N00217_003592
HUNTERS POINT
SSIC NO. 5090.3.A

DEPARTMENT OF THE NAVY
BASE REALIGNMENT AND CLOSURE
PROGRAM MANAGEMENT OFFICE WEST
1455 FRAZEE RD, SUITE 900
SAN DIEGO, CA 92108-4310

Ser BPMOW.vcw/0011
SEP 0 1 2009

Proposal to Dissolve the Hunters Point Restoration Advisory Board

1. Introduction and Background.

The Department of Navy (DON) initiated the Hunters Point Shipyard (HPS) Restoration Advisory Board (RAB) in 1994 and has operated the RAB in accordance with 32 Code of Federal Regulations (CFR) Part 202. The purpose of a RAB is to provide: an opportunity for stakeholder involvement in the environmental restoration process; a forum for the early discussion and continued exchange of environmental restoration program information; an opportunity for RAB members to review progress, participate in a dialogue with, and provide comments and advice to the installation's decision makers concerning environmental restoration matters; a forum for addressing issues associated with environmental restoration activities under DON's Defense Environmental Restoration Program.

I am the Director of the DON BRAC PMO West office and am the Installation Commander for HPS for purposes of 32 CFR Section 202.1(c)(4) and 202.10(b). I have determined that the HPS RAB as a whole is no longer fulfilling its intended purpose of advising and providing community input to the DON Base Realignment and Closure (BRAC) program decision-makers regarding environmental restoration projects. Therefore, I am proposing to dissolve the HPS RAB pursuant to the procedures set forth in 32 CFR Section 202 for the reasons set forth below.

2. Proposal to Dissolve the HPS RAB: Findings.

a. I find that the RAB has developed irreconcilable issues and can no longer provide input in a constructive manner as intended.

The RAB atmosphere is not conducive to effective public discourse. Rules of order are regularly ignored during meetings, interruptions of individuals are common, and meeting facilitators do not receive cooperation. Opposing views of RAB members by other RAB members are met with intolerance. A number of RAB members have complained about the hostile tone of RAB meetings and decline to attend because of the unwillingness of other RAB members to listen to contrasting points of view and/or inability of the RAB to focus on environmental cleanup issues.

Between August 2007 and February 2009, the DON RAB Co-Chair and the meeting facilitator have attempted to refocus RAB meetings on environmental cleanup issues.

Further, the DON RAB Co-Chair has had discussions outside of RAB meetings with RAB members to try to refocus the RAB on the HPS environmental program. Despite these attempts to restore order and provide an open forum for all members to express views on the DON's environmental program, some RAB members were unwilling to allow other viewpoints to be expressed. This effort to silence opinions, with which some RAB members disagree, violates the purpose for which the RAB was established and is inconsistent with the statutes, regulations, and guidelines that apply to RABs.

At the January 22, 2009 RAB meeting, the RAB Community members voted to request the replacement of the City of San Francisco's representative because they stated she was derelict of duty and not meeting her obligations to the RAB. I do not support the exclusion or replacement of the City of San Francisco's representative.

At a February 18, 2009 "emergency meeting" called by the Community Co-Chair, RAB members voted and approved a resolution demanding the immediate removal of the DON RAB Co-chair. The RAB does not have the authority to remove DON officials. The DON RAB Co-chair will not be replaced.

b. I find that RAB meetings are spent discussing unrelated issues and RAB members are unable to collectively discuss the environmental restoration activities affecting the installation and community.

RAB meetings have been dominated by discussion of issues that are unrelated to environmental cleanup decisions, despite the DON attempt to restore order, respect the agenda, and identify the proper forums for other issues unrelated to the RAB's scope. As a consequence, the DON has been unable to present valuable information to the community during RAB meetings and efforts to foster discussion of the effectiveness of proposed environmental actions for protecting human health and the environment have not yielded significant results.

The interruptions caused by addressing unrelated and out of scope issues have greatly limited the RAB forum's ability to provide, and the DON's ability to receive, input and advice on the Hunters Point environmental program. The DON has issued over eighty cleanup documents for review over the last twenty months and only three have received formal written comments from RAB members. The DON has issued four different Proposed Plan/Record of Decision documents over the past year without receiving any formal written comments from RAB members.

