

# Berth 136-147 [TraPac] Container Terminal Project

## Final General Conformity Determination

### **The Port of Los Angeles, California**

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# Section 1

## Introduction

Section 176 (c) of the Clean Air Act (42 U.S.C. § 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 Clean Air Act (42 U.S.C. § 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 U.S. Army Corps of Engineers [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.

At issue for the Port of Los Angeles (POLA) Berths 136-147 [TraPac] Container Terminal Project (hereinafter the Project) is the issuance of a USACE permit, pursuant to Section 404 of the Clean Water Act, Section 10 of the River and Harbor Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act, for several improvements in and over the water at the TraPac berths, including near-water areas affected by temporary access, storage, and staging necessary to complete the in and over water activities, and the transport and disposal of dredged material at designated ocean sites. This final general conformity determination documents the evaluation of the Federal action with Section 176 (c) requirements of the Clean Air Act. The remainder of Section 1 discusses the background of the regulatory requirements. Section 2 discusses the USACE's Federal action. Section 3 describes how applicability of the conformity requirements to the Federal action was analyzed. Section 4 discusses the regulatory procedures for the conformity evaluation. Section 5 presents the methods and criteria that were used to evaluate the conformity of the Federal action. Section 6 discusses the concepts of mitigation required under conformity regulations. Section 7 presents the reporting process to be followed to formalize the conformity determination. Section 8 offers the USACE's findings and conclusions. Section 9 provides references for the evaluation. Attachment A provides a discussion and results of the emission calculation methods applied in the general conformity evaluation. Attachment B provides correspondence received from the Southern California Association of Governments (SCAG) regarding the Project. Attachment C presents the USACE general conformity guidance document. Attachment D lists the changes made to the general conformity determination between the Draft issued in November 2008 and the Final issued in March 2009.

### 1.1 Transportation Conformity Requirements

The U.S. Environmental Protection Agency (EPA) promulgated two regulations to address the conformity requirements of the Clean Air Act. On November 24, 1993, EPA promulgated final transportation conformity regulations at 40 C.F.R. Part 93 Subpart A to address Federally-assisted transportation plans, programs, and projects. These

regulations have been revised several times since they were first issued to clarify and simplify them. On September 14, 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 or regional transportation improvement program and not as a stand-alone project. SCAG, the regional metropolitan planning organization (MPO), has indicated that the project is not regionally significant (SCAG 2007a), and also indicated that POLA growth in truck and automobile traffic is accounted for in the 2008 Regional Transportation Plan (RTP) (SCAG 2007b) for which a transportation conformity determination has been issued (see Section 3.1); therefore, it would not be necessary to include on-road emissions associated with construction material deliveries and on-road debris hauling in the general conformity evaluation since this portion of the Federal action is considered to conform to the SIP (40 C.F.R. § 93.158(a)(5)(ii)). Attachment B includes the SCAG statements.

## 1.2 General Conformity Requirements

On November 30, 1993, EPA promulgated final general conformity regulations at 40 C.F.R. Part 93 Subpart B 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. 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, thus requiring the Federal agency to make a determination of general conformity. Even if the total direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the de minimis rates, but represents ten percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is considered regionally significant and the Federal agency must make a determination of general conformity. 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 C.F.R. § 93.153(b) to the Federal action and/or determine the regional significance of 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 National Environmental

Policy Act (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.

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## Section 2

# Description of the Federal Action

In accordance with applicable general conformity regulations and guidance, including USACE guidance dated April 20, 1994 (see Attachment C), 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 Project selected by the Los Angeles Harbor Department (LAHD). The Project is more fully described in Section 2.1.

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 reclassified from nonattainment to attainment and requiring SIP provisions to demonstrate how attainment will be maintained). The attainment status in the vicinity of POLA is discussed in Section 3.

### 2.1 Berth 136-147 Container Terminal Project

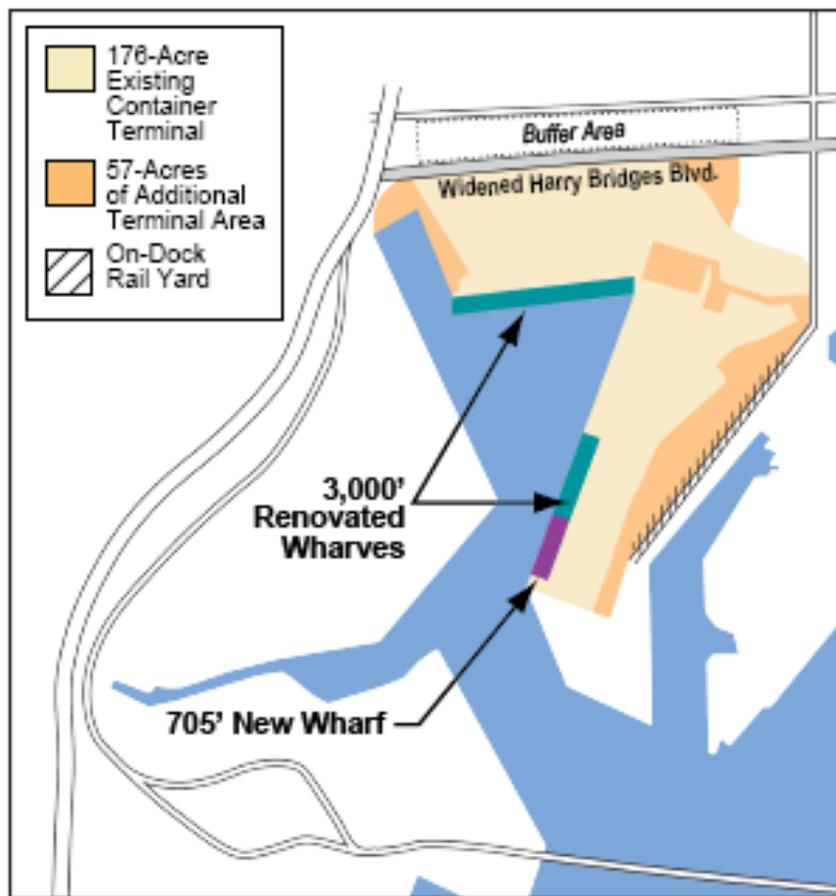
The City of Los Angeles (City) is undertaking the Project to implement numerous improvements at POLA, only some of which are included in the Federal action being addressed herein. The Project includes an expanded container terminal, deeper berths, longer and improved wharves, replacement of existing cranes, new terminal buildings and facilities, a new on-dock intermodal rail yard, a relocated Pier A rail yard, an improved Harry Bridges Boulevard, and a 30-acre buffer area adjacent to Harry Bridges Boulevard. Most of the improvements would occur on the 176 acres currently operated by TraPac. Other proposed Project components would occur in the area between "C" Street and Harry Bridges Boulevard, and the area adjacent to Berths 200C - 200H in the Port of Los Angeles.

The Federal action is defined by the new permit application submitted to the USACE by the LAHD in April 2008. The portions of the Project requiring a USACE permit are dredging in the west basin of POLA, transport and ocean disposal of dredged material, rehabilitation of the existing wharves and creation of a new 705-foot wharf at Berth 147, and landside construction activities within 100 feet of the shoreline required to complete the in and over-water structures and work (herein referred to as the Federal Action). The latter includes the crane removal and installation activities. Although included as part of

the Project selected by the LAHD, the USACE permit application does not include the 10-acre fill,<sup>1</sup> and is therefore not part of the Federal Action being analyzed herein.

