

**CA Regional Water Quality Control Board
San Diego Region**

CEQA SCOPING MEETING:

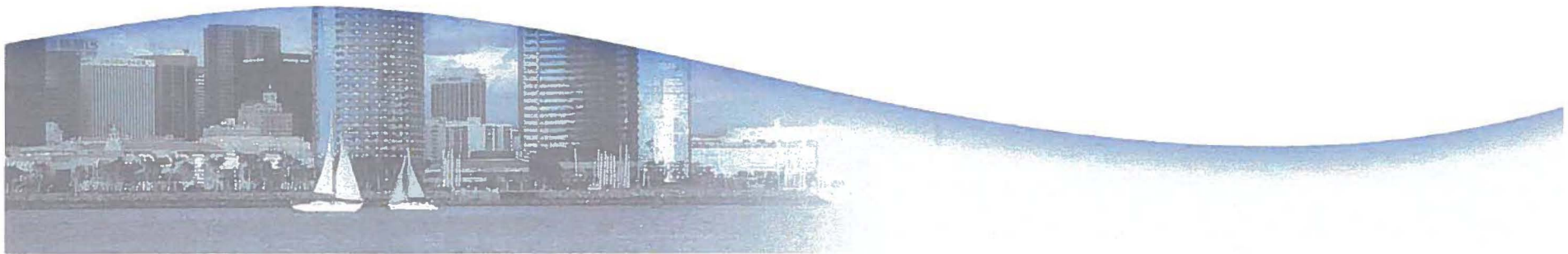
**TENTATIVE CLEANUP AND
ABATEMENT ORDER (CAO)
NO. R9-2010-0002**

January 21, 2010



CEQA SCOPING MEETING

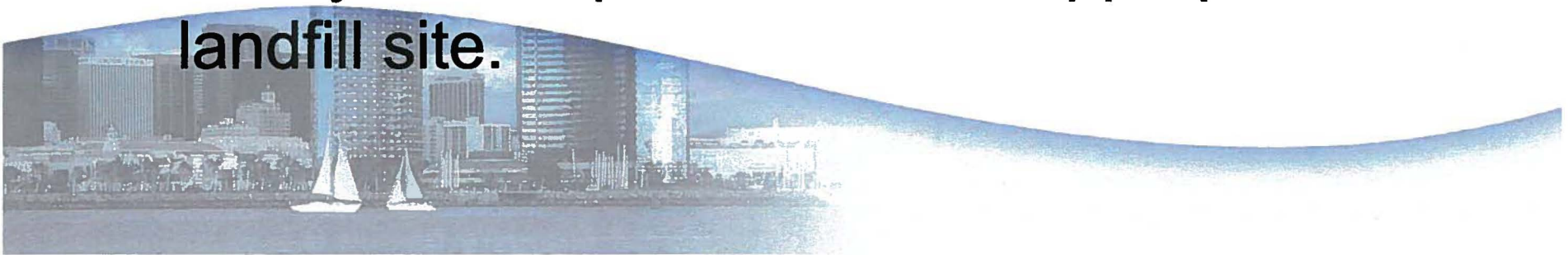
- ◆ Project Description
- ◆ Project Alternatives
- ◆ Initial Study/Environmental Checklist
- ◆ Next Steps
- ◆ Questions & Comments



Project Description

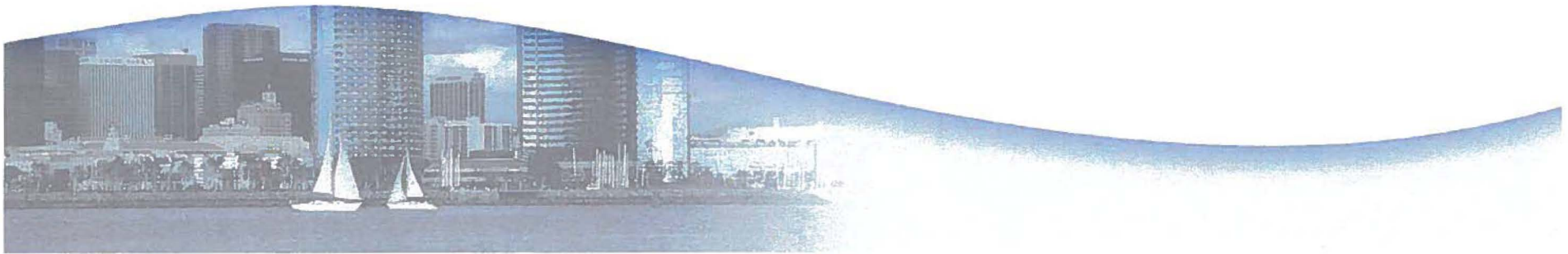
The project is a CAO for cleanup of contaminated marine sediments at the NASSCO/BAE Systems Shipyard Sediment Site in San Diego Bay.

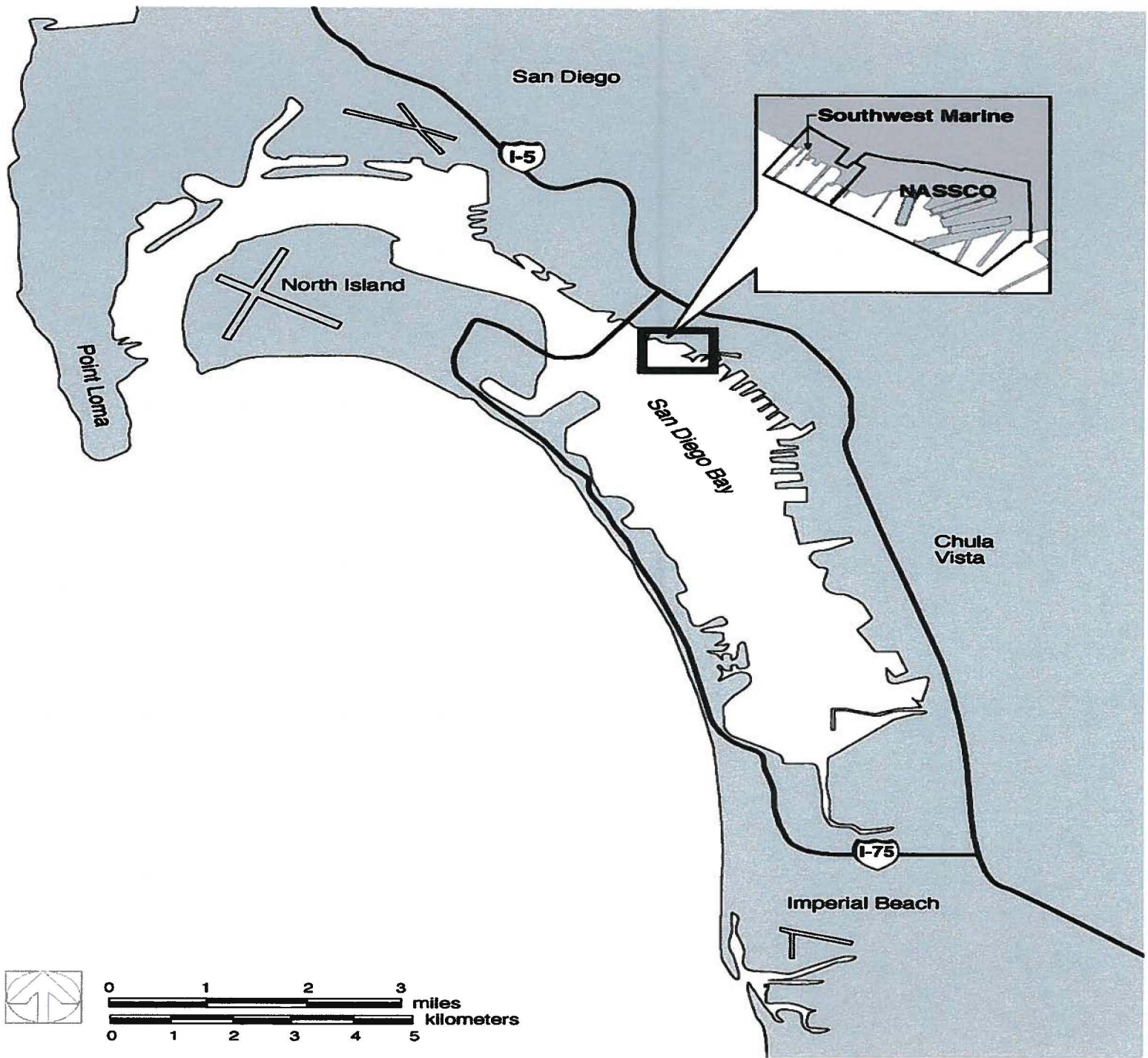
The cleanup remedy may include dredging, capping, and/or natural recovery. Dredge spoils may be dewatered at an onshore facility and disposed of at an appropriate landfill site.



