

## **Draft General Conformity Determination**



DRAFT GENERAL  
CONFORMITY  
DETERMINATION

BERTHS 226-236  
[EVERPORT]  
CONTAINER TERMINAL  
IMPROVEMENT  
PROJECT

The Port of Los Angeles,  
California

April 2017

*Prepared for:*

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## Attachments

Attachment A - USACE Guidance Concerning Implementation of EPA's Clean Air Act General Conformity Rule

Attachment B - Port of Los Angeles Everport Container Terminal Improvement Project Federal Action Emissions

Attachment C - SCAQMD Letter of Determination that Everport Federal Action NOx Emissions are Included in the Applicable SIP Budgets.

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# Section 1

## Introduction

The U.S. Army Corps of Engineers (USACE) is considering the Los Angeles Harbor Department's (LAHD) application to implement the Berths 226-236 [Everport] Container Terminal Improvements Project (proposed project), which includes the dredging and potential transport and ocean disposal of dredged material; raising of up to five existing and installation of additional container loading apparatus (i.e., over-water gantry cranes); and structural wharf improvements within 100 feet of the waters' edge associated with improvements to the existing container terminal at Berths 226-236 (the Everport Container Terminal) located on Terminal Island within the Port of Los Angeles.

Section 176 (c) of the Clean Air Act (CAA) (42 United States Code [USC] § 7506(c)) requires any entity of the federal government that engages in, supports, or in any way provides financial support for, licenses or permits, or approves any activity to demonstrate that the action conforms to the applicable State Implementation Plan (SIP) required under Section 110 (a) of the CAA (42 USC § 7410(a)) before the action is otherwise approved. In this context, conformity means that such federal actions must be consistent with a SIP's purpose of eliminating or reducing the severity and number of violations of national ambient air quality standards (NAAQS) and achieving expeditious attainment of those standards. Each federal agency (including the USACE) must determine that any action that is proposed by the agency and that is subject to the regulations implementing the conformity requirements will, in fact, conform to the applicable SIP before the action is taken. The federal actions should be consistent with the objective of the Air Quality Management Plan (AQMP).

Pursuant to Section 176(c) of the CAA (40 USC 7506(c)), the proposed project would occur in a nonattainment area and pollutant emissions generated by the federal action associated with the proposed project would equal or exceed a specified annual *de minimis* emission rate (i.e., for nitrogen oxides [NO<sub>x</sub>] in this case), a General Conformity Determination must be performed by the lead federal agency to ensure that it conforms with the CAA before the federal action can be approved. The USACE is the lead federal agency under the National Environmental Policy Act (NEPA). This document includes a CAA General Conformity Determination (GCD) for the federal action associated with this project. The conformity analysis is done for activities that would require a federal action (associated with the proposed project). This GCD analyzed whether the emissions/impacts that would result from the federal action would conform to the most recent United States Environmental Protection Agency (EPA) approved SIP.

The EPA promulgated general conformity regulations under the CAA in 40 Code of Federal Regulations (CFR) Part 93, "Determining Conformity of Federal Actions to State or Federal Implementation Plans." Section 2 discusses the regulations (conformity requirements) that apply to this project. Section 3 describes the federal action. Section 4 discusses the regulatory procedures for the conformity evaluation. Section 5 describes how applicability of the conformity requirements to the federal action was analyzed. Section 6 presents the methods and criteria that were used to evaluate the conformity of the federal action. Section 7 discusses the concepts of

mitigation required under conformity regulations. Section 8 presents the reporting process to be followed to formalize the conformity determination. Section 9 offers the USACE's findings and conclusions. Section 10 provides references for this evaluation.

## Section 2

# Conformity Requirements

## 2.1 Transportation Conformity Requirements

The EPA promulgated two regulations to address conformity requirements of the CAA. On November 24, 1993, EPA promulgated final transportation conformity regulations at 40 CFR Part 93 Subpart A to address federally-assisted transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT) and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 USC or the Federal Transit Laws (40 USC Chapter 53). This subpart sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to Section 110 and Part D of the CAA. These regulations have been revised several times since they were first issued to clarify and simplify them. They were most recently amended on March 24, 2010. In 1994, the South Coast Air Quality Management District (SCAQMD), which oversees air quality management in the South Coast Air Basin (SCAB) of California, adopted these regulations by reference as part of Rule 1902. The SCAQMD rule has also been amended since its original issuance. Although, in general, a seaport development project may require or rely on improvements in roadway or transit infrastructure, a determination of transportation conformity related to such improvements would typically be addressed by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) as part of a regional transportation plan (RTP) or regional transportation improvement program and not as a stand-alone project.

To receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this subpart, a currently conforming transportation plan and transportation implementation program (TIP) must be in place at the time of project approval. However, because of reasons discussed above, this project is not subject to approval of FHWA/FTA. Therefore, transportation conformity requirements do not directly apply to this project and so, they are not discussed in the rest of the determination.

## 2.2 General Conformity Requirements

On November 30, 1993, EPA promulgated final general conformity guidance to the states at 40 CFR Part 51 Subpart W to develop general conformity regulations for all federal activities except those covered under transportation conformity. On September 14, 1994, SCAQMD adopted these regulations by reference as part of Rule 1901, and EPA approved this rule as part of the California SIP on April 23, 1999 (64 Federal Register [FR] 19916). Parallel general conformity regulations at 40 CFR Part 93 Subpart B apply in areas where EPA has not approved general conformity requirements to the state's implementation plan. On April 5, 2010, EPA promulgated revised general conformity requirements at 40 CFR Part 93 Subpart B (75 FR 17254). In the same action, EPA eliminated most of the general conformity requirements under 40 CFR Part 51 Subpart W, because they were mostly duplicative of the requirements at 40 CFR Part 93 Subpart B, and

revised 40 CFR § 51.851 to remove the obligation for states to include general conformity requirements in their implementation plans. The revised regulations took effect on July 6, 2010.

