California State Lands Commission

PART II – RESPONSES TO COMMENTS

Final Environmental Impact Report for the Tesoro Avon Marine Oil Terminal Lease Consideration, January 2015

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PART II. RESPONSES TO COMMENTS

Pursuant to State California Environmental Quality Act (CEQA) Guidelines section 15088, the California State Lands Commission (CSLC), as CEQA lead agency, is required to evaluate comments on environmental issues received from persons who reviewed the Draft Environmental Impact Report (EIR) prepared for the Tesoro Avon Marine Oil Terminal Lease Consideration Project (Project) and to prepare a written response. The lead agency must respond to comments that it received during the noticed comment period and may respond to late comments. The State CEQA Guidelines further require the lead agency to describe in its written response the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). If the lead agency's position varies from recommendations and objections raised in the comments, the agency must address the major environmental issues raised and give details why any specific comments and suggestions were not accepted.

Part II of this Final EIR contains copies of comment letters and oral comment (excerpts from the transcripts of the public meetings) and the CSLC's responses. Eighteen written comment letters were submitted in response to the Draft EIR during the public review period. Ten speakers provided oral comments at two public meetings on the Draft EIR held by CSLC staff on October 20, 2014.

To reduce redundancy, the CSLC has prepared both (1) Master Responses to several general or recurring comments (Subpart II.A) and (2) responses to significant environmental issues raised in individual comments (Subpart II.B). Responses to comments are presented in the order listed in Table II-1 and are organized as follows:

- Each commenter is given a unique comment set and code that refers to the agency, organization, or person submitting the comments. The comment set includes all written and/or oral comments provided by that commenter, including multiple submittals of comments, if applicable.
- Individual comments are numbered in the margins of each comment letter and/or oral comment transcript; correspondingly numbered responses follow each comment set.

Part III contains the complete EIR with revisions to the text of the Draft EIR shown in strikeout and underline that were made in response to comments that required changes or for the reasons stated on page I-1. The following conventions are used to indicate how the Draft EIR text was changed during EIR finalization in Part III of this Final EIR:

- <u>Underlined text</u> represents text added to the EIR (in some cases moved from another location in the document, in other cases new text).
- ~~Strikeout text~~ represents text removed from that location in the EIR (in some cases moved elsewhere, in other cases removed entirely).

Table II-1 summarizes written comment sets submitted during the public comment period. Written comments are listed in the order received for each category.

Table II-1 Commenters Providing Written Comments on Draft EIR and Comment Identification Numbers Used in this Final EIR

Master Responses to Recurring Comments				
MR-1	Baseline Environmental Setting—Vessel Traffic			
MR-2	Baseline Environmental Setting—Oil Spill Assumptions			
MR-3	Project Scope			
MR-4	Imports of Lower-quality Crudes, Including Bakkan Crudes			
MR-5	Project Alternatives			
MR-6	Requests for Extended Comment Periods			
Name of Commenter*	**Date**	**Comment at Public Meeting**	**Comment**	
			Set #	**ID #**
Governmental Agencies				
Bay Conservation and Development Commission	11/05/14		1	1-1 to 1-2
Delta Protection Commission	11/10/14		2	2-1
Bay Area Air Quality Management District	11/13/14		3	3-1 to 3-5
Groups / Organizations / Businesses				
Cherne Contracting Corporation	10/14/14		4	4-1 to 4-2
Tesoro Golden Eagle Community Advisory Panel	10/15/14	yes	5	5-1 to 5-4
Brinderson, L.P.	10/20/14	yes	6	6-1 to 6-3
CS Marine Constructors, Inc.	10/30/14		7	7-1 to 7-3
Martinez Environmental Group	11/04/14	yes	8	8-1 to 8-53
Communities for a Better Environment	11/12/14		9	9-1 to 9-36
Adams Broadwell Joseph & Cardozo, on behalf of Safe Fuel and Energy Resources California	11/13/14		10	10-1 to 10-73
Public				
Larry Cathey	10/17/14		11	11-1
Robert Walson	11/10/14		12	12-1
Eric Gin	11/10/14		13	13-1
Michael Short	11/10/14		14	14-1
Robert E. Wallace	11/10/14		15	15-1
Jeff S. Wong	11/10/14		16	16-1
John-Paul Tioseco	11/10/14		17	17-1
Applicant				
Tesoro Refining and Marketing Company, LLC	11/12/14		18	18-1 to 18-3

* Written comments are listed in the order received for each category.

Table II-2 lists commenters who provided oral comments in order of appearance at the public meetings.

