

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT
RECORD OF DECISION FOR THE BERTHS 97-109 CONTAINER TERMINAL PROJECT
PORT OF LOS ANGELES, CALIFORNIA

1. Introduction:

a. Location: The Los Angeles Harbor Department's (LAHD's) proposed project would occur in the West Basin of the Port of Los Angeles (POLA), Los Angeles County, California, at Berths 97-109. The Berths 97-109 project area is more specifically located in the San Pedro District of POLA, and is roughly bordered by Vincent Thomas Bridge and Berth 95 to the south; Berths 121-131 [Yang Ming] Container Terminal to the north; Front Street and John S. Gibson Boulevard to the west; and the Turning Basin to the east (N33°45'-10", W118°16'30").

b. Brief Background and General Description: On April 19, 2002, the U.S. Army Corps of Engineers (USACE or Corps) issued a standard individual permit (Corps File No. 2001-01263-JLB) for the construction of a 1,200-foot-long concrete wharf at Berth 100 in the West Basin. Wharf construction was part of the first phase of three phases of an overall development plan. In June 2002, several environmental groups sued the Corps and LAHD asserting the Corps' environmental review prior to issuance of the permit violated the National Environmental Policy Act (NEPA). In February 2003, the parties entered into a Stipulation for Compromise Settlement and dismissal of the lawsuit with prejudice¹. As part of the settlement, the Corps agreed to prepare an Environmental Impact Statement (EIS) for all phases of the Berths 97-109 Container Terminal Project, and to revisit the 2002 permit terms and conditions following completion of the EIS. However, the parties agreed the 2002 permit and associated environmental review remained valid. Construction of the first phase of the plan was completed in 2003, and China Shipping Lines began operating the first phase of the proposed container terminal project in June 2004. The subject EIS serves as the project-specific EIS called for in the settlement agreement, and provides environmental analysis required for the Corps to revisit its 2002 permit decision. To reduce duplication of effort, the Corps and the LAHD jointly prepared an EIS/Environmental Impact Report (EIS/EIR).

The three phases (I-III) of the proposed project as evaluated in the EIS/EIR include the following project components:

- Dredging in the vicinity of Berths 100 and 102 (41,000 cubic yards [cy] of sediments)

¹ On March 6, 2003, the Superior Court of the State of California, Los Angeles District, approved a Stipulated Judgment memorializing the settlement agreement between the litigants and the LAHD to settle the State case. Subsequently, the LAHD and China Shipping negotiated with the litigants to amend the Stipulated Judgment. A compromise in the form of an Amended Stipulated Judgment (ASJ) was reached in March 2004. Among other things, the ASJ required the LAHD to prepare a project-specific Environmental Impact Report for all phases of the Berths 97-109 Container Terminal Project; not as part of any larger West Basin project or other project.

during Phase I in the vicinity of Berth 100, with possible minor maintenance dredging [less than 1,000 cy] during Phase II in the vicinity of Berth 102) and disposal of all dredged material at the Anchorage Road Upland Soil Storage Site, an upland disposal site, or if available and practicable, in an approved in-harbor Confined Disposal Facility (CDF)

- Constructing approximately 2,500 linear feet of concrete wharves at Berths 100 and 102 (1,200 feet constructed at Berth 100 during Phase I, 925 feet at Berth 102 during Phase II, and a 375-foot-long southern extension to Berth 100 wharf during Phase III), including discharging rock (204,000 cy) and clean fill (38,000 cy) into approximately 2.5 acres of waters of the U.S.² with 1.29 acres of waters of the U.S. filled during Phase I, installing approximately 1,427 concrete piles (652 during Phase I, 775 piles during Phases II and Phase III) and 950 pin/displacement piles (during Phase I for seismic stability), and constructing concrete wharf deck (all phases)
- Installing 10 A-frame cranes on the new concrete wharves at Berths 100 and 102 (4 cranes were installed under Phase I, 5 would be installed under Phase II, and 1 would be installed during Phase III)
- Relocating the Catalina Express Terminal including docks from Berth 96 to Berth 95 (south of the Vincent Thomas Bridge)
- Constructing two new bridge structures connecting Berths 97-109 Container Terminal and Berths 121-131 Container Terminal across the Southwest Slip (one bridge was constructed during Phase I, and the second bridge would be constructed during Phase II)
- Developing backlands, including terminal buildings, on 142 acres
- Improving transportation infrastructure in the vicinity of the existing terminal entrance (shared by the Berths 97-109 Container Terminal and the Berths 121-131 Container Terminal)
- Entering into a 40-year lease (2005 to 2045) with China Shipping Lines to operate the Berth 97-109 Container Terminal.

The proposed project would operate at optimal physical and operational capacity by 2030. When operating at optimal capacity, the Berth 97-109 Container Terminal could handle approximately 1,551,000 Twenty-Foot Equivalent Units (TEUs) per year, which represents an

² The LAHD submitted an April 2009 amendment to their June 2003 Department of the Army permit application, which, with respect to Phase III, specified that 2.4 acres of waters of the U.S. would be affected by the discharges of fill material; this is 1.2 acres more than the acreage for Phase III specified in their June 2003 application for a Department of the Army permit and evaluated in the EIS/EIR. Therefore, the total area of waters of the U.S. that would be affected by the equivalent fill material discharges evaluated in the EIS/EIR is 3.7 acres (instead of 2.5 acres). Briefly, 1.2 acres of waters of the U.S. would be permanently affected by shoreline fill (rock and clean fill) and another 1.2 acres of waters of the U.S. would be affected by discharges of clean fill and rock to construct dikes supporting the new concrete piles and wharf. The fills would affect a combination of soft-bottom and less common (10-30 percent) rock substrates underneath the water adjacent to the Catalina Express Terminal. As discussed in 3. and 7.b.(4) below, while the proposed increase in waters of the U.S. that would be affected by the same quantities of fill materials evaluated in the EIS/EIR was not considered substantial enough to warrant recirculation of the EIS/EIR, the USACE published a public notice on April 23, 2009 for a 15-day review to provide the public with an opportunity to review and comment on this change.

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 for each 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 discussed in the EIS/EIR.

In June 2003, LAHD submitted an application to the USACE for a Department of the Army permit for all three phases of the proposed project. In April 2009, the LAHD submitted additional information amending this application with updated quantities and drawings for Phases I-III, including that an additional 1.2 acres (3.7 acres total instead of 2.5 acres) of waters of the U.S. would be affected by discharges of rock and clean fill to construct the concrete wharf at Berth 100 (approximately 1,200 feet during Phases I and approximately 375 feet during Phase III). In June 2009, the LAHD submitted a second amendment clarifying that the possible minor maintenance dredging (less than 1,000 cy) evaluated for Phase II in the EIS/EIR is no longer a project component (considered unnecessary). The June 2003 permit application and April 2009 and June 2009 amendments are specific to the Federal action associated with constructing the proposed project (Phases I-III). The Federal action is limited to the work (including dredging³) and structures in and over navigable waters of the U.S. (approximately 15 acres) and discharges of fill into waters of the U.S. (approximately 3.7 acres of permanent fill) associated with constructing approximately 2,500 feet of concrete wharves at Berths 100 and 102; temporary access, staging, and storage within a 100-foot-wide portion of uplands along the shoreline necessary to undertake the in-water and over-water activities; installation of 10 A-frame cranes on the new wharves at Berths 100 and 102 that are partially stowed and would operate over navigable waters; construction of two bridges over the Southwest Slip (however, the bridges over navigable waters are subject to U.S. Coast Guard approval under the General Bridge Act of 1946, as amended, and are not subject to any of the USACE's statutory authorities); and redevelopment of 25 acres of land behind or adjacent to Berth 100 that would only occur as a result of the Federal action. The proposed modifications to and operations of the backlands associated with the subject berths, except for the redevelopment of the 25 acres behind or adjacent to Berth 100 as discussed above, do not require Federal action (issuance of a USACE permit in this case), but have been evaluated in the EIS/EIR to the extent they are within the Federal scope of analysis.

c. Purpose and Need: The USACE, in coordination with the applicant, determined the overall project purpose is to expand and optimize the cargo-handling efficiency and capacity of POLA at Berths 97-109 to address the need to optimize POLA lands and terminals for current and future containerized cargo handling. The applicant seeks to accomplish this purpose by constructing a marine terminal on approximately 142 acres at this location that would accommodate an annual throughput up to 1.551 million TEUs. As discussed in Section 1.1.3 of the EIS/EIR, even with the proposed container throughput increases and similar expansion and optimization of the other POLA container terminals, it is expected these terminals will not provide enough long-term capacity to fully meet the forecasted demand for container throughput. This deficit is expected to occur despite the recent downturn in cargo throughput

³ Although not part of the Federal action, the 41,000 cy of material dredged in the vicinity of Berth 100 during Phase I was taken to the Anchorage Road Upland Soil Storage Site.

due to global economic recession.

d. Environmental Requirements: Because the applicant's proposed project includes activities that would require USACE authorization, pursuant to section 404 of the Clean Water Act and section 10 of the River and Harbor Act, parallel environmental reviews were conducted by the USACE pursuant to NEPA and its implementing regulations (40 C.F.R. Part 1500 et seq. and 33 C.F.R. Part 325 Appendix B) and the LAHD as the lead agency under the California Environmental Quality Act (CEQA). For efficiency, a joint EIS/EIR was prepared. LAHD-hired consultants CH2MHill and CDM prepared the EIS portion of the Berths 97-109 Container Terminal Project EIS/EIR and the general conformity evaluation, respectively, under the USACE's direction and review and in coordination with the LAHD. The EIS was developed in compliance with NEPA and associated implementing regulations, and the general conformity evaluation has been completed pursuant to the General Conformity Rule at 40 C.F.R. Part 93 Subpart B and South Coast Air Quality Management District Rule 1901.

