

PUBLIC NOTICE

**US Army Corps
of Engineers®**

ADDITIONAL INFORMATION PERTAINING TO
DEPARTMENT OF THE ARMY PERMIT APPLICATION

LOS ANGELES DISTRICT

Public Notice/Application No.: 2003-01029-SDM

Review Period: April 23, 2009 through May 8, 2009

Project Manager: Spencer D. MacNeil, D.Env. (805) 585-2152 spencer.d.macneil@usace.army.mil

Applicant

Port of Los Angeles/Los Angeles Harbor Dept.
Antonio V. Gioiello, Chief Harbor Engineer
P.O. 151
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Contact

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Environmental Management Division
Dr. Ralph G. Appy
(310) 732-3497

Location

The proposed project is located in the southwestern portion of the West Basin of the Port of Los Angeles, Los Angeles County, California (latitude: 33°-45'-10" longitude: -118°-16'-30") (Figures 1 and 2).

Activity

Per previous Corps public notices for this project, the Los Angeles Harbor Department (LAHD) proposed to permanently impact approximately 2.5 acres and temporarily impact approximately 15 acres of waters of the U.S. during various dredge and fill activities associated with constructing a container terminal at Berths 97-109 [China Shipping]. The first phase of the proposed project, including 1.29 acres of the permanent impact to waters of the U.S. associated with constructing a 1,200-foot-long wharf at Berth 100, was completed and began operating in 2004; but all three phases were evaluated in the EIS/EIR (Final EIS/EIR published in December 2008) and are being considered in the Corps' permit decision-making process. According to additional information provided by the LAHD in April 2009, Phase III's approximately 375-foot-long extension to the south end of the wharf at Berth 100 would permanently impact 1.2 acres of waters of the U.S. by adding shoreline rock and clean fill, as previously identified, and an additional 1.2 acres by discharging rock into waters to further support the new wharf extension. While the acreage of waters of the U.S. affected by fill discharges would be 1.2 acres higher, the total rock and clean fills in waters are the same as identified and evaluated in the EIS/EIR. For more information, see page 4 of this notice.

Interested parties are hereby reminded that an application has been received for a Department of the Army permit for the activity described herein and shown in the attached figures (the April 30, 2008 Army Corps of Engineers-Port of Los Angeles public notice for this project first notified the public that, among other things, a permit application had been received). Interested parties are invited to provide their views on the proposed work, which will become a part of the record and will be considered in the decision. This permit will be issued or denied under Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344). Comments should be mailed to:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division, Ventura Field Office (CESPL-RG-N-2003-01029-SDM)
2151 Alessandro Drive, Suite 110
Ventura, California 93001

Alternatively, questions or comments can be sent electronically to: spencer.d.macneil@usace.army.mil

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, because the proposed activities would discharge dredged or fill material, the evaluation of the activity will include application of the USEPA Guidelines (40 C.F.R. Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. In this case, comments have been used in the preparation of an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A determination was made that an Environmental Impact Statement is required for the proposed activities in waters of the United States. The Recirculated Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the proposed Berths 97-109 Container Terminal Project was published on April 30, 2008, and comments on the above document were accepted until July 15, 2008. A public hearing was held at Banning's Landing Community Center in Wilmington, California, on June 5, 2008 to give additional opportunity for the public to comment on the Recirculated Draft EIS/EIR for this project.

The Corps published a Notice of Availability for the Final EIS/EIR, including the draft general conformity determination, in the Federal Register on December 29, 2008; the USEPA Notice of Availability was published on January 2, 2009. Comments were received until February 2, 2009. The Recirculated Draft EIS/EIR and Final EIS/EIR for this project, which address several potentially significant issues, such as impacts to air quality, traffic, biological resources, water quality, and environmental justice, can be found on the Port of Los Angeles website (http://www.portoflosangeles.org/environment/public_notices.asp).

Water Quality- The applicant is required to obtain Water Quality Certification pursuant to Section 401 of the Clean Water Act from the Los Angeles Regional Water Quality Control Board. Section 401 requires that any applicant for an individual Section 404 permit provide proof of Water Quality Certification to the Corps of Engineers prior to permit issuance.

Coastal Zone Management- The applicant is certifying that the proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management Program. The District Engineer hereby requests the California Coastal Commission's concurrence or nonconcurrence that proposed project is consistent with the California Coastal Commission-approved Port Master Plan.

