

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT  
RECORD OF DECISION FOR THE PACIFIC L.A. MARINE TERMINAL LLC  
CRUDE OIL TERMINAL PROJECT  
PORT OF LOS ANGELES, CALIFORNIA

1. Introduction:

a. Location: The Los Angeles Harbor Department's (LAHD's) proposed Pacific L.A. Marine Terminal LLC Crude Oil Terminal project (proposed Project) is located primarily on Pier 400 and Pier 300 in the Outer Harbor in the Port of Los Angeles (POLA), Los Angeles County, California (the proposed Berth 408 is located at latitude 33° 42' 57.39" N, longitude 118° 15' 2.87"W).

b. Brief Background and General Description: Development of a crude oil terminal on Pier 400 was one of three uses identified and analyzed in the 1992 Deep Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR). While the proposed Project is consistent with the Deep Draft EIS/EIR, which addressed the construction and operation of Pier 400, the changed environmental and regulatory circumstances and the altered configuration of the proposed Project from the marine terminal configuration proposed in 1992 led the U.S. Army Corps of Engineers (USACE or Corps) and the Los Angeles Harbor Department (LAHD) to prepare a Supplemental EIS (SEIS) and Subsequent EIR (SEIR), respectively. To reduce duplication of effort, the USACE and LAHD prepared a joint SEIS/SEIR. In March 2004, the LAHD applied for a Department of the Army Standard Individual Permit, which was amended in August 2009, to undertake various construction activities in and over navigable waters of the U.S., including installation of temporary (adjacent to Pier 300 during construction) and permanent piles and deck adjacent to Pier 400 associated with building the proposed Project in POLA. The Los Angeles Board of Harbor Commissioners certified the SEIR on 20 November 2008, and the LAHD is currently negotiating a lease with the tenant, Pacific Los Angeles Marine Terminal, LLC (PLAMT), a wholly owned subsidiary of Plains All American Pipeline, L.P. (Plains).

The proposed Project includes construction and operation of a new marine terminal at Berth 408 on Pier 400 (Marine Terminal), new tank farm facilities with a total of 4.0 million barrels (bbl) of capacity on Pier 400 and Pier 300, and pipelines connecting the Marine Terminal and the tank farms to local refineries on the mainland. The Marine Terminal would be operated by PLAMT under a 30-year lease from the LAHD. The proposed Project would not require any dredging, because Berth 408 already has sufficient water depth (-81 ft mean lower low water [MLLW]) to

accommodate Very Large Crude Carrier (VLCC) vessels (up to 325,000 deadweight tons [DWT]), which would be the largest vessels expected to call at Berth 408. The proposed Project would primarily receive crude oil, partially refined crude oil, and occasional deliveries of Marine Gas Oil (MGO). The proposed Project as evaluated in the SEIS/SEIR includes the following major components:

- Construction of a new Marine Terminal at Berth 408 on the southwest corner of Pier 400 designed to receive crude oil, partially refined crude oil, and MGO from marine vessels and transfer the oil to tank farm facilities on Pier 400 and Pier 300 via a new 42-inch-diameter, high-volume pipeline.
- Construction of two tank farms that would store the oil product
  - Tank Farm Site 1 would be located on Pier 400
  - Tank Farm Site 2 would be located on Pier 300 at Seaside Avenue/Terminal Way
- Construction of new pipelines to connect to existing pipeline facilities
  - The proposed Project's new tank farm facilities would be connected to the existing ExxonMobil Southwest Terminal on Terminal Island/Pier 300, the existing Ultramar/Valero Refinery on Anaheim Street near the Terminal Island Freeway, and to other Plains pipeline systems near Henry Ford Avenue and Alameda Street via new and existing 36-inch, 24-inch, and 16-inch-diameter pipelines.
  - All new pipelines would be installed below ground, with the exception of the water crossings at the Pier 400 causeway bridge and at the Valero utility/pipe bridge that crosses the Dominguez Channel west of the Ultramar/Valero Refinery.

The Federal action involves the potential issuance of a Department of the Army permit for the installation of temporary piles (adjacent to Pier 300 during construction) and construction of permanent mooring-associated and oil conveyance structures (e.g., piles, deck, pipes) in and over navigable waters of the U.S., as well as construction activities on upland portions of the Project area. The in-water and over-water activities would require USACE authorization pursuant to section 10 of the River and Harbor Act (RHA), except for the pipelines attached to the Pier 400 causeway bridge and the Valero utility/pipe bridge over the Dominguez Channel, which could require separate approval by the U.S. Coast Guard (USCG) pursuant to the General Bridges Act of 1946, as amended<sup>1</sup>. While the SEIS/SEIR evaluated the possibility of discharging

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<sup>1</sup> Based on discussions among the USACE, USCG, and the LAHD, it does not appear a USCG permit will be required for the Pier 400 Causeway crossing or the Dominguez Channel crossing, because neither crossing is expected to affect vertical or horizontal clearance in the vicinity of the causeway or bridge (i.e., no change in navigable capacity anticipated at either location); however, notices would have to be provided to mariners/local water users prior to beginning the use of floating equipment or vessels in the

fill (rock) around larger piles pursuant to section 404 of the Clean Water Act (CWA), the LAHD determined in 2009 that discharges of fill material are not necessary, and therefore, they were not included in the list of proposed activities in the 12 August 2009 amendment to their March 2004 permit application for the proposed Project. Therefore, fill discharges into waters of the U.S. are not discussed or analyzed further, and a CWA section 404(b)(1) alternatives analysis pursuant to 40 C.F.R. Part 230 is not required for the Federal action associated with the proposed Project.

c. Purpose and Need: The USACE, in coordination with the LAHD, determined the project purpose is to construct a crude oil marine terminal on Pier 400 at Berth 408, and related transfer facilities to receive, store, and convey part of the forecasted increases in the volume of crude oil that will be shipped to southern California by sea.

There are four needs the proposed Project could address: (1) the need to accommodate increasing foreign crude oil imports to offset declining domestic production shipped primarily by terrestrial pipelines; (2) a trend toward larger vessels and larger cargo sizes; (3) a projected shortfall in crude oil vessel berthing capacity at the San Pedro Bay Ports due both to crude volumes and ship sizes; and (4) increased need for crude oil tank capacity for efficient offloading of vessels at berth. Each of these needs is discussed in detail in Section 1.2.1.3 of the Final SEIS/SEIR.

