Item No. 8 - Supporting Document 5

DRAFT

ENVIRONMENTAL IMPACT REPORT

SHIPYARD SEDIMENT REMEDIATION PROJECT

SAN DIEGO BAY, CALIFORNIA

State Clearinghouse No. 2009111098

VOLUME III
RESPONSE TO COMMENTS

PREPARED FOR:

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
9174 Sky Park Court, Suite 100
San Diego, California 92123

PREPARED BY:

LSA Associates, Inc.
703 Palomar Airport Road, Suite 260
Carlsbad, California 92011

LSA

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Printed copy of Table of Contents only. Complete Document on enclosed CD.

TABLE OF CONTENTS

1.0 INTRODUCTION

The purpose of this document is to respond to all comments received by the California Regional Water Quality Control Board, San Diego Region (hereinafter referred to as the San Diego Water Board) regarding the environmental information and analyses contained in the Draft Programmatic Environmental Impact Report (Draft PEIR) for the Shipyard Sediment Site Remediation Project (proposed project).

As required by the California Environmental Quality Act (CEQA) Guidelines section 15087, a Notice of Completion (NOC) of the Draft PEIR for the Shipyard Sediment Site Remediation Project was filed with the State Clearinghouse (SCH) on June 16, 2011. In addition, the Notice of Availability was emailed to approximately 85 individuals representing public agencies, responsible parties, and interested parties.

The Draft PEIR was circulated for public review for a period of 45 days, from June 16 to August 1 2011. Copies of the Draft PEIR were distributed to all Responsible Agencies and to the SCH in addition to various public agencies and interested organizations. Copies of the Draft PEIR were also made available for public review at Logan Heights Public Library, at the San Diego Water Board office, and on the internet at the San Diego Water Board website www.waterboards.ca.gov/sandiego. Comments were accepted for a period of 45 days as required by CEQA.

Nine comment letters were received during the public review period. Comments were received from state and local agencies, and from organizations. No letters were received from members of the public. Comments that address environmental issues are thoroughly addressed. In some cases, minor corrections to the Draft PEIR are required, or additional information is provided for clarification purposes. Comments that (1) do not address the adequacy or completeness of the Draft PEIR; (2) do not raise environmental issues; or (3) request the incorporation of additional information not relevant to environmental issues do not require a response, pursuant to section 15088(a) of the CEQA Guidelines.

Section 15088 of the CEQA Guidelines, Evaluation of and Response to Comments, states:

> a. The Lead Agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

b. The Lead Agency shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.

c. The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail, giving the reasons that specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

d. The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the Lead Agency should either:

    1. Revise the text in the body of the EIR; or

    2. Include marginal notes showing that the information is revised in the responses to comments.

Information provided in this Response to Comments (RTC) document clarifies, amplifies, or makes minor modifications to the Draft PEIR. No significant changes have been made to the information contained in the Draft PEIR as a result of the responses to comments, and no significant new information has been added that would require recirculation of the document. An Errata document has been prepared to make minor corrections and clarifications to the Draft PEIR as a result of comments received during the public review period (see Appendix A). Therefore, this RTC document, along with the Errata document, is being prepared as a separate section of the EIR and is included as part of the Final Programmatic Environmental Impact Report (Final PEIR) for consideration by the San Diego Water Board prior to a vote to certify the Final PEIR.

INDEX OF COMMENTS

The following is an index list of the agencies, interested parties, and members of the public that commented on the Draft PEIR prior to the close of the public comment period or immediately thereafter. The comments received have been organized in a manner that facilitates finding a particular comment or set of comments. Each comment letter received is indexed with a number below. Please see Appendix C of this document for copies of these letters.

Letter	Name	Date
AGENCY COMMENTS		
A-1	California Department of Transportation	August 1, 2011
A-2	Unified Port of San Diego	[Undated]
A-3	Native American Heritage Commission	July 1, 2011
A-4	Department of Toxic Substance Control	July 28, 2011
A-5	California State Lands Commission	August 1, 2011
ORGANIZATION COMMENTS		
O-1	San Diego Gas & Electric	August 1, 2011
O-2	San Diego CoastKeeper/Environmental Health Coalition	July 27, 2011
O-3	NASSCO	August 1, 2011
O-4	General Dynamics	August 1, 2011

FORMAT OF RESPONSES TO COMMENTS

Copies of the comment letters are provided in Appendix C of this document**.** The number of each comment letter is in the upper-right corner and individual comments within each letter are numbered along the right-hand margin of each letter. The San Diego Water Board's responses to each comment letter are included in Chapter 2 of this document and are referenced by the index numbers in the margins. As noted in some of the responses, an Errata document has been prepared to provide corrections and clarifications to the Draft PEIR (see Appendix A of the document).

PROJECT REFINEMENTS

In response to comments received on the Draft PEIR prepared for the proposed project, the following project refinements have been hereby incorporated into the proposed project:

- Sand import and rock quarry import updated from approximately 10 truck trips per day to approximately 25 to 30 import trips per day.
- The San Diego Water Board will ensure that the responsible parties identified in the TCAO notify and consult California State Lands Commission (CSLC) staff in the event that any cultural resources are uncovered.
    - A protocol will be put into place to address accidental discovery of any archeological resources and/or human remains in the project footprint. If, during the course of project construction, unanticipated cultural resources are discovered, work should be halted temporarily until a qualified archaeologist can evaluate the significance of the

resources. If human remains are encountered during work on this project, State Health and Safety Code section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resource Code section 5097.98. The County Coroner must be notified of the find immediately. If the remains are determined to be prehistoric, the Coroner will notify the Native American Heritage Commission (NAHC), which will determine and notify a Most Likely Descendant (MLD). The MLD may inspect the site of the discovery with the permission of the landowner, or his or her authorized representative. The MLD shall complete his/her inspection within 48 hours of notification by the NAHC. The MLD may recommend scientific removal and analysis of human remains and items associated with Native American burials.

- The San Diego Water Board will ensure that the responsible parties identified in the TCAO contract specifications will include the requirement that there be no off-site truck parking.

The refinements identified above clarify or amplify project features included in the Draft PEIR, and do not result in a substantive change to project impacts or change the significance conclusions of the Draft PEIR.

Revisions to Tentative CAO No. R9-2011-0001 (TCAO) were provided on September 15, 2011, consistent with the Third Amended Order of Proceedings. There are no changes to the project description in the EIR as a result of the revisions to the TCAO.

2.0 RESPONSE TO COMMENTS

CALIFORNIA DEPARTMENT OF TRANSPORTATION

Letter Code: A-1

Date: August 1, 2011

A-1-1

The comment is introductory to other comments in the letter. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

A-1-2

The comment states: "Mitigation Measure 4.1.1, states "Haul, delivery, and employee traffic shall be discouraged at I-5 southbound ramp/Boston Avenue intersection and on the roadway segment of Boston Avenue between 28th Street and the I-5 southbound (SB) ramp." Please clarify how this mitigation measure will be enforced."

The full text of the mitigation measure is:

Mitigation Measure 4.1.1: Should one or more of Staging Areas 1 through 4 be selected, the contractor shall require, and the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall verify, that the project-related truck traffic is routed on Harbor Drive (southbound) to the Civic Center Drive access to Interstate 5 (I-5) for the duration of the dredge-and-haul and sand import activity. This requirement will be reflected in the contract documents for the primary contractor and sub-contractors. Haul, delivery, and employee traffic shall be discouraged at the I-5 southbound ramp/Boston Avenue intersection and on the roadway segment of Boston Avenue between 28th Street and the I-5 southbound ramp.

As defined in the measures, the San Diego Water Board is responsible for ensuring that the responsible parties identified in the TCAO verify that the contractor requires all of its subcontractors to route southbound truck traffic on Harbor Drive. The contract documents for all portions of the project that contribute to haul, delivery, and sand import traffic will include a traffic control plan routing southbound traffic to the Civic Center Drive interchange to avoid increasing the number of trips on Boston Avenue between 28th Street and the I-5 southbound ramp. Clarifying text has been added in underscore to the measure.

It is also noted that Mitigation Measure 4.3.8 requires that a Traffic Control Plan be implemented that includes but is not limited to planned haul truck routes and haul truck escorts, if required.

A-1-3

The comment states: "On the TIA, Figure 2A & 2B, there are some discrepancies in the Existing Peak Hour Traffic Volume when comparing to Caltrans' 2009 volume within the intersections for on/off-ramps along I-5 as follow:

- Intersection #7, SB-off, AM Peak Volume should be 611 instead of 508.
- Intersection #9, NB-off, cumulative AM/PM Peak Volume should be 714/491 instead of 383/436.
- Intersection #9, NB-on, cumulative AM/PM Peak Volume should be 629/3 10 instead of 19/44. NB-on from 28th Street should also be included.
- Intersection #10, SB-on, cumulative AM/PM Peak Volume should be 675/973 instead of 321/636.
- Intersection #12, SB-on, cumulative AM Peak Volume should be 472 instead of 260."

See Response to Comment A-1-4, below.

A-1-4

The comment states: "Based on the new Peak Volumes above, all Delays and Level of Service (LOS) Tables and Figures need to be re-calculated for these intersections."

As stated on page 4.1-9 of the Draft PEIR, the existing Peak Hour Traffic Volumes at study area intersections were collected by National Data and Surveying Services (NDS) in March 2011. This information was collected consistent with the provisions of CEQA, which require that existing conditions be used as the environmental baseline against which the project's changes to the environment are measured (CEQA Guidelines 15125). The 2011 information was determined to represent current conditions for Level of Service operations more accurately than the 2009 data suggested by Caltrans. Revisions to the Delays and Level of Service (LOS) Tables are not needed.

It should be noted that the data presented in the Traffic Study and EIR Section is existing data and not cumulative data as suggested in the comment. In addition, the data and corresponding intersection operations reported at Intersection #9 do not include volume entering the slip ramp south of National Avenue on 28th Street.

A-1-5

The comment states: "It appears that Staging Areas 1-4 will access 1-5 via intersection # 7, 9 & 10. Currently, intersections #7 & #9 operate at LOS F, and intersection #10 will degrade to LOS F with this project. Although the TIS called out to signalize intersection #10 as the proposed mitigation, additional measures could be made to minimize the impact to the local community by routing all trucks to SB Harbor Drive then use Civic Center Drive interchange."

Intersection #7 does not have traffic control and LOS was not reported in the Draft PEIR and traffic study. Intersection #9 operates at LOS B with the proposed project as reported in the Draft PEIR and traffic study. These two issues are not consistent with the comment that suggests they operate at LOS F. The mitigation provided by rerouting all traffic to the Civic Center Drive interchange was described in Attachment H of the Traffic Impact Analysis. The traffic control plan for the project will route all southbound traffic to the Civic Center Drive interchange as requested.

A-1-6

The comment states: "All state-owned signalized intersection affected by this project shall be analyzed using the Intersecting Lane Vehicle (ILV) procedure per Highway Design Manual (HDM), Topic 406, Page 400-430."

An ILV analysis (for existing and existing plus project [Staging Areas 1-5] conditions) for the following signalized freeway ramp intersections was conducted to satisfy this comment:

- Interstate 5 (I-5) Northbound Off-Ramp/National Avenue;
- I-5 Northbound Ramps/24th Street; and
- I-5 Southbound Ramps/24th Street.

A summary table is attached to these responses and is included in Appendix B of this RTC document. As shown in the ILV table, all study area signalized freeway ramp intersections would operate below the 1,500 ILV per hour threshold with implementation of the project.

A-1-7

The comment concludes the comment letter. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

UNIFIED PORT OF SAN DIEGO

Letter Code: A-2

Date: Submitted August 1, 2011

A-2-1

The comment is introductory to other comments in the letter. The comment does not contain any substantive statements or questions about the DEIR or the analysis therein. Therefore, no further response is necessary.

A-2-2

The comment states: "EIR: 'The removal of the marine sediments will require upland areas for dewatering, solidification, and stockpiling of the materials and potential treatment of decanted waters prior to off-site disposal. Therefore, in addition to the open waters of the Shipyard Sediment Site, five upland areas have been identified by the San Diego Water Board as potential sediment staging areas.'

"Comment: These five potential sediment staging areas appear to be disconnected parcels that are under the control of various District tenants or other entities. The availability and suitability of these parcels should be analyzed in greater detail. The Draft EIR should include a survey of the parcels accessibility, pavement durability and the water containment collection and removal systems that would be needed to ensure no releases occur from dewatering activities."

The Draft PEIR provides a reasonable range of project alternatives and potential staging areas and does not select a preferred alternative or staging area. Once a project has been selected, detailed analyses will be provided in a site-specific environmental document, including any staging area(s) to be used.

A-2-3

The comment states: "Comment: The Draft EIR should analyze less space intensive sediment dewatering systems, such as centrifuges and/or reagent dehydration of sediments, which could be used on barges and would allow for sediment to be directly off-loaded from barges to trucks for disposal."

The Draft PEIR included landside sediment staging areas due to the amount of sediment that was anticipated to be removed. The Draft PEIR provided a range of project alternatives and did not select a preferred alternative or staging area. Once a project has been selected, detailed analyses will be provided in a project-specific environmental document, including any alternative dewatering methods to be used. The comment expresses an opinion in support of using barges for dewatering and treatment of sediment in lieu of landside staging areas. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project.

A-2-4

The comment states: "Comment: Staging Area 1 encompasses a significant portion of a 96-acre site that is occupied by Tenth Avenue Marine Terminal (TAMT). The Draft EIR has identified 36.14 acres in the south west section of the site as a 'usable area.' The report also identifies a 13.52 acre "usable area" site in the northeast portion of Staging Area 1 which is predominately occupied by Burlington Northern Santa Fe Railroad's (BNSF) major San Diego switching yard. The 36.14 acre 'usable area' is partially comprised of the 20.5 acre Dole Fresh Fruit Company leasehold that is used as a container yard for weekly importation of bananas and other fresh fruit from Central America. The remaining 15.64 acres consists of the following; a portion of the San Diego Refrigerated Storage leasehold that is used for employee parking, container inspections by US Customs and Border Protection and for staging palletized break-bulk fruit cargos; a portion of the Cemex Pacific Coast Cement Corporation leasehold that is used for the importation of bulk cement; the wharf apron docks at Berth's 10-1 through 10-6 where a variety of cargos are handled when loading or unloading cargo vessels; and the remainder consisting of paved open areas that contain storage areas for cargo, space for cargo handling equipment, truck staging lanes, rail tracks and roadways."

Section 3.6.2 of the Draft PEIR states: "The proposed project requires a landside sediment management site with sufficient space and access to stockpile, dewater, and transport the removed dredge material. Although the exact area required for sediment management will be determined during the final design phase, it is estimated that 2 to 2.5 acres would be required." The San Diego Water Board Cleanup Team acknowledges the need to minimize the effect of staging activity on active Port uses such as shipyards and marine terminals. Only a small portion of the TAMT would be required, should Staging Area 1 be selected.

The Draft PEIR provides a range of potential staging areas and does not select a staging area. Any ongoing uses within Staging Area 1 that preclude portions of the site from being used for dewatering and treatment would be addressed once a project alternative and staging area have been selected. Future decisions and implementing actions following certification of the PEIR and approval of the project will be subject to subsequent environmental review pursuant to CEQA. Detailed analyses regarding the staging area will be provided in a site-specific environmental document to be prepared once the preferred project is identified.

A-2-5

The comment states: "Use of all or any portion of these areas for the treatment of dredged sediments would have the following impacts at TAMT: (1) an average of 100 vessels per year dock at TAMT. The cargos consist mainly of 40-foot-long refrigerated containers or project cargos such as large wind mill components or large electrical transformers. Dole uses its entire facility to stage over 500 containers each week prior to delivery to West Coast markets or before being loaded back on board a vessel. Typical wind mill blades range in length from 130 feet to 160 feet and the tower sections can be up to 80 feet in length. These

types of cargos normally cannot be stacked and tens of thousands of square feet of open space are needed to both store and handle them properly."

Any ongoing uses within the TAMT (Staging Area 1) that preclude the site from being used for dewatering and treatment would be addressed once a project alternative and staging area have been selected. Please see response to comment A-2-4, above.

A-2-6

The comment states: "(2) The terminal's system of roadways and rail track need to be kept clear to effectively move cargo, material and equipment on and off the facility. Any prolonged closure of any portion of the terminal's transportation system would have a significant impact on the efficiency of the entire terminal."

Landside staging areas would avoid the closure of existing roadways and rail tracks; detailed analyses regarding the staging area will be provided in a site-specific environmental document to be prepared once the preferred staging area is identified. Please see response to comment A-2-4, above.

A-2-7

The comment states: "(3) Within the area deemed as "useable" there are three tenant leaseholds. These leases would have to be re-negotiated, if the tenants are willing, to allow for this activity to occur."

Any ongoing uses within the TAMT (Staging Area 1) that preclude the site from being used for dewatering and treatment would be addressed once a project alternative and staging area have been selected. Please see response to comment A-2-4, above.

A-2-8

The comment states: "(4) The Port of San Diego is designated as a "Strategic Port" by the Federal Maritime Administration to handle military cargos. Under the San Diego "Port Planning Order" the Port is required to provide "staging space of no less than 8 acres" at TAMT within 48 hours after receiving notification from the US Military's "Surface Deployment and Distribution Command" (SDDC). Any materials or equipment within the 8-acre footprint would need to be relocated on or off the terminal within the stipulated time frame. Since 2008, two to four military operations have taken place each year at TAMT."

Any ongoing uses within the TAMT (Staging Area 1), including provisions of the SDDC, that preclude the site from being used for dewatering and treatment would be addressed once a project alternative and staging area have been selected. Please see response to comment A-2-4, above.

A-2-9

The comment states: "(5) Any reduction in space at the Terminal will result in lost revenue due to a reduction in cargo volumes, increased costs due to ineffective handling of cargo and impact the ability of the Port to effectively market its maritime cargo handling facilities."

Any ongoing uses within the TAMT (Staging Area 1) that preclude the site from being used for dewatering and treatment would be addressed once a project alternative and staging area have been selected. Please see response to comment A-2-4, above.

A-2-10

The comment states: "(6) If any of the existing activities described above were required to be relocated to accommodate use of the TAMT as Staging Area 1, such relocation may result in significant environmental impacts at the relocation site, which would need to be evaluated in the Draft EIR. As a result of these constraints, the use of a significant portion of the TAMT as Staging Area 1 to conduct the dewatering operations is likely to be infeasible."

The Draft PEIR provides a range of potential staging areas and does not select a staging area. Any ongoing uses within the TAMT (Staging Area 1) that preclude portions of the site from being used for dewatering and treatment would be addressed once a project alternative and staging area have been selected. Detailed analyses regarding the staging area will be provided in a site-specific environmental document to be prepared once the preferred project is identified.

A-2-11

The comment states: "Comment: Staging Area 2 also contains portions of the 96-acre TAMT site as well as a portion of the BNSF switching yard. 'Useable Areas' within Staging Area 2 are further defined as: 0.57 acres within the Searles Valley leasehold (bulk cargo handler); 0.79 acres within the Stella Maris Seaman's Center leasehold as well as the approaches to the TAMT truck scale; 2.77 acres containing a truck staging lot that is used as an overflow lot by Dole and whenever military operations are taking place. This area also contains a one acre site which is slated for development to begin during the 2nd quarter of 2012 in which an office complex for the Maritime Operations Department and potentially an office and warehouse complex for the National Oceanic and Atmospheric Administration will be built. The remaining 2.59 acres contains both Port and BNSF property consisting of the lead rail tracks that serve TAMT as well as equipment storage areas for both entities."

Section 3.6.2 of the Draft PEIR states: "The proposed project requires a landside sediment management site with sufficient space and access to stockpile, dewater, and transport the removed dredge material. Although the exact area required for sediment management will be determined during the final design phase, it is estimated that 2 to 2.5 acres would be required." The San Diego Water Board Cleanup Team acknowledges the need to minimize

the effect of staging activity on active Port uses such as shipyards and marine terminals. Only a small portion of the NCMT would be required, should Staging Area 5 be selected.

The Draft PEIR provides a range of potential staging areas and does not select a staging area. Any ongoing uses within Staging Area 2 that preclude portions of the site from being used for dewatering and treatment would be addressed once a project alternative and staging area have been selected. Detailed analyses regarding the staging area will be provided in a site-specific environmental document to be prepared once the preferred project is identified.

A-2-12

The comment states: "Use of these areas for onshore dewatering and treatment will have similar impacts as described above including leasehold issues, potential loss of the staging area if a 'Port Planning Order' is invoked, disruption of both cargo handling operations, disruption of transportation infrastructure and development plans resulting in loss of revenue. As a result of these constraints, the use of a significant portion of the TAMT as Staging Area 2 to conduct the dewatering operations is likely to be infeasible."

Any ongoing uses within the Staging Area 2 that preclude the site from being used for dewatering and treatment would be addressed once a project alternative and staging area have been selected. Please see response to comment A-2-11, above.

A-2-13

The comment states: "Comment: Staging Area 5 shows a 'Useable Area' of 145.31 acres that consists of the 125 acre National City Marine Terminal (NCMT) with the remainder of the acreage split between BNSF property and the Dixieline Lumber leasehold on Port property. Pasha is the principal terminal operator at NCMT where it conducts operations consisting of the import, export, handling and storage of motor vehicles and a biweekly cargo service to and from Hawaii by Pasha's Hawaii Transport Lines (PHTL). During each of the last three years Pasha has received an average of approximately 243,000 vehicles on 165 vessels. PHTL annually ships and receives in excess of 100,000 tons of cargo consisting of a variety of high and wide cargos (cement trucks, fire trucks, sewer pipe, Ferris wheels, yachts, containers, recreational trailers, crates etc.) on 30 vessels in the Hawaiian trade. Dixieline Lumber and Weyerhaeuser Lumber, another lumber company which is not within the 'useable area,' receive approximately 96 million board feet of lumber each year on 12 lumber barges. All of these cargos require large open paved areas for storage plus roadways and rail tracks for handling and transport. Each month up to 26,000 vehicles can be stored on the terminal."

The Draft PEIR provides a reasonable range of potential staging areas and does not select a staging area. Any ongoing uses within Staging Area 5 that preclude portions of the site from being used for dewatering and treatment would be addressed once a project alternative and staging area have been selected. Detailed analyses regarding the staging area will be

provided in a site-specific environmental document to be prepared once the preferred project is identified.

Please see response to comment A-2-11.

A-2-14

The comment states: "The "Port Planning Order" applies to NCMT as well. If notification is made by SDDC 15 acres of staging space must be made available within 48 hours. Again, the use of NCMT for onshore dewatering and treatment will have significant lease issues, disruption of revenue producing cargo operations, have a negative effect upon marketing of the terminal and could interfere with national security if a PPO is initiated. As a result of these constraints, the use of the NCMT as Staging Area 5 to conduct the dewatering operations is likely to be infeasible."

Any ongoing uses within the Staging Area 5 that preclude the site from being used for dewatering and treatment would be addressed once a project alternative and staging area have been selected. Please see responses to comments A-2-11 and A-2-13, above.

A-2-15

The comment states: "Comment: Figures 3-3 through 3-7, which identify the location of proposed staging areas, appear to be out of date. For example, the CP Kelko waterside leasehold does not reflect the recent demolition of waterside structures and the related increase in open space. This information should be updated in the Final EIR."

The comment is correct that there are some recent minor changes in the land use from that indicated by the 2008 aerial photographs used in the Draft PEIR versus that observed in more recent 2011 aerial photographs. Reviews of 2011 aerial photographs available at Google.com indicate that these recent changes are minor. There is no change to the analyses or conclusions regarding potential environmental effects as included in the Draft PEIR as a result of this comment. The Draft PEIR provides a reasonable range of potential staging areas and does not select a staging area. The actual total area available for staging as illustrated in the five potential staging areas indicated in Figures 3-3 through 3-7 will be determined by the responsible parties and specified in the Remedial Action Plan that is to be prepared and submitted to the San Diego Water Board. Detailed analyses regarding the staging area will be provided in a site-specific environmental document to be prepared once the preferred project is identified.

Please see response to comment A-2-11.

A-2-16

The comment states: "INCONSISTENCIES BETWEEN THE DRAFT EIR PROJECT DESCRIPTION AND THE PROJECT'S COST ANALYSIS ASSUMPTIONS

"The Revised Tentative Cleanup and Abatement Order and Draft Technical Report identifies a cost estimate for the Shipyard Sediment Remediation Project within Appendix 4, Section 32, Table A32-26. The District has identified some inconsistencies between the cost estimate project assumptions and the Shipyard Sediment Remediation Project Description provided in Chapter 3, Project Description, of the Draft EIR.

In general, the District has identified inconsistencies that pertain to (1) the Construction Schedule, (2) Demolition and Capping Activities, (3) Landfill Disposal, (4) Dredge Quantity, and (5) Quarry Run Rock. Table 1, provided at the end of this comment letter, identifies each cost assumption, inconsistency in the Draft EIR, and applicable environmental issue. Below is a summary of the inconsistencies that have been identified between the cost estimate project description/assumptions and the Draft EIR project description, and their potential repercussions on the analysis contained in the Draft EIR."

The comment is introductory to Comments A-2-17 through A-2-24 provided in the letter. Please see responses to comments A-2-17 through A-2-24, below.

A-2-17

The comment states: "1. Construction Schedule. In the cost estimate, the construction scenario for the proposed project is described as '3 Construction Seasons,' without further definition. In the Draft EIR, the construction scenario is described as follows: "There are two scheduling options for completion of the remedial action. The first scheduling option is expected to take 2 to 2.5 years to complete. Under this option, the dredging operations would occur for 7 months of the year and would cease from April through August during the endangered California least tern breeding season. The second option is to implement the remedial plan with continuous dredging operations, which would be expected to take approximately 12.5 months to complete. This scenario assumes that the dewatering, solidification, and stockpiling of the materials would occur simultaneously and continuously with the dredging. Also assumed under this compressed schedule option is that dredging operations could proceed year-round, including during the breeding season of the endangered California least tern (April through August).

"The construction scenarios described in the cost estimate and the Draft EIR are not consistent. The cost estimate identifies three construction seasons, while the Draft EIR identifies 12.5 months or 2.5 years to complete construction. Assuming one construction season equates to one year of construction, the cost estimate anticipates a longer duration of construction."

The remedial action implementation schedule in DTR Section 35 is more informative than the cost estimate in Table A32-26. The remedial action schedule assumes 3 dredging events that take place over approximately 2.5 years. Figure 35-1 (DTR Section 35) shows dredging event 1 beginning in September of year one. The drying and disposal part of dredging event 3 ends in the spring of year 4. Therefore, the total time for dredging, drying, and disposal

activities anticipated in the remediation implementation schedule in the DTR is consistent with the Draft PEIR assumptions.

A-2-18

The comment states: "If this extended period of construction is accurate, the Air Quality analysis within the Draft EIR may need to be revised to evaluate the extended construction timeline. An extended construction timeline could reduce air quality emission impacts, if the amount and type of daily construction is reduced from what is currently accounted for within the Draft EIR."

Please see response to comment A-2-17, above. The construction period analyzed in the Draft PEIR is consistent with the schedule in the DTR. Analysis of an extended construction period is therefore not warranted.

A-2-19

The comment states: "2. Demolition and Capping Activities. The cost estimate identifies the demolition of an existing BAE pier, while the Draft EIR does not mention demolition of this pier. If demolition of the BAE pier is considered a component of the proposed project, the Project Description, and Air Quality and Transportation and Circulation analysis in the Draft EIR would need to be revised to reflect this demolition work. Demolition of the BAE pier would likely require off-site disposal, which would result in increased truck trips and associated air emissions. Additional construction equipment may also be required for this demolition, or equipment already identified in the Draft EIR may be used for longer periods of time, which would result in increased construction-related emissions. An increase in truck traffic and construction-related emissions from demolition of the BAE pier thus may result in greater impacts to Air Quality and Transportation and Circulation than accounted for in the Draft EIR."

BAE Systems Pier 5 is the "dormant pier" referred to in DTR Table A32-26. Pier 5 is a remnant pier stub, is obsolete, and will be demolished regardless of whether or not the sediment cleanup takes place. In fact, BAE Systems has filed an application for a Clean Water Act section 401 Water Quality Certification from the San Diego Water Board for a maintenance construction project that includes the demolition of Pier 5. Thus, the pier demolition is not part of the project for purposes of CEQA. Therefore, an increase in truck traffic and construction-related emissions from demolition of the BAE pier does not need to be addressed in the Draft PEIR. It should be noted that DTR Table A32-26 has been revised to remove the "dormant pier" demolition from the cost estimate.

A-2-20

The comment states: "The cost estimate also assumes that half of the total dredged area will receive 1–3 feet of clean sand for a cap. The Draft EIR assumes that only the pier and pilings will receive a clean sand cap. If half of the dredged area is to receive a sand cap, the Draft

EIR should to be revised to reflect the additional placement and importation of sand within the Project Description, Transportation and Circulation and Air Quality EIR sections. In the Transportation and Circulation analysis, the importation of additional sand would increase truck trips and associated air emissions above levels currently accounted for in the Draft EIR. Additional construction equipment may also be required for the placement of the sand cap, or equipment already identified may be used for longer periods of time, which also would increase construction-related emissions. An increase in truck traffic and construction equipment emissions would likely result in greater impacts to Air Quality and Transportation and Circulation than accounted for in the Draft EIR."

Whether or not any dredged area of the Shipyard Sediment Site will receive a clean sand cover will be based on conditions after dredging and is speculative at this time. Thus, sand cover of the dredge areas was not included in the Draft PEIR project description. The cost estimate in Table A32-26 was prepared for the purpose of making economic feasibility findings required by State Water Board Resolution No. 92-49, not for defining the project for CEQA purposes. Nonetheless, even if part of the site receives a clean sand cover after dredging, there would be no increase in the daily impacts from noise, traffic, and air pollutant emissions as these operations would occur after the dredging phase of the proposed project. Potentially, the number of construction days could increase, but this would not increase the impacts during the dredging phase, which had the greatest overall daily impacts. Therefore, daily traffic, air quality, and noise impacts would not be increased over the levels analyzed in the Draft PEIR, and no changes to the required mitigation are necessary. Future decisions and implementing actions following certification of the PEIR and approval of the project will be subject to subsequent environmental review pursuant to CEQA. Furthermore, these impacts are not permanent, and will cease upon completion of project construction activities.

A-2-21

The comment states: "3. Landfill Disposal. The cost estimate identifies the Copper Mountain landfill in Arizona as the disposal site for all sediment. The Draft EIR identifies the Kettleman Hills landfill, in Kings County, California, as the disposal site for sediment classified as a hazardous material (up to 15 percent of the sediment) and the Otay Landfill in San Diego, California, as the disposal site for non-hazardous sediment (85 percent of the sediment). If dredged sediment is to be disposed of at the Copper Mountain landfill in Arizona, the Project Description, and Air Quality and Transportation and Circulation analysis in the Draft EIR should be revised. In the Transportation and Circulation analysis, the disposal location in Arizona would increase truck trip vehicle miles traveled. An increase in vehicle miles traveled by the disposal trucks would result in an associated increase in air emissions. If sediment is to be disposed of at the Copper Mountain landfill, the proposed project would likely result in greater impacts to Transportation and Circulation and Air Quality than accounted for in the Draft EIR."

The cost-estimate in Table A32-26 was prepared for the purpose of making economic feasibility findings required by State Water Board Resolution No. 92-49, not for defining or

developing a project description for CEQA purposes. Kettleman City and Otay Landfills are the most likely disposal sites for the dredged sediments and other wastes from the cleanup; therefore, Copper Mountain was not included in the Draft PEIR analysis. Future decisions and implementing actions following certification of the PEIR and approval of the project will be subject to subsequent environmental review pursuant to CEQA. No further analysis related to disposal at Copper Mountain is required at this time.

A-2-22

The comment states: "Additionally, the cost estimate assumes a total quantity of 171,500 cubic yards (cy) of sediment will be disposed after handling and dewatering activities. The Draft EIR identifies a total quantity of 164,910 cy to be disposed after handling and dewatering activities. If 171,500 cy of sediment must be disposed of off-site, the Draft EIR should be revised to reflect this additional quantity within the Project Description, Air Quality and Transportation and Circulation sections. An increase in off-site disposal would require additional truck trips, resulting in increased air emissions, and would potentially result in greater impacts to Transportation and Circulation and Air Quality than analyzed in the Draft EIR."

The cost estimate in the TCAO/DTR was prepared for the purpose of making economic feasibility findings required by State Water Board Resolution No. 92-49, not for defining the project for CEQA purposes. The traffic and air quality impacts of the proposed project are based on the Project Description included in Chapter 3.0 of the Draft PEIR.

A-2-23

The comment states: "4. Dredge Quantity. In addition to an initial 143,400 cy of dredging, the cost estimate identifies 28,100 cy of 'Additional Dredging.' Additional dredging is described 'as needed for a second pass.' The cost estimate states that this additional dredging will consist of two feet of dredging over one-half of the remedial area. Including initial and secondary dredging, the cost estimate identifies a total of 171,500 cy of sediment that will be dredged. However, the Draft EIR identifies a total of 143,400 cy of sediment that will be dredged. The Draft EIR does not identify additional dredging as part of the proposed project and does not account for the additional 28,100 cy of dredge identified in the cost estimate. If a total of 171,500 cy of sediment will be dredged (as identified in the cost estimate), rather than 143,400 cy of sediment (as identified in the Draft EIR), the Draft EIR should be revised to reflect this additional dredging in the Project Description, Transportation and Circulation, and Air Quality sections. In the Transportation and Circulation analysis, the removal of sediment during additional dredging activities would increase truck trips (and associated air emissions) and would likely result in greater Transportation and Circulation impacts than accounted for in the Draft EIR. Additional construction equipment may also be required for the additional dredging, or equipment already identified may be used for longer periods of time, which would increase construction-related emissions and cause impacts to Air Quality to be greater than accounted for in the Draft EIR."

Whether or not any dredged area of the Shipyard Sediment Site will need a second pass to reach required cleanup levels is speculative at this time. Thus, second pass dredge volumes were not included in the Draft PEIR project description. The cost-estimate in Table A32-26 was prepared for the purpose of making economic feasibility findings required by State Water Board Resolution No. 92-49, not for defining the project for CEQA purposes. Nonetheless, if any of the remedial footprint requires second pass dredging, there would be no increase in the daily impacts from noise, traffic, and air pollutant emissions as these operations would occur after the dredging phase of the proposed project. Potentially, the number of construction days could increase, but this would not increase the impacts during the dredging phase, which had the greatest overall daily impacts. Therefore, daily traffic, air quality, and noise impacts would not be increased over the levels analyzed in the Draft PEIR, and no changes to the required mitigation are necessary. Furthermore, these impacts are not permanent, and will cease when the project is completed.

A-2-24

The comment states: "5. Quarry Run Rock. The cost estimate identifies the placement of 21,887 tons of quarry run rock for the protection of marine structures. The Draft EIR does not account for the importation or placement of quarry run rock. If 21,877 tons of rock is required to be placed within the proposed project site, the Draft EIR should be revised to reflect this change in the Project Description, Air Quality, and Transportation and Circulation sections. The import of the quarry run rock would result in increased truck trips (and associated air emissions) and would result in potentially greater impacts to Transportation and Circulation than analyzed in the Draft EIR. Additional construction equipment may also be required for the placement of quarry run rock, or equipment already identified may be used for longer periods of time, which would further increase construction related emissions and cause impacts to Air Quality to be greater than accounted for in the Draft EIR."

The cost-estimate in Table A32-26 was prepared for the purpose of making economic feasibility findings required by State Water Board Resolution No. 92-49, not for defining the project for CEQA purposes. Nonetheless, the daily impacts from traffic and air pollutant emissions will not be greater as a result of the placement of quarry run rock to protect marine structures during the dredging project. The quarry run rock would be delivered and placed prior to dredging operations, which had the greatest overall daily impacts. Therefore, daily traffic, air quality, and noise impacts would not be increased over the levels analyzed in the Draft PEIR, and no changes to the required mitigation are necessary. Furthermore, these impacts are not permanent, and will cease when the project is completed.

A-2-25

The comment states: "SEDIMENT SAMPLING AND DISPOSAL

"The following comments are provided for sediment sampling and disposal information described in the Draft EIR. The comments are organized by chapter, section and page number.

"Chapter 3 Project Description

"A. Page 3-9, Section 3.6.2, Onshore Dewatering and Treatment.

"EIR: 'After drying, soil sampling will be conducted, and all dredged material will be loaded directly onto trucks for disposal at an approved upland landfill.'

"Comment: Please include a description of the contaminants that would be tested, the protocol that would be followed, the criteria upon which this protocol is based, and the thresholds that would be used to determine what material would require disposal at Kettleman Hills landfill rather than Otay landfill."

CEQA does not require that the protocol for the testing and criteria for proper disposal of dredge material be included in the Draft PEIR analysis. Landfill operators are required to ensure that dredge wastes disposed of in their landfills are properly categorized pursuant to Title 22 requirements and Title 27 requirements. Furthermore, landfill operators must ensure that wastes disposed of in their landfills are consistent with the landfill's waste discharge requirements. The potential environmental impacts associated with the disposal of wastes at Kettleman Hills and Otay Landfills were evaluated in the CEQA documents prepared and adopted by the Lead Agencies for these landfills and by the Central Valley and San Diego Water Boards, respectively, when they issued waste discharge requirements for the landfills.

A-2-26

The comment states: "B. Page 3-9, Section 3.6.3, Transportation and Disposal.

"EIR: 'For purposes of this project, it is assumed that 85 percent of the material will be transported from the staging area to Otay Landfill, which is approximately 15 miles southeast of the Shipyard Sediment Site. Although the sediment is not known to be classified as California hazardous material, it will be tested upon removal and prior to disposal. It is assumed for the purposes of this PEIR that up to 15 percent of the material will require transport to a hazardous waste facility (a Class I facility), which will most likely be the Kettleman Hills Landfill in Kings County, California, near Bakersfield.'

"Comment: Please include a description of the basis for the determination that 85 percent of the dredged material would be disposed of at Otay landfill, while 15 percent would be disposed of at the Kettleman Hills landfill. What is the assurance that only 15 percent of the dredged material would be disposed of at the Kettleman Hills landfill? Please also note that the Kettleman Hills landfill is near Hanford, not Bakersfield."

Based on the sediment quality chemistry data contained in the DTR, the sediment is not expected to be classified as a California hazardous material. Because most or all of the sediment was not expected to be classified as a hazardous material, it was assumed for the purposes of the Draft PEIR that up to 15 percent of the material could require transport to a hazardous waste facility (a Class I facility). The Draft PEIR recommends testing of the sediments upon removal and prior to disposal. Also see response to comment O-3-5.

The comment is correct that the Kettleman Hills landfill is closer to Hanford than Bakersfield.

A-2-27

The comment states: "Chapter 4.1 Transportation and Traffic

"A. Page 4.1-12, Section 4.1.4.2, Potentially Significant Impacts.

"EIR: 'Once the dredge materials have been dried and tested, they will be loaded onto trucks for disposal at an approved landfill. For purposes of this project, it is assumed that 85 percent of the material will be transported from the staging area to Otay Landfill, approximately 15 miles southeast of the Shipyard Sediment Site. Although the sediment is not known to be classified as California hazardous material, it will be tested upon removal and prior to disposal. It is assumed for the purposes of this PEIR that up to 15 percent of the material will require transport to a hazardous waste facility (a Class I facility), which will most likely be the Kettleman Hills Landfill in Kings County, California, near Bakersfield. Based on the excavation quantity of 143,400 cubic yards (cy) and accounting for an additional 15 percent of bulk material due to the dewatering and treatment process, it is estimated that up to 250 truck trips per week could be required over an approximately 12.5-month period to remove the material. These estimates are a worst-case scenario and will be finalized during the design phase.'

"Comment: Please describe the traffic scenario that would occur in the event less or more than 15 percent of sediment would require disposal at the Kettleman Hills landfill and how it would affect the analysis of the project in the EIR. Please also note that the Kettleman Hills landfill is near Hanford, not Bakersfield."

Based on the preliminary results of the DTR, most or all of the sediment is not expected to be classified as a California hazardous material, and therefore the Draft PEIR assumed that up to 15 percent of the material could require transport to a hazardous waste facility (a Class I facility). At the time the Draft PEIR was prepared, it could not have been known whether more or less of the material would be classified as hazardous. The project description, which included the 15 percent assumption, provides sufficient detail to assess impacts, identify mitigation measures, and to provide for meaningful public review and comment.

A-2-28

The comment states: "Page 4.1-12, Section 4.1.4.2, Potentially Significant Impacts.

"EIR: 'The most direct route to Otay Landfill is via I-5 south to State Route 54 (SR-54) east, to I-805 south. The most direct truck route to I-5 south, assumed for the proposed project condition, from potential Staging Areas 1 through 4 would be via East Harbor Drive and 28th Street. Trucks departing from Staging Area 5 would access I-5 south either directly from 24th Street-Bay Marina Drive or from West 32nd Street to 24th Street-Marina Way to Bay Marina Drive. Although the sediment is not known to be classified as California hazardous material, it will be tested upon removal and prior to disposal.'

"Comment: Please describe the most direct route to the Kettleman Hills landfill."

The most direct route to Kettleman Hills landfill is I-5, approximately 300 miles north of San Diego. This route and mileage was used for analysis in the Draft PEIR.

A-2-29

The comment states: "Chapter 4.3 Hazards

"A. Page 4.3-20, Section 4.3.4.1, Potentially Significant Impacts.

"EIR: 'Once a sediment stockpile meets the analytical and strength requirements, the material would be certified for disposal, manifested, loaded into on-road trucks (typically using a large-wheeled front-end loader), weighed to document compliance with U.S. DOT regulations, transported, and deposited at the selected disposal facility.'

"Comment: Please provide a detailed description of the analytical and strength requirements that will be used to determine the appropriate landfill disposal location, including the protocol that would be followed, the criteria upon which this protocol is based, and the thresholds that would require disposal at the Kettleman Hills landfill rather than Otay landfill. Please also provide a reference for the U.S. DOT weighting regulation."

CEQA does not require that the details of stockpiling testing be included in the Draft PEIR. Complete details of the stockpile testing will be provided in the Remedial Action Plan which will be submitted in response to TCAO Directive B.1.g. Sediment stockpiles must be tested to determine if the wastes are hazardous as defined by California Code of Regulations (CCR) Title 22 section 66261.3 et seq. This testing is required by Waste Discharge Requirements Order No. 90-09 for Otay landfill and CCR Title 27 section 20164. DOT Weighting Regulations are provided in the Code of Federal Regulations sections 657 and 658 (http://ops.fhwa.dot.gov/freight/sw/regulations/index.htm).

A-2-30

The comment states: "Chapter 4.6 Air Quality

"A. Section 4.6.3.1, Thresholds for Construction Emissions, Page 4.6-8; Section 4.6.3.2, Thresholds for Operational Emissions, Page 4.6-8; and Section 4.6.4.1, Less Than Significant Impacts, Fugitive Dust, Page 4.6-11.

"Comment: Thresholds for construction and operational emissions in Sections 4.6.3.1 and 4.6.3.2 do not include a threshold for emissions of fine particulate matter ($PM_{2.5}$). However, the discussion of fugitive dust impacts on page 4.6-11 states that emissions of $PM_{2.5}$ are less than significant because emissions are relatively small and do not exceed the significance threshold for $PM_{2.5}$. How was it determined that $PM_{2.5}$ emissions do not exceed a significance threshold, when no threshold is identified? We suggest revising this section to include a quantitative threshold for $PM_{2.5}$, particularly because the San Diego Air Basin is a state non-attainment area for $PM_{2.5}$. Furthermore, we would suggest using the U.S. Environmental Protection Agency's "Proposed Rule to Implement the Fine Particle National Ambient Air Quality Standards" threshold of 55 pounds per day (published September 2005."

The comment is correct. The text in section 4.6.4.1 states that the fugitive dust emissions (PM_{10} and $PM_{2.5}$) would be below the significance thresholds. This is incorrect as there is currently no threshold for $PM_{2.5}$. The text will be corrected in the Final EIR. See Appendix A, Errata, of this RTC document. However, should the County adopt the 55 pounds/day threshold referenced in the comment, the impact would remain below a level of significance.

A-2-31

The comment states: "B. Section 4.6.4.1, Less than Significant Impacts, Regional Air Quality Strategy, Page 4.6-10.

"EIR: 'Although the proposed project would exceed the construction threshold for NO_X, the proposed project does not obstruct implementation of the RAQS.'

"Comment: Please explain the rationale for the conclusion quoted above, which appears to be internally inconsistent."

Since the RAQS is based on local General Plans, projects that are deemed consistent with the General Plan are found to be consistent with the air quality plan. The proposed project would not result in any population growth and is consistent with the City's General Plan. In addition, the proposed project is not expected to result in any increase in long-term regional air quality impacts. Therefore, the Draft PEIR concluded that project will not conflict with the RAQS.

A-2-32

The comment states: "C. Section 4.6.4.1, Less than Significant Impacts, Fugitive Dust, Page 4.6-11.

"Comment: This EIR section does not include a summary of the methodology for the analysis, including construction assumptions, the source of the emissions factors, and any models used in the analysis. The methodology for the analysis, construction assumptions, and model descriptions are provided in the air quality technical report in Appendix G. It would helpful for the reader to have a description of this information provided in this section of the EIR. In addition, neither the Draft EIR nor the air quality technical report provides the source for the emissions factors used to determine criteria pollutant emissions, which should be included."

