

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT  
RECORD OF DECISION FOR THE PORT OF LONG BEACH MIDDLE HARBOR  
REDEVELOPMENT PROJECT

I. Introduction:

A. Location: The proposed Project is located in the Middle Harbor, Northeast Harbor, and Southeast Harbor Planning Districts of the Port of Long Beach (POLB), Los Angeles County, California. The Project comprises Piers D, E, and F and is bordered by Pier D Street and Ocean Boulevard to the north, Pico Avenue to the south, and the Back Channel to the west. The Federal portion of the Project includes Slip 1, Slip 3, the eastern portion of East Basin, and Berths D28-31, E23-27, E11-13, F1-4, and F6-10.

B. Project History and Summary of Proposed Action: The POLB initially applied to the U.S. Army Corps of Engineers (USACE) for a Department of the Army permit pursuant to section 10 of the River and Harbors Act and section 404 of the Clean Water Act for the Middle Harbor Redevelopment Plan in June 2004. At the POLB's request, processing of the application was suspended pending the completion of new protocols for the preparation of environmental impact analyses for POLB projects. The application was resubmitted in September 2005 and a notice of intent to prepare a draft environmental impact statement/environmental impact report (EIS/EIR) and hold a public scoping meeting was issued on December 30, 2005. A scoping meeting was conducted January 30, 2006. The draft EIS/EIR was circulated on May 19, 2008 for public comment and a public hearing was held in Long Beach on June 11, 2008. The Final EIS/EIR including responses to comments received on the draft document, a draft 404(b)(1) alternatives analysis and draft general conformity determination pursuant to Section 176(c) of the Clean Air Act, was released on April 3, 2009 with notification through the Los Angeles District's Public Notice mailing list and publication in the Federal Register. The EIR portion of the document was approved by the Harbor Commission during their April 13, 2009 hearing.

The proposed Project (applicant's preferred alternative) would rehabilitate or replace deteriorated and obsolete terminal facilities; provide deeper water (-55 feet MLLW) at berths and in basins and channels; create new land; modernize marine terminal facilities; and implement environmental controls, including POLB's Green Port Policy<sup>1</sup> and Clean Air Action Plan<sup>2</sup> (CAAP). As described in the EIS/EIR the proposed Project includes dredge and fill activities to redevelop and consolidate two existing container terminals for

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<sup>1</sup> 2005. Green Port Policy. Website:

[http://www.polb.com/environment/green\\_port\\_policy/default.asp](http://www.polb.com/environment/green_port_policy/default.asp).

<sup>2</sup> Port of Los Angeles and Port of Long Beach, 2006. Final 2006 San Pedro Bay Ports Clean Air Action Plan.

the construction of a 345-acre marine terminal including redevelopment of 294 acres of existing land and the placement of dredged material in open water to create approximately 54.6 acres of new land (65.3 total acres of fill, minus 10.7 acres of new open water created). The proposed Project would include dredge and fill activities, new wharf construction and terminal expansion on adjacent areas that consist of existing and newly created land (see Figure 1.6-2 in the Final EIS/EIR). The proposed Project would reconfigure existing wharves and berths at Piers D, E and F into one 4,250-foot-long wharf with four deep-water berths, a container terminal yard that includes 54.6 acres of new land and 294 acres of rehabilitated land, and an intermodal rail yard. The proposed Project would generate approximately 680,000 cubic yards of dredged material and approximately 1,290,000 cubic yards of excavated material. Approximately 6,730,000 cubic yards of imported fill from sources both inside and outside the Harbor District would be required to complete all the proposed discharges of dredged and fill material in waters of the United States.

The proposed Project would be constructed in two phases. Phase 1 construction (Figure 1.6-4, Final EIS/EIR) would redevelop the existing Piers D/E container terminal area in five stages, anticipated to begin in 2010 and continue until 2017. Stage 1 construction activities would widen and deepen Slip 3 by removing portions of Pier D (Berths D29-D31) and Pier E (Berths E23-E24); include demolition of existing wharf structures, backland areas, and existing facilities; and dredge portions of Slip 3 to elevation -55 mean lower low water (MLLW). Approximately four acres on the southwest portion of Pier E (existing subsided Tideland oil area) would be raised approximately four feet to elevation +15 MLLW, and approximately 5.4 acres of new land would be created to extend the Berth E24 wharf. Stage 1 activities would also include filling the 25.6-acre Slip 1 and surcharging 10 acres at the northern end of the fill, realigning the mainline track at Ocean Boulevard/Harbor Scenic Drive, constructing the Pier F storage yard and tracks, and constructing a 66kV electrical substation (Pier E Substation) north of Ocean Boulevard. Stage 2 construction activities would include development of Slip 1 for container yard use, and redevelopment of Berth E25. Stage 3 construction activities would include wharf development at Berth E26 and Berth E27. Stage 4 construction activities would include redevelopment of the Seaside Railyard area on Pier E and construction of new terminal buildings. Stage 5 construction activities would redevelop 18 acres north of the Gerald Desmond Bridge and Ocean Boulevard.

Phase 2 construction (Figure 1.6-7, Final EIS/EIR) would fill a portion of the East Basin to connect the existing Pier E terminal to the existing Pier F container terminal, develop this newly created land for container terminal use, and extend the wharf constructed in Phase 1 by 1,350 LF. It is anticipated that Phase 2 construction activities would begin in 2011 and continue through 2019, and would consist of four stages. Stage 1 construction yard activities would involve developing the remaining 12 acres of the Slip 1 fill as container yard, filling in 12 acres of the 40-acre East Basin area, and constructing an expanded intermodal railyard. Stage 2 construction activities would demolish the remaining Berths F6-F10 wharf structures, fill the remaining 21 acres of the East Basin between Piers E and F and construct a new connecting wharf (Berth E23). Stage 3 construction activities would redevelop the existing Pier F container yard.

Finally, Stage 4 construction would build a tail track and a loop road around the track on Pier F.