Cultural Resources- The latest version of the National Register of Historic Places has been consulted and this site is not listed. As discussed in the EIS/EIR for the Berths 97-109 [China Shipping] Container Terminal

Project, no cultural or historic resources were identified that would be affected by the proposed project. In addition, the Native American Heritage Commission (NAHC) was contacted on October 23, 2007, to request information about traditional cultural properties, such as cemeteries and sacred places, in the project area. According to NAHC's November 1, 2007 written response, their record search of the Sacred Lands file failed to indicate the presence of Native American cultural resources in the immediate project area. Furthermore, NAHC had previously provided a letter, dated June 20, 2007, containing a list of Native American tribes and individuals interested in consulting on development projects. Each of these individuals/groups was contacted by letter on October 23, 2007. The only response received was from Mr. Sam Dunlap, Cultural Resource Director, of the Gabrielino/Tongva Tribal Council; he requested that mitigation be included in the environmental document for a Native American monitoring component. While the likelihood of encountering cultural resources is considered low, considering the previous study results and the extensive disturbances in the project area, a mitigation measure (MM CR-1) was included in the EIS/EIR that includes archaeological resource monitoring. This review constitutes the extent of cultural resources investigations by the District Engineer, and he is otherwise unaware of the presence of such resources.

Endangered Species- The California least tern (*Sterna antillarum browni*) and the California brown pelican (*Pelecanus occidentalis californicus*) are known to forage on occasion in the vicinity of the project area. However, based on detailed biological information in the EIS/EIR for the Berths 97-109 Container Terminal Project, the project area is not an important foraging area for either species, and preliminary determinations indicate that the proposed activity would not affect federally listed endangered or threatened species, or their critical habitat. Therefore, consultation under Section 7 of the Endangered Species Act does not appear to be required at this time.

Essential Fish Habitat- In accordance with the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act, an assessment of Essential Fish Habitat (EFH) was prepared and included in the EIS/EIR. The proposed project would be located within an area designated as EFH for two Fishery Management Plans (FMP): Coastal Pelagics Plan; and Pacific Coast Groundfish Management Plan. One of the five species in the Coastal Pelagics FMP, northern anchovy, is well represented in the proposed project area, with both adults and larvae present. Pacific sardine is also present. Both species support a commercial bait fishery in the Outer Harbor of the Port. Adult jack mackerels are common and likely prey upon northern anchovy in the West Basin. Adult Pacific mackerel are uncommon in the West Basin with only one collected in a year's sampling. None of the seven Pacific Groundfish FMP species found in the Inner Harbor is common, and only one, English sole, has been reported in recent surveys of the West Basin.

The April 30, 2008 joint public notice for the Recirculated Draft EIS/EIR initiated EFH consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act with the National Marine Fisheries Service (NMFS). As previously described, the full suite of proposed activities would permanently and temporarily impact areas designated as EFH through wharf construction and dredging. While most of the water-associated impacts would be short-term, there would be conversion of open water and soft-bottom habitat to hard substrate habitat and dry land in the vicinity of Berth 100 to construct the wharves (as noted, the first phase, which included 1.29 acres of the permanent impacts to waters, was constructed and operating by 2004). According to the applicant's April 2009 submittal, in addition to the approximately 1.2 acre of shoreline fill discharges previously proposed under Phase III, another 1.2 acres of waters of the U.S. adjacent to this proposed fill would be impacted by construction of rock dikes (i.e., submerged rock) to support the new approximately 375-foot-long wharf south extension at Berth 100. Therefore, a total of approximately 3.7 acres of aquatic habitats would be permanently affected by fill discharges into waters of the U.S. instead of approximately 2.5 acres.

The LAHD has developed and continues to develop as needed mitigation projects to provide mitigation credits for impacts of development in Los Angeles Harbor to marine biological resources, in coordination with NMFS, U.S. Fish and Wildlife Service, and the California Department of Fish and Game through agreed-upon

mitigation policies (USACE and LAHD 1992). For this project, the LAHD fully mitigated the marine habitat loss of the Phase I activities (1.29 acres) by using/deducting equivalent mitigation credits available through the Inner Harbor Mitigation Bank (per Special Condition 3 in Corps Standard Individual Permit No. 2001-01263-JLB, which authorized the in-water and over-water activities associated with Phase I of the proposed project). Phase III's marine habitat losses would also be mitigated by the applicant, at the Bolsa Chica Mitigation Bank or by use of equivalent credits from a similar approved mitigation program. Overall, with the implemented and proposed mitigation, the proposed activity would adversely affect but would not have a substantial adverse impact on EFH or federally managed fisheries in California waters.