As part of the environmental review of the Project, the USACE, in coordination with the City, has prepared this final general conformity determination to demonstrate compliance with the general conformity requirements in support of the USACE's Federal Action associated with the Project.

The seaport layout for the Project is presented in **Figure 2-1**. **Table 2-1** presents the list of major construction activities included in the Federal Action.



**Figure 2-1 Project Without 10-Acre Fill**

<sup>1</sup> The 10-acre fill project component included in the Final EIS/EIR (USACE/LAHD 2007b) is no longer expected to be built. Therefore, LAHD did not include this project component in the permit application submitted to the USACE in April 2008.

**Table 2-1**  
**List of Construction Activities in the Federal Action**

Construction Projects	Project Description
B145-147 Wharf Construction	<p>Phase 1</p> <ul style="list-style-type: none"> <li>- Wharf demolition</li> <li>- Remove 2 existing cranes</li> <li>- Pile driving – Row A / retrofit</li> <li>- Sheet pile wall</li> <li>- Electric dredging and ocean disposal <sup>a</sup></li> <li>- Rip-rap placement</li> <li>- Pile driving (including landside)</li> <li>- Wharf deck</li> </ul> <p>Phase 2</p> <ul style="list-style-type: none"> <li>- Wharf demolition</li> <li>- Waterside crane girder</li> <li>- Pile driving / landside</li> <li>- Install 3 new cranes</li> </ul>
B136-139 Wharf Construction	<ul style="list-style-type: none"> <li>- Wharf demolition</li> <li>- Sheet pile wall</li> <li>- Electric dredging and ocean disposal <sup>a</sup></li> <li>- Rip-rap placement</li> <li>- Pile driving (including landside)</li> <li>- Wharf deck</li> </ul>

Source: Camp Dresser & McKee Inc., 2008.

a. The Federal action includes ocean disposal of dredged material. However, the emission calculations completed for this analysis included both ocean disposal and transportation to a nearby potential land disposal location (roughly 50 percent of the dredged material is transported to each).

LAHD has prepared an extensive list of both construction and operational mitigation measures that it proposes to implement as part of the Project to satisfy requirements of the California Environmental Quality Act (CEQA), and for the general conformity evaluation, the construction measures are considered part of project construction as designed. These mitigation measures were developed from reviews of mitigation measures and plans used at other seaports, extensions of ongoing LAHD environmental policies (including implementation of the Sustainable Construction Guidelines (POLA 2007) and the San Pedro Bay Ports Clean Air Action Plan (POLA/POLB 2006)), and public comments received on the Draft and Final EIS/EIR. These mitigation measures include the following general approaches to reduce air quality impacts:

- MM AQ-1: Expanded VSR Program. All cargo ships used for terminal crane deliveries shall comply with the expanded vessel speed reduction program of 12 knots for 40 nautical miles from Point Fermin to the Precautionary Area.
- MM AQ-2: Fleet Modernization for On-Road Trucks. All on-road heavy-duty diesel trucks with gross vehicle weight rating of at least 33,000 pounds used on site or to transport materials to and from the site shall comply with Year 2007 emission standards.
- MM AQ-3: Fleet Modernization for construction Equipment. All off-road diesel-powered construction equipment greater than 50 horsepower, except derrick barges and marine vessels, shall achieve the EPA Tier 2 emission standards in Phase 1 construction and the EPA Tier 4 emission standards in Phase 2 construction.
- MM AQ-4: Best Management Practices. LAHD shall implement a process by which to select additional best management practices to further reduce air emissions during construction if it is determined that the proposed construction equipment exceed any SCAQMD significant thresholds. Such practices would include use of diesel oxidation catalysts and diesel particulate traps, maintenance of equipment according to manufacturers' specifications, restriction of idling of construction equipment to a maximum of ten minutes when not in use, and installation of high-pressure fuel injectors on construction equipment vehicles.
- MM AQ-5: Additional Fugitive Dust Controls. The construction contractor shall further reduce fugitive dust emissions to 90 percent from uncontrolled levels. Measures will include, but not be limited to: additional watering beyond that required by SCAQMD Rule 403, use of non-toxic soil stabilizer, use of temporary wind fencing, covering of haul trucks, use of wheel washers for vehicles leaving the construction site, and suspension of soil disturbance when wind speed exceeds 25 miles per hour.
- MM AQ-18A: General Mitigation Measures. If a California Air Resources Board (CARB)-certified technology becomes available and is shown to be as good as or better in terms of emission performance compared to those proposed in MM AQ-1 through MM AQ-5, the new technology could replace the existing measure pending approval by LAHD.

All of the mitigation measures that the USACE has relied upon in this final general conformity determination are CEQA-related mitigation measures that have been expressly adopted by LAHD and the City in approving the overall project and certifying the EIR. As such, those mitigation measures are fully enforceable under Cal. Pub. Res. Code § 21081.6. California regulations also require compliance with mitigation requirements as stated in a mitigation monitoring and reporting program (MMRP); see 14 C.C.R. §§ 15091(d) and 15097(c)(3). The Project MMRP (LAHD 2007), which incorporates all of the mitigation measures that the USACE has relied upon in this final general conformity determination, describes LAHD's lead responsibility for

administering the program, the timing of implementation, monitoring frequency, and actions indicating compliance. These provisions ensure that the measures will be properly implemented through incorporating mitigation measures into all construction bid specifications for the Project.

## **2.2 Relationship to Other Environmental Analyses**

A joint Draft EIS/EIR was published for public review and comment in June 2007 (USACE/LAHD 2007a) providing an analysis of five build alternatives (the original proposed project and Alternatives 2, 3, 4, and 5). A joint Final EIS/EIR was published in December 2007 (USACE/LAHD 2007b) documenting the integrated analysis of all alternatives considered. The USACE is the lead agency for the NEPA analysis documented in an Environmental Impact Statement (EIS). The City is the lead agency for the CEQA analysis documented in an Environmental Impact Report (EIR).

Both NEPA and CEQA require that the air quality impacts of the Project implementation be analyzed and disclosed. Regulatory guidance implementing these statutes requires that the air quality impacts from the project and its alternatives be determined by identifying the associated project incremental emissions and air pollutant concentrations and comparing them respectively to emissions thresholds and state and national ambient air quality standards. For CEQA purposes, the air quality impacts of the build alternatives were compared to the impacts of the environmental baseline to determine environmental significance and develop appropriate mitigation measures. The air quality impacts of the build alternatives were also compared to the NEPA Baseline for NEPA purposes. The draft general conformity determination was published with an Addendum to the Final EIS (USACE 2008) that clarified the Federal Action, and revised the construction emissions associated with the Federal Action. This final general conformity determination is being published with the USACE Record of Decision (ROD) for the Federal Action.

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## Section 3

# Regulatory Procedures

The general conformity regulations establish certain procedural requirements that must be followed when preparing a general conformity evaluation. This section addresses the major procedural issues and specifies how these requirements are met for the evaluation of the Federal Action. The procedures required for the general conformity evaluation are similar but not identical to those for conducting an air quality impact analysis under NEPA regulations.