C. Purpose and Need: The Project need is to increase container terminal efficiency to accommodate a portion of the predicted future containerized cargo throughput volume and the modern cargo vessels that transport those goods to and from the POLB. These larger container vessels need slip widths, water depths, and berth lengths that are greater than previous generations of cargo vessels. The purpose of the Project is to increase and optimize the cargo handling efficiency and capacity of the POLB, by constructing sufficient berthing and infrastructure capacity to accommodate a proportional share of foreseeable increases in containerized cargo. Additional Project purposes include improving marine terminal operational efficiency that would expand the use of existing waterways for international maritime commerce, and upgrading utility infrastructure to support the implementation of environmental controls necessary to reduce pollution and conserve energy. Based on the above, the USACE determined that the overall project purpose for the purposes of the section 404(b)(1) alternatives analysis is to increase and optimize the cargo handling efficiency and capacity of the Port, by constructing sufficient berthing and infrastructure capacity to accommodate a proportional share of foreseeable increases in containerized cargo.

D. Environmental Requirements: In order to satisfy both USACE's responsibilities under 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 POLB's responsibility under the California Environmental Quality Act (CEQA), a joint EIS/EIR was prepared. The POLB-hired consultants (SAIC) prepared the document, including the EIS portion, under the USACE's direction and review and in coordination with the POLB.

## II. 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 65.3 acres of navigable waters of the U.S. associated with the Port of Long Beach Middle Harbor Redevelopment Project. I am selecting the Federal action associated with the Alternative 1 (345-acre alternative) as identified and evaluated in the project EIS/EIR, which includes the following activities:

- Demolition of Berths D29-31, E12-13, E23-26, and F1-10;
- Excavation of approximately 710,000 cubic yards (cy) of material from Berths D29-31 and E24-26 to widen Slip 3 by about 117 feet, excavation of about 580,000 cy at Berth F201, and dredging approximately 680,000 cy to deepen portions of Slip 3 to -55 feet MLLW. The excavation would create approximately 10.7 acres of marine habitat;

- Construction of rocky dikes along the excavated berths in Slip 3, at Berth F201, for extension of Berth E24, and to contain the stages of fill in Slip 1 and East Basin (1,404,000 tons of rock);
- Abandonment and relocation of the Tidelands oil well facilities and pipelines on the southwest portion of Pier E, and removal of the Baker Commodities, Inc. facilities on Pier D;
- Fill of approximately 25.6 acres in Slip 1, 5.4 acres at Berth E24, and 34.3 acres in the East Basin using about 680,000 cy of material dredged from Slip 3, 1,290,000 cy of material excavated from Pier D and Berth F201, and an additional 6,730,000 cy of material imported from inside and outside the Harbor District;
- Extension of Berth E24 southward and construction of a new Berth E23 south of E24. This includes demolition of approximately 550 linear feet (lf) of wharf and bulkhead at E24, and construction of 2,450 lf of new wharf;
- Construction of a new 66 kilovolt(kV) substation on Pier E;
- Realignment of the mainline track at Ocean Boulevard/Harbor Scenic Drive by removing about 4,000 feet of track, realigning 4,000 feet of track, and constructing about 6,000 feet of new track. Approximately 1,700 feet of Harbor Scenic Drive would also be relocated;
- Construction of Pier F storage yard and tracks (approximately 8,000 feet of new track);
- Redevelopment of Berths E25-26 by demolishing and reconstructing about 1,800 lf of existing wharf, and wharf improvements at Berth E27;
- Construction of container terminal facilities on the fill in Slip 1 and the East Basin;
- Demolition of the Seaside Railyard on Pier E and redevelop that area and adjacent terminal area (32 acres total) as container storage yard/backland area;
- Redevelopment of 18 acres north of the Gerald Desmond Bridge and Ocean Boulevard;
- Expansion of the Pier F intermodal railyard; and
- Redevelopment of the existing Pier F, including grading, paving, fencing, lighting, buildings and other infrastructure, utilities, tail track, and a loop road.

The mitigation measures to avoid and minimize impacts to the environment are summarized in Table 8.1 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 POLB, 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. Mitigation measures the USACE has determined within our scope of analysis and subject to our

continuing program responsibility are discussed in this Record of Decision (ROD) and summarized in the project's final Section 404(b)(1) alternatives analysis in Appendix A.

To implement this decision, the USACE will proffer a standard individual permit (SIP) pursuant to section 404 of the Clean Water Act (33 U.S.C. §1344) and section 10 of the River and Harbor Act (33 U.S.C. 403). 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 and excavation, dredging along Slip No. 3 to a depth of -55 MLLW, filling Slip 1 and the East Basin (65.3 acres of fill minus 10.7 acres of marine habitat created through excavation for a net fill of 54.6 acres) and associated infrastructure improvements on the newly filled wharf area. In making my decision, I have reviewed the environmental consequences of the proposed Project and reviewed all of the alternatives discussed in the EIS/EIR.

The applicant received a Tentative Order (R4-2010-0020, file no 09-204) of Waste Discharge Requirements (WDRs) from the Los Angeles Regional Water Quality Control Board (RWQCB) on November 17, 2009. The Tentative Order specifies that it also fulfills the requirements for a Clean Water Act Section 401 Water Quality Certification for the project. The Tentative Order was approved by the Board during a February 4, 2010 public meeting; the Final Order was transmitted to the POLB on February 10, 2010. The proffered SIP will therefore be provisional and not valid until the WDRs are finally issued by the RWQCB. In addition, as described in Chapter 6 (Application Summary Report) of the EIS/EIR, the POLB has determined that the project is consistent with the California Coastal Commission-approved Port Master Plan.

### III. National Environmental Policy Act (NEPA) Compliance:

Details of the NEPA process and documentation are provided in VII.B., below. Briefly, a Notice of Intent (NOI) to prepare an EIS and hold a scoping meeting was published in the Federal Register on December 27, 2005. A public scoping meeting was held at the Long Beach City Hall Council Chambers in Long Beach, California, on January 30, 2006, to solicit comments on the project. Comments were received until February 13, 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 May 16, 2008. A public hearing to solicit comments on the Draft EIS/EIR was held on June 11, 2008 at the Long Beach City Hall Council Chambers in Long Beach, California. The review period was extended by mutual agreement with the POLB and ended on August 10, 2008. All comments received were considered in preparing the Final EIS. A Notice of Availability of a Final EIS/EIR and Draft General Conformity Determination was published in the Federal Register on April 3, 2009. The public comment period ended on May 3, 2009. All comments received on the Final EIS/EIR, including the Draft General Conformity Determination, and responses to them are included in Appendix B to this ROD.