As stated in the air quality report, construction of the proposed project largely involves dredging, handling, and removal of wet material. As a result, little fugitive dust is expected to be generated by these operations. However, fugitive dust could be generated as construction equipment or trucks travel on and off the construction site and during the pad construction (if necessary). The fugitive dust emissions from the haul trucks were modeled using the EMFAC2007 emission rates. The off-road equipment emissions were calculated using AP-42 emission rates.

A-2-33

The comment states: "Comment: Please identify why CO_2 emissions are included in Table 4.6-3, Daily Construction Emissions by Phase (lbs/day), and Table 4.6-4, Peak Daily Construction Emissions (lbs/day). This section of the EIR does not include any analysis related to emissions of CO_2. It may be appropriate to delete this information from this section of the EIR."

The CO_2 emissions are included in Section 4.6, Air Quality, for disclosure purposes only. More detailed information about the CO_2 emissions is included in Section 4.7, Climate Change and Greenhouse Gas Emissions.

A-2-34

The comment states: "Comment: In Table 4.6-3, a list of construction equipment is only provided for the 'Covering of Sediment Near Structure Phase.' Please provide the equipment assumptions for all construction phases."

The Air Quality Study prepared for the project and included as Appendix G to the Draft PEIR included a list of construction equipment for all construction phases of the proposed project.

A-2-35

The comment states: "Comment: The construction phases listed in Table 4.6-4, Peak Daily Construction Emissions (lbs/day) and Table 4.6-3, Daily Construction Emissions by Phase (lbs/day), are inconsistent. Table 4.6-4, Peak Daily Construction Emissions (lbs/day), includes a Dredging Operations phase that is not included in Table 4.6-3, Daily Construction Emissions by Phase (lbs/day). It is unclear which construction activities would occur during the Dredging Operations phase and are contributing to the peak daily construction emissions. We suggest identifying construction phases listed in Table 4.6-3 that are included in the Dredging Operations phase."

The phases that contribute to the peak daily construction emissions include the Dirt and Debris Removal, Dredging of the Project Site, Landside Staging Area - Operations, and the Covering of Sediment Near Structures.

A-2-36

The comment states: "D. Section 4.6.4.1, Less than Significant Impacts, Health Risk Assessment, Pages 4.6-11 through 4.6-15.

"Comment: We would suggest including a figure that identifies the truck routes and location of the residences included in the HRA to clarify the analysis."

The commenter's request is noted. Although such a figure may provide additional visual detail, the analysis contained in the Draft PEIR is sufficient in detail to assess impacts, identify mitigation measures, and to provide for meaningful public review and comment. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

A-2-37

The comment states: "EIR: 'Perkins Elementary School is located within 0.25 mile of Staging Areas 1 and 2. Significant health risks are not expected to result from the operation of equipment at the staging areas. Assuming the peak daily emissions shown in Table 4.6-4 occur continuously for 2.5 years (a conservative assumption) results in lifetime cancer risk levels below 1.5 in a million at Perkins Elementary School.'

"Comment: The text prior to the EIR text quoted above includes an analysis and methodology that only discusses truck trips and therefore it appears as though the operation of construction equipment at the staging areas was not included in the HRA. Please clarify, and if the analysis only includes truck trips, explain the basis for determining that construction equipment would not contribute to an exceedance of the lifetime cancer risk threshold. We would suggest including the construction equipment operation in the HRA analysis, if it is not included already."

Significant health risks would not result from the operation of equipment at the staging areas because even using a very conservative screening model, and assuming the peak daily emissions (shown in Table 4.6-4 of the Draft PEIR) occur continuously for 2.5 years, the results in lifetime cancer risk levels are below 1.5 in a million at the Perkins Elementary School.

A-2-38

The comment states: "E. Section 4.6.4.2, Potentially Significant Impacts, Equipment Exhaust and Related Construction Activities, Pages 4.6-16.

"EIR: 'In addition, Mitigation Measures 4.6.8 through 4.6.14 would also reduce the generation of NO_X emissions in the area through the use of retrofitted diesel powered equipment, low-NO_X diesel fuel, and alternative fuel sources. However, there is no reasonable way to ensure that that retrofitted diesel-powered equipment, low-NO_X diesel fuel, and alternative fuel sources would be available during the construction period; therefore, it is not possible to quantify reductions in NO_X emissions that would result from implementation of Mitigation Measures 4.6.8 through 4.6.14.'

"Comment: An emissions reduction estimate can be made for some of the mitigation measures as written. The URBEMIS 2007 model and South Coast Air Quality Management District's CEQA Air Quality Handbook provide emission reduction estimates for construction mitigation measures. We suggest providing estimates for the listed mitigation measures, assuming that they would be implemented. Include any additional feasible mitigation measures from these sources that may apply to the proposed project."

It is not feasible to know the amount and type of retrofitted diesel-powered construction equipment that would be available for use at the time of project construction. Therefore, it is too speculative to quantify the reductions provided by these measures since the percentage of retrofitted equipment cannot be known at this time. Use of such equipment, combined with low-NO_X diesel fuel, and alternative fuel sources would reduce the emissions, but the extent of the reduction cannot be quantified since the availability of such equipment is unknown.

A-2-39

The comment states: "Furthermore, please explain why there is no reasonable way to ensure that the required equipment and technology would be available, and include this as a reason why this impact is significant and unavoidable. Please also explain why the EIR cannot require the use of retrofitted diesel powered equipment, low-NO_X diesel fuel, and alternative fuel sources as mitigation measures, since these measures ordinarily are feasible and available."

See response to comment A-2-38. The timing of the project is of high priority, both because the development and issuance of the TCAO has been underway for approximately 10 years,

and because the timing of implementation will attempt to address the concerns expressed earlier in the comment letter about avoiding impacts to marine terminal and shipyard contract work to the greatest extent feasible. Therefore, it is unknown at this time what percentage of the construction equipment could be replaced by retrofitted diesel powered equipment, low-NO_X diesel fuel, and alternative fuel sources.

A-2-40

The comment states: "F. Section 4.6.4.2, Potentially Significant Impacts, Odors, Pages 4.6-16.

"EIR: 'Adherence to the mitigation measures identified for equipment would reduce impacts associated with objectionable odors from the operation of diesel-powered construction equipment.'

"Comment: Please explain why the mitigation measures proposed to reduce emissions of criteria pollutants would also reduce odors related to construction equipment to a less than significant level. Additionally, the discussion of impacts for criteria pollutants determined that it cannot be ensured that these mitigation measures would be fully implemented; therefore, impacts related to NO_X emissions are significant and unavoidable. If these measures cannot be fully implemented, why wouldn't odor emissions also be significant and unavoidable?"

The Draft PEIR identifies odors as potentially significant impacts due to multiple factors, one of which is construction equipment. Adherence to the mitigation measures identified for equipment would reduce impacts associated with objectionable odors from the operation of diesel-powered construction equipment. Mitigation measures that will be implemented to reduce odors from diesel construction equipment include Mitigation Measure 4.6.11 (requires that equipment engines are maintained in good condition and in proper tune per manufacturer's specification), Mitigation Measure 4.6.12 (requires that construction-related equipment, including heavy-duty equipment, motor vehicles, and portable equipment, is turned off when not in use for more than 5 minutes), and Mitigation Measure 4.6.13 (requires that, to the extent feasible, construction operations rely on the electricity infrastructure surrounding the construction site rather than electrical generators powered by internal combustion engines). All of these measures will reduce the potential impact of odors associated with construction equipment.

Impacts related to NO_X emissions are significant and unavoidable during the dredging and landside treatment phases at the staging areas. Emissions and associated odors from equipment operating in the Bay waters during dredging and at the staging areas are substantially farther from the various sensitive receptors than the haul trucks driving down streets adjacent to sensitive receptors. Also, the significant NO_X emissions are occurring in locations further removed from the sensitive receptors and therefore odors associated with these emissions would not be significant and adverse.

A-2-41

The comment states: "G. Section 4.6.4.2, Potentially Significant Impacts, Odors, Pages 4.6-16 and 4.6-17.

"EIR: 'With implementation of this measure, and given the distance between the active areas within the potential Staging Areas and the nearest sensitive receptors, it is anticipated that odor impacts would be reduced to less than significant with the adherence to identified mitigation measures (Threshold 4.6.5).'

"Comment: Please identify the nearby sensitive receptors and the distance between these receptors and the staging areas. Also, please identify the evidence that supports this conclusion."

As stated in Appendix G to the Draft PEIR, "the closest sensitive receptors to the project site are residences located approximately 300 feet from the Staging Areas." The Draft PEIR provides a reasonable range of project alternatives and potential staging areas and does not select a preferred alternative or staging area. Once a project has been selected, detailed analyses will be provided in a site-specific environmental document, including any staging area(s) to be used.

A-2-42

The comment states: "H. Section 4.6.4.3, Mitigation Measures, Pages 4.6-17 through 4.6-21.

"Comment: Mitigation measures are included for fugitive dust emissions because of San Diego Air Pollution Control District requirements. However, the analysis identifies no significant impacts. Generally, it is inappropriate to identify mitigation measures for non-significant impacts. We would suggest moving these mitigation measures to the impact analysis and stating that compliance with these measures would occur, rather than listing them as mitigation."

Although fugitive dust impacts are not expected to exceed the construction emissions thresholds, adherence to San Diego Air Pollution Control District (APCD) requirements is required of all development within the SDAB. The Draft PEIR included incorporation of these requirements as Mitigation Measures 4.6.1 through 4.6.7 to ensure implementation of these standard requirements/precautionary mitigation measures as part of the project's Mitigation Monitoring and Reporting Program (MMRP). The comment is noted, but since the measures are appropriate regardless of whether they are labeled mitigation, conditions of approval, or project features, no change to the Draft PEIR is deemed necessary.

A-2-43

The comment states: "I. Section 4.6.5, Cumulative Impacts, Pages 4.6-21 and 4.6-22.

"Comment: The cumulative analysis discusses ozone and ozone precursors. However, the SDAB is also in non-attainment for PM_{10} and $PM_{2.5}$. Even though the proposed project would not result in direct impacts related to these pollutants, a cumulative impact may still occur. Therefore, we suggest revising this analysis to address cumulative impacts related to PM_{10} and $PM_{2.5}$. This revision would potentially result in the identification of a new significant cumulative impact."

The Draft PEIR identifies that the proposed project will contribute to adverse cumulative air quality impacts. Section 4.6.5 also identifies the cumulative short-term construction impacts of the proposed project would remain significant and unavoidable. Therefore, the revision to the cumulative analysis in the Draft PEIR is not necessary.

A-2-44

The comment states: "Chapter 4.7 Climate Change and Greenhouse Gas Emissions

"A. Section 4.7.4.1, Less than Significant Impacts, GHG Emissions, Page 4.7-11.

"EIR: 'To date there is insufficient information to establish formal, permanent thresholds by which to classify projects with relatively small, incremental contributions to the State's total GHG emissions as cumulatively considerable or not.'

"Comment: The Bay Area Air Quality Management District has adopted a quantitative threshold for annual project-level GHG emissions, and several other districts and jurisdictions have proposed interim quantitative thresholds, including the County of San Diego and South Coast Air Quality Management District. In addition, in August 2010, the City of San Diego issued a memorandum to the Environmental Analysis Section titled 'Updated – Addressing Greenhouse Gas Emissions from Projects Subject to CEQA.' This memorandum proposes a 900 metric ton CO_2 equivalent screening level threshold for determining when potential project-level GHG impacts may occur. The GHG significance threshold discussion should be revised to identify a significance threshold for GHG project emissions. An Air Resources Board (ARB) threshold is discussed, but it is stated on Page 4.7-13 that the significance conclusions of the analysis do not rely upon the ARB's proposed draft guidance. We suggest that the analysis use the County of San Diego's screening level threshold for annual emissions of 900 metric tons CO_2 equivalent published in the Interim Approach to Addressing Climate Change in CEQA Documents, consistent with the approach used for determining potential impacts related to the Convair Lagoon Confined Disposal Facility Alternative found in Section 5.10.7, Greenhouse Gas Emissions/Climate Change of the EIR. Please also note that the assertion that 'insufficient information to establish formal, permanent thresholds by which to classify projects with relatively small, incremental contributions to the State's total GHG emissions as cumulatively considerable or not' is inconsistent with recent judicial decisions, which identify satisfactory thresholds of significance and methodologies for analyzing and mitigating potential impacts associated with GHG emissions. See, e.g., *Citizens for Responsible Equitable Environmental*

Development v. City of Chula Vista (2011) Cal. App. 4th, 2011 DJDAR 10267 (July 12, 2011); *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) Cal. App. 4th, 2011 DJDAR 11239 (July 28, 2011)."

The comment is correct in that the Draft PEIR did not solely rely upon the ARB's proposed draft guidance. The Bay Area Air Quality Management District (AQMD) thresholds have not been adopted by the South Coast AQMD or by the San Diego APCD, and are not applicable in Southern California. Additionally, it should be noted that the referenced City of San Diego and County of San Diego screening threshold of 900 metric tons of CO_2 equivalent is proposed as a screening tool, not as a quantitative threshold for determining the level of significant impacts. Therefore, the San Diego Water Board Cleanup Team has not changed its view that currently there is insufficient information to establish formal, permanent thresholds by which to classify projects with relatively small, incremental contributions to the state's total GHG emissions as cumulatively considerable or not.

With regard to *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista (2011)*, the Court's holding supported the Lead Agency's discretion in selecting a threshold of significance to assess the project's impact on greenhouse gas emissions and climate change (CEQA Guidelines sections 15064 and 15064.4), the Court found that, even if substantial evidence may support the use of a different threshold of significance, that the availability of another possible threshold does not constitute substantial evidence supporting a fair argument that the project may have a significant impact. For this PEIR, the San Diego Water Board Cleanup Team made a good-faith effort to "describe, calculate or estimate the amount of greenhouse gas emission resulting from a project," and consider the extent that the project may increase or decrease emissions, and whether the emission exceed the threshold of significance that the Lead Agency applies, and the extent that the project complies with statewide, regional, or local plans to achieve reductions in greenhouse gas emissions, as required by section 15064.4 of the CEQA Guidelines.

The proposed project would result in greenhouse gas emissions during the short-term "construction" activity associated with dredging and placing clean sand cover in the Bay. The proposed project does not result in an increase in operational emissions. The proposed project emissions would be well below the 900-metric ton screening threshold when the construction contribution emissions are amortized over a longer time period (i.e., 30 years). As described in the Project Description, the project is expected to take 12.5 months to complete if dredging is continuous, or 24–30 months if dredging is limited to 7 months per year. The updated total metric tons (CO_2) produced by the project would be roughly 8,408. If amortized over a 30-year period, this would be roughly 280 metric tons per year. This amount is well below the screening threshold of 900 metric tons, as well as thresholds in the ARB's proposed draft guidance for residential, commercial, and industrial projects.

A-2-45

The comment states: "B. Section 4.7.4.1, Less than Significant Impacts, GHG Emissions, Pages 4.7-11 through 4.7-13.

"Comment: We disagree with the conclusion that because construction emission are a single-event contribution limited to a short period of time, these emissions are not considered to impede or interfere with achieving the state's emission reduction objectives in AB 32 and are inherently less than significant. As stated on Page 4.17-12 of the EIR, CO_2 emissions persist in the atmosphere for a substantially longer period of time than criteria pollutant emissions. Therefore, CO_2 emissions from construction emissions would not settle out following the completion of construction. These emissions would contribute to the state and global GHG inventory. Therefore, additional analysis is required in order to provide substantial evidence of a less than significant related to construction emissions. We suggest amortizing the construction emissions over a given time period to determine the contribution of construction emissions to annual GHG emissions, and comparing annual GHG emissions to a quantitative threshold. This approach is consistent with the recommendations of the County of San Diego, the South Coast Air Pollution Control District, and the County of San Luis Obispo Air Pollution Control District. We suggest amortizing construction emissions over a 30-year time period, consistent with the guidance of the County of San Diego and the approach used for determining potential impacts related to the Convair Lagoon Confined Disposal Facility Alternative found in Section 5.10.7, Greenhouse Gas Emissions/Climate Change of the EIR."

Please see response to comment A-2-44, above. The proposed project's amortized construction emissions are approximately 280 metric tons per year, well below the suggested threshold.

A-2-46

The comment states: "C. Section 4.7.4.1, Less than Significant Impacts, GHG Emissions, Pages 4.7-11 through 4.7-13.

"Comment: Please explain why only CO_2 emissions are quantified for the proposed project. Emissions from construction equipment would also result in emissions of methane (CH_4) and nitrogen dioxide (N_2O)."

The comment is correct that CH_4 and N_2O emissions would result from construction activities. However, the emissions of these constituents are negligible when compared to the CO_2 emissions, and adding them to the total would not change the environmental analysis or significant conclusions in the Draft PEIR. It is estimated that CH_4 and N_2O would add less than 5 percent to the CO_2 emissions. Therefore, based on the calculations included in response to comment A-2-44, the annual CO_2 equivalent emissions for the project would be 295 metric tons. This amount is well below the screening threshold, as well as thresholds in the ARB's proposed draft guidance for residential, commercial, and industrial projects.

A-2-47

The comment states: "Appendix G Air Quality Analysis

"A. Section 2.6.1, Dredging and Capping Operations, Page 14.

"EIR: 'Contaminated areas under piers and pilings will be remediated through subaqueous, or in-situ, capping. In-situ capping is the placement of clean material on top of the contaminated sediment.'

"Comment: The importation of clean material would require truck trips. Were these truck trips included in the calculation of construction emissions? They are not identified in the Total Construction Emissions tables provided in Appendix A of the Draft EIR. If they were not included, please revise the analysis to include them. Additional truck trips would result in increased emissions of criteria pollutants."

The emissions calculations for the Draft PEIR assumed approximately 10 truck trips per day of sand import. It is now estimated that there will be approximately 25 to 30 sand import trips per day. The increased number of trips would result in an increase in CO_2 emissions of 301 metric tons per year, and 1.2 metric tons per day. The updated amortized annual emissions (amortized over 30 years) would be 295 metric tons, well below the 900-metric ton screening threshold referenced by the comment author.

A-2-48

The comment states: "B. Section 4.2, Greenhouse Gas Emissions/Global Climate Change, Pages 41 and 42.

"EIR: 'Therefore, for this analysis, CO_2, CH_4, and N_2O are considered due to the relatively large contribution of these gases in comparison to other GHGs produced during the project construction and operation phases.'

"Comment: Only CO_2 emissions are provided in Table F. Please revise the analysis to include the projected emissions of CH_4 and N_2O. Identifying emissions of CH_4 and N_2O would result in additional emissions of CO_2 equivalent."

Please see response to comment A-2-46 regarding emissions of CH_4 and N_2O.

A-2-49

The comment states: "C. Section 4.2, Greenhouse Gas Emissions/Global Climate Change, Page 42.

"EIR: 'The GHG emissions resulting from increased electricity demand are modeled using GHG emissions factors from the United States Energy Information Administration. The

GHG emissions resulting from the energy used for water delivery, treatment, and use are modeled using GHG emissions factors from the California Energy Commission (CEC). The GHG emissions resulting from solid waste disposal are modeled using GHG emissions factors from the California Integrated Waste Management Board, recently renamed the Department of Resources Recycling and Recovery, or CalRecycle.'

"Comment: Only quantified construction emission are provided in the report. We suggest deleting this statement or providing the calculated emissions related to electricity, water, and solid waste. These GHG sources would result in additional emissions of CO_2 equivalent."

The comment is correct that there are no operational emissions, including operational emissions from energy use. The inadvertent inclusion of this information in the Draft PEIR does not change its impact conclusions.

A-2-50

The comment states: "MITIGATION MEASURE REVISIONS FOR THE CONVAIR LAGOON ALTERNATIVE

"The following comments are provided for the mitigation measures identified within Section 5.7, Convair Lagoon Alternative to ensure that the mitigation language for this alternative is consistent with the proposed project. The comments are organized by section and page number and shown in strikeout/underline." The comment includes the suggested mitigation refinements for consistency with the proposed project.

An updated version of Section 5.7, Convair Lagoon Alternative has been included in the Draft PEIR. Changes are shown strikethrough and underline.

A-2-51

The comment provides Table 1. Cost Estimate Project Assumptions and Draft EIR Project Assumptions Consistency Analysis.

The table does not contain any substantive questions about the Draft PEIR or the analysis therein. Further, the information about the cost estimate contained in the table has been addressed throughout the responses in this document. Therefore, no further response is necessary.

NATIVE AMERICAN HERITAGE COMMISSION

Letter Code: A-3

Date: July 1, 2011

A-3-1

The comment identifies the NAHC, and is introductory to other comments in the letter. The comment states:

"The Native American Heritage Commission (NAHC), the State of California Trustee Agency for the protection and preservation of Native American cultural resources. The NAHC wishes to comment on the above-referenced proposed Project.

"This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

"The California Environmental Quality Act (CEQA- CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect" requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ...objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC Sacred Lands File (SLF) search resulted in the identification of no Native American traditional or religious resources within the 'area of potential effect (APE), based on the USGS coordinates of the project location provided.

"The NAHC 'Sacred Sites,' as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential, and exempt from the Public Records Act pursuant to California Government Code §6254.10."

As noted in the comment, Native American cultural resources were not identified within the area of potential effect (APE) during the SLF search, based on the USGS coordinates of the project location provided. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

A-3-2

The comment states: "Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Pursuant to CA Public Resources Code § 5097.95, the NAHC requests that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends avoidance as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources."

The Native American contacts provided have been added to the list of interested parties for the project.

A-3-3

The comment states: "Furthermore we recommend, also, that you contact the California Historic Resources Information System (CHRIS) California Office of Historic Preservation for pertinent archaeological data within or near the APE at (916) 445-7000 for the nearest Information Center in order to learn what archaeological fixtures may have been recorded in the APE."

On August 19, 2011, the San Diego Water Board Cleanup Team contacted the CHRIS California Office of Historic Preservation, which provided the contact information for the local Information Center. The Cleanup Team contacted the local Information Center (South Coastal Information Center [SCIC]), which identified a protocol to determine if archaeological fixtures have been recorded in the APE. The project proponent is required to send a letter and fee requesting whether or not archaeological fixtures have been recorded in the APE prior to beginning the project. A records search was performed through the SCIC and no historic properties (resources eligible for or listed in the National Register of Historic Places [NRHP]) were identified in the APE. The records search included a review of all recorded historic and prehistoric archaeological resources within a 0.5 mi radius of the project area as well as a review of known cultural resource survey and excavation reports. In addition, the NRHP, California Register of Historical Resources (California Register), California Historical Landmarks, and California Points of Historical Interest listings were reviewed. The absence of archaeological items at the surface level does not preclude their existence at the subsurface level once ground-breaking activity is underway.

A-3-4

The comment states: "Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C 4321–43351) and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 et seq.), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 et seq. and NAGPRA (25 U.S.C. 3001–3013) as appropriate. The 1992 Secretary of the Interiors Standards for the Treatment of Historic Properties were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation."

The comment pertains to federal requirements as the issuance of a Clean Water Act (CWA) Section 404 Permit and a Section 10 of the Federal Rivers and Harbors Appropriation Act of 1899 Permit by the U.S. Army Corps of Engineers (ACOE) is a federal undertaking. As the subject project property is not owned by the federal government, NAGPRA does not apply. The ACOE will determine its jurisdictional area within the project defining the federal APE. The ACOE has Native American consultation responsibilities in accordance with 36 CFR Part 800, regulations implementing section 106 of the National Historic Preservation Act (NHPA). Section 106 requires that the lead federal agency take into account what effect the project will have on resources eligible for or listed in the NRHP within the ACOE's APE. Consultation by the ACOE takes place upon receipt of the permit applications. The ACOE may use the Native American contact list previously obtained from the NAHC. See also response to comment A-3-2, above, regarding notification of Native American contacts.

A-3-5

The comment states: "Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'."

As part of the proposed project, a protocol will be put into place to address accidental discovery of any archeological resources and human remains in the project footprint. If, during the course of project construction, unanticipated cultural resources are discovered, work should be halted temporarily until a qualified archaeologist can evaluate the significance of the resources. If human remains are encountered during work on this project, State Health and Safety Code section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resource Code section 5097.98. The County Coroner must be notified of the find immediately. If the remains are determined to be prehistoric, the Coroner will notify the NAHC, which will determine and notify a Most Likely Descendant (MLD). The MLD may

inspect the site of the discovery with the permission of the landowner, or his or her authorized representative. The MLD shall complete his/her inspection within 48 hours of notification by the NAHC. The MLD may recommend scientific removal and analysis of human remains and items associated with Native American burials.

A-3-6

The comment states: "To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects."

The San Diego Water Board Cleanup Team concurs with the comment and supports ongoing consultation with Native American tribes on the project.

A-3-7

The comment states: "The response to this search for Native American cultural resources is conducted in the NAHC Sacred Lands Inventory, established by the California Legislature (CA Public Resources Code 5097.94(a) and is exempt from the CA Public Records Act (c.f. California Government Code 6254.10) although Native Americans on the attached contact list may wish to reveal the nature of identified cultural resources/historic properties. Confidentiality of "historic properties of religious and cultural significance" may also be protected under Section 304 of he NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places and there may be sites within the APE eligible for listing on the California Register of Historical Resources. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C, 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity."

The San Diego Water Board Cleanup Team acknowledges the cited regulations on disclosure of identified cultural resources/historic properties.

A-3-8

The comment concludes the comment letter and does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

DEPARTMENT OF TOXIC SUBSTANCE CONTROL

Letter Code: A-4

Date: July 28, 2011

A-4-1

The comment identifies the Department of Toxic Substances Control (DTSC) and is introductory to other comments in the letter. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

A-4-2

The comment states that DTSC provided comments on the project Notice of Preparation (NOP) on December 22, 2009, and requests that these comments be addressed in the Final PEIR. The following three comments were provided in the December 22, 2009, DTSC letter:

- The Draft PEIR should identify the current or historic uses at the project site that may have resulted in a release of hazardous wastes/substances, and any known or potentially contaminated sites within the proposed project area.
- The NOE says, "The cleanup remedy may include dredging, capping, and/or natural recovery. Dredged spoils may be dewatered at an onshore facility and disposed of at an appropriate landfill site." If soil is contaminated, it must be properly disposed of and not simply placed in another location on the site. Land Disposal Restrictions (LDRs) may be applicable to such soils.
- If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, division 20, chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA), or DTSC.

With regard to historic uses of the site, the current and past use is ship building and repair. As stated in Section 2.1.2 of the Draft PEIR, "The San Diego Water Board has identified elevated levels of pollutants in the San Diego Bay bottom sediments adjacent to National Steel and Shipbuilding Company (NASSCO) and BAE Systems shipyards. The concentrations of these pollutants cause or threaten to cause a condition of pollution that harms aquatic life and beneficial uses designated for San Diego Bay." As further stated in Section 3.6 of the Draft PEIR, the project is the implementation of TCAO, which requires that remedial actions be implemented within the Shipyard Sediment Site. The TCAO provides relevant evidence for naming the responsible parties, and is incorporated by reference into the Draft PEIR (as stated on page 2-12). The evidence includes, but is not

limited to, documentation of historical or current activities; waste characteristics; chemical use; and storage or disposal information (refer to the Draft Technical Report for TCAO No. R9-2011-0001, Sections 2 through 11, incorporated by reference into the Draft PEIR as stated on page 2-12). Section 4.3.1.1 of the Draft PEIR also provides brief descriptions of NASSCO's and BAE System's operations and wastes generated over the years.

With regard to the cleanup remedy, Section 3.6.3 of the Draft PEIR states: "Once the dredge materials have been dried and tested, they will be loaded onto trucks for disposal at an approved landfill. For purposes of this project, it is assumed that 85 percent of the material will be transported from the staging area to Otay Landfill, which is approximately 15 miles southeast of the Shipyard Sediment Site. Although the sediment is not known to be classified as California hazardous material, it will be tested upon removal and prior to disposal. It is assumed for the purposes of this Draft PEIR that up to 15 percent of the material will require transport to a hazardous waste facility (a Class I facility), which will most likely be the Kettleman Hills Landfill in Kings County, California, near Bakersfield." The proposed project does not include relocation of contaminated soils from one portion of the site to another. Where removal of contaminated sediment is not feasible, application of clean sand cover may be conducted to ensure that no migration of contaminated sediment occurs.

With regard to hazardous wastes associated with the proposed cleanup project, an assessment of the proposed project's impacts with regard to hazardous wastes is included in Section 4.3 of the Draft PEIR. The mitigation measures contained in that section address the topics of Secondary Containment, Dredging Management Plan, Contingency Plan, Health and Safety, Plan, Communication Plan, Sediment Management Plan, Hazardous Materials Transportation Plan, and a Traffic Control Plan.

The San Diego Water Board is the lead Agency for the project, and responsible agencies are identified in Chapter 3.0 of the Draft PEIR. In addition, approvals and or permits from other agencies with waste management authority are addressed in TCAO Provision G.2, Page 31 (incorporated by reference into the Draft PEIR) which states in part that:

"The Dischargers shall properly manage, store, treat, and dispose of contaminated marine sediment and associated waste in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of contaminated marine sediment and associated waste shall not create conditions of pollution, contamination or nuisance as defined in Water Code section 13050."

A-4-3

This comment restates the third comment included in the DTSC NOP comment letter, discussed above. Refer to response A-4-2, above.

A-4-4

The comment states that the U.S. Navy has identified areas where munitions and ordnances have been found and areas with high potential of having munitions and ordnances in more than a hundred locations along the channels. The comment further states that there are at least two areas where munitions have been found at the project location referenced in the Draft PEIR and a few more such areas are located in close proximity to the project, and includes a map. The San Diego Water Board Cleanup Team concurs with the comment. A protocol will be developed for the project to address any munitions and ordnances found during the project.

Applicable mitigation measures will be revised as follows:

Mitigation Measure 4.3.2: **Dredging Management Plan.** The contractor shall ensure that a Dredging Management Plan (DMP) containing Standard Operating Procedures (SOPs) for the project is developed prior to the initiation of dredging and implemented for the duration of the dredging activity. The DMP will include the following measures to prevent release of hazardous materials during construction activities:

- Personnel involved with dredging and handling the dredged material will be given training on their specific task areas, including:
  - Potential hazards resulting from accidental oil and/or fuel spills;
  - Proper dredging equipment operation; ~~and~~
  - Proper silt curtain deployment techniques; and
  - Proper response in the event that ordnance or munitions are encountered.
- All equipment will be inspected by the dredge contractor and equipment operators before starting the shift. These inspections are intended to identify typical wear or faulty parts.
- Required instrumentation to avoid spillage of dredging material will be identified for each piece of equipment used during dredging operations.
- Personnel will be required to visually monitor for oil or fuel spills during construction activities.
- In the event that a sheen or spill is observed, the equipment will be immediately shut down and the source of the spill

identified and contained. Additionally, the spill will be reported to the applicable agencies presented in the DMP.

- All personnel associated with dredging activities will be trained as to where oil/fuel spill kits are located, how to deploy the oil-absorbent pads, and proper disposal guidelines. The dredging barge shall have a full complement of oil/fuel spill kits on board to allow for quick and timely implementation of spill containment.
- The use of oil booms will be deployed surrounding the dredging activities. In the event that a spill occurs, the oil and/or fuel will be contained within the oil boom boundary. The silt curtains may also act as an oil boom, provided absorbent material is deployed during a spill.
- Shallow areas along the haul route will be mapped and provided to the dredge operator for review. These areas will be avoided to the extent possible to prevent propeller wash resuspension of sediment.
- Load-controlled barge movement, line attachment, and horsepower requirements of tugs and support boats at the project site will be specified to avoid resuspension of sediment.
- Barge load limits and loading procedures will be identified, and the appropriate draft level will be marked on the materials barge hull.
- A protocol will be developed for the project in conjunction with the U.S. Department of the Navy (DON) to address any munitions and ordnance found during the project. As required for projects within the San Diego Bay Ship Channels, the project shall be coordinated with the Navy NAVFAC Southwest Division in San Diego for munitions clearance.

Implementation of the DMP will be verified by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). The DON will be provided an opportunity to review and comment on the DMP, particularly with respect to ordnance and munitions identified in proximity to the Shipyard Sediment Site.

Mitigation Measure 4.3.3: **Contingency Plan.** The contractor shall ensure that a Contingency Plan has been developed prior to the initiation of dredging and implemented for the duration of the dredging

activity to address equipment and operational failures that could occur during dredging operations. The Contingency Plan will also address the potential to encounter munitions or ordnance. The Contingency Plan will include the following measures to prevent release of hazardous materials during construction activities:

- Actions to implement in the event of equipment failure, repair, or silt curtain breach. These include:
  - Communication to project personnel;
  - Proper signage and/or barriers alerting others of potentially unsafe conditions;
  - Specification for repair work to be conducted on land and not over water;
  - Identification of proper spill containment equipment (e.g., spill kit);
  - A plan identifying availability of other equipment or subcontracting options;
  - Emergency procedures to follow in the event of a silt curtain breach;
  - Incident reporting and review procedure to evaluate the causes of an accidental silt curtain breach and steps to avoid further breaches; and
  - Response procedures in the event of barge overfill.
- Actions to implement in the event that munitions or ordnance are encountered during project activities. These include:
  - Immediate stoppage of all in-water work activities until further notice to proceed is received;
  - Contact the Site Safety Manager;
  - Refer to the Contingency Plan section that presents the emergency contact name(s) and telephone number(s) for NAVFAC Southwest Division; and
  - Contact NAVFAC Southwest Division personnel. The recovery and disposal of any munitions and/or ordnance item(s) found will become the responsibility of NAVFAC Southwest Division.

Implementation of the Contingency Plan will be verified by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board).

Mitigation Measure 4.3.4: **Health and Safety Plan.** The contractor shall ensure that a Health and Safety Plan (H&S Plan) has been developed prior to the initiation of dredging and implemented for the duration of the dredging activity to protect workers from exposure to contaminated sediment. The H&S Plan will include the following requirements at a minimum:

- Training for operators to prevent spillage of sediment on the bridges during dredging activities
- Training for operators in decontamination and waste containment procedures
- Training for operators in appropriate notification/handling procedures for munitions/ordnance
- Identification of appropriate Personal Protection Equipment (PPE) for all activities, including sediment removal, management, and disposal
- Certification of personnel under safety regulations such as Occupational Safety and Health Administration (OSHA) 29 Code of Federal Regulations (CFR) 1910.120
- Documentation that requires that health and safety procedures have been implemented

Implementation of the H&S Plan will be verified by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board).

A-4-5

The comment states that the Navy is currently conducting sonar and electromagnetic scans of the channel focused on the areas containing and potentially containing munitions, for possible response actions, and that the project is undertaken by the NAVFAC Southwest Division under the project reference: MRP Site 100 San Diego Bay Primary Ship Channels. The comment further states that any projects within the San Diego Bay Ship Channels must be coordinated with the Navy NAVFAC Southwest Division in San Diego for munitions clearance.

The San Diego Water Board Cleanup Team concurs with the comment. As outlined in more detail in Response A-4-4 above, a protocol will be developed for the project to ensure coordination with the Navy NAVFAC Southwest Division in San Diego for munitions

clearance. Appropriate mitigation measures in Section 4.3 have been revised to include this protocol. Please refer to response A-4-4.

A-4-6

This comment provides contact information for the appropriate staff member at DTSC in the event of questions or concerns. No further response is necessary.

CALIFORNIA STATE LANDS COMMISSION

Letter Code: A-5

Date: August 1, 2011, Received August 3, 2011

A-5-1

The comment identifies the CSLC and is introductory to other comments in the letter. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

A-5-2

The comment describes the CSLC jurisdiction. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

A-5-3

The comment provides background information regarding the CSLC jurisdiction. No further response is necessary.

A-5-4

The comment provides background information regarding the Tentative Clean Up and Abatement Order (CAO) No. 2011-0001. No further response is necessary.

A-5-5

The comment summarizes project information included in the Draft PEIR. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

A-5-6

The comment includes a description of the CSLC's agency jurisdiction. The letter states that: "1. Based on the information provided in the PEIR and a review of in-house records, the Project will involve: (1) ungranted sovereign lands under the leasing jurisdiction of the CSLC; and (2) sovereign lands legislatively granted originally to the city of San Diego and subsequently transferred to the San Diego Port District (District) pursuant to Chapter 67, Statutes of 1962, and as amended, minerals reserved. Dredging and remediation work on ungranted and granted sovereign lands, as specified in the proposed Project, will require a lease by the CSLC (please refer to www.slc.ca.gov for a lease application). Accordingly, please add the CSLC as a responsible and trustee agency in Table 3-1 of the PEIR. Specific information on the CSLC's jurisdiction is provided above."

The CSLC is already identified as a responsible and trustee agency in Table 3-1 of the Draft PEIR, which acknowledges the CSLC jurisdiction for authorization of dredging on legislatively granted sovereign lands and remediation activity on ungranted sovereign lands. The San Diego Water Board will ensure that the responsible parties identified in the TCAO secure all permits necessary for the implementation of the proposed Shipyard Sediment Remediation Project, including the lease application identified in the comment.

A-5-7

The comment includes a description of the CSLC's understanding of Program Environmental Review and Mitigation. The comment states that: "2. Section 2.1.3 (Level of Review) discusses the 'program-level' of review in the PEIR and states that CEQA permits the 'Lead Agency' to use 'tiering' to 'defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval.' However, to avoid the improper deferral of mitigation, a common flaw in program-level environmental documents, mitigation measures should either be presented as specific, feasible, enforceable obligations, or should be presented as formulas containing "performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way" (CEQA Guidelines §15126.4, subd. (b).)[1]

The San Diego Water Board Cleanup Team concurs with the comment, and concludes that the mitigation measures included in the Draft PEIR and updated as appropriate in this RTC document meet the requirements of CEQA.

A-5-8

The comment continues with a description of the CSLC's understanding of Program Environmental Review and Mitigation. The comment states that: "Section 2.1.4 (Intended Uses of the PEIR) states "Future decisions and implementing actions following certification of the PEIR and approval of the Project will be subject to subsequent environmental review pursuant to CEQA." The PEIR should make an effort to distinguish what activities and their mitigation measures are being analyzed in sufficient detail to be covered under the PEIR without additional project specific environmental review, and what activities will trigger the need for additional environmental analysis." (CEQA Guidelines § 15168, subd. (c).)

CEQA requires a Lead Agency to prepare an EIR for a project "at the earliest possible stage," yet, at the same time, it recognizes "additional EIRs might be required for later phases of the project." (*City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal. App. 3d 229, 250). As such, CEQA permits a Lead Agency to use "tiering" to "defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval." (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2008) 40 Cal. 4th 412, 431–432.) In particular, tiering is appropriate "when it helps

[1] The "State CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports." (*In re Bay-Delta*, (2008) 43 Cal. 4th 1143, 1170.) Therefore, the San Diego Water Board, as the Lead Agency for the Draft PEIR, concludes that the components of the Draft PEIR were appropriately described in sufficient detail in the documentation of impacts, mitigation measures, and strategies to provide for meaningful public review and comment.

A description of the requested information is provided in Section 2.1.3 of the Draft PEIR, which states that: "The Draft PEIR identifies the anticipated effects of the sediment removal project. The Draft PEIR also identifies five alternative sites within which the dewatering and treatment of dredge material could occur. The Draft PEIR provides sufficient information to the appropriate level of detail to permit 'reasonable and meaningful environmental review' of the effects of the project so that the San Diego Water Board may make decisions regarding approval of the proposed sediment removal project and selection of one or more of the potential staging area sites. The PEIR, once certified, may be used as an environmental clearance baseline against which to evaluate future site-specific implementation approvals and permits for implementation of the proposed project." Thus, the "tiering" process and need for further environmental review will be specific to the selection of the dewatering and treatment site(s) for the dredged materials.

A-5-9

The comment continues with a description of the CSLC's understanding of Program Environmental Review and Mitigation. The comment states that: "For example, Mitigation Measure (MM) 4.5.11 on page 4.5-60, related to sensitive biological resources in the vicinity of Staging Area 5, does not appear to prescribe specific, enforceable measures that would avoid or lessen the potential impact. Instead, MM 4.5.11 defers the formulation and analysis of specific measures to future consultation with the California Department of Fish and Game. The PEIR should either provide specific, stand-alone measures and analyze their effectiveness in reducing potential effects, or should clearly state that those impacts and any required mitigation would be disclosed and analyzed in a subsequent tiered document."

Mitigation Measures 4.5.10 and 4.5.11 are specific to Staging Area 5 (which may or may not be selected) and are proposed to avoid and minimize impacts to special-status species occurring within Paradise Marsh and the Sweetwater Marsh Unit of the San Diego Bay National Wildlife Refuge (NWR). As described in the PEIR, "off-site indirect effects associated with the proposed project that could affect areas within the San Diego Bay NWR would be limited to potential increases in noise and human activity at potential Staging Area 5." The potentially significant impact requiring mitigation is stated in the PEIR as follows: "If activities are conducted within the breeding season of special-status species that may occur in the Paradise Marsh area, there is a potential for disruption of nesting activities of listed species, including Belding's savannah sparrow and light-footed clapper rail, resulting in potentially significant impacts." (Page 4.5-55.) Mitigation Measure 4.5.10 pertains to

restricting dewatering and treatment activities to within the western and northern portions of the staging area where existing buildings obstruct sensitive habitat areas from noise sources.

The first part of Mitigation Measure 4.5-11 states that, if Staging Area 5 is selected, the California Department of Fish and Game (CDFG) shall be notified not less than 30 days in advance and shall be given the opportunity to provide recommended measures to minimize impacts from increased noise and human activity to species in the Sweetwater Marsh Unit of the San Diego Bay NWR. All agency-recommended measures (or agency-approved substitute measures, if recommended measures are infeasible) shall be implemented throughout the duration of project activities in Staging Area 5. The second part of Mitigation Measure 4.5-11 states that the biological monitor shall inspect the site at least every 2 weeks during project activities that are conducted during the nesting season (conservatively February 1 through August 31) and shall report monthly to the San Diego Water Board.

Although the CDFG and U.S. Fish and Wildlife Service (USFWS) will ultimately have the authority to approve or disapprove proposed measures, Mitigation Measure 4.5-11 has been clarified to include anticipated agency measures as follows:

Mitigation Measure 4.5.11: If Staging Area 5 is selected, the California Department of Fish and Game (CDFG) shall be notified not less than 30 days in advance and shall be given the opportunity to provide recommended measures to minimize impacts from increased noise and human activity to species in the Sweetwater Marsh Unit of the San Diego Bay National Wildlife Refuge (NWR). All agency-recommended measures (or agency-approved substitute measures, if recommended measures are infeasible) shall be implemented throughout the duration of project activities in Staging Area 5. <u>At a minimum, the applicant shall conduct pre-activity nesting bird surveys within 300 feet of all noise-intensive activities if such activities will be initiated within the breeding season for special-status species (conservatively February 1 through August 31). If nesting birds are identified within 300 feet of activities, a qualified (and, if appropriate based on the species, agency-permitted) biological monitor shall be present on site to observe the behavior of the nesting birds during initiation of activities. The biological monitor shall have the authority to temporarily halt or redirect activities in the event that adverse effects to the birds are evident (e.g., there is a risk of nest failure or other indication of harassment, as defined by the Endangered Species Act). If adverse effects to nesting birds appear to be likely, the monitor shall recommend additional measures (e.g., installation of sound barriers, limiting duration of activities, relocating</u>

activities to another area, or postponing activities until the nest is no longer active) in concert with resource agency personnel.

Regardless of whether nesting birds are identified during pre-activity nesting bird surveys, t~~T~~he biological monitor shall inspect the site and any adjacent areas supporting potential nesting habitat at least every 2 weeks during project activities that are conducted during the nesting season (conservatively February 1 through August 31) and shall report monthly to the San Diego Water Board.

See response to A-5-8 for more information regarding selection of staging areas. The mitigation measures for staging area 5, which may or may not be chosen, were specified due to the identification of sensitive biological resources in the applicable Draft PEIR technical report. The inclusion of additional information regarding the staging area does not preclude additional environmental review should staging area 5 be selected.

A-5-10

The comment includes a description of the CSLC's understanding of Cultural Resources impacts, and states: "The Initial Study (IS) for the Project (1) found no impact to cultural resources because the Project does not entail grading undisturbed areas on the site, and the area proposed for dredging consists of recently deposited material and undisturbed subtidal material below the depth that would include cultural resources, and (2) states that standard Best Management Practices (BMPs) will be employed as part of the Project in the event that an archaeological or paleontological resource is found during implementation."

A records and literature search was conducted at the South Coastal Information Center (SCIC) on September 12, 2011. The records search included archival and other background studies. The record search results indicated that there were prehistoric sites or deposits recorded in the vicinity of the proposed Staging Areas; however, these sites are now fully developed and/or paved. Use of the Staging Areas for the proposed project will not involve excavation; therefore, disturbance of possible remnants of these sites is not anticipated. There are no recorded prehistoric sites in the dredging footprint. If, during the course of project construction, unanticipated resources are discovered, work should be halted temporarily until a qualified archaeologist/paleontologist can evaluate the significance of the resources. If human remains are encountered during work on this project, State Health and Safety Code section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resource Code section 5097.98. The County Coroner must be notified of the find immediately. If the remains are determined to be prehistoric, the Coroner will notify the NAHC, which will determine and notify an MLD. The MLD may inspect the site of the discovery with the permission of the land owner, or his or her authorized representative. The MLD shall complete his/her inspection within 48 hours of notification by the NAHC. The MLD may

recommend scientific removal and analysis of human remains and items associated with Native American burials.

