Q of the Final EIS/EIR is provided, in finalized form, as Appendix A to this ROD. In summary, the proposed Project, as identified and evaluated in the EIS/EIR, as amended by the LAHD's March 2008 and March, April, and May 2011 submittals modifying their 12 December 2006 application for Department of the Army permit, is the least environmentally damaging practicable alternative (LEDPA). While Alternative 2 merited serious consideration, the proposed routing of the promenade along Shoshonean Road could be logistically impracticable (would require substantially narrowing the promenade to also accommodate the Red Car Line) and it would not result in a significant or easily identifiable difference in environmental impacts compared to the proposed Project; this routing away from open water would also not comport with one of LAHD's stated project objectives<sup>11</sup> as well as would the proposed Project. All of the appropriate and practicable conditions set forth in the EIS/EIR to minimize pollution or adverse effects to the affected aquatic ecosystem are included as part of the Federal action or will be required by special conditions of the proffered permits (see (10) below). Our determination of compliance was based on the following findings:

(1) The applicant has demonstrated that there are no available, practicable alternatives having less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences that do not involve discharge into waters of the U.S.

(2) The discharge will not violate state water quality standards.

(3) The discharge will not violate toxic effluent standards.

(4) The discharge will not jeopardize endangered or threatened species or their critical habitat.

(5) The discharge will not violate standards set by the Department of Commerce to protect marine sanctuaries.

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<sup>11</sup> Creating a continuous waterfront promenade throughout the project area allowing the public access to the water's edge.

(6) The proposed discharge material has been<sup>12</sup> or will be tested to ensure it meets testing criteria to ensure the discharged material is not a carrier of contaminants. Most of the fill material that will be discharged into waters of the U.S. is quarry rock from a clean source. All material to be discharged for beach nourishment of Cabrillo Beach will have to meet agency-specified criteria intended to protect the marine environment and the general public. Other beneficial reuse or disposal of dredged or excavated material will occur in upland areas and/or confined disposal facilities (CDFs) that prevent potential contaminants from migrating into the aquatic ecosystem.

(7) The discharge will not contribute to significant degradation of waters of the U.S. through adverse impacts to human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife and special aquatic sites.

(8) The discharge will not contribute to significant degradation of waters of the U.S. through adverse impacts to diversity, productivity, and stability of the aquatic ecosystem, such as the loss of fish or wildlife habitat, or loss of the capacity of wetland to assimilate nutrients, purify water or reduce wave energy.

(9) The discharge will not contribute to significant degradation of waters of the U.S. through adverse impacts to recreational, aesthetic, and economic values. While construction will adversely affect recreation and aesthetics during construction, there will be long-term benefits to recreation, aesthetics, and economic values as a result of the proposed Project.

(10) All appropriate and practicable steps (40 C.F.R. sections 230.70-77) will be taken to minimize the potential adverse impacts of the discharge on the aquatic ecosystem. Toward this end, the following special conditions would be included in the proffered permit:

1. The permittee shall not initiate any of the project's second phase activities (includes the North Harbor cut and improvements, installation of the pile-supported promenade, removal and construction of bulkheads, docks, piers, floats, and piles along the west side of the Main Channel [except as undertaken to develop Downtown Harbor and 7th Street Harbor] and at Berth 240, dredging in the vicinity of the Outer Harbor berths, Outer Harbor wharf upgrades, and potential disposal of dredged material at designated ocean sites [LA-2 or LA-3]) until receiving a separate notice to proceed (NTP) from Corps Regulatory Division. To receive this written NTP, at least one (1) year prior to the planned start date of the second phase, the permittee shall submit a written request to Corps Regulatory Division with

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<sup>12</sup> As discussed, soil (above MHW) and dredge (below MHW) material at the Downtown Harbor and 7<sup>th</sup> Street Harbor sites has been tested, and a portion is eligible for beneficial reuse in the aquatic environment (Cabrillo Beach nourishment). The North Harbor material will have to be tested before phase two of the proposed Project may proceed.

specific and detailed information pertaining to this phase's activities, including: plans/drawings (at least 60% design) and specifications; a brief narrative of any changes in project activities for the second phase components compared to what was identified and evaluated in the EIS/EIR and the March and April 2011 and March 2008 submittals amending the December 2006 application for a Department of the Army permit; and if ocean disposal of dredged material or in-water beneficial reuse of excavated or dredged material is proposed, a Sampling and Analysis Plan prepared in accordance with all applicable USEPA and Corps protocols and requirements (similarly, for proposed beach nourishment, material will have to be tested pursuant to the USACE/USEPA *Evaluation of Dredged Material Proposed For Discharge in Waters of the U.S. – Testing Manual*). Once complete information is received, the Corps Regulatory Division shall determine whether additional environmental documentation (such as a supplemental EIS) is required prior to completing the processing of the NTP request.