Project Alternatives

- Alternative #1 – No Action
- Alternative #2 – Dredge & Landfill Disposal
- Alternative #3 – Dredge & Confined Aquatic Disposal (CAD)





Sampling Station

SW29

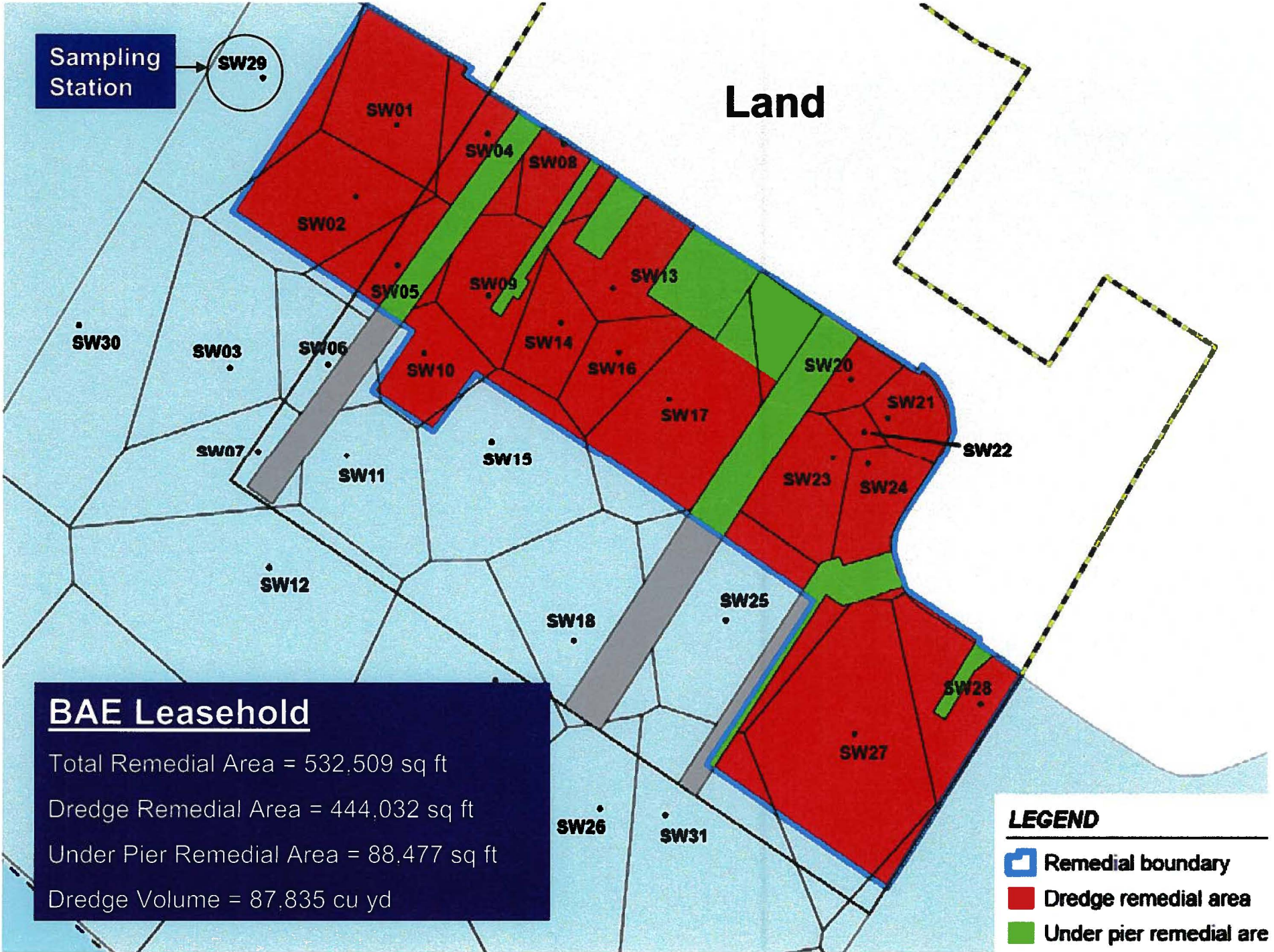
Land

BAE Leasehold

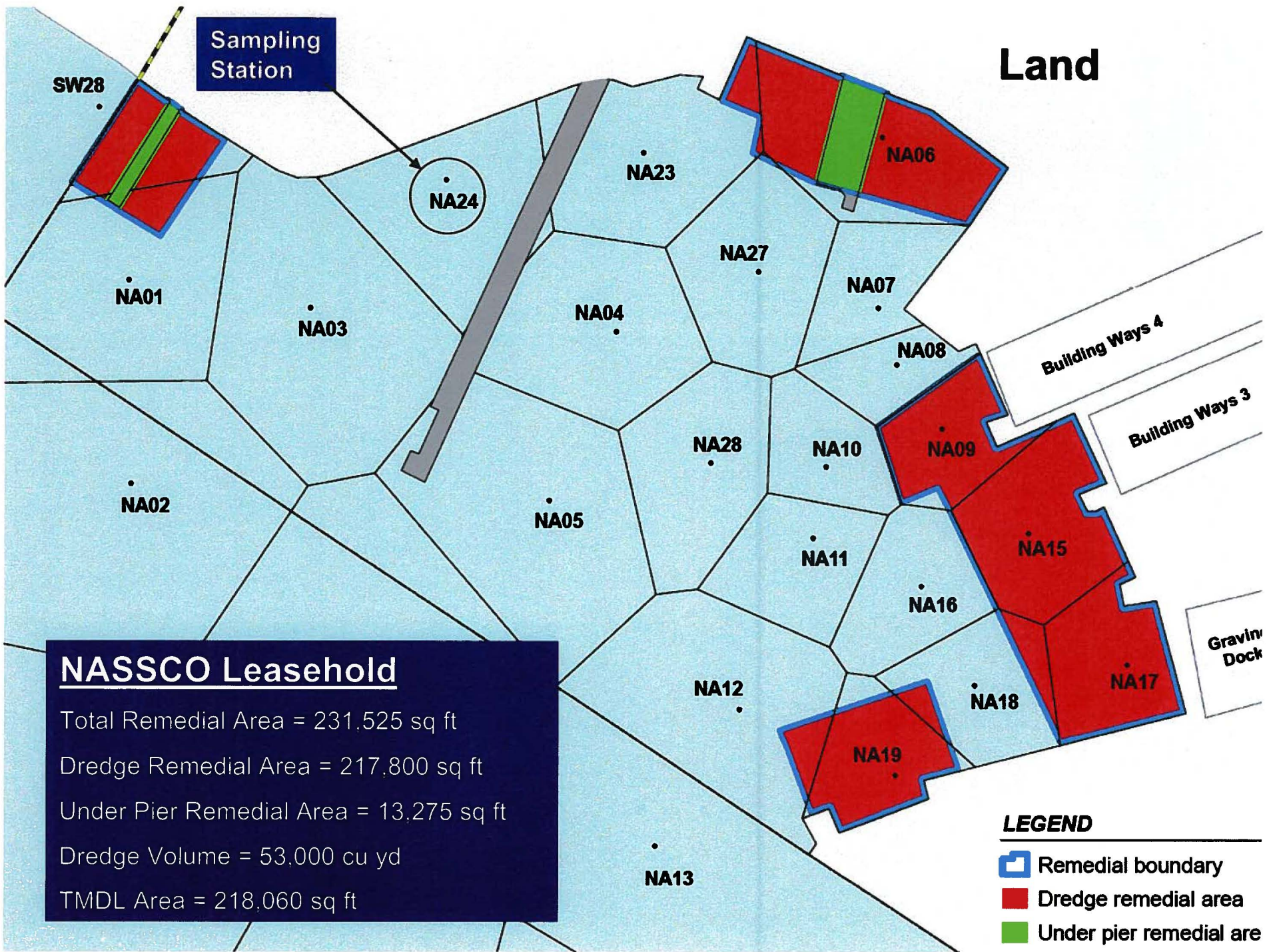
Total Remedial Area = 532,509 sq ft
Dredge Remedial Area = 444,032 sq ft
Under Pier Remedial Area = 88,477 sq ft
Dredge Volume = 87,835 cu yd