A-5-11

The comment states: "The CSLC maintains a shipwrecks database that can assist with this analysis (see http://shipwrecks.slc.ca.gov); please contact Pam Griggs of this office (contact information below) to obtain results from a search of the shipwrecks database that may contain confidential archaeological site information. The database includes known and potential vessels located on the State's tide and submerged lands; however, the locations of many shipwrecks remain unknown. Please note that any submerged archaeological site or submerged historic resource that has remained in state waters for more than 50 years is "presumed to be significant."

To clarify, the Notice of Preparation (NOP) and the Draft PEIR determined there is no "potentially significant impact" to cultural resources from the project. There is a low likelihood of underwater resources at the project site. For example, there is no historic connection between the Pier 4 project site and the Navy, and the presence of the tuna clippers in the project area was very late in the historic period. Therefore, it is unlikely that there is historic debris on the bottom of the San Diego Bay in the vicinity of the proposed project. The area to be dredged is located in an area characterized by very active ship repair facilities that have been actively operating for decades and subject to periodic maintenance dredging. There is no evidence based on current and past activities that there are shipwrecks at or near the shipyards. Despite the low likelihood of underwater resources at this location, the San Diego Water Board Cleanup Team has conducted a review of the shipwrecks database and was unable to locate any shipwrecks in or near the vicinity of the project site. The results of the requested correspondence with Pam Griggs resulted in no findings of known shipwrecks in the project area. As a portion of the project will be under jurisdiction of the ACOE under a permit per section 404 of the CWA, the results of research will be provided to the ACOE in support of the required identification efforts in the project's APE. Please see Appendix B of this document for the database search results.

A-5-12

The comment continues the description of the CSLC's understanding of Cultural Resources impacts, and states: "To address any potential impacts to submerged cultural resources and any unanticipated discoveries during the Project's construction, the BMPs should be developed into mitigation measures in the PEIR and included in the Mitigation Monitoring and Reporting Program (MMRP)."

Please see responses to comments A-5-10 and A-5-11 regarding the determination of potential significant impacts for cultural resources. CEQA Guidelines section 15126.4 (a) (3) states that "mitigation measures are not required for effects which are not found to be significant." A discussion of mitigation measures is required for significant environmental

effects only. As described in the NOP and responses to comments A-5-10 and A-5-11, the proposed project does not result in potentially significant impacts to cultural resources and no mitigation is warranted. The San Diego Water Board will ensure that the responsible parties identified in the TCAO notify and consult CSLC staff in the event that any cultural resources are uncovered. The San Diego Water Board's commitment to this procedure is acknowledged in the Project Refinements described in Chapter 1 of this RTC document.

A-5-13

The comment continues the description of the CSLC's understanding of Cultural Resources impacts, and states: "The PEIR should also clearly state that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the CSLC. The CSLC requests that the RWQCB consult with CSLC staff, should any cultural resources be discovered during construction of the proposed Project."

The San Diego Water Board Cleanup Team concurs that the CSLC retains its jurisdiction of resources in the tide and submerged lands of California, and that the CSLC be notified in the event that any cultural resources are discovered. Inclusion of this information in the Final PEIR does not change the impact conclusions of the Draft PEIR. No further change to the PEIR is required. Please see responses to comments A-5-10, A-5-11, and A-5-12.

A-5-14

The comment states: "Section 4.7 of the PEIR provides a lengthy discussion of the existing setting, regulatory setting and thresholds of significance. In Section 4.7.4, the PEIR estimates that the proposed Project would generate up to 7,750 metric tons of carbon dioxide (CO_2) per year. However, the PEIR then concludes that the proposed Project's contribution to Global Climate Change (GCC) in the form of GHG emissions is less than significant (individually and cumulatively) because the emissions generated are short-term versus ongoing (permanent). The PEIR also notes that the air quality mitigation measures that would reduce emissions from construction-related vehicles and equipment would also reduce CO_2 emissions."

The comment summarizes project information included in the Draft PEIR. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

A-5-15

The comment pertains to Climate Change and Greenhouse Gas (GHG) Emissions and states: "The PEIR does not present substantial evidence to support the 'less than significant impact' conclusion for GHGs. CSLC staff suggests that 7,750 metric tons of CO_2 emissions per year be considered a significant impact that requires mitigation. (see California Air Resources Board, "Preliminary Draft Staff Proposal, Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality

Act," Attachment A, Preliminary Draft Proposal for Industrial Projects; see www.arb.ca.gov/cc/localgov/ceqa/ceqa.htm). Alternatively, CSLC staff requests that more information be added in the PEIR justifying that 7,750 metric tons of CO_2 emissions per year is less than significant, when the presumption is that emissions of over 7,000 metric tons per year for industrial projects are a significant impact to climate change."

The San Diego Water Board Cleanup Team does not agree with the comment that there is a lack of substantial evidence in the Draft PEIR (and supporting Appendix G) regarding GHG impacts. As the Draft PEIR states (Section 4.7.4), the "purpose of calculating the emissions is for information purposes as there is no quantifiable emissions threshold. Rather, the project's incremental contribution to GCC would be considered cumulatively significant if, due to the size or nature of the proposed project, it would generate a substantial increase in GHG emissions relative to existing conditions." As stated in the Draft PEIR, the cited report from the California Air Resources Board remains in a preliminary draft form. Thus, there are no quantitative CEQA thresholds of significance in place for any projects located within the area of the project. Furthermore, as stated in the Draft PEIR, "the project's construction GHG emissions are a single-event contribution limited to a short period of time and therefore are not considered to impede or interfere with achieving the state's emission reduction objectives in AB 32."

While the Draft PEIR did not rely on the preliminary draft thresholds in the cited California Air Resources Board report, it is notable that the projected GHG emissions are only slightly higher than the proposed 7,000-metric ton threshold for the ongoing operation of industrial facilities.[1] The project would actually fall well below the metric ton screening threshold if the single-event contribution emissions are amortized over a longer time period (i.e., 30 years). As specified in the Project Description, the project is expected to take 12.5 months to complete if dredging is continuous, or 24–30 months if dredging is limited to 7 months per year. Thus based upon information included in Section 4.7.4 of the Draft PEIR, the total CO_2 produced by the project would be roughly 8,060 metric tons. If amortized over a 30-year period, this would be result in approximately 269 metric tons per year. This amount is well below the thresholds in the ARB's proposed draft guidance for residential, commercial, and industrial projects.

A-5-16

This comment also pertains to Climate Change and GHG Emissions. The comment states: "Similarly, CSLC staff requests that the PEIR reanalyze the appropriateness of the PEIR's conclusion that the cumulative impacts to GCC are less than significant with mitigation incorporation or potentially significant with mitigation incorporation."

Please see response to comment A-5-15.

[1] The California Air Resources Board Preliminary Staff Proposal focused on four main emissions from industrial facilities other than power plants.

SAN DIEGO GAS AND ELECTRIC

Letter Code: O-1

Date: August 1, 2011

O-1-1

The comment states: "At the request of San Diego Gas & Electric (SDG&E), ENVIRON International Corporation (ENVIRON) has prepared this letter to highlight potential critical issues associated with draft documents supporting the Environmental Impact Report (EIR) for the proposed San Diego Shipyard Sediment Site (Site) remediation. Although four documents were reviewed,[1] the primary focus of ENVIRON's comments concerns the March 31, 2011, Draft Water Quality Technical Report, Shipyards Sediment Site, San Diego Bay, San Diego, CA by Geosyntec Consultants (Geosyntec, 2011)."

The comment is introductory to other comments in the letter. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

It appears that the incorrect documents were reviewed, as the above documents are cited as "Draft" from March 31, 2011. Furthermore, comments received refer to incorrect page numbers, text that does not exist, and incorrect Tables. The proper documents were released for public review on June 16, 2011, and are located on the San Diego Water Board website: http://www.swrcb.ca.gov/rwqcb9/water_issues/programs/shipyards_sediment/ceqa.shtml.

O-1-2

The comment states: "1. The proposed water column turbidity monitoring plan is insufficient to characterize the potential migration of contaminated sediment to areas adjacent to the Site remedial footprint. On page 19 of Geosyntec (2011), it is noted that turbidity samples will be collected from the water column at locations 250 and 500 feet from active dredging operations. This monitoring will be conducted to evaluate the effects on water quality due to contaminated sediment suspended during dredging. However, this data will be insufficient for characterizing the deposition of contaminated footprint sediment to areas directly adjacent to the footprint.

"For example, at the northwestern end of the footprint, the nearest turbidity monitoring station is located 100 feet beyond the boundary of the non-footprint polygon SW29. There will be no data available to evaluate potential contamination with suspended footprint sediments that deposit to SW29. Although the CRWQCB found in the September 15, 2010

[1] 1) Draft Water Quality Technical Report, Shipyards Sediment Site, San Diego Bay, San Diego, CA; 2) Draft Marine Biological Resources Assessment Technical Report, Shipyard Sediment Site, National Steel and Shipbuilding Company (NASSCO), BAE Systems San Diego Ship Repair, Inc.; 3) Draft Hazards and Hazardous Materials Technical Report, Shipyards Sediment Site, San Diego Bay, San Diego, CA; and 4) Draft Traffic Impact Analysis, Shipyard Sediment Project.

version of the DTR that SW29 did not exhibit Beneficial Use Impairment and did not warrant remedial action, SW29 may be investigated in future CRWQCB action, as noted by David Barker (Chief of the Water Resource Protection Branch of San Diego Regional Water Quality Control Board) during his March 3, 2011 deposition (Barker, 2011 – statements starting at 11:49 AM).[1] Additionally, data will be unavailable for the area 100 feet to the northwest of SW29, which may be included in a potential SW29 investigation.

The San Diego Water Board Cleanup Team does not agree with the comment, as the comment misinterprets the citation in the Geosyntec (2011) report. The comment is taken out of context, as the referenced monitoring requirements from the TCAO are required only if silt curtains are not deployed during remediation. The Draft PEIR clearly states that double silt curtains will be used as a required mitigation measure. As specified in Mitigation Measure 4.2.3, double silt curtains would be used to contain the resuspension of suspended sediments and prevent the dispersal of constituents of concern outside the dredging area. (See also Mitigation Monitoring and Reporting Program, Table 7-1, and Section 4.2 of the Draft PEIR.)

The Draft PEIR also prescribes mitigation monitoring as reflected in Table 7-1, the Mitigation Monitoring and Reporting Program. Further, the TCAO requires the submittal of a Remedial Action Plan, which will specify the proposed water quality monitoring, to the San Diego Water Board for review. The Remedial Action Plan may be conditioned by the San Diego Water Board. Lastly, as described in the Draft PEIR and supporting report (Geosyntec 2011), the project will be required to obtain permits (i.e., section 404 and 401) from regulatory agencies, which may impose monitoring requirements specific to the project. It should also be noted that the TCAO requires the collection of post-dredge samples from all 65 polygons. While the Cleanup Team concurs that migration of contaminants is a potential concern, the mitigation measures in the Draft PEIR are expected to prevent contamination of non-remedial areas.

O-1-3

"As the area to the northwest of the footprint may incur future sediment investigations by CRWQCB, ENVIRON recommends that the potential contamination of surface sediments in these areas by the proposed Site dredging activities be better characterized by relocating the turbidity monitoring locations proposed by Geosyntec (2011) to stations closer to the immediate vicinity of the footprint boundary. Further safeguards may include the use of additional turbidity monitoring locations. Either option should include placement of a monitoring station not more than 50 feet from the northwest boundary of the footprint (approximately in the middle of polygon SW29). Additionally, ENVIRON recommends a pre- and post-dredging survey of concentrations of chemicals in surface sediment in SW29 and potentially-relevant areas to the northwest of SW29. Although the currently-proposed turbidity monitoring is a useful line of evidence, it is flawed as proposed and a comparison of

[1] Barker, D. 2011. Deposition of David Barker, March 3, 2011, San Diego, California

pre- and post-dredging concentrations of COCs in surface sediment would serve as a much stronger line of evidence for evaluating the deposition of suspended footprint sediments to this area."

Please refer to response O-1-2.

O-1-4

The comment states: "2. Stated post-remedy sediment action levels are incorrect. On page 20, Geosyntec (2011) notes: "Sediment concentrations in a horizon that represents the first undisturbed depth beneath the dredge depth will be measured. COCs that will be monitored and compared to background sediment chemistry levels include copper, mercury, HPAHs, TBT, and PCBs. The background sediment chemistry levels are presented in Table 1."

This passage is incorrect. Concentrations of the COCs in surface sediment sampled immediately following dredging are to be compared to values corresponding to 120 percent of the concentrations in background sediment, as discussed on page 34-3 of the CRWQCB's September 15, 2010, version of the DTR. This passage and Table 1 of Geosyntec (2011) should be revised to reflect the approach detailed on page 34-3 of the DTR.

The San Diego Water Board Cleanup Team presumes that the comment citation of Geosyntec (2011) refers to Appendix C, the Water Quality Technical Report for the Shipyard Sediment Remediation Site, San Diego Bay, San Diego, CA. However, the comment cites a draft document, as the cited text is incomplete and incorrect, with the referenced page number and Table also being incorrect. The correct passage reads:

"As per the TCAO, sediment monitoring will occur in footprint polygons (Figure 5) and will be implemented immediately after the dredging contractor has confirmed that dredge depths within the footprint area have been achieved. Sediment concentrations in a horizon that represents the first undisturbed depth beneath the dredge depth will be measured. COCs that will be monitored and compared to background sediment chemistry levels include copper, mercury, HPAHs, TBT, and PCBs. The background sediment chemistry levels are presented in Table 2 and discussed in further detail in the Draft Technical Report for the TCAO (San Diego Water Board 2010)."

Thus, the text references the DTR for the specifics regarding the comparison to background sediment levels.

O-1-5

The comment states: "3. Recent investigations by BAE Systems do not appear to have been considered. Recent Site investigations conducted by BAE Systems (BAE) in support of their late 2010/early 2011 dry dock dredging project do not appear to have been incorporated into the draft EIR materials. During this time period, BAE conducted an investigation of surface and subsurface sediment chemistry in and adjacent to the proposed footprint area. This data

is useful for multiple technical aspects of the EIR, including evaluating the likelihood that the dredged materials would be classified as hazardous waste and predicting potential impacts to water quality as a result of chemical releases from sediment. Waste characterization is a key factor in remedial cost allocation, and it is necessary to obtain a clear accounting of this remedial cost element (as well as the remainder of the remedial cost assumptions). Additionally, updated bathymetry in the BAE portion of the Site would likely improve engineering plans for the various remedial approaches. Turbidity and water quality data collected during BAE's dry dock dredging events should also be incorporated in the monitoring and mitigation plans, as they may offer a better understanding of the Site-specific performance of silt curtains and other efforts related to controlling the migration of suspended sediments."

The comment provides suggestions for incorporating recent non-remedial localized sediment investigations into technical aspects of the Draft PEIR, including the likelihood of sediment being classified as a hazardous waste. However, changes in the likelihood of the amount of hazardous wastes encountered does not warrant changes in the mitigation measures in the Draft PEIR for the assessment and handling of sediment that may be classified as hazardous waste. Furthermore, the results of the localized dredging should not be construed to represent the entire site in any capacity, as sediment sampling has shown pollutants to be variable between and among polygons. The suggestions to incorporate updated bathymetry maps and water quality data into site-specific plans do not provide adequate information to change proposed mitigation measures, as this information is more appropriately considered during project planning phases at localized areas to be dredged. In fact, the suggestion to incorporate this information into monitoring and mitigation plans is expected to occur in accordance with the plan submittal requirements in the TCAO. More specific information at this time is not necessary, as the Project Description contains sufficient detail to assess impacts, identify mitigation measures, and to provide for meaningful public review and comment. Future decisions and implementing actions following certification of the PEIR and approval of the project will be subject to subsequent environmental review pursuant to CEQA.

O-1-6

The comment states: "4. Additional engineering and feasibility detail is needed regarding the proposed remedial activity. There is a paucity of supporting information regarding technical engineering information used to derive the proposed remediation plan. For example, on page 12 of Geosyntec (2011), Geosyntec states that 'Under pier capping operations will likely be performed after sediment removal operations are fully completed.' Due to the creation of slopes adjacent to the piers (due to dredging), under-pier sediment may slough off into the adjacent dredged areas, causing a potential persistent recontamination of these areas. This likelihood should be evaluated via modeling or other engineering information, and results should be incorporated into the overall project planning and made available for review. Additionally, supporting material is needed to fully understand why hydraulic dredging of under-pier sediment was excluded as a remedial option (currently, only capping of under-pier

sediment is proposed). It is possible that hydraulic dredging may address under-pier contamination issues and protect against sloughing of under-pier sediment to adjacent areas. However, these options can only be fully explored by a thorough engineering feasibility evaluation."

As specified in the TCAO and DTR, dredged areas will be evaluated for additional remediation measure based upon a number of factors, including the likelihood of recontamination due to factors such as sloughing. Where appropriate, clean sand cover may be placed in dredged areas to protect "cuts." It is unclear what information is needed that is not already provided in the Geosyntec (2011) report. The Geosyntec (2011) report states:

> "As presented in the TCAO, portions of the remedial areas (2.4 ac) are located under piers and cannot be feasibly dredged without potential significant impacts to infrastructure. Therefore, it is assumed that a clean sand cover will be spread evenly in these under pier areas identified as containing contaminated sediments. It is assumed that the final engineering plan will be designed to illustrate where the sand cover will be placed in relationship to the anticipated dredge 'cut' depths adjacent to the piers where covering will occur. It is assumed that the sand cover will not only be placed on top of the sediment under the piers, but also along the sides at an engineered slope designed to prevent lateral migration of contaminated sediment due to propeller wash, flow and tidal induced erosion. The source and type of sand required for the subaqueous cover will be presented in the final engineering plans."

Thus, it is inappropriate to assume that sloughing will occur, and that hydraulic dredging of under-pier areas thus needs to be further evaluated at this time. More specific information is not necessary, as the Project Description contains sufficient detail to assess impacts, identify mitigation measures, and to provide for meaningful public review and comment. Future decisions and implementing actions following certification of the PEIR and approval of the project will be subject to subsequent environmental review pursuant to CEQA.

O-1-7

The comment concludes the comment letter and does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-1-8

The comment is a signature page certifying the submittal of comments for this project. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

SAN DIEGO COASTKEEPER/ENVIRONMENTAL HEALTH COALITION

Letter Code: O-2

Date: July 27, 2011

O-2-1

The comment states: "San Diego Coastkeeper and Environmental Health Coalition ("Environmental Parties") have reviewed the Draft EIR for the Shipyard Sediment Cleanup. The Environmental Parties remain concerned about the inadequacies of the remedial and post-remedial monitoring plans, detailed in our comments submitted on May 26, 2011. Notwithstanding these comments, with a few additions and clarifications, the Draft Environmental Impact Report will be adequate. It is imperative that the toxic sediments—too toxic for the Ocean Dump site—be removed from the Bay as soon as possible."

This comment expresses an opinion about the project and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project.

O-2-2

The comment states: "The Environmental Parties submit the following comments and recommendations to ensure that the Draft EIR fully reflects the conditions and measures needed to reduce environmental impacts from the project. The Environmental Parties reserve the right to rely on other comments submitted."

The comment is introductory to other comments in the letter. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-2-3

The comment states: "I. The Draft EIR should include and adopt a new, environmentally preferable sediment barging option.

"The current proposal involves two legs of truck traffic related to the project: (1) to truck the dredge spoils to the treatment staging area and (2) to haul the treated sediment to the appropriate landfill. Any remedial option that achieves the cleanup goals while also (1) reducing the number of trucks and truck trips, (2) reducing greenhouse gas emissions, and (3) avoiding from parking impacts on local communities, should be viewed as environmentally preferable.

"The Environmental Parties request that the Draft EIR include and adopt a new option of barging the sediments bound for Otay Landfill to Staging Area 5 on the National City Marine Terminal for treatment. This option could reduce the number of trucks and truck trips,

reduce greenhouse gas emissions, and avoid additional parking impacts on local communities. Northern areas of the proposed Staging Area 5 would reduce or eliminate potential impacts on the Sweetwater Marsh wildlife refuge and should be identified. No areas on the National City Marine Terminal near the parks or commercial areas should be considered for staging."

In summary, the comment expresses an opinion in support of transporting sediment by barge to Staging Area 5 at the National City Marine Terminal before transporting by truck to the Otay Landfill. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project.

The comment indicates that the selection of Staging Area 5 and the use of a barge would reduce the number of truck trips, reduce greenhouse gas emissions, and avoid parking impacts to local communities. To clarify, the current proposal does not rely on, nor explicitly require, two phases of truck trips, as, with the exception of Staging Area 4**,** it is anticipated that the barge will be off-loaded at a staging area. Section 3.6 of the Draft PEIR states: "The project includes dredging of and/or applying a clean sand cover to the contaminated soils; vessel transport to shore; dewatering, stockpiling, and testing of dredged materials at a landside staging location; and truck transport of dredge materials to the appropriate landfill disposal facility. Each of these components is further described below."

While off-loading will likely occur into a dump truck (see Section 3.6.2 of the Draft PEIR), the truck movement is not "equivalent to a trip" as implied by the comment, as the truck will already be located at the staging area.

GHG emissions for the proposed project are disclosed in Section 4.7 of the Draft PEIR. The alternatives considered in this PEIR include:

- **Alternative 1:** No Project/No Development;
- **Alternative 2:** Confined Aquatic Disposal (CAD) Site;
- **Alternative 3:** Convair Lagoon Confined Disposal Facility (CDF); and
- **Alternative 4:** CDF with Beneficial Use of Sediments.

The No Project/No Development Alternative would not result in new emissions of GHGs, and Alternatives 2 through 4 would result in emission similar to the proposed project, as all would require the use of dredge and other equipment and tugs and/or trucks. It is anticipated that, should Staging Area 5 be selected, the sediment would be barged to the marine terminal and then trucked to a landfill after dewatering and treatment, as suggested in the comment.

No off-site truck parking will be allowed, regardless of which Staging Area is selected. All of the potential Staging Areas identified in the Draft PEIR have sufficient space for dredge treatment and staging and truck movement and parking. The San Diego Water Board will

ensure that the responsible parties identified in the TCAO include the requirement that there be no off-site truck parking in the contract specifications. See also Project Refinements in Chapter 1.0 of this RTC document.

The comment further states that locating the staging activities in the northern areas of Staging Area 5 would reduce impacts to the Sweetwater marsh. The San Diego Water Board Cleanup Team concurs with this conclusion, as stated in the Draft PEIR, Mitigation Measure 4.5.10, which states "If Staging Area 5 is selected, prior to initiation of dredging and during final design, the contractor shall endeavor to restrict dewatering and treatment activities to within the western and northern portions of the staging area to the extent feasible. To the extent practicable, activities shall be conducted in locations where existing buildings obstruct sensitive habitat areas from noise sources. The staging area layout shall be submitted to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) (and to the resource agencies, if required) for review and approval."

The Draft PEIR provides a reasonable range of project alternatives and potential staging areas and does not select a preferred alternative or staging area. Once a project has been selected, detailed analyses will be provided in a site-specific environmental document, including any staging area(s) to be used. Suggestions pertaining to the use of Staging Area 5 described in the comment will be further considered during this process.

O-2-4

The comment states: "Similarly, the Naval Station should be evaluated as an additional staging area because it has many piers that are easily accessible by water and the Navy is a potentially responsible party. Further, Naval Station areas north of the National City Marine Terminal are good potential locations that would also support use of barges."

Naval Base San Diego is homeport of the Pacific Fleet, consisting of 56 ships, including 46 U.S. Navy ships, two U.S. Coast Guard cutters, and various ships of the Military Sealift Command, as well as research and auxiliary vessels. Soon, the base will welcome the Navy's newest and most advanced 21st century fleet platforms known as Littoral Combat Ships. Ashore, Naval Base San Diego is also home to more than 200 separate tenant commands and other Navy support facilities, each having specific and specialized fleet support missions. The Base is a workplace for approximately 30,000 military, civilian and contract personnel. Additionally, the base has rooms to house more than 4,000 men and women in modern apartment-like barracks. (Source: http://www.cnic.navy.mil/SanDiego/About/History/index.htm, accessed September 11, 2011.) The Naval Base is an active military installation and is the largest base of the United States Navy on the west coast of the United States. The Department of Navy has not made the facility available for the Shipyard Sediment Remediation Project and is unlikely to do so. Furthermore, availability of the site is outside the control and jurisdiction of the San Diego Water Board and the Port District. Therefore, use of Naval Base San Diego is not considered to be a viable option and was not analyzed further in the Draft PEIR.

O-2-5

The comment states: "II. New relevant studies should be included in the Draft EIR.

"The State Water Resources Control Board Surface Water Ambient Monitoring Program's SWAMP) 2009 Coast Survey, 'Contaminants in Fish from the California Coast' (Attached as Exhibit A) should be included in the Draft EIR. The Coast Survey is California's largest-ever statewide survey of contaminants in sport fish from coastal locations, and it evaluates the extent of chemical contamination in sport fish from California's coastal waters. Results from the first year of the two-year survey reveal that San Diego Bay stands out as having elevated concentrations of mercury and PCBs.[1] The survey sets further data collection and analysis of contamination levels in San Diego Bay as a high priority."[2]

The provided studies are included in Appendix C of this RTC document, and are therefore included in the Final PEIR for the project. They will be made available for review and consideration by the decision-makers. While the information included in these studies is of value, inclusion of this information in the Final PEIR does not change the impact conclusions of the Draft PEIR.

O-2-6

The comment states: "Likewise, the recent 'Final Report to the Port of San Diego Chemical Analysis of threatened and Endangered Species in San Diego: The San Diego Bay Trophic Transfer Project,' by Dr. Rebecca Lewison (Attached as Exhibit B) should be included in the Draft EIR. This study demonstrated that turtles, a long-lived species in the Bay, have had both chronic and acute exposures to toxic chemicals linked to bay sediment contamination through their food sources.[3]

"These studies should be included in the Draft EIR because they further demonstrate the adverse effects of sediment contamination on wildlife in the bay."

Inclusion of this information in the Final PEIR does not change the impact conclusions of the Draft PEIR. Please see response to comment O-2-5.

O-2-7

The comment states: "III. The Draft EIR fails to assess and address impacts of filling the Convair Lagoon, which should not be considered a viable alternative.

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1 J.A. Davis et al., Contaminants in Fish from the California Coast, 2009: Summary Report on Year One of a Two-Year Screening Survey, A Report of the Surface Water Ambient Monitoring Program (SWAMP), California State Water Resources Control Board, Sacramento, CA (2011).

2 Ibid.

3 Lewison et al., Chemical Analysis of Threatened and Endangered Species in San Diego (2011).

"The Draft EIR fails to adequately address the impacts of filling Convair Lagoon. When originally conceived and permitted, the existing underwater cap was to be replanted with eelgrass and restored as a habitat. If the lagoon is filled, the loss of habitat area and of open water would need to be mitigated. However, two projects listed as potentials (intake/ discharge channels of the power plant and fixing a failed previous mitigation) would not be appropriate and would, in fact, constitute double-dipping. Thus, these two projects should not be considered as mitigation options. The Port is very limited on mitigation options in the bay, so a major effort must be made to find adequate and appropriate mitigation for this option."

The Convair Lagoon Alternative is analyzed in detail in Chapter 5 of the Draft PEIR. Clarifications have been made to the text of this chapter, which is reprinted in Appendix A, Errata, of this RTC document.

To clarify, the Draft PEIR includes the Convair Lagoon confined disposal facility as a project alternative for consideration consistent with the requirements of CEQA. The Draft PEIR does not choose a preferred alternative. The Draft PEIR also clearly states that creation of a confined disposal facility would require significant levels of open water and eelgrass creation mitigation, and though potential sites are discussed, no specific site is identified. The evaluation of potential mitigation sites will be conducted by the San Diego Water Board and the Unified Port of San Diego through consultation with the appropriate regulatory permitting process, which is also explained in the Draft PEIR. The Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to those required for the proposed project in multiple areas, most significantly including water quality and biological resources.

O-2-8

The comment states: "IV. New mitigation measures must be added to the Draft EIR, and current measures must be strengthened.

"Mitigation measures must be added to the Draft EIR. As written, the Draft EIR fails to provide adequate and appropriate mitigation with respect to impacts on the community, air quality, and on endangered species and habitats.

a. The staging areas will adversely affect the community and must be mitigated.

Displaced parking is already a major issue in the community, thus any parking impacts must be mitigated. Staging Areas 1-4, if used, will have significant impacts on the entire community, and Staging Area 5, if used, will have impacts on areas of west Old Town National City. Mitigation fees to offset impacts should be paid to the Ports Capital Improvement Fund for projects in Barrio Logan and Old Town National city in proportion to the amount of traffic and impacts that accrue in those neighborhoods."

The comment asserts that the Proposed Project would result in significant parking impacts to the community and that mitigation fees are warranted. The Draft PEIR found that the Proposed Project would not result in significant parking impacts as a result of employee parking limitations with incorporation of Mitigation Measure 4.1.3. Mitigation Measure 4.1.3 requires that, should one or more of Staging Areas 1 through 4 be selected, the San Diego Water Board, will ensure that the responsible parties identified in the TCAO, in consultation with the Port District, the shipyards, and the City of San Diego, would prepare a Parking Management Plan (PMP) to identify appropriate substitute parking areas, shuttles, and commuter routes, as necessary, to meet the need created by the short-term loss of employee parking spaces. Mitigation Measure 4.1.3 is included to ensure that the potential short-term parking loss impact during the dredge activity is reduced to less than significant. No additional mitigation, including mitigation fees, is required.

No off-site truck parking will be allowed, regardless of which Staging Area is selected. All of the potential Staging Areas identified in the Draft PEIR have sufficient space for dredge treatment and staging and truck movement and parking. The San Diego Water Board will ensure that the responsible parties identified in the TCAO include a requirement that there be no off-site truck parking in the contract specifications. See also Project Refinements in Chapter 1 of this RTC document. CEQA Guidelines section 15126.4 (a) (3) states that "mitigation measures are not required for effects which are not found to be significant." A discussion of mitigation measures is required for significant environmental effects only. There are no significant effects related to parking impacts, and no mitigation measures, including mitigation fees, are warranted relative to truck parking.

Furthermore, Mitigation Measure 4.1.1 requires that project-related truck traffic is routed on Harbor Drive (southbound) to the Civic Center Drive access to I-5, thereby avoiding impacts to Barrio Logan. Traffic impacts for Staging Area 5 were determined to be less than significant. See Section 4.1 of the Draft PEIR for more information.

The Draft PEIR provides a reasonable range of project alternatives and potential staging areas and does not select a preferred alternative or staging area. Once a project has been selected, detailed analyses will be provided in a site-specific environmental document, including any staging area(s) to be used.

The comment's references to air quality and biological impacts are introductory to comments that follow later in the letter. Please see Responses to Comments O-2-13 through O-2-15, below.

O-2-9

The comment states: "Further, trucks parked in neighborhoods while waiting for pick-ups and drop-offs would negatively impact the community. The Draft EIR should designate a truck staging area to address this issue."

No off-site truck parking will be allowed, regardless of which Staging Area is selected. All of the potential Staging Areas identified in the Draft PEIR have sufficient space for dredge treatment and staging and truck movement and parking. The San Diego Water Board will ensure that the responsible parties identified in the TCAO include a requirement that there be no off-site truck parking in the contract specifications. See also Project Refinements in Chapter 1 of this RTC document. See also responses to comments O-2-3 and O-2-8.

O-2-10

The comment states: "b. Current mitigation measures for air quality impacts must be strengthened to ensure that the cleanup protects the environment and does not contribute to existing air pollution.

Mitigation Measures 4.6.8 and 4.6.9 should be strengthened to require all that trucks used be hybrid or cleaner alternative fuel trucks and tugs. Further, electric powered dredging equipment should be required for all dredging. For a project of this magnitude and duration, it will be cost- effective to utilize this new technology."

Mitigation Measure 4.6.8 requires that all diesel-powered equipment used are retrofitted with after-treatment products (e.g., engine catalysts) to the extent that they are readily available in the San Diego Air Basin (SDAB). Mitigation Measure 4.6.9 requires that all heavy-duty diesel-powered equipment operating and refueling at the project site use low oxides of nitrogen (NO_X) diesel fuel to the extent that it is readily available and cost effective (up to 125 percent of the cost of ARB diesel) in the SDAB. (This does not apply to diesel-powered trucks traveling to and from the project site.)

The comment suggests that all trucks used for the project be hybrid or cleaner alternative fuel trucks and tugs, and that electric powered dredging equipment should be required for all dredging.

The purpose of describing mitigation measures in an EIR is to identify mitigation measures that could minimize significant adverse impacts. A mitigation measure may be rejected as infeasible if it is "[in]capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors" (Public Resources Code Section 21061.1). Legal or other factors, such as providing employment opportunities, may also be considered in making a finding of infeasibility. See Public Resources Code section 21081; see also CEQA Guidelines section 15091 (a)(3).

Hybrid and other alternative fuel trucks and tugs, as well as electric dredge equipment currently have limited availability. For example, the San Diego Water Board Cleanup Team is aware of one zero-emission truck delivered for an 18-month pilot program in the Port of Long Beach/Port of Los Angeles area. There is no information to support a conclusion that this or other such zero-emission trucks are readily available in the SDAB. Also, there is no

evidence to support a conclusion that the use of electric dredge equipment would be either available or practical for use in the San Diego Bay. Small, electric remote dredge equipment with a hull construction on 2 foam-filled pontoons can be used in small, enclosed water bodies, but are not appropriate for the nature and scale of the proposed project in the San Diego Bay. (www.lwtpithog.com/Specifications/remote_control_dredge_PHE40HP.htm, accessed September 12, 2011.) If non-remote control dredge equipment were to be used, it would need to be cabled to a source of electricity. Use of an electric cable to power equipment operating in the actively navigated San Diego Bay is neither practical nor advisable.

Since these types of equipment are not widely available and/or practical, a requirement to use zero-emission trucks and/or dredging equipment would unduly hinder the timing of the remediation implementation. The mitigation measures identify the conditions under which these considerations would be implemented if they are readily available in the SDAB for both retrofitted equipment and cleaner fuel, and, if they are readily available, that they also be cost effective.

The San Diego Water Board has been working on the development and issuance of the TCAO for discharges of metals and other pollutant wastes to San Diego Bay marine sediment and waters at the Shipyard Sediment Site for approximately 10 years. The Cleanup Team has identified elevated levels of pollutants in the San Diego Bay bottom sediments adjacent to NASSCO and BAE Systems shipyards. The concentrations of these pollutants cause or threaten to cause a condition of pollution that harms aquatic life and beneficial uses designated for San Diego Bay. The concentrations of these pollutants also present aquatic-dependent wildlife and human health risks from exposure to pollutants through the food chain attributable to the contaminated sediment.

The additional mitigation requirements cited in the comment would inappropriately limit the project to types of trucks and equipment that are not widely available and that could add an indefinite amount of time to the project schedule. The San Diego Water Board Cleanup Team has concluded that the suggested mitigation would result in delaying the full implementation of the project cleanup plan that is intended to protect the quality of the waters of San Diego Bay for use and enjoyment by the people of the state, and that such delay is a factor that is considered in making the finding of infeasibility. Since the suggested mitigation could not be accomplished in a successful manner within a reasonable period of time, it is considered to be infeasible mitigation under CEQA.

Furthermore, Mitigation Measure 4.6.10 requires that alternative fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, and unleaded gasoline) are utilized to the extent that the equipment is readily available and cost effective in the SDAB. Therefore, in addition to being considered infeasible, the portion of the suggested mitigation related to alternatively fueled equipment is also not adopted because it is similar to mitigation measures already incorporated into the project.

O-2-11

The comment states: "The Environmental Parties suggest that Mitigation Measure 4.6.10 should be required without limitation or, at a minimum, the Draft EIR should define what "cost-effective" means. Without this requirement, the dischargers will not use hybrid or cleaner alternative fuel trucks and tugs. Further, for air emissions that cannot be eliminated, the dischargers must acquire NO_X and ozone offsets for the emissions from the project, as the area is currently in "non-attainment" for these air pollutants."

See Response to Comment O-2-10 regarding the fact that some of the alternative fuel construction and transportation equipment are not readily available, and that a requirement to use such fuels and/or equipment would adversely impact the project implementation schedule and delay the achievement of the project's environmental clean-up objectives.

It is commonly understood that a cost effectiveness evaluation is the examination of the cost and the outcomes of the alternative means of accomplishing an objective, in order to select the one with the highest effectiveness relative to its cost. Because the alternative fuel construction and transportation equipment are not readily available, their cost effectiveness is a moot issue. Thus the Final PEIR need not define "cost-effective."

O-2-12

The comment states: "In addition to reducing air pollution in local communities, a requirement for hybrid tugs and trucks would also help reduce the impacts on global climate change. This option is clearly feasible, as the Ports of Los Angeles and Long Beach are using a zero-emission heavy-duty rig that runs on electric batteries powered by a hydrogen fuel cell to transport cargo between the ports and Inland Empire warehouses and distribution centers. See *Los Angeles Times*, "Seaport complex takes delivery of zero-emission hauling truck," July 23, 2011, Attached as Exhibit C."

The referenced article identifies one zero-emission truck in the Port of Long Beach/Port of Los Angeles area, and does not provide sufficient information to support a conclusion that such alternative fuel trucks are readily available in the San Diego Air Basin. The presented article, dated July 23, 2011, discusses one truck delivered for an 18-month pilot program for the Ports of Los Angeles and Long Beach. The truck of discussion is for hauling cargo containers and is not a barge or truck fitted with containment for transporting contaminated sediment. Please see response to comment O-2-10 above. The provided article is included in Appendix C of this RTC document, and is therefore included in the Final PEIR for the project. It will be made available for review and consideration by the decision-makers. Inclusion of this information in the Final EIR does not change the conclusions of the Draft PEIR.

O-2-13

The comment states: "c. The Draft EIR must adopt more stringent measures to mitigate impacts on endangered species and of habitat loss in the bay.

"The Draft EIR should recommend that dredging should not be allowed to occur during the California Least Tern nesting season. The Tern colonies in the region are already suffering under existing pressures, such as the Big Bay fireworks show and budget cuts reducing predator management. The Cleanup would place additional pressure on the already strained Tern population. Thus, if dredging is allowed during nesting season, mitigation of impacts to the Terns must be required."

The Draft PEIR clearly states that there are two scheduling options for the remediation, with one option avoiding the tern nesting season (see section 3.6). As the section states, "The preferred schedule will be determined during the final design phase. However, both schedule options are included in the technical study analyses and the Draft PEIR."

Future decisions and implementing actions following certification of the PEIR and approval of the project will be subject to subsequent environmental review pursuant to CEQA. The PEIR, once certified, may be used as an environmental clearance baseline against which to evaluate future site-specific implementation approvals and permits for implementation of the proposed project." Thus, the "tiering" process and need for further environmental review will be specific to the selection of the dewatering and treatment site(s) for the dredged materials.

The Draft PEIR evaluates a reasonable range of project alternatives and potential staging areas, and does not select a project or staging area. Once a preferred alternative and Staging Area have been selected, detailed analyses will be provided in a site-specific environmental document, including any staging area(s) to be used and potential impacts on California least tern nesting colonies associated with those staging areas. Lastly, the regulatory permitting process under federal law will require dredging to be coordinated with the USFWS. It is noted in the Draft PEIR (Table 4.5-3) that the likelihood that California least terns will be nesting adjacent to the dredging area or at the Staging Areas under consideration is considered to be low. The discussion of potential project impacts to this species begins on page 4.5-51 in the Draft PEIR. As noted therein, the potential for impacts to California least tern resulting from the project are unlikely to be significant, but may be cumulatively significant. Mitigation Measure 4.5.9 and agency consultation prior to project implementation are intended to minimize and avoid impacts to this species.

O-2-14

The comment states: "The economic analyses included in the Draft Technical Report assume that dredging will not occur during the California Least Tern nesting season. If this

limitation is not required, the Cleanup Team must re-calculate dredging costs to reflect this changed assumption."

The comment on the economic analysis is not applicable to the Draft PEIR, but rather is a comment on the Draft Technical Report on the TCAO. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. However, for informational purposes, it is noted that the $58 million estimated cost of dredging presented in the DTR is part of the "total values" analysis required by Resolution No. 92-49 in order to establish alternative cleanup levels greater than background (see Response to Comments Report on the TCAO and DTR, Response No. 31-1). If the dredging is done continuously over 12.5 months instead of in three 7-month seasons, then only one mobilization and one demobilization would occur instead of three. The estimated cost of one mobilization and demobilization is $300,000 (see DTR Table 32-26). Therefore, if the dredging is done in one 12.5-month period, the cost of the dredging project would be reduced by $600,000. This reduction represents a 1 percent change in the estimated cost of the dredging project and is not significant.

O-2-15

The comment states: "Further, the Draft EIR should require mitigation if any open water or bay bottom is permanently lost to fills or confined disposal facilities."

This comment pertains to Chapter 5, Section 5.10.4 of the Draft PEIR. See Appendix A of this RTC document for an updated Chapter 5.0. The mitigation measures included for loss of open water impacts associated with the Convair Lagoon Alternative include:

Mitigation Measure 5.10.4.4: **Jurisdictional Waters and San Diego Bay Surface Loss.** New bay habitat shall be created within an alternative location of the San Diego Bay via excavation of shoreline and creation of tidal influence in previously non-tidal areas. The mitigation ratio for the loss of 8.5 acres of intertidal and subtidal habitats would occur at a 1:1 ratio. The coastal salt marsh habitat shall be mitigated at a 4:1 ratio (i.e., creation of 0.44 acres of salt marsh habitat for 0.11 acres impact). This shall include:

a. The removal and disposal or reuse of historic fills;

b. Grading the site to a desired hydrologic condition of channels, subtidal basins, and intertidal flats in order to support desired compensatory habitat; and

c. Planting pilot vegetation plots to allow for natural expansion of marshland vegetation.

The creation of new bay surface water habitat may occur in one or more of the following locations, as approved by the resource agencies NMFS, USFWS, EPA, CDFG and ACOE: 1) Grand Caribe Isle in the Coronado Cays; 2) D Street Fill just across the Sweetwater Channel from the National City Marine Terminal; 3) the South Bay Power Plant; 4) the Salt Works; and/or; 5) Pond 20 adjacent to the Salt Works. The approved mitigation site shall be lowered from upland elevations to create intertidal and subtidal habitats, except for the South Bay Power Plant, which would require filling the existing intake and discharge channels of the power plant to create tidal lands. The mitigation ratio for intertidal and subtidal habitats would occur at a 1:1 ratio; however, the coastal salt marsh habitat would have to be mitigated at a 4:1 ratio. These ratios would require the replacement of approximately 3.9 acres of intertidal habitat, 4.49 acres of shallow subtidal habitat, 0.31 acres of moderately deep and deep subtidal habitat (which would most likely be replaced as intertidal habitat due to habitat value) and 0.44 acres of coastal salt marsh habitat. Brief descriptions of the potential mitigation locations for jurisdictional and San Diego Bay surface loss impacts are described Table 5-26. The San Diego Water Board shall verify implementation of this measure.

Draft PEIR Table 5-26: Potential Mitigation Sites for San Diego Bay Surface Water Loss

Potential Surface Bay Loss Mitigation Site	Description
Grand Caribe Isle	The Grand Caribe Isle is located on South Grand Caribe Isle in the Coronado Cays. The South Grand Caribe Isle site is a disturbed upland area that would be regraded to accommodate wetland, intertidal marsh, and subtidal habitat. This area is located adjacent to a small passive use native plant park and has recently been used as a borrow site for the former Campbell Shipyard sediment remediation project sediment sand cap. The on-site soil consists of loamy sand from marine deposits. The Bay surrounds the site, with the peninsular connection being isolated from other native upland habitats by the Coronado Cays residential development. The biological resources on the site are dominated by common, widely distributed species, many of which are representative of disturbed lands. Species well represented on the site include salt heliotrope (*Heliotropium curvassavicum*), slender-leaved iceplant (*Mesembryanthemum nodiflorum*), garland (*Chrysanthemum coronarium*), and red-stem filaree (*Erodium cicutarium*).