2. If a violation of any permit condition occurs, the permittee shall report the violation to the Corps Regulatory Division within 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.
3. 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.
4. This permit does not authorize the placement of creosote-treated pilings in navigable waters of the U.S. Only concrete or steel piles shall be used in navigable waters of the U.S.
5. The permittee shall discharge only clean construction materials suitable for use in the marine environment. The permittee shall ensure that no debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, or oil or petroleum products from construction shall be allowed to enter into or placed where it may be washed by rainfall or surface runoff into waters of the U.S. To ensure compliance with this Special Condition, standard Best Management Practices (BMPs) shall be implemented and, as appropriate, maintained and monitored to ensure their efficacy throughout project construction. 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.
6. The permittee shall notify the Corps Regulatory Division of the date of commencement of construction not less than 14 calendar days prior to commencing work, and shall notify the Corps Regulatory Division of the date of completion of operations at least 5 calendar days prior to such completion. This requirement applies to each phase of the project assuming there are separate phases that will occur during distinct time periods (e.g., a distinct first phase and second phase have been identified and described for the project).

7. The permittee shall notify the Commander, Eleventh Coast Guard District, and the Coast Guard Marine Safety Office / Group LA-LB, not less than 14 calendar days prior to commencing work and as project information changes. As discussed in Special Condition 6, this requirement applies to each phase of the project assuming there are separate phases that will occur during distinct time periods (a distinct first phase and second phase have been identified and described for the project). The notification, either by letter, fax, or e-mail, shall include as a minimum the following information (for each phase):

- A) Project description including the type of operation (e.g., dredging, rock discharges, diving, wharf construction, etc.).
- B) Location of operation, including Latitude / Longitude coordinates (NAD 83).
- C) Work start and completion dates and the expected duration of operations.
- D) Vessels involved in the operation (name, size, and type).
- E) VHF-FM radio frequencies monitored by vessels on scene.
- F) Point of contact and 24-hour phone number.
- G) Potential hazards to navigation.
- H) Chart number for the area of operation.

Addresses:

Commander, 11th Coast Guard District (oan)	U.S. Coast Guard
Coast Guard Island, Building 50-3	Marine Safety Office /Group LA-LB
Alameda, CA 94501-5100	1001 South Seaside Ave., Bldg 20
ATTN: Local Notice to Mariners	San Pedro, CA 90731
TEL: (510) 437-2986	Attn: Waterways Management
FAX: (510) 437-3423	TEL: (310) 521-3860
	FAX: (310) 732-2029

8. 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. 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.

9. If the permittee determines the project requires the 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.

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.

10. Upon notification to the U.S. Coast Guard as specified in Special Condition 7 (for each project phase), the permittee shall forward a copy of the notification (for each project phase) to the U.S. Coast Guard Captain of the Port (COTP). 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.

11. Within 30 calendar days of completion of project activities (for each project phase), the permittee shall conduct a post-project survey indicating changes to structures and other features in navigable waters of the U.S. 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.

12. 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 of the U.S., the permittee will be required, upon due notice from the Corps, 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.

13. All vessels, vehicles, equipment, and material used in construction-related activities in or over waters of the U.S., to complete construction in or over waters of the U.S., to redevelop approximately 8 acres behind or adjacent to Berths 45-47 and Berths 49-50 as cruise ship terminals, and to construct the approximately 9 acre combined (Inner Harbor/Outer Harbor) parking structure in the Inner Harbor that depend on a Corps permit, shall employ or otherwise be operated or used in compliance with all mitigation measures identified in the project's Mitigation Monitoring and Reporting Program consistent with the project's certified Environmental Impact Report (29 September 2009).

14. The permittee shall ensure contractor(s) use sound-abatement techniques to reduce both noise and vibrations from pile-driving activities. Sound-abatement techniques shall include, but are not limited to, vibration or hydraulic insertion techniques, drilled or augured holes for cast-in-place piles, bubble curtain technology, and sound aprons where feasible. At the initiation of each pile-driving event, and after breaks of more than 15 minutes, the pile

