

CALIFORNIA COASTAL COMMISSION

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June 25, 2009

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: PETER M. DOUGLAS, Executive Director
John Ainsworth, Deputy Director
Al J. Padilla, Ports Coordinator

SUBJECT: Staff Recommendation on Port of Los Angeles Port Master Plan Amendment No. 24 [to provide new disposal sites to accommodate the remaining dredge material generated by the approved Main Channel Deepening Project (PMPA No. 21), including additional dredging: 400,000 cubic yards at the East Turning Basin; 170,000 cubic yards at the Southwest Slip; and 500,000 cubic yards for Main Channel entrance widening. Disposal sites include: 5 acres at Berths 134-135 in the Northwest Slip; 8 acres at Berths 243-245 (former Southwest Marine Shipyard); 50 acres at the Cabrillo Shallow Water Habitat site; and LA-2 ocean disposal site. The Southwest Marine Shipyard will be utilized as a Confined Disposal Facility for contaminated sediments. The land uses for the fill site at the Northwest Slip (Berths 134-135) will include "General Cargo" and "Other" (rail yard, roadways, utilities, etc.) and the Southwest Marine Shipyard fill will be designated as "Other"]. For Commission consideration at meeting of July 8-10, 2009.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends the Commission certify the Port of Los Angeles Master Plan Amendment No. 24, which would allow: new disposal sites to accommodate the remaining dredge material generated by the approved Main Channel Deepening Project (PMPA No. 21), including additional dredging: 400,000 cubic yards at the East Turning Basin; 170,000 cubic yards at the Southwest Slip; and 500,000 cubic yards for Main Channel entrance widening. Disposal sites include: 5 acres at Berths 134-135 in the Northwest Slip; 8 acres at Berths 243-245 (former Southwest Marine Shipyard); 50 acres at the Cabrillo Shallow Water Habitat site; and LA-2 ocean disposal site. The land uses for the fill site at the Northwest Slip (Berths 134-135) will include "General Cargo" and "Other" (rail yard, roadways, utilities, etc.) and the Southwest Marine Shipyard fill will be designated as "Other". The staff recommends that the Commission find that the proposed amendment conforms with and carries out the port development, water quality, and marine resource policies of Chapter 8 of the Coastal Act.

Substantive File Documents:

1. Port of Los Angeles Port Master Plan (as amended), Port of Los Angeles.
2. Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report, Port of Los Angeles Channel Deepening Project, U.S. Army Corps of Engineers and Port of Los Angeles, April 2009.
3. Circulation and Water Quality Modeling in Support of Deepening the Port of Los Angeles: Alternative Disposal Sites, U.S. Army Corps of Engineers, Engineer Research and Development Center, April 2008.
4. Contaminated Sediment Management Plan Addendum 2, U.S. Army Corps of Engineers and Port of Los Angeles, May 2009.
CD-046-08 (Corps of Engineers)
5. Water Quality and Hydrodynamic Analysis of the Cabrillo Beach Shallow Water Habitat, U.S. Army Corps of Engineers, February 2002.
6. Final Findings of Fact and Statement of Overriding Considerations, Port of Los Angeles Channel Deepening Project, Supplemental Environmental Impact Report, April 29, 2009

I. Port Master Plan Amendment Procedure. Section 30716(a) and California Code of Regulations, Title 14 Section 13636 call for port master plan amendments to be certified in the same manner as provided in Section 30714 of the Coastal Act for certification of port master plans. Section 13628 of the regulations states that upon the determination of the Executive Director that the master plan amendment and accompanying materials required by Section 13628(a) are sufficient, the master plan amendment shall be deemed submitted to the Commission for purposes of Section 30714 of the Coastal Act. The subject amendment was deemed submitted on May 11, 2009. Within 90 days (August 9, 2009) of this submittal date, the Commission, after public hearing, shall certify or reject the amendment, in whole or in part. The Commission may not modify the amendment as a condition of certification. If the Commission fails to take action on the amendment submittal within the 90-day period, without a waiver of the time period by the applicant, the proposed amendment is deemed certified.

Section 30714 also states that the Commission shall certify the amendment if the Commission finds both that:

1. The certified portions of the amendment conform with and carry out the policies of Chapter 8 of the Coastal Act.
2. Where the amendment provides for development listed as appealable in Section 30715, such development is in conformity with all the policies of Chapter 3 of the Act.

The proposed amendment provides for: new disposal sites to accommodate the remaining dredge material generated by the approved Main Channel Deepening Project (PMPA No. 21), including additional dredging: 400,00 cubic yards at the East Turning Basin; 170,000 cubic yards at the Southwest Slip; and 500,000 cubic yards for Main Channel entrance widening. Disposal sites include: 5 acres at Berths 134-135 in the Northwest Slip; 8 acres

at Berths 243-245 (former Southwest Marine Shipyard); 50 acres at the Cabrillo Shallow Water Habitat site; and LA-2 ocean disposal site. The land uses for the fill site at the Northwest slip (Berths 134-135) will include “General Cargo” and “Other” (rail yard, roadways, utilities, etc.) and the southwest Marine Terminal will be designated as “Other”.

The proposed amendment does not include appealable development under Section 30715. Therefore, the sole standard of review would, thus, be the policies of Chapter 8.

II. STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission certify the Port of Los Angeles Port Master Plan Amendment No. 24.*

STAFF RECOMMENDATION OF CERTIFICATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Port Master Plan Amendment and adoption of the following resolution and findings. The motion to certify passes only upon an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY PORT MASTER PLAN AMENDMENT:

The Commission hereby certifies the Port of Los Angeles Master Plan Amendment No. 24 and adopts the findings set forth below on grounds that the amendment is consistent with Chapter 8 of the Coastal Act. Certification of the amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the port master plan amendment.

III. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Previous Commission Port Master Plan Action and Public Comments.

The Commission certified the Port of Los Angeles Port Master Plan on March 19, 1980, and April 15, 1980. The Commission has reviewed twenty-one amendments to the master plan since that date, most recently in January 2006.

With regards to Commission’s past actions on Main Channel dredging and disposal, the Commission has reviewed a CDP that was submitted to the Commission and three

separate Port master plan amendments. In 1993, the Commission approved amendment No. 12 for dredging of 48 million cubic yards within the main channel, turning basins, and approach channels. In 1997, the Commission approved Coastal Development Permit 5-96-163 (Port of Los Angeles) for deepening to –50 feet MLLW a 3,800 foot long section of the Main Channel, extending from the S.P. Slip north to Berths 84 and 234 (Port submitted a coastal development permit application to the Commission for the proposed channel deepening because the project was not listed in the port master plan).

In June 1998, the Commission approved amendment No. 19 for deepening the Main Channel, Inner Harbor Turning Basin, West Basin, East Basin, East Basin Channel, and selected container berths from –45 feet mean lower low water (MLLW) to –50 feet MLLW; and designating two dredged material borrow and disposal sites (an approximately 50-acre site located in the Main Channel just inside Angel’s Gate; and an approximately 60-acre site located southeast of Pier 400) as allowable in-water use in the outer harbor in order to manage the handling of dredged material from the proposed Main Channel Deepening Project and the under-construction Pier 400/Deep Draft Navigation Project.

In May 2002, the Commission approved port master plan amendment No. 21 for, in part: (1) Deepening of the Main Channel, Inner Harbor Turning Basin, West Basin, East Basin, East Basin Channel, North Channel, Cerritos Channel, and selected container berths (100-102, 121-131, 136-147, 206-209, 212-221, and 226-236), from the current –50 feet MLLW depth to -53 feet; (2) dispose 4.7 million cubic yards of clean dredged material at the Pier 400 submerged storage site; and (3) 54-acre expansion of the Cabrillo Shallow Water habitat site.

B. Procedural Background

The Army Corps of Engineers has submitted consistency determination (CD-046-08) for the development proposed under PMPA No. 24 which is currently scheduled to be heard by the Commission concurrently with this amendment at the July 2009 meeting. The Consistency Determination (CD) report has been incorporated herein by reference.

The Port’s Board of Harbor Commissioners approved the Port Master Plan Amendment and certified the SEIR/SEIS for the amendment on April 29, 2009. The Los Angeles City Council subsequently asserted jurisdiction over the PMPA. In response to the City Council’s assertion of jurisdiction, on June 1, 2009, the Port’s Board adopted a resolution clarifying that the designation of the eight-acre fill site at Berths 243-245 (the slips adjacent to the former Southwest Marine Shipyard) as “Other” does not preclude the future designation of the site as a shipbuilding or ship repair facility (See Exhibit No. 6) The Board also directed Port staff to examine all possible configurations of the Confined Disposal Facility, consistent with and meeting the requirements of the SEIR/SEIS, that would fill eight acres or less. The City Council then affirmed the Port’s adoption of the PMPA and instructed the Harbor Department to study the feasibility for shipyard use before the slips at Berths 243-245 are filled.

In addition, Gambol Industries, the current lessor of the former Southwest Marine Shipyard site, and the Los Angeles Conservancy appealed the Port Board's certification of the SEIR/SEIS to the Los Angeles City Council. As of the date of this report, those appeals are still pending before the City Council.

One of the main issues addressed in the appeals was the preservation and future use of the Southwest Marine Shipyard (Berths 243-245) as a shipyard. The berths were used as a shipyard during World War II and up until 2005. The shipyard is currently vacant. Under the proposed amendment the slips would be used as an 8 acre Confined Disposal Facility (CDF). The new fill area will be designated as "Other" under the proposed amendment. According to the Port Master Plan this land use designation is used for proposed acquisitions, rights-of-way for rail, utilities, and roads, and areas not designated for a specific short-term use, and is used to designate vacant land pending a determination for a future use on the site. The proposed designation of "Other" does not preclude any potential future uses. Upon the determination of a future use, which could include a shipbuilding or ship repair facility, the land use designation would be modified through the proper environmental review and Port Master Plan Amendment process.

Berths 243-245 are located adjacent to the former Southwest Marine Shipyard which currently contains World War II era buildings and equipment (LAHD, 2006). In the LAHD's 2006 EIR for the Southwest Marine Terminal, the Port identified that the Southwest Marine Shipyard is eligible to be a historic district. The United States Army Corps of Engineers (USACE) has determined that the wharves at Berths 243-245, which would be demolished as a result of implementation of dredging and filling activity consistent with this amendment, no longer retain integrity from their period of significance and are not contributors to the Southwest Marine National Register of Historic Places district and that use of these berths as a disposal site under the proposed amendment would not have an adverse effect on the district. The USACE has requested the concurrence of the State Historic Preservation Officer of this determination.

Furthermore, one of the appellants argues that under Section 30708(c) all port-related development must be located, designed and constructed to give highest priority to the use of existing land space within harbors for port purposes, including, but not limited to, navigational facilities, shipping industries, and necessary support and access facilities. As addressed below and in the SEIR/SEIS, the development site will continue to be used for port purposes), and although the specific long term use of the site will be determined by the Port in the future, a shipyard is not precluded as a potential future use, as clarified by the Port in the above mentioned resolution. However, although a shipyard is a permitted use in the Port under the Coastal Act, it is one of many uses that is port related and one of many allowable uses that may be found consistent with the Coastal Act once the Port has determined a proposed use for the site.

The Commission's South Coast District office has also received letters from the San Pedro & Peninsula Homeowners Coalition (Exhibit No. 9) and Heal the Bay (Exhibit No. 10)

regarding water quality, dredge disposal and reuse, and air quality. These issues are addressed below.

C. Contents of Port Master Plan Amendments.

Section 30716(a) of the Coastal Act and California Code of Regulations Title 14, Section 13656 call for Port Master Plan Amendments to be certified in the same manner as port master plans. Section 30711 of the Coastal Act provides, in part, that a port master plan shall include all the following:

- 1. The proposed uses of land and water, where known.*
- 2. The proposed design and location of port land areas, water areas, berthing, and navigation ways and systems intended to serve commercial traffic within the area of jurisdiction of the port governing body.*
- 3. An estimate of the effect of development on habitat areas and the marine environment, a review of existing water quality, habitat areas, and quantitative and qualitative biological inventories, and proposals to minimize and mitigate any substantial adverse impacts.*
- 4. Proposed projects listed as appealable in Section 30715 in sufficient detail to determine their consistency with the policies of Chapter 3 (commencing with Section 30200) of this division.*
- 5. Provisions for adequate public hearings and public participation in port planning and development decisions.*

The Commission finds that the proposed Port Master Plan Amendment conforms with the provisions of Section 30711 of the Coastal Act. There are adequate details in the Port Master Plan Amendment submittal and associated materials for the Commission to make a determination of the proposed amendment's consistency with Chapter 8 policies of the Coastal Act.

The draft Port Master Plan Amendment was approved for public distribution by the Board of Harbor Commissioners on October 24, 2008. Written comments were solicited and a public hearing on the draft amendment was held during the January 8, 2009 Board of Harbor Commissioners meeting. On April 29, 2009, the Board of Harbor Commissioners approved the amendment and SEIR/SEIS for submittal to the Coastal Commission.

D. Appealable Development.

In determining the standard of review for the proposed master plan amendment, Section 30714 of the Coastal Act provides guidance and states in part that:

The Commission shall certify the plan, or portion of the plan, if the Commission finds both of the following:

(a) The master plan, or certified portions thereof, conforms with and carries out the policies of this chapter.

(b) Where a master plan, or certified portions thereof, provide for any of the developments listed as appealable in Section 30715, the development or developments are in conformity with all policies of Chapter 3 (commencing with Section 30200).

Section 30715(a) of the Coastal Act provides, in part, that:

(a) ...After a port master plan or any portion thereof has been certified,... approvals of any of the following categories of development by the port governing body may be appealed to the commission:

(1) Developments for the storage, transmission, and processing of liquefied natural gas and crude oil in such quantities as would have a significant impact upon the oil and gas supply of the state or nation or both the state and nation. A development which has a significant impact shall be defined in the master plans.

(2) Waste water treatment facilities, except for those facilities which process waste water discharged incidental to normal port activities or by vessels.

(3) Roads or highways which are not principally for internal circulation within the port boundaries.

(4) Office and residential buildings not principally devoted to the administration of activities within the port; hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities.

(5) Oil refineries.

(6) Petrochemical production plants....

The port's plan amendment does not provide for development listed as appealable in Section 30715(a). Therefore, the standard of review for the proposed amendment is Chapter 8 of the Coastal Act.

E. Summary of Proposed Plan Amendment.

The purpose of this amendment is to include project modifications initiated by the United States Army Corps of Engineers and provide new disposal sites to accommodate the remaining dredge material generated by the Main Channel Deepening (MCD) project (Amendment No. 21) previously approved by the Commission. The modifications, which were approved by the Commission in 2003 and 2004 through two negative determinations (ND-044-03 and 042-04), expanded the scope of the project approved under Amendment No. 21 by increasing the volume of material generated from the MCD Project. However, due to greater than estimated bulking and less than expected settling of dredged material, the disposal sites developed under the MCD Project are not sufficient to complete the MCD project. The Port estimates that approximately 3 million cubic yards of additional disposal capacity is needed to complete the MCD Project.

The Port of Los Angeles proposes to amend its port master plan by obtaining Commission certification of the following:

- Dredging 400,000 cy within the East Turning Basin to facilitate safer vessel movements into and out of the Cerritos Channel;
- Dredging 170,000 cy with the Southwest Slip to stabilize the Southwest Slip disposal site;
- Dredging 500,000 cy within the Main channel to widen entrance at the Pilot Station to allow for enhanced navigational safety for passing vessels that are entering and leaving the Main Channel;

Additional dredge disposal locations include:

- Berths 134-135 in the Northwest Slip (5 acres, 128,000 cy)
- Berths 243-245, the former Southwest marine Shipyard (8 acres, 368,000 cy)
- Expansion of Cabrillo Shallow Water Habitat (50 acres, 1.7 million cy)
- LA-2 ocean disposal site, south-southwest of the Port (.8 million cy)

The uses permitted at the Northwest Slip (Berths 134-135) would be “General Cargo” and “Other” (rail yard, roadways, utilities, etc.), which are the Port Master Plan use designations that permit container and container support operations. The new landfill will be used to improve vehicle access to the wharf area for the existing container terminal.

The land use designation for the fill at the former Southwest Marine Shipyard site will be designated as “Other”. The land use designation of “Other” is used to designate vacant land pending a future determination regarding use of the site. The designation does not preclude any potential future uses of the site, including its use as a shipbuilding or ship repair facility. At this time, there is no current plan from the Port for the use of this fill site. Future decisions

regarding use of the site would undergo environmental analysis and the port master plan amendment process.

The existing slips are proposed to be utilized as a Confined Disposal Facility (CDF) for the existing contaminated materials from past shipyard activities found within the slips, including contaminated dredge material generated by the main channel deepening project. It is estimated that the eight acre fill will accommodate 368,000 cubic yards of sediment, which includes 80,000 cubic yards of contaminated sediments and 288,000 cubic yards of clean sediments. Approximately 270,000 tons of quarry run rock and 20,000 tons of rock revetment would be used to construct the containment dike in stages. Uncontaminated coarse grained dredged materials would be placed behind the dike for added structural stability and would serve as a buffer zone between the dike and the contaminated sediments placed at the back of the berth. Approximately 198,000 cubic yards of uncontaminated fine-grained materials from berth and channel dredging operations would be placed on top of the contaminated sediment layer, followed by a ten-foot thick sand cap and finally approximately 180,000 cubic yards of surcharge.

The expansion of the CSWH will accommodate approximately 1.7 million cubic yards of clean dredge material to raise a 50 acre area of deep water to -15 feet MLLW. Fill material would be supported by a new submerged dike constructed to an elevation of -15 feet MLLW along the north side of the existing CSWH. Fine-grained dredged sediments would be pumped to the site via a hydraulic pipeline and would raise the elevation of the ocean floor from the existing -40 to -51 feet MLLW up to -17 feet MLLW. The site would then be capped with a two-foot thick layer of coarse-grained material obtained from the surcharge at the Southwest Slip landfill.

The filling of the various areas allowed under this amendment would result in the loss of approximately 12.4 acres of Inner Harbor habitat. The loss of marine habitat due to the inner harbor fill would be unavoidable since the project is infeasible without the landfill. To compensate for the loss of marine resources, the Port intends to apply mitigation credits from the Harbor Landfill Mitigation Credit Account and/or the port's Bolsa Chica mitigation account. These mitigation credit accounts were established through interagency memorandum of agreements and Port Master Plan Amendments to create mitigation credits through the funding of wetland restoration projects in the harbor and at the Bolsa Chica lowlands. The creation of the 50 acre Cabrillo Shallow Water Habitat (CSWH) could create additional mitigation credits but at this time the resource agencies have not determined the amount of credits and will not make a determination until a post construction analysis has been completed. Therefore, the Port is not including any generation of credits from the CSWH at this time. Impacts to marine resources and mitigation credits are discussed in Section 3, below.

F. Conformance with the Coastal Act.

In order for the Commission to certify the proposed amendment, the Commission must determine that the amendment conforms to the following Chapter 8 policies of the Coastal Act. The following sections discuss the proposed development and its conformance with the applicable Chapter 8 policies. In addition, the findings for the related consistency determination (CD-046-08) are incorporated herein by reference.