Draft PEIR Table 5-26: Potential Mitigation Sites for San Diego Bay Surface Water Loss

Potential Surface Bay Loss Mitigation Site	Description
D Street Fill	D Street Fill is located immediately south of the National City Marine Terminal (NCMT) across the Sweetwater River channel. The site is routinely cleared/disked in an effort to provide nesting habitat for the California least tern (*Sterna antillarum browni*). As a result, the area is mostly devoid of vegetation. Plant species that occur are limited to native and non-native species that are typical of disturbed sandy soils found in the area. These species include opportunistic native species such as woolly lotus (*Lotus heermannii* var. *heermannii*), salt heliotrope, beach evening primrose (*Camissonia cheiranthifolia* ssp. *suffruticosa*), coyote brush (*Baccharis pilularis*), coast woollyheads (*Nemacaulis denudata* var. *dunudata*), and fragrant everlasting (*Pseudognaphalium beneolens*). Non-native plant species include Hottentot-fig (*Carpobrotus edulis*), slender-leaved iceplant, garland, pineapple weed (*Amblyopappus pusillus*), and red-stem filaree. Bird species that utilize this area for foraging and/or nesting include horned lark (*Eremophila alpestris*); Northern rough-winged swallow (*Stelgidopteryx serripennis*); and during the winter, American pipit (*Anthus rubescens*) (pers.com Robert Patton). The gull-billed tern (*Sterna nilotica*), a species that predates on California least tern young, is also known to forage over the site.
Salt Works	Marsh lands around the mouth of the Otay River in the shallow, south end of San Diego Bay were converted to salt evaporation ponds in the late 1800s. Over the past century, various internal berms have been constructed, repaired, and removed by operational changes and flooding. These changes have resulted in changing topographic conditions that have resulted in a number of distinct pond cells. The salt ponds consist of shallow, open water cells of different salinity levels interspersed with mudflats, dry dikes, and salt marsh. The salt pond levees consist primarily of unvegetated uplands. The lack of vegetation on many of the levee tops is the result of ongoing maintenance activities associated with the salt operation, as well as the high salinities that exist in the vicinity of the levees. The nature of the salt extraction process has facilitated use of this artificial habitat by many shorebirds, sea birds, and waterfowl. It represents one of the few large feeding, roosting, and nesting areas remaining along the urbanized southern California coast.
Pond 20	The Pond 20 site, located south of the Salt Works is defined by internal dikes that include three smaller pond cells (Ponds 20A, 20B, and 20C). Pond 20 is isolated from tributary fresh or saltwater surface input and experiences occasional storm runoff from the internal pond basin and a roadway surface drain from Palm Avenue. Seasonally, water levels in the pond fluctuate significantly and waters are highly saline due both to the pond's history as a salt concentrator and the continued closed system evaporative processes occurring in the pond today. Years of drought and heavy rainfall influence the levels of standing water in the pond and the rates of fluctuation of water surface levels. At present, limited standing water is found along the lower-lying "channels" that parallel the dike and generally below a nearly complete salt crust. These deeper channels are believed to be borrow areas for the reconstruction and repair of the pond containment dikes. These channels also historically enhanced water collection for pumped transfers within the salt pond system.

O-2-16

The comment concludes the comment letter. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

NASSCO

Letter Code: O-3

Date:

O-3-1

The comment states: "Designated Party National Steel and Shipbuilding Company ('NASSCO') submits the following comments regarding the Draft Environmental Impact Report ('DEIR') for the Shipyard Sediment Remediation Project ('Project'), State Clearing House Number 2009111098, publicly released by the California Regional Water Quality Control Board, San Diego Region ('Regional Board') on June 16, 2011. NASSCO is also concurrently submitting under separate cover additional comments on the DEIR prepared by Rick Bodishbaugh, Tom Ginn and Gary Brugger of Exponent, and Michael Whelan and David Templeton of Anchor QEA, which are intended to supplement this letter.

Although we have numerous concerns with the analysis in the DEIR, NASSCO's key concerns are summarized as follows:"

The comment is introductory to other comments in the letter. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-2

The comment states: "Monitored Natural Attenuation: The DEIR fails to mention (much less evaluate) a monitored natural attenuation alternative to the Project, even though such an alternative was selected as the preferred remedy in the Detailed Sediment Investigation underlying Tentative Cleanup and Abatement Order R9-2011-0001 ('TCAO') and the associated Draft Technical Report ('DTR'), and notwithstanding that substantial evidence demonstrates that the monitored natural attenuation alternative will avoid all of the proposed Project's significant and potentially significant environmental impacts, obviate the need for the Project's detailed, costly and uncertain mitigation measures, and feasibly accomplish the Project Objectives in a reasonable period of time."

Section 15126.6(a) of the CEQA Guidelines requires that:

> "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. An EIR is not required to consider alternatives that are infeasible. The Lead Agency is responsible for selecting a range of project

> alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason."

Consistent with the CEQA Guidelines criteria for selection of project alternatives, the following four alternatives have been determined to represent a reasonable range of alternatives that have the potential to feasibly attain most of the basic objectives of the project but that may avoid or substantially lessen any of the significant impacts of the project. Therefore, the alternatives considered in this PEIR include the following:

- **Alternative 1:** No Project/No Development;
- **Alternative 2:** Confined Aquatic Disposal (CAD) Site;
- **Alternative 3:** Convair Lagoon Confined Disposal Facility (CDF); and
- **Alternative 4:** CDF with Beneficial Use of Sediments.

The Draft PEIR does not improperly omit the consideration of monitored natural attenuation as a project alternative under CEQA Guidelines (§ 15126.6). The comment cites CEQA Guidelines at 15126.6(a) regarding alternatives and the selection of alternatives for the proposed project, arguing that an "*an in-depth discussion* is required of any alternative that is *at least potentially feasible*. Center for Biological Diversity, 185 Cal. App. 4th at 883." Further, the comment states that "an EIR is legally defective if it fails to include a reasonable explanation for excluding consideration of an alternative that would reduce environmental impacts and achieve most project objectives. Center for Biological Diversity, 185 Cal. App. 4th at 883." However, these citations are taken out of context, as the referenced cases discuss the level of evaluation necessary for alternatives that have been identified that would attain most of the project objectives. The cited CEQA Guidelines at 15126.6(a) state:

> (a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376).

Furthermore, the rule of reason in CEQA Guidelines at 15126.6(f) states:

> (f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

The Draft PEIR was not, as the comment states, required to evaluate monitored natural attenuation as an alternative to the project, because monitored natural attenuation fails to achieve the majority of the project objectives, as identified in the Draft PEIR:

> The primary goal of the project is to improve water quality in San Diego Bay, consistent with the provisions of the Tentative Cleanup and Abatement Order (CAO). The specific project objectives are:
>
> - Protect the quality of the waters of San Diego Bay for use and enjoyment by the people of the state by executing a shipyard sediment cleanup project consistent with the provisions of TCAO No. R9-2011-0001;
> - Attain cleanup levels as included in the TCAO No. R9-2011-0001 (judged to be technologically and economically feasible as defined in section 2550.4 of CCR Title 23, pursuant to Resolution No. 92-49);
> - Remediate areas identified in Attachment 2 of TCAO No. R9-2011-0001;
> - Minimize adverse effects to aquatic life beneficial uses, including Estuarine Habitat (EST), Marine Habitat (MAR), and Migration of Aquatic Organisms (MIGR);
> - Minimize adverse effects to aquatic-dependent wildlife beneficial uses, including Wildlife Habitat (WILD), Preservation of Biological Habitats of Special Significance (BIOL), and Rare, Threatened, or Endangered Species (RARE);
> - Minimize adverse effects to human health beneficial uses, including Contact Water Recreation (REC-1), Non-contact Water Recreation (REC-2), Shellfish Harvesting (SHELL), and Commercial and Sport Fishing (COMM);
> - Implement a cleanup plan that will have long-term effectiveness;
> - Minimize adverse effects to the natural and built environment;
> - Avoid or minimize adverse impacts to residential areas;
> - Result in no long-term loss of use of shipyard and other San Diego Bay-dependent facilities; and

- Minimize short-term loss of use of shipyard and other San Diego Bay-dependent facilities.

Monitored natural attenuation (MNA) alone is not sufficient to meet Draft TCAO remediation goals in a reasonable time frame or to ensure protection of beneficial uses over the long term. Further, monitored natural attenuation would result in an adverse impact to aquatic life, aquatic dependent wildlife, and human health-related beneficial uses over an extended and indefinite time period. Allowing beneficial uses at the Site to remain impaired for years is inconsistent with the cleanup goals and objectives in the Tentative TCAO for the Shipyard Sediment Site, could not be considered "implementing" the San Diego Region's Basin Plan, and is not a way to achieve cleanup goals and objectives within a reasonable time frame. A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D.

Monitored natural attenuation would only meet the last three short-term project objectives simply by not conducting the actual dredging activities. This is acknowledged by the comment, which states the "alternative will avoid all of the Project's significant environmental impacts to air quality, as well as its potentially significant effects to biological resources, water quality, hazardous materials and traffic, all of which are tied specifically to dredging."

Thus, in consideration of the project objectives, the San Diego Water Board did not evaluate or consider monitored natural attenuation as a reasonable alternative. Therefore, its inclusion as an alternative is not necessary to foster meaningful public participation and informed decision-making regarding the proposed project. Additionally, CEQA "does not require that every conceivable alternative be stated in the [EIR] nor that the alternatives that are stated be described in every possible detail … [w]hat is required is that the EIR give reasonable consideration to alternatives in light of the nature of the project" (see City of Rancho Palos Verdes, supra, 59 Cal. App. 3d at page 892). Furthermore, "CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its own facts, which in turn must be reviewed in light of the statutory purpose" (Goleta II, supra, 52 Cal. 3d at p. 566; *Mann v. Community Redevelopment Agency* (2d Dist. 1991) 223 Cal. App. 3d 1143 [285 Cal. Rptr. 9]; *Save San Francisco Bay Association v. San Francisco Bay Conservation and Dev elopement Commission* (1st Dist. 19920 10 Cal. App. 4th 908, 919 [13 Cal. Rptr. 2d117].

Finally, it is noted that natural attenuation is included in the project as reflected in the TCAO. Chapter 3.0 of the Draft PEIR states that remedial actions may include dredging, application of clean sand cover, and/or natural recovery depending upon a number of factors, including levels of contamination in the sediment and site accessibility. The proposed dredge area is

approximately 11 percent of the total area of the Shipyard Sediment Site and most of the areas outside the proposed dredge area, approximately 89 percent of the Site, have several primary and secondary chemicals of concern (COCs) above background levels. Therefore, if natural attenuation is occurring, it will serve to reduce the pollutant levels in those areas not slated for active remediation by dredging.

O-3-3

The comment pertains to stormwater discharges and states: "Recontamination from Stormwater: The DEIR does not disclose the past and continuing discharges of urban runoff from Chollas Creek and other sources to the Shipyard Sediment Site ('Site'), even though the TCAO and DTR make clear that these discharges have contributed pollutants to sediments at the Site. This omission is compounded by the DEIR's failure to evaluate reasonably foreseeable impacts to the Site from recontamination, which would likely occur after the Project's contemplated dredging is completed given that stormwater discharges to the Site (unrelated to NASSCO) are uncontrolled."

In accordance with the requirements of CEQA, an EIR must identify and focus on the significant environmental effects of the proposed project. Because the purpose of an EIR is to assess the project's effects on the existing environment, an EIR need not resolve existing environmental problems that will not be made worse by the project. For example, in *Watsonville Pilots Association versus City of Watsonville* (2010), the court rejected a claim that that the EIR for a new General Plan must resolve an existing groundwater overdraft problem. The same approach would apply to the commenter's suggestion that the EIR for the remedial dredging project must resolve a surface stormwater discharge concern. In summary, the purpose of an EIR is to disclose the potential impacts of a proposed project compared to the existing conditions. It is not the purpose of a DEIR to mitigate the existing conditions. The San Diego Water Board is of the opinion that the removal of 143,400 cubic yards (cy) of contaminated marine sediment from the San Diego Bay will, in fact, further the objectives of the project to attain cleanup levels as included in the TCAO No. R9-2011-0001 and protect the quality of the waters of San Diego Bay for use and enjoyment by the people of the state. A detailed discussion on the basis for the San Diego Water Board Cleanup Team's conclusion that cleanup pursuant to the TCAO can proceed while source control efforts are underway is contained in Response 4.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D.

O-3-4

The comment states: "Hypothetical Baseline: The DEIR states without analysis that existing sediment quality at the Site adversely impacts beneficial uses to aquatic life, aquatic-dependent wildlife and human health. But these statements are based on extremely conservative theoretical assumptions used to support the DTR's analysis, and have no

relationship to the actual, existing conditions at the Site, as is mandatory for the 'baseline' under the California Environmental Quality Act ('CEQA')."

The San Diego Water Board has been working on the development and issuance of the TCAO for discharges of metals and other pollutant wastes to San Diego Bay marine sediment and waters at the Shipyard Sediment Site for approximately 10 years. The San Diego Water Board has identified elevated levels of pollutants in the San Diego Bay bottom sediments adjacent to NASSCO and BAE Systems shipyards. The concentrations of these pollutants cause or threaten to cause a condition of pollution that harms aquatic life and beneficial uses designated for San Diego Bay. The concentrations of these pollutants also present aquatic-dependent wildlife and human health risks from exposure to pollutants through the food chain attributable to the contaminated sediment. The San Diego Water Board's statutory duty to ensure restoration and enhancement of beneficial uses under Division 7 of the Water Code *demands* that the San Diego Water Board make reasonably conservative and environmentally protective assumptions about exposure, consumption, and risk in determining potential effects to beneficial uses from the pollutants accumulated in the sediment. A detailed discussion on the statutory and technical basis supporting the San Diego Water Board Cleanup Team's conservative exposure parameter assumptions used in the aquatic dependent wildlife and human health risk assessments is contained in Responses 24.1and 28.1, respectively, in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D.

In light of the history of studies, including sampling and other analyses used to prepare the DTR and TCAO, the San Diego Water Board concludes that the information contained in the DTR more than adequately and appropriately characterizes the existing sediment quality for the purpose of the Draft PEIR.

O-3-5

The comment states that: "D. The DEIR Provides No Support For Its Assumption That 15% of the Sediment Will Be Classified as 'Hazardous" Material'

"The DEIR assumes that 15% of the sediment to be dredged under the proposed Project will be classified as 'hazardous' and require transport to a Class I hazardous waste facility. *E.g.*, DEIR, at 4.1-12. This is presented as a 'worst-case' scenario. *Id.* The DEIR does not provide any support for this assumption, however, and therefore must be revised to inform the public as to the basis of the assumption. If none of the dredged sediment is 'hazardous,' that would upset the stated rationale for incurring the environmental impacts and other costs associated with the proposed plan to dredge 143,000 cubic yards of sediment from the Bay. If, after dredging, more than 15% of the material is determined to be 'hazardous,' this would disturb the remaining environmental impact analyses for a variety of impact areas, including

but not limited to impacts associated with truck trips required to transport the material to a hazardous waste facility.

"The DEIR's assumption regarding the amount of sediment that will qualify as 'hazardous' is relied upon and affects all environmental impact areas that were assessed, so it is particularly important that the DEIR provide support for that assumption; or, if there is no support, explain how each impact area will be affected if the assumption proves to be incorrect."

The Draft PEIR states as follows:

> "Once the dredge materials have been dried and tested, they will be loaded onto trucks for disposal at an approved landfill. For purposes of this project, it is assumed that 85 percent of the material will be transported from the staging area to Otay Landfill, approximately 15 miles southeast of the Shipyard Sediment Site. Although the sediment is not known to be classified as California hazardous material, it will be tested upon removal and prior to disposal. It is assumed for the purposes of this DPEIR that up to 15 percent of the material will require transport to a hazardous waste facility (a Class I facility), which will most likely be the Kettleman Hills Landfill in Kings County, California, near Bakersfield. Based on the excavation quantity of 143,400 cubic yards (cy) and accounting for an additional 15 percent of bulk material due to the dewatering and treatment process, it is estimated that up to 250 truck trips per week could be required over an approximately 12.5-month period to remove the material. These estimates are a worst-case scenario and will be finalized during the design phase."

The 15 percent is an estimate based on available information and the collective consideration of the San Diego Water Board staff and a representative of the shipyards, as reflected in a discussion held at on an on-site meeting on December 22, 2010. More specific information is not necessary, as the project description is appropriately described in sufficient detail to assess impacts, identify mitigation measures, and to provide for meaningful public review and comment. Future decisions and implementing actions following certification of the PEIR and approval of the project will be subject to subsequent environmental review pursuant to CEQA. It is further noted that 1) The comment does not provide evidence that contradicts this estimate, and 2) the California Department of Toxic Substances Control reviewed the Draft PEIR, submitted comments, and had no comments regarding this estimation of hazardous material.

O-3-6

The comment states: "Proposed Mitigation Is Infeasible: The DEIR introduces new mitigation requirements that were not evaluated in the TCAO/DTR's economic feasibility analysis, and which will add an estimated $11.8 to $18.3 million to the costs of remediating the Site. Because these measures were not evaluated under State Water Resources Control Board Resolution No. 92-49, Polices and Procedures for Investigation and Cleanup and

Abatement of Discharges Under Water Code section 13304 ('Resolution 92-49'), or California Water Code sections 13267 and 13307, and in any event will not pass muster under such analysis to the extent that it is conducted, the Regional Board lacks authority to impose these measures under the Porter Cologne Act and they are thus 'legally infeasible' under CEQA. The additional costs also render certain of the measures, and implementation of the proposed Project as a whole, economically infeasible under CEQA."

The San Diego Water Board does not concur with the commenter's assertion that the EIR must be limited to measures included in the TCAO/DTR cost analysis. A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. To implement this statutory purpose, an EIR must describe feasible mitigation measures that can minimize the project's significant environmental effects (CEQA Guidelines Section 15121(a) and 15126.4(a)). Please see responses to comments O-3-83 to O-3-100 and O-3160 to O-3-174 regarding the feasibility of specific mitigation measures.

O-3-7

The comment states: "The Regional Board Cannot Mandate Cleanup Methods: The proposed Project and alternatives (aside from the 'no project' alternative) each purport to dictate the method by which cleanup levels at the Site are to be achieved. However, because the Regional Board's authority under the Porter Cologne Act is limited to prescribing cleanup levels rather than selecting methods to achieve those cleanup levels, (Water Code § 13360), the Project and the alternatives proposing remediation each are 'legally infeasible' under CEQA because they cannot be adopted under the Porter Cologne Act."

The San Diego Water Board notes that Water Code section 13360 also states that: "(b) If the court, in an action for an injunction brought under this division, finds that the enforcement of an injunction restraining the discharger from discharging waste would be impracticable, the court may issue any order reasonable under the circumstances requiring specific measures to be undertaken by the discharger to comply with the discharge requirements, order, or decree."

Regardless, the evaluation of specific remedial actions in the Draft PEIR does not constitute an action by the San Diego Water Board to dictate how to achieve cleanup levels. The Project Description states that "Remedial actions may include dredging, application of clean sand cover, and/or natural recovery depending upon a number of factors, including levels of contamination in the sediment and site accessibility" (Draft PEIR, page 3-5). The use of a Programmatic EIR is appropriate to evaluate the potential impacts of a variety of means to conduct cleanup. The remedial actions evaluated in the Draft PEIR were developed in consultation with the stakeholders, including the Shipyards, the Port, and the San Diego Water Board.

O-3-8

The comment states: "I. THE DEIR'S ALTERNATIVES ANALYSIS IMPROPERLY OMITS CONSIDERATION OF MONITORED NATURAL ATTENUATION

"A. CEQA Requires Evaluation of Potentially Feasible Alternatives That Will Reduce Environmental Impacts

"In order to be legally valid and fulfill the EIR's purpose to 'foster informed decision making and public participation,' an EIR 'must consider a reasonable range of potentially feasible alternatives' that would 'avoid or substantially lessen any of the significant effects of the project.' 14 Cal. Code Regs. ('CEQA Guidelines') § 15126.6(a) (emphasis added); *Center for Biological Diversity v. County of San Bernardino*, 185 Cal. App. 4th 866, 885 (2010) ('The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.'). The purpose of the alternatives discussion is to identify ways to reduce or avoid significant environmental effects, (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 403 (1988)), and proposed alternatives must be discussed to the extent that they are able to implement most although not all of the identified project objectives. See *Mira Mar Mobile Community v. City of Oceanside*, 119 Cal. App. 4th 477 (2004). Further, 'an in-depth discussion is required' of any alternative that is 'at least potentially feasible.' Center for Biological Diversity, 185 Cal. App. 4th at 883.

"An agency's selection of alternatives for evaluation in an EIR must be supported by a 'reasonable basis,' and an EIR is legally defective if it fails to include a reasonable explanation for excluding consideration of an alternative that would reduce environmental impacts and achieve most project objectives. Center for Biological Diversity, 185 Cal. App. 4th at 883. Moreover, the scope of the alternatives analysis is not subject to a 'categorical legal imperative,' rather '[e]ach case must be evaluated on its facts …' *Watsonville Pilots Ass'n v. City of Watsonville*, 183 Cal. App. 4th 1059, 1086 (2010)."

A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-2.

O-3-9

The comment states: "B. The DEIR Was Required to Evaluate Monitored Natural Attenuation As an Alternative To The Project

"1. Overview of The Monitored Natural Attenuation Alternative

"Monitored Natural Attenuation ('MNA') refers to the reliance on natural processes to achieve site-specific remedial objectives. As explained in the DTR, MNA: [i]s a contaminated sediment remedy that depends on un-enhanced natural processes to reduce risk to human and environmental receptors to acceptable levels. [MNA] involves leaving the contaminated sediment in place and allowing the ongoing aquatic processes to contain, destroy, or otherwise reduce the bioavailability of the sediment pollutants in order to achieve site specific remedial action objectives. Underlying MN[A] processes may include biodegradation, biotransformation, bioturbation, diffusion, dilution, adsorption, volatilization, chemical reaction or destruction, resuspension, and burial by clean sediment."

The San Diego Water Board has determined that the alternatives analyzed in the Draft PEIR represent a reasoned selection of potential cleanup scenarios that would reduce (to varying degrees) the significant environmental effects associated with the proposed project, while achieving all or most of the stated project objectives. The Shipyards participated in three working group meetings in fall 2010 where the range of alternatives to be evaluated in the PEIR was discussed. A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-2.

O-3-10

The comment states: "'Monitoring is fundamental to the remedy in order to assess whether risk reduction and ecological recovery by natural processes are occurring as expected.' Id. Thus, while dependent upon natural processes, MNA is not a 'no-action' remedy, as it must be used within the context of a carefully controlled and monitored cleanup approach.

"Although MNA is completely ignored in the DEIR, it was selected as the preferred alternative remedy out of the three studied in detail in the expert-prepared Detailed Sediment Investigation underlying the TCAO/DTR.[1] NASSCO and Southwest Marine Detailed Sediment Investigation ("Shipyard Report"), at 1-2 – 1-4. The Shipyard Report also provided the data underlying the TCAO and DTR. TCAO, at ¶ 13. The Shipyard Report concluded that 'natural recovery of benthic macroinvertebrate communities would be expected to occur within a 3–5 year period' if off-site sources were to be controlled, and that MNA 'is the only alternative that provides acceptable effects on beneficial uses and is technically and economically feasible.' Shipyard Report, at 15-3 and 19-12, 19-13. The Shipyard Report and its associated sediment investigation was 'detailed' and conducted with substantial oversight and input from Regional Board staff, stakeholders, and the public.

[1] The "MNA alternative" discussed in this letter refers to the monitored natural attenuation alternative evaluated in and recommended by the Shipyard Report.

Shipyard Report, at 1-2 – 1-4 (summarizing the directives and guidance provided by Regional Board staff throughout the planning and execution of the sediment investigation and Shipyard Report); Deposition of David Barker ('Barker Depo.'), at 80:2 – 80:22, 82:3 – 82:4, 82:14 – 82:23 (discussing the scope, quality, and extent of Regional Board staff involvement in the sediment investigation); Deposition of Tom Alo ('Alo Depo.'), at 402:21 – 403:18 (acknowledging that the Regional Board had significant oversight and involvement in the process of developing and conducting the sediment investigation and Shipyard Report); DTR, at 13-2 – 13-3 (summarizing Regional Board staff and stakeholder involvement in the sediment investigation)."

The San Diego Water Board has determined that the alternatives analyzed in the Draft PEIR represent a reasoned selection of potential cleanup scenarios that would reduce (to varying degrees) the significant environmental effects associated with the proposed project, while achieving all or most of the stated project objectives. The Shipyards participated in three working group meetings in fall 2010 where the range of alternatives to be evaluated in the PEIR was discussed. A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-2.

O-3-11

The comment states: "The MNA alternative includes 'sampling to assess naturally occurring changes in sediment conditions and biological communities,' consisting of long-term monitoring, with periodic surveys and sample collection throughout areas of the Site not otherwise subject to disturbance, in order 'to track sediment quality and benthic community conditions over time.' Shipyard Report, at 17-1. More specifically, the alternative requires monitoring of physical, chemical, and biological parameters in four separate sampling events during years 1, 2, 5, and 10, and additional monitoring beyond year 10, if necessary, depending upon the degree to which natural recovery has occurred after 10 years. Shipyard Report, at 16-1. Monitoring stations would be located every 2 to 5 acres throughout the Site, depending on the chemical concentrations currently existing in the sediments (i.e., within the specified range, monitoring stations would be more closely spaced in areas with higher chemical concentrations.). Id., at 16-1 – 16-2. Each monitoring event would include bathymetry and core sampling for sediment thickness and physical properties (including particle size distribution, total solids, and TOC); monitoring of a selected set of metals, as well as butyltins, PCBs, and PAHs; and amphipod toxicity tests and benthic macroinvertebrate community assessments. Id. Reports would be prepared and submitted to the Regional Board after each monitoring event. Id."

The San Diego Water Board has determined that the alternatives analyzed in the Draft PEIR represent a reasoned selection of potential cleanup scenarios that would reduce (to varying

degrees) the significant environmental effects associated with the proposed project, while achieving all or most of the stated project objectives. The Shipyards participated in three working group meetings in Fall 2010 where the range of alternatives to be evaluated in the PEIR was discussed. A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-2.

O-3-12

The comment states: "The DEIR fails to offer any explanation, much less a 'reasoned' explanation, for completely omitting discussion or consideration of the MNA alternative. Because substantial evidence from multiple sources demonstrates that MNA can achieve the Project Objectives while avoiding the proposed Project's significant environmental impacts (and the need to rely on detailed, costly and uncertain mitigation measures), as discussed below, CEQA requires evaluation of MNA as an alternative remedy. Exclusion of MNA from the DEIR frustrates CEQA's goal of informed decision making and meaningful public participation, because it precludes the public from commenting on, and the Regional Board from considering and potentially adopting, a remedy that will avoid the Project's significant environmental impacts while achieving its objectives in a timely and cost-effective manner. Any doubt by Regional Board staff about whether MNA should have been considered is put to rest conclusively by the fact that it was the Shipyard Report's preferred remedy, mandating its inclusion in any 'reasonable range' of alternatives based on the specific facts of this proceeding. *Watsonville Pilots Ass'n*, 183 Cal. App. 4th at 1086."

See response to comment O-3-2. It is noted that in the Watsonville Pilot Association case cited by the commenter, the court noted that a reduced project alternative that would meet most of the project objectives should be considered. In the case of the MNA, and based on the record for the TCAO an d DTR, the San Diego Water Board concludes that an MNA Alternative would not further the project objectives related to environmental cleanup, therefore, it was appropriately excluded from evaluation in the EIR.

O-3-13

The comment states: "2. The Monitored Natural Attenuation Alternative Will Feasibly Attain Project Objectives

"Pursuant to the Regional Board's mandate, the primary purpose of the Project is to protect beneficial uses in San Diego Bay for human health, aquatic life, and aquatic-dependent wildlife, and to ensure the best water quality that is 'reasonable.' DEIR, at 3-3 and 3-4. Project Objectives also include the implementation of a sediment cleanup that is consistent with the TCAO, including the attainment of cleanup levels set forth in the TCAO, which will have long-term effectiveness while minimizing environmental impacts and disruptions on the

use of shipyard and other San Diego Bay-dependent facilities. DEIR, at 3-4 and 3-5. As discussed below, substantial evidence demonstrates that natural recovery is already occurring at the Site, and that the MNA alternative is capable of fully satisfying Project Objectives in a feasible manner."

A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See responses to comments O-3-2 and O-3-12.

O-3-14

The comment states: "The DTR acknowledges that "a range of natural recovery processes are active at the Shipyard Sediment Site." DTR, at 30-3. As detailed in NASSCO's May 26, 2011 comments on the TCAO and DTR,[1] record evidence shows that natural attenuation is already occurring at the site for all five primary contaminants of concern ('primary COCs') identified in the TCAO,[2] and that, if allowed to continue in lieu of dredging, will achieve the Regional Board's cleanup goals within a reasonable period of time. See Comments On The San Diego Regional Water Quality Control Board Cleanup Team's September 15, 2010 Tentative Cleanup And Abatement Order No. R9-2011-0001, Draft Technical Report, And Shipyard Administrative Record ('NASSCO's May 26 Comments'), at 40-41. Sampling conducted in 2009 indicates that the surface-weighted average concentrations ('SWACs')[3] for the five primary COCs decreased substantially in the monitored locations during the seven years since the data for the Shipyard Report was collected in 2002, and, in many cases, are now only slightly higher than post-remedial (i.e., dredging) SWACs in the TCAO. This suggests that the cleanup goals articulated in the TCAO can be achieved in a reasonable time through the MNA alternative, without incurring the significant environmental, economic, and social impacts that are certain to result from dredging. Barker Depo. Exhibit No. 1228. In fact, among the locations sampled in 2009, which were selected because they are considered representative of site-wide conditions, three of the five SWACs for primary contaminants of concern already have attained the post-remedial SWACs that would be required by the TCAO, and the remaining two are only slightly higher. Id.; see also Barker Depo., at 335:22

1 For the sake of brevity, and because NASSCO has already submitted detailed comments on the TCAO/DTR that are included within the Administrative Record, NASSCO will reference its prior comments in this letter rather than re-stating those comments in full. All of NASSCO's prior comments pertaining to the issues addressed in this letter are incorporated herein by this reference.

2 The primary COCs are copper, mercury, HPAHs, PCBs, and TBT. DEIR, at 4.3-3 and 4.3-4.

3 A "SWAC" approach, which refers to calculating the average concentration of a contaminant in the sediment at the surface, was used to assess potential impacts to human health and aquatic-dependent wildlife at the Site. DTR, at 32-7. The TCAO and DTR require that sediments be remediated to meet specified cleanup levels, articulated as post-remedial SWACs for the primary COCs, which levels have been determined by Regional Board staff not to pose an unreasonable health risk to humans or aquatic dependent wildlife. Id. Under the DTR's approach, once these extremely conservative target SWACs are met, through MNA or otherwise, the sediments will be considered fully protective of beneficial uses.)

– 337:13 (confirming same); see also Barker Depo., at 303:5 – 304:4 (acknowledging that MNA could eliminate risks to benthic organisms, and improve protection for all beneficial uses within five years)."

A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-2.

O-3-15

The comment states: "Regarding the efficacy of natural attenuation, evidence within the Administrative Record demonstrates that sediments buried below approximately 10 cm are not "biologically available,"[1] and thus do not impact the water or marine environment. Evidence also shows that new sediments are deposited at a rate of 2 cm per year, suggesting that new sediments will bury any residual contamination within a reasonable period of time. Deposition of David Gibson ('Gibson Depo.'), at 156:3 – 157:12 (agreeing that sediments buried below approximately 10 cm are below the "biologically active zones," and therefore are not biologically available); Regional Board Cleanup Team's Response to NASSCO's Requests For Admission, at RFA No. 57 (agreeing that new sediments are deposited at a rate of 2 cm/year at the Shipyard Sediment Site); Barker Depo., at 292:6 – 292:22 (agreeing that Site characteristics, including active deposition of sediments at 1-2 cm per year, limited elevated concentrations of chemicals in certain areas of the shipyard, and that the limited bioavailability of the chemicals to benthic organisms favors the potential effectiveness of natural recovery)."

A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-2.

[1] The term "biologically available" refers to the potential for a chemical to enter into ecological or human receptors. Importance of Bioavailability for Risk Assessment of Sediment Contaminants at the NASSCO Site – San Diego Bay, Herbert E. Allen, Ph.D., March 11, 2011 ("Allen Report"), at 2. Sediments below the "biologically active zone"—which refers to the surface layer of sediment in which bioturbation and mixing occurs, and where the exposure potential is greatest for invertebrates and fish—are not "bioavailable." The biologically active zone comprises approximately the top 10 cm of sediment; however, the most biologically active zone typically occurs within the top 0-2 cm. Deposition of David Gibson, at 156:3 – 157:12; Shipyard Report, at 15-3.

O-3-16

The comment states: "Additionally, 'chemical biodegradation;[1] sediment accumulation, mixing, and burial; and [concomitant] benthic fauna recolonization' are other natural processes that are expected to 'lead to changes in aquatic life conditions' at the Site. Shipyard Report, at 18-4 ('Natural recovery will occur through breakdown of organic chemicals and through burial and dilution of chemical concentrations by newly deposited sediment.')"

A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-2.

O-3-17

The comment states: "3. The Monitored Natural Attenuation Alternative Will Avoid All Of the Proposed Project's Significant and Potentially Significant Impacts

"The DEIR recognizes that each of the Project's potential environmental impacts results from 'construction or dredging activity,' and that, in the absence of construction or dredging, no temporary construction traffic or noise would occur, and there would be no air quality impacts, contribution to global warming, objectionable odors, risk of accidental spills during cleanup activities, impacts to marine species or communities, or increased potential impacts related to hazards or marine biological resources. DEIR, at 5-10, 5-25. The same is true with respect to all alternatives considered except for the 'no-project' alternative."

The comment summarizes information contained in the Draft PEIR. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-18

The comment states: "Because it involves no construction or dredging, it is undisputed that implementing the MNA alternative will avoid all of the Project's significant environmental impacts to air quality, as well as its potentially significant effects to biological resources, water quality, hazardous materials and traffic, all of which are tied specifically to dredging.

[1] Site constituents and primary COCs such as TBT and PAHs are known to naturally degrade relatively quickly in the marine environment. See Barker Depo, at 335:22 – 336:10 (testifying that TBT undergoes rapid natural degradation in the environment, and confirming that the 2009 testing results are consistent with previous findings concerning the rapid biodegradation of TBT); Shipyard Report, at 15-3 ("Petroleum hydrocarbons … weather relatively quickly. The most toxic components of petroleum hydrocarbons are broken down in weeks to months in the marine environment. As a result, remediation of subtidal sediments is ordinarily not required even after a major oil spill. A relatively short period of natural recovery is therefore expected to address any effects of petroleum hydrocarbons.").

The MNA alternative would also avoid the Project's proposed destruction of highly sensitive eelgrass and mature benthic communities, and obviate the Project's mandatory reliance on numerous mitigation measures which are costly and uncertain, and which will cause their own environmental impacts requiring mitigation (NASSCO also believes that many of these mitigation requirements are infeasible or otherwise inappropriate, and may not be imposed by the Regional Board, as detailed below, such that certain of the impacts deemed potentially significant would need to be treated as significant if the proposed Project is adopted). In this way, the environmental impacts associated with the MNA alternative would be equivalent to those of the 'no project/no development alternative' (Alternative 1) studied in the DEIR, which was found to be the 'environmentally superior' alternative 'because the direct physical effects of the proposed project would not occur.' DEIR, at 5-25 (emphasis added)."

The comment summarizes information contained in the Draft PEIR and notes that, since an MNA Alternative would not remove the contaminated sediment, it would not result in the adverse impact associated with dredging. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-19

The comment states: "A wealth of evidence elsewhere in the Administrative Record likewise shows that the MNA alternative will not implicate the environmental and other costs associated with dredging. See, e.g., Shipyard Report, at § 19 (comparing a variety of alternatives and concluding that dredging alternatives 'provide little or no incremental benefit over baseline conditions but impose significant impacts on shipyard operations and on the local community, and do so at a high cost'); see also Barker Depo., at 306:22 – 307:21 (acknowledging the existence of healthy benthic communities at the Site, agreeing that MNA would preserve those communities and avoid the possible risk of colonization by invasive species, and recognizing that these factors weigh in favor of selecting MNA over dredging), 916:22 – 917:2 (avoiding destruction of the mature benthic communities and eelgrass beds located at the Site would be one benefit of selecting the MNA alternative)."

A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-2 and O-3-18.

O-3-20

The comment states: "By contrast to natural recovery, the DTR confirms that dredging 'destroys the benthic community,' with no guarantee that it will be recolonized successfully. DTR, at 34-11; see also Barker Depo., at 306:22 – 307:21. Dredging destroys other biota as

well, such as eelgrass, which may require more than five years to become reestablished and mature to the point that they can sustain the original community. Shipyard Report, at 15-10, 18-9 – 18-10. Moreover, 'eelgrass is currently found primarily in areas with water depths less than 10 ft and may not be able to reestablish itself in the deeper water that would exist in the dredged areas' regardless of any mitigation that is imposed. Shipyard Report, at 18-12. Critically, the MNA alternative also avoids the very real possibility that the Project will be implemented and substantial amounts of sediment dredged, only to have the dredged areas recontaminated by ongoing and uncontrolled stormwater discharges to the Site from Chollas Creek and elsewhere. As noted, natural recovery is already occurring at the Site even in the presence of continuing sources of stormwater discharges to the Site. The TCAO and DTR recognize that these stormwater discharges continue to affect sediments at the Site, (TCAO, at ¶¶ 4, 11, 30, 32, 33; DTR, at §§ 4.7, 11.6, 30, 32, 33), although the DEIR failed to evaluate this reasonably foreseeable significant impact."

The comment references the DTR and the Shipyard Report, not the Draft PEIR. See response to comment O-3-2 regarding an MNA Alternative. See response to comment O-3-3 regarding stormwater.

O-3-21

The comment states: "Given that source control is a critical component of any remedy that is selected,[1] it certainly makes more sense to ensure that source control is achieved before incurring the significant costs associated with dredging, since recontamination may obviate any beneficial results of the dredging, and since natural recovery is already occurring at the Site even in the presence of ongoing stormwater contamination. The MNA alternative would allow source control to be implemented, and continued monitoring could determine whether the TCAO's cleanup levels are achieved through natural recovery and without the need for dredging. If dredging ultimately is required, which NASSCO does not believe it will be, that dredging would be more effectively implemented after stormwater discharges to the Site are controlled."

A detailed discussion on the basis for the San Diego Water Board Cleanup Team's conclusion that cleanup pursuant to the TCAO can proceed while source control efforts are underway is contained in Response 4.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-3.

O-3-22

The comment states: "4. Monitored Natural Attenuation is Not a 'No Action' Remedy

[1] According to EPA Guidance, "[i]dentifying and controlling contaminant sources typically is critical to the effectiveness of any [ ] sediment cleanup." Contaminated Sediment Remediation Guidance for Hazardous Waste Sites, EPA-540-R5-05-012 (Dec. 2005), at 2-20.

"As the Cleanup Team acknowledges, '[m]onitored natural recovery is not a passive, no-action, or no-cost remedy:

"'While it does not require active construction, effective remediation via MN[A] relies on a fundamental understanding of the underlying natural processes that are occurring at the site. MN[A] remedies require extensive risk assessment, site characterization, predictive modeling and monitoring to verify source control, identify natural processes, set expectations for recovery, and confirm that natural processes continue to reduce risk over time as predicted.'

"DTR, at 30-2 (emphasis added); see also Shipyard Report, at 17-1 (describing detailed monitoring requirements associated with MNA). Indeed, the DEIR recognizes that '[r]emedial actions may include … natural recovery.' DEIR, at 3-5."

The comment references the DTR and the Shipyard Report, not the Draft PEIR. See response to comment O-3-2.

O-3-23

The comment states: "In addition to detailed monitoring requirements, the MNA alternative also contemplates active remediation (or other action) if necessary based on the monitoring results. E.g., Barker Depo., at 916:16 – 917:17 (testifying that if MNA is selected and does not work as expected, the Regional Board could impose dredging or another remedy). Thus, the 'no project/no development' alternative, which 'would not implement the TCAO,' (DEIR, at 5-9), and would not include any monitoring or associated requirements, plainly is distinguishable from implementing the MNA alternative."

See response to comment O-3-2.

O-3-24

The comment states: "By way of analogy, in *Watsonville Pilots Association v. City of Watsonville*, the court rejected an agency's claim that the EIR's analysis of a no project alternative in the context of a general plan approval constituted sufficient consideration of a reduced development alternative, because 'the environmental impacts of the project were primarily due to the impacts of growth itself' and 'the alternatives analysis should have included an assessment of a reduced growth alternative that would meet most of the objectives of the project but would avoid or lessen these significant environmental impacts.' 183 Cal. App. 4th at 1089-90. Instead, '[b]ecause … the 'no project' alternative would not create any plan for the future … it did not serve the purpose that a reduced development alternative should have served … Analysis of such an alternative would have provided the decision makers with information about how most of the project's objectives could be satisfied without the level of environmental impacts that would flow from the project.' Id. at 1090. Accordingly, the city's certification of the EIR was set aside.

"Here, because taking 'no action' would not implement the TCAO or serve the purposes of the MNA alternative, an "in-depth discussion" of the MNA alternative is required. Center for Biological Diversity, 185 Cal. App. 4th at 883."

It is noted that in the Watsonville Pilot Association case cited by the commenter, the court noted that a reduced project alternative that would meet most of the project objectives should be considered. In the case of the MNA, and based on the record for the TCAO an d DTR, the San Diego Water Board concludes that an MNA Alternative would not further the project objectives related to environmental cleanup, therefore, it was appropriately excluded from evaluation in the EIR. A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See also response to comment O-3-2.

O-3-25

The comment states: "C. The Monitored Natural Attenuation Alternative Should Be Adopted

"As explained, NASSCO believes that CEQA compels the DEIR to evaluate the MNA alternative before the Regional Board may approve the proposed Project. More importantly, however, the Regional Board should adopt the MNA alternative instead of the Project because MNA provides the opportunity to feasibly accomplish Project Objectives, in a reasonable period of time, without the environmental impacts, costs and economic and social disruptions that will result from the contemplated dredging of 143,000 cubic yards of sediment. Indeed, the Regional Board is prohibited from adopting the proposed Project instead of the MNA alternative, due to CEQA's 'substantive mandate' that agencies refrain from approving projects with significant environmental effects if there are feasible alternatives that can avoid those effects. *Mountain Lion Foundation v. Fish & Game Comm.*, 16 Cal. 4th 105, 134 (1997)."

A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-2. The San Diego Water Board has determined that the alternatives analyzed in the Draft PEIR represent a reasoned selection of potential cleanup scenarios that would reduce (to varying degrees) the significant environmental effects associated with the proposed project, while achieving all or most of the stated project objectives. The Shipyards participated in three working group meetings in fall 2010 where the range of alternatives to be evaluated in the PEIR was discussed.

O-3-26

The comment states: "Upon request, NASSCO will be pleased to provide the Regional Board with any further information regarding the MNA alternative that it may wish to consider, in addition to the large volume of supporting evidence already included within the Administrative Record; and, as explained below, NASSCO will also provide a detailed analysis of the MNA alternative for inclusion in a recirculated DEIR."

The commenter's offer to provide more information is noted. A detailed discussion of the deficiencies of Monitored Natural Attenuation as the sole cleanup remedy relied upon to attain TCAO cleanup objectives is contained in Responses 1.1, 31.1, and 32.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-2.

O-3-27

The comment states: "II. THE DEIR FAILS TO DISCUSS STORMWATER DISCHARGES TO THE SITE OR REASONABLY FORESEEABLE IMPACTS FROM RECONTAMINATION

"A. An Accurate Description of the Project's Environmental Setting Is Critical to An Accurate Assessment of Impacts and Alternatives

"An EIR is not required unless a proposed activity may result in a 'significant effect on the environment.' CEQA § 21100(a). Significant environmental effects are defined as substantial or potentially substantial adverse changes in the environment. CEQA §§ 21068, 21100(d); CEQA Guidelines § 15382. The 'environment' for the purposes of CEQA analysis refers to the 'the physical environmental conditions in the vicinity of the project' – normally 'as they exist at the time the notice of preparation [for the EIR] is published' – and this environmental setting is referred to as the 'baseline' against which the potential impacts of a proposed project are measured. CEQA Guidelines § 15125(a). In order to assess whether a project will have a potentially significant impact, the potential effects of a proposed activity are measured against this existing conditions 'baseline.' CEQA Guidelines § 15126.2(a) ('In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published …') (emphasis added).

"Because an EIR 'must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed … in the full environmental context,' (CEQA Guidelines § 15125(c)), an EIR is invalid if its description of the environmental setting is in any way deficient. *Cadiz Land Co. v. Rail Cycle*, L.P., 83 Cal. App. 4th 74, 87 (2000) ('If the description of the environmental setting of the project site and

surrounding area is inaccurate, incomplete or misleading, the EIR does not comply with CEQA.') This is because an 'inadequate description of the environmental setting for the project' makes 'a proper analysis of project impacts [] impossible.' *Galante Vineyards v. Monterey Peninsula Water Management Distr.*, 60 Cal. App. 4th 1109, 1122 (1997)."

A detailed discussion on the basis for the San Diego Water Board Cleanup Team's conclusion that cleanup pursuant to the TCAO can proceed while source control efforts are underway is contained in Response 4.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-3.

O-3-28

The comment states: "B. The DEIR Ignores Ongoing Sources of Contamination to the Site and Associated Impacts From Recontamination

"The DEIR's description of the environmental setting completely ignores discharges of urban runoff to the Site from Chollas Creek, as well as stormwater discharges to the Site via storm drains SW4 and SW9, all of which are continuing and uncontrolled.[1] Because substantial evidence makes clear that these on-going discharges contribute pollutants to the sediments at the Site, and thus present a reasonable likelihood that the Site could be recontaminated after the Project's contemplated dredging, the DEIR's decision to exclude them from the environmental setting is improper as a matter of law and also precludes a legally adequate consideration of environmental impacts and alternatives. See, e.g., *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal. App. 4th 713, 725-29 (1994) (environmental setting invalid as a matter of law, and rendered inadequate the impact analysis and mitigation findings, where the EIR failed to discuss a nearby wildlife preserve)."