#### IV. Alternatives Considered:

The Draft EIS/EIR considered ten alternatives, including the proposed Project (Alternative 1). Of these, six alternatives were not carried forward for more detailed analysis based on early determinations by the USACE in coordination with POLB that they were not feasible under NEPA, would be more environmentally damaging than the proposed Project, or would not meet the overall project purpose (see Section 1.6.2 in the EIS/EIR). These included, 1) Construction of a New Near-Dock Intermodal Container Railyard, 2) Use of Other North American Ports, 3) Expansion of Marine Terminals Within Southern California but Outside the Long Beach Harbor, 4) Development of an Inland Port, 5) Marine Terminal Automation, and, 6) Offsite Backlands Facility Alternative. In addition to the proposed Project (identified and evaluated as Alternative 1 or the 345-Acre Alternative in the EIS/EIR), three other alternatives were carried forward in the Draft EIS/EIR and Final EIS/EIR for detailed, co-equal analysis: The 315-Acre Alternative (Alternative 2), the Landside Improvements Alternative (Alternative 3) and the No Project Alternative (Alternative 4). The Landside Improvements Alternative, which does not involve and work in or over waters and would not require a USACE permit, is equivalent to the No Federal Action Alternative and represents the NEPA baseline.

A. 345-Acre Alternative (proposed Project): The 345-Acre Alternative represents the applicant's preferred alternative as detailed above in sections I.B. and II.

B. 315-Acre Alternative (Alternative 2): Similar to the 345-Acre Alternative, the first construct phase 315-Acre Alternative would proceed under the same five stages, with the addition of a sixth phase. The second phase proposed under the 345-Acre Alternative would not be constructed. The 315-Acre Alternative would add 24.7 net acres of newly created land to the existing 294-acre project site by filling Slip 1 between Piers E and F (Berths E12-E14 and F1-F4). This alternative would include terminal expansion on adjacent areas of existing and newly created land, dredge and fill operations, and new wharf construction. Under the 315-Acre Alternative, a new wharf would be constructed to handle increased cargo throughput and accommodate deep-draft container ships, and to replace existing, insufficient wharves. The new 2,900-foot wharf would consist of two deep water berths with -55 feet MLLW depth. Buildout under this alternative would include the rail improvements identified for the 345-Acre Alternative (e.g., mainline track realignment at Ocean Boulevard/Harbor Scenic Drive, Pier F Avenue storage yard and tracks, Pier F tail track, and expanding the existing Pier F intermodal railyard). The proposed 66kV Pier E Substation would also be constructed, as described for Alternative 1. Detailed construction elements of the 315-Acre Alternative are presented in Section 1.6.3.2 of the EIS/EIR.

When completed, the 315-Acre Alternative would consist of one consolidated container terminal that would be designed to load and offload containerized cargo from marine vessels. When optimized at maximum throughput capacity (anticipated by approximately 2025), the consolidated container terminal would be designed to accommodate approximately 2,870,000 TEUs per year. The proposed expanded Pier F intermodal

railyard would handle approximately 30.4 percent (874,480 TEUs per year) of the terminal's expected throughput. Under this alternative, Middle Harbor container terminal operations would result in approximately 364 maximum vessel calls per year. Truck trips to and from the Middle Harbor container terminal would increase from the 2005 baseline average of 6,528 trips per day to an average of approximately 8,026 trips per day at maximum capacity in 2025. Approximately 2,095 trips annual train trips would be required at maximum capacity in 2025 to support Middle Harbor container terminal operations.

The terminal would operate under a new lease between the terminal operator and the POLB that would include environmental controls imposed pursuant to the POLB's Green Port Policy and the CAAP. Similar to the Project, this EIS/EIR assumes Alternative 2 would include participation in the POLB/POLA VSRP (CAAP measure OGV1) and compliance with applicable EPA, ARB, and SCAQMD regulations.

C. Landside Improvements Alternative (Alternative 3): The Landside Improvements Alternative would redevelop existing terminal areas on Piers E and F and convert underutilized land north of the Gerald Desmond Bridge and Ocean Boulevard within the project site to a container yard. The alternative would include construction of the following upland site improvements: redevelopment and backland expansion on existing lands within the project site (the Berth E23 oil area would be abandoned and redeveloped as container yard area); construction of a new 66 kV Pier E Substation; and construction of shore-to-ship infrastructure at Piers E and F to coldiron vessels while at berth. This alternative would also include construction of a mainline track realignment at Ocean Boulevard/Harbor Scenic Drive and the Pier F storage yard and tracks. The Landside Improvements Alternative would expand the existing Pier F intermodal railyard to six tracks. Detailed construction elements of the 315-Acre Alternative are presented in Section 1.6.3.3 of the EIS/EIR.

When completed, the Landside Improvements Alternative would consist of a consolidated container terminal that would be operated by one terminal operator. The terminal would be operated under a new lease between the terminal operator and the POLB that would include environmental controls imposed pursuant to the POLB's Green Port Policy and the CAAP. In addition to compliance with applicable EPA, ARB, and SCAQMD regulations assumed for the 345-Acre Alternative, the Landside Improvements Alternative would implement all applicable CAAP measures and regulations, including emission standards for terminal equipment (CAAP measure CHE1), the VSRP (CAAP measure OGV1), low-sulfur fuel requirements for vessels (CAAP measures OGV3 and OGV4), OGV cold-ironing (CAAP measure OGV2), and the POLA/POLB Clean Trucks Program (CTP) (CAAP measure HDV1). When optimized at maximum throughput capacity (anticipated by approximately 2025), the terminals would be designed to accommodate a combined total of about 2,910,000 TEUs per year. Approximately 416 vessel calls per year would be expected by 2025. This alternative would result in 9,830 average daily truck trips to and from Middle Harbor terminals in 2030. Approximately 1,380 train trips per year would be required to support Middle Harbor container terminal operations at maximum capacity in 2025.

Under this alternative, there would be no in-water activities (e.g., dredging, filling Slip 1 and the East Basin, new wharf construction) as proposed for the 345- and 315-Acre Alternatives, no wharf upgrades would occur (except the provisions for shore-to-ship power), and channel and berth deepening would not occur. The Landside Improvements Alternative is equivalent to a No Federal Action Alternative because it only includes construction and operational activities that would not require issuance of federal permits.

