

**US Army Corps
of Engineers®**

PUBLIC NOTICE

NOTICE OF AVAILABILITY FOR
A FINAL EIS/EIR AND
DRAFT GENERAL CONFORMITY DETERMINATION

LOS ANGELES DISTRICT

Public Notice/Application No.: 2003-01029-SDM

Review Period: December 29, 2008 through February 2, 2009

Project Manager: Spencer D. MacNeil, D.Env. (805) 585-2152 spencer.d.macneil@usace.army.mil

Applicant

Port of Los Angeles/Los Angeles Harbor Dept.
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Contact

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Environmental Management Division
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Location

The proposed project is located in the southwestern portion of the West Basin of the Port of Los Angeles, Los Angeles County, California (latitude: 33°-45'-10" longitude: -118°-16'-30") (Figure 1).

Activity

The applicant proposes to permanently impact approximately 2.54 acres of submerged soft-bottom habitat and temporarily impact approximately 15 acres of waters of the U.S. during various dredge and fill activities associated with constructing a container terminal at Berths 97-109 [China Shipping]. Note that the first phase of the proposed project, which included 1.3 acres of the 2.54 acres of permanent impact, was constructed and operating in 2004; but all three phases have been evaluated in the EIS/EIR and are being considered in the Corps' permit decision-making process. For more activity information see page 4 of this notice.

Interested parties are hereby reminded that an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawings (the April 30, 2008 Army Corps of Engineers-Port of Los Angeles public notice for this project first notified the public that, among other things, an application for a Department of the Army permit had been received). Interested parties are invited to provide their views on the proposed work, which will become a part of the record and will be considered in the decision. This permit will be issued or denied under Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344). Comments should be mailed to:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division, Ventura Field Office (CESPL-RG-N-2003-01029-SDM)
2151 Alessandro Drive, Suite 110
Ventura, California 93001

Alternatively, questions or comments can be sent electronically to: spencer.d.macneil@usace.army.mil

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, because the proposed activities would discharge dredged or fill material, the evaluation of the activity will include application of the USEPA Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. In this case, comments are used in the preparation of an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A determination was made that an Environmental Impact Statement (EIS) is required for the proposed work in waters of the United States. The Recirculated Draft EIS/EIR for the proposed Berths 97-109 Container Terminal Project was published on April 30, 2008, and comments on the above document were accepted until July 15, 2008. A public hearing was held at Banning's Landing Community Center in Wilmington, California, on June 5, 2008 to give additional opportunity for the public to comment on the Recirculated Draft EIS/EIR for this project.

A Notice of Availability for the Final EIS/EIR, including the draft general conformity determination, is also being published in the Federal Register. The Draft EIS/EIR and Final EIS/EIR for this project, which address several potentially significant issues, such as impacts to air quality, traffic, biological resources, water quality, and environmental justice, can be found on the Port of Los Angeles website (<http://www.portoflosangeles.org>).

Water Quality- The applicant is required to obtain water quality certification under Section 401 of the Clean Water Act from the Los Angeles Regional Water Quality Control Board. Section 401 requires that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance.

Coastal Zone Management- The applicant has certified that the proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management Program. The District Engineer hereby requests the California Coastal Commission's concurrence or nonconcurrence that proposed project is consistent with the Coastal Commission-approved Port Master Plan.

Cultural Resources- The latest version of the National Register of Historic Places has been consulted and this site is not listed. As discussed in the Recirculated Draft EIS/EIR for the Berths 97-109 Container Terminal Project [China Shipping], no cultural or historic resources were identified that would be affected by

the proposed project. In addition, the Native American Heritage Commission (NAHC) was contacted on October 23, 2007, to request information about traditional cultural properties, such as cemeteries and sacred places, in the project area. According to NAHC's November 1, 2007 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. Furthermore, NAHC had previously provided a letter, dated June 20, 2007, containing a list of Native American tribes and individuals interested in consulting on development projects. Each of these individuals/groups was contacted by letter on October 23, 2007. To date, the only response has been from Mr. Sam Dunlap, Cultural Resource Director, of the Gabrielino/Tongva Tribal Council; he requested that mitigation be included in the environmental document for a Native American monitoring component. While the likelihood of encountering cultural resources is considered low, considering the previous study results and the extensive disturbances in the project area, a mitigation measure (MM CR-1) has been included in the EIS/EIR that includes archaeological resource monitoring. This review constitutes the extent of cultural resources investigations by the District Engineer, and he is otherwise unaware of the presence of such resources.