In a letter dated July 11, 2008, NMFS agreed that the permanent fill in waters of the U.S. could be offset through the use of available mitigation credits at either the Bolsa Chica Mitigation Bank or the Port's Outer Harbor Mitigation Bank. They also recommended that LAHD conduct a pre-construction Caulerpa survey (per the Caulerpa Control Protocol) of the project area not earlier than 90 days prior to and no later than 30 days prior to construction, with the results to be provided to NMFS and CDFG at least 15 days before starting construction. Any detected Caulerpa would have to be eradicated before starting construction. In October 23, 2008 correspondence, the Corps responded to NMFS that their conservation recommendation would be included in any permit issued by the Corps for the proposed project or alternative (Phases I-III). With the additional information recently provided by the applicant, which identified additional filling of waters of the U.S. and EFH in the vicinity of Berth 100, the Corps of Engineers requests reinitiation of EFH consultation with NMFS to address the additional fill impacts to EFH.

General Conformity- The Final EIS/EIR included a draft general conformity determination (see Section 3.2 and Appendix P), pursuant to Section 176(c) of the Clean Air Act. A general conformity determination is necessary because project construction would require Federal action (i.e., issuance of a Corps permit for activities proposed in and over navigable waters and waters of the U.S.) and not all the Federal action's direct and indirect emissions would be below specified de minimis thresholds (40 C.F.R. § 93.153(b)). Pursuant to the general conformity regulations (40 C.F.R. Part 93 Subpart B), general conformity determinations do not have to be included in the EIS and can be separately noticed, but the draft general conformity determination for the Federal action associated with the proposed project was included in the Final EIS/EIR in this case. Comments provided during the December 29, 2008 – February 2, 2009 public review period for the Final EIS/EIR pertaining to the draft general conformity determination will be considered before the Corps makes a final general conformity determination and finalizes the Record of Decision (ROD) for the Federal action. The Corps will publish a notice of a final general conformity determination in the Federal Register within 30 days of rendering a final decision. The public can request from the Corps copies of the ROD, which includes responses to comments on the Final EIS/EIR, including any on the draft general conformity determination, following publication of a final general conformity determination and upon execution of the ROD.

Public Hearing- A public hearing was held on June 5, 2008 from 6:00-8:30 PM at Banning's Landing Community Center in Wilmington, California, to accept comments on the adequacy of the Berths 97-109 [China Shipping] Container Terminal Project Recirculated Draft EIS/EIR (40 C.F.R. § 1506.6), as well as to acquire information or evidence, which is being considered in evaluating the proposed permit action pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the River and Harbor Act (RHA) (33 C.F.R. § 327.3). This is in addition to a public scoping meeting held for the proposed project on July 10, 2003 (two scoping meetings were held simultaneously, one at Peck Park Community Center in San Pedro and one at Wilmington Recreation Center in Wilmington); with comments received from this meeting also addressed in the Recirculated Draft EIS/EIR. No additional public hearings are scheduled for the proposed project.

Proposed Activity for Which a Permit is Required

As noted above, LAHD submitted additional information in April 2009 pertaining to the proposed project, Phase III of which involves construction of an approximately 375-foot-long extension to the south end

of the 1,200-foot-long wharf constructed at Berth 100 under Phase I of the proposed project (Phase II would construct a 925-foot-long wharf at Berth 102, but would not discharge fill into waters of the U.S.). The quantities of rock and clean fill identified and evaluated in the EIS/EIR are equivalent to the quantities identified in this LAHD submittal. However, the area of waters of the U.S. that would be affected by discharges of these materials during Phase III of the proposed project is larger. The June 2003 application and EIS/EIR specified 1.2 acres of waters of the U.S. would be permanently affected by the proposed discharges of rock and clean fill to construct Phase III's 375-foot-long extension to the 1,200-foot-long wharf at Berth 100 (Sheet 2 of 7). The recent information provided by the LAHD identifies that in addition to the 1.2 acres of shoreline fill, rock would be discharged into an adjacent 1.2 acres of waters of the U.S. along the approximately 375-foot length of the proposed wharf extension to construct wharf dikes that would support the new wharf deck and piles (Attachments A and B). This rock would be submerged and is expected within a few years to provide similar functions and values to the existing combination of soft-bottom and rock habitat within the area that would be affected by these discharges (rock dike covers an estimated 10-30 percent of this area, which is currently used by the Catalina Express Terminal). Nevertheless, the Corps anticipates requiring that LAHD purchase mitigation credits at the Bolsa Chica Mitigation Bank or use equivalent credits from a similar mitigation program for this additional area of waters of the U.S. that would be affected by the proposed fill discharges.

