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Secretary for  
Environmental Protection



## Department of Toxic Substances Control

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Arnold Schwarzenegger  
Governor

February 20, 2007

### ACTION MEMORANDUM / INTERIM REMEDIAL ACTION PLAN: NON-TIME CRITICAL REMOVAL ACTION FOR SOLID WASTE DISPOSAL AREAS, INSTALLATION RESTORATION SITE 12, OLD BUNK AREA, NAVAL STATION TREASURE ISLAND, SAN FRANCISCO, CALIFORNIA

#### To Distribution List Recipients:

The Department of Toxic Substances Control (DTSC) is making a decision on the *Action Memorandum / Interim Remedial Action Plan: Non-Time Critical Removal Action for Solid Waste Disposal Areas, Installation Restoration Site 12, Old Bunker Area, Naval Station Treasure Island, San Francisco, California* (AM/IRAP). The AM/IRAP is a decision document for upper four feet of soils at four solid waste disposal areas (SWDA) (i.e., SWDA A&B, SWDA 1207/1209, SWDA 1231/1233, and SWDA Bigelow Court) within Installation Restoration Site 12 at the former Naval Station Treasure Island. The AM/IRAP selects excavation and off-site disposal of contaminated soil at permitted disposal facilities.

DTSC provided a 34-day public comment period on the draft AM/IRAP and draft Negative Declaration. DTSC opened the comment period on December 27, 2006, convened a public meeting on January 17, 2007, and closed the comment period on January 29, 2007.

On December 22, 2006, DTSC mailed the AM/IRAP fact sheet to people on the project mailing list. The project mailing list consists of approximately 1,300 addresses, which include recipients from the DTSC Mandatory Mailing List, elected and city officials, government agencies, community groups, Restoration Advisory Board members, and neighboring residences.

On December 27, 2006, DTSC published a public notice as display advertisement on the San Francisco Chronicle announcing the public comment period and inviting comments on the draft AM/IRAP and draft Negative Declaration. Both the public notice and fact sheet include written Spanish statements that a Spanish speaking DTSC staff person is available to answer questions.

Distribution List Recipients  
February 20, 2007  
Page 2

DTSC placed copies of the draft AM/IRAP and draft Negative Declaration at three information repositories: San Francisco public main library, the Navy's Treasure Island office, and DTSC's Berkeley office. In addition, the draft documents were available for download at DTSC's website.

On January 17, 2007, DTSC held a public meeting at the Casa de la Vista on Treasure Island. During the public meeting, DTSC presented the proposed remedy and offered opportunity for public inputs.

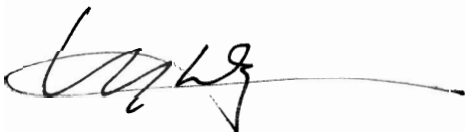
DTSC received verbal and written comments on the draft AM/IRAP and draft Negative Declaration during the 34-day public comment period. This letter transmits the Responsiveness Summary, which contains DTSC's and the Navy's responses to the comments on the drafts documents. The Responsiveness Summary becomes Attachment 6 of the final AM/IRAP.

DTSC approved the Negative Declaration on February 15, 2007. DTSC and the Navy approved the AM/IRAP on the same day. The approved AM/IRAP and Negative Declaration are placed at the information repositories identified in this letter.

In February 2007, the Navy will implement cleanup activities at SWDA A&B, SWDA 1207/1209, and SWDA 1231/1233 at Site 12.

If you have any questions, please contact me at (510) 540-3770

Sincerely,

A handwritten signature in black ink, appearing to read 'Henry Wong', with a long horizontal line extending to the right.

Henry Wong  
Remedial Project Manager  
Office of Military Facilities

Enclosure

Distribution List Recipients  
February 20, 2007  
Page 3

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Distribution List Recipients  
February 20, 2007  
Page 4

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Distribution List Recipients  
February 20, 2007  
Page 5

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## RESPONSIVENESS SUMMARY

**THE U.S. DEPARTMENT OF THE NAVY'S AND DEPARTMENT OF TOXIC SUBSTANCES CONTROL'S RESPONSIVENESS SUMMARY ON THE "DRAFT ACTION MEMORANDUM/INTERIM REMEDIAL ACTION PLAN: NON-TIME-CRITICAL REMOVAL ACTION FOR SOLID WASTE DISPOSAL AREAS, INSTALLATION RESTORATION SITE 12, OLD BUNKER AREA, NAVAL STATION TREASURE ISLAND, SAN FRANCISCO, CALIFORNIA," AND THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL'S RESPONSIVENESS SUMMARY ON THE "DRAFT NEGATIVE DECLARATION"**

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This document presents the U.S. Department of the Navy's (DoN) and Department of Toxic Substances Control's (DTSC) responses to comments from the public on the "Draft Action Memorandum [AM]/Interim Remedial Action Plan [IRAP]: Non-Time-Critical Removal Action [NTCRA] for Solid Waste Disposal Areas [SWDA], Installation Restoration [IR] Site 12, Old Bunker Area, Naval Station Treasure Island [NAVSTA TI], San Francisco, California," dated December 27, 2006. Additionally, this document presents DTSC's response to comments from the Department of Transportation and from the public on the "Draft Negative Declaration" issued on December 27, 2006 for the AM/IRAP. This Responsiveness Summary also includes responses to verbal comments provided during the January 17, 2007 public meeting.