RAB meetings are used to discuss non-Navy issues and issues unrelated to the scope of RABs. Three recent examples are: the RAB voting to remove the City of San Francisco's

representative on the RAB, the RAB voting for the replacement of the DON Co-Chair, and the RAB voting to stop all work on HPS due to concerns about a developer's construction work on the developer's property adjacent to HPS. These are all issues unrelated to the DON environmental program.

Another example is the RAB's time spent on a contracting issue that the DON explained, in detail, can only be addressed by the Army Corps of Engineers (ACOE). The RAB claims that the DON and ACOE have multiple FAR contract violations. DON must use ACOE contracting officers to contract for disposal of radiologically impacted soil. Despite the DON's inability to govern ACOE's actions, the DON coordinated several meetings between ACOE representatives and RAB members, to describe the rules governing the contracts. The RAB members were advised to provide a written complaint to the ACOE. To my knowledge, no written complaint has been submitted.

3. Proposal to Dissolve the HPS RAB: Determination.

Based upon the information above, the RAB has clearly developed irreconcilable issues and can no longer provide input in a constructive manner as intended. I have determined that the HPS RAB, as a whole, is no longer fulfilling its intended purpose of advising and providing community input to the DON Base Realignment and Closure (BRAC) program decision-makers regarding environmental restoration projects, and the RAB should be dissolved as provided in 32 CFR Section 202(b)(1).

I have consulted with regulatory agencies and elected officials regarding this decision and will move forward with the dissolution process in accordance with 32 CFR Section 202. A public notice of my intent to dissolve the RAB has been published in the *San Francisco Examiner, San Francisco Bay Guardian, and Bayview Footprints* newspapers providing a 30 day period for the public to comment upon this proposal. A copy of the proposal has also been made available for public review and comment at the following website:
http://www.bracpmo.navy.mil/basepage.aspx?baseid=45&state=California&name=hps, and in the following information repositories:

Anna E. Waden Library (Hardcopy Only)
5075 Third Street, San Francisco, CA, 94124
Hours: Mon, Tues, Sat 10:00am - 6:00pm
Wed 1:00pm - 8:00pm
Thurs 1:00pm - 7:00pm
Sun CLOSED

San Francisco Main Library Science, Technical, and Government Documents Room
100 Larkin Street, San Francisco, CA, 94102
Hours: Mon, Wed, Fri, Sat 10:00am - 6:00pm
Tues & Thurs 9:00am - 8:00pm
Sun 12:00pm - 5:00pm
Contact: Patrick Shea
Phone: (415) 570-4500 Ext 5075

4. RAB Dissolution Process.

In making this determination, I have followed the RAB dissolution process set forth in 32 CFR Section 202. The regulations at 32 CFR Part 202 provide a stepped approach for recommending and eventually approving the dissolution of a RAB. This stepped approach can be summarized as follows: (a) consult with the U.S. Environmental Protection Agency, state, local and tribal government representatives, as appropriate; (b) notify RAB members in writing of the intent to dissolve and seek their comments; and review comments from RAB members; (c) consult again with U.S. Environmental Protection Agency, state, local and tribal government representatives, regarding BRAC PMO's review of RAB comments and intention to proceed; (d) notify the public of the proposal to dissolve the RAB and seek comment from the public; and (e) send the final recommendation via the chain of command to the Deputy Assistant Secretary of the Navy (Environment) for approval or disapproval.

a. Summary of Initial Consultations.

I initiated the RAB dissolution process through consultations with Federal, state, and local government representatives as provided in 40 CFR Section 202.10(b)(2)(i) by way of a series of teleconferences, emails, and in-person meetings in March and April 2009. I discussed the extent of irreconcilable issues, whether to initiate RAB dissolution, the RAB dissolution process, and other avenues for involving the community in the HPS remedial action process. All of the representatives understood the DON position, supported proposed plans to stimulate community involvement at HPS, and offered suggestions as to what the successor program should include.

b. Notice of Intent to RAB Members.

I issued a letter to the HPS RAB members dated May 22, 2009, giving notice of the intent to dissolve the HPS RAB and setting forth reasons for initiating the dissolution process. In addition, the letter confirmed a continuing desire for open, meaningful dialogue with the Bayview Hunters Point Community regarding the environmental cleanup of HPS.

The letter also requested ideas for obtaining effective community involvement for HPS cleanup.

c. RAB Comments on Notice of Intent.