Endangered Species- The California least tern (*Sterna antillarum browni*) and the California brown pelican (*Pelecanus occidentalis californicus*) are known to forage on occasion in the vicinity of the project area. However, based on detailed biological information in the Recirculated Draft EIS/EIR for the Berths 97-109 Container Terminal Project, the project area is not an important foraging area for either species, and preliminary determinations indicate that the proposed activity would not affect federally listed endangered or threatened species, or their critical habitat. Therefore, consultation under Section 7 of the Endangered Species Act does not appear to be required at this time.

Essential Fish Habitat- In accordance with the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act, an assessment of Essential Fish Habitat (EFH) was prepared and included in the Recirculated Draft EIS/EIR. The proposed Project would be located within an area designated as EFH for two Fishery Management Plans (FMP): Coastal Pelagics Plan; and Pacific Coast Groundfish Management Plan. One of the five species in the Coastal Pelagics FMP, northern anchovy, is well represented in the proposed project area, with both adults and larvae present. Pacific sardine is also present. Both species support a commercial bait fishery in the Outer Harbor of the Port. Adult jack mackerels are common and likely prey upon northern anchovy in the West Basin. Adult Pacific mackerel are uncommon in the West Basin with only one collected in a year's sampling. None of the seven Pacific Groundfish FMP species found in the Inner Harbor is common, and only one, English sole, has been reported in recent surveys of the West Basin.

The April 30, 2008 joint public notice for the Recirculated Draft EIS/EIR initiated EFH consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act with the National Marine Fisheries Service (NMFS). Briefly, the proposed activities would permanently and temporarily impact areas designated as EFH through wharf construction and dredging. Most of the impacts would be short-term, but there would be conversion of approximately 2.54 acres of open water and soft-bottom habitat to hard substrate habitat to construct the wharves (as noted, the first phase, which included 1.3 acres of the 2.54 acres, was constructed and operating by 2004). The POLA has developed, and continues to develop as needed, mitigation projects to provide mitigation credits for impacts of development in Los Angeles Harbor to marine biological resources, in coordination with NMFS, U.S. Fish and Wildlife Service, and the California Department of Fish and Game through agreed-upon mitigation policies (USACE and LAHD 1992). For this project, the POLA proposes to fully mitigate marine habitat loss by using equivalent credits available through the Bolsa Chica Mitigation Agreement/Bank or the Outer Harbor Mitigation Bank. Overall, the proposed activity would adversely affect but would not have a substantial adverse impact on EFH or federally managed fisheries in California waters.

In a letter dated July 11, 2008, NMFS agreed that the permanent fill in waters of the U.S. could be offset through the use of available mitigation credits at either the Bolsa Chica Mitigation Bank or the Outer Harbor Mitigation Bank. They also recommended that LAHD conduct a pre-construction Caulerpa survey (per the Caulerpa Control Protocol) of the project area not earlier than 90 days prior to and no later than 30 days prior to

construction, with the results to be provided to NMFS and CDFG at least 15 days before starting construction. Any detected *Caulerpa* would have to be eradicated before starting construction. In October 23, 2008 correspondence, the Corps responded to NMFS that their conservation recommendation would be included in any permit issued by the Corps for the proposed project or alternative (Phases I-III).