### 3.1 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 C.F.R. § 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 approved 1997/1999 AQMP was developed with data similar to that used in the 1998 RTP, which was contemporaneous with the 1997/1999 AQMP. The approved 2008 RTP, which supersedes earlier RTPs, predicts an increase of goods movement in the SCAG region out to at least 2035, which partly reflects activities at POLA.

As noted previously, SCAG is the MPO for the region encompassing POLA. The SCAG region covers an area of over 38,000 square miles and includes the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura. SCAG adopted the 2008 RTP on May 8, 2008 (SCAG 2008). On June 5, 2008, the Federal Highway Administration issued a finding that the 2008 RTP conforms to the applicable state implementation plan (i.e., transportation conformity determination). The growth forecast for the 2008 RTP estimated a region-wide population growth of approximately 30 percent between 2005 and 2035 and a nearly equivalent region-wide employment growth for the same period. The growth rates for population and employment in Los Angeles County are among the lowest for counties in the SCAG region.

The 2008 RTP indicates that container volume processed by the San Pedro Bay ports (Port of Los Angeles and Port of Long Beach) grew by almost 60 percent between 2000 and 2006, and it is expected to nearly triple by 2035. While the 2008 RTP focuses on the land transport aspects of goods movement (e.g., freight rail, high-speed regional transport, and highway), it recognizes the huge contribution and potential to goods movement from maritime transport and other marine activities in the ports.

### 3.2 Use of Latest Emission Estimation Techniques

The general conformity regulations require the use of the latest and most accurate emission estimation techniques available, unless such techniques are inappropriate (40 C.F.R. § 93.159(b)). Prior written approval from SCAQMD or EPA is required to modify

or substitute emission estimation techniques. It should be noted that the latest and most accurate emission estimation techniques available at the time of this evaluation may differ from the emission estimation techniques used in establishing the applicable SIP emissions budgets. The details of emissions estimating are described in Attachment A. The emission estimation techniques used in this evaluation are generally consistent with those used in preparing the Final EIS/EIR (USACE/LAHD 2007b).

### 3.3 Emission Scenarios

The general conformity regulations require that the evaluation must reflect certain emission scenarios (40 C.F.R. §93.159(d)). Specifically, these scenarios must include emissions from the Federal Action for the following years: (1) for nonattainment areas, the year mandated in the Clean Air Act for attainment and for maintenance areas, the farthest year for which emissions are projected in the approved maintenance plan; (2) the year during which the total of direct and indirect emissions for the Federal Action are projected to be the greatest on an annual basis; and (3) any year for which the applicable SIP specifies an emissions budget. These emission scenarios will be described in more detail in Section 5. **Table 3-1** specifies the years for which the general conformity evaluation was performed for comparison to the approved SIP. **Table 3-2** specifies the years for which the general conformity evaluation was performed for comparison to the proposed SIP revisions.

**Table 3-1**  
**Emission Scenario Years for General Conformity Evaluation based on 1997/99 SIP**

Pollutant	Attainment/ Maintenance	Greatest Emission Year	Emissions Budget Years
Ozone (VOC or NO <sub>x</sub> )	2010	2009	2008,2010,2020 <sup>a</sup>

Source: Camp Dresser & McKee Inc., 2008.

a. Federal Action construction does not extend to 2020; therefore, no comparisons to 2020 budgets are included.

**Table 3-2**  
**Emission Scenario Years for General Conformity Evaluation based on 2007 AQMP**

Pollutant	Attainment/ Maintenance	Greatest Emission Year	Emissions Budget Years
Ozone (VOC or NO <sub>x</sub> )	2023 <sup>a,b</sup>	2009	2008,2010,2011 <sup>c</sup> , 2014,2017 <sup>a</sup> ,2020 <sup>a</sup> , 2023 <sup>a</sup> ,2030 <sup>a</sup> .

Source: Camp Dresser & McKee Inc., 2008.

a. Federal Action construction does not extend beyond 2016; therefore, no comparisons to budgets for years beyond 2014 are included.

b. The current designation of the region is Severe-17, which indicates an attainment year of 2021. However, the 2007 AQMP requests a re-designation to Extreme non-attainment, which has an attainment date in June 2024. Since the ozone season extends into the Autumn, attainment must be demonstrated by the end of the ozone season in 2023.

c. No project construction estimated to occur in 2011; therefore, no comparisons to 2011 budgets are necessary.

## Section 4

# Applicability Analysis

As stated previously, the first step in a general conformity evaluation is an analysis of whether the requirements apply to a Federal action proposed to be taken in a nonattainment or a maintenance area. Unless exempted by the regulations or otherwise presumed to conform, a Federal action requires a general conformity determination for each pollutant where the total of direct and indirect emissions caused by the Federal action would equal or exceed an annual de minimis emission rate. Notwithstanding the de minimis emission rate, if a Federal action is identified to be regionally significant, the Federal agency must make a general conformity determination.

### 4.1 Attainment Status of South Coast Air Basin

POLA is located within Los Angeles County in the SCAB of southern California. The regulatory agencies with primary responsibility for air quality management in the SCAB include SCAQMD and CARB, with oversight by EPA. Pursuant to the Clean Air Act, EPA established primary NAAQS to protect the public health with an adequate margin of safety and secondary NAAQS to protect the public welfare for seven air pollutants. These pollutants are known as criteria pollutants: particulate matter with an equivalent aerodynamic diameter less than or equal to ten micrometers ( $\mu\text{m}$ ) in diameter ( $\text{PM}_{10}$ ), particulate matter with an equivalent aerodynamic diameter less than or equal to 2.5  $\mu\text{m}$  in diameter ( $\text{PM}_{2.5}$ ), sulfur dioxide ( $\text{SO}_2$ ), carbon monoxide ( $\text{CO}$ ), ozone ( $\text{O}_3$ ), nitrogen dioxide ( $\text{NO}_2$ ), and lead ( $\text{Pb}$ ). EPA has delegated authority to SCAQMD to implement and enforce the NAAQS in the SCAB.

That portion of the SCAB encompassing POLA is in an area that is designated as being in nonattainment of the NAAQS for  $\text{O}_3$  (eight-hour average),  $\text{PM}_{10}$ , and  $\text{PM}_{2.5}$ . In addition, the severity of the nonattainment status for this area has been classified as "severe" for  $\text{O}_3$  and "serious" for  $\text{PM}_{10}$ , and it is unclassified for  $\text{PM}_{2.5}$ . On July 24, 1998, this area was redesignated from nonattainment to attainment/maintenance status for  $\text{NO}_2$  by EPA (63 FR 39747). More recently, the area was redesignated by EPA from nonattainment to attainment/maintenance for  $\text{CO}$  (72 FR 26718), effective June 11, 2007. The area is in attainment of the NAAQS for  $\text{SO}_2$  and  $\text{Pb}$ . Thus, for purposes of the general conformity requirements, this evaluation addresses  $\text{NO}_2$ ,  $\text{O}_3$  (eight-hour average),  $\text{CO}$ ,  $\text{PM}_{10}$ , and  $\text{PM}_{2.5}$ .