The general conformity regulations apply to a federal action in a nonattainment or maintenance area if the total of direct and indirect emissions of the relevant criteria pollutants and precursor pollutants caused by the federal action equal or exceed certain *de minimis* rates. By requiring an analysis of direct and indirect emissions, EPA intended the regulating federal agency to make sure that only those emissions that are reasonably foreseeable and that the federal agency can practicably control subject to that agency's continuing program responsibility will be addressed.

The general conformity regulations incorporate a stepwise process, beginning with an applicability analysis. According to EPA guidance (EPA 1994), before any approval is given for a federal action to go forward, the regulating federal agency must apply the applicability requirements found at 40 CFR § 93.153(b) to the federal action to evaluate whether, on a pollutant-by-pollutant basis, a determination of general conformity is required. The guidance states that the applicability analysis can be (but is not required to be) completed concurrently with any analysis required under the NEPA. If the regulating federal agency determines that the general conformity regulations do not apply to the federal action, no further analysis or documentation is required. If the general conformity regulations do apply to the federal action, the regulating federal agency must next conduct a conformity evaluation in accord with the criteria and procedures in the implementing regulations, publish a draft determination of general conformity for public review, and then publish the final determination of general conformity.

## Section 3

### Description of Federal Action

In accordance with applicable general conformity regulations and guidance, including USACE guidance dated April 20, 1994 (USACE 1994; see Attachment A), when a general conformity determination is necessary, the USACE is only required to conduct a general conformity evaluation for a specific federal action associated with the selected alternative for a project or program (EPA 1994), and the USACE must issue a positive conformity determination before the federal action is approved. Each federal agency is responsible for determining conformity of those proposed actions over which it has jurisdiction. This final general conformity determination is related only to those activities included in the USACE's federal action pertaining to the proposed project, which is more fully described in Section 3.1.

The general conformity requirements only apply to federal actions proposed in nonattainment areas (i.e., areas where one or more NAAQS are not being achieved at the time of the proposed action and requiring SIP provisions to demonstrate how attainment will be achieved) and in maintenance areas (i.e., areas recently redesignated from nonattainment to attainment and requiring SIP provisions pursuant to Section 175A of the CAA to demonstrate how attainment will be maintained).

#### 3.1 Proposed Project

The LAHD will require a permit (authorization) from USACE to complete several key elements of the proposed project. The project site is located at 389 Terminal Way on Terminal Island in the Port of Los Angeles, and within the Port's Community Plan area of the City and County of Los Angeles, California. As it relates to the federal action, the purpose of the proposed project is to:

- Optimize marine shipping and commerce by upgrading the container terminal's infrastructure in, over, and under water; and
- Increase and improve terminal backlands to accommodate the projected throughput and fleet mix of larger container ships (up to 16,000 twenty-foot equivalent units [TEU]) that are anticipated to call at the terminal through 2038.

Construction of only a portion of the proposed project would require USACE approval. That portion makes up the federal action and includes the following elements.

##### **Dredging and Wharf Improvements**

- The proposed improvements to Berths 226-229 are designed to accommodate larger ships and would include: 1) dredging to increase the depth from -45 to -53 feet MLLW plus two feet of over depth tolerance (for a total of -55 feet mean lower low water (MLLW)); and 2) the installation of king piles and approximately 1,400 linear feet of sheet piles to stabilize the wharf and accommodate the dredging activities and deeper design depth.

- The proposed improvements at Berths 230-232 are also designed to accommodate larger ships and would include: 1) dredging to increase the depth from -45 to -47 feet MLLW plus two feet of over depth tolerance (for a total of -49 feet MLLW); and 2) the installation of approximately 1,400 linear feet of sheet piles to stabilize the wharf.
- The LAHD has proposed to dispose of approximately 38,000 cubic yards of dredged materials (30,000 cubic yards from Berths 226-229 and 8,000 cubic yards from Berths 230-232) at an approved ocean disposal site (i.e., LA-2), an approved upland disposal facility, or a combination of the two. However, the Los Angeles Region Contaminated Sediments Task Force has evaluated the sediments and determined all the dredged material is suitable for ocean disposal at LA-2. Approval of ocean disposal by the USACE and USEPA is pending.

### Crane Improvements

- Raising of up to five of the existing over-water gantry (wharf) cranes and addition of five new 100-foot gauge A-frame over-water wharf cranes. These additional cranes would be installed upon existing crane rails at Berths 226-229 to accommodate larger ships at the proposed deeper berths. Addition of the new cranes would require infrastructure improvements (such as cable and electrical upgrades).

Construction of the proposed project, including those elements not subject to USACE approval, would result in significant ambient air quality impacts under NEPA and the California Environment Quality Act (CEQA). Under CEQA, mitigation must be applied to significant impacts and a mitigation monitoring and reporting plan (MMRP) developed to demonstrate that the mitigation measures will be implemented. The construction mitigation measures MM AQ-1 through MM AQ-5, summarized below, were developed and will be implemented to reduce the construction-related air quality impacts.

