

LOS ANGELES AUDUBON SOCIETY

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26 July 2007

TO: US Army Corps of Engineers, Los Angeles District
P.O. Box 532711, Los Angeles, CA 90053-2325

Port of Los Angeles
425 South Palos Verdes Street, San Pedro, CA 90731

Attn.: Dr. Spencer D. MacNeil, Sen. Project Mgr. (Spencer.D.Macneil@spl01.usace.army.mil)
Dr. Ralph G. Appy, Director of Environmental Management (rappy@portla.org)

CC: Lena Maun-DeSantis <LMaun-DeSantis@portla.org>, kcurtis@portla.org

RE: Berths 136-147 [TraPac] Container Terminal Project/ Project file No.: 2003-01142-SDM
Request for Clarifications of Original and Errata with regard to
Water Quality, Sediments, and Oceanography and Biological Resources
and Extension of Time

We, Conservation Committee of Los Angeles Audubon (LAA), are reviewing the lengthy EIS/EIR referenced above and have reviewed your recent errata and related original documents. We are somewhat confused in our preparation for the initial public session and formal comments with regard to your assessment of the Project's significance and cumulative impacts, directly, indirectly, and secondarily on biological resources, the EIS/EIR, and Federal Permit. The following indicates the relevant confusion (as a minimum):

- 1. Errata sheets for ES5.2.1 include assignment of Water Quality [not Sediments nor Oceanography] as "Significant Unmitigable Impacts", while ES5.2.3 eliminates ALL from "Less than Significant" and Sec. 13.3 states that ALL are "Less than Significant". AS(A)-1
- 2. Errata and original sheets for ES5.2.1 include assignment of Biological Resources to both "Significant Unmitigable Impacts" and "Significant Mitigable Impacts" [5.2.2], while ES5.3.3 states no "Less than Significant Impacts" exist, and Sec. 13.3 states that all three levels of significance exist. AS(A)-2
- 3. Errata of ES5.3.2 assign Groundwater and Soils to "Mitigable Significant Impacts" based on mitigation of encounters with "toxic"[=hazardous wastes], while Errata/Original retain Hazards and Hazardous Materials in "Less than Significant Impacts [ES5.3.3]". AS(A)-3
- 4. Sec. 3.7.1 states that the project and PoLA are "exposed to significant, unavoidable tsunami-related impacts..." but throughout the Executive Summary and other section of 3.7, all impacts are considered as "Less than Significant" without mitigation. AS(A)-4

Summarized as below (underlined are duplicated):

5.2.1 Significant w/ Mitigation	5.2.2 Less than Sign. w/Mit	5.2.3 Less than Significant
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- | | | |
|--|--|---|
| <ul style="list-style-type: none"> • Air Quality and Meteorology • Biological Resources • Geology • Land Use • Noise • Transportation/Circulation • Water Quality | <ul style="list-style-type: none"> • <u>Biological Resources</u> • Groundwater and Soils • Utilities and Public Services • Cultural Resources • <u>Transportation/Circulation</u> | <ul style="list-style-type: none"> • Aesthetics and Visual Resources • Groundwater and Soils • Utilities and Public Services • Hazards and Hazardous Materials <ul style="list-style-type: none"> • Marine Vessel Transportation • Water Quality • Sediments/Oceanography |
|--|--|---|

AS(A)-5 The statements (errata and original Executive Summary and Chapters) are unclear and inconsistent with regard to Significance of impacts and as to which has priority.

Similar inconsistencies arise in Audubon's review of cumulative impacts (ES5.2.4) in relationship to the significant impacts (and errata changes). Basic question arises as to how can a locally significant, unmitigable impact can be assessed as not cumulatively considerable if it is common to most port/harbor activities and facilities. The Executive Summary also is not consistent with the relevant Chapters' text as to the "Considerable" status of cumulative effects as indicated below:

Cumulatively Considerable Impacts [or] "Cumulatively Considerable and Unavoidable"	Not Cumulatively Considerable Impacts (with mitigation)	Less than Considerable
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- AS(A)-6
- Air Quality and Meteorology
 - Cultural Resources
 - Biological Resources
 - Hazards
 - Geology
 - Utilities/Public Services
 - Transportation/Circulation
 - Noise
 - Water Quality/Sediments /Oceanography.

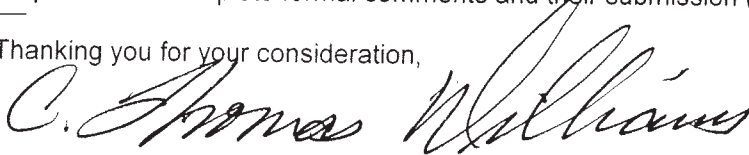
- Aesthetics and Visual Resources
- Groundwater and Soils
- Land Use
- Marine Vessel Transportation.

Within the text of relevant chapters, most, if not all but air quality, are considered as "less than considerable", including those on biological resources, especially the Caspian Terns of the PoLA/LB waters, now forced to nest on barges.

