

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**STAFF SUMMARY REPORT (George Leyva)
MEETING DATE: December 14, 2011**

ITEM: 5

SUBJECT: **City of Richmond and the United States Department of Defense, Department of the Navy, for the Former Point Molate Naval Fuel Depot, Richmond, Contra Costa County** – Adoption of Revised Site Cleanup Requirements and Rescission of Order Nos. 95-235, 97-124, and 97-125

CHRONOLOGY: December 1995 - Site Cleanup Requirements order adopted
October 1997 – Updated Site Cleanup Requirements and Time Schedule orders adopted
November 2008 – Site Cleanup Requirements order adopted
September 2009 – November 2008 order remanded by State Water Board

DISCUSSION: The Revised Tentative Order (TO), Appendix A, would update site cleanup requirements for the 413-acre former Point Molate Naval Fuel Depot (Depot) in Richmond. The Depot is located along the Bay's eastern shoreline immediately north of the Richmond-San Rafael Bridge. Past releases from operations at the Depot have resulted in petroleum impacts to soil and groundwater and releases to the Bay. While currently controlled by an actively pumped extraction trench, petroleum deposits continue to pose a threat to water quality. The TO would require the cleanup of the entire 413-acre Depot site consistent with land uses outlined in the Environmental Impact Report (EIR) for the site, certified by the City of Richmond on April 5, 2011.

The TO names the City and the Navy as dischargers since the City currently owns the Depot site and the Navy is responsible for past contaminant releases at the site. The City is primarily responsible to ensure that cleanup actions occur; however, liability would fall to the Navy in the unlikely event that the City fails to achieve cleanup.

In 2008, the Board adopted updated site cleanup requirements largely similar to those in the TO. However, the State Board vacated and remanded those requirements back to the Board in 2009, after having determined in response to a petition that the Board had relied on an erroneous categorical exemption from CEQA when adopting those requirements. The TO relies on the EIR certified by the City earlier this year, rather than any categorical exemption, to comply with CEQA.

The original TO for these updated requirements was circulated for public comment from July 26 through September 9, 2011. We received comments

(Appendix B) from two private individuals and one comment from the City's consultant. The original TO was revised as appropriate. Additional non-substantive staff-initiated changes have been made to the TO, including to the finding specific to the Board's consideration of the City-certified EIR, solely for clarification. Appendix C responds to all comments received.

This item was to be considered at the Board's October meeting. However, due to the cancellation of that meeting, and a request by the City to delay the hearing by two months to study the TO, the item was delayed until this Board meeting.

Board staff planned to participate in a November 15 City Council study session to present the TO to the City Council. However, the City chose to cancel the presentation on the day of the study session and did not reschedule the presentation.

The TO represents the culmination of years of staff effort to obtain final cleanup at the Depot site and ensure cleanup will occur, in consideration of the land uses defined by the City. The Navy has indicated support for the TO, while the City has not clearly stated its support. Based on a teleconference Board staff had with members of the Point Molate Community Advisory Committee on November 29, the chair of that committee has indicated that the committee does not object to adoption of the TO. However, given the historic public controversy over redevelopment of the Depot site, we anticipate that we may receive testimony on this item by members of the public.

**RECOMMEN-
DATION:**

Adoption of the Revised Tentative Order

FILE No.

2119.1057; T0609592138

APPENDICES:

A – Revised Tentative Order

B – Comments Received

C – Response to Comments

Appendix A

REVISED TENTATIVE ORDER

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

REVISED TENTATIVE ORDER

**UPDATED SITE CLEANUP REQUIREMENTS and
RECISSION OF ORDER Nos. 95-235, 97-124 and 97-125**

**CITY OF RICHMOND and
UNITED STATES DEPARTMENT OF DEFENSE, DEPARTMENT OF THE NAVY**

For the:

**FORMER POINT MOLATE NAVAL FUEL DEPOT, LOCATED AT 1009 WESTERN
DRIVE, RICHMOND, CONTRA COSTA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Regional Water Board) finds that:

- 1) **Site Location:** The Point Molate Naval Fuel Depot (Point Molate NFD site or Facility), is a former U.S. Department of Defense (DoD), Department of the Navy (Navy) fuel storage facility, located on the eastern shore of San Francisco Bay. The Facility is about one-mile north of the Richmond-San Rafael Bridge in the City of Richmond (Figure 1), in Contra Costa County. The Facility consists of approximately 413 acres with topography varying from flat lying, filled tidal marsh along the bay front to steep hills rising to an elevation of more than 500 feet. Approximately 100 acres of the Facility are submerged and extend into San Francisco Bay. The onshore facility is bordered by property owned by the Chevron Corporation. San Francisco Bay borders the western boundary.
- 2) **Purpose of the Order:** This Order applies to the final cleanup of the entire 413-acre Site. Although many cleanup tasks required pursuant to Order Nos. 95-235, 97-124 and 97-125 have been completed, final cleanup of the Facility is needed. Residual contamination from former Navy operations necessitates further cleanup to ensure protection of human health, water quality, and the environment consistent with the intended reuse and redevelopment plans approved by the City.
- 3) **Site History:**
 - a) The Navy established Point Molate NFD in the early 1940s. Over 40 million gallons of fuel and oil were stored in 20 underground tanks, each having a capacity of approximately two million gallons. Each tank has a diameter of about 100 feet and a depth of 20 feet, and is basically a concrete vault built into the hillside and covered by native soil. The Facility configuration is largely similar to what it has historically been since being completed in 1943.
 - b) Several fuel types were stored in the tanks over the years including Navy Special Fuel Oil (NSFO, a black viscous bunker-fuel) diesel fuel, F-76 (marine diesel), JP-5 (jet turbine fuel), and aviation and motor vehicle gasoline. The Facility also operated a sanitary sewer system and a ballast water fuel reclamation/treatment system. The reclamation/treatment system included three former treatment ponds that are described in greater detail in Finding 11b.

The ponds were built on the site of a larger single pond that was used for the disposal of oily wastewater from various facility activities.

- c) Point Molate NFD has been inactive since September 30, 1995. Since then, it has undergone closure under the congressionally authorized Base Realignment and Closure (BRAC) Act.
 - d) Approximately 373 acres of the 413-acre Facility were transferred to the City in September 2003. By letter dated September 1, 2009, the Governor determined that the remaining 40 acres (the Early Transfer Property) were suitable for transfer to the City in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 120(h)(3)(C) and deferred the covenant required by CERCLA section 120(h)(3)(A)(ii)(1). This determination allowed the early transfer to occur. As a result all land at the Point Molate NFD is now owned by the City.
- 4) Early Transfer Cooperative Agreement:** “Early Transfer” as described in Finding 3(d) above, is defined by CERCLA 120(h)(3)(C), which allows the transfer of federal property before remedial action is completed. The Navy and the City have entered into an Early Transfer Cooperative Agreement (ETCA) for the environmental cleanup of the Early Transfer Property, which provides funding to the City to address most cleanup activities required by this Order (demolition of underground storage tanks are excluded).
- 5) Named Dischargers:** The parties responsible for complying with the requirements of this Order are the City and the Navy as described below. Collectively, they are referred to as the Discharger.
- a) The City is named Discharger because it is the current owner of the Point Molate NFD site on which there is an ongoing discharge of pollutants, it has knowledge of the discharge or the activities that caused the discharge, and it has the legal ability to control the discharge. The Navy is named Discharger because of substantial evidence that it discharged waste to soil and waters of the State at the Point Molate NFD site during its ownership and operation.
 - b) In the event that the City and/or its successors-in-interest fail to implement and comply with this Order, the Navy remains liable for compliance with this Order. In addition, the Navy has retained separate liability at the Facility should certain pollutants related to unexploded ordinance and radioactive constituents be discovered. The Regional Water Board retains all of its enforcement authorities should either or both parties fail to comply with the requirements of this Order.
 - c) The Regional Water Board agrees that in the event of failure by the City to comply with this Order, the Navy may at its discretion, propose and implement a different cleanup plan than that proposed by the City. Such a plan would be subject to the same public and regulatory agency review and approval as the City’s cleanup plan submitted pursuant to this Order. Such a plan must be consistent with the land use proposed by the Navy (e.g., commercial and industrial) and must ensure no discharges of waste into waters of the State.
 - d) The Regional Water Board will give the Navy written notice of the City’s failure to comply with this order and will provide the Navy 60 days, without penalty, to negotiate revised due dates for task submittals. The revised due dates and the submittal of a revised cleanup plan may be incorporated into this Order as an administrative action by the Executive Officer.
- 6) CERCLA:** The Early Transfer Property is subject to CERCLA due to the existence of hazardous substances but of low concentrations and limited extent. This Order sets forth the

framework and schedule for investigating and completing all necessary response actions. The agreements between the Navy and the City require compliance with the provisions of this and future Regional Water Board orders to achieve completion of all necessary cleanup actions at the Facility to ensure protection of human health, water quality, and the environment.