2. Decision

This documents my decision to authorize discharges of fill material into approximately 3.7 acres of waters of the U.S. pursuant to section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) and work (including dredging) and permanent structures in and over approximately 15 acres of navigable waters of the U.S. pursuant to section 10 of the River and Harbor Act (RHA) (33 U.S.C. 403), associated with constructing the Berths 97-109 Container Terminal in the West Basin of Los Angeles Harbor. I am selecting the Federal action associated with the applicant's proposed project as the Preferred Alternative, which includes dredging and minor filling of waters of the U.S. associated with constructing approximately 2,500 feet of concrete wharves at Berths 100 and 102. Therefore, I am selecting the Federal action associated with the proposed project, as identified and evaluated in the EIS/EIR as modified by the applicant's April 2009 and June 2009 amendments to their June 2003 Department of the Army permit application, which includes the following activities:

- i. Discharging fill materials into approximately 3.7 acres of waters of the U.S.⁴ and work and constructing permanent structures in and over approximately 15 acres of navigable waters of the U.S. to construct approximately 2,500 feet of concrete wharves at Berths 100 and 102, including dredging 41,000 cy of sediment in the vicinity of Berth 100; discharging clean fill (38,000 cy) and rock (204,000 cy)⁵ into waters of the U.S. to construct the approximately 1,200-foot-long Berth 100 wharf (1.29 acres of in-water fill) and the approximately 375-foot-long southern extension to this wharf (2.4 acres of in-

⁴ The 1.29 acres of fill discharged into waters of the U.S. under Phase I did not convert water to dry land; however, 1.2 acres of waters of the U.S. would be filled and converted to dry land under Phase III (to construct the approximately 375-foot southern extension to the concrete wharf at Berth 100) and another 1.2 acres adjacent to this fill would be affected under Phase III to construct submerged rock dikes under the new wharf extension.

⁵ Quantities have been updated as specified in LAHD's April 2009 amendment to their June 2003 application for a Department of the Army permit. Fill material quantities, however, match what was evaluated in the EIS/EIR. Also, per the LAHD's June 2009 amendment, the proposed project no longer includes maintenance dredging (less than 1,000 cy) in the vicinity of Berth 102.

water fill); installing approximately 1,427 concrete piles and 950 pin/displacement piles (latter for seismic stability) and constructing concrete wharf deck at Berths 100 and 102 (totaling approximately 2,500 linear feet); installing 10 A-frame cranes on the new concrete wharves at Berths 100 and 102; temporarily accessing, staging, and storing equipment and materials within a 100-foot-wide portion of uplands along the shoreline necessary to undertake the in-water and over-water activities; and redeveloping 25 acres of land behind or adjacent to Berth 100 as backlands that would only occur as a result of Federal action.

As noted previously, the U.S. Coast Guard is responsible for approving bridge construction over navigable waters, such as Southwest Slip, and therefore, the construction of the two bridges over the Southwest Slip is not subject to any of the USACE's statutory authorities. The mitigation measures to avoid and minimize impacts to the environment are summarized in the Executive Summary and are discussed in detail for each resource/issue impact subsection 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 certified EIR for the project, pursuant to the Mitigation Monitoring and Reporting Program (MMRP) for the project (LAHD, 2008⁶). Mitigation measures the USACE has determined enforceable and subject to our continuing program responsibility are included in the project's Final Section 404(b)(1) Alternatives Analysis (Appendix A) and this Record of Decision (ROD).

To implement this decision, the USACE will proffer a Department of the Army permit pursuant to section 10 of the RHA only as it pertains to Phase II, and will proffer a separate Department of the Army permit pursuant to section 10 of the RHA and section 404 of the CWA as it pertains to Phase III. These authorizations will pertain to the remaining proposed discharges of fill materials into approximately 2.4 acres of waters of the U.S.⁷ and to the work and permanent structures constructed in and over approximately 10 acres of navigable waters of the U.S.⁸ within the West Basin of Los Angeles Harbor, Los Angeles County, California, associated with constructing approximately 1,300 feet of concrete wharves at Berths 100 and 102 (recognizing that 1,200 linear feet of concrete wharf was constructed under Phase I pursuant to the 2002 permit – Corps File No. 2001-01263-JLB). In making my decision, I have reviewed the environmental consequences of the Preferred Alternative and reviewed all of the alternatives discussed in the EIS/EIR. As part of this decision, I have also revisited the 2002 permit terms and conditions and find them adequate. Therefore, no changes to the 2002 permit are warranted.

⁶ Los Angeles Harbor Department, 2008. Mitigation and Monitoring Reporting Program, Berth 97-109 [China Shipping] Container Terminal Project, Environmental Impact Report, 12 December, 53 pages

⁷ The 2002 permit (Corps File No. 2001-01263-JLB) authorized fill discharges into 1.29 acres of waters of the U.S. (i.e., Phase I of the proposed project). The proffered permits will only pertain to Phases II and III, with the permit for Phase III addressing the proposed remaining discharges into 2.4 acres of waters of the U.S. associated with constructing the approximately 375-foot-long southern extension to the concrete wharf at Berth 100.

⁸ Approximately 5 acres of navigable waters were affected by construction of the 1,200-foot-long concrete wharf at Berth 100 during Phase I; another approximately 10 acres of navigable waters of the U.S. would be affected by the Phase II and Phase III activities.

On September 19, 2001, the Los Angeles Regional Water Quality Control Board (LARWQCB) adopted Order No. 01-130 specifying Waste Discharge Requirements (WDRs) for construction of the 1,200-foot-long concrete wharf at Berth 100 (i.e., Phase I of the proposed project). Per a provision in Order No. 01-130, the LARWQCB specified this order fulfilled the requirements for a CWA section 401 Water Quality Certification for the project (i.e., Phase I of the proposed project). A CWA section 401 Water Quality Certification is not required for Phase II because it does not include any discharge of dredged or fill material or other recognized pollutant discharge into waters of the U.S. Because Phase III includes discharges of fill into waters of the U.S., a CWA section 401 Water Quality Certification will be required prior to issuance of a Department of the Army permit for Phase III.

The Los Angeles Board of Harbor Commissioners issued Coastal Development Permits (CDP) (Nos. 00-26, 02-26, and 09-02), dated October 29, 2001 (first 1,000 feet of the 1,200-foot-long concrete wharf at Berth 100) and July 11, 2002 (remaining 200 feet of the 1,200-foot-long concrete wharf at Berth 100) (i.e., Phase I of the proposed project), and dated May 4, 2009 for Phase II and part of Phase III, that all phases of the proposed project are consistent with the California Coastal Commission-approved Port Master Plan. However, Phase III proposed land use changes specific to approximately 8 acres of the upland area and the proposed 1.2 acres of shoreline fill require a Port Master Plan Amendment and a separate CDP prior to issuance of a Department of the Army permit for Phase III. The applicant expects the Port Master Plan Amendment and CDP for the remaining portion of Phase III will be considered for approval in November 2009.

