CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE AND TDD (415) 904- 5200
FAX (415) 904- 5400

W 14a

STAFF RECOMMENDATION

ON CONSISTENCY DETERMINATION

Consistency Determination No.	CD-046-08
Staff:	LS-SF
File Date:	8/14/2008
60th Day:	10/13/2008
75th Day:	10/28/2008
Extended to:	7/10/2009
Commission Meeting:	7/8/2009

FEDERAL AGENCY: **U.S. Army Corps of Engineers**

PROJECT LOCATION: Port of Los Angeles and LA-2 ocean disposal site, Los Angeles County (**Exhibits 1 and 2**)

PROJECT DESCRIPTION: Dispose approximately three million cu.yds. of dredged material at the Northwest Slip, Berths 243-245, and Cabrillo Shallow Water Habitat expansion area in the Port of Los Angeles, and at the LA-2 ocean disposal site to complete the previously-approved Channel Deepening Project in the Port of Los Angeles.

SUBSTANTIVE FILE DOCUMENTS: See Page 30

EXECUTIVE SUMMARY

The Coastal Commission received a consistency determination from the U.S. Army Corps of Engineers for disposal of 3.0 million cubic yards of dredged material at the Northwest Slip, Berths 243-245, and Cabrillo Shallow Water Habitat expansion area in the Port of Los Angeles, and at the LA-2 ocean disposal site, to complete the previously-approved Channel Deepening Project in the Port of Los Angeles (CD-050-00 and CD-006-02). The additional disposal requirements arise from revised project bathymetric data, the occurrence of shoaling and settlement of material, changes in sediment bulking rates, the need to dispose of surcharge materials, the opportunity to remove and confine contaminated sediments, and other construction design changes.

The Northwest Slip would receive 128,000 cubic yards (cu.yds.) of clean dredged material to create a five-acre landfill behind a rock containment dike. The LA-2 ocean disposal site would receive 804,000 cu.yds. of clean, fine-grained dredged material unsuitable for beach replenishment due to incompatible grain size. Berths 243-245 would receive 368,000 cu.yds. of dredged material to create an eight-acre landfill behind a rock containment dike. This landfill would serve as a confined disposal facility for 170,000 cu.yds. of contaminated sediments placed on the floor of the berths; approximately 198,000 cu.yds. of clean sediment would then be placed above the contaminated materials. 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. The anticipated disposal operations would start in October 2009 and occur 24 hours per day, seven days a week for 22 months.

A port master plan amendment (PMPA No. 24) submitted by the Port of Los Angeles for the proposed development is scheduled to be heard by the Commission at its July 2009 meeting. Commission certification of the master plan amendment is required in order for the Commission to concur with the subject consistency determination, due to the Coastal Act Section 30705(a) requirement that the proposed disposal and fill activities in the subject consistency determination be consistent with the certified port master plan. However, should the Commission either object to (in full or in part) or postpone action on PMPA No. 24 at the July 2009 meeting, the Commission staff would need to change its recommendation on this consistency determination or the Corps would need to extend the statutory time limit for Commission action.

The proposed disposal of dredged material at the Northwest Slip, Berths 243-245, and the Cabrillo Shallow Water Habitat expansion area is an allowable use under Coastal Act Section 30705(a)(1, 2, and 6). 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 Bethlehem Shipyard Historic District. The proposed disposal of dredged material at the LA-2 ocean disposal site is an allowable use under Coastal Act Section 30233(a)(1). The proposed disposal operations will have no significant adverse effects on coastal resources and no additional mitigation measures (beyond the measures already incorporated into the project by the Corps of Engineers) are necessary. The project is consistent

with the fill policies of the California Coastal Management Program (CCMP; Coastal Act Sections 30705, 30706, and 30233(a)).

The project will generate only minor, short-term effects on water quality and marine resources in the Port and at the LA-2 ocean disposal site. Disposal activities will not result in any significant, adverse effects on water quality due to the nature of the dredged materials, the location of disposal sites, the permanent containment of contaminated sediments, and the water quality protection measures incorporated into the project. Proposed dredged material disposal at the Northwest Slip, Berths 243-245, and the CSWH expansion area will not generate significant, adverse effects on marine habitat in the Port of Los Angeles. The project includes mitigation measures to protect California least tern and California brown pelican foraging areas, protect California least tern nesting activities, replace pickleweed habitat lost at the Northwest Slip, and apply existing mitigation credits to offset the loss of deepwater marine habitat from landfills in the Northwest Slip and Berths 243-245. The Corps will also continue to implement the water quality and marine resource protection measures incorporated into the previously-approved Channel Deepening Project consistency determinations (CD-050-00 and CD-006-02). The project is consistent with the water quality and marine resource protection policies of the CCMP (Coastal Act Sections 30705, 30706, 30708, 30230, 20331, and 30233(b)).

Disposal operations will generate only temporary and minor effects on recreational boating and fishing, primarily in the vicinity of the Cabrillo Shallow Water Habitat expansion area and at the LA-2 ocean disposal site. Disposal at the former site would not affect water quality or circulation offshore of Cabrillo Beach and would therefore not adversely affect recreational use of the beach. The project is consistent with the public recreation and recreational fishing and boating policies of the CCMP (Coastal Act Sections 30706, 30708, 30224, and 30234.5). Sediment analysis indicates that the dredged materials are not suitable for beach replenishment due to the predominately small grain size of the sediments. The proposed disposal of these sediments at the Northwest Slip, Berths 243-245, the Cabrillo Shallow Water Habitat expansion area, and the LA-2 ocean disposal site is consistent with the sand supply policy of the CCMP (Coastal Act Section 30706).

STAFF NOTE

The Commission staff received letters commenting on the project from JMBM LLP (representing Gambol Industries, Inc.), Heal the Bay, and San Pedro & Peninsula Homeowners Coalition. Copies of these letters are attached to this staff report as **Exhibits 20-22**.

STAFF SUMMARY AND RECOMMENDATION

I. Background.

A. Previous Commission Action. Since 1993 the Commission has concurred with consistency determinations (CD-57-92, CD-2-97, CD-50-00, and CD-006-02), numerous negative determinations, and Port of Los Angeles port master plan amendments (POLA PMPA Nos. 12,

13, 15, 17, 19, and 21), for construction of the Port of Los Angeles Deep Draft Navigation Improvement Project and the Channel Deepening Project, which include channel deepening, landfill and terminal construction, and mitigation measures for impacts to marine habitat. The subject consistency determination is a refinement of the Channel Deepening Project in the Port of Los Angeles previously approved by the Commission in CD-050-00 and CD-006-02.

The Commission concurred with the Phase 1 consistency determination (CD-050-00, **Exhibit 23**) for the Channel Deepening Project on July 13, 2000, which included the following elements:

- Deepen the inner harbor channels at the POLA from –45 feet to –53 feet mean lower low water (MLLW);

- Dispose approximately 4.2 million cubic yards of dredged material (including 600,000 cubic yards of contaminated sediments) to create a 54-acre expansion of the Cabrillo Shallow Water Habitat Area, a 35-acre landfill in the Southwest Slip, and a 40-acre landfill at Pier 300;

- Place the contaminated sediments within the Southwest Slip and/or Pier 300 landfills;

- Dispose an additional 2.4 million cubic yards of dredged material at the LA-2 and/or LA-3 ocean disposal sites;

- Mitigate marine habitat losses from the proposed landfills by using mitigation credits held by the Port of Los Angeles in the Port's outer harbor mitigation account and in the Port's share of the Bolsa Chica wetlands restoration account.

The Commission concurred with the Phase 2 consistency determination (CD-006-02, **Exhibit 24**) for the Channel Deepening Project on May 7, 2002, which included the following elements and modifications to the CD-050-00 project:

- Dispose 4.7 million cubic yards (mcy) of clean dredged material at the Pier 400 submerged storage site;

- Increase the size of the Southwest Slip fill from 35 to 42 acres and place all contaminated dredged materials within the west fill section;

- Improve the Los Angeles County flood control channel along the northern boundary of the Southwest Slip fill;

- Construct two acres of landfill at the south end of Berth 100;

- Dredge the East Basin in the Cerritos Channel to -53 feet mean lower low water;

- Construct the Seaplane Lagoon eelgrass restoration area; and

- Provide reports on sediment disposal decisions, circulation and water quality monitoring, and post-project water quality and least tern monitoring plans.

To date, the volume of material dredged or excavated as a result of the Channel Deepening Project has increased from the initial 6.6 million cu.yds. (CD-050-00) to approximately 12.7 million cu.yds (CD-006-02, ND-044-03, and ND-042-04). The April 2009 *Final Supplemental EIS/EIR* for the proposed project states that:

> *Construction of the Channel Deepening Project began in September 2002. Over the next five years, several changes to the Channel Deepening Project were required as a result of revised bathymetric data, the occurrence of shoaling and settlement of material, design changes, the need to dispose of surcharge, the opportunity to remove and confine contaminate dredged material, and other design and construction modifications. These project changes were analyzed and documented in three separate Supplemental Environmental Assessments (EAs) prepared by USACE in 2002, 2003, and 2004. As a result of these developments, the total volume to be disposed after the 2004 Supplemental EA (USACE, 2004) was approximately 12.700 mcy.*

The Channel Deepening Project elements completed to date include deepening of the Main Channel, Turning Basin, West Basin, and several berth areas, and the placement of dredged material to create the Southwest Slip fill areas 1 and 2, the Cabrillo Shallow Water Habitat, the Pier 400 submerged material storage site, the Pier 300 expansion, and the eelgrass restoration area adjacent to Pier 300. The Corps now states that in order to complete the Channel Deepening Project, additional disposal sites must be used to receive the final three million cu.yds. (mcy) of dredged material associated with the project. At this time, no additional disposal capacity remains to complete the Channel Deepening Project. The total amount of disposal capacity required to handle the remaining dredged material and surcharge material is approximately three mcy. Of this volume, 1.025 mcy comes from channel deepening, 0.675 mcy from berth deepening, 0.815 mcy from removing surcharge on the Southwest Slip, and the remaining 0.485 mcy of capacity is related to dredging practices and dredged material disposal behavior. To complete the approved Channel Deepening Project, approximately 68 acres of navigation channel and 34 acres of berth areas still require dredging. A detailed project description is provided in Section II, below.

B. <u>Standard of Review</u>. The proposed dredged material disposal activities are examined in this report for consistency with the policies of Chapter 8 of the Coastal Act (for the disposal sites in the Port of Los Angeles) and the Chapter 3 policies (for the LA-2 ocean disposal site). The subject consistency determination does not reexamine the previously-concurred-with Channel Deepening Project, including the deepening of harbor channels and berths to the authorized navigation depth of -53 feet mean lower low water.

A port master plan amendment (PMPA No. 24) submitted by the Port of Los Angeles for the proposed development is scheduled to be heard by the Commission at its July 2009 meeting. On April 29, 2009, the Board of Harbor Commissioners ("Board") of the Port of Los Angeles adopted port master plan amendment No. 24. On June 1, 2009, the Board 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. The resolution also instructed the Port of Los Angeles staff to examine all possible configurations of the proposed confined disposal facility at Berths 243-245, consistent with and meeting the requirements of the approved project in the certified SEIS/SEIR for the Channel Deepening Project.

The certification of the master plan amendment is required in order for the Commission to subsequently concur with the subject consistency determination, due to the Coastal Act Section 30705(a) requirement that the proposed disposal and fill activities in the subject consistency determination be consistent with the certified port master plan.[1] However, should the Commission either object to (in full or in part) or postpone action on PMPA No. 24 at the July 2009 meeting, the Commission staff would need to change its recommendation on this consistency determination.

II. <u>Project Description</u>. The Corps of Engineers proposes to complete the Channel Deepening Project by providing 3.0 million cubic yards (mcy) of additional disposal capacity and optimizing beneficial reuse of the dredged material within the Port of Los Angeles (**Exhibits 1 and 2**). Additional disposal sites are needed because disposal sites developed for dredged material from the Channel Deepening Project are inadequate for the total volume of sediments that still require removal from the Main Channel, adjacent berth areas, and the Southwest Slip surcharge. As noted previously, the current capacity shortfall results from an increased volume of dredged material due to revised bathymetric data, shoaling and material settlement subsequent to previous Channel Deepening Project dredging operations, greater than expected bulking of dredged materials, the need to dispose of Southwest Slip surcharge, design and construction modifications, and the opportunity to remove and confine contaminated sediments.

The Corps examined numerous potential dredged material disposal sites to complete the Channel Deepening Project. The Final SEIS/SEIR describes the following potential disposal sites:

1. Northwest Slip
2. Berths 243-245
3. Cabrillo Shallow Water Habitat Expansion
4. Eelgrass Habitat in Outer Harbor
5. Ocean Disposal at LA-2 and LA-3
6. Anchorage Road Soil Storage Site
7. Pier 300 Expansion
8. Consolidated Slip Cap
9. West Channel Fill
10. Bird Nesting Island
11. Pier 400 Submerged Material Storage Site Expansion
12. Pier 400 Landfill Expansion

[1] Coastal Act Section 30705(a) states in part that "Water areas may be diked, filled, or dredged when consistent with a certified port master plan . . . ."

13. Western Anchorage Submerged Disposal Sites (Port of Long Beach)
14. Beach Replenishment
15. Cap DDT site off Palos Verdes
16. Treat contaminated sediments to create marketable products

The Corps proposes to use the Northwest Slip, the LA-2 ocean disposal site, Berths 243-245, and the Cabrillo Shallow Water Habitat expansion area to receive the three million cu.yds. of dredged material to complete the Channel Deepening Project. The Northwest Slip would receive 128,000 cu.yds. of clean dredged material to create a five-acre landfill behind a new rock containment dike (**Exhibits 3 and 4**). The fill material would come from the foundation trench required to construct the containment dike (50,000 cu.yds) and from Berth 100 surcharge (78,000 cu.yds. of previously-dredged material). The LA-2 ocean disposal site would receive approximately 804,000 cu.yds. of clean, fine-grained materials from channel and berth deepening and which is not suitable for beach replenishment due to incompatible grain size (**Exhibit 5**).

The Berths 243-245 site would receive approximately 368,000 cu.yds. of dredged sediments to create an eight-acre landfill (**Exhibits 6 and 7**). This landfill would also serve as a confined disposal facility (CDF) for the containment of 170,000 cu.yds. of contaminated sediments at the bottom of Berths 243-245 and from the deepening of Berths 125-131, 136-137, 212-215, and 220-221 (**Exhibits 8-10**). The May 2009 *Draft Contaminated Sediment Management Plan* states that the proposed disposal site, which consists of two open water slips covering approximately eight acres, was part of the now-vacant Southwest Marine Shipyard site. This site, along with an adjacent parcel to the north, Berth 240Z, was occupied by a number of ship builders and repair operations for nearly 100 years, and the berths contain contaminated sediments from past shipyard operations.

The April 2009 *Final Supplemental EIS/EIR* for the project states that approximately 90,000 cu.yds. of contaminated sediment would be dredged to an elevation of approximately -58 feet MLLW to create the foundation for the Berths 243-245 landfill containment dike. This material would be placed into the deepest part of the berth behind an underwater containment berm comprised of clean dredged sand. About 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 buffer zone between the dike and the contaminated sediments placed at the back of the berth. The rock dike would rise to an interim elevation of approximately -20 to -15 feet MLLW in order to provide containment of dredged materials while still allowing hull clearance for bottom dump scows to place the final 80,000 cu.yds. of contaminated material from the aforementioned berth deepening sites. Next, approximately 198,000 cu.yds. of uncontaminated fine-grained materials from berth and channel dredging operations would be placed on top of the contaminated sediment layer, to be followed by a ten-foot-thick sand cap. Lastly, approximately 180,000 cu.yds. of surcharge from the Southwest Slip landfill would be transported to the Berth 243-245 landfill to be used as surcharge at this location.

A 50-acre expansion of the existing 333-acre Cabrillo Shallow Water Habitat area would receive approximately 1.7 million cu.yds. of Channel Deepening Project dredged material (**Exhibits 11 and 12**). A foundation trench will be dredged and a rock dike constructed to an elevation of -15 feet MLLW along the north side of the expansion area. 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, raising the final elevation of the expansion area to -15 feet MLLW. The proposed shallow water expansion area would likely increase the value of marine habitat in the outer harbor and this increased value may be credited towards the existing Port of Los Angeles outer harbor mitigation bank. In coordination with NOAA Fisheries and other interested resource agencies, a monitoring program will be developed prior to the start of construction of the expansion area in order to document the expected increase in biological value. Monitoring results would then be used to determine whether additional mitigation credits can be assigned to the aforementioned mitigation bank.

The Corps of Engineers currently estimates that resumption of the Channel Deepening Project, including dredged material disposal at the four proposed disposal locations, would commence in October 2009, after completion of the NEPA/CEQA process and issuance of permits by the Corps of Engineers and the Port of Los Angeles. Work would occur 24 hours a day, seven days a week for approximately 22 months.

III. Federal Agency's Consistency Determination. The U.S. Army Corps of Engineers has determined the project consistent to the maximum extent practicable with the California Coastal Management Program (CCMP).

IV. STAFF RECOMMENDATION.

The staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission **concur** with consistency determination CD-046-08 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

Staff Recommendation:

The staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution to Concur with Consistency Determination:

The Commission hereby **concurs** with the consistency determination by the U.S. Army Corps of Engineers, on the grounds that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the CCMP.

V. Findings and Declarations:

The Commission finds and declares as follows:

A. Dredging and Filling. Section 30705 of the Coastal Act provides in part that:

(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.

. . .

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

(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.

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

Section 30706 provides 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.*
>
> *(c) The fill is constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters.*
>
> *(d) The fill is consistent with navigational safety.*

Section 30708 provides in part that:

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

Section 30233(a) of the Coastal Act provides in part that:

> *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
>
> *(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities . . . .*

The proposed dredged material disposal activity within the Port of Los Angeles must be examined for consistency with Section 30705 of the Coastal Act, and the proposed disposal at the LA-2 ocean disposal site must be examined for consistency with Section 30233(a) of the Coastal Act. Under Section 30705, water areas may be filled when consistent with a port master plan and when the proposed project is an allowable use. Under Section 30233(a), filling of open waters is limited to those cases where the proposed project is an allowable use, where there is no feasible less environmentally damaging alternative, and where mitigation measures have been provided to minimize environmental impacts.

The proposed disposal of dredged material at the Northwest Slip, Berths 243-245, and at the Cabrillo Shallow Water Habitat expansion area is an allowable use under Section 30705(a)(1, 2, and 6). (The dredged materials arise from the Channel Deepening Project, previously approved by the Commission in consistency determinations CD-050-00 and CD-006-02.) Port Master Plan Amendment No. 24 was submitted to the Commission by the Port of Los Angeles in part for the proposed dredged material disposal locations and is scheduled to be heard by the Commission at its July 8, 2009, meeting. Commission certification of the master plan amendment designating the Northwest Slip, Berths 243-245, and the Cabrillo Shallow Water Habitat expansion area as dredged material disposal sites will provide the Commission the ability to concur with the subject consistency determination and find that the Corps' proposed disposal projects within the Port are consistent with the certified port master plan.

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 (**Exhibit 17**). 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 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 Bethlehem Shipyard Historic District.

On June 8, 2009, the Commission received a letter from the law firm of JMBM LLP, representing Gambol Industries, Inc. ("Gambol"), a ship repair and ship building business located in Long Beach, CA (**Exhibit 20**). In that letter, Gambol raised several objections to the Commission's staff reports and recommendations for PMPA 24 and CD-046-08 prepared for the subsequently-postponed June 12, 2009, Commission public hearing, particularly those sections of the reports that addressed the proposed filling of Berths 243-245. Gambol stated in part that the proposed filling of the berths precluded the future use of the berths as a ship repair or ship building facility. Gambol also stated that the staff reports did not adequately evaluate the environmental impacts of the project, did not consider the historical significance of the berths, did not adequately analyze alternatives to the filling, and did not undertake a Section 30233(a) alternatives analysis.

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. The current staff reports for PMPA 24 and CD-046-08 examine the potential environmental impacts on coastal zone resources from the proposed completion of the Channel Deepening Project. (The analysis of potential impacts of the original Channel Deepening Project was undertaken in consistency determinations CD-050-00 and CD-006-02; see **Exhibits 23 and 24**.). The current staff reports include a summary of the historical significance of the shipyard and berths (see discussion immediately above), and include a listing (in Section II, above) of the alternative dredged material disposal site alternatives examined by the Corps in its development of the proposed project.

Gambol's citation of Coastal Act Section 30233(a), and its requirement for selection of the least environmentally damaging alternative for proposed diking, filling, or dredging of open coastal waters, is not applicable to the proposed project. Section 30233(a) does not apply to non-appealable development that would occur within the jurisdictional boundaries of the four ports listed in Chapter 8 of the Coastal Act (Los Angeles, Long Beach, Hueneme, and San Diego). Instead, it is the Chapter 8 policies that apply to those proposed disposal activities in the Port of Los Angeles. Chapter 3 policies, including Section 30233(a), do apply to the proposed disposal at the LA-2 ocean disposal site, and are cited in this section, below.

The proposed disposal by the Corps of Engineers of dredged materials at Berths 243-245 is consistent with the Chapter 8 policies of the Coastal Act, including Section 30708, which give the highest priority to the use of existing land space within Chapter 8 harbors to port purposes. The proposed confined disposal facility and the resultant eight-acre landfill would assist in the completion of the previously-approved Port of Los Angeles Channel Deepening Project and would provide upland area to support primary port activities. The Board of Harbor Commissioners of the Port of Los Angeles has determined that construction of a confined disposal facility and an eight-acre landfill at Berths 243-245 is the best use of this site given the port's long-term development plans for this area of Terminal Island. The Commission finds this fill an allowable use under Section 30705(a)(2).

The proposed disposal at LA-2 of dredged materials from the previously-approved expansion of Port of Los Angeles facilities is an allowable use under Section 30233(a)(1). LA-2 is an EPA-approved disposal site, and placement here is the least damaging alternative for disposal of the project's clean, fine-grained dredged materials, which are not suitable for beach replenishment due to grain size incompatibility and for which other beneficial reuse is not currently feasible. The Final SEIS/R for the project examined numerous disposal alternatives, but given the structural unsuitability of the subject 804,000 cu.yds., the Corps determined ocean disposal to be the least environmentally damaging alternative. On June 10, 2009, the U.S. EPA concurred with the Corps' proposed ocean disposal of suitable dredged materials at LA-2 (**Exhibit 18**). The Commission previously found in CD-050-00 and CD-006-02 that the dredged sediments from the Channel Deepening Project which are now proposed for disposal at LA-2 were suitable for unconfined aquatic disposal and consistent with Section 30233(a); in this consistency determination the Commission reiterates that these materials are clean and suitable for disposal at LA-2 and the project is consistent with Section 30233(a).

As discussed further in Section B, below, the proposed project will have no significant impacts on water quality and marine resources and no additional mitigation measures (beyond the measures already incorporated into the project by the Corps of Engineers) are necessary. Therefore, the Commission finds that the proposed project is consistent with the fill policies of the California Coastal Management Program (CCMP; Coastal Act Sections 30705, 30706, and 30233(a)).

B. <u>Water Quality and Marine Resources</u>. For proposed development within the jurisdictional boundary of the Port of Los Angeles, the Chapter 8 policies of the Coastal Act are the standard of review. 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. . . .

For the proposed disposal of dredged materials at the LA-2 ocean disposal site (located outside the jurisdictional boundary of the Port of Los Angeles), the following Coastal Act Chapter 3 policies are the standard of review:

30230. *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

30231. *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored*

through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

30233(b).

Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems . . . .

1. WATER QUALITY.

Water quality issues associated with the proposed disposal of dredged materials from the previously-approved Channel Deepening Project are examined in this staff report from three perspectives: (1) water quality protection measures to be implemented during disposal operations; (2) analysis of water quality and water circulation monitoring information compiled after completion of the 54-acre westward addition to the Cabrillo Shallow Water Habitat area, authorized by the Commission in consistency determination CD-050-00 and CD-006-02 as part of the Channel Deepening Project; and (3) analysis of ongoing efforts to address water quality problems at Cabrillo Beach.

The April 2009 Final Supplemental EIS/EIR for the proposed dredged material disposal project documents in great detail the existing water quality conditions in the Port of Los Angeles and examines the potential project impacts and proposed mitigation measures to protect water quality in and adjacent to the proposed disposal sites. In addition, the Commission's adopted findings for consistency determinations CD-050-00 and CD-006-02 provide information on the water quality monitoring program and water quality protection commitments made by the Corps of Engineers for the Channel Deepening Project, which will remain in effect during the proposed disposal operations and until the Channel Deepening Project is completed. The aforementioned documents are incorporated by reference into this report (**Exhibits 23 and 24**).

(a) Water Quality Protection Measures. The Corps and the Port will monitor water quality during dredge and disposal operations to ensure compliance with the Los Angeles Regional Water Quality Control Board's ("Regional Board") waste discharge requirements for the disposal of clean and contaminated dredged sediments. (On June 18, 2009, the Regional Board issued its Clean Water Act Section 401 Water Quality Certification for the proposed project (**Exhibit 19**).) The April 2009 Final SEIS/EIR for the proposed project examined monitoring results of earlier Channel Deepening Project dredged and disposal operations:

The water quality of Los Angeles Harbor would be temporarily impacted during dredging and disposal operations, including short-term increases in turbidity, decreases in DO and pH, increases in nutrients, and increases in contaminants in areas where contaminated sediments occur. Extensive water quality monitoring was conducted during dredging and

placement of dredge materials in the Port Pier 400 project area. This monitoring was required by the LARWQCB and included weekly, monthly and quarterly activities. As recommended by protocols set forth in the CSTF's Los Angeles Regional Contaminated Sediment Long Tern Management Strategy, monitoring stations were located 100 feet upcurrent, and 100 and 300 feet downcurrent of each dredge and disposal operation, as well as at fixed stations in the outer harbor (Anchor, Everest, and AMEC, 2005). Dissolved oxygen, light transmittance, temperature, pH and contaminants were monitored. This monitoring failed to detect any impacts to water quality in the outer harbor as a result of dredging or disposal activities (USACE, 2000). Therefore, temporary water quality impacts are not expected to occur more than approximately 300 feet from the project sites.

The May 2009 Contaminated Sediment Management Plan prepared for the proposed project examines the suitability of the project's three million cu.yds. of dredged sediments for unconfined aquatic disposal and concluded that except for 170,000 cu.yds. of contaminated sediment from several berthing areas (Berths 243-245, 125-131, 136-137, 212-215, and 220-221), the proposed dredged sediments are suitable for unconfined aquatic disposal at the Northwest Slip, the CSWH expansion area, and the LA-2 ocean disposal site:

Sediments within the proposed project have been characterized and the testing results have been reported in the report titled, "Environmental Evaluation of Sediments, Port of Los Angeles 2006 Marine Exploration Program, Volume II. Berth Deepening, Fill Sites, Cerritos Channel Widening, and Consolidated Slip Remediation (Kinnetic Laboratories Inc./Fugro West, 2007)." Except for dredged material units identified above that contain [170,000 cu.yds. of] *contaminated materials, all sediments tested were judged to be suitable for open water disposal and for use as fill material. The upper-layer, finer grained materials that were judged not to be contaminated are less desirable as fill, but could be used either for fill or disposed of at an approved open water site.*

Elutriate chemistry and/or suspended phase bioassay results on these materials indicated that water quality impacts would not be expected during open water disposal, or from decant water from a confined landfill disposal area assuming normal operating procedures and proper design of the disposal area to control suspended solids (turbidity). These conclusions (Kinnetic Laboratories/ToxScan 1997; 2001a) are based upon the fact that elutriate results compared to ambient water quality standards and/or toxicity results from suspended phase testing indicated that little to no dilutions would be required for discharge into harbor receiving waters.

The Advisory Committee of the Los Angeles Region Contaminated Sediment Task Force met on May 12, 2009, to discuss the proposed confined disposal facility (CDF) at Berths 243-245 and the management of project sediments determined to be unsuitable for open water disposal. Representatives from the U.S. Army Corps of Engineers, Port of Los Angeles, U.S. EPA, Los Angeles Regional Water Quality Control Board, California Coastal Commission, California Department of Fish and Game, and Heal the Bay participated in the meeting. The Committee members discussed the proposed completion of the Channel Deepening Project (CDP), the need for a disposal site for contaminated sediments to be dredged from several locations in the Port of

Los Angeles, the May 2009 CDP Contaminated Sediment Management Plan (CSMP) Addendum 2, CDF location and design, water quality monitoring criteria, and the proposed management of the approximately 170,000 cu.yds. of contaminated sediments (dredging, transport, disposal, and permanent containment). The Advisory Committee will review at a later date the final design of the CDF to assure that commitments included in the CSMP Addendum 2 are incorporated into the CDF construction documents. At the conclusion of the meeting the Advisory Committee concurred with the implementation of the proposed Berths 243-245 Confined Disposal Facility for contaminated sediments and with the CSMP Addendum 2 (**Exhibit 13**).

Water quality in the Northwest Slip, Berths 243-245, the Cabrillo Shallow Water Habitat expansion area, and the LA-2 ocean disposal site would be affected during disposal 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 may 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 disposal operations.

