



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

October 26, 2009

Dr. Spencer D. MacNeil  
U.S. Army Corps of Engineers  
Los Angeles District  
P.O. Box 532711  
Los Angeles, CA 90017

Subject: Final Environmental Impact Statement for the San Pedro Waterfront Redevelopment Project (Project) in the Port of Los Angeles (CEQ# 20090331)

Dear Dr. MacNeil,

We appreciate the opportunity to review the subject document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. This letter conveys our comments, which were also prepared under the authority of, and in accordance with, the provisions of the Federal Guidelines (Guidelines) promulgated at 40 CFR 230 under Section 404(b)(1) of the Clean Water Act (CWA).

EPA previously rated the Draft Environmental Impact Statement (DEIS) EC-2, "Environmental Concerns - Insufficient Information", due to our concerns with significant unavoidable impacts to air quality and environmental justice communities, and ocean disposal of sediments without sufficient consideration of beneficial reuse. In addition, we identified where the DEIS provided insufficient information, and recommended ways of addressing these concerns.

We thank the Corps for its commitment to beneficial reuse of sediments for the project in accordance with the Contaminated Sediment Task Force Long-Term Management Strategy. We appreciate the Corps' agreement to complete a Habitat Mitigation and Monitoring Plan, and encourage development of the plan as promptly as possible.

We remain concerned about the significant unavoidable impacts to air quality and environmental justice communities. We recognize that the Health Impact Assessment (HIA) may serve to identify measures that can reduce these unavoidable impacts. We thank the Port of Los Angeles for its support of the HIA development process. We ask the Corps to also consider

participation in the Health Impact Assessment and port-wide Health Risk Assessment, as the District's activities have also contributed to the significant unavoidable impacts. We support the Port Community Mitigation Trust Fund "geared towards addressing the overall off-Port impacts created by Port operations outside the context of a project specific NEPA and/or CEQA document" and its potential to address our concerns.

We also remain concerned that the Corps will not offer suggestions on minimizing risk to residents during construction (e.g. reducing outdoor activity, closing window etc.) in its public notifications. While the purpose of the notice may be to "inform the sensitive receptors about the potential inconvenience" of the project (page 2-80), offering preventative health measures appears relatively simple and convenient.

We have enclosed our comments on the Draft Conformity Determination, Appendix D-7 of the FEIS. We are concerned with the Corps' approach to off-setting project emissions with voluntary emissions reductions that have occurred as a result of the recession. We are also concerned that the emissions estimates need to be updated, as the estimates do not seem consistent with the current project schedule.

Portions of the project have been delayed, such as the North Harbor Cut and the Outer Harbor Cruise Facilities. As the Council on Environmental Quality guidance (<http://www.nepa.gov/nepa/regs/40/40p3.htm>) notes, "EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS supplement." We would welcome a future discussion with the Corps on the need for a supplemental EIS for the delayed elements of the project.

We appreciate the opportunity to raise these remaining concerns with you. Please send a copy of the Record of Decision to the address above (mailcode: CED-2) when it is available. If you have any questions, please contact me at 415-972-3521 or contact Tom Kelly, the lead reviewer for this project. Tom can be reached at 415-972-3856 or [Kelly.thomasp@epa.gov](mailto:Kelly.thomasp@epa.gov).

Sincerely,

/s/

Kathleen M. Goforth, Manager  
Environmental Review Office

Enclosure: EPA Comments on the Draft General Conformity Determination (Appendix D-7

of the Final Environmental Impact Statement for the San Pedro Waterfront  
Redevelopment Project)

cc: see next page

cc: Dr. Ralph Appy, Port of Los Angeles  
Ms. Jan Rebstock, Port of Los Angeles  
Ms. Cindy Tuck, California EPA  
Ms. Cynthia Marvin, California Air Resources Board  
Ms. Nakamura, South Coast Air Quality Management District  
Mr. Hassan Ikrhata, Southern California Association of Governments  
Dr. Paul Simon, Los Angeles County Department of Health

## **EPA Comments on the Draft General Conformity Determination (Appendix D-7 of the Final San Pedro Waterfront Project EIS/EIR)**

### **Emissions Off-sets**

The conformity analysis uses recession-induced emissions reductions to “off-set” project emissions; however these emission reductions are voluntary, or unenforceable under permits or regulations, and therefore subject to change. Consequently, the Corps may not use unenforceable reductions to off-set project emissions.

### **Project Schedule**

On page 3-2, section 3.3, the analysis provided indicates that the year of greatest construction emissions is 2009; but the year is nearly over and the project has not started. We suggest the Corps correct this section to reflect the current project schedule.

### **Method of Conformity Determination**

The Draft General Conformity Determination uses two approaches to demonstrate conformity. One method used the budget test, on page 4-6, table 4-3, to meet 93.158(a)(5)(A) of the conformity rule for conformity to the applicable State Implementation Plan (SIP), the 1997 South Coast Air Quality Management Plan (AQMP). However, the most recent South Coast Air Quality Management District baseline NO<sub>x</sub> emission estimates for on-road and nonroad source categories (i.e., the two categories affected by project construction) greatly exceed the applicable general conformity budgets from the 1997/1999 South Coast SIP.

We believe the second method, which used the 2007 AQMP (as the SIP revision referred to in 93.158(a)(5)(B)(i) of the conformity rule), offers a better way to demonstrate conformity. To demonstrate conformity using this approach, the Corps should include a letter from the California Air Resources Board or the Air District documenting the determination that the emissions caused by the Federal action are consistent with attainment and/or maintenance of the relevant NAAQS in the air basin. This will serve to confirm the information included in the first full paragraph on page 5-8.

### **Documentation of Mitigation Measures**

We request the Corps and the Port of Los Angeles to provide written commitments from implementing parties for mitigation measures.

### **Conflicting Information**

Page 5-4 contains the following two statements about conformity to the SIP; the first paragraph indicates "[a]t the time that SCAQMD prepared the 1997 AQMP, LAHD had not yet announced its intention to undertake the project. For this reason, it is evident that the 1997 AQMP does not

contain specific estimates of emissions for construction activities under the project." The third bullet says "Activity projection used to develop the 1997/1999 SIP budgets and 2007 AQMP budgets included Port growth." We ask the Corps to clarify what was included in "Port growth."

### **Clarifications**

We would like to clarify an issue we discussed with the Port: tugboat emissions need only be estimated out to the boundary of the nonattainment area, which extends 3 miles out from the coastline; if tugboats are within 3 miles of Catalina Island, these emissions should also be included; under the Submerged Lands Act, the "coast line" is defined as the "line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters" 43 USC section 1301(c); and the extent of "inland waters" is a complex issue, but the principles for determining the seaward extent of inland waters are discussed at length in the Supreme Court case, *United States v. California* , 381 U.S. 139 (1965).