driving shall also employ a "soft-start" in which the hammer is operated at less than full capacity (i.e., approximately 40–60% energy levels) with no less than a 1-minute interval between each strike for a 5-minute period. Although it is expected that marine mammals will voluntarily move away from the area at the commencement of the vibratory or "soft start" of pile-driving activities, as a precautionary measure, pile-driving activities occurring within the Outer Harbor shall include establishment of a safety zone, and the area surrounding the operations shall be monitored by a qualified marine biologist for pinnipeds. As the disturbance threshold level sound is expected to extend at least 1,000 feet from the steel pile-driving operations, a safety zone shall be established around the steel pile-driving site and monitored for pinnipeds within a 1,200-foot-radius safety zone around the pile. As the steel pile-driving site will move with each new pile, the 1,200-foot-radius safety zone shall move accordingly. Observers onshore or by boat shall survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving of a steel-pile segment begins. If marine mammals are found within the safety zone, pile driving of the segment shall be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the biologist shall instruct the contractor to wait at least 15 minutes, and if no marine mammals are seen by the biologist in that time, it may be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on a study indicating that pinnipeds dive for a mean time of 0.50 minutes to 3.33 minutes; the 15-minute delay will allow a more than sufficient period of observation to be reasonably sure the animal has left the project vicinity. If pinnipeds enter the safety zone after pile driving of a segment has begun, pile driving will continue. The biologist shall monitor and record the species and number of individuals observed, and make note of their behavior patterns. If the animal appears distressed and, if it is operationally safe to do so, pile driving shall cease until the animal leaves the area. Pile driving cannot be terminated safely and without severe operational difficulties until reaching a designated depth. Therefore, if it is deemed operationally unsafe by the project engineer to discontinue pile-driving activities, and a pinniped is observed in the safety zone, pile-driving activities shall continue until the critical depth is reached (at which time pile driving will cease) or until the pinniped leaves the safety zone. Prior to the initiation of each new pile-driving episode, the area shall again be thoroughly surveyed by the biologist.

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

16. Dredging of sediment authorized in this permit shall be limited to the approximately 464,310 cubic yards at +4.8 feet MLLW and below in the three harbor cut areas (Downtown Harbor, 7<sup>th</sup> Street Harbor, and North Harbor) and the approximately 3,330 cubic yards of dredging along the berth toe at Berths 45-47 and 49-50 in the Outer Harbor, as shown on the

attached Port of Los Angeles Engineering Division San Pedro Waterfront Figures 2-6 and 16-19. **However, the North Harbor cut and Outer Harbor berth activities, which are part of the second phase of the project, shall not proceed until the permittee requests and receives a separate Notice to Proceed (NTP) for those activities from the Corps Regulatory Division.** 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 -57 feet mean lower low water (MLLW) at the base or toe of the existing berth slopes at Berths 45-47 and 49-50, with a maximum allowable over-dredge depth of 2 feet below the project/design depth, to provide a final berthing depth down to -59 feet MLLW. Per Special Condition 16, the only other dredging activities authorized to occur under this permit are to construct the three harbors (North Harbor, Downtown Harbor, and 7<sup>th</sup> Street Harbor) along the west side of the Main Channel. No dredging shall occur deeper than -59 feet MLLW (dredging design depth plus 2 foot over-dredge depth) or outside the project boundaries.

18. The permittee is prohibited from dredging in navigable waters of the U.S and disposing of dredged material in ocean waters that has not been tested and determined by the Corps Regulatory Division, and with concurrence by the U.S. Environmental Protection Agency Region IX (USEPA), to be both clean and suitable for disposal in ocean waters. Re-testing of previously tested or dredged areas is required after 3 years from the date of permit issuance. This time limit is subject to shortening given the occurrence of any event that may cause previously determined clean material to become suspect, at the discretion of the Corps Regulatory Division. Prior to each dredging episode, the permittee must demonstrate that the proposed dredged materials are chemically, physically, and biologically suitable for disposal in ocean waters according to the provisions of the Ocean Disposal Manual. If the material does not meet the physical and chemical criteria for unconfined disposal in ocean waters, the dredged material shall be disposed in an upland disposal area, or, if available, reused at an in-harbor CDF. The permittee shall submit to the Corps Regulatory Division and USEPA a draft sampling and analysis plan (SAP). Sampling may not commence until the SAP is approved, in writing, by the Corps Regulatory Division, in consultation with USEPA. (Note this condition does not apply to the first phase of the project, because no ocean disposal has been proposed or approved. It does apply to the project's second phase activities, which include dredging in the vicinity of Berths 45-47 or Berths 49-50 and dredging for the North Harbor cut, assuming the permittee seeks ocean disposal of dredged material.)

19. The permittee is prohibited from discharging excavated or dredged material at Cabrillo Beach for the purpose of beach nourishment, unless the material to be reused has been tested and determined by the Corps Regulatory Division to be both clean and suitable for such beneficial reuse in waters of the U.S. Furthermore, discharges for beach nourishment shall

not occur at Cabrillo Beach during the California least tern nesting Season (April – August) in any year. Re-testing of previously tested areas is required after 3 years from the date of permit issuance. This time limit is subject to shortening given the occurrence of any event that may cause previously determined clean material to become suspect, at the discretion of the Corps Regulatory Division. Prior to each excavation/dredging episode, the permittee must demonstrate that the proposed dredged materials are chemically, physically, and biologically suitable for discharge in waters of the U.S. (beach nourishment in this case) according to the provisions of the USACE/USEPA Inland Testing Manual. If the material does not meet the specific criteria for beneficial reuse at Cabrillo Beach, the material shall be beneficially reused or disposed of in an upland area, as appropriate, or, if available, reused at an in-harbor CDF (Special Condition 18 addresses potential ocean disposal of dredged material). The permittee shall submit to the Corps Regulatory Division a draft SAP. Sampling may not commence until the SAP is approved, in writing, by the Corps Regulatory Division.