- 7) **Sites of Historic Significance:** A 100-acre portion of the Facility that includes the historic Winehaven Buildings and a residential complex has been nominated to the National Register of Historic Places. Any tasks that will directly or indirectly affect this historic district will require compliance with Section 106 of the National Historic Preservation Act of 1966, as amended in 1980, in accordance with the regulations for the protection of historic properties (36 CFR Part 800).
- 8) **Site Geology:** The Facility is situated on the western side of the Point San Pablo peninsula, projecting into San Francisco Bay. The peninsula is composed of fractured, fine to medium grained sandstones and siltstones of the Jurassic-Cretaceous age (~150 million year old) Franciscan Formation. The Facility is five miles west of the Hayward Fault zone and just east of the projected San Pedro-San Pablo Fault. Bay mud overlays the Franciscan Formation along the shoreline. During the past century, and likely earlier, the bay inter-tidal mud flats have been filled to create most of the low-lying flat areas of the Site.
- 9) **Hydrogeology:** The Facility is located in the East Bay Plain groundwater basin as designated by the State Department of Water Resources. The Facility is predominantly bedrock overlain by a thin mantle of colluvium (loose deposits of slope debris). Groundwater primarily flows through this mantle and discharges to the Bay. A relatively minor amount of groundwater is transmitted by the bedrock. It is therefore reasonable that pollutant transport, to the extent it has occurred, was through this colluvium mantle. The groundwater at this Facility may not be a potential source of drinking water, primarily due to the lack of production volume.
- 10) **Offshore Environmental Amenities:** Special areas of significance exist onsite in the offshore areas. The special areas delineated in the Point Molate Environmental Impact Report are the tidal marsh habitat and the eel-grass bed habitat. No remediation work is expected in the offshore areas. However, Prohibition A.4 requires protection of these offshore areas to prevent impacts from the remedial operations.
- 11) **Areas of Known Contamination:** There are four areas of concern (see Figure 2) that may present a continued source of pollution at Point Molate NFD. All of the following areas are subject to the requirements of this Order.
 - a) **Site 1 Landfill** – Waste from the operation of the Point Molate NFD was disposed of in a steep ravine area known as Site 1. The thickness of the waste may extend as much as 50 feet below the present ground surface. Volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs), pesticides, jet fuel, diesel, motor oil, and drums have all been documented to be in the landfill waste. Pursuant to a 2005 Record of Decision, the waste was capped and groundwater monitoring is conducted to confirm waste containment. This Order requires the continuance of long-term monitoring and maintenance for the Site 1 landfill in accordance with the 2005 Record of Decision for the landfill.
 - b) **Site 3 Treatment Pond Area** – At the time the Navy began operations at the Facility in 1942, Site 3 was a single pond formed by diking off a small embayment just west of the Winehaven Building. The pond was approximately ten to eleven acres in surface area, and

was used to capture oily waste from facility operations. In 1973, the pond was reconfigured into three smaller ponds with its use changed to sewage treatment and stormwater control for the Facility. In 1991, petroleum product as well as oil sheen was observed along the shoreline of the Bay adjacent to these ponds. The petroleum discharge was determined to be coming from the oil and sludge deposited prior to the 1973 conversion.

In 1995, the Navy installed a subsurface groundwater extraction trench approximately 1,000 feet long and 20 feet deep along the shoreline to capture oil and oil-contaminated groundwater coming from the Site 3 ponds as an emergency and interim remedy. The result of that remedy was that the oily discharge to the Bay was stopped. In 2003, the ponds were removed from service and backfilled after removal of contaminated material to a depth of ten feet below ground surface (bgs). High concentrations of petroleum-contaminated material remained below ten feet bgs. The groundwater extraction treatment system has continued to be operated to date. However, since the contamination at the Site remains, a potential threat to water quality exists if the extraction trench fails to function effectively.

Although the groundwater extraction treatment system has generally contained the oily source, a more permanent remedy is needed to abate the long-term threats to water quality. This Order requires the development of Cleanup Criteria for contamination greater than ten feet below ground surface (**Task 1**) and a Final Feasibility Study and Remedial Action Plan (FS/RAP) describing a remedy for Site 3 (**Task 3.a**).

- c) **Site 4** – Site 4 consists of Drum Lot 1 and Drum Lot 2 (Figure 2). This Order requires an Interim Remedial Action Plan (**Task 4**) to assess what technologies will best restore impacted groundwater to beneficial uses. This Order also requires a Human Health Risk Assessment and, if interim actions are not successful in achieving acceptable risk reductions, a Feasibility Study and Remedial Action Plan is required for a final remedial action, and a Remedial Action Completion Report (**Task 4 a thru e**).
 - i) **Drum Lot 1** – This area is directly south of Site 3. Contamination is generally petroleum related. Groundwater continues to be impacted from historic discharges at this location, although at concentrations that are below the approved cleanup goals for industrial use.
 - ii) **Drum Lot 2** – Drum Lot 2 is located at the southern portion of the Facility (Figure 2). Drums of liquid product were historically stored there. Groundwater monitoring as well as soil and soil-gas data indicate that trichloroethylene (TCE) is present in soils and groundwater. TCE in groundwater beneath Drum Lot 2 was recently measured at 400 ug/L (MW-29-01, October 2007).
- d) **UST Area** – Large petroleum underground storage tanks (USTs) at the Facility are generally located on its hillsides. Soil and groundwater contamination detected adjacent to the USTs and former valve boxes are the result of historic spillage and leakage. Free-phase product has been observed at some UST locations; however, those observations are generally limited in extent. As of July 2011, the Regional Water Board had approved closure for 9 out of 20 USTs (USTs 1, 7, 9, 10, 11, 14, 16, 17, and 20). The UST structures remain. The ETCA contains provisions and funding for the City to complete the regulatory closure of all the remaining USTs. Monitoring and maintenance of the remaining tanks will continue into the future. This Order requires a **UST Management Plan (Task 5)** to manage the remaining USTs, and to achieve final environmental closure of those tanks.

12) Risk Assessments:

- a) **Ecological Risk Assessment:** The Navy submitted a Final Offshore Ecological Risk Assessment Report, dated November 24, 1999, which evaluates soil and sediment chemical data along the shoreline down-gradient of Site 3. Results from this report are incorporated into the Fuel Product Action Levels (FPALs) discussed in Finding 13 below.
- b) **Human Health Risk Assessment:** The Navy submitted a Human Health and Environmental Risk Assessment Report for Site 4 dated March 2003. Results from this report are incorporated into the FPALs discussed in Finding 13 below. However, the Discharger shall submit a revised Human Health Risk Assessment for Site 4.

13) Cleanup Levels: The Navy submitted a Fuel Product Action Level report, dated August 31, 2001 (the FPAL report), which specifies soil and groundwater pollutant concentrations considered safe based on commercial and industrial land uses. The FPAL is for soil contamination to ten feet below the ground surface (less than 10ft bgs) and incorporates findings from Ecological Risk Assessment and Human Health Risk Assessment studies for this site. The FPAL report establishes fuel product cleanup levels based upon the depth of the pollutants below ground surface and its distance away from the Bay for various land use scenarios. However, the FPAL report does not address cleanup levels below ten feet, or >10ft bgs. This Order requires the development of **Soil Cleanup Criteria (Task 1)** for all depths greater than ten feet below ground surface, protective of human health and the environment for different land use scenarios.

14) Recordation of Deed Restrictions: A land use control document (LUC) has been developed and recorded for the entire Site. The LUC in this situation is known as a covenant to restrict use, or CRUP, which was recorded in Contra Costa County on March 29, 2010. The CRUP protects the public during the completion of Facility remediation activities and provides for the necessary access to complete those activities. In some cases, the CRUP may need to be amended as appropriate, depending on the scope of each proposed cleanup action for areas of the Facility that do not meet unrestricted use standards. This Order requires the Discharger to propose **Amended Land Use Controls (Task 8)** for the Regional Water Board's Executive Officer's review and approval after an acceptable remedy has been successfully completed pursuant to this Order.

15) Basis for Cleanup Standard:

- a) State Water Resources Control Board (State Water Board) Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background must be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives. This Order and its requirements are consistent with Resolution No. 68-16.
- b) State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304," applies to this discharge. This Order and its requirements are consistent with the provisions of State Board Resolution No. 92-49, as amended.

c) **Beneficial Uses:** The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Board, Office of Administrative Law and the U.S. EPA, where required. The Basin Plan designates the following potential beneficial uses of groundwater underlying and adjacent to the Facility (San Francisco Bay):

- | | |
|----------------------------------|---|
| a. Commercial and sport fishing; | g. Preservation of rare and endangered species; |
| b. Estuarine habitat; | h. Water contact recreation; |
| c. Industrial service supply; | i. Non-contact water recreation; |
| d. Fish migration; | j. Shellfish harvesting; |
| e. Navigation; | k. Fish spawning; and |
| f. Industrial process supply; | l. Wildlife habitat. |

16) Reuse or Disposal of Extracted Groundwater: Resolution No. 88-160, adopted by the Regional Water Board, allows discharges of extracted and treated groundwater from site cleanups to surface waters only if it has been demonstrated that neither reclamation nor discharge to the sanitary sewer is technically and economically feasible.

