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U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT
RECORD OF DECISION FOR THE BERTHS 136-147 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 the existing Berths 136-147 Container Terminal, currently operated by Trans-Pacific Container Service Corp. (TraPac). The Berths 136-147 Container Terminal is more specifically located in the Wilmington District of POLA, and is roughly bordered by Harry Bridges Boulevard on the north; by Slip 1, Neptune Avenue, Water Street, and Fries Avenue on the east; by John S. Gibson Boulevard and the western limit of the Northwest Slip on the west; and by the Turning Basin to the south (N 33°45'-40", W118°20"4").

b. Brief Background and General Description: In August 2003[1], the LAHD applied to the U.S. Army Corps of Engineers (USACE or Corps) for a Department of the Army Standard Individual Permit (SIP) to undertake various wharf improvements and upgrades at Berths 145-147 as part of expanding an existing container terminal, and to transport and dispose of the dredged material at an approved ocean disposal site. The USACE and LAHD subsequently prepared a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) that evaluated and disclosed environmental impacts anticipated from the proposed project, which included various wharf improvements and upgrades at Berths 136-147 and construction of a 10-acre landfill and associated 400-foot-long wharf in the Northwest Slip, and several alternatives, and proposed various measures to mitigate identified environmental impacts. The Los Angeles Board of Harbor Commissioners certified the project EIR on December 6, 2007. Based on the environmental review and discussions with the USACE, in April 2008, the LAHD submitted to the USACE a replacement SIP application as well as a subsequent amendment request that excluded the 10-acre landfill and associated 400-foot-long wharf in the Northwest Slip as a project component. The April 2008 submittals also included updated project information, such as dredge and material quantities.

With the exclusion of the 10-acre landfill and the associated 400-foot-long wharf in the Northwest Slip as a project component, the LAHD's currently proposed project is equivalent to Alternative 2, as identified and evaluated in the project EIS/EIR, finalized in November 2007, with an Addendum to the Final EIS published in November 2008, and it includes the following project components:

- Dredging 260,500 cubic yards (cy) adjacent to Berths 145-147 and less than 30,000 cy adjacent to Berths 136-139 (up to 290,000 cy total) to facilitate wharf structural upgrades and

[1] The LAHD first applied for a Department of the Army Standard Individual Permit for this project on June 9, 2003, but withdrew the application on June 17, 2003 pending project scope and design changes.

achieve sufficient final berthing depth at these berths (-53 Mean Lower Low Water [MLLW]).

- Demolishing and reconstructing portions of the existing concrete wharves at Berths 145-146, demolishing the existing wharf at Berth 147 (approximately 1,100 feet, timber and concrete) and constructing a new concrete-pile supported 705-foot concrete wharf at Berth 147 (removing approximately 360 concrete piles and 770 timber piles and installing approximately 380 concrete piles). To protect the Berth 146 slope, installing a 110-foot transverse sheetpile wall between the upgraded wharf at Berth 146 and the new concrete wharf at Berth 147. For additional slope protection at Berths 145 and 146, installing steel sheetpile bulkhead along approximately 1,000 feet of the toe of the slope at Berths 145-146 and adding rock on the seaward side of this bulkhead below the existing ground elevation. Installing approximately 180,000 cy of rock riprap to reconstruct the slope supporting the new wharf at Berth 147, and placing approximately 29,000 cy of clean fill behind the bulkhead (above the water line).
- Removing and installing concrete piles to seismically upgrade Berths 136-139 (approximately 1,480 feet; removing approximately 600 concrete piles and installing approximately 670 concrete piles) and Berths 145-146 (approximately 1,022 feet; installing approximately 300 concrete piles). For slope protection, the upgrades at Berths 136-139 also include installing a steel sheetpile bulkhead along the toe of the slope over this entire length and adding rock along the seaward side of the bulkhead below the existing ground elevation.
- Removing 6 gantry cranes and installing 5 new gantry cranes (for a total of 12 gantry cranes onsite).
- Transporting and disposing of clean/qualifying dredged material at the USEPA-approved LA-2 ocean disposal site.
- Transporting and disposing of the remaining material at Anchorage Road Upland Soil Storage Site (an upland Confined Disposal Facility [CDF]), or if available and practicable, reusing some or all of this latter material at an in-harbor CDF.
- Developing 57 ac (23 ha) of additional backlands, with all but 5 acres (2 ha) on existing lands.
- Constructing new access gates.
- Rehabilitating or replacing existing paving throughout the terminal.
- Constructing a new on-dock intermodal rail yard.
- Relocating the Pier A rail yard.
- Constructing a new administration building, other buildings and facilities, and a new employee parking lot with demolition of the facilities these replace.
- Widening Harry Bridges Boulevard.
- Developing a 30-acre (12.1-ha) landscaped buffer area between Harry Bridges Boulevard and 'C' Street.

With the April 2008 submittals of the replacement SIP application and amendment, the following components are no longer part of the applicant's proposed project or the associated Federal action for purposes of this Record of Decision and any resulting USACE permit:

- Creating a 10-acre (4-ha) landfill in Northwest Slip and developing backlands on the fill that would increase operational efficiency of the container terminal. This component would include approximately 800,000 cy of fill, 50,000 cy of rock riprap, 12,000 cy of fill behind the dike, 3,000 cy of dredging, and construction of a new 400-foot-long wharf with 397 piles and 44,000 square feet of concrete wharf along the southern edge of the fill.
- Installing storm drains and utilities on the new 10-acre (4-ha) landfill.

Therefore, the Federal action associated with the applicant's currently proposed project is limited to dredging and other wharf-associated demolition, reconstruction, and upgrades in and over waters of the U.S. in the vicinity of Berths 145-147 and Berths 136-139 (an approximately 20-acre area); temporary access, staging, and storage on an approximately 100-foot-wide portion of uplands along the shoreline necessary to undertake the in-water and over-water activities; and the transport and disposal of clean/qualifying dredged material at LA-2, a USEPA-designated ocean disposal site approximately 8.4 nautical miles south of POLA[2]. The removal and addition of gantry cranes (i.e., five added and six removed for a total of 12 gantry cranes onsite), which are partially stowed and operate over navigable waters of the U.S., are also included in the Federal action. Modifications to and operations of the backlands associated with the subject berths do not require a Federal permit, 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 increase and improve the cargo-handling efficiency and capacity of the Port of Los Angeles at Berths 136-147 in the West Basin to address the need to optimize Port lands and terminals for current and future containerized cargo handling. The applicant's currently proposed project seeks to accomplish this purpose by improving facilities and expanding the existing operating 176-acre marine container terminal at Berths 136-147. According to the applicant, the 10-acre landfill and associated 400-foot-long wharf in the Northwest Slip proposed and evaluated in the EIS/EIR and LAHD's original SIP application would not increase cargo-handling capacity, and the efficiency gained by being able to have more containers on chassis or individually stacked would be impracticable when considering the associated cost (i.e., the substantial additional cost would not be offset by additional revenues that would be expected if there were an increase in container throughput).

d. Environmental Requirements: Because the applicant's proposed project includes activities that would also require USACE authorization, pursuant to Section 404 of the Clean Water Act, Section 10 of the River and Harbor Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act, parallel environmental reviews were conducted by the USACE pursuant to the National Environmental Policy Act (NEPA) and its implementing regulations (40 C.F.R. Part 1500 et seq. and 33 C.F.R. Part 325 Appendix B) and the Los Angeles Harbor Department (LAHD) as the lead agency under the California Environmental Quality Act (CEQA). For efficiency, a joint EIS/EIR was prepared. The LAHD-hired consultants (SAIC and

[2] Consistent with Section 103 of the Marine Protection, Research, and Sanctuaries Act, the USACE coordinated with the USEPA on the transport and disposal of dredged material at LA-2, and on November 13, 2008, USEPA concurred with disposal at LA-2 of 132,200 cy to be dredged in the vicinity of Berths 145-147. Although not part of the Federal action, the remaining 129,300 cy of material (of the 260,500 cy to be dredged in the vicinity of Berths 145-147) will be disposed of at Anchorage Road Upland Soil Storage Site, a POLA-upland CDF, or if available and practicable, a portion or all of this material may be reused at an in-harbor CDF. LAHD also intends to dredge less than 30,000 cy in the vicinity of Berths 136-139 and to dispose of this material at Anchorage Road Upland Soil Storage Site. However, clean/qualifying material dredged in the vicinity of Berths 136-139 may be disposed of at LA-2 if the LAHD requests it, USACE determines some or all of the material is suitable, USEPA concurs, and the USACE issues a separate notice to proceed for this activity.

CDM) prepared the EIS portion of the Berths 136-147 Container Terminal Project EIS/EIR 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.