Table II-2 Comments Presented Orally on Draft EIR during Public Meetings and Comment Identification Numbers Used in this Final EIR

Name of Commenter	Date	Comment*	
		Set #	ID #
Groups / Organizations / Businesses			
Martinez Environmental Group (Jim Neu)	10/20/14	8	8-49
Martinez Environmental Group (Tom Griffith)	10/20/14	8	8-50
Martinez Environmental Group (Aimee Durfee)	10/20/14	8	8-51 to 8-52
Martinez Environmental Group (Jim Neu)	10/20/14	8	8-53
Brinderson, L.P. (Julie Kinder)	10/20/14	6	6-2 to 6-3
Tesoro Golden Eagle Community Advisory Panel (Darrell Foote)	10/20/14	5	5-4
Public			
Jim Vicknair	10/20/14	19	19-1
Kathleen Petricca	10/20/14	20	20-1 to 20-2
Anna Rikkelman	10/20/14	21	21-1 to 21-3
George Smith	10/20/14	22	22-1

* For commenters who provided both written and oral comments, oral comments can be found with the corresponding written comments.

SUBPART II.A MASTER RESPONSES (MR-1 THROUGH MR-6)

MR-1 BASELINE ENVIRONMENTAL SETTING—VESSEL TRAFFIC

Commenters on the Draft Environmental Impact Report (EIR) raised several concerns surrounding the pre-Project or baseline period estimates, including the number of ship calls (vessel traffic) at the Tesoro Refining and Marketing Company, LLC (Tesoro) Avon Marine Oil Terminal (Avon Terminal), export/import (barrels), and air emissions.

Commenter issue: The pre-Project or baseline ship calls (vessel traffic), as well as the associated vessel air emissions, are not accurate because the 10-year historical average that was used does not reflect the actual conditions that existed at the time the environmental analysis was commenced.

The relationship of baseline to the existing setting during California Environmental Quality Act (CEQA) review is established in the California Code of Regulations, Title 14, section 15125, subdivision (a), as follows:

> *(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.*

The following two key points from section 15125, subdivision (a) should be noted:

- The environmental setting is a description of the physical environmental conditions in the vicinity of the project as they exist at the time of the environmental analysis.
- The environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.

Therefore, the baseline is normally representative of the conditions as they exist at the time of environmental analysis. The term “normally” was included in section 15125, subdivision (a) to allow for deviation of the baseline from the environmental setting if there are unusual circumstances. This interpretation is in concurrence with the Bay Area Air Quality Management District Deputy Air Pollution Control Officer, Jean Roggenkamp, in the comment letter dated November 13, 2014, as follows:

Please note that the Air District typically uses a 3-year baseline period for calculating emission reduction credits and emission increases for new source review permits. The Air District recommends analyzing operational-related air quality and GHG [greenhouse gas] impacts against a 3-year baseline period (to be consistent with Air District regulations) rather than a 10-year baseline period, unless the 10-year baseline is more representative of normal operations.

A 3-year baseline would include years 2011 through 2013. As can be seen from EIR Table 2-4: Avon Terminal Vessel Calls, the Avon Terminal had significantly fewer vessel calls during 2011 than other years. This occurred for a number of reasons, including:

- a fendering system retrofit;
- Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) initial audit repairs;
- approachway construction between August and November 2011; and
- reduced activity at the Avon Terminal due to substantial operations modifications at the Golden Eagle Refinery in 2011.

For these reasons, the vessel activity data in 2011 were deemed anomalous, and therefore, it was determined that a 3-year baseline period was not representative of normal operations. A longer baseline period was chosen to increase the overall data set upon which the baseline annual average would be more representatively based.

Additionally, the Avon Terminal was impacted by the significant economic downturn that occurred after the financial crisis of 2007–2008, which is considered by many economists to have been the worst financial crisis since the Great Depression of the 1930s. It is important to note that the closure of Berth 5 occurred in 2009, although this did not limit the throughput or vessel calls of the Avon Terminal overall. All Berth 5 ship activity and throughput were shifted to Berth 1.

Considering the anomalous 2011 data and the aftermath of the financial crisis of 2007–2008, it was determined that a 3-year baseline period was not representative of normal conditions at the Avon Terminal. As discussed in Section 1.5.1 of the EIR, the annual average of the last 10 years “best characterizes the overall level of vessel traffic activity at the time the [Notice of Preparation] was published, without singling out a specific year that may have experienced unusually high or low numbers of vessel calls due to economic conditions and other factors.”

Finally, it is noted that in the past, courts have concurred on this issue stating that “[t]he date for establishing baseline cannot be a rigid one. Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods” (*Communities for a Better Environment v. S. Coast Air Quality Mgmt.*

Dist., (2010) 48 Cal. App. 4th 310, 327-328, quoting *Save Our Peninsula Comm. v. Monterey Cnty. Bd. of Supervisors*, (2001) 87 Cal. App. 4th 99,125).