LEGEND

- Remedial boundary
- Dredge remedial area
- Under pier remedial are



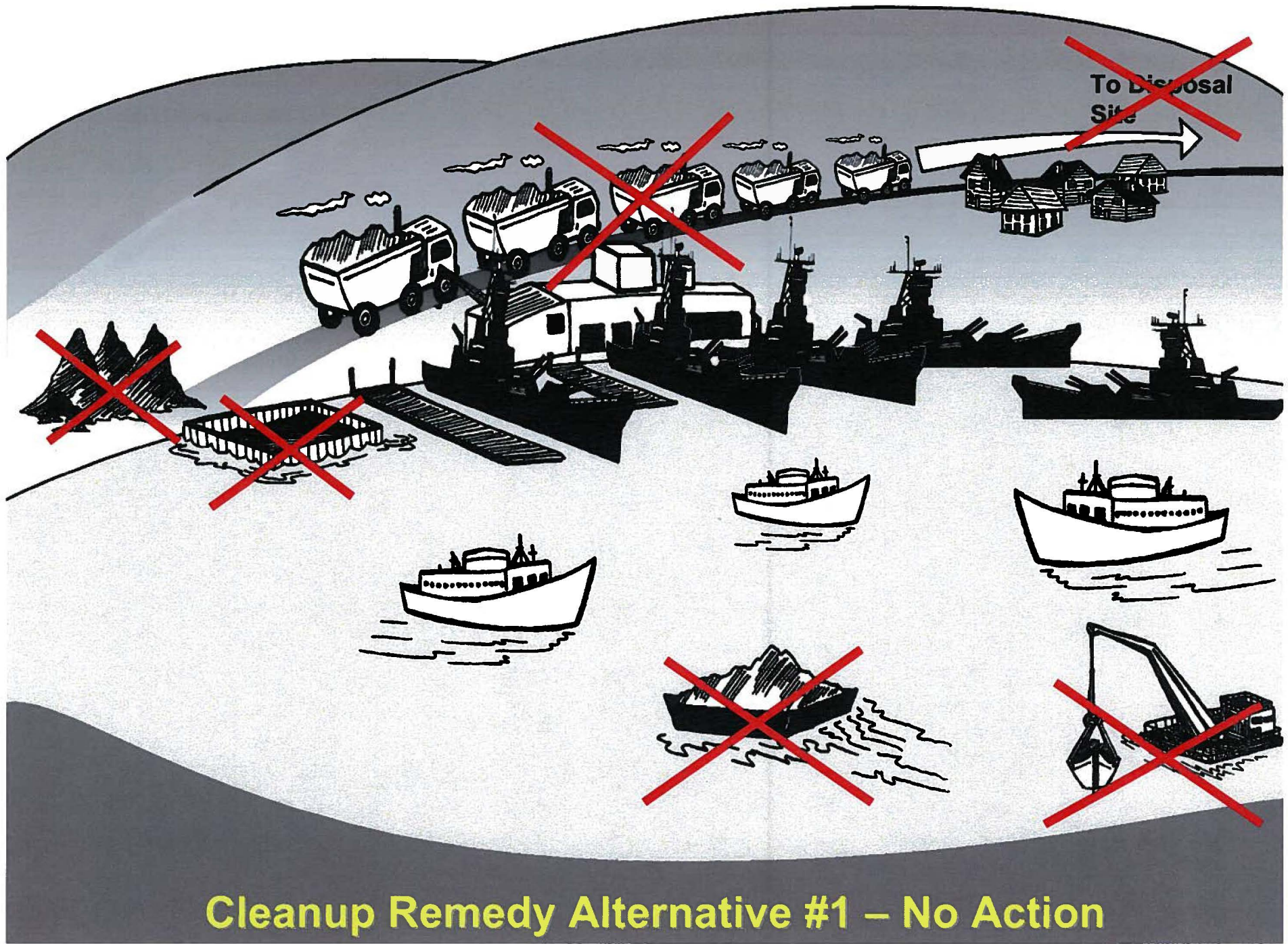
Land



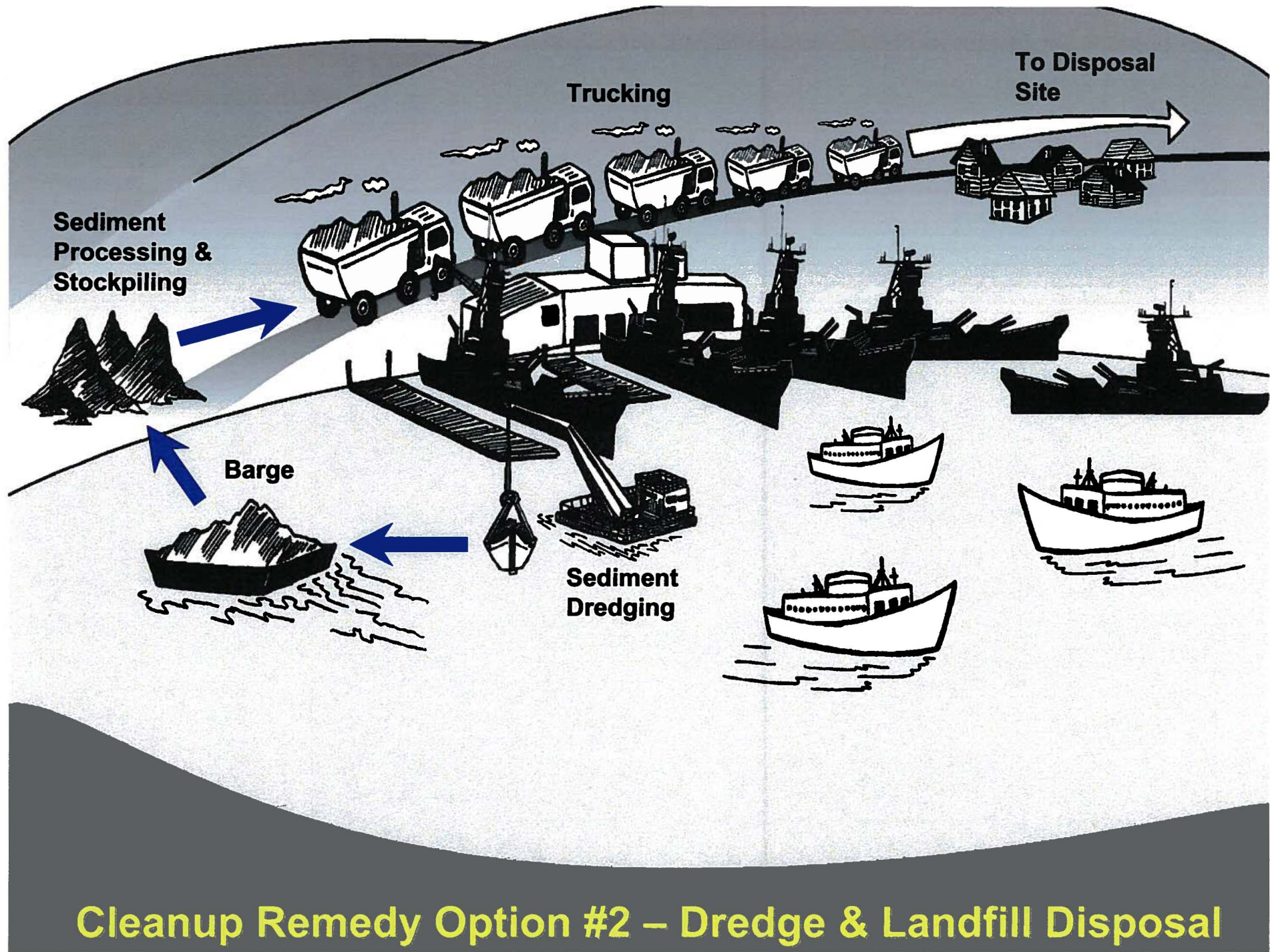
Sampling Station

NASSCO Leasehold
Total Remedial Area = 231,525 sq ft
Dredge Remedial Area = 217,800 sq ft
Under Pier Remedial Area = 13,275 sq ft
Dredge Volume = 53,000 cu yd
TMDL Area = 218,060 sq ft