D. No Project Alternative (Alternative 4): This alternative considers what would reasonably be expected to occur on the site if the POLB did not implement, or Federal action did not permit, any project at the site. The POLB would take no further action to construct additional backlands or redevelop the 294 acres that currently exist. The USACE would not issue permits for dredge and fill or wharf construction activities. This alternative would not allow implementation of physical improvements at Middle Harbor. The No Project Alternative would maintain the current container terminals (California United Terminals and Long Beach Container Terminal, Inc.) at a combined size of 294 acres and in their current configuration. Forecasted increases in cargo would still occur as greater operational efficiencies are implemented.

Under this alternative no construction and, consequently, no construction-related impacts would occur. However, the two terminals would continue to generate operational impacts: cargo ships that currently berth and load/unload at the terminal would continue to do so; terminal equipment would continue to handle cargo containers; and trucks would continue to transport containers to outlying distribution facilities. Because no rail improvements would be constructed under this alternative, the majority of the intermodal cargo to and from the two terminals would continue to be hauled by truck. In addition, the Pier E Substation would not be constructed, which would eliminate the potential for vessels to cold-iron under this alternative. However, in addition to environmental controls imposed by federal, state, and local regulatory agencies, the terminal would implement the POLB/POLA VSRP (CAAP measure OGV1) under this alternative. No other CAAP measures would be implemented under this alternative. Dredging the existing berths and channels to -55 MLLW would not occur. Section 1.6.3.4 of the EIS/EIR discusses the No Project Alternative in greater detail.

The No Project Alternative would result in a maximum throughput of approximately 2,600,000 TEUs per year. Approximately 312 vessel calls per year would be expected by 2025. As the existing Pier F intermodal railyard would remain operational, proposed terminal operations would result in approximately 786 annual train trips. This alternative would result in approximately 9,594 average daily truck trips to and from Middle Harbor terminals in 2025.

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 of this ROD), a draft of which was included as Appendix E of the Final EIS/EIR.



## V. Basis for the Decision:

In making my decision, I have reviewed Section 404 of the Clean Water Act (33 U.S.C. 1344) and USACE implementing regulations (33 C.F.R. Parts 320-332), the Section 404(b)(1) Guidelines (40 C.F.R. Part 230), the Middle Harbor Redevelopment Project Final EIS/EIR, including the final general conformity determination (Appendix C to this ROD), and all the comment letters received in response to the final EIS/EIR.

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, including the draft general conformity determination, and on the corresponding public notices for the project (No. 2004-1053-AOA), 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. 345-Acre Alternative: This alternative would result in a net fill area of 54.6 acres of tidal waters within the POLB and would fulfill the purpose and need for the project. Although the 345-Acre Alternative would result in the largest fill area of the alternatives considered, it would provide the necessary backland wharf area to enable a fully developed on-dock rail system with adequate truck access, which in turn provides the optimal cargo handling capacity. At full build-out the 345-Acre Alternative is expected to provide a throughput of 3,320,000 twenty-foot equivalent units (TEU) from 364 annual vessel calls which represents a net increase of 410,000 TEUs compared to the NEPA baseline (Landside Improvements Alternative). This would adequately accommodate forecasted container throughput growth at the Port. Therefore, based on preliminary analysis, the 345-Acre Alternative is the least environmentally damaging practicable alternative that meets the overall project purpose. The 54.6-acre fill area would be fully compensated through the purchase of credits at the Bolsa Chica Mitigation Bank.

2. 315-Acre Alternative: Compared to the 345-Acre Alternative, the 315-Acre Alternative reduces the fill area from 54.6 net acres of newly created land to 24.7 acres. The 315-Acre Alternative would limit the fill area to Slip 1 between Piers E and F (Berths E12-E14 and F1-F4). The 315-Acre Alternative would be similar to the 345-Acre Alternative except that the 34.3-acre East Basin area would not be filled and the Berth E23 wharf would not be constructed. The elimination of the East Basin fill and Berth E23 wharf would decrease container movement efficiency compared to the 345-Acre Alternative. The net loss of 24.7 acres of marine habitat would be mitigated below significance through the purchase of credits at the Bolsa Chica Mitigation Bank. The 315-Acre Alternative would consolidate common operations and wharves of the existing two terminals on Piers E and F into one terminal, as would occur under the 345-Acre Alternative. The backland area available for terminal expansion, including rail and

transit infrastructure, would be reduced compared to the 345-Acre Alternative. In particular, the wharf area available for the proposed intermodal railyard would be substantially scaled back. At full build-out, the 315-Acre Alternative would provide a throughput of about 2,870,000 TEUs from 364 annual vessel calls, which is a net *decrease* of 400,000 TEUs compared to the NEPA baseline. This reduction is largely due to a combination of smaller ships anticipated to access the terminal and reduced efficiency of terminal operations compared to the 345-Acre Alternative. The area available for the railyard as well as the area behind the Pier F berths would be substantially limited in width and not support efficient access by trucks. The storage area in that part of the terminal would be limited to approximately 36 acres. Because of the limited storage in that area, a substantial portion of the cargo being loaded to and discharged from the ships at Berths F6-F10 would need to be transferred from/to the main storage yard in the northern portion of the terminal. This would require longer intra-terminal trips by the yard hostlers, more equipment in the yard, and double handling of boxes moving to/from the Pier F storage area. All of these logistical constraints would complicate, and add cost to, terminal operations. Additionally, the ships projected to call at the reduced-fill terminal are, on average, smaller than the vessels projected for the preferred project. Estimates from the Port's 2005 Vessel Forecast (Mercator, 2005) indicate that average daily cost per TEU of operating the projected vessels for the reduced-fill alternative would be approximately 8% higher than the costs for the 345-Acre Alternative. Finally, the long-term planning process undertaken in the POLB Master Plan emphasizes future terminal expansions take place in inner harbor areas (such as Middle Harbor) as opposed to outer harbor areas, which are considered more environmentally sensitive. Efforts to make up throughput shortfalls (that would be greater under the 315-Acre Alternative) would still need to focus on inner harbor redevelopment, which is consistent with the POLB Master Plan and 345-Acre Alternative. Overall, the 315-Acre Alternative would be less environmentally damaging than the Project in terms of the immediate fill area and partially fulfill the overall project purpose; however, the logistical constraints inherent in the project layout would result in a substantial decrease in throughput compared with the NEPA baseline. Furthermore, the need to address throughput shortfalls would be greater under the 315-Acre Alternative, which could ultimately result in greater environmental impacts should terminal expansion be directed away from the inner harbor. For these reasons, the 315-Acre Alternative is not considered to be the least damaging practicable alternative.