2. Decision

This documents my decision to authorize discharges of fill into waters of the U.S. pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and work and permanent structures in and over navigable waters of the U.S. pursuant to Section 10 of the River and Harbor Act (33 U.S.C. 403), impacting a total of approximately 20 acres of Los Angeles Harbor, and temporary impacts to ocean waters during the transport and disposal of dredged material at the USEPA-approved LA-2 ocean disposal site pursuant to Section 103 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1413), associated with the expansion of the existing Berths 136-147 Container Terminal in the West Basin of POLA. I am selecting the Federal action associated with the applicant's currently proposed project as the Preferred Alternative, which does not include the applicant's originally proposed 10-acre landfill and associated 400-foot-long wharf in the Northwest Slip as a project component. Therefore, I am selecting the Federal action associated with Alternative 2, as identified and evaluated in the project EIS/EIR, which includes the following activities:

i. Discharges of fill into waters of the U.S.[3] and work and permanent structures in and over navigable waters of the U.S., impacting approximately 20 acres in the West Basin of POLA, associated with the expansion of the existing container terminal at Berths 136-147 [TraPac], including dredging of up to 290,000 cy of sediment (i.e., 260,500 cy in the vicinity of Berths 145-147 and less than 30,000 cy in the vicinity of Berths 136-139) and achieving final berthing depths of approximately -53 MLLW; wharf demolition, reconstruction, slope protection, and seismic upgrades at Berths 145-146 (approximately 1,022 feet) and Berths 136-139 (approximately 1,480 feet), including removing piles (approximately 770 timber piles and 360 concrete piles at Berths 146-147 and approximately 600 concrete piles at Berths 136-139) and placing piles (approximately 300 concrete piles at Berths 145-146 and approximately 670 concrete piles at Berths 136-139), installing a 110-foot transverse sheetpile wall between the upgraded wharf at Berth 146 and the new concrete wharf at Berth 147, and installing steel sheetpile vertical bulkheads along the toe of the slope and adding rock along the seaward side of these bulkheads at Berths 145-146 and Berths 136-139; and demolishing the wharf at Berth 147 (approximately 1,100 feet, timber and concrete) and constructing a new 705-foot concrete wharf at Berth 147 supported by approximately 380 concrete piles; removing six gantry cranes and installing five

[3] The discharges into waters of the U.S. would mostly represent temporary impacts to waters of the U.S. because the fill material would be discharged below the existing ground elevation (discharges will occur following dredging to increase depths). The exceptions are the steel sheet pile bulkheads (32-inches thick) to be installed along the toe of approximately 1,000 feet of the slope at Berths 145-146 and along the toe of approximately 1,480 feet of the slope at Berths 136-139 and will extend above the existing ground elevation, as well as the 20-inch thick, 110-foot transverse sheet pile wall to be installed between the upgraded wharf at Berth 146 and the new concrete wharf at Berth 147. The total permanent acreage of bottom substrate that would be filled by these sheetpiles at Berths 145-147 and Berths 136-139 is less than 0.2 acre of waters of the U.S.

gantry cranes (resulting in 12 gantry cranes onsite) that operate over and partially stowed over navigable waters of the U.S.;

ii. Temporary impacts to ocean waters associated with transporting and disposing of clean/qualifying dredged material at the USEPA-designated LA-2 ocean disposal site (i.e., 131,200 cy of the 260,500 cy of material to be dredged in the vicinity of Berths 145-147; and if requested by LAHD and determined to be suitable for ocean disposal by the USACE and USEPA, some or all of the less than 30,000 cy to be dredged in the vicinity of Berths 136-139).

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 project EIS/EIR. It is recognized that the LAHD, as the local agency with continuing program and 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 2007[4]). 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 an SIP pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), Section 10 of the River and Harbor Act (33 U.S.C. 403), and Section 103 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C 1413). This authorization will pertain to the discharges of fill into waters of the U.S. and work and permanent structures in and over navigable waters of the U.S. associated with wharf demolition, reconstruction, and upgrades, impacting approximately 20 acres in the West Basin of POLA, the removal of 6 and the addition of 5 gantry cranes that are partially stowed and operate over navigable waters of the U.S., and temporary impacts to ocean waters associated with the transport and disposal of clean/qualifying dredged material at the USEPA-designated LA-2 ocean disposal site, which is approximately 8.4 nautical miles south of POLA. Qualifying dredged material includes approximately 131,200 cubic yards of 260,500 cubic yards to be dredged in the vicinity of Berths 145-147; and could include, if requested by the LAHD and subject to a separate USACE determination of suitability for ocean disposal, USEPA concurrence, and USACE notice to proceed, any clean/qualifying material of the less than 30,000 cubic yards to be dredged in the vicinity of Berths 136-139. 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.

The applicant has received an Order (R4-2008-0061) of Waste Discharge Requirements (adopted on September 11, 2008 and transmitted as final on January 21, 2009) that the Los Angeles Regional Water Quality Control Board specified also fulfills the requirements for a Clean Water Act Section 401 Water Quality Certification for the project, as well as a Los Angeles Board of Harbor Commissioners-issued Coastal Development Permit (dated September 4, 2008) that the project is consistent with the California Coastal Commission-

[4] Los Angeles Harbor Department, 2007. Mitigation and Monitoring Reporting Program, Berths 136-147 [TraPac] Container Terminal Project, Environmental Impact Statement/Environmental Impact Report, 06 December, 50 pages.

approved Port Master Plan.

3. National Environmental Policy Act Compliance

Details of the NEPA process and documentation are provided in 7.(b) below. Briefly, a Notice of Intent (NOI) to prepare an EIS was published in the Federal Register on October 27, 2003. A public scoping meeting was held at the Wilmington Recreation Center in Wilmington, California, on November 5, 2003, to solicit comments on the project. Comments were received until December 10, 2003. Following substantive changes in the project mainly related to upland activities, a supplemental NOI was distributed by the USACE on February 24, 2006 and published separately in the Federal Register on April 6, 2006, with comments received until April 28, 2006. All comments received were considered in preparing the Draft EIS/EIR. A Notice of Availability of the Draft EIS/EIR for review and comment was published in the Federal Register on June 29, 2007. A public hearing to solicit comments on the Draft EIS/EIR was held on July 31, 2007 at Banning's Landing Community Center in Wilmington, California. The review period ended on September 27, 2007. All comments received were considered in preparing the Final EIS. A Notice of Availability of the Final EIS/EIR was published in the Federal Register on November 23, 2007. The public comment period ended on December 31, 2007 (more than a 30-day review). The USACE published and issued a Notice of Availability of an Addendum to the Final EIS on November 14, 2008 with comments received until December 15, 2008, to update the Conformity Statement in the EIS and include the Draft General Conformity Determination (Appendix O to the Final EIS) for the Federal action. All comments received on the Final EIS/EIR and Addendum to the Final EIS, including the Draft General Conformity Determination, and responses to them are included in Appendix B to this ROD.

4. Alternatives Considered

The Draft EIS/EIR considered eighteen alternatives, which included the applicant's currently proposed project (see Section 2.5 in the Draft EIS/EIR). Of these, twelve alternatives (use of ports outside southern California; expansion of terminals within southern California but outside the Los Angeles Harbor District; lightering; off-site backlands alternatives; development of new landfills and terminals outside the Berths 136-147 terminal area and adjoining West Basin area; shallower dredge depth; alternative shipping use of the terminal; other sites within the Los Angeles Harbor District; non-shipping use of the terminal; Harry Bridges Boulevard relocated to provide additional container storage area; development and operation of a smaller terminal; and alternative designs for the Harry Bridges Buffer Area) were not carried forward for detailed analysis based on early determinations by the USACE in coordination with LAHD that they were not feasible under NEPA, would be more environmentally damaging than the proposed project, or would not meet the overall project purpose. The Preferred Alternative (identified and evaluated as Alternative 2 in the EIS/EIR) and five project alternatives were carried forward in the Draft EIS/EIR and Final EIS/EIR for detailed, co-equal analysis. The No Project Alternative, Omni Terminal Alternative, and Landside Improvements/CEQA No Project Variant Alternative (identified and evaluated in the EIS/EIR as Alternatives 1, 4, and 5, respectively) are No Federal Action alternatives.

Preferred Alternative (Alternative 2 as identified and evaluated in the EIS/EIR): The Preferred Alternative would expand and modernize the existing container terminal at Berths 136-147,

upgrade existing wharf facilities, and install a buffer area between the terminal and the community. The proposed project includes a 30-year lease and would be constructed from 2008-2015. Throughput capacity is expected to be maximized in 2025 and then remain constant through 2038, the end of the 30-year lease period. Most of the proposed improvements would occur on 176 acres currently used as a container terminal operated by TraPac, but the Preferred Alternative includes adding a total of 57 acres to the new terminal. The 57 acres added are largely vacant or underutilized industrial lands adjacent to the existing terminal. In 2003, the existing terminal handled 891,976 twenty-foot-equivalent units (TEUs) of containerized cargo, and had 246 vessel calls. At full operation, expected to occur by 2025, the terminal would handle approximately 2.4 million TEUs per year, which would be approximately 700,000 more than the terminal would be able to handle if no improvements were made.

The new lease between the terminal operator (TraPac) and the LAHD would include environmental controls that are not part of TraPac's holdover lease. Those controls would be imposed pursuant to POLA Environmental Policy[5], the POLA's Sustainable Construction Guidelines[6], the San Pedro Bay Ports Clean Air Action Plan (CAAP)[7], and POLA's Real Estate Leasing Policy (LAHD 2006[8], Section 1.3). The lease would include emissions standards for terminal equipment; participation in the vessel speed reduction program; low sulfur fuel requirements; Alternative Maritime Power (AMP); clean truck requirements; rail engine controls; Leadership in Energy and Environmental Design (LEED)-certified buildings; solar panels; and measures unrelated to air quality such as storm water management.

Major elements of the Preferred Alternative include the following:
• Expanding, redeveloping, and constructing container terminal facilities, including new buildings and gates, and constructing a new on-dock rail yard;
• Wharf and berth work, including dredging and transport and disposal of dredged material (clean/qualifying material at the USEPA-designated LA-2 ocean disposal site, and contaminated material at Anchorage Road Upland Soil Storage Site, or if available and practicable, reuse of dredged material in an in-harbor CDF) of up to 290,000 cubic yards (cy) (260,500 cy from the vicinity of Berths 145-147 and less than 30,000 cy from the vicinity of Berths 136-139); upgrading approximately 2,500 feet of wharf (i.e., 1,022 feet at Berths 145-146 and 1,480 feet at Berths 136-139), including wharf deck improvements, pile removal (approximately 770 timber piles and 360 concrete piles at Berths 146-147 and approximately 600 concrete piles at Berths 136-139) and pile installation (approximately 300 concrete piles at Berths 145-146 and approximately 670 concrete piles at Berths 136-139), steel sheetpile bulkhead construction, and placement of rock along the seaward side of the new bulkheads; demolishing the wharf at Berth 147 (approximately 1,100 feet), installing a transverse sheetpile wall between the upgraded wharf at Berth 146 and the new concrete wharf at Berth 147, and constructing 705 feet of new concrete wharf at Berth 147 supported by approximately 380 concrete piles;

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[5] Los Angeles Harbor Department, 2001. Port of Los Angeles Environmental Policy.
[6] Los Angeles Harbor Department, 2008. Sustainable Construction Guidelines for Reducing Air Emissions.
[7] Port of Los Angeles and Port of Long Beach, 2006. San Pedro Bay Ports Clean Air Action Plan Technical Report, November. 172 pages plus appendix.
[8] Los Angeles Harbor Department, 2006. Port of Los Angeles Real Estate Leasing Policy, approved 01 February, 35 pages.