17) Basis for 13304 Order: California Water Code (CWC) section 13304 authorizes the Regional Water Board to issue orders requiring a discharger to cleanup and abate waste where the discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance.

18) Cost Recovery: Pursuant to CWC section 13304, the Discharger is hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

19) Board Order No. R2-2008-0095: The Regional Water Board previously adopted a final cleanup order (Order No. R2-2008-0095) for the entire Facility on November 12, 2008; however, that order was vacated and remanded by the State Water Board on September 15, 2009, due to an erroneous finding under the California Environmental Quality Act (CEQA). Specifically, the State Water Board held that the Regional Water Board should not have used a categorical exemption from CEQA when adopting Order No. R2-2008-0095, since the Facility is on what is commonly referred to as the "Cortese List". The Cortese List is a statewide list of sites involving the discharge of hazardous materials. CEQA prohibits the use of categorical exemptions for projects that take place on sites included on the Cortese List.

The State Water Board remanded the matter to the Regional Water Board to comply with CEQA. Since the remand, the City prepared and certified an environmental impact report (EIR) for redevelopment of the Site, including cleanup needed for redevelopment. See Finding 20 below. The Regional Water Board, as a responsible agency, is therefore relying on that EIR to comply with CEQA.

20) CEQA: The City of Richmond, as the lead agency under CEQA, has prepared and certified an Environmental Impact Report (EIR) on March 8, 2011, for the redevelopment of the Point Molate NFD, including cleanup required for protection of human health and the environment redevelopment. The EIR evaluated the environmental impacts associated with cleanup and redevelopment of the Point Molate NFD site under various alternative development scenarios. The Regional Water Board has considered the EIR and finds that with respect to those environmental impacts associated with cleanup of the Point Molate NFD that are within the Regional Water Board's jurisdiction, they have been mitigated to less than significant levels.

21) Notification: The Regional Water Board has notified the Discharger and all interested agencies and persons of its intent under CWC section 13304 to prescribe site cleanup requirements for the Point Molate NFD and has provided them with the opportunity to submit their written comments.

22) Public Hearing: The Regional Water Board in a public meeting heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED, pursuant to CWC section 13304, that the Discharger (or its agents, successors, or assigns) shall cleanup and abate the effects described in the above findings as follows:

A: PROHIBITIONS

1. The discharge of wastes and/or non-hazardous or hazardous substances in a manner which will degrade, or threaten to degrade, water quality or adversely affect, or threaten to adversely affect, the beneficial uses of the waters of the State is prohibited.
2. Further migration of wastes or hazardous substances through subsurface transport to waters of the State is prohibited.
3. Activities associated with the subsurface investigation and cleanup that will cause adverse migration of wastes or hazardous substances are prohibited.
4. The tidal marsh habitat and wetland habitats onsite shall be completely avoided unless encroachment on these areas is required to implement Facility remediation work and resultant impacts to the affected habitat are mitigated through a plan approved by the Executive Officer. A setback of 50 feet shall be established around the tidal marsh and any wetland area as a means of preventing any unintended impacts to it from the remediation.
5. The Site's offshore eel-grass habitat shall be completely avoided during any remedial work to the maximum extent practicable.

B: TASKS and COMPLIANCE DATES

1. SOIL CLEANUP GOALS

COMPLIANCE DATE: February 13, 2012

The Discharger shall propose soil cleanup goals, acceptable to the Executive Officer, for contaminated soils. The cleanup goals developed to date by the Navy for the Point Molate NFD (FPALs), describe goals for pollutants situated less than 10 feet below ground surface only. The cleanup goals for this task shall include petroleum hydrocarbons as well as other

chemicals of concern and shall include any reasonably expected decomposition byproducts, for all depths greater than 10 feet below ground surface.

**2. SOIL and GROUNDWATER MANAGEMENT PLAN
COMPLIANCE DATE: March 15, 2012**

The Discharger shall propose a Soil and Groundwater Management Plan for the Facility, acceptable to the Executive Officer, identifying how soils and affected groundwater will be managed for any phase of cleanup activities at the Facility, including initial cleanup as well as cleanups related to discoveries during any future development of the Facility.

The plan must propose how soil and groundwater will be sampled and analyzed during all phases of remediation and development, and how test results will be used to protect Facility workers and future occupants and visitors from residual pollutants. The plan shall describe the protocol to be followed for all sampling, field measurements, analytical techniques, and the sequence and methods of any proposed remediation.

The plan shall be consistent with and incorporate all applicable mitigation measures set forth in the certified EIR. The plan shall address equipment and the schedule of activities, proposed measures to limit fugitive emissions from site remediation and trucking activities, general soil removal and backfilling specifications, dewatering and discharge activities during the remedy process, and the proposed groundwater treatment activities to protect surrounding groundwater and surface water resources.

3. SITE 3

**a. FEASIBILITY STUDY and REMEDIAL ACTION PLAN (FS/RAP)
COMPLIANCE DATE: May 4, 2012**

The Discharger shall propose a final FS/RAP, acceptable to the Executive Officer, to clean up Site 3. The final Site 3 FS/RAP shall incorporate the applicable cleanup goals for the Facility and shall include a time schedule for sub-actions to attain the final cleanup.

**b. REMEDIAL ACTION COMPLETION REPORT
COMPLIANCE DATE: February 3, 2014**

Upon implementation of the Final FS/RAP, the Discharger shall prepare a Remedial Action Completion Report for Site 3, acceptable to the Executive Officer. The Remedial Action Report shall include LUCs as needed. The report shall identify the location of all remedial actions and describe the volume of soil excavated, describe the specifics of the disposal of that material, and present all test data generated during the remediation process and how the remediation activities met or did not meet remediation goals.

4. SITE 4

**a. INTERIM REMEDIAL ACTION WORK PLAN
COMPLIANCE DATE: April 3, 2012**

The Discharger shall prepare an interim remedial action work plan, acceptable to the Executive Officer, as an initial remedy for Site 4 (described in Finding 11.c.i and Finding 11.c.ii.).

b. INTERIM REMEDIAL ACTION COMPLETION REPORT

COMPLIANCE DATE: November 2, 2012

The Discharger shall conduct the interim action in a manner acceptable to the Executive Officer and provide a completion report by the compliance date. This shall be followed by eight (8) consecutive quarterly rounds of groundwater monitoring to assess the interim remedy chosen according to the accepted work plan described in Task 4.a above for Site 4.

c. HUMAN HEALTH RISK ASSESSMENT

COMPLIANCE DATE: November 4, 2013

The Discharger shall prepare a human health risk assessment for Site 4 to be used in determining if additional remedial measures are necessary to mitigate risks at the Site. If additional remedial measures are required for the expected land use, a Feasibility Study and Remedial Action Plan will be developed (Site 4 FS/RAP, Task 4.d), which shall include a time schedule for sub-actions to attain the final cleanup and shall be submitted to the Executive Officer for approval.

d. FEASIBILITY STUDY and REMEDIAL ACTION PLAN

COMPLIANCE DATE: February 3, 2014

If Interim Actions implemented per Task 4.b above are not successful in achieving the acceptable risk reductions per Task 4.c, the Discharger shall propose a final FS/RAP, acceptable to the Executive Officer, to cleanup Site 4. The final FS/RAP shall incorporate cleanup goals for the Facility and shall include a time schedule for sub-actions to attain the final cleanup.

e. REMEDIAL ACTION COMPLETION REPORT

COMPLIANCE DATE: February 3, 2015

Upon implementation of the final FS/RAP described in Task 4.d, the Discharger shall prepare a Remedial Action Completion Report for Site 4, acceptable to the Executive Officer. The report shall identify the location of all remedial actions and describe the volume of soil excavated, describe the specifics of the disposal of that material, and present all test data generated during the remediation process and how the remediation activities met or did not meet remediation goals.

If additional remediation is required but an acceptable LUC provision can be implemented to the satisfaction of the Executive Officer, the existing LUCs shall be amended per Task 8 below.

5. UST MANAGEMENT PLAN

COMPLIANCE DATE: March 4, 2013

The Discharger shall propose a management plan and schedule, acceptable to the Executive Officer, to close the remaining USTs at the Site. Environmental case closure has been approved for nine UST cases. Eleven UST cases remain open at the time of this Order because of elevated concentrations of hydrocarbons associated with the USTs. The intent of the UST Management Plan is to document the extent of contamination remaining at the eleven USTs and determine if active remediation is needed or to determine if monitored natural attenuation is adequate to achieve cleanup goals in a reasonable time frame.

6. UST REMOVAL PLAN

COMPLIANCE DATE: 90 days prior to UST demolition

If any UST will be demolished during the course of redevelopment, the Discharger shall prepare a UST Removal Plan, acceptable to the Executive Officer, describing the tank demolition. The plan shall be consistent with the UST Management Plan and the Soil and Groundwater Management Plan required by this Order and shall incorporate all the relevant mitigation measures set forth in the certified EIR and the LUCs recorded for this Site.