With the applicant's April 2009 submittal, the proposed project would discharge fill materials into approximately 3.7 acres of the U.S. to construct a container terminal at Berths 97-109 [China Shipping]. In addition, approximately 15 acres of navigable waters of the U.S. would be affected by various work activities and permanent structures constructed in and over navigable waters. All permanent impacts to waters of the U.S. as a result of fill discharges have been or would be mitigated by use of mitigation credits. Corps authorization is required pursuant to Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act to construct the container terminal at Berths 97-109 [China Shipping], including several water-associated activities: dredging approximately 41,000 yd³ to match the adjacent basin/channel depth (-53 MLLW) and to complete wharf construction (1,200 feet) at Berth 100 (completed under Phase I and operating in June 2004); performing as-needed minor maintenance dredging (less than 1,000 yd³) in the vicinity of Berth 102 associated with constructing a 925-foot-long wharf at Berth 102 (Phase II); and building a 375-foot-long south extension to the wharf at Berth 100 (Phase III). All material dredged during Phase I was disposed of at the Anchorage Road Upland Soil Storage Site, and it is expected any material dredged during Phase II would be disposed of at that location, another approved upland location, or, if available and practicable, an in-harbor Confined Disposal Facility (CDF).

Project background and more details on all the project components, including those exclusively in the upland areas (outside of the Corps' geographic jurisdiction), are provided in the following section, as well as in the EIS/EIR for this project, which are posted on the Port of Los Angeles website (http://www.portoflosangeles.org/environment/public_notices.asp).

Additional Project Information

Background Information: In addition to the NEPA/CEQA process, this project is also subject to a court-ordered Settlement Agreement. The LAHD previously prepared and certified the West Basin Transportation Improvements Program (WB TIP) EIR that assessed the construction and operation of terminal and infrastructure improvements in the West Basin of the Port (LAHD, 1997a).

In March 2001, the LAHD issued a permit approving the China Shipping lease and construction based on the WB TIP. In June 2001, opponents of the China Shipping Terminal Project (Berths 97-109) filed suit in both State and Federal court alleging that LAHD did not comply with, among other things, NEPA or CEQA in approving a permit to construct the China Shipping Terminal and a lease for the China Shipping Company to occupy the terminal. On October 30, 2002, the State of California Second District Court of Appeals ordered a partial halt to ongoing construction and operation of Phase I, Berth 97-109 [China Shipping] Container Terminal

Project component (proposed project), of the WBTIP EIR. The court ordered the preparation of a project-specific EIS/EIR to evaluate each of the three phases of the proposed project.

Afterwards, LAHD and the litigants negotiated an agreement to settle the State and Federal proceedings. On March 6, 2003, the Superior Court of the State of California, Los Angeles District, approved a Stipulated Judgment to settle the state case. On that same date, the United States District Court for the Central District of California approved a stipulation for compromise settlement among the project opponents, the Corps, and LAHD. Subsequently, the LAHD negotiated with the litigants to amend the Stipulated Judgment. A compromise in the form of an Amended Stipulated Judgment was reached in March 2004. The terms of the Amended Stipulated Judgment have been incorporated into the EIS/EIR.

On March 6, 2003, the Corps settled its case with plaintiffs in the China Shipping case. The Corps judgment requires the Corps to prepare a project-specific EIS for China Shipping Phases I, II, and III, and revisit the permit conditions of the Corps Standard Individual Permit (No. 2001-01263-JLB) issued on April 19, 2002 for construction of Berth 100 (i.e., Phase I of the proposed project). The subject EIS/EIR serves as the project-specific EIS called for in the judgment, and provides environmental analysis required for the Corps to revisit its earlier Berth 100 permit decision.

In sum, the State and Federal Settlement Agreements require the preparation of a project-specific environmental analysis of each of the three phases of the proposed project. The Federal Settlement Agreement also provided that the revised environmental analysis prepared and permit issued by the Corps would remain in place, until the Corps reconsiders the permit terms and conditions upon completion of the EIS/EIR.

The LAHD and Corps originally released the Berth 97-109 [China Shipping] Container Terminal Project Draft EIS/EIR in August 2006. Based on comments received on the Draft EIS/EIR, the LAHD and Corps decided to re-circulate the entire document. The April 2008 Draft EIS/EIR was a full re-circulation of the original Draft EIS/EIR and addressed comments received on the August 2006 document. Comments received were fully considered in preparing the Final EIS/EIR, which was published in December 2008. The Los Angeles Board of Harbor Commissioners certified the EIR in December 2008.

Project Elements: The proposed project is a new container terminal for the China Shipping Lines at Berths 97-109. Key elements of the proposed project include new wharves (2,500 linear feet at Berths 100 and 102); dredging (approximately 41,000 yd³ during Phase I, with possible minor maintenance dredging estimated at less than 1,000 yd³ during Phase II), with the material disposed of at the Anchorage Road Upland Soil Storage Site or other approved upland site if reuse in an in-harbor CDF is not available or practicable; backlands development (142 acres); terminal buildings; improvements to the terminal entrance; two bridges connecting Berths 97-109 with Berths 121-131; and the relocation of the Catalina Express terminal to Berth 95. The proposed project would be developed in three construction phases (Phases I, II and III), with start dates of 2004, 2009 (estimated), and 2011 (estimated), respectively. Subsequently, optimization or full utilization of each phase would occur in 2005 (1 year after Phase I construction), 2015 (6 years after Phase II construction), and 2030 (almost 20 years after Phase III construction), respectively. Phase I has been constructed and is operating as a container terminal, consistent with the Amended Stipulated Judgment and federal Settlement Agreement. Phase I construction and operation has been reassessed in the EIS/EIR.