• Installing five new gantry cranes and removing six existing gantry cranes (leaving 12 gantry cranes total onsite);
• Relocating the Pier A rail yard to the backlands area of Berth 200;
• Constructing a 500-space parking lot for union workers; and
• Widening Harry Bridges Boulevard and constructing a new 30-acre buffer area between "C" Street and Harry Bridges Boulevard.

The Preferred Alternative would result in discharges of fill into waters of the U.S. and work and permanent structures in and over navigable waters of the U.S., impacting approximately 20 acres of Los Angeles Harbor, to complete the dredging and wharf renovation and reconstruction. In addition, the transport and disposal of dredged material at LA-2 would result in temporary impacts to ocean waters. The Preferred Alternative is practicable and achieves the overall project purpose with minor permanent fill discharges (less than 0.2 acre total) into waters of the U.S. associated with installing a transverse sheetpile wall between the upgraded wharf at Berth 146 and the new concrete wharf at Berth 147 and steel sheetpile bulkheads along the toe of the slope at Berths 145-146 and Berths 136-139 (As noted above, the 10-acre landfill in the Northwest Slip is no longer part of the proposed project or associated Federal action per the replacement USACE permit application and subsequent amendment submitted by LAHD in April 2008.) Associated with the wharf upgrades, five new cranes would be installed to replace six existing cranes (leaving 12 gantry cranes total onsite) along the shoreline and would be used and partially stowed over navigable waters of the U.S., and they are included in the Federal action because they could affect the navigable capacity of navigable waters of the U.S.

No Project Alternative (Alternative 1 as identified and evaluated in the EIS/EIR): This alternative considers what would reasonably be expected to occur on the site if no LAHD or Federal action would occur. The 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. The USACE would not issue any permits or discretionary approvals for dredge or fill activities or for construction or renovation of wharves. This alternative would not allow implementation of physical improvements at Berths 136-147. The terminal would remain at its current size of 176 acres and in its current configuration. Forecasted increases in cargo throughput would still occur as greater operational efficiencies are made. Recently approved projects would be in place, such as the original Channel Deepening Project SEIS/SEIR (USACE and LAHD 2000[9]), and the more recent Channel Deepening Project for Additional Disposal Areas SEIS/SEIR (USACE and LAHD 2008[10]), which proposes a 5-acre fill along the east side of the Northwest Slip; but this and other currently proposed projects are subject to discretionary approval by the LAHD and various responsible agencies.

[9] U.S. Army Corps of Engineers and Los Angeles Harbor Department, 2000. Port of Los Angeles Channel Deepening Project, Final Supplemental Environmental Impact Statement/Supplemental Impact Report. State Clearinghouse No. 99091029.
[10] U.S. Army Corps of Engineers and Los Angeles Harbor Department, 2008. Port of Los Angeles Channel Deepening Project, Draft Supplemental Environmental Impact Statement/Supplemental Impact Report. State Clearinghouse No. 1999091029.

Under this alternative, no construction impacts would occur. The terminal would continue to be operated by TraPac under the current holdover lease. There would be operational impacts: cargo ships that currently berth and load and unload at the terminal would continue to do so, terminal equipment would continue to handle cargo containers, and trucks would continue to pick up and deliver containers to local and national destinations and regional intermodal facilities. Under this alternative, environmental controls imposed by local, state, and federal regulatory agencies would be implemented. Additionally, anticipated POLA-wide CAAP measures, such as a tug program, would also be applied. Because these programs have not yet been fully developed, they are not assumed in emissions reductions. There would be no on-dock rail yard or new cranes under this alternative; the 13 existing gantry cranes would remain. This alternative would result in a maximum throughput of 1,697,000 TEUs (907,487 containers), approximately 250 vessel calls, and 1,961,395 truck trips per year by 2025. For a variant of this No Project Alternative, see the Landside Improvements/CEQA No Project Variant alternative (Alternative 5) below, which maintains the same throughput, but includes a new lease with an on-dock rail facility and project-specific environmental controls.

Project With 10-Acre Northwest Slip Fill (Proposed Project as identified and evaluated in the EIS/EIR): This alternative is the same as the Preferred Alternative, except the 10-acre Northwest Slip landfill would be constructed for additional backland storage area, and a 400-foot-long wharf extension adjacent to this fill along its southern boundary would be built, which would result in increased container storage efficiency and, theoretically, slightly fewer air emissions and less energy utilization, when compared to the Preferred Alternative. With construction of this landfill (during Phase II), terminal size would increase to 243 acres (versus 233 acres for the Preferred Alternative). Other project components, such as the relocation of the Pier A rail yard, construction of the new on-dock rail yard, widening of Harry Bridges Boulevard, and development of the Harry Bridges Buffer Area would occur as detailed in Section 1 of the EIS/EIR. As with the Preferred Alternative, construction of this alternative would also include constructing a new LEED-certified administration building and new, modern maintenance and ancillary buildings and demolishing existing buildings; constructing two new gates to improve truck ingress/egress to the facility; and installing utilities, paving, fencing, and lighting as necessary.

With this alternative, the terminal would be operated under a new 30-year lease between the terminal operator (TraPac) and the LAHD. The new lease would include environmental controls that are not part of TraPac's holdover lease. Those controls would be imposed pursuant to the POLA Environmental Policy, POLA's Sustainable Construction Guidelines, San Pedro Bay Port's CAAP, and the POLA Real Estate's Leasing Policy (LAHD 2006, Section 1.3). The lease would include emissions standards for terminal equipment; participation in the vessel speed reduction program; low sulfur fuel requirements; AMP; clean truck requirements; rail engine controls; as noted, LEED-certified buildings; solar panels; and measures unrelated to air quality such as storm water management. Those measures would be essentially the same as the measures identified as mitigation measures for the Preferred Alternative.

Construction of this alternative would be similar to the Preferred Alternative, except it would also include the following:

• Constructing the 10-acre landfill in the Northwest Slip, which would require importing approximately 800,000 cubic yards of fill and 50,000 cubic yards of rock for the dike, and constructing paving, utilities, fencing, striping, and lighting.
• Building the 400-foot wharf extension, which would require driving 397 piles, constructing 44,000 square feet of concrete wharf, placing 12,000 cy of imported fill, and dredging and disposing of 3,000 cy of sediments.

At full capacity, assumed to occur by 2025, this alternative would result in the same amount of container throughput as the Preferred Alternative (2,389,000 TEUs or 1,277,540 containers per year), the same number of vessel calls per year (approximately 334 per year), the same number of rail trips (1,148 per year at the on-dock rail yard and 286 at off-site rail yards), and the same maximum number of truck trips (1,880,401 per year). The throughput and vessel call projections are based on the number of available berths, and the rail and truck trips are driven by the throughput and size of rail yard, which is why projections are the same between the Preferred Alternative and this alternative. However, the additional land (i.e., 10 acres) resulting from the Northwest Slip fill would slightly increase the efficiency of the terminal, which is also a component of the overall project purpose. The presence of additional land at the proposed location would allow for more efficient terminal operations by either allowing for overall lower/less dense stacking of containers at the terminal, or by allowing additional space for chassis/wheeled operation. Some implications of a higher-density terminal could include more top picks and side picks or gantry cranes to stack containers and sort through containers (called shuffling or digging) for placement on stacks; more yard hostler trips to bring containers to be stacked; more hostler and truck congestion in the driving aisles; and longer wait times. Theoretically, this activity would result in the expenditure of more energy and more air emissions, which have been estimated at an extreme to be 4 percent higher for the without 10-acre fill scenario (see Final EIS/EIR Response to Comments pages 2-15 and 2-16).

However, it is not certain the 10 acres would be utilized for a wheeled operation, and therefore, the slightly lower air emissions might not be attained, and constructing the landfill would result in the permanent filling of 10 acres of marine waters and navigable waters of the U.S. (albeit in a heavily industrialized area). It would also not result in additional container throughput to help address the continuing need for additional terminal/throughput capacity, and the substantial cost of constructing this landfill would not be recouped by additional revenue (i.e., throughput would be the same without this 10-acre fill).

Reduced Wharf Alternative (Alternative 3 as identified and evaluated in the EIS/EIR): This alternative is the same as the Preferred Alternative, except that the proposed new 705-foot concrete wharf at Berth 147 would not be constructed. This alternative would include expanding the terminal by 57 acres; implementing the backlands improvements and wharf seismic improvements described in Section 1 of the EIS/EIR; relocating the Pier A rail yard; constructing the new on-dock rail yard; and widening Harry Bridges Boulevard and developing the Harry Bridges Buffer Area. As with the Preferred Alternative, construction of this alternative would also include constructing a new LEED-certified administration building and new, modern maintenance and ancillary buildings and demolishing existing buildings; constructing two new gates to improve truck ingress/egress to the facility; and installing utilities, paving, fencing, and lighting as necessary.

