CALENDAR ITEM

C71

A	76	06/21/13
		W 26665
S	39	D. Oetzel

GENERAL LEASE - DREDGING

APPLICANT:

San Diego Bay Environmental Restoration Fund – South
c/o NASSCO
2798 East Harbor Drive, Mail Stop 22-A
San Diego, California 92113

AREA, LAND TYPE, AND LOCATION:

Sovereign lands granted to the San Diego Unified Port District, minerals reserved within central San Diego Bay.

AUTHORIZED USE:

Dredge a maximum of 71,700 cubic yards of material over the term of the lease within central San Diego Bay to remediate the sediment at the site. Of the 71,700 cubic yards of material, a maximum of 3,600 cubic yards is debris waste. The non-hazardous sediment waste will be disposed of at Otay Landfill located in Chula Vista, California, or other Class II or Class III landfills. If a portion of the sediment waste does not meet the acceptance criteria of the Otay Landfill or other Class II or Class III landfills, the material is to be disposed of at the Clean Harbors hazardous waste landfill in Buttonwillow, California, or other landfills approved for hazardous waste. The debris waste will be disposed of at a local recycling center or will be disposed of at a local, permitted landfill site.

LEASE TERM:

Five years, beginning June 21, 2013.

CONSIDERATION:

No monetary consideration is due for the lease because there is no commercial benefit from the project, the dredged material may not be sold, and the project is for the public benefit, as it will remove sediments from San Diego Bay that have caused conditions of contamination or nuisance that have adversely affected aquatic life and human health.

OTHER PERTINENT INFORMATION:

1. The area to be dredged includes four lease parcels that lie roughly between Schley Street on the north and Chollas Creek on the south (not within Chollas Creek), and the shoreline to the San Diego Bay main shipping channel to the west, San Diego County (South Shipyard Area) as shown on Exhibit B.

2. The purpose of the project is to comply with specifications in the Regional Water Quality Control Board's Cleanup and Abatement Order (CAO) No. – R9-2012-0024, dated March 2012. The project will remove contaminated sediment and apply a clean sand cover over contaminated sediment within the South Shipyard Area. The cleanup of sediments with primary contaminants of concern must be completed to comply with cleanup objectives stipulated by the San Diego Regional Water Board in the CAO.

3. The South Shipyard Area is leased and operated by National Steel and Shipbuilding Company (NASSCO) Shipyard Facility. The project is located in a heavy marine industrial area known in the Port Master Plan as the Belt Street Industrial & Harbor Drive Industrial of the Tenth Avenue Marine Terminal Planning District. Ship repair and construction activity occurs within the project area for Navy and commercial customers. The project site is off limits to public access.

4. None of the sediment samples taken at the site indicated that the contaminants of concern had sufficient concentrations to be characterized as hazards. Therefore, dredged sediment is planned for disposal at the Otay Landfill located in Chula Vista, California as non-hazardous waste. Prior to off-haul, the sediment stockpiles will be profiled for waste acceptance per the requirements of the landfill. If a portion of the sediment waste does not meet the acceptance criteria of the Otay landfill, an alternative landfill, such as the Clean Harbors hazardous waste landfill in Buttonwillow, California, will be used.

5. During dredging operations standard Best Management Practices (BMPs) will be implemented for minimizing re-suspension, spillage, and misplaced sediment during dredging operations. Such BMPs shall include the use and maintenance of double silt curtains that encircle the area of dredging and minimize the times in which these curtains are temporarily opened. This process ensures containment of suspended sediments. Air curtains in conjunction with silt curtains may also be used to contain re-suspended sediment. Air curtains would allow barges to transit into and out of the work area without the need to open and close silt curtain gates.

6. An Environmental Impact Report, State Clearinghouse No. 2009111098, was prepared for this project by the California Regional Water Quality Control Board—San Diego and certified on March 14, 2012. The California State Lands Commission staff has reviewed such document and Mitigation Monitoring Program prepared in conformance with the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21081.6) and adopted by the lead agency.

   Findings made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15096) are contained in Exhibit D attached hereto.

   A Statement of Overriding Considerations made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15093) is contained in Exhibit D, attached hereto.

7. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

None

FURTHER APPROVALS REQUIRED:

San Diego Regional Water Quality Control Board
U.S. Army Corps of Engineers

EXHIBITS:

A. Land Description
B. Site and Location Map
C. Mitigation Monitoring Program
D. CEQA Findings and Statement of Overriding Considerations

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that an EIR, State Clearinghouse No. 2009111098, was prepared for this Project by the California Regional Water Quality Control Board—San

Diego and certified on March 14, 2013, and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in Exhibit C, attached hereto.

Adopt the Findings, made in conformance with California Code of Regulations, Title 14, sections 15091 and 15096, subdivision (h), as contained in Exhibit D, attached hereto.

Adopt the Statement of Overriding Considerations made in conformance with California Code of Regulations, Title 14, section 15093, as contained in Exhibit D, attached hereto.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize the issuance of a General Lease – Dredging to San Diego Bay Environmental Restoration Fund – South, beginning June 21, 2013, for a term of five years, to dredge a maximum of 71,700 cubic yards of material over the term of the lease within central San Diego Bay to remediate the sediment at the site. Of the 71,700 cubic yards of material, a maximum of 3,600 cubic yards is debris waste. The non-hazardous sediment waste will be disposed of at Otay Landfill located in Chula Vista, California, or other Class II or Class III landfills. If a portion of the sediment waste does not meet the acceptance criteria of the Otay Landfill or other Class II or Class III landfills, the material is to be disposed of at Clean Harbors hazardous waste landfill in Buttonwillow, California, or other landfills approved for hazardous waste. The debris waste will be disposed of at a local recycling center or will be disposed of at a local, permitted landfill site. Such permitted activity is contingent upon the Applicant's compliance with applicable permits, recommendations, or limitations issued by federal, State, and local governments. No monetary consideration is due for the lease because there is no commercial benefit from the project, the dredged material may not be sold, and the project provides a public benefit.

EXHIBIT A

W 26665

LAND DESCRIPTION

Four parcels of tide and submerged land lying in the bed of the San Diego Bay, in the City of San Diego, San Diego County, State of California and being more particularly described as follows:

PARCEL 1 – DREDGING AREA 1

COMMENCING at a point on the U.S. Pierhead Line at Station 479, as said station is shown on that certain map filed May 28, 1976 in Misc. Maps at page 564, Records of said county; thence from said point of commencement along said Pierhead Line, North 56°20'08" West 2568.70 feet; thence leaving said Pierhead Line, North 33°39'52" East 217.78 feet to the POINT OF BEGINNING; thence from said point of beginning along the following four (4) courses:

1) North 55°59'56" West 171.81 feet,
2) North 33°59'27" East 172.31 feet,
3) South 55°59'55" East 171.81 feet, and
4) South 33°59'26" West 172.30 feet to the point of beginning.

PARCEL 2 – DREDGING AREA 2

COMMENCING at a point on the U.S. Pierhead Line at Station 479, as said station is shown on that certain map filed May 28, 1976 in Misc. Maps at page 564, Records of said county; thence from said point of commencement along said Pierhead Line, North 56°20'08" West 1558.40 feet; thence leaving said Pierhead Line, North 33°39'52" East 859.75 feet to the POINT OF BEGINNING; thence from said point of beginning along the following four (4) courses:

1) North 65°48'15" West 412.21 feet,
2) North 24°11'52" East 152.12 feet,
3) South 65°48'15" East 412.20 feet, and
4) South 24°11'51" West 152.12 feet to the point of beginning.

PARCEL 3 – DREDGING AREA 3

COMMENCING at a point on the U.S. Pierhead Line at Station 479, as said station is shown on that certain map filed May 28, 1976 in Misc. Maps at page 564, Records of said county; thence from said point of commencement along said Pierhead Line, North 56°20'08" West 1068.34 feet; thence leaving said Pierhead Line, North 33°39'52" East 260.31 feet to the POINT OF BEGINNING; thence from said point of beginning along the following four (4) courses:

1) North 22°56'19" West 573.74 feet,
2) North 59°43'32" East 224.29 feet,
3) South 23°21'35" East 611.00 feet, and
4) South 69°13'51" West 227.10 feet to the point of beginning.

PARCEL 4 – DREDGING AREA 4

COMMENCING at a point on the U.S. Pierhead Line at Station 479, as said station is shown on that certain map filed May 28, 1976 in Misc. Maps at page 564, Records of said county; thence from said point of commencement along said Pierhead Line, North 56°20'08" West 1248.06 feet; thence leaving said Pierhead Line, North 33°39'52" East 3.92 feet to the POINT OF BEGINNING; thence from said point of beginning along the following four (4) courses:

1) North 18°50'22" West 142.97 feet,
2) North 71°09'35" East 220.51 feet,
3) South 18°50'24" East 142.97 feet, and
4) South 71°09'36" West 220.51 feet to the point of beginning.

EXCEPTING THEREFROM any portions lying landward of the Ordinary High Water Mark of the San Diego Bay.

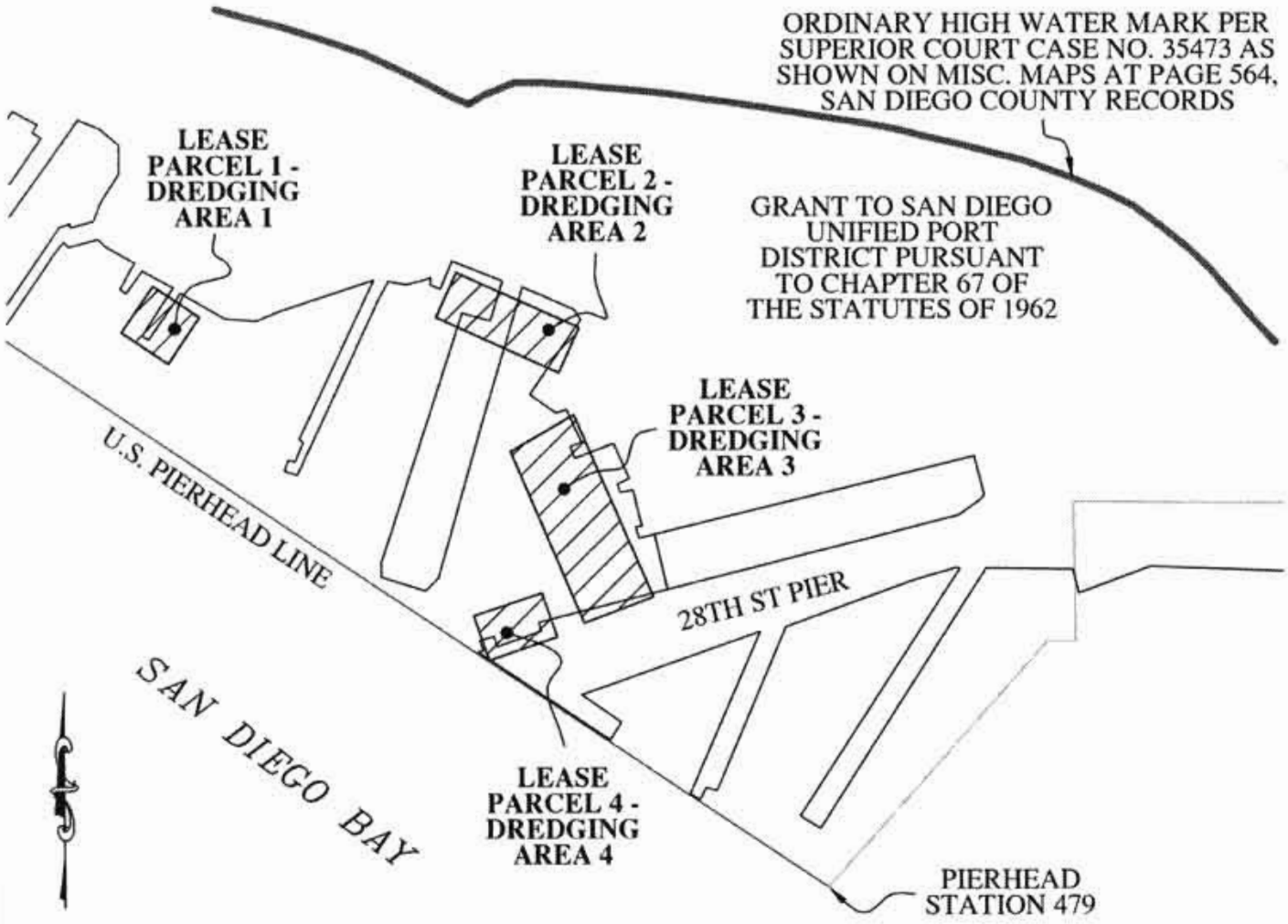
The BASIS OF BEARINGS of this description is the California Coordinate System of 1927, Zone 6. All distances are grid distances.