**MM AQ-1: Harbor Craft Used During Construction.** Harbor craft used during construction must be equipped with EPA Tier 3 engine standards or cleaner at all times during construction.

**MM AQ-2: On-road Trucks Used during Construction.** On-road trucks shall comply with EPA 2010 on-road emission standards or better, unless contractor can reasonably demonstrate that such equipment is unavailable to the satisfaction of Los Angeles Harbor Department (LAHD).

**MM AQ-3: Non-Road Construction Equipment** (except vessels, harbor craft, on-road trucks, and dredging equipment). All non-road construction equipment greater than 50 horsepower must meet EPA Tier 4 emission standards, unless contractor can reasonably demonstrate that such equipment is unavailable to the satisfaction of LAHD.

**MM AQ-4: Cargo Ships Used During Construction.** All ships and barges used primarily to deliver construction-related materials or cranes shall comply with the expanded Vessel Speed Reduction Program (VSRP) of 12 knots between 40 nautical miles (nm) from Point Fermin and the Precautionary Area.

**MM AQ-5: General Construction Mitigation Measure.** For MM AQ-1 through MM AQ-4, if a California Air Resources Board (CARB)-certified technology becomes available that is as

good as or better than the existing measure in terms of emissions performance, the technology could replace the existing technology if approved by LAHD.

In addition, the following measure will reduce operational impacts associated with the delivery by cargo ship of the new wharf cranes:

**MM AQ-6: Vessel Speed Reduction Program (VSRP).** Starting January 1, 2019 and thereafter, 95 percent of Evergreen ships calling at the Everport Container Terminal shall be required to comply with the expanded VSRP at 12 knots between 40 nm from Point Fermin and the Precautionary Area. Starting January 1, 2026, 95 percent of all ships calling at the Everport Container Terminal will follow this requirement. Alternative Compliance Plans will be considered where a different speed that would result in fewer emissions compared to the current speed limits.

Any alternative compliance plan shall be submitted to LAHD at least 90 days in advance for approval and shall be supported by data that demonstrates the ability of the alternative compliance plan for the specific vessel and type to achieve emissions reductions comparable to or greater than those achievable by compliance with VSRP. The alternative compliance plan shall be implemented once written notice of approval is granted by the LAHD.

## 3.2 Relationship to Other Environmental Analysis

NEPA and CEQA require the determination as to whether the proposed project would have significant and unavoidable impacts on the environment. The difference between the proposed project or project alternative and the baseline is then compared to a threshold to determine if the difference between the two is significant. For the purposes of the EIS/EIR for the proposed project, the City of Los Angeles CEQA thresholds will be used for determining significance under both NEPA and CEQA, except as noted for certain key resource areas. NEPA and CEQA use different baseline conditions from which significance is determined. Because the baselines are different, review under NEPA and CEQA could reach different conclusions concerning the significance of project impacts.

The NEPA baseline, or No Federal Action Alternative, would not include any dredging, ocean disposal of dredged material, wharf improvements, crane modifications, or new cranes in, over, or under navigable waters of the United States related to the proposed project. However, under the NEPA baseline scenario, the backlands improvements, certain wharf efficiency improvements (those not associated with USACE jurisdiction) and lease amendment could occur in the absence of a USACE permit, and existing operations - including projected growth in goods movement using existing and previously approved infrastructure, and improved backlands - would continue up to the terminal's maximum physical capacity of approximately 1.8 million TEUs.

The CEQA baseline normally represents conditions existing prior to the start of environmental review for approval of the proposed project. For purposes of the EIS/EIR, the CEQA baseline includes the existing container terminal configuration and operational activities for the calendar year preceding the NOP date (i.e., calendar year 2013). For the 12-month period between January 1 and December 31, 2013, the Everport Container Terminal encompassed approximately 205

acres (181 acres under its long-term lease plus an additional 25 acres on month-to-month space assignment), supported eight (8) cranes and handled approximately 1.2 million TEUs.



## Section 4

# Regulatory Procedures

The procedural requirements established by the general conformity regulations must be followed when preparing the general conformity evaluation. This section describes how these requirements are met for the evaluation of the federal action.

### 4.1 Use of Latest Planning Assumptions

The general conformity regulations require the use of the latest planning assumptions for the area encompassing the federal action, derived from the estimates of population, employment, travel, and congestion most recently approved by the MPO (40 CFR § 93.159(a)). It should be noted that the latest planning assumptions available from the MPO at the time of this evaluation may differ from the planning assumptions used in establishing the applicable SIP emissions budgets. The Southern California Association of Governments (SCAG) adopted the 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (2016 RTP/SCS) on April 7, 2016 (SCAG 2016). On June 1, 2016, FHWA and FTA issued a finding that the 2016 RTP/SCS conforms with the applicable SIP (i.e., the transportation conformity determination).

The 2016 RTP/SCS does predict continued growth in container volume through the Ports of Los Angeles and Long Beach through at least 2035. The overall growth in container throughput at the ports is expected to be over 2.5 times the 2010 volumes, and includes anticipated growth at the Port of Los Angeles container terminals.

The 2016 RTP/SCS (or Plan) includes significant investments in a regional freight corridor and other improvements to facilitate goods movement. It is estimated that the Plan would reduce heavy-duty truck delay on the highway and arterial systems. The Plan would result in an eight percent reduction in greenhouse gas emissions per capita by 2020, an 18 percent reduction by 2035 and a 21 percent reduction by 2040—compared with 2005 levels.