AS(A)-7 Review and assessment of the EIS/EIR and preparation of reasonable comments cannot be reasonably accomplished until such confusion is resolved. We therefore request that the review period is placed on-hold until such time as the documents and errata are clarified and circulated.

Without such clarifications, we request additional time for preparation of comments for the Public Hearing and for the preparation of complete formal comments and their submission (total 120 days after the current closure date).

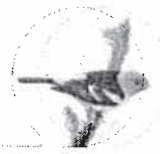
Thanking you for your consideration,



Dr. C. Thomas Williams
Conservation Committee
Los Angeles Audubon Society

Audubon Society A, July 26, 2007

- AS(A)-1.** Final EIS/EIR Section 5.2.1 (Unavoidable Significant Impacts) was revised to clarify that Project implementation would result in unavoidable significant impacts on water quality, sediments, and oceanography. However, this comment incorrectly asserts that the Draft EIS/EIR did not disclose the significant and unavoidable impacts on water quality, sediments, and oceanography. As stated in Draft EIS/EIR Section 3.13.5, “there will be a significant unavoidable impact [on water quality, sediments, and oceanography] from in-water vessel spills, illegal discharges, and leaching of contaminants.” Therefore, no further revisions to the Final EIS/EIR are necessary.
- AS(A)-2.** Final EIS/EIR Sections ES.5.2.1, ES.5.2.2, and ES.5.2.3 have been revised to eliminate internal inconsistencies.
- AS(A)-3.** This comment incorrectly asserts that the assessment of groundwater and soils is directly associated with the evaluation of hazards and hazardous materials. As stated in Draft EIS/EIR Section 3.6.1, the groundwater and soils analysis evaluates impacts associated with soil and groundwater contamination. Draft EIS/EIR Section 3.7 assesses potential hazardous material impacts associated with Project-related releases of hazardous materials (i.e., fire/explosions) to the environment. Therefore, no further revisions to the Final EIS/EIR are required.
- AS(A)-4.** Final EIS/EIR Section 3.7.1 has been revised to clarify that impacts due to seismically induced tsunamis and seiches are typical for the entire California coastline and would not be increased by construction of the proposed Project. Due to such a low probability of a large tsunami, impacts associated with tsunamis would be less than significant as they pertain to hazardous materials spills.
- AS(A)-5.** The Final EIS/EIR has been revised to eliminate internal inconsistencies.
- AS(A)-6.** As the Draft EIS/EIR demonstrates full disclosure of the Project’s contribution to the combined consequences of past, present, and future projects, the EIS/EIR is consistent with the provisions of CEQ Regulations 40 CFR 1502.16 and 1508.7 and CEQA Guidelines Section 15130 (a)(2), Discussion of Cumulative Impacts, that state, “When the combined cumulative impact associated with the project’s incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. Additionally, “a project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact.” (CEQA Guidelines Section 15130[a][3]). The Final EIS/EIR will be revised to ensure internal consistency between the Executive Summary and Chapter 4.
- AS(A)-7.** Your comment is noted and appreciated. In response to public concerns regarding the complexities of the Draft EIS/EIR, the Port extended the public comment period to 90 days pursuant to CEQA Guidelines Section 15105(a) that states, “the public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances.”



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July 31, 2007

TO: US Army Corps of Engineers
U.S. Army Corps of Engineers, Los Angeles District
P.O. Box 532711
Los Angeles, CA 90053-2325

Port of Los Angeles
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731

Attn.: Dr. Spencer D. MacNeil, Commander
Dr. Ralph G. Appy, Director of Environmental Management

FROM: Dr. C. Thomas Williams
Conservation Committee
Los Angeles Audubon Chapter
4115 Barrett Road
Los Angeles, CA 90032

RE: Berths 136-147 [TraPac] Container Terminal Project/ Project file No.: 2003-01142-SDM
Initial Comments with regard to Adequacy and Sufficiency of Assessments for Biological Resources
and Related Environmental Impacts

I wish to express my appreciation for receipt of notices and other documents made available for review of this valuable project and the Port and for your consideration in the upgrading and revision of various elements commented on below. These particular comments are of an initial nature and shall be updated during the course of the final review due in August or after. I again request an extension of the review period and an additional public hearing in late August to better present the comments on this massive review. The review comments are summarized below:

1. Comprehensibility and Consistency

AS(B)-1

Earlier court rulings have indicated that the EIR/EIS should be comprehensible for the typical decision-maker and typical high-school or junior college graduate. The massive nature of 6000 pages of documents harks back to the 1970 encyclopedic approaches. The large number of pages and chapters and appendices create conditions lending themselves to contradictions and inconsistencies and evident in Executive Statement, Chapter Texts, and Appendices.

Executive Summary, Chapter 3.3, and Appendix M do not agree as to significant, less than significant with mitigation, and less than significant (even before mitigation).

AS(B)-2

Titles and references in and to sections should be consistent and highlight the elements in the titles, the Biology or Biological Resources.

AS(B)-3

Appendix M includes little of the vast array of information available regarding the biology of the PoLA and the Project vicinity. No information was requested of various local San Pedro and Palos Verde biological (bird and fisheries) specialists and experts, and little information is specific to the Project, which provide no substantive information relevant to the EIS/EIR under review.