1. Allowable Development

Section 30705 of the Coastal Act states:

(a) Water areas may be diked, filled, or dredged when consistent with a certified port master plan only for the following:

(1) Such construction, deepening, widening, lengthening, or maintenance of ship channel approaches, ship channels, turning basins, berthing areas, and facilities as are required for the safety and the accommodation of commerce and vessels to be served by port facilities.

(2) New or expanded facilities or waterfront land for port-related facilities.

(3) New or expanded commercial fishing facilities or recreational boating facilities.

(4) Incidental public service purposes, including, but not limited to, burying cables or pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in biologically sensitive areas.

(6) Restoration purposes or creation of new habitat areas.

(7) Nature study, mariculture, or similar resource-dependent activities.

(8) Minor fill for improving shoreline appearance or public access to the water.

Section 30708(c) states in part that:

All port-related developments shall be located, designed, and constructed so as to:

...

(c) Give highest priority to the use of existing land space within harbors for port purposes, including, but not limited to, navigational facilities, shipping industries, and necessary support and access facilities.

The Port Master Plan states that the objective of the plan is to:

...consistently develop, expand, alter the port in both the short-term period and long-range period for purposes of commerce, navigation, fisheries, port-dependent activities and general public recreation...

The amendment will allow for the completion of the Main Channel Deepening project and adequate disposal of dredged material. The amendment also provides for the creation of new landfills where structurally suitable dredge material will be deposited (Exhibit No. 1).

The new landfill at the Northwest Slip is located adjacent to an existing container terminal and the proposed land use designations for the landfills will allow this terminal to become more efficient through better use of space, but will not increase throughput (Exhibit No 3). The new landfill at the Southwest Marine Shipyard will cap contaminated sediments and allow the future expansion of port related facilities along the waterfront.

Dredge disposal (clean sediment) will also be used to expand the Cabrillo Shallow Water Habitat (CSWH). See. Exhibit No. 4. Additional fill, .8 million cubic yards will be disposed of at LA-2 site (Exhibit No. 5). The LA-2 site is an EPA approved outer harbor dredge disposal site located approximately 5.8 miles south-south-west of the Port entrance on the outer continental shelf margin.

The Commission, therefore, finds that the proposed dredging and landfills, for the accommodation of commerce and vessels to be served by port facilities, is for port-related facilities and creation of habitat areas, and is allowable under Section 30705(a) and 30708(c).

2. Project Need.

Section 30701 of the Coastal Act states:

The Legislature finds and declares that:

(a) The ports of the State of California, including the Humboldt Bay Harbor, Recreation, and Conservation District, constitute one of the state's primary economic and coastal resources and are an essential element of the national maritime industry.

(b) The location of the commercial port districts within the State of California, including the Humboldt Bay Harbor, Recreation, and Conservation District, are well established, and for many years such areas have been devoted to transportation and commercial, industrial, and manufacturing uses consistent with federal, state and local regulations. Coastal planning requires no change in the number or location of the established commercial port districts. Existing ports, including the Humboldt Bay Harbor, Recreation, and Conservation District, shall be encouraged to modernize and construct necessary facilities within their boundaries in order to minimize or eliminate the necessity for future dredging and filling to create new ports in new areas of the state.

Section 30706 of the Coastal Act states:

In addition to the other provisions of this chapter, the policies contained in this section shall govern filling seaward of the mean high tide line within the jurisdiction of ports:

(a) The water area to be filled shall be the minimum necessary to achieve the purpose of the fill.

The Coastal Act policies require that any approved landfill be the minimum necessary in order to achieve the purpose of the project. In this regard, the Commission has required that the port demonstrate the need for any proposed landfill through the use of a well-documented and conservative approach to justify the requested landfill acreage.

As stated by the Port, the purpose of the amendment is to allow the Main Channel Deepening project to be completed through the creation of additional dredge disposal sites and use of the approved LA-2 ocean disposal site; and expansion of the Cabrillo Shallow Water Habitat. As explained in the findings for the related Consistency Determination (CD-046-08), the dredged materials are not suitable for beach replenishment. The proposed project amendment would allow filling approximately 63 acres of water surface within the Port. The landfills will allow expansion of marine terminals, creation of shallow water habitat, and allow the storage and confinement of contaminated fill materials. The Port states that the new landfill at the Northwest Slip is located adjacent to an existing container terminal and the proposed land use designations for the fill will allow for increased terminal efficiency and as a result, will minimize or eliminate the necessity for future dredging and filling in new areas of the state. The Port will also examine configurations of the Confined Disposal Facility at berths 243-245 that would fill eight acres or less.

The Port has previously indicated that the Port of Los Angeles handled 4.99 million TEUs (twenty-foot equivalent units) in fiscal year 2002, an increase of 137 percent from fiscal year 1990. Forecasts project that the port will continue to experience significant growth as overall trade with Asia grows, primarily due to trade with China, and the port's rail operations enter a new phase with the completion of the Alameda Corridor Transportation Project. According to forecasts, by the year 2020, cargo throughput at the San Pedro Bay ports is estimated to exceed 12 million TEUs, more than tripling current cargo flows (Mercer/DRI 1998).

For the Port to accommodate this increasing flow of international cargo, additional cargo handling facilities are necessary. Additional cargo handling capacity is typically created through expansion of existing facilities or construction of new facilities on available land or new landfill sites. Where possible, the Port has acquired private land areas within the Harbor District and surrounding area to accommodate the construction of new facilities on existing land area. Without a major landfill, the Port is attempting to increase the operating efficiencies within the Port by reuse of existing parcels of land and minor land fills. In

addition, the Port has administered a policy of consolidating ancillary uses and oil operations located throughout the Harbor District to allow expansion of existing marine terminals. The Port has also been constructing on-dock and near-dock rail yards and other rail related infrastructure improvements to limit congestion and improve the movement of cargo through the terminals and the Port. As available land areas within the San Pedro Harbor District are developed for marine cargo terminal purposes, landfill projects, such as those that would be allowed by this amendment, will postpone the need for future major landfill expansion projects within the Port or other areas of the State.

The proposed landfill is the minimum necessary to expand the existing terminals and increase operating efficiencies within the existing port. The Commission, therefore, finds, that the proposed dredging and landfill will be the minimum necessary in order to achieve the purpose of the project, will provide additional area for a high priority port use and will be consistent with Section 30701(a) and (b) and 30706(a) of the Coastal Act. Furthermore, the Commission also finds that the use of dredged sediments as landfill for the project, minimizing ocean disposal conforms with Section 30708(d), which states in part that port-related development shall provide for other beneficial uses consistent with public trust. The Commission and other state and federal regulatory agencies that review port development and expansion in southern California consistently urge the Port of Los Angeles (and other ports and agencies that dredge in coastal waters) to pursue alternatives to ocean dumping.

3. Water Quality

Section 30705 of the Coastal Act provides in part that:

(c) Dredging shall be planned, scheduled, and carried out to minimize disruption to fish and bird breeding and migrations, marine habitats, and water circulation. Bottom sediments or sediment elutriate shall be analyzed for toxicants prior to dredging or mining, and where water quality standards are met, dredge spoils may be deposited in open coastal water sites designated to minimize potential adverse impacts on marine organisms, or in confined coastal waters designated as fill sites by the master plan where such spoil can be isolated and contained, or in fill basins on upland sites. Dredge material shall not be transported from coastal waters into estuarine or fresh water areas for disposal.

(d) For water areas to be diked, filled, or dredged, the commission shall balance and consider socioeconomic and environmental factors.

Section 30706 of the Coastal Act provides in part that:

In addition to the other provisions of this chapter, the policies contained in this section shall govern filling seaward of the mean high tide line within the jurisdiction of ports:

(a) The water area to be filled shall be the minimum necessary to achieve the purpose of the fill.

(b) The nature, location, and extent of any fill, including the disposal of dredge spoils within an area designated for fill, shall minimize harmful effects to coastal resources, such as water quality, fish or wildlife resources, recreational resources, or sand transport systems, and shall minimize reductions of the volume, surface area, or circulation of water. . . .

Section 30708 of the Coastal Act provides in part that:

All port-related developments shall be located, designed, and constructed so as to:

(a) Minimize substantial adverse environmental impacts.

. . .

(d) Provide for other beneficial uses consistent with the public trust, including, but not limited to, recreation and wildlife habitat uses, to the extent feasible. . . .

Water quality issues associated with development under this amendment are examined in this staff report from two perspectives: (1) water quality protection measures associated with project construction; and (2) analysis of the water quality-related reports (sediment disposal decisions, circulation and water quality modeling, and post-project water quality monitoring).

a) Water Quality protection measures

The associated SEIS/SEIR documented the existing water quality conditions in the Port of Los Angeles, and examined the potential project impacts and proposed mitigation measures. Those documents are incorporated by reference into this report.

Water quality would be affected during dredge and fill operations, due primarily to increases in turbidity, decreases in dissolved oxygen, increases in nutrients, and increases in contaminants in the immediate vicinity of operations. These localized water column impacts will in turn affect fish and marine birds in the project area. However, any adverse effects will be limited due to the nature of the dredged materials, the short-term nature of the water column changes, and the ability of fish and birds to avoid the turbidity plumes generated by project operations.

In addition, the landfill in the Southwest Marine Shipyard (Berths 243-245) will serve as a Confined Disposal Facility (CDF) for contaminated materials dredged from the Main Channel Deepening (MCD) project, and will also cap existing contaminated sediments found within the Berths, prevent resuspension of the contaminated sediments, and prevent release of contaminants into the water column. Dredging of an estimated 80,000 cubic yards of contaminated sediments (368,000 cubic yards of total sediments) from the MCD

project and placement in the Southwest Marine Shipyard site will provide significant, long-term water quality benefits in the Port of Los Angeles.

The development proposed under this amendment would be subject to Federal and State water quality protection measures, including:

- An amended, Clean Water Act Section 401 -Certification from the RWQCB for dredging and filling activities that contains conditions including standard Waste Discharge Requirements (WDR).
- Monitoring to ensure that return water flow from disposal of dredge material behind landfill dikes meets RWQCB requirements for settleable solids and toxic pollutants.
- Contaminated sediments will be placed and confined in the in-harbor disposal site in such a manner that the contaminants cannot enter harbor waters after the fill is complete.

Extensive water quality monitoring conducted during the Pier 400 Deep Draft Navigation Improvement Project (CD-050-00), including the dredging and disposal of sediments of similar physical, chemical, and locational characteristics when compared to sediments proposed for dredging under the proposed amendment, failed to detect any significant, adverse, long-term impacts to water quality in the outer harbor as a result of dredging or disposal activities, and none are anticipated for the similar inner and outer harbor operations associated with development under the proposed amendment.

Additionally, the Port of Los Angeles is subject to the requirements of the Los Angeles County Storm Water Permit for operation of Port facilities and the Construction Activities Storm Water General Permit for Port construction activities. The Port is actively involved in ensuring compliance with these NPDES permits, including (1) participation by various Port divisions in storm drain maintenance activities, street sweeping, implementation of BMPs, spill response activities, etc.; (2) ongoing participation in various City-wide and regional task forces (including the Dominguez Channel Watershed Advisory Committee, the LA Region Contaminated Sediment Task Force) to facilitate interagency coordination and remain current on applicable storm water regulations and activities; (3) periodic training of Port employees, contractors and tenants to ensure compliance; (4) development of guidance documents for use by Port employees, contractors and tenants to ensure permit compliance; (5) inspection of construction sites by Port inspectors to ensure compliance with construction BMPs; (6) application of the recently adopted SUSMP criteria in the design of Port facilities to capture and treat the first 0.75 inches of rainfall from storm events; and (7) active participation in various studies to support Total Maximum Daily Load (TMDL) development in the harbor area, including the Dominguez Channel.

b) Water Quality Reports

The Corps' Contaminated Sediment Management Plan (CSMP) (January 2002) and addendum (May 2009) describes in detail the plans for dredging and disposal of the project's contaminated sediments. The CSMP also includes water quality monitoring protocols for contaminated sediment dredging and disposal operations. The monitoring plan states that "for every item where the [monitoring] requirements are not met, the discharger shall submit a statement of actions undertaken or proposed which will bring the discharge into full compliance with requirements at the earliest time and submit a timetable for correction." Dredging and fill operations will continue in compliance with the 2002 CSMP and with the 2009 addendum.

The dredging and additional fill has been developed in accordance with the goals of the Long Term Management Strategy defined by the Los Angeles Regional Contaminated Sediments Task Force (CSTF). The CSTF, comprised of one representative each from U.S. EPA, California Regional Water Quality Control Board – Los Angeles Region, California Department of Fish and Game, California Coastal Commission, and the environmental group Heal the Bay, was formed to create a long term strategy for managing contaminated sediments within Los Angeles County. The CSTF developed the Los Angeles Contaminated Sediment Long Term Management Strategy, which established a goal of 100 percent beneficial reuse of contaminated dredge materials. This goal complies with the requirements of the Clean Water Act and marine Protection, Research and Sanctuaries Act to maximize beneficial reuse of dredged materials and minimizing discharges of dredged materials to the aquatic or ocean environment.

The proposed amendment has been reviewed by the CSTF and has preliminarily approved the proposed project. As of the date of this report final written approval from the CSTF has not been received, but is expected to be submitted prior to the Commission hearing. The Commission concurs with CSTF determination and finds that the proposed option is consistent with the water quality and marine habitat protection policies of the Coastal Act.

(c) Modeling of Water Circulation and Quality at Cabrillo Beach.

A lengthy and detailed technical report, Water Quality and Hydrodynamic Analysis of the Cabrillo Beach Shallow Water Habitat (February 2002), by the Corps was completed for the development proposed under amendment No. 21. The report describes four modeling scenarios as follows:

Scenario 1: plan-form geometry and bathymetry of San Pedro Bay as they existed in year 2001, except that pre-construction depths are specified in the Cabrillo Shallow Water Habitat (CSWH).

Scenario 2: as-built configuration and depth of the CSWH are included.

Scenario 3: incorporates the recommended plan for expanding the Port of Los Angeles, which includes the proposed expansion of the CSWH.

Scenario 4: incorporates the recommended plan expansions and also includes an opening in the San Pedro Breakwater.

The utility of these modeling scenarios is then addressed:

Comparison of modeling results between scenarios 1 and 2 permits assessing the impact that the construction of the habitat has had on water circulation and water quality, and comparison of modeling results between scenarios 2 and 3 provides insight into potential impacts that an expansion may have on water circulation and water quality. . . [Scenario 4] investigates whether an exchange in waters between the study area and the open ocean improves water circulation and water quality at the inner Cabrillo beach.

The report includes extensive technical information on hydrodynamic testing, hydrodynamic modeling of the four scenarios, the water quality model, water quality modeling results, and a particle tracker to investigate circulation patterns in the Cabrillo Beach and Cabrillo Shallow Water Habitat.

Lastly, the report conclusion states, in part, that based on the modeling results of the four scenarios, the following conclusions were reached:

- 1. There are only minor differences between water circulation and water quality results for scenarios 1 and 2, indicating that the construction of the habitat had no significant impact on waters within 300 ft to 500 ft of the inner Cabrillo Beach. Currents approximately 3000 ft from shore were strengthened as a result of its construction; however, water quality was not impacted within western San Pedro Bay.*
- 2. There are only minor differences between water circulation and water quality results for scenarios 2 and 3, indicating that expanding the habitat will have no significant impact on water circulation and water quality in western San Pedro Bay.*
- 3. An opening in the breakwater can have some positive impact on water circulation and water quality in western San Pedro Bay. This improvement is attributed to the mixing of open-ocean and bay waters. However, the opening had little impact on waters immediately adjacent to the beach (i.e. in the area used for swimming).*

Scenario 4 was conducted at a “proof-of-concept” level for determining whether an opening warrants further study. This study was therefore limited, in terms of hydrodynamics, to currents and did not investigate potential impacts imposed by waves propagating through the opening and into the open water area east of Cabrillo Beach. Although the potential impacts described below have not been studied, and are therefore conjecture, an opening in the breakwater leads to several issues that should be addressed before giving this option further consideration. These issues include breakwater stability, erosion of the harbor bottom (including the CSWH),

harbor resonance, beach stability/erosion, and public use of beaches and their safety.

For the additional dredging and filling proposed under this amendment, the potential long-term effects on the quality of water was evaluated in a report prepared by the USACE (USACE, 2008). The report provided results of the hydrodynamic computer modeling of existing conditions, conducted pursuant to the Main Channel Dredging project, and comparison to existing conditions. The report found that water quality differences between existing conditions and conditions that would exist after project implementation were usually less than a one percent maximum change at most of the eight water quality modeling stations.

The Commission finds that the water circulation (and inferred water quality effects) modeling work undertaken by the Corps for the water area between Cabrillo Beach and the Main Channel satisfactorily documents that the existing Cabrillo Shallow Water Habitat (CSWH), and the proposed 50 acre expansion of the CSWH does not, and will not, generate significant adverse impacts on water circulation or water quality at Cabrillo Beach and adjacent offshore areas, and is consistent with the water quality and marine habitat protection policies of the Coastal Act.

(d) Post-Project Water Quality Monitoring.

A Cabrillo Beach Monitoring Plan (March 2002) was prepared for the Main Channel dredging and expansion of the Cabrillo Shallow Water Habitat approved under Amendment No. 21. The Executive Summary states in part that:

Data will be collected to supplement the ongoing hydrodynamic and water quality measurements by the Corps and local partners. Circulation data include water levels, currents, dispersion, and dilution measurements. Water quality data include dissolved oxygen, temperature, turbidity, and transparency. The data will be supported by environmental and morphologic measurements including atmospheric pressure, temperature, wind velocity, and wading-depth beach profiles. Analysis of the data and assessment of changed conditions will be reported.

The Port will continue to monitor and collect data consistent with the Cabrillo Beach Monitoring Plan for the project proposed under this amendment. The Commission finds that the proposed post-project water quality monitoring program for the area between Cabrillo Beach and the Main Channel will adequately generate the type of technical information needed to confirm or disprove the results of the Corps' water circulation modeling results for this area. The commitment to monitor this area for potential changes in water quality characteristics as a result of the construction of the Cabrillo Shallow Water Habitat expansion provides the Commission with the ability to ensure that project components will not over time adversely affect water quality and related recreational resources in this area.

In conclusion, the Commission finds that the development proposed by this amendment will generate only minor, short-term effects on water quality and marine resources in the Port of Los Angeles. With the proposed mitigation measures required through the State and Federal permitting processes, and compliance with those standards, the adverse effects on water quality and marine habitat will not be significant and the proposed amendment is consistent with Sections 30705, 30706, and 30708 of the Coastal Act.

4. Environmentally Sensitive Habitat.

Section 30705 of the Coastal Act states in part:

(b) The design and location of new or expanded facilities shall, to the extent practicable, take advantage of existing water depths, water circulation, siltation patterns, and means available to reduce controllable sedimentation so as to diminish the need for future dredging.