During the approximately five week review period for RAB member comments, the DON received three e-mails and fourteen comment letters. One e-mail was from a community member and the other two from RAB members. One letter was from the City and County of San Francisco, which has a representative on the RAB, and thirteen letters were identical form letters from RAB and community members.

The community member e-mail stated that the RAB was not representative of the community. One RAB member e-mail supported removing City and Navy representatives from the RAB and requested the RAB be restored. The other RAB member e-mail was addressed to the Environmental Protection Agency (EPA), with DON as a copy to, and asked EPA to support reinstatement of the RAB.

The letter from the City and County of San Francisco was supportive of DON attempts to resolve issues and provided suggestions for improved community involvement. The form letter included a simple statement asking that the RAB be reinstated. The comments did not dispute, supplement or otherwise respond to the specific findings and reasons for dissolution set forth in the May 22, 2009, Notice of Intent letter.

In order to seek comments from RAB members who had not submitted written responses, the HPS BRAC Environmental Coordinator (BEC) attempted to contact these members. Seven of eight RAB members who did not submit written responses agreed with the dissolution process and were interested in how future community involvement would be addressed. The last RAB member could not be reached.

d. Summary of Additional Consultations.

I have reviewed the comments on the Notice of Intent and consulted again with EPA, State and local government representatives to review those comments and determine the next appropriate step as provided in 32 CFR Section 202.10(b)(2)(ii). All of the representatives understood the DON position, and discussed options to improve public participation opportunities for HPS. I have determined based on the information before me that the RAB dissolution process should continue.

e. BRAC PMO West Recommendation.

I will review the public comments received on this Proposal to Dissolve the HPS RAB and again consult with federal, state and local government representatives, as appropriate. If I determine that dissolution remains the appropriate solution, I will prepare and send a recommendation to dissolve the RAB to the Deputy Assistant Secretary of the Navy (Environment) for approval or disapproval as provided by 32 CFR Sections 202(b)(2)(iii) and (iv).

5. Community Involvement During the Dissolution Process.

I remain committed to community involvement and establishing an effective, far reaching plan for an improved forum for public participation that facilitates open two-way communication with the Hunters Point community and that fosters informed decision making. Throughout the dissolution process, my team and I will continue to provide information surrounding the HPS clean-up to the community and will ask for public comment in a variety of ways. Recent progress reports and technical fact sheets have been posted on the BRAC PMO Website, http://www.bracpmo.navy.mil/basepage.aspx?baseid=45&state=California&name=hps, and mailed to interested parties. In the past several months, the DON has hosted two large Community Environmental Forums and numerous small focus group meetings to discuss the HPS clean-up program. A video of the presentations made at the Community Environmental Forum can be found on the website. A technical meeting was also held to discuss current documents under public review in order to explain the DON process and recommendations and to elicit public comment on the recommendations. An open house style meeting was also conducted, after which DON received two emails supporting the format – one from a RAB member and one from a community member. DON plans to continue with regular technical meetings, quarterly open house meetings, and smaller focus group meetings to enhance public participation.

Laura Duchnak
LAURA DUCHNAK
Director

Enclosure 1: Notice of Intent Letter to dissolve the Hunters Point Shipyard RAB

DEPARTMENT OF THE NAVY
BASE REALIGNMENT AND CLOSURE
PROGRAM MANAGEMENT OFFICE WEST
1455 FRAZEE RD, SUITE 900
SAN DIEGO, CA 92108-4310

Ser BPMOW.DG/0317
MAY 22 2009

Dear Hunters Point Naval Shipyard RAB Community Co-Chair and RAB Members:

This letter serves as the Navy's notice of intent to dissolve the Hunters Point Naval Shipyard (HPS) Restoration Advisory Board (RAB) as provided by 32 Code of Federal Regulations (CFR) Part 202. My office has consulted with the Environmental Protection Agency, as well as State, and local government representatives about this proposal. The purpose of a RAB is to ensure community involvement in the environmental cleanup process whereby an open discussion and exchange of information occurs. The Navy fully supports the need for open, meaningful dialogue with the diverse Bayview Hunters Point Community regarding our environmental cleanup actions and decisions. However, the RAB is not fulfilling this objective. Therefore, we will be exploring other means to accomplish this important goal. As the Navy follows the RAB dissolution process (enclosed), my staff will be working with you, the greater Bayview Hunters Point Community, and our regulatory partners to find alternative means to meet these community involvement goals and requirements. I specifically request your ideas for an effective community involvement program which will reach a broad community audience and encourage effective two-way communication between the community and Navy regarding environmental cleanup issues at HPS.