MR-2 BASELINE ENVIRONMENTAL SETTING—OIL SPILL ASSUMPTIONS

Commenters on the Draft EIR raised several concerns surrounding the baseline assumptions used for the oil spill frequency calculations, including the use of the mean (arithmetic average) to summarize the frequency of spills, and that a discussion of small spills (less than 10,000 gallons) and associated impacts was not included.

Commenter issue: Tesoro is required to submit a Worst-case Discharge (WCD) report of a 10,443 barrel spill.

As stated in Section 4.1.1.2, Bay Area and Avon Oil Spill Response Capability, of the EIR, the existing Avon Terminal WCD is 10,443 barrels (438,606 gallons), which is the sum of individual spill volumes from multiple pipelines, transferring at the same time under current operations at the Avon Terminal, if simultaneous failures of the piping systems occur (the WCD is calculated pursuant to 40 CFR part 112, appen. D, "Determination of a Worst Case Discharge Planning Volume"). Under the proposed Project, Tesoro would construct Berth 1A, which would then become the only operational berth. In that case, only one pipeline could be used to transport product to and from Berth 1A at any given time. Thus the WCD under proposed Avon Terminal operations would be the volume of the largest individual pipeline, or 6,207 barrels (260,694 gallons). Consequently, construction and operation of the new Berth 1A, which is a requirement of the California State Lands Commission's (CSLC) MOTEMS, would reduce the WCD by 4,236 barrels (177,912 gallons), or 41 percent.

10,443 barrels – 6,207 barrels = 4,236 barrels
4,236 barrels x 42 gallons/barrel = 177,912 gallons

Commenter issue: The use of mean (arithmetic average) to summarize the frequency of oil spills minimizes the predicted number of spills and their frequency.

The Chambers Group, Inc. (1994) data used in the EIR to estimate the probability of a tank vessel spill while in transit inside and outside of the San Francisco Bay were derived from a comprehensive analysis of the potential for tank vessel spills and are the best data available. Use of these data also provides consistency, as the data have been used in prior EIRs, most recently in an EIR certified by the CSLC for the Tesoro Amorco Marine Oil Terminal (Amorco Terminal) Lease Consideration in February 2014 (State Clearinghouse [SCH] No. 2012052030) (CSLC 2014).

As stated in EIR Section 4.1.1.4, Spills from Bay Area Terminals and Avon Terminal, the CSLC maintains a database of tank vessel calls to and spills at marine oil terminals

in the San Francisco Bay. The EIR analysis used the number of tank vessel calls and number of spills available from this database to calculate the probability of a spill per vessel call in the bay. This probability was then used to calculate the annual probability of a spill from the Avon Terminal. The reciprocals of these annual probabilities were then provided to the public as another method of presenting the same information. To be able to calculate the median, information on every spill would be required, including the size and date. Such detailed information was not available for the probability estimates used, and the CSLC database for spills and vessel calls at the Avon Terminal is not large enough to develop these additional statistics, much less to calculate the mean time between spills. To gather such information independently (outside of existing agency-maintained or accepted published databases) is infeasible because it would be extremely difficult to gather and it would be potentially incomplete. In addition, it would not change the conclusion of the analysis that the potential impacts of an oil spill could be considered significant.

Implementation over time of enhanced tank vessel design standards (e.g., double hulls), increased training requirements, and other safety requirements (e.g., use of tug escorts) have resulted in overall improvements in tank vessel transportation. As such, an in-depth statistical analysis would result in lower probabilities of oil spills. Because the potential impacts of oil spills have already been classified as significant in the EIR, any additional statistical analysis would only lower the statistical significance level.

Commenter issue: The Draft EIR under reports the frequency of spills by arbitrarily choosing to measure spills of 238 barrels (10,000 gallons) or larger.

As stated in EIR Section 4.1.1.4, Spills from Bay Area Terminals and Avon Terminal, the CSLC maintains a database of all spills from marine oil terminals and vessels while at marine oil terminals in the San Francisco Bay. This includes spills of all sizes. Figure 4.1-3: Worldwide Spill Size Cumulative Distribution at Large Marine Terminals in EIR Section 4.1, Operational Safety/Risk of Accidents, presents a graph of the probable size distribution of spill events at marine oil terminals. As the figure indicates:

- 54 percent of spills are likely to be less than 1 gallon;
- 70 percent are likely to be less than 10 gallons;
- 86 percent are likely to be less than 100 gallons; and
- 95 percent are likely to be less than 1,000 gallons.

As stated in Section 4.1, Operational Safety/Risk of Accidents, relatively small spills can be contained during first-response efforts with rapid cleanup, and impacts would be considered less than significant.