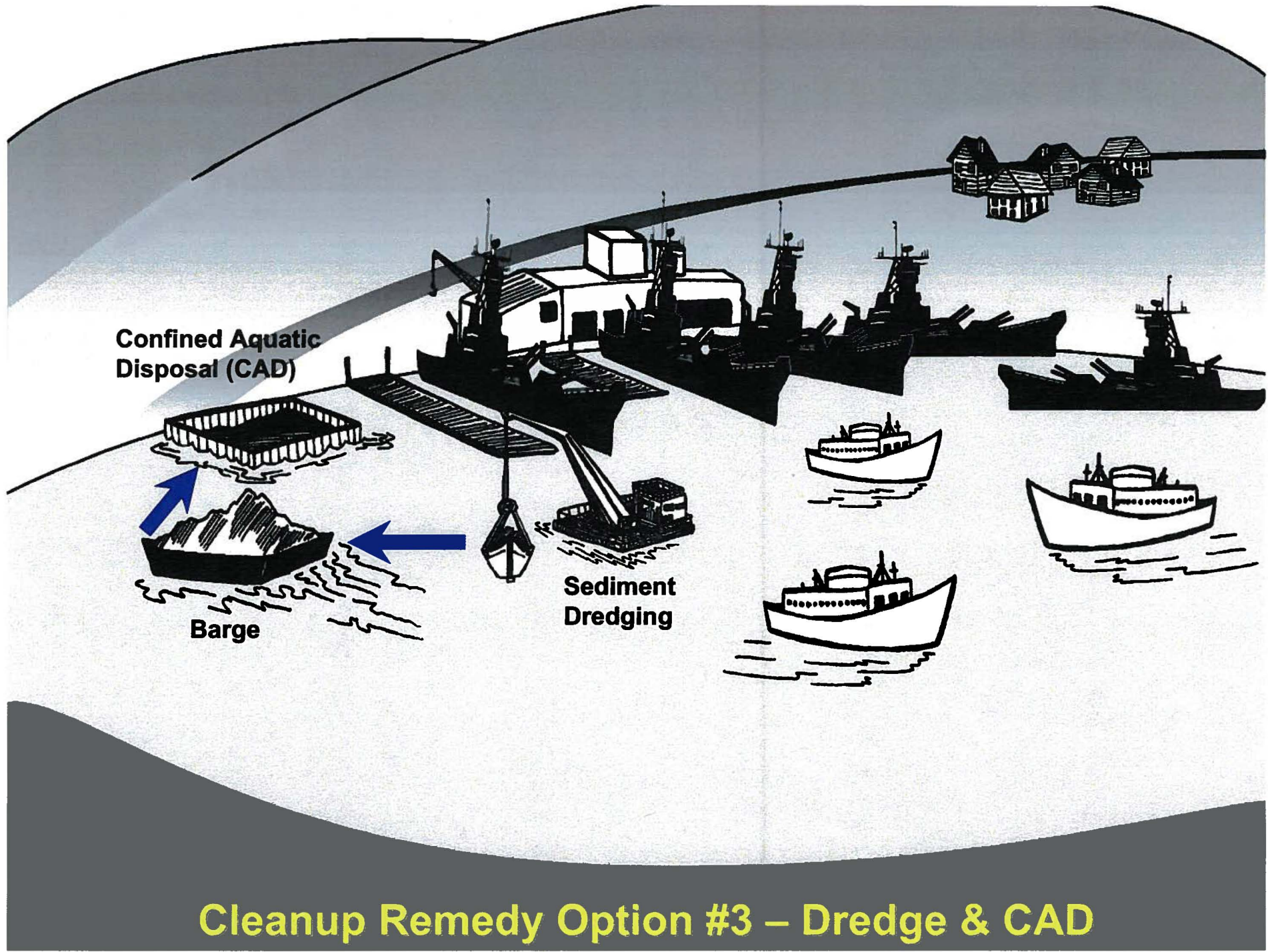
LEGEND
Remedial boundary
Dredge remedial area
Under pier remedial are



