

State of California
Regional Water Quality Control Board
San Diego Region

ADVISORY TEAM SUMMARY REPORT
March 14, 2012

- ITEM: 8
- SUBJECT: Public Hearing: Consideration of Resolution No. R9-2012-0025, Certifying the Final Environmental Impact Report, including Statement of Overriding Considerations, for the San Diego Bay Shipyard Sediment Cleanup Project, Tentative Order No. R9-2012-0024 and Draft Technical Report, San Diego County. Note: Item 8 may be considered with Item 9, below, but will be acted upon first. (*Frank Melbourn*)
- PURPOSE: To consider certification of the final Environmental Impact Report (EIR) and adoption of Tentative Resolution No. R9-2012-0025 (including Findings of Fact and Mitigation Monitoring and Reporting Program).
- RECOMMENDATION: The Hearing Panel recommends adoption of Tentative Resolution No. R9-2012-0025.
- DISCUSSION: The San Diego Regional Water Quality Control Board (San Diego Water Board) is the lead agency under the California Environmental Quality Act (Pub. Res. Code § 21000, et seq. (CEQA)) with responsibility for conducting environmental review prior to considering discretionary approval of the proposed Shipyard Sediment Remediation Project (Project) in Tentative Cleanup and Abatement Order (TCAO) No. R9-2012-0024. The study area for the Project is located along the eastern shore of central San Diego Bay, extending approximately from the Sampson Street Extension on the northwest to Chollas Creek on the southeast, and from the shoreline out to the San Diego Bay main shipping channel to the west (Supporting Documents 1 and 2). The EIR generally consists of the following documents:
1. Draft EIR released for public comment on June 16, 2011, (Supporting Document 4.a) with Appendices (Supporting Document 4.b);

2. Responses to Comments on the draft EIR (August 23, 2011) (Supporting Document 5);
3. Supplemental Response to Comments on the final EIR (November 2, 2011) (Supporting Document 6); and
4. Tentative Resolution R9-2012-0025 with Exhibit A (Findings of Fact and Statement of Overriding Considerations) and Exhibit B (Mitigation Monitoring and Reporting Program) (Supporting Document 7).

The purpose of the Project identified in the final EIR is to implement a cleanup order, specifically TCAO No.R9-2012-0024. As drafted, the TCAO establishes alternative sediment cleanup levels for the Project. It further proposes a combination of dredging and capping of contaminated sediments in a defined remedial area. The final EIR describes the Project as dredging of sediment located in the Shipyards leaseholds (Supporting Document 2) located within San Diego Bay. The Project includes the following components: dewatering and solidification of the dredged material (onshore or on a barge); potential treatment of decanted water (anticipated disposal to the sanitary sewer system); placement of sand upon contaminated marine sediments located adjacent to piers and bulkheads; and transport of the dredged material to an appropriate landfill for disposal. (Supporting Document 4.a.)

The final EIR (See Supporting Document 4.a., Table 1.A) summarizes the Project's environmental impacts, includes a significance determination, proposed mitigation measures, and a determination of the level of significance after mitigation is incorporated into the project. The EIR identifies significant/unavoidable impacts to air quality from nitrous oxides (NO_x), a precursor of ozone. All other impacts are addressed through mitigation measures described in the EIR. Because the EIR concludes that air quality impacts associated with the proposed project are unavoidable, certification of the EIR includes a Statement of Overriding Considerations. And because the EIR incorporates mitigation, it also includes a Mitigation Monitoring and Reporting Program Requirement.

The final EIR considers a range of reasonable alternatives to the project that might feasibly attain most of the basic project objectives while avoiding or substantially lessening any significant effects of the project. These include: (1) No Project/No Development; (2) Confined Aquatic Disposal

(CAD) Site; (3) Convair Lagoon Confined Disposal Facility (CDF); and (4) CDF with Beneficial Use of Sediments.

On November 9, 14, 15 and 16, 2011, a hearing panel consisting of Grant Destache, Eric Anderson and Gary Strawn (Hearing Panel or Panel) conducted evidentiary hearings on TCAO No. R9-2011-0001 and its supporting Draft Technical Report (DTR). The Panel also considered the final EIR in conjunction with tentative Resolution No. R9-2011-0072, which proposed certification of the final EIR for the Project.

The Panel heard from all of the Designated Parties to the proceeding and from the public, and accepted oral comments on the final EIR. On November 16, 2011, January 27, 2012, and February 8, 2012, the Panel deliberated on the evidence received during the hearing. The Hearing Panel subsequently revised TCAO No. R9-2011-0001 and corresponding sections of the DTR to incorporate the Panel's revisions. TCAO No. R9-2012-0024 and the revised DTR (collectively Proposed Order), distributed on February 13, 2012, constitute the Hearing Panel's recommendation to the full Board. (See Agenda Item No. 9.) Corresponding changes, where appropriate, were made to Resolution No. R9-2011-0072 and its exhibits and the resolution was renumbered R9-2012-0025. The Draft EIR dated June 16, 2011, was also modified to incorporate revisions to Section 4.2, Hydrology and Water Quality, Section 7.2, Mitigation Monitoring Procedures and the Mitigation Monitoring and Reporting Program. These revisions were made by the San Diego Water Board Cleanup Team in response to comments on November 2, 2011, and were considered by the Panel during the November hearing as part of the final EIR. The Hearing Panel did not make other substantive changes to the EIR documents.

The Advisory Team has provided the full Board with all of the supporting documents identified below, including hearing transcripts (Supporting Document 9) and a redline/strikeout version of Resolution No. R9-2012-0025 showing the Hearing Panel's revisions described above (Supporting Document 8). The Board is not required to take additional evidence or allow additional comments when it considers a hearing panel's recommendation, unless the panel proposes significant modifications to the earlier orders. As set forth in

the February 13, 2012, Notice of Public Hearing (Supporting Document 3), the Board allowed limited written comments on the Panel's revisions to the Proposed Order and to the Tentative Resolution and its Exhibits.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Location Map of the Shipyards Site (hard copy)
2. Plot plan for Shipyard facilities - NASSCO and BAE (hard copy)
3. Notice of Public Hearing
 - a. February 13, 2012 (hard copy)
 - b. September 19, 2011, with Hearing Procedures (hard copy)
4. a. Draft Environmental Impact Report (June 16, 2011) (on CD)
b. Appendices to Draft Environmental Impact Report (on CD)
5. Written Comments and Responses to Comments on draft EIR (August 23, 2011) (on CD)
6. Written Comments and Responses to Comments on final EIR (November 2, 2011) (on CD)
7. Tentative Resolution No. R9-2012-0025, with Exhibits A and B (hard copy)
8. Tentative Resolution No. R9-2012-0025, with Exhibits A and B (Redline/Strikethrough showing changes from Tentative Resolution No. R9-2011-0072) (on CD)
9. Transcripts of Hearing on November 9, 14, 15 and 16, 2011 (on CD)
10. Designated Party PowerPoint Presentations Made During the November 2011 Hearing (on CD)
11. Initial and Supplemental Agenda Packages for November 2011 Hearing for Item 5 (EIR for Shipyard Sediment Cleanup Project) (on CD).

PUBLIC NOTICE: The Advisory Team distributed a Notice of Public Hearing, including hearing procedures, for the November Panel Hearing on September 19, 2011 (Supporting Document 3.b). On February 13, 2012, the Advisory Team publicly noticed this item with a Notice of Public Hearing (Supporting Document 3.a) and in the Agenda and Notice of Meeting published on February 24, 2012.