## 2. Decision

This documents my decision to authorize construction of temporary and permanent structures in and over approximately 15 acres of navigable waters of the U.S. pursuant to section 10 of the RHA (33 U.S.C. §403), associated with constructing the proposed Project in the Los Angeles Harbor. I am selecting the Federal action associated with the applicant's proposed Project as the Preferred Alternative. Therefore, I am selecting the Federal action associated with the proposed Project, as identified and evaluated in the SEIS/SEIR and the 12 August 2009 amendment to LAHD's March 2004 Department of the Army permit application, which includes the following activities:

- i. Installing up to 12 temporary concrete piles and constructing permanent mooring-associated structures (piles, deck) in and over approximately 15 acres of navigable waters of the U.S. adjacent to Pier 300 and Pier 400, respectively, in the Outer Harbor of POLA, including approximately 86 steel piles, 27 steel king piles, 97 feet of steel sheet piles, 75 concrete piles, 3,700 square feet of steel deck, 44,620 square feet of concrete deck, and 1,900 square feet of floating deck, and constructing the upland elements of the Project (tank farms, pipelines) on Pier 400, Pier 300, and on the mainland northeastward

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vicinity of the causeway or bridge, which would have to be coordinated through the USCG.

of Mormon Island to the Ultramar/Valero Refinery that would only occur as a result of Federal action.

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 SEIS/SEIR. 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 SEIR for the proposed Project, pursuant to the Mitigation Monitoring and Reporting Program (MMRP) for the proposed Project (LAHD, 2008<sup>2</sup>). All measures identified as the responsibility of the tenant would be included by the LAHD in the lease for the facility. Mitigation measures the USACE has determined enforceable and subject to our continuing program responsibility are included in 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. This authorization will pertain to the installation of temporary concrete piles and construction of permanent mooring-associated structures (piles, deck) in and over approximately 15 acres of navigable waters of the U.S. adjacent to Pier 300 and Pier 400, respectively, in the Outer Harbor of POLA, Los Angeles County, California, associated with constructing the proposed Project<sup>3</sup>. In making my decision, I have reviewed the environmental consequences of the Preferred Alternative and reviewed all of the alternatives discussed in the SEIS/SEIR.

The Los Angeles Regional Water Quality Control Board (LARWQCB) is requiring that the LAHD obtain a CWA section 401 Water Quality Certification for the proposed Project. Therefore, a CWA section 401 Water Quality Certification will be needed before a Department of the Army permit can be issued for the Federal action.

In addition, the applicant needs to obtain a California Coastal Commission-approved Port Master Plan amendment before a Department of the Army permit can be issued for the Federal action.

### 3. National Environmental Policy Act and Clean Air Act General Conformity Compliance

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<sup>2</sup> Los Angeles Harbor Department, 2008. Mitigation Monitoring and Reporting Program, Pacific L.A. Marine Terminal LLC Crude Oil Terminal, Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (SEIS/SEIR), November, 55 pages.

<sup>3</sup> As noted, the pipeline crossings over navigable waters of the U.S. (attached to the Pier 400 causeway bridge and the Valero utility/pipe bridge over Dominguez Channel) could be subject to separate approval by the USCG pursuant to the General Bridges Act of 1946, as amended; although discussions with the USCG indicate they will not require a permit for these activities.

Because the applicant's proposed Project includes activities that would require USACE authorization, pursuant to section 10 of the RHA, parallel environmental reviews were conducted by the USACE pursuant to the National Environmental Policy Act (NEPA) and its implementing regulations (40 Code of Federal Regulations [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 SEIS/SEIR was prepared. LAHD-hired consultants SAIC and CDM prepared the SEIS portion of the SEIS/SEIR and the general conformity determination, respectively, under the USACE's direction and review and in coordination with the LAHD. The SEIS was developed in compliance with NEPA and associated implementing regulations, and the general conformity determination has been completed pursuant to the General Conformity Rule at 40 C.F.R. Part 51 Subpart W<sup>4</sup> and South Coast Air Quality Management District Rule 1901.

Details on the NEPA and General Conformity processes and documentation are provided in 7.a. and b. below. Briefly, a Notice of Intent (NOI) to prepare an SEIS/SEIR was published in the Federal Register on 25 June 2004, and a joint Corps-LAHD scoping meeting was held on 08 July 2004 at Banning's Landing Community Center in Wilmington. Scoping comments were received until 16 July 2004. A Notice of Availability of the Draft SEIS/SEIR for review and comment was published in the Federal Register on 06 June 2008, and the USACE distributed a separate USACE public notice of the availability of the Draft SEIS/SEIR, receipt of an application for a Department of the Army permit, and notice of a public hearing on 28 May 2008. A public hearing to solicit comments on the Draft SEIS/SEIR was held on 26 June 2008 in the Board of Harbor Commissioners Hearing Room in San Pedro. The public review period for this document was scheduled to end on 29 July 2008, but was extended until 13 August 2008. Responses were prepared to all comments received and were fully considered in preparing the Final SEIS/SEIR. Notices of Availability of the Final SEIS/SEIR were published in the Federal Register by the USACE and the U.S. Environmental Protection Agency (USEPA) on 28 November 2008. The USACE distributed a separate USACE public notice of the availability of the Final SEIS/SEIR and reminder of the receipt of a Department of the Army permit application on the same date. Comments on the Final SEIS/SEIR were received until 29 December 2008; those comments and responses to them are included in Appendix A to this ROD. A Notice of Availability of the draft general conformity determination was published in the Federal Register on 19 February 2010 for review until 22 March 2010. Similarly, a USACE public notice of the availability of the draft general conformity determination and of additional information

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<sup>4</sup> On 05 April 2010, EPA promulgated revised general conformity requirements at 40 C.F.R. Part 93 Subpart B (75 FR 17254). In the same action, USEPA eliminated most of the general conformity requirements under 40 C.F.R. Part 51 Subpart W, because they were mostly duplicative of the requirements at 40 C.F.R. Part 93 Subpart B, and revised 40 C.F.R. § 51.851 to remove the obligation for states to include general conformity requirements in their implementation plans. The revised regulations will take effect on 06 July 2010.

pertaining to the Department of the Army permit application was published on the same date. The South Coast Air Quality Management District (SCAQMD) provided a comment letter on the draft general conformity determination approximately 2 months after the close of the comment period, which has been incorporated into the final general conformity determination included in Appendix B to this ROD. Electronic correspondence from the National Marine Fisheries Service (NMFS) on the additional information pertaining to the Department of the Army permit application is included in Appendix C to this ROD.

#### 4. Alternatives Considered

Sixteen alternatives, including the applicant's proposed Project and the No Federal Action/No Project Alternative, were considered and evaluated with regard to how well each could feasibly meet the purpose of the proposed Project and avoid or substantially lessen any of the significant effects of the proposed Project. Thirteen of these alternatives were eliminated from detailed consideration because they were not feasible, would not avoid or substantially lessen any of the significant effects of the proposed Project, or would not meet the project purpose and need (see Section 2.5.2 and Section 6 of the SEIS/SEIR). Three alternatives were carried forward in the Draft SEIS/SEIR and Final SEIS/SEIR for detailed, co-equal analysis. The Preferred Alternative is the proposed Project, as originally identified in the LAHD's March 2004 application for a Department of the Army Permit and as amended by their August 2009 submittal. The Reduced Project Alternative is identical to the Preferred Alternative in terms of design, construction, and operation, but it would involve a lease condition imposed by the LAHD that would cap the permitted throughput of crude oil received at Berth 408. The No Federal Action/No Project Alternative identified and evaluated in the SEIS/SEIR would not involve any Federal action.