3. National Environmental Policy Act Compliance

Details on the NEPA process and documentation are provided in 7.(b) below. Briefly, a Notice of Intent (NOI) to prepare an EIS/EIR was published in the Federal Register on June 25, 2003. Two simultaneous public scoping meetings were held on July 10, 2003, at the Peck Park Recreation Center in San Pedro (English language meeting) and the Wilmington Community Center in Wilmington (Spanish language meeting), to obtain additional 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 August 21, 2006, with a separate USACE public notice of the availability of the Draft EIS/EIR, 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 September 21, 2006 at Peck Park Community Center in San Pedro. Following substantial changes to the draft environmental document, the document was retracted and amended, and the USACE published a Notice of Availability for a Recirculated Draft EIS/EIR in the Federal Register on May 9, 2008. A public hearing on the Recirculated Draft EIS/EIR was held on June 5, 2008 at Banning's Landing Community Center in Wilmington to provide additional opportunity for the public to comment on the document. The public review period for this document ended on July 15, 2008. Responses were prepared to all comments received and considered in preparing the Final EIS/EIR. A Notice of Availability of the Final EIS/EIR was published in the Federal Register by the USACE on December 29, 2008 and by the U.S. Environmental Protection Agency (USEPA) on January 2, 2009. Comments on the Final EIS/EIR were received until February 2, 2009. Following receipt of additional information from the LAHD in April 2009 amending their June

2003 application for a Department of the Army permit, which disclosed that an additional 1.2 acres of waters of the U.S. would be affected by discharges of fill materials during Phase III, a public notice was published on April 23, 2009 for a 15-day review period to provide an opportunity for public review and comment on this change. This amendment specified that the fill quantities would be the same as those evaluated in the EIS/EIR, but that they would be discharged into 2.4 acres instead of 1.2 acres of waters of the U.S. Because the fill quantities are the same as previously evaluated and the additional area of waters occurs in a heavily industrialized portion of POLA's Inner Harbor that has been degraded by the adjacent Catalina Express Terminal (e.g., 10-30 percent of the soft-bottom substrate is covered by rock), dredging, and periodic maintenance activities, the USACE determined recirculation of the EIS was not necessary. As discussed in the public notice of the April 2009 amendment, while 1.2 acres would be lost through shoreline fill, the remaining 1.2 acres would be affected by submerged rock dikes, which studies have shown provide similar levels of biological functions than areas with soft-bottom substrate in a port setting. While the rock dike area is expected to provide similar levels of biological functions within a few years, the USACE will require LAHD purchase mitigation credits from the Bolsa Chica Mitigation Bank for this impact as well as for the 1.2 acre shoreline fill. With respect to the June 2009 amendment to their Department of the Army application for a permit submitted by LAHD, the USACE determined neither a public notice nor recirculation of the EIS/EIR was necessary, because this amendment clarified maintenance dredging is no longer part of the proposed project, which reduces the environmental impacts associated with the proposed project. All comments received on the Final EIS/EIR, including the draft general conformity determination, as well as on the public notice of the additional acreage of waters of the U.S. that would be affected, and responses to these comments are included in Appendix B to this ROD.

4. Alternatives Considered

The Recirculated Draft EIS/EIR initially considered eighteen alternatives, including the applicant's proposed project (see Section 2.5). Of these, ten alternatives (use of west coast ports outside southern California; expansion of terminals in southern California but outside the Los Angeles Harbor District; lightering; shallow dredge depth; liquefied natural gas terminal facility; off-site backlands alternatives; development of new landfills and terminals outside the Berths 97-109 terminal area and the adjoining West Basin area; other sites in the Los Angeles Harbor District; narrower wharves; and development and operation of a smaller terminal) were not carried forward for detailed analysis based on early determinations by the USACE in coordination with LAHD that they were not feasible, would be more environmentally damaging than the proposed project, or would not meet the overall project purpose (see Section 2.5.2). The proposed project and seven alternatives were carried forward in the Recirculated Draft EIS/EIR and Final EIS/EIR for detailed, co-equal analysis. The Preferred Alternative is the proposed project as modified by the applicant's April 2009 and June 2009 amendments to their June 2003 application for a Department of the Army Permit (i.e., fill discharges into 3.7 acres of waters of the U.S. and no maintenance dredging)⁹. Neither the No

⁹ The descriptions of the proposed project and seven alternatives have been revised herein to recognize that the originally proposed minor maintenance dredging (less than 1,000 cy) under Phase II is no longer a component of the proposed project or the associated Federal action. Moreover, for the descriptions of the proposed project and alternatives 3 and 6, which would add in-water fill to construct the

Project Alternative nor the No Federal Action Alternative (identified and evaluated in the EIS/EIR as Alternatives 1 and 2, respectively) would involve Federal action.

Preferred Alternative (applicant's proposed project as identified and evaluated in the EIS/EIR):

The Preferred Alternative is a new container terminal to be operated by China Shipping Lines at Berths 97-109. Key elements of the proposed project include constructing 2,500 feet of new concrete wharves at Berths 100 and 102; dredging (approximately 41,000 cy during Phase I), with the dredged material disposed of at the Anchorage Road Upland Soil Storage Site; discharges of clean fill and rock into approximately 3.7 acres of waters of the U.S. at Berth 100 associated with constructing the 2,500 feet of concrete-pile supported concrete wharves at Berths 100 and 102; installing 10 A-frame cranes on the wharves at Berths 100 and 102; constructing two bridges connecting Berths 97-109 Container Terminal with Berths 121-131 (Yang Ming) Container Terminal; developing backlands (142 acres); constructing terminal buildings; making improvements to the terminal entrance; and relocating the Catalina Express Terminal to Berth 95. The Preferred Alternative 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 and operation), 2015 (6 years after Phase II construction), and 2030 (almost 20 years after Phase III construction), respectively. Phase I activities were completed in 2003 and the container terminal has been operating since June 2004, consistent with the settlement agreement. The completed Berths 97-109 Container Terminal would have a maximum annual throughput capacity of approximately 1,551,000 TEUs (838,338 containers) reached by 2030. Annual ship calls at Berths 100 and 102 would peak at 234.

No Project Alternative (Alternative 1 as identified and evaluated in the EIS/EIR): Alternative 1 would utilize the terminal site constructed under Phase I for container storage. Because of this, Alternative 1 includes the Phase I construction activities, although the in- and over-water Phase I elements would not be used. Alternative 1 acknowledges the completion of Phase I activities but seeks to return to pre-Phase I conditions to the maximum extent practicable through abandonment of structures and fills rather than removing them, which could require additional Federal action.

Under the No Project Alternative, no further LAHD action or Federal action would occur. The LAHD would take no further action to construct and develop additional backlands, but construction of the existing 72 acres of backlands (completed as part of Phase I) is included in Alternative 1. Under this alternative, the four existing A-frame cranes would be removed, and the existing wharf at Berth 100 would cease to be used for ship berthing and container loading and unloading operations. The bridge constructed across the Southwest Slip during Phase I would be abandoned. The 1.29 acres of fill discharged into waters of the U.S. during construction of the Phase I terminal under the proposed project (as allowed under the settlement agreement and USACE 2002 permit), which was fully mitigated by applying mitigation credits, would remain in place under Alternative 1.

approximately 375-foot-long southern extension to the concrete wharf at Berth 100, the corrected fill area (3.7 acres instead of 2.5 acres) has been included herein.

Under the No Project Alternative, the site would operate as a 72-acre container backlands area by the Yang Ming Container Terminal under a revocable permit. Yang Ming would use this area as additional backlands to supplement the Berths 121-131 area. Containers would be transported between the two terminals via an internal road. Under the No Project Alternative, up to 457,100 TEUs from the Yang Ming Container Terminal could be stored on the 72 acres of backlands. The Yang Ming facility is presently berth limited. Under this alternative, the Yang Ming total throughput is assumed to remain the same with or without additional land at Berths 97-109. The additional land would allow Yang Ming to operate more wheeled operations versus a stacked operation. Wheeled operations are more efficient and cheaper than stacked, but terminals are often limited by their backlands area necessitating a certain amount of stacking. No ship calls would occur at Berths 97-109 under this alternative. Additionally, because the Berths 121-131 Container Terminal is berth limited, the use of Berths 97-109 backlands by Yang Ming would not result in additional ship, truck, or rail trips at the Berths 121-131 Container Terminal.

No Federal Action Alternative (Alternative 2 as identified and evaluated in the EIS/EIR):

Alternative 2 would utilize the terminal site constructed as part of Phase I for container storage and would further increase the backland area to 117 acres. Because of this, Alternative 2 includes the Phase I construction activities, although the in- and over-water Phase I elements would not be used. Phase I rock dike, clean fill, bridge, and Berth 100 wharf would be abandoned. Alternative 2 acknowledges the completion of Phase I activities but seeks to return to pre-Phase I conditions to the maximum extent practicable through abandonment of structures and fills rather than removing them, which could require additional Federal action.

The No Federal Action Alternative would not include additional terminal features that could only be implemented when a Federal permit or federal funding for either construction or operation were acquired. This alternative would not allow any new dredging, additional in-water fill, or new wharf construction (beyond what previously has been approved with the Channel Deepening Supplemental EIS/EIR) (USACE and LAHD, 2000).