3. Landside Improvements Alternative: The Landside Improvements Alternative would redevelop existing wharf area on Piers E and F as well as redevelop land north of the Gerald Desmond Bridge and Ocean Boulevard to a container yard. No in-water activities would occur under this alternative and no USACE permit would be required. The Landside Improvements Alternative therefore represents the NEPA baseline. At full build-out, the Landside Improvements Alternative would accommodate an annual throughput of about 2,910,000 TEUs from approximately 416 vessel calls. Although the Landside Improvements Alternative would result in less direct impacts to waters of the U.S. compared with either the 315- or 345-Acre Alternatives, it would not improve cargo handling capacity and efficiency over the baseline condition, and, as a result, would not

accommodate a portion of the projected future increases in containerized cargo throughput. Therefore, this alternative would not meet the overall project purpose.

4. No Project Alternative: The No Project Alternative considers what would occur if the POLB did not implement any action to improve or upgrade facilities at the wharves the comprise Middle Harbor. As with the Landside Improvements Alternative, the No Project Alternative would not involve any in-water activities and therefore would not require a USACE permit. Under the No Project Alternative, maximum annual throughput would be approximately 2,600,000 TEUs from about 312 vessel calls per year. Compared to the NEPA baseline, this would represent 310,000 fewer TEUs per year or a decrease of approximately 11 percent. As a result, the No Project Alternative would not provide any increase in containerized cargo throughput volume and would in fact result in a decrease compared with the NEPA baseline. Therefore, this alternative would not meet the overall project purpose.

#### B. Identification of the Environmentally Preferable Alternatives.

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 proposed under the both the Landside Improvements Alternative and No Project Alternative, neither of which would require a Federal action, would be the Environmentally Preferable Alternatives. Of the two remaining alternatives involving a Federal action, the 315-Acre Alternative would be the environmentally preferable alternative.

2. The reason for selecting the 345-Acre Alternative over the remaining three alternatives (315-Acre, Landside Improvements and No Project Alternatives) is based on the ability to achieve the overall project purpose of increasing and optimizing the cargo handling efficiency and capacity of the POLB by constructing sufficient berthing and infrastructure capacity to accommodate a proportional share of foreseeable increases in containerized cargo. Although the remaining three alternatives would be less environmentally damaging compared with the 345-Acre Alternative, they would result in terminal layouts that would impose logistical constraints and additional costs, both in terms of the vessels that would be served by the terminal and the handling and distribution of cargo once unloaded, that would result in roughly 12-22 percent less throughput capacity compared with the applicant's preferred alternative. Therefore, given the current and future forecasts for cargo demand in the combined ports of San Pedro Bay (more than doubling in the next 15-20 years) and the recognized need to optimize existing terminal efficiency and capacity, they would not achieve the overall project purpose.

#### VI. Measures to Avoid and Minimize Environmental Harm:

The mitigation measures to avoid and minimize impacts to the environment are summarized in the Executive Summary and discussed in detail for each resource/issue impact in Section 3 of the EIS/EIR. It is recognized that the POLB, 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 April 2009 certified EIR for the project (see section 1.7 of the EIS/EIR). Mitigation measures the USACE has determined enforceable and subject to our continuing program responsibility are included in the Final Section 404(b)(1) alternatives analysis (Appendix A) and this Record of Decision (see VII.C.10) below).

## VII. Findings:

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

1. Water Quality Certification: An Order (No. R4-2010-0020) for Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act was adopted by the Los Angeles Regional Water Quality Control on February 4, 2010 and transmitted as final on February 10, 2010. As specified by the Los Angeles Regional Water Quality Control Board the Order 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: The POLB has certified that the proposed activity complies with and will be conducted in a manner that is consistent with the approved Port Master Plan, which has been developed in conformance with the State Coastal Zone Management Program. Chapter 6.1 of the Final EIS/EIR includes a consistency analysis with the California Coastal Act.

3. Compliance with Section 106 of the National Historic Preservation Act (NHPA): As discussed in the Final EIS/EIR, the proposed project is located on artificial fill material with adjacent waterway subject to routine maintenance dredging. As such, there is little likelihood of any potentially significant prehistoric or historic archaeological resources. The Final EIS/EIR does identify two historic archaeological resources, consisting of a pair of Smoke Houses/Offices built in 1953, which may qualify as historically significant based on their age and uniqueness. Both buildings are located in uplands and outside the USACE's scope of analysis for the subject permit action. Therefore the USACE determined the Federal action associated with the proposed Project would have no effect on cultural or historic resources listed or eligible for listing on the National Register of Historic Places.

4. Compliance with the federal Endangered Species Act: The California least tern (*Sterna antillarum browni*) and the California brown pelican (*Pelecanus occidentalis californicus*)<sup>3</sup> are known to occur in the general vicinity of the proposed project. However, the proposed discharges of fill material in waters of the United States are not

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<sup>3</sup> The California brown pelican was removed from the Endangered Species List in November 2009.

located in close proximity to any known foraging areas for the above species. No other listed species were found to be affected by the USACE's federal action. As a result, the USACE made a preliminary determination that the proposed activity may affect but is not likely to adversely affect the California least tern and California brown pelican, nor adversely modify their designated critical habitat. Pursuant to Section 7 of the Endangered Species Act, the USACE initiated informal consultation with the U.S. Fish and Wildlife Service to ensure that they concur with the above determination and that the proposed permit action would be in full compliance with the Endangered Species Act. The U.S. Fish & Wildlife Service concurred with the USACE determination in a letter dated May 15, 2009.