Preferred Alternative (applicant's proposed Project as identified and evaluated in the SEIS/SEIR): The Preferred Alternative would include construction and operation of the Marine Terminal on Pier 400, new tank farm facilities with a total of 4.0 million barrels (bbl) of capacity on Pier 400 and Pier 300, and pipelines connecting the Marine Terminal and the tank farms to local refineries. The terminal would be operated by PLAMT under a 30-year lease from the LAHD.

The Preferred Alternative would not require any dredging, because Berth 408 already has sufficient water depth (-81 feet MLLW) to accommodate VLCC vessels (up to 325,000 DWT), which would be the largest vessels expected to call at Berth 408, followed in order of decreasing size by Suezmax, Aframax, and Panamax-type vessels. The Preferred Alternative would primarily receive crude oil and partially refined crude oil. The sole exception is that the Preferred Alternative would also receive occasional deliveries of MGO, a fuel with 0.05 percent sulfur content that is available in the local market, to provide low-sulfur fuel to tanker vessels unloading at the new berth.

The new Marine Terminal would be designed to receive crude oil from marine vessels and transfer the oil to two new tank farm facilities via a new 42-inch-diameter, high-volume pipeline. The terminal would be operated so as to minimize the time each marine tanker remains at the berth and would do so with a combination of high-capacity pumps, large-diameter pipelines, and adequate storage capacity in the tank farms. One of the new tank farms would be located on Pier 400 (Tank Farm Site 1) and the other on Pier 300 at Seaside Avenue/Terminal Way (Tank Farm Site 2). The Marine Terminal site and both tank farm sites are owned by LAHD. The Preferred Alternative's new tank farm facilities would be connected to the existing ExxonMobil Southwest Terminal on Terminal Island, the existing Ultramar/Valero Refinery on Anaheim Street near the Terminal Island Freeway, and to other Plains pipeline systems near Henry Ford Avenue and Alameda Street via new and existing 36-inch, 24-inch, and 16-inch-diameter pipelines. All new pipelines would be installed belowground, with the exception of the water crossings at the Pier 400 causeway bridge and at the Valero utility/pipe bridge that crosses the Dominguez Channel west of the Ultramar/Valero Refinery.

The proposed tenant, PLAMT, requires a minimum crude oil tank capacity of 4 million bbl to support an economically viable operation. PLAMT represents that it has three customers that would utilize a total of 3.5 million bbl of capacity, and PLAMT would reserve 0.5 million bbl of capacity for operational and spot business use. Accordingly, the total tank capacity for the Preferred Alternative would be 4.0 million bbl. Should the terminal operator require more than 4.0 million bbl of tank capacity at a later date, additional approval and environmental assessment would be required at that time.

No Federal Action/No Project Alternative (as identified and evaluated in the SEIS/SEIR): This alternative is what would reasonably be expected to occur on the Project site if no additional LAHD or Federal action would occur. LAHD would not issue any permits or discretionary approvals, and would take no further action to construct and develop additional backlands or any aspect of the proposed Project. A result of the considerations discussed above, the No Federal Action/No Project Alternative in this SEIS/SEIR considers the only remaining allowable and reasonably foreseeable use of the Project site: the temporary storage of chassis-mounted containers on the site of Tank Farm Site 1 by APM, the operator of the adjacent container terminal on Pier 400, and on Tank Farm Site 2 by the APL Terminal at Pier 300 and the Evergreen Terminal farther to the west at Berths 226-236. Although it is possible that different uses of the Project site (e.g., possibly including liquid bulk storage at either site) could be approved at some future date, such future approvals are not known or foreseeable at this time. Thus, to be conservative, this document describes the No Federal Action/No Project Alternative as consisting of container storage use from approximately 2012 through 2040 (i.e., through the entire duration of the proposed Project).

In addition, for analysis purposes, this No Federal Action/No Project Alternative assumes that a portion of the increased demand for imports of crude oil in southern California would be accommodated at existing liquid bulk terminals in the San Pedro Bay Ports, to the extent of their remaining capacities. Some of the crude oil would probably also be accommodated at other existing liquid bulk terminals in the region; however, the crude oil would come in smaller vessels. As documented in Section 1.1.3 of the SEIS/SEIR, five marine terminals in the Los Angeles area presently offload crude oil: ExxonMobil (LAHD Berths 238-240), BP (Port of Long Beach Berths 76-78 and Port of Long Beach Berth 121), Tesoro (formerly Shell) (Port of Long Beach Berths 84-87), and Chevron (offshore mooring west of El Segundo). Based on research conducted by PLAMT and reviewed by the USACE and LAHD, only the terminals at Port of Long Beach Berths 76-78 and 84-87, and at LAHD Berths 238-240, had capacity to increase their crude oil throughput as of 2007 (Figure 2-16 in the SEIS/SEIR shows the locations of these terminals). Port of Long Beach Berth 121 is limited to its current throughput by SCAQMD emissions caps; El Segundo is limited by its current infrastructure and by its SCAQMD permit.

Reduced Project Alternative: the Proposed Project with Reduced Throughput Alternative (as identified and evaluated in the SEIS/SEIR): The Reduced Project Alternative would result in construction impacts that would be identical to those of the Preferred Alternative, but the volume of crude oil would be capped by the lease agreement between LAHD and PLAMT. Operationally, the impacts of the Reduced Project Alternative would be similar to the Preferred Alternative, and identical for some resource areas, but slightly higher in some cases and for some resource areas. For instance, the Reduced Project Alternative would result in a significant unavoidable increase in cancer risk at residential and sensitive receptors (under CEQA only), while the Preferred Alternative would result in less than significant increases in cancer risk at all receptors (under NEPA and CEQA) (Section 3.2 in the SEIS/SEIR). There is no resource area for which the Reduced Project Alternative would result in lower environmental impacts than the Preferred Alternative (although the geographic dispersion of some impacts, such as health risk impacts, would differ somewhat due to the different operational characteristics compared to the Preferred Alternative). The Reduced Project Alternative would meet the project purpose, but the lease cap limiting throughput would reduce the degree to which the Reduced Project Alternative would maximize the use of deepwater facilities created by the Deep-Draft Navigation Improvements Project for the purpose of accommodating deep-draft VLCC tankers. As a result, the Preferred Alternative would better meet the project purpose and need compared to the Reduced Project Alternative with comparable or slightly less environmental impact, such as fewer air emissions.

## 5. Basis for the Decision

In making my decision, I have reviewed section 10 of the RHA and the USACE's implementing regulations (33 C.F.R. Parts 320-332), the Pacific L.A. Marine Terminal LLC Crude Oil Terminal Final SEIS/SEIR, the final general conformity determination (in Appendix B to this ROD), and



all comment letters received in response to the Draft and Final versions of the environmental document as well as the draft general conformity determination and the additional information pertaining to the Department of the Army permit application.

