



## United States Department of the Interior

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August 27, 2007

Dr. Spencer D. MacNeil, Commander  
U.S. Army Corps of Engineers, Los Angeles District  
P.O. Box 532711  
Los Angeles, CA 90053-2325

Dr. Ralph G. Appy, Director of Environmental Management  
Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, CA 90731

Subject: Review of the Draft Environmental Impact Statement (DEIS), for Berth 136-147  
(TraPac) Container Terminal Project, Port of Los Angeles, CA

Dear Dr. MacNeil and Dr. Appy:

The Department of the Interior has received and reviewed the subject document and has the following comments to offer.

### GENERAL COMMENTS

The Fish and Wildlife Service (FWS) offers the following comments pursuant to the Fish and Wildlife Coordination Act, Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

FWS has a long history of successfully working with the Port to resolve potential fish and wildlife conflicts with Port developments. The biological baseline, against which impacts are assessed, was last updated in 2000. This biological baseline information is contained in the report titled, "Ports of Long Beach and Los Angeles Year 2000 Biological Baseline Study of San Pedro Bay", June 2002. This biological information is applicable to subject project and has been used in preparation of the subject DEIR/EIS. The harbor biological baseline is being updated for use with future projects.

There has been a series of biological mitigation agreements among biological resource agencies and the Port. A description of landfill mitigation history by the Port has been included in the DEIR/EIS. The most recent mitigation agreement, implemented in 1997, was also signed by ten agencies, including the Port, FWS, and USACE.

That mitigation agreement is titled: "Agreement to Establish a Project for Wetlands Acquisition and Restoration at the Bolsa Chica Lowlands in Orange County, California, for the Purpose, Among Others, of Compensating for Marine Habitat Losses Incurred by Port Development Landfills within the Harbor Districts of the Cities of Los Angeles and Long Beach, California".

This Agreement (and amendments) describes the Port's mitigation credits for offsetting landfill habitat impacts associated with Port developments. As noted in the DEIR/EIS, there are other applicable mitigation agreements. The DEIR/EIS for subject project includes a Port mitigation history and description of basis and process of establishing Port landfill mitigation credits.

The DEIR/EIS includes updated accounting of Port mitigation credits available for use by this project (Table 3.3-4 on Page 3.3-31) and balance remaining after the project, per the Agreement.

However, the subject document is very unclear as to when the debit of mitigation credits would occur. Project description indicates proposed 10-acre landfill would be constructed in Phase II, between 2015 and 2025. Also, this 10-acre fill may be constructed only if ongoing Federal project (not addressed in this document) were to construct a five acre fill in this same area.

Document states, "The USACE will consider this document in any permit actions that the LAHD might undertake to implement the proposed Project or alternative. This document, however, does not serve as public notice of application for any Department of the Army (DA) permit at this time." It would seem that many years will pass before the 10-acre landfill permit application is submitted and construction begins. In those years, mitigation credits identified in this DEIR/EIS may have been obligated to other projects.

We recommend the final EIR/EIS expressly state whether mitigation credits currently available will not be committed to any other project until USACE's permit decision on Berth 136-147 Phase II is considered. Another option is to state in the EIR/EIS that Phase II 10-acre landfill would not be permitted unless mitigation credits were confirmed to be available at the time the permit is considered.

## SPECIFIC COMMENTS

Page 1-19, Section 1.4.2.1 USACE Use. This section concludes with the following sentence: "The USACE Record of Decision (ROD) will document the decision of the USACE on the proposed action, including issuance of any permit pursuant to Section 404 of the CWA and Section 10 of the RHA, as well as any required environmental mitigation commitments." We recommend this section address how the permit application would be processed and how USACE would secure mitigation during eight or more years that would pass after the ROD was signed and before Phase II landfill were permitted or constructed.

Page 3.3-20, Section 3.3.4.3.1.1 Construction Impacts and Mitigation. Impact Bio-1a indicates "USACE has made a "no effect" determination for federally-listed species in accordance with requirements of Section 7 of the ESA." We recommend USACE reconsider its effects

determination at the time they make a decision on a permit application for 10-acre Phase II landfill. Circumstances may change in many years between the EIR/EIS, ROD, and project construction. If, at time of permit application, USACE determines that 10-acre fill "may adversely affect" a listed species, formal section 7 consultation with FWS would be warranted.

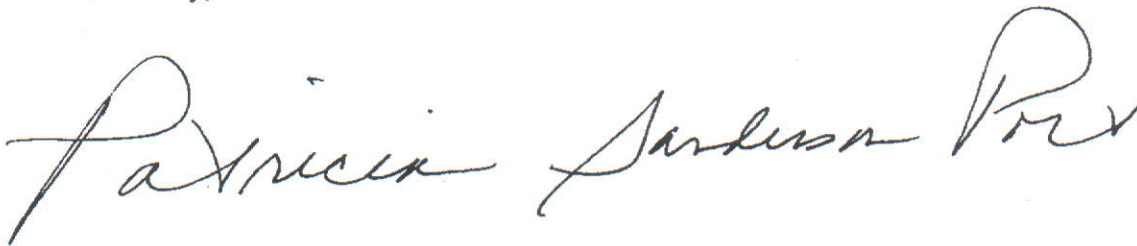
Page 3.3-22, Section 3.3.4.3.1.1 CEQA Impact Determination. This section states that Mitigation Measure Bio-1 would fully offset potential marine habitat impacts. This statement is accurate only if appropriate mitigation credits remain at time of construction. We recommend language be added to clarify this important point.

Page 4-45, Section 4.2.3.3 Cumulative Impact Mitigation Measure Bio-1. The statement is repeated that marine habitat loss of Phase II 10-acre landfill would be offset in accordance with interagency mitigation agreements. We recommend language be added to clarify that landfill can only be appropriately mitigated if credits remain at the time of construction.

If you have questions regarding these comments, please contact Darrin Thome, 916-414-6533.

Thank you for the opportunity to review this project.

Sincerely,

A handwritten signature in black ink that reads "Patricia Sanderson Port". The signature is written in a cursive, flowing style.

Patricia Sanderson Port  
Regional Environmental Officer

cc:  
Director, OEPC  
FWS