5. Compliance with Section 176(c) of the Clean Air Act: The proposed Federal action associated with the Middle Harbor Redevelopment Project has been analyzed in accordance with Section 176(c) of the Clean Air Act through the preparation of a general conformity determination. A general conformity determination is necessary because project construction would require Federal action (i.e., issuance of a USACE permit for activities proposed in and over navigable waters and waters of the U.S.) and not all the Federal action's direct and indirect emissions would be below specified de minimis thresholds (40 C.F.R. 93.153(b)). Specifically, the 345-Acre Alternative is anticipated to generate NOx emissions during in- and over-water construction activities that exceed the established de minimis threshold of 25 tons per year (TPY) for 3 of the 10 years of construction. 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. The general conformity determination is intended to demonstrate that a proposed Federal action will not: 1) cause or contribute to any new violations of a national ambient air quality standard (NAAQS), 2) interfere with provisions in the application State Implementation Plan for maintenance of any NAAQS, 3) increase the frequency or severity of existing violations of any standard, or 4) delay the timely attainment of any standard. A draft determination was published concurrently with the Final EIS/EIR and included as Appendix A-4. A final determination has been prepared following review of comments received to the draft as well as extensive coordination with the U.S. Environmental Protection Agency (EPA), California Air Resources Board and the South Coast Air Quality Management District. The final determination will be published in the Federal Register concurrent with this ROD, and is included as Appendix C to this ROD. Based on the findings of the final general conformity analysis, the Federal action associated with the Middle Harbor Redevelopment Project (for all alternatives carried forward in the EIS/EIR) would conform to the approved State Implementation Plan for those years subject to the general conformity evaluation.

Of the comments received in response to the Final EIS/EIR, including the draft general conformity determination, only the South Coast Air Quality Management District (AQMD) provided any substantive comments on the general conformity determination (additional comments addressing issues outside the general conformity determination are described in section B.3., below). A comment letter from a coalition of environmental

organizations including the Center for Biological Diversity, Coalition for Clean Air, and the Coalition for a Safe Environment, among others, indicated that additional detailed comments specific to the draft general conformity determination were forthcoming; however, no additional comments were received. The AQMD provided comments in a letter dated October 15, 2009, which essentially endorsed the approach applied in the draft determination.

#### B. Public Involvement:

1. The USACE, as the lead agency under NEPA, published an NOI to prepare an EIS and hold a scoping meeting on December 27, 2005 (an NOI for an earlier version of the project was published in September 2004, however the scoping meeting was cancelled and the notice superseded by the December 2005 notice). The USACE published and distributed the same information simultaneously in a public notice. The public scoping meeting was held at the City Hall Council Chambers in Long Beach, California, on January 30, 2006. The public comment period ended on February 13, 2006. Approximately 10 comments were received during the comment period, which were considered as part of the development of 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 May 16, 2008. The USACE published and distributed the same information simultaneously in a separate public notice, 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. Copies of the Draft EIS/EIR were made available to four public libraries in Long Beach, Wilmington and San Pedro. The document was also made to anyone requesting a copy from the POLB. The document was also posted on the POLB's website, which was also linked to in the public notice posted on the USACE's website. A public hearing was held in the City Hall Council Chambers in Long Beach, California, on June 11, 2008. The public comment period ended on July 11, 2008, but was extended to August 8, 2008 with the agreement of the POLB. A total of 64 written comments were received from agencies, organizations, and individuals that were considered in preparing the Final EIS/EIR. In addition, approximately 50 participants provided comments during the public hearing.

3. A Notice of Availability of a Final EIR/EIS and a draft general conformity determination was published in the Federal Register on April 3, 2009. The USACE published and distributed the same information in a separate public notice to solicit comments on the Final EIR/EIS as well as the draft general conformity determination. As with the Draft EIR/EIS, copies were circulated directly to and/or made available to agencies, organizations and the public for review. The comment period for comments to the USACE public notice ended on May 3, 2009.

The USACE received two comment letters in response to our public notice regarding the Final EIS/EIR and draft general conformity determination. Detailed responses to these comments are provided in Appendix B and a brief summary is provided here.

EPA provided comments in a letter dated May 11, 2009. The letter provided acknowledgement that issues raised in EPA's comment letters to the Draft EIS/EIR had been adequately addressed in the Final EIS/EIR and response to comments, with the exception of certain elements of the draft 404(b)(1) analysis (described below). Discussions among the USACE, EPA and POLB following closure of the comment period on the Final EIS/EIR had also served to address EPA's earlier concerns. With regard to the earlier comments that were addressed to EPA's satisfaction, the letter acknowledged that, 1) the enforcement and compliance requirements of Mitigation Monitoring and Reporting Program (MMRP) on future lease agreements would ensure health risk reduction targets related to air quality would be met; 2) emissions from transport of 6.73 million cubic yards of fill material were adequately considered and based on reasonable assumptions regarding the source of the material; 3) the EPA will review and coordinate separately on the completion of the final conformity determination; 4) the Cumulative Air Quality Impact Reduction Program (mitigation measure AQ-29) along with other outreach efforts described in the Final EIS/EIR would help to alleviate unavoidable environmental justice impacts related to air quality and noise; 5) the POLB's willingness to participate in a port-wide Health Impact Assessment that would consider the cumulative health impacts of all port activities in the context of environmental justice communities is appreciated and acknowledged; and, 6) use of the Bolsa Chica mitigation program is appropriate and conforms to the 2008 mitigation rule; 7) the recolonization of the benthos and water column in the newly created open water has been addressed; 8) the project is consistent with the goals of the Contaminated Sediments Task Force; and, 9) EPA appreciates the POLB's willingness to consider sources of fill material other than the outer harbor area and encourage coordination with the Port of Los Angeles to consider the feasibility of utilizing dredged materials from the Channel Deepening Project. With regard to the draft 404(b)(1) analysis, EPA requested that the final 404(b)(1) include additional language on efficiency of operations and the avoidance of adverse effects from future outer harbor fill to increase cargo handling efficiency to further justify why the 315-Acre Alternative would not be considered the least environmentally damaging practicable alternative (LEDPA). EPA felt this approach provided a better rationale and one that was more in line with the 404(b)(1) guidelines compared with the language in the draft 404(b)(1) analysis which placed more emphasis on costs associated with the reduced efficiency of the 315-Acre Alternative. The final 404(b)(1) alternatives analysis included as Appendix A to this ROD has been amended from the draft version to incorporate these recommendations. Finally, EPA's comment letter also indicated that their previous concerns about the analysis of the Landside Improvements Alternative and the EPA Dredge-Only Alternative, and the conclusion that neither could be considered the LEDPA, had been adequately addressed.