This alternative would result in a container terminal of 233 acres with a maximum throughput of 2,035,000 TEUs (1,088,235 containers) per year, and approximately 300 vessel calls per year by 2025. This alternative would result in the same number of rail trips from the on-dock yard (1,148 per year) as the Preferred Alternative, and a maximum of 1,456,293 annual truck trips. This alternative would be subject to the same environmental control measures as the Preferred Alternative. In the Reduced Wharf Alternative, the terminal would be operated under a new 30-year lease between the terminal operator (TraPac) and the LAHD. The new lease would include environmental controls that are not part of TraPac's current lease. Those controls would be imposed pursuant to the POLA Environmental Policy, POLA's Sustainable Construction Guidelines, San Pedro Bay Port's, San Pedro Bay Ports CAAP, and the POLA Real Estate's Leasing Policy (LAHD 2006; Section 1.3), and would include emissions standards for terminal equipment; participation in the vessel speed reduction program; low sulfur fuel requirements; AMP; clean truck requirements; rail engine controls; as noted, LEED-certified buildings; solar panels; and measures unrelated to air quality such as storm water management. Those measures would be essentially the same as the measures identified as mitigation measures for the Preferred Alternative.

Construction of this alternative would be similar to the Preferred Alternative, except that omission of the 705-foot wharf replacement at Berth 147 would eliminate the need to drive 380 concrete piles, construct 78,135 square feet of concrete wharf, place approximately 180,000 cy of rock and 29,000 cy of fill, and dredge and dispose of 242,000 cy of sediment. As with the Preferred Alternative, it would result in minor permanent fill (less than 0.2 acre total) discharges in waters of the U.S. (from installation of the steel sheetpile bulkheads at the toe of the slope at Berths 145-146 and Berths 136-139) and no loss of navigable waters of the U.S., but it would not impact the Berth 147 vicinity to reconstruct the slope and replace the wharf at Berth 147 (and therefore the transverse sheetpile wall would not be installed either).

Omni Terminal Alternative (Alternative 4 as identified and evaluated in the EIS/EIR):

This alternative would convert the project area into an omni-cargo handling terminal, similar to the Pasha Stevedoring & Terminals L.P. (Pasha) operation currently operating at Berths 174-181. This alternative would differ from the Preferred Alternative in several ways:

- No seismic upgrades to the existing wharves;
- No new wharf construction; and
- No change in existing cranes

Because no water-associated fill, dredging, or wharf construction would be needed, the omni terminal would require no USACE permit or other Federal action (i.e., it is a No Federal Action alternative).

Backland development to support the omni terminal would result in a 202-acre terminal. However, there would be no on-dock rail yard, and the Pier A rail yard would not be relocated. The backlands redevelopment would include different buildings than those included in the Preferred Alternative, and the configuration of the utilities, striping, and lighting would be different.

It is assumed that one-third of the omni terminal would be used for container cargo (565,700 TEUs per year in 2025), one-third for automobile off-loading/transport (31,920 automobiles per year), and one-third for break-bulk use (315,336 metric tons per year in 2030). Approximately 83 vessel calls per year would be expected by 2025. There would be no rail trips from an on-dock yard because the on-dock yard would not be built, but intermodal cargo would generate a maximum of 483 trains per year to and from off-site rail yards. This alternative would generate a maximum of 692,193 truck trips per year.

This alternative would be operated under a new 30-year lease between the terminal operator (TraPac) and the LAHD. The new lease would include environmental controls that are not part of the current lease. Those controls would be imposed pursuant to the POLA Environmental Policy, POLA's Sustainable Construction Guidelines, San Pedro Bay Ports CAAP, and the POLA Real Estate's Leasing Policy (LAHD 2006, Section 1.3). The lease would include emissions standards for terminal equipment; participation in the vessel speed reduction program; low sulfur fuel requirements; clean truck requirements; rail engine controls; LEED-certified buildings; solar panels; and measures unrelated to air quality such as storm water management. Those measures would be essentially the same as the measures identified as mitigation measures for the Preferred Alternative.

Construction of this alternative would include the addition of 26 acres of land to the terminal, including the 5-acre of fill expected to be placed in the eastern portion of the Northwest Slip as part of the Channel Deepening Project. Construction would require paving, fencing, and striping; the demolition of the existing administration and maintenance buildings and the main gate; construction of new buildings and gates; and construction of the Harry Bridges Buffer Area and the associated roadway widening as described in Section 1 of the EIS/EIR.

Landside Terminal Improvements/CEQA No Project Variant Alternative (Alternative 5 as identified and evaluated in the EIS/EIR): This alternative comprises only the upland infrastructure components of the Preferred Alternative, including new terminal buildings, new truck gates, an on-dock rail yard, a new 500 space parking lot, and the paving, fencing, utilities, and lighting necessary for the infrastructure changes. The Pier A rail yard would be relocated as in the Preferred Alternative, and Pacific Harbor Line's operations transferred to the new rail yard. The new terminal's area would be 190 acres, including area for the new on-dock rail yard, terminal buildings, and gate modifications. This alternative would not include new land for container storage. This alternative includes widening Harry Bridges Boulevard and constructing the Harry Bridges Buffer Area.

Under this alternative, the terminal would be operated under a new 30-year lease between the terminal operator (TraPac) and the LAHD. The new lease would include environmental controls that are not part of the current lease. Those controls would be imposed pursuant to the POLA Environmental Policy, POLA's Sustainable Construction Guidelines, San Pedro Bay Ports CAAP, and the POLA Real Estate's Leasing Policy (LAHD 2006, Section 1.3). The lease would include emissions standards for terminal equipment; participation in the vessel speed reduction program; low sulfur fuel requirements; AMP; clean truck requirements; rail engine controls; LEED-certified buildings; solar panels; and measures unrelated to air quality such as storm water management. Those measures would be essentially the same as the measures identified as mitigation measures for the Preferred Alternative.

Under this alternative, the terminal would handle approximately 1,355,200 TEUs in 2015 and 1,697,000 in 2025 through 2038, the same as the No Project Alternative. Throughput limitations are imposed by the limited berth capacity and backlands acreage. Thus, this alternative is a variant of the CEQA No Project Alternative (Alternative 1). Both the No Project Alternative and this alternative would generate the same throughput, but this alternative includes discretionary action and permits by the LAHD that would include a new lease with environmental controls.

Under this alternative, there would be no wharf upgrades, no new wharves or container cranes, no dredging to deepen berths or associated transport and ocean disposal, and no 10-acre landfill and associated 400-foot-long wharf in the Northwest Slip. This alternative is also a No Federal Action alternative. Under this alternative, only the upland infrastructure components are constructed, but no new backland area for container storage is added. Therefore, while throughput has the potential to grow due to operational changes, actual throughput growth is constrained in 2015 by significantly less backland acreage and lack of operational changes in this time frame.

A detailed analysis of the direct, indirect, and cumulative impacts to aquatic resources associated with the above alternatives is contained in the attached Final Section 404(b)(1) Alternatives Analysis (Appendix A), a draft of which was included as Appendix H of the Final EIS/EIR.

5. Basis for the Decision

In making my decision, I have reviewed Section 404 of the Clean Water Act (33 U.S.C. 1344) and the promulgated USACE regulations (33 C.F.R. Parts 320-332), the Section 404(b)(1) Guidelines (40 C.F.R. Part 230), the Berths 136-147 Container Terminal Final EIS/EIR, the November 14, 2008 Addendum to the Final EIS, including the final general conformity determination (Appendix C to this ROD), and all the comment letters received in response to the draft and final versions of the document and to the Addendum to the Final EIS, including the draft general conformity determination.

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 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 and Addendum to the Final EIS, including the draft general conformity determination, and on the corresponding public notices for the project (No. 2003-1142-SDM), and responses to these comments, are contained in Appendix B, and the Final Section 404 (b)(1) Alternatives Analysis is included as Appendix A.

a. Evaluation of Alternatives: (1) No Project Alternative: While it would be less environmentally damaging than the Preferred Alternative (no dredging or associated transport and ocean disposal, in-water fills, or other wharf-associated work), it would result in approximately 30 percent less throughput at this existing terminal (1.697 million versus 2.389 million TEUs). Given the current and future forecasts for cargo demand in POLA (more than

doubling in the next 15-20 years) and the recognized need to optimize if not maximize existing terminal capacity, which would still result in a capacity shortfall, this alternative does not meet the overall project purpose.

(2) Project With 10-Acre Fill: This alternative would be more environmentally damaging than the Preferred Alternative (10 acres of waters of the U.S. and navigable waters of the U.S. would be permanently filled and lost in the Los Angeles Harbor). While it would provide additional backland acreage for storage that could reduce stacking of containers and result in slightly less energy utilization and air emissions (i.e., more efficient terminal operations), these potentially minor benefits would result from filling and loss of marine waters and navigable waters of the U.S. While the West Basin is located in an area of lower biological and Essential Fish Habitat (EFH) value than the Outer Harbor (as recognized by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the USACE), it would be a clear loss of aquatic ecosystem habitat versus the potential for slightly lower air emissions (estimated at 3-4 percent) at the project site. It would also not result in any additional throughput compared to the Preferred Alternative, so it would achieve the overall project purpose but with more damage to the aquatic ecosystem than the Preferred Alternative.