END OF DESCRIPTION

Prepared 05/20/2013 by the California State Lands Commission Boundary Unit.

NO SCALE

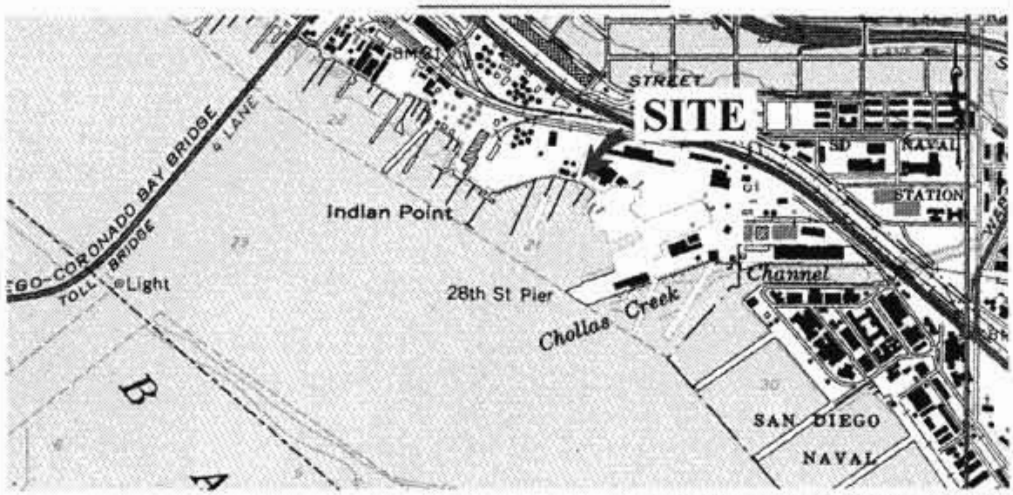
SITE



28TH STREET PIER VICINITY, SAN DIEGO BAY

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

W 26665
SAN DIEGO BAY
ENVIRONMENTAL
RESTORATION FUND - SOUTH
GENERAL LEASE - DREDGING
SAN DIEGO COUNTY

JWP 05/20/13

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
Hydrology and Water Quality					
WQ 4.2.6: Project Impacts on Water Quality	**MM 4.2.1: Automatic Monitoring of Dredging Operations and Water Quality Conditions.** During dredging operations, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall verify that the contractor/dredge operator is using automatic rather than manual monitoring of the dredging operations, which will allow continuous data logging with automatic interpretation and adjustments to the dredging operations for real-time feedback for the dredge operator. 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/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. Water quality sampling for contaminants of concern shall be required if silt curtains are not deployed during any phase of the in-water activities.	Dredge area	Compliance monitoring	Contractor, as verified by the San Diego Water Board	Ongoing during dredging operations
	MM 4.2.2: Best Management Practices (BMPs). During dredging operations, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall verify that the dredge contractor is	Dredge area	Compliance monitoring	Contractor, as verified by the San Diego Water Board	Ongoing during dredging operations

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	implementing standard BMPs for minimizing resuspension, spillage, and misplaced sediment during dredging operations, as the deposition of such material would increase turbidity and compromise cleanup efforts. Such BMPs shall include, but not be limited to, the following: • The contractor shall not stockpile material on the bottom of the San Diego Bay floor and shall not sweep or level the bottom surface with the bucket. • The contractor shall use and maintain double silt curtains that encircle the area of dredging and shall minimize the times in which these curtains are temporarily opened, to contain suspended sediments. • 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. • The contractor shall ensure the environmental clamshell bucket is entirely closed when withdrawn from the water and moved to the barge. This action requires extra attention when debris is present to make sure debris does not prevent the bucket from completely closing. Two closure switches shall be on each side of the bucket near the top and bottom to provide an electrical signal to the operator that the bucket is closed. Use of the switches shall minimize the potential of sediment leaking from the bucket into the water column during travel to the surface. • The contractor shall not overfill the digging bucket because overfill results in material overflowing back into the water. Use of instrumentation such as Clam				

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	Vision® shall allow the operator to visualize in real time the depth of cut that shall be designed to prevent overfilling. • The contractor shall utilize wide-pocket material barges having watertight containments to prevent return water from re-entering San Diego Bay. The contractor shall not overfill the material barge to a point where overflow or spillage could occur. Each material barge shall be marked in such a way to allow the operator to visually identify the maximum load point. The marking should allow sufficient interior freeboard to prevent spillage in rough water such as ship wakes during transit. Initiating the material barge marking shall minimize impact of load spillage during transit to the unloading area. • The contractor shall not use weirs as a means to dewater the scow and shall allow additional room for sediment placement. Preventing this action shall minimize the introduction of turbidity to the water column. • The contractor shall place material in the material barge such that splashing or sloshing does not occur, which could send sediment back into the water. Splashing can be controlled by restricting the drop height from the bucket. • If the use of a grate to collect debris is required, the contractor shall not allow material to pile up on the grid and flow or slip from the grid back into the water. The debris scalper shall be positioned in such a way as to be totally contained on the shore side of the unloading operations. The dredge operator shall visually monitor for debris build-up and alert the support personnel on the barge to				

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	assist in clearing the debris, as necessary. Debris that is derived from dredging activities shall be removed from the grate by the environmental clamshell bucket and placed in a contained area on the dredge barge or in a second material barge for subsequent removal to the onshore dewatering facility. • The contractor shall restrict barge movement and work boat speeds (i.e., reducing propeller wash) in the dredge area. The remedial design should identify the various areas where this operational control should be used.				
	MM 4.2.3: Silt Curtains. During dredging operations, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall verify that the contractor is deploying inner- and outer-boundary floating silt curtains fully around the dredging area at all times. Double silt curtains shall be utilized for containment of the dredge area; configurations, technologies, and actual locations of silt curtains in relation to the dredge barge shall be finalized during the design phase of the project. The floating silt curtain shall be comprised of connected lengths of Type III geotextile fabric. A continuous length of floating silt curtain shall be arranged to fully encircle the dredging equipment and the scow barge being loaded with sediment. The silt curtain shall be supported by a floating boom in open water areas (such as along the bay ward side of the dredging areas). Along pier edges, the contractor shall have the option of connecting the silt curtain directly to the structure. The contractor shall continuously monitor the silt curtain for damage, dislocation, or gaps and immediately fix any locations where it is no longer continuous or where it has loosened from its supports. The bottom of the silt curtain shall be	Dredge area	Compliance monitoring	Contractor, as verified by the San Diego Water Board	Ongoing during dredging operations

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	weighted with ballast weights or rods affixed to the base of the fabric. Where feasible and applicable, the floating silt curtains shall be anchored and deployed from the surface of the water to just above the substrate. If necessary, silt curtains with tidal flaps may be installed to facilitate curtain deployment in areas of higher flow. Air curtains may be used in conjunction with silt curtains to contain suspended sediment, 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.				
	MM 4.2.4: Water Quality Monitoring. Throughout the remediation process of dredging and application of the clean sand covers, the contractor shall conduct water quality monitoring to demonstrate that implementation of the remedial activities does not result in violations of water quality objectives in the Basin Plan outside of the construction area. The contractor shall submit weekly water quality reports to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). If water quality objectives are violated, the San Diego Water Board may temporarily halt activity and impose additional required measures to protect water quality.	Dredge area	Compliance monitoring, weekly water quality reports	Contractor, as verified by the San Diego Water Board	Ongoing during dredging operations
	MM 4.2.5: Spill Plate Usage. Prior to initiation of dredging activities, the contractor shall determine the swing radius of the unloading equipment and shall place a steel plate (swing tray or spill plate) between the material barge and the hard cape to prevent spillage from falling directly into the water. The steel plate shall be sufficiently large enough to cover the swing radius of the unloading equipment. The spill plate shall be designed to prevent any “drippings” from falling between the material barge and dock where the	Dredge area	Compliance monitoring	Contractor, as verified by the San Diego Water Board	Prior to dredging operations

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	unloading equipment is stationed. The spill plate shall be positioned so that any "dripped" material/water either runs back into the material barge or onto the unloading dock, which shall be lined with an impermeable material and beamed to contain excess sediment/water. The steel plate shall be designed to prevent any water or sediment from re-entering San Diego Bay. As a secondary containment measure, filter fabric material shall be placed over the spill plate and between edges of the barge and unloading dock to prevent any drippings from falling into San Diego Bay. Upon completion of unloading a material barge, the spill plate shall be thoroughly rinsed so that excess sediment is drained into the material barge or onto the unloading dock (depending on spill plate positioning) and then placed on the lined dock until the next unloading sequence. The San Diego Water Board shall be responsible for ensuring adherence to the requirements of this measure.				
	MM 4.2.6: Clamshell Bucket Use. During dredging activities, the contractor shall ensure that the environmental clamshell bucket is entirely closed when withdrawn from the barge and moved to the truck. In addition, the contractor shall ensure that the bucket is completely empty of sediment prior to being moved back to the barge to minimize sediment being spilled over the dock. The California Regional Water Quality Control Board shall be responsible for ensuring adherence to the requirements of this measure.	Dredge area	Compliance monitoring	Contractor, as verified by the San Diego Water Board	Ongoing during dredging operations
	MM 4.2.9: Dredging Management Plan (DMP). Prior to dredging operations, a DMP shall be prepared. The contractor shall implement the measures listed in the DMP during dredging operations. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall be responsible for review and approval	Dredge area	Approval of plan, compliance monitoring	Contractor, as verified by the San Diego Water Board	Prior to initiation of and ongoing during dredging

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	of the DMP. The DMP shall contain Standard Operating Procedures (SOPs) for the project to assist the dredge contractor in preventing accidental spills and providing the necessary guidelines to follow in case of an oil or fuel spill. In addition to providing SOPs to prevent accidental oil/fuel spills during construction activities, the DMP shall address the identification of dredging needs, a methodology and process for determining dredging priorities and scheduling, the feasibility and requirements for expedited permitting, Quality Assurance Project Plan to comply with regulatory requirements, alternatives for control and operation of dredging equipment, and Best Management Practices (BMPs) to implement in the event of equipment failure and/or repair. Typical BMPs for equipment failure or repair shall be identified in the DMP and could include: communication to project personnel, proper signage and/or barriers alerting others of potentially unsafe conditions, all repair work to be conducted on land and not over water, repair work involving use of liquids to be performed with proper spill containment equipment (e.g., spill kit), and a contingency plan identifying availability of other equipment or subcontracting options. Furthermore, the DMP shall specify that water discharges to San Diego Bay are prohibited; therefore, the barge shall implement measures necessary to capture all return water and prevent discharge to San Diego Bay. In addition, the DMP shall include, at a minimum, the following measures to prevent accidental oil/fuel spills during construction activities: • As an operational control element, all oil and fuel shall be housed in a secondary containment structure to ensure that any spill or leakage is prevented from entering the water column. • Personnel involved with dredging and handling the dredged material shall be given training on the				operations

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	potential hazards resulting from accidental oil and/or fuel spills. This operational control shall provide the personnel with an awareness of the materials they are handling as well as the potential impact to the environment. • All equipment shall be inspected by dredge contractor personnel before starting the shift. These inspections are intended to identify typical wear or faulty parts that may contain oil or fuel. • Personnel shall 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 shall be immediately shut down and the source of the spill identified and contained. Additionally, the spill shall be reported to the applicable agencies presented in the DMP. • The shipyards currently have oil/fuel spill kits located at various locations on site for routine ship repair operations. All personnel associated with dredging activities shall be trained on where these spill kits are located, how to deploy the oil sorbent 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 shall be deployed surrounding the dredging activities. In the event that a spill occurs, the oil and/or fuel shall be contained within the oil boom boundary. This operational control shall be the last line of defense against accidental oil/fuel spill occurrences. The oil boom shall be deployed along the entire length of the outer silt curtain.				