The public participation process was integral to making my decision. The comments suggested alternatives to be considered, document corrections, and issues to be addressed further. Comments received on the Draft SEIS/SEIR and corresponding public notice along with detailed responses are contained in the Final SEIS/SEIR. Comments received on the Final SEIS/SEIR, including the corresponding public notices, and responses to these comments, are contained in Appendix A to this ROD. The 20 May 2010 SCAQMD letter on the February 2010 draft general conformity determination (i.e., only comment received in response to the draft general conformity determination) has been incorporated fully into the final general conformity determination included in Appendix B to this ROD. NMFS' comment that no additional conservation recommendations were warranted in response to the 19 February 2010 Corps special public notice of the draft general conformity determination and additional information pertaining to the Department of the Army permit application and our response to NMFS are included in Appendix C to this ROD.

a. Evaluation of Alternatives: (1) No Federal Action/No Project Alternative: While this alternative would not affect the aquatic ecosystem through discharges of dredged or fill material, it would result in environmental damage, such as higher air emissions (i.e., higher than the Preferred Alternative and Reduced Project Alternative) and a higher risk of oil spills, because a larger number of smaller ships would offload at other terminals in Los Angeles Harbor, many of which are not employing emission control measures. In addition, these smaller vessels would be offloading crude from larger vessels moored offshore increasing the risk of spills during transfer. Despite the higher air emissions, the No Federal Action/No Project Alternative would result in fewer environmental impacts overall. However, the No Federal Action/No Project Alternative would not meet the project purpose of constructing a crude oil marine terminal on Pier 400 at Berth 408, and related transfer facilities, to receive, store, and convey part of the forecasted increases in the volume of crude oil that will be shipped to southern California by sea. This alternative would not accommodate the larger oil tankers (e.g., VLCC), which are comprising an increasing portion of the oil carrying fleet, and it would only provide an oil throughput of 252,000 barrels per day (bpd), which is less than half the Preferred Alternative's throughput (677,000 bpd).

(2) Reduced Project Alternative: The Reduced Project Alternative would have the same facilities as the Preferred Alternative and comparable environmental damage, but the throughput of oil would be less at the new Berth 408 Marine Terminal (450,000 bpd versus 677,000 bpd), and additional oil (227,000 bpd) would be delivered to existing terminals in POLA and the Port of Long Beach with an expected increased frequency of oil spills (i.e., more vessel calls). In addition, air emissions under the Reduced Project Alternative would be somewhat

higher than for the Preferred Alternative, because a greater number of vessels would be needed to deliver product (i.e., many vessels would be smaller than those that could access the Harbor under the Preferred Alternative) and the fact that many of those vessels would be using existing terminals that are at a greater distance from the Harbor entrance to the berth and do not currently employ the emission measures that would be implemented at Berth 408. In short, while it could meet the project purpose, assuming the existing terminals could accept the additional product (227,000 bpd), compared to the Preferred Alternative, the Reduced Project Alternative would accomplish this throughput with potentially more environmental damage with respect to air emissions.

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 the No Federal Action/No Project Alternative has the fewest overall environmental impacts and is therefore the Environmentally Preferable Alternative.

(2) The reason for selecting the Preferred Alternative over the No Federal Action/No Project Alternative is based on its ability to achieve the project purpose of constructing a crude oil marine terminal on Pier 400 at Berth 408 and related transfer facilities to receive, store, and convey part of the forecasted increases in the volume of crude oil that will be shipped to southern California by sea. POLA is one of only five locations in the state identified in the Coastal Act (PRC Sections 30700 and 30701) for the purposes of international maritime commerce. Legal mandates of the LAHD and the California Coastal Commission identify POLA and its facilities as a primary economic/coastal resource of the State and an essential element of the national maritime industry for promotion of commerce, navigation, fisheries, and operations of a harbor. Leaving the premises vacant for any extended time is not consistent with the legal mandates of POLA, nor would it be consistent with the goals of the 1992 Deep Draft EIS/EIR. Based on existing demand and capacity limitations on industrial port uses and Trust purposes, all or most of the industrial facilities adjacent to deep water are needed to accommodate maritime commerce. Under the No Federal Action/No Project Alternative, it is not considered likely that another liquid bulk terminal project would be approved at the Project site in the foreseeable future, because there is no proposal to do so; instead, the use anticipated is the temporary storage of chassis-mounted containers. Thus, the No Federal Action/No Project Alternative would not address the four identified needs under NEPA: (1) to accommodate increasing foreign crude oil imports to offset declining domestic production shipped primarily by terrestrial pipelines; (2) a trend toward larger vessels and larger cargo sizes; (3) a projected shortfall in crude oil vessel berthing capacity at the San Pedro Bay Ports due both to crude volumes and ship sizes; and (4) increased need for crude oil tank capacity for

efficient offloading of vessels at berth (see Section 1.2.1.3 of the Final SEIS/SEIR); nor would it meet the above-stated project purpose. In contrast, the Preferred Alternative would be able to meet the forecasted increases in oil throughput using facilities developed specifically for that 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 SEIS/SEIR. A detailed comparison of these alternatives is presented in Section 6 of the SEIS/SEIR.

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 SEIS/SEIR. 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 November 2008-certified SEIR, pursuant to the proposed Project's MMRP (LAHD, 2008). Mitigation measures the USACE has determined enforceable and subject to our continuing program responsibility are included in this ROD (see 7.d.).

## 7. Findings

a. Status of Other Authorizations and Legal Requirements: (1) Water Quality Certification: Before proceeding with the proposed Project, the LAHD will need to obtain a section 401 Water Quality Certification, as is being required by the LARWQCB.

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

(3) Compliance with Section 106 of the National Historic Preservation Act (NHPA): A record search determined that no historic resources eligible for listing on the National Register of Historic Places (NRHP) have been recorded within the Federal action area. Furthermore, as discussed in the SEIS/SEIR, it is not expected the proposed Project would affect any cultural or historic resources. The State Historic Preservation Officer (SHPO) received the public notices and the Draft and Final SEIS/SEIR that included preliminary determinations of no effect to resources listed or eligible for listing on the NRHP, and in neither case did the SHPO respond to the contrary. Moreover, the LAHD contacted the Native American Heritage Commission (NAHC) on 01 October 2004, to request information about traditional cultural properties, such as cemeteries and sacred places, in the Project area. The NAHC record search of the Sacred Lands File failed to indicate the presence of Native American cultural resources in the immediate Project area. A letter dated 03 November 2004 was received from the NAHC containing a list of Native American tribes and individuals interested in consulting on development projects in this area. An attempt was made to contact each of these individuals/groups by phone in April 2008. A revised list of Native American tribes and

individuals interested in consulting on development projects in this area was received from the NAHC on 10 June 2008, as part of their comments on the Draft SEIS/SEIR, and a follow-up letter was sent to these tribal contacts in November 2008. Follow-up phone calls were also made to these tribal contacts. One of the individuals contacted requested monitoring during ground disturbance on Pier 300/Terminal Island and other project sites, because of the potential for Native American cultural resources to occur throughout the Project area. Given the extensive surface and subsurface disturbance throughout the Project area, the USACE determined it is highly unlikely Native American cultural resources exist in the affected area. Nevertheless, the monitoring proposed by the contacted individual is consistent with Mitigation Measure (MM) CR-1a already included in the SEIS/SEIR that the LAHD would implement as part of the proposed Project. Based on this information, the USACE determined the Federal action would not affect cultural resources listed or eligible for listing on the National Register of Historic Places.

