

**RESPONSE TO AGENCY COMMENTS ON THE RECORD OF DECISION
FOR INSTALLATION RESTORATION SITE 1
NAVAL FUEL DEPOT POINT MOLATE, RICHMOND, CALIFORNIA**

This document presents the Navy's responses to the California Regional Water Quality Control Board, San Francisco Bay Region (RWQCB) additional comments on the "Record of Decision for Installation Restoration Site 1 at Naval Fuel Depot Point Molate, Richmond, California" dated December 2004 (hereinafter referred to as the ROD).

**RESPONSES TO RWQCB COMMENTS
(COMMENTS PROVIDED BY ADRIANA CONSTANTINESCU, PG, PROJECT MANAGER)**

Adriana Constantinescu of RWQCB submitted the following additional comments in a letter dated April 28, 2005 to Mr. Michael Bloom, BRAC Environmental Coordinator of the Navy.

1. Comment: Water Board's staff had thoroughly reviewed the Navy's responses and concurs with the responses to comments 1 through 7 and comment number 9.

Response: The Navy acknowledges the Water Boards concurrence with Navy responses to comments 1 through 7 and 9.

2. Comment: In the response to comment number 8, it was stated, "the institutional controls placed on IR Site 1 will be in the form of deed restrictions and notices. These run with the land and follow the chain of title as property is transferred." In the light of the land disposition agreement (LDA) approved by the City of Richmond on November 16, 2004, LDA that purported to transfer the property to Upstream Point Molate LLC for subsequent transfer to the Guidiville Band of Pomo Indians of the Guidiville Rancheria and according to the notice of intent (NOI) published on March 11, 2005, there will be a possible residential development on the property.

If a change to residential development is proposed, which will require cleanup to a residential standard, please indicate in Section 2.8.2 of the ROD that this would need to be coordinated with the Navy, as the lead agency responsible for remediation at Site 1, and the Water Board, as the lead regulatory agency.

In other words, the Navy needs to advise the new owner of their expected duties in proposing the change of land use. For example, it would seem prudent to advise the new owner to coordinate any land use changes with the appropriate local and state agencies, and to obtain the concurrence of both the Navy and Water Board on any modifications to the land use covenant (LUC).

Response: To clarify, the Navy will implement ICs that affect the potential future land uses of Site 1 as part of the remedy selected in this ROD. One of these controls will be a residential land use restriction which is placed in the deed, a legally binding document applicable to current and subsequent property owners. The obligations of current and future landowners with respect to any changes to the land use restrictions for Site 1 are already described in Section 2.8.2 of the Draft ROD as excerpted in the following (with emphasis added):

“ICs are considered for this alternative to maintain the integrity of the soil cover, *prohibit the residential use and development of the site*, and prohibit the extraction and use of groundwater for any purpose other than monitoring, remediation, or construction dewatering.”

The Navy is responsible for implementing, inspecting, reporting on, and enforcing the ICs described in this ROD. Although the Navy retains ultimate responsibility for overseeing adherence to these controls, compliance with these ICs will involve actions by other interested parties. Currently in Section 2.8.2 of the Draft ROD (with emphasis added) it states that “*Subsequent property owners will have the obligation of complying with restrictions on future land use of the property*, using the property in a manner consistent with maintaining the integrity of the landfill and its structures, and will be obligated to notify the Navy, state, county, and city representatives of any proposed transfer of title or proposed transfer of a possessory interest in the site.”

The Navy agrees with the RWQCB on the need to coordinate any land use changes with the appropriate agencies and the Navy. This is reflected in the Department of Defense (DoD) policy “Responsibility for Additional Environmental Cleanup after Transfer of Real Property” (DoD, July 25, 1997). This policy states “DoD will also work cooperatively with any transferee of property that is interested in revising or removing deed restrictions in order to facilitate a broader range of land uses. Before DoD could support revision or removal, however, the transferee would need to demonstrate to DoD and the regulators, through additional study and/or remedial action undertaken and paid for by the transferee, that a broader range of land uses may be undertaken consistent with the continued protection of human health and the environment.” This change “will follow the NCP process and require the participation by DoD and regulatory agencies, as well as appropriate public input”.



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 Author: William Ulmer

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FROM: _____ <i>Harry F. Cullen</i> Harry F. Cullen, Director of Quality			
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