

## **RESOLUTION 2013-124**

**RESOLUTION                    CONSIDERING                    FINAL  
ENVIRONMENTAL IMPACT REPORT PREPARED  
BY CALIFORNIA REGIONAL WATER QUALITY  
CONTROL BOARD, ADOPTING FINDINGS OF  
FACT AND STATEMENT OF OVERRIDING  
CONSIDERATIONS, ADOPTING MITIGATION  
MONITORING AND REPORTING PROGRAM, AND  
AUTHORIZING FILING OF NOTICE OF  
DETERMINATION FOR SAN DIEGO SHIPYARD  
SEDIMENT REMEDIATION PROJECT – SOUTH  
SHIPYARD**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

**WHEREAS**, on March 14, 2012, the California Regional Water Quality Control Board, San Diego Region (Water Board) released Tentative Cleanup and Abatement Order (CAO) No. R9-2012-0024, which identified elevated levels of pollutants in the bottom marine sediment along the eastern shore of central San Diego Bay extending approximately from the Sampson Street extension to the northwest and Chollas Creek to the southeast, and from the shoreline out to the San Diego Bay main shipping channel to the west (Shipyard Sediment Site) and which required dischargers that caused or permitted the discharge of waste to the Shipyard Sediment Site to remediate marine sediment within the Shipyard Sediment Site that was determined to have pollutant levels likely to adversely affect the health of the benthic community within the San Diego Bay; and

**WHEREAS**, the San Diego Shipyard Sediment Remediation Project – South Shipyard (Proposed Project) has been proposed to comply with the requirements of CAO No. R9-2012-0024, and includes the dredging of approximately 52,600 cubic yards (cy), an estimated 2,600 cy of debris, or application of approximately 5,500 cy of clean sand/gravel over contaminated sediment in areas that are inaccessible; the transportation, dewatering, stockpiling, and testing of dredge materials and effluent (water) at a landside sediment management area to be located on an approximately 2.5-acre site situated on an adjacent parcel to the National Steel and Shipbuilding Company (NASSCO) leasehold just north of Chollas Creek known as the S-Lane Parcel; the treatment (if needed) and discharge of the effluent; the truck transport of dredge materials to appropriate landfill disposal facilities; and, once dredging activities are completed, the placement of approximately 7,800 tons of quarry rock on slopes adjacent to existing bulkheads and piers to protect those

structures; and the removal of an existing wooden pier; and

**WHEREAS**, NASSCO was named in the CAO as a discharger that caused or permitted the discharge of waste to the Shipyard Sediment Site resulting in the accumulation of waste in the marine sediment; and

**WHEREAS**, NASSCO has a lease with the District to operate and maintain a shipyard at the foot of 28th Street, San Diego, comprised of 81 acres of land area and 47 acres of water area, where it provides new construction and repair services for military and commercial contracts; and

**WHEREAS**, the Proposed Project complies with all District policies and requirements, including NASSCO's lease provisions, and will allow NASSCO to comply with the CAO issued by the Water Board and to continue operating into the future; and

**WHEREAS**, the Proposed Project is located within the Harbor Drive Industrial subarea of Planning District 4, Tenth Avenue Marine Terminal, which is delineated on Precise Plan Map Figure 13 of the Port Master Plan (PMP), and the PMP land and water use designations within the limits of the site are Marine Related Industrial and Specialized Berthing; and

**WHEREAS**, the Port District is the trustee of said tidelands where the Proposed Project will be constructed; and

**WHEREAS**, the Proposed Project conforms to the certified PMP and facilitates the land use designations of Marine Related Industrial and Specialized Berthing by remediating contaminated sediments located within the San Diego Bay and will not change the uses of the site nor will it expand the existing conforming uses of the site; and

**WHEREAS**, in accordance with the California Environmental Quality Act (CEQA), the Water Board, as lead agency, prepared an Environmental Impact Report for the Shipyard Sediment Remediation Project, SCH No. 2009111098 (EIR) as required by law; and

**WHEREAS**, on March 14, 2012, the Water Board adopted Resolution No. R9-2012-0025 which certified the Final EIR as adequate and complete under CEQA and adopted Findings of Fact, a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program (MMRP) as required by law; and

**WHEREAS**, the named dischargers prepared and submitted a Remedial Action Plan (RAP) generally describing implementation of the Proposed Project at the Shipyard Sediment Site; and

**WHEREAS**, pursuant to Section 15168(e) of the State CEQA Guidelines, 14 California Code of Regulations Section 15000, et seq. (CEQA Guidelines), the Water Board found the RAP to be within the scope of the Final EIR, and pursuant to CEQA Guidelines Section 15168(c), found that implementation of the RAP would not cause environmental effects that were not analyzed in the Final EIR, or require any new mitigation measures, and pursuant to CEQA Guidelines Section 15164(e), concluded that a supplemental or subsequent EIR or other CEQA document was not required for approval of the RAP; and

**WHEREAS**, pursuant to Public Resources Code Section 21069 and Section 15381 of the CEQA Guidelines, the Port District is a responsible agency under CEQA because the Proposed Project requires a Coastal Development Permit (CDP) under the California Coastal Act and the Port District is the public agency which has discretionary approval power over the Proposed Project with respect to issuance of a CDP; and

**WHEREAS**, the Clerk of the Board has caused notice to be duly given of a public hearing in this matter in accordance with law, as evidenced by the affidavit of publication and affidavit of mailing on file with the Clerk of the Board; and