(4) Compliance with the Federal Endangered Species Act: The California least tern (*Sterna antillarum browni*), California brown pelican (*Pelecanus occidentalis californicus*), and western snowy plover (*Charadrius alexandrinus nivosus*) are known to forage in the vicinity of the Project site, and there is a 15-acre California least tern nesting preserve on the southeastern tip of Pier 400, which is adjacent to the proposed Tank Farm 1 area. Based on detailed biological information in the SEIS/SEIR, including a Biological Assessment (BA), a preliminary determination was made that the proposed activity may affect California least tern and California brown pelican. On 07 July 2008, the Corps initiated formal consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act (ESA) for California least tern and California brown pelican (Appendix C to this ROD). The U.S. Fish and Wildlife Service responded with a 07 January 2009 letter stating that the Federal action is not likely to adversely affect either species, in consideration of several measures that were incorporated into the Project design, such as implementing a predator control program in the area. On 03 May 2010, in response to our 29 April 2010 electronic mail inquiry, the U.S. Fish and Wildlife confirmed that post-construction predator control in this area, which was referenced in their 07 January 2009 letter, can be considered part of the baseline, because it is required by the multi-agency Memorandum of Understanding (MOU) addressing the adjoining 15-acre California least tern preserve. They further stated it can also be considered part of the proposed Project, because the monitoring would include assessing the proposed Project features in this area, as agreed to by the LAHD in electronic mail on 03 May 2010. Therefore, the U.S. Fish and Wildlife Service confirmed that operations-related measures, such as the post-construction predator control program, do not need to be implemented by this Federal action to ensure this action is not likely to adversely affect the California least tern; the LAHD has committed to implementing those measures as part of the proposed Project through implementation of the MMRP. The Federal action, then, is limited to implementing the construction-related measures proposed in the draft BA (i.e., measures 1-10) and to two related measures the Corps, U.S. Fish and Wildlife Service, and LAHD agreed to in late November 2008, as discussed in the U.S. Fish

and Wildlife Service's 07 January 2009 letter. With respect to federally endangered brown pelican, on 11 November 2009, this species was removed from the list of threatened and endangered wildlife, because this species had recovered sufficiently for such action; this species de-listing became effective on 11 December 2009.

(5) Compliance with the Magnuson-Stevens Fishery Conservation and Management Act: In accordance with the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act, an assessment of Essential Fish Habitat (EFH) was prepared and included in the SEIS/SEIR. The proposed Project would be located within an area designated as EFH for two Fishery Management Plans (FMPs): Coastal Pelagics Plan and Pacific Coast Groundfish Management Plan. The pipeline route from Pier 400 to Terminal Island would be located adjacent to EFH. Of the 94 fisheries management species federally managed under these plans, 19 are known to occur in the Outer Harbor near Pier 400 or near the 42-inch-diameter pipeline corridor and could be affected by the proposed Project (Table 3.3-2 in the SEIS/SEIR). One of the five species in the Coastal Pelagics FMP (northern anchovy) is well represented in the Project area, with both adults and larvae present. Pacific sardine is also common. Both species support a commercial bait fishery in the Outer Harbor. Adult jack mackerel are present and likely prey upon small northern anchovy. Adult Pacific mackerel are also fairly common throughout the Harbor. Only 2 of the 15 Pacific Groundfish FMP species (Pacific sanddab and California scorpionfish) are relatively common in the Outer Harbor.

The 28 May 2008 joint public notice of receipt of an application for a USACE permit, availability of the Draft SEIS/SEIR, and public hearing initiated EFH consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The proposed activities would temporarily impact areas designated as EFH through wharf construction, which would introduce new materials into the water and temporarily suspend sediments and increase noise. Temporary disturbances in the water during Berth 408 construction and temporary mooring construction adjacent to Pier 300 would cause no substantial alteration of EFH or loss of fish in managed species as described above. Construction activities at the tank farm sites and for new pipeline installation would have no direct impacts on EFH because none is present at those sites. Indirect impacts through runoff of sediments during storm events would be less than significant because such runoff would be controlled through a project-specific Storm Water Pollution Prevention Plan with Best Management Practices, such as sediment barriers and sedimentation basins. In addition, the work would be conducted in compliance with applicable permits, such as the USACE's permit and the LARWQCB's section 401 water quality certification.

On 15 July 2008, NMFS provided a comment letter that included two conservation recommendations: one recommendation was to employ a pile-driving approach that would result in lower noise levels during installation; and the second recommendation was to monitor whether pile driving was adversely affecting fish species (Appendix C to this ROD). LAHD

added MM BIO-1.1k and modified MM NOISE-1: Noise Reduction during Pile Driving (see Final SEIS/SEIR), to address and incorporate the recommendations, and NMFS responded by electronic mail in November 2008 that these changes would suffice to address EFH effects. On 11 March 2010, in response to the Corps' 19 February 2010 public notice of the draft general conformity determination and additional information to the Department of the Army permit application, the latter of which notified the public of the potential for the temporary installation of up to twelve 24-inch-diameter concrete piles adjacent to Pier 300, NMFS declined to make additional conservation recommendations and stated they would not object to the issuance of a USACE permit for the proposed Project.

(6) Compliance with Section 176(c) of the Clean Air Act: The Final SEIS/SEIR did not include a draft general conformity determination (see Section 3.2 of the SEIS/SEIR), pursuant to Section 176(c) of the Clean Air Act, but notified the public that general conformity would be separately noticed, which is acceptable pursuant to the general conformity regulations (40 C.F.R. Part 51 Subpart W). A general conformity determination is necessary because proposed Project construction would require Federal action (i.e., issuance of a Corps permit for activities proposed in and over navigable waters of the U.S.) and not all the Federal action's direct and indirect emissions of pollutants would be below specified de minimis thresholds (40 C.F.R. section 51.853(b)). The draft general conformity determination, which was published on 19 February 2010 for review until 22 March 2010, is included in Appendix B to this ROD. There were no comments received on the draft general conformity determination during the comment period, but the SCAQMD provided a 20 May 2010 letter confirming that the 2007 Air Quality Management Plan, together with the 2007 State Strategy, provides the Corps with a basis upon which to make a positive conformity determination for the Federal action's emissions under 40 C.F.R. 51.858(a)(5)(i)(B) (i.e., written commitment for SIP revision to accommodate emissions from the project). This letter was utilized to prepare the 01 June 2010 final general conformity determination, which is also included in Appendix B to this ROD. The only comment received during the review period for the public notice announcing the draft general conformity determination and additional information pertaining to the Department of the Army permit application was by NMFS (see 7.a.(5)), and they were addressing the temporary pile-associated impacts to the marine environment. The Corps will publish a notice of the final general conformity determination in the Federal Register within the next 30 days. The public can request from the Corps copies of the ROD, which includes responses to comments on the Final EIS/EIR, the NMFS' 11 March 2010 electronic correspondence, and the SCAQMD's 20 May 2010 letter, following publication of the final general conformity determination and upon execution of the 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 SEIS/SEIR for the proposed Project on 08 June 2004. In addition, the USACE published and distributed the same information simultaneously on its public notice web page, and published