To estimate the probability of an in-transit tank vessel spill in the San Francisco Bay, the Chambers Group, Inc. (1994) data were used because they provide the only comprehensive analysis of the potential for tank vessel spills in the bay, and these data

include mileage and trip information. It is correct that the U.S. Coast Guard (USCG) maintains a database of nationwide spills, including small spills; however, use of the USCG database would require extensive analysis and would not allow for the needed statistical evaluations referenced in the EIR (e.g., Table 4.1-6: Probability of Spill Greater than 100 Gallons, per Vessel Calling [by Vessel and Accident Type]). The USCG database does not include mileage or trip information, and therefore, does not provide the data necessary to evaluate per mile or per trip spill probabilities. The EIR, Section 4.1, Operational Safety/Risk of Accidents, presents probabilities for oil spills greater than 100 gallons (a relatively small spill) from barges and tankers in transit from collisions, ramming (or allisions), and groundings. Again, as stated in Section 4.1, Operational Safety/Risk of Accidents, relatively small spills can be contained during first-response efforts with rapid cleanup, and impacts would be considered less than significant.

Commenter issue: The Draft EIR relies on an outdated report, although recent USCG data are available.

For tank vessels transiting to and from marine oil terminals, the Chambers Group, Inc. (1994) data were used to estimate the probability of a tank vessel spill in the San Francisco Bay for two reasons. First, this estimate was based on a comprehensive analysis of the potential for tank vessel spills in the bay, and it is the only available report covering spills in harbor areas. It is correct that the USCG maintains a database of nationwide spills. However, to use these data to calculate the probability of a spill per mile traveled would require extensive analysis and would introduce additional uncertainty given the lack of mileage and trip information in the USCG database. In addition, the Chambers Group, Inc. (1994) data have been used in other recent CSLC marine oil terminal lease-renewal EIRs covering San Francisco Bay, thereby allowing for accurate situational comparisons. As stated above, implementation over time of enhanced tank vessel design standards (e.g., double hulls), increased training requirements, and other safety requirements (e.g., use of tug escorts) have resulted in overall improvements in tank vessel transportation. Because the potential impacts of spills have already been classified as significant in the EIR, any additional statistical analysis would likely only lower the statistical significance level.

Commenter issue: The Draft EIR calculated the risk of Avon Terminal-related shipping accidents by comparing distance traveled rather than frequency of spills, scaled by distance.

The types of vessels that call at the Avon Terminal are the same as those that call at other marine oil terminals in the bay. Thus, the probability of spills per mile from vessels in transit to and from the Avon Terminal is expected to be the same as for those to and from all marine oil terminals in the Bay Area. No available information suggests that more hazardous areas would need to be transited by tank vessels going to and from the

Avon Terminal. In addition, the database for tanker traffic to and from the Avon Terminal is not large enough to allow meaningful probabilities to be calculated based on frequency of spills. For example, no spills from tank vessels transiting to and from the Avon Terminal have been identified; thus, the probability of a spill would be zero, which is not the case.

The justification for the number of tank vessel calls assumed for the baseline is addressed in Master Response MR-1. While Tesoro estimates that the maximum number of tank vessels that will call annually at the Avon Terminal is 120, it is possible that more could call. If this were to occur, the estimated probability of a spill would be proportionally greater both for spills at the Avon Terminal and for tank vessels transiting to and from the Avon Terminal. However, it is unlikely that the average would be greater than 120 per year over the 30-year lease period, and thus, the overall 30-year probability would not increase. The potential impacts from a spill have been classified in the EIR as significant; therefore, an increase in the probability of a release would not alter this classification.

The number of vessel calls per week would be a function of when the tank vessels arrive, and could vary from zero to as many as the Avon Terminal could safely handle, which is about seven. The tank vessels would use pilots and tugs, as required, and would approach and depart the Avon Terminal in a safe manner. Thus, the number of tank vessel calls per week would have no impact on the probability or frequency of spills.

MR-3 PROJECT SCOPE

Commenters on the Draft EIR raised several concerns surrounding the scope of the Project, including the exclusion of Golden Eagle Refinery (Refinery) operations, and associated potential environmental impacts resulting from Refinery operations, from the Project.

Commenter issue: Environmental impacts resulting from the operation of the Golden Eagle Refinery and onshore tankage for the period of the lease renewal should be evaluated as part of the proposed Project.