Major elements of the proposed project evaluated in this EIS/EIR include:

- Dredging (41,000 yd³ of sediments during Phase I, with possible minor maintenance dredging estimated at less than 1,000 yd³ during Phase II) and disposal of that material at the upland Anchorage Road Upland Soil Storage Site or another approved upland site if reuse in an in-harbor CDF is not available and practicable, new wharf construction (2,500 feet) at Berths 100 and 102 (Phase I-III), and backland creation, including terminal buildings, on 142 acres
- Installing 10 new A-frame cranes at Berths 100 and 102

- Implementing transportation infrastructure improvements in the vicinity of the existing terminal entrance (shared by the Berths 97-109 Container Terminal and the Berths 121-131 Container Terminal)
- Constructing two new bridge structures connecting Berths 97-109 Container Terminal and Berths 121-131 Container Terminal across the Southwest Slip
- Relocating the Catalina Terminal south of the Vincent Thomas Bridge at Berth 95
- A 40-year lease (2005 to 2045) to China Shipping Lines to operate the Berth 97-109 Container Terminal

The proposed project would operate at optimal capacity by 2030. When operating at optimal capacity, the improved Berths 97-109 Container Terminal could handle approximately 1,551,000 Twenty-Foot Equivalent Units (TEUs) per year, which represents an annual throughput of approximately 856,906 containers. To accommodate the annual throughput of 1,551,000 TEUs, 234 ship calls and associated tugboat operations would be required (two tugs are required each for ship docking and undocking, for a total of four tugs per call or 936 tugboat operations per year). In addition, a total of 5,055 daily truck trips, and up to 817 annual round trip rail movements would be required. The details of each component of the proposed project are provided in the EIS/EIR.

Proposed Special Conditions

The proposed permit would include the standard conditions for water-associated dredging and upland disposal of sediments that have been coordinated with USEPA and the standard Section 10 conditions pertaining to work and structures in navigable waters of the U.S. No ocean disposal occurred under the first phase, nor is it being proposed for any material generated by minor maintenance dredging (less than 1,000 yd³) under the future phases.

For additional information please call Dr. Spencer D. MacNeil of my staff at (805) 585-2152. This public notice is issued by the Chief, Regulatory Division.