As noted previously, SCAG is the MPO for the region encompassing Port of Los Angeles. The SCAB region covers an area of over 38,000 square miles and includes the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura. The growth forecast for the 2016 RTP estimated a region-wide population growth of approximately 20 percent by 2040.

### 4.2 Use of Latest Emission Estimation Techniques

Emissions must be estimated by using the latest emission estimation techniques as per the general conformity requirements. The latest and most accurate emission estimation techniques available and used at the time of this evaluation may differ from the emissions estimation techniques used in establishing the applicable SIP emissions budgets. The appropriate air quality emission models were used to estimate emissions from construction activities in this project. The models include EMFAC (2014), and OFFROAD (2011, 2007). The emission estimating process is discussed in more detail in Berths 226-236 [Everport] Container Terminal Improvements Project

Draft EIS/EIR (see Section 3.2, Air Quality and Meteorology, and Appendix B of the Draft EIS/EIR – USACE/USHD 2017).

### 4.3 Emission Scenarios

According to the 40 CFR § 93.159(d), the conformity analysis must reflect certain emission scenarios that are expected to occur under the following cases.

- The attainment year specified in the SIP, or if the SIP does not specify an attainment year, the latest attainment year possible under the Act; or
- The last year for which emissions are projected in the maintenance plan;
- The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and
- Any year for which the applicable SIP specifies an emissions budget.

**Table 4-1** specifies the years for which the general conformity evaluation was performed for comparison to the proposed SIP revisions (the 2012 AQMP). As the 2016 AQMP was under development during the creation of the Berths 226-236 [Everport] Container Terminal Improvements Project Draft EIS/EIR, the 2012 AQMP was considered the current AQMP and used for this analysis.

**Table 4-1 Emission Scenario Years for General Conformity Evaluation Based on 2012 AQMP**

Pollutant	Attainment/ Maintenance	Greatest Emission Year	Years Analyzed for General Conformity <sup>1,2</sup>
Ozone (VOC or NO <sub>x</sub> )	2023	2018	2018

Notes:

VOC = volatile organic compounds

1. Federal action construction does not extend beyond 2019; therefore, no comparisons to budgets for milestone years beyond 2019 (2023 and 2030) are included.

2. No project construction occurred in 2008 or 2014, and very little is expected to occur in 2019; therefore, no comparisons to budgets for these years are necessary.

## Section 5

### Applicability Analysis

As mentioned earlier, the first step in the general conformity evaluation is an analysis to find if the requirements apply to the proposed federal action. If the total direct or indirect emissions caused by the federal action would equal or exceed an annual *de minimis* emission rate, a general conformity determination for each pollutant would be required.

#### 5.1 Attainment Status of SCAB

The Port of Los Angeles is located within Los Angeles County in the SCAB of southern California. The SCAQMD and CARB are the primary two regulatory agencies for air quality management in the SCAB with oversight by the EPA. The pollutants for which standards are established are criteria pollutants. EPA listed particulate matter (PM<sub>10</sub>, PM<sub>2.5</sub>), carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), ozone, nitrogen dioxide (NO<sub>2</sub>), and lead (Pb) as criteria pollutants. EPA established primary NAAQS to protect the public health and secondary NAAQS to protect the public welfare. **Table 5-1** shows the current attainment status of the pollutants in the SCAB.

**Table 5-1 NAAQS Attainment Status SCAB**

Criteria Pollutant	Averaging Time	Designation	Attainment Date
<b>1979 1-Hour Ozone</b>	1-Hour (0.12 ppm)	Nonattainment (Extreme)	11/15/2010 (not attained)
<b>1997 8-Hour Ozone</b>	8-Hour (0.08 ppm)	Nonattainment (Extreme)	6/15/2024
<b>2008 8-Hour Ozone</b>	8-Hour (0.075 ppm)	Nonattainment (Extreme)	12/31/2032
<b>CO</b>	1-Hour (35 ppm) 8-Hour (9 ppm)	Attainment (Maintenance)	6/11/2007 (attained)
<b>NO<sub>2</sub></b>	1-Hour (100 ppb)	Unclassifiable/Attainment	Attained
	Annual (0.053 ppm)	Attainment (Maintenance)	9/22/1998
<b>SO<sub>2</sub></b>	1-Hour (75 ppb)	Designations Pending	Pending
	3-Hour (0.5 ppm) 24-Hour (0.14 ppm) Annual (0.03 ppm)	Unclassifiable/Attainment	3/19/1979 (attained)
	24-hour (150 µg/m <sup>3</sup> )	Attainment (Maintenance)	12/31/2006 (attained)
<b>PM<sub>2.5</sub></b>	24-Hour (35 µg/m <sup>3</sup> )	Nonattainment (Serious)	12/31/2019
	Annual (12.0 µg/m <sup>3</sup> )	Nonattainment	4/5/2015
<b>Lead</b>	3-Months Rolling (0.15 µg/m <sup>3</sup> )	Nonattainment (Partial)	12/31/2015

Sources: SCAQMD AQMP 2012; 81 FR 1514 (2016); and 78 FR 38223.

## 5.2 Exemptions from General Conformity Requirements

As noted previously, the general conformity requirements apply to a federal action if the net project emissions equal or exceed certain *de minimis* emission rates. The only exceptions to this applicability criterion are the topical exemptions summarized below. However, the emissions that would be caused by the federal action do not meet any of these exempt categories.