(c) Dredging shall be planned, scheduled, and carried out to minimize disruption to fish and bird breeding and migrations, marine habitats, and water circulation. Bottom sediments or sediment elutriate shall be analyzed for toxicants prior to dredging or mining, and where water quality standards are met, dredge spoils may be deposited in open coastal water sites designated to minimize potential adverse impacts on marine organisms, or in confined coastal waters designated as fill sites by the master plan where such spoil can be isolated and contained, or in fill basins on upland sites. Dredge material shall not be transported from coastal waters into estuarine or fresh water areas for disposal.

Section 30706 of the Coastal Act states in part:

In addition to the other provisions of this chapter, the policies contained in this section shall govern filling seaward of the mean high tide line within the jurisdiction of ports... (b) The nature, location, and extent of any fill, including the disposal of dredge spoils within an area designated for fill, shall minimize harmful effects to coastal resources, such as water quality, fish or wildlife resources, recreational resources, or sand transport systems, and shall minimize reductions of the volume, surface area, or circulation of water.

Section 30708 of the Coastal Act states in part:

All port-related developments shall be located, designed, and constructed so as to...a) Minimize substantial adverse environmental impacts.

The development proposed by this amendment could potentially affect environmentally sensitive marine habitat used by two federally endangered species: the California least tern and the California brown pelican. The amendment would allow for additional dredging to deepen the Main Channel and constructing a five and eight acre fill at Berths 134-135

and Berths 243-245. These inner harbor locations are not considered significant foraging areas for terns or pelicans, and dredging, filling, and the related turbidity effects that will occur in these areas are not expected to adversely affect either species. Mitigation for the additional approximately thirteen acres of inner harbor landfills will be obtained from existing credits in the port's harbor mitigation account and/or the port's Bolsa Chica mitigation account.

According to the SEIS/SEIR, there are a total of approximately 116 credits available to mitigate landfill projects (see Exhibit No. 7). Based on mitigation ratios established by the Port and the various resource agencies (Department of Fish and Game and the U.S. Fish and Wildlife Service), which are consistent with, or exceed, previous ratios approved by the Commission, the proposed landfills (approximately 12 acres) will require approximately 6.2 inner harbor credits (based on the established mitigation ratio of 1:2 for "inner-harbor" landfills and 1:1 for "outer-harbor" landfills). The creation of the 50 acre Cabrillo Shallow Water Habitat (CSWH) could create additional credits but at this time the resource agencies have not determined the amount of credits and will not approve any credit generation until a post construction analysis has been completed, therefore, the Port is not including any generation of credits from the 50 acre CSWH expansion at this time. Based on the surplus of credits there is an adequate amount of credits to mitigate the loss of the approximately 12 acres of inner harbor habitat that will be impacted.

Furthermore, according to the Final SEIS/SEIR, there is approximately 1,830 sq.ft. of pickleweed (*Salicornia virginica*) located at the back end of the Northwest Slip. The Port and Corps have agreed to mitigate this loss at 3:1. Mitigation will include salvaging and replanting the removed pickleweed in the harbor or off-site in accordance with USACE habitat mitigation and monitoring guidelines which will be incorporated into a final mitigation plan prepared prior to permit issuance and the Record of Decision of the Proposed Action.

a) California Least Tern.

The California least tern (*Sterna antillarum brownii*) is a federally and state listed endangered species. The species has nested during the summer on Terminal Island (including Pier 300) and is currently nesting on Pier 400. Least terns feed on small fish directly under the water surface. They have been observed to forage over shallow water (generally less than 20 feet deep) in the Outer harbor, adjacent to the Pier 300 nesting site, but not in the Inner Harbor area.

Construction activity may cause turbidity in the water column which would affect foraging species ability to see food normally visible in the water. In addition, construction activity using heavy equipment could generate noise in the water column that would disturb fish and other species normally present upon which foraging least terns would normally feed.

According to the SEIS/SEIR the existing wharves and landfill at Berths 243-245 and the Northwest Slips (Berths 134-135) provide no breeding or important resting or foraging

habitat for the least tern. However, the Cabrillo Shallow Water Habitat (CSWH) provides foraging habitat for the least tern and construction activities would overlap with their entire nesting season (April through August). The construction activities have the potential to adversely affect least tern foraging by causing a decline in availability of forage fish in and adjacent to the construction area. However, it is predicted that some of the fish in and adjacent to the construction area will migrate to nearby undisturbed areas within the CSWH, thus continuing to provide food for the least tern. Furthermore, the proportion of area impacted by construction, including the temporary turbidity plume, compared to the total area (326 acres) of the CSWH is not considered substantial. Approximately 6.5 acres of the existing 326 acres of habitat is expected to be temporarily impacted.

To ensure protection of the least tern during project activities proposed mitigation includes: limiting the turbidity plume to no greater than 6.5 acres over the shallow water habitat; monitoring by a qualified least tern biologist in coordination with California Department of Fish and Game and United States Fish and Wildlife Service; and protection of least tern nests found outside of the known least tern colonies during construction..

Upon completion, the expanded shallow water area would provide an additional 50 acres of habitat for fish and invertebrates and increase the foraging area for the least tern. In conclusion, the Commission finds that the proposed project modifications will not generate significant, adverse effects on environmentally sensitive marine habitat in San Pedro Bay. With the proposed mitigation measures outlined in the Draft SEA and required through the State and Federal permitting processes, and compliance with those standards, the adverse effects on marine resources will not be significant and the proposed amendment is consistent with Sections 30705(b)(c), 30706(b) and 30708(a) of the Coastal Act.

5. Recreation

Section 30706(b) of the Coastal Act provides:

In addition to the other provisions of this chapter, the policies contained in this section shall govern filling seaward of the mean high tide line within the jurisdiction of ports:

(b) The nature, location, and extent of any fill, including the disposal of dredge spoils within an area designated for fill, shall minimize harmful effects to coastal resources, such as water quality, fish or wildlife resources, recreational resources, or sand transport systems, and shall minimize reductions of the volume, surface area, or circulation of water. . .

Section 30708 of the Coastal Act provides, in part:

All port-related developments shall be located, designed, and constructed so as to:

(a) Minimize substantial adverse environmental impacts.

. . .

(d) Provide for other beneficial uses consistent with the public trust, including, but not limited to, recreation and wildlife habitat uses, to the extent feasible. . . .

The proposed project modifications and final design decisions must be consistent with the aforementioned recreational resource policies of the Coastal Act. The proposed dredging and filling modifications that would occur would not generate adverse effects on recreational activities in the Port. These dredge and landfill sites, are not recreation areas due to the existing cargo and industrial activities that occur at these sites. No existing public access or recreation areas will be eliminated or created by the proposed project modifications. On-water recreational boating will be restricted in the immediate areas of active dredging and filling, and some inconvenience to recreational boaters traveling within the harbor will occur during project construction, but these restrictions would be temporary and are not considered significant impacts.

The Commission has previously expressed concerns about the potential effects that expanding the Cabrillo Shallow Water Habitat (CSWH) site will have on public recreation (boating and fishing). However, the Commission found that project dredging and filling will generate only temporary and minor effects on recreational boating and fishing in the vicinity of dredge and fill operations at CSWH. That finding was made with the commitment by the Corps to undertake further circulation/water quality modeling at this location and to produce a post-project water quality monitoring plan for this site, in order to ensure that the CSWH expansion that has been previously approved by the Commission will not cause a degradation in water quality or recreational opportunities at Cabrillo Beach. As discussed in Section 3 of this report, modeling was undertaken and the study results confirmed that no adverse effects would occur; a post-project water quality monitoring plan for this area was developed and will be used to analyze the modeling predictions. Therefore, the Commission finds that the proposed amendment is consistent with the commercial and recreational fishing and boating policies of Sections 30706(b) and 30708(a)(d) of the Coastal Act.

6. Risk Management Plan

Section 30708(a) of the Coastal Act requires that all port-related developments be located, designed and constructed so as to minimize substantial adverse environmental impacts. The Commission certified the Ports' Risk Management Plan (RMP) in November 1983. The certified RMP is to be used for the siting of new hazardous liquid cargo facilities and any proposed modification, expansion or relocation of existing hazardous liquid cargo facilities in a manner that minimizes or eliminates risks to life and property in and around the port through the physical separation of hazards and "vulnerable resources". Vulnerable resources are defined in the RMP as significant residential, recreational and working populations, and facilities that have high economic value or are critical to the economy or national defense.

The risk to “vulnerable resources” from hazardous materials is analyzed by determining the area in which people would be hurt and property would be damaged if a “worst case” accident occurred. The area where “vulnerable resources” could be injured or damaged by a worst case accident is called a “hazard footprint”. The boundary of a hazard footprint is determined by calculating the distance at which impacts of the worst probable events will be reduced to levels that are not likely to cause injury or property damage.

This generally does not allow placement of vulnerable resources within a hazard footprint. The design criteria of the RMP recognizes that there are situations where vulnerable resources may be located within a hazard footprint area. Under these situations, application of additional protection measures such as the installation of an approved early warning system, development of a comprehensive emergency evacuation plan, or personal training, may be required.

In the Port’s analysis of the project, there were no hazard footprints in the vicinity of the proposed project and the proposed cargoes that would be handled at the proposed expansions of existing marine cargo terminals would not include hazardous liquid bulk facilities and the terminals will not create any new hazardous liquid cargo facilities. Therefore, the Commission finds that the proposed project will be consistent with the Port’s RMP and will minimize substantial adverse environmental impacts consistent with Section 30708(a) of the Coastal Act.

7. Historic Resources

In determining the suitability of using Berths 243-245 as a confined disposal facility for contaminated dredged materials, the Final SEIS/R for the project also examined the potential historical significance of this location:

Berths 243-245 are located adjacent to the former Southwest Marine Shipyard which currently contains World War II era buildings and equipment (LAHD, 2006). In the LAHD’s 2006 EIR for the Southwest Marine Terminal. The Port identified that the Southwest Marine Shipyard is eligible to be a historic district. The USACE has determined that the wharves at Berths 243-245, which would be demolished as a result of implementation of Alternative 1 of the Proposed Action, no longer retain integrity from their period of significance and are not contributors to the Southwest Marine National Register of Historic Places district and that use of these berths as a disposal site under the Proposed Action would not have an adverse effect on the district. USACE has requested the concurrence of the State Historic Preservation Officer of this determination in a letter dated March 16, 2009, which is included in Appendix J of the Final SEIS/SEIR.

In a letter dated April 29, 2009, the State Historic Preservation Officer (“SHPO”) requested that the Port of Los Angeles defer any action on the Final SEIS/SEIR for the Channel Deepening Project until the Section 106 consultation between the Office and the Corps of Engineers has been completed. The SHPO also requested additional information regarding the site and the project from the Corps on May 11, 2009. The Port of Los

Angeles then contracted with the ICF Jones & Stokes environmental consulting firm to “provide additional information about the construction history of the former Bethlehem Shipyard at Berths 243-245, Port of Los Angeles (Port), and further research to evaluate World War II and Cold War-era significance.” The report was delivered to the Corps and the Port on June 23, 2009, and immediately transmitted to the SHPO. The ICF Jones & Stokes report concluded that:

- 1) The Bethlehem Shipyard historic district is still eligible for the National Register under Criterion A, with a period of significance of 1941-1945;
- 2) The historic district boundary first delineated in 2000 and updated in 2008 is correct;
- 3) The close of the period of significance in 1945 is correct;
- 4) There is no evidence to support the theory that the basins or the ship repairs that occurred within them or in the Bethlehem Shipyard historic district played an important role in the Cold War era;
- 5) Berths 243-245 have undergone extensive demolition and reconfiguration since the period of significance closed in 1945, including demolition of the four slipways used for the wartime emergency shipbuilding program and conversion into basins for ship repair;
- 6) The demolition or removal of the floating dry docks from the basins has severely compromised the integrity of design, materials, workmanship, setting, feeling, and especially association with ship repair operations;
- 7) Construction of the two basins at Berths 243-245 was completed in 1961; it has been demonstrated that they do not date from the historic district’s period of significance of 1941-1945. They do not, therefore, qualify as an “integral part” of the historic district, as required by the National Park Service when evaluating properties less than 50 years old (U.S. Department of the Interior 1979:7); and
- 8) As a result, the two basins at Berths 243-245 do not contribute to the significance of the Bethlehem Shipyard Historic District.

The SHPO has not yet (as of the date of this report, June 25, 2009) completed the aforementioned Section 106 consultation. However, the Commission notes that the Coastal Act, and in particular, Chapter 8, does not include specific policies that address the protection of historic resources. Rather, Section 30708 states that “all port-related development shall be located, designed, and constructed so as to minimize substantial adverse environmental impacts.” The Commission faced a somewhat similar situation when it reviewed coastal development permit 5-96-182 from the Port of Long Beach for demolition of the former Long Beach Naval Station and the subsequent construction of a

container cargo terminal. In its approval of the permit, the Commission found that the proposed demolition of the historic structures at the Naval Station would not result in substantial adverse environmental impact. The Commission also found that:

Chapter 8 policies state that the Port of Long Beach is one of the state's primary coastal resources, call for port modernization, call for protection of commercial fishing facilities, include provisions for protecting marine resources within the waters of the port, but do not include policies for the protection of historic structures within the port.

In CDP 5-96-182 the proposed redevelopment included the demolition of historic structures but the Commission still determined that the project was consistent with the port development and resource protection policies of Chapter 8. In the present case, the Commission finds that the existing open-water slips at Berths 243-245 are not historic resources and their filling with dredged material would not adversely impact the historic upland properties and structures in the adjacent Bethlehem Shipyard Historic District. In addition, and as discussed previously in this report, on June 1, 2009, the Port of Los Angeles adopted a resolution that clarified the intent of the PMPA 24 land use designation for the proposed fill at Berths 243-245, stating that the "Other" land use designation does not preclude the future designation of this site as a shipbuilding or ship repair facility. As proposed, the port master plan amendment is consistent with all applicable Chapter 8 policies of the California Coastal Act.

8. Summary

In summary, the Commission finds that the proposed port master plan amendment will allow the Port of Los Angeles to accommodate commerce and vessels to be served by port facilities and construct needed cargo and shipping facilities and other port related facilities, and all adverse impacts to the marine environment will be adequately mitigated. As proposed, the port master plan amendment is consistent with all applicable procedural provisions and policies of the California Coastal Act of 1976.

9. Consistency with the California Environmental Quality Act (CEQA).

The California Environmental Quality Act (CEQA) requires less environmentally damaging alternatives to be considered and the imposition of mitigation measures to lessen significant adverse effects that may result from the proposal.

The applicant is the lead agency for the purposes of California Environmental Quality Act (CEQA) review and is responsible for the preparation of the EIR/EIS. The Port's Board of Harbor Commissioners certified a supplemental EIR/EIS for the project on April 29, 2009. The Port's certification of the SEIR/EIS has been appealed to the Los Angeles City Council. As of the date of this staff report, the City Council has not yet acted on the appeal. The SEIR/EIS includes mitigation measures to address potential impacts created by the proposed development.

In the EIR/EIS process, the Port reviewed three alternatives: Alternative 1, which was the selected alternative addressed above; Alternative 2, Environmental Enhancement and Ocean Disposal, consisting of placing dredge material at the CSWH Expansion Area, Anchorage Road Soil Storage Site (ARSSS), LA-2, and LA-3; and Alternative 3, No Action Alternative. According to the final SEIS/SEIR alternative 1 was selected over alternative 2 because it would:

1. Improve water quality through capping of existing contaminated sediments
2. Eliminate potential for bioaccumulation of existing heavy metals and organochlorides at and in the vicinity of Berths 243-245
3. Reduce amount of material disposed in the open ocean, minimizing temporary impacts to a larger marine habitat area that exhibits relatively high physical and biological functions (LA-2 and LA-3)
4. Improve safety for truck turning movements at the Northwest Slip.

Alternative 3, the No Alternative, would not allow the completion of the Main Channel deepening project without the additional dredge disposal sites, therefore, would not meet the project's objective.

According to the CEQA guidelines, the Lead Agency must not approve a project that will have a significant effect on the environment unless it finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the unavoidable adverse environmental effects (PRC Sec. 21081(b); 14 California Code of Regulations [CCR] Sec 15093). The Board of Harbor Commissioners adopted a Statement of Overriding Considerations, which identified the specific overriding benefits of the proposed project that outweigh the significant environmental impacts identified in the Final SEIR. The Commission adopts the Port's Statement of Overriding Considerations by reference. The SEIR identified significant, unavoidable construction-related impacts to air quality. Specifically, the SEIR identified significant impacts regarding NOX emissions and odors and found that those effects would disproportionately affect minority and low-income populations. The South Coast Air Quality Management

District (SCAQMD) is the regulatory agency with primary authority with respect to air quality matters. Air quality impacts have been mitigated to the extent feasible, consistent with SCAQMD requirements. The Commission finds that for the reasons discussed in this report, all adverse effects over which the Commission has regulatory authority have been mitigated to a level of insignificance and that the significant impacts with respect to air quality and environmental justice have been mitigated to the extent feasible. Thus there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any adverse environmental impacts. The Commission finds that the environmental benefits of the project with respect to addressing contaminated sediments and the economic benefits of the project with respect to maintaining and improving Port facilities and operations outweigh the unavoidable adverse environmental effects of the project.