Extensive water quality monitoring conducted during the Pier 400 Deep Draft Navigation Improvement Project and earlier phases of the Channel Deepening Project, including dredging and disposal of sediments of similar physical, chemical, and locational characteristics when compared to sediments proposed for disposal in this project, failed to detect any significant, adverse, long-term impacts to water quality in the Port of Los Angeles or at LA-2 as a result of disposal operations. The Commission anticipates the same results for the similar inner and outer harbor and LA-2 disposal operations proposed to complete the Channel Deepening Project.

(b) Water Quality and Circulation at Cabrillo Shallow Water Habitat. The Commission has previously approved three Corps of Engineers consistency determinations regarding the Cabrillo Shallow Water Habitat (CSWH) area inside the San Pedro Breakwater: the original 192-acre CSWH (CD-057-92); one 87-acre eastward expansion (CD-002-97), and one 54-acre westward expansion (CD-050-00). The subject consistency determination proposes a 50-acre northward expansion of the CSWH. In Corps of Engineers consistency determination CD-006-02 for Phase 2 of the Channel Deepening Project, the Commission examined the potential impacts on water quality and water circulation at and immediately offshore of inner Cabrillo Beach from construction of the CSWH westward expansion included in CD-050-00.

As a part of that effort, the Commission reviewed the Corps' February 2002 Water Quality and Hydrodynamic Analysis of the Cabrillo Beach Shallow Water Habitat report, which analyzed four modeling scenarios in an effort to determine potential water circulation changes, and the inferred water quality effects, from several shallow water habitat development proposals. The report included 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. The Commission ultimately found in CD-006-02 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 westerly expansion of the CSWH (concurred with by the Commission in CD-050-00 in July 2000) does not and will not generate significant adverse impacts on water circulation or water quality at Cabrillo Beach and adjacent offshore areas.*

In addition, the Commission also found that the post-project water quality monitoring program for the area between Cabrillo Beach and the Main Channel would generate the technical information needed to confirm or disprove the results of the aforementioned water circulation and quality modeling results for this area, and will provide the Commission with the ability to ensure that CSWH components will not over time adversely affect water quality and related recreational resources in this area. Construction of the 54-acre westward expansion of the CSWH area began in January 2003 and was completed in December 2004. The Corps and the Port state that the results of the Channel Deepening Project water quality monitoring that took place prior to, during, and subsequent to construction of the CSWH expansion area, and in particular, the history of bacterial exceedances at inner Cabrillo Beach, indicate that the expansion area is not the source of the water quality problem at this beach (**Exhibits 14 and 15**).

The December 2008 (First Draft) *Inner Cabrillo Beach Tier 3 TMDL*[2] *Improvements, Circulation Enhancement Options* report prepared by the Port of Los Angeles includes a review of previous hydrodynamic studies at Inner Cabrillo Beach. These current meter and dye tracing studies are in agreement with previous hydrodynamic and numerical modeling results on circulation and mixing at inner Cabrillo Beach:

> *Early hydrodynamic modeling efforts by the U.S. Army Corps of Engineers were for design of the Channel Deepening Project along with the design of the Shallow Water Habitat in the outer Harbor. Results of these modeling efforts supported the conclusion that circulation in the western Harbor in the area of Cabrillo Beach would not be significantly affected by the Deepening Project even though currents further out in the Harbor in the channels would be strengthened (Refs. 9 and 10). Extensive field studies were then carried out by the USACE (Refs. 11 and 12) with moored acoustic Doppler profiling current meters and dye tracking methods. With reference to Figure 10, results showed that currents under no wind conditions were tidally dominated and slow averaging 4 cm/sec or less moving in and out of the western Harbor. However (Figure 11), during the predominate daily westerly wind conditions, a two layer circulation develops where bottom waters are directed westward toward the shorelines, the surface currents are directed northeastward, and upwelling of the bottom waters into the surface waters occurs along the shoreline. An examination of Figure 11 shows that no ebb current occurs in the bottom layer under the westerly wind conditions. Dye moved offshore with the surface layer but the bottom return current transported dye to the beach.*

[2] TMDL: Total Maximum Daily Load. A regulatory term in the federal Clean Water Act describing a value of the maximum amount of a pollutant that a body of water can receive while still meeting water quality standards for the uses of that body of water.

The report concluded that:

> *Hydrodynamics of flow at Inner Cabrillo Beach is well understood from both physical and hydrodynamic modeling coupled with field studies. The base tidal flow is slow into and out of this dead-end area, but is heavily dominated by wind forces that set up a two-layer flow regime in the western harbor. Flow in the shallow water offshore Inner Cabrillo Beach is most often toward the beach face at depth and offshore at the surface, with a northward moving component.*

The Corps submitted with the subject consistency determination the April 2008 Circulation and Water Quality Modeling in Support of Deepening the Port of Los Angeles: Alternative Disposal Sites report prepared by the Corps' Engineer Research and Development Center. This report was developed to investigate the potential effect of channel deepening and in-harbor disposal of dredged material (including the proposed CSWH northward expansion) on circulation and water quality in the Port of Los Angeles. One of the project alternatives examined in this modeling study was a proposed project comprised of the Northwest Slip landfill, the Berths 243-245 landfill, a 50-acre northward expansion of the CSWH, and a 40-acre eelgrass restoration site adjacent to the existing CSWH. This alternative is similar to the proposed project in the subject consistency determination, except for the eelgrass restoration site, which is not an element of the proposed project. The project Final SEIS/EIR referred to the aforementioned April 2008 report and states in the water quality and oceanography section that:

> *. . . increased bottom current velocities and the formation of an eddy would occur immediately to the west of the CSWH Expansion Area in the vicinity of Inner Cabrillo Beach. Most changes in residual currents would be on the order of 0.1 cm/sec. Due to the localized and small changes in current velocities when compared to baseline conditions, the predicted changes in water movement were considered to be less than significant and impacts to the overall circulation system in the POLA would not produce a substantial change in currents or direction of water flow.*

The April 2008 report concluded that:

> *. . . from both hydrodynamic and water quality perspectives, there were no significant adverse impacts to POLA due to the . . .* [proposed alternative]. *Differences in residual hydrodynamic flows were relatively minor and localized. Minor differences occurred for all water quality constituents. The DO* [dissolved oxygen] *concentrations for all alternatives in Phase 4 never decreased more than 5 percent relative to the Base. This decrease in DO concentrations is considered insignificant, posing no threat to aquatic life.*

The April 2008 report conclusions are similar to previous modeling predictions and monitoring results. That is, the CSWH and subsequent expansions have not adversely affected water circulation patterns or water quality in the outer harbor, including the area between the CSWH and Cabrillo Beach. As noted previously in this report, the Corps of Engineers will continue to implement the construction and post-construction water quality monitoring program that is

incorporated into the overall Channel Deepening Project. While previous expansions of the CSWH have not adversely affected water circulation and water quality in the area between the Main Channel and Cabrillo Beach, and modeled predictions were confirmed by subsequent monitoring, the Corps will continue to undertake the necessary monitoring of water circulation and water quality in order to confirm or disprove the current modeling predictions contained in the April 2008 report. As in previous consistency determinations concurred with by the Commission for the Channel Deepening Project, the commitment by the Corps to monitor this area for potential changes in water quality characteristics as a result of the construction of the CSWH northward expansion, and the commitment by the Corps to submit project water quality monitoring reports to the Executive Director, provides the Commission with the ability to ensure that this project component will not over time adversely affect water quality and recreational resources in this area. However, should the proposed project generate adverse impacts on water quality and circulation in a manner and degree not currently anticipated by the Corps, the Commission has the ability to re-open this consistency determination and evaluate whether the project remains consistent with the water quality protection policies of the CCMP.

(c) Cabrillo Beach Water Quality Improvement Program. Notwithstanding the determination by the Corps of Engineers that the CSWH has not adversely affected water quality and circulation at inner Cabrillo Beach, the Corps and the Port of Los Angeles have long acknowledged that Cabrillo Beach suffers from poor water quality and, in particular, high levels of bacterial contamination that contribute to an unhealthy recreational environment. While the proposed Corps of Engineers project does not include any specific Cabrillo Beach bacterial remediation measures, the following discussion provides background information on the historic and ongoing work by the Port of Los Angeles (concurrent with construction of the Channel Deepening Project) to address this water quality problem.

In March 2003, prior to the start of construction of the westward expansion of the CSWH, the Port initiated work to identify and eliminate the sources of bacterial contamination at Cabrillo Beach. At the same time the Port began working with the Los Angeles Regional Water Quality Control Board (RWQCB) to develop a bacterial TMDL program for this area. Building on historic and ongoing water quality monitoring data, and with funding from the State Water Resources Control Board's Clean Beach Initiative for additional water quality monitoring, the Port developed a bacteria source identification and elimination project, with a primary goal to identify onshore and offshore/water column sources of bacteria. While no offshore sources were identified, numerous onshore sources were documented, including leaking sewer pipes and dry-weather storm flows.

In July 2004 the RWQCB required the Port to comply with a bacterial TMDL order. The Port responded by developing a tiered program to improve water quality at Cabrillo Beach (**Exhibit 16**). The Port undertook and continues to implement numerous TMDL Tier 1 and 2 actions to address bacterial contamination at Cabrillo Beach including the rebuilding of leaky sanitary sewers in the area, diverting dry-weather flows away from the beach, and removing an old ocean outfall holding contaminated water. It also determined that the Cabrillo Beach materials, comprised of fine-grained silts and clays with a thin sand surface layer, were serving as a bacterial reservoir and contributing to the bacterial exceedances in the adjacent waters. As a

result, the Port is completing a project to replace the beach materials with coarse-grained sands and to recontour the beach to prevent ponding and improve drainage. The Port is also preparing to re-install bird exclusion devices which in the past appeared to reduce avian-related sources of bacteria at the beach, and to remove a rock groin at the adjacent boat launching ramp to improve water circulation along the beach. These actions are scheduled for completion in June 2009.

However, the numerous on-shore remedies have not adequately improved water quality at Cabrillo Beach. In September 2008 the RWQCB issued a notice of violation to the Port for not complying with the 2004 TMDL order and directed the Port to develop a Tier 3 program, including the use of submerged water pumps to improve circulation in the waters offshore of the beach. The Port had previously experimented with a small pump to improve water flushing and mixing along the beach face, but this project did not generate satisfactory results. In developing a Tier 3 program, the Port is further investigating artificial circulation enhancement alternatives, including using more and larger pumps.

A potential source of the bacterial exceedances may be the eelgrass bed that is located just offshore of Cabrillo Beach. Eelgrass is a rooted aquatic plant that inhabits shallow, soft bottom habitats in quiet waters of bays and estuaries. In the Port of Los Angeles, eelgrass beds are found on the east side of Pier 300, in Seaplane Lagoon, and offshore of inner Cabrillo Beach. Eelgrass was planted at this latter location sometime in the 1970s without regulatory approval or oversight; over time it expanded to its current size of between 40 and 50 acres approximately 100 feet offshore at high tide. Recent diver surveys conducted by the Port documented continuous, dense eelgrass beds that appear to interfere with tidal and wind circulation in the shallow water between the eelgrass beds and Cabrillo Beach. The eelgrass beds, due to the continued production and decaying of rich organic matter, may be a source of bacteria to the sheltered waters between the beds and the beach. This, in combination with the reduced circulation in these waters due to the close-in physical location of the beds, could be a significant factor in the ongoing and so far intractable bacterial exceedances at Cabrillo Beach.

In its October 30, 2008, response to the RWQCB's aforementioned notice of violation, the City of Los Angeles responded with a report of the Tier 1 and 2 actions completed or in progress at Cabrillo Beach. This response also included a commitment to implement Tier 3 improvements at Inner Cabrillo Beach, including "installation of a permanent circulation enhancement device(s) and modifications to the eelgrass bed area." Some alteration to the existing eelgrass beds might provide a partial solution to the water quality/circulation problem, and hydrologic modeling of potential alternative manipulations of the beds would generate useful data towards solving this problem. The City and the Port are currently moving forward on implementing the Tier 3 actions at Cabrillo Beach.

However, the potential land/water use conflict between sensitive marine biological habitat and the only sheltered-water beach in the Port of Los Angeles, a beach long-used by and easily accessible to residents of the surrounding communities of San Pedro and Wilmington, may not be one that is easily resolved. A permanent, workable solution to the bacterial exceedance problem at Cabrillo Beach will require continued biological and engineering analyses by the Port of Los Angeles, Corps of Engineers, and other agencies in order to ensure that decisions to

resolve the water quality problem adequately take into account the Coastal Act requirements to ensure clean, safe recreational waters and protect valuable marine habitat.

2. MARINE RESOURCES.

The proposed disposal of dredged materials generated by the completion of the previously-approved Channel Deepening Project hold the potential to affect environmentally sensitive open water habitat at several locations in the Port of Los Angeles. The Final SEIS/EIR for the proposed project states that marine biological resources in the Los Angeles/Long Beach harbor complex have been studied in detail during the last 30 years and described in numerous project-related environmental documents over that same time period. Concurrently, state and federal resource agencies, along with the Ports of Los Angeles and Long Beach, conducted periodic evaluations of harbor marine resources in order to establish appropriate habitat mitigation values for port development projects. The Final SEIS/EIR reports that substantial improvements in habitat quality associated with improved water quality in the harbor occurred in the 1970s and 1980s, and further improvements have occurred since that time, albeit at a slower pace. The most significant change in habitat types in the harbor has been the expansion of eelgrass habitat in the shallow soft bottom habitats of the Outer Harbor, offshore of inner Cabrillo Beach.

Marine habitat in the three proposed fill areas is comprised of deep water, soft-bottom habitat; the rock rip rap, pilings, and concrete or sheetpile walls along existing harbor uplands that border the proposed fill sites also provide narrow areas of hard substrate habitat. These areas support a wide assemblage of benthic infauna and epifauna invertebrates, plankton, and fish, with more diversity of organisms present in the outer harbor than in the channels, basins, and slips of the inner harbor. In the Northwest Slip, sediments deposited from storm drain runoff have accumulated along the existing landfill shoreline at Berths 134-135. Scattered pickleweed plants have opportunistically colonized an approximately 1,830 sq.ft. area at this location. The Final SEIS/EIR and the Port of Los Angeles Environmental Management Division states that the pickleweed cover is sparse to moderate, the plants exist amidst concrete rubble, rock rip rap, and trash, and that the pickleweed plants provide no wetland habitat or productive value at this location. Small kelp beds and scattered kelp plants are present on the existing containment dike for the Cabrillo Shallow Water Habitat area. Outer and inner harbor waters adjacent to the proposed fill areas also provide foraging habitat for the endangered California least tern and California brown pelican, and the least tern nests on the southern tip of Pier 400 in the outer harbor.

The Final SEIS/EIR for the project summarizes the potential impacts to environmentally sensitive marine habitat and species as a result of the proposed dredged material disposal in the Port of Los Angeles:

- Impacts from the construction of landfills at the Northwest Slip and Berths 243-245 would be less than significant because no loss of individuals or a substantial reduction of habitat for the California least tern, marine mammals, or other special status species would occur, nor would loss of any critical habitat for federally listed species occur.

- Construction activities in the immediate vicinity of the Cabrillo Shallow Water Habitat (CSWH) for construction of the expansion area have the potential to adversely affect California least tern foraging by causing a decline in the availability of forage fish or the ability of least terns to find forage fish during the nesting season due to construction-related turbidity within the adjacent CSWH and surrounding areas. Construction would affect approximately 6.5 acres (1.3 percent) of the 519 acres of existing shallow water California least tern foraging habitat available within the Harbor at any time during concurrent construction of the CSWH expansion area. Thus, impacts would be less than significant. Nevertheless, based on informal consultation with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act, to ensure that construction-related turbidity would not adversely affect California least terns, mitigation measures **BIO-1, -2, and -3** (below) are incorporated into the project.

- Impacts to the California brown pelican would be less than significant because, as described above, foraging would not be affected with implementation of project mitigation measures **BIO-1, -2, and -3**.

- The permanent loss of 1,830 sq.ft. of pickleweed habitat from fill placement in the Northwest Slip would have no significant ecological effects due to small amount and fragmented distribution of plants in this area, as well as isolation from other wetlands. However, since this is a plant community of special concern and a wetland, impacts are considered locally significant but feasibly mitigated, with implementation of project mitigation measure **BIO-4**.

- Loss of 12.4 acres of marine habitat due to construction of new landfills at Berths 243-245 and the Northwest Slip and would be a significant impact prior to mitigation. The loss of marine habitat would be mitigated through the use of credits available from the Bolsa Chica mitigation bank. Credit in this bank may be used to mitigate for loss of inner harbor habitat in the POLA at a ratio of 0.5 mitigation credit for every acre of inner harbor fill. Therefore, 6.2 mitigation credits are required for the proposed 12.4 acres of landfill. Currently there are 88 mitigation credits remaining in the Bolsa Chica mitigation bank. Implementation of project mitigation measure **BIO-5** will address the loss of marine habitat in the inner harbor. No net loss of marine habitat would result from the conversion of deep water habitat to shallow water habitat within the 50-acre CSWH expansion area and no mitigation is required for this activity.

The following are the mitigation measures referenced in the above analysis of potential project impacts on sensitive marine habitat and species, and which are incorporated into the proposed project:

- **BIO-1**. Limit Turbidity Plume. Unless specifically allowed by the USFWS, as appropriate, the LAHD/USACE shall not allow turbidity from the dredge and fill activities to extend over greater than 6.5 acres of shallow (i.e., less than 20 feet deep) Outer Harbor waters during the April-to-September nesting season of the California least

tern. This requirement shall be monitored as provided for in mitigation measure BIO-2 below and shall be based on visually observed differences between ambient surface water conditions and any dredging turbidity plume.

- **BIO-2**. California Least Tern Monitoring. The LAHD/USACE shall provide a qualified California least tern biologist, acceptable to the USFWS and CDFG, as appropriate, to monitor and manage known California least tern colonies foraging in the immediate vicinity of the existing Cabrillo Shallow Water Habitat during the nesting season. This program shall be carried out for up to one year following construction of the last element of the Port of Los Angeles Channel Deepening Project. The biologist shall coordinate with CDFG and USFWS, pursuant to the existing California least tern MOA (LAHD et al., 2006) and shall:

  a) Monitor nesting and fledgling success of the California least tern colony and provide an annual report in the format provided in previous years.
  b) Provide an education program for construction crews regarding the identity of the California least tern and their nests, restricted areas and activities, actions to be taken if California least tern nesting sites are found outside the designated California least tern nesting sites (e.g., Southwest Slip surcharge area).
  c) Assist the USFWS and CDFG in predator control, prior to and during the California least tern nesting season and during the construction period.
  d) Visually monitor and report to USACE field representative and Environmental Resources Branch biologist any turbidity from project dredging which extends over greater than 6.5 acres of shallow Outer Harbor waters.

- **BIO-3**. Protect California Least Tern Nesting Sites. If California least tern nests are found outside of the known California least tern colonies during construction, the biologist shall determine the affected area and notify the USACE field representative and Environmental Resources Branch biologist, and USACE shall halt work as appropriate. The USACE shall notify the USFWS and CDFG immediately. The USACE will then determine any potential effect to the California least tern and consult with the USFWS pursuant to Section 7 of the ESA as appropriate.

- **BIO-4**. Transplant Pickleweed. Pickleweed in areas to be filled at the Northwest Slip shall be salvaged prior to filling and replanted at a 1:1 mitigation ratio in suitable habitat in the harbor or off site. A final mitigation plan consistent with USACE habitat mitigation and monitoring guidelines will be prepared prior to permit issuance and the Record of Decision for the Proposed Action.

  (Note: This mitigation proposal is similar to one concurred with by the Commission in CD-050-00 (Corps of Engineers, Channel Deepening Project Phase 1), where sparse and low-quality pickleweed plants within a 4,500 sq.ft. area of the Southwest Slip landfill were salvaged and transplanted to the Cabrillo Salt Marsh and other sites, in coordination with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Game.)

- **BIO-5**. Apply Mitigation Credits. The POLA shall offset the loss of marine habitat from the Berths 243-245 disposal site and the Northwest Slip by using existing mitigation credits from the Bolsa Chica Mitigation Bank, in accordance with the provisions of the memorandum of Agreement governing its use. The loss of 12.4 acres of Inner Harbor Habitat from Berths 243-245 and the Northwest Slip would require 6.2 credits (acres) (calculated at 0.5 credits per acre of Inner Harbor habitat lost) from that bank.

With the above mitigation, the Commission finds that the proposed disposal of dredged materials from the previously-approved Channel Deepening Project at three locations in the Port of Los Angeles will not adversely affect marine habitat. The project will remove contaminated sediments from the marine environment, where they are currently exposed to the aquatic food chain, and isolate those materials in a confined disposal facility. Previously-approved confined disposal facilities for contaminated sediments constructed in the Ports of Los Angeles and Long Beach (similar in design to the proposed facility at Berths 243-245) have successfully removed such materials from the harbor environment without creating adverse effects on environmentally sensitive habitat during dredging, transport, disposal, or confinement operations.

The project will also create additional soft bottom, shallow water habitat in the outer harbor adjacent to the existing Cabrillo Shallow Water Habitat area. Re-colonization of the 50-acre shallow water expansion area with benthic invertebrates, plankton, and fish is expected to take between two to three years, and will provide a more diverse and productive habitat than currently exists at this deep-water site. Construction of shallow water habitat areas at the Cabrillo, Pier 300, and Pier 400 locations in the Port of Los Angeles using dredged materials from the Pier 400 Landfill Project and the Channel Deepening Project were successful in creating biologically diverse and productive shallow water areas.

3. CONCLUSION. The Commission finds that the proposed disposal of dredged materials to complete the previously-approved Channel Deepening Project in the Port of Los Angeles will generate only minor, short-term effects on water quality and marine resources in the Port and at the LA-2 ocean disposal site. Disposal activities will not result in any significant, adverse effects on the coastal zone due to the nature of the dredged materials, the location of disposal sites, the permanent containment of contaminated sediments, and the water quality protection measures incorporated into the project. Proposed dredged material disposal at the Northwest Slip, Berths 243-245, and the CSWH expansion area will not generate significant, adverse effects on environmentally sensitive marine habitat in the Port of Los Angeles. The project includes mitigation measures to protect California Least tern and California brown pelican foraging areas, protect California least tern nesting activities, replace pickleweed habitat lost at the Northwest Slip, and apply existing mitigation credits to offset the loss of deepwater marine habitat from landfills in the Northwest Slip and Berths 243-245. With these measures, and with the commitment by the Corps of Engineers for continuing implementation of the water quality and marine resource protection measures incorporated in the previously-approved Channel Deepening Project consistency determinations (CD-050-00 and CD-006-02), the Commission finds that the proposed project is consistent with the water quality and marine resource protection policies of the CCMP (Coastal Act Sections 30705, 30706, 30708, 30230, 20331, and 30233(b)).

C. Recreation. The Coastal Act provides the following:

> 30706. *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. . . .*
>
> 30708. *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. . . .*
>
> 30220. *Coastal areas suited for water-oriented recreational activities that cannot be readily provided at inland water areas shall be protected for such uses.*
>
> 30234.5. *The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.*

Dredged materials from the Channel Deepening Project would be disposed at the Northwest Slip, Berths 243-245, the LA-2 ocean disposal site (located approximately six miles offshore of the Port of Los Angeles), and the Cabrillo Shallow Water Habitat expansion area. Project disposal activities within the Port of Los Angeles must be consistent with the recreational policies in Sections 30706 and 30708 of the Coastal Act; disposal at LA-2 must be consistent with the recreational policies of Sections 30220 and 30234.5.

The Northwest Slip and Berths 243-245 are not recreation areas due to the existing cargo and industrial uses that occur at and adjacent to these sites. No public access or recreation impacts will occur during the disposal of dredged materials at these two locations. Recreational boating will be restricted in the immediate areas of active dredging and filling, and some inconvenience to recreational boaters traveling within the harbor may occur during disposal operations but these restrictions would be temporary and insignificant.

Construction of the proposed 50-acre expansion of the Cabrillo Shallow Water Habitat (CSWH) area would generate temporary effects on public recreation in adjacent waters, could slightly restrict the water area available for sailing, and would provide additional shallow water area for recreational fishing. The Final SEIS/R for the proposed project states that:

> *The presence of equipment and vessels for the transportation and disposal of dredged sediment would require localized closures and restrictions around work equipment and disposal sites. In addition, turbidity would be created during construction of dikes and disposal of sediment. Transport and disposal of sediment would therefore displace some recreational boaters in the vicinity of transport and disposal equipment due to closures and restrictions, and could create poor conditions for some recreational activities, such as swimming or fishing, due to the creation of turbidity. However, only the Outer Harbor area in the vicinity of the CSWH Expansion Area would be affected by these impacts as it is the only area of the Port that supports any substantial recreational activities. These impacts would diminish the quality of some recreational activities, but similar to dredging, this would cause only a minor loss or diminishment to quality because closures, restrictions, and increased turbidity are temporary, and main transit lanes and most boating areas would still be accessible to recreational boaters . . .*
>
> *Although this alternative [the proposed project] would decrease the depth of a 50-acre area adjacent to the existing CSWH from approximately -40 feet MLLW to -15 feet MLLW, the final depth of -15 feet MLLW would still allow passage of recreational vessels . . .*
>
> *It should be noted however, that kelp currently grows in a band along the submerged rock dike of the existing CSWH, which precludes the use of this area for recreational sailing. It is possible that kelp would also grow along the submerged rock dike of the proposed CSWH Expansion Area, thereby incrementally decreasing the amount of area available for sailing in the outer harbor, but no other types of recreational boating. However, construction of the CSWH Expansion would provide 50 acres of improved habitat for fish species, therefore enhancing and creating more recreational fishing opportunities.*

The disposal of dredged material to create the CSWH expansion area will generate only temporary and minor effects on recreational boating and fishing at this location.

The Final SEIS/R for the proposed project also examines the public recreational opportunities available at Cabrillo Beach, located west of the existing Cabrillo Shallow Water Habitat area:

> *A heavy concentration of recreational activities is found at the Cabrillo Beach recreational complex, which is located along the southwest boundary of the Port. The outer beach, which faces the ocean, is used for swimming, wind surfing, surf fishing, and surfing (USACE, 2000). The inner beach, which lies within the breakwater, is used for sunbathing, beachcombing, wind surfing, swimming, and wading (USACE, 2000). The Cabrillo Beach Boat Launch Ramp is located at the end of Shoshonean Road at 34th Street; the offshore area between the boat launch and the San Pedro Breakwater is used for board sailing and jet skiing. The complex also includes 1,100 pleasure craft slips.*

In 1992 the Commission approved construction of the initial 192-acre CSWH area (CD-057-92), located inside the San Pedro Breakwater and serving as mitigation for the loss of open water habitat from the construction of the Pier 400 landfill. Subsequently, the Commission approved an 87-acre eastward expansion of the CSWH (CD-002-97), and a 54-acre westward expansion (CD-050-00). In these actions, the Commission found that the disposal of clean dredged materials to create shallow water habitat in this area of the outer harbor would not adversely affect public recreational activities at and adjacent to Cabrillo Beach. The Commission found that additions to the CSWH would not cause significant changes in water circulation patterns or degradation in water quality at and offshore of Cabrillo Beach. The proposed 50-acre northward expansion of the CSWH, and the potential effects on water quality and circulation in the waters offshore of Cabrillo Beach, were analyzed previously in Section B of this report (Water Quality and Marine Resources). The Commission found that the proposed project would not create adverse effects on water quality and would therefore not adversely affect recreational activities at and offshore of Cabrillo Beach.

The Commission has concurred with consistency determinations and certifications for dredged material disposal at LA-2 for over 25 years. In those reviews, the Commission determined that dredged material disposal has not significantly affected commercial and recreational fisheries or recreational boating in the ocean waters adjacent to LA-2 or in the transit paths between southern California dredging sites and LA-2. In addition, the Commission found in its June 2005 concurrence with USEPA's consistency determination (CD-065-05) for an increased maximum annual dredged material disposal quantity at LA-2 that:

> *. . . the LA-2/LA-3 Ocean Dredged Material Disposal Site Management and Monitoring Plan is a required element of the . . . increased use of LA-2. As described earlier in this report, the Site Management and Monitoring Plan includes provisions for site monitoring and management actions to protect marine and fishery resources, including revisions to the Plan if necessary . . . .*

Given the existing limitations on the use of the LA-2 ocean disposal site and the monitoring of that site, the proposed disposal at LA-2 of approximately 804,000 cu.yds. of clean, fine-grained dredged materials from the Channel Deepening Project in 2009 and 2010 will not adversely affect offshore recreational boating and fishing activities.

In conclusion, the Commission finds that the proposed dredged material disposal operations within the Port of Los Angeles and at the LA-2 ocean disposal site will not adversely affect public recreational activities at these locations, and are consistent with the public recreation and recreational fishing and boating policies of the CCMP (Coastal Act Sections 30706, 30708, 30224, and 30234.5)

D. <u>Sand Supply</u>. 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:*

. . .

(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 . . . .

The Corps of Engineers proposes to dispose up to three million cu.yds. of dredged material at the Northwest Slip, Berths 243-245, the Cabrillo Shallow Water Habitat expansion area, and at the LA-2 ocean disposal site. Approximately 170,000 cu.yds. of the dredged materials are unsuitable for unconfined aquatic disposal and will be placed in a confined disposal facility to be constructed at Berths 243-245. While all of the dredged materials would be disposed at locations that would not contribute to beach replenishment, sediment analysis previously completed for the Channel Deepening Project indicated that these materials are not suitable for beach replenishment due to the predominately small grain size of the sediments. Since the material is primarily silt and clay, wave energy would move this relatively fine material off the beaches and out of the littoral system if the material were placed on a beach or in the nearshore zone. In conclusion, the Commission finds that the three million cu.yds. of dredged material are not suitable for beach replenishment, and that the proposed disposal of this material at the Northwest Slip, Berths 243-245, the Cabrillo Shallow Water Habitat expansion area, and the LA-2 ocean disposal site is consistent with the sand supply policy of the CCMP (Coastal Act Section 30706).

