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

May 11, 2009

Mr. Antal Szijj
U.S. Army Corps of Engineers
Los Angeles District
Attn: Regulatory Division
P.O. Box 532711
Los Angeles, California 90053-2325

Subject: Final Environmental Impact Statement (FEIS) for the Port of Long Beach Middle Harbor Redevelopment Project in the Port of Long Beach, California (CEQ # 20090111)

Dear Mr. Szijj:

The U.S. Environmental Protection Agency (EPA) has reviewed the FEIS for the Port of Long Beach Middle Harbor Redevelopment Project (Project) in the Port of Long Beach (Port) 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. These comments were also prepared under the authority of, and in accordance with, the provisions of the Federal Guidelines promulgated at 40 CFR 230 under Section 404(b)(1) of the Clean Water Act (CWA) and EPA's ocean dumping regulations promulgated at 40 CFR 220-227 under the Marine Protection, Research and Sanctuaries Act (MPRSA). This letter addresses the FEIS, including the U.S. Army Corps of Engineers' (Corps) and Port's response to our August 8, 2008 comment letter on the Draft EIS (DEIS), and does not directly address the response to our July 11, 2008 comment letter for Public Notice 2004-01053-AOA that was an attachment to the DEIS letter.

We recognize and appreciate the effort that the Corps and Port have made to respond to EPA's concerns with the proposed Project and to address our comments in the FEIS. In particular, we acknowledge the following responses and provide clarifications as needed:

<u>Comments Addressed</u>

Air Quality

EPA recommended that the FEIS and Record of Decision (ROD) include commitments to fully implement mitigations that will reduce health risks from toxic air contaminants. The comment was intended to ensure that the health risk reduction targets described in the Project's Health Risk Assessment would be met even if mitigations considered were delayed or could not

be fully implemented. In light of this recommendation, we acknowledge the compliance and enforcement requirements of the Mitigation Monitoring and Reporting Plan that would be included as part of terminal lease agreements. We also appreciate the addition of Mitigation Measure AQ-25 that would reopen leases every five years to facilitate implementation of new feasible air quality mitigations. We commend the Port for developing and committing in the FEIS to Mitigation Measure AQ-29: Cumulative Air Quality Impact Reduction Program that would require the Project to provide $5 million for the Schools and Related Sites Grant Program and $5 million for the Healthcare and Seniors' Facility Grant Program. The EPA considers this ongoing program to be an innovative approach to addressing the cumulative air quality impacts from the Project and from future projects at both the Ports of Long Beach and Los Angeles. We encourage the Port to solicit input from community members as an integral part of the grant awards process.

The EPA apologizes for any confusion that may have resulted from our comment that the Corps and Port should commit in the FEIS and ROD to implement, in a timely manner, mitigation measures that exceed emission reduction measures in the San Pedro Bay Ports Clean Air Action Plan (CAAP). The intent was to ensure that CAAP measures are fully implemented on schedule and that mitigations that the DEIS described as going beyond the current CAAP measures are implemented, as well. Our comment was provided in light of the significant air quality impacts from construction and operations of the proposed Project and the already degraded air quality in the South Coast Air Basin. We appreciate the revised language in the FEIS identifying enforcement mechanisms for mitigation and the commitment to implement all identified measures regardless of changes or delays in the CAAP.

Thank you for clarifying in the response to comments that emissions from transport of 6.73 million cubic yards of fill material were included in the DEIS air quality analysis. According to the response to comments, emissions estimates were based on the assumption that these materials would originate from the Outer Harbor area over the course of the proposed Project. The EPA considers this to be a reasonable assumption. In the event fill originates from outside the Outer Harbor area, we recommend that air emissions not exceed the emissions estimates in the FEIS.

With regard to our recommendation that the FEIS demonstrate general conformity with the applicable State Implementation Plan, we appreciate the Corps providing a draft general conformity determination for the proposed Project with the FEIS. The EPA will review and comment on the draft determination separate from the FEIS and will coordinate with the Corps, Port, California Air Resources Board, and South Coast Air Quality Management District, as appropriate. For questions concerning general conformity in the South Coast Air Basin, please contact Wienke Tax at (520) 622-1622 or tax.wienke@epa.gov.

Environmental Justice

The EPA recognizes and appreciates that the Port committed in the DEIS to several mitigation measures that minimize disproportionate impacts to near-port communities; however, the DEIS and FEIS both state that, even with mitigation, significant and unavoidable air quality and noise impacts would result in disproportionate impacts to environmental justice communities near the Port. EPA's DEIS comment letter provided several additional mitigation recommendations for the Port and Corps to consider in light of this finding of significant and

unavoidable disproportionate impacts. Thank you for addressing these recommendations individually in the FEIS response to comments. We were pleased to learn the Port intends to consider a community outreach program to establish coordination with local community groups for creating jobs and providing training opportunities. We are willing and available to work with the Port to development this program. In addition, we consider the Schools and Related Sites and the Healthcare and Seniors' Facility grant programs, described in Mitigation Measure AQ-29: Cumulative Air Quality Impact Reduction Program, to be an important step towards identifying and funding additional mitigation measures. For EPA input on Port environmental justice mitigation programs, we encourage you to contact Zoe Heller at (415) 972-3074, or heller.zoe@epa.gov.