7. UST STATUS REPORT

COMPLIANCE DATE: June 3, 2013

Quarterly UST status reports shall outline the progress of UST closure activities undertaken pursuant to the plan developed for Task 5. Status reports shall include the results of monitoring and closure activities undertaken during the prior quarter, and include any proposed activities for the upcoming quarter.

8. AMENDED LAND USE CONTROLS

COMPLIANCE DATE: Due at the time Environmental Closure is requested by the Discharger

The Discharger shall submit amended LUCs, acceptable to the Executive Officer, for any area of the Facility that does not meet “unrestricted use standards” after an acceptable cleanup has been implemented. In areas with existing LUCs, the Discharger may submit amended LUCs to reflect the completed cleanup or may propose eliminating land use restrictions, as appropriate, after cleanup activities are completed.

9. REMEDIATION STATUS REPORTS

COMPLIANCE DATE: Monthly beginning 30 days after the start of the remediation activities and ceasing 30 days after completion of all field activities related to this Order

The Discharger shall submit a report to the Regional Water Board, 30 days prior to the start of any onsite remediation activities, and then on a monthly basis beginning 30 days after the start of the remediation activities, outlining the onsite remediation activities accomplished during the past month and those planned for the following month. The first monthly report at the beginning of each quarter shall include monitoring and test results and any conclusions or proposed changes to the remediation process based on those results. If any changes to the remediation are proposed during any monthly report, applicable supporting monitoring or test data will be submitted at that time. The status report shall also verify that the Prohibitions in Section A, stipulated above, have been adhered to. Should any of those prohibitions be trespassed, the report shall propose a recommendation acceptable to the Executive Officer to correct the trespass.

10. DISCOVERIES DURING FACILITY REDEVELOPMENT

COMPLIANCE DATE: 60 days from initial discovery

After the initial remedies have been implemented as ordered by the above tasks, and Facility redevelopment begins, discoveries of otherwise previously unknown pollution that exceeds the Facility’s Cleanup Goals shall be reported to the Executive Officer within 48 hours of its discovery. A cleanup shall be promptly implemented according to **Task 2, Soil and Groundwater Management Plan**. The initial reporting shall be followed up by a Cleanup/Investigations Report submitted to the Regional Water Board and acceptable to the

Executive Officer, documenting cleanup actions and residual contaminant concentrations achieved, describing the situation and its status, and any further actions needing resolution.

11. SITE 1 ROD

This Order requires the continuance of long-term monitoring and maintenance for the Site 1 landfill in accordance with the June 2005 Record of Decision (ROD) for the landfill and any amendments to that ROD.

12. CONSTRUCTION STORM WATER GENERAL PERMIT

COMPLIANCE DATE: Prior to commencement of any field work

The Discharger shall comply with the State Water Board's Construction General Permit (CGP), Order No. 2009-0009-DWQ, prior to commencement of any cleanup activity that will include disturbing greater than one acre of land. Proof of coverage under the CGP may consist of a Notice of Intent (NOI) after being assigned a WDID number for that NOI. As required by the CGP, a stormwater pollution prevention plan must be implemented and maintained at the Facility and shall be submitted to the Regional Water Board in digital format (preferably PDF).

C. GENERAL PROVISIONS

1. **No Nuisance:** The storage, handling, treatment, or disposal of polluted soil or groundwater must not create a nuisance as defined in CWC section 13050(m).
2. **Good Operation and Maintenance (O&M):** The Discharger must maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.
3. **Cost Recovery:** The Discharger is liable, pursuant to CWC section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. If the Facility addressed by the Order is enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Discharger over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.
4. **Access to Facility and Facility Records:** In accordance with CWC section 13267(c), the Discharger shall permit the Regional Water Board or its authorized representative:
 - a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.
 - b. Access to copy any records required by this Order.
 - c. Inspection of any monitoring or remediation facilities installed in response to this Order.
 - d. Sampling of any groundwater or soil that is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the Discharger.
5. **Contractor / Consultant Qualifications:** All technical documents that make or present geologic or engineering interpretations must be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.

6. **Lab Qualifications:** All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Regional Water Board using approved U.S. EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control records for Regional Water Board review. This provision does not apply to analyses that can only reasonably be performed onsite (e.g., temperature).
7. **Document Distribution: Document Distribution:** Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following agencies:
 - a. City of Richmond - Public Library
 - b. County of Contra Costa Department of Environmental Health

The Executive Officer may modify this distribution as needed.

8. **Reporting of Changed Owner or Operator:** The Discharger shall file a technical report on any changes in Site occupancy or ownership associated with the Facility as described in this Order.
9. **Compliance Delays:** If the Discharger is delayed, interrupted or prevented from meeting one or more of the completion dates specified in this Order, the Discharger shall promptly notify the Executive Officer. If, for any reason, the Discharger is unable to perform any activity or submit any document within the time required under this Order, the Discharger may make a written request for a specified extension of time. The extension request shall include a justification for the delay, and shall be submitted in advance of the date on which the activity is to be performed or the document is due.
10. **Electronic Reporting Format:** All reports submitted pursuant to this Order must be submitted as both hard copies and electronic files in PDF format. The Regional Water Board has implemented a document database that is intended to reduce the need for storing printed reports and to streamline the public review process. All electronic files, whether in PDF or spreadsheet format must be submitted via email (only if the file size is under 1MB), or on a CD. Email notification should be provided to Regional Water Board staff whenever a file is uploaded to Geotracker (**Provision C.11**).
11. **Geotracker:** The State Water Board adopted regulations requiring electronic report and data submittal to the State's Geotracker database (Title 23, Division 3, Chapter 30, Articles 1 and 2, Sections 3890-3895 of the CCR). The Discharger is responsible for submitting the following via Geotracker:
 - a. All chemical analytical results for soil, water, and vapor samples;
 - b. The latitude and longitude of any permanent sampling point for which data is reported, accurate to within 1 meter and referenced to a minimum two reference points from the California Spatial Reference System, if available;
 - c. The surveyed elevation relative to a geodetic datum of any permanent sampling point;
 - d. The elevation of groundwater in any permanent monitoring well relative to the surveyed elevations;
 - e. A site map or maps showing the location of all sampling points;
 - f. The depth of the screened interval and the length of screened interval for any permanent monitoring well;
 - g. PDF copies of boring logs; and

- h. PDF copies of all reports, work plan and other documents (the document, in its entirety [signature pages, text, figures, tables, etc.] must be saved to a single PDF file) including the signed transmittal letter and professional certification by a California registered civil engineer or a registered geologist.
12. **Reporting of Hazardous Substance Release:** If, on or after the effective date of this Order, any hazardous substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the Discharger shall report such discharge to the Regional Water Board by calling (510) 622-2369 during regular office hours (Monday through Friday, 8:00 to 5:00).
 - a. A written report must be filed with the Regional Water Board within five working days. The report must describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective actions taken or planned, schedule of corrective actions planned, and persons/agencies notified.
 - b. This reporting requirement is in addition to reporting to the California Emergency Management Agency, required pursuant to the State Health and Safety Code Section 25507.
13. **Periodic Order Review:** The Regional Water Board will review this Order periodically and may revise it when necessary. The Discharger may individually or jointly request revisions, and upon review, the Executive Officer may recommend that the Regional Water Board revise these requirements.
14. **Responsible Discharger:** Within 60 days after being notified by the Executive Officer that any one named discharger has failed to comply with this Order, the remaining discharger(s) shall be responsible to comply with this Order. The subsequent responsibility for compliance is described in Finding 5 of this Order.
15. **Rescission of Existing Orders:** This Order supersedes and rescinds Order Nos. 95-235, 97-124 and 97-125 except for enforcement purposes.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on **XXX XX, 2011**.

