UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

May 6, 2011

Ronald Bochenek
U.S. Navy
Base Realignment and Closure Program
Management Office West
1455 Frazee Rd., Ste 900
San Diego, CA 92108

Subject: Draft Supplemental Environmental Impact Statement (DSEIS) for the Disposal and Reuse of Hunters Point Shipyard, San Francisco County, California (CEQ # 20110047)

Dear Mr. Bochenek:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. Our detailed comments are enclosed.

The proposed project is located in a community with environmental justice (EJ) concerns. In response to EPA's scoping comments and concerns, the Navy organized additional public outreach meetings with eleven different community groups, conducted substantial follow-up from these meetings, and conducted a follow-up Community Informational Workshop. This outreach effort offered additional opportunities for the community to learn about the nature of the environmental cleanup, the roles of the City and other agencies in the redevelopment process, and for the Navy to hear community concerns.

The DSEIS concludes that air quality impacts from particulate matter would not be significant; however, the assumptions to support this conclusion are not clear. The Final SEIS should clarify the assumptions used for estimating emissions, including emissions resulting from transport of a large amount of import fill. Because the analysis assumed a high level of mitigation, the Final SEIS should provide more information on the potential effectiveness, implementation, and monitoring of this mitigation. Additionally, it is unclear whether the importance of air quality as an issue (as identified through scoping) was fully considered when establishing significance thresholds for cumulative impacts, consistent with Council on Environmental Quality (CEQ) Guidance.

The impacts of the hazardous waste cleanup are covered under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) program, commonly known as Superfund, and are not presented in the DSEIS. However, given the extent to which the subsequent development would interface with the cleanup remedy and alter the timeline of when the public could access portions of the site, the Final SEIS should provide additional

information concerning the development/cleanup interface. Because of this, and questions regarding the air quality analysis, we have rated all development alternatives in the DSEIS as Environmental Concerns – Insufficient Information (EC-2) (see enclosed "Summary of Rating Definitions").

The development plan includes many sustainability features that would facilitate pedestrian, bicycle, and transit travel and reduce motor vehicle trips. It commits to construct all project buildings to a Leadership in Energy and Environmental Design (LEED) Gold standard for Neighborhood Development. The project also includes a community benefits plan which will help address many environmental justice issues. We recommend that the Final SEIS include additional information on the scope of the community benefits fund within the benefits plan and indicate whether this fund would be available to address the concerns identified by the community at the Navy's public outreach meetings. We also recommend that all mitigation commitments and details regarding their implementation, including mechanisms and responsible parties, be clearly documented in the Final SEIS, as these were not always apparent.

EPA appreciates the opportunity to review this DSEIS. When the Final SEIS is released for public review, please send one hard copy and 3 electronic copies to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3521, or contact Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,

For Connell Dunning

Kathleen M. Goforth, Manager
Environmental Review Office (CED-2)

Enclosure: Summary of EPA Rating Definitions
EPA's Detailed Comments

cc: City and County of San Francisco - Department of Public Health; Planning Department
Bay Area Air Quality Management District

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

Category "1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category "2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category "3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

EPA DETAILED COMMENTS ON THE DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT FOR THE DISPOSAL AND REUSE OF HUNTERS POINT SHIPYARD, SAN FRANCISCO COUNTY, CALIFORNIA, MAY 6, 2011

The Navy is supplementing its 2000 Final Environmental Impact Statement (FEIS) to reflect changes in the City of San Francisco's development plan for the site. The Navy's decision is whether to dispose of the property for subsequent reuse or retain the site in federal ownership. When the decision to dispose of the property has been made, the Navy relies on the development alternatives presented by the community's development plan. The City of San Francisco made substantial changes to the development plan that the Navy evaluated in its 2000 FEIS, including: an increase in the number of residential units, research and development space, and parks and open space; the addition of a football stadium; and the exclusion of industrial and maritime uses; necessitating this supplemental EIS.

Air Quality Impacts

Construction Dust Control Mitigation

The community has expressed concerns regarding the transport of pollutants during construction, including the naturally occurring asbestos that is present on some parcels. The DSEIS concludes that impacts from particulate matter less than 10 microns (PM_{10}) would be less than significant, assuming substantial mitigation is implemented[1].

To support these conclusions, mitigation measures will need to be successful. NEPA requires that mitigation measures be discussed, and an essential component of this discussion is an assessment of whether the proposed mitigation measures can be effective[2]. We are aware that there were problems with the implementation of the dust control measures during site grading of Parcel "A" (which is not part of this DSEIS), resulting in a violation and enforcement action by the Bay Area Air Quality Management District and the City of San Francisco. Lessons learned from dust control at Parcel A, and information regarding the actions taken to ensure mitigation will be effective in the future, are important to include in the environmental impact discussion.