A detailed discussion on the basis for the San Diego Water Board Cleanup Team's conclusion that cleanup pursuant to the TCAO can proceed while source control efforts are underway is contained in Response 4.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-3.

[1] Pollutants in these discharges include metals, such as arsenic, cadmium, chromium, copper, lead, mercury, nickel, silver, and zinc; TSS; sediment; petroleum products; and synthetic organics, such as pesticides, herbicides, and PCBs. DTR, at 4-6.

O-3-29

The comment states: "As discussed in NASSCO's May 26 Comments, and stated clearly in the TCAO and DTR (and the supporting technical studies cited in the DTR),[1] substantial evidence shows that Chollas Creek discharges have contributed (and will continue to contribute) to the accumulation of pollutants observed in marine sediments at the Site; and, further, that the discharge of contaminants from Chollas Creek is not expected to be fully controlled for decades. May 26 Comments, at 35-39; see also TCAO, at ¶¶ 4 and 10 ('during storm events, storm water plumes toxic to marine life emanate from Chollas Creek up to 1.2 kilometers into San Diego Bay, and contribute to pollutant levels at the Shipyard Sediment Site.'); DTR, at 4-1, 4-14 – 4-15 (confirming that the toxic plume of contaminated stormwater from Chollas Creek during rain events has been shown to extend more than a kilometer into San Diego Bay, including the area within NASSCO's leasehold, and contributes an array of pollutants to the Site); Deposition of Craig Carlisle ('Carlisle Depo.'), at 200:5-200:13 (confirming that Chollas Creek releases contributed to sediment contamination at the Site); Barker Depo., at 921:14 – 922:15 (confirming that storm water outflows from Chollas Creek have contributed to the accumulation of pollution in marine sediment at the Site, and that these outflows reach the inner portion of NASSCO's leasehold), 923:8 – 923:15 (confirming that Stations NA19, NA06, NA15 and NA17 within the Site are potentially subject to influence from Chollas Creek); Carlisle Depo., at 104:5 – 105:3 (same). The TCAO and DTR also specifically identify urban runoff from SW4 and SW9 as sources contributing to sediment contamination at the Site. TCAO, at ¶¶ 4 and 10; DTR, at § 4; see also, e.g., Carlisle Depo., at 102:23 – 103:21 (concluding that chemicals discharged from SW9 impact the area to be addressed in the TCAO); 207:2 – 207:7."

The comment references the DTR and other documents, not the Draft PEIR.

A detailed discussion on the basis for the San Diego Water Board Cleanup Team's conclusion that cleanup pursuant to the TCAO can proceed while source control efforts are underway is contained in Response 4.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-3.

O-3-30

The comment states: "Because these sources are continuing, logic dictates against dredging sediments at the Site until the sources are controlled, given the potential for subsequent recontamination. Indeed, the Shipyard Report concluded that 'remediation of shipyard sediments prior to control of contaminant sources would be premature. Remediation would

[1] DTR, at § 4.7.1.3 (collecting studies concluding that toxic storm water flows from Chollas Creek impact the sediments at the Site, including Schiff (2003); Katz (2003); and Chadwick, et al. 1999. Sediment Quality Characterization - Naval Station San Diego Final Summary Report. U.S. Navy Technical Report 1777.

be ineffective because the shipyard leaseholds would be recontaminated by Chollas Creek and storm drain effluent.' Shipyard Report, at 13-3."

A detailed discussion on the basis for the San Diego Water Board Cleanup Team's conclusion that cleanup pursuant to the TCAO can proceed while source control efforts are underway is contained in Response 4.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-3.

O-3-31

The comment states: "Moreover, members of the Cleanup Team have acknowledged it is 'probable' that discharges from Chollas Creek will remain uncontrolled for the foreseeable future. Deposition of Benjamin Tobler ('Tobler Depo.'), at 90:6 – 92:5. No reductions are required under the Chollas Creek TMDL for metals[1] until 2018, and full compliance is not required until October 2028. RWQCB Resolution No. R9-2007-0043, at ¶ 13; Barker Depo., 925:19-927:25. And it is unlikely that full compliance with the TMDL will be achieved even within the twenty-year timeframe set forth in the TMDL, because existing technology is simply insufficient and cost-prohibitive. Tobler Depo., at 90:6 – 92:5 ('[W]ithout getting into space-age technology, which is extremely cost-prohibitive, the only possible fix for the problem is a system of sand filters. Sand filters do filter out metals, but even sand filters only get you into the general ballpark for meeting compliance. In other words, the best sand filters right now only just barely get you to the ballpark of compliance. There's no margin of safety with it.') Thus, according to Regional Board staff, it is 'probable' that full compliance will not be achieved, even after 20 years and significant infrastructure improvements, 'unless technology comes to the rescue.'"

See response to comment O-3-3. Resolution No. R9-2003-0043 adopted a TMDL for dissolved metals in Chollas Creek, not contaminated sediment which is the media of principal concern for the Shipyard Sediment Site. Contaminated sediment discharges from Chollas Creek will be addressed in the sediment TMDL for the mouth of Chollas Creek that is in preparation at this time. Available storm water best management practices for sediment

[1] Since 1994, Chollas Creek storm water samples have frequently exceeded Basin Plan narrative water quality objectives for toxicity, and California Toxics Rule criteria for copper, lead, and zinc. DTR, at 4-12. As a result, Chollas Creek was placed on the Clean Water Act section 303(d) List of Water Quality Limited Segments in 1996 for cadmium, copper, lead, zinc and toxicity, with zinc, copper, and diazinon subsequently identified as causes of the observed toxicity. Chollas Creek TMDL for Metals, Background, (available at http://www.waterboards.ca.gov/sandiego/water_issues/programs/tmdls/chollascreekmetals.shtml). Chollas Creek was also designated as a priority hot spot due to the presence of copper, DDT, chlordane and diazinon in the sediments, and the presence of impacts to aquatic life. RWQCB, Proposed Regional Toxic Hot Spot Cleanup Plan (Dec. 1997), at 1-16; Shipyard Report, at 1-16 – 1-17. To address these problems, TMDLs were adopted for diazinon and metals in Chollas Creek, and the Regional Board is currently in the process of developing a TMDL for PCBs, PAHs, and chlordane at the mouth of Chollas Creek. Id. The Chollas Creek TMDL for metals allocates quantitative limits for point and nonpoint discharges of copper, lead, and zinc, with the goal of ensuring that the capacity of the waterbody to assimilate pollutant loading is not exceeded.

control are capable of eliminating most, if not all sediment discharges from the Chollas Creek MS4 and are not cost prohibitive

O-3-32

The comment states: "While it is undisputed that stormwater discharges are reaching the Site and have contributed to sediment contamination at the Site, and that Regional Board staff are well aware of same, the DEIR fails even to mention these sources of pollution, much less address the potential for recontamination. This oversight is particularly egregious given that EPA and Regional Board policies concerning sediment remediation each call for source control prior to any active remediation. Contaminated Sediment Remediation Guidance for Hazardous Waste Sites, EPA-540-R5-05-012 (Dec. 2005) ('Contaminated Sediment Remediation Guidance'), at 2-21 ('Generally, significant continuing upland sources … should be controlled to the greatest extent possible before sediment cleanup.'); State Water Resources Control Board Resolution No. 92-49, at III. E.; EPA's Contaminated Sediment Management Strategy, EPA-823-R-98-001 (Apr. 1998), at 54 (recognizing pollution prevention and source control as methods that will allow contaminated sediments to recover naturally without unacceptable impacts to beneficial uses). In fact, EPA Guidance specifically provides that 'project managers should consider the potential for recontamination and factor that potential into the remedy selection process … before any sediment action is taken.' Contaminated Sediment Remediation Guidance, at 2-21 (emphasis added)."

In accordance with the requirements of CEQA, an EIR must identify and focus on the significant environmental effects of the proposed project. Because the purpose of an EIR is to assess the project's effects on the existing environment, an EIR need not resolve existing environmental problems that will not be made worse by the project. See response to comment O-3-3.

O-3-33

The comment states: "This Regional Board and its staff are certainly aware of the need for source control prior to active remediation, given, among other things, the experience at the Convair Lagoon site in San Diego Bay, where significant funds were expended to construct a cap to remediate PCBs, only to subsequently find PCBs on top of the cap, apparently due to incomplete source control (among other potential causes). E.g., Barker Depo., at 183:22 – 183:25. Ironically, the DEIR recognizes the potential for recontamination in its analysis of the Convair Lagoon alternative, noting the prior history at Convair Lagoon and explaining that the current Convair Lagoon CAO requires discharges to be abated, to the satisfaction of the State Board, before any further remedial actions may be conducted at Convair Lagoon. DEIR, at 5-35, 5-208, 5-211, 5-225 ('The CAO states that soil and groundwater must be cleaned up and waste discharges abated prior to conducting remedial actions in Convair Lagoon and San Diego Bay to prevent potential recontamination of the marine sediments in the bay.'). Inexplicably, however, the DEIR simultaneously fails even to mention potential recontamination in relation to the proposed Project. See also Deposition of Cynthia Gorham,

at 62:4 – 62:23 (acknowledging that dredging prior to source control may lead to recontamination)."

A detailed discussion on the basis for the San Diego Water Board Cleanup Team's conclusion that cleanup pursuant to the TCAO can proceed while source control efforts are underway is contained in Response 4.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-3.

O-3-34

The comment states: "The DEIR also ignores other potential sources of recontamination that could occur after the Project's contemplated dredging. For example, while the DEIR concedes that resuspension of sediment caused by dredging related ship/barge movements is a potentially significant impact, (DEIR, at 4.3-15), it wholly fails to consider resuspension from non-dredging related ship movements. See also DEIR, at 4.3-15 (discussing potential for resuspended sediment to be introduced into the water column during placement of silt curtains)."

Non-dredging related ship movement is a well-established existing condition in the San Diego Bay. In accordance with the requirements of CEQA, an EIR must identify and focus on the significant environmental effects of the proposed project. Because the purpose of an EIR is to assess the project's effects on the existing environment, an EIR need not resolve existing environmental problems that will not be made worse by the project. See response to comment O-3-3.

O-3-35

The comment states: "The DEIR's failure to discuss urban runoff/stormwater discharges to the Site and the potential for Site recontamination precludes a proper consideration of the Project's potential environmental impacts or comparison of alternatives, and renders the DEIR invalid."

In accordance with the requirements of CEQA, an EIR must identify and focus on the significant environmental effects of the proposed project. Because the purpose of an EIR is to assess the project's effects on the existing environment, an EIR need not resolve existing environmental problems that will not be made worse by the project. A detailed discussion on the basis for the San Diego Water Board Cleanup Team's conclusion that cleanup pursuant to the TCAO can proceed while source control efforts are underway is contained in Response 4.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-3.

O-3-36

The comment states: "C. The Proposed Project May Not Feasibly Attain Project Objectives Due to the Likelihood That The Site Will Be Recontaminated After Dredging

"Among others, the Project includes an objective of implementing a cleanup plan 'that will have long-term effectiveness.' DEIR, at 3-5. Even setting aside the proposed Project's significant environmental effects and questions regarding the necessity of the contemplated dredging or the efficacy of related mitigation measures, the proposed dredging may not ultimately be effective, or have 'long-term effectiveness,' if the dredged areas are subsequently recontaminated by ongoing sources of contamination to the Site. This is another reason why the DEIR must describe those sources and analyze the reasonably foreseeable and potentially significant impacts from recontamination, and identify any mitigation measures or alternatives to address this impact."

The statement of project objectives identifies the underlying purpose of the project, and is used to guide the selection of alternatives to be evaluated in an EIR. The San Diego Water Board has concluded that the proposed project would achieve all 11 of the project objectives, including the objective to "Implement a cleanup plan that will have long-term effectiveness." The commenter expresses an opinion about the long-term efficacy of the project. This comment will be included as part of the record and made available to the decision makers prior to a final decision on the project. A detailed discussion on the basis for the San Diego Water Board Cleanup Team's conclusion that cleanup pursuant to the TCAO can proceed while source control efforts are underway is contained in Response 4.1 in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-3.

O-3-37

The comment states: "Potential recontamination of the Site also weighs in favor of adopting the MNA alternative, which would allow source control to be addressed prior to any dredging, while confirming whether natural recovery is achieving the cleanup levels in the TCAO."

The comment expresses an opinion in favor of an MNA Alternative, and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision makers prior to a final decision on the project. See response to comment O-3-3.

O-3-38

The comment states: "III. THE BASELINE DOES NOT REFLECT EXISTING CONDITIONS

"A. The Baseline Must Be Premised On *Existing* Physical Conditions

"As noted, potentially significant impacts are assessed in an EIR by measuring the potential effects of a proposed activity against a 'baseline.' CEQA Guidelines § 15126.2(a) ('In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the *existing* physical conditions in the affected area as they *exist* at the time the notice of preparation is published …') (emphasis added). Regarding the selection of a 'baseline,' the California Supreme Court recently confirmed that the lead agency must use "existing physical conditions." *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.*, 48 Cal. 4th 310, 316, 319, 321 n. 7 (2010) (proper baseline for determining whether there would be significant environmental effects from emissions caused by proposed modifications to an oil refinery was the refinery's current existing operations, rather than its maximum permitted operations); see also *Eureka Citizens for Responsible Government v. City of Eureka*, 147 Cal. App. 4th 357, 370 (2007) ('environmental impacts should be examined in light of the environment as it exists when a project is approved')."

The comment states that the existing condition is typically the baseline of analysis under CEQA. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. See also response to comment O-3-4.

O-3-39

The comment states: "Case law makes clear that '[a]n EIR must focus on impacts to the existing environment, *not hypothetical situations*.'" *Sunnyvale West Neighborhood Ass'n v. City of Sunnyvale*, 190 Cal. App. 4th 1351, 1373 (2010) (emphasis added). This is because "[a]n approach using hypothetical … conditions as the baseline results in 'illusory' comparisons that 'can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,' a result at direct odds with CEQA's intent.' *Id.* at 1374. 'It is only against [a proper] baseline that any significant environmental effects can be determined.' *Id.* at 1373."

In light of the extensive history of studies pertaining to the project, including sampling and other analyses used to prepare the DTR and TCAO, the San Diego Water Board concludes that the information contained in the DTR appropriately and more than adequately characterizes the existing sediment quality for the purpose of the Draft PEIR, and is not a "hypothetical" situation as asserted in the comment. See also response to comment O-3-4.

O-3-40

The comment states: "Agencies possess discretion to decide how the existing physical conditions can most realistically be measured, so long as that determination is supported by substantial evidence. *Communities for a Better Environment*, 48 Cal. 4th at 328. '[T]he date

for establishing a baseline cannot be a rigid one. Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods.' *Id.* at 327-28."

The comment provides information about CEQA. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-41

The comment states: "B. The DEIR's Description of Sediment Quality at the Site Is Based On Hypothetical Assumptions Used In the TCAO and DTR

"Based on the most cursory purported description of sediment quality at the Site, (DEIR, at 4.3-2; 3-3), the DEIR assumes (without providing any factual or analytical support) that Site sediments present risks to aquatic life, aquatic-dependent wildlife and human health beneficial uses. These assumptions color the entire CEQA review, including the Project Objectives and the analysis of alternatives and mitigation measures, and go to the heart of the decision whether the proposed Project should be pursued notwithstanding its undisputed significant and potentially significant environmental impacts. It is clear that the DEIR premises its statements regarding sediment quality on the TCAO and DTR, which the Project is designed to implement. But the TCAO's conclusions of risk to beneficial uses at the Site are predicated on assumptions that are overly conservative and unrealistic—by design and as admitted by the Cleanup Team, with an intent of being overly protective. Regardless of whether or not the Regional Board's highly conservative assumptions are appropriate in the context of the Project's evaluation under the Porter Cologne Act (NASSCO believes they are not), such assumptions cannot form a proper baseline under CEQA, as a matter of law, because CEQA mandates that the baseline reflect actual, existing conditions rather than hypothetical or theoretical scenarios. *Sunnyvale,* 190 Cal. App. 4th at 1373."

The San Diego Water Board's statutory duty to ensure restoration and enhancement of beneficial uses under Division 7 of the Water Code *demands* that the San Diego Water Board make reasonably conservative and environmentally protective assumptions about exposure, consumption, and risk in determining potential effects to beneficial uses from the pollutants accumulated in the sediment. A detailed discussion on the statutory and technical basis supporting the San Diego Water Board Cleanup Team's conservative exposure parameter assumptions used in the aquatic dependent wildlife and human health risk assessments is contained in Responses 24.1and 28.1, respectively, in the *Response to Comments Report, Tentative Cleanup and Abatement Order No. R9-2011-0001 and Draft Technical Report for the Shipyard Sediment Site, San Diego Bay* dated August 23, 2011. This report is incorporated into this RTC as Appendix D. See response to comment O-3-4.

O-3-42

The comment states: "A wealth of information in the Administrative Record shows that existing conditions at the Site present no risk to aquatic life, aquatic-dependent wildlife or human health beneficial uses. Rather, actual conditions are protective of beneficial uses, and the 'risks' identified in the DTR were manufactured by compounding a series of overly conservative and unrealistic assumptions. *See* NASSCO's May 26 Comments, at 7-34. In fact, the Shipyard Report concluded that Site conditions were protective of beneficial uses based on sampling conducted in 2002-03;[1] and, as explained above, supplemental 2009 sampling (the most recent data available) demonstrates that natural attenuation has since reduced further the SWACs for primary COCs at the Site, and that for three of the five primary COCs the SWACs are already below the post-remediation levels required by the TCAO at the locations monitored in 2009. Shipyard Report, at 18-4; Barker Depo., Ex. 1228."

The comment references the DTR and the Shipyard Report, not the Draft PEIR. This comment expresses an opinion and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision makers prior to a final decision on the project.

O-3-43

The comment states: "The hypothetical assumptions in the DTR and TCAO that are the foundation of the DEIR's environmental setting and baseline regarding sediment quality and alleged risks to beneficial uses are summarized below."

See response to comment O-3-4.

O-3-44

The comment states: "1. Aquatic-Dependent Wildlife

"In assessing risks to aquatic-dependent wildlife, Regional Board staff assumed that each of the six species of concern that were evaluated[2] derived 100% of their diet from prey obtained within the Site. DTR, at § 24.2.2, Table 24-6. This assumption is entirely unrealistic for all six receptors—and was in no way predicated on the actual foraging activities of the receptors or any studies, guidelines or other agency documents. *E.g.*, Alo Depo., at 333:11-334:2; 345:8-346:13. The home range for each receptor is substantially greater than the 43 acre shipyard area, demonstrating that the receptors will travel well beyond (and consume prey outside) the confines of the shipyards. It also is unrealistic to assume that any receptor would

[1] Because the data underlying the TCAO and DTR was collected in 2002–2003, and because that data is the most recent comprehensive data set for the Site, it may appropriately be used to establish the baseline. It is also appropriate to consider the data collected in 2009. *Communities for a Better Environment*, 48 Cal. 4th at 328.

[2] The DTR's aquatic-dependent wildlife analysis evaluated the California Least Tern, the California Brown Pelican, the Western Grebe, the Surf Scoter, the California Sea Lion, and the East Pacific Green Turtle. DTR, at Table 24-4.

choose to forage exclusively in an active industrial shipyard where the habitat quality is low for all species. Expert Report, of Thomas C. Ginn, Ph.D. ('Ginn Report'), at 59-61. By contrast, using a realistic assumption of each receptor's foraging area, alone, demonstrates that there is no risk to any of the receptors at the NASSCO shipyard. *Id*. Thus, the DTR's finding of risk to aquatic-dependent wildlife is entirely dependent upon Regional Board staff's policy decision to assume receptors would consume 100% of their diet at the shipyards; is not reflective of existing conditions at the Site; and cannot be used to inform the DEIR's baseline under CEQA."

The comment references the DTR, which is an attachment to the TCAO. The Draft PEIR relied primarily on separate project-specific and region-wide biological analyses, as described in Section 4.5, and did base conclusions on the assumption that special-status species foraged exclusively in the Shipyard Site. See response to comment O-3-4 regarding the existing conditions baseline.

O-3-45

The comment states: "It is notable that in assessing the Project's impacts to the California Least Tern (one of the six receptors evaluated in the DTR's aquatic-dependent wildlife analysis), the DEIR states that the Site is only a "very small area of San Diego Bay" and that there are other open water areas available for foraging. DEIR, at 4.5-51. The DEIR also notes that 'the majority of the sediment remediation site is in an area with relatively low abundance of prey species' for the least tern, and that '[t]here is no shallow water foraging habitat at the project site, limiting feeding opportunities.' DEIR, at 4.5-51, 52. In other words, the DEIR's biological analysis emphatically refutes the DTR's assumption that a least tern would consume 100% of its diet from the Site, and precludes any reliance on such an assumption in selecting the environmental baseline relative to the effect of Site sediments on aquatic-dependent wildlife beneficial uses."

See response to comment O-3-4 regarding the existing conditions baseline. See Section 4.5 of the Draft PEIR for an assessment of potential project impacts to the least tern. The San Diego Water Board concurs with the commenter's apparent position that the Draft PEIR appropriately characterizes the existing setting with regard to biological resources.

O-3-46

The comment states: "The DEIR should be revised to reflect accurately the estimated foraging behavior of the six species of concern evaluated in the DTR's aquatic-dependent wildlife analysis, and analyze how that data affects the DTR's conclusions regarding risks to aquatic-dependent wildlife from sediments at the Site and the determination of an appropriate baseline. The DEIR's baseline should also be revised to reflect existing conditions."

See response to comment O-3-4 regarding the existing conditions baseline. See Section 4.5 of the Draft PEIR for an assessment of potential project impacts to biological resources.

CEQA does not require the inclusion of the analysis requested by the commenter. The conclusions reached in the Draft PEIR are substantiated by project-specific analysis and reports.

O-3-47

The comment states: "2. Human Health Impairment

"Likewise, in the human health risk analysis, Regional Board staff assumed not only that fishing *could* occur at the Site—a facially erroneous assumption because strict security measures resulting from the shipyards' work for the U.S. Navy prevent *any* fishing at the shipyards—but also that each hypothetical subsistence angler at the shipyards would derive his or her entire daily protein source from fish caught within the shipyard (161 g/day), every day for 70 years (for carcinogens),[1] and would always eat the entire fish or shellfish (including skin/shell, organs, eyes, etc.), containing the maximum measured pollutant concentrations. Ginn Report, at 80-81; Expert Report of Brent L. Finley, Prepared in Regards to the California Regional Water Quality Control Board's Draft Technical Report for Tentative Cleanup and Abatement Order No. R9-2011-0001 (San Diego Bay) (March 11, 2011) ('Finley Report'), at 9, 22."

The comment pertains to documents other than the Draft PEIR. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein; therefore, no further response is necessary.

O-3-48

The comment states: "Given that absolutely no fishing occurs at the shipyards, and since the Administrative Record is devoid of evidence that there has *ever* been *any* fishing at the shipyards (*see* Alo Depo., at 88:4-93:18), it is highly conservative (to put it mildly) to assume that anglers will fish at the shipyards, much less that any angler would do so every day for 70 years and derive all of his or her protein requirements from fish caught at the shipyards. Because this hypothetical assumption bears no relationship to existing conditions at the Site, it cannot be used to inform the DEIR's environmental baseline relative to the effect of Site sediments on human health beneficial uses."

Draft PEIR discussion that relates to human health beneficial use is in the context of the water quality of the San Diego Bay. The EIR does not rely on an assumption that fishing occurs at the shipyards.

O-3-49

The comment states: "The DEIR should be revised to accurately describe the extent of fishing currently taking place at the Site, and analyze how that information affects the DTR's

[1] The DEIR uses an assumption of 30 years for non-carcinogens.

conclusions regarding risks to human health from sediments at the Site and the determination of an appropriate baseline. The DEIR's baseline should also be revised to reflect existing conditions."

See responses to comments O-3-4 and O-3-48.

O-3-50

The comment states: "3. Aquatic Life

"The DTR contends that aquatic life beneficial uses at the Site are impaired 'due to the elevated levels of pollutants present in the marine sediment at the Shipyard Sediment Site.' TCAO, at ¶ 14, DTR, at 14-1. But the results of the sediment investigation indicate that, although contaminants of concern and other pollutants are present in Site sediments in elevated concentrations relative to reference, they do not pose significant risks to aquatic life because they are not 'bioavailable' and many constituents do not 'bioaccumulate.'[1] NASSCO's May 26 Comments, at 8."

The comment pertains to documents other than the Draft PEIR. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein; therefore, no further response is necessary.

O-3-51

The comment states: "Risks to aquatic life were evaluated by sampling and assessing both benthic macroinvertebrates and fish. Ginn Report, at 12. Effects on benthic macroinvertebrates were assessed using a triad approach, involving the synoptic collection of data on sediment chemistry, toxicity, and benthic community structure, and effects on fish were assessed by comparing fish living at the Site to fish caught in reference areas in San Diego Bay. The results of these analyses showed little or no effects on aquatic life; in particular, the results of the sediment investigation confirmed that (1) amphipod toxicity is absent from all but one station at the NASSCO Shipyard (out of 15 monitored), with only

[1] As explained above, "bioavailability" is a measure of the potential for a chemical to enter into ecological or human receptors. Similarly, "bioaccumulation" refers to the accumulation of substances, such as pesticides or COCs, in an organism. Bioaccumulation occurs when an organism absorbs a toxic substance at a rate greater than that at which the substance is lost The DTR cites a finding that "bioaccumulation is occurring at the shipyard" as one basis for concluding that aquatic life at the Site is impacted. DTR, at 14-1, 19-1. But the DTR's conclusion that Site sediments impact aquatic life is overly-conservative, since substances may bioaccumulate in laboratory tests (such as those underlying the DTR's bioaccumulation finding), but not adversely affect the benthic community, and because not all shipyard chemicals were found to bioaccumulate. DTR, at 19-1; Barker Depo, at 98:19 – 98:22. For many COCs, including all primary COCs, the laboratory bioaccumulation test was the only test showing any statistical relationship between the chemicals at the Site and a biological response to a particular chemical, suggesting that the concentrations observed in the *Macoma* laboratory testing did not accurately predict adverse responses in consumer organisms at the Site. Barker Depo, at 95:22 – 98:16. Moreover, other COCs, including cadmium, chromium, nickel, selenium, silver, and PPT showed no statistical relationship with biological effects and also did not bioaccumulate in laboratory tests. DTR, at Table 20-1. Similarly, bioaccumulation relationships for arsenic and zinc, although statistically significant, were each controlled by only a single data point. DTR, at 19-1.

one station showing any significant difference from reference conditions, and even then the station was only 3% below the statistical reference range equal to one of the reference stations; (2) measurements of four indices of the health of benthic macroinvertebrate communities are not different from reference conditions[1]; (3) fish show no elevation in significant liver lesions or other abnormalities related to chemical exposures at the Site; and (4) predicted exposures of aquatic-dependent wildlife fall below the thresholds for which adverse effects are expected. Ginn Report, at 15-16. Likewise, the direct measurements of biological conditions, which Regional Board staff acknowledge 'are the most important since they are direct measures of what is being protected,' reveal that only a minimal fraction of stations at NASSCO do not meet reference conditions. Alo Depo., at 228:23 – 229:3; Ginn Report, at 49. Put another way, of 42 total toxicity tests conducted (excluding NA22, which is not being addressed under the Project), 37 tests showed conditions at NASSCO were as protective as background, with respect to toxicity."

The comment pertains to documents other than the Draft PEIR. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein; therefore, no further response is necessary.

O-3-52

The comment states: "Remarkably, even the DTR's overly conservative analysis[2] acknowledges that (1) benthic communities are equivalent to reference conditions at 14 of 15 stations in the NASSCO leasehold, with the only "moderately" impacted station located at the mouth of Chollas Creek; (2) amphipod toxicity was found at only 1 of 15 stations at NASSCO, and for that station the survival rate, at 70%, was still only 3% below the statistical reference range and equal to one of the reference stations; (3) toxicity to sea urchins was not found at any of the 15 stations at NASSCO; and (4) toxicity to bivalves was found at only 5 of 15 stations at NASSCO. DTR, at Tables 18-8 and 18-13. Yet, despite these favorable toxicity results and contrary to current regulatory guidance, the DTR simply

[1] The health of benthic macroinvertebrate communities at the Site was measured by comparing four benthic macroinvertebrate metrics at the NASSCO Site with the 95% prediction limits for the reference pool selected by Regional Board staff. The four metrics evaluated were (1) the benthic response index for Southern California embayments (BRI-E), which is a quantitative index that measures the conditions of marine and estuarine benthic communities by reducing complex biological data to single values; (2) total abundance, which measures the total number of individuals identified in each replicate sample; (3) total taxa richness, which measures the number of taxa identified in each replicate sample; and (4) Shannon-Weiner Diversity, which is a measure of both the number of species and the distribution of individuals among species, with higher values indicating that more species are present or that individuals are more evenly distributed among species. DTR, at 18-20. Of the 60 individual comparisons between Site conditions and reference conditions (15 stations and 4 metrics), there were only three significant differences from the reference pool. Ginn Report, at 31.

[2] The DTR framework is overly conservative and fundamentally flawed because it concludes that adverse effects on benthic macroinvertebrates are "likely" or "possible" whenever sediment chemistry is characterized as "high"—regardless of whether significant sediment toxicity or adverse effects on benthic communities are also observed. DTR, at Table 18-4. As a result, the chemistry line of evidence unilaterally trumps the others, causing the TCAO and DTR to reach conclusions that are not technically justified. Ginn Report, at 48. Regional Board staff's framework is further biased by its lack of a "no" effects category—meaning that stations will be characterized as having at least "low" levels of effects, even where the results are indistinguishable from reference conditions—contrary to methods published by others, including the State Water Resources Control Board. *Id.*

assumed "possible" or "likely" effects whenever chemical and biological indicators disagreed, resulting in seven stations at NASSCO being incorrectly characterized as having either "possible" or "likely" impacts on benthic macroinvertebrates. For example, NA19 was characterized as "likely" impaired, even though six of the seven lines of direct biological evidence showed no significant differences from reference conditions. Alo Depo., at 263:22 – 265:17. The DTR's conclusions of adverse effects to aquatic life beneficial uses does not accurately reflect existing conditions and cannot be used to form the DEIR's baseline."

The comment pertains to documents other than the Draft PEIR. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein; therefore, no further response is necessary. Refer to response O-3-4 for a discussion of the Draft PEIR baseline.

O-3-53

The comment states: "C. The Environmental Setting Fails to Account For Pre-1960 Activities Contributing to Existing Conditions at the Site

"In the description of Project Site Conditions for the Hazards and Hazardous Materials analysis, the DEIR describes wastes allegedly generated as a result of shipyard operations conducted by NASSCO since at least 1960, and BAE Systems (and its predecessor) since 1979. DEIR, at 4.3-1, 2. But the DEIR completely ignores pre-1960 activities that caused releases of hazardous materials to the Site, even though the DTR and the Administrative Record include detailed information regarding a variety of industrial operations conducted at the Site going back to the turn of the century, by a multitude of entities."

An EIR must identify and focus on the significant environmental effects of the proposed project. Because the purpose of an EIR is to assess the project's effects on the existing environment, an EIR need not go into extensive detail with regard to the history of the project site.

O-3-54

The comment states: "It is well-documented that the City of San Diego leased properties at or in the vicinity of the Site to numerous industrial and commercial tenants beginning in approximately 1900—well before NASSCO existed or operated at the Site. San Diego Unified Port District Report, Historical Study San Diego Bay Waterfront Sampson Street to 28th Street (2004) (SAR159392 – 94); City of San Diego, Report for the Investigation of Exceedances of the Sediment Quality Objectives at National Steel and Shipbuilding Company Shipyard (2004) (SAR157095 – 167). These former tenants included operators in heavy industries such as tire manufacturing, lumbering, fish-packing and shipbuilding, and operated at times when environmental regulations were minimal or non-existent. There is ample record evidence that these entities contributed significant contamination to the Site. *See e.g., id.*; Letter from City Port Director to Anthony Martinolich (1951) (SAR175155)

('[a]pparently your sandblasters are dumping the used sand in the bay in your water area.'); Documents Evidencing Transformer Spill/PCB discharge by Lynch Shipbuilding at foot of 28th Street (1943) (PORT05994 -06007) ('hot oil from the transformer was sprayed over many square feet of deck')."

The comment provides information about the history of the NASSCO shipyard site. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. See response to comment O-3-53.

O-3-55

The comment states: "Accordingly, the DEIR must be revised to reflect the waste discharges to the Site that resulted from pre-1960s activities."

See response to comment O-3-53. No change to the Draft PEIR is warranted.

O-3-56

The comment states: "D. The DEIR Provides No Support For Its Assumptions That 15% of the Sediment Will Be Classified as 'Hazardous' Material

"The DEIR assumes that 15% of the sediment to be dredged under the proposed Project will be classified as "hazardous" and require transport to a Class I hazardous waste facility. E.g., DEIR, at 4.1-12. This is presented as a "worst-case" scenario. Id. The DEIR does not provide any support for this assumption, however, and therefore must be revised to inform the public as to the basis of the assumption. If none of the dredged sediment is 'hazardous,' that would upset the stated rationale for incurring the environmental impacts and other costs associated with the proposed plan to dredge 143,000 cubic yards of sediment from the Bay. If, after dredging, more than 15% of the material is determined to be 'hazardous,' this would disturb the remaining environmental impact analyses for a variety of impact areas, including but not limited to impacts associated with truck trips required to transport the material to a hazardous waste facility."

The 15 percent is an estimate based on available information and the collective consideration of the San Diego Water Board staff and a representative of the shipyards, as reflected in a discussion held at on an on-site meeting on December 22, 2010. More specific information is not necessary, as the project description provides sufficient detail to assess impacts, identify mitigation measures, and to provide for meaningful public review and comment. Future decisions and implementing actions following certification of the PEIR and approval of the project will be subject to subsequent environmental review pursuant to CEQA. It is further noted that 1) the comment does not provide evidence that contradicts this estimate, and 2) the California Department of Toxic Substances Control reviewed the Draft PEIR, submitted comments, and had no comments regarding this estimation of hazardous material.

O-3-57

This comment is a continuation of comment O-3-56. See response to comment O-3-56.

O-3-58

The comment states: "IV. THE DEIR'S DESCRIPTION OF THE PROJECT'S PROPOSED SAND COVER REMEDY MUST BE REVISED TO CLARIFY THAT AN ENGINEERED SAND CAP IS NOT REQUIRED

"While the proposed Project calls for dredging as the primary remedial tool, the Project Description indicates that '[d]ue to the presence of infrastructure, such as piers and pilings, dredging is constrained in several locations within the project site. Therefore, contaminated areas under piers and pilings will be remedied through subaqueous, or in situ, clean sand cover. In situ clean sand cover is the placement of clean material on top of the contaminated sediment.' DEIR, at 3-7. Elsewhere, the DEIR indicates that approximately 2.4 acres of the remedial areas 'will be covered with a layer of clean sand to contain contaminated sediments.' DEIR, at 4.2-14. NASSCO recognizes that clean sand cover is part of the TCAO proposed by the Cleanup Team and evaluated in the DTR; however, certain language in the DEIR and its proposed mitigation measures must be clarified in order to ensure that the proposed remedy is not confused with the separate and significantly more costly and technologically challenging (and likely infeasible) remedy of an engineered sand cap. Such clarification is necessary in order to ensure that the Project Description in the DEIR accurately reflects the remediation that is being proposed by the TCAO and DTR.[1] See San Joaquin Raptor, 27 Cal. App. 4th at 730 ('an accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.'); CEQA Guidelines § 15124 (EIR must include 'description of the project's technical … characteristics, considering the principal engineering proposals if any…')."

The clean sand cover under piers is included in the TCAO and in the project description for the Draft PEIR. As specified in Mitigation Measures 4.2.7 and 4.2.8, the clean sand covers will be designed and installed to reduce the potential for sediment and contaminants to be released into the water column, and may include separate subcomponents for isolation. The intent of the clean sand cover is to provide a permanent feature that is protected against erosion. A temporary cover that would continuously erode would not be consistent with the intent and requirements of the TCAO. As the placement of sand will be a discharge of fill to cover existing contaminated sediments, it is imperative that an engineered design of the placement take place to ensure mitigation measures be utilized that prevent the suspension of contaminated sediments in the water column, in addition to maintaining turbidity levels during sand placement at levels that protect beneficial uses. At no place in the Draft PEIR do

[1] The sand cover is described as a mitigation measure (number 4.2.7), but it is more than that, as it is a critical component of the Project's proposed remediation strategy and thus must be detailed as part of the Project description in the DEIR.

mitigation measures indicate that there will be an engineered cap, and therefore the level of description and mitigation measures are appropriate given the activity.

O-3-59

The comment states: "Although the DEIR correctly refers to a "clean sand cover" rather than an engineered sand 'cap,' certain language in the DEIR could be misconstrued to refer to an engineered cap, and Mitigation Measure 4.2.7 includes requirements commensurate with an engineered cap. For example, the DEIR refers to the 'design and install[ation]' of the sand cover, in contrast to the DTR's description of the 'placement of a sand layer' in under-structure remedial areas. Compare DEIR, at 4.2-14 with DTR, at 30-4. In addition, Mitigation Measure 4.2.7 proposes detailed requirements regarding the 'design' of the sand cover, including requirements that it 'prevent substantial perturbation … of underlying contaminated sediments,' 'physically isolate the sediments from benthic or epigenetic organisms,' 'stabilize the contaminated sediments,' and include 'final engineering plans.' DEIR, at 4.2-20. This measure includes the likely requirement for a surficial layer of protective armor rock, along with, potentially, an intervening layer of filter gravel and brick, among other things that would be required in an engineered cap."

No language in the Draft PEIR or mitigation measures includes a "requirement for a surficial layer of protective armor rock, along with, potentially, an intervening layer of filter gravel and brick." Please see response to comment O-3-58.

O-3-60

The comment states: "In light of the above, the DEIR should be revised to make clear that the TCAO contemplates a sand cover rather than an engineered sand cap in the under-pier remedial areas, and Mitigation Measure 4.2.7 should be modified accordingly. The distinction is significant with respect to the proposed Project's economic and technological feasibility analysis. As explained below, Mitigation Measure 4.2.7 is estimated to add approximately $7,000,000 in additional costs relative to the clean sand cover remedy contemplated by the parties in the TCAO/DTR process. Memorandum Regarding Cost Implication of Mitigation Measures Described in the Draft Environmental Impact Report for the San Diego Shipyards Sediment Cleanup Project, San Diego California, submitted concurrently herewith (the 'Anchor Comments')."

The project description and mitigation measures in the Draft PEIR include the placement of a clean sand cover and do not include an engineered sand cap in the under-pier remedial areas. Please see response to comment O-3-58.

O-3-61

The comment states: "V. THE DEIR PROPOSES INFEASIBLE MITIGATION MEASURES

"A. CEQA Mitigation May Not Be Adopted Unless It Is 'Feasible'

"Mitigation may not be adopted under CEQA unless it is 'feasible,' which CEQA defines as 'capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.' CEQA Guidelines § 15364. Mitigation is 'legally infeasible' if its adoption is beyond the powers conferred by law on the agency, or prohibited by statutes governing the agency. *Kenneth Mebane Ranches v Superior Court,* 10 Cal. App. 4th 276, 291 (1992); *Sequoyah Hills Homeowners Ass'n v City of Oakland,* 23 Cal. App. 4th 704, 715-16 (1993)."

The comment is introductory to the following comment (O-3-62) and does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-62

The comment states: "CEQA does not provide agencies with independent authority to mitigate environmental impacts. Rather, '[i]n mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than this division.' CEQA § 21004; *see also* CEQA Guidelines § 15040. Accordingly, the Regional Board may not adopt any mitigation measures for the proposed Project unless those measures are authorized by the Porter Cologne Act or other applicable statutory authority beyond CEQA. To the extent mitigation contemplated by the DEIR does not satisfy the Porter Cologne Act, it is legally infeasible under CEQA and may not be adopted."

Preparation of a Programmatic EIR to evaluate the potential impacts associated with the cleanup options, and the development of mitigation measures to address such identified impacts does not violate section 13360 of the Water Code or any other applicable regulations.

O-3-63

The comment states: "B. New Mitigation Proposed In The DEIR Does Not Satisfy Resolution 92-49; Therefore It May Not Be Adopted

"1. The TCAO's Cleanup Levels Must Be Evaluated For Economic Feasibility Under Resolution 92-49

"The Regional Board's authority to issue cleanup and abatement orders is supplied by Water Code section 13304, (see DEIR, at 3-3), which is part of the Porter Cologne Act, Water Code sections 13000, et seq., which sets forth California's water quality control laws. Regarding implementation of Water Code section 13304, the State Board issued Resolution 92-49. Among other things, Resolution 92-49 requires an analysis of cost-effectiveness and

technological and economic feasibility in determining cleanup levels. Resolution 92-49, at 6-8 ('The Regional Water Board shall … ensure that dischargers shall have the opportunity to select cost-effective methods for … cleaning up or abating the effects [of wastes discharged and] … require the discharger to consider the effectiveness, feasibility, and relative costs of applicable alternative methods for investigation, cleanup and abatement.'). The Regional Board is also required to evaluate costs pursuant to Water Code section 13307."

Comment is introductory to other comments in the letter and does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-64

The comment states: "The DTR explains that the 'economic feasibility' requirement under Resolution 92-49 'refers to the objective balancing of the incremental benefit of attaining more stringent cleanup levels compared with the incremental cost of achieving those levels,' and 'does not refer to the discharger's ability to pay the costs of a cleanup.' DTR, at 31-1. In assessing economic feasibility under Resolution 92-49, the benefits of remediation are best expressed as the reduction in exposure of human, aquatic wildlife and benthic receptors to site-related contaminants of concern. *Id.*"

The comment is further introduction to the following comments and does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-65

The comment states: "Resolution 92-49 cites Water Code section 13307 as authorizing the State Board to adopt policies for Regional Boards to follow for the oversight of cleanup and abatement activities. Section 13307, in turn, mandates that the State Board's policies '*shall* include … [p]rocedures for identifying and utilizing the *most cost-effective* methods … for cleaning up *or abating the effects* of contamination or pollution.' Water Code § 13307(a)(3) (emphasis added). Water Code section 13267 likewise requires a costs-benefits analysis with regard to any 'technical or monitoring program reports' required by the Regional Board, providing specifically that '[t]he burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.' This provides further confirmation that the cost of any measures imposed on dischargers by the Regional Board must have a reasonable relationship to the anticipated benefits to be obtained."

Comment further describes an opinion related to the cost-benefit analysis, but does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-66

The comment states: "2. New Mitigation Requirements In The DEIR Would Increase Site-Wide Remediation Costs By Approximately $11.8 to $18.3 Million

"As set forth in the concurrently submitted Anchor Comments, an expert assessment of the mitigation proposed in the DEIR indicates that new measures or requirements not discussed in the TCAO/DTR will increase Site-wide remediation costs by an estimated $11.8 to $18.3 million. The critical changes or additions to the cleanup requirements that are proposed in the DEIR, and associated increases in remediation costs, are summarized in the chart below, and detailed further in the Anchor Comments.[1] These measures were not evaluated in the TCAO/DTR, and were not included in the DTR's economic feasibility analysis for the TCAO."

Mitigation Measure(s)	Probable Minimum Cost	Most Probable Cost	Probable Maximum Cost
Automatic turbidity monitoring systems (MMRP 4.2.1)	$ 500,000	$ 800,000	$ 1,000,000
Double silt curtain enclosure (MMRP 4.2.2)	$ 250,000	$ 400,000	$ 500,000
Bucket additions and controls (closure switches, Clam Vision TM) (MMRP 4.2.2)	$ 250,000	$ 400,000	$ 500,000
Air Curtains (MMRP 4.2.2)	$ 300,000	$ 400,000	$ 500,000
Complete enclosure of dredge AND barge (MMRP 4.2.3)	$ 1,500,000	$ 1,750,000	$ 2,000,000
Design and construction of permanent cap instead of sand cover (MMRP 4.2.7)	$ 5,000,000	$ 6,000,000	$ 7,000,000
Hydraulic placement of cap material (MMRP 4.2.8)	$ 1,500,000	$ 1,750,000	$ 2,000,000
Restriction on haul times (MMRP 4.4.1)	$ 2,000,000	$ 3,200,000	$ 4,000,000
Biological monitoring for sea turtles, terns, etc. (MMRP 4.5.7 -4.5.9)	$ 250,000	$ 400,000	$ 500,000
Use of engine catalysts, low-NOx, and alternative fuels (MMRP 4.6.8 - 4.6.10)	$ 100,000	$ 180,000	$ 200,000
Use of special deodorizing additives (such as Simple Green) (MMRP 4.6.15)	$ 50,000	$ 80,000	$ 100,000
Total Estimated Cost Increase from Mitigation Measures	$ 11,700,000	$ 15,360,000	$ 18,300,000

The comment introduces a table that summarizes the commenter's estimate of the costs of mitigation. The comment does not contain any substantive statements or questions about the

[1] NASSCO takes issue with the necessity or feasibility of many of these measures, as set forth in the Anchor Comments and elsewhere in this letter. NASSCO also seeks clarification as to the scope or application of certain of these measures, as also reflected elsewhere in NASSCO's comments. Such clarification (and corresponding revision to the DEIR and its discussion of mitigation measures), or the removal of certain mitigation, could alter the above cost estimates.

Draft PEIR or the analysis therein. Therefore, no further response is necessary. Please see response to Comment O-3-158.