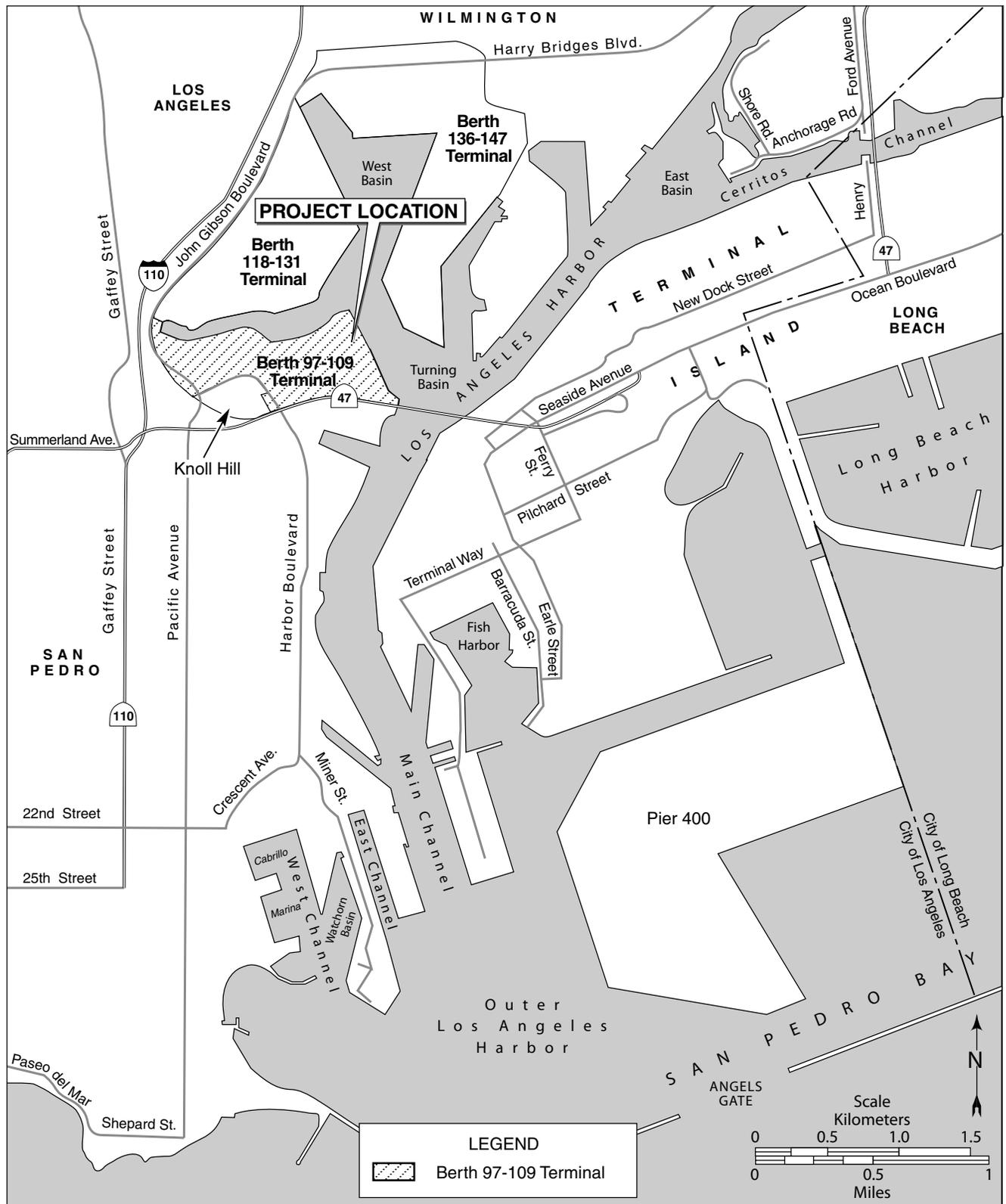


Figure 1
 Project Site and Vicinity
 Berth 97-109 Container
 Terminal Project EIS/EIR

