

State of California
Regional Water Quality Control Board
San Diego Region

ADVISORY TEAM SUMMARY REPORT
November 9, 14, 15, and 16, 2011

ITEM: 5

SUBJECT: Public Hearing: Consideration of Resolution No. R9-2011-0072, Certifying the Final Environmental Impact Report, including Statement of Overriding Considerations, for the San Diego Bay Shipyard Sediment Cleanup Project, Tentative Order No. R9-2011-0001 and Draft Technical Report, San Diego County. Note: Item 5 may be considered with Item 6, below, but will be acted upon first. *(Frank Melbourn)* **TIME CERTAIN: THE SAN DIEGO WATER BOARD WILL HEAR COMMENTS FROM INTERESTED PERSONS/PUBLIC ON THIS ITEM AT 5:00 P.M. ON NOVEMBER 9, 2011.**

PURPOSE: To hear public comments and consider adoption of Tentative Resolution No. R9-2011-0072 to certify the final Environmental Impact Report (EIR) for the San Diego Shipyard Sediment Cleanup site.

PUBLIC NOTICE: This item was publicly noticed with a Notice of Public Hearing on September 16, 2011 and in the Agenda and Notice of Meeting published on October 26, 2011. A Public Hearing Fact Sheet (in both Spanish and English) was published on September 28, 2011(Supporting Document 3).

DISCUSSION: The San Diego Regional Water Quality Control Board (San Diego Water Board) is the lead agency under the California Environmental Quality Act (Pub. Res. Code § 21000, et seq. (CEQA)) with responsibility for conducting environmental review prior to considering discretionary approval of the proposed project (Shipyard Sediment Remediation Project) in Tentative Cleanup and Abatement Order (Order No. R9-2011-0001 or TCAO). The study area for the Shipyard Sediment Cleanup Project is located along the eastern shore of central San Diego Bay, extending approximately from the Sampson Street Extension on the northwest to Chollas Creek on the southeast, and from the shoreline out to the San Diego Bay main shipping channel to the west (Supporting Document 1). The final EIR

generally consists of the draft EIR released for public comment on June 16, 2011, a list of commenting parties, Responses to Comments on the DEIR and revisions to the Draft EIR made as a result of the comment process.

The Tentative Cleanup and Abatement Order and associated Draft Technical Report (DTR) were prepared by the San Diego Water Board Cleanup Team (Cleanup Team). The TCAO concludes that eight entities/agencies are dischargers because they caused or permitted the discharge of waste to the Shipyard Sediment Remediation Site that has resulted in the accumulation of waste in the marine sediment. The TCAO further concludes that concentrations of chemicals in marine sediment have caused conditions of contamination or nuisance and adversely affect aquatic life, aquatic-dependent wildlife and human health beneficial uses in the affected portions of San Diego Bay.

The purpose of the “project” identified in the Final EIR is to implement a cleanup order, with a remedial action requirement, adopted by the San Diego Water Board. As drafted, the TCAO proposes approval of alternative cleanup levels for the project as the most stringent, technologically and economically achievable levels as required by State Water Resources Control Board Resolution No. 92-49 and California Code of Regulations (CCR), Title 23, section 2550.4(e). It further proposes a combination of dredging and capping of contaminated sediments in a remedial area.

PREFERRED PROJECT AND ALTERNATIVE ACTIONS (EIR§ 3 and 5)

The final EIR identifies the Shipyard Sediment Remediation Project (proposed project) as dredging of sediment located in the Shipyards leaseholds (Supporting Document 2) located within San Diego Bay. The proposed project includes the following components (Supporting Document 4, See Chapter 3): dewatering and solidification of the dredged material (onshore or on a barge); potential treatment of decanted water (anticipated disposal to the sanitary sewer system); placement of sand upon contaminated marine sediments located adjacent to piers and bulkheads; and transport of the dredged material to an appropriate landfill for disposal.