However, under the No Federal Action Alternative, further development of backlands could occur at the project site, which does not require a Federal permit. The No Federal Action Alternative would allow construction and container storage use of all upland elements (existing lands and fill areas previously approved through permits or Channel Deepening) for backlands or other purposes on up to 117 acres, including 72 acres of existing backlands and 45 additional acres proposed to be developed as backlands similar to Phase II of the proposed project (25 acres of upland area behind or adjacent to Berth 100, primarily used by Catalina Express Terminal, would not be redeveloped under this alternative).

Under Alternative 2, the four existing A-frame cranes would be removed and the existing concrete wharf at Berth 100 would cease to be used for ship berthing and container loading and unloading operations. The bridge constructed during Phase I would be abandoned in place. The rock and clean fill discharged into 1.29 acres of waters of the U.S. during construction of the Phase I of the proposed project (as allowed under the USACE 2002 permit and settlement agreement), which was fully mitigated by applying mitigation offsets, would remain in place under Alternative 2.

Under Alternative 2, the site would operate as a container backlands area by the Yang Ming terminal under a revocable permit. The Berths 97-109 backlands would be used to sort and store containers, and containers would be transported between the two terminals (Berths 121-131 and Berths 97-109) by yard equipment along an internal road. The Yang Ming facility is presently berth limited. Under this alternative, total throughput of Yang Ming is assumed to remain the same with or without additional land at Berths 97-109. The additional land would allow Yang Ming to operate more wheeled operations versus a stacked operation. Wheeled operations are more efficient and cheaper than stacked, but terminals are often limited by their backlands area necessitating a certain amount of stacking. No ship calls would occur at Berths 97-109 under this alternative.

Under the No Federal Action, up to 632,500 TEUs from the Yang Ming Container Terminal could be stored on the 117 acres of backlands to improve efficiency at that terminal. Additionally, because the Berths 121-131 Container Terminal is berth limited, use of Berths 97-109 by Yang Ming would not result in additional ship, truck, or rail trips at the Berths 121-131 Container Terminal.

Reduced Fill - No New Wharf Construction at Berth 102 (Alternative 3 as identified and evaluated in the EIS/EIR): This alternative would be developed similar to the Preferred Alternative, except that 925 linear feet of wharf proposed at Berth 102 under the Preferred Alternative would not be constructed under Alternative 3. The total length of concrete wharf at the terminal would be approximately 1,575 feet (i.e., the existing 1,200 feet of Berth 100 [already constructed during Phase I and officially put into operation on June 21, 2004] and the proposed approximately 375-foot-long southern extension of the 1,200-foot-long wharf at Berth 100). In addition to the 41,000 cy of dredge material that was disposed of at the Anchorage Road Upland Soil Storage Site and the placement of dike rock (88,000 cy) and clean fill (14,000 cy) into 1.29 acres of waters of the U.S. under Phase I, the southern extension of the wharf at Berth 100 would require discharging 116,000 cy of rock dike and 24,000 cy of clean fill behind the dike into an additional 2.4 acres of waters of the U.S. (as noted above, 1.2 acres of water and underlying substrate would be filled to create dry land and the predominantly soft-bottom substrate underlying the other adjacent 1.2 acres would be covered with submerged rock). As a result of no wharf construction at Berth 102, only one additional A-frame crane would be installed (on the southern wharf extension) for a total of five cranes at the Berths 97-109 Container Terminal (four are present currently on the Berth 100 wharf, which were installed under Phase I). The total acreage of backlands under this alternative would be 142 acres, the same as the Preferred Alternative. Because there would be less wharf length/capacity under this alternative, total throughput would be less than the Preferred Alternative, with an expected 936,000 TEUs by 2030. This would translate into 130 annual ship calls and 520 associated tugboat trips at Berths 97-109. In addition, this alternative would result in up to 2,833 daily truck trips, and up to 493 annual round-trip rail movements. Development of all other landside terminal components would be identical to the Preferred Alternative.

Reduced Fill - No South Wharf Extension at Berth 100 (Alternative 4 as identified and evaluated in the EIS/EIR): This alternative would be similar to the Preferred Alternative, except the proposed 375-foot-long southern extension of the Berth 100 concrete wharf would not be constructed and 12 of the 25 acres of backland behind or adjacent to Berth 100 would not be redeveloped; the other 13 acres would be redeveloped under Phase III to better match

backland capacity with wharf capacity. The total length of concrete wharf at the terminal would be approximately 2,125 feet. As part of the Phase I construction, 1,200 feet of wharf was constructed at Berth 100, which included discharging rock and clean fill into 1.29 acres of waters of the U.S., and the Berth 100 terminal was officially put into operation on June 21, 2004. Phase I also included dredging 41,000 cy of material in the vicinity of Berth 100, and this material was placed at the Anchorage Road Upland Soil Storage Site. Alternative 4 would include constructing an additional approximately 925 feet of concrete wharf at Berth 102, to extend north of the existing concrete wharf at Berth 100. No additional rock dike or fill would be required (the Channel Deepening Project constructed the rock dike in this area). Five additional A-frame cranes would be installed along the wharf at Berth 102 in Phase II for a total of nine cranes at the Berths 97-109 Container Terminal (four of the five new cranes for the Berth 100 wharf were installed under Phase I of the Preferred Alternative). Under Alternative 4, total throughput would be 10 percent less than the Preferred Alternative, with an expected 1,392,000 TEUs by 2030. This would translate into 208 annual ship calls and 832 associated tugboat trips. In addition, Alternative 4 would result in up to 4,472 daily truck trips and up to 734 annual round-trip rail movements. With 130 acres of backlands, compared to the Preferred Alternative, 12 fewer acres of backland would be developed under Alternative 4, allowing the Catalina Express Terminal to remain at Berth 96.

Reduced Construction and Operation - Phase I Construction Only (Alternative 5 as identified and evaluated in the EIS/EIR): Under Alternative 5, the Phase I container terminal (completed in 2003) would operate at levels similar to today (2009). The total acreage of backlands under Alternative 5 would be 72 acres. Existing equipment and facilities on the terminal site (constructed during Phase I of the Preferred Alternative) would remain, including four A-frame cranes along the wharf, the single bridge connecting Berths 121-131 to Berths 97-109, the paved backlands used for container storage, terminal and gate buildings, mobile equipment used to handle containers, 1,200 linear feet of concrete wharf at Berth 100, and the 1.29 acres of in-water fill (88,000 cy of rock and 14,000 cy of clean fill) associated with the wharf construction. Under this alternative, however, Phase II and Phase III construction elements (under the Preferred Alternative) would not be constructed, including the Berth 102 concrete wharf and the southern extension of the Berth 100 concrete wharf (and associated discharges of fill into 2.4 acres of waters of the U.S.), the six additional cranes, the second bridge connecting Berths 97-109 and Berths 121-131, and 70 additional acres of backlands. Under Alternative 5, China Shipping Lines would operate the terminal under a 40-year lease. TEU throughput would be approximately 60 percent less than the Preferred Alternative, with an expected total of 630,000 TEUs by 2030. This would translate into 104 annual ship calls at Berths 97-109 and 416 associated tugboat trips. In addition, this alternative would result in up to 1,796 daily truck trips, and up to 332 annual round-trip rail movements.

Omni Cargo Terminal (Alternative 6 as identified and evaluated in the EIS/EIR): The Omni Cargo Terminal Alternative would convert the existing site into an operating omni cargo-handling terminal, similar to the Pasha Stevedoring & Terminals L. P. (Pasha) currently operating at Berths 174-181. The primary objective of the Omni Cargo Terminal Alternative is to provide increased and diversified cargo-handling capabilities by expanding and improving existing terminal facilities. The omni terminal would handle containers and Roll-On-Roll-Off and break-bulk commodities. Roll-On-Roll-Off goods include automobiles. Break-bulk

commodities include factory equipment, forest products, bundles of steel, and other bulky material.

This alternative would develop approximately 2,500 feet of concrete wharves (including the 1,200-foot concrete wharf at Berth 100 wharf completed as part of Phase I, the approximately 925-foot-long concrete wharf at Berth 102 as part of Phase II, and the approximately 375-foot-long southern extension to the Berth 100 wharf as part of Phase III), install a total five new A-frame cranes (one would be added to the existing four A-frame cranes installed as part of Phase I), and develop backlands occupying 142 acres (the same acreage as under the Preferred Alternative). As with the Preferred Alternative, which would also construct 2,500 feet of wharves, this alternative would discharge fill into approximately 3.7 acres of waters of the U.S.

Annual throughput volumes at the proposed omni terminal would vary by commodity: 506,467 container TEUs; 17,987 automobile TEUs; and break-bulk commodities totaling 5,159,570 tons. Under this alternative, 364 annual ship calls and 1,456 tugboat trips would be required. In addition, this alternative would result in up to 3,982 truck trips, and up to 245 annual round-trip rail movements.