General Conformity- The Final EIS/EIR includes a draft general conformity determination (see Section 3.2 and Appendix P), pursuant to Section 176(c) of the Clean Air Act. A general conformity determination is necessary because 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 Project is being 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 are provided during the 30-day public review period, will be considered before the Corps makes a final general conformity determination and finalizes the Record of Decision (ROD) for the Federal action. The Corps will publish a notice of a final general conformity determination in the Federal Register within 30 days of rendering a final decision. The public can request from the Corps copies of the ROD, which includes responses to comments on the Final EIS/EIR, including any on the draft general conformity determination, following publication of a final general conformity determination and upon execution of the ROD.

Public Hearing- A public hearing was conducted on June 5, 2008 from 6:00-8:30 PM at Banning's Landing Community Center in Wilmington to accept comments on the adequacy of the Berths 97-109 [China Shipping] Container Terminal Project Recirculated Draft EIS/EIR (40 CFR Part 1506.6), as well as to acquire information or evidence, which will be considered in evaluating the proposed permit action pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the River and Harbor Act (RHA) (33 CFR Part 327.3). This is in addition to a public scoping meeting held for the proposed project on July 10, 2003 (two scoping meetings were held simultaneously, one at Peck Park Community Center in San Pedro and one at Wilmington Recreation Center in Wilmington); with comments received from this meeting also addressed in the Recirculated Draft EIS/EIR. No additional public hearings are scheduled for the proposed project.

Proposed Activity for Which a Permit is Required

The applicant proposes to permanently impact approximately 2.54 acres of submerged soft-bottom habitat and temporarily impact approximately 15 acres of waters of the United States to construct a container terminal at Berths 97-109 [China Shipping]. Authorization is required pursuant to CWA Section 404 and RHA Section 10 to construct the container terminal at Berths 97-109 [China Shipping], including several water-associated activities: dredging approximately 41,000 cubic yards to match the adjacent basin/channel depth (-53 MLLW) and to complete wharf construction at Berth 100; building a 375-foot-long wharf extension to Berth 100; constructing a 1,200 foot wharf at Berth 102; and performing as-needed minor maintenance dredging (estimated at less than 1,000 cubic yards) in the vicinity of Berth 102 and disposing of the material at an approved upland landfill if it is not eligible for beneficial reuse.

Project background and more details on all the project components, including those exclusively in the upland areas, are provided in the following section, as well as in the Recirculated Draft and Final EIS/EIR for this project, which are posted on the Port of Los Angeles website (<http://www.portoflosangeles.org>).

Additional Project Information

Background Information: In addition to the NEPA/CEQA process, this project is also subject to a court-ordered Settlement Agreement. The Port previously prepared and certified the West Basin Transportation

Improvements Program (WBTIP) EIR that assessed the construction and operation of terminal and infrastructure improvements in the West Basin of the Port (LAHD, 1997a).

In March 2001, the Port issued a permit approving the China Shipping lease and construction based on the WBTIP. In June 2001, opponents of the China Shipping Terminal Project (Berths 97-109) filed suit in both state and federal court alleging that LAHD did not comply with, among other things, NEPA or CEQA in approving a permit to construct the China Shipping Terminal and a lease for the China Shipping Company to occupy the terminal. On October 30, 2002, the State of California Second District Court of Appeals ordered a partial halt to ongoing construction and operation of Phase I, Berth 97-109 China Shipping Container Terminal Project component (proposed project), of the WBTIP EIR. The court ordered the preparation of a project-specific EIS/EIR to evaluate each of the three phases of the proposed project.

Afterwards, LAHD and the litigants negotiated an agreement to settle the state and federal proceedings. On March 6, 2003, the Superior Court of the State of California, Los Angeles District, approved a Stipulated Judgment to settle the state case. On that same date, the United States District Court for the Central District of California approved a stipulation for compromise settlement among the project opponents, the Corps, and LAHD. Subsequently, the Port negotiated with the litigants to amend the Stipulated Judgment. A compromise in the form of an Amended Stipulated Judgment was reached in March 2004. The terms of the Amended Stipulated Judgment have been incorporated into the Draft EIS/EIR.