Bruce H. Wolfe
Executive Officer

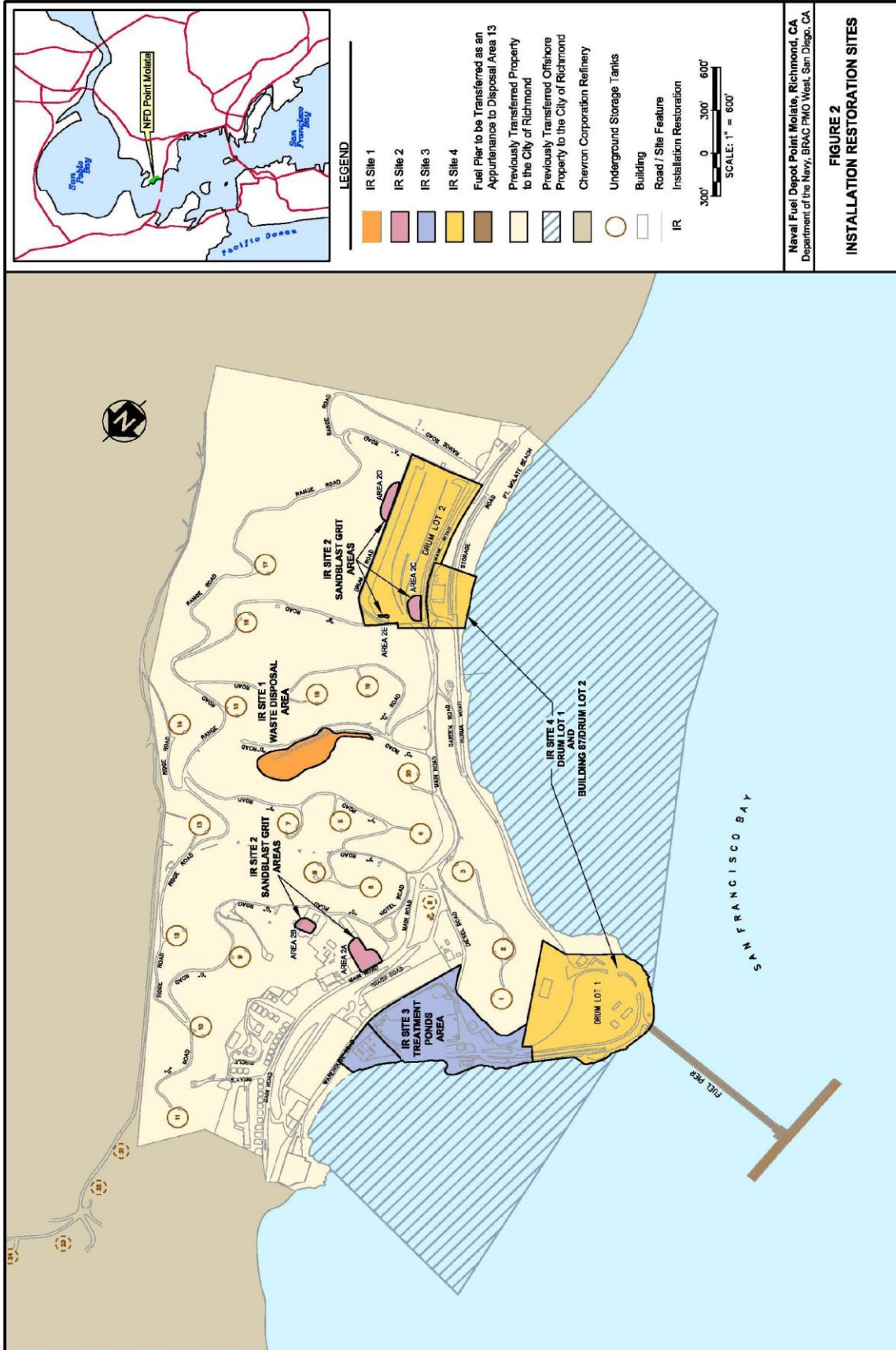
=====
FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO
ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL
LIABILITY UNDER CALIFORNIA WATER CODE SECTIONS 13268 OR 13350, OR REFERRAL TO THE
ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY
=====

Attachments:

- Figure 1: Location/Facility Map
- Figure 2: Areas of Concern/Facility Map



Revised Tentative Order
 Updated Site Cleanup Requirements for the Former Point Molate Naval Fuel Depot



Appendix B

COMMENTS RECEIVED

From: Susan Glendening <sglending@gmail.com>
To: George Leyva <GLeyva@waterboards.ca.gov>
Date: 9/9/2011 4:21 PM
Subject: Comments on the Point Molate Tentative Order

Dear Mr. Leyva,

This email is to provide comments to you and the Water Board on the *"Tentative Order: Updated Site Cleanup Requirements for the Former Point Molate Naval Fuel Depot"*

*(TENTATIVE ORDER UPDATED SITE CLEANUP REQUIREMENTS AND RECISSION OF ORDER Nos. 95-235, 97-124 and 97-125 FOR: **CITY OF RICHMOND AND UNITED STATES DEPARTMENT OF DEFENSE, DEPARTMENT OF THE NAVY*

*For the: **FORMER POINT MOLATE NAVAL FUEL DEPOT, LOCATED AT 1009 WESTERN DRIVE, RICHMOND, CONTRA COSTA COUNTY)*.

My comments are contained within this email.

My husband and I have owned a home and been raising our family in Richmond for 11 years. In spring 2011 I joined the Point Molate Community Advisory Committee (PMCAC) although my comments are my own and not meant to represent those of the entire committee.

Project Has Yet to be Defined

I urge the San Francisco Bay Water Quality Control Board to postpone its consideration to adopt the Tentative Order (T.O.) because the T.O. is based on an Environmental Impact Report (EIR) for a project that is not going to take place. As you are aware, the city of Richmond, as the lead agency, certified the EIR for a mega-casino project. Not only is the formerly-proposed casino project in nonconformance with the Indian Gaming Regulatory Act as ruled by the U.S. Department of the Interior (September 2, 2011), it has very little public support including that of the Richmond voters, and other stakeholders including the neighboring city of San Pablo. Without an approved project, the footprint and design of future redevelopment at the site are unknown. The approach that the T.O. uses in which the footprint and designs of a mega-casino project guide the cleanup decisions does not make sense. A new EIR or amended EIR needs to take place for the city of Richmond to fulfill its CEQA requirements for the site as well as for the Water Board to fulfill its CEQA obligations. Without a new or amended EIR, the Water Board should not adopt this T.O.

This issue is particularly relevant in Paragraph 20, which states "Furthermore, with respect to environmental impacts within the Regional Water Board's

jurisdiction, the Board finds that the impacts of those parts of the Point Molate NFD redevelopment project it approves, have been mitigated to less than significant levels." This statement embodies the crux of the problem with relying on an EIR for a project that is now moot.

Cleanup Schedule

Regarding the T.O. comment period and Site Cleanup Requirements adoption schedule, the cleanup schedule in the T.O. and thus the public comment period is structured on meeting a planned cleanup and construction schedule to begin in 2012 for a project that is not going to take place. Because there is no approved project for the site to date, the Water Board's urgency to adopt a site cleanup plan should be alleviated and more time should be given for the stakeholders to be able to fully understand the implications of a proposed cleanup plan. A cleanup plan that would rely on the future redevelopment design should not be adopted before the project is delineated or properly vetted in the CEQA process.

Public Outreach

Water Board staff Mr. George Leyva stated in a PMCAC meeting on 18-July-11 that the Water Board hopes to facilitate public participation for site cleanup decision-making. However, public outreach for the T.O. has been minimal, to my knowledge; it has consisted of a presentation at the July PMCAC meeting, before the T.O. was released, and at the 15-Aug-11 PMCAC meeting Mr. Leyva fielded questions about the T.O. from the PMCAC. While these sessions were very helpful in providing for clarification about the project and the T.O., I would need more time, at least four months after September, to gather and review all of the related documents to be able to fully understand the implications of a site cleanup requirements tentative order. I therefore urge the Water Board to postpone consideration of adopting the T.O. so that the public can be better informed about the project, site cleanup goals, and the implications of a site cleanup requirements put forth in a future T.O.

The PMCAC has not been provided with adequate documentation as of yet, nor enough time to provide a learned opinion on the adequacy of the proposed remediation measures. Specifically, the PMCAC has not yet been provided a copy of the environmental remediation insurance policy, nor has it been provided information regarding the specifics of how and where the \$28M contributed to the City of Richmond by the Navy as part of the Early Transfer Agreement is to be spent. Under Item 11d on Page 5 of the draft TO for instance, it is noted that provisions were made in the ETCA to fund the closure of all remaining UST's. Is this where the \$28M is earmarked? or is it earmarked for a series of remediation steps, across cleanup sites.

The following comments are taken directly from an email I received from Richmond resident Joan Garrett. I share the same opinions and have inserted

her text almost verbatim. (I don't know if she's submitting comments as well.)

B1, Tasks and Compliance Dates. The water board is dependent upon Feasibility Studies and a Soil and Groundwater Management Plan emanating from the consultant Terraphase, who specifically has targeted areas to be put in use under the Tribal Destination Resort Project, vs. the Point Molate site as a whole, and is under contract to Upstream. The City of Richmond as discharger, must ensure that the Feasibility Studies and Soil and Groundwater Management Plan reflect intended use of the property, or in an absence of a stated intended use, must ensure that the entire property is covered by Feasibility Studies and a Soil and Groundwater Management Plan - a task that would be expensive, and wasteful. This issue further reinforces the need for the future project to be better defined and delineated so that cleanup can be conducted efficiently and strategically.

B2 states that the Soil and Groundwater Management Plan be consistent with and incorporate all mitigation measures as set forth in the certified Tribal Destination Resort EIR, a document that is now moot.

B3a, the remedial action plan for site 3 specifically states that the remediation must address all land use cleanup goals. We don't have an approved land use for site 3, and thus cannot have appropriate cleanup goals. Further, historic documentation indicates that the trench is inadequate as a long term solution, and a trench improvement is what is advocated in the FEIR/EIS for the Tribal Destination Project.