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.

5. Water Quality and Hydrodynamic Analysis of the Cabrillo Beach Shallow Water Habitat, U.S. Army Corps of Engineers, February 2002.

6. InnerCabrillo Beach Tier 3 TMDL Improvements. Circulation Enhancement Options. First Draft. Port of Los Angeles, December 2008.

7. Inner Cabrillo Beach Tier 3 TMDL Improvements. Circulation Enhancement Plan. Revised Eelgrass Management Plan. Port of Los Angeles, May 2009.

8. Consistency Determinations CD-057-92 and CD-002-97 (Corps of Engineers: Port of Los Angeles Deep Draft Navigation Improvement Project, Stages 1 and 2, respectively).

9. Consistency Determinations CD-050-00 and CD-006-02 (Corps of Engineers: Port of Los Angeles Channel Deepening Project, Phases 1 and 2, respectively).

10. Consistency Determination CD-115-96 (U.S. Fish and Wildlife Service, Bolsa Chica Lowlands Acquisition, Conceptual Restoration Project, and Mitigation Credit Program).

11. Bethlehem Shipyard – Construction History and Further Research, ICF Jones & Stokes, June 22, 2009.

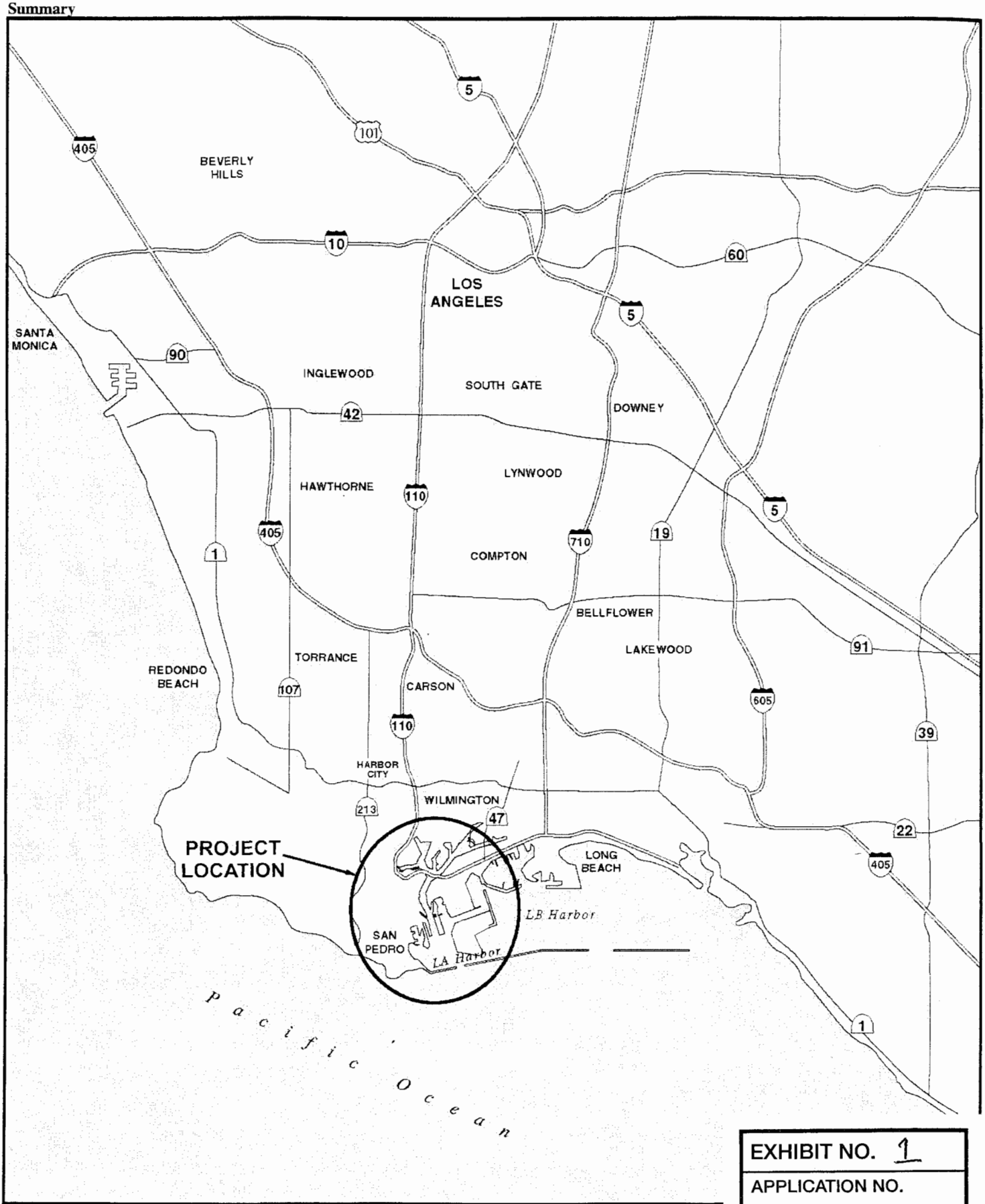


EXHIBIT NO. 1
APPLICATION NO.
CD-046-08

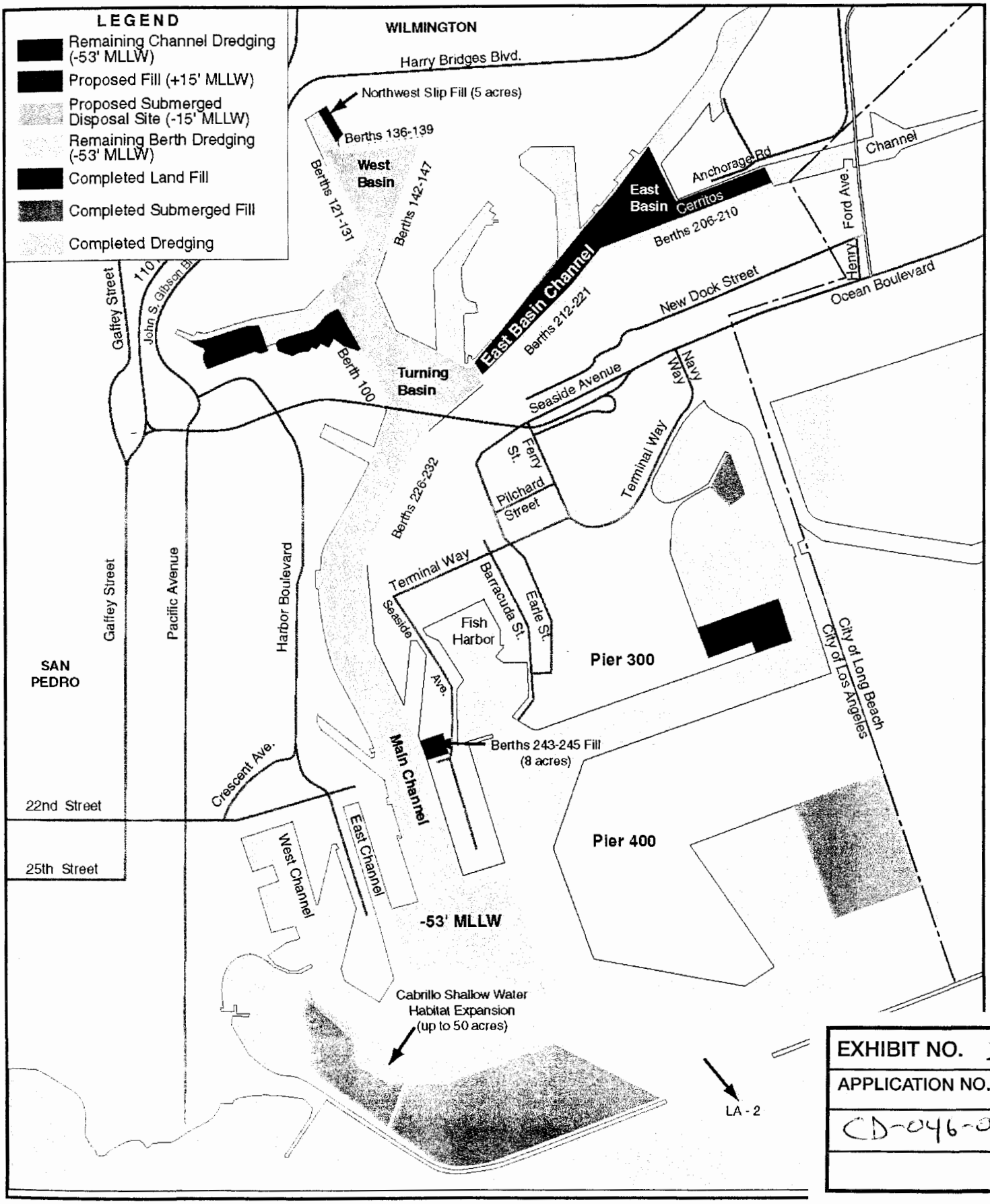


EXHIBIT NO. 2
APPLICATION NO.
CD-046-08

Figure S-2
Alternative 1:
Port Development and Environmental Enhancement

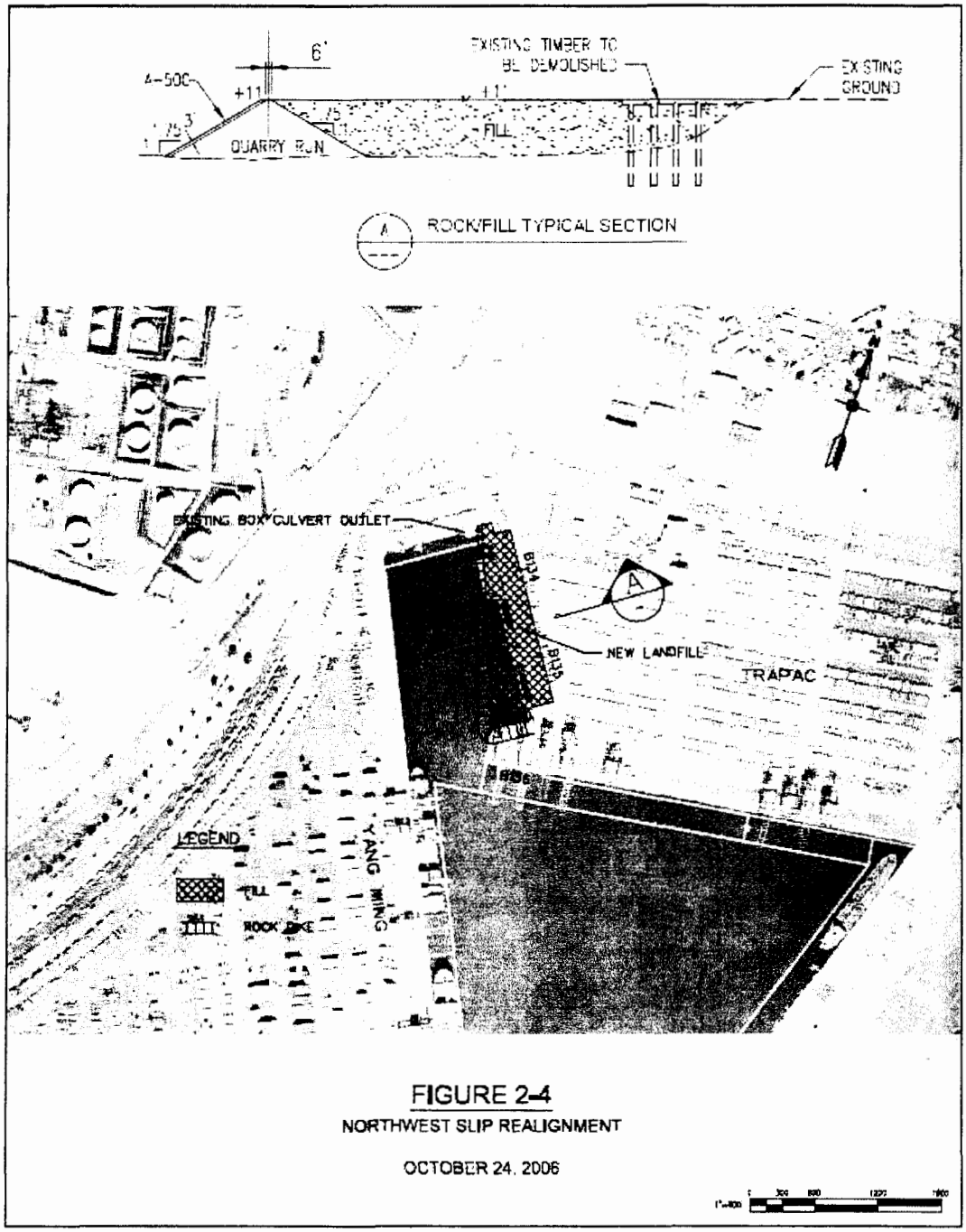
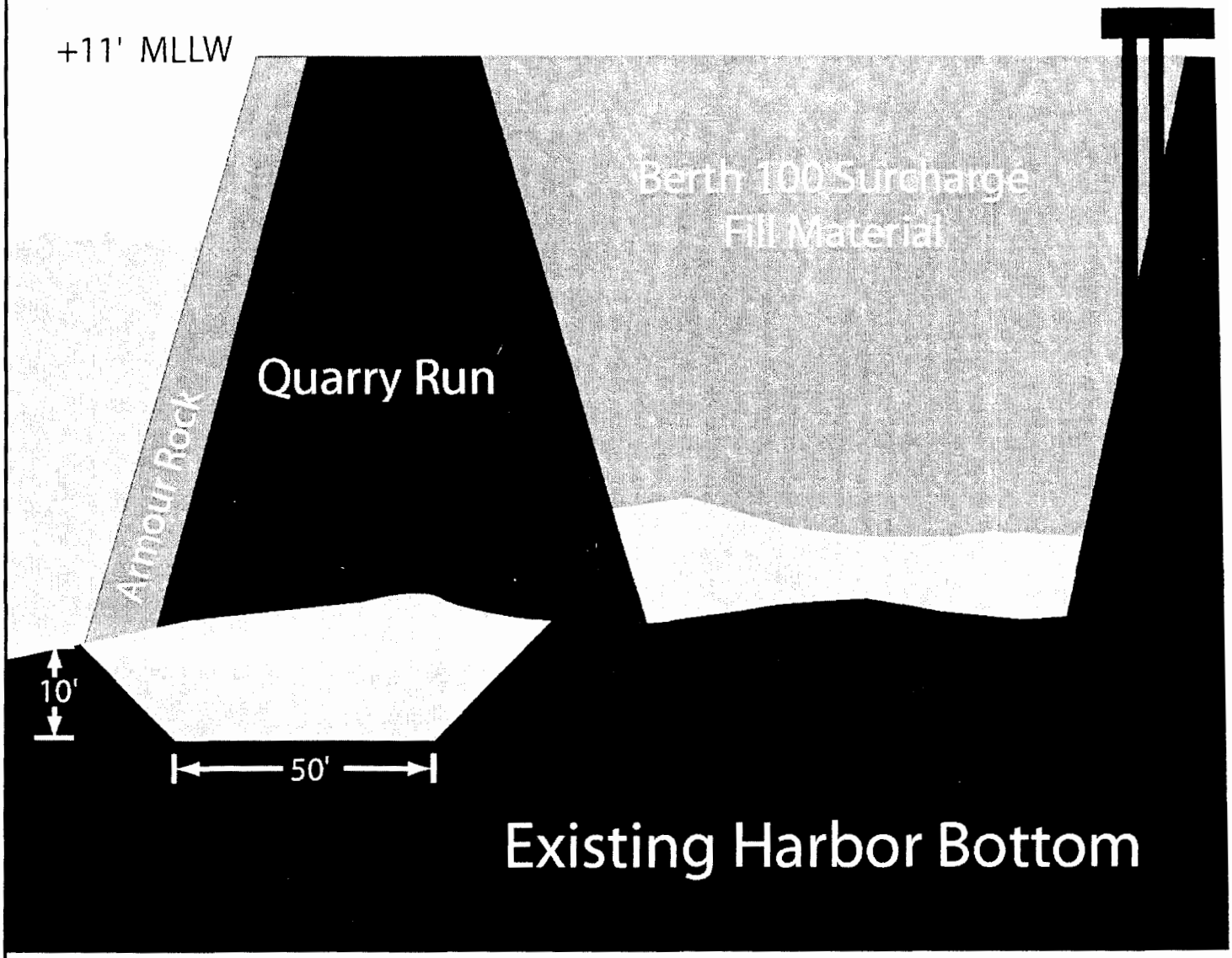


Figure 3 – Northwest Slip Fill

EXHIBIT NO. 3
APPLICATION NO.
CD-046-08

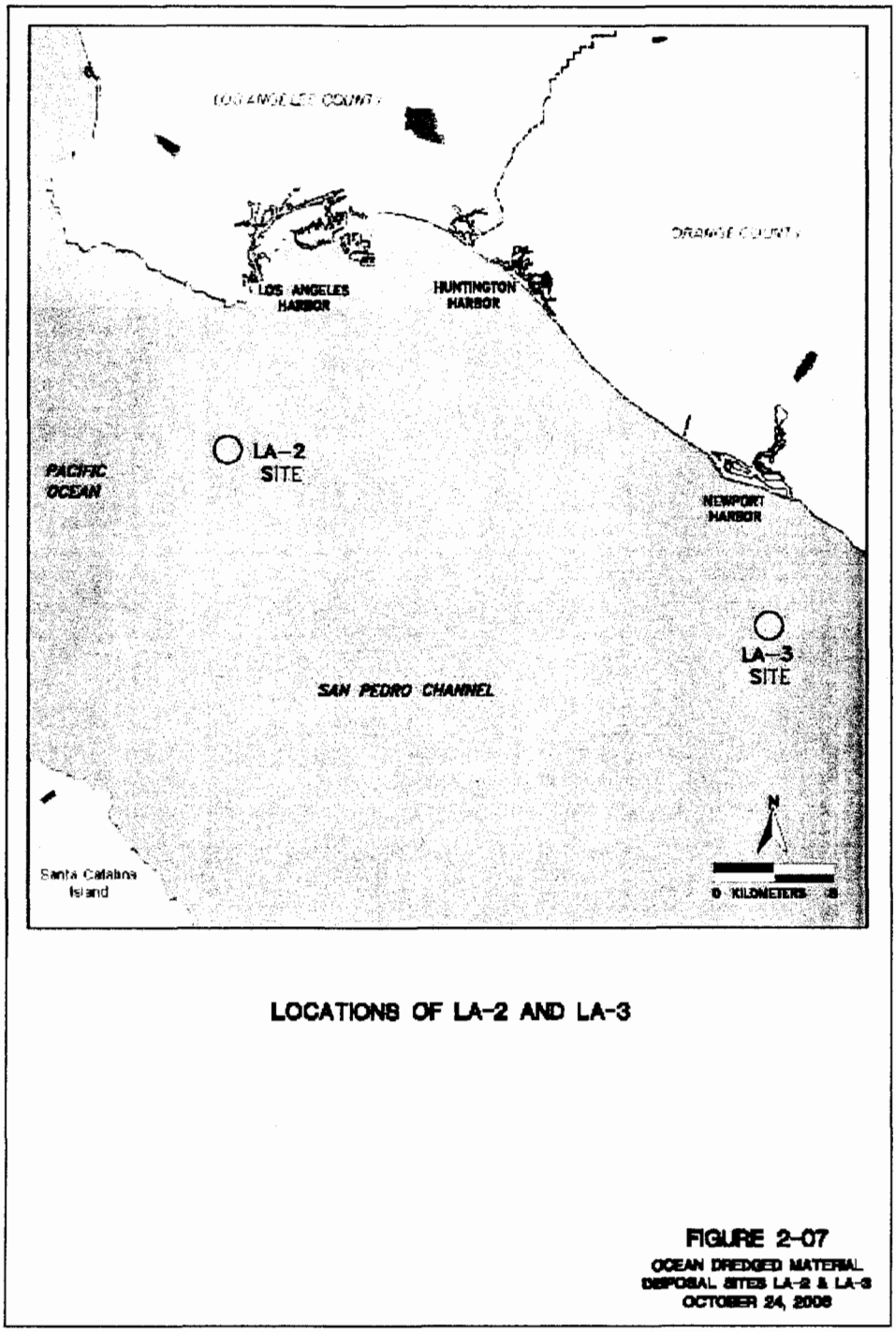


Not to Scale

EXHIBIT NO. 4
APPLICATION NO.
CD-046-08

Northwest Slip Cross-Section

DRAFT



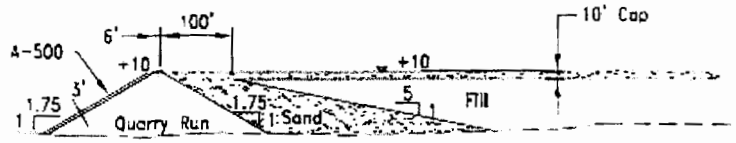
LOCATIONS OF LA-2 AND LA-3

FIGURE 2-07
OCEAN DREDGED MATERIAL DISPOSAL SITES LA-2 & LA-3
OCTOBER 24, 2006

Figure 5 – Location of LA-2 Offshore Disposal Site

EXHIBIT NO. 5
APPLICATION NO.
CD-046-08

DRAFT



A ROCK/FILL TYPICAL SECTION

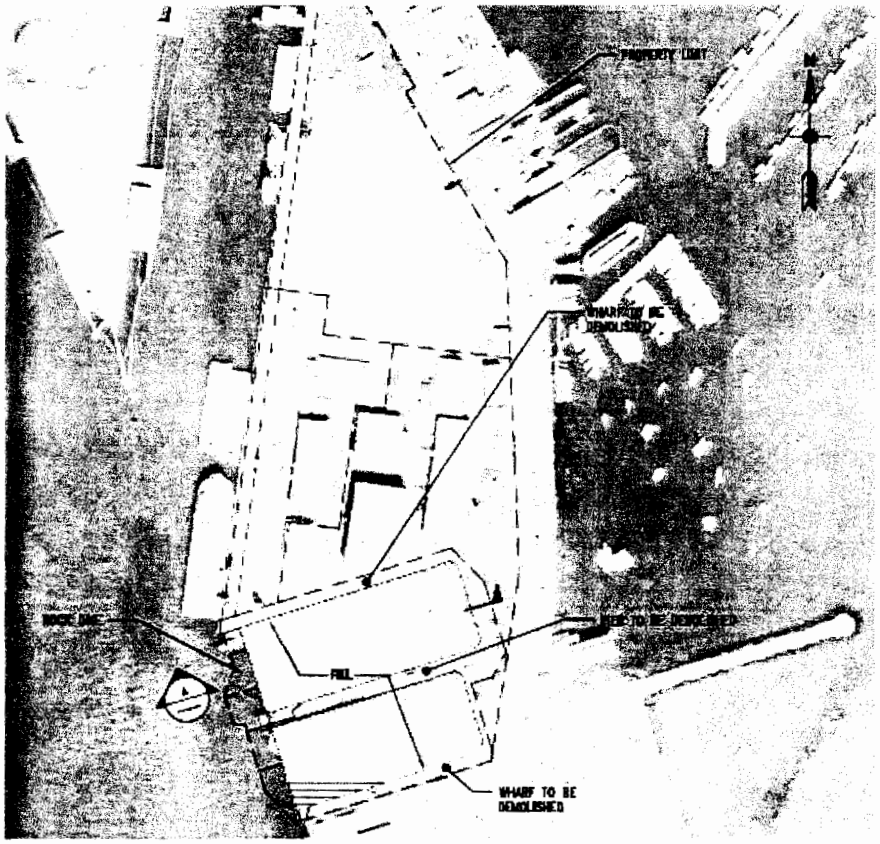


FIGURE 2-3
BERTH 243-245 TERMINAL

OCTOBER 24, 2006

Figure 2 – Berth 243-245 Terminal

EXHIBIT NO. 6
APPLICATION NO.
CD-046-08

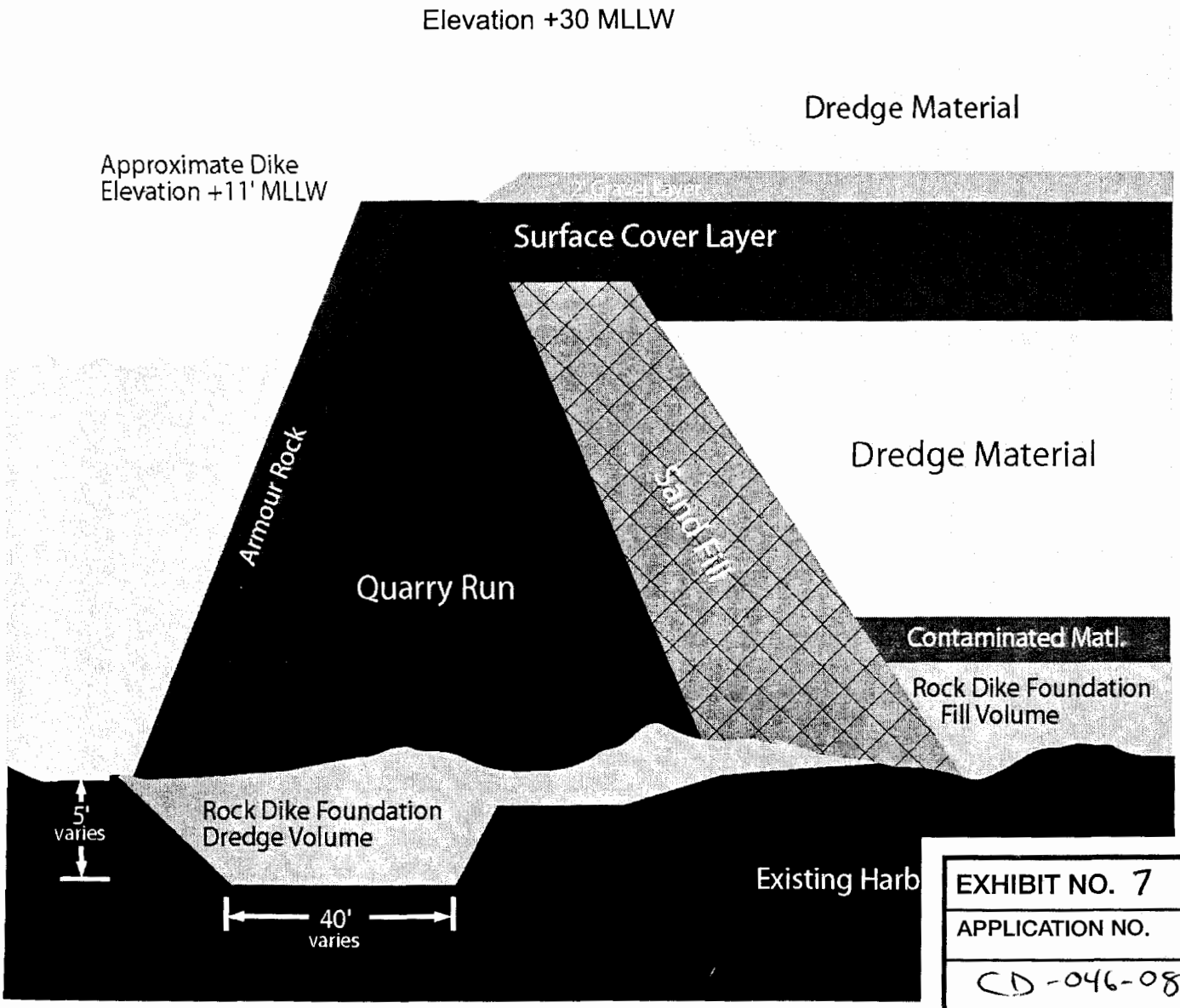
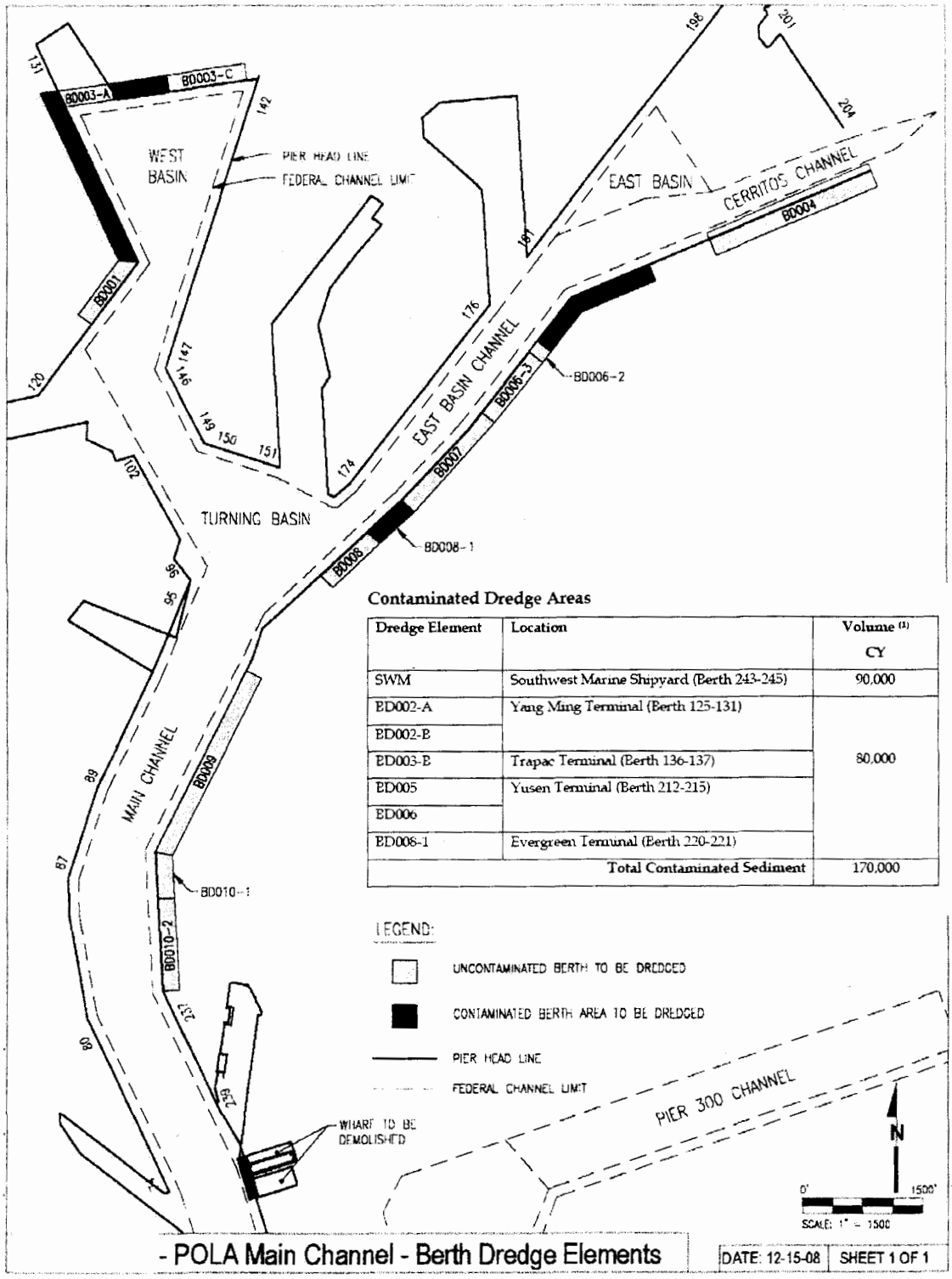