O-3-67

The comment states: "3. The New Mitigation Has Not Been Evaluated Under Resolution 92-49, And Is Not Economically Feasible Under Resolution 92-49

"The aforementioned mitigation requirements have not been assessed for economic feasibility under Resolution 92-49 or Water Code sections 13267 and 13307, and the TCAO and DTR's economic feasibility determinations did not incorporate the additional $11.8 to $18.3 million in estimated remedial expenses. Because these costs have not been assessed for compliance under Resolution 92-49 or Water Code sections 13267 and 13307, they may not be imposed under the Porter Cologne Act. As a result, the Regional Board lacks authority to impose them under CEQA because they are 'legally infeasible,' and they may not be adopted by the Regional Board. *Sequoyah Hills*, 23 Cal. App. 4th at 715-16; *Kenneth Mebane Ranches*, 10 Cal. App. 4th at 291; CEQA Guidelines § 15364; CEQA § 21004."

The comment summarizes the commenter's cost estimation of mitigation measure contained in the Draft PEIR. The comment does not contain any specific or substantive statements or questions about the Draft PEIR or the analysis therein. Under CEQA, lead agencies must avoid or reduce the impacts of a proposed project by adopting feasible project alternatives or mitigation measures. Please see response to comment O-3-158.

O-3-68

The comment states: "Nor could these mitigation measures pass muster under Resolution 92-49 had they been evaluated. The DTR's economic feasibility analysis compared incremental benefits of further cleanup, expressed in terms of exposure reduction to target receptors, with the incremental cost of achieving those benefits, and determined that the degree of exposure reduction does not justify the incremental cost of such reductions beyond approximately $33 million in total cleanup costs. DTR, at 31-2 – 31-3. Even before the mitigation requirements proposed in the DEIR, the maximum estimated cleanup costs totaled approximately $60,345,500, well beyond the point at which the DTR concluded any incremental benefit is not supported by the additional costs. Resolution 92-49 certainly will not permit an additional $11.8 to $18.3 million in remediation costs, given that the additional, significant costs would have such a minimal degree of environmental benefit. Accordingly, the additional mitigation requirements proposed in the DEIR may not permissibly be adopted by the Regional Board under Resolution 92-49. Stated differently, to the extent that the Regional Board determines that the additional mitigation requirements are necessary to achieve the TCAO's cleanup levels (which NASSCO disputes), then those cleanup levels are economically infeasible and must be revised. Accordingly, Resolution 92-49 precludes adoption of the above measures, as does Water Code section 13307."

Please see response to comment O-3-67.

O-3-69

The comment states: "It is also worth noting that the costs of the mitigation requirements proposed in the DEIR, which increase the total Project cleanup costs to an estimated $72,145,500 to 78,645,500, also render implementation of the Project economically infeasible under CEQA. Given their estimated cost, many of the proposed individual mitigation measures, including each of those set forth in the chart above, are also economically infeasible under CEQA. *See* CEQA Guidelines § 15364 (feasibility analysis under CEQA includes consideration of 'economic factors')."

The comment contains further description of the costs associated with mitigation included in the Draft PEIR. The comment does not contain any specific or substantive statements or questions about the Draft PEIR or the analysis therein. Under CEQA, lead agencies must avoid or reduce the impacts of a proposed project by adopting feasible project alternatives or mitigation measures. PRC 21002-21002.1. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors. Cost in and of itself is not necessarily a determination of a measure's "feasibility" under CEQA. The purpose of including mitigation measures in an EIR is to identify mitigation measures that could minimize significant adverse impacts.

O-3-70

The comment states: "VI. SIMILAR SITES MUST BE TREATED SIMILARLY, BUT OTHER SEDIMENT REMEDIATION PROJECTS HAVE NOT BEEN SUBJECTED TO CEQA REVIEW AND MITIGATION

"Resolution 92-49 also provides that the 'Regional Water Board *shall* … prescribe cleanup levels which are *consistent* with appropriate levels set by the Regional Water Board for analogous discharges that involve similar wastes, site characteristics, and water quality considerations.' (emphasis added). *See also* Barker Depo., at 345:12-345:17 (recognizing that one goal of Resolution 92-49 is to ensure that the Regional Boards treat similar sites similarly). Constitutional principles of due process and equal protection likewise require both fundamental fairness and similar treatment of similarly situated persons subject to the same legislation or regulation. U.S. Const. amend. XIV, §1; Cal. Const. art. I, §§ 7, 15."

The comment is introductory to other comments in the letter and does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-71

The comment states: "Contravening these principles, the Project appears to be the first sediment remediation project in San Diego Bay that the Regional Board has subjected to CEQA review and mitigation. The Regional Board imposed CEQA review notwithstanding that the Project is 'categorically exempt' from CEQA, as explained below, and despite the DEIR's concession that an average of 245,000 cubic yards of sediment are dredged annually from San Diego Bay, which nullifies the Cleanup Team's prior position that 'unusual circumstances' required CEQA review because the Project called for the dredging of 143,000 cubic yards of sediment. Because the Regional Board's unprecedented imposition of CEQA review is not consistent with the Regional Board's treatment of similarly situated sites in San Diego Bay, and because, among other things, the DEIR is proposing mitigation that would add approximately $11.8 to $18.3 million to the cost of cleanup, the Regional Board's review of the Project under CEQA violates Resolution of 92-49 and the constitutional mandates of due process and equal protection. Notably, most of these measures have not been required for other cleanups in San Diego Bay (or elsewhere), including for the Campbell Shipyard cleanup, the most recent environmental sediment remediation project in San Diego Bay."

The comment states that the Water Board's imposing CEQA upon the project and the requirement to prepare an EIR is not consistent with other similar projects in San Diego Bay. The Water Board, as the Lead Agency under CEQA, makes the determination as to what level of environmental review is appropriate. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-72

The comment states: "VII. THE IMPOSITION OF NEW MITIGATION THROUGH THE DEIR WOULD VIOLATE DUE PROCESS BECAUSE THE PARTIES HAVE NOT HAD THE OPPORTUNITY TO TAKE DISCOVERY ON THOSE REQUIREMENTS

"The DEIR's new mitigation requirements (if adopted) violate due process for the additional reason that they purport to alter the cleanup required under the TCAO and DTR, but were first imposed after the close of discovery in the TCAO proceeding, precluding the opportunity for the parties to take discovery regarding the new requirements. There is no question that due process mandates that discovery may be taken regarding the parameters of the TCAO and DTR; the Presiding Officer's February 18, 2010 Discovery Plan specifically states that the 'Designated Parties are entitled to the procedural and due process safeguards' provided by the state and federal constitutions, the California Administrative Procedure Act, and the California Code of Regulations."

Preparation of a Programmatic EIR to evaluate the potential impacts associated with the cleanup options, and the development of mitigation measures to address such identified impacts, does not violate any parties "procedural and due process safeguards provided by the

state and federal constitutions, the California Administrative Procedure Act, or the California Code of Regulations." Further, CEQA is intended to be a transparent process by which information pertaining to project activities is openly addressed in a public forum.

The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-73

The comment states: "NASSCO, along with the City of San Diego, United States Navy, SDG&E, BAE Systems and Campbell Industries, previously made this very point in connection with their combined request for the discovery period to be extended to coincide with the CEQA process, so that the parties would retain the right to take discovery on any components of the TCAO/DTR (or their implementation) that might be affected by the CEQA review.[1]

The Cleanup Team agreed. SAR381340 ('Because the CEQA process must determine the timing of the San Diego Water Board's consideration of the tentative CAO and DTR … the Cleanup Team does not believe there is any good reason not to integrate the timing of the remaining discovery deadlines with the CEQA process.'). But this request was denied by former Presiding Officer David King."

The comment is a statement further describing the discovery period and does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-74

The comment states: "Accordingly, to the extent the Regional Board desires to impose additional mitigation requirements introduced in the DEIR, it must reopen the discovery period to allow the Designated Parties to take discovery regarding same, and extend the comment period so that the parties may use the results of discovery to inform their comments."

Please see response to comment O-3-73.

[1] The parties' request stated: "Tying discovery deadlines to the CEQA process is logical because the 'project' will be better defined and explained through the CEQA process and in the resulting Environmental Impact Report ('EIR'). The Parties will not know whether or to what extent they are agreeable to the final CAO (and therefore, can waive discovery) until after the CEQA process has been completed, including the submission of public comments and responses by the Regional Board and an analysis of proposed mitigation measures. It therefore makes sense for the discovery period to coincide with the CEQA process, so that the parties may take any discovery they believe is necessary as a result of the CEQA process, or waive discovery entirely." SAR381342.

O-3-75

The comment states: "VIII. THE CUMULATIVE IMPACTS ANALYSIS FAILS TO IDENTIFY REASONABLY FORESEEABLE DREDGING PROJECTS IN SAN DIEGO BAY

"As noted, the DEIR indicates that between 1994–2005, 'an average of approximately 245,000 cubic yards of sediment was dredged from San Diego Bay each year,' including maintenance and environmental dredging, with an annual total as high as 763,000 cubic yards. DEIR, at 4-2. The DEIR further makes the '**conservative assumption** that two similar-sized dredging projects occur during the dredging operations at the project site.' DEIR, at 4.3-30 (emphasis added). The DEIR also 'anticipates that **regularly scheduled** maintenance dredging projects may occur in San Diego Bay over the next several years.' DEIR, at 4.2-25. These statements raise several concerns regarding the DEIR's cumulative impacts analysis, which applies across all environmental impact areas considered in the DEIR."

The comment states concerns with the Draft PEIR's cumulative analysis, but does not provide any specific comments, substantive statements, or questions about the analysis contained in the Draft PEIR. Therefore, no further response is necessary. Refer to responses O-3-76 through O-382 for further discussion of the cumulative analysis.

O-3-76

Comments O-3-76 through O-3-82 pertain to the cumulative impacts discussion in the Draft PEIR. Comment O-3-76 cites portions of the Draft PEIR that describe the assumptions about other dredging projects in the San Diego Bay used in the cumulative impact analysis throughout the Draft PEIR.

The comment states: "First, given (i) that approximately 245,000 cubic yards of sediment are dredged from the Bay each year; (ii) that we can conservatively assume that two dredging projects of approximately 143,000 cubic yards each will occur during Project implementation; and (iii) that maintenance dredging in the Bay is 'regularly scheduled,' the DEIR's failure to identify a single anticipated dredging project is unsupportable. The DEIR should identify *any* dredging projects currently underway or scheduled to take place in the next ten years, regardless of whether they are maintenance *or* environmental dredging projects, as well as any specific dredging projects that are reasonably foreseeable or probable at this time. The DEIR's statement that no 'specific environmental dredging projects have been identified' suggests that maintenance dredging projects have been identified, but were simply not disclosed. DEIR, at 4.3-30. This is improper."

The San Diego Water Board Cleanup Team did not identify future specific maintenance projects for inclusion in the Draft PEIR. The cumulative analysis was based on historical dredging records for the 11-year period from 1994 to 2005, which showed an average of

approximately 245,000 cy of material dredged per year. Since no specific future maintenance or environmental dredging projects were identified, the use of historical information is appropriate for an estimation of the amount of dredging that could be expected to occur each year. No changes to the analysis or conclusions of the Draft PEIR are warranted.

O-3-77

This comment states that the failure to identify any specific dredging project within the San Diego Bay is unsupportable given the magnitude of ongoing dredging projects, and further states that the Draft PEIR should identify dredging projects currently underway, scheduled, or reasonably foreseeable to take place within the next 10 years (maintenance or environmental remediation projects). Finally, the comment states that it is improper not to disclose maintenance dredging projects that have been identified in the Draft PEIR, citing page 4.3-30.

The proposed project is a limited-duration dredge, treatment, haul, and sand cover activity. The analysis also appropriately focuses on the cumulative impacts and not on attributes of other projects that are not relevant to or do not contribute to the cumulative impact. Also an EIR's discussion of cumulative impacts need not be at the same level of detail as is provided for project-specific effects. (CEQA Guidelines 15130(b)) A Lead Agency is not required to provide evidence supporting every fact underlying the EIR's evaluation of cumulative impacts, nor is an exhaustive analysis required (*Association of Irritated Residents v County of Madera* 2003).

The cumulative impacts analysis related to dredging projects is based on the total anticipated dredge volume within the San Diego Bay that would occur within the same time frame as the proposed project. It is possible to identify this amount based on historical records maintained by the San Diego Water Board, as stated on page 4.3-30: "San Diego Water Board maintenance and environmental dredging records for the 11-year period from 1994 to 2005 show an average of approximately 245,000 cy [cubic yards] of material dredged from the bay, with yearly ranges from 0 to 763,000 cy." It is not necessary to specifically identify maintenance dredging projects to conduct the cumulative impacts analysis, as the quantity of dredged material is the key factor in the potential overlapping impacts. Furthermore, maintenance dredging is an ongoing condition in the Bay, part of the "past, present, and foreseeable future" projects.

The cumulative impacts discussion in the Draft PEIR is based on a list of anticipated landside projects as well as anticipated dredging activities. Due to the relatively short-term and intermittent nature of maintenance dredging activities within the Bay, the approach used allows reasonable and meaningful analysis of the cumulative effects. The analysis also appropriately focuses on the cumulative impacts and not on attributes of other dredging activity in the Bay, that are not relevant to or do not contribute to the cumulative impact. Cumulative dredging activity is described in sufficient detail to assess cumulative impacts,

identify the need for mitigation measures, and to provide for meaningful public review and comment.

O-3-78

This comment states that the Draft PEIR should explain the steps taken to identify "probable" dredging projects, and to make any schedule of regularly scheduled maintenance dredging projects public. Further, the comment states that the Draft PEIR should indicate the extent to which other dredging projects would involve contaminated sediment, and whether eelgrass or other sensitive biological communities may be located in the dredged areas. Finally, the comment requests documentation or information supporting the assertions on page 4.1-31 in the Draft PEIR that the location and timing of future dredging and staging activity is not known and that maintenance dredging projects in the San Diego Bay do not typically occur simultaneously.

Probable future maintenance dredging projects were based on the records from the past 11 years provided by the San Diego Water Board Cleanup Team. Maintenance dredging is typically conducted on an as-needed basis; therefore, it is difficult or impossible to predict the timing that various areas within the Bay will require dredging. The statement in the Draft PEIR that maintenance dredging projects in the San Diego Bay do not typically occur simultaneously is based on records from the past 11 years. Refer to response O-3-77 regarding the appropriate characterization of cumulative maintenance dredging activity in the Bay. Cumulative dredging activity is described in sufficient detail to assess cumulative impacts, identify the need for mitigation measures, and to provide for meaningful public review and comment.

Projects that propose to discharge dredge or fill material into a water of the United States, must get a Clean Water Act section 401 Water Quality Certification and/or Waste Discharge Requirements from the San Diego Water Board and other environmental permits/ authorizations. This places the San Diego Water Board in a position to implement Mitigation Measure 4.2.14 to coordinate dredging projects to ensure that major projects are not conducted simultaneously.

O-3-79

This comment states that the Draft PEIR should state whether the San Diego Water Board has conducted CEQA review for previous dredging projects and whether it intends to conduct CEQA review for future dredging projects, and states that the Draft PEIR does not mention CEQA review of future projects. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. CEQA does not require that the Draft PEIR include a comprehensive list of all previous dredging activities or a statement relating to the CEQA review of such activities.

Projects that propose to discharge dredge or fill material into a water of the United States, must get a Clean Water Act section 401 Water Quality Certification and/or Waste Discharge Requirements from the San Diego Water Board and other environmental permits/ authorizations. CEQA review is a required for issuance of a Certification of Water Quality and Waste Discharge Requirements. CEQA review has been conducted for the referenced previous dredging projects that required issuance of a Certification of Water Quality or Waste Discharge Requirements. The Draft PEIR states on page 4.2-25 that "Implementation of Mitigation Measure 4.2.14, *and compliance with the applicable regulatory permits*, would reduce adverse cumulative effects to water quality to a less than significant level" (emphasis added). The San Diego Water Board is not expected to function as the CEQA Lead Agency for most dredging projects, but it does have permitting authority and the ability to condition permits with respect to avoiding scheduling conflicts and cumulatively additive impacts.

O-3-80

This comment states that the Draft PEIR should include a thorough analysis of any specific or reasonably anticipated dredging projects (maintenance or environmental) that will occur during the next ten years, asserting that these other dredging projects are "unlikely to be reviewed under CEQA." The assertion that other dredging projects would not be reviewed under CEQA is faulty (refer to response O-3-79), as CEQA review is required for all dredging activities requiring issuance of a Clean Water Act section 401 Certification or Waste Discharge Requirements from the San Diego Water Board. As stated on page 4.5-61, "The San Diego Water Board has approval authority over dredging activities pursuant to section 401 of the CWA." The Draft PEIR relies heavily on the comprehensive information contained within the San Diego Bay Integrated Natural Resources Management Plan (INRMP)[1] for the analysis relating to biological resources (cited on page 4.5-1), particularly with respect to the cumulative context. The INRMP is a "long-term, collaborative strategy for managing the Bay's natural resources, and the primary means by which the Navy and Port jointly plan natural resources work in San Diego Bay. It guides stewardship and compliance with environmental laws, while supporting the ability of the Navy and the Port to accomplish their mission-related work." (June 2007 Draft INRMP, page 1-1). The Draft PEIR relied on both the adopted INRMP (dated 1999, adopted in 2002) and the June 2007 Draft update to the plan. The June 2007 Draft INRMP includes a table summary of existing and potential dredging projects since 1988 (Table 5-1, page 5-8). The INRMP is referenced into the PEIR, and the cumulative impact assessment for biological resources follows the suggested guidelines on page 5-70 (Section 5.5 Cumulative Impacts) of the June 2007 Draft INRMP. CEQA does not require a thorough analysis of all cumulative projects in the Draft PEIR; rather, it requires an analysis of those effects that may be compounded by the project. The disclosure of the anticipated volume of dredged materials suffices to evaluate cumulative effects from the project.

[1] U.S. Department of the Navy, Southwest Division (USDoN, SWDIV). 1999. San Diego Bay Integrated Natural Resources Management Plan, and San Diego Unified Port District (Port) Public Draft. September 1999. San Diego, CA. Prepared by Tierra Data Systems, Escondido, CA. Adopted in 2002.

O-3-81

This comment states that the Draft PEIR should focus particularly on the anticipated combined effects of dredging on eelgrass communities and eelgrass-reliant marine life. The distribution of eelgrass communities throughout the Bay is described in general on page 4.5-10 of the Draft PEIR. Implementation of the Southern California Eelgrass Mitigation Policy (SCEMP), as proposed in the Draft PEIR and required by the resource agencies, addresses the potential temporal and fragmentary impacts of the proposed project by ensuring that replacement habitat is adequately connected (refer to Section 4.5.5 of the Draft PEIR). The SCEMP was adopted to standardize the approach to eelgrass mitigation; according to the INRMP, eelgrass habitat within the Bay is thought to be increasing as a result of conservation efforts.[1] The analysis of the additive effects of the proposed dredging and other dredging projects in the Draft PEIR is sufficient without including those details requested by the commenter.

O-3-82

The comment questions the authority of the San Diego Water Board to coordinate monitoring efforts and data with other dredging projects in the Bay and to take other actions intended to address potential cumulative impacts. Any dredging project that requires a Federal Clean Water Act permit (Section 10, 404, etc.) requires a Clean Water Act section 401 Certification from the San Diego Water Board. Dredging projects may also require Waste Discharge Requirements from the San Diego Water Board. As stated on page 4.5-61 of the Draft PEIR, "The San Diego Water Board has approval authority over dredging activities pursuant to section 401 of the CWA." The comment also states that the Draft PEIR for the proposed project may be the only opportunity to assess cumulative impacts of dredging projects throughout the Bay. Refer to response O-3-79 for a discussion on the CEQA clearance requirements for other dredging projects. The information requested by the commenter is not required to be included pursuant to CEQA and is not necessary for analysis of project impacts.

The comment further states that the San Diego Water Board ought to be able to make information about future projects available. This statement is erroneous, as permitting occurs only after an application has been received. Active applications for permits and approval actions are available for public review on the San Diego Water Board website. A variety of agencies may serve as lead agency for dredging projects, including, but not limited to, the Port, the San Diego Water Board, and various cities.

O-3-83

Comments O-3-83 through O-3-100 focus on specific mitigation measures in the Draft PEIR.

[1] NMFS. 2009. 2008 San Diego Bay Eelgrass Inventory and Bathymetry Update. Presented to San Diego Unified Port District Environmental Advisory Committee. September 10, 2009. As cited in Appendix F of the Draft PEIR.

Comment O-3-83 states: "Set forth below are additional comments on various environmental impact analyses, mitigation measures and alternatives in the DEIR, to the extent these issues are not separately addressed. For the sake of brevity, comments pertaining to specific impact areas or mitigations addressed elsewhere in this letter generally are not reasserted here."

The comment is introductory to other comments in the letter. The San Diego Water Board has responded to the issues separately addressed as appropriate within the responses to those comments.

O-3-84

This comment states: "Water Code section 13360 provides in relevant part that '[n]o waste discharge requirement or other order of a regional board … shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.' Contradicting Water Code section 13360, the proposed Project purports to dictate how the Site should be remediated to achieve the TCAO's cleanup levels. Because the Regional Board lacks authority to dictate how the cleanup levels are to be achieved, it may not adopt the proposed Project, which therefore is legally infeasible under CEQA."

Water Code section 13360 also states that: "(b) If the court, in an action for an injunction brought under this division, finds that the enforcement of an injunction restraining the discharger from discharging waste would be impracticable, the court may issue any order reasonable under the circumstances requiring specific measures to be undertaken by the discharger to comply with the discharge requirements, order, or decree."

The evaluation of specific remedial actions in the Draft PEIR does not constitute an action by the San Diego Water Board to dictate how to achieve cleanup levels. The project description states that "Remedial actions may include dredging, application of clean sand cover, and/or natural recovery depending upon a number of factors, including levels of contamination in the sediment and site accessibility." (Draft PEIR, page 3-5). The use of a Programmatic EIR is appropriate to evaluate the potential impacts of a variety of means to conduct cleanup. The remedial actions evaluated in the Draft PEIR were developed in consultation with the stakeholders, including the Shipyards, the Port, and the San Diego Water Board Cleanup Team. Refer also to response O-3-72.

O-3-85

The comment states: "The DEIR indicates that vessel traffic in San Diego Bay for maintenance dredging is similar to that required for the proposed Project. DEIR, at 4.1-9. To better assess cumulative impacts, the DEIR should provide a discussion of the vessel traffic typically encountered during recent maintenance dredging projects in the Bay, based on the volume of dredging that occurs."

With regard to the operation of vessel traffic during implementation of the proposed project dredging, the conditions would be very similar to those during maintenance dredging, which occurs regularly throughout the Bay. For example, a dredging project proposed in 2002 for deepening San Diego Harbor (referred to as the San Diego Harbor Deepening Project) included a barge with clamshell dredge and a support tug boat. Additional ocean-going tug boats were proposed to transport an estimated 260,000 to 890,000 cubic yards of dredge spoils for disposal (http://www.portofsandiego.org/north-embarcadero/documents/doc_view/1165-sdcdc-energy-requirements-and-conservation-potential-of-alternatives-and-mitigation-measures.html). The EIR/EIS for the Harbor Deepening project states that "Types of construction equipment that are typical of projects of this type include, but are not limited to dredging vessels, barges, a crew boat, and a survey boat." The equipment identified in the analysis (Table 6.1-1) includes one clamshell dredge, one support tug boat, and an oceangoing barge tug. The level of vessel traffic proposed for this project is comparable and does not warrant further analysis. The proposed project dredging will be implemented in a manner consistent with the past and future dredging projects in the Bay. No further analysis is required.

O-3-86

The comment states "The DEIR indicates that an alternative traffic mitigation measure is the diversion of 15 percent of the dredged sediment to an ocean disposal site, but that "ocean disposal has not been approved by the San Diego Water Board at this time." DEIR, at 4.1-24. Given that no form of remediation or disposal has yet to be approved by the Regional Board, the purpose of this statement should be explained."

Ocean disposal was identified as a mitigating measure to reduce the impact of truck traffic. Traffic modeling indicated that even with 15 percent of the dredged sediment diverted to ocean disposal, traffic impact to certain intersections was unacceptable. The alternative mitigation measure of rerouting traffic to the Civic Center Drive interchange was found to be effective. Once a more appropriate alternative was identified no further action has been taken to approve ocean disposal. This information was included to document that the ocean disposal was evaluated and was not found to be an effective method to reduce truck traffic associated with this project.

O-3-87

The comment states: "The DEIR uses the 2000 Highway Capacity Manual ('HCM') published by the Transportation Research Board, even though an updated edition was published in 2010. The Regional Board should explain its decision to use the 2000 manual, despite the availability of an updated version, and explain whether use of the 2010 HCM would affect the results of the DEIR's traffic analysis in any way."

The 2010 HCM was released in late 2010 and was not readily available to be used for this project. Major updates to the HCM such as an integrated multimodal approach to the

analysis and evaluation of urban streets from the points of view of automobile drivers, transit passengers, bicyclists, and pedestrians are not anticipated to significantly change the results of the analysis.

O-3-88

The comment states: "The DEIR states that the I-5 Southbound Ramp/Boston Avenue intersection currently operates at LOS E during the p.m. peak hour, but the Draft Barrio Logan/Harbor 101 Community Plan Update acknowledges that this intersection currently operates at LOS F. The Regional Board should explain this discrepancy, as well as whether the results of the DEIR's traffic analysis would be affected in any way if this intersection is properly categorized as operating at LOS F."

The DEIR utilized traffic counts collected for the project in 2011; in comparison, the Draft Barrio Logan/Harbor 101 Community Plan Update utilized older volume estimates from a number of sources dating from 2003 to 2010. The recent, project -specific traffic counts used in the Draft PEIR are considered more representative of the current conditions. Traffic will be routed to the Civic Center Drive interchange to avoid the I-5 Southbound Ramp/Boston Avenue. As mitigated; the project will not impact this intersection; therefore, the current LOS (either E or F) will not be changed by the project.

O-3-89

The comment states: "The DEIR repeatedly refers to 'the City's performance criteria' or 'the City's significance criteria' without specifying which city is referred to (San Diego or National City), or which particular guidance document contains the referenced criteria. See e.g., DEIR, at 4.1-16, 4.1-25, Appx. B, at 39. The Regional Board should clarify which city's criteria is implicated, and cite to the particular document containing the criteria that were relied upon."

As defined in the list of acronyms, "the City" refers to the City of San Diego. The City of National City is always referenced by the full name. The methodology section in Section 4.1.4.1 of the Draft PEIR includes references to the significance criteria used (e.g., "Roadway segments were analyzed on a daily basis by comparing the ADT volume to the City of San Diego Proposed LOS Standards – Street Segment Average Daily Trip Thresholds for Staging Areas 1 through 4. The City of National City has amended the SANTEC roadway capacities, and these are analyzed separately for Staging Area 5." Draft PEIR pg 4.1-10). The traffic study (Appendix B of the Draft PEIR) introduction states: "This traffic study has been prepared in accordance with the methodologies and procedures outlined in the City of San Diego *Traffic Impact Study Guidelines*, San Diego Traffic Engineers' Council (SANTEC) *Traffic Impact Study Guidelines*, the Highway Capacity Manual 2000 (HCM) published by the Transportation Research Board, and applicable provisions from the California Environmental Quality Act (CEQA). It should be noted that the City of National City follows the SANTEC *Traffic Impact Study Guidelines.*"

O-3-90

The comment states: "The DEIR recognizes that the National City General Plan is currently in the process of being updated; however, it appears that the revised General Plan was adopted on June 7, 2011, and a revised zoning map is expected to be adopted on August 16, 2011, well before the Regional Board will take action on the Project. The Regional Board should explain whether the results of the DEIR's traffic analysis will be affected in any way by the revisions to these plans."

Current information from the National City General Plan Update was used in development of the Draft PEIR to the extent practicable. For example, the Circulation Element Roadway Classifications Capacity and Level of Service Standards from draft National City General Plan were included in the Draft PEIR in Appendix B. Significant changes to the Draft PEIR are not expected as a result of the adoption of the revised General Plan because the content was incorporated in the Draft PEIR to the extent possible.

O-3-91

The comment states "At page 4.2-12, the DEIR correctly acknowledges that cleanup to 'background sediment quality level' is economically infeasible. The DEIR should be revised to indicate that cleanup to background also is technologically infeasible, as conceded in the Cleanup Team's written discovery responses."

This comment summarizes comments provided in the Anchor QEA letter. Please refer to responses O-3-157 through O-3-160 for a detailed response.

O-3-92

The comment states "Mitigation Measure 4.2.1 requires automatic rather than manual turbidity monitoring during dredging. The requirement for automatic dredging should be deleted and replaced by manual monitoring. Given possible disturbances in San Diego Bay, such as ship movements or storm events, the likelihood of false positives from automatic monitoring is high, and the associated dredging interruptions will significantly impair the ability to implement the proposed remedy in a timely and cost-effective manner."

This comment summarizes comments provided in the Anchor QEA letter. Please refer to response O-3-160 for a detailed response.

O-3-93

The comment states: "Mitigation Measure 4.2.2, as described on pages 1-10 and 4.2-17 of the DEIR, indicates that the contractor 'may' use air curtains in conjunction with silt curtains. In the Mitigation Monitoring and Reporting Program ('MMRP'), however, Mitigation Measure 4.2.2 provides that the contractor 'shall' use air curtains. DEIR, at 7-5. We understand that the use of air curtains is not intended to be mandatory, and that the 'shall' included in the MMRP is inadvertent. Accordingly, we request revision of the MMRP so that the

requirements of Mitigation Measure 4.2.2 relative to the use of air curtains are consistent throughout the document."

This comment summarizes comments provided in the Anchor QEA letter. Please refer to response O-3-166 for a detailed response. The typo has been corrected. Please see Appendix A to this RTC document, Errata.

O-3-94

This comment states: "Mitigation Measure 4.2.2 includes a requirement for a double silt curtain enclosure, which adds considerable cost without any demonstrated environmental benefit. This requirement therefore should be eliminated."

This comment summarizes comments provided in the Anchor QEA letter. Please refer to responses O-3-163 and O-3-164 for a detailed response.

O-3-95

This comment states: "Mitigation Measure 4.2.2 also would require certain customized features on the dredge buckets, such as closure switches and Clam Vision TM. These features would add considerable cost, and pose the risk of complicating the contractor's work by providing ambiguous or misleading data during dredging. These features should not be required."

This comment summarizes comments provided in the Anchor QEA letter. Please refer to response O-3-165 for a detailed response.

O-3-96

This comment states: "Mitigation Measure 4.2.3 requires that double silt curtains are to 'fully encircle the dredging equipment and the scow barge being loaded with sediment.' Including the scow barge in the enclosure would significantly impact (and slow down) operations, increasing costs without measurable environmental benefit. This requirement should be removed."

This comment summarizes comments provided in the Anchor QEA letter. Please refer to response O-3-167 for a detailed response.

O-3-97

The comment states: "In addition to concerns raised elsewhere in this letter, Mitigation Measure 4.2.14 constitutes improper 'deferred' mitigation because it defers an assessment of reasonably anticipated cumulative impacts from other dredging projects in concert with the proposed Project."

The purpose of describing mitigation measures in an EIR is to identify mitigation measures that could minimize significant adverse impacts. Deferred mitigation measures are those that do not describe the actions that would be taken to reduce or avoid an impact. This may occur by deferring to future studies before devising the measure without including a description of the nature of the actions expected to be incorporated and performance standards for their effectiveness. Mitigation Measure 4.2.14 is a feasible measure that can be implemented by the San Diego Water Board as future dredging projects are proposed through its approval authority as a permitting agency involved in all dredging projects in the San Diego Bay.

O-3-98

The comment states: "Mitigation Measure 4.4.1 prohibits certain treatment and haul activities between the hours of 7:00 p.m. and 7:00 a.m., to the extent the activities would cause 'disturbing, excessive, or offensive noise,' unless a permit has been obtained from the City of San Diego's Noise Abatement and Control Administrator in conformance with San Diego Municipal Code section 59.5.0404. DEIR, at 4.4-10. NASSCO understands that this measure is intended to allow work to be performed continuously at all hours of the day, so long as a variance or other appropriate permit has been obtained from the City of San Diego, or so long as any noise generated is not 'disturbing, excessive, or offensive.' Please confirm that this is the Regional Board's understanding as well. The ability to work continuously throughout the day is critical to accomplishing the proposed remediation in a timely and cost-effective manner."

The TCAO, Section G. provisions requires that the Dischargers "…properly manage, store, treat, and dispose of contaminated soils and ground water in accordance with applicable federal, state, and local laws and regulations." The San Diego Water Board Cleanup Team understands that activities may occur continuously throughout the day in San Diego so long as it does not "…create disturbing, excessive or offensive noise unless a permit has been applied for and granted beforehand…" per San Diego Municipal Code 50.5.0404 Construction Noise.

See also response to comment O-3-170.

O-3-99

The comment states: "Mitigation Measure 4.4.2 is generally similar to Mitigation Measure 4.4.1, except that it applies to activities in National City rather than the City of San Diego. Mitigation Measure 4.4.2 should be modified to correspond to Measure 4.4.1, and allow activities to occur continuously throughout the day, in National City, so long as any noise generated is not 'disturbing, excessive, or offensive,' or if a variance or other appropriate permit has been obtained from National City."

Mitigation Measure 4.4.2 applies to activities in National City and is correctly worded. It will not be revised since National City's noise control ordinance differs from that of San

Diego. Section 4.4.2.2 of the Draft PEIR correctly identifies National City's noise control ordinance.

O-3-100

The comment states: "Mitigation Measure 4.6.15 provides that the contractor 'shall apply a mixture of Simple Green and water (a ratio of 10:1) to the dredged material.' DEIR, at 4.6-21. We understand that this measure is not intended to apply to every load of dredged material, and instead should apply only to the extent that an odor issue arises. As such, we request that the language of Mitigation Measure 4.6.15 be revised to clarify that liquids need only be applied to the extent odor issues arise with respect to particular portions of the dredged material."

The San Diego Water Board Cleanup Team agrees with the comment and the Draft PEIR has been clarified as suggested. See Appendix A, Errata.

O-3-101

The comment states: "The DEIR states that the 'no project' alternative would not reduce or minimize adverse effects to aquatic life, aquatic-dependent wildlife and human health beneficial uses 'because the contaminated sediments would remain in place.' DEIR, at 5-10. This statement is conclusionary, and is not supported by the requisite 'facts and analysis.' *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 568 (1990) ('the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions.'). As set forth above and in NASSCO's May 26 Comments, substantial evidence does not support the contention that current sediment conditions adversely effect any of these beneficial uses, rather, such contentions are premised on assumptions which are clearly erroneous and not reflective of existing conditions at the Site. See CEQA Guidelines § 15384 ('Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate … does not constitute substantial evidence.')."

The comment fails to acknowledge the full discussion of the No Project Alternative under Section 5.5.1. The Draft PEIR clearly cites the TCAO and DTR in Section 5.5 and provides a summary of the attainment of project objectives; it incorporates both by reference in Section 2. It is unnecessary and excessive to reproduce the facts and analysis as contained in the TCAO and DTR, and the citation, when combined with the project description and background in the Draft PEIR, does not result in a conclusion that is "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate." The presented information clearly consists of substantial evidence in accordance with CEQA guidelines, which state:

Section 15384. Substantial Evidence

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

CEQA guidelines clearly state that substantial evidence "means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."

Thus, the comment is incorrect, as the argument is clearly related to the conclusion reached in the Draft PEIR as differing from the conclusion reached by NASSCO, rather than pertaining to the evidence relied upon to reach the conclusion. It is evident that NASSCO has reached a different conclusion based upon the whole record before the lead agency, as evidenced by the reference to comments submitted on the TCAO and DTR, as well comments received on the Draft PEIR. Clearly, the San Diego Water Board Cleanup Team and NASSCO relied upon the same "substantial evidence" to reach differing conclusions. The Draft PEIR, including the documents incorporated by reference therein, contains facts and analysis, expert opinion supported by facts, and reasonable assumptions predicated upon facts. The Draft PEIR is adequate and does not need to be revised.

O-3-102

The comment states: "The DEIR's conclusion that the no project alternative would result in the Site continuing to be "injurious to human health," and "a public nuisance" is similarly unsupported by "facts and analysis" or any substantial evidence. DEIR, at 5-10."

Please refer to response O-3-101. The Draft PEIR is adequate and does not need to be revised.

O-3-103

The comment states: "Alternative 2 consists of dredging and constructing a CAD facility 'at a yet to be determined location.' DEIR, at 5-11. Given that a location for the facility has not been identified, the feasibility of this alternative cannot properly be evaluated."

The Draft PEIR provides a reasonable range of project alternatives and potential staging areas and does not select a preferred alternative or staging area. Once a project has been

selected, detailed analyses will be provided in a site-specific environmental document, including any staging area(s) to be used and any potential use of Confined Aquatic Disposal.

O-3-104

The comment states: "Alternative 2 assumes that a majority of dredged sediments would be 'barged to an ocean disposal location.' DEIR, at 5-11. But elsewhere the DEIR rejects consideration of ocean disposal. If the Regional Board believes ocean disposal is a feasible option, the DEIR should explain the basis for that decision. If not, the DEIR should state clearly that Alternative 2 is not feasible and may not be adopted."

To clarify, Alternative 2 assumes that a majority of the dredged sediments would be "barged to an ocean disposal location" for confined disposal. As described in the Draft PEIR, Alternative 2 is different from simple ocean disposal (via dumping) at a USEPA approved offshore location (see Section 5.4.1 "Alternatives Considered But Not Studied Further," which precedes the referenced section at 5-11).

O-3-105

The comment states: "The DEIR indicates that 'Alternative 2 could have greater impacts [to marine biological resources] if the CAD facility did not effectively sequester underlying contaminants …' DEIR, at 5-15; see also id. at 5-13. But the DEIR provides no analysis of whether this may or may not happen, and concludes only that the potential marine biological impacts from Alternative 2 'would be slightly increased as compared to the proposed project' but remain less than significant with mitigation. Id. Without any analysis of whether or not the CAD cap will maintain its integrity, Alternative 2 should be considered to have a significant effect on marine biological resources and water quality, and should be treated as environmentally inferior to the proposed Project. This is certainly a critical area that would warrant detailed evaluation before Alternative 2 could be approved by the Regional Board."

CEQA Guidelines (section 15126.6) provide information on the level of discussion necessary when considering alternatives:

> (*d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed.* (*County of Inyo v. City of Los Angeles* (1981) 124 Cal. App. 3d 1).

The comment requests a detailed discussion and evaluation within the Draft PEIR on whether specific mitigation measures that would be a conditional element for the alternative may or

may not maintain integrity, presumably in perpetuity (in this case, integrity of an engineered cap, which notably would also be subject to further environmental review and CEQA tiering). This level of detailed discussion for alternatives is not necessary, as the alternative should "be described in sufficient detail to serve the informational purpose of the report to the government body which will act…" (*City of Rancho Palos Verdes v. City Council* (2d Dist. 1976) 59 Cal. App. 3d 869,892 [129 Cal. Rptr. 173]). Furthermore, the "discussion of alternatives need not be exhaustive, and the requirement as to the discussion of alternatives is subject to a construction of reasonableness. 'Crystal ball' inquiry is not required." (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (3d Dist. 1979) 89 Cal. App. 3d 274, 286 [152 Cal. Rptr. 585].

For this alternative, and subsequent comments on the other alternatives, the level of prescribed detail is sufficient to determine if reasonable alternatives would eliminate and/or reduce significant unavoidable impacts when compared to the proposed project. No reported CEQA case has suggested or required a level of detail similar to that of the proposed project, including when an alternative may result in significant effects beyond or in addition to those of the proposed project: "If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed." (CEQA Guidelines section 15126.6 (d), citing *County of Inyo v. City of Los Angeles* (3d Dist. 1981) 124 Cal. App. 3d 1 [177 Cal. Rptr. 479]).

In regard to the level of information required for consideration in the Draft PEIR, the alternatives presented in the Draft PEIR are sufficient for the EIR tiering process, and is consistent with applicable code and CEQA Guidelines (Public Resources Code sections 21068.5 and 21093(b), CEQA Guidelines section 15152). Please refer also to response O-4-6. Once a project has been selected, detailed analyses will be provided in a site-specific environmental document, including any staging area(s) to be used and any potential use of a Confined Aquatic Disposal facility.

O-3-106

The comment states: "The Regional Board lacks authority to adopt Alternative 2 because the Regional Board's authority under the Porter Cologne Act is limited to setting cleanup levels, rather than selecting methods to achieve cleanup levels. Water Code § 13360. Accordingly, Alternative 2 is legally infeasible under CEQA. *Kenneth Mebane Ranches,* 10 Cal. App. 4th at 291; *Sequoyah Hills Homeowners Ass'n,* 23 Cal. App. 4th at 715-16; CEQA § 21004; CEQA Guidelines § 15040."

Please refer to response O-3-84. Preparation of a Programmatic EIR to evaluate potential cleanup options does not violate section 13360 of the Water Code or any other applicable regulations.

O-3-107

The comment states: "The DEIR indicates that '[a] complete analysis of the potential impacts related to Alternative 3, the Convair Lagoon CDF, was completed by Atkins and is included in Section 5.10 of this chapter. Technical appendices in support of the Convair Lagoon CDF Alternative Analysis are included as Appendices I through O of this PEIR.' DEIR, at 5-18. But the DEIR fails to explain why a 'complete analysis' of this alternative was prepared by separate consultants, or why technical appendices were included for this alternative. The DEIR also fails to explain why a 'complete analysis' and technical appendices were not provided for Alternatives 1, 3 or 4."

The inclusion of detailed information about the Convair Lagoon CDF Alternative in the Draft PEIR is intended to illuminate the potential effects of such an alternative and to inform the decision-makers. The analysis was prepared by the Unified Port of San Diego, a responsible agency under CEQA, with oversight by the San Diego Water Board Cleanup Team. The Convair Lagoon is not the proposed project, nor has it been identified as the preferred course of action. The Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to those required for the proposed project in multiple areas, most significantly including water quality and biological resources.

O-3-108

The comment states: "The DEIR must explain the basis for this discrepancy. If Regional Board staff believe the cursory analysis in Section 5.7 is insufficient for a proper assessment of Alternative 3, then it must explain why it believes the same cursory analysis is sufficient for consideration of the remaining alternatives. If Regional Board staff believes that the analysis included for Alternatives 1, 3 and 4 is insufficient to allow the Regional Board to adopt one of those alternatives, or fairly compare these alternatives to the proposed Project, the DEIR should also make that point clear."

Please see responses to comments O-3-105 and O-3-107.

The analysis of alternatives in the Draft PEIR is sufficient to determine if reasonable alternatives would eliminate and/or reduce significant unavoidable impacts when compared to the proposed project. "If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed." (CEQA Guidelines section 15126.6 (d), citing *County of Inyo v. City of Los Angeles* (3d Dist. 1981) 124 Cal. App. 3d 1 [177 Cal. Rptr. 479]).

The San Diego Water Board Cleanup Team concludes that the alternatives presented in the DPEIR are sufficient for the EIR tiering process, and that the alternatives analysis is consistent with applicable code and CEQA Guidelines (Public Resources Code sections

21068.5 and 21093(b), CEQA Guidelines section 15152). Once a project has been selected, detailed analyses will be provided in a site-specific environmental document.

O-3-109

The comment states: "The Regional Board lacks authority to adopt Alternative 3 because the Regional Board's authority under the Porter Cologne Act is limited to setting cleanup levels, rather than selecting methods to achieve cleanup levels. Water Code § 13360. Accordingly, Alternative 3 is legally infeasible under CEQA. *Kenneth Mebane Ranches*, 10 Cal. App. 4th at 291; *Sequoyah Hills Homeowners Ass'n*, 23 Cal. App. 4th at 715-16; CEQA § 21004; CEQA Guidelines § 15040."

Please refer to response O-3-84. Preparation of a Programmatic EIR to evaluate potential cleanup options does not violate section 13360 of the Water Code or any other applicable regulations.

O-3-110

The comment states: "The DEIR indicates that 'the location of the CDF for Alternative 4 is unknown at this time; therefore, it is unknown whether this alternative would result in any short-term or long-term loss of use of shipyard or other San Diego Bay-dependent facilities.' DEIR, at 5-20. But this is only one reason why the feasibility of Alternative 4 cannot be assessed without identification of where the CDF would be located. The DEIR fails to demonstrate that Alternative 4 is a feasible alternative that could attain most of the Project Objectives, and it may not be adopted by the Regional Board."

The Draft PEIR provides a reasonable range of project alternatives and potential staging areas and does not select a preferred alternative or staging area. Once a project has been selected, detailed analyses will be provided in a site-specific environmental document, including any staging area(s) to be used and the location of any CDF.

O-3-111

The comment states: "The DEIR indicates that Alternative 4 'could have greater impacts if the covering did not effectively sequester underlying contaminants …' DEIR, at 5-23, see also id. at 5-21. But the DEIR provides no analysis of whether this may or may not happen, and concludes only that the potential marine biological impacts from Alternative 4 'would be slightly increased as compared to the proposed project' but remain less than significant with mitigation. Id. Without any analysis of whether or not the CDF covering will maintain its integrity, Alternative 4 should be considered to have a significant effect on marine biological resources and hydrology and water quality, and should be treated as environmentally inferior to the proposed Project. This is certainly a critical area that would warrant detailed evaluation before Alternative 4 could be approved by the Regional Board."