A new 250,000- to 350,000- ft² transit storage shed would be constructed onsite, as well as new entrance and exit gate facilities, heavy lift pad, utility relocations, and possible realignment of existing railroad tracks. Development of this alternative would take place proportionately over three phases similar to those of the Preferred Alternative.

Demolition and/or reconstruction of existing backlands facilities such as exit gate, maintenance building, operations building, extensive filling, grading, fire protection system, storm drains, sewers, lighting, electrical, and paving would be completed to match the needs of the proposed omni terminal.

Nonshipping Use (Alternative 7 as identified and evaluated in the EIS/EIR): The Nonshipping Use Alternative would convert the existing site into a "Regional Center," which would generally be considered as a mixed-use center with major retail tenants serving as "anchor" uses; office park uses; and light industrial uses supporting maritime activities such as machine shops, marine vessel chandlers, and marine supply stores¹⁰. In addition, a public floating dock would be constructed to support on-site retail and restaurant uses. This dock would be constructed to provide service and access to smaller recreational watercraft (such as small boats, wave runners, and kayaks) and would require 10 piles to anchor the dock and connect it to the existing dock.

5. Basis for the Decision

In making my decision, I have reviewed section 404 of the CWA and the USACE's

¹⁰ A Nonshipping Use Alternative normally would not be evaluated in detail in an EIS/EIR for a POLA project, because such use of the site would not be consistent with the applicant's objectives, with the maximum utilization of POLA lands for port-related uses, with the Port Master Plan for the project site, or with LAHD's 2002 Regulations and Guidelines for Development Projects. However, the Nonshipping Use Alternative was included in the EIS/EIR for detailed analysis pursuant to the terms of the ASJ.

implementing regulations (33 C.F.R. Parts 320-332), the CWA Section 404(b)(1) Guidelines (40 C.F.R. Part 230 et seq.), the Berths 97-109 Container Terminal Final EIS/EIR, the final general conformity applicability analysis (Appendix C to this ROD), and all comment letters received in response to the Recirculated Draft and Final versions of the environmental document, including the draft general conformity determination, and the public notice published on April 23, 2009 pertaining to the increase in waters of the U.S. that would be affected by the fill discharges.

The public participation process was integral to making my decision. The comments suggested alternatives to be considered, document corrections, and issues to be further addressed. Comments received on the Recirculated Draft EIS/EIR and corresponding public notice along with detailed responses are contained in the Final EIS/EIR. Comments received on the Final EIS/EIR, including the draft general conformity determination, and on the corresponding public notices for the project (Corps File No. 2003-1029-SDM), and responses to these comments, are contained in Appendix B to this ROD, and the Final Section 404 (b)(1) Alternatives Analysis is included as Appendix A to this ROD.

a. Evaluation of Alternatives: (1) No Project Alternative: While Alternative 1 would be less environmentally damaging from an aquatic ecosystem perspective than the Preferred Alternative (no additional discharges of fill into waters of the U.S., other wharf-associated work or structures, or second bridge over the Southwest Slip), it would result in no increase in container throughput at Berths 97-109. The existing 1,200-foot-long concrete wharf at Berth 100, associated in-water fill (1.29 acres), and bridge over the Southwest Slip would be abandoned, the four A-frame cranes would be removed, and the 72 acres of existing backlands would be used by the Berths 121-131 [Yang Ming] Container Terminal for container storage to increase the efficiency (but not throughput) of that terminal. Given the long-term forecasted increases in cargo demand in POLA and the recognized need to optimize if not maximize existing terminal capacity, which would still result in a capacity shortfall, this alternative would not be consistent with the overall project purpose.

(2) No Federal Action Alternative: While it would be less environmentally damaging from an aquatic ecosystem perspective than the Preferred Alternative (no additional discharges of fill into waters of the U.S., other wharf-associated work or structures, or second bridge over the Southwest Slip), Alternative 2 would result in no increase in container throughput at Berths 97-109. The existing 1,200-foot-long concrete wharf at Berth 100, associated in-water fill (1.29 acres), and bridge over the Southwest Slip would be abandoned, the four A-frame cranes would be removed, and the 45 acres of landfill created by the Channel Deepening Project would be developed into additional backlands. The 117 acres of backlands (i.e., 72 acres already in use and the additional 45 acres from the Channel Deepening Project) would be used by the Berths 121-131 [Yang Ming] Container Terminal for container storage to increase the efficiency (but not throughput) of that terminal. Given the long-term forecasted increases in cargo demand in POLA and the recognized need to optimize if not maximize existing terminal capacity, which would still result in a capacity shortfall, this alternative would not be consistent with the overall project purpose.

(3) Reduced Fill - No New Wharf Construction at Berth 102: While it would be slightly less environmentally damaging from an aquatic ecosystem perspective than the Preferred

Alternative, by not installing approximately 560 concrete piles¹¹ to construct an approximately 925-foot-long concrete wharf at Berth 102, Alternative 3 would result in approximately 40 percent less container throughput than the Preferred Alternative. Given the long-term forecasted increases in cargo demand in POLA and the recognized need to optimize if not maximize existing terminal capacity, which would still result in a capacity shortfall, this alternative would not be consistent with the overall project purpose.

(4) Reduced Fill - No South Wharf Extension at Berth 100: While it would be less environmentally damaging from an aquatic ecosystem perspective than the Preferred Alternative, by not discharging rock and clean fill into an additional 2.4 acres of water of the U.S. associated with constructing the approximately 375-foot-long southern extension to the 1,200-foot-long concrete wharf at Berth 100, it would result in 10 percent less container throughput than the Preferred Alternative. This lower throughput would be the result of not constructing an additional minor shoreline fill (1.2 acres) and wharf extension with submerged rock dike (1.2 acres) in a heavily industrialized portion of POLA (West Basin) recognized by several resource agencies for its lower biological functions and values (Inner Harbor). Given the long-term forecasted increases in cargo demand in POLA and the recognized need to optimize if not maximize existing terminal capacity, which would still result in a capacity shortfall, this alternative would not be consistent with the overall project purpose, particularly in light of the minor aquatic habitat impact that would be avoided.

(5) Reduced Construction and Operation - Phase I Construction Only: While it would be less environmentally damaging from an aquatic ecosystem perspective than the Preferred Alternative, by not undertaking any additional in-water or over-water activities, it would result in approximately 60 percent less container throughput than the Preferred Alternative. Given the long-term forecasted increases in cargo demand in POLA and the recognized need to optimize if not maximize existing terminal capacity, which would still result in a capacity shortfall, this alternative would not be consistent with the overall project purpose.

(6) Omni Cargo Terminal: Alternative 6 would result in comparable environmental damage from an aquatic ecosystem perspective than the Preferred Alternative (both would discharge fill into approximately 3.7 acres of waters of the U.S. and would include work and permanent structures in and over approximately 15 acres of navigable waters of the U.S.), but it would result in approximately 67 percent less container throughput than the Preferred Alternative. Given the long-term forecasted increases in cargo demand in POLA and the recognized need to optimize if not maximize existing terminal capacity, which would still result in a capacity shortfall, this alternative would not be consistent with the overall project purpose.

(7) Nonshipping Use: While it would be less environmentally damaging from an aquatic ecosystem perspective than the Preferred Alternative (i.e., it would not involve any additional fill discharges into waters of the U.S. but would require 10 concrete piles to anchor a public

¹¹ As discussed in Appendix A, the installation of concrete piles would not constitute a discharge of fill into waters of the U.S. subject to section 404 of the Clean Water Act in this case. Nevertheless, the USACE recognizes this activity would result in some adverse effects to the aquatic ecosystem in the vicinity of Berths 100-102.

floating dock and connect the dock to the existing wharf), it would not provide any container throughput at Berths 97-109. Given the long-term forecasted increases in cargo demand in POLA and the recognized need to optimize if not maximize existing terminal capacity, which would still result in a capacity shortfall, this alternative would not be consistent with the overall project purpose.

b. Identification of the Environmentally Preferable Alternative: (1) 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 fill materials into an additional 2.4 acres of the West Basin in the vicinity of Berth 100 and further impacting the in-water and over-water area at Berth 100 and Berth 102, the No Federal Action Alternative (Alternative 2) is the Environmentally Preferable Alternative.