Cleanup Remedy Alternative #1 – No Action



Cleanup Remedy Option #2 – Dredge & Landfill Disposal

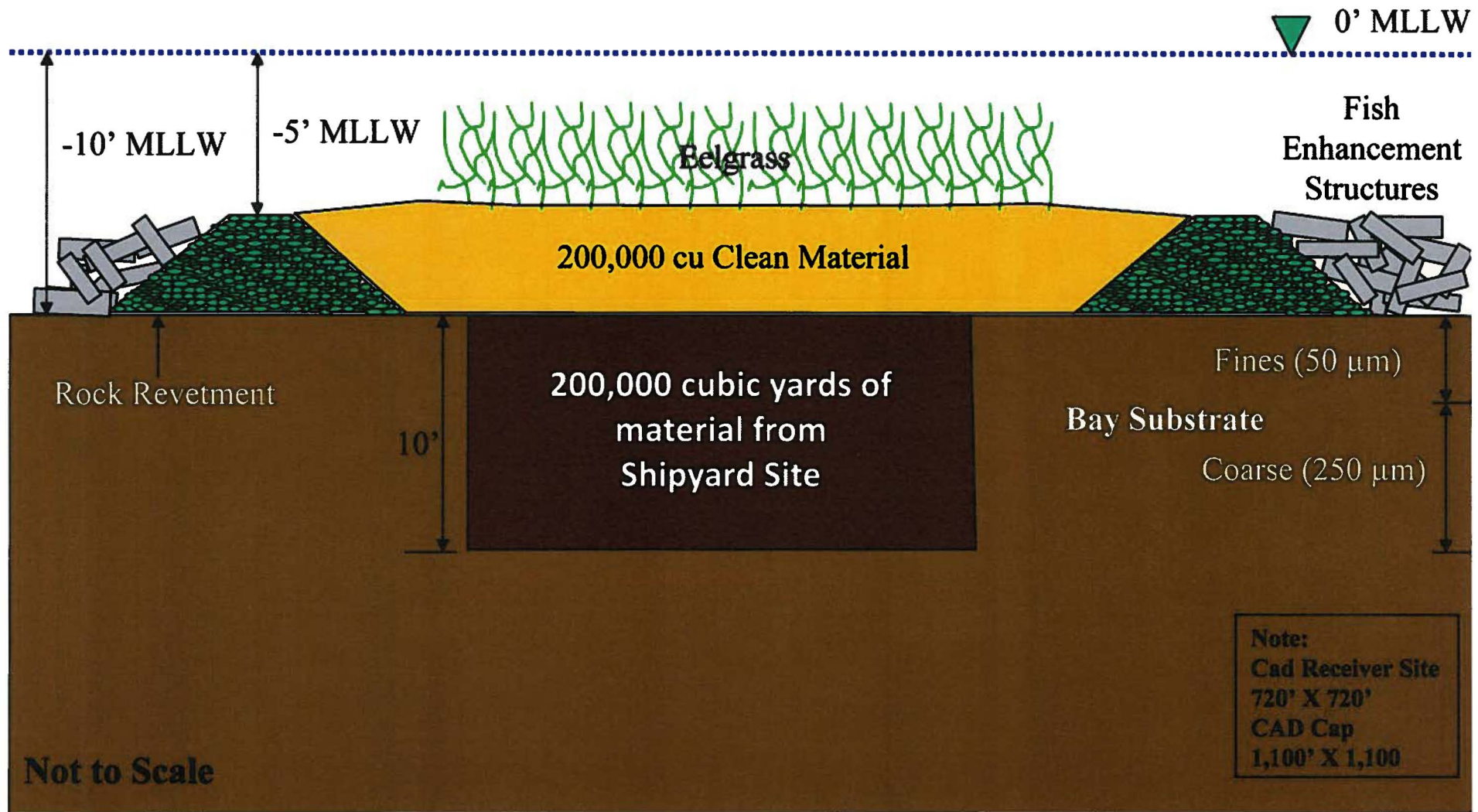


Cleanup Remedy Option #3 – Dredge & CAD

TYPICAL CAD CONSTRUCTION

with

Fish Enhancement Structures & Eelgrass



Initial Study/Environmental Checklist

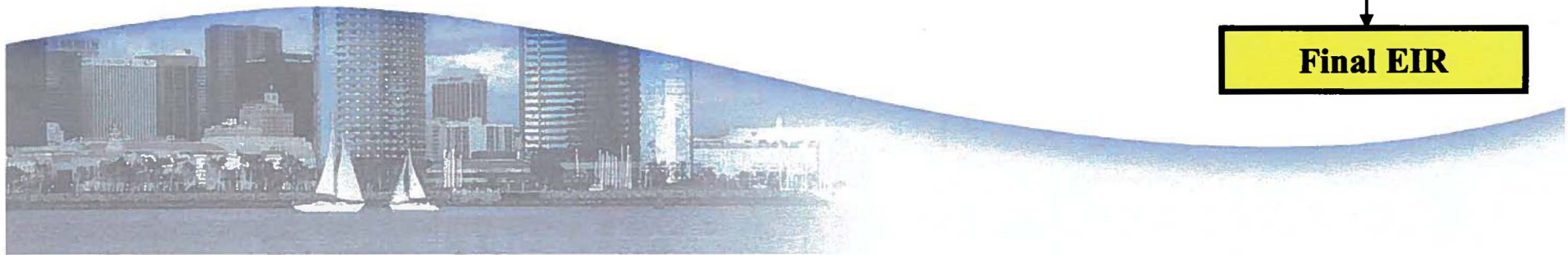
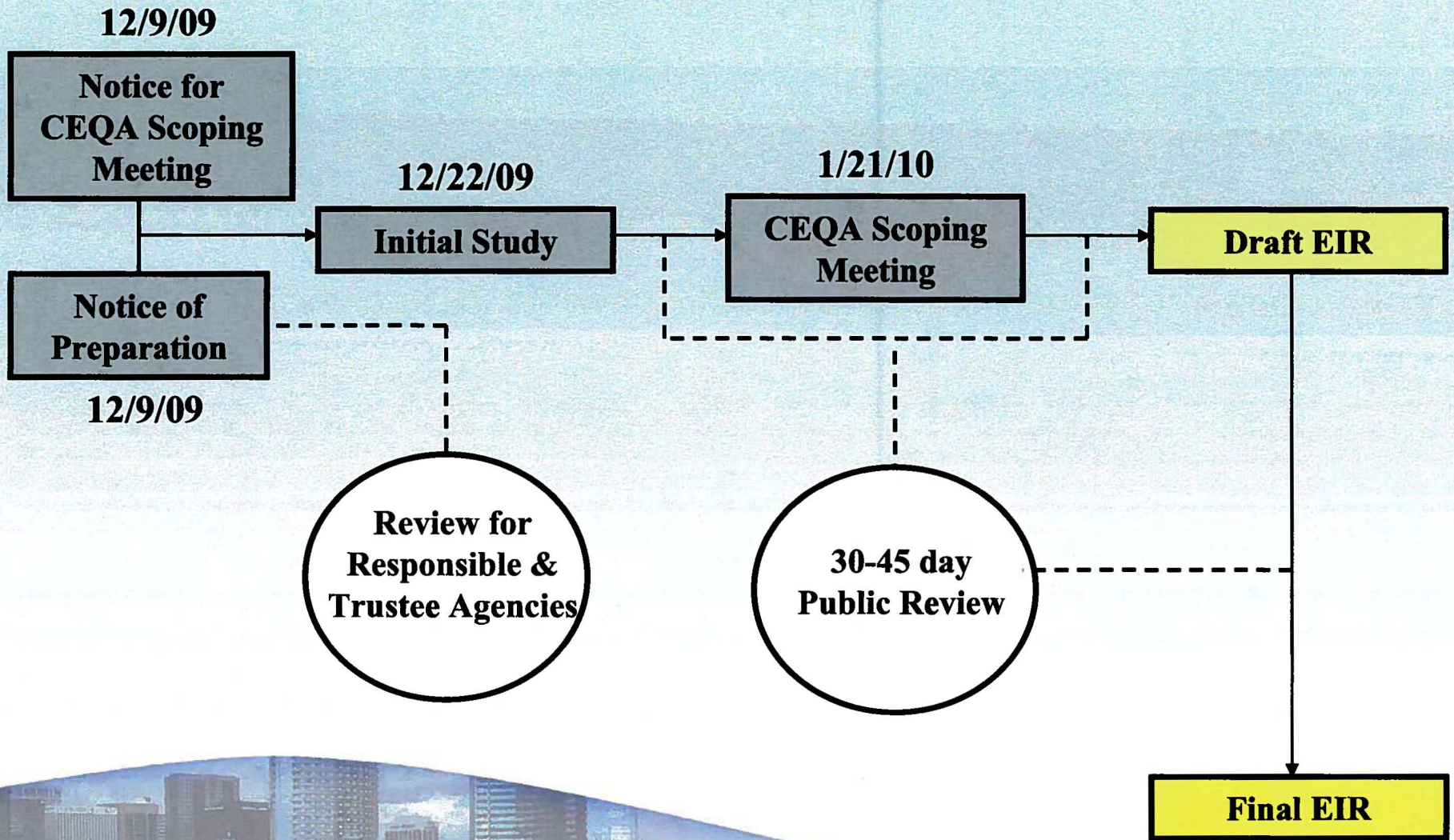
The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact".

- | | | |
|--|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture Resources | <input checked="" type="checkbox"/> <u>Air Quality</u> |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input checked="" type="checkbox"/> <u>Geology /Soils</u> |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use / Planning |
| <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise | <input type="checkbox"/> Population / Housing |
| <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation | <input type="checkbox"/> Transportation/Traffic |
| <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Mandatory Findings of Significance | |

Air Quality	Potentially Significant Impact	Less than Significant with Mitigation	Less than Significant Impact	No Impact
a) Conflict with or obstruct implementation of the applicable air quality plan?	X			
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	X			
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	X			

GEOLOGY AND SOILS	Potentially Significant Impact	Less than Significant with Mitigation	Less than Significant Impact	No Impact
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
ii) Strong seismic ground shaking?	X			

Next Steps



Questions & Comments



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

**NOTICE OF EXTENSION OF PUBLIC REVIEW AND COMMENT PERIOD ON
CALIFORNIA ENVIRONMENTAL QUALITY ACT INITIAL STUDY**

**TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2010-0002
FOR THE SHIPYARD SEDIMENT SITE, SAN DIEGO BAY**

INITIAL STUDY

A California Environmental Quality Act (CEQA) initial study is a preliminary analysis of a project's potential environmental effects. Based on the findings, a decision is made whether or not an Environmental Impact Report (EIR) is necessary.

The Shipyard Sediment Cleanup Team (Cleanup Team) from the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) prepared an initial study for the project described below:

Project Description: The project is a tentative Cleanup and Abatement Order (CAO) for cleanup of contaminated marine sediments at the National Steel and Shipbuilding Company Shipyard (NASSCO)/BAE Systems Shipyard Sediment Site in San Diego Bay. The cleanup remedy may include dredging, capping, and/or natural recovery. Dredge spoils may be dewatered at an onshore facility and disposed of at an appropriate landfill site.

Location: The Shipyard Sediment Site is located along the eastern shore of central San Diego Bay and encompasses an area extending approximately from the Sampson Street Extension to the north and Chollas Creek to the south and from the NASSCO and BAE Systems shipyard facilities shoreline out to the San Diego Bay main shipping channel on the west.

The initial study indicates that the proposed project may have a significant effect on Air Quality and Geology/Soils and as such, an EIR should be prepared. On December 22, 2009, the initial study was posted on the San Diego Water Board's website for a 30-day public review and comment period. No comments were received from the public.

CEQA SCOPING MEETING

On January 21, 2010, the Cleanup Team held a CEQA scoping meeting to receive comments on (1)

the initial study, and (2) the scope of the environmental issues to be addressed in the EIR for the Cleanup and Abatement Order for the Shipyard Sediment Site. Comments were received from NASSCO, BAE Systems, Environmental Health Coalition, Sierra Club, and San Diego Coastkeeper.

EXTENSION OF THE PUBLIC COMMENT PERIOD

The San Diego Water Board is extending the comment period on the initial study to 5:00 pm on Monday, March 22, 2010. Interested persons are encouraged to review the initial study and provide written comments to the Cleanup Team. Written comments are due no later than **5:00 pm on Monday, March 22, 2010**. Written comments should be submitted in either MS Word or pdf format by email to:

TAlo@waterboards.ca.gov

Comments on paper may also be submitted, but electronic format is preferred. Comments on paper should be submitted to:

Mr. Tom Alo
California Regional Water Quality Control Board,
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Written responses to significant environmental comments will be posted on the San Diego Water Board's website prior to preparation of the EIR for the proposed project.

AVAILABILITY OF DOCUMENTS

The initial study may be reviewed at the San Diego Water Board office or on the San Diego Water Board's website at:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/shipyards_sediment/docs/sediment_cleanup/cut/updates_122209/Shipyard_InitialStudy.pdf

ADDITIONAL INFORMATION

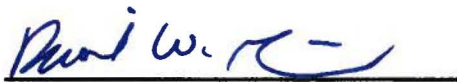
For questions regarding this notice, please contact Mr. Tom Alo, Water Resource Control Engineer by:

U.S. Mail: California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Email: TAlo@waterboards.ca.gov

Telephone: (858) 636-3154

Please bring the foregoing to the attention of any persons you know who would be interested in this matter. Thank you for your interest in the protection of water quality.



David W. Gibson
Executive Officer
February 3, 2010



Department of Toxic Substances Control



Linda S. Adams
Secretary for
Environmental Protection

Maziar Movassaghi, Acting Director
5796 Corporate Avenue
Cypress, California 90630

Arnold Schwarzenegger
Governor

December 22, 2009

Mr. Tom Alo
Water Resource Control Engineer
Regional Water Quality Control Board
Region 9
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340
TAlo@waterboards.ca.gov

2009 DEC 24 A 2:17
SAN DIEGO COUNTY
WATER QUALITY CONTROL BOARD

NOTICE OF PREPARATION OF DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE NASSCO/BAE SHIPYARD SEDIMENT SITE, SAN DIEGO BAY PROJECT (SCH# 2009111098), SAN DIEGO COUNTY

Dear Mr. Alo:

The Department of Toxic Substances Control (DTSC) has received your submitted Initial Study and Notice of Preparation (NOP) for an Environmental Impact Report (EIR) for the above-mentioned Project. The following project description is stated in your document: "The project is a tentative Cleanup and Abatement Order (CAO) for cleanup of contaminated marine sediments at the National Steel and Shipbuilding Company Shipyard (NASSCO/BAE Systems) Shipyard Sediment Site in San Diego Bay. 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. The Shipyard Sediment Site is located along the eastern shore of central San Diego Bay and encompasses an area extending approximately from the Sampson Street Extension to the north and Chollas Creek to the south and from the NASSCO and BAE Systems shipyard facilities shoreline out to the San Diego Bay main shipping channel on the west." DTSC has the following comments:

The EIR 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

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CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



PAUL D. THAYER, 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) 574-1892

Contact FAX: (916) 574-1925

December 29, 2009

File Ref: SCH# 2009111098

YC/G10-08

REGIONAL WATER QUALITY CONTROL BOARD
2010 JAN -4 A 11:28

Tom Alo
Regional Water Quality Control Board
Region 9
9174 Sky Park Court, Suite 100
San Diego, CA 92123

SUBJECT: Notice of Preparation (NOP) of Draft Environmental Impact Report (EIR), Tentative Cleanup and Abatement Order No. R9-2010-0002 for the Shipyard Sediment Site, San Diego Bay

Dear Mr. Alo:

Staff of the California State Lands Commission (CSLC) has reviewed the Notice of Preparation (NOP) for the above-proposed project. Under the California Environmental Quality Act (CEQA), the Regional Water Quality Control Board (RWQCB) is the Lead Agency and the CSLC is a Responsible and/or Trustee Agency for any and all projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters.