CSLC staff acknowledges that Tesoro's Avon Terminal is an element of the Refinery's current operational practices, specifically its existing marine oil terminal export operations (see EIR Section 3.0, Alternatives and Cumulative Projects). Should Tesoro's Avon Terminal lease not be renewed, and the existing Avon Terminal be subsequently decommissioned, Tesoro would have to pursue other means of export to continue to meet existing regional demands and replace the current throughput from the Avon Terminal. The Golden Eagle Refinery would still continue to operate. However, the Golden Eagle Refinery is also served by facilities for other land-based transport of products, including rail car and truck transportation, by pipeline connections to other

San Francisco Bay Area terminals, and by the existing Amorco Terminal.[1] Existing operation of the Refinery and other land-based facilities are subject to permitting by other local and State agencies. The overall operation of the Refinery is dependent on various means of onshore and offshore transport of products, often resulting from existing market supply and demand, and existing local and State jurisdictional permitting capacities.

The Golden Eagle Refinery and onshore tankage currently operate under their own land use permits, air district permits, storm water permits and other entitlements. Tesoro is not seeking any changes to these existing entitlements. Since no new permits are required for the refining, storage, or other activities at the Golden Eagle Refinery and onshore tankage, they are not considered part of the CEQA Project associated with renewal of the state leases and related approvals for the Avon Terminal. Under the Guidelines, the term "Project" refers to the whole of an activity that has the potential to cause a change in the environment and may be subject to one or more discretionary approvals (State CEQA Guidelines, § 15378, subds. (a) and (d)). Here, the project being considered is the renewal of a state lease; accordingly, the project for CEQA purposes encompasses all the permits and approvals necessary for Tesoro to operate and renovate the Avon Terminal. Because no permits or approvals are necessary for the refining, storage, or other activities at the Golden Eagle Refinery and onshore tankage, these facilities were not included as part of the proposed Project scope.

MR-4 IMPORTS OF LOWER-QUALITY CRUDES, INCLUDING BAKKAN CRUDES

Commenters on the Draft EIR raised several concerns regarding the possibility of importing heavy crude oil and Group V oils (oils that have a relative density to water of >1.0 and tend to sink under certain conditions) at the Avon Terminal, including concerns regarding which types of oils may be imported and their potential impacts, and Mitigation Measures (MMs) for subsurface spills of Group V oils.

Commenter issue: The EIR does not identify crude imports/types of oils, and/or clearly identify import limitations.

The CSLC has never instituted lease-based provisions to limit the types and sources of product transferred at marine oil terminals. As described in Section 1.2, Project Objective, of the EIR, the basic Project objective is to obtain a CSLC lease to continue operations at, and maintain existing transport levels of petroleum products for marketing through, the upgraded Avon Terminal, thereby maintaining existing operations and

[1] The CSLC issued Lease No. PRC 3453.1 for the Amorco Terminal in February 2014 (see http://archives.slc.ca.gov/Meeting_Summaries/2014_Documents/02-21-14/Items_and_exhibits/C41.pdf and Amorco Marine Oil Terminal Lease Consideration Project Final EIR [CSLC 2014, SCH No. 2012052030]).

viability of Tesoro's associated Golden Eagle Refinery. Limiting the type of product imported to the Avon Terminal would limit the operation of the Refinery, thereby rendering the Project objective infeasible.

As detailed in EIR Section 2.1, Project Overview and Lease History, product exports and imports currently represent approximately 90 and 10 percent of Avon Terminal operations, respectively. The Avon Terminal exports petroleum products, including premium fuel oil, gas oil, diesel, and cutter stock. Infrequently and as needed, the Avon Terminal imports Refinery feedstocks.

All crude oil imports occur at Tesoro's Amorco Terminal, which also services the Golden Eagle Refinery. However, small quantities of decant oil have historically been received at the Avon Terminal for processing at the Refinery. Decant oil products may be mixed with lighter distillants and byproducts to produce Group V residual fuel oils. Depending on the distillants used and the blending process, these oils can separate when spilled and either sink or float in the water column. Unlike light oils, decant oils are not generally acutely toxic. Because the amount of decant oil imported to the Avon Terminal is small, and the vast majority of product processed at the Avon Terminal would float if spilled, the oil spill trajectory modeling in Appendix B of the EIR does not address the trajectory of subsurface oil, and the EIR focuses primarily on impacts and applicable MMs in the event of a surface spill. Impacts and MMs should a spill of decant oil occur are discussed in detail below.

The types of petroleum product that are currently exported and imported at the Avon Terminal are expected to remain the same during the period of the new lease. Tesoro does not anticipate that any hydrocarbon feedstocks, tar sands, Bakken crude, or other products that might be classified as Group V, other than small amounts of decant oil (previously mentioned), would be handled at the Avon Terminal during the life of the lease. Tesoro's Project objective is to obtain a CSLC lease and conduct the improvements required to comply with the most recent update to MOTEMS. These upgrades will not facilitate or increase the ability of the Avon Terminal to import heavy crude oils. Therefore, any change in the types of product handled at the Avon Terminal is not a reasonably foreseeable consequence of the Project, and is too speculative for evaluation in this EIR.