(2) The reason for selecting the Preferred Alternative over the No Federal Action Alternative (Alternative 2) is based on the ability to achieve the overall project purpose of increasing and optimizing the cargo-handling efficiency and capacity of POLA at Berths 97-109 in the West Basin to address the need to optimize POLA lands and terminals for current and future containerized cargo handling. With the implementation of the No Federal Action Alternative, the overall project purpose would not be met (i.e., it would not optimize this terminal to meet anticipated long-term forecasted containerized cargo handling needs). While it would be less environmentally damaging from an aquatic ecosystem perspective than the Preferred Alternative (no additional discharges of fill into waters of the U.S., other wharf-associated work or structures, or second bridge over the Southwest Slip), it would result in no container throughput increase at Berths 97-109; instead, as noted, it would only provide some container storage (approximately 630,000 TEUs) for Berths 121-131 [Yang Ming] Container Terminal, which would increase the efficiency (but not the capacity) of that terminal. Given the long-term forecasts for cargo demand in POLA¹² and the recognized need to optimize if not maximize existing terminal efficiency and capacity, which would still result in a capacity shortfall, the No Federal Action Alternative would not be consistent with the overall project purpose, particularly considering the minor acreage and quality of the aquatic habitat that would be affected or lost. In contrast, the Preferred Alternative would provide the most capacity and efficiency at the Berths 97-109 Container Terminal, and would be consistent with the overall project purpose. 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.

6. 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

¹² It is important to note that while the current global economic recession has resulted in a downturn in cargo throughput, long-term forecasts are for substantial cargo growth at POLA that would exceed terminal physical and operational capacity.

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 December 2008-certified EIR, pursuant to the project's MMRP (LAHD, 2008). Mitigation measures the USACE has determined enforceable and subject to our continuing program responsibility are included in the Final Section 404(1) Alternatives Analysis (Appendix A) and this ROD (see 7.c.(10)).

7. Findings

a. Status of Other Authorizations and Legal Requirements: (1) Water Quality Certification: On September 19, 2001, the LARWQCB issued Order No. 01-130 specifying WDRs for construction of a 1,200-foot-long concrete wharf at Berth 100 (i.e., Phase I of the proposed project). This order included a provision specifying it also fulfilled the requirements for CWA section 401 Water Quality Certification for the project (i.e., Phase I). A CWA section 401 Water Quality Certification is not required for Phase II, which would not include any discharge of dredged or fill material or other pollutant into waters of the U.S. However, the LAHD will need to obtain a CWA Section 401 Water Quality Certification prior to the issuance of a Department of the Army permit for Phase III activities, which include discharges of fill into waters of the U.S.

(2) Coastal Zone Management Act (CZMA) Consistency Determination: On October 29, 2001, the Los Angeles Board of Harbor Commissioners issued a CDP (00-26) for the first 1,000 feet of the 1,200-foot-long concrete wharf at Berth 100, and on July 11, 2002, they issued a separate CDP (02-26) for the remaining 200 feet of this wharf, following California Coastal Commission approval of a Port Master Plan Amendment. On May 4, 2009, the Los Angeles Board of Harbor Commissioners issued CDP 09-02 for Phase II and most of Phase III (except approximately 8 acres of upland redevelopment for backlands and the 1.2 acres of shoreline fill). Therefore, Phase II has received the necessary approval to begin, but a Master Plan Amendment and CDP will be required for the remaining Phase III activities, pursuant to the California Coastal Commission-approved Port Master Plan for the Port of Los Angeles, before a Department of the Army permit can be issued for Phase III. According to the applicant, the Master Plan Amendment and CDP for the remaining portion of Phase III are expected to be considered for approval in November 2009.

(3) Compliance with Section 106 of the National Historic Preservation Act (NHPA): The latest version of the National Register of Historic Places has been consulted and this site is not listed. As discussed in the EIS/EIR for the Berths 97-109 Container Terminal Project, 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. The only response received from a tribal contact was 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) was included in the EIS/EIR that includes archaeological resource monitoring. It specifies that prior to beginning construction, the LAHD shall meet with applicable Native American Groups, including the Gabrielino/Tongva Tribal Council, to identify areas of concern. A trained archaeologist shall monitor construction at identified areas. In addition to monitoring, a treatment plan shall be developed in conjunction with the Native American Groups to establish the proper way of extracting and handling all artifacts in the event of an archaeological discovery. This review constitutes the extent of my cultural resources investigations, and I am otherwise unaware of the presence of such resources.

(4) Compliance with the Federal Endangered Species Act: As discussed in Section 3.3 of the EIS/EIR and in the Final Section 404(b)(1) Alternatives Analysis (Appendix A), there is no nesting or breeding habitat or high quality foraging habitat for any federally listed species in the vicinity of the project area. There have been a few observations of California brown pelican and California least tern in the West Basin, which is a highly industrialized area within POLA, but any individuals of either species passing through the West Basin during construction of the proposed project could easily forage in other portions of the West Basin or higher quality foraging habitat elsewhere in the Los Angeles Harbor, and no effects to either species are anticipated. Consultation with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act Section is therefore not required.

(5) Compliance with the Magnuson-Stevens Fishery Conservation and Management Act: The April 30, 2008 joint public notice for the Recirculated Draft EIS/EIR initiated Essential Fish Habitat (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 3.7 acres of open water and soft-bottom habitat to hard substrate habitat and landfill to construct the wharves (as noted, Phase I of the proposed project, which included 1.29 acres of the approximately 3.7 acres of in-water fill, was constructed and operating by 2004). The LAHD 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). The Phase I impacts to marine habitat were fully mitigated by the LAHD's use of available Inner Harbor mitigation credits, pursuant to the Inner Harbor Memorandum of Understanding, which was executed in 1984 by the LAHD, NMFS, U.S. Fish and Wildlife Service, and California Department of Fish and Game to account for marine habitat gains and losses in Los Angeles Harbor (the Inner Harbor portion in particular). For the Phase III in-water fills, the LAHD proposed to fully mitigate additional marine habitat and open water losses by purchasing equivalent credits available through the Bolsa Chica 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 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 Bank¹³. They also recommended that if maintenance dredging were needed 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 USACE responded to NMFS that their conservation recommendation would be included in any permit issued by the USACE for the proposed project or an alternative. Following receipt of additional information from LAHD in April 2009 amending their June 2003 application for a Department of the Army permit, the USACE, on April 23, 2009, published a public notice of the increase in acreage of waters of the U.S. and EFH that would be affected by fill discharges and requested reinitiation of EFH consultation. On May 6, 2009, the NMFS responded by E-mail that additional mitigation credits could offset the increased proposed loss of marine habitat, and that they have no additional conservation recommendations. On June 3, 2009, the USACE sent another E-mail to NMFS that maintenance dredging is no longer a project component, and therefore, a Caulerpa survey is unnecessary, but the LAHD would be required to purchase sufficient mitigation credits (from the Bolsa Chica Mitigation Bank) to offset the aquatic habitat losses. On June 11, 2009, NMFS responded by E-mail agreeing that a Caulerpa survey is not necessary because maintenance dredging is no longer part of the project.

(6) Compliance with Section 176(c) of the Clean Air Act: The requested USACE permit to authorize work and structures in navigable waters of the U.S. and discharges of fill material into waters of the U.S. has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. The Final EIS, which included a draft general conformity determination, was published on January 2, 2009 for a 30-day review. The draft general conformity determination was for the Federal action associated with the applicant's proposed project, including all emissions resulting from the in-water and over-water construction activities, those associated with temporary staging, storage, and access within 100 feet of the shoreline needed to complete the in-water and over-water activities, and those associated with redeveloping 25 acres behind or adjacent to Berth 100 that would only occur with Federal action. Other indirect construction emissions, such as backland development (except the 25 acres noted), and any later indirect emissions from operations of any of the facilities expected to be constructed are outside the USACE's continuing program responsibility and cannot be practicably controlled by the USACE.