B3b, a Final Remedial Action Completion Report is required by 2/3/2014 for site 3, but again is dependant on the FS/RAP that is produced. Refer to items B2 and B3a above.

B4 continues with a calendar supposing the use of FS/RAPs based on the FEIS/EIR of the Tribal Destination Resort.

B8 requires submission of LUC's after an acceptable cleanup has been implemented, however as per items above, developing a remediation plan against a now moot FEIR/EIS will serve no purpose.

Thank you for the opportunity to comment on the "Updated Point Molate Site Cleanup Requirements" Tentative Order.

Regards,
Susan Glendenning
34 Montana Street
Richmond, CA 94801

Bruce Beyaert

75 Belvedere Ave Richmond, CA 94801

Tel: 510 255-2855 Fax: 510 255-2855 beyaert@cartblink.net

August 17, 2011

Mr. George V. Leyva, P.G., Project Manager
Groundwater Protection Division
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Dear Mr. Leyva:

I was a member of the Navy's Restoration Advisory Board for the former Point Molate Naval Fuel Depot (NFD) and before that chaired the Environmental Subcommittee of the Blue Ribbon Advisory Committee which developed the 1997 Reuse Plan adopted by the Richmond City Council. Currently, I serve as Vice Chair of the City of Richmond's Point Molate Community Advisory Committee. With this background, please consider the following personal comments regarding the proposed Tentative Order (TO) for site cleanup of former Point Molate NFD.

Page 1, item 1 Site Location: On shore, the facility is bordered entirely by property owned by Chevron — not as stated on the northern side by City of Richmond lands. Chevron lands lie between the facility and the City's former Terminal 1 at Point San Pablo.

Page 2, item 5 Named Dischargers: The last sentence of item 5c requires the Navy to prepare a cleanup plan consistent with only "proposed commercial and industrial re-use" in the event that the City fails to comply with the order. Referring to the attached Figure 7, this is inconsistent with the City of Richmond's mixed use Reuse Plan. The Navy's cleanup plan under item 5c should be consistent with the Reuse Plan.

Page 3, item 8 Site Geology: The last sentence should state that filling has occurred over the last 105 years, rather than the last 50 years. Filling started with the establishment of Winehaven in 1906, if not earlier.

Pages 4 & 8 Site 3 Saturated Zone Soil Cleanup Criteria: The last sentence of item 11b. on page 4 describes Task 1 development of saturated zone soil cleanup criteria **for IR Site 3**. For clarity, I suggest moving Task 1 Saturated Zone Soil Cleanup Criteria to become a sub-task under Task 3 for IR Site 3. In any event, the language of Task 1 should be amended to make it clear that this task is limited to IR Site 3. No justification is presented for developing or applying these criteria to other locations on the former NFD.

I urge the RWQCB to expedite issuance of a TO after taking into account all comments, especially those of the City of Richmond with regard to feasibility of compliance dates in the face of uncertainty regarding the nature and location of future land uses. Cleanup of this contaminated land has been delayed for too long.

Sincerely,



Bruce Beyaert

Attachment: Point Molate Reuse Plan Figure 7



POINT MOLATE REUSE PLAN

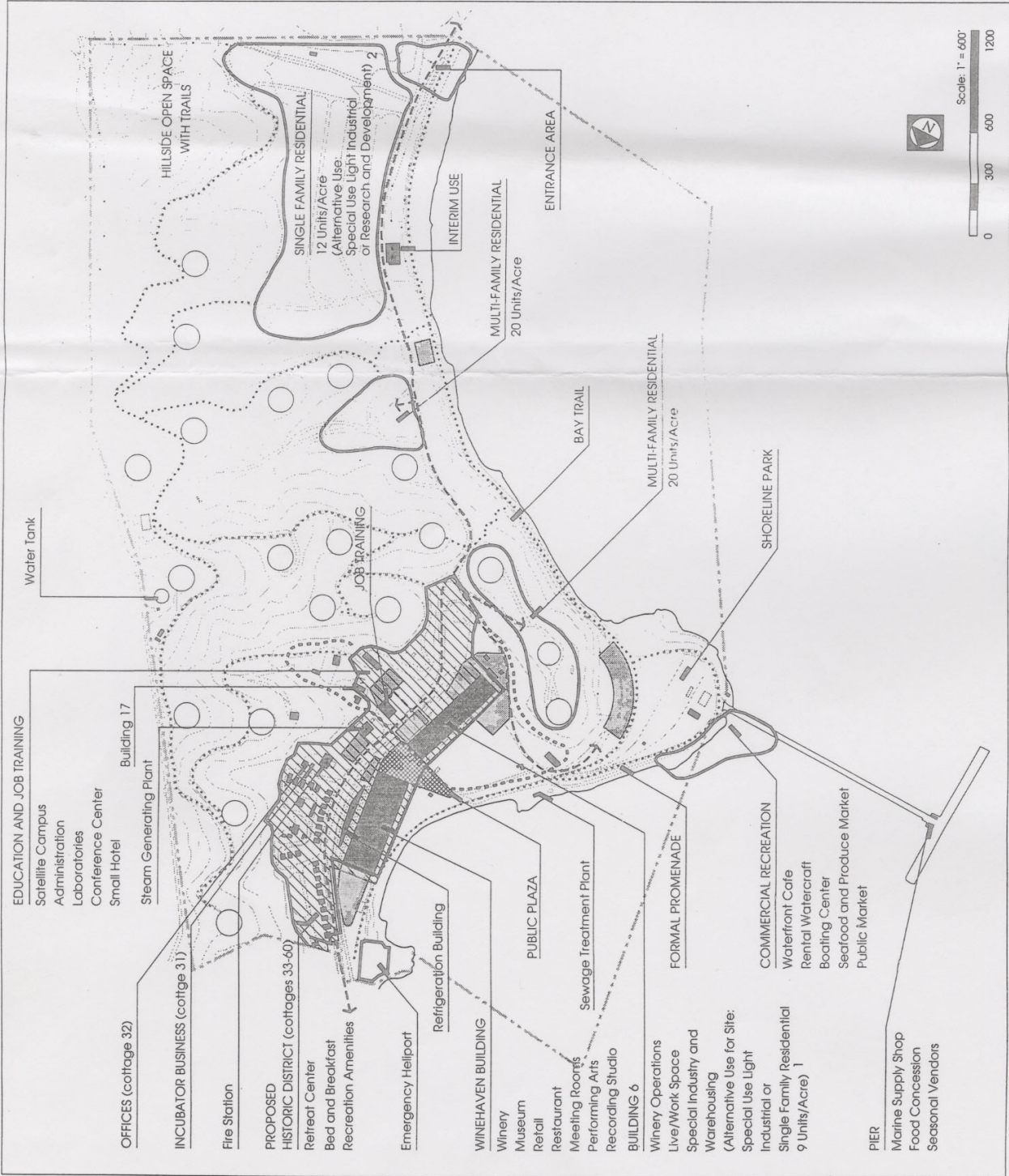
City of Richmond

Figure 7:

Conceptual Land Use Plan

- Buildings to be Reused
- Proposed Parking
- Recommended Land Use
- Use of Area is Contingent on Building 6 Demolition
- Revised Historic District
- Roads to be Reused
- Proposed Trail
- Existing Underground Fuel Tank

1. Alternative use assumes demolition of building 6.
2. Special use light industry is recommended over single family residential if building 6 is demolished and light industry is not accommodated around the building.





September 9, 2011

George Leyva
Groundwater Protection Division
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

sent via: email

Subject: Comments on Point Molate Tentative Order

Dear Ms. Leyva:

On behalf of Upstream and the City of Richmond, Terraphase Engineering Inc. (Terraphase) is submitting the following comment on the following entitled document that is published at http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2011/October/Molate/TO.pdf

TENTATIVE ORDER
UPDATED SITE CLEANUP REQUIREMENTS AND RECISSION OF ORDER Nos. 95-235, 97-124 and 97-125 FOR: CITY OF RICHMOND AND UNITED STATES DEPARTMENT OF DEFENSE, DEPARTMENT OF THE NAVY
For the:
FORMER POINT MOLATE NAVAL FUEL DEPOT, LOCATED AT 1009 WESTERN DRIVE, RICHMOND, CONTRA COSTA COUNTY

We request that the following existing text from page 8:

The tidal marsh habitat and wetland habitats on-site shall be completely avoided. A setback of 50 feet shall be established around the tidal marsh and any wetland area as a means of preventing any impacts to it from the remediation.

be amended to read as follows:

The tidal marsh habitat and wetland habitats on-site shall be completely avoided unless encroachment on these areas is required to implement site remediation work, and

resultant impacts to the affected habitat are mitigated through a plan approved by the RWQCB.

Thank you for your consideration.

For Terraphase Engineering Inc.