20. At least 15 calendar days before initiation of any dredging operations authorized by this permit, the permittee shall send a dredging and beneficial reuse/disposal operations plan to the Corps Regulatory Division and USEPA, with the following information (separate plans to the Corps Regulatory Division and USEPA are required for Downtown Harbor and 7<sup>th</sup> Street Harbor cut/dredging operations, and the second phase's North Harbor cut/dredge and Berths 45-47 and 49-50 dredging operations):

- 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 or beneficial reuse site.
- B) A list of all vessels, major dredging equipment, and electronic positioning systems or navigation equipment that will be used for dredging and beneficial reuse or 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) The results of a detailed analysis of all material to be dredged pursuant to an approved SAP.
- D) A detailed description of the dredging and beneficial reuse or disposal operations authorized by this permit, including a schedule showing when dredging is planned to begin and end.
- E) For dredging in the vicinity of Berths 45-47 and 49-50, a pre-dredging bathymetric condition survey (presented as a large format plan view drawing), taken within 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 shall 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, over-dredge 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 over-dredge depth shall be shaded yellow, and areas below over-dredge depth that will not be dredged shall be shaded blue. If these areas are not clearly shown, the Corps Regulatory Division 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 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.

**21. The permittee shall not commence any dredging operations unless and until the permittee receives a written NTP from the Corps Regulatory Division. This requirement applies to every separate dredging event/phase.**

22. The permittee shall ensure that the captain of any hopper dredge, tug, or other vessel used in the dredging and beneficial reuse or disposal operations, is a licensed operator under U.S. Coast Guard 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.

23. The permittee shall maintain a copy of this permit on all vessels used to dredge, transport, and reuse or dispose of dredged material authorized under this permit.

24. 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.

25. 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 44.

26. Upon request, the permittee and its contractor(s) shall allow inspectors from the Corps Regulatory Division, USEPA, LARWQCB, and/or the U.S. Coast Guard to inspect all phases of the dredging and beneficial reuse or disposal operations.

27. 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, USEPA, LARWQCB, and/or the U.S. Coast Guard the following: dredging and beneficial reuse/disposal operations inspectors' logs, the vessel track plots and all beneficial reuse/disposal vessel logs or records, any analyses of the characteristics of dredged material, or any other documents related to dredging and beneficial reuse/disposal operations.

28. For this permit, the term beneficial reuse/disposal operations shall mean: (1) the transport of dredged material from the dredging sites (Downtown Harbor, 7<sup>th</sup> Street Harbor, North Harbor cuts, Berths 45-47 and Berths 49-50 toe dredging) to in-harbor berths for offloading and trucking to an upland beneficial reuse or disposal site (such as Berth 200 Railyard and China Shipping Terminal Phase III), to the USEPA-designated LA-2 and/or LA-3 ocean disposal site (see Special Condition 29); and/or, if available, to an in-harbor CDF and/or Cabrillo Beach for beach nourishment (material reuse); (2) the proper beneficial reuse or disposal of dredged material at an appropriate upland beneficial reuse or disposal site (such as Berth 200 Railyard or China Shipping Terminal Phase III), the USEPA-designated LA-2 and/or LA-3 ocean disposal site, and/or an in-harbor CDF, and/or beach nourishment at Cabrillo Beach; and (3) the transport of the hopper dredge or disposal barge or scow back to the dredging site.

29. The applicable USEPA-designated ocean disposal site is demarcated as a circle with the center coordinates and radii listed below:

LA-2: 33 degrees 37.10 minutes North Latitude, 118 degrees 17.40 minutes West Latitude (NAD 1983), circular site with radius of 3,000 feet.

LA-3: 33 degrees 31.00 minutes North Latitude, 117 degrees 53.50 minutes West Longitude (NAD 1983), circular site with radius of 3,000 feet.

30. No dredged material from the project area shall be authorized for disposal at the LA-2 or LA-3 ocean disposal site unless testing of the material pursuant to established Corps/USEPA protocols demonstrates this dredged material is acceptable for ocean disposal. If the Corps Regulatory Division determines and USEPA concurs the dredged material qualifies for

ocean disposal at the LA-2 or LA-3 site, the Corps Regulatory Division may authorize such material disposal at the LA-2 and/or LA-3 site in the NTP with other project activities pursuant to Special Condition 1 (no ocean disposal of dredged material is authorized under the first phase of the project).

31. Prior to commencing any ocean disposal operations, the permittee shall submit a Scow Certification Checklist to USEPA and the Corps Regulatory Division for review and approval. The Scow Certification Checklist shall document: the amount of material dredged and loaded into each barge for disposal; the location from which the material in each barge was dredged; the weather report for and sea state conditions anticipated during the transit period; the time that each disposal vessel is expected to depart for, arrive at, and return from the LA-2 and/or LA-3 ocean disposal site(s).