(3) Reduced Wharf Alternative: Construction of this alternative would be similar to the Preferred Alternative, except that omission of the 705-foot wharf replacement at Berth 147 would eliminate the need to drive 380 concrete piles, construct 78,135 square feet of concrete wharf, place approximately 180,000 cy of rock on the reconstructed slope, add 29,000 cy of fill behind the bulkhead and above the water line, and dredge and dispose of approximately 242,000 cy of sediment. As with the Preferred Alternative, there would be minor permanent fill (less than 0.2 acre total) discharged into waters of the U.S. (from installation of the steel sheetpile bulkheads at the toe of the slope at Berths 145-146 and Berths 136-139) and no loss of navigable waters of the U.S. Unlike the Preferred Alternative, this alternative would not affect the aquatic habitat in the vicinity of Berth 147 by dredging, filling, pile removal and placement, and installation of a transverse sheetpile wall. However, the aquatic habitat in the project area is in a heavily industrialized area. Also, the aquatic habitat in the vicinity of Berth 147 would be expected to provide similar functions and values within a few years following completion of the wharf reconstruction activities at Berth 147. While this alternative would be less environmentally damaging than the Preferred Alternative during the short term (in the vicinity of Berth 147), it would result in 15 percent less throughput at the existing Berths 136-147 container terminal. Given the current and future forecasts for cargo demand in POLA (more than doubling in the next 15-20 years) and the recognized need to optimize if not maximize existing terminal capacity, which would still result in a capacity shortfall, this alternative does not meet the overall project purpose.

(4) Omni Terminal Alternative: This alternative would involve no Federal action, but it would result in approximately 75 percent less cargo throughput than the Preferred Alternative. Given the current and future forecasts for cargo demand POLA (more than doubling in the next 15-20 years) and the recognized need to optimize if not maximize existing terminal capacity, which would still result in a capacity shortfall, this alternative does not meet the overall project purpose.

(5) Landside Terminal Improvements Alternative: This alternative would involve no Federal action. However, it would result in approximately 30 percent less throughput at this existing terminal than the Preferred Alternative. Given the current and future forecasts for cargo demand in POLA (more than doubling in the next 15-20 years) and the recognized need to optimize if not maximize existing terminal capacity, which would still result in a capacity shortfall, this alternative does not meet the overall project purpose.

(6) Preferred Alternative: This alternative (identified and evaluated as Alternative 2 in the EIS/EIR and the project in the April 2008 replacement application and subsequent amendment) is the Preferred Alternative, because it would be practicable to construct in terms of cost, logistics, and technology, would achieve the overall project purpose by providing a terminal with a capacity of approximately 2.4 million TEUs, and would result in less environmental damage than the only other alternative that would meet the overall project purpose (i.e., project with the 10-acre landfill in the Northwest Slip). It would result in the same throughput as the applicant's originally proposed project as identified and evaluated in the EIS/EIR, without the 10-acre permanent filling of waters of the U.S. and loss of navigable waters of the U.S. Because of the discharges of fill in waters of the U.S., work (including up to 290,000 cy of dredging) and permanent structures in and over navigable waters of the U.S., and temporary impacts to ocean waters associated with transport and disposal of dredged material at LA-2, it would result in more environmental impacts than the Reduced Wharf Alternative (no wharf reconstruction at Berth 147 and therefore fewer short-term impacts at that location and no transverse sheetpile wall installed between the upgraded wharf at Berth 146 and the new concrete wharf at Berth 147), No Project Alternative, Omni Terminal Alternative, and Landside Improvements Alternative (the latter three are No Federal Action alternatives) (Alternatives 3, 1, 4, and 5, respectively, in the EIS/EIR). Unlike those alternatives, however, the Preferred Alternative would meet the overall project purpose.

b. Identification of the Environmentally Preferable Alternative: (1) The Environmentally Preferable Alternative would consist of that alternative which most closely fulfills the national environmental policy found in Section 101 of the NEPA. Essentially, it is the alternative that causes the least damage to the biological and physical environment; it also means the alternative that best protects, preserves, and enhances 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 10 acres of the Northwest Slip and to construct 1,105 feet of new wharves (705-foot wharf at the south end of Berth 147 and the 400-foot wharf adjacent to the 10-acre Northwest Slip fill) and to upgrade 2,500 linear feet of wharves, both the Omni Terminal Alternative and the Landside Terminal/CEQA Project Variant Alternative (identified as Alternatives 4 and 5, respectively, in the EIS/EIR), neither of which would require Federal action, would be Environmentally Preferable Alternatives. Of the alternatives involving Federal action, the Reduced Wharf Alternative (identified as Alternative 3 in the EIS/EIR) would be environmentally preferable.

(2) The reason for selecting the Preferred Alternative over the No Action Alternatives (No Project, Omni Terminal, Landside Improvements/CEQA No Project Variant) is based on the ability to achieve the overall project purpose of increasing and optimizing the cargo-handling efficiency and capacity of the Port at Berths 136-147 in the West Basin to address the

need to optimize Port lands and terminals for current and future containerized cargo handling. None of the No Action alternatives meet the overall project purpose. While they would be less environmentally damaging than the Preferred Alternative (no dredging or transport and ocean disposal, in-water filling, or other wharf work in or over waters of the U.S.), they would result in approximately 30-75 percent less throughput at the Berths 136-147 container terminal. Given the current and future forecasts for cargo demand in POLA (more than doubling in the next 15-20 years) and the recognized need to optimize if not maximize existing terminal efficiency and capacity, which would still result in a capacity shortfall, none of the No Action alternatives meet 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 project EIS/EIR. It is recognized that the LAHD, as the local agency with continuing program and responsibility over the entire project throughout its useful life, will implement, maintain, and monitor the full suite of mitigation measures identified in the December 2007 certified EIR for the project, pursuant to the project's MMRP (LAHD, 2007). 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 Record of Decision (see 7.c.(10) below).

7. Findings

a. Status of Other Authorizations and Legal Requirements: (1) Water Quality Certification: An Order (No. RF-2008-0061) for Waste Discharge Requirements (adopted on September 11, 2008 and transmitted as final on January 21, 2009) was issued by the Los Angeles Regional Water Quality Control Board pursuant to the Porter-Cologne Water Quality Control Act, and as specified by the Los Angeles Regional Water Quality Control Board also fulfills the requirements of a Clean Water Act Section 401 Water Quality Certification for the project.

(2) Coastal Zone Management Act (CZMA) Consistency Determination: On September 4, 2008, the Los Angeles Board of Harbor Commissioners issued a Coastal Development Permit for the project as being consistent with the California Coastal Commission-approved Port Master Plan for the Port of Los Angeles.

(3) Compliance with Section 106 of the National Historic Preservation Act (NHPA): The entire project area was examined via records search and pedestrian survey. No cultural resources were detected within the proposed project area. The Native American Heritage Commission sent an October 26, 2007 letter stating their record search of their Sacred Lands File failed to identify resources of interest to Native Americans in the vicinity of the project area. In early November 2007, LAHD-hired consultant SAIC sent a USACE-approved letter to all the tribal contacts included in the Native American Heritage Commission's letter, to solicit tribal input on cultural resources of interest. One response was received in late November 2007 from Mr. Sam Dunlap, Cultural Resource Director of the Gabrielino/Tongva Tribal Council, recommending a Native American monitoring component be implemented as part of the

project. This monitoring component has been incorporated into CR-1, which is a cultural resource mitigation measure (MM) specified in the EIS/EIR. The USACE public notice for the Draft EIS/EIR also included a preliminary determination that the proposed project would not affect cultural resources listed or eligible for listing on the National Register of Historic Places, and requested that the State Historic Preservation Officer provide any information to the contrary during the 45-day review period. Except for Mr. Dunlap's comment letter, no cultural resource information or requests for additional time or information were received. Considering all of this information and the amended MM CR-1 with Native American monitoring, it is expected that no cultural resources listed or eligible for listing on the Nation Register of Historic Places would be affected by the currently proposed project, and the Preferred Alternative would be in compliance with Section 106 of the NHPA.

(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, 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 USFWS is therefore not required.

(5) Compliance with the Magnuson-Stevens Fishery Conservation and Management Act: The June 29, 2007 joint public notice of the application for a USACE Department of the Army permit, availability of the Draft EIS/EIR, and notice of the July 31, 2007 public hearing initiated EFH consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. As originally proposed, the project included a 10-acre landfill in the Northwest Slip and associated 400-foot-long wharf and temporary impacts to areas designated as EFH by dredging, wharf retrofits, reconstruction, and new construction, and potential disposal actions at LA-2/LA-3 or other approved sites in the harbor if available. NMFS provided a September 25, 2007 letter determining that most of the impacts to EFH would be temporary and adverse, but there would be adequate measures incorporated to avoid, minimize, and otherwise mitigate these impacts. At that time, NMFS was primarily concerned about the proposed 10-acre landfill in the Northwest Slip, and they requested the USACE and LAHD select Alternative 2 (i.e., Project without 10-acre fill in the Northwest Slip) if practicable. Because the 10-acre landfill is no longer part of the proposed project (i.e., equivalent to Alternative 2 in the EIS/EIR), EFH consultation has been concluded with no additional requirements, as confirmed in a February 11, 2009 E-mail from Bryant Chesney at NMFS.

(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., discharges of fill material into waters of the U.S., and the transport and disposal of dredged material at designated ocean sites has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. An Addendum to the Final EIS, which included a draft general conformity determination, was published on November 14, 2008 for a 30-day review. The draft general conformity determination was for the Federal action associated with the applicant's currently proposed project, including all emissions resulting from the in-water and over-water

construction activities as well as those associated with temporary staging, storage, and access within 100 feet of the shoreline needed to complete the in-water and over-water activities. Other indirect construction emissions, such as backland development, 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, and were therefore not included in the analysis.