My review of input from the RAB over the last 24 months regarding Navy environmental cleanup matters leads me to conclude that the HPS RAB should be dissolved. To continue holding meetings will not fulfill the RAB's purpose or mission. This conclusion is based on the following:

1. RAB meetings do not provide the diverse Bayview Hunters Point Community's input to the Navy's environmental cleanup program.

- The Navy has issued over 80 documents for review over the last 24 months and only 3 have received formal written comments from RAB members.
- The Navy has issued four different Proposed Plan/Record of Decision documents over the past year without receiving any formal written comment from RAB members.
- RAB meetings are used to discuss non-Navy issues such as redevelopment actions. In fact, RAB members recently voted to stop all work on HPS due to concerns about work on an adjacent City-owned parcel.
- RAB meetings are used to discuss contracting issues rather than the cleanup program. RAB members recently passed a resolution to pursue a civil grand jury investigation into economic issues at HPS.

While the Navy agrees that redevelopment and contracting issues are important to the community, they are outside the scope of the RAB and there are other appropriate forums for these topics. The Navy has repeated this point to the RAB without a change in RAB performance.

2. The RAB atmosphere is not productive to effective public discourse.
   - Rules of order are often not followed during meetings; interruptions are common; and meeting facilitators are not respected.
   - A number of RAB Community members have complained about the hostile tone of RAB meetings and decline to attend because of the unwillingness of other RAB members to listen to contrasting points of view and/or inability of the RAB to focus on environmental cleanup issues.
   - At the January 22, 2009 RAB meeting, RAB members voted to request replacement of the City's representative, which is not an appropriate RAB function.
   - At a February 18, 2009 "emergency meeting" RAB members voted to request replacement of the Navy RAB Co-Chair, which is not an appropriate RAB function.

As a consequence, valuable information from Navy and other state and Federal agency representatives has not been effectively presented. Instead of fostering discussion on the effectiveness of proposed Navy cleanup actions, RAB discussions focus on matters unrelated to the Navy's clean-up efforts.

3. Navy attempts to work with the Community to improve the RAB process have failed.
   - Over the past 24 months, the Navy RAB Co-Chair and others have attempted to refocus RAB meetings with the help of a professional facilitator.
   - The Navy RAB Co-Chair has had discussions outside of RAB meetings with RAB members to try to refocus the RAB on the environmental program.

These attempts have been unsuccessful in changing the atmosphere or inducing input on the environmental restoration program.

Though I believe the RAB should be dissolved, I remain fully committed to seeking community involvement and input for ongoing and future HPS cleanup actions. While we work through this RAB dissolution process, I will post information such as fact sheets and presentations on the Hunter's Point website (www.bracpmo.navy.mil), as well as provide informational mailings to elicit community member comments and questions.

As stated earlier, the Navy fully supports the need for open, meaningful dialogue with the diverse Bayview Hunters Point Community regarding our environmental cleanup actions and decisions. Should the RAB be dissolved, the revised community involvement program may include community environmental forums, including using internet-based technology to more easily reach a diverse audience; expanded Monthly Progress Reports and facts sheets; and hosting technical discussions and tours of cleanup sites on HPS for interested community members. I solicit your comments on this letter of intent, as well as your ideas regarding more productive community involvement alternatives between the Bayview Hunters Point Community and the Navy. I request you provide your ideas and comments to HPS Base Closure Manager, Mr. Douglas Gilkey, at the address on the letterhead no later than 30 June 2009. Please feel free to contact Mr. Gilkey at (619)-532-0949 if you have any questions about this notice or the dissolution process.

During the interim period between my publishing of this intent letter and a final decision as to the RAB's dissolution, further meetings of the RAB are suspended.

I thank each of you for the effort you have made as a member of the HPS RAB. The Navy places a high priority on obtaining meaningful and timely input from the community in the course of its environmental cleanup activities and hope you will continue to participate in the HPS environmental restoration program in the future. Thank you for your contributions.

Sincerely,

Laura Duchnak

LAURA DUCHNAK
Director, BRAC PMO West

Encl: (1) 32 C.F.R Part 202.10

32 C.F.R Part 202.10

(b) *RAB dissolution*—(1) *Requirements for RAB dissolution.* An Installation Commander may recommend dissolution of a RAB when a RAB is no longer fulfilling the intended purpose of advising and providing community input to an Installation Commander and decision makers on environmental restoration projects as described in §202.1(b).