CH2MHILL



Source: POLA, 2003

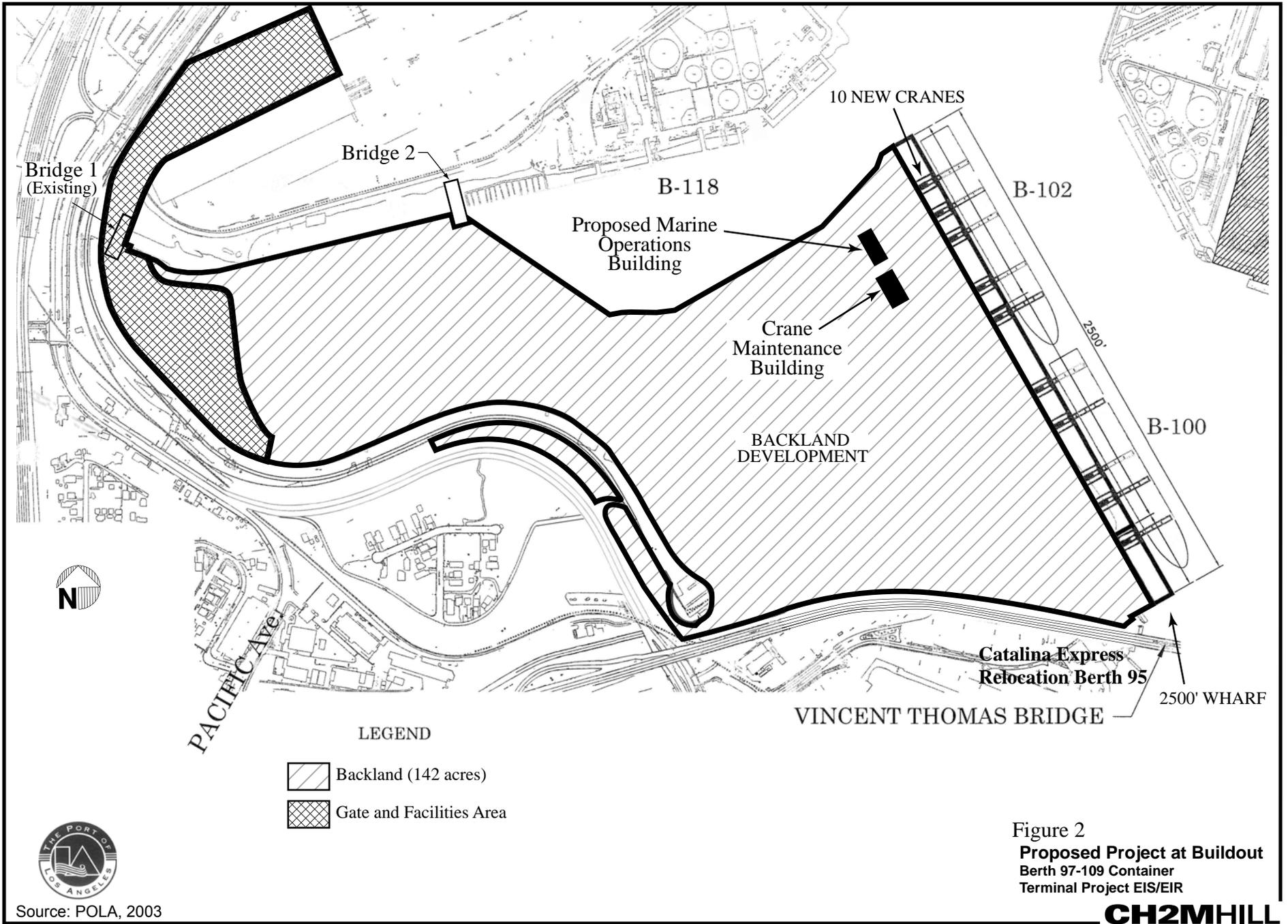
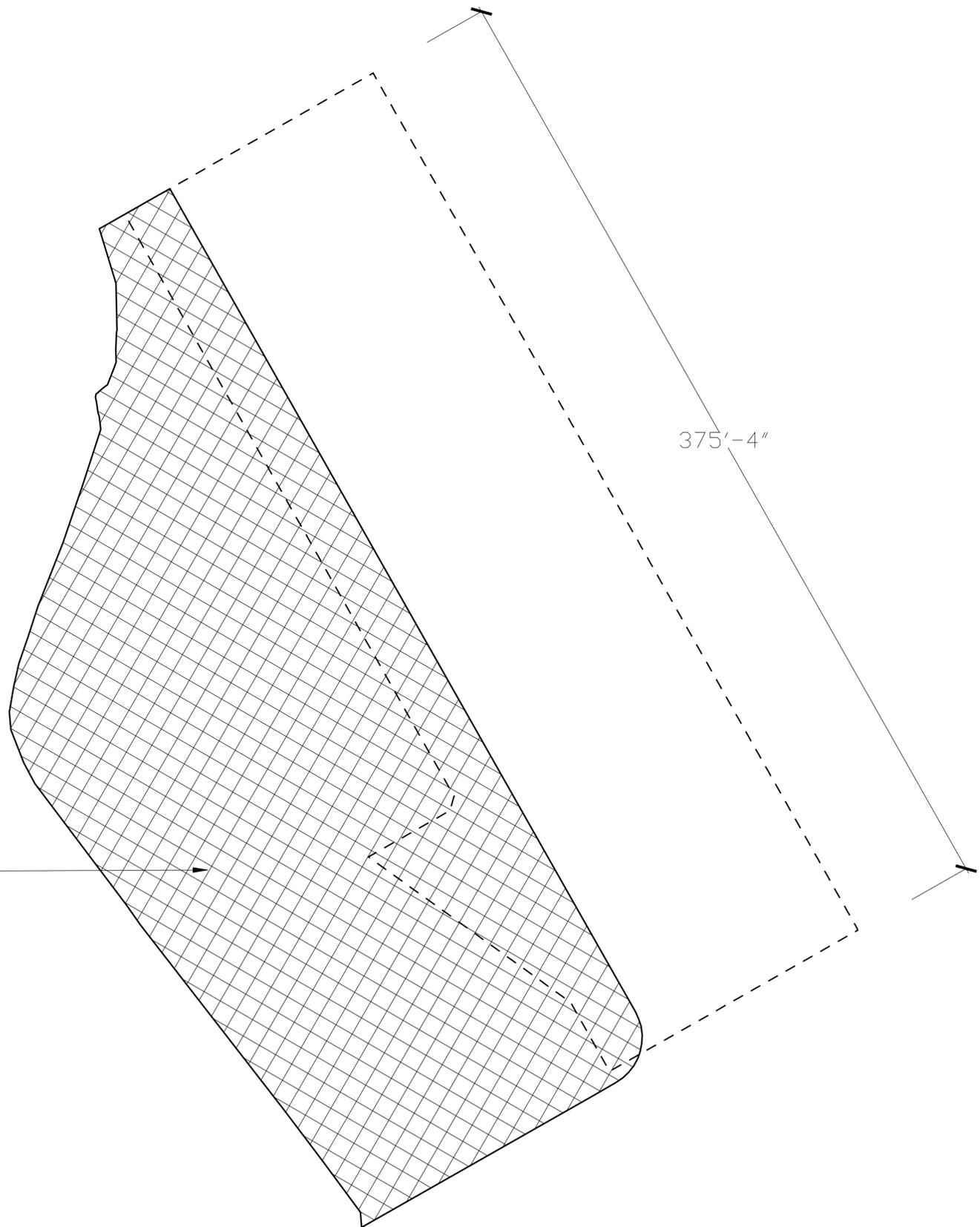