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	The San Diego Water Board shall be responsible for verifying adherence to the requirements of this measure.				
	MM 4.2.14: Water Quality Monitoring Data. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall coordinate water quality monitoring efforts and share water quality monitoring data with other dredging projects in San Diego Bay throughout the duration of the project. Considerations for the issuance of dredge permits or General Waste Discharge Requirements (WDRs) shall include distance(s) between sites and proposed timing of inwater activities that shall involve potential impacts to water quality, selection of appropriate water quality reference sampling locations in San Diego Bay, configuration of silt curtains, and coordination of expected commercial and recreational vessel traffic.	San Diego Bay	Compliance monitoring	San Diego Water Board	Ongoing during dredging operations
Hazards and Hazardous Materials					
HAZ 4.3.2: Potential Release of Hazardous Materials	**MM 4.3.1: Secondary Containment.** As an operational control element, the contractor shall ensure, and the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) will verify, that all oil and fuel is housed in a secondary containment structure to ensure that spilled or leaked oil or fuel will be prevented from entering the water column.	Project area	Compliance monitoring	Contractor, as verified by the San Diego Water Board	Ongoing during dredging and dewatering operations
	MM 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	Dredge area	Approval of plan, compliance monitoring	Contractor, as verified by the San Diego Water Board	Prior to and ongoing during dredging operations

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	dredged material will be given training on their specific task areas, including: o Potential hazards resulting from accidental oil and/or fuel spills; o Proper dredging equipment operation; o Proper silt curtain deployment techniques; and o Proper response in the event that ordinance 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 oil boom shall be				

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	deployed along the entire length of the outer silt curtain. • 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 to address any munitions and ordnance that have been found during the project. As required for projects within 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 Department of the Navy will be provided an opportunity to review and comment on the DMP, particularly with respect to ordnance and munitions that have been identified in proximity to the Shipyard Site.				
	MM 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	Dredge area	Approval of plan, compliance monitoring	Contractor, as verified by the San Diego Water Board	Prior to and ongoing during dredging operations

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	Contingency Plan will also address the potential to encounter munitions or ordnance. The Contingency Plan will include the following measures to prevent the release of hazardous materials during construction activities: • Actions to implement in the event of equipment failure, repair, or silt curtain breach. These include: o Communication to project personnel; o Proper signage and/or barriers alerting others of potentially unsafe conditions; o Specification for repair work to be conducted on land and not over water; o Identification of proper spill containment equipment (e.g., spill kit); o A plan identifying availability of other equipment or subcontracting options; o Emergency procedures to follow in the event of silt curtain breach; o Incident reporting and review procedure to evaluate the causes of an accidental silt curtain breach and steps to avoid further breaches; and o Response procedures in the event of barge overfill. • Actions to implement in the event that munitions or ordinance are encountered during project activities. These include: o Immediate stoppage of all in-water work activities until further notice to proceed is received; o Contact the Site Safety Manager o Refer to the Contingency Plan section that presents the emergency contact name(s) and telephone number(s) for NAVFAC Southwest Division; and				

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	o Contact NAVFAC Southwest Division personnel. The recovery and disposal of munitions and/or ordinance item(s) found will become the responsibltiy 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).				
	MM 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	Project Area	Approval of plan, compliance monitoring	Contractor, as verified by the San Diego Water Board	Prior to and ongoing during dredging operations

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	Diego Region (San Diego Water Board).				
	MM 4.3.5: Communication Plan. The contractor shall ensure that a Communication Plan and operational guidelines are developed between the Port of San Diego and/or the Harbor Master and all vessel operators prior to the initiation of dredging to ensure the safe movement of project vessels from the dredge to the unloading area. Features of the Communication Plan will include: • Identification of vessel speed limitations (wake/no wake); and • Notification to project personnel using air horns as necessary. Implementation of the Communication Plan for the duration of the dredging activity will be verified by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board).	Dredge area	Approval of plan, compliance monitoring	Contractor, as verified by the San Diego Water Board	Prior to and ongoing during dredging operations
	Mitigation Measure 4.3.6: Sediment Management Plan. The contractor shall implement Best Management Practices (BMPs) and follow Standard Operating Procedures (SOPs) during sediment unloading, transport, drying/dewatering, and disposal operations for the duration of the dredging activity. At a minimum, these BMPs/SOPs will include: • Mechanical stops to limit the swing arm of the crane; • Placement of a spillage plate to prevent any dropped sediment from impacting the water column; • Conveyance of sediment on the spillage plate to a collection sump; • Utilization of a power wash arm to clean sediment from equipment into the collection sump; • Contractor identification of haul truck load limits on				

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	first load each day; • Driver training and enforcement of safe driving procedures; • Only liquid drying agents will be utilized to avoid airborne release of these materials; • Implementation of a dust control and monitoring plan during sediment staging; • The stockpile liner will be protected from excavator penetration by a visual indicator such as sand, or by physical barriers such as railroad rails or K-rails; • Decanted water from sediment and any storm water in the staging area will be managed by sloping the staging area to a common sump or pond (containment cell) or pumped to a series of tanks. • The containment device(s) will be designed to meet a performance standard of “no discharge” so that storm water runoff cannot enter the bay or adjacent areas and to ensure that storm water surrounding areas cannot penetrate the containment area. The containment device(s) will be inspected daily during sediment staging. Prior to discharge, the liquid will be tested to evaluate whether it meets discharge criteria for the San Diego Publically Owned Treatment Works (POTW) or if treatment is required prior to discharge; • Sediment loading for transport off site will be conducted in a contained area, and haul trucks will be power washed prior to exit to prevent sediment from being discharged to the bay or surrounding area; and • All hazardous materials (liquid, sediment, or chemicals used during the Project) will be handled, transported, and disposed of at the proper disposal facility in accordance with state regulations.				

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	MM 4.3.7: Hazardous Materials Transportation Plan. Prior to the initiation of dredging, the contractor shall prepare and implement a Hazardous Materials Transportation Plan for the duration of the dredging activity that specifies the following procedures: • Sediment containment procedures • Emergency notification procedures The Hazardous Materials Transportation Plan will be subject to review by, and its implementation will be verified by, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board).	Dredge area	Approval of plan, compliance monitoring	Contractor, as verified by the San Diego Water Board	Prior to and ongoing during dredging and transportation operations
Biological Resources					
BIO 4.5.1: Potential Impacts to Eelgrass Habitat	**MM 4.5.1: Eelgrass Survey and Transplantation.** A pre-construction eelgrass habitat mapping survey for the Shipyard Sediment Site shall be completed by the shipyards within 120 days of the proposed start dates of each project phase in accordance with the Southern California Eelgrass Mitigation Policy (SCEMP) (National Marine Fisheries Service [NMFS], 1991 as amended) to document the amount of eelgrass that will likely be affected by dredging activity. The results of these surveys shall be integrated into a Final Eelgrass Mitigation Plan prepared by the shipyards for the project and used to calculate the amount of eelgrass to be mitigated. The Final Eelgrass Mitigation Plan shall be subject to approval by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) and NMFS, and shall include the following elements: • A detailed map of the area including distribution, density and relationship to depth contours of any eelgrass beds likely to be impacted by project construction;	Dredge area	Approval of plan, compliance monitoring	Shipyards, as verified by the San Diego Water Board, in concert with the appropriate resource agencies	Prior to dredging and post-dredging operations

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	• The identification of mitigation site factors such as distance from project, depth, sediment type, distance from ocean connection, water quality, and currents should be considered in evaluating potential sites; • Techniques for the construction and planting of the eelgrass mitigation site consistent with the best available technology at the time of the project; • Proposed mitigation timing schedule; and • Proposed mitigation monitoring activities. A post-dredging project eelgrass survey shall be completed by the shipyards within 30 days of the completion of each dredging episode in accordance with the SCEMP and shall be submitted to the NMFS, United States Fish and Wildlife Service, California Department of Fish and Wildlife, and the Executive Director of the California Coastal Commission, as well as the San Diego Water Board. Criteria for determination of transplant success shall be based upon a comparison of vegetation coverage (area) and density (turions1 per square meter) between the project adjusted impact area (original impact area multiplied by 1.2 or the amount of eelgrass habitat to be successfully mitigated at the end of 5 years) and the mitigation site(s). The extent of vegetated cover is defined as that area where eelgrass is present and where gaps in coverage are less than 1 meter between individual turion clusters. Density of shoots is defined by the number of turions per area present in representative samples within the original impact area, control or transplant bed. Specific criteria are as follows: • The mitigation site shall achieve a minimum of 70 percent area of eelgrass and 30 percent density as compared to the adjusted project impact area after				

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	the first year; • The mitigation site shall achieve a minimum of 85 percent area of eelgrass and 70 percent density as compared to the adjusted project impact area after the second year. • The mitigation site shall achieve a sustained 100 percent area of eelgrass bed and at least 85 percent density as compared to the adjusted project impact area for the third, fourth and fifth years. The amount to be transplanted shall be based upon the guidelines in the SCEMP. If remedial transplants at the project site are unsuccessful, then eelgrass mitigation shall be pursued at the secondary eelgrass transplant location. The San Diego Water Board shall verify implementation of this mitigation measure.				
	MM 4.5.3: Pre-Dredge Review. The project marine biologist shall meet with the construction crews prior to dredging as well as periodically throughout the project to review pre-dredge survey areas of eelgrass beds to avoid those located adjacent to the project site and to review proper construction techniques. A training log shall be maintained by the project marine biologist and shall be submitted monthly to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), who shall verify implementation of this measure.	Dredge area	Compliance monitoring	Project marine biologist as verified by the San Diego Water Board	Prior to and periodically throughout dredging operations and application of clean sand cover
	MM 4.5.4: Non-Disturbance Measures. The contractor shall ensure that throughout the duration of dredge and clean sand cover placement activities, project-related barges and work vessels operating in areas where eelgrass beds exist shall be operated in a manner to ensure that eelgrass beds are not impacted through grounding, propeller damage, or other activities that may disturb the seafloor. Such measures shall include speed	Dredge area	Compliance monitoring	Project marine biologist as verified by the San Diego Water Board	Ongoing throughout dredging operations and application of clean sand cover

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	restrictions, establishment of off-limit areas, and use of shallow draft vessels. The project marine biologist shall periodically confirm that these measures are implemented and shall submit a monthly monitoring report to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board).				
BIO 4.5.2: Potential Impacts to Special-Status Fish Species	**Implement the following (See above for full text):** **MM 4.2.1: Automatic Monitoring of Dredging Operations and Water Quality Conditions.** **MM 4.2.3: Silt Curtains.** **MM 4.2.2: Best Management Practices (BMPs).** **MM 4.2.4: Water Quality Monitoring.** **MM 4.2.5: Spill Plate Usage.** **MM 4.2.6: Clamshell Bucket Use.** **MM 4.2.9: Dredging Management Plan (DMP).**				
BIO 4.5.3: Potential Impacts to Sea Turtles	**MM 4.5.2: Protection of Foraging Habitat.** In order to protect sea turtles that could potentially forage within and among eelgrass beds identified at or near the project site, the project marine biologist shall mark the positions of eelgrass beds with buoys prior to the initiation of any construction to minimize damage to turtles foraging within eelgrass beds outside the construction zone. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall verify that buoys have been properly placed.	Dredge area	Compliance monitoring	Project marine biologist as verified by the San Diego Water Board	Prior to and throughout dredging operations and application of clean sand cover
	Also implement the following (See above for full text): **MM 4.5.3: Pre-Dredge Review (see above)** **MM 4.5.4: Non-Disturbance Measures (see above)**				
	MM 4.5.5: Vessel Operation. The contractor shall ensure that throughout the duration of dredge and clean sand	Dredge area	Compliance monitoring	Contractor and project	Ongoing throughout