On March 6, 2003, the Corps settled its case with plaintiffs in the China Shipping case. The Corps judgment requires the Corps to prepare a project-specific EIS for China Shipping Phases I, II, and III, and revisit the permit conditions of the permit originally issued for construction of Berth 100. The subject EIS/EIR serves as the project-specific EIS called for in the judgment, and provides environmental analysis required for the Corps to revisit its Berth 100 decision.

In sum, the state and federal Settlement Agreements require the preparation of a project-specific environmental analysis of each of the three phases of the proposed project. The federal Settlement Agreement also provided that the revised environmental analysis and permit prepared by the Corps would remain in place, until the Corps reconsiders the permit terms and conditions upon completion of the EIS/EIR.

The Port and Corps originally released the Berth 97-109 [China Shipping] Container Terminal Project Draft EIS/EIR in August 2006. Based on comments received on the Draft EIS/EIR, the Port and Corps decided to re-circulate the entire document. The April 2008 Draft EIS/EIR was a full re-circulation of the original Draft EIS/EIR and addressed comments received on the August 2006 document.

Project Elements: The proposed project is a new container terminal for the China Shipping Lines at Berths 97-109. Key elements of the proposed project include new wharves; dredging (approximately 41,000 yd³ during Phase I, with possible minor maintenance dredging estimated at less than 1,000 cubic yards during Phase II), with the material disposed of at the upland Anchorage Road Storage Site if not eligible for beneficial reuse; backlands development (142 acres); terminal buildings; improvements to the terminal entrance; two bridges connecting Berths 97-109 with Berths 121-131; and the relocation of the Catalina Express terminal to Berth 95 (Figure 2). The proposed project would be developed in three construction phases (Phases I, II and III), with estimated start dates of 2003, 2009, and 2011, respectively. Subsequently, optimization or full utilization of each phase would occur in 2005 (1 year after Phase I construction), 2015 (6 years after Phase II construction), and 2030 (almost 20 years after Phase III construction), respectively. Phase I has been constructed and is operating as a container terminal, consistent with the Amended Stipulated Judgment and federal Settlement Agreement. Phase I construction and operation is reassessed in the Recirculated Draft EIS/EIR.

Major elements of the proposed project evaluated in this EIS/EIR include:

- Dredging (41,000 cubic yards [yd³] of sediments during Phase I, with possible minor maintenance

dredging estimated at less than 1,000 cubic yards during Phase II) and disposal of that material at the upland Port Anchorage Road Disposal Site if not eligible for beneficial reuse, new wharf construction at Berths 100 and 102, and backland creation, including terminal buildings, on 142 acres