## 4.2 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 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 C.F.R. § 93.153(c)(2)). Examples include administrative actions and routine maintenance and repair.
- Actions where the emissions are not reasonably foreseeable (40 C.F.R. § 93.153(c)(3)).
- Actions which implement a decision to conduct or carry out a conforming program (40 C.F.R. § 93.153 (c)(4)).
- Actions which include major new or modified sources requiring a permit under the New Source Review (NSR) program (40 C.F.R. § 93.153(d)(1)).
- Actions in response to emergencies or natural disasters (40 C.F.R. § 93.153(d)(2)).
- Actions which include air quality research not harming the environment (40 C.F.R. § 93.153(d)(3)).
- Actions which include modifications to existing sources to enable compliance with applicable environmental requirements (40 C.F.R. § 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 C.F.R. § 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 C.F.R. § 93.153(f)). The USACE has not established a presumed-to-conform list of activities at the time of this evaluation.

## 4.3 De Minimis Emission Rates

The general conformity requirements will apply to the Federal Action for each pollutant for which the total of direct and indirect emissions caused by the Federal Action equal or exceed the de minimis emission rates shown in **Table 4-1**. These emission rates are expressed in units of tons per year (tpy) and are compared to the total of direct and indirect emissions caused by Federal Action for the calendar year during which the net emissions are expected to be the greatest. It should be noted that, because O<sub>3</sub> is a secondary pollutant (i.e., it is not emitted directly into the atmosphere but is formed in the atmosphere from the photochemical reactions of volatile organic compounds, VOC,

and oxides of nitrogen,  $\text{NO}_x$ , in the presence of sunlight), its de minimis emission rate is based on primary emissions of its precursor pollutants - VOC and  $\text{NO}_x$ . If the net emissions of either VOC or  $\text{NO}_x$  exceed the de minimis emission rate for  $\text{O}_3$  (EPA 1994), then the Federal Action is subject to a general conformity evaluation for  $\text{O}_3$ .

The region in which the project is located has been designated as a "severe" non-attainment area for the 8-hour  $\text{O}_3$  NAAQS, which carries a 25 tpy de minimis emission rate for  $\text{NO}_x$  and VOC. However, the currently approved SIP (1997 AQMP, as amended in 1999) was developed to demonstrate attainment of the revoked 1-hour  $\text{O}_3$  NAAQS by 2010. At that time the region had been designated as an "extreme" non-attainment area for  $\text{O}_3$ , which carries a 10 tpy de minimis emission rate for  $\text{NO}_x$  and VOC. In addition, SCAQMD has requested re-designation (bump up) to "extreme" nonattainment for the 8-hour  $\text{O}_3$  NAAQS in the 2007 AQMP. Therefore, the applicability analysis will use 10 tpy as the most stringent de minimis emission rate that might be applied to the Federal Action for  $\text{NO}_x$  and VOC emissions.

Further, the pollutant  $\text{PM}_{2.5}$  consists of primary particulate matter (directly emitted) and secondary particulate matter (formed in the atmosphere from precursor compounds) and may ultimately be composed of many separate chemical compounds. Generally, the main precursors of secondary  $\text{PM}_{2.5}$  include oxides of nitrogen ( $\text{NO}_x$ ), oxides of sulfur ( $\text{SO}_x$ ), and ammonia, although organic carbon compounds (VOC) also contribute to the formation of  $\text{PM}_{2.5}$ . Dynamic reactions between these precursor compounds emitted into the atmosphere by the sources of interest will affect the amount of  $\text{PM}_{2.5}$  attributable to the Federal Action. Based on studies conducted by SCAQMD in the SCAB, in general, the total mass of  $\text{PM}_{2.5}$  is more associated with combustion-related sources and secondary particles formed therefrom, and primary particles represent a relative small proportion of total  $\text{PM}_{2.5}$  mass. In fact, ammonium nitrates and ammonium sulfates represent a dominant fraction of  $\text{PM}_{2.5}$  components in the SCAB. If the net emissions of any of these precursor compounds exceed the de minimis emission rate for  $\text{PM}_{2.5}$ , then the Federal Action is subject to a general conformity evaluation for  $\text{PM}_{2.5}$ .

**Table 4-1  
De Minimis Emission Rates for Determining Applicability of  
General Conformity Requirements to the Federal Action**

<b>Pollutant</b>	<b>SCAB Attainment Status Designations</b>	<b>De Minimis Emission Rate (tpy)</b>
Nitrogen Dioxide	Attainment/Maintenance	100
Ozone (VOC or NO <sub>x</sub> )	Nonattainment/Extreme <sup>a</sup>	10 <sup>a</sup>
Carbon Monoxide	Attainment/Maintenance	100
Particulate Matter PM <sub>10</sub>	Nonattainment/Serious	70
Particulate Matter PM <sub>2.5</sub> (and each precursor) <sup>b</sup>	Nonattainment	100

a. The region in which POLA resides has been designated as a "severe" non-attainment area for the 8-hour O<sub>3</sub> NAAQS, which carries a 25 tpy de minimis emission rate for NO<sub>x</sub> and VOC. However, the currently approved SIP (1997 AQMP, as amended in 1999) was developed to demonstrate attainment of the revoked 1-hour O<sub>3</sub> NAAQS by 2010. At that time the region had been designated as an "extreme" non-attainment area for O<sub>3</sub>, which carries a 10 tpy de minimis emission rate for NO<sub>x</sub> and VOC. In addition, SCAQMD has requested re-designation to "extreme" nonattainment for the 8-hour O<sub>3</sub> NAAQS in the 2007 AQMP. Therefore, the applicability analysis will use 10 tpy as the de minimis emission rate for Federal Action NO<sub>x</sub> and VOC emissions.

b. The PM<sub>2.5</sub> precursors in the region include SO<sub>x</sub>, NO<sub>x</sub>, VOC, and ammonia.

## 4.4 Regional Significance

Even if a Federal action is less than the applicable de minimis emission rate for a given pollutant, the general conformity requirements state that a regionally significant action must undergo a conformity evaluation. A regionally significant action is one for which the total of direct and indirect emissions represent ten percent or more of the nonattainment or maintenance area's emissions inventories for all sources (as identified in the applicable SIP for stationary point, mobile, and area sources) for that pollutant. EPA guidance also indicates that any milestone emissions inventory in the applicable SIP should also be considered when evaluating regional significance (EPA 1994).

## 4.5 Applicability for Federal Action

The applicability of the general conformity requirements to the Federal Action was evaluated by comparing the total of direct and indirect emissions (calculated as discussed in Attachment A) for the calendar year of greatest emissions to the de minimis emission rates specified in Table 4-1. Where the total of direct and indirect emissions attributable to the Federal Action were found to be excluded from the general conformity requirements because they are below the de minimis emission rates for a pollutant, the total of direct and indirect emissions for that pollutant were compared to the nonattainment or maintenance area's emission inventory for that pollutant to determine whether it is regionally significant. Those pollutants that could not be excluded from applicability by both of these mechanisms underwent a complete general conformity evaluation consistent with the procedures in Section 3 above using the methods in Attachment A and the criteria in Section 5 below.