Port of Los Angeles Channel Deepening Project

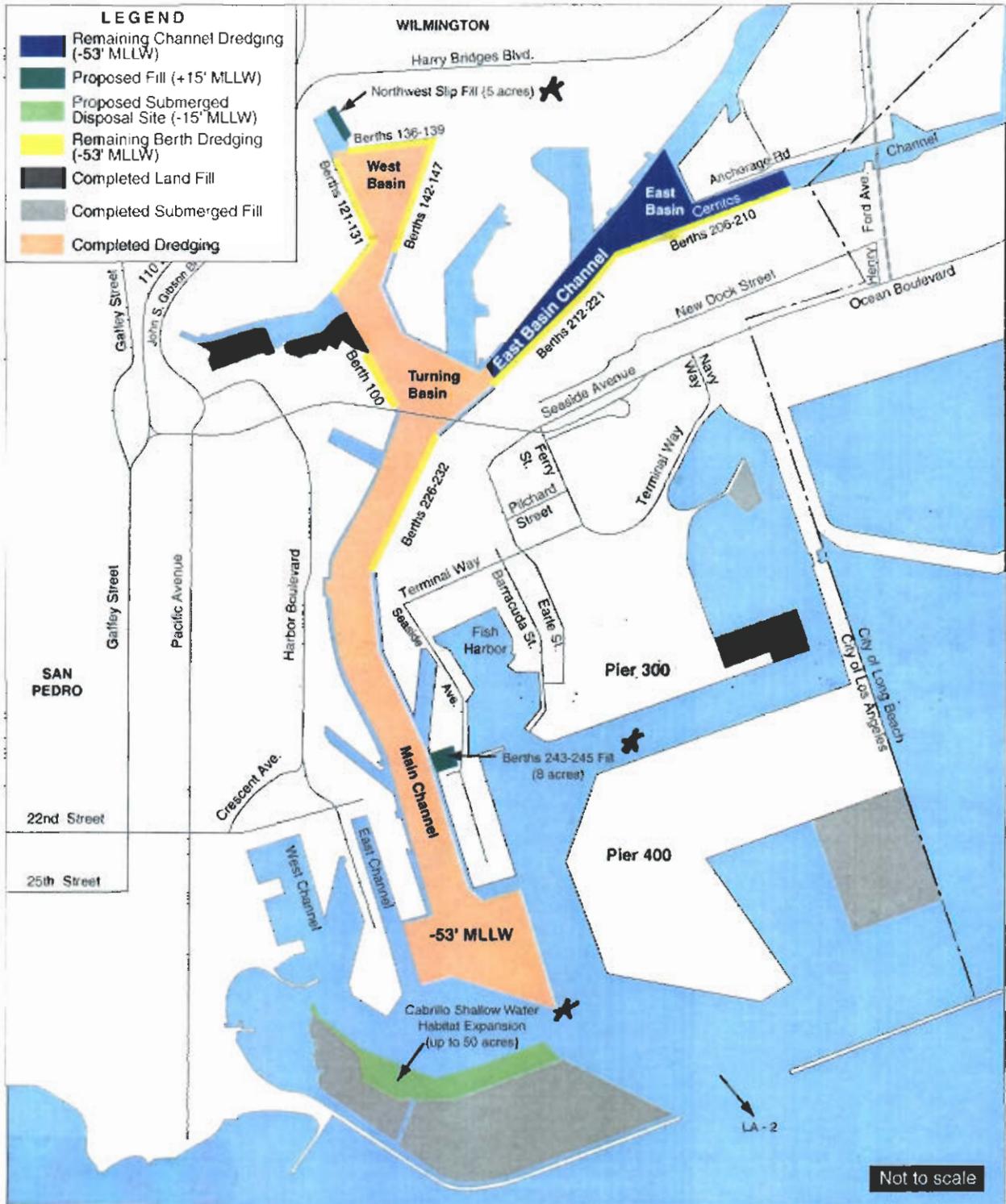
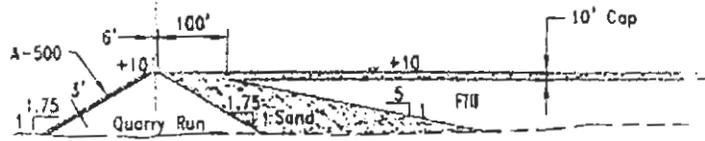


EXHIBIT NO. <u>1</u>
Application Number POLA PMPA # 24
Site Plan
California Coastal Commission

Proposed Project

EXHIBIT NO. 2
Application Number POLA PMPA #24
Berth 243-245
Landfill
California Coastal Commission



A ROCK/FILL TYPICAL SECTION

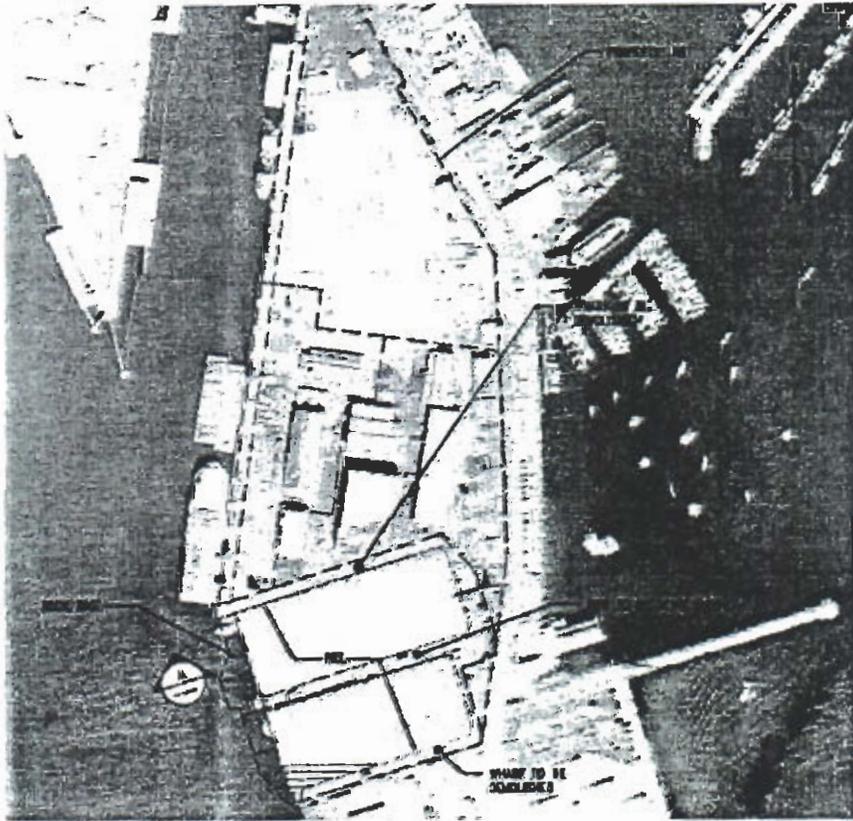


FIGURE 2-3
BERTH 243-245 TERMINAL
OCTOBER 24, 2006

Figure 2 - Berth 243-245 Terminal

EXHIBIT NO. 3
Application Number
POLA PMPA #24
Northwest Slip Fill
California Coastal Commission

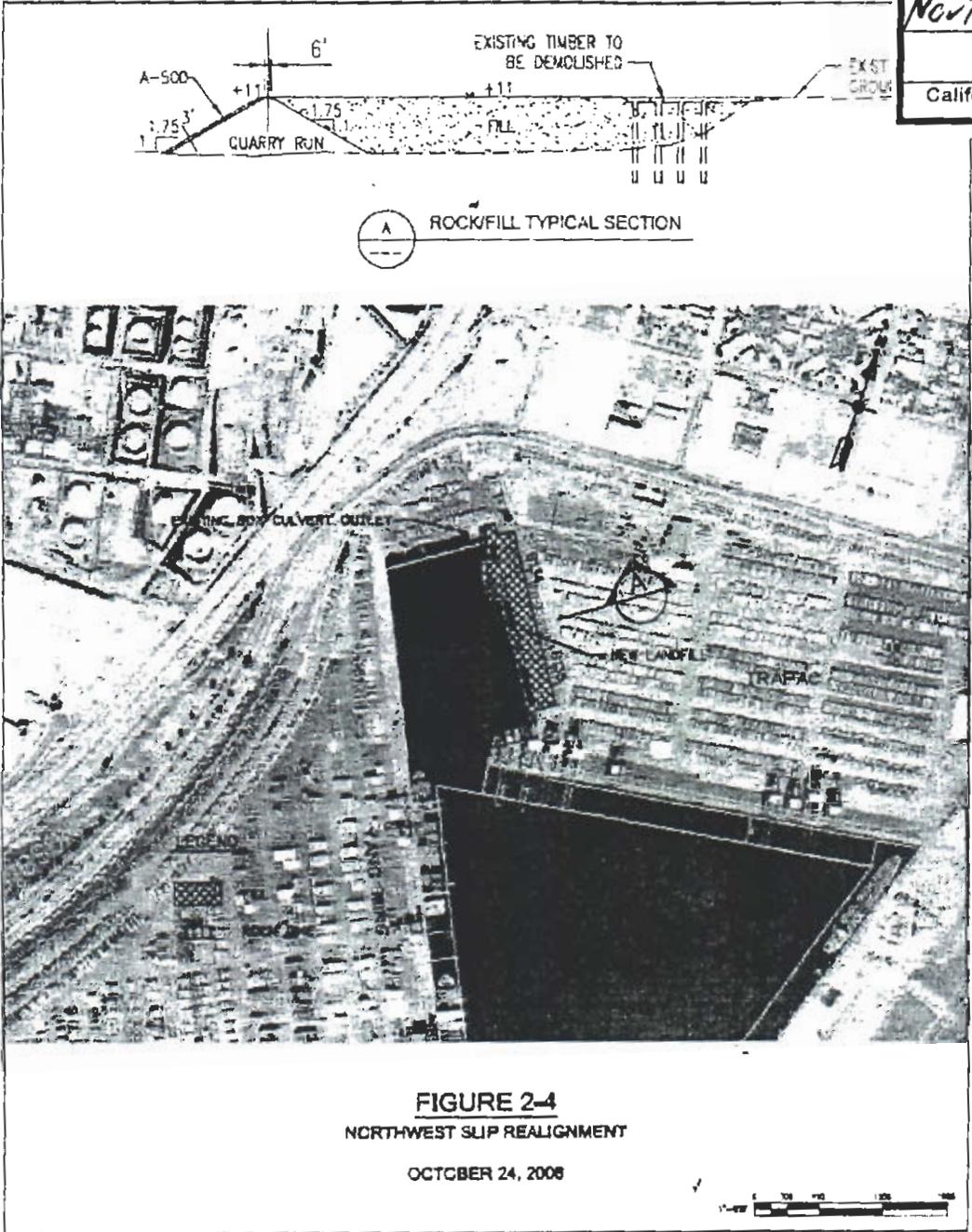


Figure 3 - Northwest Slip Fill

EXHIBIT NO. <i>4</i>
Application Number <i>POLA RMPA #24</i>
<i>Cabrillo Shallow Water</i> <i>Habitat Expansion</i>
California Coastal Commission

PORT OF LOS ANGELES - PORT OF LOS ANGELES CHANNEL DEEPENING PROJECT
CONTAMINATED SEDIMENT MANAGEMENT PLAN - ADDENDUM 2

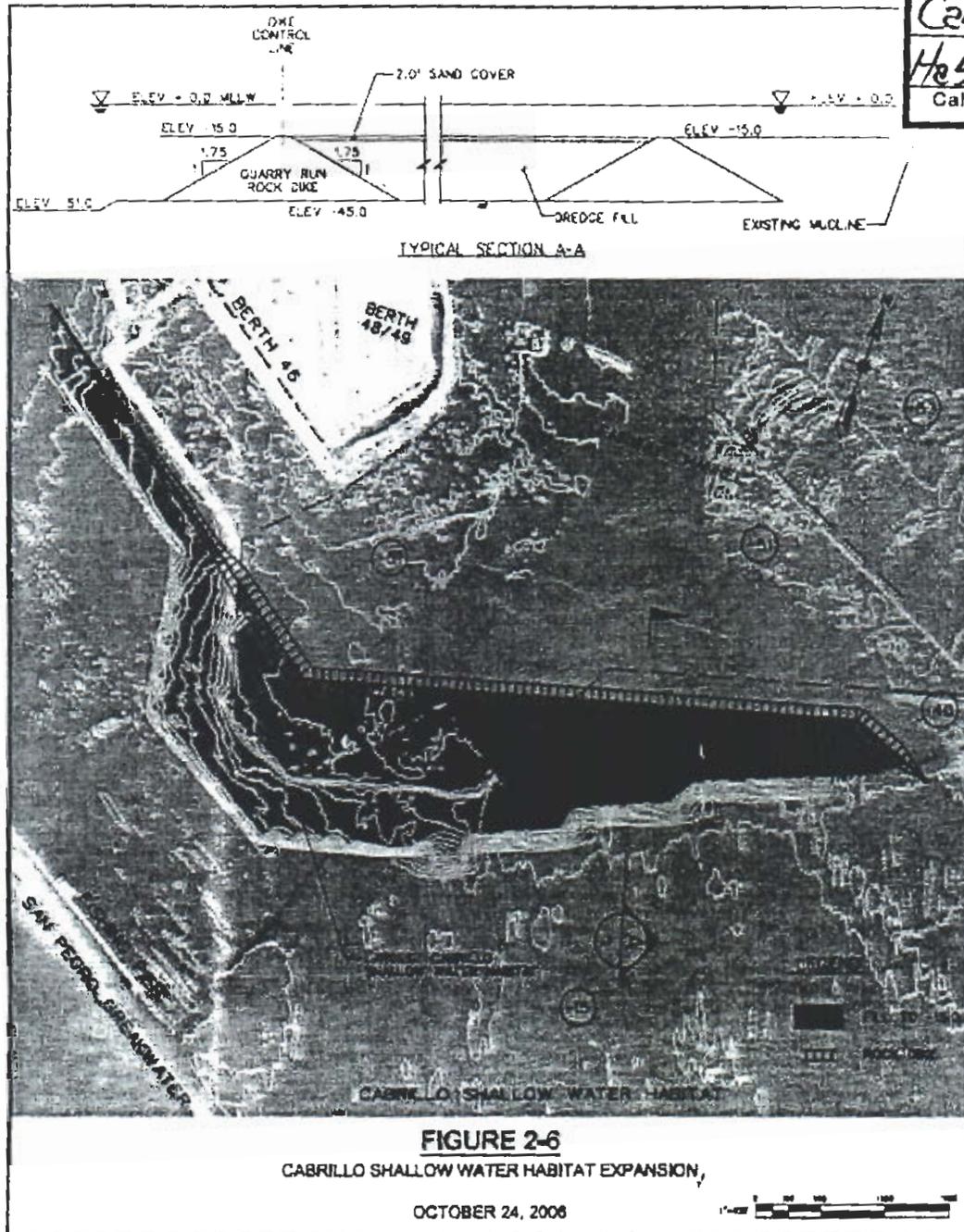
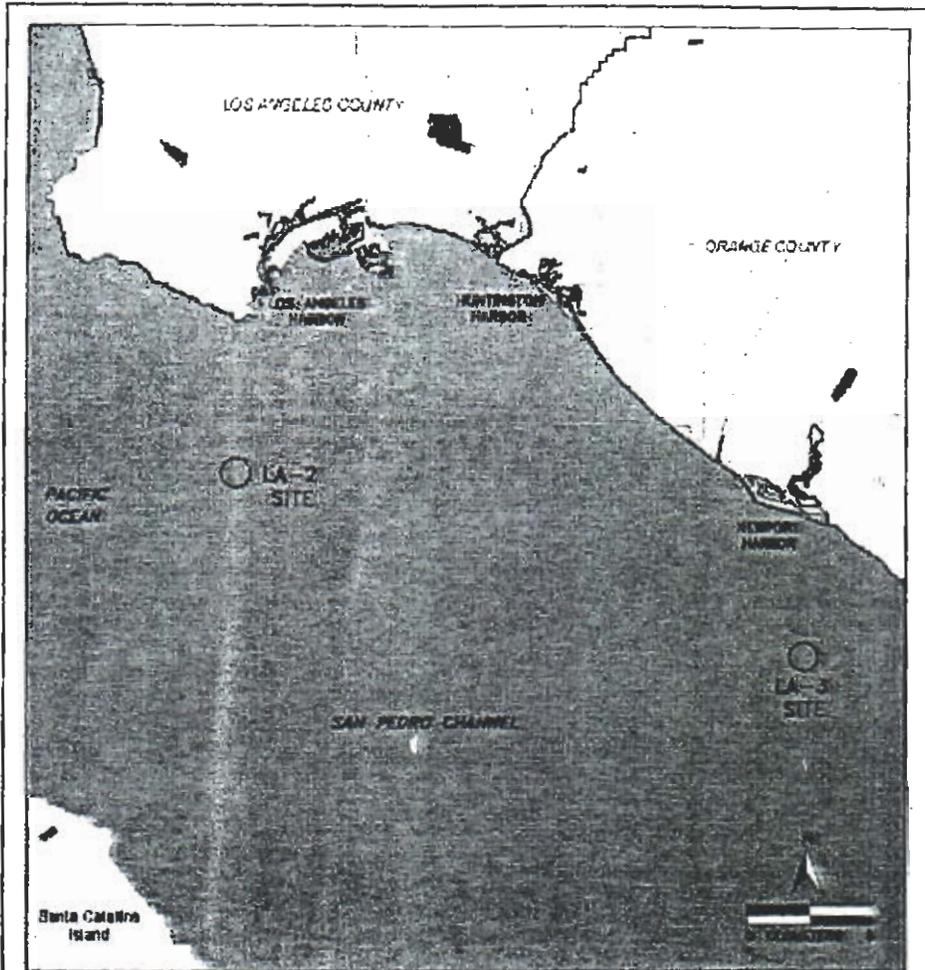


Figure 4 - Cabrillo Shallow Water Habitat Expansion

PORT OF LOS ANGELES - PORT OF LOS ANGELES CHANNEL DEEPENING PROJECT
CONTAMINATED SEDIMENT MANAGEMENT PLAN - ADDENDUM 2

D

EXHIBIT NO. 5
Application Number POLA PMPA #24
LA-2 Disposal Site
California Coastal Commission



LOCATIONS OF LA-2 AND LA-3

FIGURE 2-07
OCEAN DREDGED MATERIAL
DISPOSAL SITES LA-2 & LA-3
OCTOBER 24, 2008

Figure 5 - Location of LA-2 Offshore Disposal Site

EXHIBIT NO. B
Application Number <i>POLA PMPA #24</i>
<i>Harbor Dept.</i>
<i>Resolution</i>
California Coastal Commission



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: JUNE 1, 2009

FROM: PLANNING & RESEARCH

SUBJECT: RESOLUTION NO. _____ HARBOR DEPARTMENT RESPONSE TO LOS ANGELES CITY COUNCIL'S TRADE, COMMERCE AND TOURISM COMMITTEE'S CONSIDERATION OF PORT MASTER PLAN AMENDMENT NO. 24 – MAIN CHANNEL DEEPENING PROJECT

SUMMARY:

Staff recommends that the Board of Harbor Commissioners (Board) adopt staff responses to actions from the Los Angeles City Council's Trade, Commerce and Tourism Committee regarding Port Master Plan Amendment No. 24 (Amendment No. 24). Specifically, staff clarifies the intent of the land use designation for the proposed fill for the slips at Berths 243-245 (the slips adjacent to the former Southwest Marine Shipyard). The land use designation for this proposed 8-acre fill is "Other" and does not preclude the future designation of this site as a shipbuilding or ship repair facility. The "Other" land use designation supports minimal uses and is utilized to designate vacant land pending a determination for a future use on the site. Upon the determination of a future use, which could include a shipbuilding or ship repair facility, and the necessary California Environmental Quality Act (CEQA) environmental review, the land use designation will be modified with a land use designation consistent with the identified future use of the fill site. Additionally, it is recommended that the Board instruct staff to examine all possible configurations of the Confined Disposal Facility (CDF), consistent with and meeting the requirements of the approved project in the certified Supplemental Environmental Impact Report/Statement (SEIR/SEIS) for the Main Channel Deepening Project (MCDP), that would fill eight acres or less.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Adopt the response contained in the discussion section of this report to actions from the Los Angeles City Council's Trade, Commerce and Tourism Committee seeking a clarification of the intended land use designation for the proposed fill at the slips at Berths 243-245 regarding Amendment No. 24;
2. Instruct the Los Angeles Harbor Department (Harbor Department) staff to examine all possible configurations of the CDF, consistent with and meeting the requirements

DATE: JUNE 1, 2009

PAGE 2 OF 4

SUBJECT: RESOLUTION NO. _____ HARBOR DEPARTMENT RESPONSE TO LOS ANGELES CITY COUNCIL'S TRADE, COMMERCE AND TOURISM COMMITTEE'S CONSIDERATION OF PORT MASTER PLAN AMENDMENT NO. 24 – MAIN CHANNEL DEEPENING PROJECT

of the approved project in the certified SEIR/SEIS for the MCDP that would fill eight acres or less;

3. Instruct Harbor Department staff to forward the Board report to the California Coastal Commission for their information; and
4. Adopt Resolution No. _____.