> *Recommendation:* The FSEIS should more fully discuss the dust control mitigation measures. We recommend that the dust control plan be included as an appendix in the FSEIS. The dust control plan should include, at a minimum, all the elements of the plan developed for Parcel A, as well as any improvements to that plan that would ensure greater effectiveness.
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> The FSEIS should discuss the expected effectiveness of proposed mitigation measures for air quality impacts, taking into consideration past experiences where mitigation was not fully successful, and improvements that will maximize mitigation effectiveness.

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[1] The analysis assumes all fugitive dust control measures recommended by the Bay Area Air Quality Management District (BAAQMD) will be successfully implemented, including all basic, enhanced, and optional control measures, as well as measures required in the San Francisco Health Code Article 22B.

[2] Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1381 (9th Cir. 1998)

Air Quality Analysis
The DSEIS concludes that impacts from particulate matter, both PM_{10} and $PM_{2.5}$, will be less than significant. It is not clear if the assumptions used in the air quality impact model to estimate construction emissions (Appendix J) considered the large amount of import fill needed in the development areas. The DSEIS indicates that the proposed action will require 1.1 million cubic yards of import fill in the development areas from locations throughout the Bay Area, in addition to the almost 600,000 cubic yards that will come from Candlestick Point. An additional 600,000 cubic yards of import fill will be needed for the open space areas (p. 2-40). While these fill needs will occur over a period of time, this represents a very large number of trucks. If a single truck carries 20 cubic yards, the import fill for development areas alone (not counting open space) would require over 85,000 trucks. It is not clear where the construction-phase on-road truck travel assumptions are provided.

The DSEIS also concludes that impacts from particulate matter are not cumulatively significant. CEQ advises that agencies should consider the importance of the resource as an issue (as identified through scoping) when establishing significance thresholds for cumulative effects[3]. The community in proximity to the development site has expressed strong concerns regarding air quality, especially during the construction phase.

> *Recommendation:* Identify the on-road truck travel assumptions used to estimate emissions, and confirm that the analysis has considered emissions from these truck trips. For the cumulative impact assessment, ensure that the assessment of significance considers the context and importance of the resource to the community.

Hazardous Waste Cleanup
The DSEIS identifies the hazardous contaminants that are associated with the site parcels and provides a general overview of the status of the cleanup that is occurring on the site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund (Section 3.7). The DSEIS does not regard the cleanup to be part of the proposed project because it would occur whether or not the site was developed. We understand this approach and believe that the public has numerous opportunities to participate and learn about the cleanup through the Superfund remediation process, which is not subject to NEPA. However, it is still important that the information regarding how the proposed development will interface with the cleanup remedies be presented in the NEPA document. The analytical method identified in the DSEIS states that the impact assessment focuses on whether the physical development of the proposed action could expose construction and maintenance workers, visitors, occupants, or ecological systems to potential hazards associated with contaminants (p. 4.7-3), yet there is no such discussion. The DSEIS simply identifies the CERCLA requirement that remedial action will occur sufficient to protect human health and the environment, and the concept of institutional controls.

> *Recommendation:* The FSEIS should, at a minimum, discuss each land use for each cleanup parcel, for all of the alternatives. It should identify what the cleanup remedy will (or is expected to) be for that parcel and describe the proposed development activities that

[3] Council on Environmental Quality, *Considering Cumulative Effects under the National Environmental Policy Act*, p. 45

would occur there during construction. It should discuss how construction activities could come in contact with any contamination that may remain onsite and if/how the development might affect the final remedy. If the development is part of the remedy, the FSEIS should disclose this. It should discuss the institutional controls for that parcel in the context of the proposed land use for the operational phase. Since the project would alter the timeline of when the public could access portions of the site, the NEPA document should provide an overview of the monitoring that would occur pursuant to the Superfund cleanup, and estimate the location of the nearest potential onsite receptors that could occur under the development scenario. This overview would provide a clearer picture of when and where cleanup, development, and public access will be happening simultaneously. It would also clarify the project's mitigation measures in context, allowing for a better determination of their effectiveness.