## 4.5.1 Methodology

Attachment A contains a discussion of the approach used for estimating emissions for this general conformity evaluation and the resulting emission inventories for the Federal Action. In general, the equipment parameters and wharf construction activities were originally described in the Draft EIS/EIR (USACE/LAHD 2007a), and were not modified in the Final EIS/EIR (USACE/LAHD2007b). Since completion of the Final EIS/EIR, additional detail regarding overall schedule, equipment sizes and anticipated work days has been developed. This updated information has been incorporated into the emission calculations presented in Attachment A, and summarized below.

## 4.5.2 Estimated Emissions and Comparison to De Minimis

Emissions were calculated for VOC, CO, NO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> (including precursors) for construction activities associated with the Federal Action. For purposes of this evaluation, emissions of NO<sub>2</sub> are assumed to equal emissions of NO<sub>x</sub>. These emissions are associated with mobile and area sources expected to be used for on-site construction-related purposes. Off-site construction-related emission sources (e.g., construction worker commute trips, material delivery hauling trips, debris/spoils disposal hauling trips) are assumed to be accounted for in the conforming 2008 RTP (due to the extensive discussions of, and plans for growth in, goods movement in the SCAG region presented in that document, and the SCAG statements included in Attachment B), and they are therefore excluded from consideration of general conformity herein (40 C.F.R. § 93.158(a)(5)(ii)). Emissions related to other construction and operations at Berths 136-147 at POLA subsequent to the completion of the Federal Action addressed herein are not included in the total of direct and indirect emissions associated with the Federal Action because the USACE has determined that it has no legal authority to control those emissions-generating construction and operational activities (i.e., USACE lacks continuing program responsibility over the project once the construction activities in and over navigable waters of the U.S./waters of the U.S. are completed) (USACE 1994).

The Federal Action emissions are summarized in **Table 4-2** for the entire construction period regardless of the individual year or years that each construction activity occurs. The specific construction activities are listed by both the name used in the Final EIS/EIR, and the name provided by LAHD in the updated schedule included in Attachment A. The resulting calculations indicate that only emissions of NO<sub>x</sub> could potentially exceed the general conformity de minimis emission rates presented in Table 4-1. Therefore, only NO<sub>x</sub> emissions are analyzed to determine the peak annual emission rate. The Federal Action emissions of CO, SO<sub>x</sub>, VOC, PM<sub>10</sub>, or PM<sub>2.5</sub> are compared to the regional emissions in Section 4.5.3 to verify that project emissions do not represent ten percent or more of the regional budgets.

The Federal Action annual NO<sub>x</sub> emission rates for each year during the construction period is summarized in **Table 4-3**. The peak year of NO<sub>x</sub> emissions is estimated to be 2009, and the peak annual emissions are 20.9 tpy. This emission rate exceeds the de minimis emission rates, as does the emission rate estimated for 2015 (15.1 tpy). Therefore, a complete conformity evaluation is included for NO<sub>x</sub> emissions in the general conformity determination. Note that the region is currently designated as a

“severe” O<sub>3</sub> nonattainment area. If the severe O<sub>3</sub> nonattainment area de minimis emission rate (25 tpy each for NO<sub>x</sub> or VOC) were used, then even the peak annual NO<sub>x</sub> emissions would be less than the de minimis threshold for general conformity applicability.

**Table 4-2**  
**Federal Action Emission Rates and Comparison to**  
**De Minimis Emission Rates**

Construction Phase & Activity (New Schedule/EIS) <sup>b</sup>	Emission Rates, tons <sup>a</sup>					
	VOC	CO	NO <sub>x</sub>	SO <sub>x</sub>	PM <sub>10</sub>	PM <sub>2.5</sub>
<b>B145-147 Phase 1</b>						
Wharf Demolition / Wharf Demolition	0.1	0.5	2.5	0.0	0.1	0.1
Remove 2 Existing Cranes at Berth 145 <sup>m</sup>	0.0	0.0	0.0	0.0	0.0	0.0
Pile Driving - Row A/retrofit / Piledriving - Waterside Piles	0.0	0.0	0.3	0.0	0.0	0.0
Sheet Pile Wall / Piledriving - sheet piles	0.0	0.1	0.9	0.0	0.0	0.0
Electric Dredging / Dredge and disposal	0.2	0.7	4.8	0.0	0.2	0.2
Rock / Rip-Rap Placement	0.5	1.7	10.6	0.0	0.5	0.5
Pile Driving - Including Landside / Piledriving – Landside	0.1	0.4	1.9	0.0	0.1	0.1
Wharf Deck / Replace Existing Wharf	0.2	1.1	3.3	0.0	0.1	0.1
<b>B145-147 Phase 2</b>						
Wharf Demolition / Wharf Demolition	0.1	0.2	1.0	0.0	0.0	0.0
Waterside Crane Girder <sup>c</sup> / Upgrade Existing Wharf	0.0	0.2	0.7	0.0	0.0	0.0
Pile Driving/Landside / Piledriving – Landside	0.0	0.1	0.5	0.0	0.0	0.0
Install 3 Cranes at Berth 145 <sup>m</sup>	0.0	0.1	1.2	0.7	0.1	0.1
<b>B136-139</b>						
Wharf Demolition / Wharf Demolition	0.1	0.5	2.5	0.0	0.1	0.1
Sheet Pile Wall / Piledriving - Sheet piles	0.0	0.2	1.1	0.0	0.0	0.0
Electric Dredging / Dredge and disposal	0.2	0.6	4.5	0.0	0.2	0.2
Rock / Rip-Rap Placement	0.5	1.7	10.6	0.0	0.5	0.5
Pile Driving - Including Landside / Piledriving – Landside	0.1	0.4	1.9	0.0	0.1	0.1
Wharf Deck / Replace Existing Wharf	0.2	1.1	3.3	0.0	0.1	0.1
<b>PROJECT CUMULATIVE POLLUTANT EMISSIONS<sup>a</sup></b>	<b>2.6</b>	<b>9.8</b>	<b>51.7</b>	<b>0.7</b>	<b>2.2</b>	<b>2.1</b>
<b>General Conformity de minimis emission rate (tpy)<sup>d</sup></b>	<b>10</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>70</b>	<b>100</b>
<b>Were the de minimis emission rates exceeded?</b>	<b>No</b>	<b>No</b>	<b>Yes<sup>e</sup></b>	<b>No</b>	<b>No</b>	<b>No</b>

a. Emissions shown are for entire construction duration, not peak annual.

b. The New Schedule name refers to the construction activity name provided by LAHD for the updated schedule of Federal Action activities. The EIS name refers to the construction activity name used in the Draft and Final EIS/EIR (USACE/LAHD 2007a,b).

c. The crane girder is the part of the wharf that supports the crane.

d. The de minimis rates are meant to be compared to peak annual emissions. If total Federal Action emissions exceed the de minimis emission rates, then annual emissions will be determined.

e. Federal Action NO<sub>x</sub> emissions exceeded the threshold; peak annual NO<sub>x</sub> emissions will be calculated(see Table 4-3).