Only one letter was received that included comments pertaining to the draft general conformity determination provided in the Final EIS. It was submitted by the Natural Resources Defense Council (NRDC). The NRDC stated their concern that the South Coast Air Basin would not attain the one-hour ozone standard by 2010. However, this standard no

¹³ This is more correctly referred to as the Outer Harbor Memorandum of Agreement, which was executed in 1997 by the LAHD, the California Department of Fish and Game, the NMFS, and the U.S. Fish and Wildlife Service, to address marine habitat gains and losses in the Los Angeles Harbor (the Outer Harbor portion in particular).

longer applies because it was revoked effective June 15, 2005, and the District Court for the D.C. Circuit on June 8, 2007 clarified that it was not the intention of the related decision on December 22, 2006 by the U.S. Court of Appeals for the District of Columbia¹⁴ to establish a requirement that areas continue to demonstrate conformity under the one-hour ozone National Ambient Air Quality Standard (NAAQS) for anti-backsliding purposes; see proposed rule at 74 FR 2936. NRDC also asserted there was no demonstration that the Federal action's construction emissions were included in the emissions inventory for the approved SIP/AQMP (1997/1998), so the Federal action had not demonstrated conformity. However, the emissions inventories in the SIPs include substantial, region-wide construction and operational emissions and account for growth of emissions sources, including those at the POLA/POLB complex, over time (out to 2020 in the approved SIP). In addition, USEPA recently clarified¹⁵ that the currently approved eight-hour ozone nonattainment classification is Severe-17 for the South Coast Air Basin. The general conformity *de minimis* thresholds used in a general conformity applicability analysis should use those thresholds identified in 40 C.F.R. Part 51, Subpart W (as adopted by SCAQMD in Rule 1901) for the severe classification. Specifically, the applicable NO_x and VOC thresholds are 25 tons per year. Using these thresholds, the general conformity applicability analysis demonstrates that the Federal action's NO_x and VOC emissions are less than *de minimis* thresholds, and less than 10 percent of the regional emissions in the approved SIP. Therefore, no additional general conformity evaluation is necessary because the general conformity requirements do not apply to the Federal action. The general conformity applicability analysis has been included as Appendix C to this ROD.

b. Public Involvement: (1) The USACE, as the Lead Agency under NEPA, and the applicant, as the Lead Agency under CEQA, published a joint NOI/NOP to prepare an EIS/EIR for the proposed project on June 25, 2003. The USACE published and distributed the same information simultaneously on its public notice web page. In addition, two simultaneous public scoping meetings were held on July 10, 2003, one at the Peck Park Recreation Center in San Pedro (English language meeting) and the other at Wilmington Community Center in Wilmington (Spanish language meeting), to obtain additional project-related input from the public. Comments were received until December 10, 2003. More than 50 public comments were received from agencies, organizations, and individuals during the review period that were considered in preparing the Draft EIS/EIR.

(2) A Notice of Availability of the Draft EIS/EIR for review and comment was published in the Federal Register on August 21, 2006. The USACE published simultaneously a separate public notice of the same, as well as notice of a public hearing to solicit comments from the public and a notice of the receipt of an application for a Department of the Army permit (as noted above, the original application was received in June 2003). In addition, approximately 200 copies of the Draft EIS/EIR were distributed to agencies, organizations, individuals, and POLA tenants and were made available to four public libraries in Wilmington and San Pedro as well as the applicant's office. Furthermore, postcards in English and Spanish were mailed to all addresses in San Pedro and Wilmington. The document was also posted on the applicant's

¹⁴ South Coast Air Quality Management District, et al., v. EPA, 472 F.3d 882 (D.C. Cir. 2006).

¹⁵ U.S. EPA (J. Wehling, A. Stern, W. Tax, J. Kelly, and P. Amato), personal communication with USACE (S. MacNeil), Los Angeles Harbor Department (R. Appy and L. Maun-DeSantis), and CDM (J. Pehrson & G. Siple). June 25, 2009.

website: http://www.portoflosangeles.org/environmental_pn.htm, with the public notice posted on the USACE's website: <http://www.spl.usace.army.mil/regulatory/POLA.htm>. Electronic copies of the Draft EIS/EIR were made available free of charge to all interested parties, and hard copies were distributed to all local community groups (the Port Community Advisory Committee or PCAC, Neighborhood Councils, and Homeowner's Associations). A public hearing to solicit comments on the project Draft EIS/EIR was held on September 21, 2006 at the Peck Park Recreation Center in San Pedro. Following substantial changes to the environmental document, the document was retracted and amended, and the USACE published a Notice of Availability for a Recirculated Draft EIS/EIR in the Federal Register on May 9, 2008 for public review until June 30, 2008, which was subsequently extended until July 15, 2008. Similar noticing by the USACE and applicant occurred as for the Draft EIS/EIR, with approximately 200 copies of the document sent to various agencies, organizations, individuals, and POLA tenants, and the document also being made available at local libraries, the LAHD's Environmental Management Division office, and an electronic version of it posted on POLA's website. A public hearing on the Recirculated Draft EIS/EIR was held on June 5, 2008 at Banning's Landing Community Center in Wilmington to provide additional opportunity to solicit public input on the document. A total of 51 comment letters were received, and responses to all comments, including those provided during the public hearing, were prepared and considered fully in preparing the Final EIS/EIR.

(3) A Notice of Availability of the Final EIS/EIR was published in the Federal Register on January 2, 2009 for a 30-day review (it was published by USEPA on January 2, 2009, and the USACE published it on December 29, 2008). The USACE published simultaneously a public notice of the same. In addition, approximately 50 hard copies of the Final EIS/EIR and 150 electronic copies of the Final EIS/EIR on CD-ROM were distributed to agencies, organizations, individuals, and POLA tenants and were made available to four public libraries in Wilmington and San Pedro as well as the LAHD's office. Furthermore, postcards in English and Spanish were mailed to all addresses in San Pedro and Wilmington. The document was also posted on the applicant's website: http://www.portoflosangeles.org/environmental_pn.htm, with the public notice posted on the USACE's website: <http://www.spl.usace.army.mil/regulatory/POLA.htm>. Electronic copies of the Final EIS/EIR were made available free of charge to all interested parties. Comments were received until February 2, 2009. The USACE received substantive comment letters from the USEPA, the NRDC, and the City of Riverside. Briefly, the USEPA letter requested additional measures to mitigate disproportionate and highly adverse effects on minority and/or low-income communities. As discussed in Sections 3 and 4 of the EIS/EIR, all practicable mitigation has been evaluated, and pursuant to the MMRP, will be implemented, maintained, and monitored by the LAHD as the local agency with continuing program responsibility over the project throughout its life. The USEPA also stated their belief that Alternative 4 (no southern extension of the Berth 100 wharf) would be the least environmentally damaging practicable alternative. We believe the 10 percent less container throughput under Alternative 4 would not meet the overall project purpose that emphasizes the need to increase and optimize terminals to meet long-term forecasted increases in containerized cargo demand. Achieving this 10 percent additional capacity would be at the cost of filling a small portion (1.2-acre loss of open water and underlying predominantly soft-bottom substrate and another 1.2 acres of predominantly soft-bottom substrate affected by submerged rock dikes and clean fill) of Los Angeles Harbor (Inner Harbor) recognized by several resource agencies as having lower

biological functions and that is adjacent to the continually active Catalina Express Terminal. Clearly, addressing this capacity shortfall elsewhere would result in similar if not more impacts to the aquatic ecosystem. NRDC's letter also included several comments. They were concerned about the applicant's lack of progress in reducing dependence on fossil fuels, but developing alternative technologies is a complex and costly enterprise best addressed on a port-wide versus a project-by-project basis. NRDC also expressed concern about the project's health risk, but as shown in the second health risk analysis (pertaining to the 70-year period beginning in 2009), these risks can be mitigated below significance thresholds considering implementation of mitigation measures beyond those required by the ASJ for the first phase of the project. Their concern about the project's approach to assessing and mitigating Greenhouse Gas emissions is noted, but the approach used is consistent with AB 32 and the applicant is working on a comprehensive Climate Change Action Plan that would address port-wide operations. With respect to NRDC's comments pertaining to our draft general conformity determination, as addressed in 7.a.(6), the USACE has determined that the general conformity requirements do not apply to the Federal action because the total of direct and indirect emissions of all criteria pollutants and precursors caused by the Federal action would be less than the respective *de minimis* threshold levels and less than 10 percent of the regional emissions for the applicable pollutants. The City of Riverside's letter reiterated previously expressed concerns about the project generating additional rail trips that would result in adverse environmental effects within their jurisdiction (such as traffic delays, delays in providing emergency services, and noise); they want the applicant to help the City of Riverside fund grade separations to mitigate impacts of additional rail traffic. While the issue of increases in rail traffic on municipalities such as Riverside is substantive, we consider this a local issue that is most appropriately addressed by the City of Los Angeles and the City of Riverside. All comment letters and responses to these comments are provided in Appendix B of this ROD.

(4) A public notice of additional information pertaining to the Department of the Army permit application was published on April 23, 2009 for a 15-day review. It notified the public that while the EIS/EIR correctly disclosed the total rock and clean fill quantities that would be discharged into waters of the U.S. to construct the entire Berth 100 wharf, including the approximately 375-foot-long southern extension, the area of waters of the U.S. affected would be larger than specified in the EIS/EIR (a total of approximately 3.7 acres instead of 2.5 acres total during Phases I and III). As discussed, the Phase III activities would include 1.2 acres of shoreline fill (rock dike and clean fill), which would replace open water and underlying substrate (mostly soft-bottom substrate but covered by 10-30 percent rock) with dry land, and another 1.2 acres that would be affected by submerged rock dikes. Furthermore, the LAHD will be required to purchase mitigation credits to compensate for the unavoidable impacts to the aquatic ecosystem (similar to Phase I marine habitat impacts, for which the LAHD used Inner Harbor mitigation credits). The only comment received was from NMFS, which as discussed in 7.a.(5), approved of using or purchasing additional mitigation credits from the Bolsa Chica Mitigation Bank or the Outer Harbor Bank to offset the increased proposed loss of marine habitat.

c. Section 404(b)(1) Compliance: Detailed preliminary discussion of compliance with the Section 404(b)(1) Guidelines was provided in Appendix N of the Recirculated Draft EIS/EIR and Final EIS/EIR. Appendix N of the Final EIS/EIR is provided, in finalized form, as

Appendix A to this ROD. In summary, the Preferred Alternative (the proposed project, as identified and evaluated in the EIS/EIR, as modified by the LAHD's April 2009 and June 2009 amendments to their June 2003 application for Department of the Army permit) is the least environmentally damaging practicable alternative. 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 project 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.