an NOI to prepare an SEIS/SEIR in the Federal Register on 25 June 2004. A joint Corps-LAHD scoping meeting was held on 08 July 2004 at Banning's Landing Community Center in Wilmington. Comments were received until 16 July 2004. A total of 14 comment letters were received from agencies, organizations, and individuals during the comment period, which were fully considered in preparing the Draft SEIS/SEIR.

(2) A Notice of Availability of the Draft SEIS/SEIR for review and comment was published in the Federal Register on 06 June 2008. On 28 May 2008, the USACE separately published a 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 (as noted above, the application was received in March 2004). In addition, approximately 200 copies of the Draft SEIS/SEIR were distributed to agencies, organizations, individuals, and POLA tenants and were made available to four public libraries in Wilmington, San Pedro, and Long Beach as well as the applicant's office. Furthermore, postcards in English and Spanish were mailed to all addresses in San Pedro and Wilmington noticing the document's release and the public hearing. The document was also posted on the applicant's website: [http://www.portoflosangeles.org/environmental\\_pn.htm](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 SEIS/SEIR 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 Draft SEIS/SEIR was held on 26 June 2008 in the Board of Harbor Commissioners Meeting Room in San Pedro. The public review period for this document was scheduled to end on 29 July 2008, but was extended to 13 August 2008 (i.e., 75-day review period). A total of 102 comment letters were received on the Draft SEIS/SEIR during the public review period, and responses to all comments, including those provided during the public hearing, were prepared and considered fully in preparing the Final SEIS/SEIR.

(3) Notices of Availability of the Final SEIS/SEIR were published in the Federal Register by the USACE and the USEPA on 28 November 2008. The USACE simultaneously distributed a separate USACE public notice of the same and reminder of the receipt of a Department of the Army permit application, including the latest proposed Project-related information. In addition, approximately 200 copies of the Final SEIS/SEIR were distributed to agencies, organizations, individuals, and POLA tenants and were made available to four public libraries in Wilmington, San Pedro, and Long Beach as well as the LAHD's office. Furthermore, postcards in English and Spanish were mailed to all addresses in San Pedro and Wilmington noticing the document's release and the LAHD's public hearing. The document was also posted on the applicant's website: [http://www.portoflosangeles.org/environmental\\_pn.htm](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 SEIS/SEIR were made available free of charge to all interested parties. Comments on the Final SEIS/SEIR

were received until 29 December 2008. All comments received on the Final SEIS/SEIR are included in Appendix A to this ROD.

In response to the Final SEIS/SEIR, the USACE received comment letters from the U.S. Environmental Protection Agency (Region IX) (USEPA), the Coalition for a Safe Environment (CFASE), and the Federal Emergency Management Agency (FEMA). Detailed responses to these comments are provided in Appendix A. Briefly, USEPA remained concerned over unmitigated cumulative impacts to environmental justice communities and requested a Health Impact Assessment (HIA) to further assess the health impacts. However, the SEIS/SEIR contained a number of tools to both assess the potential impacts on the neighboring communities and discussed a number of applicable mitigation measures to reduce such impacts. While an HIA could provide additional information, the provided Health Risk Assessment (HRA) and other included tools and analyses are sufficient for project-level evaluations; as USEPA is aware, the ports are involved in a proposed San Pedro Bay Port-wide HIA effort being organized by USEPA. USEPA also requested firm commitments to ensure implementation of mitigation to achieve HRA reduction targets. The mitigation measures would be implemented through construction contracts held by the LAHD, as the primary local authority/landlord with continuing program responsibility, and a lease agreement between the LAHD and PLAMT (it should be noted that because, in addition to LAHD, PLAMT will also be responsible for construction, the lease between LAHD and PLAMT will include mitigation measures for construction as well as operation). USEPA also remained concerned about proposed Project impacts on the South Coast Air Basin and the neighboring communities. The proposed Project includes all feasible mitigation to reduce air emissions. In regards to construction emissions, the LAHD, through construction contracts and the lease negotiations, has expanded the construction mitigation to meet the LAHD's Sustainable Construction Guidelines 2009 update. USEPA also recommended a site-specific functional assessment of the originally anticipated 0.09 acre of rock that would have been placed around several of the larger piles at Berth 408. With the 12 August 2009 amendment to the March 2004 application for a Department of the Army permit, discharges of rock or other fill material into waters of the U.S. are no longer proposed, and therefore, USEPA's concern about the effects of in-water rock discharges is moot. USEPA also remained concerned with the lack of mitigation for oil spills and recommended a fine-based mitigation fund be established to mitigate for oil spill impacts. The Final SEIS/SEIR includes requirements such as use of double hulls and containment dikes to minimize the potential for spills to adversely affect the aquatic ecosystem. The proposed measure to fine parties responsible for oil spills would not effectively reduce or avoid spill impacts to the environment, and is therefore, not appropriate for implementation on the proposed Project pursuant to environmental review under CEQA or NEPA. Moreover, such a measure would focus on PLAMT operations, over which the Corps would lack federal control and responsibility pursuant to section 10 of the RHA.