**Table 4-3  
Federal Action Annual NO<sub>x</sub> Emission Rates and Comparison to  
De Minimis Emission Rates**

Construction Phase & Activity (New Schedule/EIS) <sup>a</sup>	NO <sub>x</sub> Emission Rates by year, tpy						
	2008	2009	2010	2013 <sup>b</sup>	2014	2015	2016
<b>B145-147 Phase 1</b>							
Wharf Demolition / Wharf Demolition	0.5	2.0	-	-	-	-	-
Remove 2 Existing Cranes at Berth 145 <sup>c</sup>	-	0.0	-	-	-	-	-
Pile Driving - Row A/retrofit / Piledriving - Waterside Piles	-	0.3	-	-	-	-	-
Sheet Pile Wall / Piledriving - sheet piles	-	0.9	-	-	-	-	-
Electric Dredging / Dredge and disposal	-	4.1	0.7	-	-	-	-
Rock / Rip-Rap Placement	-	10.6	-	-	-	-	-
Pile Driving - Including Landside / Piledriving – Landside	-	1.5	0.4	-	-	-	-
Wharf Deck / Replace Existing Wharf	-	1.4	2.0	-	-	-	-
<b>B145-147 Phase 2</b>							
Wharf Demolition / Wharf Demolition	-	-	1.0	-	-	-	-
Waterside Crane Girder d. / Upgrade Existing Wharf	-	-	0.7	-	-	-	-
Pile Driving/Landside / Piledriving – Landside	-	-	0.5	-	-	-	-
Install 3 Cranes at Berth 145 <sup>c</sup>	-	-	1.2	-	-	-	-
<b>B136-139</b>							
Wharf Demolition / Wharf Demolition	-	-	-	1.5	1.0	-	-
Sheet Pile Wall / Piledriving - Sheet piles	-	-	-	-	1.1	-	-
Electric Dredging / Dredge and disposal	-	-	-	-	3.0	1.5	-
Rock / Rip-Rap Placement	-	-	-	-	-	10.6	-
Pile Driving - Including Landside / Piledriving – Landside	-	-	-	-	-	1.9	-
Wharf Deck / Replace Existing Wharf	-	-	-	-	-	1.1	2.2
<b>ANNUAL POLLUTANT EMISSIONS (tpy)</b>	<b>0.5</b>	<b>20.9</b>	<b>6.4</b>	<b>1.5</b>	<b>5.1</b>	<b>15.1</b>	<b>2.2</b>
<b>General Conformity de minimis emission rate (tpy)</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>
<b>Was the de minimis emission rate exceeded?</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>Yes</b>	<b>No</b>

a. The New Schedule name refers to the construction activity name provided by LAHD for the updated schedule of Federal Action activities. The EIS name refers to the construction activity name used in the Draft and Final EIS/EIR (USACE/LAHD 2007a,b).

b. No construction emissions are estimated to occur in 2011 and 2012.

c. The crane girder is the part of the wharf that supports the crane.

### 4.5.3 Regional Significance

The totals of direct and indirect emissions of VOC, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> for the Federal Action are compared to the regional emissions inventories of these pollutants prepared by SCAQMD for the SCAB. Two comparisons are presented, using data taken from the 1997 Air Quality Management Plan (AQMP) (SCAQMD 1996), which contains the currently approved SIP budgets, and from the 2007 AQMP (SCAQMD 2007). The lowest annual emissions from each of these documents between 2008 and 2016 are used for this calculation. The results of this comparison are summarized in **Table 4-4**. As one can see, the project totals are much less than ten percent of the SCAB emissions inventories; therefore, the Federal Action is not regionally significant for VOC, CO, SO<sub>x</sub>, PM<sub>10</sub>, or PM<sub>2.5</sub>.

**Table 4-4**  
**Comparison of Federal Action Emissions for Regional Significance**

Pollutant	Total Federal Action Emissions (tons) <sup>a</sup>	Approved SIP Emissions (tpy) <sup>b</sup>	Percent of Approved SIP	2007 AQMP Emissions (tpy) <sup>c</sup>	Percent of 2007 AQMP
VOC	2.5	150,955	0.0016%	153,300	0.0016%
CO	9.6	885,301	0.0011%	744,235	0.0013%
SO <sub>x</sub>	0.7	25,769	0.0027%	6,935	0.01%
PM <sub>10</sub>	2.1	120,687	0.0017%	d.	d.
PM <sub>2.5</sub>	1.9	d.	d.	31,755	0.0060%

Source: Camp Dresser & McKee Inc., 2008.

a. Total emissions caused by the Federal Action include all construction emissions regardless of the year or years over which these emissions occurred. Therefore, the Federal Action emissions are the most conservative (high) that could be used for this comparison.

b. Based on data in 1997 AQMP Appendix V (controlled inventories in 2010).

c. Based on data in 2007 AQMP Appendix V (carrying capacities in 2015 for PM<sub>2.5</sub> and SO<sub>x</sub>, and in 2023 for VOC and CO).

d. No budgets were developed in the currently approved SIP for PM<sub>2.5</sub> or in the 2007 AQMP for controlled PM<sub>10</sub>.

### 4.5.4 Applicability Determination

The total of direct and indirect emissions of VOC, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> are less than the general conformity de minimis threshold emission rates and the Federal Action is not regionally significant for any of these pollutants. Therefore, the general conformity requirements do not apply to these pollutants, and there will be no further evaluation of these pollutants herein.

Because the total of direct and indirect emissions of NO<sub>x</sub> exceeds the “extreme” O<sub>3</sub> non-attainment area general conformity de minimis emission rate identified in Section 4.3, the general conformity requirements do apply to NO<sub>x</sub>. Subsequent sections of this document will address the general conformity evaluation of NO<sub>x</sub> as applicable to the Federal Action.

## Section 5

# 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 C.F.R. § 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 determination.

### 5.1 Designation of Applicable SIP

Section 110(a) of the Clean Air Act (42 U.S.C. § 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.

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

CARB designates both air quality management districts and air pollution control districts within California for the purpose of implementing and enforcing ambient air quality standards on a regional or airshed basis. These district agencies must prepare regional plans (Air Quality Management Plans [AQMPs]) to support the broader SIP, as well as to meet the goals of the California Clean Air Act.

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 into the SIP. The approved SIP for the SCAB is based on the AQMP which SCAQMD submitted to CARB in 1997 (SCAQMD 1996) and supplemental information as discussed in Section 5.1.2. In August 2003, SCAQMD submitted to CARB the final 2003 AQMP (SCAQMD 2003), and this formed the basis of a proposed SIP revision submitted by CARB to EPA on January 9, 2004<sup>2</sup>. In June 2007, SCAQMD submitted to CARB the final 2007 AQMP (SCAQMD 2007), and this formed the basis of a proposed SIP revision submitted by CARB to EPA on November 16, 2007.

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<sup>2</sup> On March 10, 2009, EPA issued a final rule that partially approved and partially disapproved the 2003 AQMP. Among the portions that were approved were the Base year emissions inventory and the Baseline inventories. However, the EPA did not approve the attainment budgets for ozone. Therefore, the EPA-approved budgets for attainment demonstrations continue to be those developed for the 1997/1999 AQMP.

## 5.1.2 Status of Applicable SIP and Emissions Budgets by Pollutant

The Clean Air Act 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 action. Upon redesignation of an area from nonattainment to attainment for each standard, the area will be considered to be a maintenance area for that standard, and as such, must meet all applicable requirements to maintain the standard.

