

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



CURTIS L. FOSSUM, Executive Officer
(916) 574-1800 FAX (916) 574-1810
California Relay Service From TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1890
Contact FAX: (916) 574-1885

August 1, 2011

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California Regional Water Quality Control Board, San Diego Region
Attention: Vicente Rodriguez
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Subject: Draft Program Environmental Impact Report (PEIR) for the Shipyard Sediment Remediation Project, San Diego, San Diego County

Dear Mr. Rodriguez:

Staff of the California State Lands Commission (CSLC) has reviewed the subject draft PEIR for the Shipyard Sediment Remediation Project (Project) prepared by the California Regional Water Quality Control Board, San Diego Region (RWQCB) as the state lead agency under the California Environmental Quality Act (CEQA) (Public Resources Code [PRC] § 21000 et seq.). The CSLC has prepared these comments as a trustee and responsible agency because of its trust responsibility for projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters.

Background

CSLC Jurisdiction

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (PRC §6301 and §6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway

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landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

Proposed Project and Project Location

On September 15, 2010, the RWQCB released Tentative Cleanup and Abatement Order (TCAO) No. 2011-0001 and its associated draft technical report for discharges of metals and other pollutant wastes to San Diego Bay marine sediment and waters located within and adjacent to BAE Systems San Diego Ship Repair and National Steel and Shipbuilding Company leaseholds (the "Shipyard Sediment Site"). The Shipyard Sediment Site is located in San Diego Bay generally between Sampson Street extension and the mouth of Chollas Creek in the city of San Diego.

Under the terms of the TCAO over 140,000 cubic yards of contaminated sediments will be removed from approximately 15.2 acres of the Shipyard Sediment Site with dredge buckets. Dredged materials will be disposed of at appropriate landfill facilities. In addition to the 15.2 acres targeted for dredging, approximately 2.3 acres of the Project site are inaccessible or under-pier areas that would be remediated by one or more methods other than dredging, most likely by sand cover. 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 are identified by the RWQCB as potential sediment staging areas.

Staging Area	Location	Potentially Usable Acres
1	10th Avenue Marine Terminal and Adjacent Parking	49.66
2	Commercial Berthing Pier and Parking Lots Adjacent to Coronado Bridge	11.66
3	SDG&E Leasehold/BAE Systems Leasehold/BAE Systems and NASSCO Parking Lots	7.27
4	NASSCO/NASSCO Parking and Parking Lot North of Harbor Drive (Staging Area 4 is not located adjacent to the waterfront; therefore, sediment transport from the barge to the staging area would be required)	3.85
5	24th Street Marine Terminal and Adjacent Parking Lots in the city of National City	145.31

Comments on the Draft PEIR

Agency Jurisdiction

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.

Program Environmental Review and Mitigation

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” (State CEQA Guidelines § 15126.4, subd. (b)).¹
3. 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 (see State CEQA Guidelines § 15168, subd. (c)).
4. 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.

Cultural Resources

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

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

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.

5. The latter statement provides for the possibility of an unanticipated cultural resource find. Therefore, the PEIR should discuss and evaluate potential impacts to submerged cultural resources in the Project area. 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.
6. 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).
7. 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.

Climate Change and Greenhouse Gas (GHG) Emissions

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 (CO₂) 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 CO₂ emissions.

8. 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 CO₂ 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 <http://www.arb.ca.gov/cc/localgov/ceqa/ceqa.htm>). Alternatively, CSLC staff

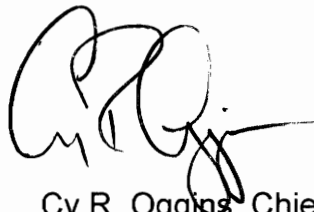
requests that more information be added in the PEIR justifying that 7,750 metric tons of CO₂ emissions per year is less than significant, when the presumption is that emissions of over 7,000 metric tons per year for industrial projects are a significant impact to climate change.

9. 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.

Thank you for the opportunity to comment on the Draft PEIR. It is anticipated that the CSLC will need to rely on this CEQA document for issuance of a dredging lease; therefore, we request that you consider our comments prior to adoption of the Final PEIR.

Please send copies of future Project-related CEQA documents or refer questions concerning environmental review to Sarah Mongano, Staff Environmental Scientist, at (916) 574-1889 or via e-mail at Sarah.Mongano@slc.ca.gov. Please contact Michelle Andersen at (916) 574-0200 (e-mail: Michelle.Andersen@slc.ca.gov) if you have questions concerning CSLC jurisdiction or leases, or Senior Staff Counsel Pam Griggs at (916) 574-1854 (e-mail: Pamela.Griggs@slc.ca.gov) if you have questions concerning archaeological or historic resources under CSLC jurisdiction.

Sincerely,



Cy R. Oggins, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
M. Andersen, LMD, CSLC
S. Mongano, DEPM, CSLC
P. Griggs, Legal, CSLC