- Actions which would result in no emissions increase or an increase in emissions that is clearly below the *de minimis* levels (40 CFR § 93.153(c)(2)). Examples include administrative actions and routine maintenance and repair.
- Actions where the emissions are not reasonably foreseeable (40 CFR § 93.153(c)(3)).
- Actions which implement a decision to conduct or carry out a conforming program (40 CFR § 93.153 (c)(4)).
- Actions which include major or minor new or modified sources requiring a permit under the New Source Review (NSR) program or the Prevention of Significant Deterioration (PSD) program (40 CFR § 93.153(d)(1)).
- Actions in response to emergencies which are typically commenced on the order of hours or days after the emergency and, if applicable, which meet the requirements of 40 CFR § 93.153(e) (40 CFR § 93.153(d)(2)).
- Actions which include air quality research not harming the environment (40 CFR § 93.153(d)(3)).
- Actions which include modifications to existing sources to enable compliance with applicable environmental requirements (40 CFR § 93.153(d)(4)).
- Actions which include emissions from remedial measures carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) that comply with other applicable requirements (40 CFR § 93.153(d)(5)).

In addition to these topical exemptions, the general conformity regulations allow each federal agency to establish a list of activities that are presumed to conform (40 CFR § 93.153(f)). However, none of the exemptions listed above apply to this project, and the USACE has not established a presumed-to-conform activities list. Therefore, exemptions are not discussed in the rest of the determination.

## 5.3 General Conformity *de minimis* Thresholds

If the total of the direct or indirect emissions caused by the proposed action exceed or equal the conformity *de minimis* thresholds shown in **Table 5-2**, conformity determination needs to be made. Only the pollutants which exceed these thresholds must undergo a full general conformity determination.

**Table 5-2 General Conformity *de minimis* Thresholds for the South Coast Air Basin**

Criteria Pollutant: and Quantified Precursors	SCAB Attainment Status Designations	<i>de minimis</i> Threshold tons per year (tpy)
Nitrogen Dioxide: NO <sub>x</sub>	Attainment/Maintenance	--- 100
Ozone: NO <sub>x</sub> VOC	Nonattainment/Extreme	--- 10 10
Carbon Monoxide	Attainment/Maintenance	100
Particulate Matter PM <sub>10</sub>	Attainment/Maintenance	100
Particulate Matter PM <sub>2.5</sub> : Directly Emitted PM <sub>2.5</sub> SO <sub>x</sub> NO <sub>x</sub> VOC	Nonattainment/Serious	--- 70 70 70 70

Source: 40 CFR § 93.153(b)(1)

## 5.4 Applicability for Federal Action

The general conformity regulations applicability to the federal action was evaluated by comparing the emissions to the *de minimis* emission rates. The peak year of construction emissions was found to be 2018; therefore, the 2018 construction emissions were compared to the *de minimis* thresholds, as shown in **Table 5-3**. The total of direct and indirect emissions for that year were calculated and presented in Attachment B.

**Table 5-3 Everport 2018 Federal Action Emission Rates**

Pollutant	Federal Action Emission Rates, tpy	Most Stringent Conformity <i>de minimis</i> Threshold, tpy	Above Threshold?
NO <sub>x</sub>	14.30	10 (as an ozone precursor)	Yes
VOC	1.43	10 (as an ozone precursor)	No
CO	7.21	100 (maintenance)	No
SO <sub>x</sub>	0.03	70 (as a PM <sub>2.5</sub> precursor)	No
PM <sub>10</sub>	0.59	100 (maintenance)	No
PM <sub>2.5</sub>	0.42	70 (nonattainment/serious)	No

The total of direct and indirect emissions of VOC, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> from the federal action are less than the general conformity *de minimis* threshold emission rates shown in **Table 5-2**. Therefore, the general conformity regulations do not apply to these pollutants, and no additional conformity evaluation need be made for these pollutants.

Because the total of direct and indirect emissions of NO<sub>x</sub> from the federal action exceeds the “extreme” ozone nonattainment area conformity *de minimis* threshold, the general conformity requirements apply to NO<sub>x</sub> emissions from the action. Subsequent sections of this document will address the general conformity evaluation of NO<sub>x</sub> as applicable to the federal action.

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## Section 6

# General Conformity Evaluation

For federal actions subject to a general conformity evaluation, the regulations delineate several criteria that can be used to demonstrate conformity (40 CFR § 93.158). In fact, a combination of these criteria may be used to support a positive general conformity determination (EPA 1994). The approach to be taken to evaluate the federal action relies on a combination of these available criteria, and the remainder of this section summarizes the findings to make the final determination.

### 6.1 Designation of Applicable SIP

Section 110(a) of the CAA (42 USC § 7410(a)) requires each state to adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each NAAQS. This plan is known as the SIP. Over time, states have made and continue to make many such submittals to EPA to address issues as they arise related to the various NAAQS. As EPA reviews these submittals, it can either approve or disapprove them in whole or in part. The compilation of a state's approved submittals constitutes that state's applicable SIP. In California, the state agency responsible for preparing and maintaining the SIP is CARB.

#### 6.1.1 SIP Process in the South Coast Air Basin

California law provides for the establishment of air quality management districts and air pollution control districts within California for the purpose of implementing and enforcing ambient air quality standards on a county or regional (airshed) basis. State law also requires the districts in areas with poor air quality to prepare regional plans (AQMPs) to support the broader SIP, as well as to meet the goals of the California CAA. The SCAQMD is the local air district for the Port of Los Angeles/project site.