Two comment letters were received in response to the Addendum to the Final EIS, although only one, from the Natural Resources Defense Council (NRDC), addressed general conformity (the other, a National Marine Fisheries Service comment letter, is addressed in b.(4) below). The NRDC stated their concern that the South Coast Air Basin would not attain the 1-hour ozone standard by 2010. However, this standard no 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 Columbia[11] 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 expressed concern that the analyzed Federal action did not include the originally proposed 10-acre landfill in the Northwest Slip. However, as noted, the applicant's April 2008 replacement and amended Department of the Army permit application clarified that this landfill was no longer a project component. Therefore, the general conformity determination does not need to include it. However, if the LAHD proposes to fill this area in the future, they would be subject to additional environmental requirements, which could include additional general conformity analysis. 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). Given the small percentage the Federal action's NOx emissions would represent of the regional inventory (less than 0.2 percent), it is reasonable to conclude the regional inventory accounts for this level of NOx emissions from construction of a project at POLA/POLB, as a major part of goods movement in southern California. The same approach was used and supported by the South Coast Air Quality Management District, California Air Resources Board, and USEPA in demonstrating general conformity for the expansion of Los Angeles International Airport, a project in the South Coast Air Basin with significantly more construction emissions than the proposed project. Even though none of these agencies provided comments on our Addendum to the Final EIS, including the draft general conformity determination, we discussed our approach and draft general conformity determination with the USEPA, SCAQMD, and CARB. The SCAQMD and CARB conducted a regulatory review of the Federal action emissions and concluded that the approved SIP and 2007 AQMP budgets can accommodate those emissions. USEPA reviewed and agreed with the regulatory review. The regulatory review has been included in the Final General Conformity Determination, which is included as Appendix C to this ROD. In short, the USACE believes there is adequate allowance in the emissions budgets under the EPA-approved SIP and the 2007 AQMP to accommodate the total of direct and indirect NOx emissions under the Federal

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

action (as evaluated in Appendix O in the EIS).

b. Public Involvement: (1) The USACE, as the lead agency under NEPA, published an NOI to prepare an EIS for the proposed project on October 27, 2003. The USACE published and distributed the same information simultaneously on its public notice web page. In addition, a public scoping meeting was held at the Wilmington Recreation Center in Wilmington, California, on November 5, 2003. The public comment period ended on December 10, 2003. Following substantive project changes, a supplemental NOI was distributed on February 24, 2006, and a supplemental NOI was published separately in the Federal Register on April 6, 2006. Comments on the supplemental NOI were received until April 28, 2006. Approximately 450 written comments were received from agencies, organizations, and individuals 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 June 29, 2007. 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 August 2003). In addition, approximately 50 hard copies and 150 CDs of the Draft EIS/EIR and 150 summaries were distributed to agencies, organizations, individuals, and Port 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 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. A public hearing was held in Banning's Landing Community Center in Wilmington, California, on July 31, 2007. The public comment period ended on September 27, 2007 (90-day review period). There were 395 written comments in response to the Draft EIS/EIR that were considered in preparing the Final EIS/EIR.

(3) A Notice of Availability of the Final EIS was published in the Federal Register on November 23, 2007. The USACE published simultaneously a public notice of the same. In addition, approximately 50 copies of the Final EIS/EIR and 150 summaries were distributed to agencies, organizations, individuals, and Port 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 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. The public comment period ended on December 31, 2007 (more than a 30-day review). The USACE received five substantive comment letters from the NRDC, Center for Biological Diversity, South Coast Air Quality Management District, USEPA, and Gabrielino/Tongva Tribal Council; the California State Lands Commission and California Attorney General each provided a letter of support. Responses to all of the comments are provided in Appendix B. Briefly, the USEPA letter supported the USACE's preliminary determination made in the Draft Section 404(b)(1)

alternatives analysis, included as Appendix H in the Draft and Final EIS/EIR, that Alternative 2 (Project without 10-acre fill in the Northwest Slip) was the least environmentally damaging practicable alternative. As discussed above, the applicant agreed not to include this component in the project and submitted in April 2008 a replacement USACE permit application and amendment request to authorize the in- and over-water activities identified and evaluated in Alternative 2 in the EIS/EIR. The USEPA also reiterated that additional analysis was warranted with regard to general conformity. NRDC had also commented that additional general conformity analysis was needed. The USACE had further discussions with USEPA and the applicant about this issue, and agreed that a general conformity determination was needed, as discussed below. The Gabrielino/Tongva Tribal Council requested Native American monitoring be incorporated during project construction and the preparation of the treatment plan if archaeological resources are discovered; these were incorporated into MM CR-1 in the EIR prior to it being certified in December 2007. The Center for Biological Diversity requested the USACE conduct a cumulative impact analysis of the project's anticipated greenhouse gas emissions. However, an EIS does not require a significance finding for any impact criterion evaluated, such as AQ-8 (i.e., the greenhouse gas emissions criterion presented and used by the applicant for the purposes of the EIR), for project-level or cumulative impacts. It is sufficient to disclose the impacts/emissions and their potential environmental effects without concluding whether they are individually or cumulatively significant. Our response to this comment in Appendix B clarifies information presented in the EIS/EIR. The other comment letters had no substantive bearing on the final decision.

(4) A Notice of Availability of an Addendum to the Final EIS, which updated the General Conformity Statement in Section 3.2 of the EIS/EIR and added the draft general conformity determination as Appendix O to the EIS/EIR, was published in the Federal Register on November 14, 2008 for a 30-day review. The USACE published simultaneously a special public notice (in English and in Spanish) with the same information, and provided links to the revised section and Appendix O (Draft General Conformity Determination) on its website (http://www.spl.usace.army.mil/regulatory/POLA.htm) and the applicant's website (http://www.portoflosangeles.org/environmental_pn.htm). In addition, the applicant made these documents available to four public libraries in Wilmington and San Pedro as well as the applicant's office. The public comment period ended on December 15, 2008. The USACE received two comment letters from the NMFS and NRDC; although the comment letter from NMFS was focused on marine mammal protection and did not include comments on general conformity. The comment letter from the NRDC had no substantive bearing on the final decision (see 7.a.(5) above). To address the comment in the NMFS letter, a special condition intended to minimize pile-driving-associated noise effects on marine mammals is being included in this ROD (see c.(10) below) and the SIP to be consistent with a similar measure developed with the NMFS on other Port of Los Angeles EIS/EIRs. Both comment letters and responses to these comments are provided in Appendix B of this ROD.

c. Section 404(b)(1) Compliance: Detailed preliminary discussion of compliance with the Section 404(b)(1) Guidelines was provided in Appendix H of the Draft EIS/EIR and Final EIS/EIR. The Final Section 404(b)(1) Alternatives Analysis is provided as Appendix A to this ROD. In summary, the Preferred Alternative (identified and evaluated as Alternative 2 in the EIS/EIR) is the least environmentally damaging practicable alternative (LEDPA). All of the appropriate and practicable conditions set forth in the EIS/EIR to minimize pollution or adverse

effects to the affected aquatic ecosystem will be included as part of the Federal action or will be required by special conditions of the SIP (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 SIP being proffered for this project:

1. The permittee shall not initiate any Berths 136-139 project activities until receiving a separate written notice to proceed (NTP) from the Corps. To receive this written NTP, at least 30 days prior to the planned start date, the permittee shall submit a written request to the Corps with specific information pertaining to the Berths 136-139 project activities, including: final plans/drawings and specifications; a brief narrative of any changes in the Berths 136-139 project activities compared to what was identified and evaluated in the EIS/EIR and the April 2008 replacement/amended application for a Department of the Army permit; and if there have been changes, written confirmation from the Los Angeles Regional Water Quality Control Board and the Los Angeles Board of Harbor

Commissioners these activities are consistent with the project Waste Discharge Requirements (such as issuance of amended Waste Discharge Requirements), which the Los Angeles Regional Water Quality Control Board specified also fulfills the requirement for a Clean Water Act Section 401 Water Quality Certification, and the California Coastal Commission-approved Port Master Plan, respectively. .

2. 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.

3. The permitted activity shall not interfere with the right of the public to free navigation on all navigable waters of the United States as defined by 33 C.F.R. Part 329.

4. While discharges of fill in waters of the U.S. are authorized (e.g., addition of rock, steel sheetpiles/bulkhead), this permit does **not** authorize any permanent loss of surface waters from discharges of fill, such as the originally proposed 10-acre landfill in the Northwest Slip.

5. 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.

6. A pre-construction survey of the project area for *Caulerpa taxifolia* (Caulerpa) shall be conducted in accordance with the Caulerpa Control Protocol (see http://swr.nmfs.noaa.gov/hcd/caulerpa/ccp.pdf) not earlier than 90 calendar days prior to planned construction and not later than 30 calendar days prior to construction in a particular portion of the West Basin (i.e., it is expected separate Caulerpa surveys will be conducted prior to work being initiated at Berths 145-147 and, later, at Berths 136-139). The results of each survey shall be furnished to the Corps, National Marine Fisheries Service (NMFS), and the California Department of Fish and Game (CDFG) at least 15 calendar days prior to initiation of work in waters of the U.S. In the event that Caulerpa is detected within any portion of the project area, the permittee shall not commence work until such time as the infestation has been isolated, treated, and the risk of spread is eliminated as confirmed in writing by the Corps, in consultation with NMFS and CDFG.

7. 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 activities authorized herein, any and all excess material or debris shall be completely removed from the work area and disposed of in an appropriate upland site.

8. The permittee shall notify the Corps of the date of commencement of operations 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. Separate notifications shall be required for the Berths 145-147 and the Berths 136-139 project activities.

9. 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 (i.e., 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)
Coast Guard Island, Building 50-3
Alameda, CA 94501-5100
ATTN: Local Notice to Mariners
TEL: (510) 437-2986
FAX: (510) 437-3423
FAX: (310) 732-2029

U.S. Coast Guard
Marine Safety Office / Group LA-LB
1001 South Seaside Ave., Bldg 20
San Pedro, CA 90731
Attn: Waterways Management
TEL: (310) 732-2020

10. 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.

11. 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.

12. Upon notification to the U.S. Coast Guard as specified in Special Condition 9, 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.