**DoN's AND DTSC's RESPONSES TO COMMENTS SUBMITTED BY THE PUBLIC ON THE DRAFT AM/IRAP**

The DoN and DTSC received email comments regarding access to the unimproved boat ramp and adjacent parking lot at the northeastern portion of the island from the following members of the public:

- James McGrath on January 16, 2007
- Paul Kamen on January 17, 2007
- Diane Younger on January 18, 2007
- John D. Kim on January 19, 2007
- Peter Thorner on January 19 and 26, 2007
- Thorsten J. Pray on January 19 and 26, 2007
- Steve Elliott on January 25, 2007
- D. Damis on January 25, 2007
- John C. Brown on January 25, 2007
- John Rushworth on January 25, 2007
- Bob Stevens on January 26, 2007
- Steve Grasso on January 28, 2007
- John Schmuker on January 28, 2007
- Ron Adler on January 29, 2007

## **DoN's AND DTSC's RESPONSES TO COMMENTS SUBMITTED BY THE PUBLIC ON THE DRAFT AM/IRAP (CONTINUED)**

Additionally, during the January 17, 2007 public meeting, the following members of the public made comments regarding access to the unimproved boat ramp and adjacent parking lot:

- James McGrath
- Enrique Benede
- Robert Stroud
- Chris Apicella
- Bradley Johnson
- Taylor Stein
- Bill McCurdy
- Manolis Dimotakis
- Hardy Chambliss
- Diane Portnoy
- John Schmucker
- Timothy Thole

The DoN and DTSC have used Peter Thorner's comments (submitted on January 19 and January 26, 2007, email) to be representative of all the comments (email and in person) received from the people mentioned above regarding recreational access for boardsailing. The DoN's and DTSC's responses to these comments are presented below.

## Responses to Comments from Peter Thorner, President of the San Francisco Boardsailing Association (Comments Received on January 19 and 26, 2007)

1. **Comment:** The San Francisco Boardsailing Association (SFBA) is a 1,600-member non-profit organization that promotes public access and safety for the windsurfing and boardsailing community.

Following a review of the above referenced Draft Action Plan / Interim Remediation Action Plan (AM/IRAP) and draft Negative Declaration pursuant to California Environmental Quality Act (CEQA) (Negative Declaration) it has become clear that the proposed action will have a significant environmental impact, specifically to the recreational activity of windsurfing at Treasure Island (TI). The actions called for under the AM/IRAP would effectively shut down windsurfing at TI by eliminating the parking area used by windsurfers and by blocking access to the launch areas that allow windsurfers to reach the water. The majority of these areas do not lie within the remediation area, but the parties who developed the remediation plan found it convenient to use these areas for loading, storage or staging. It is SFBA's hope that the AM/IRAP can be modified to eliminate the significant impact to recreation by finding other areas that can be used for loading, storage and staging.

**Response:** The recreational activity of windsurfing and boardsailing at Treasure Island is an ad hoc activity undertaken without any invitation from the Navy, and without any permits, licenses, or other use agreements. The DoN has coordinated the planning of the proposed removal action with the Treasure Island Development Authority (TIDA) to minimize potential conflicts between the necessary remediation of environmental contamination and the use of Treasure Island property by the residents of leased premises. Through this planning effort, the DoN has determined that certain areas outside the remediation area will be secured and used for loading, storage, or staging. These plans require that access to the parking lot and boat ramp be restricted for the duration of the removal action to help expedite the performance of the work, while minimizing effects to Treasure Island residents. For a temporary period, the requirement to conduct a cleanup action to remove hazardous substances from the environment to protect the health and safety of residents and to accommodate future reuse and development of Treasure Island must take precedence over the informal recreational access of the windsurfing and boardsailing community.

Many factors were evaluated when looking at the different work areas and potential staging areas before deciding on a final location. These factors included first and foremost, health and safety to surrounding residents, areas that would allow for heavy equipment and easy loading of trucks, the effect to traffic on the island, the topography and current conditions of

## Responses to Comments from Peter Thorner (Continued)

each area, and security. Based on these factors, it was determined that the areas shown on the "Truck Staging and Route Map" (Figure 5 of the AM/IRAP) were the best locations for work to occur that would not adversely affect the health and safety of the residents on the island.

### 2. Comment: Location of Recreational Impacts

An exhibit to both the AM/IRAP and the Negative Declaration entitled 'Figure 5 - Truck Staging and Route Map' shows an area on the map of TI that is shaded orange. The key on the exhibit identifies the area shaded in orange as a "truck loading area for debris area." The location in question appears to be identified on the 'Site Location Map' as area T109. The area shaded in orange/mustard is known as the boat ramp parking lot to recreational users of the bay including windsurfers, kayakers, and fishermen. Windsurfers and others park in this lot in order to have access to the waters of the San Francisco Bay.



Excerpt - Truck Staging and Route Map



Excerpt - Site Location Map

Windsurfers use an unimproved launch on the north side of the boat ramp parking lot that is approximately 50' east of the abandoned transformer pad (Launch 1) and the boat ramp (Launch 2) for launching and landing. In addition, many windsurfers have traditionally rigged their equipment on the dry grassy area behind building 1235 and 1237 (Rigging Area). The Rigging Area lies within the east end of clean up area SWDA 1231/1233. A number of years ago, TIDA staff had a portion of the fence removed between the Rigging Area and the perimeter road so that windsurfers could carry their rigged gear to the boat ramp without impediment. The various sites mentioned are delineated in Figure 1 below.

## Responses to Comments from Peter Thorner (Continued)



**Figure 1 - Windsurfing Use Areas at Treasure Island**

Also visible in Figure 1 is a portable toilet that is located along the west side of the parking area. SFBA has covered the cost of placing a portable toilet on site during the season because of the popularity of the site. During the last windsurfing season, this was the only unimproved site where SFBA chose to incur the expense of providing a portable toilet.

**Response:** The recreational use of Navy property by windsurfers and boardsailors is an ad hoc activity undertaken without any invitation from the DoN, and without any permits, licenses, or use agreements. The DoN and DTSC understand that boardsailing and kayaking are recognized future potential uses; however, such future potential use of the property should be distinguished from the current circumstances that must be addressed prior to property transfer and redevelopment. Currently the Navy property that is the area of concern for the boardsailing and kayaking community is not a recognized recreational resource.

**3. Comment: WINDSURFING USE AT TREASURE ISLAND**

**Treasure Island is a significant regional resource for the windsurfing community. The site in question has been used continuously by windsurfers more than 10 years. Treasure Island has been growing in popularity and importance as a windsurfing spot as windsurfers have learned that there are many days when the wind conditions at Treasure Island are ideal even though the wind at most other sites is too light for most windsurfers. During weekends when the wind conditions are ideal it is normal for the boat ramp parking lot to be nearly full with the vehicles of windsurfers with peak vehicle counts at**

## Responses to Comments from Peter Thorner (Continued)

or above 60 and peak users at or above 65-70. There are some days when the wind conditions at TI are ideal for most users and the wind conditions at other regional sites such as Crissy Field or Berkeley are not sufficient to justify launching. Most of the users of Treasure Island primarily use boards and sails that are designed for high wind conditions. This equipment may not provide the power or flotation to allow for use in light winds. Launching at Treasure Island enables many windsurfers to safely access the waters that lie between Treasure Island, Angel Island, and Alcatraz. The launch at Treasure Island has been used to stage races and the sailing site is also used by professional windsurfers as a site to train for national and international competition.