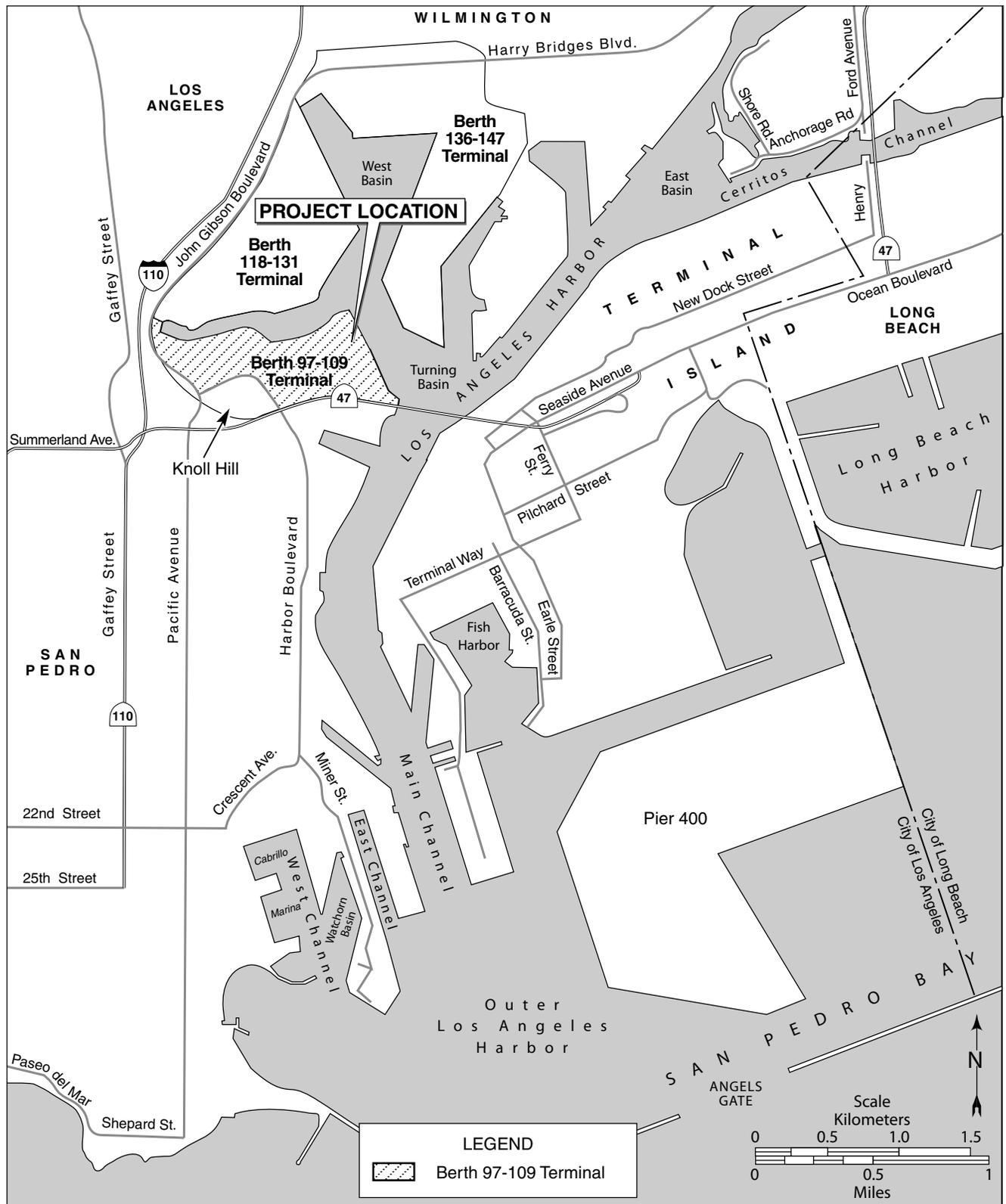
- Installation of 10 new A-frame cranes at Berths 100 and 102
- Transportation infrastructure improvements in the vicinity of the existing terminal entrance (shared by the Berth 97-109 terminal and the Berth 121-131 terminal)
- Two new bridge structures connecting Berth 97-109 terminal and Berth 121-131 terminal across the Southwest Slip
- Relocating the Catalina Terminal to south of the Vincent Thomas Bridge at Berth 95
- A 40-year lease (2005 to 2045) to China Shipping Lines to operate the Berth 97-109 Container Terminal

The proposed project would operate at optimal capacity by 2030. When operating at optimal capacity, the improved Berth 97-109 Container Terminal could handle approximately 1,551,000 Twenty-Foot Equivalent Units (TEUs) per year, which represents an annual throughput of approximately 856,906 containers. To accommodate the annual throughput of 1,551,000 TEUs, 234 ship calls and associated tugboat operations would be required (two tugs are required each for ship docking and undocking, for a total of four tugs per call or 936 tugboat operations per year). In addition, a total of 5,055 daily truck trips, and up to 817 annual round trip rail movements would be required. The details of each component of the proposed project are in the EIS/EIR.

Proposed Special Conditions

The proposed permit would include the standard conditions for the dredging/disposal of sediments that have been coordinated with USEPA in the past and the standard Section 10 conditions for activities in navigable waters of the U.S. No ocean disposal occurred under the first phase, nor is it being proposed for any material generated by minor maintenance dredging under the future phases.

For additional information please call Dr. Spencer D. MacNeil of my staff at (805) 585-2152. This public notice is issued by the Chief, Regulatory Division.