To support the general conformity determination, the USACE demonstrates herein that the emissions of NO<sub>x</sub> (as an O<sub>3</sub> precursor) caused by the Federal Action either will result in a level of emissions which, together with all other emissions in the nonattainment area, will not exceed the emissions budgets specified in the approved SIP (criterion at 40 C.F.R. § 93.158(a)(5)(i)(A)) or, in the alternative, will not exceed the emissions budgets specified in the 2007 AQMP, see Section 5.2 below. The currently approved SIPs for the SCAB are summarized below.

- O<sub>3</sub>: SIP approved by EPA on April 10, 2000 (65 FR 18903), based on the 1997 AQMP and a 1999 amendment to the 1997 AQMP.
- CO: SIP approved by EPA on May 11, 2007 (72 FR 26718), based on 2005 redesignation request and maintenance plan. In this SIP approval, EPA also redesignated the SCAB from nonattainment to attainment/maintenance for CO
- PM<sub>10</sub>: SIP approved by EPA on April 18, 2003 (68 FR 19315), based on the 1997 AQMP, amendments to the 1997 AQMP submitted in 1998 and 1999, and further modifications to the 1997 AQMP submitted in a status report to EPA in 2002.
- PM<sub>2.5</sub>: No EPA-approved SIP.
- NO<sub>2</sub>: SIP approved by EPA on July 24, 1998 (63 FR 39747), based on the 1997 AQMP. In this SIP approval, EPA also redesignated the SCAB from nonattainment to attainment/maintenance for NO<sub>2</sub>.

SCAQMD released the Final 2007 AQMP on June 1, 2007, and as noted above that AQMP formed the basis of a proposed SIP revision submitted to EPA. This evaluation will make comparisons both to applicable emissions inventories in the current EPA-approved SIP and to applicable emissions inventories contained in the 2007 AQMP. For purposes of the general conformity determination, the applicable SIP will be the most recent EPA-approved SIP at the time of the release of the final general conformity determination.

## 5.2 Comparison to SIP Emissions Inventories

As noted in the preceding section, the most recent EPA-approved SIP at the time of the release of the final general conformity determination must be used for emission budget analyses. The 1997 AQMP together with supplemental information form the basis for the current, EPA-approved O<sub>3</sub> SIP. However, the EPA may approve all or part of the 2007 AQMP for O<sub>3</sub> (or other pollutants) before the final general conformity determination is published. Therefore, to avoid revisions to and/or recirculation of the draft and final general conformity determination, emissions for the Federal Action presented in this section are compared to both the currently approved SIP emissions budgets and to the 2007 AQMP emissions budgets.

The emissions inventories developed by SCAQMD and fully documented in the AQMPs are delineated by source types. **Table 5-1** provides a concordance between the emission source categories that characterize the Federal Action and the emission source types in the AQMPs. In the following discussion, the term "NO<sub>x</sub>" should be understood to represent both NO<sub>x</sub> and NO<sub>2</sub> (see discussion in Section 4.3).

**Table 5-1**  
**Relationship of Federal Action Source Categories and AQMP Source Types**

Federal Action Source Category	1997 AQMP Source Type	2007 AQMP Source Type
Construction	Heavy Duty Diesel Trucks	Heavy-Heavy Duty Diesel Truck
	Mobile Equipment	Off-Road Equipment
	Commercial Boats	Ships and Commercial Boats

Source: Camp Dresser & McKee Inc., 2008.

The source type "Commercial Boats/Ships" in the 1997 AQMP represents two separate subcategories of off-road equipment in the inventory, whereas the source type "Ships and Commercial Boats" in the 2007 AQMP represents a single combined subcategory of off-road equipment in the inventory. "Ships" are considered ocean-going marine vessels (e.g., container ships), and "commercial boats" are considered commercial harbor craft (e.g., tugboats).

### 5.2.1 NO<sub>x</sub> Emissions from Construction Sources Under the Federal Action

At the time that SCAQMD prepared the 1997 AQMP, LAHD 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 any of the build alternatives, including the Federal Action. While the Draft EIS/EIR was released in June 2007 after approval of the final 2007 AQMP, the USACE had issued a Notice of Intent to prepare the EIS in October 2003, so SCAQMD would have been aware of the Federal Action. For that reason, as well as the rapid growth in goods movement—particularly at the ports—in the SCAB, it would be reasonable to assume that SCAQMD allowed for an accommodation for such a major construction program within the 2007 AQMP.

The general conformity regulations require evaluating the total of direct and indirect emissions for the Federal Action for the mandated attainment year (2021), the year of maximum emissions (2009), and any years for which the SIP identifies an emissions budget (40 C.F.R. § 93.159(d)). Because the construction will be complete well before 2021, there is no analysis of emissions for that year in this evaluation. For the years of construction planned under the Federal Action, the approved SIP includes emissions budgets for 2008 and 2010, while the 2007 AQMP includes emissions budgets for 2008, 2010, 2011, and 2014. There are not expected to be any construction-related emissions for the Federal Action in 2011, so the following evaluation provides no comparison for that year. For those years requiring a quantitative evaluation but for which an emissions budget does not exist in either the approved SIP or the 2007 AQMP, a budget was estimated by performing a linear interpolation using the two years of emissions budget data most closely bracketing the year of interest.

**Tables 5-2** and **Table 5-3** summarize a comparison of estimated NO<sub>x</sub> emissions from construction activities under the Federal Action to the applicable source types under both the approved SIP and the 2007 AQMP, respectively, for the years noted in Tables 3-1 and 3-2 above. It should be noted that the emissions for those source types taken from the approved SIP and the 2007 AQMP may represent more than construction-related emissions since these source types are not exclusive to construction equipment and activities. Because the SIP for the SCAB has to accommodate many planned and some unplanned construction projects, the construction-related emissions inventories included in the AQMPs are very substantial. Despite the fact that the Federal Action would require a substantial program of construction, one can note that the construction emissions from the Federal Action would be very small compared to the emissions inventories in the AQMPs (i.e., less than 0.1% relative contributions). For that reason, it is reasonable to assume that the emissions from construction activities under the Federal Action can be accommodated in future emissions growth from the construction sector within the approved SIP or alternatively within the 2007 AQMP. Therefore, it can be inferred that the construction NO<sub>x</sub> emissions for the Federal Action, taken together with NO<sub>x</sub> emissions for all other construction sources in the SCAB, would not exceed the NO<sub>x</sub> emissions budgets for construction-related source types specified in the approved SIP, or alternatively in the 2007 AQMP (SCAQMD 2007, included in Appendix III).

**Table 5-2**  
**Comparison of the Federal Action NO<sub>x</sub> Emissions for**  
**Construction to Approved SIP Emission Budgets for**  
**Construction-Related Source Types**

Year and Source Type	Federal Action Emission (tpy)	Approved SIP Emissions (tpy)	Relative Contribution to SIP Budgets
<b>2008</b>			
Heavy-Duty Diesel Trucks	0.003	54,316	0.000006%
Mobile Equipment	0.4	44,599	0.0009%
Commercial Boats/Ships	0.1	18,400	0.0005%
<b>2009<sup>a</sup></b>			
Heavy-Duty Diesel Trucks	0.1	55,097	0.0002%
Mobile Equipment	9.3	44,048	0.02%
Commercial Boats/Ships	11.5	18,703	0.06%
<b>2010</b>			
Heavy-Duty Diesel Trucks	0.3	55,874	0.0005%
Mobile Equipment	4.2	43,493	0.01%
Commercial Boats/Ships	1.9	19,002	0.01%

Sources: Camp Dresser & McKee Inc., 2008, SCAQMD 1996.

a. SIP emissions in 2009 interpolated from the 1997 AQMP Appendix III, Attachment A, Tables A-12 and A-13.