In light of the exceptional windsurfing access at the north end of Treasure Island, the area is recognized by the Bay Conservation and Development Commission (BCDC) as location where access for windsurfing and other bay users shall be provided. Bay Plan Map 4, as approved by BCDC, identifies the north end of TI as a location where there shall be the provision of “parking and water access for users of small watercraft.” While the San Francisco Bay now has over 200 miles of publicly accessible shoreline, there less than a dozen sites along those shores where facilities and site conditions allow for the kind of superior access that can frequently attract large numbers of windsurfers (peak use of 50 or more). The site has also been designated as a location for the provision of windsurfing access in the conceptual redevelopment plans prepared by Treasure Island Community Development (TICD). The conceptual plan prepared by TICD also anticipate that there will be a second windsurf access point to the west of the boat ramp in the future, but access in that area is currently infeasible due to the lack of parking, lack of a means to get the equipment to the shoreline, and the lack of any ramp or walkway that would allow one to safely cross the rip rap to the waterline. Access on the west side of the island is infeasible because winds blowing directly or almost directly on shore push launching windsurfers back into the rip rap. Access on the east or south side of the island is infeasible due to lack of sufficient wind.

**Response:** The DoN and DTSC understand that access for boardsailing is a recognized future potential use of portions of Treasure Island. The DoN and DTSC acknowledge that the Bay Conservation and Development Commission and the Treasure Island Community Development plans designate this area for future use as a boardsailing access point. However, the site currently is not designated for recreational use.

## Responses to Comments from Peter Thorner (Continued)

4. Comment: ALTERNATIVES TO AVOID IMPACTS

(1) Relocating the "truck loading area for debris area" and maintaining vehicular access to the boat ramp parking lot could preserve access with nominal impact. The loss of the rigging area that lies in or near SWDA 1231/1232 may not be significant because windsurfers can and do rig in the parking lot. There appear to be a number of open areas on Treasure Island that could be used as an alternative site for the truck loading area for debris area:

Shift the "truck loading area for debris area" from the boat ramp parking lot to an area within the areas already designated under the remediation plan for soil stockpile and truck loading. The boat ramp parking lot accounts for less than 1/2 an acre out of the approximately 6.5 acres that have been set aside in the remediation plan for soil storage, debris storage or truck loading. This means that the lot accounts for about 12% of the space set aside.

Shift the "truck loading area for debris area" from the boat ramp parking lot to another open area that is not currently within areas already designated under the remediation plan for soil stockpile and truck loading. Immediately adjacent to the other soil stockpile and storage areas are large open areas that do not appear to be in use (e.g. the area south of 13th between Avenue H and Avenue I and the area bounded by 13th, 11th, Avenue E and Avenue H). Using only a portion of one of these areas could replace any area not used in the boat ramp parking lot while allowing a buffer to still be maintained between the loading area and residential uses.

(2) Allowing for remote parking on the southeast side of the training building coupled with a corridor allowing foot access from the parking to the launch site. While this alternative is less desirable, it would allow windsurfers to gain safe and useful access if they were willing to carry their equipment approximately 400' to the launch.

(3) Avoid impacting the recreational use by windsurfers by remediating SWDA 1231/1233 during the times when windsurfing use is light or non-existent. The period of the year when the windsurfing use negligible and other recreational uses is lowest runs from November through February. The use of the area by windsurfers increases in the spring and is highest in the summer months. The time of day use is generally in the afternoon as the best winds are created by thermal winds that increase during the day. Most users during the summer months arrive at the site between 2-4 pm.

**Response:** The timing of the NTCRA was set to occur during the winter months because occupied housing areas and occupied buildings will have to be

## Responses to Comments from Peter Thorner (Continued)

tarped off on a side. It would be less an impact for the occupants in these buildings if the work were conducted in cooler months. The DoN is responsible for compliance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requirement to conduct a NTCRA to remove hazardous substances from the environment in order to protect the health and safety of residents. The CERCLA activities also will support property transfer objectives and thus future development of Treasure Island. These considerations must take precedence over the recreational access interests of the boardsailing community.

5. **Comment:** **POLICIES THAT PROTECT RECREATIONAL ACCESS**

**In the State of California, the State Constitution, the Navigation Code, and the MacAteer-Petris Act include provisions that establish State policy that the State’s tidelands should normally be available to all users. The standard in the Constitution is that “No individual...shall be permitted to exclude the right of way to such water...” That mandate further calls for the most liberal construction of the provision. The legislature has provided such further liberal construction, in Section 39933 of the Government Code, and in Section 40 of the Navigation Code. The former provides: “All navigable waters situated within or adjacent to city shall remain open to the free and unobstructed navigation of the public.” The latter calls for facilities and connecting waterways to be open to all. Further, such liberal provision is provided in the MacAteer-Petris Act and in the Bay Plan. The former provides in Section 66602: that “...that existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.” The Bay Plan Map 4 identifies the recreational site at Treasure Island and provides the following language in the map notes, “Provide parking and water access for users of small watercraft at north end of Treasure Island.”**

**Response:** The requirements of the tideland trust do not currently apply to Treasure Island. Therefore, planning and implementation of the DoN’s CERCLA response action is not constrained by policies and guidelines for the protection of recreational access to areas encumbered by the Tidelands Trust. As mentioned in the responses to comments #1 and #3, the area of concern is not an area that can properly be identified as a “recreational resource” at the current time.