AS(B)-4

REQUEST: Provide actual bird survey information regarding use of the Main Channel, Turning Basin, and West Basin.

Materials should be relevant only to the Project and vicinity or mitigation and compensation areas, unless the contention is made that distant conditions are related to the Project.

AS(B)-5

The Chapter 3.3 and Appendix M should be combined and reduced in volume and focused on the Project; the Chapter text should be not more than 25 pages so that it can be comprehended by Decision Makers, stakeholders, and reviewers.

AS(B)-6

The Executive Summary should be consistent with the chapter text with regard to the level of impacts and mitigation required.

2. Alternatives

2.A State-of-the-Industry Bench-Marked Terminal Alternative

AS(B)-7

An alternative should be developed to minimize future additional berths by maximizing the efficiency of existing and proposed berths and yards. For biological resources (including the various related elements mentioned in different sections and paragraphs), in-/outbound movements of vessels in the Turning Basin and West Basin (also East Basin and Dominquez Channel (estuary) causes more disruption than more seaward circulation and therefore increased operations on the southernmost berths would less effects on the biology of the PoLA.

Similarly the redistribution of leaching contaminants from fills and "muds" (a recognized Significant Impact) by vessel movement is not assessed although sediment contaminants (especially DDD, DDE, and DDT) in previously dredged channel muds (maintenance muds) clearly shows that redistribution of 30+ year old materials is occurring since the ban for DDT in the 1970s.

AS(B)-8

2.B Western Harbor Relocation

An Alternative should be considered southward of the Turning Basin on the western shore of the Terminal Island as the shoreline is not used for maritime or other water-dependent activities and facilities.

2.C Risks of Collisions and Oil Spill

AS(B)-9

Collision risks are not assessed at the levels available for maritime movements, although the spills is considered as a Significant Impact for water resources and thereby all indirectly affected resources should be considered significantly impacted. The proposed project location, the circulation routing for vessels, and conflicting maritime modes all contribute to a heightened risk of collisions and spill, although no traffic and risk management (VTS) assessment has been conducted, only passing the potential impacts as Significant and unmitigateable, which they are not. Assessment and relocation based on the risk and spill assessment would provide alternative locations along the Main Channel and lessen impacts on the biology of the PoLA.

REQUEST: Adequate development of:

- More efficient terminal alternatives
- West Basin/Main Channel maritime alternatives
- Risk-based terminal alternatives

would produce more environmentally acceptable alternatives and greatly lessen impacts from collisions, spills, and other related water related activities on the biological resources of the PoLA.

AS(B)-9

3. Biological Resources

Assessment of biological resources and impacts are not consistent as invasive species potential are assessed as significant, irreversible, and unmitigateable, while those for specially status species are considered as undocumented and mitigated.

AS(B)-10

3.A Terns, Falcons, Osprey are known for the area and will be affected by current and future operations of facilities (traffic is the real operational impact of roads and ports while the road construction has a very different impact).

AS(B)-11

3.B Presence of Falcons and Osprey to the coastal waters and nesting in bridge works clearly show that the activities and facilities of the PoLA have operational impacts on nesting, breeding, roosting, feeding, and travel.

AS(B)-12

3.C Caspian and Least terns are known to nest within the PoLA but no comments or documentation is provided for their co-presence and different requirements.

AS(B)-13

3.D Killings of nesting terns and hatchlings on barges clearly show that if available terns and others will use the areas provided in the PoLA.

AS(B)-14

3.E Disruption of nesting and attempts by Caspian terns on Pier 400 (lack weed and pest controls) clearly shows that if available terns and others will use the areas provided in the PoLA.

AS(B)-15

3.F Capital Works - Mitigation Bank which requires additional deposits for compensation of capital works; operations are considered as non-impacting although operations of the project requires virtual complete and continuing occupation of 25 additional acres with no mitigation (e.g., 5 vessels--1000+ft x 200ft = 5 x 200,000 = 1,000,000sqft = 25 acres) along with disruption through the main channel.

AS(B)-16

3.G Mitigation Adequacy - Current mitigation is based upon the current impacted conditions which is a 1% remainder of the original pre-LA River relocation coastal conditions, and the easy resumption of birdlife breeding to even the current conditions clearly indicate that the current "POTENTIAL" conditions are suitable for restoration to earlier conditions - Zero-Based Accounting should be applied to current development and mitigation. If Corps projected impacts can be based on future development then past destruction by the PoLA should be adequately incorporated into the current impact assessments.

AS(B)-17

3.H Corridors - Revitalization of LA River – Wetlands and One-Million trees as part of the City's programs for a greener city is not reflected in previous discussion of corridors which has become out-of-date. As terns and other birds clearly demonstrate the coast itself also provides a corridor between Santa Monica and San Pedro Bays. Terns are know from the LA River where water is available with some depth and where freshwater is available for preening/cleaning of seabird plumage.