Source: POLA, 2003

Figure 1
Project Site and Vicinity
 Berth 97-109 Container
 Terminal Project EIS/EIR

CH2MHILL

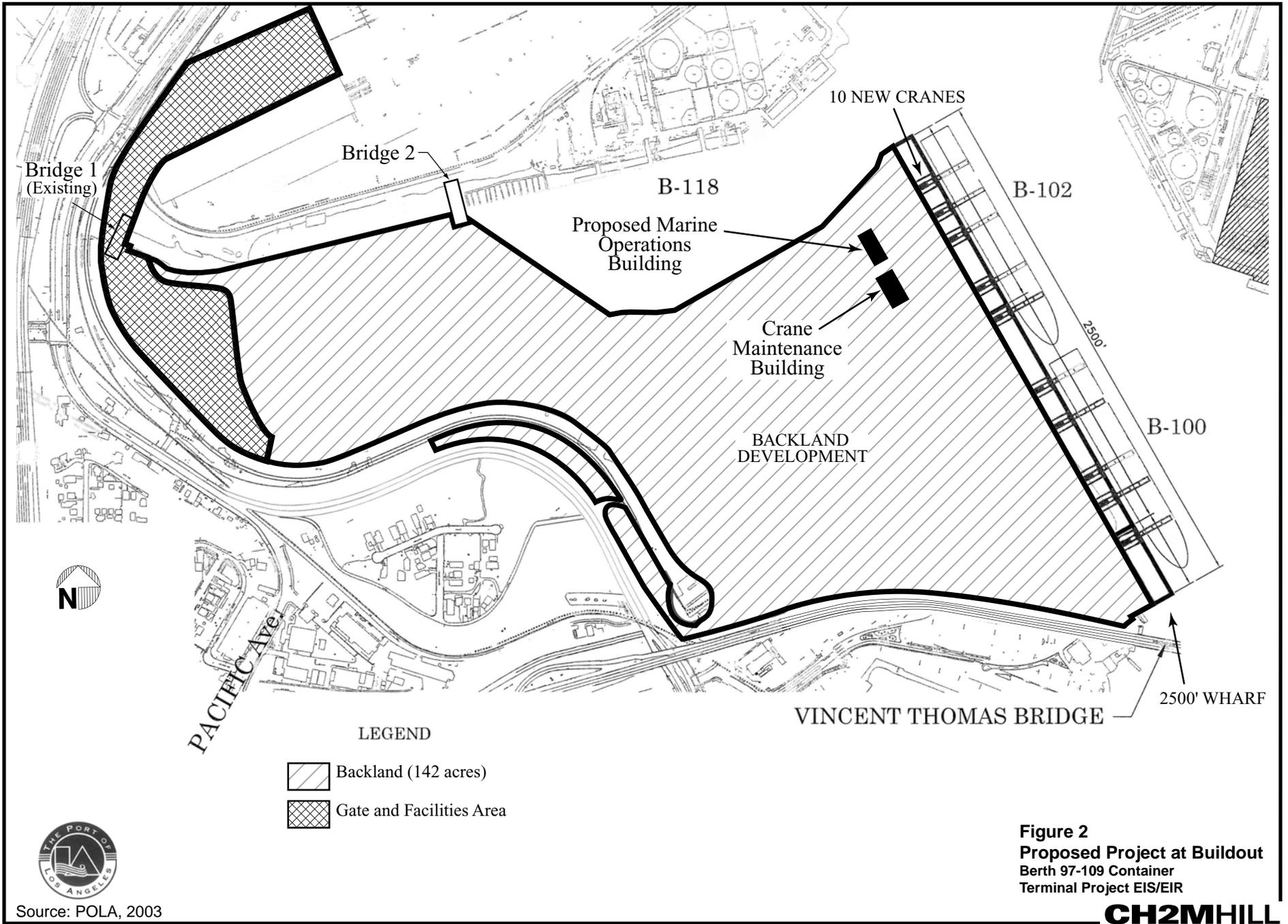


Figure 2
Proposed Project at Buildout
 Berth 97-109 Container
 Terminal Project EIS/EIR