Environmental Justice

Disproportionate health impacts from air pollutants and traffic

The DSEIS concludes that cumulative air quality impacts will not disproportionately impact the EJ population. While the health risk assessment determined that impacts from diesel particulate matter are less than significant, the FSEIS should still note that even short-term exposure can be harmful. EPA's *Health Assessment Document for Diesel Engine Exhaust* [4] concludes that short-term (e.g. episodic) exposure to diesel exhaust can cause acute irritation of the eyes, throat, and bronchial region, neurological symptoms (e.g. lightheadedness and nausea), and respiratory symptoms, such as a cough. Children may be particularly sensitive to impacts from diesel exhaust[5]. This 2002 EPA health assessment was based on Tier 1 engines, and it is commendable that the project will phase in cleaner Tier 2 engines ahead of regulatory requirements (p. 4.2-10); however, 50% of the fleet during the first 2 years of construction would still be composed of older engines (p. 4.2-10). There is evidence that low income and minority communities are more vulnerable to pollution impacts than other communities. Disadvantaged, underserved, and overburdened communities are likely to have pre-existing deficits of both a physical and social nature that make the effects of environmental pollution more, and in some cases, unacceptably, burdensome[6]. The DSEIS did not identify these pre-existing health liabilities in the local population and this is a significant omission for an EJ analysis. Bayview/Hunters Point residents have substantially higher rates of hospitalizations and emergency room visits for preventable conditions such as asthma, congestive heart failure, and diabetes[7].

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[4] May 2002, Available: http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060. The assessment's health hazard conclusions are based on exposure to exhaust from diesel engines built prior to the mid-1990s. The health hazard conclusions, in general, are applicable to engines currently in use, which include many older engines. As new diesel engines with cleaner exhaust emissions replace existing engines, the applicability of the conclusions in this Health Assessment Document will need to be reevaluated.

[5] Children are believed to be especially vulnerable due to higher relative doses of air pollution, their developing lungs and immune systems, smaller diameter airways, and more active time spent outdoors and closer to ground-level sources of vehicle exhaust.

[6] EPA's *Framework for Cumulative Risk* (www.epa.gov/OSA/raf/publications/pdfs/frmwrk_cum_risk_assmnt.pdf) and the *National Environmental Justice Advisory Council's (NEJAC) Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* (http://www.epa.gov/compliance/ej/resources/publications/nejac/nejac-cum-risk-rpt-122104.pdf)

[7] Candlestick Point–Hunters Point Shipyard Phase II Development Plan Project EIR, Volume VII: Comments & Responses, p. C&R-69.

Traffic impacts were identified as disproportionately impacting the EJ population (p. 6-18), but the health effects of traffic were not mentioned. Increases in stress as a result of traffic congestion and the additional noise during both construction and operation phases can cause health impacts in some populations[8].

> *Recommendation:* The FSEIS should document the pre-existing health vulnerabilities in the population and ensure that the EJ analysis and conclusions consider these vulnerabilities.

Impacts to Children

The DSEIS concludes that there would be no health and safety impacts to children (p. 6-18), but there is no analysis nor discussion preceding this conclusion. The DSEIS acknowledges significant traffic impacts during both the construction and operational phases (pp. 4.1-30, 4.1-33), and traffic safety hazards appear to be a real possibility. The DSEIS states that development of a construction access route that avoids residential areas to the extent feasible could reduce, but would not necessarily avoid, disproportionate traffic impacts, but says that it is not known whether it will be feasible to reroute traffic to avoid all residential areas.

> *Recommendation:* The FSEIS should assess traffic safety impacts to children from construction and operation of the project. Provide further discussion on the feasibility of avoiding residential areas during construction and propose mitigation to ensure that safety for children, especially in areas near schools and playgrounds, is addressed. The FSEIS should indicate whether this mitigation will be pursued.

Community Benefits Plan

The Community Benefits Plan in Appendix O that was developed by the City offers many benefits to the community, including $2,000,000 for pediatric wellness. The plan includes a community benefits fund, but it is not clear if this fund would be available to the community to address the specific project related concerns that were identified by the local community during the Navy's public outreach meetings (Table 6.4.4-1 - Overview of Community Outreach Meetings and Comments), including impacts that might appear during project construction. Potential projects that could address community concerns include technical assistance for the community to interpret environmental documents; air filtration systems; mobile asthma clinics; or other community identified mitigation measures.

One example of a successful mitigation fund is the Port of Los Angeles's "Port Community Mitigation Trust Fund." This fund is managed by a nonprofit organization, which distributes the money to pay for projects that mitigate environmental justice impacts from Port of Los Angeles activities.

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[8] See Gee GC, and Takeuchi DT.. "Traffic stress, vehicular burden and well-being: a multilevel analysis." Soc Sci Med. 2004 Jul;59(2):405-14, (http://www.ncbi.nlm.nih.gov/pubmed/15110429). Also Peters A, von Klot S, Murray A, et al. "Exposure to Traffic and the Onset of Myocardial Infarction". *New England Journal of Medicine*, Vol. 351, No. 17. 21 October 2004, (http://www.ncbi.nlm.nih.gov/pubmed/15496621).