William Carson, P.E. (60735)
President and Principal Engineer

Cc: Steve Duran, City of Richmond
Bruce Goodmiller, City of Richmond
Jim Levine, Upstream Point Molate

Appendix C

STAFF RESPONSES TO COMMENTS RECEIVED

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

Response to Written Comments for Item 5, Updated Site Cleanup Requirements, and Rescission of Order Nos. 95-235, 97-124 and 97-125, for the Former Point Molate Naval Fuel Depot, Richmond, Contra Costa County

December 14, 2011 Water Board Meeting

Comments on the tentative order, circulated for public comment from July 26 through September 9, 2011, were received from the following parties:

- 1) Ms. Susan Glendening, private individual,
- 2) Mr. Bruce Beyaert, private individual, and
- 3) Mr. Bill Carson, Terraphase Engineering (consultant to the City of Richmond)

Navy staff contacted Water Board staff by phone and indicated they support the tentative order.

Comments received are summarized below and followed by the Water Board staff response. For the full context and content of each comment, refer to the original comment letters in Appendix B. Pursuant to those comments, Water Board staff revised the tentative order as indicated.

1) Ms. Susan Glendening, private individual, and member of the City of Richmond's Point Molate Community Advisory Committee – September 9, 2011

Comment 1:

I urge the San Francisco Bay Water Quality Control Board to postpone its consideration to adopt the Tentative Order (T.O.) because the T.O. is based on an Environmental Impact Report (EIR) for a project that is not going to take place.

Response to Comment 1:

As a responsible agency under CEQA, the Water Board is relying on the Final Environmental Impact Report (FEIR) for the Point Molate site certified by the City of Richmond on April 5, 2011. Six alternatives for redevelopment of the Point Molate site were studied in the EIR:

- Alt.A – Mixed-use tribal destination resort and casino,
- Alt.B – Mixed-use tribal destination resort and casino with residential,
- Alt.C – Reduced intensity mixed-use tribal destination resort and casino,
- Alt.D – Non-trust acquisition with non-gaming mixed-use development,
- Alt.E – Total parkland, and
- Alt.F – No Action.

By resolution dated April 5, 2011, the City chose to discontinue consideration of alternatives associated with a gaming casino, alternatives A, B and C, and affirmed pursuing Alternative D, *Non-trust acquisition with non-gaming mixed-use development*. Under this alternative, the EIR conceptually describes a development footprint for land use providing the basis for cleanup of the site required by the T.O. While the cleanup of the Point Molate site must be consistent with the land use needs as determined by the City, the City may finalize redevelopment designs independent from the cleanup action.

Thus, it is not anticipated that the City will consider and certify a subsequent EIR that conflicts with the cleanup actions required by the T.O. There is therefore no benefit to further postpone the Water Board's consideration of adopting the T.O.

The full FEIR may be reviewed at <http://www.ci.richmond.ca.us/index.aspx?nid=1863> .

Comment 2:

As you are aware, the City of Richmond, as the lead agency, certified the EIR for a mega- casino project. Not only is the formerly- proposed casino project in nonconformance with the Indian Gaming Regulatory Act as ruled by the U.S. Department of the Interior (September 2, 2011), it has very little public support including that of the Richmond voters, and other stakeholders including the neighboring city of San Pablo.

Without an approved project, the footprint and design of future redevelopment at the site are unknown. The approach that the T.O. uses in which the footprint and designs of a mega-casino project guide the cleanup decisions does not make sense.

Response to Comment 2:

As described in Response to Comment 1, above, while the cleanup of the Point Molate site must be consistent with the land use needs as determined by the City, the City may finalize redevelopment designs independent from the cleanup action.

Comment 3:

A new EIR or amended EIR needs to take place for the City of Richmond to fulfill its CEQA requirements for the site as well as for the Water Board to fulfill its CEQA obligations. Without a new or amended EIR, the Water Board should not adopt this T.O.

Response to Comment 3:

As described in Response to Comment 1, above, the Water Board is relying on a valid EIR certified by the City when considering the T.O. The City's decision not to proceed with the casino alternatives does not render the EIR invalid. Alternative D (Non-trust acquisition with non-gaming mixed-use development) and Alternative E (Total parkland), evaluated in the EIR, remain viable alternatives. Moreover, the cleanup evaluated in the EIR remains unchanged even though the casino alternatives have been dropped. As such, there is no reason for the Water Board not to consider the certified EIR. In fact, under CEQA, as a responsible agency, the Water Board is *required* to

consider the EIR prepared and certified by the lead agency, here the City (Cal. Code Regs., tit. 14, § 15096).¹ In addition, the final EIR is conclusively presumed to comply with CEQA for purposes of use by the responsible agency unless a court determines otherwise or a subsequent EIR is necessary. (Cal. Code Regs., tit. 14, § 15231)

In this case, no court has determined the EIR is invalid, and no cause exists for a subsequent EIR. A subsequent EIR is warranted only where there are substantial changes to the project or new information that will require major revisions to the EIR due to the involvement of new significant environmental impacts or a substantial increase in the severity of previously identified impacts. Just because the casino alternatives will not proceed does not mean there has to be major revisions to the EIR because of new significant impacts. The EIR was crafted to consider the environmental impacts of six projects in the form of alternatives. Rejection of the casino alternatives does not change the remediation evaluated in the EIR or its environmental impact. Thus, at this point, no subsequent EIR is required, and the Water Board may properly rely on the existing EIR. (If, in the future, the City were to decide on a radically different land use and cleanup for Point Molate beyond what was evaluated in the EIR, then the City would have to prepare a new or subsequent EIR or negative declaration. The Water Board would then consider such environmental document when approving specific cleanup plans required under the T.O.)

In sum, all potentially significant environmental impacts associated with the T.O. have been adequately evaluated in the EIR and remain unchanged even with the rejection of the casino alternatives. The Water Board may consider the existing EIR in connection with the T.O.

Comment 4:

Regarding the T.O. comment period and Site Cleanup Requirements adoption schedule, the cleanup schedule in the T.O. and thus the public comment period is structured on meeting a planned cleanup and construction schedule to begin in 2012 for a project that is not going to take place.

Because there is no approved project for the site to date, the Water Board's urgency to adopt a site cleanup plan should be alleviated and more time should be given for the stakeholders to be able to fully understand the implications of a proposed cleanup plan. A cleanup plan that would rely on the future redevelopment design should not be adopted before the project is delineated or properly vetted in the CEQA process.

Response to Comment 4:

As described in the above responses, there is no basis or benefit to further postpone the Water Board's consideration of adopting the T.O. As to "the Water Board's urgency to adopt a site cleanup," cleanup of the Point Molate site has been delayed over three years since the Water Board's initial adoption of updated cleanup requirements in November 2008. Further delay continues to threaten water quality. Additionally, City staff has indicated that the December date for the Water Board's consideration of the T.O. is adequate and does not wish to postpone consideration of the T.O. further.

Detailed redevelopment plans pursuant to Alternative D could be debated for years to come. It is not necessary or appropriate to continue delaying cleanup when a credible basis for performing that cleanup currently exists and has been evaluated in a certified EIR.

Comment 5:

Water Board staff Mr. George Leyva stated in a Point Molate Community Advisory Committee, (PMCAC) meeting on 18-July-11 that the Water Board hopes to facilitate public participation for site cleanup decision-making. However, public outreach for the T.O. has been minimal, to my knowledge; it has consisted of a presentation at the July PMCAC meeting, before the T.O. was released, and at the 15-Aug-11 PMCAC meeting Mr. Leyva fielded questions about the T.O. from the PMCAC.

While these sessions were very helpful in providing for clarification about the project and the T.O., I would need more time, at least four months after September, to gather and review all of the related documents to be able to fully understand the implications of a site cleanup requirements tentative order. I therefore urge the Water Board to postpone consideration of adopting the T.O. so that the public can be better informed about the project, site cleanup goals, and the implications of a site cleanup requirements put forth in a future T.O.

Response to Comment 5:

We do not support further postponing the Water Board's consideration of the T.O. We feel the public has been adequately informed about the need to complete the cleanup of the Point Molate site and the goals of that cleanup. In addition to the meetings cited in the comment, the T.O. was broadcast to a wide range of stakeholders on July 26, 2011, including, but not limited to, a direct emailing to all PMCAC members. In addition, a public notice was placed in the Contra Costa Times on or around July 26, announcing the availability of the T.O., the due date for submitting comments and the anticipated date for the Water Board's public hearing for consideration of the T.O.

Additionally, the T.O. was made available for download from our website on or about July 26 and an email announcement was sent at that time via the State Water Board's Lyris list server to any and all parties that sign up to receive such electronic notices. Forty-five days of public notice were provided, which is more than the customary 30-day period we provide, even though the law does not require public notice of cleanup orders.

Since the delay of consideration of the T.O. at the October Water Board meeting, Water Board staff had a teleconference meeting with the PMCAC on November 29. After that meeting, Water Board staff received the following email message from Joan Garrett, Chair of the PMCAC:

“...the PMCAC will not be submitting in writing or in person additional questions for the December 14th Executive Board meeting on the adoption of the T.O. nor any objections to the adoption of the T.O. as currently written at the December 14th Executive Board meeting.”