**Table 5-3**  
**Comparison of the Federal Action NO<sub>x</sub> Emissions for**  
**Construction to 2007 AQMP Emission Budgets**  
**for Construction-Related Source Types**

<b>Year and Source Type</b>	<b>Federal Action Emission (tpy)</b>	<b>2007 AQMP Emissions (tpy)</b>	<b>Relative Contribution to 2007 AQMP Budgets</b>
<b>2008</b>			
Heavy-Heavy Duty Diesel Trucks	0.003	55,761	0.000005%
Off-Road Equipment	0.4	69,602	0.0006%
Ships and Commercial Boats	0.1	28,087	0.0004%
<b>2009<sup>a</sup></b>			
Heavy-Heavy Duty Diesel Trucks	0.1	52,571	0.002%
Off-Road Equipment	9.3	65,806	0.01%
Ships and Commercial Boats	11.5	28,813	0.04%
<b>2010</b>			
Heavy-Heavy Duty Diesel Trucks	0.3	49,381	0.0006%
Off-Road Equipment	4.2	62,736	0.007%
Ships and Commercial Boats	1.9	29,536	0.006%
<b>2014</b>			
Heavy-Heavy Duty Diesel Trucks	0.1	37,226	0.0003%
Off-Road Equipment	2.5	50,089	0.005%
Ships and Commercial Boats	2.6	31,919	0.008%

Source: Camp Dresser & McKee Inc., 2008; SCAQMD 2007 (Appendix III Attachment A: Tables A-3, A-4, and A-6).

a. AQMP emissions for 2009 interpolated from 2007 AQMP Appendix III, Attachment A, Tables A-3 and A-4.

## **5.2.2 NO<sub>x</sub> Emissions from Other Sources at POLA**

Notwithstanding the emissions attributable to the Federal Action, NO<sub>x</sub> emissions (whether operations- or other construction-related) at POLA following completion of the construction of the Federal Action may be similar to those that would have occurred in the absence of the Project, due to ongoing operations at the existing container terminal in the project area. However, it is the determination of the USACE that any change in future emissions at POLA following the implementation of the Federal Action are not subject to the continuing program responsibility of the USACE and therefore are not required to be addressed in this evaluation. Once construction activities in and over the water are completed, the USACE will retain little or no authority over the project's other construction and operational activities, particularly those occurring in the upland portions of the project area. However, these future emissions will remain subject to the continuing program responsibility of LAHD, as the local agency with lease and development control over projects in the Port of Los Angeles, and numerous CEQA-related mitigation measures, including many focused on limiting air emissions, will have to be implemented, maintained, and monitored pursuant to the MMRP included in the certified Final EIR.

## **5.3 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 C.F.R. § 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 Action was assessed for SIP consistency for this evaluation.

### **5.3.1 Applicable Requirements from EPA**

EPA has already promulgated, and will continue to promulgate, numerous requirements to support the goals of the Clean Air Act 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 Clean Air Act and can impose stricter limitations than EPA, the EPA requirements often serve as guidance to the states in formulating their air quality management strategies.

### 5.3.2 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 Clean Air Act from regulating emissions from many non-road mobile sources, including marine craft. Emission standards for preempted equipment can only be set by EPA.

### 5.3.3 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.

### 5.3.4 Consistency with Applicable Requirements

In operating POLA, 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 U.S. 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 C.F.R. 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 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.

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## **Section 6 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 and the Federal agency must include the mitigation measures as conditions in any permit or license granted for the Federal action (40 C.F.R. § 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 Final EIS/EIR (USACE/LAHD 2007b) to meet CEQA requirements are part of the Project. Based on CEQA provisions that mitigation measures be required in, or incorporated into, the project (14 C.C.R. § 15091(a)(1)), the City will implement, maintain, monitor, and enforce these CEQA-related air quality mitigation measures pursuant to the MMRP included in the certified Final EIR; see Section 2.1 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 the 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. As such, no mitigation, as defined under the general conformity regulations (40 C.F.R. § 93.160) or guidance (EPA 1994), are required to support a positive general conformity determination.

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## **Section 7 Reporting**

To support a decision concerning the Federal Action, the USACE is issuing this final general conformity determination with the ROD.

### **7.1 Draft General Conformity Determination**

The USACE provided copies of the draft general conformity determination to the appropriate regional offices of EPA, any affected Federal land manager, as well as to CARB, SCAQMD, and SCAG for a 30-day review. The USACE also placed a notice in a daily newspaper of general circulation in the SCAB announcing the availability of the draft general conformity determination and requesting written public comments for a 30-day period.

### **7.2 Final General Conformity Determination**

The USACE is providing copies of this final general conformity determination 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 general conformity determination within 30 days of its promulgation. As part of the general conformity evaluation, the USACE has documented its responses to all comments received on the draft general conformity determination and will make both the comments and responses available upon request by any person within 30 days of the promulgation of the final general conformity determination. The responses to comments are also included in Appendix B of the ROD.

### **7.3 Frequency of General Conformity**

The general conformity regulations state that the status of a specific conformity determination lapses five years after the date of public notification for the final general conformity determination, unless the action has been completed or a continuous program has been commenced to implement the action (40 C.F.R. § 93.157(a)). Because the Federal Action envisions a development program extending beyond five years, it is important to note that the final general conformity determination will remain active only under this "continuous program to implement."

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, the USACE will conduct a new general conformity evaluation.

## Section 8

# Findings and Conclusions

As part of the environmental review of the Federal Action, the USACE conducted a general conformity evaluation pursuant to 40 C.F.R. Part 93 Subpart B. The general conformity regulations apply at this time to any actions at POLA requiring USACE approval because the SCAB where POLA is situated is a nonattainment area for O<sub>3</sub>, 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. Specifically, SCAQMD and CARB researched the estimated construction equipment emissions developed for the approved SIP and 2007 AQMP for Los Angeles County. Based on this review, they concluded that the Federal Action emissions can be accommodated in the 1997 SIP and 2007 AQMP budgets. EPA reviewed and agreed with the regulatory analysis. A summary of the regulatory review is included in Attachment E. The USACE has determined that the Federal Action as designed will conform to the approved SIP, based on the findings below:

- The Federal Action is not subject to a general conformity determination for CO, VOC (as an O<sub>3</sub> and PM<sub>2.5</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 and they are not regionally significant.
- The Federal Action conforms to the SIP for NO<sub>x</sub> (as an O<sub>3</sub> precursor) because the net emissions associated with the Federal Action, taken together with all other NO<sub>x</sub> emissions in the SCAB, would not exceed the emissions budgets in the approved SIP for the years subject to the general conformity evaluation.

Therefore, USACE herewith concludes that the Federal Action as designed conforms to the purpose of the approved SIP and is consistent with all applicable requirements.

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## Section 9 References

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