The DoN has identified the Coastal Zone Management Act, the McAteer-Petris Act, and the Bay Plan as applicable or relevant and appropriate

## Responses to Comments from Peter Thorner (Continued)

requirements (ARARs). The NTCRA will comply with the Bay Plan and thus will comply with the McAteer-Petris Act and the Coastal Zone Management Act. The DoN identified the Coastal Zone Management Act as a federal location-specific ARAR. The DoN recognizes the following substantive provisions of the Bay Plan as a state location-specific ARAR:

- The Bay Plan at Cal. Code Regs. tit. 14, §§ 10110-11990 – prohibiting uncontrolled development and filling of the Bay, reducing disposal of dredged material in the Bay, maintaining marshes and mudflats to the fullest extent possible to conserve wildlife and abate pollution, and protecting the beneficial uses of the Bay.

6. **Comment:** **EXPOSURE TO TOXIC METALS**

**The proposed remediation plan calls for the toxic soil to be controlled so that toxic materials do not put humans or the natural environment at risk. The SFBA believes that if the job is done properly, no risk outside of the work zone would be present. Dust monitors should be operating and work should cease if toxic materials are being dispersed. This is an issue that relates to residents and the health of the San Francisco Bay as well as to recreational users.**

**Response:** The DoN has developed an air monitoring plan that will protect the health of residents and building occupants at the site during completion of the NTCRA. Dust monitors will be placed along the perimeters of the excavation areas to ensure that levels do not exceed the dust screening levels for the site. An on-site health and safety officer will provide continuous visual monitoring. The NTCRA complies with the Bay Area Air Quality Management District (BAAQMD) Regulation 6-302. Additionally, access to the site will be restricted during completion of the NTCRA and only authorized personnel will be allowed on site.

7. **Comment:** **TRUCK TRAFFIC**

**The level of traffic is moderate and would not create an undo risk to windsurfers traveling on Avenue M between 13<sup>th</sup> Street and the alternate lot that lies between the old training building and the sewer plant. If necessary a flag man could be employed at a minimal cost. Traffic conflict is not expected between the trucks and the windsurfers that use the site.**

**Response:** The DoN's plans for conducting the proposed removal action require that street access be restricted for the duration of the removal action to help expedite the work, while minimizing effects to Treasure Island residents. For a temporary period, the requirement to conduct a cleanup action to

## Responses to Comments from Peter Thorner (Continued)

remove hazardous substances from the environment to protect the health and safety of residents and to accommodate future reuse and development of Treasure Island must take precedence over recreational access interests of the boardsailing and kayaking communities.

8. **Comment:** **INJURIES/INTERFERENCE WITHIN THE JOB SITE**

**There will not be a risk of someone inadvertently wandering into the job site if it is fenced off as windsurfers have no conceivable reason to enter the jobsite area.**

**Response:** As indicated in the response to comment 6 from Mr. Thorner, access to the site will be restricted and only authorized personnel will be allowed on site.

9. **Comment:** **NAVY'S LACK OF KNOWLEDGE ABOUT WINDSURFING USE**

**The Navy has suggested that the conflict between the proposed remediation plan and the windsurfing use is in part based upon the Navy being unaware of the windsurfing use. SFBA recognizes that the Navy was not directly informed of this conflict until November 2006; however, the public notices distributed by the Navy showed a solid line around the housing area and did not indicate that the boat ramp parking lot might be impacted by the remediation work. In this case the Navy seems to take the stance that the plan cannot be modified once it has been proposed. The Navy has indicated from the start that it would begin work within a week following the close of the public comment period, regardless of the comments received and that the Navy would start a portion of the work that does not occur within the housing area before the response to comments is issued.**

**Response:** The work is scheduled to begin in February 2007. However, this schedule is dependent on the completion of all required CERCLA decision-making processes and documentation. The regulatory agencies (state and federal) will be provided an opportunity to review and comment on the "Draft Removal Action Work Plan / Remedial Design, Non-Time Critical Removal Action, IR Site 12, Three Solid Waste Disposal Areas (SWDAs A&B, 1207/1209, and 1231/1233)" (Shaw 2007) before a final decision is made on the proposed action and the work begins.

The DoN and DTSC received comments on issues other than those addressed in the responses to Mr. Thorner's comments. These additional comments were received from Jim McGrath on January 16, 2007 (via email and hardcopy); and (2) Thorsten J. Pray, on January 19, 2007 (via email).

The DoN's and DTSC's responses to these comments are presented below.

### **Responses to Comments from Jim McGrath, Berkeley, California**

- 1. Comment:** I write as a board member of three organizations who represent recreational windsurfing and kayaking on San Francisco Bay. Those organizations are U.S. Windsurfing, San Francisco Boardsailing Association, and Bay Access. Members of all three groups use the parking lot and the launch ramp on Treasure Island for access to the Bay. The subject RAP and associated documentation is legally inadequate because it fails to consider and evaluate the recreational impacts of the project. Further, the consistency information provided in the document is inadequate, and fails to comply with the requirements of the Federal Coastal Zone Management Act. Similar deficiencies are associated with DTSC's documentation under the California Environmental Quality Act. We believe that the deficiencies of both documents can be remedied by a direct meeting involving the Bay Conservation and Development Commission, the Navy, DTSC, and interested public access groups that result in modification to the project to preserve public access to the Bay. We urge you to schedule such a meeting and modify the project so that its impacts on access are minor and the project may proceed with minimal delay. However, the current document is not sufficient to use in reaching discretionary decisions on the remedial action plan.

**Response:** The AM/IRAP as it stands is legally adequate. The document is not flawed because of a purported failure to consider and evaluate recreational effects of the project.

As indicated in the previous response to comment 5 from Mr. Thorner, the NTCRA will comply with the Bay Plan and thus will comply with the McAteer-Petris Act and the Coastal Zone Management Act. The DoN identified the Coastal Zone Management Act, the McAteer-Petris Act, and the Bay Plan as ARARs. Because the requirements of the tidelands trust do not apply to Treasure Island while it is federally owned property, planning and implementation of the DoN's CERCLA response action did not take into account policies and guidelines for the protection of recreational access to areas encumbered by the tidelands trust.

## Responses to Comments from Jim McGrath (Continued)

The DoN and DTSC recognize that recreational use is a potential future use of the site; however, the DoN and DTSC distinguishes such future potential uses from the current use and requirements that must be met for environmental cleanup prior to transfer of the property.