EXHIBIT NO. 7
APPLICATION NO.
CD-046-08

Figure 2-13
Berths 243-245 Cross-Section

DRAFT



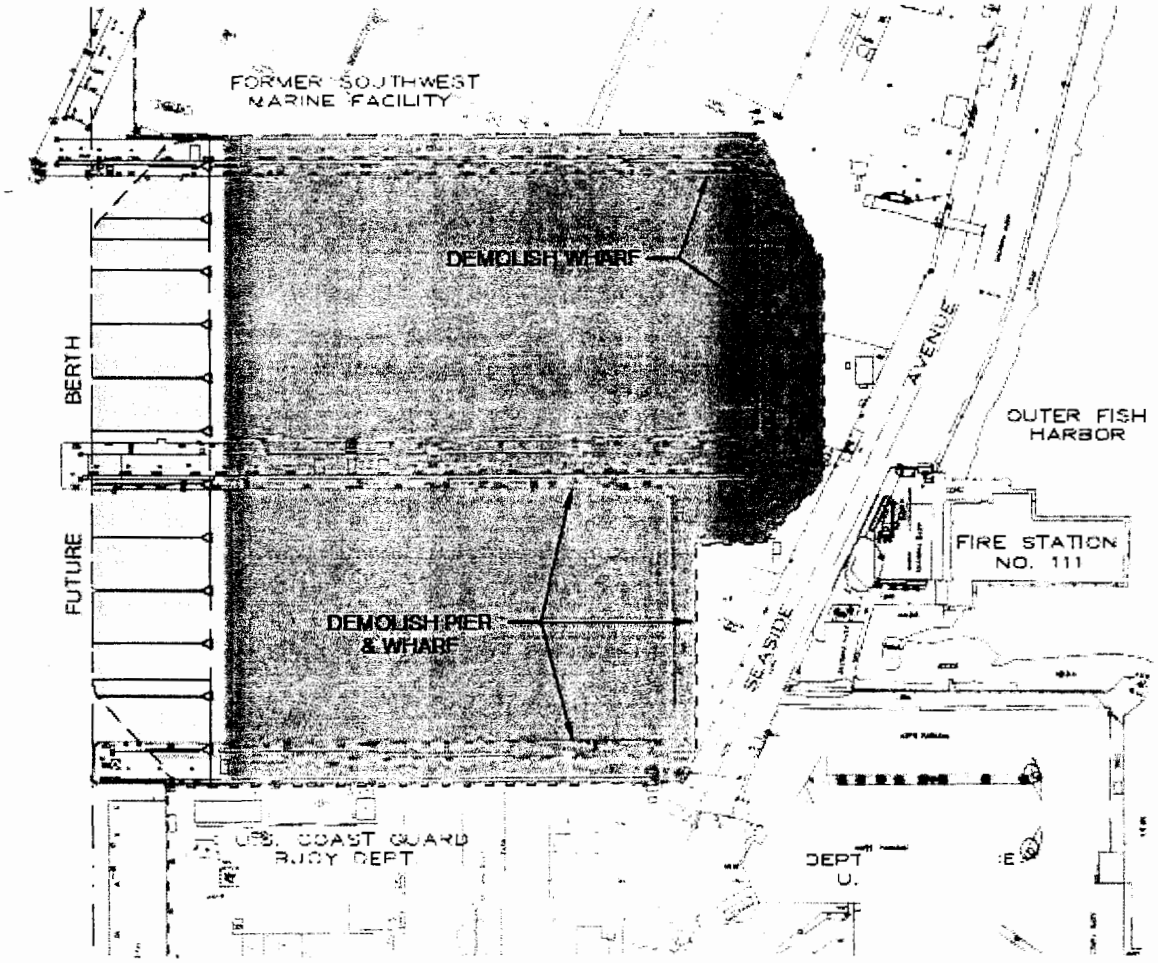
Contaminated Dredge Areas

Dredge Element	Location	Volume [1] CY
SWM	Southwest Marine Shipyard (Berth 243-245)	90,000
BD002-A	Yang Ming Terminal (Berth 125-131)	80,000
BD002-B		
BD003-B	Trapac Terminal (Berth 136-137)	
BD005	Yusen Terminal (Berth 212-215)	
BD006		
BD008-1	Evergreen Terminal (Berth 220-221)	
	Total Contaminated Sediment	170,000

Figure 8 – Contaminated Sediment Dredge Areas

EXHIBIT NO. 8
APPLICATION NO.
CD-046-08

Figure 5 – Berth 243-245 Terminal - Dike and Fill Plan



CONFINED DISPOSAL FACILITY DIKE AND FILL PLAN

SCALE: 1" =150

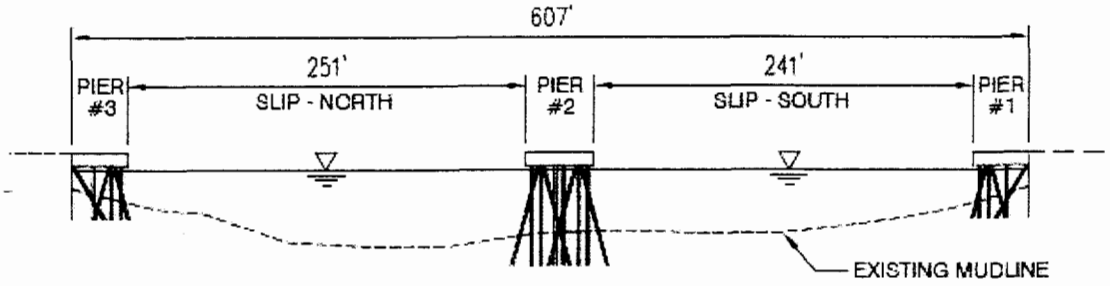
LEGEND:

ROCK DIKE

LAND FILL

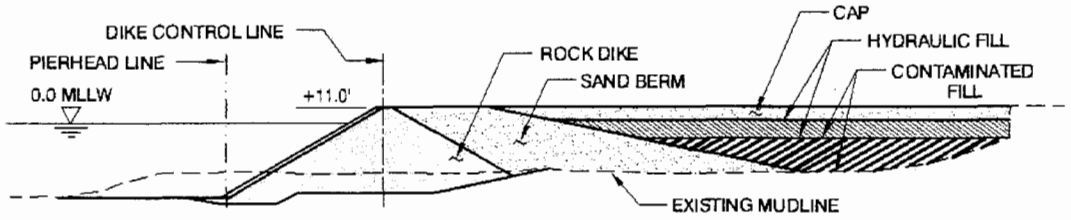
EXHIBIT NO. 9
APPLICATION NO.
CD-046-08

Figure 6 - Berth 243-245 - Sections



BERTHS 243-245 - EXISTING SECTION

SCALE: 1" = 100'



CONFINED DISPOSAL SITE - FUTURE CROSS SECTION

EXHIBIT NO. 10
APPLICATION NO.
CD-046-08

DRAFT

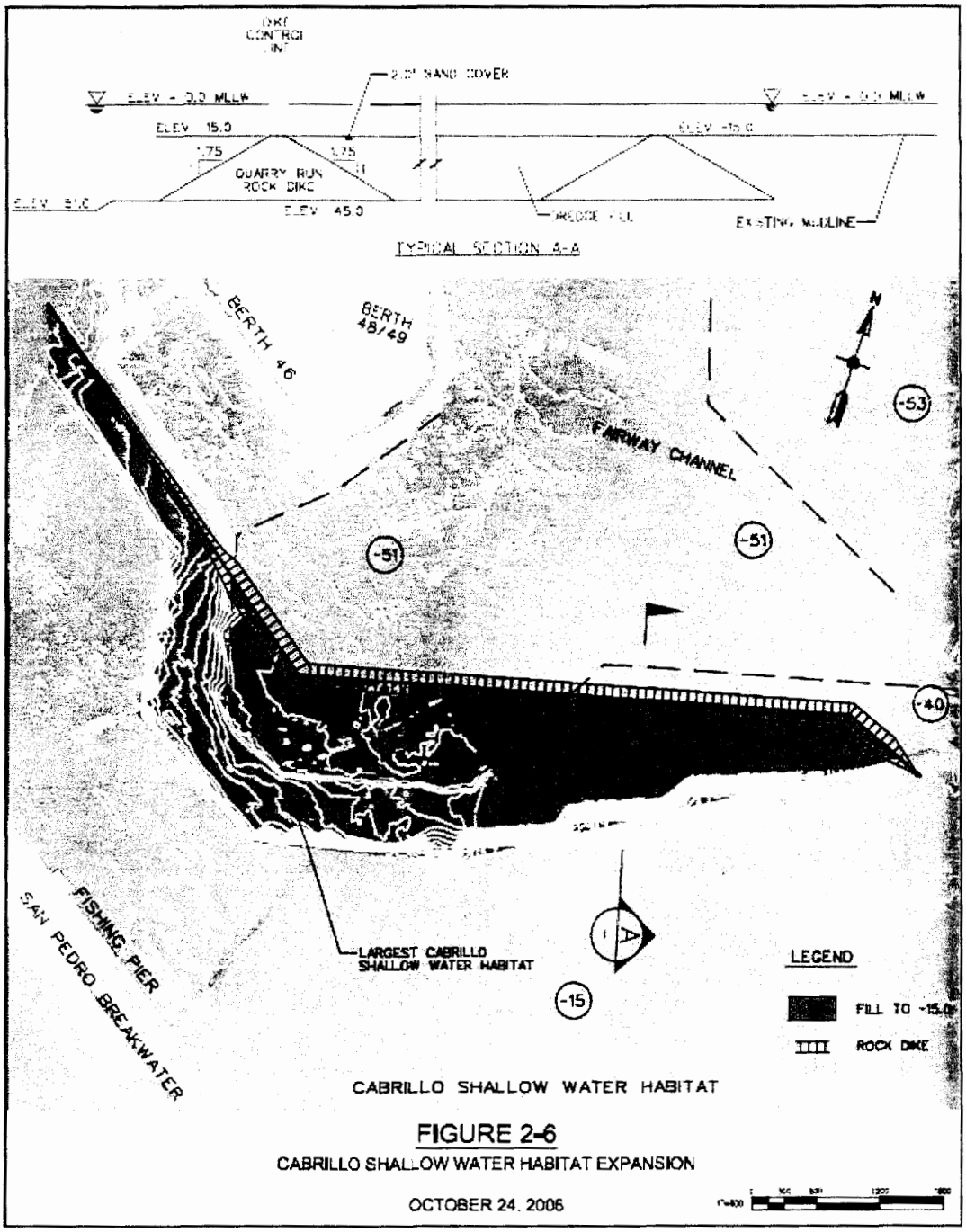


Figure 4 – Cabrillo Shallow Water Habitat Expansion

EXHIBIT NO. 11
APPLICATION NO.
CD-046-08

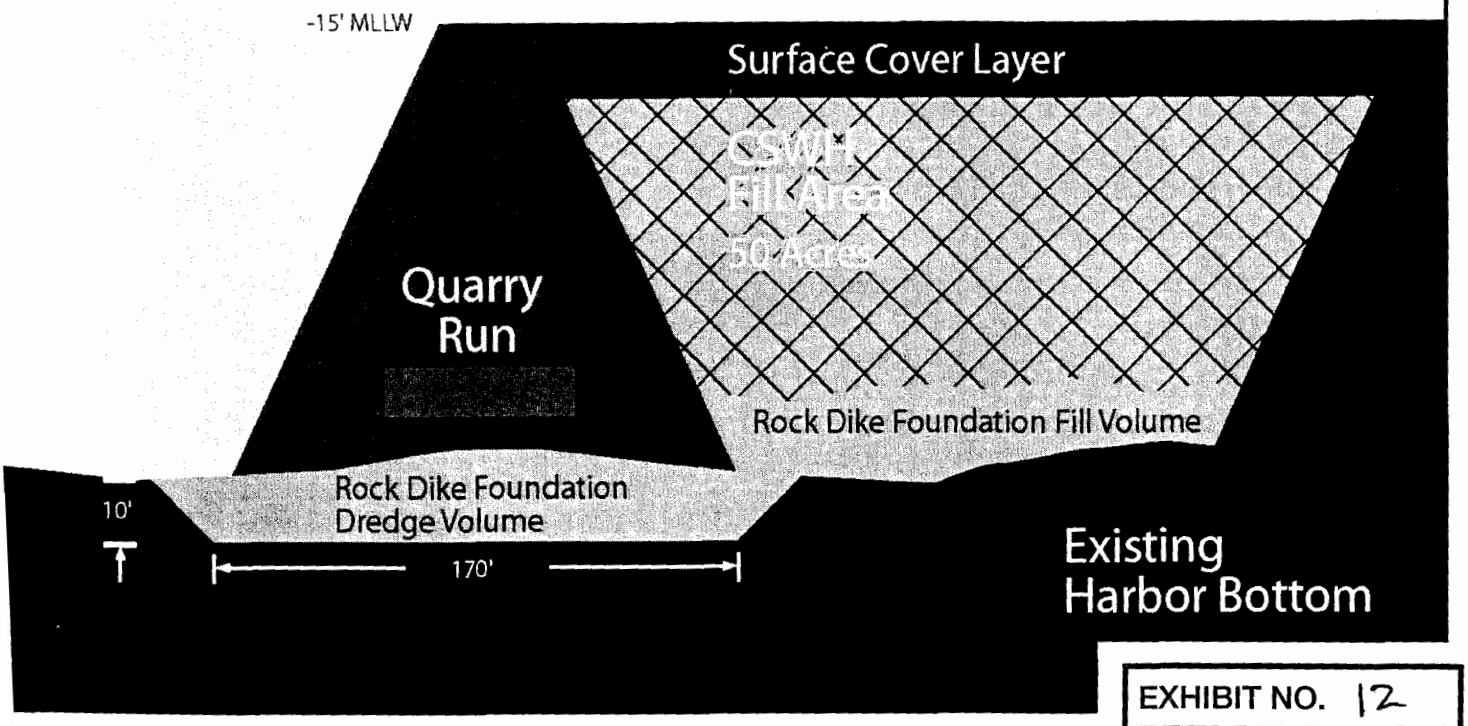


EXHIBIT NO. 12
APPLICATION NO.
CD-046-08

Not to Scale

Figure 2-15
CSWH Expansion Area Cross-Section

LOS ANGELES REGION
CONTAMINATED SEDIMENT TASK FORCE
ADVISORY COMMITTEE MEETING
MAY 12, 2009

INTRODUCTION: The US Army Corps of Engineers (USACE) and the Port of Los Angeles (POLA), as part of the Port of Los Angeles Channel Deepening Project, have prepared a Contaminated Sediment Management Plan (CSMP), Addendum 2, to address management of sediments determined unsuitable for open water disposal as part of the Channel Deepening Additional Disposal Capacity Project. This memo serves to document conclusion and consensus of the CSTF Advisory Committee regarding the CSMP. A list of meeting attendees is included in Attachment No. 1.

BACKGROUND: The Port of Los Angeles Channel Deepening Project is a Federal deep draft navigation improvement project authorized by the Congress as part of the Water Resources Development Act of 2000. The project commenced construction in 2002. As part of the initial construction, a CSMP (January 2002) was prepared to address creation of a Confined Disposal Facility (CDF) at the SouthWest Slip Fill site. Dredge material management and monitoring requirements were addressed in the CSMP. The CSMP was concurred with by the CSTF Advisory Committee prior to project initiation.

In 2003, the USACE and POLA identified the need for removal of contaminated sediments at Berths 44-60. The CDF at the Southwest Slip was determined to have capacity for the dredge material. In May 2003, Channel Deepening Project CSMP Addendum 1 was coordinated with the CSFT Advisory Committee with concurrence prior to initiation of the work.

All work to date has been completed in conformance with water quality monitoring and reporting requirements identified in the CSMP's.

DISCUSSION: Construction progress to date has indicated a need for additional disposal capacity to complete the navigation improvements of the authorized project. The USACE and POLA have prepared a Final Supplemental Environmental Impact Statement/Supplemental Impact Report (FSEIS/SEIR), April 2009, for Additional Disposal Capacity to address this need. Supplemental sediment testing has identified the presence of dredge material unsuitable for open water disposal within the remaining dredge areas. USACE and POLA have prepared a CSMP Addendum 2 which is included as Attachment No. 2, to address dredge material management, disposal site conditions, and construction monitoring/reporting requirements for this additional work.

PROJECT DESCRIPTION: The Berths 243-245 disposal site, which consists of two open water slips covering approximately 8 acres, was part of the former Southwest Marine Shipyard site. The slips at Berths 243-245 contain contaminated sediments from past shipyard operations. This option includes creating a CDF for the existing contaminated materials within Berths 243-245, as well as for contaminated dredge material associated with completing the Channel Deepening Project which is unsuitable for open water disposal. A CSMP Addendum 2 has been developed in cooperation with the CSTF and other State and Federal agencies for moving and disposing of the contaminated sediments. Construction of a CDF involves placing contaminated dredged materials inside a diked area to create land. CDFs are constructed with containment and control measures such as lining, covering and effluent

EXHIBIT NO. 13
APPLICATION NO.
CD-046-08

control. CDFs are constructed with contaminated material as fill material and capped with clean material.

Over time, the material would densify; however, the timeframe for densification is unknown. Therefore, the surcharge material would remain in place until post project geotechnical investigation/monitoring determines the fill has been consolidated. In the future, after the material has consolidated and the Port determines a use for the site, the Port would prepare an appropriate CEQA document to develop the site.

ISSUES: On May 12, 2009 a meeting of the CSTF Advisory Committee was held to consider the CSMP Addendum 2. An agenda and figures were included as handouts to facilitate the meeting dialogue and are included as Attachment No. 3. Issues discussed include the following:

1. Is the meeting the final review of the CSMP? No, final design will be performed upon completion of the regulatory process. CSTF Advisory Committee representatives will be consulted to assure the commitments of the CSMP are included in project construction documents.

2. What water quality criteria will be used to monitor compliance during construction? The water quality monitoring criteria is included in the CSMP Addendum 2.

3. How will sediments from the rock dike keyway be isolated from re-exposure to the channel area? The contractor will be required to isolate the sediments through construction of a temporary berm which will contain these sediments.

4. Has beneficial use of dredge material been included in the Proposed Project? Yes, the FSEIS/SEIR identifies the Proposed Project as the plan which best meets the project objective of maximizing beneficial use of dredge material.

CONCLUSION/CONCURRENCE: Based on the above, the Advisory Committee members hereby concur with implementation of the Proposed Project identified in the FSEIS/SEIR and the CSMP Addendum 2.

CSTF ADVISORY COMMITTEE PARTICIPANTS

APPLICANTS

U.S. Army Corps of Engineers
Joy Jaiswal, Megan Wong, Jim Fields

Port of Los Angeles
David Walsh, John Foxworthy, Katherine Prickett, Kathryn Curtis

REGULATORY AGENCIES

U. S. EPA
Brian Ross, Jorine Campopiano

U. S. Army Corps of Engineers – Regulatory
Aaron Allen (invited but could not attend)

Los Angeles District Regional Water Quality Control Board
Michael Lyons

California Coastal Commission
Larry Simon, Al Padilla

RESOURCE AGENCY

California Department of Fish and Game
William Paznokas

National Marine Fisheries Service
Bryant Chesney (invited but could not attend)

ENVIRONMENTAL PUBLIC INTEREST GROUP

Heal the Bay
Susie Santilena

Timeline of Shallow Water Habitat Construction and Monitoring Efforts at Inner Cabrillo Beach

Results Before & After SWH

* BT exceedances continue at beach face, no change.
* BT Monthly offshore waters clean (except few days of storm events), no change.
* 45 BT monitoring transects nearshore events, also clean with no change.
* USACE current moorings and dye before/after show 2-layer wind dominated circulation.
* 3D modeling, dye, and current meters confirm same wind dominated circulation patterns in nearshore.

1. SWH Dyke Construction
2. SWH Fill Construction
3. SWH Cap Construction
4. Monthly Offshore Harbor Monitoring
5. Daily Beach Monitoring Started in July 1994 ended June 2005
6. Beach Monitoring 5-Days a Week Started June 2005
7. 45 Inshore Water BT Monitoring Events
8. CORPS of Engineers Offshore Current Meter Moorings
9. Study of Bacterial Sources

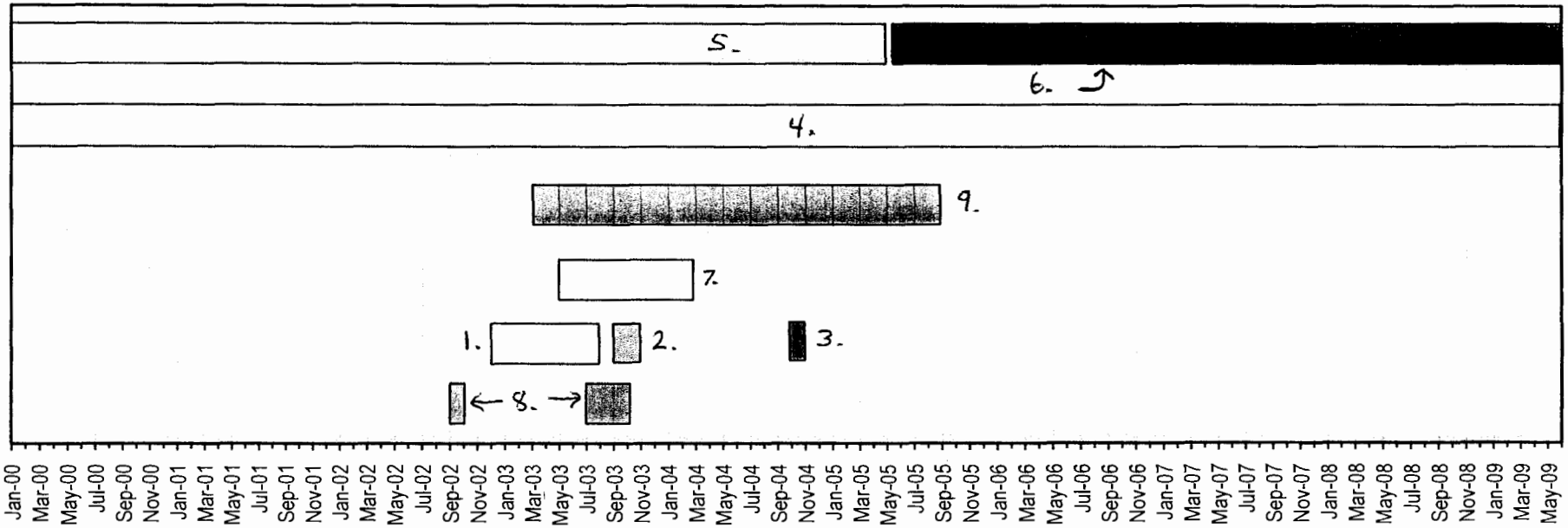
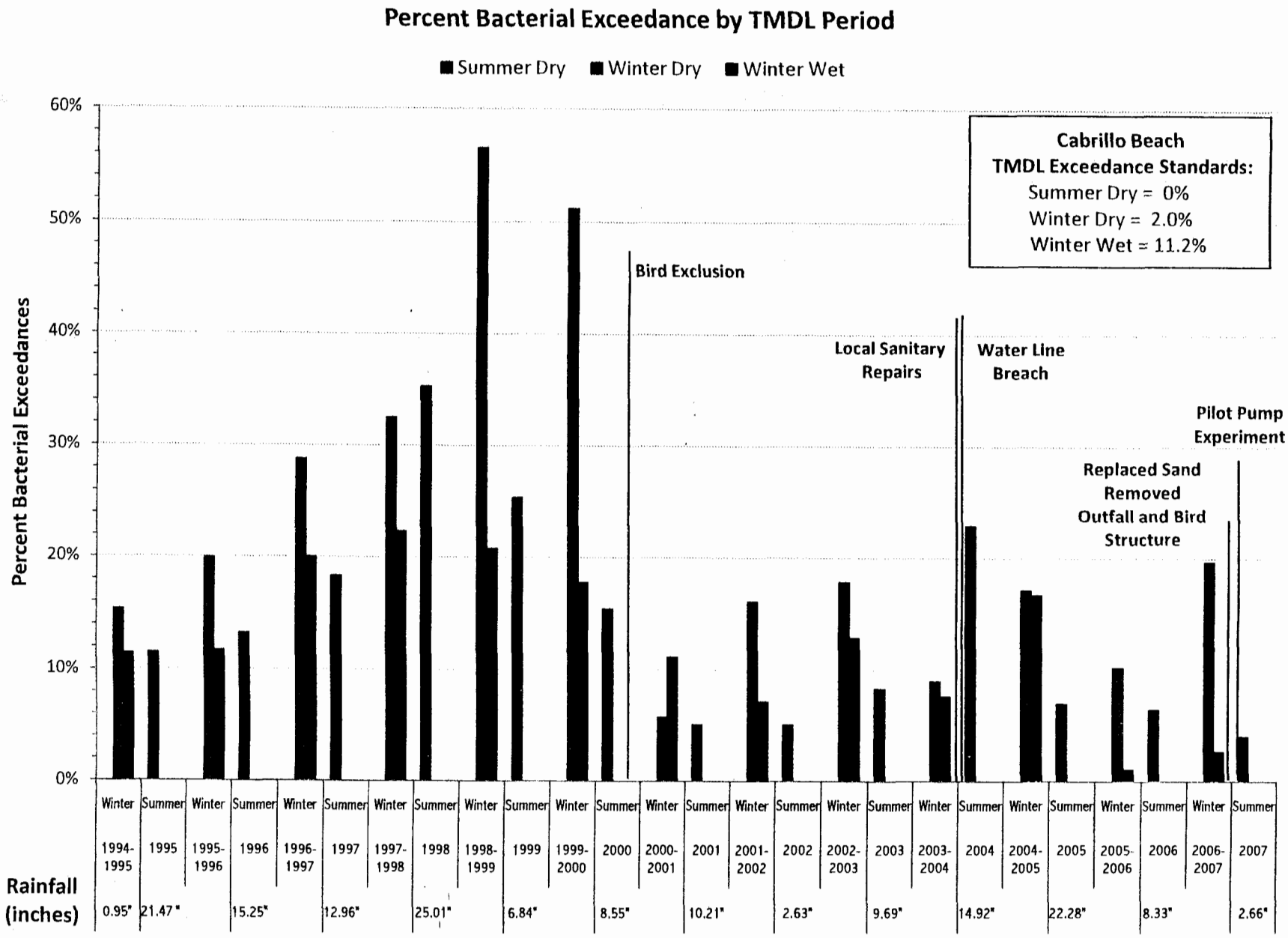


EXHIBIT NO. 14
APPLICATION NO.



Inner Cabrillo Beach History of Bacterial Exceedances.

EXHIBIT NO. 15
APPLICATION NO. CD-046-08

INNER CABRILLO BEACH CORRECTIVE ACTIONS AND RESULTS

21 May 2008

Port of Los Angeles
Engineering Division

Purpose: To meet water quality standards (REC-1) at CB02 on the beach consistent with the new Los Angels Harbor bacterial TMDL. Preserve a historic sheltered recreational and educational beach for urban City.