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	cover placement activities, barges and work vessels shall be operated in a manner to ensure that sea turtles and marine mammals are not injured or harassed through excessive vessel speed or propeller damage. Such measures shall include speed restrictions, establishment of off-limit areas, and use of shallow draft vessels. The project marine biologist shall periodically confirm that these measures are implemented and shall submit a monthly monitoring report to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board).			marine biologist, as verified by the San Diego Water Board	dredging operations and application of clean sand cover
	MM 4.5.6: Daily Briefings. The contractor shall ensure that construction crews and work vessel crews are briefed daily on the potential for sea turtles and marine mammals to be present and provided with identification characteristics of sea turtles, seals, sea lions, and dolphin. The project marine biologist shall periodically confirm that this measure is implemented and include verification in a monthly monitoring report.	Dredge area	Compliance monitoring	Contractor and project marine biologist, as verified by the San Diego Water Board	Ongoing throughout dredging operations and application of clean sand cover
	MM 4.5.7: Construction Zone Buffer. The contractor shall ensure that all construction activity be temporarily stopped if a sea turtle or marine mammal is sighted within 100 meters of the construction zone until the sea turtle or marine mammal is safely outside the outer perimeter of project activities. The biological monitor, who will be on site periodically during dredging activities, shall have the authority to halt construction operation and shall determine when construction operations can proceed. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall verify implementation of this mitigation measure.	Dredge area	Compliance monitoring	Contractor and project marine biologist, as verified by the San Diego Water Board	Ongoing throughout dredging operations and application of clean sand cover
	MM 4.5.8: Incident Notification. The biological monitor shall prepare an incident report of any green sea turtle or	Dredge area	Submission of report,	Project marine	Upon sighting or

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	marine mammal activity in the project area and shall inform the contractor to have his/her crews be aware of the potential for additional sightings. The report shall be provided within 24 hours to the California Department of Fish and Wildlife and National Marine Fisheries Service (NMFS). In the event a sea turtle, pinniped, or cetacean is injured or killed as consequence of a collision, the vessel operator and the appointed shipyard safety personnel shall be required to immediately notify the NMFS (Southwest Division) and shall submit a written, follow-up report within 24 hours of the incident. Any injured sea turtle or marine mammal shall be transported to an agency-approved treatment facility. The California Regional Water Quality Control Board, San Diego Region shall verify implementation of this mitigation measure.		compliance monitoring	biologist, as verified by the San Diego Water Board	green sea turtle or marine mammal during dredging operations and application of clean sand cover
BIO 4.5.4: Potential Impacts to Sea Birds	**MM 4.5.9: Sea Bird Assessment and Monitoring.** A qualified biologist familiar with the California least tern and other special-status seabirds and waterfowl shall be retained and be on site to assess the roosting and foraging behavior of special-status seabirds and waterfowl at the Shipyard Sediment Site and selected staging area(s) immediately prior to and during the initial start-up phase of dredging and clean sand cover placement activities. Once it has been determined that activities are not adversely affecting seabirds and waterfowl, the biologist shall not be required to be on site continuously; however, monitoring shall be performed at least once per week (or more often if required by the resource agencies) to adequately assess whether substantial adverse impacts to special-status seabirds and waterfowl are resulting from project activities (e.g., disrupting nesting or foraging activities, harassing roosting birds). The biologist shall be present during either of the selected dredge scheduling options. In the event of an imminent threat to California least tern and/or other	Dredge area	Compliance monitoring	Project biologist, as verified by the San Diego Water Board	Prior to and ongoing throughout dredging operations and application of clean sand cover

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	special-status species, the monitor shall immediately contact the contractor's construction manager. In the event the construction manager/contractor is not available, the monitor shall have the authority to redirect or halt construction activities if determined to be necessary. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall verify implementation of this mitigation measure.				
BIO 4.5.5: Potential Impacts to Marine Mammals	**Implement the following (See above for full text):** **MM 4.2.2: Best Management Practices (BMPs).** **MM 4.2.3: Silt Curtains.** **MM 4.3.5: Communication Plan.** **MM 4.5.3: Pre-Dredge Review.** **MM 4.5.8: Incident Notification.**				
Air Quality					
AIR 4.6.3. Construction-related Impacts to Air Quality	**MM 4.6.1: Construction Timing.** The contractor shall be required by contract specifications to ensure that dredging, treatment, and haul activities are timed so as not to interfere with peak-hour traffic and to minimize obstruction of through traffic lanes adjacent to the site. If necessary, a flag person shall be retained by the construction supervisor to maintain safety adjacent to existing roadways. Contract specifications shall be included in the proposed Project construction documents, which shall be reviewed by the San Diego Water Board prior to the issuance of construction permits. The San Diego Water Board shall verify implementation of this measure.	Dredge area	Compliance monitoring	Contractor, as verified by the San Diego Water Board	During dredging operations

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	MM 4.6.2: Transit Incentives. During dredging and dewatering activities, the contractor shall support and encourage ridesharing and transit incentives for the construction crew. These specifications shall be included in the proposed Project's construction documents, which shall be reviewed by the San Diego Water Board prior to the issuance of a construction permit.	Dredge area	Compliance monitoring	Contractor, as verified by the San Diego Water Board	During dredging operations
	MM 4.6.3: Vehicle Speed. During dredging and dewatering activities, the contractor shall ensure that on-site vehicle speed shall be limited to 15 miles per hour. Contract specifications shall be included in the proposed Project construction documents, which shall be reviewed by the San Diego Water Board prior to the issuance of construction permits. The San Diego Water Board shall verify implementation of this measure.	Dredge area	Compliance monitoring	Contractor, as verified by the San Diego Water Board	During dredging operations

EXHIBIT D – Shipyard Sediment Remediation Project

STATEMENT OF FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS

1.0 INTRODUCTION

The California State Lands Commission (CSLC), acting as a responsible agency under the California Environmental Quality Act (CEQA), makes these findings and this Statement of Overriding Considerations to comply with CEQA as part of its discretionary approval to authorize issuance of dredging leases, one to the San Diego Shipyard Environmental Restoration Fund–NASSCO (South) and one to the San Diego Shipyard Environmental Restoration Fund–BAE (North), for use of sovereign lands associated with the proposed Shipyard Sediment Remediation Project (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines, § 15381.)[1] 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 (Pub. Resources Code, §§ 6301, 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.

The CSLC is a responsible agency under CEQA for the Project because the CSLC must approve a lease for the Project to go forward and because the California Regional Water Quality Control Board—San Diego Region (San Diego Water Board), as the CEQA lead agency, has the principal responsibility for approving the Project and has completed its environmental review under CEQA. The San Diego Water Board analyzed the environmental impacts associated with the Project in a Programmatic Environmental Impact Report (PEIR) (State Clearinghouse [SCH] No. 2009111098) and, in March 2012, certified the PEIR and adopted a Mitigation Monitoring and Reporting Program (MMRP), Findings, and a Statement of Overriding Considerations.

The Project involves the dredging of contaminated sediment adjacent to shipyards in San Diego Bay, the dewatering and solidification of the dredged material, the potential treatment of decanted water, the transportation of dredged material to an appropriate landfill for disposal, and the placement of a clean sand cover in areas where dredging is not feasible, such as under existing piers. The purpose of the Project is to restore and protect the impaired beneficial uses of the waters of San Diego Bay through implementing Cleanup and Abatement Order (CAO) No. R9-2012-0024 issued by the San Diego Water Board. The dredging of the sediment occurs on sovereign land, requiring a dredging lease from the CSLC.

[1] CEQA is codified in Public Resources Code section 21000 et seq. The State CEQA Guidelines are found in California Code of Regulations, Title 14, section 15000 et seq.

The San Diego Water Board determined that the Project could have significant environmental effects on the following environmental resources:

- Transportation and Circulation;
- Hydrology and Water Quality;
- Hazards and Hazardous Materials;
- Noise;
- Biological Resources; and
- Air Quality.

Of those six resources areas, Project components within the CSLC's jurisdiction (i.e., dredging) could have significant environmental effects on four of the above resource areas:

- Hydrology and Water Quality;
- Hazards and Hazardous Materials ;
- Biological Resources; and
- Air Quality.

In certifying the PEIR and approving the Project, the San Diego Water Board imposed various mitigation measures for Project-related significant effects on the environment as conditions of Project approval and concluded that Project-related impacts would be substantially lessened with implementation of these mitigation measures. However, even with the integration of feasible mitigation, the San Diego Water Board concluded in the PEIR that some of the identified impacts would remain significant. As a result, the San Diego Water Board adopted a Statement of Overriding Considerations to support its approval of the Project despite the significant and unavoidable impacts. The San Diego Water Board determined that, after mitigation, the Project may still have significant impacts on Air Quality.

As a responsible agency, the CSLC complies with CEQA by considering the lead agency's PEIR and reaching its own conclusions on whether, how, and with what conditions to approve a project. In doing so, the CSLC may require changes in a project to lessen or avoid the effects, either direct or indirect, of that part of the project which the CSLC will be called on to carry out or approve. In order to ensure the identified mitigation measures and/or project revisions are implemented, the CSLC adopts a Mitigation Monitoring Program (MMP) as set forth in an exhibit as part of its Project approval.

2.0 FINDINGS

The CSLC's role as a responsible agency affects the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an EIR has been certified that identifies one or more significant impacts on the environment (Pub. Resources Code, § 21081, subd. (a); State CEQA Guidelines, § 15091, subd. (a)). Because the PEIR certified by the San Diego Water Board for the Project identifies potentially significant impacts that fall within the scope of the CSLC's approval, the CSLC makes the Findings set forth below as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund.* v. *Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

While the CSLC must consider the environmental impacts of the Project as set forth in the San Diego Water Board's PEIR, the CSLC's obligation to mitigate or avoid the direct or indirect environmental impacts of the Project is limited to those parts which it decides to carry out, finance, or approve (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g)). Accordingly, because the CSLC's exercise of discretion involves only issuing a dredging lease, the CSLC is responsible for considering only the environmental impacts related to lands or resources subject to the CSLC's jurisdiction. With respect to all other impacts associated with implementation of the Project, the CSLC is bound by the legal presumption that the PEIR fully complies with CEQA.

The CSLC has reviewed and considered the information contained in the Project PEIR. All significant adverse impacts of the Project identified in the PEIR relating to the CSLC's approval of a General Lease – Dredging, which would allow the dredging required to remove contaminated sediment, are included herein and organized according to the resource affected. These Findings, which reflect the independent judgment of the CSLC, are intended to comply with CEQA's mandate that no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects unless the agency makes written findings for each of those significant effects. Possible findings on each significant effect are:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment;

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency;

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the PEIR.[2]

[2] See Public Resources Code section 21081, subdivision (a) and State CEQA Guidelines section 15091, subdivision (a).

Whenever Finding (3) is made, the CSLC has determined that sufficient mitigation is not practicable to reduce the impact to a less than significant level, and even after implementation of all feasible mitigation measures, there will be or could be one or more unavoidable significant adverse impacts due to the Project. Significant impacts requiring Finding (3) were identified in the Final PEIR. The Statement of Overriding Considerations adopted as part of this exhibit applies to all such unavoidable impacts related to the CSLC's discretionary action, as required by CEQA (Pub. Resources Code, § 21081, subd. (b); State CEQA Guidelines, §§ 15093, 15096, subd. (h)).

These Findings are based on the information contained in the PEIR, all of which is contained in the administrative record. The mitigation measures are briefly described in these Findings; more detail on the mitigation measures is included in the San Diego Water Board's PEIR.

The CSLC is the custodian of the record of proceedings upon which its decision is based. The location of the CSLC's record of proceedings is in the Sacramento office of the CSLC, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825.

I. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION

The following impacts were determined in the PEIR to be potentially significant absent mitigation: WQ 4.2.6, HAZ 4.3.2, BIO 4.5.1, BIO 4.5.2, BIO 4.5.3, BIO 4.5.4, and BIO 4.5.5. After application of mitigation, however, the impacts were determined to be less than significant.

A. Water Quality

CEQA FINDING NO. 4.2.6	
Impact:	**WQ 4.2.6. Project Impacts on Water Quality.** Implementation of the Project may substantially degrade water quality in San Diego Bay.
Finding(s):	(1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project that have the potential to result in adverse water quality impacts include dredging, unloading of dredged material to the onshore dewatering area, onshore dewatering, and application of the clean sand cover. The shipyard sediments are known to be contaminated with several pollutants or constituents of concern. The primary constituents of concern for the proposed Project are copper, mercury, high molecular weight polynuclear aromatic hydrocarbons (HPAHs), Polychlorinated Biphenyls (PCBs), and tributyltin (TBT); secondary constituents of concern are arsenic, cadmium, lead, and zinc. The Project activities listed above could degrade water quality by introducing sediments and contaminants

into the water column that could increase turbidity and degrade acceptable levels of habitat quality for organisms in the water column. In addition, the primary and secondary constituents of concern could be released when bed sediments are suspended in the water column. Resuspended contaminants may dissolve into the water column and become available for uptake by biota. Re-deposition may occur near the dredge area or, depending on the environmental conditions and controls, resuspended sediment may be transported to other locations in the water body. Resuspension of contaminated sediments and release of constituents of concern could impact water quality by decreasing dissolved oxygen, changing pH, increasing turbidity, and increasing contaminant levels to levels toxic to aquatic receptors. Changes in water quality could degrade and/or impair the beneficial uses in San Diego Bay and the Pacific Ocean. Sediment dredging activities are planned such that a sufficient volume of contaminated sediment is removed; however, removing all particles of contaminated sediment is neither practical nor feasible.