Refer to response O-3-105. Future decisions and implementing actions following certification of the PEIR and approval of the project will be subject to subsequent environmental review pursuant to CEQA. The PEIR, once certified, may be used as an environmental clearance baseline against which to evaluate future site-specific implementation approvals and permits for implementation of the proposed project. Thus, the "tiering" process and need for further environmental review will be specific to the selection of the dewatering and treatment site(s) for the dredged materials.

O-3-112

The comment states: "The Regional Board lacks authority to adopt Alternative 4 because the Regional Board's authority under the Porter Cologne Act is limited to setting cleanup levels, rather than selecting methods to achieve cleanup levels. Water Code § 13360. Accordingly, Alternative 4 is legally infeasible under CEQA. *Kenneth Mebane Ranches*, 10 Cal. App. 4th at 291; *Sequoyah Hills Homeowners Ass'n*, 23 Cal. App. 4th at 715-16; CEQA § 21004; CEQA Guidelines § 15040."

Please refer to response O-3-84. Preparation of a Programmatic EIR to evaluate potential cleanup options does not violate section 13360 of the Water Code or any other applicable regulations.

O-3-113 and O-3-114

The comment states: "The DEIR's conclusion that the no project alternative 'would cause [the alleged] environmental impacts related to the existing conditions to be perpetuated,' is not supported by any 'facts and analysis.' Citizens of Goleta Valley, 52 Cal. 3d at 568. This is a fatal omission, as it is the sole justification provided by the DEIR for foregoing the "environmentally superior" no project alternative, which would avoid all of the proposed Project's significant and potentially significant impacts."

Refer to response O-3-101.

O-3-115

The comment states: "The DEIR selected four alternatives for consideration: (1) the No Project/No Development Alternative (Alternative 1), (2) Confined Aquatic Disposal Site (Alternative 2), (3) Convair Lagoon Confined Disposal Facility (CDF) (Alternative 3), and (4) CDF with Beneficial Use of Sediments (Alternative 4). DEIR, at 5-9. While the alternatives analysis (and the DEIR as a whole) is deficient for its failure to study the MNA alternative, as detailed above, it also is facially biased in favor of Alternative 3; which, unlike the other Alternatives, received its own, detailed supplemental evaluation consisting of roughly 239 pages, or approximately 31% of the entire DEIR, not including six Alternative-specific appendices totaling approximately 247 additional pages. DEIR, at 5-32. By contrast, the other three alternatives each received between 2 and 6.5 pages of analysis in the DEIR, with no appendices."

The inclusion of detailed information about the Convair Lagoon CDF Alternative in the Draft PEIR is intended to illuminate the potential effects of such an alternative and to inform the decision-makers. The Convair Lagoon is not the proposed project, nor has it been identified as the preferred course of action. The Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to those required for the proposed project in multiple areas, most significantly including water quality and biological resources. Thus, the Draft PEIR is not biased toward this alternative.

O-3-116

The comment states: "We understand that Alternative 3 is favored by the San Diego Unified Port District ('Port District'), which makes sense given that this alternative would create ten acres of shoreline property that would likely be leased by the Port District to third parties. DEIR, at 5-117. We also understand that the detailed supplemental analysis of Alternative 3 was submitted on behalf of the Port District, and at the Port District's request, and note that the analysis was prepared by different consultants than those that prepared the remainder of the DEIR, including the analysis of the other alternatives. DEIR, at 9-1 and 9-2. The DEIR should clearly explain to the public the circumstances associated with the Regional Board's decision to include more than 200 pages of analysis (plus appendices) for one alternative prepared by separate consultants for a party that will benefit from that alternative (if implemented), while the other alternatives each received less than seven pages of analysis."

As explained in response to comment O-4-3, the Unified Port of San Diego (Port) is the public agency with land use authority in the Port District, including the potential Staging Areas for the proposed project and the Convair Lagoon. The Port is a responsible agency identified in Chapter 3.0 of the Draft PEIR. The shipyards are private entities, not public agencies, and therefore do not enjoy the same status as the Port under CEQA.

O-3-117

The comment states: "The Regional Board should make publicly available any contract or other agreement that has been entered into between the Regional Board and the Port District (or the Port District's consultants) regarding the preparation of the expanded analysis for Alternative 3, as well as any other documentation associated with the decision to include the expanded analysis of Alternative 3 in the DEIR. The Regional Board should also make clear if Alternative 3 is the politically preferred alternative, or is otherwise receiving special treatment because it is being advanced by the Port District, and explain why the Port District is being allowed to submit its own self-serving alternatives analysis for inclusion in the DEIR, an offer that has not (to NASSCO's knowledge) been extended to other Designated Parties or members of the public. CEQA's emphasis on public participation and open decision making demands that the public be fully apprised of the circumstances associated with the inclusion of the expanded analysis regarding Alternative 3."

As explained in response to comment O-4-3, the Unified Port of San Diego (Port) is the public agency with land use authority in the Port District, including the potential Staging Areas for the proposed project and the Convair Lagoon. The Port is a responsible agency identified in Chapter 3.0 of the Draft PEIR. The shipyards are private entities, not public agencies, and therefore do not enjoy the same status as the Port under CEQA.

O-3-118

The comment states: "To this end, NASSCO requests the opportunity to prepare a detailed analysis of the MNA alternative for incorporation into a recirculated DEIR. To the extent the Regional Board is unwilling to allow NASSCO to prepare an analysis of the MNA alternative for inclusion into the DEIR, it should explain the basis for treating NASSCO differently than the Port District."

As explained in response to comment O-4-3, the Unified Port of San Diego (Port) is the public agency with land use authority in the Port District, including the potential Staging Areas for the proposed project and the Convair Lagoon. The Port is a responsible agency identified in Chapter 3.0 of the Draft PEIR. The shipyards are private entities, not public agencies, and therefore do not enjoy the same status as the Port under CEQA. It should be noted that the Project Description includes natural recovery as a remedial action that may be included in the project.

O-3-119

The comment states: "Biasing an EIR in favor of one entity or alternative is grounds for invalidation under CEQA. For example, CEQA's implementing regulations specifically provide that '[t]he lead agency is responsible for the adequacy and objectivity of the draft EIR,' and the draft EIR 'must reflect the independent judgment of the lead agency.' CEQA Guidelines § 15084(e); see also CEQA § 21082.1 (EIR 'shall be prepared directly by, or under contract to' the lead agency). Although a lead agency may enlist the initial drafting and analytical skills of an applicant's consultant, the agency must apply its 'independent review and judgment to the work product before adopting and utilizing it.' *Eureka Citizens*, 147 Cal. App. 4th at 369-371 (quotations omitted); *People v. County of Kern*, 62 Cal. App. 3d 761, 775 (1976) (lead agency 'may not use a draft EIR as its own without independent evaluation and analysis.'); CEQA Guidelines § 15084(e) ('Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis.'). Thus, the Regional Board may not simply adopt the Port District's submittal verbatim, and the DEIR must include a reasoned basis for its extensive analysis of Alternative 3 relative to the other alternatives."

Refer to responses O-3-115 through O-3-118. The Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to those required for the proposed project in multiple

areas, most significantly including water quality and biological resources. Thus, the Draft PEIR is not biased toward this alternative.

O-3-120

The comment states: "Moreover, as noted above, the Port District was the only entity that was permitted to directly draft sections of the EIR, improperly biasing the alternatives analysis in its favor. This is particularly troubling given the circumstances of the instant proceeding. Unlike a typical development project subject to CEQA, where approvals are sought by a single project applicant, here, multiple parties are required to implement the Project and currently are involved in federal court litigation regarding the proper allocation of costs required for Project implementation. There is no basis for allowing the Port District to prepare a self-serving analysis of an alternative that would provide it with financial and other benefits associated with the creation of an additional ten acres of shoreline property while imposing additional costs on other Designated Parties and additional (but largely undisclosed) impacts on the environment."

As explained in response to comment O-4-3, the Unified Port of San Diego (Port) is the public agency with land use authority in the Port District, including the potential Staging Areas for the proposed project and the Convair Lagoon. The Port is a responsible agency identified in Chapter 3.0 of the Draft PEIR. The shipyards are private entities, not public agencies, and therefore do not enjoy the same status as the Port under CEQA. The Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to those required for the proposed project in multiple areas, most significantly including water quality and biological resources. Thus, the Draft PEIR is not biased toward this alternative.

O-3-121

The comment states: "Alternative 3, which the DEIR acknowledges has greater impacts than the proposed Project, (DEIR, at 5-19), should not be adopted for a variety of reasons, but primarily because it would take contaminated sediment from one location in the Bay and transport it for burial in another location of the Bay, creating the very real possibility that contaminants from the sediment will escape from the CDF and recontaminate another portion of the Bay. As a threshold matter, the DEIR simply fails to analyze this risk in sufficient detail to provide the decision makers with an accurate assessment of the likelihood that the Convair site may be recontaminated due to CDF failure. This alone mandates that the DEIR treat Alternative 3 as causing a significant impact to water quality, hazards and hazardous materials, and marine biological resources, and dictates that the Regional Board may not adopt Alternative 3 because it is environmentally inferior to the proposed Project. CEQA § 21002 (project may not be approved if feasible alternatives exist that would substantially lessen environmental impacts)."

Alternative 3 would also result in significant unavoidable air quality impacts. Table 5-1 in the Draft PEIR clearly lays out a comparison of alternatives with the proposed project, and further allows a comparison of alternatives. Furthermore, as stated in Section 5.9 of the Draft PEIR, "there is no clear Environmentally Superior Alternative to the proposed project. No one alternative would eliminate the significant and adverse impacts of the proposed project." The inclusion of detailed information about the Convair Lagoon CDF Alternative in the Draft PEIR is intended to illuminate the potential effects of such an alternative and to inform the decision-makers. The Convair Lagoon is not the proposed project, nor has it been identified as the preferred course of action. The Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to those required for the proposed project in multiple areas, most significantly including water quality and biological resources. Refer to response O-3-105 for additional discussion of the level of analysis for alternatives.

O-3-122

The comment states: "A variety of additional inadequacies regarding Alternative 3 and the DEIR's analysis of same are set forth below (and also are discussed in the concurrently submitted Exponent Comments):

"As noted above, the DEIR indicates that Alternative 3 cannot be commenced until continuing discharges of PCBs to the Convair Lagoon site are abated to the satisfaction of the State Board, in order to 'prevent potential recontamination of the marine sediments in the bay.' DEIR, at 5-35, 5-208. But the DEIR does not provide any indication of how long it will take to achieve source control at Convair Lagoon, and thus fails to provide any information as to how soon Alternative 3 could be implemented in relationship to the Project or other alternatives. This clouds the viability of Alternative 3, given the Regional Board's desire to implement the TCAO as soon as reasonably possible. It also clouds the feasibility of the alternative under CEQA, which requires that an alternative be 'capable of being accomplished in a successful manner within a reasonable period of time …' CEQA Guidelines § 15364 (emphasis added)."

Refer to response O-4-6. Even assuming that a CDF could be permitted at Convair Lagoon, it is unlikely that it could be permitted in time to meet the contemplated TCAO implementation schedule.

O-3-123

The comment states: "The DEIR states the source of continuing PCB contamination to the Convair site 'presumably' is a 60-inch storm drain, reflecting uncertainty as to the source and highlighting the difficulty that may be required to ultimately address the issue. DEIR, at 5-224. It also suggests that cap failure may, in part, be the cause of the recontamination, a cautionary point in relationship to Alternative 3's contemplated CDF."

Refer to response O-4-6. Refer also to response O-3-105 for additional discussion of the level of analysis for alternatives.

O-3-124

The comment states: "Alternative 3 is premised on the assumption that 15%, or 21,510 cubic yards, of the material dredged from the Shipyard Sediment Site will be classified as 'hazardous' and thus would not qualify for placement in the CDF, due to high contamination levels. Conversely, the DEIR assumes that 85%, or 121,890 cubic yards, would be placed within the CDF. DEIR, at 5-42. But the DEIR fails to provide any support for these assumptions, which are critical to the feasibility of Alternative 3. If these assumptions are incorrect, and substantially more of the dredged sediment does not qualify for placement into a CDF, the ability to feasibly implement Alternative 3 will be jeopardized."

Refer to response to comment O-3-56.

O-3-125

The comment states: "The DEIR indicates that the thresholds of significance used to assess Alternative 3 are 'primarily' based on Appendix G to the CEQA Guidelines. DEIR, at 5-62. The DEIR should explain which thresholds of significance are not based on Appendix G, and the reason for departing from these thresholds in certain circumstances."

CEQA Guidelines section 15064.7 "Thresholds of Significance" discusses the development and adoption of thresholds of significance. This section states, "(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative, or performance level of a particular environmental effect..." Appendix G of the CEQA Guidelines provides a useful outline for evaluating significance. However, CEQA states that an agency may adopt alternate thresholds. The CEQA Guidelines require that the thresholds used in an EIR be stated; however, it is not necessary to provide justification for thresholds that differ from the language in Appendix G. Section 5 provides ample discussion of the significance thresholds used to evaluate the project alternatives and no further information is required.

O-3-126

The comment states: "Table 5-8 purports to provide a list of past, present and probable future projects within the vicinity of the Convair Lagoon Alternative site. DEIR, at 5-63-67. But the table fails to include a list of past, present and probable future (or indeed any other) dredging projects in San Diego Bay, which necessarily precludes an accurate evaluation of the cumulative impacts from Alternative 3's proposed dredging of 143,000 cubic yards of sediment from the Bay."

Refer to responses O-3-76 through O-3-82.

O-3-127

The comment states: "The DEIR acknowledges that '[e]xtensive eelgrass beds are present on the Convair Lagoon Alternative site.' DEIR, at 5-101. The DEIR indicates that Alternative 3 would destroy 5.64 acres of eelgrass, with 6.01 acres significantly impacted. DEIR, at 5-113, 114. Given the DEIR's acknowledgment of the importance of eelgrasss as habitat for a variety of marine life, and the extensive (and uncertain) mitigation that would be required to address Alternative 3's substantial eelgrass destruction, this weighs strongly against adoption of Alternative 3, in which eelgrass impacts from disposal of sediment would substantially outweigh eelgrass impacts caused by dredging at the Shipyard Site."

The San Diego Water Board Cleanup Team agrees with the comments regarding the loss of eelgrass, intertidal and open water habitat. While the Draft PEIR presumes the loss of eelgrass, intertidal and open water habitat can be mitigated, the scale, geographic location, and status of the eelgrass beds as an existing mitigation site clearly classifies Alternative 3 as not Environmentally Superior to the proposed project.

O-3-128

The comment states: "Alternative 3 indicates that the Southern California Eelgrass Mitigation Policy requires pre and post construction surveys within 30 days of project commencement and completion. DEIR, at 5-109. But elsewhere the DEIR indicates that such surveys are required 120 days before proposed start dates. DEIR, at 4.5-56. This discrepancy should be clarified."

Please note the typo regarding eelgrass surveys has been corrected. See Appendix A of this RTC document, Errata. The SCEMP requires post-construction surveys within 30 days of project completion. Pre-construction surveys are required to be conducted between March through October and are generally valid for 60 days, except that surveys conducted August through October are valid until the following March.

O-3-129

The comment states: "Alternative 3 would result in the direct loss of 4 acres of intertidal habitat; another significant impact weighing heavily against adoption of Alternative 3. DEIR, at 5-114."

Refer to response O-3-127.

O-3-130

The comment states: "The DEIR contends that Alternative 3 satisfies a Port Master Plan ('PMP') goal that 'Bay fills, dredging and the granting of long-term leases will be taken only when substantial public benefit is derived.' DEIR, at 5-117. According to the DEIR, a substantial public benefit would be satisfied because the Alternative 'would protect the quality of the waters of San Diego Bay for use and enjoyment by the people of the state' by

implementing the TCAO. This is inaccurate, because, rather than 'protecting' the waters of the state, Alternative 3 would actually eliminate 10 acres of water by converting it to upland habitat. Accordingly, Alternative 3 would cause a significant impact regarding consistency with local policies and ordinances, by virtue of its conflict with the PMP's Goals. This is particularly critical given that Alternative 3 is the only alternative that would require the elimination of state waters in order to implement the TCAO."

The goal cited is the protection of the "quality" of the waters of San Diego Bay, not the quantity. Substantial public benefit could be derived if the alternative successfully remediated contamination at the Shipyard Sediment Site. The commenter's assertion that eliminating 10 acres of water by converting it to upland uses would conflict with the stated goal of protecting the quality of the waters reflects a differing interpretation than was reached by the San Diego Water Board Cleanup Team in its analysis. This does not negate the validity of the conclusion of the Draft PEIR; furthermore, as this information was provided through consultation with the Port (the agency ultimately responsible for interpreting the PMP), the conclusion in the Draft PEIR is supported by expert opinion. The table beginning on page 5-117 of the Draft PEIR provides substantiation of the conclusion of the project's consistency with applicable goals in the PMP.

O-3-131

The comment states: "The DEIR also contends that Alternative 3 satisfies PMP Goal X, requiring that the 'quality of water in San Diego Bay will be maintained at such a level as will permit human water contact activities.' DEIR, at 5-118. Rather than 'maintaining' water quality, however, Alternative 3 calls for the elimination of 10 acres of water by converting it to upland habitat. While the DEIR claims that Alternative 3 satisfies this goal by virtue of implementing the TCAO, Alternative 3 is the only alternative that proposes eliminating water in the Bay in order to accomplish TCAO objectives. Alternative 3 therefore would cause a significant impact by conflicting with local policies and ordinances."

Refer to response O-3-130.

O-3-132

The comment states: "The DEIR asserts that Alternative 3 satisfies PMP Goal XI, which provides that '[t]he District will protect, preserve and enhance natural resources, including natural plant and animal life in the Bay as a desirable amenity, and ecological necessity, and a valuable and usable resource.' DEIR, at 5-118. But since Alternative 3 will destroy up to six acres of eelgrass at the Convair site, and destroy the benthic community, on its face the alternative is incapable of 'preserving' same. While mitigation measures propose 'creating similar habitat in an alternative location,' (DEIR, at 5-118), this certainly is not equivalent to 'preserving' the eelgrass present at the Convair site in the first instance. Alternative 3 therefore would cause a significant impact by conflicting with local policies and ordinances. Alternative 3 conflicts with Goal XI for the additional reason that it proposes off-site creation

of eelgrass habitat in locations outside of the PMP area, insufficient to comply with the PMP's mandate."

Refer to response O-3-130. As stated on page 5-118 in the Draft PEIR, "Approximately three-quarters of the water area associated with the Convair Lagoon Alternative site is currently used for remediation and monitoring activities and is not considered a desirable ecological amenity or resource because the habitats on site are too fragmented to support any listed species or species considered to be rare and the site is not considered an environmentally sensitive habitat area under the California Coastal Act." Creating or restoring eelgrass habitat in a location that is not fragmented and adversely affected by adjacent land uses to support special status species, particularly if habitat is created at a greater than 1:1 ratio as proposed in Mitigation Measure 5.10.4.3, would provide greater biological and ecological value than preserving the eelgrass present on the site. Potential locations for restoration listed in Table 5-25 of the Draft PEIR include an area adjacent to the Convair Lagoon.

O-3-133

The comment states: "Alternative 3's proposed Mitigation Measure 5.10.4.3 constitutes improper 'deferred' mitigation because it defers a determination of the 'success criteria' and 'actions to undertake for failed mitigation goals' until after Project approval. It also does not provide for a final Regional Board determination as to the adequacy of the mitigation measure."

Mitigation Measure 5.10.4.3 has been revised to include success criteria and San Diego Water Board, as well as resource agency, approval. See Appendix A of this RTC document, Errata.

O-3-134

The comment states: "Alternative 3's proposed Mitigation Measure 5.10.4.4 also constitutes improper deferred mitigation because it does not provide success criteria or performance standards, and does not provide for a final Regional Board determination as to the adequacy of the mitigation measure."

Mitigation Measure 5.10.4.4 has been revised to include San Diego Water Board approval. Performance standards, including mitigation ratios, are included in this measure. See Appendix A of this RTC document, Errata.

O-3-135

The comment states: "Not only will Alternative 3 cause greater environmental impacts than the proposed Project, but its significant impacts to 6 acres of eelgrass and 4 acres of intertidal habitat at the Convair site (among other impacts) would require the imposition of substantial mitigation measures. While these measures are uncertain regarding their potential for

success, they also will cause significant environmental impacts of their own requiring even further mitigation. DEIR, at 5-125. This weighs heavily against adoption of Alternative 3, and there is simply no reason to rely on mitigation measures to protect against the additional impacts from Alternative 3, only to be required to rely on even more mitigation measures to address the environmental impacts caused by the initial mitigation, when other less environmentally harmful alternatives are available."

Refer to responses O-3-115 through O-3-134.

O-3-136

The comment states: "Recirculation of an EIR is required if 'significant new information' is added to the EIR after notice of public review has been given but before final certification. CEQA Guidelines § 15088.5(a). Recirculation is generally required when the addition of new information deprives the public of a meaningful opportunity to comment on substantial adverse project impacts or feasible mitigation measures or alternatives that are not adopted. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 6 Cal. 4th 1112 (1993); CEQA Guidelines §15088.5(a). The CEQA Guidelines specify that the new information requiring recirculation may include changes in the project or the environmental setting. CEQA Guidelines §15088.5(a). Recirculation is also required if information added to the EIR shows a new potentially significant impact that was not previously addressed. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40 Cal. 4th 412, 447 (2007). 'A decision not to recirculate must be supported by substantial evidence in the administrative record.' CEQA Guidelines § 15088.5(e).

"Here, recirculation of a revised DEIR is required for at least the following reasons, among others:"

The comment is introductory to the subsequent comments in the letter. Please refer to responses O-3-137 through O-3-141.

O-3-137

The comment states: "A revised DEIR must evaluate the MNA alternative. As explained above, the MNA alternative will avoid all of the Project's significant and potentially significant impacts and obviate the need for mitigation measures, and substantial evidence shows that it can feasibly attain Project Objectives in a reasonable period of time."

Refer to responses O-3-2 and O-3-8 through O-3-27 for a discussion of this topic. Recirculation of the Draft PEIR is not required.

O-3-138

The comment states: "A revised DEIR must include an updated description of the environmental setting, including a disclosure of past and ongoing sources of contamination to

the Site via stormwater from Chollas Creeks and SW4 and SW9, as well as an accurate description of baseline conditions regarding sediment quality at the Site, in relationship to the potential impairment of aquatic life, aquatic-dependent wildlife and human health beneficial uses. This baseline must be premised on actual conditions rather than hypothetical (and erroneous) assumptions."

Refer to responses O-3-3 and O-3-4.

O-3-139

The comment states: "A revised DEIR must evaluate the reasonably foreseeable potentially significant impact of recontamination of the Site, after Project implementation, from ongoing and uncontrolled stormwater discharges from Chollas Creek and SW4 and SW9. Mitigation measures and alternatives to address this potentially significant impact must also be evaluated."

The comment is incorrect. The proposed project is a remedial dredging cleanup project that will not result in long-term changes to existing storm water conditions. In accordance with the requirements of CEQA, an EIR must identify and focus on the significant environmental effects of the proposed project. Because the purpose of an EIR is to assess the project's effects on the existing environment, an EIR need not resolve existing environmental problems that will not be made worse by the project.

O-3-140

The comment states: "A revised DEIR must include an updated cumulative impacts analysis accounting for scheduled and reasonably anticipated probable future dredging projects in San Diego Bay."

Refer to responses to comments O-3-76 through O-3-82. The cumulative impacts analysis is sufficient and recirculation of the Draft PEIR is not required.

O-3-141

The comment states "A revised DEIR must treat as 'significant' impacts previously found to be less than significant based on mitigation measures that are infeasible or otherwise impermissible, including mitigation that may not be adopted by the Regional Board under the Porter Cologne Act, and which therefore is legally infeasible under CEQA."

As addressed throughout this RTC document (O-3), the mitigation measures included in the Draft PEIR are feasible and enforceable, and do not violate the Water Code or other applicable regulations. Recirculation of the Draft PEIR is not required. No further response is possible in the absence of specific examples.

O-3-142

The comment states: "Finally, NASSCO reasserts its objection to the Regional Board's decision to require preparation of an EIR for the Project, on the grounds that the Project is 'categorically exempt' from CEQA review. While NASSCO's preceding comments are based on its assumption that the Regional Board and its staff will continue with the Project's CEQA review notwithstanding that the Project should be found exempt, the preceding comments should in no way be interpreted as a waiver of NASSCO's position that an EIR is not required."

The comment is introductory to following comments in the letter. This comment expresses an opinion about the San Diego Water Board's decision to prepare an EIR and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. See also response O-3-148.

O-3-143

The comment states: "CEQA section 21084(a) requires the Secretary of the Natural Resources Agency to prepare and adopt 'a list of classes of projects which have been determined not to have a significant effect on the environment,' and which are therefore 'categorically exempt' from CEQA. Thirty-three such categorical exemptions are currently authorized, (CEQA Guidelines sections 15301-333), and each exempted class of project 'embodies a 'finding by the Resources Agency that the project will not have a significant environmental impact.'' *San Lorenzo Valley Community Advocates For Responsible Education v. San Lorenzo Valley Unified School District*, 139 Cal. App. 4th 1356, 1381 (2006); CEQA Guidelines § 15300. If a project is categorically exempt, it 'may be implemented without any CEQA compliance whatsoever.' *Ass'n for Prot. of Envt'l Values in Ukiah v. City of Ukiah*, 2 Cal. App. 4th 720, 726 (1991)."

The comment provides information about CEQA. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. See also response O-3-148.

O-3-144

The comment states: "As explained in the motion filed by NASSCO on July 23, 2010, the TCAO is 'categorically exempt' from CEQA under at least the three exemptions set forth in CEQA Guidelines sections 15307, 15308 and 15321, which apply to actions by regulatory agencies to protect natural resources or the environment, as well as regulatory enforcement actions. More specifically, the referenced classes of exempted projects include (i) 'actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process

involves procedures for protection of the environment' (Class 7); (ii) 'actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment' (Class 8); and (iii) actions by agencies related to 'enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency' (Class 21). CEQA Guidelines §§ 15307, 15308 and 15321. Because the proposed Project is to be overseen by a regulatory agency, the Regional Board, and is designed to protect water quality and beneficial uses in the San Diego Bay, it clearly falls within the scope of each of these exemptions."

This comment expresses an opinion about the San Diego Water Board's decision to prepare an EIR and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. See also response O-3-148.

O-3-145

The comment states: "In fact, the above-referenced categorical exemptions were cited in the first three iterations of the TCAO, released between 2005–2008, to support the Cleanup Team's then-position that the TCAO was exempt from CEQA review. Cleanup Team's California Environmental Quality Act Analysis for Shipyard Sediment Project; Tentative Cleanup and Abatement Order R9-2010-002, dated July 9, 2011 ('CUT's CEQA Analysis'); Tentative Cleanup and Abatement Order R9-2005-0126, released April 29, 2005; Tentative Cleanup and Abatement Order R9-2005-0126, released August 24, 2007; Tentative Cleanup and Abatement Order R9-2005-0126, released April 4, 2008. It was not until the fourth iteration of the TCAO, released on December 22, 2009, that the Cleanup Team dramatically reversed course and alleged that CEQA review was required because the Project 'presents unusual circumstances both with respect to its scope and unique characteristics.' CUT's CEQA Analysis, at 2, Section II(A)."

This comment expresses an opinion about the San Diego Water Board's decision to prepare an EIR and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. See also response O-3-148.

O-3-146

The comment states: "An exemption finding would be consistent with statewide practice and this Regional Board's prior practice of exempting cleanup and abatement orders, including orders for sediment remediation and dredging projects in San Diego Bay, and, as NASSCO

repeatedly has asserted, also would avoid any unnecessary delay in the cleanup associated with the preparation and certification of an EIR."

This comment expresses an opinion about the San Diego Water Board's decision to prepare an EIR and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. Of note, the role of the Lead Agency for a project includes the discretion to determine when unusual circumstances warrant the preparation of a more comprehensive environmental document. See also response O-3-148.

O-3-147

The comment states: "NASSCO recognizes that a categorical exemption to CEQA may not apply where a project includes 'unusual circumstances' and those unusual circumstances present a 'reasonable possibility of a significant effect on the environment.' *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego*, 139 Cal. App. 4th 249, 278 (2006). Both of these prongs must be satisfied, however, as '[a] negative answer to either question means the exception does not apply.' Id. (quoting *Santa Monica Chamber of Commerce v. City of Santa Monica*, 101 Cal. App. 4th 786, 800 (2002)). Further, 'unusual circumstances' will not be found unless some feature distinguishes the project from other typical projects in the exempt class, such that the type of environmental impacts that may result are different than the type of environmental impacts likely to result from other typical projects within the class. E.g., *Santa Monica Chamber of Commerce*, 101 Cal. App. 4th at 801-803."

The comment provides information about CEQA. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. See also response O-3-148.

O-3-148

The comment states: "In opposition to NASSCO's motion, the Cleanup Team argued that an EIR is required because the TCAO 'is the largest sediment remediation project in the history San Diego Bay' and thus is distinguishable from 'garden variety' Class 7, Class 8, and Class 21 projects because it is expected to require dredging of over 140,000 cubic yards of sediment. See Cleanup Team's Comments On The Applicability of a CEQA Categorical Exemption For Tentative Cleanup And Abatement Order R9-2010-0002, at 2 (emphasis added). The Cleanup Team further relied on a statement by David Gibson that the Project 'will result in more dredging and removal of sediments from San Diego Bay than all previous Cleanup and Abatement Orders combined.' Id. at n.1 (emphasis added). In addition, the Cleanup Team asserted that NASSCO's argument for an exemption was based on an improper supposition that 'large-scale dredging projects do not usually have a potential for

significant adverse environmental impacts,' while, according to the Cleanup Team, the volume of this dredging project differentiated it from other dredging in San Diego Bay. Id.; see also CUT's CEQA Analysis, at 3, Section III(A) (citing the alleged unprecedented scope of the project, and referencing as factors supporting a finding of unusual circumstances its associated 'physical disturbance to the environment, including but not limited to, sediment movement, air quality impacts from diesel emissions from dredging equipment, and potential impacts to traffic patterns and noise from equipment operations in the area where the sediments will be dewatered and from which they will be transported.'); see also DTR, at 37-3."

The Lead Agency under CEQA is responsible for most decisions regarding the proper manner of complying with CEQA in considering and carrying out a project. The Lead Agency must conduct a preliminary review of a proposed activity to determine whether the activity is subject to CEQA and if it is exempt from CEQA. The San Diego Water Board determined that the proposal under consideration is a "project" as defined by CEQA Guidelines section 15180, that the undertaking may have a significant impact on the environment, and that an EIR must be prepared. Specifically, in Resolution No. R9-2010-0115 adopted on September 8, 2010, the San Diego Water Board found that because the TCAO presents unusual circumstances and there is a reasonable possibility of a significant effect on the environment due to the unusual circumstances, the TCAO is not exempt from CEQA and that an EIR analyzing the potential environmental effects of the TCAO should be prepared.[1]

Once a Lead Agency determines during its preliminary review that a proposed activity is a project subject to CEQA and is not exempt, it next determines whether to initiate preparation of an EIR or to complete an Initial Study to determine whether to prepare an EIR, a Negative Declaration, or a Mitigated Negative Declaration for the project. Upon preparation of an Initial Study (IS) for the Shipyard Sediment Remediation Project, the San Diego Water Board determined that a PEIR should be prepared to focus on significant effects of the proposed project and to satisfy the requirements of CEQA.

The comment includes information from sources and documents other than the Draft PEIR. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein.

O-3-149

The comment states: "Finally, the Cleanup Team contended that the above-referenced categorical exemptions contain exclusions where 'construction activities' are undertaken in the context of an otherwise exempt project, and that dredging of sediment constitutes a 'construction activit[y]' such that dredging cannot qualify for a categorical exemption under

[1] Draft Technical Report for Tentative Cleanup and Abatement Order No. R9-2011-0001, Finding 37, September 15, 2010.

CEQA Guidelines sections 15307, 15308 or 15321. Cleanup Team's Comments On The Applicability of a CEQA Categorical Exemption For Tentative Cleanup And Abatement Order R9-2010-0002, at 4. The Cleanup Team further opined that 'large-scale modifications' to the environment caused by the volume of dredging required for the Project precluded application of a categorical exemption, including the destruction of eelgrass habitat."

This comment expresses an opinion about the San Diego Water Board's decision to prepare an EIR and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. Of note, the role of the Lead Agency for a project includes the discretion to determine when unusual circumstances warrant the preparation of a more comprehensive environmental document. See also response O-3-148.

O-3-150

The comment states: "But the DEIR disproves the Regional Board's finding that 'unusual circumstances' required an EIR for this particular sediment remediation project, which calls for the dredging of approximately 143,000 cubic yards of sediment. The DEIR indicates that during an 11-year period between 1994–2005, 'an average of approximately 245,000 cubic yards of sediment was dredged from the Bay each year,' including maintenance and environmental dredging, with an annual total as high as 763,000 cubic yards. The DEIR further indicates that the project dredge volume 'falls within the historic ranges for the yearly overall volume of dredging activity in San Diego Bay.' DEIR, at 4-2 (emphasis added)."

The comment fails to recognize the San Diego Water Board's discretion as the CEQA Lead Agency to distinguish between maintenance dredging and remedial cleanup dredging and between projects of different scale and purpose. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. See also response O-3-148.

O-3-151

The comment states: "Because the DEIR confirms that the volume of dredging for this Project is consistent with the normal amount of dredging conducted in San Diego Bay each year (albeit the Project is a larger sediment remediation CAO than other sediment dredging in San Diego Bay), there are no 'unusual circumstances' warranting CEQA review for this but not other dredging projects. Accordingly, NASSCO reasserts its objection to the preparation of the EIR, and requests that the Regional Board refrain from further CEQA review of the Project and elect not to prepare or certify a Final EIR."

This comment expresses an opinion about the San Diego Water Board's decision to prepare an EIR and is not a comment on the environmental analysis contained in the Draft PEIR.

This comment will be included as part of the record and made available to the decision makers prior to a final decision on the project. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. See also response O-3-148.

O-3-152

The comment states: "In addition, so that the public may better understand the type and scope of dredging typically conducted in San Diego Bay, NASSCO requests that the Regional Board make publically available and include in the Administrative Record the records of dredging in San Diego Bay between 1994–2005, referenced at page 4-2 of the DEIR, as well as any additional records reflecting past dredging in San Diego Bay or reasonably anticipated future dredging. The Regional Board should also explain the extent to which it does or does not regularly analyze sediment dredging projects under CEQA, and indicate each dredging project in San Diego Bay that has undergone CEQA review."

The comment suggests that historical records be made available. San Diego Water Board project records are publicly available documents subject to a public records request. The San Diego Water Board Cleanup Team does not have a need to incorporate the dredging records cited by NASSCO in the Administrative Record for the TCAO. NASSCO may wish to submit a motion to admit these records into the administrative record for the TCAO proceedings as contemplated under Phase V.A. of the June 8, 2011, Third Amended Order of Proceedings.

O-3-153

This comment is the certification of authenticity of electronic submittal by Jeffrey P. Carlin. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-154

This comment is the declaration and proof of service. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-155

This comment is a cover letter that is introductory to other comments. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-156

This comment is an introduction of the memorandum by Anchor QEA. It summarizes the commenter's estimate of the costs of mitigation. The comment does not contain any

substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-157

The comment expresses the view that some of the mitigation measures included in the Draft PEIR are "typical" for a remedial dredge project and some are not. The comment does not contain any specific or substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. It is noted that the comment defines "Typical environmental mitigation measures for sediment remediation projects" based upon two projects, the Campbell Shipyard Cleanup and the Rhine Channel Sediment Cleanup in San Diego Bay and Newport Beach, respectively. The San Diego Water Board notes that Anchor QEA, the author of this comment, was the consultant for the City of Newport Beach for the Rhine Channel project. The comparison of BMP requirements using two remediation projects to discuss mitigation measures status as "typical" or feasible is not sufficient for validating the necessity or removal of proposed mitigation measures. The San Diego Water Board Cleanup Team utilized multiple guidance documents and references when evaluating mitigation measures and past projects including:

- Clean Water Act section 404(b)(1) guidelines – Subpart H.
- Clean Water Act section 401 Water Quality Certification No. 10C-017 for the BAE Systems Pride of San Diego Dry Dock Dredging Project.
- California Regional Water Quality Control Board, San Diego Region. 2004. Order No. R9-2004-0295 Waste Discharge Requirements for the Port of San Diego Campbell Shipyard Sediment Cap Closure and Post Closure Maintenance San Diego Bay. October 2004.
- National Marine Fisheries Service, Southwest Regional Office. 2010. Turbidity Flow Chart. Available on the web at: http://www.swr.noaa.gov/efh.htm.
- U.S. EPA. 2004. Engineering Performance Standards Hudson River PCBs Superfund Site: Volume 5: Appendix – Case Studies of Environmental Dredging Projects. U.S. Environmental Protection Agency, Region 2, New York, NY. April 2004.
- U.S. EPA. 2005. Contaminated Sediment Remediation Guidance for Hazardous Waste Sites. EPA-540-R-05-012. OSWER 9355.0-85. Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency. December 2005.
- U.S. Army Corps of Engineers (USACE). 2001. Dredge Bucket Comparison Demonstration at Boston Harbor. ERDC/CHL CHETN-VI-35. March 2001.
- USACE. 2008a. The Four Rs of Environmental Dredging: Resuspension, Release, Residual, and Risk. USACE Engineer Research and Development Center, Vicksburg, MS. ERDC/EL TR-08-4, February, 2008. Available on the web at http://www.epa.gov/superfund/health/conmedia/sediment/pdfs/summaryreport.pdf.

- USACE. 2008b. Technical Guidelines for Environmental Dredging of Contaminated Sediments. USACE Engineer Research and Development Center, Vicksburg, MS. ERDC/EL TR-08-29, September 2008.

O-3-158

The comment introduces a table that summarizes the commenter's cost estimation and states that impacts to construction costs are compounded when various measures are implemented in combination. The comment does not contain any specific or substantive statements or questions about the Draft PEIR or the analysis therein. Under CEQA, lead agencies must avoid or reduce the impacts of a proposed project by adopting feasible project alternatives or mitigation measures. PRC 21002-21002.1. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. Cost in and of itself is not necessarily a determination of a measure's "feasibility" under CEQA.

The purpose of including mitigation measures in an EIR is to identify mitigation measures that could minimize significant adverse impacts.

O-3-159

The comment indicates that a key consideration is if the mitigation measures are required or recommended by the DEIR. Mitigation included in the Draft PEIR is required.

Future decisions and implementing actions following certification of the PEIR and approval of the Project will be subject to subsequent environmental review pursuant to CEQA.

O-3-160

The comment pertains to Mitigation Measure 4.2.1 and states: "This mitigation measure requires that 'automatic systems' be used to monitor turbidity outside of the construction area. While automatic monitoring of dredging position and progress is a standard and beneficial industry practice (and a key monitoring element of the Section 401 WQC), the automated monitoring of turbidity is not, aside from a select few instances known nationally. In fact, requiring automated monitoring is likely to have significant adverse effects on operations owing to the difficulty of discerning meaningful turbidity results from ambient conditions and statistical 'noise.' Turbidity is a complex phenomenon and subject to a host of environmental variables as well as to the ever-changing conditions of construction. Successful monitoring of turbidity effects, and interpretation of the monitoring data, requires the judgment of a skilled operating team so that external variables can be properly taken into account. Automating the monitoring is likely to lead to significant uncertainty and false positives (unwarranted indications of exceedances) resulting from external factors such as currents, weather, and vessel traffic as well as a frequent need to refine or clarify what the automatic monitors are indicating, which is likely to lead to confusion and loss of time on the project."

As stated by the comment, automated turbidity monitoring has been utilized nationally as a mitigation measure during remedial dredging projects. While the Cleanup Team agrees with the complexity involving turbidity, this complexity in no way discounts the important role environmental factors play in influencing dredge operations and the resulting turbidity. The complexity of turbidity should not serve as a rationale for a relaxing of water quality standards or of required BMPs. The comment is also misleading, suggesting that automated turbidity monitoring has no human input or involvement in regard to sampling location and frequency (i.e., selecting an ambient station to detect environmental factors), trigger levels, required responses or combination with manual and visual monitoring. The Draft PEIR does not provide specific deployment locations, sampling frequency, NTU trigger levels, or required operator responses. This flexibility is available for automated systems, though it is requested by the comment under the impetus that it is only available for manual monitoring. It is expected that automated monitoring will be utilized in a cost-effective manner combined with manual and visual monitoring. This approach is reflecting in the referenced mitigation measure:

> "Automatic systems shall also be used to monitor turbidity and other water quality conditions in the vicinity of the dredging operations to facilitate real-time adjustments by the dredging operators to control temporary water quality effects. The automatic systems shall include threshold level alarms so that the operator or other appropriate project personnel recognize that a particular system within the operation has failed. If the threshold-level alarms are activated, the dredge operator shall immediately shut down or modify the operations to reduce water quality constituents to within threshold levels. The San Diego Water Board shall further verify that the contractor/dredge operator is using visual monitoring and recording of water turbidity during the dredging operations, including the temporary cessation of dredging if exceedances of the turbidity objective in the Basin Plan occur."

Therefore, the San Diego Water Board concludes that the mitigation is appropriate and no change to the Draft PEIR is warranted.

O-3-161

The comment states: "Potential slowdowns to the dredging process, even if limited in duration, will result in considerable extra costs, because dredging effectiveness is primarily driven by production rate. Working in these active shipyards is already subject to a number of scheduling challenges. We expect that adding the uncertainty of an automated turbidity monitoring system could add as much as $500,000 to $1 million to total project costs, simply through the occasions of unnecessary work slowdown and uncertainty."

Please see response to comment O-3-160. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. Cost in and of itself is not necessarily a determination of a measure's "feasibility" under CEQA.

O-3-162

The comment states: "Alternatively, implementation of a water quality monitoring program that employs the manual collection of turbidity values allows for appropriate adjustments for tidal exchanges, wind, and vessel traffic. This flexibility will allow the contractor to adjust dredging and barge-loading methodologies (e.g., speed and bucket type) based on visual assessment at both the early warning and compliance distances from the construction area. In turn, manual collection of water quality results in better production rates and lower costs while providing better environmental protectiveness."

Please see response to comment O-3-160. The San Diego Water Board Cleanup Team concludes that the mitigation is appropriate and no change to the Draft PEIR is warranted. The TCAO notes that the specific actions to be taken by the responsible parties for the cleanup will be described in a Remedial Action Plan (RAP) that is to be prepared and submitted to the San Diego Water Board. Future decisions and refinement of implementing actions following certification of the PEIR and approval of the project will be subject to subsequent environmental review pursuant to CEQA.

O-3-163

The comment pertains to Mitigation Measure 4.2.2 and states: "This mitigation measure lists a number of best management practices (BMPs) intended to meet water quality objectives during the dredging work. Some of these BMPs are standard and would customarily be included in the project specifications, such as prohibitions against stockpiling, spillage, and splashing; bucket closure; and debris grid management. Other listed BMPs, however, are not representative standard practice. While there have been limited instances known nationally where they have been applied to highly toxic cleanup events, at this project they will add significantly to construction costs (and potentially slowing down the rate of progress) without a commensurate gain in environmental protectiveness. Examples of such BMPs include:"

As specified by the comment, the BMPs prescribed by the comment have been utilized nationally, and even locally, for contaminated sediment cleanups. For example, dual layers of turbidity control (curtains or otherwise) have been utilized for multiple environmental dredging projects (U.S. EPA 2004), and at shipyard sites in San Diego Bay. The comment provides no evidence that there is no demonstrable benefit from requiring dual curtains. Specialized environmental buckets, including the one prescribed in the Draft PEIR, have been utilized in multiple dredging projects nationally (U.S. EPA 2004) and recently by BAE Systems for dry dock dredging that included contaminated sediments. Use of "Clam Vision" is a mitigation measure to ensure that sufficient dredging in proper locations is performed to remove contaminated sediment without over-filling, to prevent excessive dredge passes, and to prevent unnecessary dredging and dredging non-target areas, all of which would result in unnecessary increases in potential water quality impacts. The importance of the mitigation measures are acknowledged in previous comments, which state "automatic monitoring of dredging position and progress is a standard and beneficial industry practice."

O-3-164

The comment states: "Double silt curtain enclosure. Although double silt curtains were used for the Campbell Shipyard project in San Diego, they are not a standard practice. Single silt curtains, for instance, have been required and successfully used for recent and ongoing sediment cleanup projects in Newport Beach and at the Port of Long Beach. Employing double silt curtains adds considerable cost and management time without any demonstrated environmental benefit. We estimate that this measure could add $250,000 to $500,000 to project costs, owing not only to the increased cost of material purchase but also to the greater effort required to manage and move the double silt curtain."

See response to comment O-3-163. Cost in and of itself is not necessarily a determination of a measure's "feasibility" under CEQA.

O-3-165

The comment states: "Specialized bucket additions and controls (e.g., closure switches and Clam Vision TM). These additions and controls would add cost due to their purchase, installation, upkeep, calibration, and management and would pose the risk of complicating the contractor's work by providing ambiguous or misleading data owing to the many variables that are in effect during dredging. We envision this measure adding as much as $250,000 to $500,000 to project costs. Alternatively, a practical water quality control and monitoring plan (as was used successfully for the Campbell Shipyard project in 2005/2006) will ensure compliance with the Section 401 WQC and allow the contractor to use the right equipment for the conditions while keeping production efficient."