Commenter issue: The EIR does not analyze the potential impacts associated with processing lower-quality crudes, including impacts on sensitive species and recreation, and cumulative impacts.

As noted in MR-3, Project Scope, the refining, storage, and other activities at the Golden Eagle Refinery and the onshore tankage are not a part of the Project. The following discussion addresses potential impacts associated with the transport of lower-quality crudes.

It is possible that in spill conditions, small quantities of decant oil could disperse and result in the sinking of the oil or its components. Although decant oils are not generally acutely toxic and vessels calling at the Avon Terminal may transport this type of oil in small amounts, a spill of decant oil, as with other forms of oil, at or near the Avon Terminal could result in significant impacts on sensitive species, water quality, and recreational activities.

Decant oils that sink can be forced into the substrate by tidal waves or can remain suspended in the water column. If the oil becomes suspended in the water column, sensitive aquatic species are more likely to encounter the oil. Impacts on and MMs for sensitive aquatic species, including diving birds, fish, and invertebrates, resulting from a spill of submerged oil would be the same as impacts and MMs for a surface spill; the primary difference is that more individuals and species would be likely to be impacted. Refer to Section 4.2, Biological Resources, of the EIR, for a detailed discussion of oil spill impacts on aquatic species.

Submerged decant oils are difficult to remove from benthic substrates, and if left unrecovered in large quantity, can cause periodic re-oiling of shorelines. As stated in Section 4.9, Land Use and Recreation, of the EIR, spills that beach along heavily used areas and recreational points would limit or preclude such uses, depending on the characteristics of a spill and its residual effects. Oil that spreads to beaches, sand dunes, tide pools, shoreline reserves, harbors, marinas, and other recreational boating and fishing facilities would limit access to these areas due to containment equipment and cleanup activities. Spills that reach the more remote portions of the shoreline and the outer coast may not necessarily decrease the availability of recreational uses because use may be minimal, but would result in impacts on biological resources and water quality. Impacts on biological resources and water quality resulting from submerged oils that cause re-oiling of shorelines would be the same as from surface oils impacting the shoreline, and are discussed in EIR Sections 4.2, Biological Resources, and 4.3, Water Quality.

When the cumulative environment is considered, the Project's contribution of decant oil (Group V oil) is small. Even so, and as with other forms of oil expected to be transferred across the Avon Terminal, impacts on biological resources, water quality, sensitive shoreline lands, and water and non-water recreation due to an accidental release of decant oil would be potentially significant. Refer to EIR Sections 4.2, Biological Resources, 4.3, Water Quality, and 4.9, Land Use and Recreation, for a discussion of cumulative impacts on these resources related to an oil spill.

The level of shipment activity and throughput is not expected to change substantially over the proposed 30-year lease period; therefore, future impacts on environmental resources due to a spill of decant oil would not increase.

Commenter issue: The EIR does not address response capability, including providing the steps that are in place to handle a spill and the amount of training Avon Terminal staff receives, and MMs for subsurface spills of heavier crude oils.

Removal of spilled Group V oils presents several challenges. Due to many variables, including oil makeup and environmental conditions, this oil, if spilled, may exist in several different states, such as floating, sinking, and/or spreading throughout the water column. According to the Safety Data Sheet, decant oil can have a relative density to water of >1.0; therefore, it could be classified, for oil spill response purposes, as a Group V oil. Oils classified under Group V tend to sink under certain conditions. If the ratio of the density of oil to the density of the receiving water is greater than 1.0, the oil will not float. If it is within a few percentage points of 1.0, the oil is much more likely to become submerged due to wave action and/or sedimentation or adherence.

A variety of recovery techniques may be required to successfully mitigate Group V spills, and no technique has been found to be effective in all situations. It can be particularly difficult to locate, track, and predict the behavior of non-floating oil, especially in the presence of currents. Effective containment of submerged oil is usually next to impossible in areas where currents are present, such as in the vicinity of the Avon Terminal and the outer coast. Accepted methods may be difficult due to a general lack of experience in the field, the need for specialized equipment, and the tendency to recover large quantities of water and/or sediments along with the oil.

As stated in Section 4.1, Operational Safety/Risk of Accidents, of the EIR, all terminals and tanker/barge operators are required by federal and State regulations to demonstrate that they have, or have under contract, sufficient response assets to respond to worst-case releases, including releases of Group V oils. All terminals are under contract with one or more Oil Spill Response Organizations (OSROs), which can provide all of the necessary equipment and manpower to meet the requirements of existing regulations. OSROs that would be contracted for cleanup of any decant oil spills, including Bay Area Ship Services and Marine Spill Response Corporation (MSRC), would have access to equipment and materials necessary for removal of floating, dispersed, or sunken oil, as directed by jurisdictional regulatory agencies. Guidance for cleanup of sunken oil is available from the U.S. Environmental Protection Agency and other sources.