Accidental oil or fuel spills that could potentially occur during the proposed dredging operations could impair and/or degrade water quality in San Diego Bay, depending on the severity of the spill. Such events are likely to be localized spills of lighter, refined diesel fuels, gasoline, and lubricating oils that are highly toxic to marine life. The potential for the occurrence of petroleum-product leaks or spills is low, but the potential for an adverse effect to marine resources is moderate to high.

Implementation of **Mitigation Measures 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.2.6, 4.2.9, and 4.2.14** will minimize impacts to water quality through the use of monitoring and best management practices (BMPs) to minimize Project impacts.

> **Mitigation Measure 4.2.1: Automatic Monitoring of Dredging Operations and Water Quality Conditions.** During dredging operations, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall verify that the contractor/dredge operator is using automatic rather than manual monitoring of the dredging operations, which will allow continuous data logging with automatic interpretation and adjustments to the dredging operations for real-time feedback for the dredge operator. 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/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. Water quality sampling for contaminants of concern shall be required if silt curtains are not deployed during any phase of the in-water activities.

Mitigation Measure 4.2.2: Best Management Practices (BMPs). During dredging operations, the San Diego Water Board shall verify that the dredge contractor is implementing standard BMPs for minimizing resuspension, spillage, and misplaced sediment during dredging operations, as the deposition of such material would increase turbidity and compromise cleanup efforts. Such BMPs shall include, but not be limited to, the following:

- The contractor shall not stockpile material on the bottom of the San Diego Bay floor and shall not sweep or level the bottom surface with the bucket.
- The contractor shall use and maintain double silt curtains that encircle the area of dredging and shall minimize the times in which these curtains are temporarily opened, to contain suspended sediments.
- 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.
- The contractor shall ensure the environmental clamshell bucket is entirely closed when withdrawn from the water and moved to the barge. This action requires extra attention when debris is present to make sure debris does not prevent the bucket from completely closing. Two closure switches shall be on each side of the bucket near the top and bottom to provide an electrical signal to the operator that the bucket is closed. Use of the switches shall minimize the potential of sediment leaking from the bucket into the water column during travel to the surface.
- The contractor shall not overfill the digging bucket because overfill results in material overflowing back into the water. Use of instrumentation such as Clam Vision® shall allow the operator to visualize in real time the depth of cut that shall be designed to prevent overfilling.
- The contractor shall utilize wide-pocket material barges having watertight containments to prevent return water from re-entering San Diego Bay. The contractor shall not overfill the material barge to a point where overflow or spillage could occur. Each material barge shall be marked in such a way to allow the operator to visually identify the maximum load point. The marking should allow sufficient interior freeboard to prevent spillage in rough water such as ship wakes during transit. Initiating the material barge marking shall minimize impact of load spillage during transit to the unloading area.
- The contractor shall not use weirs as a means to dewater the scow and shall allow additional room for sediment placement. Preventing this action shall minimize the introduction of turbidity to the water column. The contractor shall place material in the material barge such that splashing or sloshing does not occur, which could send sediment back into the water. Splashing can be controlled by restricting the drop height from the bucket.
- If the use of a grate to collect debris is required, the contractor shall not allow material to pile up on the grid and flow or slip from the grid back into the water. The debris scalper shall be positioned in such a way as to be totally contained on the shore side of the unloading operations. The dredge operator shall visually

monitor for debris build-up and alert the support personnel on the barge to assist in clearing the debris, as necessary. Debris that is derived from dredging activities shall be removed from the grate by the environmental clamshell bucket and placed in a contained area on the dredge barge or in a second material barge for subsequent removal to the onshore dewatering facility.

- The contractor shall restrict barge movement and work boat speeds (i.e., reducing propeller wash) in the dredge area. The remedial design should identify the various areas where this operational control should be used.

Mitigation Measure 4.2.3: Silt Curtains. During dredging operations, the San Diego Water Board shall verify that the contractor is deploying inner- and outer-boundary floating silt curtains fully around the dredging area at all times. Double silt curtains shall be utilized for containment of the dredge area; configurations, technologies, and actual locations of silt curtains in relation to the dredge barge shall be finalized during the design phase of the Project. The floating silt curtain shall be comprised of connected lengths of Type III geotextile fabric. A continuous length of floating silt curtain shall be arranged to fully encircle the dredging equipment and the scow barge being loaded with sediment. The silt curtain shall be supported by a floating boom in open water areas (such as along the bay ward side of the dredging areas). Along pier edges, the contractor shall have the option of connecting the silt curtain directly to the structure. The contractor shall continuously monitor the silt curtain for damage, dislocation, or gaps and immediately fix any locations where it is no longer continuous or where it has loosened from its supports. The bottom of the silt curtain shall be weighted with ballast weights or rods affixed to the base of the fabric. Where feasible and applicable, the floating silt curtains shall be anchored and deployed from the surface of the water to just above the substrate. If necessary, silt curtains with tidal flaps may be installed to facilitate curtain deployment in areas of higher flow. Air curtains may be used in conjunction with silt curtains to contain resuspended sediment, 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.

Mitigation Measure 4.2.4: Water Quality Monitoring. Throughout the remediation process of dredging and application of the clean sand covers, the contractor shall conduct water quality monitoring to demonstrate that implementation of the remedial activities does not result in violations of water quality objectives in the Basin Plan outside of the construction area. The contractor shall submit weekly water quality reports to the San Diego Water Board. If water quality objectives are violated, the San Diego Water Board may temporarily halt activity and impose additional required measures to protect water quality.

Mitigation Measure 4.2.5: Spill Plate Usage. Prior to initiation of dredging activities, the contractor shall determine the swing radius of the unloading equipment and shall place a steel plate (swing tray or spill plate) between the material barge and the hard cape to prevent spillage from falling directly into the water. The steel plate shall be sufficiently large enough to cover the swing radius of the unloading equipment. The spill plate shall be designed to prevent any “drippings” from falling

between the material barge and dock where the unloading equipment is stationed. The spill plate shall be positioned so that any “dripped” material/water either runs back into the material barge or onto the unloading dock, which shall be lined with an impermeable material and beamed to contain excess sediment/water. The steel plate shall be designed to prevent any water or sediment from re-entering San Diego Bay. As a secondary containment measure, filter fabric material shall be placed over the spill plate and between edges of the barge and unloading dock to prevent any drippings from falling into San Diego Bay. Upon completion of unloading a material barge, the spill plate shall be thoroughly rinsed so that excess sediment is drained into the material barge or onto the unloading dock (depending on spill plate positioning) and then placed on the lined dock until the next unloading sequence. The San Diego Water Board shall be responsible for ensuring adherence to the requirements of this measure.

Mitigation Measure 4.2.6: Clamshell Bucket Use. During dredging activities, the contractor shall ensure that the environmental clamshell bucket is entirely closed when withdrawn from the barge and moved to the truck. In addition, the contractor shall ensure that the bucket is completely empty of sediment prior to being moved back to the barge to minimize sediment being spilled over the dock. The San Diego Water Board shall be responsible for ensuring adherence to the requirements of this measure.

Mitigation Measure 4.2.9: Dredging Management Plan (DMP). Prior to dredging operations, a DMP shall be prepared. The contractor shall implement the measures listed in the DMP during dredging operations. The San Diego Water Board shall be responsible for review and approval of the DMP. The DMP shall contain Standard Operating Procedures (SOPs) for the Project to assist the dredge contractor in preventing accidental spills and providing the necessary guidelines to follow in case of an oil or fuel spill. In addition to providing SOPs to prevent accidental oil/fuel spills during construction activities, the DMP shall address the identification of dredging needs, a methodology and process for determining dredging priorities and scheduling, the feasibility and requirements for expedited permitting, Quality Assurance Project Plan to comply with regulatory requirements, alternatives for control and operation of dredging equipment, and Best Management Practices (BMPs) to implement in the event of equipment failure and/or repair. Typical BMPs for equipment failure or repair shall be identified in the DMP and could include: communication to Project personnel, proper signage and/or barriers alerting others of potentially unsafe conditions, all repair work to be conducted on land and not over water, repair work involving use of liquids to be performed with proper spill containment equipment (e.g., spill kit), and a contingency plan identifying availability of other equipment or subcontracting options. Furthermore, the DMP shall specify that water discharges to San Diego Bay are prohibited; therefore, the barge shall implement measures necessary to capture all return water and prevent discharge to San Diego Bay. In addition, the DMP shall include, at a minimum, the following measures to prevent accidental oil/fuel spills during construction activities:

- As an operational control element, all oil and fuel shall be housed in a secondary containment structure to ensure that any spill or leakage is prevented from entering the water column.
- Personnel involved with dredging and handling the dredged material shall be given training on the potential hazards resulting from accidental oil and/or fuel spills. This operational control shall provide the personnel with an awareness of the materials they are handling as well as the potential impact to the environment.
- All equipment shall be inspected by dredge contractor personnel before starting the shift. These inspections are intended to identify typical wear or faulty parts that may contain oil or fuel.
- Personnel shall 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 shall be immediately shut down and the source of the spill identified and contained. Additionally, the spill shall be reported to the applicable agencies presented in the DMP. The shipyards currently have oil/fuel spill kits located at various locations on site for routine ship repair operations. All personnel associated with dredging activities shall be trained on where these spill kits are located, how to deploy the oil sorbent 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 shall be deployed surrounding the dredging activities. In the event that a spill occurs, the oil and/or fuel shall be contained within the oil boom boundary. This operational control shall be the last line of defense against accidental oil/fuel spill occurrences. The oil boom shall be deployed along the entire length of the outer silt curtain. The San Diego Water Board shall be responsible for verifying adherence to the requirements of this measure.

Mitigation Measure 4.2.14: Water Quality Monitoring Data. The San Diego Water Board shall coordinate water quality monitoring efforts and share water quality monitoring data with other dredging Projects in San Diego Bay throughout the duration of the Project. Considerations for the issuance of dredge permits or General Waste Discharge Requirements (WDRs) shall include distance(s) between sites and proposed timing of in-water activities that shall involve potential impacts to water quality, selection of appropriate water quality reference sampling locations in San Diego Bay, configuration of silt curtains, and coordination of expected commercial and recreational vessel traffic. Implementation of Mitigation Measures 4.2.1-14 will ensure that the potential hydrology and water quality impacts during the dredge, transport, and disposal activities are reduced to less than significant by requiring the implementation of source and treatment control best management practices for the proposed Project.

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

B. Hazards And Hazardous Materials

CEQA FINDING NO. 4.3.2	
Impact:	**HAZ 4.3.2. Potential Release of Hazardous Materials.** Reasonably foreseeable upset or accident conditions involving the release of hazardous materials into the environment in San Diego Bay.
Finding(s):	(1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Accidental oil or fuel spills from the crane or tugboat could occur during dredging operations, which could impair and/or degrade water quality in San Diego Bay. In addition, there is the potential for a release of sediments during Project activities. Some contact with sediment by workers during loading would occur regardless of the standard of care taken during the loading process. Contact with impacted sediment by personnel may lead to acute and/or chronic health effects depending on the contaminant type, concentration, and exposure route.

Implementation of **Mitigation Measures 4.3.1 through 4.3.7** would minimize this impact by minimizing the likelihood of spills and sediment release, and providing plans to address potential releases.

Mitigation Measure 4.3.1: Secondary Containment. As an operational control element, the contractor shall ensure, and the San Diego Water Board will verify, that all oil and fuel is housed in a secondary containment structure to ensure that spilled or leaked oil or fuel will be prevented from entering the water column.

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.
  - 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 oil boom shall be deployed along the entire length of the outer silt curtain.
- 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 to address any munitions and ordnance that have been found during the Project. As required for Projects within 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 San Diego Water Board. The Department of the Navy will be provided an opportunity to review and comment on the DMP, particularly with respect to ordnance and munitions that have been identified in proximity to the Shipyard 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 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 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; and
- 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).