32. The permittee shall notify the U.S. Coast Guard by radio on VHF-FM channel 16 or by telephone at least 4 hours before departing for each disposal site. The notification shall include:

- A) Name of permittee.
- B) Corps permit number.
- C) Name and identification of vessels (tug boat, hopper dredge, or disposal barge or scow) employed in the disposal operation.
- D) Loading location of the material to be disposed.
- E) Material to be disposed.
- F) Time of departure from the dredging site.
- G) Estimated time of arrival at the ocean disposal site and estimated time of departure from the ocean disposal site.
- H) Estimated time of arrival at dredging site after the disposal operation is completed.

33. The permittee shall ensure dredged material is not leaked or spilled from the disposal vessels during in-harbor transit or transit to the LA-2 and/or LA-3 ocean disposal site(s). The permittee shall transport dredged material to the LA-2 and/or LA-3 ocean disposal site(s) only when weather and sea state conditions will not interfere with safe transportation and will not create risk of spillage, leak, or other loss of dredged material during transit. No disposal vessel trips shall be initiated when the National Weather Service has issued a gale warning for local waters during the time period necessary to complete disposal operations.

34. The permittee shall not allow any water or dredged material placed in a hopper dredge or disposal barge or scow to flow over the sides of such vessels during dredging or disposal operations. The permittee shall determine the level that a disposal hopper dredge or barge or scow can be filled 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 LA-2 or LA-3 ocean disposal

site. This level shall be reported to the Los Angeles District's Regulatory Division before disposal operations commence. No hopper dredge or disposal barge or scow shall be filled above this pre-determined level. Before each hopper dredge or disposal barge or scow is transported to the LA-2 or LA-3 ocean disposal site, the dredging site inspector shall certify that it is filled correctly.

35. When dredged material is discharged by the permittee at the LA-2 or LA-3 ocean disposal site, no portion of the vessel from which the materials are to be released (e.g., hopper dredge or towed barge) may be farther than 1,000 feet (305 meters) from the center of the disposal site (the surface disposal zone or SDZ) identified in Special Condition 29.

36. No more than one disposal vessel may be present within the LA-2 or LA-3 ocean disposal site SDZ at any time.

37. The captain of any tug boat or other vessel covered by this permit shall monitor VHF-FM channel 16 while conducting disposal/beneficial reuse operations.

38. The primary disposal tracking system for recording ocean disposal operations data shall be disposal vessel (e.g., scow) based. An appropriate Global Positioning System (GPS) shall be used to indicate the position of the disposal vessel with a minimum accuracy of 10 feet during all transportation and disposal operations. This primary disposal tracking system must indicate and automatically record both the position and the draft of the disposal vessel at a maximum 1-minute interval while outside the LA-2 or LA-3 ocean disposal site boundary, and at a maximum 15-second interval while inside the LA-2 or LA-3 ocean disposal site boundary. This system must also indicate and record the time and location of each disposal event (e.g., the discharge phase). Finally, the primary system must include a real-time display, in the wheelhouse or otherwise for the helmsman, of the position of the disposal vessel relative to the boundaries of the LA-2 or LA-3 ocean disposal site and its SDZ, superimposed on the appropriate National Oceanic Service navigational chart, so that the operator can confirm proper position within the SDZ before disposing the dredged material.

39. Data recorded from the primary disposal tracking system must be posted by a third-party contractor on a near-real time basis to a World Wide Web (Internet) site accessible at a minimum by USEPA, the Corps Regulatory Division, the permittee, the prime dredging contractor, and any independent inspector. The Internet site shall be provided to the Corps Regulatory Division and USEPA prior to commencement of disposal operations. The Internet site must be searchable by disposal trip number and date, and at a minimum for each disposal trip it must provide a visual display of: the disposal vessel transit route to the LA-2 or LA-3 ocean disposal site; the beginning and ending locations of the disposal event; and the disposal vessel draft throughout the transit. The requirement for posting this

information on the Internet is independent from the hard-copy reporting requirements listed in Special Condition 43 below. The third-party system must also generate and distribute e-mail alerts regarding any degree of apparent dumping outside the SDZ of the LA-2 or LA-3 ocean disposal site, and regarding any apparent substantial leakage/spillage or other loss of material en route to the LA-2 or LA-3 ocean disposal site. Substantial leakage/spillage or other loss for this permit is defined as an apparent loss of draft of one foot or more between the time that the disposal vessel begins the trip to the LA-2 or LA-3 ocean disposal site and the time of actual disposal. E-mail alerts for any disposal trip must be sent within 24 hours of the end of that trip, at a minimum to USEPA, the Corps Regulatory Division, the permittee, and the prime dredging contractor.