**WHEREAS**, all materials with regard to this Project were made available to the Board for its review and consideration of the Proposed Project including, but not limited to, the following:

1. The Final EIR certified by the Water Board on March 14, 2012;
2. The Findings of Fact and Statement of Overriding Considerations adopted by the Water Board on March 14, 2012;
3. The MMRP adopted by the Water Board on March 14, 2012;
4. The Water Board's post-certification documents, including the following: Post Remedial Monitoring Plan (PRMP) notice, RAP notice, PRMP, RAP, approval of discharger requests for extension of time to submit RAP, revised notice of availability of RAP, modified RAP, amended PRMP, amended RAP, status report on RAP and CEQA compliance, request for CEQA compliance status, CEQA notice regarding RAP, and RAP acceptance and CEQA compliance;
5. The Staff Report and Agenda Sheet, dated July 16, 2013; and
6. All documents and records filed in this proceeding by interested parties.

**WHEREAS**, a duly noticed public hearing was held on July 16, 2013, before the Board, at which the Board received public testimony and reviewed and

considered all testimony and materials made available to the Board regarding the Proposed Project; and

WHEREAS, having reviewed and considered all testimony and materials made available to the Board, including but not limited to the Final EIR, Findings of Fact and Statement of Overriding Considerations, MMRP, the staff reports and all the testimony and evidence in the record of the proceedings with respect to the Proposed Project, the Board took the actions hereinafter set forth.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

1. The Board finds the facts recited above are true and further finds that this Board has jurisdiction to consider, approve and adopt the subject of this Resolution.

2. The Board finds and determines that the applicable provisions of CEQA, the State CEQA Guidelines, and the Port District Guidelines have been duly observed in conjunction with said hearing and the considerations of this matter and all of the previous proceedings related thereto.

3. Pursuant to CEQA Guidelines Section 15096(a) and (f), the Board finds and determines that (a) the Final EIR prepared and certified by the Water Board has been presented to the Board, (b) the Board has fully reviewed and considered the Final EIR and the environmental effects of the Proposed Project as shown in the Final EIR prior to making a decision whether to approve the Proposed Project, and (c) the Board has reached its own conclusions on whether and how to approve the Proposed Project.

4. Pursuant to CEQA Guidelines Sections 15168(e), 15168(c), and 15164(e), the Board finds the Proposed Project to be within the scope of the Final EIR, finds that implementation of the Proposed Project would not cause environmental effects that were not analyzed in the Final EIR, or require any new mitigation measures, and finds that a supplemental or subsequent EIR or other CEQA document is not required for approval of the Proposed Project.

5. Pursuant to Public Resources Code Section 21081.6 and CEQA Guidelines Sections 15091(d) and 15096(g), the Board hereby adopts and approves the MMRP adopted by the Water Board, which is appended hereto as Exhibit "A" and is made a part hereof by this reference, with respect to the significant environmental effects identified in the Final EIR, and hereby makes and adopts the provisions of the MMRP as conditions of approval for the Proposed Project.

6. Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15096(h), the Board hereby makes and adopts as its own

the findings with respect to each significant environmental effect identified in the Final EIR as set forth in the Water Board's CEQA Findings of Fact, appended hereto as Exhibit "B" and made a part hereof by this reference, and declares that it considered the evidence described in connection with each such finding.

7. The Proposed Project is approved despite the existence of certain unavoidable significant environmental effects identified in the Final EIR and, pursuant to Public Resources Code Section 21081(b) and CEQA Guidelines Sections 15093 and 15096(h), the Board hereby makes and adopts as its own the Statement of Overriding Considerations as set forth by the Water Board, appended hereto as Pages 58 and 59 of Exhibit "B" and made a part hereof by this reference, and finds that such effects are considered acceptable because the benefits of the Proposed Project outweigh the unavoidable environmental effects.

8. Based on the absence of evidence in the record of these proceedings as required by Public Resources Code Section 21082.2 for the purpose of documenting significant effects on the environment, the Board finds the Proposed Project will have impacts below the level of significance with regard to wildlife resources and, therefore, is hereby granted a "*de minimis*" exception in accordance with Fish and Wildlife Code Section 711. Additionally, the assumption of adverse effect is rebutted on the basis of the above referenced absence of evidence in the record.

9. Pursuant to Public Resources Code Section 21152 and CEQA Guidelines Sections 15094 and 15096(i), the Clerk of the Board shall cause a Notice of Determination to be filed with the Clerk of the County of San Diego and the State Office of Planning and Research. Unless the Proposed Project is declared exempt herein and a Certificate of Filing Fee Exemption is on file, the Proposed Project is not operative, vested or final until the filing fees required pursuant to Fish and Game Code Section 711.4 are paid to the Clerk of the County of San Diego.

10. Pursuant to Public Resources Code Section 21081.6(a)(2) and CEQA Guidelines Section 15091(e), the location and custodian of the documents and other materials which constitute the record of proceedings on which this Resolution is based is the Clerk, San Diego Unified Port District, 3165 Pacific Highway, San Diego, California 92101.

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 16th day of July, 2013, by the following vote:

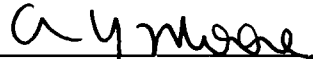
AYES: Castellanos, Malcolm, Merrifield, Moore, Smith, Valderrama

NAYS: None.

EXCUSED: Nelson.

ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair  
Board of Port Commissioners

ATTEST:



Laura Nicholson  
Deputy District Clerk

(Seal)