AS(B)-18

3.I Invasive Species - Rules, regulations, and procedures are available for ballast waters. Lack of enforcement and verifications is reflected by statements. Statements that the PoLA can't control and can't mitigate reflects negative approach, not enforceable = can't do anything. Invasive species can be mitigated, and their impacts on Native Species and resources require compensation for the Significant Adverse Impacts of the Invasive Species.

AS(B)-19

AS(B)-20 3.J Water resources dredging, dumping, discharges, and SW-runoff Mgmt. Plans are required and related impacts are considered controllable, and therefore they can be mitigated. Ballast discharges (and invasive species), oil spills, and contaminant leaching (water quality) are not considered as unmitigated and Significant for water, and thereby should be considered as Significant to limited biological resources which suffer from oil spills and competition and displacement by the Significant Impacting conditions.

AS(B)-21 3.K Air Resources - PM10/2.5, NOx, SOx, and other air pollutants in the LA basin are considered as significant impacts on human life which can reduce their exposures, while wildlife and vegetation are subject to the same unhealthy conditions and precipitates, and food-chain accumulations indicated in the waters and muds of the harbor. If significant to humans, impacts are significant to biological resources and conditions.

AS(B)-22 **REQUEST:**
Provide results of active bird surveys of the Main Channel, Turning Basin, East and West Basins, and the Dominquez Channel (where tidal) prior to dredging;

AS(B)-23 ***Provide additional mitigation (10% of total affected shoreline and yard areas [previous marshes]) to compensate for historic losses, lack of enforcement, and operational impacts and disruptions, including leachate migration, illegal discharges, and in-water spills;***

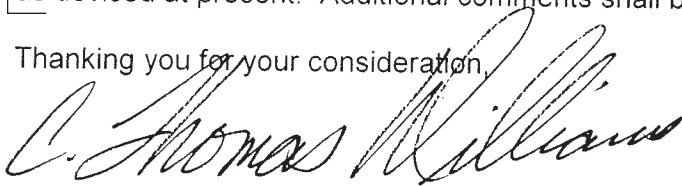
AS(B)-24 ***Develop all other Non-Maritime Use Shorelines (>3000 lineal feet of intertidal zones) within the PoLA (e.g., east bank of Main Channel) for wildlife mitigation and compensation;***

AS(B)-25 ***Develop and provide a manual and enforcement for wildlife mitigation and protection measures throughout the PoLA.***

AS(B)-26 Based on previous submitted comments on the errata and these comment, above, we request additional time for preparation of comments for the Public Hearing and for the preparation of complete formal comments and their submission (total 120 days after the current closure date).

AS(B)-27 As the documents stand at present, they are considered as inadequate and insufficient for decision making and reliable assessment of the interrelated environmental impacts of the proposed project or its alternatives as devised at present. Additional comments shall be prepared and submitted within the comment period.

Thanking you for your consideration,



Dr. C. Thomas Williams
Conservation Committee
Los Angeles Audubon Society

Audubon Society B, July 31, 2007

- AS(B)-1.** Your comment is noted and appreciated. Please see response to comment AS(A)-7. The Final EIS/EIR has been revised to eliminate internal inconsistencies.
- AS(B)-2.** Final EIS/EIR Executive Summary and Chapter 3.3 have been revised for consistency. Draft EIS/EIR Appendix M provides the survey protocol for *Caulerpa* and the executive summary of the year 2000 baseline studies for the harbor. No impacts are addressed in Appendix M.
- AS(B)-3.** Your comment is noted and appreciated. The Final EIS/EIR has been revised to eliminate internal inconsistencies.
- AS(B)-4.** Thank you for your comment. The most recent bird survey data for the harbor are included in Appendix H.2 of the Year 2000 baseline survey report by MEC and Associates (2002). This report is available at the Port, and a copy will be sent to you. The Los Angeles-Long Beach Harbor was divided into 34 zones (Figure 9.2-1 in the MEC report) and surveyed every month for a year. Zone 34 covers the Main Channel and Zones 31-32 cover West Basin and the Turning Basin. Zone 33 covers Southwest Slip in West Basin, and much of that area was filled after the surveys were conducted. The data from the 2000 surveys were used in preparation of the Draft EIS/EIR. Detailed information on the common and typical birds present in the project area were not included in the Draft EIS/EIR because the construction activities would result in temporary disturbances in the Project area, and mobile species such as birds can avoid the work area. Operation of the upgraded terminal would be similar to past operation of the terminal and would not change the effects of such activities on birds.
- AS(B)-5.** Draft EIS/EIR Section 3.3 is already condensed and focused on the Project area to the extent feasible. However, for resources such as marine mammals, a larger area is necessary to address impacts of vessel traffic. All of the potential impacts of the Project must be evaluated under CEQA and NEPA so the volume of the chapter cannot be reduced while meeting those requirements. Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-6.** The Final EIS/EIR has been revised to eliminate internal inconsistencies.
- AS(B)-7.** Thank you for your comment and the suggested alternative. As described in Section 2.5 of the Draft EIS/EIR, many alternatives were considered but most were not carried forward because they did not meet enough of the Project objectives. It is unclear from your comment how incorporation of the proposed alternative would minimize significant impacts associated with the proposed Project. The comment infers that berths closer to the Outer Harbor should be used more than those in the Inner Harbor, such as West Basin, to reduce vessel traffic effects on biota. This would not maximize the efficiency of the entire Port. Project-related vessel traffic would not have a measurable adverse affect on biota since studies over a number of years show that biota in the Port, including in the Inner Harbor, have not decreased and have shifted to less pollution tolerant populations. Therefore, no revisions to the Final EIS/EIR are necessary.