Mitigation Measure 4.3.5: Communication Plan. The contractor shall ensure that a Communication Plan and operational guidelines are developed between the Port of San Diego and/or the Harbor Master and all vessel operators prior to the initiation of dredging to ensure the safe movement of project vessels from the dredge to the unloading area. Features of the Communication Plan will include:

- Identification of vessel speed limitations (wake/no wake); and
- Notification to project personnel using air horns as necessary.

Implementation of the Communication Plan for the duration of the dredging activity will be verified by the California Regional Water Quality Control Board, San Diego Region.

Mitigation Measure 4.3.6: Sediment Management Plan. The contractor shall implement Best Management Practices (BMPs) and follow Standard Operating Procedures (SOPs) during sediment unloading, transport, drying/dewatering, and disposal operations for the duration of the dredging activity. At a minimum, these BMPs/SOPs will include:

- Mechanical stops to limit the swing arm of the crane;
- Placement of a spillage plate to prevent any dropped sediment from impacting the water column;
- Conveyance of sediment on the spillage plate to a collection sump;
- Utilization of a power wash arm to clean sediment from equipment into the collection sump;
- Contractor identification of haul truck load limits on first load each day;
- Driver training and enforcement of safe driving procedures;
- Only liquid drying agents will be utilized to avoid airborne release of these materials;
- Implementation of a dust control and monitoring plan during sediment staging;
- The stockpile liner will be protected from excavator penetration by a visual indicator such as sand, or by physical barriers such as railroad rails or K-rails;
- Decanted water from sediment and any storm water in the staging area will be managed by sloping the staging area to a common sump or pond (containment cell) or pumped to a series of tanks.
- The containment device(s) will be designed to meet a performance standard of “no discharge” so that storm water runoff cannot enter the bay or adjacent areas and to ensure that storm water surrounding areas cannot penetrate the containment area. The containment device(s) will be inspected daily during sediment staging. Prior to discharge, the liquid will be tested to evaluate whether

it meets discharge criteria for the San Diego Publically Owned Treatment Works (POTW) or if treatment is required prior to discharge;

- Sediment loading for transport off site will be conducted in a contained area, and haul trucks will be power washed prior to exit to prevent sediment from being discharged to the bay or surrounding area; and
- All hazardous materials (liquid, sediment, or chemicals used during the Project) will be handled, transported, and disposed of at the proper disposal facility in accordance with state regulations.

MM 4.3.7: Hazardous Materials Transportation Plan. Prior to the initiation of dredging, the contractor shall prepare and implement a Hazardous Materials Transportation Plan for the duration of the dredging activity that specifies the following procedures:

- Sediment containment procedures
- Emergency notification procedures

The Hazardous Materials Transportation Plan will be subject to review by, and its implementation will be verified by, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board).

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

C. Biological Resources

CEQA FINDING NO. 4.5.1	
Impact:	**BIO 4.5.1. Potential Impacts to Eelgrass Habitat.** Patches and beds of eelgrass are present within the Project area and would be adversely affected by dredging activities through direct removal.
Finding(s):	(1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Implementation of Mitigation Measures 4.5.1, 4.5.3 and 4.5.4 will ensure that potential biological resources impacts during the dredging activities are reduced by requiring the implementation of best management practices during the dredging and mitigation for the loss of eelgrass removed by the dredging.

Mitigation Measure 4.5.1: Eelgrass Survey and Transplantation. A pre-construction eelgrass habitat mapping survey for the Shipyard Sediment Site shall be completed by the shipyards within 120 days of the proposed start dates of each project phase in accordance with the Southern California Eelgrass Mitigation Policy

(SCEMP) (National Marine Fisheries Service [NMFS], 1991 as amended) to document the amount of eelgrass that will likely be affected by dredging activity. The results of these surveys shall be integrated into a Final Eelgrass Mitigation Plan prepared by the shipyards for the project and used to calculate the amount of eelgrass to be mitigated. The Final Eelgrass Mitigation Plan shall be subject to approval by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) and NMFS, and shall include the following elements:

- A detailed map of the area including distribution, density and relationship to depth contours of any eelgrass beds likely to be impacted by project construction;
- The identification of mitigation site factors such as distance from project, depth, sediment type, distance from ocean connection, water quality, and currents should be considered in evaluating potential sites;
- Techniques for the construction and planting of the eelgrass mitigation site consistent with the best available technology at the time of the project;
- Proposed mitigation timing schedule; and
- Proposed mitigation monitoring activities.

A post-dredging project eelgrass survey shall be completed by the shipyards within 30 days of the completion of each dredging episode in accordance with the SCEMP and shall be submitted to the NMFS, United States Fish and Wildlife Service, California Department of Fish and Wildlife and the Executive Director of the California Coastal Commission, as well as the San Diego Water Board.

Criteria for determination of transplant success shall be based upon a comparison of vegetation coverage (area) and density (turions per square meter) between the project adjusted impact area (original impact area multiplied by 1.2 or the amount of eelgrass habitat to be successfully mitigated at the end of 5 years) and the mitigation site(s). The extent of vegetated cover is defined as that area where eelgrass is present and where gaps in coverage are less than 1 meter between individual turion clusters. Density of shoots is defined by the number of turions per area present in representative samples within the original impact area, control or transplant bed.

Specific criteria are as follows:

- The mitigation site shall achieve a minimum of 70 percent area of eelgrass and 30 percent density as compared to the adjusted project impact area after the first year;
- The mitigation site shall achieve a minimum of 85 percent area of eelgrass and 70 percent density as compared to the adjusted project impact area after the second year.
- The mitigation site shall achieve a sustained 100 percent area of eelgrass bed and at least 85 percent density as compared to the adjusted project impact area for the third, fourth and fifth years.

The amount to be transplanted shall be based upon the guidelines in the SCEMP. If remedial transplants at the project site are unsuccessful, then eelgrass mitigation shall be pursued at the secondary eelgrass transplant location. The San Diego Water Board shall verify implementation of this mitigation measure.

Mitigation Measure 4.5.3: Pre-Dredge Review. The project marine biologist shall meet with the construction crews prior to dredging as well as periodically throughout the project to review pre-dredge survey areas of eelgrass beds to avoid those located adjacent to the project site and to review proper construction techniques. A training log shall be maintained by the project marine biologist and shall be submitted monthly to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), who shall verify implementation of this measure.

Mitigation Measure 4.5.4: Non-Disturbance Measures. The contractor shall ensure that throughout the duration of dredge and clean sand cover placement activities, project-related barges and work vessels operating in areas where eelgrass beds exist shall be operated in a manner to ensure that eelgrass beds are not impacted through grounding, propeller damage, or other activities that may disturb the seafloor. Such measures shall include speed restrictions, establishment of off-limit areas, and use of shallow draft vessels. The project marine biologist shall periodically confirm that these measures are implemented and shall submit a monthly monitoring report to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board).

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.5.2	
Impact:	**BIO 4.5.2. Potential Impacts to Special-Status Fish Species.** Sediment and water quality effects on marine biological resources from dredging would include temporary and localized increases in turbidity that could result in adverse effects on water quality, and subsequently special-status fish species in San Diego Bay.
Finding(s):	(1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Mitigation Measures 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.2.6, and 4.2.9 require the implementation of BMPs, which are proposed to prevent the spread of any turbidity plume or release of sediment-bound contaminants out of the dredging area, and thereby reduce potential adverse impacts to marine resources, sensitive species, and rare and endangered species. BMPs include use of an environmental dredge bucket, installation

of silt curtains, operational controls, and water quality monitoring. The measures also require the inclusion and implementation of a Dredging Management Plan (DMP) for the Project, which will assist in preventing accidental spills and providing the necessary guidelines to follow in case of an oil or fuel spill, and is expected reduce the potential for a significant long-term impact to special-status fish species.

Refer to **Mitigation Measures 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.2.6, and 4.2.9** under CEQA Finding No. WQ 4.2.6.

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.5.3

Impact: **BIO 4.5.3. Potential Impacts to Sea Turtles.** Dredging, sand covering, and vessel movements within the Project area would potentially result in a behavioral modification to sea turtles that would include a change in swimming behavior to avoid increased noise, turbidity, or the vessel movements. Additionally, the deployment of silt curtains surrounding the dredging/sand covering activities will act as a preventive barrier for green sea turtles entering the construction area.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Implementation of **Mitigation Measures 4.5.2 through 4.5.9** would reduce impacts to sea turtles to less than significant by minimizing activity and damage within nearby eelgrass beds, assigning a marine biologist to provide crew training, ensuring that operation of barges and work vessels is conducted in a manner to minimize potential harm to turtles, providing daily briefings of turtle occurrence probability, temporarily halting activities if a turtle is sighted, and coordinating with/notifying resource agencies.

Mitigation Measure 4.5.2: Protection of Foraging Habitat. In order to protect sea turtles that could potentially forage within and among eelgrass beds identified at or near the project site, the project marine biologist shall mark the positions of eelgrass beds with buoys prior to the initiation of any construction to minimize damage to turtles foraging within eelgrass beds outside the construction zone. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall verify that buoys have been properly placed.

Mitigation Measure 4.5.3: Pre-Dredge Review (refer to CEQA Finding No. 4.5.1).

Mitigation Measure 4.5.4: Non-Disturbance Measures (refer to CEQA Finding No. 4.5.1).

Mitigation Measure 4.5.5: Vessel Operation. The contractor shall ensure that throughout the duration of dredge and clean sand cover placement activities, barges and work vessels shall be operated in a manner to ensure that sea turtles and marine mammals are not injured or harassed through excessive vessel speed or propeller damage. Such measures shall include speed restrictions, establishment of off-limit areas, and use of shallow draft vessels. The project marine biologist shall periodically confirm that these measures are implemented and shall submit a monthly monitoring report to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board).

Mitigation Measure 4.5.6: Daily Briefings. The contractor shall ensure that construction crews and work vessel crews are briefed daily on the potential for sea turtles and marine mammals to be present and provided with identification characteristics of sea turtles, seals, sea lions, and dolphin. The project marine biologist shall periodically confirm that this measure is implemented and include verification in a monthly monitoring report.

Mitigation Measure 4.5.7: Construction Zone Buffer. The contractor shall ensure that all construction activity be temporarily stopped if a sea turtle or marine mammal is sighted within 100 meters of the construction zone until the sea turtle or marine mammal is safely outside the outer perimeter of project activities. The biological monitor, who will be on site periodically during dredging activities, shall have the authority to halt construction operation and shall determine when construction operations can proceed. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall verify implementation of this mitigation measure.

Mitigation Measure 4.5.8: Incident Notification. The biological monitor shall prepare an incident report of any green sea turtle or marine mammal activity in the project area and shall inform the contractor to have his/her crews be aware of the potential for additional sightings. The report shall be provided within 24 hours to the California Department of Fish and Wildlife and National Marine Fisheries Service (NMFS). In the event a sea turtle, pinniped, or cetacean is injured or killed as consequence of a collision, the vessel operator and the appointed shipyard safety personnel shall be required to immediately notify the NMFS (Southwest Division) and shall submit a written, follow-up report within 24 hours of the incident. Any injured sea turtle or marine mammal shall be transported to an agency-approved treatment facility. The California Regional Water Quality Control Board, San Diego Region shall verify implementation of this mitigation measure.

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.5.4

Impact: **BIO 4.5.4. Potential Impacts to Sea Birds.** Impacts to birds would occur as a result of activities associated with dredging and would primarily affect seabirds (e.g., gulls, cormorants, terns, pelicans, scoters) and waterfowl (e.g., brants and sea-going ducks).

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Implementation of **Mitigation Measure 4.5.9** reduces potential impacts to sea birds due to required monitoring to adequately assess whether Project activities cause substantial adverse impacts to special-status seabirds and waterfowl (e.g., disrupting nesting or foraging activities, harassing roosting birds), and provides for redirecting or halting construction activities if determined to be necessary to protect sensitive bird species.