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable rivers, sloughs, lakes, etc. The CSLC has certain residual and review authority for tide and submerged lands legislatively granted in trust to local jurisdictions (Public Resources Code §6301 and §6306). All tide and submerged lands, granted or ungranted, as well as navigable rivers, sloughs, etc., are impressed with the Common Law Public Trust.

The draft EIR will address tentative Cleanup and Abatement Order No. R9-2010-0002 (CAO) for the proposed remediation of contaminated marine sediments at the National Steel and Shipbuilding Company Shipyard and BAE Systems Shipyard Sediment Site in San Diego Bay. The project may include dredging, capping, and/or natural recovery, and the dewatering of dredge spoils at an onshore facility with disposal at an appropriate landfill site.

The remediation project will involve: (1) ungranted sovereign lands under the CSLC's exclusive jurisdiction; and (2) sovereign lands granted to the San Diego Unified

1-5-10

Port District (Port) pursuant to Chapter 67, Statutes of 1962, as amended, with minerals reserved to the State. Any remediation work on ungranted sovereign lands will require formal authorization by the CSLC. Any dredging activities on legislatively granted sovereign lands will also require formal authorization by the CSLC.

The CSLC is extremely concerned about the impacts of sediment contamination on the public trust resources within San Diego Bay. On December 14, 2006, the CSLC adopted a resolution acknowledging the significant contamination in San Diego Bay and urging the Board to act expeditiously to require remediation of the contaminated sediment. A copy of the Resolution is attached for your convenience.

The Biological Resources section of the EIR should include a discussion of the potential effects of any contaminants that may be exposed or released during cleanup activities and the effect that may have on aquatic species or other wildlife. The issue of what effect this potential contaminant exposure may have on aquatic species or other wildlife and their habitat should also be addressed more thoroughly in the Water Quality section.

There are several issue areas in the NOP that are marked as "less than significant" or "less than significant with mitigation incorporation" but their associated discussions indicate that the issues in question will **not** be addressed in the EIR. These include:

- VII. Hazards and Hazardous Materials, sections a and b
- VIII. Hydrology and Water Quality, sections a and f
- XI. Noise, sections a, b, and d

Any potentially significant issue areas and their associated mitigations are required by CEQA to be discussed in the EIR, and therefore all of these issue areas should be included (CCR sections 15126 and 15126.2).

Please contact Jane Smith, Public Land Management Specialist, at (916) 574-1892, or by email at smithj@slc.ca.gov, for information concerning our leasing requirements. If you have any questions concerning the environmental review, please contact Sarah Mongano at (916) 574-1889 or by e-mail at mongans@slc.ca.gov.

Sincerely,



Marina R. Brand, Acting Chief
Division of Environmental Planning
and Management

Attachment

cc: Office of Planning and Research
Jennifer Lucchesi, Jane Smith,
Susan Young, Kathryn Wiens,
and Sarah Mongano



**CALIFORNIA STATE
LANDS COMMISSION**

JOHN GARAMENDI, *Lieutenant Governor*
JOHN CHIANG, *Controller*
MICHAEL C. GENEST, *Director of Finance*



EXECUTIVE OFFICE
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

PAUL D. THAYER, *Executive Officer*
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
Voice Phone 1-800-735-2922

**RESOLUTION BY THE CALIFORNIA STATE LANDS COMMISSION
REGARDING SEDIMENT QUALITY IN SAN DIEGO BAY**

WHEREAS, elevated levels of pollutants above background conditions exist in the San Diego Bay (Bay) bottom marine sediment generally between the Sampson Street extension and the mouth of Chollas Creek in the City of San Diego (Shipyard Sediment Site), and

WHEREAS, the concentrations of these pollutants causes or threatens to cause conditions of pollution, contamination, and nuisance in the Bay that impairs the aquatic life, aquatic dependent wildlife, and human health, categories of beneficial uses at this site, and

WHEREAS, shipyard, municipal, and industrial dischargers have caused or permitted the discharge of pollutants to the Shipyard Sediment Site resulting in the accumulation of pollutants in the marine sediment, and

WHEREAS, more than 50 years of discharges into the Bay have left nationally recognized toxic hot spots in the Bay, and

WHEREAS, a 1998 National Oceanographic and Atmospheric Administration, *State of the Coastal Environment* report found pervasive toxicity and toxic hot spots in the Bay, and

WHEREAS, many chemicals in the contaminated sediments are of concern to human health, and

WHEREAS, studies indicate that there are significant health risks to people who consume Bay fish at higher rates of consumption than the average recreational fisher, and

WHEREAS, the *Survey of Fishers on Piers in San Diego Bay* undertaken by Environmental Health Coalition conducted in 2004 reveals that a significant population of fishers frequently fish near contaminated areas of the Bay, and

WHEREAS, this potential public health threat led the Port of San Diego to place fish advisory warnings at piers throughout the Bay, and

WHEREAS, in April 2005 the San Diego Regional Water Quality Board (Regional Board) released a Tentative Cleanup and Abatement Order (TCAO) for eight named parties, including both major shipyards, to remove 885,000 cubic yards of tainted sediment at an estimated cost of \$96 million, and

WHEREAS, delays in issuing a TCAO are detrimental to the quality of water and sediments in the Bay and its users; therefore, be it

RESOLVED, by the California State Lands Commission that it supports a cleanup plan for San Diego Bay sediments that fully protects beneficial uses and human health, and be it also

RESOLVED, that the California State Lands Commission urges the Regional Board to move as expeditiously as possible in issuing and implementing a Cleanup and Abatement Order that effectively remediates the contamination and protects the public resources.

Adopted by the State Lands Commission on December 14, 2006.

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
e-mail: ds_nahc@pacbell.net



December 29, 2009

Mr. Tom Alo

CALIFORNIA REG. WATER QUALITY CONTROL BOARD - REGION 9

9174 Sky Park Court, Suite 100
San Diego, CA 92123

Sent by FAX to : 858-571-6972
No. of Pages: 4

Re: SCH#2009111098 CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR) for the Nassco/BAE Shipyard Sediment Site, San Diego located in the San Diego Bay area near National City, San Diego County, California

Dear Mr. Alo:

The Native American Heritage Commission (NAHC) is the state 'trustee agency' pursuant to Public Resources Code §21070 for the protection and preservation of California's Native American Cultural Resources.. (Also see *Environmental Protection Information Center v. Johnson* (1985) 170 Cal App. 3rd 604) The California Environmental Quality Act (CEQA - CA Public Resources Code §21000-21177, amended in 2009) 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 California Code of Regulations §15064.5(b)(c)(f) CEQA guidelines). Section 15382 of 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. To adequately assess the project-related impacts on historical resources, the Commission recommends the following.

The Native American Heritage Commission did perform a Sacred Lands File (SLF) search in the NAHC SLF Inventory, established by the Legislature pursuant to Public Resources Code §5097.94(a) and Native American Cultural resources were not identified within one-half mile of the APE. Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Enclosed are the names of the nearest tribes and interested Native American individuals that the NAHC recommends as 'consulting parties,' for this purpose, that may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We recommend that you contact persons on the attached list of Native American contacts. A Native American Tribe or Tribal Elder may be the only source of information about a cultural resource.. Also, the NAHC recommends that a Native American Monitor or Native American culturally knowledgeable person be employed whenever a professional archaeologist is employed during the 'Initial Study' and in other phases of the environmental planning processes.. Furthermore we suggest that you contact the California Historic Resources Information System (CHRIS) at the Office of Historic Preservation (OHP) Coordinator's office (at (916) 653-7278, for referral to the nearest OHP Information Center of which there are 11..