In addition to Tesoro's contracted OSRO response capabilities, the Tesoro Avon Terminal staff is fully trained to take immediate action in response to spills. As discussed in Section 4.1.1.3, Bay Area and Avon Oil Spill Response Capability, of the EIR, the Tesoro Spill Response Team is composed of approximately 25 personnel trained in oil spill containment and recovery procedures, including boat handling, area contingency plans, sensitive sites, protection, deflection and containment boom strategies, and incident management drills. Avon Terminal staff does not presently

receive spill response training for submerged oil. Training is ongoing on a monthly basis, and training records are audited by the CSLC.

Supplemental text regarding the methods used for detection and containment of submerged oil has been added to Section 4.1.1.3, Bay Area and Avon Response Capability, as follows:

Methods used for detection of submerged oil include vessel-mounted bottom- or side-scan sonar, divers with cameras, remotely operated vehicles with cameras, aircraft, and photobathymetry (photographic mapping of subsurface details). Other methods include diaper drops, where sorbents (often disposable diapers) wrapped around a lead ball are bounced on the bottom and then checked for the presence of oil; dragnet, where a seine net or chain-link fence is fitted with sorbent materials and towed through the water; and snare drops, where sorbents are attached to a line or chain, submerged, anchored, and later raised to surface. The purpose of these drops is to locate and track oil movement on the bottom.

Containment methods for submerged oil include a bottom boom (a weighted boom placed on the bottom); bubble curtains (massive amounts of bubbles released from a perforated manifold on the bottom that contain oil through turbulence caused by their rising action); water jets (nozzles placed above the surface of the water impinging on the water's surface, thus containing the oil); and a Jackson net (a boom-type device consisting of a double layer of knotless net, with an impermeable plastic membrane between layers fastened at the top and bottom that supports tension lines). The specialized types of equipment used to contain a submerged spill are not listed in EIR Table 4.1-5: MSRC Benicia/Martinez Spill Response Equipment because effective containment of submerged oil is usually almost impossible in areas where currents are present, such as in the vicinity of the Avon Terminal and the outer coast; therefore, it is uncertain which type of equipment might be used. However, the OSROs have access to the specialized equipment needed for a submerged oil spill.

MR-5 PROJECT ALTERNATIVES

Commenters on the Draft EIR raised several concerns surrounding the Project alternatives, including the accuracy of potential impacts on the environment as a result of the No Project alternative, and the deferral of mitigation to a future environmental review of the No Project and the Restricted Lease Taking Avon Terminal out of Service for Oil Transport alternatives.

Commenter issue: The No Project alternative is illogically deemed more harmful for the environment than the proposed Project; that inaccuracy is simply based on specious and speculative conclusions about subsequent actions to the decommissioning on the Avon Terminal.

Section 15126.6 of the State CEQA Guidelines requires an EIR to describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project. As described in Section 1.2, Project Objective, of the EIR, the basic Project objective is to obtain a CSLC lease to continue operations at, and maintain existing transport levels of petroleum products for marketing through, the upgraded Avon Terminal, thereby maintaining existing operations and viability of Tesoro's associated Golden Eagle Refinery. Tesoro's Avon Terminal is an essential part of the Refinery, without which the Refinery would need to find an alternative method of export (see EIR Section 3, Alternatives and Cumulative Projects). Should Tesoro's Avon Terminal lease not be renewed, and the existing Avon Terminal be subsequently decommissioned, Tesoro would have to pursue other means of export to continue to meet existing regional demands and the current throughput from the Avon Terminal, to meet the basic Project objective.

An EIR need not consider every conceivable alternative, but rather, must consider a reasonable range of potentially feasible alternatives, and is not required to consider alternatives that are infeasible. Section 21061.1 of the Public Resources Code defines "feasible," for purposes of CEQA review, as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." As described in the EIR, the Avon Terminal operates primarily (approximately 90 percent of current operations) as an export facility, transferring petroleum products from Tesoro's Golden Eagle Refinery. As discussed in Section 2.4.11, Throughput Volumes, in the EIR, Avon Terminal export volumes have ranged from 4.6 to 11.8 million barrels per year over the past 5 years. The CSLC understands from the Applicant (Tesoro) that the most feasible means of maintaining existing operations and viability of the Refinery would include three options:

- Transitioning the import-only Amorco Terminal to absorb Avon Terminal exports,
- Land-based alternatives such as rail, truck, or pipeline transportation, or
- Some combination of these alternatives.