DISCUSSION:

1. On April 29, 2009, the Board adopted Amendment No. 24 and authorized the Executive Director to submit Amendment No. 24 to the California Coastal Commission for certification. Amendment No. 24 provides for the completion of the Port of Los Angeles MCDP, which provides sufficient channel depth for the new generation of deep-draft container ships calling at the Port. Amendment No. 24 also addresses the disposal of approximately three million cubic yards of dredge material at various locations, and provides land use designations for above water fill sites.
2. On May 27, 2009, pursuant to City of Los Angeles Charter Section 245, the Trade, Commerce and Tourism Committee of the Los Angeles City Council reviewed the Board action for Amendment No. 24. At the meeting, the committee requested that the Harbor Department clarify the land use designation for the proposed fill at the slips at Berths 243-245 and whether the proposed land use designation would preclude a proposed shipbuilding and repair facility from being developed at the site.
3. The proposed land use designation for the Berths 243-245 slips fill site is "Other". This land use designation allows for a limited number of uses and activities and is principally used to designate vacant land. "Other" permits the following uses; vacant land, rights of way for utilities and roads and areas not designated for a specific use. All new land area that is created through fill activities requires a land use designation. Until a proposed use is known and environmentally assessed, the "Other" land use designation is applied to the new land area. Designating the proposed fill for the slips at Berths 243-245 as "Other" will not preclude the future use of the 8-acre fill site as a potential shipbuilding or ship repair facility. The area immediately surrounding the proposed fill site currently permits a variety of land uses, including general cargo, bulk uses, institutional, commercial fishing and industrial. The industrial land use designation permits shipbuilding and repair activities and is the designation that allowed previous ship repair activities to occur

DATE: JUNE 1, 2009

PAGE 3 OF 4

SUBJECT: RESOLUTION NO. _____ HARBOR DEPARTMENT RESPONSE TO LOS ANGELES CITY COUNCIL'S TRADE, COMMERCE AND TOURISM COMMITTEE'S CONSIDERATION OF PORT MASTER PLAN AMENDMENT NO. 24 – MAIN CHANNEL DEEPENING PROJECT

at the former Southwest Marine Shipyard site. There are no land use changes to these areas surrounding the proposed fill site.

4. Once a future use of the proposed Berths 243-245 fill site is determined, and an environmental assessment is completed, a Port Master Plan amendment will be prepared to address the appropriate land use designation for the proposed project. The environmental assessment will be utilized to support the Port Master Plan amendment that would modify the land use designation to support the future development. Should a shipbuilding or ship repair facility be identified as the preferred development, the amendment would seek to add industrial as a permitted land use on the fill site. The surrounding land use designation and zoning would not need to be modified for shipbuilding or ship repair as they currently permit ship repair operations.
5. Should the Board adopt the staff recommendations, the Board report will be forwarded to the staff of the California Coastal Commission for their information.

ENVIRONMENTAL ASSESSMENT:

The proposed action is adoption of a staff response to the Los Angeles City Council's Trade, Commerce and Tourism Committee review and consideration of Amendment No. 24. As an administrative action, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action would have no direct employment effect.

FINANCIAL IMPACT:

Neither approval of Amendment No. 24, which provides for the completion of the Main Channel Deepening Project (MCDP), nor this Board action are expected to have a financial impact upon the Harbor Department. However, if approved in the future, construction of the MCDP is expected to cost over \$38 million through Fiscal Year 2014. The MCDP is expected to benefit the Harbor Department by promoting water-oriented commerce activities under the auspices of the State Tidelands Trust Act. Any proposed actions identified herein other than the adoption of the proposed staff recommendations referenced herein will be brought before the Board under separate actions at a future date.

DATE: JUNE 1, 2009

PAGE 4 OF 4

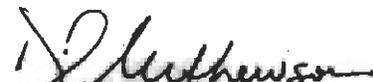
SUBJECT: RESOLUTION NO. _____ HARBOR DEPARTMENT RESPONSE TO
LOS ANGELES CITY COUNCIL'S TRADE, COMMERCE AND
TOURISM COMMITTEE'S CONSIDERATION OF PORT MASTER PLAN
AMENDMENT NO. 24 – MAIN CHANNEL DEEPENING PROJECT

CITY ATTORNEY:

The City Attorney has reviewed this Board report and has no comments at this time.

TRANSMITTAL:

1. Port of Los Angeles Channel Deepening Project – Project Map


DAVID L. MATHEWSON
Director of Planning & Research


KATHRYN McDERMOTT
Deputy Executive Director

APPROVED:


GERALDINE KNATZ, Ph.D.
Executive Director

DM:mc

ITEM 4 - A

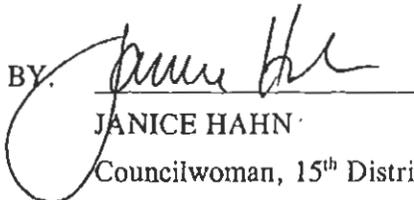
MOTION

I MOVE that the matter of the Administrative Exemption and Trade, Commerce and Tourism Committee Report relative to a proposed Port Master Plan Amendment No. 24 related to the Main Channel Deepening Project, Item No. 4 on today's Council Agenda (CF 09-1116), **BE AMENDED**, adopt the below listed recommendations in lieu of the recommendations contained in the Report, inasmuch as the issues raised at the Trade, Commerce and Tourism Committee meeting have been addressed by a Resolution adopted by the Board of Harbor Commissioners on June 1, 2009 which adopted the following: a) the land use designation of "other" contained within the Master Plan does not preclude a future shipyard at this site; and b) Harbor staff will examine the possibility of filling less than eight acres at Berths 243 - 245:

1. AFFIRM the action taken by the Board of Harbor Commissioners at its meeting held April 29, 2009 approving Master Plan Amendment No. 24, which allows the disposal of approximately three million cubic yards of materials at various disposal sites as part of the Main Channel Deepening Project; and

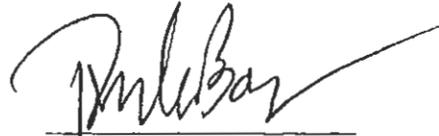
2. INSTRUCT the Harbor Department to study the feasibility for shipyard use before slips at Berths 243-245 are filled.

PRESENTED BY:


JANICE HAHN

Councilwoman, 15th District

SECONDED BY:



June 2, 2009

ak

JMBM | Jeffer Mangels
Butler & Marmaro LLP

Kenneth A. Ehrlich
Direct: (310) 785-5395
Fax: (310) 712-3395
KEhrlich@jmbm.com

1900 Avenue
Los Angeles,
(310) 203-8080 (310) 203-0567 Fax 1 of 18 pgs
www.jmbm.com
Ref: 70343-0001

EXHIBIT NO. 7
Application Number POLA PMPA #24
Letter from
JMBM
California Coastal Commission

June 8, 2009

VIA E-MAIL AND U.S. MAIL

Steve Blank, Chair
and Members of the California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Re: POLA Main Channel Deepening Project
LAHD ADP No. 990809-102
Port Master Plan Amendment No. 24
Consistency Determination No. CD-046-08
Hearing date: Friday, June 12, 2009
AGENDA ITEM # Fr 7a, 8a

Dear Chairman Blank and Honorable Commissioners:

Our office represents Gambol Industries, Inc. ("Gambol"), a ship repair and ship building business located at 1825 Pier D Street, Long Beach, California, in connection with the Project referenced above. Gambol supports the need for Main Channel deepening, but opposes the Port Master Plan Amendment No. 24 ("PMPA 24") because it unnecessarily precludes the foreseeable future use of the Site (defined below) as a ship repair or ship building facility. Accordingly, Gambol requests that the California Coastal Commission (the "Commission") reject PMPA 24 or, in the alternative, refrain from acting on PMPA 24 and the related Consistency Determination until such time as the Port of Los Angeles (the "Port") and the Commission adequately evaluate the potential environmental impacts of the proposed amendment.

On April 29, 2009, the Port's Board of Harbor Commissioners ("Board"): (1) certified the Supplemental Environmental Impact Report/Supplemental Environmental Impact Statement ("SEIR/SEIS") for the Port's Main Channel Deepening Project (the "Project"), which would deepen the Main Channel and dispose of the dredged materials at various sites, including Berths 243-245, and (2) approved PMPA 24, which changes the land use designation on some of the sites, including the former Southwest Marine facility and Berths 243-245 (collectively, the "Site"), designated to receive some of the dredged materials. On April 30, 2009, the Port filed a Notice of Determination ("NOD") for the Project in accordance with Public Resources Code § 21108 (attached as Exhibit "A"). On June 3, 2009, the Port issued a Notice of Exemption ("NOE") for PMPA 24 (attached as Exhibit "B").

I. PMPA 24

The Commission has no legal authority to consider PMPA 24 because the City has not completed its review of the Project and PMPA 24 under the California Environmental Quality Act ("CEQA"). Cal. Pub. Res. Code §§ 21006, 21080. The Port ostensibly approved PMPA 24 on April 29, 2009 on the basis of a "categorical exemption" under CEQA, which by its own terms was grounded upon a conclusion that the potential environmental impacts of PMPA 24 had been addressed in the SEIR/SEIS.¹ However, the SEIR/SEIS has not been certified. Specifically, Gambol appealed the Board's April 29, 2009 decision to certify the SEIR to the Los Angeles City Council; the Los Angeles Conservancy similarly appealed on or about May 15, 2009. These appeals remain pending. Since PMPA 24 cannot be approved by the Port without first complying with CEQA, the Board's April 29, 2009 decision to approve PMPA 24 is not yet final as a matter of law. CEQA Guidelines §§ 15002(e), 15004(a) and 15090. Since PMPA 24 has not been finally approved by the Port, Commission action on PMPA 24 would be premature and contrary to law. Cal. Pub. Res. Code §§ 30716(a), 30711 and 30714.

Further, the potential environmental impacts of PMPA 24 have not been adequately evaluated under CEQA. Here, it is unclear whether the Commission is acting as a responsible agency under CEQA by relying on the SEIR/SEIR or if it is proceeding under the Coastal Commission's certified regulatory program. Regardless, the Commission failed to meaningfully assess the environmental impacts of PMPA 24 or the Project as a whole. Significant environmental points raised by the public were not addressed. Viable alternatives to the Project which would accommodate the Port's desired Project and allow for future use of the Site as a ship repair and shipbuilding facility were ignored.

In its present form, PMPA 24 would preclude future shipyard and shipbuilding activities at the Site. This is especially damaging to the local economy since the San Pedro Bay port complex (POLA and POLB) is the only major port area worldwide without heavy duty shipbuilding capacity. See Exhibit "C". Gambol seeks a win-win resolution that would not only facilitate the channel deepening and dredged material disposal activities sought by POLA, but also preserve the Site, including the Southwest Marine slips/dry docks, for future use as a state of the art, job-creating shipyard.

By law, the Commission must delay consideration of PMPA 24 until the SEIR is certified and the Port's decision to approve PMPA 24 becomes final. Alternatively, we respectfully request that the Commission reject PMPA 24 in its present form because it is inconsistent with numerous policies of Chapter 8 of the Coastal Act.

¹ The NOE states that PMPA 24 is categorically exempt from CEQA review under Article II 2(i) because the amendment was "analyzed in the Port of Los Angeles Channel Deepening Project SEIR certified by the Board of Harbor Commissioners on April 29, 2009." This statement, while circular, reveals that the Port was relying on the SEIR when it approved PMPA 24.

The Commission Cannot Act on PMPA 24 Until the SEIR/SEIS is Complete

The Commission's Staff Report fails to specifically identify how PMPA 24 complies with CEQA. Instead, sweeping general statements state that:

"all adverse effects have been mitigated to a level of insignificance thus there are no additional feasible alternatives or feasible mitigations measures available that could substantially reduce any adverse environmental impacts." Staff Report, p. 21.

These conclusory statements provide no indication whether the Commission is acting as a responsible agency under the SEIR/SEIR or proceeding under its certified regulatory program.

If in fact the Commission is relying on the SEIR/SEIS,² it must refrain from acting on the certification of PMPA 24 until the SEIR/SEIS has been finally certified by the lead agency (the Port). The law requires all California public agencies to comply with CEQA prior to granting any approval of a project subject to CEQA. CEQA Guidelines §§ 15002(e), 15004(a), 15096. The Port ostensibly approved PMPA 24 on April 29, 2009 on the basis of a "categorical exemption" under CEQA, which circuitously relies on an SEIR/SEIS that has not been certified. The NOE specifically provides that PMPA 24 is exempt from CEQA review under City of Los Angeles CEQA Guidelines Article II 2 (i) as an activity "for which the underlying project has previously been evaluated for environmental significance and processed according to the requirements of these Guidelines." The NOE states that the project is exempt because "the PMP Amendment was analyzed in the Port of Los Angeles Channel Deepening Project SEIR certified by the Board of Harbor Commissioners on April 29, 2009, the proposed action is exempt under CEQA." Exh. "B". Gambol and the LA Conservancy appealed the SEIR to the City Council and such appeals remain pending. Therefore, the Board's April 29, 2009 decision to approve PMPA 24 is not yet final as a matter of law.³ CEQA Guidelines §§ 15002(e), 15004(a) and 15090.

The California Coastal Act provides that amendments to a certified port master plan must first be adopted by the port governing body before submission to the Commission for certification. Pub. Res. Code §§ 30716(a) and 30714. Since PMPA 24 has not yet been finally approved by the Port, the Commission cannot proceed.

Additionally, for the reasons specified in Gambol's appeal to the City Council (attached as Exhibit "D"), the SEIR/SEIS is inadequate. Among other things, the SEIR/SEIS

² The Commission's Staff Report incorporates the "associated SEIS/SEIER [sic] documented the existing water quality conditions in the Port of Los Angeles" on p. 12.

³ For this reason, the NOD filed by the Port on April 30, 2009 was premature and had no legal effect.

fails to describe PMPA 24 in its project description,⁴ and **does not analyze** the impacts of PMPA 24. For example, nowhere does the SEIR/SEIS analyze the impacts of changing the land use of the Site, or a portion thereof, to "Other". If the Port claims that it analyzed the impacts of PMPA 24 in a document other than the subject SEIR/SEIS, it does not specify such document. The land use designations should be the subject of a public process over land uses, and the Port should not be allowed to "bootstrap" such a land use change into a complicated engineering project.

The Commission's Review of PMPA 24 Fails to Comply With the Certified Regulatory Program

To the extent that the Commission is proceeding under its certified regulatory program, it should refrain from taking action on PMPA 24 because the Staff Report does not comply with the requirements of CEQA. Public Resources Code § 21080.5 does not grant qualifying agencies "blanket exemptions" from all of CEQA's provisions. Cal. Pub. Resources Code § 21080.5. Instead, certified regulatory programs excuse agencies from complying with chapters 3 and 4 of the Act, relating to the EIR process, and from Public Resources Code § 21167, which specifies statutes of limitations for challenging agency decision on various CEQA grounds. CEQA's remaining policies and requirements still govern the actions of agencies with certified regulatory programs. Such agencies must still undertake a meaningful assessment of a project's cumulative environmental impacts.

Here, the Staff Report's entire discussion of the potential impacts of PMPA 24 is contained within a single paragraph, stating that the "[c]ertification of the amendment complies with CEQA because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the port master plan amendment." These conclusionary statements fail to provide any substantive analysis and do not remotely satisfy the requirements of CEQA.

The agency must adhere to basic policies and substantive obligations established by CEQA. Thus, an environmental document prepared pursuant to a certified regulatory program must include a description of the project, alternatives to the project, and mitigation measures to minimize any significant adverse environmental impact. Cal. Pub. Res. Code § 21080.5(d)(3)(A). The Staff Report fails to include any of these required components.

The description of PMPA 24 fails as a matter of law because it has been improperly segmented from the Channel Deepening Project. The two projects are inextricably related and must be considered as a whole. Direct and reasonably foreseeable indirect physical

⁴ The Draft SEIR/SEIS language that was stricken in the Introductory Section provided that "CCC staff indicated that the SEIS/SEIR should include analysis related to coastal Zone Management Act, specifically, impacts to any recreational activities." (SEIS/SEIR, p. I-47). The SEIR/SEIS failed to provide this analysis.

changes in the environment caused by these two projects must be considered as a whole. According to the California Supreme Court, CEQA mandates that "environmental considerations do not become submerged by chopping a large project into many little ones -- each with minimal potential impact on the environment -- which cumulatively may have disastrous consequences." Bozung v. Local Agency Formation Commission (1975) 13 Cal. 3d 263, 284.

As a result, the Staff Report fails to adequately discuss the potential environmental impacts of PMPA 24 or the Project as a whole. Among other things, no evidence exists that the Commission considered the historic significance of Berths 243 - 245. The State Historic Preservation Office is currently reviewing the Project. At the very least, the Commission should refrain from acting on PMPA 24 until this review has been completed. Similarly, the Staff Report does not provide any substantive evidence showing that the Commission has considered the Project's potential impacts on air quality, aesthetics, land use, hazardous materials or any environmental resource. PMPA 24 would substantially and adversely affect the types and extent of existing land uses in the project area if it forecloses opportunities to adaptively reuse an existing historical resource.

Similarly, the agency must meaningfully assess the project's cumulative environmental impacts. See Environmental Protection Information Center, Inc. v. Johnson, 170 Cal. App. 3d 604, 624-625 (1985). The Staff Report contains no information about the Project's potential cumulative environmental impacts.

The Commission failed to adequately analyze alternatives. Public Resources Code Section 21002 provides that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. In commenting on the draft SEIR/EIS, Gambol presented a feasible concrete containment "cell" design, which would preserve the majority of Berths 243 - 245 and provide some additional re-usable land area. This significant input was ignored. The project proposed by Gambol should have been evaluated as an alternative because it would constitute a less onerous alternative, provide business and jobs in the midst of an economic downturn, and avoid or lessen the impacts on an historical resource.

The Commission Has No Authority to Certify PMPA 24 Where PMPA 24 Contravenes the Policies of Chapter 8 of the Coastal Act

Chapter 8 of the Coastal Act specify the considerations for master plan amendments within industrial port areas. PMPA 24 fails to consider existing water quality, habitat areas and quantitative and qualitative biological inventories in accordance with Public Resources Code § 30711 because it does not include a comprehensive description of the proposed uses of land and water areas. The Commission's Staff Report states that "[t]here is no current plan for the use of this fill site." However, there is at least one pending Application for Discretionary Development for the Southwest Marine Shipyard site. Further, on June 2, 2009, the City Council directed the Port to study the feasibility for shipyard use before the slips are filled at Berths 243 - 245. The socioeconomic and environmental factors set forth in the pending

feasibility study must be incorporated into PMPA 24. To find that the master plan amendment and accompanying materials were appropriately submitted on May 11, 2009 directly contravenes the law. 14 Cal. Code Regs., § 13628.