Consultation with tribes and interested Native American tribes and individuals, as 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 (f))et se),

36 CFR Part 800.3, 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. .

Lead agencies should consider avoidance, as defined in Section 15370 of the California Environmental Quality Act (CEQA) when significant cultural resources could be affected by a project. Also, Public Resources Code Section 5097.98 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'. Discussion of these should be included in your environmental documents, as appropriate.

The authority for the SLF record search of the NAHC Sacred Lands Inventory, established by the California Legislature, is California Public Resources Code §5097.94(a) and is exempt from the CA Public Records Act (c.f. California Government Code §6254.10). The results of the SLF search are confidential. However, Native Americans on the attached contact list are not prohibited from and 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 the NHPA or at the Secretary of the Interior' discretion if not eligible for listing on the National Register of Historic Places. 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 APE and possibly threatened by proposed project activity.

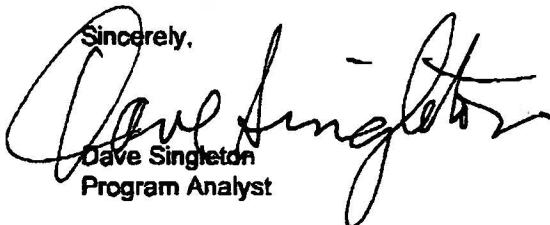
CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens.

Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the California Code of Regulations (CEQA Guidelines) mandate procedures to be followed, including that construction or excavation be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the county coroner or medical examiner can determine whether the remains are those of a Native American. . Note that §7052 of the Health & Safety Code states that disturbance of Native American cemeteries is a felony.

Again, Lead agencies should consider avoidance, as defined in §15370 of the California Code of Regulations (CEQA Guidelines), when significant cultural resources are discovered during the course of project planning and implementation

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,



Dave Singleton
Program Analyst

Attachment: List of Native American Contacts

Cc: State Clearinghouse

SEEN ON 11

Native American Contacts
San Diego County
December 29, 2009

Barona Group of the Capitan Grande
Edwin Romero, Chairperson
1095 Barona Road Diegueno
Lakeside , CA 92040
sue@barona-nsn.gov
(619) 443-6612
619-443-0681

Sycuan Band of the Kumeyaay Nation
Danny Tucker, Chairperson
5459 Sycuan Road Diegueno/Kumeyaay
El Cajon , CA 92021
ssilva@sycuan-nsn.gov
619 445-2613
619 445-1927 Fax

La Posta Band of Mission Indians
Gwendolyn Parada, Chairperson
PO Box 1120 Diegueno
Boulevard , CA 91905
(619) 478-2113
619-478-2125

Viejas Band of Mission Indians
Bobby L. Barrett, Chairperson
PO Box 908 Diegueno/Kumeyaay
Alpine , CA 91903
jrothauff@viejas-nsn.gov
(619) 445-3810
(619) 445-5337 Fax

San Pasqual Band of Mission Indians
Allen E. Lawson, Chairperson
PO Box 365 Diegueno
Valley Center, CA 92082
(760) 749-3200
(760) 749-3876 Fax

Kumeyaay Cultural Historic Committee
Ron Christman
56 Viejas Grade Road Diegueno/Kumeyaay
Alpine , CA 92001
(619) 445-0385

Santa Ysabel Band of Diegueno Indians
Johnny Hernandez, Spokesman
PO Box 130 Diegueno
Santa Ysabel, CA 92070
brandietaylor@yahoo.com
(760) 765-0845
(760) 765-0320 Fax

Jamul Indian Village
Kenneth Meza, Chairperson
P.O. Box 612 Diegueno/Kumeyaay
Jamul , CA 91935
jamulrez@sctdv.net
(619) 669-4785
(619) 669-48178 - Fax

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106, and federal NAGPRA.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009111096; CEQA Notice of Preparation (NOP); draft Environmental Report (DEIR) for the Nassco/BAE Shipyard Sediment Site, San Diego; located in the San Diego Bay area; San Diego County, California.

Native American Contacts
San Diego County
December 29, 2009

Mesa Grande Band of Mission Indians
Mark Romero, Chairperson
P.O Box 270 Diegueno
Santa Ysabel, CA 92070
mesagrandeband@msn.com
(760) 782-3818
(760) 782-9092 Fax

Kumeyaay Cultural Repatriation Committee
Steve Banegas, Spokesperson
1095 Barona Road Diegueno/Kumeyaay
Lakeside, CA 92040
(619) 742-5587
(619) 443-0681 FAX

Kumeyaay Cultural Heritage Preservation
Paul Cuero
36190 Church Road, Suite 5 Diegueno/ Kumeyaay
Campo, CA 91906
chairman@campo-nsn.gov
(619) 478-9046
(619) 478-9505
(619) 478-5818 Fax

Clint Linton
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Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106, and federal NAGPRA.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009111088; CEQA Notice of Preparation (NOP); draft Environmental Report (DEIR) for the Nasseco/BAE Shipyard Sediment Site, San Diego; located in the San Diego Bay area; San Diego County, California.



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January 21, 2010
BY HAND

RWRCB rec'd 1/21/10
@ 9:00 am

San Diego Regional Water Quality Control Board
9174 Sky Park Court
San Diego, CA 92123

Re: Scoping Meeting – Tentative CAO for NASSCO/BAE Systems Shipyard Sediment Site

To whom it may concern:

On behalf of our client BAE Systems San Diego Ship Repair, Inc., we submit the following comments with respect to the California Environmental Quality Act (CEQA) scoping meeting being held on January 21, 2010.

Under CEQA, the purpose for holding a scoping meeting is to solicit comments from the public and other responsible public agencies on the scope and content of the environmental information to be addressed in the planned environmental impact report (EIR) for a specific project. Pub. Res. Code §§ 21080.4, 21083.9, 21104. The holding of a scoping meeting now, with respect to the Tentative Cleanup and Abatement Order (Tentative CAO), is inappropriate and pre-mature for several reasons. Therefore, BAE respectfully requests that the scoping meeting be continued and not be rescheduled unless and until it is determined that such a meeting is appropriate.

First, as clearly articulated in the Tentative CAO, there has been no decision yet as to whether the Tentative CAO is even subject to CEQA. As noted, many (if not all) prior CAOs such as this have been considered exempt from CEQA under three separate categorical exemptions. 14 Cal. Code of Regs. (CEQA Guidelines) §§ 15307, 15308, 15321. If the Tentative CAO is exempt from CEQA, there would be no preparation of an EIR and hence no scoping meeting would be necessary or appropriate.

Second, in order to consider the "scope" and content of a proposed EIR, there must be a clear and definite description of the project to be analyzed in the EIR. As noted in the Tentative CAO, the proposed Remedial Action Plan (RAP) is not even required to be submitted to the Regional Board until 90 days after adoption of the CAO. How can a project that is not now and will not be fully articulated until after the CAO is approved be described with sufficient clarity and detail to be "scoped" for purposes of an EIR?

Finally, the very purpose of preparing an EIR is to analyze a proposed project and provide the lead agency with information concerning that project's potential environmental impacts before the lead agency makes a decision whether or not to approve the project. Because the proposed manner of complying with the COA will not be known until the RAP is submitted, and because that is not intended to occur until after the CAO is approved, it is not possible at this point to begin preparation of an EIR that could be considered by the Board before it decides whether to approve the Tentative CAO.

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San Diego Regional Water Quality Control Board
January 21, 2010
Page Two

Any comments provided today on the appropriate scope of an EIR for the Tentative CAO will be premature. Holding a scoping meeting before it has even been determined whether or not CEQA applies could also lead to public confusion. Therefore, the Board should continue this CEQA "scoping" meeting for the Tentative CAO until such time as it determines what, if any, CEQA review is required and appropriate.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in cursive script, appearing to read 'Amy G. Nefouse'.

Amy G. Nefouse
Partner

Admitted to practice in California

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8304 Clairemont Mesa Boulevard, #101
San Diego, California 92111

February 20, 2010

California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4353
Attn: Mr. Tom Alo

Subject: Initial Study/Environmental Checklist for Tentative Cleanup and Abatement
Order No. R9-2010-0002 for the Shipyard Sediment Site, San Diego Bay
Dated December 22, 2009

Dear Mr. Alo:

On behalf of the Sierra Club San Diego Chapter, I have reviewed the subject Initial Study/Environment Checklist for the Shipyard Sediment site and submit the following comments.

The subject Initial Study/Environmental Checklist does not clearly distinguish the potential impacts between the Alternative #2 Dredge and Landfill Disposal (preferred alternative) and Alternative #3 Dredge and Confined Aquatic Disposal. In our view there are potentially distinct environmental impacts between these two alternatives that must be addressed. The Initial Study/Environmental Checklist has not provided sufficient information to adequately scope the environmental issues for the Confined Aquatic Disposal portion of Alternative #3.

Our comments on the Initial Study/Environmental Checklist separate the two alternatives where there are notable differences in potential impacts.

Where we agree with the subject checklist no comments are made.