(6) The proposed discharge material will meet testing exclusion criteria because the material is not a carrier of contaminants.

(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.

(10) All appropriate and practicable steps (40 C.F.R. §§ 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 are being included in the two proffered permits (i.e., as noted in 2. above, separate permits are being proffered for Phases II and III):

The Following Special Conditions Apply to Phases II and III

1. If a violation of any permit condition occurs, the permittee shall report the violation to the Corps 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.

2. 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.
3. 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.
4. The permittee shall discharge only clean construction materials suitable for use in the oceanic environment. The permittee shall ensure that no debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the U.S. To ensure compliance with this Special Condition, standard Best Management Practices 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.
5. The permittee shall notify the Corps of the date of commencement of construction not less than 14 calendar days prior to commencing work, and shall notify the Corps of the date of completion of operations at least 5 calendar days prior to such completion.
6. 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. The notification, either by letter, fax, or e-mail, shall include as a minimum the following information:
 - A) Project description including the type of operation (e.g., dredging, 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 | Marine Safety Office /Group LA-LB |
| Coast Guard Island, Building 50-3 | 1001 South Seaside Ave., Bldg 20 |
| Alameda, CA 94501-5100 | San Pedro, CA 90731 |
| ATTN: Local Notice to Mariners | Attn: Waterways Management |
| TEL: (510) 437-2986 | TEL: (310) 732-2020 |
| FAX: (510) 437-3423 | FAX: (310) 732-2029 |

7. 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, 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 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 and the U.S. Coast Guard.

8. Should the permittee determine 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 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 and the U.S. Coast Guard.

9. Upon notification to the U.S. Coast Guard as specified in Special Condition 6, the permittee shall forward a copy of the notification 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.

10. Within 30 calendar days of completion of project activities, 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 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.

11. 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.

12. 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., or to redevelop the 25 acres behind or adjacent to Berth 100 as backlands that depends 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.

13. The permittee shall ensure the contractor(s) use sound abatement techniques to reduce noise and vibrations from pile-driving activities. Sound abatement techniques shall include, but not be 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 to 60 percent energy levels) with no less than a 1-minute interval between each strike for a 5-minute period. In addition, a qualified biologist hired by the permittee shall be required to monitor the area in the vicinity of pile-driving activities for any fish kills during pile driving. If there are any observed or reported fish kills, pile driving shall be halted and the USACE and National Marine Fisheries Service shall be notified via the Los Angeles Harbor Department's Environmental Management Division. The biological monitor shall also note (surface scan only) whether marine mammals are present within 100 meters/110 yards of the pile driving and, if any are observed, temporarily halt pile driving until the observed mammals move beyond this distance.

The Following Special Condition Applies only to Phase III

14. Prior to commencing any water-associated activities related to construction of the approximately 375-foot-long southern extension of the 1,200-foot-long concrete wharf at Berth 100, the permittee shall purchase mitigation credits sufficient to fully compensate for impacts to 2.4 acres of Inner Harbor aquatic habitat from the Bolsa Chica Mitigation Bank. No water-associated activities shall begin until the permittee provides written evidence to the Corps that sufficient mitigation credits have been purchased from the Bolsa Chica Mitigation Bank and the Corps notifies the permittee in writing that this requirement has been met.

(11) The discharge complies with the 404(b)(1) guidelines pursuant to 40 C.F.R. § 230.12.

d. Public Interest Review: I find that my decision to adopt the Preferred Alternative for the Berths 97-109 Container Terminal Project, as prescribed by regulations published in 33 C.F.R. Parts 320 to 332 and 40 C.F.R. Part 230 et seq., is not contrary to the public interest. While I considered all the public interest factors listed in 33 C.F.R. Part 320.4, the discussion that follows focuses on those factors relevant to this project. During the Draft EIS/EIR and the Final EIS/EIR comment periods, there was opposition to several aspects of the Preferred Alternative. 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, and noise restrictions on pile driving. As summarized in Section 3 in the EIS/EIR, under NEPA, the Federal action associated with the applicant's currently proposed project would not result in significant adverse effects to several public interest factors, including cultural resources, land use, marine vessel transportation, and recreation. In addition, with mitigation, project-specific adverse effects would be less than significant with respect to ground water and soils, hazards, and utilities and public services.

However, relative to the NEPA baseline¹⁶, significant and unavoidable (even with mitigation) adverse impacts would be expected to aesthetics and visual resources (reduced views of Vincent Thomas Bridge because of new A-frame cranes); air quality (construction and operational exceedances of air quality standards, cancer and non-cancer health risks); biological resources (increased albeit low potential of accidental spills/introduction of invasive species that could disrupt local biological communities); geological resources (seismic risks to people and structures during construction and operations); water quality, sediments, and oceanography (potential to increase vessel spills, illegal discharges, and leaching of metals); ground transportation (increase in rail activity causing potential delays in regional traffic); and noise (increases in construction and operational noise levels above significance thresholds). However, in many cases, these impacts would occur beyond the USACE's statutory authorities under section 404 of the CWA and section 10 of the RHA to require effective mitigation. They would still be subject to the applicant'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. However, none of the resources/issues that would be less than significant with respect to project-level impacts would contribute considerably to a cumulatively significant impact.

Some of the project-specific and cumulatively significant and unavoidable impacts would have disproportionately high and adverse effects on minority and/or low-income populations, specifically aesthetics and visual resources, air quality, ground transportation, and noise. However, for the reasons discussed in Section 5 of the EIS/EIR, impacts to the following 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: biological resources; geological resources; 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 provide several economic benefits, including additional jobs and income (310 direct and indirect construction jobs during the 6 years of construction, with annual tax revenues contributed by all workers for the peak construction activity year reaching approximately \$9 million; 4,687 permanent direct jobs by 2030, with project operations resulting in an additional 3,748 indirect and induced jobs in the five-county region and \$85 million in annual tax revenues contributed by all workers by 2045), and the implementation of various mitigation measures that would reduce health risks in the vicinity of the project area.

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. While the health risk assessment found that the project's contribution would be significant (i.e., exceeding 10 in a million

¹⁶ 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 1.5.5.2 and 2.6.2 of the EIS/EIR provide additional NEPA baseline discussion.


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), only the recreational receptor would exceed this threshold starting in 2009. This is important because Phase I of the Preferred Alternative was already constructed and did not implement the various mitigation measures that would be incorporated into construction of Phases II and III and all operations beginning in 2009 (see the second health risk analysis for the 70-year period beginning in 2009). In short, the proposed project's health risk contributions going forward are expected to be less than significant for most sensitive receptors compared to the recent past, because of the implementation of additional air quality-improvement measures.

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 is a clear public interest locally, and at the state and national levels, to move forward with this container terminal to address forecasted container throughput increases at both ports. Despite the recent global economic recession and the downturn in cargo through POLA, over the long term, optimizing or maximizing terminal operations at this location and other terminals in POLA is projected to result in a container throughput shortfall (i.e., demand will exceed capacity). If the proposed project were not to proceed, the need to meet the growing demand would have to be met elsewhere in POLA, which is impracticable because all the existing and proposed terminals are planned to operate optimally or maximally already, or at another west coast location, which probably would result in greater environmental impacts than anticipated under this proposal.

8. Conclusion

Based upon a careful consideration of all the social, economic, and environmental evaluations contained in the Draft and Final EIS/EIR; the input received from other agencies, organizations, and the public; and the factors and project commitments outlined above, it is my decision to adopt the Berths 97-109 Container Terminal Project as reflected in the Preferred Alternative (i.e., the Federal action associated with the applicant's proposed project as described in their June 2003 application for a Department of the Army permit and their April 2009 and June 2009 amendments to the application). I further determine that selection of the Preferred Alternative complies with federal regulations at 40 C.F.R. Part 230 et seq. as the least environmentally damaging practicable alternative.

9. Record of Decision Approval



Thomas H. Magness
Colonel, US Army
District Commander