Implementation Plan: Proposition 13 Source Study followed by Concept Implementation Plan (KLI/POLA, 2006a, b) identified sources and sequential corrective actions. Harbor waters generally clean except for few days after rain events and contamination sources at the beach face.

First - Drainage Infrastructure Repair: (Red=Implemented)

- Rebuild Leaking Sanitary Sewer System (Prop. 13)
- Divert Dry Weather Flows from Beach (Prop. 13)
- Remove Old Outfall with Contaminated Water (Prop. 40)

Local Sources/ Beach Configuration Actions Completed/In Progress:

- Re-contour Beach/Replace Sand to Prevent Ponding & Improve Drainage (Wet Weather BMP; Beach Face Pending, Prop. O)
- Remove Rock Groin at Boat Launch Ramp to Improve Water Circulation at Beach Face (Pending, Prop. 40)
- Circulation Pump Study to Improve Flushing & Mixing at Beach Face (Small Pump not Effective, Collection System Settlement)
- Aquarium Operational Water Discharge (Not BT Source; POLA)
- Replace/Rebuild Bird Exclusion Structure (Pending; Prop. 40)

Beach Performance

- Bacterial exceedances of water quality criteria have continued to occur at Inner Cabrillo Beach in violation of the TMDL requirements. Violations have continued with frequencies similar to dry weather results of previous years.

Additional Local Sources/ Beach Configuration Actions

- Implement Pending Corrective Actions
- Eelgrass Bed Mud and Organics Sources - Clean/ Deepen Immediate Nearshore Beach Area & Mitigate
- Large Circulation/ Mixing Pump

Kinnetic Laboratories/POLA Engineering Division/Kinnetic Laboratories, 2006. Inner Cabrillo Beach Water Quality Improvement Project, Source Identifications and Mitigation Alternaitves.

Kinnetic Laboratories/DMJM Harris/Port of Los Angeles 2006. Inner Cabrillo Beach Water Quality Improvement Project. Concept Implementation Plan.

RWQCB, 2004. Los Angeles Harbor Bacteria TMDL, Inner Cabrillo Beach and Main Ship Channel. April 30,2004.

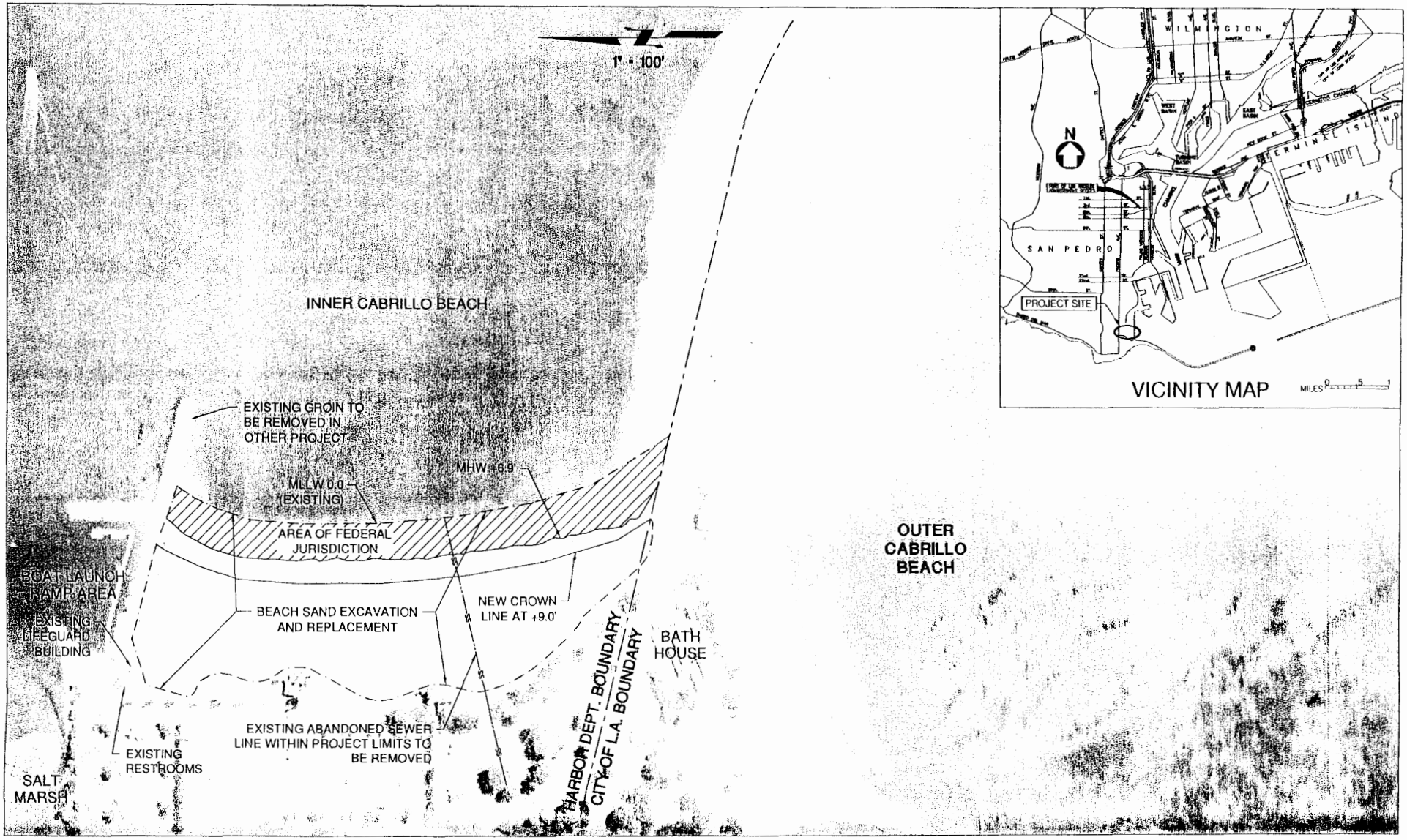
City of Los Angeles Department of Public Works, 2007. Pilot Study Work Plan, Inner Cabrillo Beach Water Quality Improvement Plan. Collection System Settlement Agreement Supplemental Environmental Projects. July 18, 2007 (Revised).

Kinnetic Laboratories/POLA Engineering Division, 2008. Monitoring Results Inner Cabrillo Beach Pilot Beach Circulation Pump Experiment.

EXHIBIT NO. 16

APPLICATION NO.

CD-046-08



INNER CABRILLO BEACH
ONSHORE BEACH SAND REPLACEMENT AND RE-CONTOUR OF SURFACE AREA

PLAN VIEW

DATE: OCTOBER 2, 2006
VERSION: 1

THE PORT OF LOS ANGELES

#16, p.2

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, *Governor*

OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION
P.O. BOX 942896
SACRAMENTO, CA 94296-0001
(916) 653-6624 Fax: (916) 653-9824
calshpo@ohp.parks.ca.gov
www.ohp.parks.ca.gov

April 29, 2009 In reply refer to: COE970314B

Geraldine Knatz, PhD, Executive Director
President David S. Freeman, Board of Harbor Commissioners
Port of Los Angeles
P.O. Box 151
San Pedro, CA 90733

Re: Final Supplemental EIS/EIR Main Channel Deepening Project

Dear Director Knatz, President Freeman, and Harbor Commissioners:

I am writing to request that the Board of Harbor Commissioners 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 and the U.S. Army Corps of Engineers has been completed.

On March 19, 2009, the U.S. Army Corps of Engineers initiated Section 106 review for the proposed Main Channel Deepening Project at the Port of Los Angeles. On April 8, 2009, our office received a copy of correspondence from Susan Brandt-Hawley, Esq., on behalf of the Los Angeles Conservancy, to Geraldine Knatz, PhD and the Board of Harbor Commissioners objecting to the proposed certification of the Final Supplemental EIS/EIR before an assessment of adverse effects under Section 106 of the National Historic Preservation Act (NHPA).

Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties. 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 State Historic Preservation Officer (SHPO), 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, which provides:

> An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association....Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Among other possible adverse effects, the agency shall consider changes to "the character of the property's use or of physical features within the property's setting that

EXHIBIT NO. 17
APPLICATION NO.
CD-046-08

contribute to its historic significance." In making this determination, the agency official and SHPO "shall consider any views concerning such effects which have been provided by consulting parties and the public."

For projects that are subject to review under the National Environmental Policy Act (NEPA), such as the Main Channel Deepening Project, Section 106 review should be coordinated with preparation of the EIS, coordinated with scoping, identification, evaluation, and the initial effect determination, and consultation to resolve adverse effects taking place as needed before the EIS is finalized and the FONSI and ROD are issued. Such coordination enables the public to be fully informed about the results of Section 106 consultation through its review of draft NEPA material, and the consulting parties under Section 106 to be informed of public views obtained by the agency through the NEPA process.

Because Section 106 consultation for the proposed project was initiated by the USACE only recently – at the culmination of NEPA/CEQA review – our office has not had an opportunity to make a formal determination regarding adverse effects that may result from its implementation. Nonetheless, we understand that the Harbor Commission is being asked to certify the Final Supplemental EIS/EIR and adopt its determination of no significant adverse impacts on historic resources at the former Southwest Marine Shipyard site. The requested action is not only premature, given ongoing review by our office, but would clearly undermine the purpose and intent of the Section 106 consultation process.

In order to avoid the potential need for supplemental environmental review in the future, we urge the Harbor Commission to withhold any further action on the Main Channel Deepening Project until Section 106 consultation is complete.

Sincerely,

milford wayne donaldson

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

cc: Josephine R. Axt, PhD, U.S. Army Corps of Engineers
D. Stephen Dibble, Senior Archaeologist, U.S. Army Corps of Engineers
Dr. Ralph Appy, Port of Los Angeles
Dennis Hagner, Environmental Specialist, Port of Los Angeles
Linda Dishman, Executive Director, Los Angeles Conservancy

Ex. 17, P. 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

JUN 10 2009

Josephine R. Axt, PhD
Chief, Planning Division
and
David J. Castanon
Chief, Regulatory Division
Los Angeles District, US Army Corps of Engineers
PO Box 532711
Los Angeles, CA 90053-2325

Subject: EPA concurrence in and conditions for ocean disposal of suitable dredged material from the Port of Los Angeles Channel Deepening Project

Dear Dr. Axt and Mr. Castanon,

This letter transmits the Environmental Protection Agency Region 9 (EPA) concurrence in and conditions for ocean disposal of suitable dredged material from the Port of Los Angeles Channel Deepening Project. The proposed project would discharge a maximum of 804,000 cubic yards of clean dredged material at the EPA-designated LA-2 Ocean Disposal Site, as part of construction of Alternative 1 described in the April, 2009 "*Port of Los Angeles Channel Deepening Project Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report*" (FSEIS). These comments are provided in accordance with our authorities under the Marine Protection, research, and Sanctuaries Act, and the related regulations published at 40 CFR Part 225-227.

EPA has worked extensively with USACE and the Port of Los Angeles (POLA) for several years to help craft a mutually acceptable alternative for completing the Channel Deepening project that maximizes beneficial reuse of the material to be dredged. Our official comment letter on the FSEIS was dated May 18, 2009, and presents our agreement that Alternative 1 as described in the FSEIS is the environmentally superior alternative. We appreciate USACE's and POLA's efforts in bringing the project to this point. EPA previously determined that the material proposed for ocean disposal is physically, chemically, and biologically suitable for discharge. Now that the FSEIS is complete and Alternative 1 has been selected for construction, we are providing our concurrence and conditions for ocean disposal.

EXHIBIT NO. 18
APPLICATION NO.
CD-046-08

Generic Ocean Disposal Site Use Conditions

EPA's concurrence in ocean disposal at LA-2 is contingent on the attached generic ocean disposal site use conditions being fully incorporated into the relevant project authorizations, including construction contracts and sub-contracts. (Note that these generic conditions have been recently updated, and apply to ocean disposal operations at all three of EPA's ocean disposal sites in southern California, including LA-2, LA-3, and LA-5.)

Additional Project-Specific Conditions

EPA's concurrence is further contingent on incorporation of the following additional project-specific conditions in the relevant project authorizations and contracts:

A. **Project-specific annual disposal limit:** Disposal operations at LA-2 for this project shall be limited to a maximum of 500,000 cubic yards in any one calendar year. If more than 500,000 cubic yards of material are to be discharged, disposal operations must be spread out into multiple calendar years.
B. **Pre-discharge notification and meeting:** USACE shall notify EPA (Allan Ota in San Francisco, and Jorine Campopiano in Los Angeles) no later than 30 days prior to initiation of discharge activity at LA-2 in any calendar year. USACE shall also arrange a meeting, at a mutually agreeable time prior to initiating discharge operations, between EPA, USACE, POLA, and relevant dredging contractor(s), to discuss and ensure understanding of EPA's generic and project-specific special conditions for ocean disposal.

Thank you for the opportunity to provide these comments. We look forward to continuing our close working relationship as this final phase of the project moves into construction. Please forward a copy of the Record of Decision, showing incorporation of EPA's generic and project-specific conditions, to us once it has been signed.

Sincerely,

Elizabeth Goldmark

for David W. Smith, Chief
Wetlands Regulatory Office

Cc: Ralph Appy, John Foxworthy (POLA)

EX-18 P. 2

California Regional Water Quality Control Board
Los Angeles Region

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: http://www.waterboards.ca.gov/losangeles

Linda S. Adams
Cal/EPA Secretary

Arnold Schwarzenegger
Governor

June 18, 2009

Mr. Tony Gioiello
Chief, Harbor Engineer
Port of Los Angeles
P.O. Box 151
San Pedro, CA 90731

Dr. Josephine R. Axt
Chief, Planning Division
U.S. Army Corps of Engineers
Los Angeles District
P.O. Box 532711
Los Angeles, CA 90053-2325

WATER QUALITY CERTIFICATION FOR PROPOSED ADDITIONAL SITES AND CAPACITY FOR DREDGED MATERIAL DISPOSAL FOR CHANNEL DEEPENING PROJECT IN THE PORT OF LOS ANGELES

Dear Mr. Gioiello and Dr. Axt:

Board staff has reviewed your request on behalf of the Port of Los Angeles and the U.S. Army Corps of Engineers (Applicants) for a Clean Water Act Section 401 Water Quality Certification for the above-referenced project. Your application was deemed complete on May 18, 2009.

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge also is regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that have received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

The Applicants shall be liable civilly for any violations of this Certification in accordance with the California Water Code. This Certification does not eliminate the Applicants' responsibility to comply with any other applicable laws, requirements and/or permits.

Should you have any questions concerning this Certification action, please contact Michael Lyons, Contaminated Sediments Coordinator, at (213) 576-6718.

Tracy J. Egoscue
Executive Officer

6/18/09
June 18, 2009

EXHIBIT NO. 19
APPLICATION NO.
CD-046-08

JMBM | Jeffer Mangels Butler & Marmaro LLP

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

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

Ref: 70343-0001

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").

EXHIBIT NO. 20
APPLICATION NO.
CD-046-08

I. PMPA 24

The Commission has no legal authority to consider PMPA 24 because the City has not completed it's 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

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

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

Appendix D

JUN - 2 2009

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

☒ County Clerk
County of: Los Angeles
Address:

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

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

FILED
APR 30 2009
DEAN C. LOGAN
REGISTRAR-RECORDER/COUNTY CLERK
BY
DEPUTY

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 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
☒ Lead Agency or ☐ Responsible Agency

April 29, 2009 (Date) and has made the following determinations regarding the above described project:

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

EXHIBIT A

EX.20 P.9

Notice of Exemption

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

☒ County Clerk
County of Los Angeles

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

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 Amendement 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: Ralph G. Appy Date: 06/03/09 Title: Director of Environmental Management

☑ Signed by Lead Agency
☐ Signed by Applicant

Date received for filing at OPR:

EXHIBIT B

EX.20 P.10

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	7,312,465	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

EXHIBIT C

EX.20 P.11

JMBM | Jeffer Mangels Butler & Marmaro LLP

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

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

Ref: 00000-5004

May 15, 2009

RECEIVED
CITY CLERK'S OFFICE
2009 MAY 15 PM 4:04
CITY CLERK
BY _____ DEPUTY

VIA HAND DELIVERY

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

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

EXHIBIT D

EX. 20 P. 12

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:

1. 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-usuable 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 Angels 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

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 Schecter, Legislative Deputy
Benjamin M. Reznik
Amy Tsai-Shen

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1550
fax 310 496 1902

info@healthebay.org
www.healthebay.org

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.

EXHIBIT NO. 21
APPLICATION NO.
CD-046-08

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1550
fax 310 496 1902

info@healthebay.org
www.healthebay.org

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

EX. 21 P. 2

SAN PEDRO & PENINSULA HOMEOWNERS COALITION
Po Box 1106 - San Pedro, CA 90733

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)

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.

EXHIBIT NO. 22
APPLICATION NO.
CD-046-08

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,

Andrrew Mardesich
President

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

Tu13a

PROPOSED FINDINGS

ON CONSISTENCY DETERMINATION

Consistency Determination No.	CD-50-00
Staff:	LJS-SF
File Date:	5/5/2000
45th Day:	6/19/2000
60th Day: extended through	7/14/2000
Commission Vote:	7/13/2000
Hearing on Findings:	10/10/2000

FEDERAL AGENCY: **CORPS OF ENGINEERS**

PROJECT LOCATION: Port of Los Angeles and LA-2 and/or LA-3 offshore dredge material disposal sites, Los Angeles County **(Exhibits 1-4)**.

PROJECT DESCRIPTION: Phased review of a channel deepening and landfill construction project in the Port of Los Angeles. The overall project would: (1) deepen the inner harbor channels at the POLA from –45 feet to –53 feet mean lower low water; (2) dispose approximately 4.2 million cubic yards of dredged material (including 600,000 cu.yds. of contaminated sediments) to create a 54-acre expansion of the Cabrillo Shallow Water Habitat Area, a 35-acre landfill in the Southwest Slip, and a 40-acre landfill at Pier 300; (3) place the contaminated sediments within the Southwest Slip and/or Pier 300 landfills; (4) dispose an additional 2.4 million cu.yds. of dredged material at the LA-2 and/or LA-3 ocean disposal sites; and (5) mitigate marine habitat losses from the proposed landfills by using mitigation credits held by the Port of Los Angeles in the Port's

outer harbor mitigation account and in the Port's share of the Bolsa Chica wetlands restoration account.

This consistency determination includes all project elements except for the disposal of contaminated sediments at the Southwest Slip and/or Pier 300, and the disposal of clean sediments at LA-2 and/or LA-3; these elements will be the subject of a second consistency determination to be submitted by the Corps of Engineers later this calendar year.

PREVAILING COMMISSIONERS: Commissioners Daniels, Desser, Dettloff, Estolano, Hart, Kruer, McClain-Hill, Nava, Potter, Rose, Woolley, and Chairman Wan.

SUBSTANTIVE FILE DOCUMENTS:

1. Port of Los Angeles Port Master Plan (as amended).

2. Port of Los Angeles Port Master Plan Amendment No. 15 (Port Landfill Mitigation Credit Account/Bolsa Chica Wetlands Restoration, November 1995).

3. Consistency Determinations CD-57-92 and CD-2-97 (Corps of Engineers: Port of Los Angeles Deep Draft Navigation Improvement Project, Stages 1 and 2, respectively).

4. Negative Determinations ND- 103-97 and ND-25-99 (Corps of Engineers: Port of Los Angeles Deep Draft Navigation Improvement Stage 2 Project Modifications).

5. Consistency Determination CD-90-95 (U.S. Fish and Wildlife Service: Bolsa Chica Lowland Acquisition and Conceptual Wetland Restoration Plan).

EXECUTIVE SUMMARY

The Corps of Engineers has submitted the first of two consistency determinations for its proposed harbor deepening project in the Port of Los Angeles. The Corps proposes in the overall project to: (1) deepen the inner harbor channels from –45 feet to –53 feet mean lower low; (2) dispose approximately 4.2 million cubic yards of dredged material (including 600,000 cu.yds. of contaminated sediments) to create a 54-acre expansion of the Cabrillo Shallow Water Habitat Site, a 35-acre landfill in the Southwest Slip, a 40-acre landfill at Pier 300: (3) place the contaminated sediments within the Southwest Slip and/or Pier 300 landfills; (4) dispose an additional 2.4 million cu.yds. of dredged material at the LA-2 and/or LA-3 ocean disposal sites; and (5) mitigate marine habitat losses from the proposed landfills by using mitigation credits held by the Port of Los Angeles in the Port's outer harbor mitigation account and in the Port's share of the Bolsa Chica wetlands restoration account.

The Corps has agreed to a phased review of the proposed project pursuant to 15 C.F.R. Section 930.37(c), and will submit to the Commission at a later date (well in advance of the start of project construction in the spring of 2002) a second consistency determination that will address the final design decisions on the disposal of contaminated sediments at the Southwest Slip and/or Pier 300 and the disposal of clean sediments at LA-2 and/or LA-3. The second consistency determination will incorporate final EPA review of sediment test results and review by the Contaminated Sediments Task Force of the proposed disposal of contaminated sediments. The second consistency determination will also incorporate the results of modeling by the Corps of potential circulation changes, and the inferred water quality effects, in harbor waters between Cabrillo Beach and the Main Channel from four shallow water habitat development scenarios (no shallow water habitat; the shallow water habitat as it presently exists; the existing shallow water habitat with the proposed expansion; and the existing shallow water habitat with the proposed expansion and with a "hole in the breakwater", that is, a connection between the waters offshore of Cabrillo Beach and the ocean through the San Pedro Breakwater). The Corps seeks this initial Commission concurrence with the first consistency determination in order to secure federal funding for the project. The Commission's determination (as outlined, below) that the proposed project is consistent with the California Coastal Management Program (CCMP) is predicated on the Corps' agreement to submit a subsequent consistency determination for final project design, and on the Commission's ability to determine at that time whether the project remains consistent with the resource protection policies of the CCMP.

The project is designed to improve cargo handling efficiency at the Port of Los Angeles by deepening channels to provide safe access to inner harbor berths for the largest vessels in the international container ship fleet. Dredging and disposal to create new landfills and mitigation areas within the Port of Los Angeles, and disposal at the LA-2 and/or LA-3 ocean disposal sites, are consistent with the dredge and fill policies of the CCMP (Sections 30705 and 30233 of the Coastal Act). Sediments were tested and, except for approximately 600,000 cu.yds. of contaminated sediments to be placed in confined disposal sites within new landfills, were found physically and chemically suitable for unconfined aquatic disposal. The project will generate minor, short-term effects on water quality and marine resources in the Port. However, environmental commitments and mitigation measures incorporated into the project make it consistent with the water quality and marine habitat protection policies of the CCMP (Sections 30705, 30706, and 30708 of the Coastal Act).

The project includes restrictions on dredging and fill operations designed to protect the endangered California least tern and California brown pelican from significant, adverse project impacts in shallow water foraging areas used by both species. Additional foraging areas will be created using dredge spoils, and contaminated harbor bottom sediments will be capped to protect existing and new foraging areas. The project is therefore consistent with the fish and wildlife resource and habitat protection policies of the CCMP (Sections 30706 and 30708 of the Coastal Act). Disposal of 4.2 million cu.yds. of dredged material to create new landfills at Pier 300 and the Southwest Slip and expand the Cabrillo Shallow Water Habitat area, and disposal of 2.4 million cu.yds. of material at the LA-2 and/or LA-3 ocean disposal sites are consistent with the sand supply policies of the CCMP (Sections 30706, 30708, and 30233 of the Coastal Act). Dredging and filling activities will generate only minor and short-term impacts on commercial

and recreational fishing and boating within the Port and at the ocean disposal sites, and are consistent with the public recreation policies of the CCMP (Sections 30706, 30708, 30213, 30220, 30224, and 30234 of the Coastal Act).

STAFF SUMMARY AND RECOMMENDATION:

I. Staff Note.

A. Background. Since 1993 the Commission has concurred with numerous consistency determinations (CD-57-92 and CD-2-97), negative determinations (ND-103-97 and ND-25-99), and Port Master Plan Amendments (POLA PMPA Nos. 12, 13, 15, 17, and 19) for construction of the Port of Los Angeles Deep Draft Navigation Improvement Project (DDNI), which includes channel deepening, landfill and terminal construction, and mitigation measures for impacts to marine habitat. The subject consistency determination is a further refinement of the original DDNI project; a port master plan amendment for the subject development is expected from the Port of Los Angeles in the fall of 2000, well before project construction is scheduled to commence in April 2002.

The subject consistency determination was initially heard by the Commission at its June 14, 2000, hearing in Santa Barbara. The hearing was continued to the July 13 Commission meeting in order to provide the Commission additional information on the need for the proposed Pier 300 landfill and potential water quality impacts on Cabrillo Beach due to the proposed expansion of the Cabrillo Shallow Water Habitat Area. Full review of these two project elements by the Commission's technical services staff will not occur until after completion of this staff recommendation due to scheduling constraints. An addendum to this report will be prepared and delivered to the Commission at the July 13 meeting.

B. Phased Review. As of June 22, 2000, the Corps of Engineers has yet to make final design decisions on two project elements: (1) the location for disposal of approximately 600,000 cu.yds. of contaminated project sediments (to be placed at proposed landfills at Pier 300 and/or the Southwest Slip); and (2) the disposal location for approximately 2.4 million cu.yds. of clean (but structurally unsuitable for landfills) dredged sediments (to be placed at the LA-2 and/or LA-3 ocean disposal sites). In addition, final U.S. EPA review of sediment testing results is not completed for an area of contaminated sediments, and the Contaminated Sediments Task Force (CSTF) is still reviewing proposed plans for disposal of all project contaminated sediments at the Pier 300 and/or Southwest Slip landfill sites. As a result, the Corps of Engineers agreed to a phased review of the proposed project pursuant to 15 C.F.R. Section 930.37(c), and will submit to the Commission at a later date (well in advance of the start of project construction in the spring of 2002) a consistency determination that will address the final design decisions on issues (1) and (2), above, and incorporate final EPA review of sediment test results and the review by the CSTF of the proposed disposal of contaminated sediments. The second consistency determination will also incorporate the results of modeling by the Corps of potential circulation changes, and the inferred water quality effects, in harbor waters between Cabrillo Beach and the Main Channel from four shallow water habitat development scenarios (no shallow water habitat;

the shallow water habitat as it presently exists; the existing shallow water habitat with the proposed expansion; and the existing shallow water habitat with the proposed expansion and with a "hole in the breakwater", that is, a connection between the waters offshore of Cabrillo Beach and the ocean through the San Pedro Breakwater). The Corps seeks this initial Commission concurrence in order to secure federal funding for the project. The Commission's determination (as outlined, below) that the proposed project is consistent with the California Coastal Management Program (CCMP) is predicated on the Corps' agreement to submit a subsequent consistency determination for final project design, and on the Commission's ability to determine at that time whether the project remains consistent with the resource protection policies of the CCMP.

C. Standard of Review. The proposed harbor deepening project is examined for consistency with the policies of Chapter 8 of the Coastal Act because most of the development would occur within the jurisdictional boundary of the Port of Los Angeles; in addition, because the in-port developments are non-appealable there is no trigger for Chapter 3 policy review. However, the proposed disposal of dredged material at the LA-2 and/or LA-3 ocean disposal sites is examined for consistency with the Chapter 3 policies of the Coastal Act because the disposal sites are outside the Port boundary.

II. Project Description.

The proposed project is the first of two consistency determinations to be submitted by the Corps of Engineers for a phased Commission review of the Port of Los Angeles harbor deepening project, a further refinement of the previously-concurred with Deep Draft Navigation Improvement Project(CD-57-92 and CD-2-97). The Corps, in cooperation with the Port of Los Angeles, proposes to deepen the inner harbor channels within the Port from the existing –45 feet to –53 feet mean lower low water (MLLW) in order to accommodate the largest vessels in the international container ship fleet. The project would consist of dredging approximately 6.6 million cu.yds. of sediment over 670 acres of harbor bottom from the Los Angeles Main Channel, West Basin, East Channel, East Basin, and Cerritos Channel. While most of the sediment is clean and suitable for unconfined aquatic disposal, approximately 600,000 cu.yds. of contaminated sediment will be dredged from the West Basin and Reservation Point areas and placed within proposed landfills at the Southwest Slip and/or Pier 300 **(Exhibits 1-4)**.

Disposal of dredged material would occur at several locations. Approximately one million cu.yds. would be used to expand the existing Cabrillo Shallow Water Habitat (CSWH) site by approximately 54 acres. The dredged material would be supported by a new submerged dike on the north side, by the existing CSWH dike on the east side, and would slope down from its submerged elevation of –15 feet MLLW to the -20 foot MLLW contour on the west and south sides. The clean dredged material placed here would cap existing contaminated sediments present on the harbor bottom at this location, and the habitat value generated by this project element would add credits to the Port's existing Outer Harbor Mitigation Bank.

Approximately one and one-half million cu.yds. would be used to create a 40-acre landfill expansion at Pier 300. Dredged material would be placed behind a rock dike to a finished

elevation of +15 feet MLLW, and the landfill would be used to construct an additional container terminal and berth. Approximately 1.7 million cu.yds. would be used to create a 35-acre landfill in the Southwest Slip. Dredged material would be placed behind a rock dike to a finished elevation of +15 feet MLLW. The finished landfill would cap contaminated sediments currently on the harbor bottom at this location and would be used as backland for container terminal storage (two bridges would be constructed across the remnant Southwest Slip channel to connect the new landfill with an existing container terminal). Both locations could be used as a confined aquatic disposal facility for approximately 600,000 cu.yds. of contaminated dredge material to be removed from the West Basin and Reservation Point.