Every three years, SCAQMD must prepare and submit to CARB an AQMP to demonstrate how the SCAB will attain and maintain the NAAQS and the California ambient air quality standards. The AQMP contains extensive emissions inventories of all emission sources in the SCAB as well as various control measures applicable to most of these sources. Once CARB approves the AQMP, it is submitted to EPA for approval in the SIP.

The current approved SIP for the SCAB is based on the 2012 AQMP. The 2012 AQMP was prepared by SCAQMD in conjunction with the CARB, the SCAG and the EPA.

The 2012 AQMP was adopted by the SCAQMD Governing Board on December 7, 2012. It incorporates the latest scientific and technological information and planning assumptions, including the 2012 RTP Sustainable Communities Strategy and updated emission inventory methodologies for various source categories. The 2012 AQMP included the new and changing federal requirements, implementation of new technology measures, and the continued development of economically sound, flexible compliance approaches. Control measure IND-01 was approved for adoption and inclusion in the 2012 AQMP at the February 1, 2013 Governing

Board meeting. A Supplement to the 2012 AQMP was prepared to demonstrate attainment of the 24-hour PM<sub>2.5</sub> standard by 2015. The Governing Board approved the Supplement on February 5, 2015, and submitted to CARB / EPA for approval as part of the California SIP.

This GCD evaluates the proposed project on the basis of the currently approved SIP.

### **6.1.2 Status of Applicable SIP and Emissions Budgets for NO<sub>x</sub>**

The CAA requires attainment of the NAAQS as expeditiously as practicable, but no later than the statutory dates for those criteria pollutants for which the SCAB is designated nonattainment and for which a finding of general conformity must be determined for the federal actions. Upon re-designation of an area from nonattainment to attainment for each standard, the area will be considered to be a maintenance area for that standard (pursuant to Section 175A of the CAA), and as such, must meet all applicable requirements to maintain the standard.

To support the general conformity determination, this document demonstrates that the emissions of NO<sub>x</sub> (as an ozone precursor) caused by the federal action would result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the most recent federally approved SIP. The currently approved general conformity budgets for ozone precursors are contained in the 2012 AQMP (page III-2-53), approved by EPA on April 14, 2016 (81 FR 22025).

## **6.2 Comparison to SIP Emissions Inventories**

Under the general conformity regulations, a federal action can be determined to conform to the applicable SIP for ozone if the action is specifically identified and accounted for in the SIP's attainment demonstration or reasonable further progress milestone, or in a facility-wide emission budget included in the SIP; if the total of direct and indirect emissions from the action are fully offset within the same nonattainment area by a revision to the applicable SIP or a similarly federally enforceable measure; or if the state agency responsible for the SIP determines and documents that the total of direct and indirect emissions from the action can be accommodated within the SIP emissions budgets.

As an ozone precursor, the NO<sub>x</sub> federal action emissions have been identified by SCAQMD as contained in the SIP Conformity Emissions budget for the SCAB (SCAQMD 2016, see Attachment C). Therefore, the emissions from the federal action conform with the intent of the SIP.

## **6.3 Consistency with Requirements and Milestones in Applicable SIP**

The general conformity regulations state that notwithstanding the other requirements of the rule, a federal action may not be determined to conform unless the total of direct and indirect emissions from the federal action is in compliance or consistent with all relevant requirements and milestones in the applicable SIP (40 CFR § 93.158(c)). This includes but is not limited to such issues as reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice standards. This section briefly addresses how the federal actions were assessed for SIP consistency for this evaluation.



### 6.3.1 Applicable Requirements from EPA

EPA has already promulgated, and will continue to promulgate, requirements to support the goals of the CAA with respect to the NAAQS. Typically, these requirements take the form of rules regulating emissions from significant new sources, including emission standards for major stationary point sources and classes of mobile sources as well as permitting requirements for new major stationary point sources. Since states have the primary responsibility for implementation and enforcement of requirements under the CAA and can impose stricter limitations than EPA, the EPA requirements often serve as guidance to the states in formulating their air quality management strategies.

### 6.3.2 Applicable Requirements from CARB

In California, to support the attainment and maintenance of the NAAQS, CARB is primarily responsible for regulating emissions from mobile sources. In fact, EPA has delegated authority to CARB to establish emission standards for on-road and some non-road vehicles separate from the EPA vehicle emission standards, although CARB is preempted by the CAA from regulating emissions from many non-road mobile sources, including marine craft. Emission standards for preempted equipment can only be set by EPA.

### 6.3.3 Applicable Requirements from SCAQMD

To support the attainment and maintenance of the NAAQS in the SCAB, SCAQMD is primarily responsible for regulating emissions from stationary sources. As noted above, SCAQMD develops and updates its AQMP regularly to support the California SIP. While the AQMP contains rules and regulations geared to attain and maintain the NAAQS, these rules and regulations also have the much more difficult goal of attaining and maintaining the California ambient air quality standards.

### 6.3.4 Consistency with Applicable Requirements

In operating the Port of Los Angeles, LAHD already complies with, and will continue to comply with, a myriad of rules and regulations implemented and enforced by federal, state, regional, and local agencies to protect and enhance ambient air quality in the SCAB. In particular, due to the long persistence of challenges to attain the ambient air quality standards in the SCAB, the rules and regulations promulgated by CARB and SCAQMD are among the most stringent in the United States. LAHD will continue to comply with all existing applicable air quality regulatory requirements for activities over which it has direct control and will meet in a timely manner all regulatory requirements that become applicable in the future. Likewise, LAHD actively encourages all tenants and users of its facilities to comply with applicable air quality requirements.