13. Within 30 calendar days of completion of the activities authorized by this permit, 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. (Because Berths 145-47 and Berths 136-139 project activities are expected to occur during different years, two post-project surveys shall be prepared and provided: one within 30 days of completing the Berths 145-147 project activities; and the second within 30 days of completing the Berths 136-139 project activities.)

14. 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.

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

16. Dredging authorized in this permit shall be limited to the areas defined in Drawings 1-2342 DR-1 to DR-5 and XX-1 to XX-14 only (the drawings for the dredging associated with the Berths 136-139 will be separately referenced in the NTP if one is issued by the Corps). The permittee is authorized to dredge no more than 260,500 cubic yards of material from the vicinity of Berths 145-147 and less than 30,000 cubic yards of material from the vicinity of Berths 136-139. Per Special Condition 1, however, no Berths 136-139 project activities, including dredging, may proceed until the permittee requests and receives a separate NTP for those project activities from the Corps. No dredging is authorized in any other location under this permit. This permit does not authorize the placement or removal of buoys.

17. For this permit, consistent with the drawings cited in Special Condition 16, the maximum dredging design/project depth shall be -57 feet mean lower low water (MLLW) at Berths 145 and Berths 136-139 and –65 feet MLLW at Berths 146-147, with a maximum allowable over-dredge depth of 2 feet below the project/design depth at each location. At the completion of wharf slope reconstruction and protection activities, a final berthing depth of -53 MLLW shall be achieved at all berths, matching the depth elsewhere in the West Basin. In no case shall dredging occur deeper than –67 feet below MLLW (maximum

dredging design depth of -65 MLLW with 2 foot over-dredge depth) or outside the project boundaries.

18. The permittee is prohibited from dredging and disposing of material in navigable waters of the U.S. that has not been tested and determined by the Corps, and with concurrence by the U.S. Environmental Protection Agency Region IX (USEPA), to be both clean and suitable for disposal in ocean waters. Re-testing of previously tested or dredged areas is required after 3 years from the date of permit issuance. This time limit is subject to shortening given the occurrence of any event that may cause previously determined clean material to become suspect, at the discretion of the Corps. Prior to each dredging episode, the permittee must demonstrate that the proposed dredged materials are chemically, physically, and biologically suitable for disposal in ocean waters according to the provisions of the Inland Testing Manual (for upland disposal or other disposal not in the ocean) or Ocean Disposal Manual, as appropriate. If the material does not meet the physical and chemical criteria for unconfined disposal in ocean waters, the dredged material shall be disposed in an upland disposal area or, if available, an in-harbor CDF. The permittee shall submit to the Corps and USEPA a draft sampling and analysis plan (SAP). Sampling may not commence until the SAP is approved, in writing, by the Corps, in consultation with USEPA. (Note that this condition has been satisfied for the proposed dredging in the vicinity of Berths 145-147, assuming the dredging at this location occurs within 3 years of the issue date of this permit, but it has not been satisfied for dredging in the vicinity of Berths 136-139 if the permittee proposes any ocean disposal of that future dredged material. However, in the April 2008 replacement application/amendment for a Department of the Army permit, the permittee proposed to dispose of all material dredged in the vicinity of Berths 136-139 at the Anchorage Road Upland Soil Storage Site, which would not necessitate this testing.)

19. At least 15 calendar days before initiation of any dredging operations authorized by this permit, the permittee shall send a dredging and disposal operations plan to the Corps and USEPA, with the following information (what follows specifically addresses Berths 145-147 but shall also apply to dredging operations associated with Berths 136-139 and shall, therefore, require separate notification to the Corps and USEPA):

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

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

C) The results of a detailed analysis of all material to be dredged pursuant to an approved SAP.

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

i) Dredging and disposal procedures for 129,300 cubic yards of dredged material in the vicinity of Berths 145-147 determined by the Corps and USEPA Region IX to be unsuitable for ocean disposal.
ii) Dredging and disposal procedures for all 260,500 cubic yards to be dredged from the vicinity of Berths 145-147.
iii) A schedule showing when the dredging project is planned to begin and end.

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

i) The entire dredging area, the toe and top of all side-slopes, and typical cross sections of the dredging areas. To ensure that the entire area is surveyed, the pre-dredge condition survey shall cover an area at least 50 feet outside the top of the side-slope or the boundary of the dredging area, unless obstructions are encountered.
ii) The dredging design depth, over-dredge depth and the side-slope ratio.
iii) The total quantity of dredged material to be removed from the dredging areas and the side-slope areas.
iv) Areas shallower than the dredging design depth shall be shaded green, areas between the dredging design depth and over-dredge depth shall be shaded yellow, and areas below over-dredge depth that will not be dredged shall be shaded blue. If these areas are not clearly shown, the Corps may request additional information.
v) The pre-dredging survey chart shall be signed by the permittee to certify that the data are accurate and that the survey was completed 30 days before the proposed dredging start date.

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

20. The permittee shall not commence dredging operations unless and until the permittee receives a written NTP from the Corps.

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

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

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

24. The permittee shall use an electronic positioning system to navigate at the dredging site. The electronic positioning system shall have a minimum accuracy and precision of +/- 10 feet (3 meters). If the electronic positioning system fails or navigation problems are detected, all dredging operations shall cease until the failure or navigation problems are corrected. Any navigation problems and corrective measures shall be described in the post-dredging completion report per Special Condition 45.

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

26. Upon request, the permittee and its contractor(s) retained to perform work authorized by the permit or to monitor compliance with this permit shall make available to inspectors from the Corps, USEPA, LARWQCB, and/or the U.S. Coast Guard the following: dredging and disposal operations inspectors' logs, the vessel track plots and all disposal vessel logs or records, any analyses of the characteristics of dredged material, or any other documents related to dredging and disposal operations.

27. For this permit, the term disposal operations shall mean: (1) the transport of dredged material from the dredging site (vicinity of Berths 145-147 and Berths 136-139) to in-harbor berths for offloading and trucking to an upland disposal site (such as Anchorage Road Upland Soil Storage Site), to the USEPA-designated LA-2 ocean disposal site located approximately 8.5 nm south of the Port of Los Angeles (see Special Condition 28), and/or, if available, to an in-harbor CDF; (2) the proper disposal of dredged material at an appropriate upland disposal site (such as Anchorage Road Upland Soil Storage Site), the USEPA-designated LA-2 ocean disposal site, and/or an in-harbor CDF; and (3) the transport of the hopper dredge or disposal barge or scow back to the dredging site.

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

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

29. As concurred with by USEPA, no more than 131,200 cubic yards of dredged material excavated in the vicinity of Berths 145-147 are authorized for disposal at the LA-2 ocean disposal site.

30. No material dredged in the vicinity of Berths 136-139 shall be authorized for disposal at the LA-2 ocean disposal site unless testing of the material pursuant to established Corps/USEPA protocols demonstrates this dredged material is acceptable for ocean disposal. If the Corps determines and USEPA concurs the material qualifies for ocean disposal at the LA-2 site, the Corps may authorize such material disposal at the LA-2 site in the NTP with other proposed Berths 136-139 project activities pursuant to Special Condition 1.

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

32. The permittee shall notify the U.S. Coast Guard by radio on VHF-FM channel 16 or by telephone at least 4 hours before departing for each disposal site. The notification shall include:
A) Name of permittee.
B) Corps permit number.
C) Name and identification of vessels (tug boat, hopper dredge, or disposal barge or scow) employed in the disposal operation.
D) Loading location of the material to be disposed.
E) Material to be disposed.
F) Time of departure from the dredging site.
G) Estimated time of arrival at the ocean disposal site and estimated time of departure from the ocean disposal site.
H) Estimated time or arrival at dredging site after the disposal operation is completed.

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

34. During transit from the dredging site to the disposal site, the level that a hopper dredge can be filled shall not exceed the load line (Plimsoll line) to prevent any dredged material or water from spilling over the sides. No hopper dredge shall be filled above this predetermined level during transit. Before each hopper dredge is transported to the disposal site, the dredging site inspector shall certify that it is filled correctly.

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

36. When dredged material is discharged by the permittee at the LA-2 ocean disposal site, no portion of the vessel from which the materials are to be released (e.g., hopper dredge or

towed barge) may be farther than 1,000 feet (305 meters) from the center of the disposal site (the surface disposal zone or SDZ) identified in Special Condition 28.

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

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

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

40. Data recorded from the primary disposal tracking system must be posted by a third-party contractor on a near-real time basis to a World Wide Web (Internet) site accessible at a minimum by USEPA, the Corps, the permittee, the prime dredging contractor, and any independent inspector. The Internet site shall be provided to the Corps and USEPA prior to commencement of disposal operations. The Internet site must be searchable by disposal trip number and date, and at a minimum for each disposal trip it must provide a visual display of: the disposal vessel transit route to the LA-2 ocean disposal site; the beginning and ending locations of the disposal event; and the disposal vessel draft throughout the transit. The requirement for posting this information on the Internet is independent from the hard-copy reporting requirements listed in Special Condition 43 below. The third-party system must also generate and distribute e-mail alerts regarding any degree of apparent dumping outside the SDZ of the LA-2 ocean disposal site, and regarding any apparent substantial leakage/spillage or other loss of material en route to the LA-2 ocean disposal site. Substantial leakage/spillage or other loss for this permit is defined as an apparent loss of draft of one foot or more between the time that the disposal vessel begins the trip to the LA-2 ocean disposal site and the time of actual disposal. E-mail alerts for any disposal trip must be sent within 24 hours of the end of that trip, at a minimum to USEPA, the Corps, the permittee, and the prime dredging contractor.