The second comment letter was submitted by the Coalition for a Safe Environment and requested that the Final EIS/EIR not be certified based on several areas of concern. Many of the comments were directed at the CEQA process lead by the POLB and/or issues that are beyond the USACE's scope of analysis. A complete response is provided in Appendix B.

C. Section 404(b)(1) Compliance: A draft Section 404(b)(1) alternatives analysis and compliance determination was included as Appendix E in the Draft and Final EIS/EIR. The final Section 404(b)(1) alternatives analysis is provided as Appendix A to this ROD. In summary, the proposed Project (identified and evaluated as the 345-Acre Alternative in the EIS/EIR) was found to be the 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 proposed Project 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. Acceptable constraints are available and will be implemented to reduce contamination to acceptable levels within the disposal site and prevent contaminants from being transported beyond the boundaries of the disposal site.

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:



- a) 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.
- b) 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.
- c) This permit does not authorize the disposal of material deemed inappropriate for disposal in a confined disposal facility (CDF) or designated as hazardous waste by either EPA or the California Dept of Toxic Substances Control in any portion of the project.
- d) A pre-construction survey of the project area for *Caulerpa taxifolia* (Caulerpa) within the Slip 3 dredge/excavation area 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. The results of the 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.
- e) The permittee shall discharge only clean construction materials suitable for use in the oceanic environment, with the exception of any contaminated sediment specifically authorized by the Corps for CDF disposal at Middle Harbor. 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.
- f) The permittee shall notify the Corps of the date of commencement of operations not less than 15 calendar days prior to commencing work in waters, and shall notify the Corps of the date of completion of operations at least 5 calendar days prior to such completion.
- g) The permittee shall notify the Commander, Eleventh Coast Guard District, and the Coast Guard Marine Safety Office / Group LA-LB, not less than 15 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:

- i. Project description including the type of operation (i.e., dredging, diving, wharf construction, etc).
- ii. Location of operation, including Latitude / Longitude coordinates (NAD 83).
- iii. Work start and completion dates and the expected duration of operations.
- iv. Vessels involved in the operation (name, size, and type).
- v. VHF-FM radio frequencies monitored by vessels on scene.
- vi. Point of contact and 24-hour phone number.
- vii. Potential hazards to navigation.
- viii. Chart number for the area of operation.

Addresses:

Commander, 11th Coast Guard District (dpw)  
TEL: (510) 437-2980  
E-mail: d11LNM@uscg.mil  
Website: <http://www.uscg.mil/dp/lnmrequest.asp>

U.S. Coast Guard, Sector LA-LB (COTP)  
TEL: (310) 521-3860  
E-mail: john.p.hennigan@uscg.mil

h) 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.

i) 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.

j) Upon notification to the U.S. Coast Guard as specified in Special Condition f, 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.

k) 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.

l) 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.

m) 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 or other Outer Harbor borrow site by the Port of Long Beach, and placement of dredged material into a hopper dredge or disposal barge or scow.

n) This permit does not authorize the discharge of fill materials beyond the limits of the designated fill areas within Slip 1 and the East Basin.

o) Dredging authorized in this permit shall be limited to the areas shown in Figure 3 (attached), the Western Anchorage Temporary Sediment Storage Site and a Corps-approved borrow site located within the Port of Long Beach Outer Harbor. The Permittee is authorized to dredge no more than 680,000 cubic yards from Slip 3 (this does not include additional material excavated from Berths D29-D31 and Berths E24-E26 as required to widen Slip 3).

p) The maximum dredging/design depth shall be -55 MLLW along the combined Pier E and F wharf, with a maximum allowable over-dredge depth of 2 feet below the project/design depth.

q) At least 15 calendar days before initiation of any dredging or disposal operations authorized by this permit, the permittee shall send a dredging and

disposal operations plan to the Corps and USEPA, with the following information:

- i) 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.
- ii) 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.
- iii) A summary of the results of a detailed analysis of all material to be dredged pursuant to a sampling and analysis plan (SAP) that has been approved within three years of the dredging or disposal operation.
- iv) 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 dredging and disposal procedures for the Slip 3 dredging for each project phase/stage and a schedule showing when each dredging project is planned to begin and end.
- v) 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:
  - 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.
  - The dredging design depth, over-dredge depth and the side-slope ratio.
  - The total quantity of material to be removed from the dredging areas and the side-slope areas.
  - 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.
  - 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.
- vi) 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.

r) The permittee shall not commence any dredging or disposal operations unless and until the permittee receives a written notice to proceed (NTP) from the Corps.

s) 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.

t) 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.

u) 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.

v) 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 cc.

w) 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.

x) 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.

y) For this permit, the term disposal operations shall mean: (1) the transport of dredged material from the dredging site to the Slip 1 or East Basin fill sites by the Port of Long Beach; (2) the transport of material from other accepted sources by the Port of Long Beach to the Slip 1 or East Basin fill sites; (3) the transport of the hopper dredge or disposal barge or scow back to the dredging

site by the Port of Long Beach; and (4) the disposal of fill material from an approved third-party source.

z) The permittee shall ensure dredged material is not leaked or spilled from the disposal vessels during in-harbor 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.

aa) 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.

bb) 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.

cc) The permittee shall submit a post-dredging completion report to the Corps within 30 calendar days after completion of each phase/stage dredging project. 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:

- i) Permit and project number.
- ii) Start date and completion date of dredging and disposal operations.
- iii) Total cubic yards disposed.
- iv) Mode of dredging.
- v) Mode of transportation.
- vi) Form of dredged material.
- vii) 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.
- viii) 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.

ix) 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.*

dd) 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.

ee) The permittee shall ensure the contractor(s) use sound abatement techniques to reduce noise and vibrations from pile-driving activities. Steel piles and steel sheet pile shall be driven using a vibratory hammer. Concrete pile shall be driven to the maximum extent possible using a vibratory hammer, followed by an impact hammer to complete setting of the concrete piles. 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. 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.

ff) 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.

gg) Prior to any discharges of fill in waters of the U.S., the permittee shall provide proof (through an updated credit ledger or similar means) that 40.0 credits have been debited from the Bolsa Chica Mitigation Bank to compensate for the loss of waters associated with the Project.