The nature and extent of the requirements with which LAHD complies and will continue to comply include, but are not limited to, the following.

- EPA Rule 40 CFR Part 89, Control of Emissions from New and In-Use Non-road Compression-Ignition Engines: requires stringent emission standards for mobile non-road diesel engines of almost all types using a tiered phase in of standards.

- CARB Rule 13 C.C.R. § 1956.8, California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles: requires significant reductions in emissions of NO<sub>x</sub>, particulate matter, and non-methane organic compounds using exhaust treatment on heavy-duty diesel engines manufactured in model year 2007 and later years.
- SCAQMD Rule 403, Fugitive Dust: identifies the minimum particulate controls for construction-related fugitive dust. For example, Rule 403 requires twice daily watering of all active grading or construction sites. Haul trucks leaving the facility must be covered and maintain at least two feet of freeboard (C.V.C. § 23114). Low emission street sweepers must be used at the end of each construction day if visible soil is carried onto adjacent public paved roads, as required by SCAQMD Rule 1186.1, Less-Polluting-Sweepers. Wheel washers must be used to clean off the trucks, particularly the tires, prior to them entering the public roadways.
- SCAQMD Rule 431.2, Sulfur Content of Liquid Fuels: requires that, after January 1, 2005, only ultra-low sulfur diesel fuel (containing 15 parts per million by weight sulfur) will be permitted for sale in the SCAB for any stationary- or mobile-source application.
- SCAQMD Rule 2202, On-Road Motor Vehicle Mitigation Options: requires employers in the SCAB with more than 250 employees to implement an approved rideshare program and attain an average vehicle ridership of at least 1.5.
- City Council directive on diesel engine particulate traps, approved by the Mayor on December 2, 2002: requires that all existing City-owned and City-contracted diesel fueled vehicles be retrofitted with particulate traps, which engines would henceforth be required to use ultra-low sulfur diesel fuel (15 parts per million by weight or less); some exceptions include emergency vehicles and off-road vehicles.

## Section 7

### Mitigation

As part of a conformity evaluation, it may be necessary for the federal agency to identify mitigation measures and mechanisms for their implementation and enforcement. For example, if a federal action does not initially conform to the applicable SIP, mitigation measures could be pursued. If mitigation measures are used to support a positive conformity determination, the federal agency must obtain a written commitment from the entity required to implement these measures prior to a positive conformity determination, and the federal agency must include the mitigation measures as conditions in any permit or license granted for the federal action (40 CFR § 93.160).

Mitigation measures may be used in combination with other criteria to demonstrate conformity. The federal action, as evaluated herein, assumes various air quality mitigation measures as described in the Berths 226-236 [Everport] Container Terminal Improvements Project Draft EIS/EIR (USACE/LAHD 2017) to meet CEQA requirements are part of the proposed project. Based on CEQA provisions that mitigation measures be required in, or incorporated into, the project (14 C.C.R. § 15091(a)(1)), LAHD will implement, maintain, monitor, and enforce these CEQA-related air quality mitigation measures pursuant to the MMRP, which will be included in the certified Final EIR for the project; see Section 3.1 for more information on the CEQA-related mitigation measures. The USACE recognizes the LAHD, as the local responsible agency, will implement, maintain, monitor, and enforce numerous mitigation measures, including many focused on limiting air emissions, as required by a certified Final EIR; however, the USACE lacks continuing program responsibility, control, and enforcement capability over mitigation measures not related to project construction activities in or over water as well as those continuing after construction activities in and over water are completed. Because the USACE has determined that the federal action, which incorporates the abovementioned CEQA-related mitigation measures as design features of the proposed project, will conform to the CAA, no mitigation, as defined under the general conformity regulations (40 CFR § 93.160) or guidance (EPA 1994), are required to support a positive general conformity determination.

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## Section 8

### Reporting

To support a decision concerning the federal action, the USACE is issuing this draft GCD for public disclosure purposes.

#### 8.1 Draft General Conformity Determination

The USACE is providing copies of the draft GCD to the appropriate regional offices of EPA, any affected federal land manager, as well as to CARB, SCAQMD, and SCAG for a 45-day review. The USACE is also placing a notice in a daily newspaper of general circulation in the SCAB announcing the availability of the draft GCD and requesting written public comments for a 45-day period, coincidental with the draft EIS/EIR review period.

#### 8.2 Final General Conformity Determination

The USACE will provide copies of the final GCD to the appropriate regional offices of EPA, any affected federal land manager, as well as to CARB, SCAQMD, and SCAG, within 30 days of its promulgation. The USACE will also place a notice in a daily newspaper of general circulation in the SCAB announcing the availability of its final GCD within 30 days of its promulgation. As part of the general conformity evaluation, the USACE will document its responses to all comments received on the draft GCD and will make both the comments and responses available upon request by any person within 30 days of the promulgation of the final GCD.

#### 8.3 Reevaluation of General Conformity

The general conformity regulations state that once a conformity determination is completed, that determination is not required to be reevaluated if the responsible federal agency has maintained a continuous program to implement the action, the determination has not lapsed, or any modification to the federal action does not result in an increase in emissions above the *de minimis* emission rates (40 CFR § 93.157(a)). The conformity status of a federal action automatically lapses five years from the date a final GCD is reported, unless the federal action has been completed or a continuous program to implement the federal action has commenced (40 CFR § 93.157(b)). Because the federal action envisions a development program that will not extend beyond five years, it is anticipated that the final GCD will remain active for the standard five year effectiveness portion of the regulation.