Recommendation: The FSEIS should clarify the scope of the community benefits fund. The FSEIS should also describe how the Community Benefits Plan will be administered, including the parties responsible for implementation of the components, the tracking and monitoring that will occur, and how this information will be shared with the public.

Low Income Designation

The DSEIS identifies the project site as minority, but not low-income, because the low income households in the project vicinity, as measured by the U.S. Census, comprise 16.7% of all households, which is less than 10 percentage points higher than the base communities (p. 6-11). It is not clear why a minimum of 10 percentage points higher than the reference community average is being used as a criterion for defining "low-income". Due to the high cost of living in California, especially San Francisco, substantial low-income populations might not be captured if such a high threshold is used.

Recommendation: The FSEIS should use a lower threshold for identifying low-income populations. Block groups that have a higher percentage than the state average (12.4%) for households living in poverty could be used to more accurately capture low-income communities in the area.

Mitigation Measures

We understand that under the Base Realignment and Closure (BRAC) Program, when the decision to dispose of the property has been made, the Navy relies on the development alternatives and mitigation measures presented in the community's development plan. The DSEIS indicates that mitigation for impacts associated with reuse of Hunters Point Shipyard would be the responsibility of the City of San Francisco or a reuse organization approved by the City (p. ES-18). It specifies that mitigation for transportation improvements to address significant traffic impacts would be the responsibility of the future developers of Hunters Point and/or the City and County of San Francisco (p. 4.1-3), but it also presents mitigation in a tentative manner. For example, for noise impacts, it states that the contractor *could* consider use of noise barriers; and new residences *could* include sound attenuating elements (p. 2-113). For impacts to wetlands, it states that the applicant *should* prepare a wetlands and jurisdictional waters mitigation monitoring plan (p. 2-119). It is not clear which mitigation measures will be implemented nor what mechanism will ensure mitigation will occur. This should be disclosed in the Navy's NEPA document.

Recommendation: The FSEIS should clearly identify the mitigation that would occur for the proposed project and the party responsible for implementation. Indicate whether there is sufficient funding for mitigation, identify the authority for the mitigation (i.e. legal requirements by state or local government entities), and identify the mechanism by which enforcement of mitigation would occur. This is consistent with CEQ's recently issued guidance on the appropriate use of mitigation and monitoring[9]. In it, CEQ also states that mitigation commitments should be carefully specified in terms of measureable performance standards or expected results so as to establish clear performance expectations. The timeframe for the action should also be specified to ensure that the intended start date and duration of the mitigation commitment is clear.

[9] http://ceq.hss.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf

Water Quality
The DSEIS states that the installation of foundation support piles, including potential for groundwater contamination, and methods to reduce the potential of encountering contaminated sediments while implementing shoreline improvements is discussed in Section 4.7, Hazards and Hazardous Substances (p. 4.9-6); however, no discussion of this was found in this section. It also states that potential impacts from shoreline improvements, including contaminant remobilization, would be addressed in the Stormwater Pollution Prevention Plan and does not provide any discussion of how this would occur.

The cleanup status discussion of parcel F (offshore areas) references numbered subareas (p. 3.7-23), but no map is included to facilitate understanding of these references.

> *Recommendation:* The FSEIS should discuss the methods that would be used to reduce the potential for encountering and remobilizing contaminated sediments while implementing shoreline improvements. Include a map of Parcel F subareas.

Wetlands and Waters of the U.S.
The DSEIS states that the project will permanently impact 0.17 acres of seasonal freshwater wetlands and permanently alter over 20 acres of bay habitat (p. 4.13-7). It states that the project applicant should prepare and implement a wetland and jurisdictional waters mitigation monitoring plan (p. 2-119) and that the acquiring entity would be responsible for implementing the necessary mitigation measures, which would be specified during the permitting process (p. 2-27).

> *Recommendation:* The FSEIS should indicate how the applicant and acquiring entity will comply with the Federal Guidelines under Clean Water Act (CWA) Section 404(b)(1), which requires applicants to clearly demonstrate that the proposed project represents the least environmentally damaging practicable alternative (LEDPA) that achieves the basic project purpose. A 404(b)(1) alternative analysis is required for the CWA 404 permit. This alternatives analysis must evaluate a full range of alternatives and select the LEDPA as the preferred alternative. The proposed mitigation must fully comply with the April 10, 2008, Corps and EPA "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule" (Mitigation Rule) 40 CFR 230 (See http://www.epa.gov/EPA-WATER/2008/April/Day-10/w6918a.pdf).