The EPA also recommended in our DEIS comment letter that the Ports of Long Beach and Los Angeles consider the development of a port-wide Health Impact Assessment (HIA). We recognize the level of effort that the Port has put forth to identify potential Project impacts to the health of neighboring communities. We also are aware of the various port area health studies referenced in your response to comments. The intent of EPA's recommendation was to encourage the Port to work with the Port of Los Angeles and local health departments to conduct a port-wide HIA that would consider the cumulative health impacts of all port activities in the context of environmental justice communities. These communities may already be disadvantaged, underserved, and overburdened such that air pollution and other port impacts may cause disproportionate environmental effects. Based on the discussion during our April 6, 2009 phone call between the Port, Corps and EPA, we understand that the Port would be available to participate in future collaborative efforts to scope out a port-wide HIA. We appreciate the Port's willingness to do so. The EPA is also pleased to report that the Port of Los Angeles, in the Channel Deepening Project FEIS response to comments, has committed to working with EPA and others on a port-wide HIA as part of its April 2, 2008 TraPac Project Memorandum of Understanding.

Fill of Water of the U.S.

The response to comments adequately discloses the acceptability of the Bolsa Chica mitigation agreement in the context of the *Compensatory Mitigation for Losses of Aquatic Resources: Final Rule*, and clarifies the mitigation credit discrepancy by including the new Table 10.2 in the FEIS. The response to comments also provides additional information describing expected recolonization of newly created open water, water column, and benthic habitats at the proposed Project site. We find the responses to our comments regarding consistency with goals of the Contaminated Sediment Task Force and the identification, handling and characterization of sediments for fill to be sufficient. We also recognize the Port's willingness to consider sources of dredge material for fill other than the Outer Harbor area, and find this to be consistent with regional goals for beneficial reuse of dredge material. We encourage the Port to coordinate with the Port of Los Angeles to consider whether it would be feasible and appropriate to beneficially reuse any of the approximately 804,000 cubic yards of surplus dredge materials from the proposed Channel Deepening Project, in the event a fill alternative is approved. This material is currently proposed for ocean disposal.

Primary Continuing Concerns

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The Record of Decision (ROD) should include additional language clarifying why the 315-Acre Alternative (Alternative 2) does not adequately meet the Project purpose and is not considered the least environmentally damaging practicable alternative (LEDPA). In our DEIS comment letter, the EPA stated that Alternatives 2 and 3 appeared to be practicable under the CWA Section 404(b)(1) Guidelines (Guidelines), which require applicants to clearly demonstrate that the Proposed Project represents the LEDPA. We recommended the FEIS include a detailed discussion of the practicability of Alternatives 2 and 3, as well as a fifth possible alternative that we proposed.

The draft Section 404(b)(1) Alternatives Analysis (AA), provided as an appendix to the FEIS, and the FEIS discussion of alternatives considered but not carried forward sufficiently explain why Alternative 3 and the fifth alternative suggested by the EPA do not meet the Project purpose or meet the criteria of the LEDPA. However, new language further demonstrating the operational inefficiencies of Alternative 2 and the potential for environmental impacts from new Outer Harbor fill to occur in the absence of the proposed Project, was not provided to EPA until May 5, and 11, 2009 (respectively), shortly before the close of the FEIS comment period. Based on this language and information provided during our discussions with the Port and Corps on April 6, 27, and May 11, 2009, the EPA acknowledges that Alternative 2 would not adequately meet the project purpose to increase container terminal efficiency to accommodate a portion of the predicted future cargo volumes and modern container vessels. We also understand that the proposed project would likely be the LEDPA if it avoids the adverse effects of new Outer Harbor fill by limiting fill to areas within existing port facilities, like Middle Harbor. The ROD and final AA should include the additional efficiency and Outer Harbor fill avoidance language provided on May 6 and 11, 2009 (respectively). Cost information provided with the efficiency language should be omitted or revised to clarify that it is not intended to support a CWA Section 404(b)(1) practicability determination. We recommend the Outer Harbor fill language in the ROD and AA be revised to focus on avoidance that would result directly from the Project, in the context of the Port's strategy for future growth projections.

We appreciate the opportunity to review this FEIS and coordinate with the Corps and Port. When the ROD is published, please send a copy to us at the address above (Mail Code: CED-2). If you have any questions, please contact Paul Amato, the lead reviewer for this project, at 415-972-3847 or amato.paul@epa.gov; or contact me at 415-972-3521 or goforth.kathleen@epa.gov.

Sincerely,

/S/
Kathleen M. Goforth, Manager
Environmental Review Office

cc: Mr. Richard Cameron, Director of Environmental Planning, Port of Long Beach;
Ms. Stacey Crouch, Senior Environmental Specialist, Port of Long Beach;

Ms. Cynthia Marvin, Assistant Division Chief for Planning and Technical Support, California Air Resources Board;
Ms. Susan Nakamura, South Coast Air Quality Management District;
Mr. Hassan Ikrhata, Executive Director, Southern California Association of Governments;
Mr. Ron Arias, Director, Long Beach Department of Health and Human Services;
Dr. Ralph Appy, Director, Environmental Management Division, Port of LA;
Mr. John Foxworthy, Project Manager, Port of LA;