The Commission's Staff Report states that the new landfill at the Site will allow the future expansion of port related facilities along the water and concludes that PMPA 24 would minimize or eliminate the necessity for future dredging and filling in new areas of the state. However, this conclusory statement ignores the policy that all port-related developments must be located, designed and constructed to as to give highest priority to the use of existing land space within harbors for port purposes, including, but not limited to, navigational facilities, **shipping industries**, and necessary support and access facilities. Cal. Pub. Res. Code § 30708(c) (emphasis supplied). Gambol proposes an alternative that would allow for the disposal of dredged materials, permit future use of slips and drydocks, and similarly create additional backlands for shipbuilding and repair. According to Gambol's alternative proposal, the Main Channel would be deepened and the dredge spoils would be placed in a concrete and steel column structure at a portion of the Site that would allow for the future use of the slips and dry docks, and create additional backlands for shipbuilding and repair. Such actions could similarly expand future port-related facilities and eliminate the necessity for future dredging and filling in new areas of the state.

In addition to saving and adaptively reusing an historic resource, Gambol's alternative proposal will similarly provide for other beneficial uses consistent with the public trust by providing lands for port-related operations. In its present form, PMPA 24 does not reflect that port-related developments have been designed to minimize substantial adverse environmental impacts in accordance with Public Resources Code § 30708. This is because PMPA 24 fails to adequately analyze feasible alternatives that could minimize substantial adverse environmental impacts.

Because PMPA 24 contravenes the policies set forth in Chapter 8 of the Coastal Act, the Commission should decline to certify it.

II. Consistency Determination

The Commission Must Deny the Consistency Determination Where PMPA 24 Contravenes the California Coastal Management Program

Consistency Determination CD-046-08 ("CD") is inconsistent with the policies of the California Coastal Management Program because the proposed dredged material disposal activity within POLA does not adhere to Public Resources Code § 30705. Specifically, subparagraph (d) of § 30705 requires the Commission to balance and consider socioeconomic and environmental factors. There is no evidence that such balancing took place.

Importantly, diking, filling or dredging of open coastal waters shall only be permitted where there is no feasible less environmentally damaging alternatives and where

Honorable Coastal Commissioners
June 8, 2009
Page 7

feasible mitigation measures have been provided to minimize adverse environmental effects. Cal. Pub. Res. Code § 30233(a). Here, Gambol has appropriately proposed an alternative that would not only protect an historic resource, but offer storage of the dredged materials in a vertical containment system.

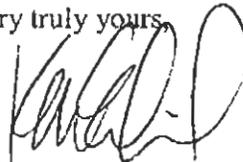
The law requires that existing ports should be encouraged to modernize and construct necessary facilities within their boundaries in order to minimize or eliminate the necessity for future dredging and filling to create new ports in new areas of the state. Cal. Pub. Res. Code § 30701. As discussed, the Site remains viable for a high capacity, modern shipyard. The slips and dry docks remain functional and, with certain refurbishing, the Site could house a vibrant and successful business. Gambol has proposed such a future use and remains committed to working within existing laws and regulations to achieve its goals. Gambol's proposed alternative would fulfill the stated goal to modernize facilities to minimize future dredging.

All port-related developments must be located, designed and constructed to as to give highest priority to the use of existing land space within harbors for port purposes, including, but not limited to, navigational facilities, **shipping industries**, and necessary support and access facilities. Pub. Res. Code § 30708(c) (emphasis supplied). PMPA 24 would completely fill in Berths 243 - 245 and foreclose any opportunities to return the former Southwest Marine Shipyard to its historic use as a shipbuilding and/or ship repair facility.

Conclusion

For the above stated reasons, we urge the Commission to carefully consider the impacts of the Project before significant business opportunities are lost, the slips are filled and subsequently become a lost and irretrievable resource. Accordingly, we respectfully request that the Commission to refrain from certifying PMPA 24 and approving the Consistency Determination pending full compliance with the law.

Very truly yours,



BENJAMIN M. REZNIK
KENNETH A. EHRLICH,
Professional Corporations of
Jeffer, Mangels, Butler & Marmaro LLP

KAE:JMB:aht

cc: Peter Douglas, Executive Director of the California Coastal Commission

Honorable Coastal Commissioners
June 8, 2009
Page 8

Hon. Janice Hahn, attn: Jenny Chavez
Deputy Mayor Bud Ovrom
Los Angeles Harbor Commission, attn: Rose Dworshak, Commission Secretary
Port of Los Angeles, attn: Dr. Geraldine Knatz, Executive Director
Port of Los Angeles, attn: Dr. Ralph Appy, Director of Environmental Management
Port of Los Angeles, David Mathewson, Director of Planning and Research
Janna Sidley, Deputy City Attorney

Please bill this service to Customer Code # 4524.
For additional information please call (310)732-3675.

Notice of Determination



To:
 Office of Planning and Research
For U.S. Mail: Street Address:
P.O. Box 3044 1400 Tenth St.
Sacramento, CA 95812-3044 Sacramento, CA 95814

From:
Public Agency: Los Angeles Harbor Department
Address: 425 S. Palos Verdes St
San Pedro CA 90731
Contact: Dr. Ralph Appy
Phone: (310) 732-3675

County Clerk
County of: Los Angeles
Address: _____

Lead Agency (if different from above):
Address: _____
Contact: _____
Phone: _____

FILED

APR 30 2009

DEAN C. LOGAN
REGISTRAR-RECORDER/COUNTY CLERK
DEPUTY

SUBJECT: Filing of Notice of Determination in compliance with Section 1508 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 1999091029

Project Title: Port of Los Angeles Channel Deepening Project

Project Location (include county): Port of Los Angeles, Los Angeles County

Project Description:

The proposed Project is completion of the Port of Los Angeles Main Channel Deepening project and disposal of the sediments associated with the dredging.

This is to advise that the Los Angeles Harbor Department has approved the above described project on April 29, 2009 and has made the following determinations regarding the above described project:
(Date)

- 1. The project [will will not] have a significant effect on the environment.
- 2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
- 3. Mitigation measures [were were not] made a condition of the approval of the project.
- 4. A mitigation reporting or monitoring plan [was was not] adopted for this project.
- 5. A statement of Overriding Considerations [was was not] adopted for this project.
- 6. Findings [were were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at: Port of Los Angeles, 425 S. Palos Verdes St. San Pedro CA 90731

Signature (Public Agency) _____ Title Director, Environmental Management

Date April 29, 2009 Date Received for filing at OPR _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

THIS NOTICE WAS POSTED
ON APR 30 2009
UNTIL MAY 29 2009
REGISTRAR-RECORDER/COUNTY CLERK

Revised 2005

09 0034115

Notice of Exemption

To: Office of Planning and Research
PO Box 3044, 1400 Tenth Street, Room 222
Sacramento, CA 95812-3044

From: Los Angeles Harbor Department
425 S. Palos Verdes St.
San Pedro, CA 90731

County Clerk
County of Los Angeles

Project Title: 990809-102 - LAHD
Port Master Plan Amendment Channel Deepening

Project Location - Specific:

Project Location - City: Los Angeles Project Location - County: Los Angeles

Description of Project:

The proposed Action is a Port Master Plan Amendment consistent with the 2009 Channel Deepening Project approved by the Board of Harbor Commissioners on April 29, 2009 and the Los Angeles City Council on June 1, 2009.

Name of Public Agency Approving Project: Los Angeles Harbor Department

Name of Person or Agency Carrying Out Project: _____

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: _____
- Statutory Exemptions. State code number: Article II 2(i)

Reasons why project is exempt:

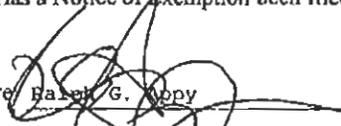
As the PMP Amendment was analyzed in the Port of Los Angeles Channel Deepening Project SEIR certified by the Board of Harbor Commissioners on April 29, 2009, the proposed action is exempt under CEQA.

Lead agency

Contact Person: Lena Maun Area Code/Telephone/Extension: 310 732-3675

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature:  Date: 06/03/09 Title: Director of Environmental Management

Signed by Lead Agency

Signed by Applicant

Date received for filing at OPR: _____

Rank	Port	Country	TEUs	Shipyards
1	Singapore	Singapore	27,935,500	9
2	Shanghai	China	26,152,400	9
3	Hong Kong	China	23,998,449	8
4	Shenzhen	China	21,103,800	1
5	Busan	South Korea	13,254,703	8
6	Rotterdam	Netherlands	10,790,604	6
8	Dubai Ports	UAE	10,653,026	4
8	Kaohsiung	Taiwan	10,256,829	1
9	Hamburg	Germany	9,917,180	5
10	Qingdao	China	9,430,600	1
11	Ningbo	China	9,258,800	4
12	Guangzhou	China	9,200,000	3
13	Los Angeles	US	8,355,038	0
14	Antwerp	Belgium	8,175,951	3
15	Long Beach	US	7,812,465	0
16	Port Kelang	Malaysia	7,118,714	1
17	Tianjin	China	7,102,100	2
18	Tanjung Pelepas	Malaysia	5,500,000	1
19	New York / New Jersey	US	5,299,105	2
20	Bremen/Bremerhaven	Germany	4,892,056	2
21	Laem Chabang	Thailand	4,641,915	1
22	Xiamen	China	4,627,052	4
23	Tokyo	Japan	4,123,920	1
24	Jawaharlal Nehru (Nhava Sheva)	India	4,059,843	5
25	Dalian	China	3,813,300	3

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Ref: 00000-5004

May 15, 2009

VIA HAND DELIVERY

Los Angeles City Council
c/o City Clerk, Room 395
City Hall, 200 N. Spring Street
Los Angeles, CA 90012-4801

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DEPUTY

Re: CEQA Appeal (Resolution No. 09-6722)
Port of Los Angeles - Board of Harbor Commissioners
Certification of Final Supplemental Environmental Impact Report
Adoption of Statement of Overriding Considerations
Channel Deepening Project
LAHD ADP No. 990809-102; SCH No. 19999091029
Board of Harbor Commissioners Hearing Date: April 29, 2009

Dear Honorable City Council:

We represent Gambol Industries, Inc. ("Appellant"), located at 1825 Pier D Street in Long Beach, California. This letter serves as the appeal of the Board of Harbor Commissioners' ("Board") certification of the Final Supplemental Environmental Impact Report for the Channel Deepening Project ("SEIR") and adoption of the Findings of Fact and Statement of Overriding Considerations ("SOC") on April 29, 2009 (the SEIR and SOC shall be collectively referred to as the "Decision") to the Los Angeles City Council. The SEIR purported to analyze the environmental impacts from providing additional capacity for disposal of contaminated dredged material associated with completing the Channel Deepening Project ("Project") at the Port of Los Angeles ("Port") under the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA").

The Project effectively precludes the potential reuse of historically significant Berths 243-245 ("Slips") once it is used as a receptacle of contaminated dredge remnants from the channel. Appellant remains committed to explore all options to restore the historic buildings and facilities and operate, under permit from the Port, a state of the art, self-contained, green and environmentally clean drydock, ship repair and ship construction facility ("Gambol Marine Center"). Filling the Slips deprives the City of Los Angeles and the Port opportunities for permanent job creation and much needed services. The Slips fill a vital need because vessels of varying sizes must currently travel to other ports for service. Appellant seeks to revitalize the

May 15, 2009

Page 2

shipbuilding and dry dock business in the Port, and bring significant local, high-paying jobs back to the area.

According to the Los Angeles County Economic Development Corporation's report on the economic impacts of the Gambol Marine Center, potential customers include deck, container and trailer barges, chemical carriers, dredges, ferries and large yachts, as well as military and first-responder vessels. The proposed project would provide jobs for 440 workers in the first year alone and provide over 2,000 high paying jobs by the fifth year of operations, and generate over \$200 million in yearly revenue. As recognized by Councilmember Hahn, this kind of revenue diversification is much needed with the recent downturn in cargo volumes (see April 14, 2009 letter from Councilmember Janice Hahn to the Board of Harbor Commissioners attached to the SEIR).

Numerous comments were submitted and public testimony provided describing the multiple deficiencies of the SEIR. Among other points, the Board's action on the Decision contravenes existing law for the following reasons:

I. THE SEIR PROVIDES AN INCOMPLETE ANALYSIS OF THE IMPACTS BY FAILING TO CONSIDER THE HISTORIC SIGNIFICANCE OF BERTHS 243-245

Appellant remains concerned about the Port approving the Project before the State Historic Preservation Officer ("SHPO") has an opportunity to assess the adverse effects on identified historic properties to ensure that no significant historical impacts exist under CEQA. Certification of the SEIR is premature in light of SHPO's continuing review of the Project and consideration of changes to the character of the property's use or of physical features within the property's setting that contribute to its historic significance.

The Southwest Marine Shipyard, including the Slips proposed to be filled with contaminated dredge spoils, looms as the last remaining link to San Pedro Bay's significant role in the historic World War II emergency shipbuilding program. Although integral to the shipyard's historic maritime uses, the SEIR fails to analyze the Project effects on an historical resource. As a lead agency, the Los Angeles Harbor Department had a duty to assess whether the Slips were historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California.¹ CEQA Guidelines § 15064.5(a)(3). The lead agency must also identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. CEQA Guidelines § 15064.5(b)(4).

¹ The Los Angeles Harbor Department relied on a 2000 Jones and Stokes Survey ("2000 Survey") which determined the Southwest Marine Shipyard was eligible for listing as a historical district. The 2000 Survey established the historic district boundary and listed elements on the site that were contributors to the district. In an updated report from Jones and Stokes in 2008, the historical district map again includes the Slips. Inexplicably, Jones and Stokes removed the Slips from the historical district map in its 2009 memorandum prepared for the Harbor Department.

The Secretary of the Interior's Standards for Rehabilitation, Standard 1, states that "a property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships." Filling in the Slips will foreclose opportunities to return the former Southwest Marine Shipyard to its historic use as a shipbuilding and/or ship repair facility.

2. THE SEIR FAILS TO ADEQUATELY ANALYZE AIR QUALITY IMPACTS

The air pollutant emissions from the Project are analyzed in relation to the "2004 CEQA/NEPA baseline peak daily emissions" without any discussion or substantiation for the use of such a baseline. See Section 3.2.2. CEQA Guidelines § 15125 requires the baseline for assessing impacts for the environmental setting of a project at the time a notice of preparation is issued. Thus, the Port should have established a baseline of environmental conditions when the notice of preparation for the 2000 Channel Deepening Project was issued.

Even if reliance on this baseline were legally justified, the daily emissions for criteria and Greenhouse Gas ("GHG") pollutants from the Project are offset, or reduced, by subtracting the "baseline" emissions from the new emissions to demonstrate no impact or no significant impact. The SEIR provides no explanation for this arbitrary calculation.

Additionally, the analysis of GHG emissions similarly utilizes the "baseline" and does not consider alternative thresholds developed by the California Air Resources and the South Coast Air Quality Management District. Finally, the Port offers no reason or justification for the failure to consider the use of emission reduction credits (or offsets) or Mobile Source Emission Reduction credits as feasible mitigation measures for Project emissions.

3. THE SEIR CONTAINS AN INADEQUATE ALTERNATIVES ANALYSIS

Adequate alternative analysis serves as a crucial component of compliance with CEQA and NEPA. Public Resources Code Section 21002 provides that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.

The Port's unwillingness to evaluate alternatives for the Contained Disposal Facility demonstrates a failure to adequately consider alternatives pursuant to Public Resources Code § 21100. The SEIR only considers a rock dike system. However, the Gambol Marine Center presented a feasible concrete containment "cell" design, which would preserve the majority of the Slips and provide some additional re-usable land area. The Port ignored this significant input. Moreover, the Gambol Marine Center should have been evaluated as an alternative in the SEIR because it would constitute a less onerous alternative, provide business and jobs in the midst of an economic downturn, and avoid or lessen the impacts on an historical resource.

Moreover, certain alternative disposal sites were dismissed from consideration because the United States Environmental Protection Agency "will not be ready" in time to allow these options to be considered. There is no evidence that the Port followed up with the EPA or otherwise pursued these options.

4. THE SEIR UNDERSTATES THE PROJECT'S AESTHETIC IMPACTS

The SEIR concludes that the Project will have no impact on visual resources, but states that a 30-foot high surcharge pile of dirt will be placed on the filled-in Slips. The Southwest Marine Shipyard is one of the major vistas from the San Pedro Waterfront development. The dirt pile will remain visible on the land for an indefinite period. This is an unmitigated impact on a \$67 million Port tourism and community development project.

Further, the Project lies in close proximity to residential neighborhoods, schools and local businesses. The SEIR fails to assess the off-site aesthetic impacts on these non-industrial uses.

5. THE PROJECT DESCRIPTION IS INACCURATE AND OVERLY VAGUE

The SEIR includes an unexplained excess volume of 248,000 cubic yard of excess capacity within the Slips. The SEIR estimated the available fill capacity at the Slips to be 458,000 cubic yards. The SEIR contemplates 210,000 cubic yards of sediments to be buried in the Slips, composed of 80,000 cubic yards of contaminated dredged material, 90,000 cubic yards of newly dredged materials to form the dike foundation and 40,000 cubic yards of existing in-slip sediments. Using Port-derived numbers, an excess volume of 248,000 exists within the Slips.

The Slips have a greater capacity than needed to contain the contaminated dredged materials and do not need to be filled completely to meet Project objectives. In contrast, the Gambol Marine Center's proposal allows for partial infill of one slipway with 120,000 cubic yards of contaminated dredged materials, meeting the Project's requirements and providing the ability for the ship yard to restart operations.

The SEIR overstates the clean project volume to be disposed of at the Slips as 288,000 cubic yards. See Section 2.5.1. This overlooks the 40,000 cubic yards of existing in-slip sediments. Similarly, the SEIR inexplicably decreases the annual disposal capacity at the LA-2 site from 1,400,000 cubic yards to 1,000,000 cubic yards, without an adequate source cite other than an ambiguous reference to "USACE and USEPA, 2004." The project description is demonstrably riddled with misstatements and unsupported analysis.

6. THE SEIR PRESENTS AN INSUFFICIENT ANALYSIS OF LAND USE IMPACTS

The Project will likely cause significant land use impacts because inconsistency with a single policy or goal of a general plan can be the basis for a finding of significant impacts under CEQA. See San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino,

155 Cal. App.3d 738, 753 (1984). The proposed use would substantially and adversely affect the types and extent of existing land uses in the project area if it forecloses opportunities to adaptively reuse an existing historical resource. The goals to "preserve and enhance the positive characteristics of existing neighborhoods" would be substantially undermined if the Port does not address the historical impacts of the Project. The SEIR fails to adequately analyze the secondary impacts to surrounding land uses.

The Port expressly acknowledged receipt of various Applications for Discretionary Development of the Slips. These applications should have been integrated and considered as part of the CEQA analysis. Specifically, where a lease is contemplated, the Applications for Discretionary Development will be considered a division requiring compliance with the Subdivision Map Act. Cal. Gov't Code § 66424. As noted by Susan Brandt-Hawley, the Board artificially split the Slips from the Southwest Marine Shipyard complex for the SEIR without complying with the Map Act. Clearly, the SEIR fails to provide any analysis on the mandated discretionary approvals related to the Applications for Discretionary Development. The SEIR did not reference preparation of a parcel map or any other steps to conform to the Map Act. No land use impacts were identified or evaluated.