It is understood that the second part of the comment is referring to effects from prop wash on redistribution of existing sediment contaminants. Sediment resuspension from prop wash can occur from any shipping activities within the Port, not just those associated with the proposed Project. In addition, ship movements can also cause sediment resuspension. Resuspended sediments are expected to settle quickly to the bottom, and associated

contaminants are not expected to increase toxicity or bioavailability because contaminants typically have a strong attachment to sediment particles. The effects of sediment resuspension from dredging and construction are addressed in Draft EIS/EIR Section 3.13.4.

- AS(B)-8.** The comment suggests that the Port consider an alternative that would relocate the Project site south of the Turning Basin on the western shore of Terminal Island. However, the comment does not specifically identify how the proposed alternative would feasibly attain most of the basic project objectives or substantially lessen any of the significant effects of the Project (CEQA Guidelines Section 15126.6 and CEQ Regulations 40 CFR 1502.14). Additionally, as stated in CEQA Guidelines Section 15126.6(a), an “EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.” As Draft EIS/EIR Section 2.5 includes a reasonable range of alternatives, no revisions to the Final EIS/EIR are required.
- AS(B)-9.** Thank you for your comment and the suggested alternatives. As described in Section 2.5 of the Draft EIS/EIR, many alternatives were considered such as use of other sites within the Los Angeles Harbor District (Section 2.5.2.8). This alternative was not carried forward because it would not optimize the use of Los Angeles Harbor waterways and accommodate the projected growth in the volume of containerized cargo through the Port. As discussed in Draft EIS/EIR Section 1.1.3 the Port is planning to optimize all of its terminals to accommodate anticipated cargo increases. With this as a basis, Section 3.11 of the Draft EIS/EIR includes information on vessel transportation safety (e.g., collision risks) at the Port. As noted, the USCG database indicates that the POLA/POLB Harbor area has one of the lowest accident rates among all U.S. ports, with a 0.0038 percent probability of a vessel experiencing an accident during a single transit, as compared to the average 0.025 percent vessel accident rates for all U.S. Ports (see Draft EIS/EIR p. 3.11-7). Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-10.** The impacts assessed for invasive species and special status species are separate analyses that use available information to support the impacts predicted. Impacts for special status species are not undocumented but were found to be less than significant using site-specific information. Information on habitat use by these species in the Port was used to assess the potential for Project impacts. These species are not present at the project site or would not be adversely affected by Project activities as described in Impact BIO-1a and 1b. Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-11.** The effects of the proposed Project on peregrine falcons and California least terns were addressed in the Draft EIS/EIR in Impact BIO-1a and 1b. The osprey is an uncommon visitor to the Port with only two observed in the 2000 surveys, one each in May and October 2000, and both were at the Seaplane Lagoon (Appendix H.2, MEC and Associates 2002). This species does not nest in the region (California Department of Fish and Game at http://www.dfg.ca.gov/habcon/cgi-bin/read_one.asp?specy=birds&idNum=25, San Diego Natural History Museum at <http://www.oceanoasis.org/fieldguide/pand-hal.html>). The proposed Project would not adversely affect this species because no nesting occurs in the region and the few transitory individuals using the Seaplane Lagoon would be too far from the proposed Project site to be affected during construction or operations. Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-12.** The peregrine falcon is present and nests on bridges in the harbor. This species has adapted to the industrial activities in the harbor as shown by its repeated nesting on bridges there.

However, none of these bridges would be affected by the proposed Project. Impacts to peregrine falcons were addressed in the Draft EIS/EIR Impact BIO-1a and -1b. Please see response to comment AS(B)-11 for osprey impacts. Therefore, no revisions to the Final EIS/EIR are required.