> **Mitigation 4.5.9: Sea Bird Assessment and Monitoring.** A qualified biologist familiar with the California least tern and other special-status seabirds and waterfowl shall be retained and be on site to assess the roosting and foraging behavior of special-status seabirds and waterfowl at the Shipyard Sediment Site and selected staging area(s) immediately prior to and during the initial start-up phase of dredging and clean sand cover placement activities. Once it has been determined that activities are not adversely affecting seabirds and waterfowl, the biologist shall not be required to be on site continuously; however, monitoring shall be performed at least once per week (or more often if required by the resource agencies) to adequately assess whether substantial adverse impacts to special-status seabirds and waterfowl are resulting from project activities (e.g., disrupting nesting or foraging activities, harassing roosting birds). The biologist shall be present during either of the selected dredge scheduling options. In the event of an imminent threat to California least tern and/or other special-status species, the monitor shall immediately contact the contractor's construction manager. In the event the construction manager/contractor is not available, the monitor shall have the authority to redirect or halt construction activities if determined to be necessary. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) shall verify implementation of this mitigation measure.

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.5.5

Impact: **BIO 4.5.5. Potential Impacts to Marine Mammals.** Impacts to marine mammals would occur as a result of activities associated with dredging.

Finding(s):	(1)	Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Use of silt curtains throughout the entire Project, as required by **Mitigation Measure 4.2.2: Best Management Practices (BMPs)** and **Mitigation Measure 4.2.3: Silt Curtains** (refer to CEQA Finding No. WQ 4.2.6), will act as a preventive barrier to reduce marine mammal exposure to dredging activities. **Mitigation Measure 4.3.5: Communication Plan** (refer to CEQA Finding No. 4.3.2) requires the contractor to establish and follow a communication plan that will identify vessel speed limitations. In addition, **Mitigation Measures 4.5.3 through 4.5.8** would specifically reduce impacts to marine mammals by assigning a marine biologist to provide crew training and perform related duties (refer to the CEQA Findings for Biological Resources).

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

II. SIGNIFICANT AND UNAVOIDABLE IMPACTS

A. Air Quality

CEQA FINDING NO. 4.6.3		
Impact:	**AIR 4.6.3. Construction-related Impacts to Air Quality.**	
Finding(s):	(1)	Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the PEIR.
	(3)	Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the PEIR.

FACTS SUPPORTING THE FINDING(S)

Impact AIR 4.6.3 was determined in the PEIR to be significant and unavoidable. Construction equipment/vehicle emissions during the dredging would result in NO_X emissions that would exceed the City-established daily emissions threshold. While adherence to San Diego APCD rules and regulations (including Mitigation Measures 4.6.1 through 4.6.3 listed below) would reduce this impact, impacts associated with this issue would remain significant and adverse because the City-established daily threshold for NO_X would be exceeded.

Mitigation Measure 4.6.1: Construction Timing. The contractor shall be required by contract specifications to ensure that dredging, treatment, and haul activities are

timed so as not to interfere with peak-hour traffic and to minimize obstruction of through traffic lanes adjacent to the site. If necessary, a flag person shall be retained by the construction supervisor to maintain safety adjacent to existing roadways. Contract specifications shall be included in the proposed Project construction documents, which shall be reviewed by the San Diego Water Board prior to the issuance of construction permits. The San Diego Water Board shall verify implementation of this measure.

Mitigation Measure 4.6.2: Transit Incentives. During dredging and dewatering activities, the contractor shall support and encourage ridesharing and transit incentives for the construction crew. These specifications shall be included in the proposed Project's construction documents, which shall be reviewed by the San Diego Water Board prior to the issuance of a construction permit.

Mitigation Measure 4.6.3: Vehicle Speed. During dredging and dewatering activities, the contractor shall ensure that on-site vehicle speed shall be limited to 15 miles per hour. Contract specifications shall be included in the proposed Project construction documents, which shall be reviewed by the San Diego Water Board prior to the issuance of construction permits. The San Diego Water Board shall verify implementation of this measure.

However, the proposed Project is an environmental cleanup project to be implemented once all necessary permits are secured. It is not possible 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, this impact remains significant and unavoidable because the City of San Diego and National City daily thresholds for NO_X would be exceeded. There are no other feasible mitigation measures that are available to offset this significant impact. This potential unavoidable significant impact is overridden as set forth in the Statement of Overriding Considerations.

The PEIR finds that the Project construction activities would also contribute to construction-related adverse cumulative air quality impacts because the San Diego Air Basin (SDAB) is presently in nonattainment for O_3, and the proposed Project, in conjunction with other planned Projects, would contribute to the existing nonattainment status for O_3. Therefore, the cumulative construction air quality impacts of the proposed Project would remain significant even after the implementation of mitigation measures identified above. This potential unavoidable significant impact is overridden as set forth in the Statement of Overriding Considerations.

LEVEL OF SIGNIFICANCE AFTER MITIGATION

This impact remains significant after application of all feasible mitigation.

3.0 STATEMENT OF OVERRIDING CONSIDERATIONS

I. INTRODUCTION

This section addresses the CSLC's obligations under Public Resources Code section 21081, subdivisions (a)(3) and (b). (See also State CEQA Guidelines, §§ 15091, subd. (a)(3), 15093.) Under these provisions, CEQA requires the CSLC to balance, as applicable, the economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the approved Shipyard Sediment Remediation Project against the backdrop of unavoidable significant environmental impacts. For purposes of CEQA, if the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable significant environmental effects, those effects may be considered acceptable and the decision making agency may approve the underlying project (State CEQA Guidelines § 15092, subd. (b)(2)(B)). CEQA, in this respect, does not prohibit the CSLC from approving the lease even if the Project activities as authorized under the lease may cause significant and unavoidable environmental effects.

This Statement of Overriding Considerations presents a list of (1) the specific significant effects on the environment attributable to the approved Project that cannot feasibly be mitigated to below a level of significance, (2) benefits derived from the approved Project, and (3) specific reasons for approving the Project.

Although the San Diego Water Board and CSLC have imposed mitigation measures to reduce impacts, impacts remain that are considered significant after application of all feasible mitigation. Significant impacts of the approved Project fall under one resource area: Air Quality (see Table 1). This impact is specifically identified and discussed in more detail in the CSLC's CEQA Findings and in San Diego Water Board's Final PEIR. While the CSLC has required all feasible mitigation measures, this impact remains significant for purposes of adopting this Statement of Overriding Considerations.

Table 1 – Significant and Unavoidable Impacts Identified for the Approved Project

Impact	Impact Description
Air Quality	
AIR 4.6.3. Construction-related Impacts to Air Quality	The proposed Shipyard Sediment Remediation Project would result in significant unavoidable construction-related adverse air quality impacts of oxides of nitrogen (NO_X) (which is a precursor to ozone [O_3]) emissions, even after the implementation of feasible standard conditions and mitigation measures. While the adherence to San Diego Air Pollution Control District (APCD) rules and regulations and identified mitigation measures would reduce this impact, it would remain significant and adverse because the City daily threshold for NO_X would be exceeded. There are no other feasible mitigation measures that are available to offset this significant impact. Construction activities for the Shipyard Sediment Remediation Project would also contribute to construction-related adverse cumulative air

Impact	Impact Description
	quality impacts because the San Diego Air Basin (SDAB) is presently in nonattainment for O_3, and the proposed Project, in conjunction with other planned Projects, would contribute to the existing nonattainment status for O_3. Therefore, the cumulative construction air quality impacts of the proposed Project would remain significant.

II. ALTERNATIVES

As explained in California Native Plant Society v. City of Santa Cruz (2009) 177 Cal.App.4th 957, 1000,

> "When it comes time to decide on project approval, the public agency's decisionmaking body evaluates whether the alternatives [analyzed in the EIR] are actually feasible…. At this final stage of project approval, the agency considers whether '[s]pecific economic, legal, social, technological, or other considerations…make infeasible the mitigation measures or alternatives identified in the environmental impact report.' Broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives" [citations omitted].

The four potentially feasible alternatives analyzed in the PEIR represent a reasonable range of potentially feasible alternatives that reduce one or more significant impacts of the Project. These alternatives include:

1) The No Project/No Development Alternative, which was identified as the environmentally superior alternative;
2) Confined Aquatic Disposal Site;
3) Convair Lagoon Confined Disposal Facility; and
4) Nearshore Confined Disposal Facility with Beneficial Reuse of Sediments.

As presented in the EIR, the alternatives were described and compared with each other and with the proposed Project.

Under CEQA Guidelines section 15126.6(e)(2), if the No Project Alternative is identified as the environmentally superior alternative, the EIR must also identify an environmentally superior alternative among the other alternatives. Based on the analysis contained in the PEIR, there is no clear environmentally superior alternative to the proposed Project that is capable of achieving the Project objective. No one alternative would eliminate the significant and adverse impacts of the proposed Project.

The San Diego Water Board independently reviewed and considered the information on alternatives provided in the PEIR and in the record. The PEIR reflects the San Diego Water Board's independent judgment as to alternatives. The San Diego Water Board found that the Project provides the best balance between the Project goals and

objectives and the Project's benefits. The four CEQA alternatives proposed and evaluated in the PEIR were rejected as being infeasible for reasons provided in the San Diego Water Board's Findings Regarding Alternatives (Attachment A).

Based upon the objectives identified in the final PEIR and the detailed mitigation measures imposed upon the Project, the CSLC has determined that the Project should be approved, subject to such mitigation measures (Exhibit C, Mitigation Monitoring Program), and that any remaining unmitigated environmental impacts attributable to the Project are outweighed by the following specific economic, fiscal, social, environmental, land use, and other overriding considerations:

- The Project will restore and protect the quality of the waters of San Diego Bay, which are currently impaired by the presence of pollutants, for use and enjoyment by the people of the state by executing a shipyard sediment cleanup Project consistent with the provisions of Tentative CAO No. R9-2012-0024.
- The Project will attain cleanup levels for contaminated sediment that result in the restoration of beneficial uses designated under the San Diego Basin Plan as included in the Tentative CAO No. R9-2012-0024 (judged to be technologically and economically feasible as defined in Cal. Code Regs, tit 23, § 2550.4, pursuant to Resolution No. 92-49).
- The Project will implement a cleanup plan that will have long-term effectiveness and restore waters that are listed as impaired under the Clean Water Act section 303(d).
- The Project will minimize the adverse effects of existing pollutants on aquatic life beneficial uses, including Estuarine Habitat, Marine Habitat, and Migration of Aquatic Organisms while restoring those beneficial uses through final implementation of the Project.
- The Project will minimize the adverse effects of existing pollutants on aquatic dependent wildlife beneficial uses, including Wildlife Habitat, Preservation of Biological Habitats of Special Significance, and Rare, Threatened, or Endangered Species while restoring those beneficial uses through final implementation of the Project.
- The Project will minimize the adverse effects of existing pollutants on human health beneficial uses, including Shellfish Harvesting and Commercial and Sport Fishing while restoring those beneficial uses through final implementation of the Project.
- The Project will result in the removal of a substantial mass of pollutants, including PCBs, HPAHs, tributyltin, copper, mercury and other metals from the environment.
- The implementation of the Project and Tentative CAO R9-2012-0024 are highly important to the protection of not only benthic invertebrates, fish and wildlife, but also for human health. In the absence of implementation of Tentative CAO R9-

2012-0024, designated aquatic life, aquatic-dependent wildlife, and human health beneficial uses would continue to be impaired.

- The Project will result in long-term benefits to human health and the environment by removing pollutants from the site, while the identified significant unavoidable impacts are temporary and expected to occur only for the duration of the cleanup activities.
- To the extent that Tentative CAO R9-2012-0024 and this decision do not fully mitigate the adverse effects of the Project, as discussed above, the San Diego Water Board and CSLC find that overriding considerations of the greater public interest requires this action. Implementing the Project objective is in the greater public interest. The environmental, economic, and social benefits of implementing Tentative CAO R9-2012-0024 outweigh the potential adverse environmental effects that are not avoided or fully mitigated.

III. CONCLUSION

The CSLC has considered the final PEIR and all of the environmental impacts described therein including those that cannot be mitigated to a less than significant level and those that may affect Public Trust uses of State sovereign lands. The CSLC has considered the fiscal, economic, legal, social, environmental, and public health and safety benefits of the Project and has balanced them against the Project's unavoidable and unmitigated adverse environmental impacts and, based upon substantial evidence in the record, has determined that the benefits of the Project outweigh the adverse environmental effects. Based on the foregoing and pursuant to Public Resources Code section 21081 and State CEQA Guidelines sections 15096 subdivision (h) and 15093, the CSLC finds that the remaining significant unavoidable impacts of the Project are acceptable in light of the economic, fiscal, social, environmental, and public health and safety benefits of the Project. Such benefits outweigh such significant and unavoidable impacts of the Project and provide the substantive and legal basis for this Statement of Overriding Considerations.