CEQA requires that a lead agency preparing an environmental impact report consider a range of reasonable

alternatives to the proposed project that might feasibly attain most of the basic project objectives while avoiding or substantially lessening any significant effects of the proposed project. The final EIR considers the following four alternatives to the proposed project:

Alternative 1: No Project/No Development

Alternative 2: Confined Aquatic Disposal (CAD) Site

Alternative 3: Convair Lagoon Confined Disposal Facility (CDF)

Alternative 4: CDF with Beneficial Use of Sediments

The final EIR concludes that the Proposed Project, CAD, CDF and Convair Lagoon CDF all meet the project objectives and that no remedial alternative was environmentally superior to the other alternatives.

Please see Supporting Document 4 (See Chapter 5.0) for more detailed information regarding the alternatives to the proposed project. Implementation of the “preferred project” or each of the alternative remedial actions would require various discretionary permits by a number of federal, state and local agencies.

Issues and concerns raised at the Scoping Meeting held at the commencement of the CEQA process on January 21, 2010, and comments submitted in writing during the Notice of Preparation process (Supporting Document 4, Appendix A) include: (1) concerns regarding disproportionate impacts to low-income and/or minority communities (environmental justice); (2) release of contaminants during the cleanup activities and the effects to marine biological resources; (3) additional information regarding a confined aquatic disposal alternative; and (4) questions about the need for an EIR for a CAO. The Draft EIR addresses each of these areas of concern in detail. Environmental Justice is addressed in Appendix H (Supporting Document 4) to the Final EIR and in each of the topical sections (See Supporting Document 4, Section 4.0). The Final EIR also addresses potential for release of contaminants during the cleanup activities in Section 4.2, Hydrology and Water Quality; Section 4.3, Hazards and Hazardous Materials; and Section 4.5, Biological Resources.

Additional information regarding a confined aquatic disposal alternative is included in (Supporting Document 4) Section 5.0 of this EIR. Although the Initial Study had anticipated that the EIR would not further evaluate a CAD alternative, one has been included (Supporting Document 4, Section 5 - Alternative 2 And Appendices I, J, K And L) and evaluated in this Final EIR in response to this comment on the Notice of Preparation of the Draft EIR.

The Draft EIR was publicly noticed for comment (Supporting Document 5, Responses to Comments and Appendix C) and the Final EIR incorporates Errata and additional analyses (Supporting Document 5) in response to those comments.

SUMMARY OF IMPACTS AND MITIGATION (EIR § 4)

The Executive Summary of the Final EIR (See Supporting Document 4, Table 1.A) contains a summary of the project environmental impacts, a significance determination, proposed mitigation measures, and a determination of the level of significance after mitigation is incorporated into the project. That summary table also identifies cumulative impacts resulting from the proposed project in conjunction with the related cumulative projects. Potential environmental impacts addressed in this final EIR include: Transportation and Circulation, Hydrology and Water Quality, Hazards and Hazardous Materials, Noise, Biological Resources, Air Quality, and Climate Change and Greenhouse Gas (GHG) Emissions.

The final EIR identifies significant/unavoidable impacts to air quality from nitrous oxides (NO_x), a precursor of ozone. All other impacts are addressed through mitigation measures described in the final EIR. Because the final EIR concludes that air quality impacts associated with the proposed project are unavoidable, certification of the final EIR includes a Statement of Overriding Considerations. (See below.) Because the final EIR incorporates mitigation, it also includes a Mitigation Monitoring Reporting Requirement.

PREPARATION OF EIR AND ACTION

Although one of the shipyards questioned the need for an EIR for the TCAO, the San Diego Water Board determined that the proposal under consideration in the TCAO is a "project" as defined by CEQA Guidelines section 15180, that its implementation may have a significant impact on the environment, and that that an EIR must be prepared. When

a lead agency decides to approve a project that will cause one or more significant environmental effects that are not avoided or substantially lessened through mitigation, the lead agency shall prepare a statement of overriding considerations which reflects the balancing of applicable, competing public objectives (such as environmental, legal, technical, social, economic factors or region-wide environmental benefits).