CFASE was concerned the SEIS/SEIR did not address CFASE-identified discrepancies, did not include CFASE-recommended mitigation (such as Public Health Mitigation), and failed to identify mitigation that would address public health, safety, and environmental and economic impacts, and Clean Air Action Plan standards. The SEIS/SEIR complies with NEPA and CEQA by disclosing and evaluating significant impacts and identifying feasible alternatives and mitigation measures to reduce or avoid those impacts. In addition, the document discloses and evaluates disproportionate impacts on the environmental justice communities. Despite the application of all feasible mitigation measures, significant unavoidable adverse project-level and cumulative impacts would remain. Through an MOU, the LAHD has previously agreed to establish a Port Community Mitigation Trust Fund geared towards addressing overall Port impacts created by Port operations outside the context of project-specific NEPA and/or CEQA documents. While the MOU is not an environmental justice mitigation per se, it would have particular benefits (e.g., money collected used for air filtration improvements in schools) for harbor area communities where disproportionate effects could occur. The proposed Project is consistent with the San Pedro Bay standards as it is consistent with the projections of the Ports' future operations used in formulating the San Pedro Bay standards, and as it exceeds compliance with applicable Clean Air Action Plan (CAAP) measures as shown in Table 3.2-22 in the SEIS/SEIR. As discussed in the CAAP, one of the main implementation tools is through lease negotiations, and the mitigation measures identified in the SEIS/SEIR will be made part of the lease. CFASE was also concerned the SEIS/SEIR did not include the recommended HIA or Public Health Survey, but as noted above for the USEPA response, the HRA and the other tools used and analyses undertaken, which accomplish many of the goals of an HIA, are sufficient for a project-level evaluation. They also are seeking the use of renewable energy generation facilities; LAHD has already agreed to build a 10 megawatt photovoltaic solar system on its property under an environmental program separate from approval of the proposed Project, and the proposed Project and alternatives already include all reasonable and feasible mitigation to minimize energy consumption including use of Leadership in Energy and Environmental Design (LEED) standards in building design. CFASE also expressed concern the recommended mitigation and study failed to address that the Port has destroyed more than 90 percent of the wetlands and mudflats in San Pedro Bay, which are used by California least terns; the proposed Project would be built near the 15-acre preserve, which could adversely affect the tern, and mitigation could include restoration and maintenance of Machado Lake. The biological resources analysis in the SEIS/SEIR did not identify project-level or cumulative significant impacts on wetlands or on California least terns (feeding or nesting), except for the potential of an oil spill to affect the tern. Regarding the latter, on 07 January 2009, the U.S. Fish and Wildlife Service provided a letter that the proposed action would not likely adversely affect California least tern or California brown pelican with the inclusion of avoidance and minimization measures; mainly those specified in the BA included in the SEIS/SEIR and agreed to by the LAHD. In the unlikely event of an oil spill, the U.S. Fish and Wildlife Service stated that they could use emergency Section 7 consultation procedures to address these speculative effects on federally listed species.

FEMA requested LAHD review the latest Flood Rate Insurance Maps (FIRMs) and follow the specified National Flood Insurance Program (NFIP) requirements. LAHD has stated that all construction/development will comply with provisions of the NFIP and address the risk of coastal flooding.

(4) A Notice of Availability of the draft general conformity determination was published in the Federal Register on 19 February 2010 for a 30-day review. As stated in the Final SEIS/SEIR, general conformity evaluations can be completed separately from the NEPA document, pursuant to the general conformity regulations at 40 C.F.R. Part 51 Subpart W. Similarly, the USACE simultaneously published a separate public notice of the same as well as additional information pertaining to the LAHD's Department of the Army permit application. The latter was to notify the public of the potential for the construction contractor to install up to twelve 24-inch-diameter concrete mooring piles adjacent to Pier 300 during construction, which would be removed entirely at the conclusion of construction; Pier 300 was identified as a potential staging and storage area in the SEIS/SEIR, but the potential for temporary mooring piles was not discussed. The SCAQMD's 20 May 2010 letter on the draft general conformity determination, which states the USACE has a basis to make a positive conformity determination for the Federal action's emissions, and changes to the general conformity determination have been incorporated into the final general conformity determination (in Appendix B to this ROD). Sections 5.2 and Section 8 of the final general conformity determination were revised, relative to the draft, primarily to acknowledge the statements contained in SCAQMD's 20 May 2010 letter. The 11 March 2010 electronic correspondence from the NMFS on the additional information pertaining to the Department of the Army permit application, in which they state additional conservation recommendations are not warranted to address the temporary pile impacts, is provided in Appendix C to this ROD.

c. Section 404(b)(1) Compliance: Because the Federal action would not include a CWA section 404 discharge of dredged or fill material into waters of the U.S., compliance with the Section 404(b)(1) Guidelines is not required, and it is not discussed further.

d. Public Interest Review: I find that my decision to adopt the Preferred Alternative for the Pacific L.A. Marine Terminal LLC Crude Oil Terminal, as prescribed by regulations published in 33 C.F.R. Parts 320 to 332, is not contrary to the public interest. While I considered all the public interest factors listed in 33 C.F.R. section 320.4, the discussion that follows focuses on those factors relevant to this proposed Project. During the Draft SEIS/SEIR and the Final SEIS/SEIR 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 noise restrictions on pile-driving activities to protect marine mammals and fish and measures focused on protecting California least terns at the adjacent 15-acre California least tern nesting site and foraging areas. As summarized in Section 3 in the SEIS/SEIR, under NEPA, the Federal action associated with the applicant's

proposed Project would not result in significant adverse effects to several public interest factors, including aesthetics, cultural resources, land use, marine vessel transportation, and population and housing. In addition, with mitigation, project-specific adverse effects would be less than significant with respect to ground transportation, ground water and soils, and utilities and public services.

However, relative to the NEPA baseline<sup>5</sup>, significant and unavoidable (even with mitigation) adverse impacts would be expected to air quality (construction and operational exceedances of air quality standards); 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); noise (increases in construction noise levels above significance thresholds); recreation (construction noise from pile driving and increased risk of oil spills during operations that could adversely affect recreational resources); risk of upset and hazards (accidental oil spills from tankers or a terrorist attack during operations could increase risk to the public or the environment); and water quality, sediments, and oceanography (potential to increase vessel spills, contaminated runoff, and ballast water introduction of non-native invasive species). However, in many cases, these impacts would occur beyond the USACE's statutory authority under 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 responsibility over the proposed 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 SEIS/SEIR. In addition, the proposed Project would contribute to a cumulatively significant impact with respect to ground water and soils (groundwater contamination).

Some of the project-specific and cumulatively significant and unavoidable impacts would have disproportionately high and adverse effects on minority and/or low-income populations, specifically air quality, noise, recreation, and risk of upset and hazards. However, for the reasons discussed in Section 5 of the SEIS/SEIR, 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; groundwater and soils; and water quality, sediments, and oceanography.

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<sup>5</sup> Briefly, the NEPA baseline is the set of conditions expected to occur onsite in the absence of Federal action. For some resource issues, such as air quality, conditions can change over time, and therefore, the NEPA baseline is not a static baseline. Sections 1.5.5.1 and 2.6.1 of the SEIS/SEIR provide additional NEPA baseline discussion.

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 SEIS/SEIR, the proposed Project would provide several economic benefits, including additional jobs and income (maximum annual employment of more than 1,700 jobs [direct and secondary]; aggregate wages and salaries would reach more than \$81.92 million annually, which equates to an average annual wage or salary for each worker related to the proposed Project [both direct and secondary] of more than \$46,000 per year [2005 dollars]; annual tax revenues contributed from construction would reach \$13.4 million, while annual tax revenues contributed from proposed Project operation would reach \$1.75 million); 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. As discussed in Section 3.2 of the SEIS/SEIR, the maximum residential NEPA cancer risk increment associated with the unmitigated proposed Project is predicted to be less than significant (i.e., less than 10 in a million). In addition, both the maximum chronic hazard index increment and the maximum acute hazard index increment associated with the unmitigated proposed Project are predicted to be less than significant for all receptors. While the impacts are expected to be less than significant, the LAHD would implement several air-related mitigation measures that would reduce the effects of the proposed Project's air emissions further. Therefore, while the proposed Project would emit air pollutants, it is not expected the emissions would result in significant cancer risk or chronic or acute hazards.