41. If the primary disposal tracking system fails during transit to the LA-2 ocean disposal site, the navigation system on the towing vessel (tug, if any), meeting the minimum accuracy requirement listed above, may be used to complete the disposal trip by maneuvering the towing vessel so that, given the compass heading and tow cable length to the scow (layback), the estimated scow position would be within the SDZ of the LA-2 ocean

disposal site. In such cases, the towing vessel's position, and the tow cable length and compass heading to the disposal vessel, must be recorded and reported. The permittee shall halt further disposal operations using a disposal vessel whose navigation tracking system fails until those primary disposal-tracking capabilities are restored.

42. The permittee shall report any anticipated, potential, or actual variances from compliance with the general and special conditions of this permit, to USEPA and the Corps within 24 hours of discovering such a situation. An operational e-mail alert system, as described in Special Condition 40 above, will be considered as fulfilling this 24-hour notification requirement. In addition, the permittee shall prepare and submit a detailed report of any such compliance problems with the monthly hard-copy reports described below.

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

44. Following the completion of ocean disposal operations, the permittee shall submit to USEPA and the Corps a completion letter summarizing the total number of disposal trips and the overall (in situ) volumes of material from the project disposed at the LA-2 ocean disposal site, at in-harbor CDF site(s) (if available and used), and at an appropriate upland disposal site (such as Anchorage Road Upland Soil Storage Site) for the project, and whether any of this dredged material was excavated from outside the areas authorized for ocean disposal or was dredged deeper than authorized by this permit. (Note this is only anticipated for material dredged in the vicinity of Berths 145-147, but it would also apply for any ocean disposal operations involving material dredged in the vicinity of Berths 136-139, which would require a separate completion letter.)

45. The permittee shall submit a post-dredging completion report to the Corps within 30 calendar days after completion of each dredging project (Berths 145-147 and Berths 136-139 are separate dredging projects and will require separate reports) to document compliance with all general and special conditions defined in this permit. The report shall include all information collected by the permittee, the dredging operations inspector, and the disposal operations inspector or the disposal vessel captain as required by the special conditions of this permit. The report shall indicate whether all general and special permit conditions were met. Any violations of the permit shall be explained in detail. The report shall further include the following information:

A) Permit and project number.

B) Start date and completion date of dredging and disposal operations.
C) Total cubic yards disposed at the LA-2, Anchorage Road Upland Soil Storage Site/other approved upland disposal site, and in-harbor CDF (if available and used).
D) Mode of dredging.
E) Mode of transportation.
F) Form of dredged material.
G) Frequency of disposal and plots of all trips to the LA-2 ocean disposal site.
H) Tug boat or other disposal vessel logs documenting contact with the U.S. Coast Guard before each trip to the LA-2 ocean disposal site.
I) Percent sand, silt, and clay in dredged material.
J) A certified report from the dredging site inspector indicating all general and special permit conditions were met. Any violations of the permit shall be explained in detail.
K) A detailed post-dredging hydrographic survey of the dredging area. The survey shall show areas above the dredging design depth shaded green, areas between the dredging design depth and over-dredge depth shaded yellow, areas below over-dredged depth that were not dredged or areas that were deeper than the over-dredge depth before the project began as indicated on the pre-dredging survey shaded blue, and areas dredged below the over-dredge depth or outside the project boundaries shaded red. The methods used to prepare the post-dredging survey shall be the same methods used in the pre-dredging condition survey. The survey shall be signed by the permittee certifying that the data are accurate.
L) The post-dredging report shall be signed by a duly authorized representative of the permittee. The permittee's representative shall make the following certification:

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

46. All vessels, vehicles, equipment, and material used in construction-related activities in or on waters of the U.S., navigable waters of the U.S., or ocean waters, or used to complete construction in or over waters of the U.S., navigable waters of the U.S., or ocean waters, shall employ or otherwise be operated or used in compliance with all mitigation measures identified in the project's Mitigation Monitoring and Reporting Plan consistent with the project's certified Environmental Impact Report.

47. 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 reported fish kills, pile driving shall be halted and the USACE and NMFS shall be notified via the Port of Los Angeles'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.

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

d. Public Interest Review: I find that my decision to adopt the Preferred Alternative for the Berths 136-147 Container Terminal Project, as prescribed by regulations published in 33 C.F.R. Parts 320 to 332 and 40 C.F.R. Part 230, is not contrary to the public interest. While I considered all the public interest factors listed in 33 C.F.R. 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 proposed project. In evaluating these comments, the USACE worked with the applicant to identify as the Preferred Alternative the proposed project without the 10-acre landfill and associated wharf in the Northwest Slip (i.e., Alternative 2 as identified and evaluated in the EIS/EIR), as stated above. This differs from the project approved by the Los Angeles Board of Harbor Commissioners on December 6, 2007, which included the 10-acre landfill in the Northwest Slip and associated wharf construction. Following the December 6, 2007 Los Angeles Board of Harbor Commissioners meeting, the LAHD eliminated the 10-acre fill and found that this elimination reduced overall environmental impacts. Therefore, further Los Angeles Board of Harbor Commissioners approval was not necessary.

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 aesthetics, cultural resources, hazards, land use, noise, and marine transportation/navigation. In addition, with mitigation, project-specific adverse effects would be less than significant with regard to transportation and circulation, recreation, ground water, and utilities and public services.

However, relative to the NEPA baseline[12] (as defined in Sections 1.5.5 and 2.6 and evaluated for each resource or issue in Section 3 of the EIS/EIR), significant and unavoidable (even with mitigation) adverse impacts would be expected to air quality (construction and operational exceedances of air quality standards, cancer and non-cancer health risks); biological resources (increased albeit low potential to introduce invasive species/disrupt local biological communities); geological resources (seismic risks to people and structures); and water quality, sediments, and oceanography (potential to increase vessel spills and leaching of metals).

[12] Briefly, the NEPA baseline is the 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.

However, in many cases, these impacts would occur beyond the USACE's statutory authorities under Section 404 of the Clean Water Act, Section 10 of the River and Harbor Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act to require effective mitigation. They would, however, still be subject to the applicant's authority, as the local agency with continuing program and responsibility over the project throughout its useful life.

In addition to these project-specific significant and unavoidable impacts, there would be cumulatively significant impacts, as discussed in Section 4 of the EIS/EIR, with respect to transportation and circulation and utilities and public services. (Note that all project-specific significant impacts are also cumulatively significant.)

Many of the project-specific and cumulatively significant and unavoidable impacts would have disproportionately high and adverse effects on minority and/or low-income populations, as discussed in Section 5 of the EIS/EIR. 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; water quality, sediments, and oceanography; and utilities and public services. While there would be significant and unavoidable impacts, many with disproportionate high and adverse effects on minority and/or low-income populations, as described in Sections 5 and 7 of the project EIS/EIR, the project would provide several benefits, including additional jobs and income (2,800 construction jobs; providing approximately 300 longshoreman jobs at maximum build out of the terminal over the No Project conditions; a net 5,433 annual operational jobs in the five county region at build out; total annual tax revenues of more than $200 million), a large local recreational and aesthetic amenity (Harry Bridges Buffer Area, a 30-acre landscaped buffer in Wilmington), and the implementation of various mitigation measures that would reduce health risks in the vicinity of the project area (i.e., the current tenant, TraPac, is on holdover, operating on the same lease since 1985, and has not implemented CAAP or other environmentally protective/beneficial measures at this existing container terminal).

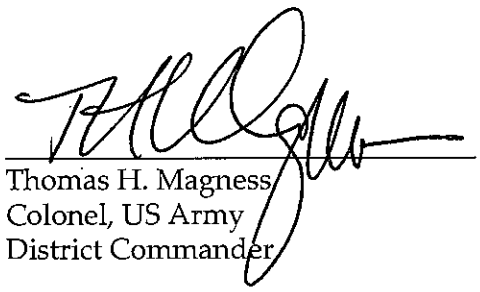
With regard to air quality, a particular issue of concern is health risk to the local communities, San Pedro and Wilmington, which have minority and/or low-income populations. While the health risk assessment found that the project's contribution would be significant (i.e., exceed 10 in a million additional cancer risk) for residential, occupational, and sensitive receptors relative to the NEPA baseline (i.e., incremental increases exceed 10 in a million for these receptors), these findings are attributable to the NEPA baseline representing an improving or less impacted condition, as air quality measures are implemented at this operating terminal over time even in the absence of Federal action. In contrast, the proposed project's contribution would be less than significant for all receptor types compared to the CEQA baseline, which represents the project area conditions in 2006 (i.e., a more impacted condition from an air quality perspective). In short, the proposed project's health risk contributions are expected to be less than significant compared to the recent past, because of the implementation over time of air quality-improvement measures. Moreover, it is expected that implementation of the proposed project and the associated mitigation measures pursuant to the MMRP would reduce terminal operational emissions by half in 2015 and reduce health risk in the surrounding communities of San Pedro and Wilmington below baseline (2006) conditions.

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, there is a clear public interest locally, and at the state and national levels, to move forward with the proposed expansion of this existing terminal to address current and projected container throughput increases at both ports. As discussed in Section 1 of the EIS/EIR, throughput is expected to more than double in the next 20 years. Even optimizing or maximizing terminal operations at this location and other terminals in the POLA is projected to result in a throughput shortfall (i.e., demand will continue to 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 could result in greater environmental impacts than anticipated under the Preferred Alternative.

8. Conclusion

Based upon a careful consideration of all the social, economic, and environmental evaluations contained in the Final EIS/EIR and the Addendum to the Final EIS; 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 136-147 Container Terminal Project as reflected in the Preferred Alternative (i.e., the Federal action associated with the applicant's currently proposed project as described in their April 2008 replacement application for a Department of the Army permit and subsequent amendment). I further determine that selection of the Preferred Alternative complies with federal regulations at 40 C.F.R. Part 230 as the least environmentally damaging practicable alternative.

9. Record of Decision Approval



Thomas H. Magness
Colonel, US Army
District Commander