Lastly, approximately 2.4 million cu.yds. of clean, fine-grained dredged material unsuitable for structural fill or beach replenishment would be disposed at LA-3 and/or LA-2 ocean disposal sites.

This first consistency determination includes all project elements except for the disposal of contaminated sediments at the Southwest Slip and/or Pier 300, and the disposal of clean sediments at LA-2 and/or LA-3; these elements will be the subject of a second consistency determination to be submitted by the Corps of Engineers at a later date. In addition, the second consistency determination will also incorporate the results of modeling by the Corps of potential circulation changes, and the inferred water quality effects, in harbor waters between Cabrillo Beach and the Main Channel from four shallow water habitat development scenarios (no shallow water habitat; the shallow water habitat as it presently exists; the existing shallow water habitat with the proposed expansion; and the existing shallow water habitat with the proposed expansion and with a "hole in the breakwater", that is, a connection between the waters offshore of Cabrillo Beach and the ocean through the San Pedro Breakwater).

III. Status of Local Coastal Program.

The standard of review for federal consistency determinations is the policies of Chapter 3 and Chapter 8 of the Coastal Act, and not the Local Coastal Program (LCP) of Port Master Plan (PMP) of the affected area. If the LCP or PMP has been certified by the Commission and incorporated into the CCMP, it can provide guidance in applying Chapter 3 and Chapter 8 policies in light of local circumstances. If the LCP or PMP has not been incorporated into the CCMP, it cannot be used to guide the Commission's decision, but it can be used as background information. The Port of Los Angeles PMP has been certified by the Commission and incorporated into the CCMP.

IV. Federal Agency's Consistency Determination.

The Corps of Engineers has determined the project consistent to the maximum extent practicable with the California Coastal Management Program.

V. Commission Decision.

On July 13, 2000, the Commission adopted the following resolution:

Agreement

*The Commission hereby **agrees** with consistency determination CD-50-00 by the U.S. Army Corps of Engineers, on the grounds that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).*

VI. Staff Recommendation. The staff recommends that the Commission adopt the following motion in support of its action:

MOTION: *I move that the Commission **adopt** the following findings in support of its agreement with the Corps' consistency determination.*

STAFF RECOMMENDATION:

*Staff recommends a **YES** vote on the motion. A majority vote by the prevailing Commissioners listed on page 2 of this report will result in the adoption of the following findings:*

VII. Findings and Declarations.

The Commission finds and declares as follows:

A. Dredging and Filling. Section 30705 of the Coastal Act provides the following in relevant part:

(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.

(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.

. . .

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

Section 30233 of the Coastal Act provides the following in relevant part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

. . .

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

The proposed dredging and disposal activity within the Port of Los Angeles needs to be examined for consistency with Section 30705 of the Coastal Act, and the proposed disposal at LA-2 and/or LA-3 needs to be examined for consistency with Section 30233 of the Coastal Act. Under Section 30705, water areas may be dredged and filled when consistent with a port master plan and when the proposed project is an allowable use. Under Section 30233(a), dredging and filling of open waters is limited to those cases where the proposed project is an allowable use, where there is no feasible less environmentally damaging alternative, and where mitigation measures have been provided to minimize environmental impacts.

The dredging to deepen inner harbor channels, create new landfills at Pier 300 and the Southwest Slip, place contaminated sediments at one or both of the two proposed landfills, and expand the Cabrillo Shallow Water Habitat area in the Port of Los Angeles (POLA) are allowable uses under Section 30705(a)(1, 2, and 6). POLA port master plan amendments have been certified by the Commission over the past seven years in order to provide for the ongoing expansion of the port. A port master plan amendment for the proposed channel deepening, landfills, and terminal development is scheduled to be submitted by POLA to the Commission in the fall of 2000. The Commission typically reviews a Corps consistency determination for POLA navigation improvements concurrently with a port master plan amendment to incorporate into the master plan the new upland areas created, new channel depths, and new land and water uses. In this instance, however, the consistency determination precedes the plan amendment by several months due to the Corps' need to incorporate the project this summer into the 2000 Water Resources Development Act. The fact that project construction will not commence until April 2002 means that the Corps project would in theory be consistent by then with the port master plan. However, should the Commission **not** certify the upcoming plan amendment, then the Corps project could not go forward as the POLA would be unable to issue coastal development permits for any of the project elements due to inconsistency with the port master plan. In addition, the Commission will also be reviewing later this year a second consistency determination from the Corps for the final sediment disposal elements for the project. Commission concurrence with those elements will be required before any project construction could commence.

The disposal of dredged materials from the expansion of port facilities at the LA-2 and/or LA-3 ocean disposal sites is an allowable use under Section 30233(a)(1). Both proposed disposal locations are EPA-approved disposal sites, and disposal here is the least damaging alternative for disposal of the project's clean dredged materials, which are not suitable for beach replenishment due to grain size incompatibility. The project DEIS examined numerous disposal alternatives, but given the structural unsuitability of the subject 2.4 million cu.yds., ocean disposal was determined to be the least environmentally damaging alternative. However, these sediments may possibly be used to cap contaminated sediments at the Palos Verdes shelf site if it becomes feasible to use fine-grained materials at that site. The final decision on the volume of clean dredged materials going to LA-2 and/or LA-3 will be incorporated into the second consistency determination for this project. At this time, however, the Commission finds that the material is clean and suitable for ocean disposal.

As discussed below, the project will have no significant impacts on coastal resources and no additional mitigation measures (beyond the measures already incorporated into the project by the Corps of Engineers) are necessary. Therefore, the Commission finds that the proposed project is consistent with the dredge and fill policies of the California Coastal Management Program (Sections 30705 and 30233 of the Coastal Act). This finding is based on the information submitted to date, which does not contain final project details regarding the volumes of contaminated sediments placed at the proposed landfills at Pier 300 and/or the Southwest Slip, and the volumes of clean dredged materials to be placed at the LA-2 and/or LA-3 ocean disposal sites. These details will follow and be the subject of subsequent federal consistency review by the Commission.

B. Water Quality and Marine Resources. Section 30705 of the Coastal Act provides in relevant 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 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.*
>
> *(c) The fill is constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters.*
>
> *(d) The fill is consistent with navigational safety.*

Section 30708 of the Coastal Act provides that:

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

(b) Minimize potential traffic conflicts between vessels.

(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.

(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.

(e) Encourage rail service to port areas and multicompany use of facilities.

The project DEIS documents in great detail the existing water quality conditions and marine resources in the Port of Los Angeles and examines potential project impacts and associated mitigation measures. The DEIS states that the proposed project will include the following water quality protection measures:

A Section 401 (of the Clean Water Act) 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 Pier 300 dikes meets the RWQCB requirements for settleable solids and toxic pollutants.

Contaminated sediments will be placed and confined in the in-harbor disposal sites in such a manner that the contaminants cannot enter harbor waters after the fill is complete.

Monitoring to ensure that runoff from upland disposal sites meets RWQCB requirements for toxic contaminants and suspended sediments.

Water quality monitoring will be used, to the extent feasible, to design the Pier 300 fill so that water quality is minimally affected in the remaining shallow water habitat and the Seaplane Anchorage. Any reduction in water quality would require mitigation as described in section 3.4, Biota and Habitats.

Oil and sewer pipelines to be removed will be thoroughly cleaned prior to removal.

Water quality in the project area would be affected during dredge and fill operations, primarily 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. Extensive water quality monitoring during Stage 1 and 2 of the Pier 400 Deep Draft Navigation Improvement Project 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 included in the proposed project. While contaminants could be released into the water column during the proposed dredge and disposal activities that involve contaminated sediments in the West Basin and near Reservation Point, previous water quality monitoring efforts associated with both project and maintenance dredging in the Port of Los Angeles documented that substantial resuspension of contaminated sediments does not occur. The Corps reports in the DEIS that:

> *Because little contamination is present in the sediments to be dredged and because resuspension of sediments is expected to be low and in a small area, dredging in the inner harbor would not adversely affect water quality in terms of contaminants.*
>
> *Removal of the contaminated sediments through dredging would improve the sediment quality in the harbor, a beneficial impact.*
>
> . . .
>
> *Removal of the top layer of sediment which, in some areas, contains accumulated contaminants and sediments deposited over time from numerous sources, including terrestrial inputs such as stormwater runoff and aerial deposition, would decrease the potential for bioaccumulation of contaminants in aquatic organisms. Placing the contaminated sediments in a landfill would, thus, provide an overall benefit to organisms in the harbor by removing a source of pollutants.*

Capping a portion of the toxic hot spot adjacent to the Cabrillo Shallow Water Habitat area with clean sand and capping contaminated sediments in the Southwest Slip with a new landfill will prevent resuspension of the contaminated sediments and release of contaminants into the water column at both locations. These project elements are considered long-term benefits and will improve water quality in the Port of Los Angeles.

Marine biological resources in the project area have been documented in a number of environmental documents prepared for the Deep Draft Navigation Improvement Project and subsequent modifications in the Port of Los Angeles, and are incorporated by reference in the subject project's DEIS. Habitats to be dredged are mainly deep, soft bottom areas and fill sites are deep and shallow soft bottom areas. Eelgrass has become established in shallow waters off Cabrillo Beach (54 acres), the Pier 300 shallow water area (18 acres), and the Seaplane Lagoon (9 acres)**(Exhibit 5)**. Sparse and low-quality pickleweed is found at isolated patches within the rip rap uplands of the Southwest Slip. Port waters serve as transient or permanent habitat for over 130 species of juvenile or adult fish. Species richness and diversity increase along a gradient from the Inner to the Outer Harbor.

Dredging would eliminate benthic organisms in and on the 670 acres of soft bottom habitat to be deepened. Newly exposed sediments would recolonize within five years based on past dredging operations in the Port, and therefore this adverse impact is not considered significant. Fish in the water column would be temporarily disturbed by project activities as a result of turbidity, noise, and vibration, and most would leave the immediate area of operations. Effects on fish

populations are expected to be similar to those of previous harbor deepening and landfill projects and generate no significant, adverse impacts.

The Pier 300 landfill expansion would cause a loss of 40 acres of shallow water, soft bottom habitat that serves as a nursery for a number of fish species, contains eelgrass, and is a foraging area for the California least tern (see below). Mitigation will occur through the use of existing port mitigation credits as approved by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Game. Loss of 0.4 acres of dense and 7.7 acres of sparse eelgrass will be replaced at a 1.2:1 ratio in the Pier 300 shallow water habitat area, Seaplane Lagoon, or Cabrillo Beach. The Southwest Slip landfill would cause a loss of 35 acres of soft bottom habitat and mitigation will occur similar to that for the Pier 300 landfill. The Port will salvage and transplant the sparse and low-quality 4,500 square feet of pickleweed here to either the Cabrillo Salt Marsh in the harbor or to an offsite location, as agreed to by the USFWS, NMFS, and CDFG. Expanding the Cabrillo Shallow Water Habitat area would convert 54 acres of deep soft bottom habitat to shallow soft bottom habitat. Colonization of the shallow fill is expected to result in a higher density of organisms as reflected in the recent surveys of the existing Cabrillo Shallow Water Habitat and nearby deep water habitat. Capping a part of the state-listed toxic hot spot near the Cabrillo Pier is a beneficial effect from the fill operation here. **Exhibit 9** provides a list of the mitigation measures to be used to limit adverse project impacts on marine resources.

In a June 8, 2000, letter to the Commission **(Exhibit 14)**, the environmental group Heal the Bay raised a concern regarding potential water quality impacts at Cabrillo Beach from the proposed expansion of the Cabrillo Shallow Water Habitat Area:

> *The Cabrillo Beach is a popular swimming area that routinely has the worst microbiological water quality in LA County and consistently receives an "F" on Heal the Bay's Beach Report Card during both dry and wet weather. In fact, State Health Department water contact standards are exceeded over 60% of the time during dry weather. This beach is listed on the SWRCB's 303(d) list as impaired for recreational water contact due to high fecal bacteria densities measured at the shoreline of this beach. The proposed expansion of the Cabrillo SWH will likely further reduce water circulation at this beach, and could cause even higher bacteria densities. Higher bacteria densities indicate higher health risk associated with swimming at the beach.*

Heal the Bay also distributed a graph, "Cabrillo Beach - Exceedances Enterococcus," at the June 14 Commission meeting, which is attached to this report as **Exhibit 15**.

The Port of Los Angeles responded to this concern (and other Heal the Bay comments on the project) in a June 12, 2000, letter to the Commission **(Exhibit 16)** which states in part that:

> *Extensive sampling at the inner Cabrillo Beach are indicates that high levels of bacteria along the shoreline at this location, which is over one-quarter of a mile from the new Shallow Water Habitat, are likely caused by birds which roost on the beach.*

> *Water quality indicators (including dissolved oxygen, transparency, and biological oxygen demand (BOD)) just off shore of Cabrillo Beach have, if anything, improved with construction of the Cabrillo Shallow Water Habitat.*
>
> *Water quality and hydrodynamic specialists at the Corps' Waterways Experiment Station indicate that construction of the new shallow water will have no concentrating effect on the bacteria levels at the Inner Cabrillo Beach and may result in more water movement in the area.*

In a separate response to Heal the Bay's comment letter to the Port of Los Angeles **(Exhibit 17)**, the Port states in part that:

> *The Inner Cabrillo Beach has had chronic high levels of bacteria, and unlike at least some beaches, these high levels occur during low runoff periods. Extensive sampling of the beach and infrastructure (storm drains and sewer lines) surrounding the beach have shown birds, which roost on the beach in large numbers, as the likely source of the high bacteria counts on the beach. While a strong current running along the beach might act to disperse bacteria, to our knowledge, there is no information that substantiates Heal the Bay's claim that "Poor water circulation in the beach area contributes to the high bacteria densities measures at this beach" or that construction of the existing Cabrillo Shallow Water Habitat has "been exacerbated by the Cabrillo SWH the Port constructed in the early 1990s."*
>
> . . .
>
> *Recent discussions with Dave Marke and Berry Bunch at the Waterways Experiment Station in Vicksburg indicated that expansion of the Cabrillo Shallow Water Habitat would not have any effect on the circulation in the shallow water adjacent to the Inner Cabrillo Beach. However, a reduction in water volume in this area of the harbor may increase tidal velocities, which could increase water exchange in the area. Expansion of the eelgrass in the area of Cabrillo Beach in recent years indicates that the water quality in the area is good, although the eelgrass itself may tend to reduce circulation between the eelgrass bed and the beach.*

To further address these concerns regarding circulation and water quality in the project area between Cabrillo Beach and the Main Channel, the Corps stated that the second consistency determination for this project will now incorporate the results of modeling by the Corps of potential circulation changes, and the inferred water quality effects, in harbor waters between Cabrillo Beach and the Main Channel from four shallow water habitat development scenarios (no shallow water habitat; the shallow water habitat as it presently exists; the existing shallow water habitat with the proposed expansion; and the existing shallow water habitat with the proposed expansion and with a "hole in the breakwater", that is, a connection between the waters offshore of Cabrillo Beach and the ocean through the San Pedro Breakwater.

The Corps also has committed (as an additional element of the subject consistency determination) to undertake post-construction monitoring of circulation and water quality in the project area (between Cabrillo Beach and the Main Channel), and to submit a consistency determination for mitigation/remediation work if the monitoring results indicate unexpected adverse effects on circulation or water quality in the project area caused by the expansion of the shallow water habitat. Water quality in the project area will be evaluated by measuring dissolved oxygen, turbidity/transparency, and temperature. The Corps will include the circulation/water quality monitoring plan in the second consistency determination for Commission review and approval prior to finalizing and implementing the plan, and will submit the monitoring results as they become available to the Commission staff.

In conclusion, the Commission finds that the proposed harbor deepening project will generate only minor, short-term effects on water quality and marine resources in the Port of Los Angeles. Dredging and disposal activities will not result in any significant, adverse effects on the coastal zone due to the nature of the dredged materials, the location of the disposal sites, and the environmental commitments incorporated into the project. Therefore, the Commission finds that the proposed project is consistent with the water quality and marine habitat protection policies of the CCMP (Sections 30705, 30706, and 30708 of the Coastal Act). However, because of the phased review process for this project agreed to by the Corps of Engineers, the Commission will review the final project design for disposal of contaminated sediments at in-harbor sites, the aforementioned circulation/water quality modeling results, and the post-construction circulation/ water quality monitoring plan at a later date in a second consistency determination in order to ensure that disposal of contaminated sediments and construction of the shallow water habitat expansion will not adversely affect circulation, water quality, and marine resources in the harbor, and to ensure that the project remains consistent with the water quality and marine habitat protection policies of the CCMP.

C. Environmentally Sensitive Habitat. Sections 30706 and 30708 of the Coastal Act provide in relevant part that:

> 30706. *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. . . .*
>
> 30708. *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 could potentially affect marine habitat used by two federally endangered species, the California least tern and the California brown pelican. The Draft EIS for the project describes the habitat needs of, potential project impacts on, and associated mitigation measures for these species. While the least tern has nested on Pier 300 since the mid-1970s, since 1997 the only successful nesting has taken place on the newly-constructed Pier 400; in 1998 the Pier 300 site was decommissioned. Least tern nesting in the Port has been monitored since 1974 and the data indicate that harbor dredging projects that include measures to protect terns have not adversely affected tern nesting **(Exhibit 6)**. For the 1999 nesting season, one 15-acre site in the southeast corner of Pier 400 was designated as the tern nesting site and the entire southern portion of Pier 400 was identified as a tern management area where no construction would occur. Monitoring in 1999 showed that a majority of the terns nested in the management area (280 nests), at one location in the pier surcharge area (4 nests), and at two locations on the transportation corridor (83 nests). Least terns forage primarily over shallow water (less than 20 feet deep) in the outer harbor near Pier 300, Cabrillo Beach and salt marsh, the West Basin in the Port of Long Beach, and the Cabrillo Shallow Water Habitat Area. However, in recent years the terns have also foraged in deeper harbor waters south and east of the new Pier 400 landfill.

The California brown pelican resides in the harbor year round but its abundance is greatest during the period between July and November. The pelican prefers to roost on the harbor breakwater dikes and forages over open harbor waters for several species of fish.

The Corps states that the proposed dredging would have no significant adverse effects on endangered species. The inner harbor channels to be dredged are not considered significant foraging areas for least terns or brown pelicans, and, therefore, dredging and related turbidity in these areas are not expected to affect these species.

The proposed Pier 300 landfill would result in a permanent loss of shallow water habitat that is used by least terns as foraging habitat. The fill would also alter circulation in the remaining shallow water habitat in this area which could then cause a degradation of the habitat value that remains. Loss and degradation of shallow water habitat would be mitigated through use of existing port mitigation credits and the creation of additional shallow water habitat in the Outer Harbor. No turbidity will be allowed in the Pier 300 shallow water areas during the tern nesting season between April and September. With these mitigation measures, the USFWS determined that the proposed landfill would not adversely affect either the California least tern or California brown pelican.

The 35-acre Southwest Slip landfill would cause a permanent loss of soft bottom fish and bird habitat (some of currently contaminated) and would be mitigated through use of existing

mitigation credits and/or the creation of additional credits in the Outer Harbor. However, this area is not used by least terns or brown pelicans and the landfill would not adversely affect either of these species.

Proposed expansion of the Cabrillo Shallow Water Habitat Area by 54 acres would convert deep water habitat to shallow water habitat at an elevation of approximately -15 feet MLLW. The expansion would also cap part of the State of California-listed toxic hot spot located near the Cabrillo Pier; this is considered a beneficial impact for protecting this foraging area used by terns and pelicans. Placement of fill material at this location will be timed to avoid the least tern nesting season and/or will be designed to assure that turbidity does not enter the existing shallow water area in order to avoid impacts to least tern foraging activity. Formation of additional shallow water habitat will benefit the least tern once its prey species become established in the new area. The Corps reports that based on surveys in August 1999, fish abundance and species composition were similar during the daytime at the Pier 300 and Cabrillo Shallow Water Habitat areas, five years after the Cabrillo habitat was created. Least tern foraging surveys in 1996, however, showed less use of the Cabrillo area relative to the Pier 300 area, which could be related to tern behavior rather than abundance of fish at the Cabrillo Habitat area.

The Port of Los Angeles develops mitigation plans for impacts to fish and wildlife species in coordination with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game through agreed-upon mitigation policies. **Exhibit 7** shows the estimated number of current mitigation credits available for use in the proposed project. **Exhibit 8** illustrates how those credits would be used in the proposed project. **Exhibit 9** illustrates the marine resources and endangered species mitigation measures to be used in the proposed project. **Exhibit 10** provides information on the mitigation monitoring program for the project. In addition, in its May 15, 2000, letter to the Corps of Engineers **(Exhibit 11)**, the U.S. Fish and Wildlife Service commented on the proposed project as follows:

> *We had produced a Biological Opinion (BO), for the Deep Draft Navigation Improvements Project in 1992 (1-6-92-F-25, September 24, 1992), addressing potential impacts to the California least tern (Sterna antillarum browni) and the California brown pelican (Pelecanus occidentalis californicus). Phases 1 and 2 of that project are nearly completed. The least tern, in particular, has been very well served by the actions of the local sponsor, Port of Los Angeles, who has acted in compliance with the nest management agreement, nest site monitoring, essential foraging area mitigation and protection, all requirements of the 1992 EIS and BO.*
>
> *We completed a Planning Aid Report in August of 1999, and a draft Fish and Wildlife Coordination Act Report (FWCAR) in January 2000, for the subject supplemental project and expect to complete a final FWCAR very soon. As your letter confirms, we have been in discussions, that is, informal consultation, with the Corps of Engineers and the local sponsor, the Port of Los Angeles since last year. By mutual design, the dSEIS includes agreed upon protection measures for the California least tern and acts as a Biological Assessment, as well.*

> *The project description components that would assure that the listed species, particularly the least tern, would not be adversely affected are listed on pages 3.4-20 through 23 of the dSEIS. In general, those elements include: protection and management of a designated nesting area pursuant to written agreement, through construction timing and monitoring protection of specifically designated essential shallow water foraging areas from degradation during construction, and offsetting, acre-for-acre and near the nesting site, of any loss of shallow water foraging area in advance of loss.*
>
> *No other listed species may be affected by the proposed channel deepening and landfill construction project. Therefore, provided the project is implemented as described in the dSEIS, we concur that no listed species would be adversely affected by the project and Formal Consultation, pursuant to section 7 of the Endangered Species Act is not warranted. . . .*

The National Marine Fisheries Service stated in its May 5, 2000, letter to the Port of Los Angeles **(Exhibit 12)** that:

> *The proposed project is located in an area identified as Essential Fish Habitat (EFH) for fish species federally managed under the Pacific Groundfish Fishery Management Plan and Coastal Pelagic Fishery Management Plan. Based on our review of the information contained in the DSEIS/DSEIR, NMFS believes that the proposed project, including implementation of the described mitigation, would not result in an adverse impact on EFH and other NMFS-trust fishery resources.*

The California Department of Fish and Game stated in its May 16, 2000, letter to the Port of Los Angeles **(Exhibit 13)** that:

> *The DSEIS/DSEIR is adequate in its portrayal of impacts to fish and wildlife resources and habitats associated with the preferred project and alternatives. Therefore, the Department does not object to the adoption of the recommended plan alternative provided the described mitigation measures are implemented.*

In a June 8, 2000, letter to the Commission **(Exhibit 14)**, the environmental group Heal the Bay raised a concern "about the use of dredged materials to fill in more of San Pedro Bay" and the need for the proposed Pier 300 landfill:

> *The expansion of Pier 300 will result in the permanent destruction of an estimated 20% of the preferred foraging habitat for the California least tern. The expansion of the Cabrillo Shallow Water Habitat (SWH) may not mitigate this loss.*
>
> . . .
>
> *To date, it does not appear the Port has considered project alternatives such as upland disposal of dredged materials; beneficial reuse of the dredged materials for products such as concrete; and a smaller-scale project which would generate less dredge material.*

The Port of Los Angeles responded to Heal the Bay's concerns about the need for and alternatives to the project landfills in the Port's June 12, 2000, letter to the Commission **(Exhibit 16)** and in the Port's separate response to Heal the Bay's May 22, 2000, letter **(Exhibit 17)**. The information contained in these response letters and in the project DSEIS/SEIR adequately documents: (1) the range of project alternatives considered; (2) the need for the Pier 300 landfill to support current and future cargo handling requirements at this container terminal; and (3) the conclusion that the proposed landfill will have no adverse effect on the foraging activity and population of California least terns.

To further address the concerns regarding potential adverse effects on least terns, the Corps has committed (as an additional element of the subject consistency determination) to undertake post-construction monitoring of least tern foraging activity in the project area, and to submit a consistency determination for mitigation/remediation work if the monitoring results indicate unexpected adverse effects on least terns caused by construction of the Pier 300 landfill expansion. The Corps will include the monitoring plan in the second consistency determination for Commission review and approval prior to finalizing and implementing the plan, and will submit the monitoring results as they become available to the Commission staff.

In conclusion, with the mitigation measures outlined in the consistency determination and project DSEIS/SEIR, with the considerations discussed in previous sections (i.e., subsequent review of final project design, in particular, dredge material disposal locations and design), and with the aforementioned additional environmental commitments made by the Corps, the Commission finds that the proposed dredging and filling will not significantly affect the endangered California least tern or California brown pelican and is consistent with the fish and wildlife resource and habitat protection policies of the CCMP (Sections 30706 and 30708 of the Coastal Act).

D. Sand Supply. Sections 30706 and 30708 of the Coastal Act provide in relevant part that:

> 30706. *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.*

> 30708. *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. . . .*

Section 30233(b) of the Coastal Act provides that:

> *Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.*

The Port of Los Angeles proposes to dispose up to 2.4 million cu.yds. of dredged material at LA-2 and/or LA-3, EPA-approved ocean dredge material disposal sites, the former located seven miles offshore from the Port of Los Angeles and the latter five miles offshore from Newport Beach. Dredged material placed at these sites would not be available for beach replenishment after disposal. Analysis indicates that the dredged material is not suitable for beach placement due to the predominately small grain size of the material. Since the material is predominately silt and clay, wave energy would move this relatively fine material off the beaches and out of the littoral system if the material were placed on the beach or in the nearshore zone. Therefore, the Commission finds that the 2.4 million cu.yds. of clean but structurally unsuitable dredged materials are also not suitable for beach replenishment, and that the proposed disposal of the 2.4 million cu.yds. of material at LA-2 and/or LA-3 is consistent with the sand supply policies of the California Coastal Management Program (Sections 30706, 30708, and 30233 of the Coastal Act). The volumes of clean dredged material to be placed at one or both of the ocean disposal sites will be finalized by the Corps of Engineers at a later date and will be a component of the previously-mentioned second consistency submittal for this project under the phased review process agreed to by the Corps of Engineers.

E. Recreation. The Coastal Act provides in the following sections that:

> 30213. *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. . . .*
>
> 30220. *Coastal areas suited for water-oriented recreational activities that cannot be readily provided at inland water areas shall be protected for such uses.*
>
> 30224. *Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching*

facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

30234. *Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

30234.5. *The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.*

30706. *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. . . .

30708**.** *All port-related developments shall be located, designed, and constructed so as to:*

(a) Minimize substantial adverse environmental impacts.

. . .

(c) 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 Commission must examine project consistency with recreational resources at the LA-2 and LA-3 ocean disposal sites and those located in the Port of Los Angeles. Regarding the former two sites, in the second consistency determination for this phased-review project that will be submitted by the Corps in the fall of 2000, the final volumes of clean dredged material to be placed at the LA-2 and LA-3 sites will be provided to the Commission. In this subject consistency determination, the Commission must determine whether the general use of the ocean disposal sites is consistent with the CCMP. In its 1997 review of the redesignation of the LA-2 ocean disposal site, the Commission examined the previous twenty years of disposal activity at

LA-2 and adopted the following findings regarding commercial and recreational fishing at and near LA-2:

> *The Commission's interest in the effect of the use of the disposal site on benthic resources and on turbidity at and near LA-2 is generated by concern over the effect of the site on economically, recreationally, and biologically important fish species. It appears from the data presented so far that the designation of LA-2 has not affected fishery resources of the area. To provide further evidence of this conclusion, EPA conducted an analysis of recreational and commercial fish catch to determine if use of LA-2 has caused a noticeable reduction of fish catches as compared to trends of the region. Based on these studies, EPA concludes that dredged material disposal at LA-2 has not caused any significant effect on recreational and commercial fish catches.*

With the Commission's 1997 concurrence in the redesignation of the LA-2 ocean disposal site, the proposed disposal of clean dredged material at LA-2 will not generate significant adverse effects on commercial or recreational fishing. The disposal site is located seven miles from shore and disposal activities will not affect public access to or recreational use of the offshore area. Therefore, the Commission finds that proposed disposal at LA-2 is consistent with the commercial and recreational fishing and boating policies of the California Coastal Management Program (Sections 30234, 30234.5, 30220, and 30224 of the Coastal Act).