As evaluated in Section 3 of the SEIS/SEIR, 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 regionally, to move forward with this deep-water crude oil terminal to process forecasted increases in imported oil arriving on larger marine transport vessels.

As discussed in Section 1.2.1.3 in the Final SEIS/SEIR, Alaskan and California crude production are decreasing, while foreign imports are increasing, which arrive in the Los Angeles area on marine tanker vessels; and larger vessels (e.g., VLCCs, Suezmax) from the Middle East and other distant ports are calling on POLA in increasing numbers, which is a trend expected to continue. In light of this shift in oil sources, the California Energy Commission recommends that California continue with improving critical petroleum product import infrastructure, particularly for crude oil, as well as related storage and onshore transportation facilities. The proposed Project would directly address part of that stated need, and would provide a deep-

water berth capable of handling the larger ships, such as VLCCs. Larger ships calling on other regional ports, which are not as deep, have to lighter their cargo onto smaller ships that can safely make it into port, which can result in substantial additional air emissions. If the proposed Project were not to proceed, the need to meet the growing demand for oil importation 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 and other POLA terminals lack deep-water berths to handle the larger ships, or at another west coast location, which probably would result in greater environmental impacts than anticipated under this proposal.

While there are clear needs in moving forward with the Preferred Alternative, to ensure the public interest is adequately protected during its construction, the following special conditions are being included in the proffered permit:

1. If a violation of any permit condition occurs, the permittee shall report the violation to the Corps' Regulatory Division within 24 hours. If the permittee retains any contractors to perform any activity authorized by this permit, the permittee shall instruct all such contractors that notice of any violations must be reported to the permittee immediately.
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 (BMPs) shall be implemented and, as appropriate, maintained and monitored to ensure their efficacy throughout project construction. Upon completion of the project authorized herein, any and all excess material or debris shall be completely removed from the work area and disposed of in an appropriate upland site.
5. The permittee shall notify the Corps' Regulatory Division of the date of commencement of construction not less than 14 calendar days prior to commencing work, and shall notify the Corps' Regulatory Division of the date of completion of operations at least 5 calendar days prior to such completion.

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

Addresses:

Commander, 11th Coast Guard District (oan)	U.S. Coast Guard
Coast Guard Island, Building 50-3	Marine Safety Office /Group LA-LB
Alameda, CA 94501-5100	1001 South Seaside Ave., Bldg 20
ATTN: Local Notice to Mariners	San Pedro, CA 90731
TEL: (510) 437-2986	Attn: Waterways Management
FAX: (510) 437-3423	TEL: (310) 732-2020
	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' Regulatory Division, not less than 30 calendar days in advance of operating any equipment adjacent to any aids to navigation that requires relocation or removal. Should any federal aids to navigation be affected by this project, the permittee shall submit a request, in writing, to the Corps' Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office. The permittee and its contractor are prohibited from relocating or removing any aids to navigation until authorized to do so by the Corps' Regulatory Division and the U.S. Coast Guard.

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' Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office. The permittee is prohibited from establishing private aids to navigation in navigable waters of the U.S. until authorized to do so by the Corps' Regulatory Division and the U.S. Coast Guard.

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' Regulatory Division and to the National Oceanic and Atmospheric Service for chart updating: Gerald E. Wheaton, NOAA, Regional Manager, West Coast and Pacific Ocean, DOD Center Monterey Bay, Room 5082, Seaside, CA 93955-6711.

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' Regulatory Division, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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 construct Pacific L.A. Marine Terminal LLC Crude Oil Terminal components on Pier 400, Pier 300, or the mainland shall employ or otherwise be operated or used in compliance with all mitigation measures identified in the project's November 2008 Mitigation Monitoring and Reporting Program (MMRP) consistent with the project's certified Subsequent Environmental Impact Report.

13. The permittee shall employ sound abatement techniques to reduce both noise and vibrations from pile-driving activities. Sound abatement techniques shall include, but are not limited to, vibration or hydraulic insertion techniques, drilled or augured holes for cast-in-place piles, bubble curtain technology, and sound aprons where feasible. At the initiation of each pile driving event, and after breaks of more than 15 minutes, the pile driving shall also employ a "soft-start" in which the hammer is operated at less than full capacity (i.e., approximately 40–60% energy levels) with no less than a 1-minute interval between each strike for a 5-minute period. In addition, a qualified biologist 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 reported fish kills, pile driving shall be halted and the Corps' Regulatory Division

and National Marine Fisheries Service shall be notified via the Port's Environmental Management Division. The biological monitor shall also note (surface scan only) whether marine mammals are present within 100 meters of the pile driving, and if any are observed, temporarily halt pile driving until the observed mammals move beyond this distance.

14. To avoid and minimize adversely affecting California least tern, the permittee shall implement the construction-related conservation measures identified in the November 2008 biological assessment (BA) for the Project (i.e., pages J-52 to J-54, measures 1 through 10; note that operations-related measures [11-16 specifically], such as the predator control program during operations, are included in the Project design and will be implemented and enforced by the LAHD, per the November 2008 MMRP and as reiterated in electronic correspondence from LAHD in November 2008 and May 2010), as well as the following two measures identified in the U.S. Fish and Wildlife Service's January 7, 2009 letter to the Corps concluding Endangered Species Act Section 7 consultation:

*If pile driving and/or stone column construction at Tank Farm Site 1 must be conducted during the tern breeding season, a predator control program shall be implemented to minimize the potential for predation on tern eggs and/or chicks. A qualified biologist will monitor for the presence of predators prior to the initiation of pile driving and/or stone column construction during the breeding season. If predators are present in the vicinity of the tern colony then the Port shall be prepared to initiate predator control when pile driving and/or stone column construction begins.*

and

*During the first tern breeding season following the initiation of Project operations, a qualified biologist will monitor tern nesting success at Pier 400 and compare this data with that from other areas in Los Angeles and Orange Counties. If it is determined that the project design is having an impact on tern nesting success then the LAHD will implement additional measures (e.g., additional sound barriers) as necessary to ensure a successful tern colony is maintained.*

## 8. Conclusion

Based upon a careful consideration of all the social, economic, and environmental evaluations contained in the Draft and Final SEIS/SEIR; 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 Pacific L.A. Marine Terminal LLC Crude Oil Terminal project as reflected in the Preferred Alternative (i.e., the Federal action associated with the applicant's proposed Project as described in their March 2004 application for a Department of the Army permit and their 12 August 2009 amendment to the application).



9. Record of Decision Approval

A handwritten signature in black ink, appearing to read 'H. Magness', written over a horizontal line.

Thomas H. Magness  
Colonel, US Army  
District Commander