40. If the primary disposal tracking system fails during transit to the LA-2 or LA-3 ocean disposal site, the navigation system on the towing vessel (tug, if any), meeting the minimum accuracy requirement listed above, may be used to complete the disposal trip by maneuvering the towing vessel so that, given the compass heading and tow cable length to the scow (layback), the estimated scow position would be within the SDZ of the LA-2 or LA-3 ocean disposal site. In such cases, the towing vessel's position, and the tow cable length and compass heading to the disposal vessel, must be recorded and reported. The permittee shall halt further disposal operations using a disposal vessel whose navigation tracking system fails until those primary disposal-tracking capabilities are restored.

41. The permittee shall report any anticipated, potential, or actual variances from compliance with the general and special conditions of this permit, to USEPA and the Corps Regulatory Division within 24 hours of discovering such a situation. An operational e-mail alert system, as described in Special Condition 39 above, will be considered as fulfilling this 24-hour notification requirement. In addition, the permittee shall prepare and submit a detailed report of any such compliance problems with the monthly hard-copy reports described below.

42. The permittee shall collect, for each ocean disposal trip, both automatically recorded electronic data and printouts from the primary disposal tracking system showing transit routes, disposal vessel draft readings, disposal coordinates, and the time and the position of the disposal vessel when dumping was commenced and completed. These daily records shall be compiled and provided in reports to both USEPA and the Corps Regulatory Division at a minimum for each month during which ocean disposal operations occur. These reports shall include the automatically recorded electronic navigation tracking and disposal vessel draft data on CD-ROM (or other media approved by USEPA and the Corps Regulatory Division), as well as hard copy reproductions of the Scow Certification Checklists and printouts listed above. The reports shall also include a cover letter describing any problems complying with the general and special conditions of this permit, the cause(s) of

the problems, any steps taken to rectify the problems, and whether the problems occurred on subsequent disposal trips.

43. Following the completion of ocean disposal/beneficial reuse operations, the permittee shall submit to USEPA and the Corps Regulatory Division a completion letter summarizing the total number of disposal trips and the overall (in situ) volumes of material from the project disposed at the LA-2 and/or LA-3 ocean disposal site(s), at in-harbor CDF site(s), and/or at Cabrillo Beach for nourishment (if available and used), at an appropriate upland beneficial reuse site (e.g., Berth 200 Railyard, China Shipping Terminal Phase III), or approved upland disposal site, and whether any of this dredged material was excavated from outside the areas authorized for ocean disposal or was dredged deeper than authorized by this permit (Downtown Harbor, 7<sup>th</sup> Street Harbor, and North Harbor, Berths 45-47, and Berths 49-50 are expected to be separate disposal/beneficial reuse operations and will therefore require separate reports to USEPA and the Corps Regulatory Division).

44. The permittee shall submit a post-dredging completion report to 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 harbor cuts, Berths 45-47, and Berths 49-50 will be separate dredging projects and will therefore require separate reports be prepared and submitted to Corps Regulatory Division). Each report shall include all information collected by the permittee, the dredging operations inspector, and the disposal/beneficial reuse 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 LA-2 and/or LA-3 ocean disposal site(s), beneficially reused at Berth 200 Railyard, China Shipping Terminal Phase III, or other POLA site, disposed of at approved upland disposal site, disposed of at in-harbor CDF(s), and/or beneficially reused at Cabrillo Beach (if available and used).
- D) Mode of dredging.
- E) Mode of transportation.
- F) Form of dredged material.
- G) Frequency of disposal and plots of all trips to the LA-2 and/or LA-3 ocean disposal site(s).
- H) Tug boat or other disposal vessel logs documenting contact with the U.S. Coast Guard before each trip to the LA-2 and/or LA-3 ocean disposal site(s).
- 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 over-dredge depth shaded yellow, areas below over-dredged depth that were not dredged or areas that were deeper than the over-dredge depth before the project began as indicated on the pre-dredging survey shaded blue, and areas dredged below the over-dredge 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) Each 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.*

45. The permittee shall conduct a pre-construction eelgrass survey during the growing season (March–October), which will be valid up to 60 days prior to construction activities. A post-construction survey shall also be conducted within 30 days following construction in order to determine the project's impact to eelgrass habitat. Given that impacts associated with any potential changes in hydrology and/or sedimentation patterns from placement of the rock jetty will not become immediately apparent in the 30-day post-construction survey, two additional annual monitoring surveys shall be conducted and submitted to the National Marine Fisheries Service and Corps Regulatory Division for review. These surveys and any necessary mitigation shall be conducted in accordance with the Southern California Eelgrass Mitigation Policy ([http://swr.nmfs.noaa.gov/hcd/policies/EELPOLrevll\\_final.pdf](http://swr.nmfs.noaa.gov/hcd/policies/EELPOLrevll_final.pdf)). This Special Condition applies to the second phase of the project, which will directly affect the marine environment in the vicinity of eelgrass.