A public meeting was held on January 19, 2007, in which representatives from DTSC, representatives from the DoN, and interested organizations, such as the SFBA, were in attendance.

### 2. Comment: CONSISTENCY REQUIREMENTS

**The Navy's responsibilities to develop projects that are consistent to the maximum extent practicable with the State's coastal program are established in the CZMA. The procedural requirements that the Navy consult with BCDC in that process are established in the regulations implementing that Act under OCRM's regulations. The Navy's compliance with this process is limited to a single sentence on page 51 of the background memorandum. That sentence does not analyze the projects impacts on recreation, or BCDC's program, but is simply conclusory in nature, and fails to meet the regulatory requirements. Let me review the OCRM regulations for you. Section 930.33(b) of those regulations provide that:**

**Federal agencies shall consider all development projects within the coastal zone to be activities affecting any coastal use or resource. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they affect any coastal use or resource.**

**Additional guidance is provided by Section 930.34, which establishes responsibilities for Federal and State agency coordination as follows:**

**(a)(1) Federal agencies shall provide State agencies with consistency determinations for all Federal agency activities affecting any coastal use or resource. To facilitate State agency review, Federal agencies should coordinate with the State agency prior to providing the determination.**

**Public participation is encouraged in Section 930.2, and the content of a consistency determination is laid out in Section 930.39 as follows:**

**a) The consistency determination shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The statement must be based upon an evaluation of the relevant enforceable policies of the management program. A description of this evaluation shall be included in the consistency determination, or provided to the State**

## Responses to Comments from Jim McGrath (Continued)

**agency simultaneously with the consistency determination if the evaluation is contained in another document.**

**The single line on page 51 fails to address these requirements.**

**Response:** As stated in the previous response to comment 5 from Mr. Thorner, the NTCRA will comply with the Bay Plan, the McAteer-Petris Act, and the Coastal Zone Management Act.

As indicated in previous responses, the DoN and DTSC recognize that recreational use is a potential future use of the site. The DoN and DTSC distinguish such future potential uses from the current land use.

## Responses to Comments from Thorsten J. Pray, (January 19, 2007)

1. **Comment:** My concern is with the serious impact this will have on the public's access to the water and, in particular, access for windsurfing and kite sailing sports enthusiasts. There is no reason why the needs for public access at this part of this island can not be accommodated during the Navy's remediation work on the island. I respectfully request that the Navy give serious thought as to how it can accommodate both an easement for public windsailing access to the traditional launching point of the Northeast corner of the island and the equipment staging needs of the remediation subcontractors. The Navy is aware of this location, as it was discussed at the recent T.I.D.A board meeting held in San Francisco in January. The easement discussed was a simple 20 foot wide strip along the waterfront edge of the parking lot currently used by the windsurfers adjacent to the north boat ramp. The easement strip would mean a mere 10 foot net encroachment on the useable area of the former parking lot currently used by the windsurfers. This would result in a very small percentage of staging area and in exchange a very sizable minimization of the negative impact of this project on the established recreational use of this part of the island would be achieved.

**Response:** As indicated in DoN's and DTSC's response to comment 4 from Mr. Thorner, the DoN is responsible for compliance with the CERCLA requirement to conduct a NTCRA to remove hazardous substances from the environment in order to protect the health and safety of residents. The CERCLA activities will support property transfer objectives and future development of Treasure Island. These considerations must take precedence over the recreational access interests of the boardsailing and kayaking community.

As stated in response to comment 1 from Mr. Thorner, the DoN has coordinated the planning of the proposed removal action with TIDA to minimize potential conflicts between the necessary remediation of environmental contamination and the use of Treasure Island property by residents of leased premises. Throughout this planning effort the DoN has determined that certain areas outside the remediation area will be secured and used for loading, storage or staging. These plans require that access to the parking lot and boat ramp be restricted for the duration of the removal action to facilitate the expeditious and safe performance of the work while minimizing impacts to Treasure Island residents.

## Responses to Comments from Thorsten J. Pray, (January 26, 2007)

- 1. Comment:** Following my January 19, 2007 correspondence to you and my discussion with Mr. Cummins of your division, unfortunately, it appears as though the U.S. Navy had made the decision to exclude the further use of Treasure Island by windsurfers before investigating whether such further use could be accommodated. This is in spite of the fact that windsurfers have been using the north east corner of the island at the parking lot adjacent to the boat ramp for parking, rigging, and launching for the last ten years. For the last approximately three years we have even placed a portable toilet at that location for the convenience of the general public. There are two brief concerns I would like to address that relate to the issues in connection with the toxic soils remediation plan that is expected to be underway by February 1, 2007 and secondly the longer term, specifically the period from the time of completion of the remediation work until the Navy actually hands over full ownership of the island. We are concerned that Navy now intends to completely exclude windsurfing access until it delivers control of the island.

There would be minimum disruption, if any at all, to the remediation work by giving a temporary 20 foot wide corridor for the months of May through August, limited to afternoons commencing at 2p.m. The corridor could be created by erecting a temporary and moveable segmented stand alone cyclone fence. It appears that the Navy has failed to comply with any CEQA requirements that would apply in mitigation of any significant impacts. Due to the unprecedented short notice provided as a result of the Navy's last minute extension of the zone of operations, we have had little time to research the precise relationship between the Navy's Remediation Program and any CEQA requirements that the Navy may have either agreed to comply with or be required to follow. Under NEPA requirements the Navy's plan still must state what impacts arise as a result of its program and must also consider alternatives to avoid these impacts. We do not believe that the Navy's plan has taken these factors into consideration. The Negative Declaration makes a finding of significant effect but there are no mitigation measures whatsoever prescribed. This is unreasonable, arbitrary and capricious and unacceptable. DTSC should prescribe a mitigation measure requiring that the Navy preserve water recreation access by the public, during the course of the project. The project is not even characterized in the Negative Declaration as time sensitive and there is no reason why the project must commence operations on February 1<sup>st</sup>. I respectfully but strenuously object to DTSC allowing this project to commence operations with taking measure to preserve water recreation access for the public.