Therefore, environmental resource impact analysis, in reaching its conclusion for the No Project alternative, encompasses a general consideration of these possibilities in order for the No Project alternative to meet the basic Project objective.

Commenter issue: The Draft EIR improperly defers the identification and incorporation of MMs.

In preparing an EIR, some degree of forecasting may be necessary; however, a lead agency is not required to speculate regarding particular impacts (State CEQA Guidelines, §§ 15144-15145). Section 15144 states that "[w]hile foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." Nonetheless, section 15145 notes that if a particular

impact is "too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." The EIR assumes that the No Project alternative would result in a decommissioning schedule for the Avon Terminal. As discussed in EIR Section 3.0, Alternatives and Cumulative Projects, the potential implementation of one or more future crude oil or product shipping alternatives to the Golden Eagle Refinery would involve (land based) processes over which the CSLC does not have jurisdiction. The CSLC discloses and evaluates a general discussion of the Applicant's objective to maintain existing Avon Terminal operations and viability of the Refinery, as mentioned previously. Since there are multiple ways to combine rail, truck pipeline, and other land-based transport alternatives with expansion of transport facilities at the Amorco Terminal and the CSLC would not have leasing jurisdiction over any land-based alternative, it is infeasible for the CSLC to evaluate particular impacts resulting from an alternative project and/or require MMs for such impacts.

In the California Supreme Court's decision on the *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, the court found that the limitations of the lead agency and their jurisdiction are a factor to consider when determining the feasibility of alternative sites and associated resource analyses. Therefore, sites outside of the CSLC jurisdictional boundaries may be considered infeasible by the CSLC. Also, it was the court's opinion that CEQA does not require in-depth review of alternatives that cannot be realistically considered and successfully accomplished, and that in the case of *Citizens of Goleta*, the County of Santa Barbara could properly find that a property located outside of its decision-making authority was not a feasible project alternative (even if the developer owned or had access to other sites outside of the lead agency's jurisdiction). Decommissioning, abandonment, and/or deconstruction of the Avon Terminal or any other proposed reuse of the Avon Terminal would require a separate CEQA review by the CSLC. Because details associated with decommissioning, abandonment, and/or deconstruction would need to be developed if they were to occur, impacts are discussed only generally.

MR-6 REQUESTS FOR EXTENDED COMMENT PERIODS

Commenters on the Draft EIR requested additional time for public review.

Commenter issue: Because there is so much to review, commenters are requesting a 45-day extension for the review period.

Consistent with section 15105 of the State CEQA Guidelines, the public review period for a Draft EIR should not be less than 30 days nor longer than 60 days except in unusual circumstances. The Draft EIR for the Tesoro Avon Marine Oil Terminal Lease Consideration was released for a 45-day public review period between September 29, 2014, and November 13, 2014. During this time, comments were accepted by mail, email, facsimile transmission, and in person at two public meetings.

There are significant reasons why the CSLC did not extend the public comment period. First, the CSLC believes that the 45-day comment period was a sufficient and reasonable amount of time to allow for a responsible and thorough review of the EIR. Second, there are extenuating circumstances why the CSLC believes it is critical to proceed without an extension or other delays. As noted throughout the EIR, the Avon Terminal is currently seismically deficient under MOTEMS, and the proposed renovations and construction of Berth 1A are intended to address this deficiency (i.e., upgrade the Avon Terminal to MOTEMS compliance). Tesoro has committed to the CSLC to complete the seismic retrofit and MOTEMS work at the Avon Terminal by 2017. Mitigation measures required by the CSLC under the proposed new lease, should it be approved by the CSLC (see EIR Section 4.1, Operational Safety/Risk of Accidents), will also reduce the risk of oil spills occurring at the Avon Terminal and should be implemented without delay. As discussed in Master Response MR-2, Baseline Environmental Setting—Oil Spill Assumptions, when the MOTEMS work is complete and mitigation measures are implemented, the WCD spill potential at the Avon Terminal will drop by 41 percent, thereby reducing the potential severity of oil spills at the Avon Terminal.

To meet the 2017 deadline, Tesoro must begin in-water work at the Avon Terminal in 2015 during the August 1 to November 30 work window specified by the National Marine Fisheries Service and California Department of Fish and Wildlife. (See also MM BIO-11a, In-Water Work Restrictions, and MM BIO-18a, Sound Attenuation Measures.) If delays in the CEQA and permitting process cause Tesoro to miss the 2015 work window, in-water work could not start until August 1, 2016, and Project completion would be delayed by at least a year. Therefore, the benefits from Project implementation—the reduced potential and severity of oil spills, and consequently, increased protection to California's waters and natural resources—would also be delayed by at least a year.