III. Air Quality .

Alternative # 2 Dredge and Landfill Disposal. The Initial Study/Environmental Checklist does not describe in any details of the equipment used for dewatering the dredged material for the shipyard site. Presumably the dewatering equipment would be diesel powered.

a) Potentially significant impact

The Port of San Diego Clean Air Program¹ and the San Diego Air Pollution Control District Air Quality Planning² should be consulted to avoid conflicts with their plans and mitigation measures. The State designations for the priority pollutants ozone (one and 8 hour) , PM 10 and PM 2.5 as Nonattainment.³

¹ Port of San Diego Clean Air Program <http://www.portofsandiego.org/environment/clean-air.html>

² San Diego County Air Pollution Control District Air Quality Planning. <http://www.sdapcd.org/planning/plan.html>

³ San Diego Air Pollution District Fact Sheet Attainment Status <http://www.sdapcd.org/info/facts/attain.pdf>

b) Potentially Significant

The US Environmental Protection Agency should be consulted for measures to reduce the emissions from the diesel engines used in all the equipment associated with dredging⁴. USEPA also has list of verified diesel retrofit technologies⁵. A report prepared for the USEPA U.S. Environmental Protection Agency Office of Policy, Economics and Innovation provides information on incentives to reduce emissions for off-road diesel equipment used in port and construction sectors.⁶

c) Potentially significant.

The cumulative impacts from ozone and particulates (PM 10 and PM 2.5) would be significant. It will pose additional health risks to communities within the dredge site air shed including the Barrio Logan community. See XVII on environmental justice.

d) Less than significant with mitigation measures incorporated.

Trucks to haul the dewatered dredged material should meet strict emission standards. As noted above diesel truck exhaust emission retrofit systems are available that significantly reduces emissions. Additional measures noted in the staff Initial Study/Environmental Checklist should be evaluated and addressed in the EIS/EIR

e) Less than significant with mitigation measures incorporated

III Air Quality

Alternative # 3 Dredge and Confined Aquatic Disposal (CAD)

The air quality impacts related to the dredge operations of the shipyard sediment site would be the same as Alternative #2. Air quality impacts related to the construction of the CAD, transport of the dredged matter from the shipyard site to the CAD and capping the site. These would include:

- Construction
 - Dredging CAD site
 - Disposal of dredge spoils to a landfill
 - Transport and placement of the construction material- revetments, cap
 - Dewatering the site
- Transport of the dredged matter from shipyard site to the CAD
- Capping and restoration of the CAD site

The air quality impacts of Alternative #3 will be greater than the preferred Alternative #2. Staging the construction site for the CAD and truck disposal route of the dredge material is unknown.

IV. Biological Resources (1)

a) Potentially significant impacts

Alternative #2 and #3 Shipyard dredging

The shipyard remedial dredging footprint will have potentially significant impacts on the aquatic ecosystem. The Tentative Cleanup and Abatement Order⁷ Attachments 3 and 4 show the remedial footprints for BAE and NASSCO shipyards, respectively. The Draft Technical Report for the Tentative Cleanup and Abatement Order⁸ (CAO) tacitly assumes that boundaries between the dredged and un-dredged sectors will be distinct without disturbing the un-dredged sector. Sediment core data (38 core samples) for chemicals, engineering characteristics (moisture, total solids, grain

⁴ USEPA EPA Clean Ports <http://www.epa.gov/diesel/ports/technologies.htm>

⁵ USEPA Diesel Retrofit Technology Verification <http://www.epa.gov/otaq/retrofit/verif-list.htm>

⁶ ICF Consulting, Emission Reduction Incentives for Off-Road Diesel Equipment Used in Port and Construction Sectors Final Report May 19, 2005 prepared for U.S. Environmental Protection Agency Office of Policy, Economics and Innovation <http://westcoastcollaborative.org/files/sector-marine/ICF%20Emission%20Reduction%20Incentives.pdf>

⁷ California Regional Water Quality Control Board San Diego Region Tentative Cleanup and Abatement Order, No. R9-2010-0002

⁸ California Regional Water Quality Control Board San Diego Region Draft Technical Report Vol. II

size, etc) and depth profiles of sediment grain size collected by Exponent⁹ reveal that the bay sediments are not highly consolidated from surface to the depths where the core sampling encountered resistance (hard bottom, 1 to 8 feet). With few exceptions these sediment samples contain chemicals of concern that exceed the cleanup levels. The unconsolidated sediment samples indicate that dredged boundaries will not be well defined. Rather the sediment from the un-dredged sectors will slump into the dredged area forming a new unstable boundary that shift into the previously un-dredged sector. In those cases where these un-dredged sectors contain highly contaminated sediments, the dredging would expose these sediments and slump into the adjoining dredged sector. The unstable boundary will be contaminated at the upper surfaces of the un-dredged section as the movement of the sediment exposes a new surface that may not be in compliance with the sediment quality objectives. If not, additional dredging into the un-dredged sector will be needed until compliance with the CAO sediment quality objectives is obtained.

The size, surface area and depth, of the transition region between the remediated an un-remediated sector is dependent on the depth gradient caused by the dredging and other factors such as erosion from ship induced wave motion, tidal currents, storm drain flows and gravitational forces exposing subsurface sediments that may not be in compliance with the CAO.

Invertebrates The Draft Technical Report Vol. II Section 35 remediation plan only focuses on achieving the prescribed chemical cleanup levels but fails recognize that remediated sites must also provide suitable habitats that are necessary to recruit and re-colonize the benthic community. Cleanup alone will not be adequate. This subject is very complex¹⁰. A qualified benthic ecologist should be consulted to address this issue. Therefore, we do not agree with the discussion on invertebrates in the staff Initial Study/Environmental Checklist¹¹ that the impacts to the invertebrates are minimal, temporary and not significant.

Fish and Essential Fish Habitat The Initial Study/Environmental Checklist asserts that the impacts to fish and essential habitat are minimum and short term. It does not define short term. Is it weeks, months? It fails to recognize that the suspended sediments responsible for the turbidity may very likely contain contaminants of concern that are toxic to fish: copper, and PAH's.

A pre-remediation plan should be required. It should include contingencies to address the issues described above. There should be a core sampling plan that adequately addresses the subsurface sediment quality on both sides of the boundary between the sector to be dredged and the un-dredged sector.

The Draft Technical Report Volume I¹² reports the disadvantages of subaqueous capping in most shipyard locations subject to sediment disturbance are not viable candidates for in-place capping. But in the very next paragraph it states that that where contaminated sediments under the piers cannot be removed, subaqueous capping will be used. A ship moored at a pier will cause wave motion that can erode the cap. No discussion is presented on the possible depth differential (> 1 ft.) between the dredged and capped area that could exacerbate the erosion of the cap. Monitoring for cap integrity to contain the contamination is not discussed. The Campbell Shipyard capping has proved to be difficult to maintain the required cap depth over varying bottom depth.

⁹ Exponent NASSCO and Southwest Marine Detailed Sediment Investigation Vol. II, Appendix B Tables B2, B3, and B4

¹⁰ NOAA Costal Services Center Benthic Habitat Monitoring
<http://www.csc.noaa.gov/benthic/mapping/applying/quality.htm>

¹¹ Initial Study/Environmental Checklist Dec 22, 2009 page 13

¹² California Regional Water Quality Control Board San Diego Region Draft Technical Report Vol. I page 32-2

Unless mitigated the issues discussed above the shipyard sites will not comply with the target remediation concentration for the contaminants of concern and thereby expose the biological resources including the marine vegetation, the invertebrates, fish and fish habitats and birds to unacceptable levels of contamination.

The above issues if not mitigated will have a substantial adverse effects on the natural community including the beneficial uses of the Bay as defined in the Basin Plan.

IV Biological Resources (2)

Alternative #3 Confined Aquatic Disposal

This alternative proposes to locate a CAD at an undefined location in San Diego Bay. Based on the description provided at the January 21, 2010 CEQA Scoping meeting presentation, the approximate footprint of the CAD is about 30 acres.

Potentially significant impacts a), b), c), d) The CAD could have significant adverse effects due to change in natural habitat of San Diego Bay in spite of the fact that it proposes to offset the adverse effect by adding an eelgrass habitat.

XVII Mandatory Findings of Significance

Environmental Justice

Potentially significant impact

The CAO must address the environmental quality and public health of low-income communities and communities of color.

Thank you for this opportunity to submit these comments.

Sincerely,



Edward Kimura
Chair, Water Committee
Sierra Club
San Diego Chapter

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APPENDIX B

TRAFFIC IMPACT ANALYSIS

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DRAFT
TRAFFIC IMPACT ANALYSIS
SHIPYARD SEDIMENT REMEDIATION PROJECT
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

LSA

May 2011

DRAFT
TRAFFIC IMPACT ANALYSIS
SHIPYARD SEDIMENT REMEDIATION PROJECT
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
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May 2011

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