7. THE PORT ILLEGALLY SEGMENTED THE PROJECT IN VIOLATION OF CEQA

The Port demonstrates an unlawful pattern and practice of segmenting critical project components in violation of CEQA. CEQA Guidelines define "project" to mean the "whole of an action" that may result in either a direct or reasonably foreseeable indirect physical change to the environment. CEQA Guidelines § 16378(a). "Project" is given a broad interpretation to maximize protection of the environment. In performing CEQA analysis, the agency should not "piecemeal" or "segment" a project by splitting it into two or more segments. McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District, 202 Cal. App. 3d 1136 (1988). According to the California Supreme Court, CEQA mandates that "environmental considerations do not become submerged by chopping a large project into many little ones -- each with minimal potential impact on the environment -- which cumulatively may have disastrous consequences." Bozung v. Local Agency Formation Commission, 13 Cal. 3d 263 (1975).

Here, the Port failed to analyze the impacts of the entire Channel Deepening project as a whole. The Port acknowledged receipt of various Applications for Discretionary Development on the Slips. These Applications for Discretionary Development are future phases of an initially approved land use and should have been contemplated as part of the Project. Instead, the Port segmented the projects in contravention of CEQA.

8. THE SEIR IGNORES THE PROJECT'S HAZARDOUS MATERIALS IMPACTS

The SEIR's analysis of hazardous materials is lacking because it summarily concludes that no mitigation measures are required for hazards and hazardous materials and dispenses with preparation of a hazardous waste management plan. However, during public

hearings, the Port Director specifically referred to the high probability of the existence of hazardous wastes within the existing sediments. Even if it were true that the Port Director's reference to hazardous materials included contaminated materials that could not go to ocean disposal (or economically disposed of using land-based facilities), the SEIR still did not sufficiently review the cumulative impacts created as a result of the combination of the project evaluated in the SEIR together with other projects causing related impacts. CEQA Guidelines § 15130(a)(1).

The Port failed to evaluate the incremental effects of an individual project in connection with the effects of past, current and probable future projects. CEQA Guidelines § 15064(h)(1). Specifically, the draft environmental impact report for the San Pedro Waterfront project highlights hazardous wastes issues for the Southwest Marine Shipyard which impacts were not analyzed. The SEIR also refers to the Los Angeles Contaminated Sediment Long Term Management Strategy report ("CSTF Report") prepared by the Los Angeles Regional Contaminated Sediments Task Force but provides no analysis on the impacts of the projected contaminated sediment quantities described in Table 3-11 in the CSTF Report, Section 2.3.3. Instead, the SEIR treats the Project as an isolated disposition of dredged materials in violation of CEQA Guidelines § 15064(h)(1). The CSTF Report clearly identifies future contaminated sediments associated with maintenance and other capital improvement projects at the Port, however, the SEIR fails to consider any of cumulative impacts certain to be produced by these projects.

9. FINDINGS OF THE SOC ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The statements of overriding considerations must be supported by substantial evidence in the record. Sierra Club v. Contra Costa County, 10 Cal. App. 4th 1212, 1222 (1992). The SOC is defective because the cited project benefits were not supported by substantial evidence in the administrative record. Specifically, the Port failed to adopt findings mandated by Public Resources Code § 21081.

The SOC alleges that a total of 90 current or reasonably foreseeable future projects were identified within the general vicinity of the Project that could contribute to cumulative impacts. Paragraph II.4. However, it is clear that the SEIR failed to adequately analyze the cumulative impacts from these projects. The SEIR did not acknowledge any potential environmental impacts from the pending Applications for Discretionary Development, failed to analyze the cumulative impacts resulting from maintenance dredging and proposed capital improvement projects at the Port. Accordingly, the findings of the SOC cannot be supported by substantial evidence in the record.

10. CONCLUSION

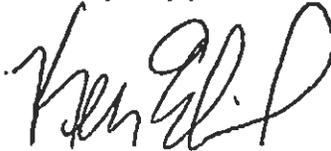
For the above stated reasons, the Port and the Board of Harbor Commissioners erred and abused their discretion in certifying the SEIR. We urge you to carefully consider the impacts of the Project before significant business opportunities are lost, the Slips are filled and

May 15, 2009

Page 7

subsequently become a lost and irretrievable resource. Accordingly, Appellant respectfully requests that the City Council set aside all approvals of the Project and to forego consideration of any further approvals of the Project pending full compliance with CEQA.

Very truly yours,



KENNETH A. EHRLICH
of Jeffer, Mangels, Butler & Marmaro LLP

KAE:aht

cc: Los Angeles Harbor Commission, attn: Rose Dworshak, Commission Secretary
Port of Los Angeles, attn: Dr. Geraldine Knatz, Executive Director
Port of Los Angeles, attn: Dr. Ralph Appy, Director of Environmental Management
Honorable Janice Hahn, c/o Jenny Chavez, Deputy Chief of Staff
Honorable Bill Rosendahl, c/o Alex Fay, Legislative Deputy
Honorable Tom LaBonge, c/o Lisa Schechter, Legislative Deputy
Benjamin M. Reznik
Amy Tsai-Shen

EXHIBIT NO.	8
Application Number	PCLA PMPA #24
	Letter from Los
	Angeles Conservancy
	California Coastal Commission



1 of 13 pgs

January 8, 2009

Submitted via email

President David S. Freeman
 Members of the Los Angeles Board of Harbor Commissioners
 Attn: Michael Cham, Harbor Planner & Economic Analyst
 Port of Los Angeles
 P.O. Box 151
 San Pedro, California 90733
 via email: mcham@portla.org

Re: Draft Port Master Plan Amendment for Main Channel Deepening Project

Dear President Freeman and Harbor Commissioners:

On behalf of the Los Angeles Conservancy, thank you for the opportunity to comment on the Draft Port Master Plan Amendment for the Main Channel Deepening Project. The Conservancy is the countywide historic preservation organization for the Los Angeles area and is the largest local historic preservation organization in the United States, with over 7,000 members. We have previously submitted comments on the proposed Southwest Marine Buildings Demolition Project, located directly adjacent to Berths 243-245 and deemed eligible for the National Register of Historic Places. As the port is currently reevaluating future disposition of the Southwest Marine buildings, we are concerned that the historic significance of Berths 243-245 has yet to be considered as part of the original shipyard complex, further demonstrating an unlawful "pattern and practice" of segmenting critical project components under CEQA. Accordingly, we urge the Harbor Commission to direct the port to hire a consultant to evaluate the potential significance of Berths 243-245, and their inclusion in the district already determined eligible for the National Register, before taking any action on the Main Channel Deepening Project.

The Southwest Marine Shipyard, including the slipways proposed to be filled with contaminated dredge spoils, is the last remaining link to Terminal Island's significant role in the World War II emergency shipbuilding program. As one of only 15 private and Navy shipyards building destroyers during the war, the former Bethlehem Steel Shipyard launched 26 destroyers from Berth 240 (renamed Berths 243-245 in the proposed project). The original shipyard infrastructure is remarkably intact today, with 13 of the 16 buildings deemed eligible for the National Register, including everything from the original hospital building and warehouses to a transformer shed and various machine shops used during WWII emergency shipbuilding operations. There are also six pre-1945 gantry cranes that contribute to the significance of the historic district.

Although integral to the shipyard's historic maritime uses, Berths 243-245 were apparently not evaluated for possible inclusion within the boundaries of the historic district – neither in the EIR for the Southwest Marine Buildings Demolition Project nor the Draft SEIS/SEIR for the Port of Los Angeles Channel Deepening Project.¹ Despite being modified in 1959 as part of Bethlehem Steel's Cold War improvement program, the slipways occupy the same wartime footprint and remain essential to maintaining the site's historic uses as a ship building and repair facility.² As a result, the potential impact of filling the slipways on the historic district as a whole has not been considered as part of the proposed Main Channel Deepening Project.

A comparable collection of shipyard buildings and waterside features can be found at Bethlehem Steel's sister facility at Pier 70 in San Francisco, which is currently slated for reuse and redevelopment by the Port of San Francisco.³ The State Office of Historic Preservation has determined that the site's approximately 30 historic buildings, structures, and waterside features are eligible for the National Register collectively as contributors to a Pier 70 historic district. It is particularly noteworthy that the Pier 70 historic district includes altered and filled-in slipways within its boundaries, albeit as non-contributing elements. The inclusion of the Pier 70 slipways and other waterside features within district boundaries, despite major alterations after the period of significance, recognizes their integral role in the site's overall historic context: "Pier 70's unique qualities go beyond the diverse architectural character of the individual buildings. The relationship of buildings and spaces to the Bay and the pattern of slipways, dry docks and piers underline the maritime significance of the complex."⁴

The Los Angeles Conservancy would like to continue to actively participate in the review process for the above-referenced project, as a "consulting party" under Section 106 of the National Historic Preservation Act (NHPA), pursuant to 36 C.F.R. § 800.2(c)(6). Over the past two years, the Conservancy has submitted numerous comment letters on projects affecting historic resources at the port, including the proposed Southwest Marine Buildings Demolition Project and the Pan-Pacific Fisheries Cannery Buildings Demolition Project. With regard to the Main Channel Deepening Project, we are disappointed that Section 106 consultation has yet to be initiated at this late stage in the environmental review process, with the Final SEIS/SEIR currently scheduled for certification by the

¹ Although the DEIS/DEIR acknowledges that Berths 243-245 would be demolished as part of the proposed project, it does not analyze their potential significance as part of the Southwest Marine historic district. Port of Los Angeles Channel Deepening Project Draft SEIS/SEIR (July 2008) at p.3.4-2.

² The Secretary of the Interior's Standards for Preservation, Standard 1, provides: "A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken."

³ See www.sfgov.org/site/port_page.asp?id=34925.

⁴ Informational briefing on the status of the Pier 70 Master Planning Process to San Francisco Port Commission, August 7, 2008.

Harbor Commission next month.⁵ Certainly, the State Office of Historic Preservation could have provided valuable guidance as to whether Berths 243-245 should be included within the boundaries of Southwest Marine National Register-eligible historic district.

Thank you for the opportunity to comment on the Draft Port Master Plan Amendment for the Main Channel Deepening Project. We ask that these comments be included in the administrative record for the SEIS/SEIR currently being prepared under NEPA and CEQA for the proposed project, incorporating by reference our previously submitted comments on the Southwest Marine Buildings Demolition Project. Please feel free to contact me at (213) 430-4203 or mbuhler@laconservancy.org should you have any questions.

Sincerely,



Michael Buhler, Esq.
Director of Advocacy

cc: Stephen Dibble, Senior Archeologist, Army Corps of Engineers
Ralph Appy, Ph.D., Director of Environmental Management, Los Angeles Harbor
Department
Steve Mikesell, Deputy State Historic Preservation Officer

⁵ The identification, evaluation and initial effect determination under Section 106 should be coordinated with the Environmental Assessment and Draft EIS/EIR preparation under NEPA and CEQA, with consultation to resolve adverse effects taking place as needed before the EIR/EIS is finalized. Thomas King, *Cultural Resource Laws & Practice: an introductory guide* (AltaMira Press, 1998), 135.



May 22, 2009

Submitted by facsimile

Los Angeles City Council
Trade, Commerce & Tourism Committee
Attn: Eric Villanueva, Clerk
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Los Angeles, CA 90012-4801
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**Re: CEQA Appeal (Council File No. 09-6722)
Port of Los Angeles, Board of Harbor Commissioners
Certification of Final Supplemental Environmental Impact Report
Adoption of Statement of Overriding Considerations
Main Channel Deepening Project
LAHD ADP No. 990809-102; SCH No. 19999091029
Board of Harbor Commissioners Hearing Date: April 29, 2009**

Dear Honorable City Council:

On behalf of the Los Angeles Conservancy, this letter serves as the appeal of the Board of Harbor Commissioners' certification of the Final Supplemental Environmental Impact Report for the Main Channel Deepening Project (SEIR) and adoption of the Findings of Fact and Statement of Overriding Considerations on April 29, 2009 to the Los Angeles City Council. The Los Angeles Conservancy is the countywide historic preservation organization for the Los Angeles area and is the largest local historic preservation organization in the United States, with over 7,000 members. Over the past three years, the Conservancy has submitted many comment letters on projects affecting historic resources at the Port of Los Angeles, including the Southwest Marine Buildings Demolition Project, the Pan-Pacific Fisheries Cannery Buildings Demolition Project, and the Main Channel Deepening Project.

The infill of two slips at the Southwest Marine Shipyard (Berths 243-245) as part of the proposed project will nullify the site's historic function as a shipbuilding and repair facility, creating impacts on historic resources and their uses that require further environmental review and the adoption of feasible alternatives. This appeal focuses on the Port's failure to consider significant adverse impacts on historic maritime uses at the Southwest Marine Shipyard and, consequently, the SEIR's failure to include potentially feasible alternatives that

would achieve most project objectives and enable continuation of the shipyard's historic uses.

1. **The SEIR fails to adequately consider the project's impacts on the Southwest Marine historic district**
 - a. **The slips proposed to be filled are located within the boundaries of the historic district**

The Southwest Marine Shipyard (formerly Bethlehem Steel) is the last remaining link to Terminal Island's significant role in the World War II emergency shipbuilding program. The original shipyard infrastructure is largely intact today, with 13 buildings identified as contributors to a National Register-eligible historic district, including the original hospital building, warehouses, a transformer shed, and various machine shops used during WWII emergency shipbuilding operations. There are also six pre-1945 gantry cranes that contribute to the significance of the historic district on wharves adjacent to the slips. Although reconfigured in 1959, the slips targeted for fill occupy roughly the same wartime footprint and remained in continuous operation from 1941 until 2004. They are included within the National Register-district boundaries established by Jones & Stokes in 2000 as non-contributing elements and remain integral to the district's identity and function as a shipyard. See attached map.¹

- b. **The continuation of ship-related activities at the Southwest Marine shipyard contributes to the historic character of the site**

In addition to the shipyard's exceptional physical integrity, the Jones & Stokes report underscores the importance of preserving the shipyard's historic uses, noting that "the continuation of ship-related activities on the site contributes to the historic character of the site and evokes a strong sense of historical time and place."² The Port does not dispute that the slips – and the water access they provide – are essential to maintaining ship-related uses on the site. Although the site is currently vacant, Southwest Marine remains fully functional as a shipyard and can be easily returned to maritime uses.

A comparable collection of shipyard buildings and waterside features can be found at Bethlehem Steel's sister facility at Pier 70 in San Francisco, which has been nominated by the Port of San Francisco for designation as a National Register historic district.³ Like the Southwest Marine Shipyard, the Pier 70 district boundaries include "modified waterfront structures inherent to shipbuilding and ship repair, including slipways, piers, and floating dry docks, which enhance the district's setting and express its historical function."⁴ Pier 70's historical function is considered integral to the

¹ *Architectural Survey and Evaluation of the Southwest Marine Terminal (Berth 240) of the Port of Los Angeles*, Jones & Stokes (September 2000), Appendix B (Site Record Forms), at 6 of 37.

² *Id.* at p.20.

³ See www.sfgov.org/site/port_page.asp?id=34925.

⁴ Pier 70 National Register nomination, Section 7, p.1.

shipyard's historical setting, with the Port of San Francisco having prioritized the continued existence of ship repair operations as a stand-alone historic preservation objective. Southwest Marine's collection of waterside features, whether intact or modified, helps define the site's historical context by providing visual connections and access to the water for ship-related operations.⁵

The Port's responses to comments in the Final SEIR fail to acknowledge that filling the slips will irrevocably alter the character, identity and historical function of Southwest Marine as a shipyard. Because the slips have been altered, the Port maintains that they are not part of the historic district and, as a result, their loss will not adversely impact on the district as a whole. Although the attached Jones & Stokes map clearly places the slips within the district boundaries, the Port insists that "the slips are not part of the historic district. Therefore removing the slips would not adversely impact the historic district, nor impact the shipyard's historic function."⁶

Filling in the slips would relegate a fully functional shipyard into a collection of buildings, eliminating viable reuse options that maintain the shipyard's historical uses. **The fact that the slips have been altered does not diminish their importance in maintaining the shipyard's historical function.**

c. The SEIR fails to consider adverse impacts on the shipyard's ability to continue its historic function, contrary to the Secretary of the Interior's Standards for Rehabilitation

The *Secretary of the Interior's Standards for Rehabilitation*, Standard 1, states that "a property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships." Filling in the slips will not only destroy the shipyard's historic function, but will forever alter its "distinctive materials, features, spaces, and spatial relationships" that define it as a shipyard. Published by the National Park Service, the *Secretary of the Interior's Standards for Treatment of Historic Properties* are explicitly referenced in Section 15126.4(b) of the CEQA Guidelines, which states that projects involving historical resources "shall generally be considered mitigated below a level of significance" if they comply with the *Secretary's Standards*.

Without the slips, the Southwest Marine Shipyard ceases to exist as a shipyard. The proposed project will significantly impact the historic district by making shipyard buildings unusable for maritime-related functions, likely hastening their abandonment and demolition. The SEIR does not consider the project's impacts on the shipyard's

⁵ As presently located, the slips at Southwest Marine were originally constructed in 1941 as slipways. The original slipways were 100 feet wide and 508 feet deep (east-west) and oriented around the center of the existing basins. Inclined slipways were located within the slips and piers (then called "high water platforms") with cranes surrounded the slips. During the period 1959-1960, the slipways were removed, and the two slips were reconfigured into basins, at the same location. The 1941 piers were removed and new piers were built surrounding the expanded slips, with six of the eight original 1941 Colby cranes relocated onto the piers. The basins are 250 feet wide and 550 feet and 650 feet deep.

⁶ Responses to Brandt-Hawley, Main Channel Deepening Project SEIR, p.3.

historic uses and “distinctive materials, features, spaces, and spatial relationships,” nor evaluate potentially feasible alternatives that lessen or avoid such impacts.

2. The SEIR improperly subdivides the shipyard into three parcels

Although the entire Southwest Marine Shipyard has been always been known as Berth 240, the slips have been artificially split away from the shipyard and renamed Berths 243-245 specifically for this SEIR. The Harbor Commission has taken no official action to subdivide the property and should not draw new boundaries simply for the purposes of this project review and approval. As recently as September 2006, the Draft EIR for the Southwest Marine Demolition Project included the slips within the boundaries of Berth 240 and the historic district;⁷ to this day, the Port’s online map of Berth 240 identifies both slips as part of the shipyard, with no mention of Berths 243-245.⁸ This contrivance improperly limits the scope of environmental review to evaluate potential impacts on the slips themselves rather than the historic shipyard complex as a whole.

3. The SEIR fails to evaluate potentially feasible alternatives to filling in the slips that avoid adverse impacts on the historic district as a whole

CEQA Guidelines require that a “range of reasonable alternatives” be evaluated in the EIR.⁹ Although there is no set minimum, the selection must be sufficient “to permit a reasonable choice of alternatives so far as environmental aspects are concerned.”¹⁰ In addition to the requisite “no project” alternative, the SEIR for the Main Channel Deepening Project brought forward only two project alternatives for in-depth evaluation, leaving the Harbor Commission little choice but to select the preferred option, Alternative 1. Although Alternative 2 does not fill the slips, and therefore avoids major impacts on the historic district, it fails to meet two of the five major project objectives and is of dubious feasibility.