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 345-Acre Alternative for the Middle Harbor Redevelopment 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. In making my decision, I have considered all of the relevant public interest factors described in 33 C.F.R. Part 320.4. The comments received to the Draft and Final EIS/EIR indicated both support for and opposition to the Project. In evaluating these comments, the USACE has worked closely with the POLB to ensure the Project conforms to the requirements of NEPA, the EPA's 404(b)(1) guidelines, as well as ensuring adequate mitigation measures are in place to address the unavoidable adverse impacts arising from the Project.

As detailed in the EIS/EIR, the Project would result in significant unavoidable impacts, both on an individual and cumulative basis, to air quality and health risk, ground transportation, noise, and environmental justice. Although specific mitigation measures would be implemented to reduce these impacts, they would remain significant, both on an individual and cumulative basis. Potentially significant impacts to Biota and Habitats, as well as Public Services/Health and Safety, would also occur but would be reduced to a level below significance with the implementation of mitigation measures. The project would have minimal or no effect on other public interest factors including aesthetics, conservation, navigation, water quality, recreation, shore erosion/accretion, consideration of property ownership, energy needs, water supply and conservation, food and fiber production, mineral needs, floodplain values, flood hazards, economics and historic properties. This evaluation will therefore focus on those public interest factors where adverse impacts were found to be significant.

Of particular concern are the project's adverse impacts to air quality and the health risks associated with these impacts. As described in Section 3.2 of the EIS/EIR, the Project's construction activities would produce significant levels adverse emissions under NEPA. Specifically these emissions would include volatile organic compounds (VOC), carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), and particulate matter less than 10 and 2.5 microns in diameter (PM<sub>10</sub> and PM<sub>2.5</sub>, respectively). Additionally, construction activities would produce offsite ambient air pollutant concentrations (one-hour NO<sub>2</sub> and 24-hour PM<sub>10</sub>) that would exceed SCAQMD thresholds under NEPA. With regard to construction-related emissions found to be within the Corps' scope of analysis, the attached general conformity determination (Appendix C) prepared pursuant to Section 176(c) of the Clean Air Act demonstrates that the Federal action associated with the Project would conform to the requirements of Federal Clean Air Act. Air Quality



Impacts associated with the operational phase of the project, as well as construction-related emissions associated with purely upland aspects of the project (i.e. those that would occur under the NEPA baseline) would occur beyond the USACE's statutory authorities under Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act. As a result, the USACE cannot require effective mitigation for these effects. Nevertheless, they would still be subject to the applicant's authority as the local agency with ongoing responsibility over the operational phase of project. The Project would include 29 separate mitigation measures to reduce adverse impacts to air quality and the associated health risks, both during the construction and operational phases of the project, which are included in the MMRP. Several of these measures would result in substantial reductions in hazardous emissions and include, but are not limited to stringent emission controls on construction equipment and vessels involved in construction, requiring low sulfur fuel on ocean going vehicles, implementing shore-to-ship power ("cold ironing"), subjecting tenants leasing at the terminal to review and implement new emission control technologies every five years where feasible, and implementing a cumulative air quality impact reduction program. This last measure would involve providing \$10 million in grants to fund improvements to schools, healthcare and seniors facilities to reduce the health impacts of emissions. Although the inclusion of these measures would reduce the overall adverse impacts to air quality, they would remain significant. Furthermore, they would disproportionately impact minority and low-income communities that surround the POLB.

The Project would also generate additional traffic during both construction and operation that would result in significant and unavoidable ground transportation impacts on highway segments in the study area, including portions of the 405, 710 and 91 Freeways. Neither the Corps nor the POLB owns or controls any of these highway facilities and therefore no direct mitigation measures are feasible. Mitigation measure TRANS-2.1 would require the POLB to pay its fair share if Caltrans implements a fair share-based program or obtains the balance of funding required to improve these highway segments. Significant impacts to local roads and intersections were also identified; however, these would be mitigated to a level below significance with the implementation of mitigation measures included in the MMRP (TRANS-1.1c through TRANS-1.1e and TRANS-1.2).

Project construction activities would cause ambient noise levels to increase by more than three dBA, which would exceed the Long Beach Municipal Code maximum noise levels at sensitive receptor sites in the vicinity of the POLB. Mitigation measures including limiting the hours of pile-driving activities, erecting temporary noise barriers between construction activities and sensitive receptors would be implemented to reduce these impact, however they would remain significant. Furthermore, the Census Tract containing identified sensitive receptor sites subject to significant increases in noise is identified as a low-income population. Therefore these impacts would also have a disproportionate adverse impact on minority and low-income communities in the vicinity of the POLB. Noise impacts to aquatic wildlife were also identified but would be mitigated to a level below significance with the implementation of noise control measures such as use of a "soft-start" before pile-driving activities and use of a vibratory hammer

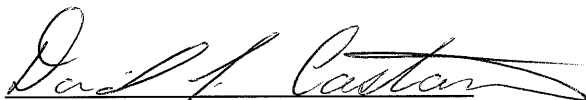
to drive steel pile, sheet pile and to provide the initial setting of concrete piles. No significant noise impacts would result from the operational phase of the Project.

As discussed in Sections 1 and 5 of the EIS/EIR, implementation of the Project would provide substantial economic benefits to the local community, the region and the nation. These benefits would be realized through local job creation (to up to 2,961 new jobs by 2030) and economic benefits from international trade and goods movement (over \$100 billion in foreign cargo value annually). Furthermore, the project would implement numerous measures to avoid and minimize the unavoidable impacts that would result from the project. 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. Vessel calls the combined ports is expected to increase 74 percent between 2004 and 2020. If the proposed project were not to proceed, the need to meet the growing demand would have to be met elsewhere in POLB, 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 345-Acre Alternative.

#### VIII. Conclusion:

Based upon a careful consideration of all the social, economic, and environmental evaluations contained in the Final EIS/EIR; the input received from other agencies, organizations, and the public; and the factors and project commitments outlined above, it is my decision to adopt the Middle Harbor Redevelopment project as reflected in the 345-Acre Alternative. I further determine that selection of the 345-Acre Alternative complies with federal regulations at 40 C.F.R. Part 230 as the least environmentally damaging practicable alternative.

#### IX. Record of Decision Approval:



David J. Castanon  
Regulatory Division Chief  
Los Angeles District