As part of a phased program, the implementation of each element of the development of the federal action does not require separate conformity determinations, even if they are begun more than five years after the final determination, as long as those elements are consistent with the original program which was determined to conform (EPA 2002). However, if this original conforming program is changed such that there is an increase in the total of direct and indirect emissions above the *de minimis* threshold levels, USACE will conduct a new general conformity evaluation.

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## Section 9

### Findings and Conclusions

As part of the environmental review of the federal action, the USACE conducted a general conformity evaluation pursuant to 40 CFR Part 93 Subpart B. The general conformity regulations apply at this time to any action at the Port of Los Angeles requiring USACE approval because the SCAB where the Port is situated is a nonattainment area for ozone, PM<sub>10</sub>, and PM<sub>2.5</sub>; and a maintenance area for NO<sub>2</sub> and CO. The USACE conducted the general conformity evaluation following all regulatory criteria and procedures and in coordination with EPA, CARB, SCAQMD, and SCAG. The USACE proposes that the federal action as designed will conform to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, based on the findings below:

- The federal action is not subject to a general conformity determination for CO, VOC (as an ozone and PM<sub>2.5</sub> precursor), NO<sub>x</sub> (as a PM<sub>2.5</sub> and NO<sub>2</sub> precursor), PM<sub>10</sub>, PM<sub>2.5</sub>, or SO<sub>x</sub> (as a PM<sub>2.5</sub> precursor) because the net emissions associated with the federal action are less than the general conformity *de minimis* thresholds.
- The NO<sub>x</sub> emissions (as an ozone precursor) from the federal action will exceed the general conformity *de minimis* thresholds and were found by the SCAQMD to be included in the EPA-approved Conformity Budgets presented in the 2012 AQMP (i.e., the current SIP NO<sub>x</sub> budgets).

Therefore, USACE herewith concludes that the federal action as designed conforms to the purpose of the SIP, and it is consistent with all applicable requirements.

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## Section 10

### References

40 CFR Part 51 Subpart W. Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

40 CFR Part 93 Subpart A. Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Laws.

40 CFR. Part 93 Subpart B. Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

58 FR 63241. Determining Conformity of General Federal Actions to State or Federal Implementation Plans. Final Rule. November 30, 1993.

64 FR 19916. Approval and Promulgation of Implementation Plans for Arizona and California; General Conformity Rules. April 23, 1999.

75 FR 17254. Revisions to the General Conformity Regulations; Final Rule. April 5, 2010.

75 FR 24409. Designations of Areas for Air Quality Planning Purposes; California; San Joaquin Valley, South Coast Air Basin, Coachella Valley, and Sacramento Metro 8-Hour Ozone Nonattainment Areas; Reclassification. May 5, 2010.

77 FR 12674. Approval of Air Quality Implementation Plans; California— South Coast. Final Rule. March 1. 2012.

78 FR 38223. Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Air Basin; Approval of PM10 Maintenance Plan and Redesignation to Attainment for the PM10 Standard. Final Rule. June 26, 2013.

81 FR 1514. Designation of Areas for Air Quality Planning Purposes; California; South Coast; Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS. Final Rule. January 13, 2016.

81 FR 22025 - Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; California; South Coast; Moderate Area Plan For the 2006 PM<sub>2.5</sub>

California Air Resources Board (CARB). 2009. Speciation Profiles Used in ARB Modeling: <http://www.arb.ca.gov/ei/speciate/speciate.htm> .

Southern California Association of Governments (SCAG). 2012. 2012 Regional Transportation Plan. Web site:

<http://scagrtpsc.net/Pages/2012RTPSCS.aspx>

Southern California Association of Governments (SCAG). 2016. 2016 Regional Transportation Plan. Web site:

<http://scagrtpscs.net/Pages/FINAL2016RTPSCS.aspx>

South Coast Air Quality Management District (SCAQMD). 2012. Final 2012 Air Quality Management Plan. June. Website:

<http://www.aqmd.gov/home/library/clean-air-plans/air-quality-mgt-plan/final-2012-air-quality-management-plan>.

U.S. Army Corps of Engineers (USACE). 1994. Memorandum for All Major Subordinate Commanders, and District Commanders, Subject: EPA's Clean Air Act (CAA) General Conformity Rule, from Lester Edelman, Chief Counsel, USACE (CECC-E). April 20.

U.S. Army Corps of Engineers/Los Angeles Harbor Department (USACE/LAHD). 2017. Berths 226-236 [Everport] Container Terminal improvements Project Draft EIS/EIR. April

U.S. Environmental Protection Agency (EPA). 2002. General Conformity Guidance for Airports: Questions and Answers. September 25. Web site:

[http://www.epa.gov/ttn/oarpg/conform/airport\\_qa.pdf](http://www.epa.gov/ttn/oarpg/conform/airport_qa.pdf) .

U.S. Environmental Protection Agency (EPA). 1994. General Conformity Guidance: Questions and Answers. July 13. Web site:

[http://www.epa.gov/ttn/oarpg/conform/gcgqa\\_71394.pdf](http://www.epa.gov/ttn/oarpg/conform/gcgqa_71394.pdf) .