- AS(B)-13.** As described in Section 3.3.2.5 of the Draft EIS/EIR, California least terns have nested in the harbor for many years. Caspian terns are not currently a special status species and thus are not discussed in that section of the document. These species do not nest near the proposed Project, and construction and operation of the proposed Project would not affect their nesting or foraging. Their differences in the nesting requirements of California least terns and Caspial terns, although of biological interest, are not relevant to the impact analysis for this Project and were not included. Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-14.** A nesting area is currently provided for the California least tern on Pier 400. Providing nesting habitat for the California least tern or other species of terns is not required for the proposed Project because none would be affected by the Project. The commenter is evidently referring to the loss of tern eggs and chicks that occurred on a barge that was anchored in the Port of Long Beach. Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-15.** A nesting area is currently provided for the California least tern on Pier 400 in accordance with the Ports interagency tern nesting site agreement (Draft EIS/EIS Section 3.3.2.5.1). Providing nesting habitat for tern species is not required for the proposed Project because none would be affected by the Project. Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-16.** The impacts of operating the proposed Project on biological resources were addressed in the Draft EIS/EIR Section 3.3.4.3. No significant impacts to special status birds were found. The loss of surface water from filling Northwest Slip was addressed in Impact BIO-5. New wharves (1,105 feet) in the proposed Project would not eliminate surface water, and vessel use of these new wharves would not be present continuously or be as long as the wharf. An existing timber wharf is present where the 705 foot new wharf would be build, and the new wharf would replace that wharf. The commenter is correct in noting that surface water under new wharves and in the space used by berthing vessels is not considered a permanent loss of habitat to be mitigated by use of mitigation bank credits. Surface area occupied by ships does not result in loss of marine habitat and does not require mitigation. Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-17.** Past impacts are only required to be addressed in the cumulative analysis under CEQA and NEPA. These impacts are addressed in Section 4.0 of the document. The baseline for direct project impacts from the proposed Project is 2003. Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-18.** City trees can provide habitat for wildlife, such as birds and rats, but they generally do not provide migration corridors due to the number of people and structures also present. In any circumstance, the proposed Project does not remove any known existing corridors for wildlife. Revitalization of the LA River is a commendable goal but is not related to the impacts of this Project. Therefore, no revisions to the Final EIS/EIR are required.

- AS(B)-19.** The topic of invasive species is addressed in Section 3.3 of the Draft EIS/EIR. The State of California State Lands Commission and the U.S. Coast Guard are primarily responsible for enforcing existing ballast water regulations. The major measure for reducing introductions through ballast water control including primarily open ocean exchange. However, these regulations do not apply to all vessels or to organisms on vessel hulls as noted in Impact BIO-4c. Past introductions of invasive species have occurred and are not the result of the proposed Project. Methods for preventing transport of such species are improving and being implemented, but none of the methods are currently 100% effective. No feasible mitigation measures have been identified to date to achieve “total” effectiveness. Recently however, the Ports of Los Angeles and Long Beach, the State Lands Commission and APL have entered into an agreement to try implementation of an oxygen stripping system for use on container ships. Development of such technologies may eventually lead to stopping the introduction of invasive species from ballast water, but still does not stop exotics that might arrive as fouling organisms. Eradication of invasive species once they have become established is difficult to impossible for most species, particularly without adverse impacts to native species. Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-20.** See response to comment AS(B)-19 for a discussion of invasive species in ballast water. The introduction of invasive species via project-related vessels was analyzed in the Draft EIS/EIR and found to have the potential to be significant.
- Ballast water discharges are not considered a significant source of chemical contaminants to the harbor. It is not clear that “contaminant leaching” refers to anti-fouling paints on ship hulls. As discussed in Draft EIS/EIR Section 3.13.4, copper leaching from hull paints may exacerbate impaired water quality conditions with respect to the water quality objective for copper. However, this does not necessarily represent a significant impact to biological resources because excess copper may not be in a biologically available form (a topic of ongoing research). The fact that various chemicals incidentally enter harbor waters does not mean that there would be a significant effect on biological resources using significance criteria established for this Project. Despite increasing maritime activities in the harbor, biological surveys done since the 1970’s indicate that there is significant improvement in both water quality and in the numbers and diversity of species in the harbor (Section 3.3.2). Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-21.** As described in Draft EIS/EIR Section 3.2 Air Quality, emissions of pollutants to the air would be reduced by the proposed Project. Effects of aerial deposition of pollutants into harbor waters were addressed in Draft EIS/EIR Section 3.13, Water Quality, Sediments, and Oceanography. Therefore, no revisions to the Final EIS/EIR are required.
- AS(B)-22.** Please see response to comment AS(B)-4. Bird survey Zone 27 covers Consolidated Slip that leads into Dominguez Channel.
- AS(B)-23.** Discussion regarding discharges and spills has been provided in Draft EIS/EIR Section 3.13 and responded to above in the responses to comments AS(B)-19 and -20. As the Draft EIS/EIR demonstrates full disclosure of the Project’s contribution to the combined consequences of past, present, and future projects, the EIS/EIR is consistent with the provisions of CEQ Regulations 40 CFR 1502.16 and 1509.7 and CEQA Guidelines Section 15130 (a)(2), Discussion of Cumulative Impacts, that state, “when the combined cumulative impact associated with the project’s incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR.”

Additionally, “a project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact” (CEQA Guidelines Section 15130[a][3]). Further, CEQA case law holds that, where facts in the record show that activities were occurring at a project site prior to environmental review, it may be “misleading and illusory” to describe baseline conditions as if those activities were not occurring. (See *Fairview Neighbors v. County of Ventura*, 70 Cal.App.4th 238, 243 (1999) (upholding baseline for evaluation of conditional use permit to expand existing mining operations as including levels of truck traffic actually achieved under prior approvals). Additionally, CEQA provides for the environmental baseline to include all uses that actually existed during the baseline period, regardless of whether those activities are alleged to have exceeded prior approvals. See, e.g., *Fat v. County of Sacramento*, 97 Cal.App.4th 1270, 1277-1281 (2002); *Riverwatch v. County of San Diego*, 76 Cal.App.4th 1428, 1451-1453 (1999). Therefore, it is appropriate for the EIS/EIR to compare the potential impacts of the proposed Project against baseline conditions.