## Responses to Comments from Thorsten J. Pray, (January 26, 2007) (Continued)

Response: As indicated in DoN's and DTSC's responses to Peter Thorner's Comment #4 and the response above, the DoN is responsible for compliance with the CERCLA requirement to conduct a NTCRA to remove hazardous substances from the environment in order to protect the health and safety of residents. The CERCLA activities will support property transfer objectives and future development of Treasure Island. These considerations must take precedence over the recreational access interests of the boardsailing community.

See DTSC's response to Jim McGrath's comment below regarding CEQA.

The process and analysis for removal actions under CERCLA are viewed as superseding the requirements for environmental analysis under NEPA.

The DoN and DTSC received comments during the public meeting held on January 17, 2007, (Peters 2007) on issues other than the access issue to the unimproved boat ramp and adjacent parking lot at the northeastern portion of the island. These comments were received from (1) Robert Stroud, (2) Bradley Johnson, (3) Taylor Stein, (4) Hardy Chambliss, (5) Diane Portnoy, (6) John Schmucker, and (7) Timothy Thole.

## **Responses to Comments Received During DTSC Public Meeting**

**1. Comment: Mr. Stroud asked:**

**When the cleanup occurs, is it removed from the site and deposited, or is the soil cleaned and returned to the site?**

**Wouldn't it make a lot more sense to not have the work done in the time period when the wind is the worst and when it will require more water to go on the ground? I just wondered then what about the residents on the island who are going to be impacted by that blowing dust at this time of the year.**

**Response:** This NTCRA will result in the permanent removal of soil from the site. All removed soil will be transported to a licensed nonhazardous or hazardous waste disposal facility; the soil will not be brought back to the site.

The NTCRA complies with the BAAQMD District Regulation 6-302. The DoN has extensive experience with soil excavations on Treasure Island and has developed a very detailed protocol that includes dust monitors, hand-held equipment at the work site, work protocols, and so forth. All of the DoN air monitoring previously conducted at Treasure Island has been successful. The safety and health of the workers at the site, the residents, and the occupants of the buildings during the NTCRA is the DoN's highest priority.

**2. Comment: Mr. Johnson asked:**

**What is it that has made the two options (excavation or setting up boundaries) feasible for the sites projected to be cleaned up in the next six months?**

**Why are certain areas fenced and why are certain areas being excavated? Is there a uniform problem across Treasure Island and certain sites are being designated for certain uses in ten years from now.**

**Are you clear on the parking lot and the road that accesses the launching spot?...if not, then we can definitely draw a map of this area.**

## Responses to Comments Received During DTSC Public Meeting (Continued)

**Response:** The DoN evaluated five options in the Engineering Evaluation/Cost Analysis (EE/CA) (SulTech 2006). Four of the options involve excavations and off-site disposal and the fifth option involves capping the site. The DoN, in consultation with the regulatory agencies and after receiving public comments on the EE/CA, has determined that excavating down to 4 feet below ground surface is the appropriate option for this site because it is protective of human health and the environment and it is economically feasible for the reasonably anticipated future reuse of the site as defined in the Reuse Plan (City and County of San Francisco 1996).

The areas that are designated for excavation are the areas of contamination. The staging area also was evaluated because additional areas outside of the SWDA are needed for the duration of the cleanup. Site 12 has been designated an IR site that is being evaluated under the DoN's CERCLA program. Treasure Island as a whole contains other IR sites that are also being evaluated under the DoN's CERCLA program and are not public property.

The DoN and DTSC know the road and parking lot that Mr. Johnson has referenced.

**3. Comment:** **Mr. Stein asked:**

**How did you choose the time frame that the work was going to be conducted? Was weather or anything like that taken into consideration? (Note: Mr. Dimatokis asked this question as well)**

**In the previous excavating that you guys did, what time of year did it occur?**

**Response:** The DoN has coordinated the planning of the proposed removal action with the TIDA to minimize potential conflicts between the necessary remediation of environmental contamination and the use of Treasure Island property by residents of leased premises. The time frame for when the work is proposed to be performed was selected because the remediation efforts involve covering sides of buildings with tarps or another type of barrier. This work would ideally occur while the weather was not too warm to minimize the discomfort to residents and building occupants in the area. In addition, damp conditions that typically exist during this time of year augment dust suppression efforts.

The DoN has conducted excavations at various times of the year; many have been conducted during the winter months. In 1999, an excavation conducted at Building 1207/1209 was successfully accomplished at the same time of year as that proposed for the Site 12 excavations.

## Responses to Comments Received During DTSC Public Meeting (Continued)

4. **Comment:** Mr. Chambliss asked:

**What is being done with the water that is used to spray down the toxic soil? Do you know how many gallons of oil it takes to contaminate the Bay? My guess is a tiny bit and if the water used to spray down the toxic soil gets into the Bay then the Bay will be contaminated. I hope a disgusting mess does not occur like what happened over at Sherman Williams in Emeryville.**

**How many dust monitors will there be and where will they be placed?**

**When is the proposed first day for digging so to speak?**

**Response:** The Removal Action Work Plan / Remedial Design will also include a Stormwater Management Plan (SWMP), which will outline the use of best management practices and controls to be used to prevent both stormwater and non-stormwater discharges to the Bay. The amount of water sprayed on the soil will be sufficient to wet the soil to keep dust from forming but not a large enough quantity to cause over saturation of the surface soils and infiltration toward the water table. In addition, the contaminants being addressed in the removal action do not readily dissolve in water; and as long as dust suppression water and stormwater are properly managed, the removal action will not affect the Bay.

The Draft Removal Action Work Plan / Remedial Design (Shaw 2007) proposed four stations to monitor the dust and air. Separate monitors around the areas of essential buildings were also proposed to be placed in addition to the four stations. The locations and the number of monitors will be included in the Final Removal Action Work Plan / Remedial Design. Approval of the work plan by the DoN and DTSC will occur before any excavation activities begin.

The proposed first day of work is in February 2007. As discussed in previous responses, excavation work will not begin until all comments are addressed and all documents are approved by the regulatory agencies.