If the Final EIR is certified through adoption of Resolution No. R9-2011-0072 (Supporting Document 6), including the associated Statement Of Overriding Considerations (Supporting Document 7), the San Diego Water Board may choose to approve the proposed project or one of the alternatives.

LEGAL CONCERNS: None.

KEY ISSUES:

1. Has the final EIR adequately evaluated all the significant environmental impacts of implementing the preferred remedial alternative?
2. Are incorporated mitigation measures feasible and appropriate?
3. Has the final EIR adequately addressed alternative remedial actions in compliance with CEQA?
4. Has the process used to finalize the EIR adequately addressed the required public participation requirements of CEQA?
5. Does certification of the final EIR require a Statement of Overriding Considerations for significant unavoidable adverse impacts [e.g., Air Quality from daily threshold for NO_x (precursor to O₃) emissions], Final EIR Section 4.6.6)?

SUPPORTING DOCUMENTS:

1. Location Map of the Shipyards site (hard-copy)
2. Plot plan for Shipyard facilities- NASSCO and BAE
3. Public Hearing Notifications
 - a. Notice of Public Meeting- September 16, 2011
 - b. Fact Sheet: Spanish September 28, 2011
 - c. Fact Sheet: English September 28, 2011

4. Draft Environmental Impact Report (June 16, 2011)
 - a. Table of Contents (hard-copy)
 - b. Executive Summary (hard-copy)
 - c. Introduction
 - d. Project Description
 - e. Environmental Analyses
 - f. Alternatives
 - g. Long-term Implications
 - h. MMRP
 - i. References
 - j. List of Preparers

Appendices (June 16, 2011)

- k. Table of Contents
 - l. Appendix A – Initial Study and NOP documents
 - m. Appendix B – Traffic Impact Analysis
 - n. Appendix C – Water Quality Tech Report
 - o. Appendix D – Hazards and hazardous materials Tech Report
 - p. Appendix E – Noise Impact Analysis
 - q. Appendix F – Marine Biological Resources Assessment Tech Report
 - r. Appendix G – Air Quality Analysis
 - s. Appendix H – Environmental Justice Analysis
 - t. Appendix I – Convair Lagoon ALT Air Quality Tech Report for Shipyard Sediment Site Project
 - u. Appendix J – Convair Lagoon ALT – Confirmed [sic] Disposal Facility Alternative Marine Biological Resources Tech Report
 - v. Appendix K – Convair Lagoon ALT Architectural Resources Evaluation and Assessment of Effects
 - w. Appendix L – Convair Lagoon ALT Geology and Soils Evaluation
 - x. Appendix M – Greenhouse Gas Calculations
 - y. Appendix N – Convair Lagoon ALT Hazards and Hazardous Materials Tech Study
 - z. Appendix O – Convair Lagoon ALT Water Quality Tech Study
5. Responses to Comments (hard-copy of Summary)
 - a. Appendix A – Errata (hard-copy)
 - b. Appendix B – Additional Analysis
 - c. Appendix C – Coded Comment Letters – These documents have been posted to the San Diego Water Board website at
http://www.waterboards.ca.gov/sandiego/water_issue_s/programs/shipyards_sediment/ceqa.shtml

- d. Appendix D – Response to Comments Report TCAO and DTR (dated August 23, 2011) – This is the same document as No. 3 in FOLDER: TENTATIVE CAO NO. R9-2011-0001 AND DRAFT TECHNICAL REPORT.
- 6. Comments on Final EIR
 - a. NASSCO
 - i. Comments on Final EIR (NASSCO) (hard-copy)
 - ii. Comments on Final EIR (Anchor) (hard-copy)
 - b. San Diego Unified Port District (hard-copy)
 - c. BAE Systems San Diego Ship Repair, Inc. (hard-copy)
- 7. Tentative Resolution No. R9-2011-0072
- 8. Monitoring Plan- Tentative Resolution R9-2011-0072
- 9. Statement of Overriding Considerations- Tentative Resolution No. R9-2011-0072

RECOMMENDATION: Recommendations from the Advisory Team will be provided upon request at the conclusion of the hearing.