The LA-3 site is located in an area devoid of submerged relief and at a depth beyond most commercial bottom fishing. While a setline dory fishery exists in the general area of LA-3, dredged material disposal has not adversely affected this fishery in the past, and there is no indication that continued disposal at LA-3 will generate adverse effects on this fishery. Likewise, there are no significant recreational fisheries in the area that could be affected by the project. The site is outside the designated vessel traffic approach lanes for the Ports of Los Angeles and Long Beach, and no significant effects on commercial shipping are generated by use of LA-3. In addition, use of LA-3 will not affect recreational boating in the area. Therefore, the Commission finds that proposed disposal at LA-3 is consistent with the commercial and recreational fishing and boating policies of the California Coastal Management Program (Sections 30234, 30234.5, 30220, and 30224 of the Coastal Act).

The project activities within the Port of Los Angeles must be consistent with the recreational policies in Sections 30706 and 30708 of the Coastal Act. The proposed dredging and filling that would occur in the inner harbor channels, Pier 300, the Southwest Slip, and adjacent to the Cabrillo Shallow Water Habitat would not generate adverse effects on recreational activity in the Port. No existing public access or recreation areas will be eliminated or created by the proposed project. Dredging will not affect the existing commercial recreational facilities at Ports O' Call Village on the west side of the main channel. 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 may occur due to project activities, but these are not considered significant impacts. The proposed Pier 300 and Southwest Slip landfill sites are not recreation areas due to the existing cargo terminal and industrial activities that occur here; proposed landfills will not affect public access or recreation.

Construction of the expansion of the Cabrillo Shallow Water Habitat site could generate temporary effects on public recreation in adjacent waters. The DEIS states that:

> *Constructing the submerged dike at this site and disposing of dredged material would cause turbidity for about 1.5 months . . . To avoid conflicts with construction equipment and impacts to their operations from turbidity, and prior to construction of the Shallow Water Habitat, both bait barges would be located temporarily to an appropriate site within the Outer Los Angeles Harbor. After construction of the Shallow Water Habitat, both barges may need to be relocated to a more permanent and appropriate location in the Outer Los Angeles Harbor. The bait barges would continue to be accessible to fishing boats during and after construction and no significant recreational impacts would result from use of this site.*
>
> *Turbidity generated by construction also could adversely affect fishing opportunities at the nearby pier since the number of fish may decline. Since the possible impact to fishing would be short term, fishing would not be precluded at the pier, and opportunities to fish from shore are available elsewhere in the project area (e.g., the Port of Long Beach and the outer beach), this impact is not considered significant. Fish would be expected to return soon after construction ceased (i.e., within days or weeks). Long-term fishing opportunities may increase in the Port of Los Angeles due to the provision of more shallow water habitat, which attracts many different fish species . . . .*
>
> *Construction activities could also temporarily disrupt recreational water sports in the vicinity of the Cabrillo Shallow Water Habitat Expansion Site. Disruption would be short term and insignificant.*

The Commission agrees 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. The Commission also finds that the proposed expansion of the Cabrillo Shallow Water Habitat Area, with the environmental commitments made by the Corps of Engineers regarding circulation/ water quality modeling, monitoring, and mitigation (as discussed in Section VIIB of this report), will not cause a degradation in water quality or recreational opportunities at Cabrillo Beach. Therefore, the Commission finds that with the same considerations discussed in previous sections (i.e., subsequent review of final project design, in particular, dredge material disposal locations and design), proposed dredge and fill activities in the Port of Los Angeles are consistent with the commercial and recreational fishing and boating policies of the California Coastal Management Program (Sections 30706 and 30708 of the Coastal Act).

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

Tu 20a

STAFF RECOMMENDATION
ON CONSISTENCY DETERMINATION

Consistency Determination No.	CD-006-02
Staff:	LJS-SF
File Date:	3/07/2002
60th Day:	5/06/2002
75th Day:	5/21/2002
Commission Meeting:	5/7/2002

FEDERAL AGENCY: **U.S. Army Corps of Engineers**

PROJECT LOCATION: Port of Los Angeles **(Exhibits 1 and 2)**.

PROJECT DESCRIPTION: Phase 2 channel deepening and landfill construction in the Port of Los Angeles (Phase 1 concurrence (CD-050-00) occurred on July 13, 2000). Phase 2 includes the following changes to the previously-concurred-with project: (1) dispose 4.7 million cubic yards of clean dredged material at the Pier 400 submerged storage site; (2) increase the size of the Southwest Slip fill site from 35 to 43 acres and place all contaminated dredged materials within the west fill section; (3) improve the Los Angeles County flood control channel along the northern boundary of the Southwest Slip fill; (4) construct two acres of landfill at the south end of Berth 100; (5) dredge the East Basin in the Cerritos Channel to –53 feet MLLW; and (6) construct the Seaplane Lagoon eelgrass restoration area. Phase 2 also includes reports on sediment disposal decisions, circulation and water quality modeling, and post-project water quality and least tern monitoring plans.

SUBSTANTIVE FILE DOCUMENTS:

1. Port of Los Angeles Port Master Plan (as amended).

2. Consistency Determination CD-50-00 (Corps of Engineers: Port of Los Angeles Channel Deepening Project).

3. Port of Los Angeles Port Master Plan Amendment No. 21 (Channel Deepening and Fill Project, as submitted in March 2002).

4. Consistency Determinations CD-57-92 and CD-2-97 (Corps of Engineers: Port of Los Angeles Deep Draft Navigation Improvement Project, Stages 1 and 2, respectively).

5. Negative Determinations ND-103-97 and ND-25-99 (Corps of Engineers: Port of Los Angeles Deep Draft Navigation Improvement Stage 2 Project Modifications).

6. Consistency Determination CD-115-96 (U.S. Fish and Wildlife Service: Bolsa Chica Lowland Acquisition and Conceptual Restoration Plan).

7. Port of Long Beach Port Master Plan Amendment No. 11 (Dredged Material Storage Disposal Site, certified May 1998).

EXECUTIVE SUMMARY

The Corps of Engineers has submitted the second of two consistency determinations for its proposed Channel Deepening Project in the Port of Los Angeles. The project is designed to improve cargo handling efficiency at the Port of Los Angeles by deepening channels to provide safe access to inner harbor berths for the largest vessels in the international container ship fleet. The first consistency determination, CD-050-00, was concurred with by the Commission on July 13, 2000. As a part of that concurrence, the Corps agreed to a phased review of the overall project pursuant to 15 C.F.R. Section 930.37(c) and the submittal of a second consistency determination to address: (1) the final design decisions on the disposal of contaminated and clean sediments dredged from harbor channels and turning basins; (2) final review by U.S. EPA of sediment test results and review by the Los Angeles Region Contaminated Sediments Task Force of contaminated sediment disposal plans; (3) results of modeling of potential water circulation and water quality changes due to the existing and proposed expansion of the Cabrillo Shallow Water Habitat; and (4) post-project water quality monitoring and California least tern foraging monitoring plans.

In addition, this consistency determination includes the following proposed project modifications:

- Construction and use of the proposed Pier 400 Submerged Storage Site to allow in-bay disposal of approximately 4.7 million cubic yards (mcy) of clean dredged material; 2.9 mcy would come from channel dredging and 1.8 mcy would come from excess Pier 400 landfill surcharge material;

- Dredge the East Basin in the Cerritos Channel to the -53' MLLW project depth;

- Increase the size of the Southwest Slip fill site from 35 acres to approximately 43 acres measured at +15' MLLW and placing all contaminated materials within the West Fill section of this site;

- Design and construction of improvements to the Los Angeles County Flood Control Channel (LACFCC) located along the northern boundary of the Southwest Slip fill site West Fill;

- Construct two acres of landfill at the south end of Berth 100.

- Construct the Seaplane Lagoon Eelgrass Restoration Area north of the Pier 300 landfill.

The proposed modifications to dredging and disposal elements to deepen shipping channels and berths, and to create new landfills, sediment storage areas, and mitigation areas, are consistent with the dredge and fill policies of the California Coastal Management Program (CCMP; Section 30705 of the Coastal Act). Proposed dredged sediments were tested and, except for 650,000 cubic yards of contaminated sediments to be placed in the Southwest Slip west landfill, are physically and chemically suitable for unconfined aquatic disposal. Review of sediment test results by U.S. EPA, review of contaminated sediment management plans by the Los Angeles Region Contaminated Sediments Task Force, results of modeling of water circulation patterns adjacent to Cabrillo Beach, and a post-project water quality monitoring plan indicate and ensure that the proposed project modifications will not result in any significant adverse water quality effects. The environmental commitments and mitigation measures incorporated into the project make the project modifications consistent with the water quality and marine habitat protection policies of the CCMP (Sections 30705, 30706, and 30708 of the Coastal Act).

Proposed project modifications will not generate significant, adverse effects on environmentally sensitive marine habitat in San Pedro Bay. With the mitigation measures outlined in the consistency determination and Draft SEA, and with the commitments made by the Corps in the Phase 1 and 2 consistency determinations regarding California least tern foraging monitoring and mitigation and eelgrass mitigation and monitoring, the proposed dredging and filling is consistent with the fish and wildlife resource and habitat protection policies of the CCMP (Sections 30706 and 30708 of the Coastal Act).

Proposed project modifications will place 4.7 million cubic yards of clean dredged materials at the proposed Pier 400 submerged storage site. Because of the predominately small grain size of this material and its unsuitability for beach replenishment, this modification is consistent with the sand supply policies of the CCMP (Sections 30706 and 30708 of the Coastal Act). Proposed

dredge and fill modifications will generate only temporary and minor effects on recreational boating and fishing in port waters. Water circulation and water quality modeling adjacent to the Cabrillo Shallow Water Habitat confirmed that no adverse effects would occur due to the project. Therefore, the proposed project modifications are consistent with the commercial and recreational fishing and boating policies of the CCMP (Sections 30706 and 30708 of the Coastal Act).

STAFF SUMMARY AND RECOMMENDATION:

I. Background.

A. Previous Commission Action. Since 1993 the Commission has concurred with numerous consistency determinations (CD-57-92, CD-2-97, and CD-50-00), negative determinations (ND-103-97 and ND-25-99), and port master plan amendments (POLA PMPA Nos. 12, 13, 15, 17, and 19), for construction of the Port of Los Angeles Deep Draft Navigation Improvement (DDNI), which includes channel deepening, landfill and terminal construction, and mitigation measures for impacts to marine habitat. The subject consistency determination is a further refinement of the original DDNI project.

The Phase 1 consistency determination (CD-050-00) for the Port of Los Angeles Channel Deepening Project was concurred with by the Commission on July 13, 2000, and included the following elements:

- Deepen the inner harbor channels at the POLA from –45 feet to –53 feet mean lower low water;

- Dispose approximately 4.2 million cubic yards of dredged material (including 600,000 cubic yards of contaminated sediments) to create a 54-acre expansion of the Cabrillo Shallow Water Habitat Area, a 35-acre landfill in the Southwest Slip, and a 40-acre landfill at Pier 300;

- Place the contaminated sediments within the Southwest Slip and/or Pier 300 landfills;

- Dispose an additional 2.4 million cubic yards of dredged material at the LA-2 and/or LA-3 ocean disposal sites;

- Mitigate marine habitat losses from the proposed landfills by using mitigation credits held by the Port of Los Angeles in the Port's outer harbor mitigation account and in the Port's share of the Bolsa Chica wetlands restoration account.

B. Phased Review. As a part of the Commission's concurrence with CD-050-00, the Corps of Engineers agreed to a phased review of the project pursuant to 15 C.F.R. Section 930.37(c). At that time, the Corps committed to submit to the Commission, prior to the start of project

construction, a second consistency determination for the project that would include the following elements:

- Final design decisions on the disposal location for contaminated and clean sediments.
- Final EPA review of sediment test results.
- Review by the Los Angeles region Contaminated Sediments Task Force of the proposed disposal of contaminated sediments.
- Results of modeling by the Corps of potential circulation changes, and the inferred water quality effects, in harbor waters between Cabrillo Beach and the Main Channel from four Cabrillo Shallow Water Habitat development scenarios.
- A post-project water quality monitoring program for harbor waters between Cabrillo Beach and the Main Channel.
- A post-project California least tern foraging monitoring program for the project area.

The Corps has included these elements in the subject consistency determination, along with several modifications (described below in Section II) to the overall project. The Commission must now determine whether the previously-concurred with project (CD-50-00), as modified by the subject consistency determination, remains consistent with the resource protection policies of the California Coastal Management Program. Therefore, this staff report and recommendation focuses on the project modifications, final design decisions, and technical reports, and does not reexamine the previously-concurred-with, and un-changed, project elements. However, to provide the necessary context and to assist in the analysis of the subject consistency determination, the adopted findings for CD-50-00 are attached to this report as **Appendix 1.**

C. Standard of Review. The proposed Channel Deepening Project is examined in this report for consistency with the policies of Chapter 8 of the Coastal Act, and not the Chapter 3 policies, because all the proposed development would occur within the jurisdictional boundary of the Port of Los Angeles. In addition, because the proposed developments are non-appealable there is no trigger for Chapter 3 policy review.

A port master plan amendment submitted by the Port of Los Angeles for the proposed development (encompassing development contained in both CD-050-00 and CD-006-02) is scheduled to be heard by the Commission at its May 2002 meeting. Commission certification of the master plan amendment is required in order for the Commission to concur with the subject consistency determination, due to the requirement that the proposed activities in the consistency determination be consistent with a certified port master plan. However, should the Commission either object to or postpone action on POLA's port master plan amendment No. 21 at the May 2002 meeting, the Commission staff will necessarily change its recommendation on this consistency determination.

II. <u>Project Description</u>.

The Phase 2 consistency determination describes the design refinements for the proposed project that were developed after the Commission's concurrence with the Phase 1 consistency determination in July 2000 (**Exhibits 3-7**):

- Construction and use of the proposed Pier 400 Submerged Storage Site to allow in-bay disposal of approximately 4.7 million cubic yards (mcy) of clean dredged material; 2.9 mcy would come from channel dredging and 1.8 mcy would come from excess Pier 400 landfill surcharge material;

- Dredge the East Basin in the Cerritos Channel to the -53' MLLW project depth;

- Increase the size of the Southwest Slip fill site from 35 acres to approximately 43 acres measured at +15' MLLW and placing all contaminated materials within the West Fill section of this site;

- Design and construction of improvements to the Los Angeles County Flood Control Channel (LACFCC) located along the northern boundary of the Southwest Slip fill site West Fill;

- Construct two acres of landfill at the south end of Berth 100.

- Construct the Seaplane Lagoon Eelgrass Restoration Area north of the Pier 300 landfill.

With the proposed modifications, the following is a breakdown of the project's dredge and fill volumes:

Total volume dredged: 8.0 million cubic yards (mcy)

Disposal locations of dredged material:

Pier 300 Landfill	1.6 mcy
Southwest Slip Landfill	1.5 mcy
Berth 100 Landfill	0.9 mcy
Cabrillo SWH Expansion	1.0 mcy
Pier 300 Eelgrass Site	0.1 mcy
Pier 400 Submerged Fill	2.9 mcy
TOTAL	8.0 mcy

Note: In addition, 1.8 mcy of excess Pier 400 landfill surcharge material (clean sediment dredged in an earlier stage of the POLA navigation improvement project and used to compact and stabilize the Pier 400 landfill) will be removed from the northwest quadrant of the Pier 400

landfill and placed at the Pier 400 submerged fill storage site, bringing the total volume placed at this location to 4.7 mcy.

CD-050-00 contained an estimate of 6.6 mcy as the total volume of dredged materials to be removed for the Channel Deepening Project. This estimate was revised upward to the new estimated volume of 8.0 mcy. This revision is due to two processes: a refinement in the original estimate using more recent bathymetric data, and the addition of new areas to be dredged that were not contained in the original project description and that are addressed in the Draft Supplemental Environmental Assessment (DEA) accompanying the consistency determination. The following table from the Draft SEA describes and quantifies those revisions:

Table 1 Dredge Quantity Revisions

Topic	Dredge Volume
Original SEIS/SEIR total volume	6.6 mcy
More recent bathymetric data/Contingency	+0.13 mcy
Pilot Station	+0.50 mcy
Maintenance dredging	+0.20 mcy
East Turning Basin	+0.40 mcy
Southwest Slip foundation dredging	+0.17 mcy
SEA total volume	8.0 mcy

The Draft SEA describes changes in the dredge and disposal volumes in further detail:

> *The area immediately south of the Pilot Station was revised in order to daylight to the south at the –51' MLLW contour. This change and the use of new bathymetry in this area (which hadn't been recently surveyed since it lies outside the navigational channel) resulted in an increased estimate of dredged materials from this area by an additional 500,000 cubic yards (0.50 mcy). Sediments within the federal navigation channel that are above the currently authorized depth of –45' MLLW were not included in the original estimate. These sediments are considered to be maintenance dredging. New surveys were conducted to include this volume in the proposed project to allow use of Operation and Maintenance funds to pay for the dredging and disposal of these sediments. This resulted in an increase of 200,000 cubic yards (0.20 mcy) of dredged materials. The East Turning Basin in Cerritos Channel was not originally included in the proposed project. It has now been included (see section 1.2.2 above). This addition has resulted in an increase in sediment volume of approximately 400,000 cubic yards (0.40 mcy). Dredging associated with dike construction in the Southwest Slip Fill Site also was not included in the proposed project. It has now been included (see section 1.2.3, 1.2.4, & 1.2.5 above). This addition has resulted in an increase in sediment volume of 150,000 cubic yards (0.15 mcy). The total volume estimate of 8.0 mcy includes 150,000 cubic yards for round off and contingency considering variability in measurement.*

The consistency determination also includes technical reports and information items which the Corps committed to include in this Phase 2 consistency determination for the overall project: (1) water circulation and water quality modeling of potential impacts to the Inner Cabrillo Beach

area by expansion of the Cabrillo Shallow Water Habitat; (2) post-project California least tern foraging study; (3) post-project water quality monitoring plan for the water area between Cabrillo Beach and the Main Channel; and (4) dredged sediment management decisions, including final disposal locations, EPA review of sediment test results, and Contaminated Sediment Task Force review of the contaminated sediment disposal plan.

The Draft SEA describes in greater detail the proposed project modifications:

Pier 400 Submerged Storage Site (**Exhibit 3**):

This disposal alternative was fully assessed in the SEIS/SEIR, but was not included in the proposed project. The Draft SEA included this alternative in the proposed project with minor design modifications. The design modifications are construction of the submerged dike and storage area to –15' mean lower low water (MLLW) instead of the –20' MLLW assessed in the SEIS/SEIR (-15' MLLW is required to allow for consolidation of the dredged materials to result in a long-term maximum depth of –20' MLLW), increase in storage volume from 2.5 million cubic yards (mcy) to 4.7 mcy, and a reduction in surface area from 160 to 125 acres. Additionally, the Terminal Island Treatment Plant (TITP) outfall will not have to be relocated (the SEIS/SEIR addressed relocation of the TITP outfall as a consequence of this disposal option). Of the 4.7 mcy of fill material, approximately 2.9 mcy will consist of dredged materials from the Channel Deepening Project. The remaining materials will be surcharge material taken from Pier 400 that will be used to provide structural support for the rock containment dikes and the quarry-run rock for the dikes themselves. This surcharge material is material previously dredged during construction of the Pier 400 landfill and placed, for surcharge purposes, on to Pier 400.

Dredging of the East Basin in Cerritos Channel (**Exhibit 4**):

Dredging in the East Basin of the Cerritos Channel (Figure 6) was originally included in the Port of Los Angeles' plans to deepen the Main Channel to a project depth of –50' MLLW (POLA 1998). The East Basin dredging was removed from the federal project as being unnecessary during the Feasibility Study Phase. Discussions with Port of Los Angeles Port Pilots have resulted in the reintroduction of East Basin dredging as part of the proposed project for safety. The East Basin area to be dredged covers approximately 125 acres and will entail dredging of approximately 0.4 mcy of sediments.

The East Basin is being reintroduced as a navigation safety measure resulting from a navigation simulation study conducted by the Corps and Port. Dredging this area to project depth will provide a turn out area for ships passing in the Cerritos Channel (which is too narrow for two-way traffic) as well as an emergency area for ships to turn into while experiencing equipment breakdown (i.e. loss of rudder or engine control). Additionally, if the –53' MLLW project does not include the entire basin, marking of the channel with a buoy will interfere with the commercial vessels using the East Basin for

turning. The channel-marker buoy would become a navigational hazard for smaller vessels.

Southwest Slip Fill Site (**Exhibit 5**):

The size of the Southwest Slip Fill Site is being increased from 35 to 43 acres measured at +15' MLLW. This is being done by increasing the size of the West Fill from 15 to 23 acre in size (Figure 7). The size of the West Fill is being increased in order to sequester all dredged sediments determined to be unsuitable for ocean disposal. All sediments determined by the U.S. Army Corps of Engineers in consultation with the U.S. Environmental Protection Agency to be unsuitable for ocean disposal will be disposed of within the West Fill.

Los Angeles County Flood Control Channel Improvements (**Exhibit 5**):

The Southwest Slip Fill Site West Fill will channelize the Los Angeles County Flood Control Channel (LACFCC). The north bank and bottom of this channel will be improved so that the LACFCC will continue to function unimpeded during design flow events. This will entail removal of a small point of land (see Figure 7), smoothing and placement of rock armor on the north bank, and sloping and placement of rock on the channel bottom. All channel dimensions and slopes were designed to meet Los Angeles County's flood control requirements. Approximately one acre of land will be converted into water area.

One side benefit of this process is the removal of the necessity to dig a dike key under the northern dike for the Southwest Slip Fill Site West Fill. A soft-bottomed LACFCC would have required excavation of a key beneath the northern fill dike in order to maintain lateral stability of the dike. With the rock-bottomed channel this key is no longer necessary. Dredging and disposal of sediments from the former key will no longer be required.

Berth 100 Dredge and Wharf Fill (**Exhibit 6**):

Construction of a wharf at Berth 100 requires a southward extension of the existing dike face (Figure 8), which requires dredging for placement of a rock dike and filling approximately 2 acres behind the rock dike.

Seaplane Lagoon Eelgrass Restoration Area (**Exhibit 7**):

One of the mitigation measures included in the SEIS/SEIR is the requirement to replace eelgrass lost due to construction of the Pier 300 Expansion Site. An area adjacent to the jetty located in the Seaplane Lagoon has been selected as the site to construct the eelgrass mitigation bed. Dredged materials will be used to raise the bottom elevation of approximately 15 acres to a new elevation ranging from -5' MLLW at the jetty to –10' MLLW along the outer boundary (Figure 9). This will require approximately 110,000 cy

of sediments. Due to lack of coarse-grained dredge materials, this fill is currently identified as silts and silty-sand. Should coarse-grained materials be required, another source of sand (i.e. surcharge material located on Pier 400) will be identified. Eelgrass will be transplanted into the site using eelgrass from the Pier 300 Shallow Water Habitat and Cabrillo Beach area as source materials. Eelgrass will be transplanted in accordance with National Marine Fisheries Service guidance. A survey will be conducted in the Pier 300 Shallow Water Habitat prior to construction to establish the mitigation area required.

Area South of the Pilot Station:

Approximately 2.3 acres of the dredge footprint within the area south of the Pilot Station meets the definition of shallow water habitat (depth <20' MLLW). Dredging would result in the loss of this 2.3 acres of shallow water habitat. This loss will be mitigated through the Outer Harbor Mitigation Bank. The habitat is somewhat degraded in comparison to other shallow water habitats located in San Pedro Bay both by its location immediately adjacent to the Main Channel and by its existing depth of –18' to –19' MLLW.

The consistency determination also includes documentation of final sediment disposal decisions (including review by EPA and the Contaminated Sediments Task Force) and the following reports, which the Corps committed to submit in the Phase 1 consistency determination (CD-050-00) in July 2000:

- Water Quality and Hydrodynamic Analysis of the Cabrillo Shallow Water Habitat (Corps of Engineers, February 2002).

- Monitoring of Least Tern Foraging, Port of Los Angeles Deepening Project, 2001 (Corps of Engineers, January 2002).

- Cabrillo Beach Monitoring Plan (Corps of Engineers, March 2002).

The Corps anticipates starting project construction in August 2002 and completing all work by December 2003.

III. Status of Local Coastal Program.

The standard of review for federal consistency determinations is the policies of Chapter 3 and Chapter 8 of the Coastal Act, and not the Local Coastal Program (LCP) or Port Master Plan (PMP) of the affected area. If an LCP or PMP that the Commission has certified and incorporated into the California Coastal Management Program (CCMP) provides development standards that are applicable to the project site, the LCP or PMP can provide guidance in applying Chapter 3 or Chapter 8 policies in light of local circumstances. If the Commission has not incorporated the LCP or PMP into the CCMP, it cannot guide the Commission's decision,

but it can provide background information. The Commission has certified the Port of Los Angeles' PMP and incorporated it into the CCMP.

IV. Federal Agency's Consistency Determination.

The U.S. Army Corps of Engineers has determined the proposed project consistent to the maximum extent practicable with the California Coastal Management Program.

V. Motion.

*I move that the Commission **concur** with consistency determination CD-006-02 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).*

VI. Staff Recommendation.

The staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the consistency determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

VII. Resolution to Concur with Consistency Determination.

*The Commission hereby **concurs** with the consistency determination made by the U.S. Army Corps of Engineers on the grounds that the project described therein is consistent with the enforceable policies of the CCMP.*

VIII. Findings and Declarations.

The Commission finds and declares as follows:

A. Dredging and Filling. Section 30705 of the Coastal Act provides the following in relevant part:

(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.

(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.

. . .

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

The proposed modifications (described above in Section II) to the previously-concurred with dredging and disposal activities within the Port of Los Angeles need to be examined for consistency with Section 30705 of the Coastal Act. That section states in part that water areas may be dredged and filled when consistent with a port master plan and when the proposed project is an allowable use.

The dredging to deepen the East Basin in the Cerritos Channel to –53 feet mean lower low water, expanding the size of the Southwest Slip landfill by eight acres, creating a two-acre landfill at the south end of Berth 100, constructing improvements to the Los Angeles County Flood Control Channel in the Southwest Slip, constructing the Seaplane Lagoon eelgrass restoration area north of Pier 300, and placing 4.7 million cubic yards of clean dredged material at the proposed Pier 400 submerged storage site, are allowable uses under Section 30705(a)(1, 2, and 6).

POLA port master plan amendments have been certified by the Commission over the past nine years in order to provide for the ongoing expansion of the port. Commission action on those amendments typically preceeded action on related federal consistency determinations to allow for conformance with the Section 30705(a) requirement that dredging and filling be "…consistent with a certified port master plan…." A POLA port master plan amendment (No. 21, for the proposed channel deepening, landfills, and terminal development) is scheduled to be

acted on by the Commission at its May 2002 meeting prior to consideration of this consistency determination. If the Commission certifies the amendment, then the development proposed in the consistency determination would be consistent with the port master plan. However, should the amendment not be certified, then the development proposed in the consistency determination would not be consistent with the master plan.

The proposal to store approximately 4.7 million cubic yards (mcy) of clean dredged material at a diked, 125-acre footprint adjacent to the southeast corner of the Pier 400 landfill is a concept similar (but not identical) to dredged material storage projects undertaken in the Port of Long Beach. POLB master plan amendment No. 11 (certified by the Commission in May 1998) provided for the following:

> *Temporary storage or permanent disposal of clean dredged material from Port of Long Beach development projects, deemed suitable for unconfined aquatic disposal and unsuitable for beach replenishment, at existing deepwater borrow sites in the Southwest Harbor Planning District up to an elevation approximately –40 to –45 feet MLLW as shown in Figure 2.*

The POLB estimated that the combined capacity of the two sites (220 acres total) was approximately five million cubic yards (**Exhibit 8**).

The Commission's adopted findings stated in part that:

> *The Commission also finds that the concept of beneficial reuse of dredged sediments on the scale proposed by the Port of Long Beach (sediments that would typically be dumped at the LA-2 ocean disposal site) conforms with Section 30708(d) of the Coastal Act, which states in part that port-related development shall provide for other beneficial uses consistent with the 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 Long Beach (and other ports and agencies that dredge in coastal waters) to pursue alternatives to ocean dumping of clean dredged sediments deemed unsuitable for beach replenishment. Reuse of dredged sediments has occurred when channel dredging coincided with landfill construction (for instance, the Pier J expansion in the Port of Long Beach and the Pier 300 and 400 projects in the Port of Los Angeles). However, in situations when the ports undertake a stand-alone dredging project (either maintenance or deepening), clean dredged sediments typically go to the LA-2 or LA-3 ocean disposal sites due to an absence of alternative upland or in-water disposal sites or because construction schedules for separate dredging and landfill projects cannot be coordinated.*
>
> *The Commission now has the opportunity to certify a proposal that could lead to the conservation of clean, dredged sediments for future beneficial reuse. While not without some adverse, short-term impacts on marine resources at the sediment storage site (as noted earlier in this report), the proposal would also generate: (1) benefits to the marine environment by reducing the volume of dredged materials dumped at the LA-2 and LA-3 ocean disposal sites; (2) benefits to the Port from having a readily available source of*

construction-grade landfill material for port-related developments; and (3) benefits to regulatory agencies that may need clean capping materials for remediating contaminated offshore sites or constructing confined aquatic disposal sites. In conclusion, the Commission finds that the proposed amendment provides support for future high-priority, port-related development, provides for the beneficial use of coastal resources within the Port of Long Beach, and conforms with Section 30708(d) of the Coastal Act.