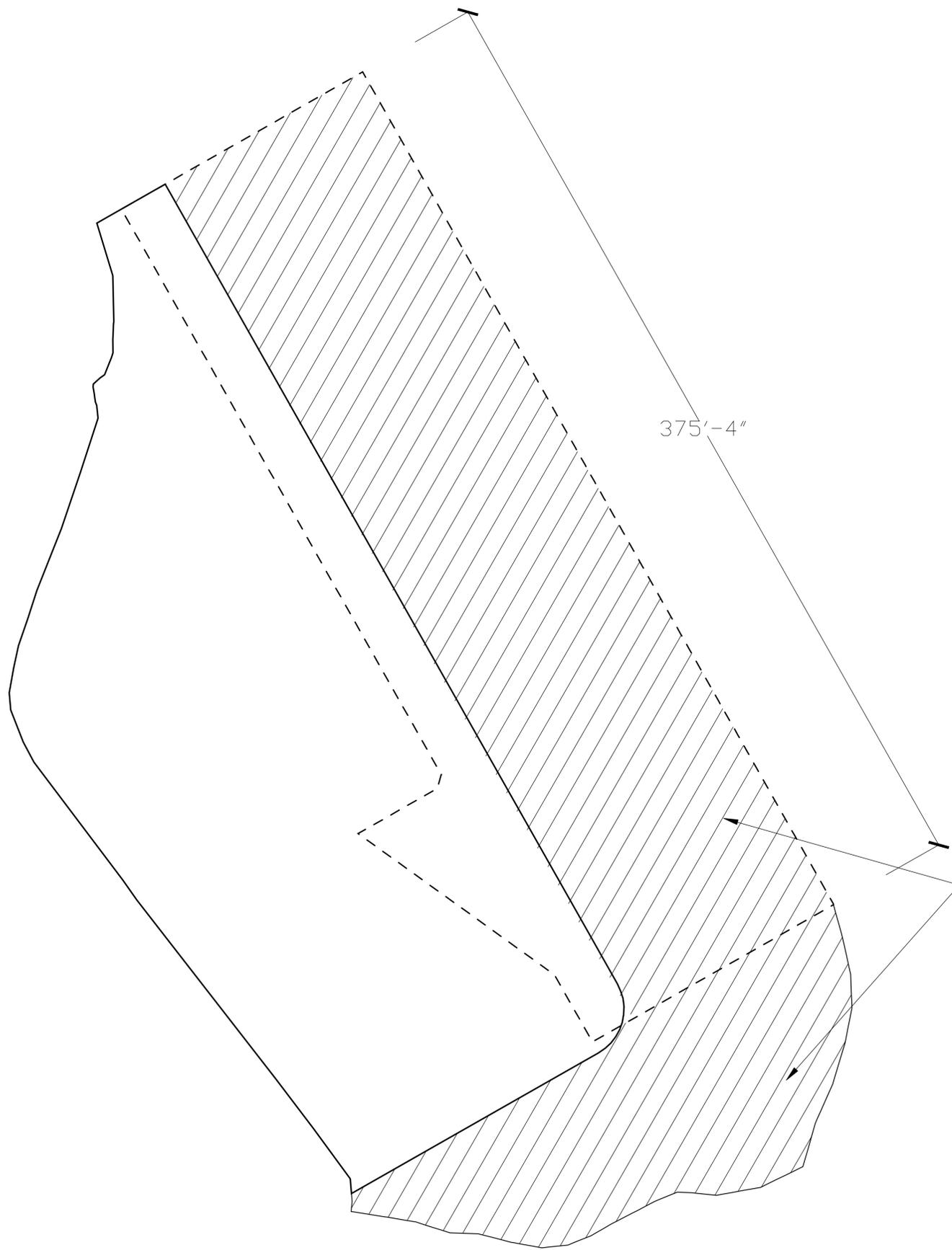
Figure 2
 Proposed Project at Buildout
 Berth 97-109 Container
 Terminal Project EIS/EIR

Source: POLA, 2003

LOST WATER AREA DUE TO FILL OF
APPROXIMATELY 1.2 ACRES BASED
ON +4.8 MLLW CONTOUR LINES



----- PROPOSED BERTH 100 WHARF
SOUTH EXTENSION



ROCK DIKES BELOW +4,8 MLLW
OF APPROXIMATELY 1.2 ACRES

----- PROPOSED BERTH 100 WHARF
SOUTH EXTENSION

ATTACHMENT "B"