Because the Port refuses to acknowledge impacts of eliminating the slips, no serious effort has been made to develop alternatives that maintain water access at the Southwest Marine Shipyard. Because the slips are noncontributing elements to the historic district, the Port has broad discretion formulate alternatives that partially fill or otherwise alter the slips, so long as water access is maintained, without causing unavoidable significant adverse impacts to the district as a whole.

⁷ See www.portoflosangeles.org/EIR/SWM/DEIR/deir_swm.asp, at 3.4-8.

⁸ See www.laporthistory.org/images/Berth240/240sitephoto.html.

⁹ *Citizens of Goleta Valley v. Board of Supervisors (Goleta II)* (1990) 52 Cal.3d 553; *Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal.App.3d 274; Guidelines § 15126.6(c).

¹⁰ *San Bernardino Valley Audubon Soc’y v. County of San Bernardino* (1998) 155 Cal.App.3d at 750-751; Guidelines §§ 15126.6(c),(f).

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4. **The Harbor Commission acted prematurely to certify the SEIR before completion of Section 106 consultation under the National Historic Preservation Act**

Although the Notice of Preparation of the Draft SEIS/SEIR was released in November 2004, the U.S. Army Corps of Engineers did not request the concurrence of the State Historic Preservation Officer on the project's impacts on historic resources until March 16, 2009. In a letter to the Harbor Commission dated April 29, 2009, the State Historic Preservation Officer urged the Board to "defer any action on the Final Supplemental EIS/EIR for the Main Channel Deepening Project until Section 106 consultation between the State Office of Historic Preservation (OHP) and the U.S. Army Corps of Engineers has been completed."¹¹

The historic preservation review process mandated by Section 106 is outlined in regulations issued by the Federal Advisory Council on Historic Preservation, at 36 CFR Part 800. In consultation with the OHP, the Federal agency will make an assessment of adverse effects on the identified historic properties based on criteria set forth in Section 800.5 of the regulations. Among possible adverse impacts, the agency shall consider changes to "the character of the property's use or of physical features within the property's setting that contribute to its historic significance."

For joint federal-state projects requiring review under both the National Environmental Policy Act and CEQA, as here, Section 106 review should be coordinated with preparation of the EIS/EIR, with scoping coordinated with scoping, identification, evaluation, and the initial effect determination, and consultation to resolve adverse effects taking place as needed before the EIS/EIR is finalized.¹² Such coordination is intended to ensure maximum input from federal, state and local agencies on a project's likely impacts on historic resources before it is too late to meaningfully influence the outcome. Because the USACE did not formally initiate consultation until the tail end of environmental review, the OHP objected to the Harbor Commission's certification of the SEIR as "premature given ongoing review by our office," noting that the proposed action would "clearly undermine the purpose and intent of the Section 106 consultation process."

In discussing the OHP letter at the April 29, 2009 Harbor Commission hearing, President Freeman dismissed concerns over the project's impacts on historic resources and their relevance to determining the adequacy of the SEIR, stating:

It seems to me that it's almost irrelevant whether it's historic or not. We have a duty to dispose of the dirt in the most environmentally sensitive way and if that involves something that some people think are historic, that doesn't relieve us of our fundamental duties so I don't know that the issue of whether or how it's classified really gets to the heart of what I see

¹¹ Letter from Milford Wayne Donaldson, FAIA, State Historic Preservation Officer, to Geraldine Knatz, PhD and President David S. Freeman, Board of Harbor Commissioners, April 29, 2009.

¹² CFR Section 3100.45; also see King, Thomas F., *Cultural Resources Laws & Practice* (1998), p.136.

Rather than awaiting OHP's input and expertise, the Commission elected to forge ahead without the benefit of Section 106 consultation. Certainly, OHP could have provided valuable guidance in assessing the project's impacts on the Southwest Marine historic district and helping to determine whether additional project alternatives need to be considered in the SEIR.

For the above-stated reasons, the Los Angeles Conservancy believes that the SEIR for the Main Channel Deepening Project is flawed and requests that the Harbor Commission's approval of the project be set aside. Over the past three years, the Conservancy has been engaged in a dialogue with the Port officials and other interested parties to resolve repeated threats to the Southwest Marine Shipyard historic district and identify viable options for its future reuse. With commitment on all sides, we continue to believe that a "win-win" solution can be reached that protects the historic district and enables the Main Channel Deepening Project to proceed without significant delay.

Sincerely,



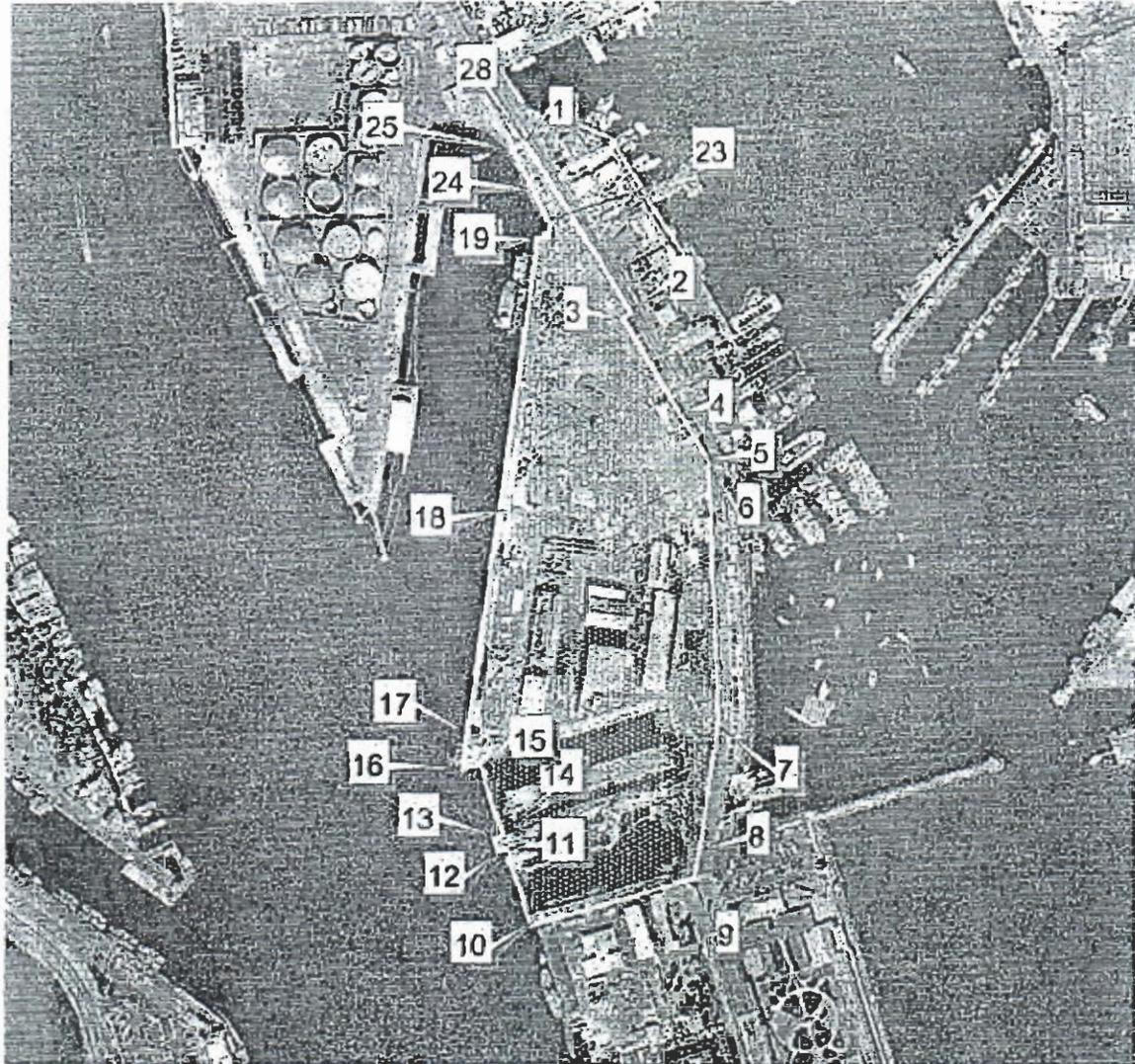
Michael Buhler, Esq.
Director of Advocacy

Attachment

cc: Rose Dworshak, Commission Secretary, Los Angeles Harbor Commission
Dr. Geraldine Knatz, Executive Director, Port of Los Angeles
Dr. Ralph Appy, Director of Environmental Management, Port of Los Angeles,
Honorable Janice Hahn, c/o Jenny Chavez, Deputy Chief of Staff
Honorable Bill Roscendahl, c/o Alex Fay, Legislative Deputy
Honorable Tom LaBonge, c/o Lisa Schechter, Legislative Deputy
Milford Wayne Donaldson, FAIA, State Historic Preservation Officer
Dr. Josephine Axt, U.S. Army Corps of Engineers

Boundary Description (Continued)

Map of points (provided by Port of Los Angeles).



#4



June 2, 2009

HAND DELIVERY

Los Angeles City Council
John Ferraro Council Chamber
Room 340, City Hall
200 North Spring Street
Los Angeles, CA 90012

Re: **Port Master Plan Amendment No. 24 – Main Channel Deepening Project**
(No. 09-1116)

Dear Members of the City Council:

On behalf of the Los Angeles Conservancy, I am writing to urge the City Council to impose a deadline for the port to complete its evaluation of "all possible configurations" for the proposed Confined Disposal Facility (CDF) at the former Southwest Marine Shipyard. To ensure meaningful consideration of alternatives, this analysis must take place long before any construction activity is scheduled to begin at the Southwest Marine slips in order to allow sufficient time to modify the project if warranted.

The Southwest Marine Shipyard, including the slips proposed to be filled for the proposed CDF, is the last remaining link to Terminal Island's significant role in the World War II emergency shipbuilding program. The original shipyard infrastructure is remarkably intact today, with 13 of the 16 buildings deemed eligible for the National Register of Historic Places, including everything from the original hospital building and warehouses to a transformer shed and various machine shops used during WWII emergency shipbuilding operations. The slips are located within the historic district boundaries established by Jones & Stokes, and the water access they provide is essential to maintaining the shipyard's historic use.

On June 1, 2009, the Los Angeles Harbor Commission approved a resolution in response to the Los Angeles City Council's Trade, Commerce and Tourism Committee's consideration of Port Master Plan Amendment No. 24 for the Main Channel Deepening Project, which proposes to fill in two slips at Southwest Marine with dredge spoils to create a CDF. The Los Angeles Conservancy has filed a CEQA appeal of the Harbor Commission's certification of the Final Supplemental Environmental Impact Report/Environmental Impact Statement based on the project's adverse impacts on the historic shipyard and the port's failure to consider feasible alternatives to completely filling in the slips.

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The Harbor Commission resolution clarifies that the proposed project does not preclude future use of the site as a shipbuilding and ship repair facility and directs port staff "to examine all possible configurations of the Confined Disposal Facility (CDF), consistent with and meeting the requirements of the approved project in the certified Supplemental Environmental Impact Report/Statement (SEIR/SEIS) for the Main Channel Deepening Project (MCDP), that would fill in eight acres of less." At the June 1 hearing, the Conservancy asked the Harbor Commission to clarify the proposed construction schedule for the MCDP and explicitly require that alternative CDF configurations be evaluated immediately in order to allow enough time to modify that project based on an addendum to the SEIR/SEIS.

Because the Harbor Commission did not address our concerns in approving the resolution, we now ask that the City Council set a deadline for the port to complete its evaluation of CDF alternatives and to direct port staff to report back to the City Council with its findings. These conditions are needed to ensure meaningful consideration of alternatives that would enable continuation of the shipyard's historic use.

Sincerely,



Mike Buhler, Esq.

Director of Advocacy

cc: Dr. Ralph Appy, Director of Environmental Management, Port of Los Angeles

SAN PEDRO & PENINSULA HOMEOWNERS CO

Po Box 1106 - San Pedro, CA 90733

EXHIBIT NO.	9
Application Number	POLA PMPTA #24
	Letter from San Pedro
	Peninsula Homeowners
	California Coastal Commission

June 10, 2009

California Coastal Commission
 South Central Coast Area Office
 89 South California St., Suite 200
 Ventura, CA 93001
 Sent Via Email to (lsimon@coastal.ca.gov)

Coalition. 10/2/09

Re: Comments on consistency determination CD-046-08 for the Port of Los Angeles Channel Deepening Project

Dear Coastal Commissioners:

Over the years our Homeowners organization has approached your Commission about various issues concerning the Port of Los Angeles and their deficient Environmental Impact Report process. It is fairly obvious to even the most simple minded that there is something inappropriate about a process that allows a developer to conduct, review and approve it's own projects. That, of course is the situation at the port. It is also a fact that for some time now the Port of Los Angeles has been operating completely out of compliance with their 1979 Master Plan. This should have (according to the California Coastal Act) terminated their authority to grant their own coastal developmental permits. We find it problematic that you have not responded appropriately to this existing condition.

Our Community of San Pedro has suffered environmentally for years due to the industrial operations of the Port. Our court case against the port's expansion of China Shipping in 2000 exposed the truth of air pollution due to port industry and proved the deficiency of the port's environmental review. It also started the process of mitigating and reducing associated lethal diesel emissions. This problem was the result of reckless and blind promotion of profits over the protection of human health and would no doubt still be ignored today without the benefit of that lawsuit.

Our Cabrillo Beach has received an "F" rating consecutively for many years due to the contamination of the Harbor and lack of circulation of those waters. This current dredging project will only worsen this already intolerable situation. Again, as witnessed with air pollution, we see the focus on fiscal opportunity trump the interests of public safety, human health and environmental concerns. Looking at the world situation today should shake all of us out of this monetary drone mentality into a renewed state of consciousness about the long term effects of our careless and greedy actions.

K

We wish to echo the concerns of Heal the Bay about the dumping of this toxic soil into our Harbor and the immediate need to rectify the condition of Cabrillo Beach. We also oppose the planned inefficient and irresponsible open ocean disposal of these contaminated materials at the LA-2 site.

We emphasize the critical need of the Ports of LA and Long Beach to begin work with the Army Corps of Engineers in the development of a specific plan that creates beneficial reuse of dredged materials as soon as possible.

We look to your Commission to investigate and respond responsibly to the irresponsible actions set forward in this dredging project and correct them. The time is long over due for more serious and thoughtful consideration regarding the welfare of our people and this planet.

Sincerely,

Andrew Mardesich
President



Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1550
fax 310 496 1902

info@healthebay.org
www.healthebay.org

EXHIBIT NO.	10
Application Number	POLA PMPA #24
	Letter from Heal
	The Bay
	California Coastal Commission

1 of 2 pgs

June 4, 2009

California Coastal Commission
South Central Coast Area Office
89 South California St., Suite 200
Ventura, CA 93001
Sent Via Email to [lsimon@coastal.ca.gov]

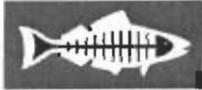
Re: Comments on consistency determination CD-046-08 for the *Port of Los Angeles Channel Deepening Project*

Dear Coastal Commissioners:

On behalf of Heal the Bay, we submit the following comments on consistency determination CD-046-08 for the *Port of Los Angeles Channel Deepening Project* ("Project"). We appreciate the opportunity to provide these comments. While we support the designation of dredged materials toward beneficial reuse as slip fill for this project, we have a number of concerns and questions regarding the proposed disposal of 804,000 cubic yards of dredged material in the LA-2 Offshore Disposal Site and the use of dredged material for expansion of the Cabrillo Shallow Water Habitat.

The Cabrillo Shallow Water Habitat expansion may exacerbate water quality problems at Cabrillo Beach.

We acknowledge the Army Corps of Engineers' ("ACOE") efforts to beneficially reuse a portion of the sediments dredged in this project for habitat restoration. However, we are concerned that the choice of habitat restoration may impede the circulation of water in the harbor and further impact water quality at Cabrillo Beach. The Staff Report mentions "A 50-acre expansion of the existing Cabrillo Shallow Water Habitat area would receive approximately 1.7 million cu. yds. of clean dredged material placed behind a rock containment dike along the north side of the expansion area," then continues to say, "Disposal at the [Cabrillo Shallow Water Habitat expansion area] would not affect water quality or circulation offshore of Cabrillo Beach and would therefore not adversely affect recreational use of the beach." This statement, however, does not quell our concern. Logic dictates that placing 1.7 million cubic yards of material over 50-acres in an area that already has problems with circulation and beach bacteria would only further aggravate the situation. Further, it appears there have been changes in the project alternatives since the circulation impacts were last evaluated. The impact to circulation patterns in the harbor area must be thoroughly considered, as Cabrillo Beach is a heavily used beach that consistently fails to meeting bacteria standards. We encourage project proponents to consider other disposal options for this material, such as beach nourishment with clean material. If no other immediate disposal options are available, then the material should be stored at one of the POLA's designated material storage sites for future beneficial reuse.



Heal the Bay

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ACOE should not dispose of dredged material in the LA-2 disposal site and should work towards 100% beneficial reuse of this material.

In the *Los Angeles Regional Contaminated Sediments Task Force: Long-Term Management Strategy*, the Army Corps of Engineers has a goal to beneficially reuse 100 percent of dredged contaminated sediment. We acknowledge the Army Corps' efforts to beneficially reuse a portion of the sediments dredged in this project in slip fill and habitat restoration. We are, however, disappointed to learn that 804,000 cubic yards of material have been designated for open-ocean disposal at LA-2. Open ocean disposal of dredged materials must not continue. This practice does not qualify as beneficial reuse and poses potential threats to marine life. We encourage project proponents to pursue beneficial uses for this material in upcoming projects within the Los Angeles/Long Beach Harbor. As we have noted many times, ACOE should cooperate with the Port of Los Angeles and the Port of Long Beach to develop a specific plan for beneficial reuse as soon as possible that includes interim goals with a timeline to reach the 100 percent reuse goal. Without a 100 percent beneficial reuse plan with enforceable milestones, Heal the Bay will continue to oppose aquatic disposal of dredged materials.

Material deemed marginally suitable for ocean disposal should be considered contaminated.

The document entitled *The Port of Los Angeles Channel Deepening Project Contaminated Sediment Management Plan-Addendum 2* lists areas deemed to be unsuitable for ocean disposal. However, this list does not include material from Berths 138-140 and 228-229, which were deemed marginally suitable for disposal at LA-2 due to Amphipod Toxicity and Bioaccumulation test results, respectively. Were new data collected that changed this determination? If not, we urge the Coastal Commission to prevent the project proponent from designating this material for open ocean disposal at LA-2 and to instead place this material in one of the designated slip fill areas for this project.

As discussed above, we have several major concerns regarding this project. In summary, we urge the Coastal Commission to discourage the use of the LA-2 site for dredged sediment disposal, to further evaluate the projects impacts on Cabrillo Beach, and to encourage the ACOE to work toward 100 percent beneficial reuse of dredged material. If you have any questions or would like to discuss any of these comments, please feel free to contact us at (310) 451-1500.

Sincerely,

Kirsten James
Water Quality Director

W. Susie Santilena
Water Quality Scientist