The CSLC finds that to the extent that any impacts identified in the final PEIR remain unmitigated, mitigation measures have been required to the extent feasible, although the impacts could not be reduced to a less than significant level.

Based on the above discussion, the CSLC finds that the benefits of the Project outweigh the significant unavoidable impacts that could remain after mitigation is applied and considers such impacts acceptable.

ATTACHMENT A

SAN DIEGO WATER BOARD FINDINGS REGARDING ALTERNATIVES AND STATEMENT OF OVERRIDING CONSIDERATIONS

Findings Regarding Alternatives

27. The San Diego Water Board finds that specific economic, social, environmental, technological, legal, and/or other considerations make infeasible the alternatives to the Project as described in the EIR despite remaining impacts, as more fully set forth in the Statement of Overriding Considerations below. The only remaining significant unavoidable impacts of the Project that cannot be fully mitigated through the mitigation measures and standard conditions described in the EIR are impacts to air quality associated with Project construction.

28. The EIR evaluated a reasonable range of alternatives to the original Project that was described in the Draft Program EIR. The Draft Program EIR identified eight alternatives to the proposed Project. The San Diego Water Board adopts the EIR's analysis and conclusions eliminating an alternative site from further consideration.

29. The four potentially feasible alternatives analyzed in the EIR represent a reasonable range of potentially feasible alternatives that reduce one or more significant impacts of the Project. These alternatives include: (1) No Project/No Development Alternative; (2) Confined Aquatic Disposal Site; (3) Convair Lagoon Confined Disposal Facility; and (4) Nearshore Confined Disposal Facility with Beneficial Reuse of Sediments. As presented in the EIR, the alternatives were described and compared with each other and with the proposed Project. The No Project Alternative was identified as the environmentally superior alternative. Under CEQA Guidelines section 15126.6(e)(2), if the No Project Alternative is identified as the environmentally superior alternative, the EIR must also identify an environmentally superior alternative among the other alternatives. Based on the analysis contained in the EIR, there is no clear Environmentally Superior Alternative to the proposed Project that is capable of achieving the Project objective. No one alternative would eliminate the significant and adverse impacts of the proposed Project.

30. The San Diego Water Board certifies that it has independently reviewed and considered the information on alternatives provided in the EIR and in the record. The EIR reflects the San Diego Water Board's independent judgment as to alternatives. The San Diego Water Board finds that the Project provides the best balance between the Project goals and objectives and the Project's benefits as described below in the Statement of Overriding Considerations. The four CEQA alternatives proposed and evaluated in the EIR are rejected for the following reasons. Each individual reason presented below constitutes a separate and independent basis to reject the Project alternative as being infeasible, and, when the reasons are viewed collectively, provide an overall basis for rejecting the alternative as being infeasible.

31. No Project/No Development Alternative: Under the No Project/No Development Alternative, the Project would not be undertaken and the site would remain in its current condition with the contaminated sediment remaining and the condition of pollution and/or nuisance persisting in San Diego Bay. This alternative would avoid all of the Projects potentially significant and mitigable impacts, as well as the significant and unavoidable impacts. This alternative is rejected as infeasible because:
    a. It would not attain the cleanup levels and would not remediate areas as identified in the Tentative CAO because the Tentative CAO would not be implemented. Therefore, the No Project/No Development alternative would not protect the quality of the waters of San Diego Bay for the use and enjoyment by the people of the state and it is not capable of achieving the Project objective;
    b. It would not reduce or minimize adverse effects to aquatic life beneficial uses, aquatic-dependent wildlife beneficial uses, or human health beneficial uses because the contaminated sediments would remain in place and the condition of pollution and/or nuisance would persist;
    c. It would not implement a cleanup plan and would not realize any long-term public benefits associated with the cleanup of the contaminated marine sediments;
    d. The site would continue to constitute a public nuisance by being injurious to human health obstructing the free use of property, and interfering with the comfortable enjoyment of life and property.
    e. Because there is no construction or dredging activity associated with the No Project/No Development alternative, the alternative would not result in any long-term or short-term loss of use of shipyard and other San Diego Bay dependent facilities; however, the nuisance and public health effects of the contaminated sediments would continue to have a negative impact on San Diego Bay-dependent facilities and beneficial uses.

32. Confined Aquatic Disposal Site (CAD): Under the CAD alternative the contaminated sediments would be dredged and deposited in a constructed CAD facility at a yet to be determined location. A CAD facility is a submerged containment area where dredged material is placed. This alternative would reduce some potentially significant impacts, but would not avoid or reduce the significant unavoidable impacts. This alternative would also increase some potentially significant impacts, thus requiring additional mitigation measures. This alternative was rejected as infeasible because:
    a. It would increase air quality emissions associated with dredging activities due to the need for additional construction vessels and equipment to remove and dispose of the additional sediment associated with constructing the CAD facility itself.
    b. It would slightly increase the potentially significant marine biological impacts in the area where the CAD facility would be constructed, requiring additional mitigation measures.
    c. It would increase the potential water quality impacts in the area where the CAD facility would be constructed, which would require additional mitigation measures and permitting.

d. It includes additional unidentified areas within San Diego Bay waters that would be disturbed due to the construction and filling of the CAD facility.
e. It would require monitoring of the CAP for a significant time period to ensure the stability of the CAD, and its success in sequestering the contaminants.
f. It could have greater impacts if the CAD facility did not effectively sequester underlying contaminants and the marine biological community did not reestablish itself.

33. Convair Lagoon Confined Disposal Facility (Convair CDF): Under the Convair CDF alternative the contaminated sediments would be dredged and deposited in a created nearshore CDF at Convair Lagoon in the northern portion of San Diego Bay. A CDF is an engineered structure consisting of dikes or other retaining structures that extend above any adjacent water surface and enclose a disposal area for containment of dredged material, thereby isolating the dredged material from adjacent waters or land. A nearshore CDF typically creates new shoreline. This alternative would reduce some potentially significant impacts, but would not avoid or reduce the significant unavoidable impacts. This alternative would also significantly increase some potentially significant impacts, thus requiring additional mitigation measures. This alternative was rejected as infeasible because:
    a. It would increase air quality emissions associated with dredging activities (due to construction vessels and equipment) due to the removal and construction activities associated with the building of the CDF. These air quality impacts would remain a significant adverse impact.
    b. It would increase the potentially significant traffic impacts due to CDF construction, requiring additional mitigation measures.
    c. It would significantly increase the potential marine biological impacts due to CDF construction, which would require significantly more mitigation measures.
    d. It would increase the potential water quality impacts, which would require additional mitigation measures and permitting.
    e. It would require monitoring of the CDF for a significant time period to ensure the stability of the CDF, and its success in sequestering the contaminants.
    f. It could have greater impacts if the CDF facility did not effectively sequester underlying contaminants.

34. Nearshore Confined Disposal Facility with Beneficial Reuse of Sediments (Nearshore CDF): This alternative is similar to the Convair CDF Alternative in that it would create a nearshore CDF. However, this alternative includes the beneficial use of placing the contaminated sediment as cover for areas under existing piers that cannot be dredged. The placed sediment would be contained by sheet pile walls on both sides. The area under the piers that cannot be dredged is not large enough to contain all of the contaminated sediment; consequently, landfill disposal will be necessary for the excess. This alternative would reduce some potentially significant impacts from traffic, hazards and noise, but would not avoid or reduce the significant unavoidable impacts. This alternative would also increase some potentially significant impacts, requiring additional mitigation measures. This alternative was rejected as infeasible because:

a. It would increase air quality emissions associated with dredging activities (due to construction vessels and equipment) due to the removal and construction activities associated with the building of the CDF. These air quality impacts would remain a significant adverse impact.
b. t would increase the potential marine biological impacts due to CDF construction, which would require additional mitigation measures.
c. t would increase the potential water quality impacts, which would require additional mitigation measures and permitting.
d. It would require monitoring of the CDF for a significant time period to ensure the stability of the CDF, and its success in sequestering the contaminants.
e. It could have greater impacts if the CDF facility did not effectively sequester underlying contaminants.

35. Comments received on the Draft and proposed Final Program EIR suggested the San Diego Water Board should consider monitored natural attenuation as an alternative to the Project. The San Diego Water Board, in accordance with CEQA Guidelines at 15126.6(a), considered a reasonable rage of alternatives to the proposed Project, or 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. Monitored natural attenuation was not considered as an alternative to the Project, as monitored natural attenuation fails to achieve the majority of the Project objectives, as identified in the Final Program EIR.

Statement of Overriding Considerations

The proposed Shipyard Sediment Remediation Project would result in significant unavoidable construction-related adverse air quality impacts of oxides of nitrogen (NO_X) (which is a precursor to ozone [O_3]) emissions, even after the implementation of feasible standard conditions and mitigation measures. While the adherence to San Diego Air Pollution Control District (APCD) rules and regulations and identified mitigation measures would reduce this impact, it would remain significant and adverse because the City daily threshold for NO_X would be exceeded. There are no other feasible mitigation measures that are available to offset this significant impact.

Construction activities for the Shipyard Sediment Remediation Project would also contribute to construction-related adverse cumulative air quality impacts because the San Diego Air Basin (SDAB) is presently in nonattainment for O_3, and the proposed Project, in conjunction with other planned Projects, would contribute to the existing nonattainment status for O_3. Therefore, the cumulative construction air quality impacts of the proposed Project would remain significant.

36. The San Diego Water Board finds that each of the specific economic, legal, social, technological, environmental, or other considerations and the benefits of the Project separately and independently outweigh these remaining significant, adverse impacts and is an overriding consideration independently warranting approval. The remaining significant adverse impacts identified above are acceptable in light of each of these overriding considerations.

37. The Project will restore and protect the quality of the waters of San Diego Bay, which are currently impaired by the presence of pollutants, for use and enjoyment by the people of the state by executing a shipyard sediment cleanup Project consistent with the provisions of Tentative CAO No. R9-2012-0024.

38. The Project will attain cleanup levels for contaminated sediment that result in the restoration of beneficial uses designated under the San Diego Basin Plan as included in the Tentative CAO No. R9-2012-0024 (judged to be technologically and economically feasible as defined in section 2550.4 of CCR Title 23, pursuant to Resolution No. 92-49).

39. The Project will implement a cleanup plan that will have long-term effectiveness and restore waters 303(d) listed as impaired under the Clean Water Act.

40. The Project will minimize the adverse effects of existing pollutants on aquatic life beneficial uses, including Estuarine Habitat (EST), Marine Habitat (MAR), and Migration of Aquatic Organisms (MIGR) while restoring those beneficial uses through final implementation of the Project.

41. The Project will minimize the adverse effects of existing pollutants on aquatic dependent wildlife beneficial uses, including Wildlife Habitat (WILD), Preservation of Biological Habitats of Special Significance (BIOL), and Rare, Threatened, or Endangered Species (RARE) while restoring those beneficial uses through final implementation of the Project.

42. The Project will minimize the adverse effects of existing pollutants on human health beneficial uses, including Shellfish Harvesting (SHELL), and Commercial and Sport Fishing (COMM) while restoring those beneficial uses through final implementation of the Project.

43. The Project will result in the removal of a substantial mass of pollutants, including PCBs, HPAHs, tributyltin, copper, mercury and other metals from the environment.

44. The San Diego Water Board finds that the benefits to beneficial uses in San Diego Bay from implementation of Tentative CAO R9-2012-0024 are highly important to the protection of not only benthic invertebrates, fish and wildlife, but also for human health. In the absence of implementation of Tentative CAO R9-2012-0024, designated aquatic life, aquatic-dependent wildlife, and human health beneficial uses would continue to be impaired. The Project will result in long term benefits to human health and the environment by removing pollutants from the site, while the identified significant unavoidable impacts are temporary and expected to occur only for the duration of the cleanup activities. To the extent that Tentative CAO R9-2012-0024 and this decision does not fully mitigate the adverse effects of the Project, as discussed above, the San Diego Water Board finds that overriding considerations of the greater public interest requires this action. Implementing the Project objective is in the greater public interest. The environmental, economic, and social benefits of implementing Tentative CAO R9-2012-0024 outweigh the potential adverse environmental effects that are not avoided or fully mitigated.