Dredged material storage and reuse at the outer harbor site is now occurring. In 1999 the Port of Long Beach placed 3.1 mcy of clean dredged material from the Queen's Gate channel deepening project into the outer harbor borrow pit. In 2000 approximately 1.4 mcy were removed from the pit for use in the port's Navy Mole landfill. Later that same year 25,000 cubic yards of dredged material was deposited in the borrow pit (Robert Kanter, POLB, April 10, 2002).

The proposal by the Corps of Engineers to construct the Pier 400 submerged storage site differs from the referenced POLB project in that the latter involved filling two existing borrow pits and an area between the pits, while the former involves constructing rock dikes to contain dredged material up against the Pier 400 landfill and raising the elevation of the harbor floor from –30 to –40 feet MLLW up to –15 feet MLLW, with eventual settlement to –20 feet MLLW. In both instances, however, the projects allow for dredging, removal, and reuse of the sediments placed at the storage sites. The potential marine resource impacts associated with the Pier 400 submerged fill storage site proposal are addressed in Sections B and C of this report.

As documented in the following sections, the project will have no significant adverse effects on coastal resources and no additional mitigation measures (beyond the measures already incorporated into the project by the Corps of Engineers) are necessary. Therefore, the Commission finds that the proposed project, as modified, is consistent with the dredge and fill policies of the California Coastal Management Program (Section 30705 of the Coastal Act).

B. <u>Water Quality and Marine Resources</u>. 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 the consistency determination are examined in this staff report from two perspectives: (1) water quality protection measures associated with the proposed project modifications to be implemented during 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) submitted by the Corps as a part of commitments made in the Phase 1 consistency determination (CD-050-00).

The Corps of Engineers' Phase 1 consistency determination, the associated Draft EIS, and the Commission's adopted findings for that consistency determination documented in great detail the existing water quality conditions in the Port of Los Angeles, and examined the potential project impacts and proposed mitigation measures for the Channel Deepening Project. Those documents are incorporated by reference into this report. The water quality monitoring program and water quality protection commitments made by the Corps of Engineers for the Channel Deepening Project, as outlined in CD-050-00, remain in effect for the proposed project modifications.

(1) Project Modifications. The subject consistency determination includes the following project modifications that need to be examined for their potential effects on water quality: disposal of 4.7 mcy of dredged material at the Pier 400 submerged fill site, disposal of all contaminated sediments at the expanded Southwest Slip fill site and improvements to the flood

control channel in the Southwest Slip, disposal of fill to create a two-acre landfill at Berth 100, and dredging to deepen the East Basin in the Cerritos Channel.

Water quality in the project modification areas 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 expanded landfill in the Southwest Slip and related improvements to the Los Angeles County flood control channel at this location will cap existing contaminated sediments, prevent resuspension of the contaminated sediments, and prevent release of contaminants into the water column. Dredging of approximately 650,000 cubic yards of contaminated sediments (from four sites in the Main Channel, West Basin, Southwest Slip, and Berth 100) and their placement in the Southwest Slip landfill will provide significant, long-term water quality benefits in the Port of Los Angeles.

The project modifications will be subject to the same water quality protection measures previously attached to the overall project, including:

> *A Section 401 (of the Clean Water Act) 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.*

The Port of Los Angeles' Port Master Plan Amendment No. 21 (for the Channel Deepening Project) also addresses water quality protections for the project construction activities, including the proposed modifications which are the subject of this consistency determination:

> *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 Dominquez 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 [Standard Urban Stormwater Mitigation Plan] *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 Dominquez Channel.*

Port tenants are subject to regulation under the Industrial Activities Storm Water General Permit and are required to file a Notice of Intent if warranted based on the nature of their operations. The Port has taken a proactive approach in assisting tenants with their stormwater permit compliance by developing and providing Port tenants with model SWPPP documents oriented towards the various types of industrial uses within the Port.

Extensive water quality monitoring conducted during Stages 1 and 2 of the Pier 400 Deep Draft Navigation Improvement Project, including the dredging and disposal of sediments of similar physical, chemical, and locational characteristics when compared to sediments proposed for dredging in the proposed project, 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 the proposed project modifications.

(2) Water Quality Reports. In the Phase 1 consistency determination for the POLA Channel Deepening Project (CD-050-00), the Corps committed to submit the following sediment and water quality related reports to the Commission as a part of the Phase 2 consistency determination for the project:

- Final design decisions on the disposal location for contaminated and clean sediments.
- Final EPA review of sediment test results.
- Review by the Contaminated Sediments Task Force of the proposed disposal of contaminated sediments.
- Results of modeling by the Corps of potential circulation changes, and the inferred water quality effects, in harbor waters between Cabrillo Beach and the Main Channel from four Cabrillo Shallow Water Habitat development scenarios.
- A post-project water quality monitoring program for harbor waters between Cabrillo Beach and the Main Channel.

Analysis of these submittals is provided below.

(a) Final Design Decisions on Sediment Disposal. The Phase 1 consistency determination for the project proposed that 600,000 cubic yards of contaminated sediments be placed in the Southwest Slip and/or Pier 300 expansion landfills, and that 2.4 million cubic yards (mcy) of clean sediments be disposed at the LA-2 and/or LA-3 ocean disposal sites. The Corps deferred these two disposal site decisions until the Phase 2 consistency determination. As noted earlier in the Project Description, the Corps now proposes to place 650,000 cubic yards (an increase over the Phase 1 volume estimate) of contaminated sediments inside a 25-acre confined disposal facility located inside the west landfill in the Southwest Slip, and to place 4.7 mcy of clean sediments (2.9 mcy from proposed channel deepening and 1.8 mcy from excess surcharge material from Pier 400) at the Pier 400 submerged fill site (**Exhibit 2**). No dredged material will be disposed at either of the ocean disposal sites. The rationale for selection of the proposed Pier 400 submerged fill site is examined above in Section VIII(A) of this staff report.

The Corps' Review of Chemical and Biological Data on Sediments for the Channel Deepening Project, Port of Los Angeles (January 2002) collects and presents sediment testing results for all of the sediments involved in the Channel Deepening Project. The report identifies those dredged sediments that are suitable and unsuitable for unconfined aquatic disposal. The Summary Report from that document is provided in **Exhibit 9** of this report.

The Corps' Draft Contaminated Sediment Management Plan (CSMP) (January 2002) describes in detail the plans for dredging and disposal of the project's contaminated sediments. The document states that:

> *The reclamation at the Southwest Slip West Fill is part of the development for a new container terminal in the West Basin. . . The site features two deep depressions inside the area designated for reclamation. These depressions, also identified as tubs, are approximately to –50 feet MLLW.*
>
> . . .
>
> *The dimensions of the CDF* [confined disposal facility] *have now been determined by the boundaries on the north side (LACFC Channel), the west and south side (existing landfill limits) and on the east side by locating the rock dike at a position where maximum use is made of one tub, as well as placing most material from FM-1, Berth 100 South Extension, and the Southwest Slip dike foundations and basin dredging below an elevation of approximately –12 feet MLLW.*

Additional information on the proposed dredging and disposal of contaminated sediments contained in the CSMP is provided in **Exhibit 10** of this report.

The CSMP also includes water quality monitoring protocols for contaminated sediment dredging and disposal operations (**Exhibit 11**). 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."

(b) Final EPA Review of Dredged Sediment Test Results. The Corps committed to include in this Phase 2 consistency determination evidence of final U.S. EPA review of sediment test results for the project. **Exhibit 12** is the February 20, 2002, suitability concurrence memorandum from EPA to the Corps. This document reviews the Corps' suitability determination for all of the proposed dredged materials, including contaminated sediments and materials suitable for unconfined aquatic disposal. The memo confirms the suitability concurrences previously made by EPA for dredged materials evaluated in the POLA Main Channel Deepening Project, and provides concurrence on the Corps suitability determinations for the project modifications, which are the subject of this consistency determination.

(c) Contaminated Sediment Task Force Review. The Corps committed to include in this Phase 2 consistency determination evidence of review by the Los Angeles Region Contaminated Sediments Task Force of the proposed disposal of project contaminated sediments. The Task Force's Advisory Committee (AC), 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, held four meetings to review the Channel Deepening Project in late 2001 and early 2002 with representatives from the Corps of Engineers and the Port of Los Angeles. Members of the Advisory Committee were also provided copies of the Corps' Draft Contaminated Sediments Management Plan. **Exhibit 13** is the April 9, 2002, Port of Los Angeles Channel Deepening Project – Final Contaminated Sediments Task Force Advisory Committee Memo. The memo states in part that:

> *This memo is intended to serve as a record of comments provided by the AC during the meetings and to document project modifications made in response to comments of the AC. It is also a record of key points of agreement regarding dredging and disposal of contaminated sediments, and any areas of continuing disagreement.*

Regarding the proposed placement of contaminated sediments in the Southwest Slip west landfill, the memo states that:

> *The design presented in the Contaminated Sediments Management Plan (CSMP) expanded the West Fill from 15 to 23 acres in place of the previously proposed CAD [confined aquatic disposal site]. This design met the requirements to contain all sediments unsuitable for ocean disposal, avoid navigational impacts to the liquid bulk terminal, and provided an alternative to placing a CAD site in the harbor.*
>
> *The design alternative for the Southwest Slip Fill Site as presented in the CSMP was determined to be the most desirable option by members of the AC.*

The memo also includes discussion of other elements of the Channel Deepening Project, including the Pier 400 Submerged Storage Site, Malaga mudstone dredged materials, and water quality monitoring. The Advisory Committee recommendation on the Pier 400 project element is more appropriately examined in Section C of this report.

Regarding the suitability of dredged Malaga mudstone for unconfined aquatic disposal, the Advisory Committee memo states that:

> *Formation materials in the channel entrance are classified as Malaga mudstone. These materials were initially proposed to be placed offshore at the LA-3 ocean disposal site in the September 2000 EA. The AC voiced dissenting opinions on this issue. Members from the US EPA, and the LARWQCB disagreed with this option, preferring to see the surplus material kept within the port for future reuse. A proposal to place the Malaga mudstone within the Cabrillo Shallow Water Habitat Expansion (CSWHE) was made. However, as design proceeded it quickly became clear that there would not be sufficient volume within the CSWHE to contain all of the Malaga mudstone that required dredging and disposal as part of the proposed project. To address this, the area directly south of Pier 400 was proposed as a temporary sediment storage site for sediments that otherwise would be disposed of at the LA-3 ocean disposal site. The design of the Pier 400 Submerged Storage Site places the Malaga mudstone in the bottom of the site, to be overlain by fine-grained sediments removed from the Main Channel. The Malaga mudstone is low in organic carbon and would serve as a poor substrate for recolonization by benthic organisms. The Main Channel sediments are much higher in organic carbon and would be more easily and quickly recolonized following completion of construction.*
>
> *The location of Malaga mudstone in a temporary submerged storage site as described above was acceptable to the AC members representing the U.S. Environmental Protection Agency (US EPA), the Los Angeles Regional Water Quality Control Board (LARWQCB), the California Department of Fish and Game (CDFG) and the California Coastal Commission (CCC). The AC member representing Heal the Bay did not support this option.*
>
> *Although Malaga mudstone materials were determined to be suitable for ocean disposal by the Corps, with the U.S. EPA concurring, and have previously been dredged and disposed of within the Outer Harbor and at the LA-2 ocean disposal site, they contain naturally occurring elevated levels of metals. It is the position of most of the members of the AC that Malaga mudstone is suitable for unconfined ocean disposal and that the naturally occurring metals do not represent a threat to the environment. Further, covering the Malaga mudstone with Main Channel sediments will provide additional seclusion from the benthic environment. It is Heal the Bay's position that the Malaga mudstone should undergo bioassay testing prior to any dredging or disposal of these sediments.*

Regarding the water quality monitoring plan, the Advisory Committee memo states that:

> *The CSMP contained a proposed water quality monitoring plan. One recommendation proposed by the AC was made to the monitoring plan. The water-sampling requirement will be changed from a one-time event to once per month during dredging of sediments unsuitable for ocean disposal. Dredging of sediments suitable for ocean disposal would be monitored by the weekly monitoring requirements, but chemical analyses of water samples would not be required. It is estimated that it will take approximately three months to dredge*

and dispose of the sediments unsuitable for ocean disposal resulting in a total of three water-sampling events.

All members of the AC except Heal the Bay found the plan acceptable with the proposed change. In comments addressed to the AC after the last meeting, they expressed the concern that the monitoring plan is not sufficiently defined and a contingency plan of BMPs that will be implemented in the event that monitoring indicates an exceedance of water quality standards has not been developed. Subsequently the POLA is addressing these concerns by providing a more specifically defined plan, including contingency BMPs.

The Advisory Committee of the Los Angeles Region Contaminated Task Force undertook and completed its review of the proposed disposal of project contaminated sediments. The Advisory Committee reviewed the Corps' dredge material suitability determination, EPA's suitability concurrence, and concluded that the proposed placement of all project contaminated sediments in the proposed Southwest Slip west landfill was the most desirable option for management of those sediments. The Commission agrees with this conclusion and finds that the proposed option is consistent with the water quality and marine habitat protection policies of the CCMP.

(d) Modeling of Water Circulation and Quality at Cabrillo Beach. The Commission's adopted findings for the Phase 1 consistency determination (CD-050-00) for the proposed project included the following:

To further address these concerns regarding circulation and water quality in the project area between Cabrillo Beach and the Main Channel, the Corps stated that the second consistency determination for this project will now incorporate the results of modeling by the Corps of potential circulation changes, and the inferred water quality effects, in harbor waters between Cabrillo Beach and the Main Channel from four shallow water habitat development scenarios: no shallow water habitat; the shallow water habitat as it presently exists; the existing shallow water habitat with the proposed expansion; and the existing shallow water habitat with the proposed expansion and with a "hole in the breakwater", that is, a connection between the waters offshore of Cabrillo Beach and the ocean through the San Pedro Breakwater.

The Corps submitted as a part of the Phase 2 consistency determination the lengthy and detailed technical report, Water Quality and Hydrodynamic Analysis of the Cabrillo Beach Shallow Water Habitat (February 2002). The Corps report describes the 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 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.

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 westerly expansion of the CSWH (concurred with by the Commission in CD-050-00 in July 2002) does not and will not generate significant adverse impacts on water circulation or water quality at Cabrillo Beach and adjacent offshore areas.

(e) Post-Project Water Quality Monitoring. The Commission's adopted findings for CD-050-00 included the following:

The Corps also has committed (as an additional element of the subject consistency determination) to undertake post-construction monitoring of circulation and water quality in the project area (between Cabrillo Beach and the Main Channel), and to submit a consistency determination for mitigation/remediation work if the monitoring results indicate unexpected adverse effects on circulation or water quality in the project area caused by the expansion of the shallow water habitat. Water quality in the project area will be evaluated by measuring dissolved oxygen, turbidity/transparency, and temperature. The Corps will include the circulation/water quality monitoring plan in the second consistency determination for Commission review and approval prior to finalizing and implementing the plan, and will submit the monitoring results as they become available to the Commission staff.

However, because of the phased review process for this project agreed to by the Corps of Engineers, the Commission will review the final project design for disposal of contaminated sediments at in-harbor sites, the aforementioned circulation/water quality modeling results, and the post-construction circulation/ water quality monitoring plan at a later date in a second consistency determination in order to ensure that disposal of contaminated sediments and construction of the shallow water habitat expansion will not adversely affect circulation, water quality, and marine resources in the harbor, and to ensure that the project remains consistent with the water quality and marine habitat protection policies of the CCMP.

The Corps submitted as a part of the Phase 2 consistency determination the Cabrillo Beach Monitoring Plan (March 2002); the Executive Summary and Table of Contents are attached to this report as **Exhibit 14**. The Executive Summary states in part that:

The field monitoring plan is designed to provide an objective assessment of impacts from construction of the Cabrillo Shallow Water Habitat Expansion on circulation and water quality at inner Cabrillo Beach . . . The plan here exceeds [the requirement of the CCC for post-construction monitoring of circulation and water quality] *by also providing for a pre-construction data collection. The pre-construction data set will provide a baseline for an*

objective evaluation of any changed conditions after construction. The construction schedule could require up to 24 months.

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 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 westerly 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 proposed modifications to the Channel Deepening Project will generate only minor, short-term effects on water quality and marine resources in the Port of Los Angeles. Dredging and disposal activities will not result in any significant, adverse effects on the coastal zone due to the nature of the dredged materials, the location of dredging and disposal sites, and the aforementioned environmental commitments incorporated into the project. Therefore, the Commission finds that the proposed project, as modified, remains consistent with the water quality and marine habitat protection policies of the CCMP (Sections 30705, 30706, and 30708 of the Coastal Act).

C. <u>Environmentally Sensitive Habitat</u>. Sections 30706 and 30708 of the Coastal Act provide in part that:

<u>30706</u>. *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. . . .

<u>30708</u>. *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. . . .

(1) Project Modifications. Proposed project modifications could potentially affect environmentally sensitive marine habitat used by two federally endangered species, the California least tern and the California brown pelican. The consistency determination calls for additional dredging to deepen the East Basin, increasing the size of the Southwest Slip fill from 35 to 43 acres, and constructing a two-acre fill at the southern end of Berth 100. 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 ten 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 (**Exhibit 15**).

The consistency determination also proposes two new dredge material disposal sites in the port which could affect least tern and brown pelican foraging: the Pier 400 Submerged Storage Site and the Seaplane Lagoon Eelgrass Restoration Area. The consistency determination provides the following information on these two sites:

Pier 400 Submerged Storage Site. *It is anticipated that the overall area supports an infaunal community characteristic of the Outer Harbor. Use of the site as a disposal site will bury any organisms present in the pit. Colonization of the disposal site after disposal will occur as organisms along the edges migrated inward and as larvae settled from the water column. The species of larvae available for recruitment will be predominantly the common species present in the general area. Different sediment characteristics in the pits can influence species colonization, shifting the community towards more pollution /disturbance tolerant species such as Capitella capitata. However, colonization normally follows a pattern of succession until a dynamic community is established, usually in about 2 to 3 years.*

This area will be filled to a final elevation of –15' MLLW creating a de facto shallow water habitat. However, owing to the future need to re-dredge this area to move sediments out of storage for use as fill materials, no credits will be claimed for the creation of shallow water habitat. The site is expected to function as a shallow water habitat for a period of years offsetting the temporary loss of soft-bottom habitat by the temporarily increased value of shallow water habitat.

Seaplane Lagoon Eelgrass Restoration Area. *Raising the bottom elevation would require two to five feet of fill over the entire area. This will most probably result in the smothering of any marine organisms present. However, since the area will be used as an eelgrass*

mitigation site, the resulting eelgrass habitat will provide habitat that is considerably more valuable than the current soft-bottom habitat. Therefore, this impact is considered to be insignificant.

The National Marine Fisheries Service (NMFS) commented on the Draft SEA and proposed project modifications on February 12, 2002, as follows:

NMFS concurs with your conclusion that the proposed work will not result in significant impacts to Essential Fish Habitat (EFH) for those species covered by the Pacific Groundfish and Coastal Pelagics Fishery Management Plans. However, it should be noted that during a coordination meeting of December 13, 2001, it was agreed that the material deposited at the Pier 400 Submerged Storage Site would remain in place for a minimum of two years. Relevant sections of the DSEA should be modified to reflect this agreement. In view of the above, we do not believe further EFH conservation recommendations are necessary.

The California Department of Fish and Game (Department) commented on the Draft SEA and proposed project modifications on February 25, 2002, as follows:

The Department believes that the DSEA is adequate in its portrayal of impacts to fish and wildlife resources associated with the proposed project. However, as discussed in a December 3, 2001, Resource Agency meeting with the Department, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Port of Los Angeles, and the Corps, and documented in the meeting minutes, it was agreed that the Pier 400 Submerged Storage Site would be left alone for a minimum of 2 years prior to any disturbance. This should be noted in the final SEA.

Through its membership on the Advisory Committee of the Los Angeles Region Contaminated Sediments Task Force, the environmental group Heal the Bay expressed its opposition to the Pier 400 submerged storage site. The Advisory Committee reviewed the Channel Deepening Project and in its final memo on the project addressed the Pier 400 submerged storage site:

The design alternative for the Pier 400 Submerged Storage Site as presented in the Supplemental Environmental Assessment (SEA) was acceptable to the AC members representing the U.S. Environmental Protection Agency (US EPA), the Los Angeles Regional Water Quality Control Board (LARWQCB), the California Department of Fish and Game (CDFG) and the California Coastal Commission (CCC). The AC member representing Heal the Bay did not support this design alternative.

All members of the AC except Heal the Bay agreed that the storage of dredged materials for reuse is preferable to permanent disposal of the materials in an ocean disposal site. It is Heal the Bay's position that the impacts of creating such a site would not constitute beneficial reuse, but would result in the loss of habitat due to periodic disturbance and damage after the initial three year period. Because the POLA is not required to mitigate these impacts under the Safe Harbors Agreement, it is Heal the Bay's position that the storage site would result in the loss of 120 acres of outer harbor habitat. Heal the Bay

would prefer ocean disposal of clean sediment to the construction of the Pier 400 Submerged Storage Site.

As noted in the project description (Section II), mitigation was required for the loss of approximately eight acres of eelgrass due to construction of the 40-acre Pier 300 landfill (concurred with in the Phase 1 consistency determination). This Phase 2 consistency determination identifies the mitigation that will be provided for this habitat loss. The 15-acre mitigation site at the Seaplane Lagoon jetty will be created by placing approximately 110,000 cubic yards of clean silt and silty sands to raise the bottom elevation two to five feet to a final elevation range of –5 feet to –10 feet MLLW. Eelgrass will then be transplanted into the site using eelgrass from the Pier 300 Shallow Water Habitat and Cabrillo Beach eelgrass beds in accordance with National Marine Fisheries Service guidance (Southern California Eelgrass Mitigation Policy, last revised 2/2/99; **Exhibit 16**). Construction activities will generate minor, temporary adverse effects on water quality, primarily turbidity. However, over the long run, the proposed Seaplane Lagoon eelgrass restoration area will not adversely affect least tern or brown pelican foraging, but rather will improve foraging opportunities for these species by increasing the areal extent of productive eelgrass beds used by both species in San Pedro Bay.

Construction of the Pier 400 Submerged Storage Site will also generate temporary adverse turbidity effects during the 18-month disposal operation in an area within the foraging range of the least tern and brown pelican. As noted in the project description, approximately 4.7 million cubic yards of clean dredged material will be deposited and stored behind dikes and against the southeastern edge of the Pier 400 landfill, and will raise the harbor floor at this 125-acre footprint from the current –30 to –40 feet MLLW depth to –15 feet MLLW. Once dredge material disposal is completed and turbidity returns to normal levels, foraging opportunities and activity will not be adversely affected by the storage site. Given the new shallow water depth over this 125-acre area, there may be beneficial effects from this project element on least tern foraging.

Construction of the submerged storage site will replace deep water, soft bottom habitat with shallow water, soft bottom habitat. Recolonization of the submerged fill site by the infaunal community characteristic of the outer harbor is expected to take between two and three years. However, re-use of the stored dredged material at this site for future projects requiring fill material will disturb and/or eliminate sections of the 125-acre site. The Corps is not proposing to claim mitigation credits for the creation of this shallow water habitat as is usually done in San Pedro Bay when deep water habitat is transformed to shallow water habitat. A Safe Harbors Agreement between the Port of Los Angeles and the federal and state resource agencies will call for no mitigation credits to be generated by the submerged fill site and the shallow water habitat it will create, and call for no mitigation requirements when portions of the fill are removed at some future date(s). In addition, the Port of Los Angeles has committed to developing a management plan for the long term use of this site, including participation by the resource agencies and other interested parties in the decision-making process associated with future proposals for removal of fill from the site.

The Corps and the Port of Los Angeles have stated that beneficial reuse of dredged materials placed at this site will be conducted in a manner that minimizes adverse effects on marine habitat. This could be implemented by removing needed fill in discreet horizontal and vertical sections rather than scraping off the top layer of the 125-acre site. While projects that remove fill after the three-year period will generate adverse effects on this newly created shallow water habitat, the Commission believes that the overall benefits to the marine environment that arise from eliminating the disposal of 4.7 mcy of sediment at the LA-2 and LA-3 ocean disposal sites, from the beneficial reuse of these dredged materials (for future port landfills or, as was discussed in the review of the Port of Long Beach's sediment storage site, for capping contaminated sediments at White's Point off the Palos Verdes Peninsula), and from creating a significant additional shallow water area inside the San Pedro Breakwater together outweigh the impacts that will occur as a result of future fill removal projects.

Another project modification results from a more accurate delineation of the dredging footprint in the Main Channel south of the pilot station. As noted in the project description, dredging here will result in the loss of approximately 2.3 acres of shallow water habitat (defined as water less than –20 feet MLLW). While this 2.3-acre area is presently –18 to –19 feet MLLW and immediately adjacent to the Main Channel, the adverse effect of its elimination will be mitigated through the use of mitigation credits existing in the Port of Los Angeles' Outer Harbor Mitigation Bank. With this mitigation commitment, there will be no significant loss of environmentally sensitive marine habitat due to this segment of the channel deepening.

(2) California Least Tern Monitoring Commitment. In its Phase 1 consistency determination for the overall project (CD-050-00), the Corps of Engineers committed, as a part of this Phase 2 consistency determination:

> *. . . to undertake post-construction monitoring of least tern foraging activity in the project area, and to submit a consistency determination for mitigation/remediation work if the monitoring results indicate unexpected adverse effects on least terns caused by construction of the Pier 300 landfill expansion. The Corps will include the monitoring plan in the second consistency determination for Commission review and approval prior to finalizing and implementing the plan, and will submit the monitoring results as they become available to the Commission staff.*

The Corps submitted the report, Monitoring of Least Tern Foraging – Port of Los Angeles Deepening Project, 2001 (January 2002) as an element of the subject consistency determination; the summary of that document is attached to this report as **Exhibit 17**. The plan includes the following elements:

- Observations of least tern foraging activity at 29 stations throughout Los Angeles Harbor;
- Surveys are conducted weekly from April through September when the terns are present in the Harbor;
- Least tern behavior recorded for a 20-minute period at each station;

- Recorded data include number of terns exhibiting same behavior at same time, number of foraging dives, number of foraging flights, number of transit flights, tern life stage, date, time, and weather;

- The recorded data are analyzed for total percentage of each foraging behavior, mean behaviors per survey, and by nesting stage. Data are combined for similar stations (and corrected for number of stations) to compare foraging behavior among differing foraging habitats in the Harbor. Data are also compared with other survey results from previous years.

The proposed monitoring plan submitted by the Corps will generate the necessary information on least tern foraging in San Pedro Bay to allow the Corps and the Port of Los Angeles to determine whether the Pier 300 landfill expansion is adversely affecting least tern foraging. In addition, as committed to in the Phase 1 consistency determination, in the event that monitoring indicates that unexpected adverse effects on least terns are being caused by construction of the Pier 300 landfill expansion, the Corps has committed to submit a consistency determination to the Commission for mitigation and/or remediation of those adverse effects.

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 mitigation measures outlined in the consistency determination and Draft SEA, and with the commitments made by the Corps in the Phase 1 and 2 consistency determinations regarding California least tern foraging monitoring and mitigation and eelgrass mitigation and monitoring, the Commission finds that the proposed dredging and filling, as modified, remains consistent with the fish and wildlife resource and habitat protection policies of the CCMP (Sections 30706 and 30708 of the Coastal Act).

D. Sand Supply. Section 30706 of the Coastal Act provides in part that:

> 30706. *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 affects 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.*

The Corps of Engineers proposes to dispose up to 4.7 million cubic yards (mcy) of clean dredged material, suitable for unconfined aquatic disposal, at the proposed Pier 400 Submerged Storage Site. Approximately 2.9 mcy would come from proposed dredging and 1.8 mcy from excess

surcharge material (from past dredging) on the northwest quadrant of the Pier 400 landfill. While dredged material placed at this submerged site would not be available for beach replenishment, analysis indicates that this dredged material is not suitable for beach placement due to the predominately small grain size of the material. Since the material is predominately silt and clay, wave energy would move this relatively fine material off the beaches and out of the littoral system if the material were placed on a beach or in the nearshore zone. Therefore, the Commission finds that the 4.7 mcy of clean but structurally unsuitable dredged materials are not suitable for beach replenishment, and that the proposed disposal of this material at the proposed Pier 400 Submerged Storage Site is consistent with the sand supply policies of the California Coastal Management Program (Sections 30706 and 30708 of the Coastal Act).

E. Recreation. The Coastal Act provides in the following sections that:

> 30706. *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. . . .*
>
> 30708**.** *All port-related developments shall be located, designed, and constructed so as to:*
>
> *(a) Minimize substantial adverse environmental impacts.*
>
> . . .
>
> *(a) 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 dredging and filling modifications that would occur at the Pier 400 submerged storage site, the Southwest Slip, Berth 100, the East Basin in the Cerritos Channel, and Seaplane Lagoon would not generate adverse effects on recreational activities in the Port. These dredge and landfill sites, except for the Pier 400 storage site, 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. Recreational boating will resume over the Pier 400 submerged storage site once construction is completed.

In its concurrence with the Phase 1 consistency determination for this project (CD-050-00), the Commission expressed concerns about the potential effects of expanding the Cabrillo Shallow Water Habitat (CSWH) site on public recreation. 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 will not cause a degradation in water quality or recreational opportunities at Cabrillo Beach. As discussed in Section B 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 proposed dredge and fill activities in the Port of Los Angeles remain consistent with the commercial and recreational fishing and boating policies of the California Coastal Management Program (Sections 30706 and 30708 of the Coastal Act).