5. **Comment:** Ms. Portnoy commented:

**I am a little concerned about the end of the public comment period and the start of the work because it seems like there is only three days. Are there any guarantees that everything will be addressed before the work begins or somewhere down the road? (Mr. Thole asked the same question)**

## Responses to Comments Received During DTSC Public Meeting (Continued)

**I am concerned about the quality of the Bay during the work. Are we guaranteed that it will be safe to actually launch at that point with all the remediation work going on only twenty feet away?**

**So there might be a change in how things are handled, and the Navy will evaluate the plan and change the work as items come up? I've seen when there are problems and a sign is put up that says "no one can use this water".**

**Response:** This responsiveness summary will be finalized before excavation work begins. The work is scheduled to begin in February 2007; however, work will not begin until the DoN and DTSC respond to all comments.

Please see the response to Mr. Chambliss' comment regarding the quality of the Bay. As mentioned in previous responses, boardsailing, kayaking, or other recreational use is not an approved use. The DoN will have dust monitors at the site to ensure that trigger levels are not exceeded. Additionally, if excessive dust is being generated during the work or the wind is causing more dust to be generated, then the contractors will execute dust-suppression techniques. The DoN is prepared for several scenarios and has extensive experience conducting excavations at Treasure Island.

Safety of the workers, the residents, and the occupants of the buildings during the NTCRA is the DoN's highest priority. Health and safety procedures include the implementation of procedures to protect human health and the environment that allow for adjustment to operations in the event additional measures are required while the remediation work is being conducted.

**6. Comment: Mr. Schmucker commented:**

**Did you take time in evaluating all the different potential staging areas?**

**When you were evaluating the staging area or choosing the staging area, were you aware of the long term and heavy use for recreational activities by windsurfers?**

**Response:** Many factors were evaluated when looking at the different work areas and potential staging areas before deciding on a final location. Some of these factors included health and safety to surrounding residents first and foremost, areas that would allow for heavy equipment and easy loading of trucks, the effect to traffic on the island, the topography and current conditions of each area, and security. It was determined that the areas shown on the "Truck Staging and Route Map" (Figure 5 of the AM/IRAP)

## **Responses to Comments Received During DTSC Public Meeting (Continued)**

were the best locations for work to occur that would not adversely affect the health and safety of the residents on the island.

Safety to the residents and to remediation workers was the highest consideration. Consideration was given to all aspects of the resident's use of the island before finalizing the locations of the work areas and determining the effects they would have on the public.

## **DTSC'S RESPONSES TO COMMENTS SUBMITTED BY THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND THE PUBLIC ON THE DRAFT NEGATIVE DECLARATION**

DTSC received comments from Timothy C. Sable, the District Branch Chief of the California Department of Transportation (DOT), on January 26, 2007. DTSC's responses to these comments are presented below.

### **Responses to Comments from Timothy C. Sable, the District Branch Chief, California DOT (Comments Received on January 26, 2007)**

- 1. Comment: Has water-borne transport of both excavated soil and backfill soil been considered as an alternative? Is it feasible?**

**Response:** During previous evaluations, disposal of soil via water-borne transport was determined to be logistically nonfeasible and much more costly than ground transport and disposal. Additionally, the BAAQMD and the San Francisco Bay Regional Water Quality Control Board are opposed to the transport of hazardous waste on Bay waters.

- 2. Comment: The document states that the excavated soil will be transported "to appropriate off-site permitted landfills via trucks." It would be helpful to know the locations of the landfills so that potential impacts along the most likely truck routes may be evaluated. Truck routes should be designed to minimize their impact.**

**Response:** The landfill has not yet been chosen; however, materials excavated during previous remediation activities at NAVSTA TI have been transported and disposed of at Forward Landfill and Kettleman Hill Landfill which are both CERCLA-approved off-site disposal facilities. Bids are being requested from multiple transport and disposal companies. During previous excavation activities, including the arrival and departure of trucks between the hours of 7:00 AM and 4:00 PM, traffic on NAVSTA TI or the Bay Bridge was not affected. The DoN and DTSC agree with the DOT that truck routes should be designed to minimize the impact these trucks would have on traffic, highways, roads, and so forth, and has provided the local truck route information on Figure 5 of the AM/IRAP. Potential trucks routes from Treasure Island to disposal facilities may include Interstates 80, 880, 238, 580, 205, and 5.

- 3. Comment: In both the Initial Study and Negative Declaration sections of the document, "Generation of fugitive dust and particulates at excavation zone ... and truck routes" is listed under "project activities likely to create an impact." However, no information is provided as to how this would be mitigated or minimized. For example, would the**

## Responses to Comments from Timothy C. Sable (Continued)

**excavated soil loaded onto trucks be covered to prevent the soil from being blown off the trucks and onto the highway during the trip to the landfill site?**

**Response:** The project descriptions of both the Initial Study and draft Negative Declaration identify activities that may create an impact to the environmental resources. This was a general and preliminary identification of project activities that could create an impact. However, in this particular case, elements of the project have been included that reduce the potential of such impacts to insignificance. These elements include monitoring and provisions to stop work if airborne particulates and fugitive dust emissions rise to unacceptable levels, dust suppression measures, and careful soil handling methods. The Initial Study, section 3 of the environmental impact analysis, states the following:

“The BAAQMD regulations specify standards for fugitive dust emissions and particulate matter emissions. The BAAQMD exempts certain operations, under Regulation 2, from obtaining air permits.

“Airborne dust will be visually monitored on a continual basis. Water spray and careful soil handling will be used to prevent airborne dust from reaching workers’ breathing zones and to prevent dust from escaping the perimeter of the Exclusion Zone. In addition, air monitoring instrumentation will be used to document that all field personnel are adequately protected from airborne contaminants.

“Real-time monitoring for dust will be performed in the work areas where the potential for the highest concentrations of dust are expected during activities that may have the potential for dust hazard, such as clearing, excavation, loading and unloading trucks, and stockpiling. A personal data-logging real time data logger will be used to monitor for dust in the work area and on the downwind boundary of the site.

“The site specific actions levels for dust are 2.5 mg/m<sup>3</sup> for worker areas and 1.0 mg/m<sup>3</sup> for the exclusion zone perimeter. The action levels are based on the lead concentrations in the soil since lead has the highest soil concentration to permissible exposure level ratio, thereby introducing an extra margin of safety for the other constituents.