See response to comment O-3-163. Cost in and of itself is not necessarily a determination of a measure's "feasibility" under CEQA.

O-3-166

The comment states: "Air curtains. The MMRP suggests these as a supplement to silt curtains for better controlling loss of suspended sediment and enhancing worker safety. We are not aware of any regional precedent for using air curtains for these reasons, and their effectiveness in this regard appears highly doubtful. Air curtains would add considerable cost and would be time-consuming to install, maintain, and continually relocate as the dredging proceeds. We estimate that this measure could add as much as $300,000 to $500,000 to project costs, owing not only to the increased cost of material purchase but also to the greater effort required to manage and move the air curtain assembly."

See response to comment O-3-163. To clarify, the Mitigation Measure states that the contractor may use air curtains in conjunction with silt curtains to contain re-suspended sediment, to enhance worker safety, and allow barges to transit into and out of the work area without the need to open and close silt curtain gates. A final determination on the applicability of air curtains to the project will be made during the final design stage and

preparation of the RAP. A regional precedent is not required for their use in the proposed project.

O-3-167

The comment pertains to Mitigation Measure 4.2.3 and states: "This mitigation measure stipulates that double silt curtains (previously discussed) are to 'fully encircle the dredging equipment and the scow barge being loaded with sediment.' Although a silt curtain enclosure around the dredging barge is a typical requirement, including the scow barge in the enclosure would have a significant impact on operations. Each time the scow barge is loaded, it would have to wait within the silt curtain enclosure until water quality within the curtains can be documented as meeting water quality criteria and then for the curtain enclosure to be opened. This delay on the contractor's work efforts will increase dredging cycle times and, therefore, significantly slow down the necessary progress of the cleanup work. We also anticipate an increase to the dredging unit cost that could add as much as $1.5 to $2 million to project costs, with little to no resulting environmental benefit. With the appropriate controls on scow leakage and overflow, it would be unnecessary and counterintuitive to require that the scows also be situated within the silt curtains."

With the implementation of proper dredging and barge design and operation controls (BMPs), time limitations for dredge barge movements are expected to be minimal. Enclosing the scow barge provides a treatment control mitigation measure that is in place if needed due to source control BMP failure. This clearly is an environmental benefit. This requirement was utilized by BAE Systems for dry dock dredging that included contaminated sediments. It is also unclear how this will add to the cost of the dredging unit.

O-3-168

The comment pertains to Mitigation Measure 4.2.7 and states: "This mitigation measure anticipates a fundamentally different concept for the underpier remediation aspect of the project work. Prior discussions envisioned that a cover layer of sand or a sand-gravel mixture would be placed below piers, as a means of lessening the incidence of exposed contaminants and augmenting the ongoing process of sedimentation. Installing the cover to be a permanent feature that is fully protected against erosion requires the addition of a surficial armoring layer, generally comprised of a rock product, separated from the underlying sand by an intervening "filter layer" of gravel, and potentially a layer of filter fabric. The resulting sequence of aggregate material layers would in fact be 5 to 7 feet thick, comprised of layers of sand, gravel, and rock. Not only is such a sediment cover a far more complex element to design and construct, it also raises the risk of imposing stresses on the foundations and soils that underlie the overwater marine structures. Clearly, this measure has tremendous impacts on the project's cost and timeframe. We estimate that the cost impact would be as much as $5 to $7 million, which makes it the most costly of all the mitigation measures described in the MMRP, because the material and placement costs increase so substantially."

The clean sand cover under piers is included in the TCAO and in the project description for the Draft PEIR. Because portions of the remedial areas (approximately 2.4 acres) are located under piers and cannot be feasibly dredged without impacting the infrastructure, these areas will be covered with a layer of clean sand to contain contaminated sediments. As specified in Mitigation Measures 4.2.7 and 4.2.8, the clean sand covers will be designed and installed to reduce the potential for sediment and contaminants to be released into the water column. The comment states that the measure requires "the cover to be a permanent feature that is fully protected against erosion." This is the intent of the clean sand cover feature of the project. A temporary cover that would continuously erode would not be consistent with the intent and requirements of the TCAO. See also response O-3-58.

O-3-169

The comment pertains to Mitigation Measure 4.2.8 and states: "Hydraulic placement of sand cover material might in fact be a feasible and cost-effective option for some contractors, but including hydraulic placement as a project requirement will unnecessarily disrupt the ability of otherwise qualified contractors to submit competitively priced bids. Other feasible methods are also available for placement of sand and gravel materials below overwater structures, including long-reach conveyors and reticulated bucket arms. Rather than making hydraulic placement a project requirement, we recommend instead to let individual contractors determine whether they will use mechanical or hydraulic methods to place sand cover materials. In other words, we recommend approaching the project requirements in much the same way as was done for the successful Campbell Shipyard project. Otherwise, the cost difference could be substantial, as much as $1.5 to $2 million for this relatively high-cost element of the project."

The mitigation requirement for hydraulic placement is discussed in Appendix C – Water Quality Technical Report (Section 3), which states the following:

> "During clean sand cover, the contractor should place the initial layers of the cover in thin lifts by hydraulically placing the material from a barge. This placement method reduces the vertical impact and lateral spreading of the cover material, thus reducing the potential for resuspending the contaminated surface sediments. Controlled placement also minimizes the mixing of cover and underlying sediment by allowing the sediment to slowly gain strength before subsequent layers are deposited. Operational controls such as silt curtains should be employed during the sand cover placement."

The hydraulic placement of sand cover material is a feasible approach. Please see information from the EPA regarding its contaminated sediment program at: www.epa.gov/glnpo/sediment/iscmain/four.html.

The ability of some contractors to place bids is not a consideration factor in the selection of mitigation measures to protect water quality.

O-3-170

The comment pertains to Mitigation Measure 4.4.1 and states: "This mitigation measure anticipates a restriction on haul times to the hours between 7 am and 7 pm only. While these construction times are consistent with the San Diego Municipal Code, imposition of this ordinance will delay the critical transport of sediment off site. The common and recommended practice for critical environmental cleanups, such as this one, is to obtain a temporary variance from the City Ordinance so that the work can be completed in as timely a fashion as possible. Because sediment disposal is a high-cost item on the project, any change will result in a proportionately high impact. We estimate that restricting truck haul times could add as much as $2 to $4 million is cost by significantly complicating the sediment transport operations and hindering the rate and progress of the cleanup action."

The comment appears to have incorrectly interpreted the cited mitigation measure, which states:

> "The contractor shall ensure, and the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) and City of San Diego Noise Control Officer shall verify, that treatment and haul activity in the City of San Diego is prohibited between the hours of 7:00 p.m. of any day and 7:00 a.m. of the following day, or on legal holidays as specified in section 21.04 of the San Diego Municipal Code, with the exception of Columbus Day and Washington's Birthday, or on Sundays, that would create disturbing, excessive, or offensive noise unless a permit has been applied for and granted beforehand by the Noise Abatement and Control Administrator in conformance with San Diego Municipal Code section 59.5.0404."

The mitigation measure clearly states that the project may apply for a permit to conduct activities outside of the specified hours. For reference San Diego Municipal Code section 59.5.0404 (a) states:

> "It shall be unlawful for any person, between the hours of 7:00 p.m. of any day and 7:00 a.m. of the following day, or on legal holidays as specified in Section 21.04 of the San Diego Municipal Code, with exception of Columbus Day and Washington's Birthday, or on Sundays, to erect, construct, demolish, excavate for, alter or repair any building or structure in such a manner as to create disturbing, excessive or offensive noise unless a permit has been applied for and granted beforehand by the Noise Abatement and Control Administrator. In granting such permit, the Administrator shall consider whether the construction noise in the vicinity of the proposed work site would be less objectionable at night than during the daytime because of different population densities or different neighboring activities; whether obstruction and interference with traffic particularly on streets of major importance, would be less objectionable at night than during the daytime; whether the type of work to be performed emits noises at such a low level as to not cause significant

> disturbances in the vicinity of the work site; the character and nature of the neighborhood of the proposed work site; whether great economic hardship would occur if the work were spread over a longer time; whether proposed night work is in the general public interest; and he shall prescribe such conditions, working times, types of construction equipment to be used, and permissible noise levels as he deems to be required in the public interest."

Furthermore, the TCAO, Section G. provisions requires that the Dischargers "…properly manage, store, treat, and dispose of contaminated soils and ground water in accordance with applicable federal, state, and local laws and regulations." The San Diego Water Board understands that activities may occur continuously throughout the day in San Diego so long as it does not "…create disturbing, excessive or offensive noise unless a permit has been applied for and granted beforehand…" per San Diego Municipal Code 50.5.0404 Construction Noise.

O-3-171

The comment pertains to Mitigation Measures 4.5-7 through 4.5-9, and states: "It is expected that the proper application of operational controls and BMPs, as will be detailed in the Section 401 WQC, in combination with effective construction quality assurance will be successfully able to limit impacts to biological resources. Further, water quality impacts that might result from the work are expected to be short-term in duration. Nevertheless, the use of biological monitors on such projects is not without precedent and can be completed without incurring significant project delays, although it does add cost to the work effort. We estimate that the net cost could be as much as $250,000 to $500,000."

Mitigation Measures 4.5.7 and 4.5.8 are intended to reduce project impacts to turtles and marine mammals. Mitigation Measure 4.5.9 is intended to reduce project impacts to California least tern and other special-status seabirds and waterfowl. Refer to 16 U.S.C. §1561 et seq. for a schedule of penalties associated with violations of the Federal Endangered Species Act.

The San Diego Water Board Cleanup Team agrees that the proper application of water quality BMPs is sufficient to adequately reduce impacts to biological resources. Furthermore, the use of biological monitors, which are commonplace on dredge and fill projects throughout the San Diego Region, is considered to be a necessary element to confirm that the proper BMPs are in place during all project phases, and that water quality and biological BMPs are being implemented properly and successfully. Consistent successful implementation of required mitigation will help to ensure that unnecessary work stoppages are avoided. Additionally, the mitigation measures prescribed for on-site monitors are flexible, with the number of monitors not being prescribed and the minimum frequency described as once per week. However, the comment states that a monitor can be utilized without significant project delays. Thus, it is unclear if the cost estimates provided are the costs for the monitor or the combined costs for presumed slowdowns and BMP costs for a

monitor that identifies a lack of, or improperly implemented, BMPs. Cost in and of itself is not necessarily a determination of a measure's "feasibility" under CEQA.

O-3-172

The comment pertains to Mitigation Measures 4.6.9 through 4.6.10 and states: "This set of mitigation measures discusses the use of various technologies for reducing air emissions from construction equipment engines to the extent that they are readily available and cost effective in the San Diego Air Basin (SDAB). Specifically identified measures include the use of engine catalysts, low-NO_X fuels, and alternative fuels. Because of the clause regarding their use only when available and cost effective, the imposition of these measures on construction costs is restricted. In the case of low-NO_X fuels, the MMRP defines cost effective as up to 125 percent of the cost of diesel. We anticipate that these requirements will increase overall costs by approximately $100,000 to $200,000."

This comment summarizes the commenter's estimate of the costs of mitigation. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-173

The comment pertains to Mitigation Measure 4.6.15 and the use of "Simple Green" on an as-needed basis.

See response to comment O-3-100. The San Diego Water Board agrees with the comment and the Draft PEIR has been clarified as suggested. See Appendix A, Errata.

O-3-174

This comment is a table summarizing cost impacts of mitigation. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary. Also, please see responses to the comments above.

O-3-175

This comment is the certification of authenticity of electronic submittal by Jeffrey P. Carlin. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-176

This comment is a cover letter that is introductory to other comments. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-177

This comment is an introduction of the memorandum by Exponent. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-178

The comment pertains to existing environmental conditions, and notes that the Draft PEIR relies on information included in the TCAO and DTR.

Please see response to comment O-3-4.

O-3-179

The comment pertains to existing environmental conditions, and expresses an opinion regarding the beneficial use impairment.

This comment expresses an opinion about the project and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project. Refer to responses O-3-3 and O-3-4 for further discussion of environmental baseline.

O-3-180

The comment pertains to existing environmental conditions, and expresses an opinion regarding the beneficial use impairment.

This comment expresses an opinion about the project and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project. Refer to responses O-3-3 and O-3-4 for further discussion of environmental baseline.

O-3-181

The comment pertains to existing environmental conditions, and expresses an opinion regarding the beneficial use impairment.

This comment expresses an opinion about the project and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project. Refer to responses O-3-3 and O-3-4 for further discussion of environmental baseline.

O-3-182

The comment pertains to existing environmental conditions, and expresses an opinion regarding the beneficial use impairment.

This comment expresses an opinion about the project and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project. Refer to responses O-3-3 and O-3-4 for further discussion of environmental baseline.

O-3-183

The comment pertains to existing environmental conditions; specifically, stormwater runoff and a source of contamination in the existing condition.

Please see response to comment O-3-3.

O-3-184

The comment pertains to project alternatives and summarizes the alternatives evaluated in the Draft PEIR.

The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-185

The comment pertains to project alternatives, and notes that the dredging method and dredge footprint is the same for all alternatives, other than the No Project Alternative.

The San Diego Water Board Cleanup Team concurs with the comment.

O-3-186

The comment pertains to project alternatives and notes that a monitored natural attenuation alternative is not included.

Please see response to comment O-3-2.

O-3-187

The comment pertains to Alternative 1 and claims that it is included only because of the CEQA requirement to do so.

The comment is correct in that the range of alternatives presented in the Draft PEIR is consistent with the requirements of CEQA. As stated in the Draft PEIR, the No Project Alternative does not meet the project objectives.

O-3-188

The comment pertains to Alternative 2, the Confined Aquatic Disposal Alternative, and states that there is insufficient detail to compare the alternative to the proposed project and to assess costs and benefits.

CEQA Guidelines (section 15126.6) provide information on the level of discussion necessary when considering alternatives:

> (d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles* (1981) 124 Cal. App. 3d 1).

For this alternative, and subsequent comments on the other alternatives, the level of prescribed detail is sufficient to determine if reasonable alternatives would eliminate and/or reduce significant unavoidable impacts when compared to the proposed project. No reported CEQA case has suggested or required a level of detail similar to that of the proposed project, including when an alternative may result in significant effects beyond or in addition to those of the proposed project: "If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed." (CEQA Guidelines section 15126.6 (d), citing *County of Inyo v. City of Los Angeles* (3d Dist. 1981) 124 Cal. App. 3d 1 [177 Cal. Rptr. 479]).

With regard to the level of information required for consideration in the Draft PEIR, the alternatives presented in the Draft PEIR are sufficient for the EIR tiering process, and is consistent with applicable code and CEQA Guidelines (Public Resources Code sections 21068.5 and 21093(b), CEQA Guidelines section 15152). Please refer also to Response O-4-6. Once a project has been selected, detailed analyses will be provided in a site-specific environmental document, including any staging area(s) to be used and any potential use of a Confined Aquatic Disposal facility.

O-3-189

The comment pertains to Alternative 3, the Convair Lagoon Alternative, and expresses an opinion that the greater level of detail presented for Alternative 3 could imply that this is the preferred alternative.

The Draft PEIR includes the Convair Lagoon confined disposal facility as a project alternative for consideration consistent with the requirements of CEQA. The Draft PEIR does not choose a preferred alternative. The Draft PEIR also clearly states that creation of a confined disposal facility would require significant levels of open water and eelgrass creation mitigation, and though potential sites are discussed, no specific site is identified. Should this alternative be selected, the evaluation of potential mitigation sites will be conducted by the San Diego Water Board and the Unified Port of San Diego through consultation with the appropriate regulatory permitting process, which is also explained in the Draft PEIR. The Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to those required for the proposed project.

O-3-190

The comment pertains to Alternative 3, the Convair Lagoon Alternative, and the increased impacts to aquatic habitat compared to the proposed project.

The San Diego Water Board Cleanup Team concurs with the comment.

O-3-191

The comment pertains to Alternative 3, the Convair Lagoon Alternative, and notes that a specific mitigation location is not proposed. The comment also states that the specific off-site disposal locations for Alternatives 2 and 4 are not identified in the Draft PEIR.

The Draft PEIR presents a range of potential eelgrass mitigation sites (see Table 5.25). The eelgrass mitigation is consistent with the requirements of CEQA because available means of mitigation the impact are identified, and performance standards, including mitigation ratio, are included. Please see response to comment O-3-188 regarding the level of detail required for the alternatives discussion.

O-3-192

The comment pertains to Alternative 3, the Convair Lagoon Alternative, and notes that there is a risk of failure and recontamination due to a seismic event.

Seismic considerations are addressed in Section 5.10.6 of the Draft PEIR and hazards are addressed in Section 5.10.8, and Accidental Release of Hazardous Materials is addressed under Threshold 5.10.8.2: Accidental Release of Hazardous Materials.

As explained in the Draft PEIR, compliance with the applicable federal, state, and local regulations and implementation of the Mitigation Measures 4.3.1 through 4.3.8, listed for the proposed project in Section 4.3, would reduce the potential for the Convair Lagoon to create a significant hazard to the public or the environment through the accidental release of hazardous materials.

Furthermore, Mitigation Measure 5.10.6.1 requires a detailed site-specific geotechnical investigation to determine specific geologic recommendations for the development of the containment barrier and storm drains. Areas of hydro-collapse, soft ground, expansive soils, compressible soils, liquefaction, shallow groundwater, and corrosive soils will be identified as part of the geotechnical investigation. The investigation will specifically address the proposed containment barrier, storm drains, and asphalt improvement stability in these identified geologic hazard areas. The geotechnical investigation shall be submitted to the San Diego Water Board for review and approval, prior to the issuance of a construction permit. The geotechnical investigation will comply with the specifications provided in the Naval Facilities Engineering Command (NAVFAC), DM-7.2, Foundations and Earth Structures, dated September, as well as the City of San Diego Building Division plans and the City of San Diego Engineering Department local grading ordinances. Recommendations made in conjunction with the geotechnical investigations will be implemented during construction. The qualified geologist shall periodically confirm that these measures are being implemented, including (as appropriate) but not necessarily limited to the following actions:

1. Over-excavate unsuitable materials associated with the confinement structure and replace them with imported engineered fill.
2. Confine unstable soils to deeper fill areas of the site.
3. Perform densification of soils in the area beneath the proposed containment structure through geotechnical engineering methods such as stone columns, compaction grouting, or deep dynamic compaction.
4. Select an engineering foundation design to accommodate the expected effects of liquefaction. Examples of types of foundation design that might be appropriate given the soil conditions include gravel bedding for the storm drain pipes and a pipe bell with flexibility to accommodate differential settlement.
5. Consider potential corrosion issues related to storm drain pipe degradation in the design of this improvement where it would contact corrosive soils or be subject to other corrosive forces.
6. Establish and implement a long-term monitoring and repair program to monitor the integrity of the asphalt, containment barrier and storm drains. Key features of the program include determination of the periodic review, the type of review, identification of potential problems that may occur in the future, and the methods that would be used to rectify any problems discovered.

7. The San Diego Water Board shall verify implementation of this mitigation measure.

The San Diego Water Board Cleanup Team finds that this mitigation measure is sufficient to reduce the potential impacts for the Convair Lagoon CDF Alternative from a seismically induced event to less than significant.

O-3-193

The comment pertains to Alternative 3, the Convair Lagoon Alternative, and refers to the risk of leakage of failure of existing storm drains the possibility of deposition of additional contaminants from storm drains.

Please see response to comment O-3-3 regarding the potential for recontamination from stormwater. Existing stormwater conditions are not an impact of the proposed project or project alternatives.

O-3-194

The comment pertains to Alternative 3, the Convair Lagoon Alternative, and states that the contaminants under the existing sand cap in the Lagoon are not quantified.

CEQA Guidelines (section 15126.6) provide information on the level of discussion necessary when considering alternatives:

> (d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles* (1981) 124 Cal. App. 3d 1).

For this alternative, and subsequent comments on the other alternatives, the level of prescribed detail is sufficient to determine if reasonable alternatives would eliminate and/or reduce significant unavoidable impacts when compared to the proposed project. No reported CEQA case has suggested or required a level of detail similar to that of the proposed project, including when an alternative may result in significant effects beyond or in addition to those of the proposed project: "If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed." (CEQA Guidelines section 15126.6 (d), citing *County of Inyo v. City of Los Angeles* (3d Dist. 1981) 124 Cal. App. 3d 1 [177 Cal. Rptr. 479]).

With regard to the level of information required for consideration in the Draft PEIR, the alternatives presented in the Draft PEIR are sufficient for the EIR tiering process, and is consistent with applicable code and CEQA Guidelines (Public Resources Code sections 21068.5 and 21093(b), CEQA Guidelines section 15152). Please refer also to Response O-4-6. Once a project has been selected, detailed analyses will be provided in a site-specific environmental document.

Finally, the comment does not present information to suggest that the contaminants under the existing sand cap are bioavailable. The existing sand cap is part of the existing setting for the proposed projects. It is not the purpose of an EIR to evaluate or to mitigate existing conditions.

O-3-195

The comment pertains to Alternative 3, the Convair Lagoon Alternative, and suggests that a 4-inch asphalt concrete cap would be preferable to a 3-inch cap, and offers other design suggestions.

The comment will be made available to the decision-makers for consideration in the design phase should Alternative 3 be selected.

O-3-196

The comment pertains to Alternative 3, the Convair Lagoon Alternative; specifically the proposed extension of two storm drain pipes through the containment barrier.

The comment will be made available to the decision-makers for consideration in the design phase should Alternative 3 be selected.

O-3-197

The comment pertains to Alternative 3, the Convair Lagoon Alternative; specifically the potential return of water from the dredged material.

The comment will be made available to the decision-makers for consideration in the design phase should Alternative 3 be selected.

O-3-198

The comment pertains to Alternative 3, the Convair Lagoon Alternative; specifically the conceptual design of the containment barrier.

The comment will be made available to the decision-makers for consideration in the design phase should Alternative 3 be selected.

O-3-199

The comment pertains to Alternative 3, the Convair Lagoon Alternative, and requests additional detail with regard to the design of the energy dissipater.

Please see response to comment O-3-194 regarding the level of detail required for the alternatives discussion. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-200

The comment pertains to Alternative 3, the Convair Lagoon Alternative, and the effect of placing hard shoreline into the Bay on waves and erosion.

The San Diego Bay is a large body of water and active port that already has areas of shoreline that are rock revetment or other hard surfaces. The placement of a hard shoreline in the area of Alternative 3, similar to other locations in the Bay, is not expected to have substantial detrimental effects on waves or erosion. The comment will be made available to the decision-makers for consideration in the design phase should Alternative 3 be selected.

O-3-201

The comment notes that pozzolonic treatment will increase the weight of the treated dredge and therefore increase the cost of disposal.

Cost in and of itself is not necessarily a determination of a measure's "feasibility" under CEQA.

O-3-202

The comment notes that the Draft PEIR states that no dewatering of contaminated sediments would be required for the Convair Lagoon CDF Alternative; however, the Draft PEIR also notes that the 15 percent of sediments presumed to be hazardous would require dewatering.

The comment is correct. The approximately 85 percent of sediment that is contaminated but not considered hazardous would not require dewatering prior to disposal at the CDF. However, the approximately 15 percent of sediment that is considered hazardous and subject to upland disposal would be dewatered prior to disposal.

O-3-203

The comment notes that the future use of the Convair Lagoon parcel beyond serving as a CDF is not identified in the Draft PEIR.

Future use of the area for any use in addition to a CDF is not included in the proposed project, is not within the jurisdiction of the San Diego Water Board, and would be subject to subsequent CEQA review by the Unified Port of San Diego.

O-3-204

The comment pertains to the Nearshore CDF Alternative and notes that it is not possible to quantify the impacts or required mitigation for this alternative without a specific off-site disposal location and more details about the design of the CDF.

The comment is correct that the Nearshore CDF Alternative is presented in less detail than the Proposed Project or the Convair Lagoon Alternative. CEQA "does not require that every conceivable alternative be stated in the [EIR] nor that the alternatives that are stated be described in every possible detail … [w]hat is required is that the EIR give reasonable consideration to alternatives in light of the nature of the project" (see *City of Rancho Palos Verdes*, supra, 59 Cal. App. 3d at page 892). The San Diego Water Board Cleanup Team finds that the alternatives are appropriately described in sufficient detail for the comparison of impacts of the proposed project and to provide for meaningful public review and comment.

O-3-205

The comment pertains to the benefits of Monitored Natural Attenuation. Please see response to comment O-3-2.

O-3-206

The comment pertains to the No Project Alternative. Please see response to comment O-3-187.

O-3-207

The comment notes that Alternatives 2 and 4 are only qualitatively described. Please see response to comments O-3-194 and O-3-204.

O-3-208

The comment expresses an opinion that the Convair Lagoon CDF Alternative, Alternative 3, is presented with disproportionate detail indicating a favoring of this alternative. The Draft PEIR provides a reasonable range of project alternatives and potential staging areas and does not select a preferred alternative or staging area. The inclusion of more detailed information about the Convair Lagoon CDF Alternative is intended to illuminate the potential effects of such an alternative and in no way reflects a preferred course of action. As noted in the comment, the Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to

those required for the proposed project in multiple areas, most significantly including water quality and biological resources.

O-3-209

The comment indicates that the Draft PEIR does not address the potential for inadvertent re-release of contaminants back into San Diego Bay through CAD or CDF. Refer to response O-3-105.

O-3-210

The comment sates that the Convair Lagoon CDF Alternative will have the highest ecological impacts of the alternatives presented in the Draft PEIR.

The Draft PEIR clearly states that creation of a confined disposal facility would require significant levels of open water and eelgrass creation mitigation and, though potential sites are discussed, no specific site is identified. Should this alternative be selected, the evaluation of potential mitigation sites will be conducted by the San Diego Water Board and the Unified Port of San Diego through consultation with the appropriate regulatory permitting process, which is also explained in the Draft PEIR. The Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to those required for the proposed project in multiple areas, most significantly including water quality and biological resources. Furthermore, the Convair Lagoon CDF Alternative for sediment disposal represents substantial regulatory obstacles with respect to permitting. Even assuming that a CDF could be permitted at Convair Lagoon, it is unlikely that it could be permitted in time to meet the contemplated TCAO implementation schedule.

O-3-211

The comment states that all of the three evaluated alternatives that include dredging will result in significantly more aquatic and shoreline habitat impacts than the proposed project, with additional risk of future failure and rerelease of contamination.

Please see response to comment O-3-192.

O-3-212

This comment is the list of references cited in the comment letter. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-213

This comment is a cover memorandum to the station data provided in Comment O-3-215.

The comment expresses the opinion that there is no evidence of significant impairment of beneficial uses of the Bay due to NASSCO sediment contamination, and that monitored natural recovery should be the preferred alternative. This comment expresses an opinion about the project and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project.

The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-214

This comment is a glossary of key terms used in the station data presented in Comment O-3-215. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-215

This comment is station data. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-216

This comment letter was submitted by the U.S. Fish and Wildlife Service in January 2011 (prior to the release of the Draft PEIR in June 2011) on an Addendum to the TCAO for the Teledyne Ryan Aeronautical site. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-217

This comment letter was submitted by the U.S. Fish and Wildlife Service in January 2011 (prior to the release of the Draft PEIR in June 2011) on an Addendum to the TCAO for the Teledyne Ryan Aeronautical site. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-218

This comment letter was submitted by the U.S. Fish and Wildlife Service in January 2011 (prior to the release of the Draft PEIR in June 2011) on an Addendum to the TCAO for the Teledyne Ryan Aeronautical site. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-219

This comment letter was submitted by the U.S. Fish and Wildlife Service in January 2011 (prior to the release of the Draft PEIR in June 2011) on an Addendum to the TCAO for the Teledyne Ryan Aeronautical site. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-220

This comment letter was submitted by the U.S. Fish and Wildlife Service in January 2011 (prior to the release of the Draft PEIR in June 2011) on an Addendum to the TCAO for the Teledyne Ryan Aeronautical site. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-221

This comment letter was submitted by the U.S. Fish and Wildlife Service in January 2011 (prior to the release of the Draft PEIR in June 2011) on an Addendum to the TCAO for the Teledyne Ryan Aeronautical site. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-222

This comment letter was submitted by the U.S. Fish and Wildlife Service in January 2011 (prior to the release of the Draft PEIR in June 2011) on an Addendum to the TCAO for the Teledyne Ryan Aeronautical site. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-223

This comment is a curriculum vitae/résumé. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-224

This comment is a curriculum vitae/résumé. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-225

This comment is a curriculum vitae/résumé. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

O-3-226

This comment is the certification of authenticity of electronic submittal. The comment does not contain any substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

GENERAL DYNAMICS

Letter Code: O-4

Date: August 1, 2011

O-4-1

The first part of the comment is introductory to other comments in the letter and notes that General Dynamics is a former lessee of the Convair Division, Lindbergh Field Plant. The letter states that: "As discussed below, General Dynamics has a number of significant concerns regarding the Draft PEIR's proposed Convair Lagoon Confined Disposal Facility ("CDF"). Specifically, General Dynamics is concerned that the Cleanup Team concludes in the Draft PEIR that spending millions of dollars to place contaminated sediments from the Shipyard Sediment Site back into the Bay, creating the Convair Lagoon CDF, is a potentially viable alternative for the Shipyard Sediment Site, particularly considering that the risk of recontamination cannot be eliminated."

This comment expresses an opinion about Alternative 3, the Convair Lagoon Confined Disposal Facility (CDF). Specifically the comment expresses concern that the Convair Lagoon CDF would introduce the possibility of recontamination of the San Diego Bay. This comment will be included as part of the record and made available to the decision-makers prior to a final decision on the project.

The Convair Lagoon CDF was included in the Draft PEIR consistent with the requirements of CEQA, which requires that the Lead Agency consider a range of potentially feasible alternatives to the proposed project. See Public Resources Code sections 21002 and 21081; see also CEQA Guidelines section 15126.6(f). "Feasible" means capable of being accomplished in a successful manner within a reasonable time, taking economic, environmental, legal, social and technological factors into account. (CEQA Guidelines section 15364.) The range of alternatives to be considered is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited ones that would avoid or substantially lessen any of the significant impacts of the project. "Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project" CEQA Guidelines section 15126.6(f). Additionally, CEQA does not require the consideration of alternatives that are incompatible with the fundamental objectives of the project or alternatives that would change the basic nature of the project.

As noted in Section 5.7.1 of the Draft PEIR, Alternative 3 would obtain the project objectives and would implement the San Diego Water Board's overall goal to improve water quality in San Diego Bay. Alternative 3 would remove the contaminated sediments within the remedial footprint and is consistent with the DTR for TCAO No. R9-2010-0002, Finding 30 (pages 30-5 and 30-6). Specifically:

- Alternative 3 would attain the cleanup levels and remediate areas as identified in the TCAO; therefore, Alternative 3 would protect the water quality of San Diego Bay for the use and enjoyment by the people of the state.
- Alternative 3 would reduce or minimize adverse effects to aquatic life beneficial uses, aquatic-dependent wildlife beneficial uses, and human health beneficial uses by the removal and/or covering of the contaminated sediments in the remedial footprint.
- Alternative 3 would implement a cleanup plan that would have long-term effectiveness and would realize long-term public benefits associated with the cleanup of the contaminated marine sediments; the site would no longer constitute a public nuisance.

The Draft PEIR provides a reasonable range of project alternatives and potential staging areas and does not select a preferred alternative or staging area. Once a project has been selected, detailed analyses will be provided in a site-specific environmental document, including any staging area(s) to be used.

O-4-2

The letter states that: "Despite significant risks and challenges associated with the construction and maintenance of a CDF, the Draft PEIR unduly emphasizes this alternative by including extensive discussion of Convair Lagoon, as well as unnecessary documentation pertaining to the demolition of General Dynamics' former Lindbergh Field Facility. In particular, Appendix A to Appendix K consists largely of dozens of forms from the Department of Parks and Recreation describing buildings formerly located at the General Dynamics Lindbergh Field Facility. These documents appear to have been included without any discernable or legitimate purpose, as they do not relate to the Shipyard Sediment Site cleanup, or to the pier and seaplane ramp proposed for demolition as part of the Convair Lagoon CDF."

As part of the Convair Lagoon Alternative, the concrete seaplane ramp and pier located on the site would be demolished. Both the seaplane ramp and the pier were constructed circa 1957. The discussion in Chapter 5.0 of the Draft PEIR provides an evaluation of the seaplane ramp and pier for eligibility of listing in the NRHP, the CRHR, the local register for the City of San Diego Historical Sites, and of qualifying as a historic resource under CEQA. The existing pier and seaplane ramp were previously part of a larger aircraft manufacturing complex that included several buildings, hangars, runways and testing sites for the aviation company Convair. The demolition of the seaplane ramp and pier was evaluated in the context of the larger aircraft manufacturing complex that had been present at the site. Therefore, the Department of Parks and Recreation (DPR) forms for the larger complex that forms the historic setting and background for the seaplane ramp and pier are appropriately included in Appendix K of the Draft PEIR.

The Draft PEIR provides a reasonable range of project alternatives and potential staging areas and does not select a preferred alternative or staging area. Once a project has been

selected, detailed analyses will be provided in a site-specific environmental document, including any staging area(s) to be used.

O-4-3

The letter states that: "For the reasons discussed herein, General Dynamics objects to the Convair Lagoon CDF as a potential means for disposing of Shipyard Sediment Site sediments, and respectfully requests that all references to General Dynamics' former Lindbergh Field facility within the DEIR be stricken.

"I. THE DEIR MUST FOCUS ON THE SHIPYARD SEDIMENT SITE, NOT CONVAIR LAGOON

"The Cleanup Team's purpose in issuing the DEIR is to 'analyze the [Shipyard Remediation Project's] potential impacts on the environment, to discuss alternatives, and to propose mitigation measures for identified potentially significant impacts that will minimize, offset, or otherwise reduce or avoid those environmental impacts.' DEIR, at 1-1 (emphasis added). While the DEIR discusses four alternatives to the proposed project, including (1) the No Project/No Development Alternative, (2) the Confined Aquatic Disposal Site, (3) the Convair Lagoon CDF, and (4) CDF with Beneficial Use of Sediments, a disproportionate share of the DEIR was devoted to the Convair Lagoon CDF-including over 200 pages and six appendices drafted by the San Diego Unified Port District's ('Port District') consultant. DEIR, at 5-9 (setting forth the four project alternatives); 5-32- 5-271 (discussing the Convair Lagoon CDF). By contrast, the other alternatives set forth in the DEIR each received only between 2 and 6 12 pages of analysis. Moreover, no other party interested in the Shipyard Sediment Remediation Project, or the Convair Lagoon remediation was permitted to make a similar contribution. To avoid the appearance of bias, the San Diego Regional Water Quality Control Board ('Regional Board') staff should explain to the public why it included more than 200 pages of analysis (plus appendices) for one alternative prepared by the Port District's consultants, while the other alternatives received a much less detailed analysis. Although the Convair Lagoon CDF was not ultimately selected as the environmentally superior alternative, General Dynamics is concerned that the extensive discussion and special treatment of this alternative compared to the other alternatives may lead to confusion as to the preferred course of action, and as discussed below, General Dynamics does not view the Convair Lagoon CDF as a viable long-term solution for the remediation of the Shipyard Sediment Site or Convair Lagoon."

The Unified Port of San Diego (Port) is the public agency with land use authority in the San Diego Bay tidelands, including the potential Staging Areas for the proposed project and the Convair Lagoon. Responsible agencies under CEQA are agencies, other than the lead agency, that have some discretionary authority for carrying out or approving a project. (The shipyards are private entities, not public agencies, and therefore do not enjoy the same status as the Port under CEQA.) The lead agency must convene a meeting with Responsible Agency representatives to discuss the scope and content of the environmental information to

be included in the EIR if requested to do so by the responsible agency (Public Resources Code section 21080.4(b)).

As a responsible agency for the proposed project and project alternatives, the Port requested consultation with the San Diego Water Board. As a result of appropriate inter-agency discussion pertaining to the CEQA Alternatives to the proposed project, a decision was made to include the Convair Lagoon CDF Alternative in the Draft PEIR.

An EIR must contain sufficient information about each alternative to permit an evaluation of the relative merits of the alternatives and the project (CEQA Guidelines section 15126.6(a)). The significant adverse environmental effects of each alternative must be discussed, but in less detail than is required for the project's effects (CEQA Guidelines section 15126.6(d)). The Draft PEIR provides a reasonable range of project alternatives and potential staging areas and does not select a preferred alternative or staging area. The inclusion of more detailed information about the Convair Lagoon CDF Alternative is intended to illuminate the potential effects of such an alternative and in no way reflects a preferred course of action. As noted in the comment, the Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to those required for the proposed project in multiple areas, most significantly including water quality and biological resources.

O-4-4

The letter states that: "In addition to the disproportionate consideration afforded to the Convair Lagoon CDF, General Dynamics is also concerned that much of the information contained in the Convair Lagoon CDF analysis does not relate to the Shipyard Sediment Remediation Project and should not have been included. For example, the DEIR's Appendix K, which purports to be an "Architectural Resources Evaluation" of the pier and seaplane ramp that would be demolished if the Convair Lagoon CDF were adopted, contains descriptions of a number of buildings previously located at General Dynamics' former Lindbergh Field Facility that were demolished over a decade ago. These documents are wholly irrelevant to the Shipyard Sediment Site, and there is no legitimate purpose for including them in the DEIR as part of an evaluation of architectural resources, especially when they no longer exist.[1] Likewise, the DEIR also discusses a closed leaking underground storage tank case at the former General Dynamics facility, with no explanation of how this tank relates to the Shipyard Sediment Remediation Project, or any of the alternatives under consideration. DEIR, at 5-191. While this type of information might be appropriate with

[1] Comment O-4-4 Footnote states: While it is true that the issue of source control is relevant to any alternative, including the Convair Lagoon CDF, the cleanup and abatement order for the former Teledyne Ryan site already requires source control to be achieved before further cleanup of Convair Lagoon is implemented (DEIR, at 5-35 (citing R9-2004-0258)); accordingly, the DEIR may simply note that the CDF alternative could not be adopted until source control is achieved in accordance with R9-2004-0258. Any further detail concerning potential upland sources at Convair Lagoon is not required, and is inappropriate given that the DEIR is supposed to analyze the Shipyard Sediment Remediation Project, not Convair Lagoon. This is particularly true considering that interested parties with respect to the Convair Lagoon cleanup were not afforded the opportunity to assist in the development of the DEIR, as was the Port District.

regard to an EIR for Convair Lagoon, it is plainly irrelevant to the Shipyard Sediment Remediation Project. Thus, the Cleanup Team should make clear that independent CEQA review will be required for the Convair Lagoon CDF, if selected, and strike the references to the closed underground storage tank and the demolished buildings that were previously located at the former General Dynamics' Lindbergh Field Facility."

Please see response to comment O-4-2 regarding Appendix K of the Draft PEIR.

The Cortese list, formally known as the Hazardous Waste and/or Substance Site List, is maintained by the Office of Hazardous Materials Data Management (or Office of Environmental Information within the California Environmental Protection Agency (CAL-EPA). It is based on reports provided by the Toxic Substances Control Department, the State Water Resources Control Board, CalRecycle (formerly known as the California Integrated Waste Management and Recycling Board), and local solid waste enforcement agencies. Under Public Resources Code section 21092.6, Cortese list information must be included in a Draft EIR if the project is located on a listed site. In total, five sites, including the Convair Lagoon and four adjacent properties, were identified in the records search for the Convair Lagoon Alternative as having existing or past hazardous materials contamination. These sites are appropriately identified in Chapter 5.0 of the Draft PEIR and in the revised Chapter 5.0 included in Appendix A of this RTC document.

The inclusion of detailed information about the Convair Lagoon CDF Alternative in the Draft PEIR is intended to illuminate the potential effects of such an alternative and to inform the decision-makers. The Convair Lagoon is not the proposed project, nor has it been identified as the preferred course of action. The Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to those required for the proposed project in multiple areas, most significantly including water quality and biological resources.

O-4-5

The letter states that: "II. SPENDING MILLIONS OF DOLLARS TO DREDGE CONTAMINATED SEDIMENT, ONLY TO DISPOSE OF IT ELSEWHERE IN THE BAY, IS NOT A VIABLE REMEDY FOR THE SHIPYARD SEDIMENT SITE

"Notwithstanding General Dynamics' above-listed concerns regarding the preparation of the DEIR, it would be patently unreasonable for dischargers to spend millions of dollars to dredge over 140,000 cubic yards of contaminated sediment, only to dispose of it in a CDF elsewhere in the Bay-particularly when consideration of the specific design details of the CDF have been deferred."

The comment expresses an opinion opposing the Convair Lagoon Alternative, and is not a comment on the environmental analysis contained in the Draft PEIR. This comment will be included as part of the record and made available to the decision-makers prior to a final

decision on the project. The Convair Lagoon is not the proposed project, nor has it been identified as the preferred course of action. The Convair Lagoon Alternative was not identified as an Environmentally Superior Alternative to the proposed project and would require mitigation measures in addition to those required for the proposed project in multiple areas.

O-4-6

The letter states that: "As drafted, the DEIR contemplates that existing sediment at Convair Lagoon would be dredged and contained in a CDF, along with spoils from the Shipyard Sediment Site, and that BMPs and long-term monitoring measures would be implemented to protect water quality.

"DEIR, at 5-17- 5-19; DEIR, at Table 5-1. However, even if the proposed BMPs and monitoring measures are implemented as discussed in the DEIR, there is no guarantee that the CDF will be successful, or that sediments contained in the CDF will never be released. In fact, Convair Lagoon is already a prime example of the dangers associated with confined disposal: After significant funds were expended constructing a cap to remediate PCBs, and cleaning storm drain lines that discharge to the lagoon, PCBs were subsequently found on top of the cap. While the Cleanup Team has suggested that the contamination, 'presumably c[ame] from the 60-inch storm drain' (which drains sources upland from Convair Lagoon), the cause of the contamination has not been established, and it remains possible that the contamination resulted from a breach of the cap. DEIR, at 5-35 ('Subsequent to installation of the sand cap over the PCB contaminated sediments in Convair Lagoon, monitoring has been conducted that has discovered PCB contamination above the cap, presumably coming from the 60-inch storm drain.') (emphasis added).

Monitoring of the Convair Lagoon cap has shown that upland sources are the most likely source of the PCBs detected on top of the cap, not PCBs contained under the cap. Of the 34 samples collected from the bottom of sediment cores of the cap, only two samples contained a detectable concentration of PCBs (0.065 mg/kg in sample 3.5-120-1.5B and 0.06 mg/kg in sample 3-80-1.0B). Based on these findings, there is no evidence that the cap has been breached.

Upland source control of Convair Lagoon, among other issues, may impact the implementation schedule for achieving cleanup and abatement of the Shipyard Sediment Site. For the Convair Lagoon CDF to be a viable alternative, upland sources must be controlled to the point that beneficial uses of San Diego Bay are not threatened by upland discharges, and the TCAO implementation schedule can be met. Upland source control is ongoing and, at this time, the San Diego Water Board Cleanup Team expects it could be accomplished in time as to not adversely affect the TCAO implementation schedule. While it is not expected that upland source control would present a major obstacle to timely implementation of the TCAO, the Convair Lagoon CDF Alternative for sediment disposal represents substantial regulatory obstacles with respect to permitting. Even assuming that a CDF could be

permitted at Convair Lagoon, it is unlikely that it could be permitted in time to meet the contemplated TCAO implementation schedule.

As explained in response to comment O-4-3, the Unified Port of San Diego (Port) is the public agency with land use authority in the Port District, including the potential Staging Areas for the proposed project and the Convair Lagoon. The Port is a responsible agency identified in Chapter 3.0 of the Draft PEIR. The shipyards are private entities, not public agencies, and therefore do not enjoy the same status as the Port under CEQA.

O-4-7

The comment states that: **"**The Regional Board should not risk a similar outcome with respect to a CDF at Convair Lagoon. If the proposed CDF were to be adopted and fail, causing impacts to the environment, the commingling of sediments in the CDF would likely result in complex, multi-party litigation-at great cost to all parties involved.[1] Since the Port District would be the sole beneficiary of such an alternative, due to its acquisition of the 10 additional acres of land that would be created by constructing the CDF, any alternative involving the commingling and confinement of sediments at Convair Lagoon should be contingent upon the Port District's agreement to fully fund such an approach, including accepting any and all future liability, obligations and costs, and indemnifying other parties for monitoring and remediation costs if the CDF fails."

Please refer to response to comment O-4-6.

O-4-8

The letter states that: "III. CONCLUSION

For the foregoing reasons, General Dynamics strongly objects to the Convair Lagoon CDF alternative, and requests that pages 20 to 90 of Appendix A to Appendix K, and all similar references to the former Lindbergh Field Facility, be stricken from the DEIR.**"**

The comment concludes the comment letter. See responses to comments O-4-1 through O-4-6. The comment does not contain any new substantive statements or questions about the Draft PEIR or the analysis therein. Therefore, no further response is necessary.

[1] Comment O-4-7 Footnote states: As it stands, the Shipyard Sediment Site now involves 13 Designated Parties. To General Dynamics' knowledge, of the numerous parties involved, the Port District is the only party in favor of the Convair Lagoon CDF alternative.