(2) *Dissolution procedures.* If the Installation Commander is considering dissolving the RAB, the Installation Commander shall:

(i) Consult with EPA, state, tribal and local government representatives, as appropriate, regarding dissolving the RAB.

(ii) Notify the RAB community co-chair and members in writing of the intent to dissolve the RAB and the reasons for doing so and provide the RAB members 30 days to respond in writing. The Installation Commander shall consider RAB member responses, and in consultation with EPA, state, tribal and local government representatives, as appropriate, determine the appropriate actions.

(iii) Notify the public of the proposal to dissolve the RAB and provide a 30-day public comment period on the proposal, if the Installation Commander decides to proceed with dissolution. At the conclusion of the public comment period, the Installation Commander will review the public comments, consult with EPA, state, tribal and local government representatives, as appropriate, and, if the Installation Commander still believes dissolution is appropriate, render a recommendation to that effect.

(iv) Send the recommendation, responsiveness summary, and all supporting documentation via the chain-of-command to the Military Component's Environmental Deputy Assistant Secretary (or equivalent) for approval or disapproval. The Military Component's Environmental Deputy Assistant Secretary (or equivalent) shall notify the Office of the Deputy Under Secretary of Defense (Installations & Environment) (or equivalent) of the decision to approve or disapprove the request to dissolve the RAB and the rationale for that decision.

(v) Document the recommendation, responsiveness summary, and the rationale for dissolution in a memorandum for inclusion in the Administrative Record, notify the public of the decision through written notice to the RAB members and through publication of a notice in a local newspaper of general circulation and describe other ongoing public involvement opportunities that are available, once the Military Component's Environmental Deputy Assistant Secretary (or equivalent) makes a final decision.

(c) *Reestablishing an adjourned or dissolved RAB.* An Installation Commander may reestablish an adjourned or dissolved RAB if there is sufficient and sustained community interest in doing so, and there are environmental restoration activities still ongoing at the installation or that may start up again. Where a RAB is adjourned or dissolved and environmental restoration activities continue, the Installation Commander should reassess community interest at least every 24 months. When all environmental restoration decisions have been made and required remedies are in place and are properly operating at an installation, reassessment of the community interest for reestablishing the RAB is not necessary. When additional environmental restoration decisions have to be made resulting from subsequent actions, such as long-term management and five-year reviews, the installation will reassess community interest for reestablishing the RAB. Where the reassessment finds sufficient and sustained community interest at previously adjourned or dissolved RABs, the Installation Commander should reestablish a RAB. Where the reassessment does not find sufficient and sustained community interest in reestablishing the RAB, the Installation Commander shall document in a memorandum for the record the procedures followed in the reassessment and the findings of the reassessment. This document shall be included in the Administrative Record for the installation. If there is interest in reestablishment at a previously dissolved RAB, but the Installation Commander determines that the same conditions exist that required the original dissolution, he or she will request, through the chain-of-command to the Military Component's Deputy Assistant Secretary, an exception to reestablishing the RAB. If those conditions no longer exist at a previously dissolved RAB, and there is sufficient and sustained interest in reestablishment, the Installation Commander should recommend to the Deputy Assistant Secretary that the RAB be reestablished. The Deputy Assistant Secretary will take the Installation Commander's recommendation under advisement and may approve that RAB for reestablishment.

(d) *Public comment.* If the Installation Commander intends to recommend dissolution of a RAB or reestablish a dissolved RAB, the Installation Commander shall notify the public of the proposal to dissolve or reestablish the RAB and provide a 30-day public comment period on the proposal. At the conclusion of the public comment period, the Installation Commander shall review public comments; consult with EPA and state, tribal, or local government representatives, as appropriate; prepare a responsiveness summary; and render a recommendation. The recommendation, responsiveness summary, and all supporting documentation should be sent via the chain-of-command to the Military Component's Environmental Deputy Assistant Secretary (or equivalent) for approval or disapproval. The Installation Commander shall notify the public of the decision.

NOTE: Notice as posted at: http://www.bracpmo.navy.mil/base_docs/hps/documents/public_notices/HP_RAB_01SEP09.pdf, as of 27 October 2011.