Finally, the Port may only impose mitigation measures and other project conditions that bear a reasonable relationship to the significant impacts that would occur if the proposed Project is approved. The Port may not try to cure past environmental harms by imposing measures that go beyond the scope of the impacts created by the proposed Project. (See *Dolan v. City of Tigard* (1994) 512 U.S. 374; *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825.)

- AS(B)-24.** After mitigation of the 10-acre fill in the Northwest Slip, there is no incremental effect that would result in cumulative effects (Draft EIS/EIR p. 3/3-32). Development of other shorelines for wildlife mitigation and compensation is outside the scope of the proposed Project. Since implementation of the Clean Water Act, the Port has accounted for habitat loss and provided on-site or off-site compensatory mitigation for permanent loss of marine habitat in coordination with Federal and State Resource Agencies. [In accordance with the California Coastal Act, the Port has been designated an essential element of the national maritime industry (PRC Section 30701). The Port is responsible for modernizing and constructing necessary facilities to accommodate deep-draft vessels and the demands of foreign and domestic waterborne commerce, and other water dependent facilities in order to preclude the necessity for developing new ports elsewhere in the state (Draft EIS/EIR Table 205).] As a result, the Port gives priority for development of shoreline for maritime purposes. No revisions to the Final EIS/EIR are required.
- AS(B)-25.** This comment addresses the need to develop a manual and enforcement for wildlife mitigation and protection measures throughout the Port that are beyond the scope of this EIS/EIR. The Port has worked with the resource agencies and entered into agreements related to wildlife mitigation and protection measures. These include the least tern nesting site agreement (Draft EIS/EIR Section 3.3.2.5.1), and various mitigation banks (Draft EIS/EIR Table 3.3-4). The commenter is also referred to agreed-upon interagency mitigation policies referred to in the Draft EIS/EIR (Section 3.3.4.3, p. 3.3-29 and USACE and LAHD 1992).
- AS(B)-26.** Please see response to comment AS(A)-7. Your comment is noted and appreciated.
- AS(B)-27.** The EIS/EIR has been prepared in accordance with the NEPA requirements and in conformance with the CEQ Guidelines and the USACE NEPA Implementing Regulations. The document also fulfills the requirements of CEQA and the State CEQA Guidelines (Draft EIS/EIR ES-1 and 1.4.1). Your comment is appreciated and will be forwarded to the Board of Harbor Commissioners for their consideration.



Scenic America

Commander, U.S. Army Corps of Engineers, Los Angeles District,
c/o Dr. Ralph Appy
Port of Los Angeles
425 South Palos Verdes St.
San Pedro, California 90731



September 24, 2007

Dear Mr. Appy,

We would like to first thank the Port of Los Angeles and Army Corps of Engineers for the opportunity to provide comments on the Draft Environmental Impact Statement/Environmental Impact Report Berth 97-109 Container Terminal Project. In our review, it appears that the significance of visual impacts as a legitimate, measurable resource impact has been downplayed.

While it is understandable to cite the area's industrial purpose as part of a description of the existing environment, this description must, necessarily, also include and account for the community context of the various neighborhoods surrounding the Port. The visual character of these areas should not be ignored nor the quality of life for these communities sacrificed simply because they lie geographically juxtaposed. Decisions can be implemented that honor the mechanical necessities of Port operations while integrating measures for visual quality improvements. Specifically, there are several issues of concern in how aesthetic, scenic, visual impacts are addressed, such as;

SA-1

SA-2

SA-3

SA-4

SA-5

SA-6

- The analysis inadequately addresses the direct, indirect and cumulative affects of current and proposed lighting in contribution to light pollution in the area.
- The document fails to appropriately define and examine the setting of the project to include the context of the communities bordering the port. It is impossible to separate or ignore the visual impacts associated with these adjacent lands.
- The analysis fails to adequately address the visual impacts of views from within the neighboring communities. Along with travel routes along or past the area, these views should have been considered key observation points by which the visual impacts of alternatives were evaluated and to which subsequent monitoring activities are developed.
- The document fails to recognize numerous opportunities for visual quality improvements through compensatory mitigation where on-site physical techniques are not feasible.
- The analysis is weak in consideration of ancillary structures, utilities, vehicles, signage and other features which contribute to the visual environment and thusly, the cumulative and indirect impacts.

Scenic resources are a public resource which can be inventoried, monitored and protected. We recommend that the Port and other responsible authorities reconsider the attention to visual quality impacts. Doing so could represent a visible opportunity for the Port to demonstrate its commitment to the communities in which it resides.