46. A pre-construction survey for Caulerpa of the project area shall be conducted by the permittee in accordance with the Caulerpa Control Protocol (see <http://swr.nmfs.noaa.gov/hcd/caulerpa/ccp.pdf>) not earlier than 90 days prior to planned construction and not later than 30 days prior to construction (this requirement applies to each phase of the project i.e., that portion/those portions of the project area that would be affected by a particular phase must be surveyed 30-90 days prior to construction of that phase). The results of each survey shall be transmitted to the National Marine Fisheries

Service and the California Department of Fish and Game at least 15 days prior to initiation of proposed work. In the event that *Caulerpa* is detected within the project area, no work shall be conducted until such time as the infestation has been isolated, treated, and the risk of spread is eliminated.

47. Prior to or concurrent with the implementation of the second phase of the project, the permittee shall begin full implementation of *Habitat Mitigation and Monitoring Plan Salinas de San Pedro Salt Marsh Port of Los Angeles San Pedro Waterfront Project, Prepared for: The Los Angeles Harbor Department*, dated May 2011, as potentially amended following completion of the review and approval of the applicable aspects of the project by the Los Angeles Regional Water Quality Control Board (as part of the section 401 Water Quality Certification) and/or California Coastal Commission (as part of the Port Master Plan Amendment). To avoid the California least tern nesting season (April – August), mitigation activities shall begin September-November (any given year) to allow sufficient time to complete them before the next nesting season begins. Prior to implementing the second phase of the project, the permittee shall submit to the Corps for approval a schedule for implementing the habitat mitigation and monitoring plan that documents compliance with the above requirements.

48. The permittee shall ensure the undertaking is implemented in accordance with all the stipulations in the executed *Memorandum of Agreement Between the U.S. Army Corps of Engineers and the California State Historic Preservation Officer Regarding the San Pedro Waterfront Redevelopment Project, Los Angeles County, CA*, including implementing the Historic Property Treatment Plan (MOA Appendix A). It also includes the unanticipated cultural resources discovery stipulation during construction (VI.B.), requiring immediate Corps notification and temporarily halting activities affecting such resources pending further Corps action.

(11) The discharge complies with the Section 404(b)(1) Guidelines pursuant to 40 C.F.R. § 230.12. Implementation of the HM&MP (Appendix A to the Final Section 404(b)(1) Alternatives Analysis, which is included as Appendix A to this ROD) will fully compensate for minor unavoidable impacts to waters of the U.S. anticipated to result from the proposed Project.

**c. Public Interest Review:** I find that my decision to issue a permit associated with the proposed Project for the San Pedro Waterfront, as prescribed by regulations published in 33 C.F.R. Parts 320 to 332 and 40 C.F.R. Part 230, 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 Draft EIS/EIR and the Final EIS/EIR comment periods, there was opposition to several aspects of the proposed Project. In evaluating these comments, the USACE worked with the applicant to modify/strengthen mitigation measures, such as increased Alternative Maritime Power and low-sulfur fuel requirements, additional fuel technology, noise restrictions during pile driving, development of a Historic Property Treatment Plan and MOA with the State Historic Preservation Officer, and

preparation of an HM&MP for the proposed establishment and restoration of aquatic habitats at Salinas de San Pedro Salt Marsh, as compensation for proposed Project impacts to special aquatic sites. 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 marine transportation and navigation. In addition, with mitigation, project-specific adverse effects would be less than significant with respect to cultural resources, ground water and soils, hazards and hazardous materials, land use planning, and utilities and public services.

However, relative to the NEPA baseline<sup>13</sup>, significant and unavoidable (even with mitigation) adverse impacts would be expected to aesthetics (adverse effect on a scenic vista from a designated scenic resource due to obstruction of views); air quality and meteorology (construction and operational exceedances of air quality standards, cancer and non-cancer health risks); biology (potential for visiting vessels to introduce non-native species that would disrupt local biological communities); geology (seismic, tsunami, and seiche risks to people and structures during construction and operations); noise (increases in construction activity noise levels and in motor vehicle traffic noise levels above significance thresholds); recreation (substantial loss or diminished quality of recreational, educational, or visitor-oriented opportunities, facilities, or resources during construction); ground transportation and circulation (operations would increase traffic volumes and degrade Level of Service at intersections in the proposed Project vicinity); and water quality, sediments, and oceanography (operations could increase vessel leaching of contaminants). However, in many cases, these impacts would occur beyond the USACE's statutory authorities under section 404 of the CWA, section 10 of the RHA, and section 103 of the MPRSA to require effective mitigation. They would still be subject to the LAHD's authority, as the local agency with continuing program and responsibility over the Project throughout its useful life.

These Project-specific significant and unavoidable impacts would also be cumulatively significant impacts, as discussed in Section 4 of the EIS/EIR. Because the Federal action associated with the proposed Project would damage or destroy "Mexican Hollywood", a resource eligible for listing on the NRHP, this effect, although mitigated, would add incrementally to the cumulatively significant loss of cultural resources that has occurred in the area, and therefore, it would contribute considerably to a cumulatively significant impact on known archaeological resources. None of the other resources/issues that would be less than significant with respect to Project-level impacts would contribute considerably to a cumulatively significant impact.