Also, as described in Response to Comment 4 above, City staff has not expressed concern with considering adoption of the T.O. at the December Water Board meeting.

Finally, prior to approving any of the specific cleanup plans required by the T.O., Water Board staff will issue a fact sheet describing the plans and will provide a minimum of 30-day public comment period as required by Water Code section 13307.5(a)(3). The fact sheets would be distributed to the

PMCAC and nearby residents, and would be circulated by the City at the City Hall/library in accordance with the State Water Board's public participation guidelines.

Comment 6:

The PMCAC has not been provided with adequate documentation as of yet, nor enough time to provide a learned opinion on the adequacy of the proposed remediation measures. Specifically, the PMCAC has not yet been provided a copy of the environmental remediation insurance policy, nor has it been provided information regarding the specifics of how and where the \$28M contributed to the City of Richmond by the Navy as part of the Early Transfer Agreement is to be spent.

Response to Comment 6:

The T.O. requires completion of final cleanup of the Point Molate site by either the Navy or the City. The Water Board has no jurisdiction regarding how the funds provided by the Navy to the City are spent. Also, as noted in Response to Comment 5, the PMCAC Chair has indicated that the PMCAC has no objection to considering adoption of the T.O. at the December Water Board meeting.

Comment 7:

Under Item 11d on Page 5 of the draft T.O. for instance, it is noted that provisions were made in the ETCA to fund the closure of all remaining UST's. Is this where the \$28M is earmarked? Or is it earmarked for a series of remediation steps, across cleanup sites.

Response to Comment 7:

The T.O. requires completion of final cleanup of the Point Molate site. The Water Board has no jurisdiction regarding how the funds provided by the Navy to the City for cleanup are allocated.

Comment 8:

The Water Board is dependent upon Feasibility Studies and a Soil and Groundwater Management Plan emanating from the consultant Terraphase, who specifically has targeted areas to be put in use under the Tribal Destination Resort Project, vs. the Point Molate site as a whole, and is under contract to Upstream. The City of Richmond as discharger, must ensure that the Feasibility Studies and Soil and Groundwater Management Plan reflect intended use of the property, or in an absence of a stated intended use, must ensure that the entire property is covered by Feasibility Studies and a Soil and Groundwater Management Plan - a task that would be expensive, and wasteful. This issue further reinforces the need for the future project to be better defined and delineated so that cleanup can be conducted efficiently and strategically.

Response to Comment 8:

The T.O. is written with the intent to address all remaining pollutant issues at the Point Molate site. There are onsite areas where the EIR has focused the future land uses, and the T.O. requires submittal of documents (FS/RAP & Soil Management Plan) with those future uses in mind. Every attempt possible is being made to ensure that all cleanup actions are appropriate and cost effective.

Comment 9:

B2 states that the Soil and Groundwater Management Plan be consistent with and incorporate all mitigation measures as set forth in the certified Tribal Destination Resort EIR, a document that is now moot.

Response to Comment 9:

As described in Response to Comment 1, the EIR was certified by the City and recommends moving forward with the non-gaming mixed-use development; the EIR is not “moot” as stated by the commenter. All documents submitted pursuant to the T.O. must relate to the land uses defined in the EIR.

Comment 10:

B3a, the remedial action plan for Site-3 specifically states that the remediation must address all land use cleanup goals. We don't have an approved land use for Site-3, and thus cannot have appropriate cleanup goals. Further, historic documentation indicates that the trench is inadequate as a long term solution, and a trench improvement is what is advocated in the FEIR/EIS for the Tribal Destination Project.

Response to Comment 10:

See Response to Comments 1 & 9 above. As to “trench improvement” comment, we have not yet approved a remedial action as required by Task B.3 of the T.O. However, whatever remedial action does get final approval, that plan will be publicly vetted before being approved and must comply with all aspects of the T.O.

Comment 11:

B3b, a Final Remedial Action Completion Report is required by 2/3/2014 for Site-3, but again is dependent on the FS/RAP that is produced. Refer to items B2 and B3a above.

Response to Comment 11:

See Response to Comments 1, 9 & 10 above.

Comment 12:

B4 continues with a calendar supposing the use of FS/RAPs based on the FEIS/EIR of the Tribal Destination Resort.

Response to Comment 12:

See Response to Comments 1, 9 & 10 above.

Comment 13:

B8 requires submission of LUC's after an acceptable cleanup has been implemented, however as per items above, developing a remediation plan against a now moot FEIR/EIS will serve no purpose.

Response to Comment 13:

See Response to Comments 1, 9 & 10 above.

2) Mr. Bruce Beyaert, private individual, and member of the City of Richmond's Point Molate Community Advisory Committee – August 17, 2011

Comment 1:

Page 1, item 1 Site Location: On shore, the facility is bordered entirely by property owned by Chevron, not as stated on the northern side by City of Richmond lands. Chevron lands lie between the facility and the City's former Terminal 1 at Point San Pablo.

Response to Comment 1:

We have modified the last two sentences of Finding 1 of the T.O. to read:

The onshore facility is bordered by property owned by the Chevron Corporation. San Francisco Bay borders the western boundary.

Comment 2:

Page 2, item 5 Named Dischargers: The last sentence of item 5c requires the Navy to prepare a cleanup plan consistent with only "proposed commercial and industrial re-use" in the event that the City fails to comply with the order. Referring to the attached Figure 7, this is inconsistent with the City of Richmond's mixed use Reuse Plan. The Navy's cleanup plan under item 5c should be consistent with the Reuse Plan.

Response to Comment 2:

In the unlikely event the Navy were to clean up the site instead of the City, the Navy is not bound by the City's intended land use. We have modified the last sentence of Finding 5.c. of the T.O. to read:

Such a plan must be consistent with the land use proposed by the Navy (e.g., commercial and industrial) and must ensure no discharges of waste into waters of the State.

Comment 3:

Page 3, item 8 Site Geology: The last sentence should state that filling has occurred over the last 105 years, rather than the last 50 years. Filling started with the establishment of Winehaven in 1906, if not earlier.

Response to Comment 3:

We will modify the last sentence of Finding 8 of the T.O. to read:

During the past century, and likely earlier, the bay inter-tidal mud flats have been artificially filled to create most of the low-lying flat areas of the Site.

Comment 4:

Pages 4 & 8 Site 3 Saturated Zone Soil Cleanup Criteria: The last sentence of Item 11b on page 4, describes Task 1 development of saturated zone soil cleanup criteria *for IR Site 3*. For clarity, I suggest moving Task 1 Saturated Zone Soil Cleanup Criteria to become a sub-task under Task 3 for IR Site 3. In any event, the language of Task 1 should be amended to make it clear that this task is limited to IR Site 3. No justification is presented for developing or applying these criteria to other locations on the former NFD.

Response to Comment 4:

Since there is no cleanup standard for soil deeper than ten feet below the ground surface for any area of the Point Molate site, this requirement should remain pertinent to the whole site. Even though Site 3 is the primary area that would benefit from this, a site-wide saturated zone cleanup goals report would be beneficial and could be used in any other area of the Point Molate site.

Comment 5:

I urge the RWQCB to expedite issuance of a T.O. after taking into account all comments, especially those of the City of Richmond with regard to feasibility of compliance dates in the face of uncertainty regarding the nature and location of future land uses. Cleanup of this contaminated land has been delayed for too long.

Response to Comment 5:

Comment acknowledged.

3) Mr. Bill Carson, Terraphase Engineering, Consultant to the City of Richmond – September 9, 2011

Comment 1:

We request that the following existing text from page 8:

The tidal marsh habitat and wetland habitats on-site shall be completely avoided. A setback of 50 feet shall be established around the tidal marsh and any wetland area as a means of preventing any impacts to it from the remediation, be amended to read as follows:

The tidal marsh habitat and wetland habitats on-site shall be completely avoided unless encroachment on these areas is required to implement site remediation work, and resultant impacts to the affected habitat are mitigated through a plan approved by the RWQCB.

Response to Comment 1:

Prohibition 4 has been modified to read:

The tidal marsh habitat and wetland habitats onsite shall be completely avoided unless encroachment on these areas is required to implement site remediation work and resultant impacts to the affected habitat are mitigated through a plan approved by the Executive Officer. A setback of 50 feet shall be established around the tidal marsh and any wetland area as a means of preventing any unintended impacts to it from the remediation.

ⁱ As a responsible agency, the Water Board is limited in what it can do under CEQA. For example, if it finds the EIR to be inadequate, the Water Board's options as a responsible agency are limited to:

- a) Suing the lead agency within 30 days of a notice of determination;
- b) Being deemed to have waived any objection to the adequacy of the EIR;
- c) Preparing a subsequent EIR if permissible; or
- d) Assuming lead agency status, if the lead agency did not consult the Water Board .
(Cal. Code of Regs., tit. 14, § 15096(e))

Absent these conditions, the Water Board must consider the lead agency's environmental document.