“Water will be available at all times during excavation, soil handling and loading activities.

## Responses to Comments from Timothy C. Sable (Continued)

“DTSC will require the Navy to comply with an air monitoring plan, which is an integral part of the Remedial Design. Therefore, project activities during the 7-month implementation period would not have a conflict with or obstruct implementation of the applicable air quality plan.”

The small-volume dump trucks and the transfer trucks will be loaded with the excavated soil within the SWDA and covered during transport to the stockpile area at Site 6. Additionally the work plan requires engineering controls such as periodic watering of contaminated soil. The stockpiles of imported and excavated soil will be covered, and the trucks transporting soil off the island and to the landfill will be covered. The DoN will conduct continuous air monitoring at locations upwind and downwind of each excavation to ensure that workers and residents are not exposed to hazardous dust levels.

4. **Comment:** **The volume of excavated soil will require approximately 1600 truckloads in a 115-day period to transport that material to the disposal site. With two trips per load, there would be approximately 56 truck trips per day. The document assumes that the trips would occur at a constant rate over an 8-hour workday. This means that there would be approximately 4 trips per hour both departing from and arriving at the island. If these trips actually occur at that constant rate, impacts to freeway operation should be relatively minor. On the other hand, if these trips were to be concentrated in a relatively short time period, particularly during the AM or PM commute periods, the impacts to freeway operation could be significant.**

**Response:** The DoN imported large quantities of soil to TI between December 2006 and January 2007. Approximately 150 trucks per day arrived and departed TI via the Bay Bridge between 7:00 AM and 4:00 PM. This truck traffic, which coincided with rush hour traffic on the Bay Bridge, did not impact either TI or Bay Bridge traffic.

In comparison, a maximum of roughly 60 trucks per day will arrive and depart the island during the course of the excavation work. The excavation truck schedule will run from 7:30 AM to 5:00 PM Monday through Thursday with an estimated time between trucks of 9½ minutes for a maximum production day. The more likely scenario of an estimated average of 40 trucks per day results in a 14-minute interval between trucks.

## Responses to Comments from Timothy C. Sable (Continued)

5. **Comment:** Serious consideration should be given to restricting truck arrivals and departures to hours outside of the weekday AM and PM commute periods to minimize the risk of traffic impacts. Some long-term ramp closures are expected to accommodate the construction of the Bay Bridge east span replacement project. It is possible that truck access to and from the island may be affected during the ramp closures.

**Response:** As indicated in the response to DOT comment 1, the DoN and DTSC agree that truck routes and schedules need to have a minimal effect on traffic. During previous excavation activities, traffic on NAVSTA TI or the Bay Bridge was not affected. The DoN and DTSC understand that the on/off ramps may be closed because of the replacement project for the eastern span of the Bay Bridge. The DoN is coordinating with DOT to assess whether Bay Bridge construction closures will affect truck traffic from NAVSTA TI.

DTSC received comments from Jim McGrath on the “Draft Negative Declaration” on January 16, 2007. DTSC’s responses to these comments are presented below.

### **Responses to Comments from Jim McGrath (Comments Received on January 16, 2007)**

1. **Comment:** **The subject negative declaration is legally inadequate because it fails to consider and evaluate the recreational impacts of the project. The EIR also fails to identify inconsistencies between the project and adopted plans, specifically, the base reuse plan for Treasure Island and the Bay Plan. Projects that adversely affect recreation, and projects that are inconsistent with adopted plans, are generally considered to have significant impacts under the California Environmental Quality Act.**

**Response:** The DoN owns a major portion of Treasure Island, including the parking lot and boat ramp at the northeastern end of the island. The Navy has neither invited, permitted, licensed, nor entered use agreements with anyone for accessing the parking lot and boat ramp. Recreational activities such as windsurfing and kayaking at these locations are unauthorized.

Because the activities described are not permitted by the DoN, and were not identified as an ongoing allowed use, DTSC was not aware of the disallowed use at the time that the Initial Study and draft Negative Declaration for this project were prepared. It is therefore not included in DTSC’s analysis of recreational uses or impact to those uses.

As a result of comments received, DTSC has reevaluated the potential from impacts to recreational uses. DTSC has determined that, irrespective of the Site 12 cleanup project, the area of concern to the windsurfers and kayakers is not currently available for recreational use by windsurfers and kayakers. Therefore, DTSC cannot consider such use in the Initial Study, Negative Declaration, and AM/IRAP. DTSC plans to approve the AM/IRAP and Negative Declaration.

The remedial action selected by DTSC is necessary to protect, rehabilitate and enhance the environmental quality of California and the communities affected by toxic substances that are the subject of this project; and to provide the people of the State and the affected communities with clean air and water, enjoyment of aesthetic natural, scenic and historic environmental qualities. The DoN and DTSC have considered alternative remedies, and have determined that this plan provides the most technically feasible and efficient location for carrying out the necessary remediation

## Responses to Comments from Jim McGrath (Continued)

activities, while minimizing construction related impacts to the residents in the neighborhood being cleaned up.

2. **Comment:** For many years, the CEQA Guidelines included an appendix that identified the types of impacts that are normally considered to be significant. Adverse impacts on recreation were among those listed. While that appendix has been eliminated, the classes identified were derived from the various court cases interpreting CEQA, and provide important guidance, and in effect, a rebuttable presumption that adverse impacts may be significant. In this particular case, the existing pattern of use, the uniqueness of the site, its designation in both the Bay Plan and the Bay Reuse plan, and the language of PRC 66602 that existing access is not sufficient, all compel a conclusion that closure of this site constitutes a significant impact under CEQA. The failure to be consistent with local plans also generally constitutes a significant impact. This issue is flagged for the Department in Section IX. b) of the CEQA Guidelines. Taken together, these policies at a minimum require the Department to consider the impacts of the project on recreation as well as alternatives and mitigation measures that might avoid or reduce the recreational impact.

**Response:** In consultation with the DoN, DTSC has determined that the use of the northeastern parking lot and boat ramp by the windsurfer and kayaker communities is unauthorized at this time, even though such use may be contemplated in the future. Further, this project will in no way affect future availability and arrangements for recreational use as contemplated in any proposed reuse plans.

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