Sincerely,

Brad Cownover
Director, Scenic Conservation Services

Scenic America, September 24, 2007

SA-1. The Draft EIS/EIR discusses and analyzes visual impacts in the context of the adjoining communities, including their residential neighborhoods. Critical public views were identified based on variables of exposure to the Project and visual sensitivity. Several critical public views were identified at points within the surrounding communities. These included views from Wilmington, San Pedro, and Rancho Palos Verdes, and the character of the setting for those views was described in Section 3.1.2.2.3, (Existing Visual Conditions within Critical Public Views). Specifically, Viewing Position 11 represents the view from Shields Drive Residential Area in San Pedro, and Viewing Positions 12 and 13 represent from San Pedro residential neighborhoods located in the hills to the west and southwest of the site. Figures 3.1-3 and 3.1-6 are representative of the residential area along the side of “C” Street (residential) in Wilmington (Figure 3.1-7).

The analysis also explained that the existing visual setting at the relevant residential neighborhoods is currently dominated by features that are not congruent with their residential character. The significance of project impacts is necessarily determined in comparison to the existing settings. For example, relative to the community of Wilmington, “... it is the visual character of the neighborhood along the north side of “C” Street and its vicinity that is relevant to the baseline visual conditions for views from this area. The nearby Port facilities are seen by the residents in terms of their immediate surroundings and not those of the Port environment.” Later, the report goes on to say that: “Views to the south that include the Berths 136-147 Terminal facilities are part of a sequence of views that includes the larger residential area to the north, and the mix of commercial/industrial and residential land uses along “C” Street.” It is the character of the south edge of Wilmington, along “C” Street, that is the benchmark for judging the visual condition of lands within view to the south. In the case of Wilmington, the Port facilities are of a character that is not congruent with the character of the residential area along and north of “C” Street and the existing visual condition for south-directed views is Visual Modification Class 4: the available views are dominated by visually incongruent and incoherent land uses. Similarly, the existing view from Shields Drive, relative to its residential context the Port’s features are incongruous, dominate attention, and visual quality is low (Visual Modification Class 4). (See discussion of Impact AES-1.) Please also see response to comment NRDC-42.

To summarize, the community context was recognized in terms of its character in relation to that for the lands within view from there, as well as in terms of public sensitivity (views from residential areas are highly sensitive).

SA-2. The Draft EIS/EIR analyzed the Project’s anticipated impact on nighttime light and glare and determined that the design of the new lighting at the Berths 136-147 Terminal and the replacement of old lighting fixtures would meet current design standards and result in reduced levels of off-site illumination attributed to Terminal operations, relative to the December 2003 Baseline conditions (Section 3.1.4.3.1). POLA engineering will demonstrate that a reduction in off-site illumination would occur by measuring offsite light levels at strategic points prior to implementing the Project lighting plan and comparing the illumination to lighting measured at the same points after the Project is completed. Therefore, the Project would result in a lessening of offsite illumination and there would be no adverse impact.

Because there would be a reduction in offsite light and glare, the Project would have no potential to incrementally contribute to ambient nighttime light from Port operations. CEQA

specifies that “[a]n EIR should not discuss impacts which do not result in part from the project evaluated in the EIR” (CEQA Guidelines § 15130(a)(1)). Therefore, the cumulative impact analysis correctly concluded that the project would not have an adverse cumulative impact on existing light and glare conditions.

- SA-3.** Please see the responses to comments SA-1 and NRDC-42.
- SA-4.** Please see the responses to comments SA-1 and NRDC-42. Views representing those from within the neighboring communities were selected for detailed analysis of the proposed Project and the Alternatives. No adverse impacts were identified. Therefore, no mitigation measures or monitoring activities are required.
- SA-5.** Under CEQA, all significant impacts are to be mitigated to the fullest extent feasible. However, the analysis in the Draft EIS/EIR concluded that the proposed Project and its Alternatives would not cause adverse visual impacts and, therefore, the impacts would be less than significant and not require mitigation.
- SA-6.** Draft EIS/EIR Section 3.1.4.3.1, indicates which of the many aspects of the Project would be within public view. The focus was on the most apparent Project features with the greatest potential for visual impacts. Public views of the Project site are from substantial distances, and smaller features such as yard equipment, signage, security lighting, top-pick cranes, and RTG cranes would not be discerned, particularly because they would be shielded from view by stacked containers stored in the backlands and/or neighboring terminal equipment, or their effect would be attenuated by distance to the point of not being noticeable. Offsite trucking operations would not be viewed from Wilmington due to the Harry Bridges Buffer, and on-site trucking would be shielded as noted. Additions to, and modifications of, utilities would occur onsite and be screened from view by existing infrastructure.

Moreover, the visibility of features is not by itself relevant to the assessment of cumulative and indirect impacts. Please see Section 3.1.4.1.2 and Appendix F for a detailed discussion of the methodology used to evaluate visual impacts. The analysis in the Draft EIS/EIR concluded that the proposed Project and its Alternatives would not cause adverse visual impacts and, therefore, the impacts would be less than significant. No mitigation is required where no significant impact is identified.