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<sup>13</sup> 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 1.5.5.1 and 2.6.2 of the EIS/EIR provide additional NEPA baseline discussion.

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 and meteorology, noise, recreation, and transportation and circulation. However, for the reasons discussed in Section 5 of the EIS/EIR, impacts to the following<sup>14</sup> 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; and water quality, sediments, and oceanography.

While there would be significant and unavoidable impacts, some with disproportionate high and adverse effects on minority and/or low-income populations, as described in Sections 5 and 7 of the EIS/EIR, the proposed Project would also provide several socioeconomic benefits, such as additional income from new retail businesses and new jobs. The proposed Project is expected to generate 14,301<sup>15</sup> construction-related jobs due to public spending. These include direct employment of 7,416 workers and an additional 6,885 jobs indirectly related to proposed Project construction. The proposed Project is also expected to generate 4,899<sup>15</sup> construction-related jobs due to private spending. These include direct employment of 2,523 workers and an additional 2,376 jobs indirectly related to proposed Project construction. At full build-out, the proposed Project would support 5,660 jobs, including 3,060 direct jobs and 2,600 indirect jobs. The construction of the Downtown and 7th Street Harbors, with new public open spaces that consist of promenade areas, plazas, parks, and landscape and hardscape areas, would make the waterfront and downtown San Pedro more attractive to visitors. Therefore, there would be an overall beneficial impact of the proposed Project on local business revenue. Furthermore, based on the cruise calls projected for 2037 for the Port of Los Angeles, the proposed Project would generate \$340.1 million<sup>15</sup> in revenue for the region from cruise activity. Similarly, at full build-out and utilization, the cruise ship industry and expanded commercial activity could generate as much as \$30.3 million<sup>15</sup> in state and local taxes annually. It would also create recreational amenities, such as new harbors, a waterfront promenade, improved visitor-oriented facilities, new open space areas, and improvements to existing recreational areas. In addition, it would remove the Jankovich fueling station, Westway Terminal, and the S.P. Railyard from the proposed Project area. The proposed Project would physically remove industrial use from Planning Area 2 and allow the former site to be utilized for a better-suited use for the community of San Pedro. If contaminated soils are encountered during construction, site

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<sup>14</sup> There would not be Project-specific or cumulatively significant impacts with respect to groundwater and soils, hazards and hazardous materials, land use planning, transportation and navigation (marine), or utilities and public services, so these would not result in disproportionately high and adverse effects on minority and/or low-income populations either.

<sup>15</sup> Executive Director's Report to the Board of Harbor Commissioners, and Final Findings of Fact and Statement of Overriding Considerations, San Pedro Waterfront Environmental Impact Report (EIR), Board Approved 29 September 2009.

remediation would result in beneficial impacts (see Section 3.6 in the EIS/EIR). Certain beneficial uses of waters in the Inner Harbor, including navigation, non-contact water recreation, aquatic habitat, and industrial service supply, would benefit from the availability of new dock and moorage space provided by the proposed new harbors (see Section 3.14 in the EIS/EIR).

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 the proposed Project's contribution would be significant (i.e., exceeding 10 in a million additional cancer risk) for residential, occupational, and recreational receptors relative to the NEPA baseline (i.e., incremental increases exceed 10 in a million for these receptors), and the acute hazard index would be significant for occupational and recreational receptors. The residential receptors affected to a level of significance are limited to "live-aboards" in Cabrillo Way Marina (Figure D3.7-10 in the EIS/EIR). The other receptors at risk also concentrate on or along the water in the Outer Harbor. In short, much of the health risks relative to the NEPA baseline are affecting those living, working, or recreating on or in close proximity to the water in the Outer Harbor, particularly near the proposed Outer Harbor berths. This contrasts with the No Federal Action Alternative (equivalent to the NEPA baseline) in which all regular cruise ship berthing would continue to occur in the Inner Harbor (Figure D3.7-5 in the EIS/EIR). Under the latter scenario, the same receptors would be significantly affected, as would sensitive receptors, and there would be significant chronic and acute hazards, but the health risks would be concentrated in the Inner Harbor and would affect substantially more land area occupied by residential neighborhoods and used by workers and visitors in POLA.

As evaluated in Section 3 of the EIS/EIR, numerous measures, many of which are innovative, are being required to avoid and minimize a broad array of impacts that are of interest to the public. While some of the impacts would remain significant and unavoidable even with mitigation, and in certain cases would have a disproportionately high and adverse effect on minority and/or low-income populations, there are clear public interests and needs locally and regionally, to move forward with this waterfront redevelopment in San Pedro. Residents and visitors would benefit greatly from the improved access (seaside and waterside) to and along the enhanced waterfront along the Main Channel from Vincent Thomas Bridge to Cabrillo Beach, and the local, regional, and State economy would also benefit from POLA's ability to support additional berthing of larger Freedom and Voyager class cruise ships and to attract additional visitors to the area.



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