

ATTACHMENT 7

REGULATORY/PUBLIC COMMENTS



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

July 19, 2005

Ms. Gail Youngblood
BRAC Environmental Coordinator
Fort Ord Base Realignment and Closure Office
P.O. Box 5004
Monterey, CA 93944-5004

RE: Revised Finding of Suitability to Transfer (FOST), Track 0 Plug-in C Parcels and Track 1 Parcels, Former Fort Ord, dated May 2005, also known as FOST 9

Dear Ms. Youngblood:

The United States Environmental Protection Agency (EPA) has some additional comments on above referenced document (FOST 9). EPA comments are provided in an attachment to this letter. All other EPA comments on FOST 9 previously submitted (with the exception of those provided by EPA Regional Counsel Robert Carr on July 8, 2005 and reiterated in the attachment to this letter) have been resolved satisfactorily by the Army and EPA need only verify that the changes noted in the Army responses to EPA comments have been incorporated into the FOST, as appropriate.

Should you have any questions, please contact me at (415) 972-3013.

Sincerely,

A handwritten signature in cursive script that reads "Claire Trombadore".

Claire Trombadore
Remedial Project Manager

cc: Roman Racca, DTSC
Grant Himebaugh, RWQCB

Attachment

**ADDITIONAL EPA COMMENTS
REVISED FINDING OF SUITABILITY TO TRANSFER
TRACK 0 PLUG-IN C PARCELS AND TRACK 1 PARCELS (FOST 9)
FORMER FORT ORD
MAY 2005**

SPECIFIC COMMENTS

1. EPA requests that the Army retain a buffer zone of 100 feet surrounding the entire perimeter of the OU 2 landfill.
2. EPA requests that the Army confirm it has an emergency response plan for the OU 2 landfill as required by Section 21130, Article 2, Subchapter 5, Chapter 3, Title 27 of the California Code of Regulations.
3. Based upon discussions with the Army, the following comments, developed by Mr. Robert Carr of the Office of Regional Counsel EPA Region 9 and submitted to the Army on July 8, 2005, shall remain unresolved and attached to the final FOST:

1) The language which appears at page 2 of attachment 4, and is repeated at page 3, limiting the CERCLA Covenant does not reflect EPA's understanding of the Army's obligation. The language is based on the notion that a PRP who acquires federal property is not entitled to the statutory covenant; however the Army language does not focus on the status of the parties at the time of the transfer. Any party who acquires contaminated property is a PRP with respect to that property, subject to various defenses. The second sentence which purports to limit the exclusion contained in the first is also flawed because it would allow the Army to avoid its obligation under the CERCLA covenant if any act of the transferee contributed to a release of a hazardous substance remaining on the parcel. For example, if there were construction debris remaining on the parcel the act of the transferee, unknowingly disturbing the debris and releasing asbestos to the environment, could void the Army's obligation to address the asbestos.

This section should be rewritten to focus on the status of the parties at the time of transfer and to make it clear that while the transferee could incur responsibility for improperly dealing with hazardous substance which might be encountered, the primary responsibility for addressing material remaining on the parcel is retained by the Army. EPA would be happy to discuss specific language to accomplish this objective.

2) Paragraphs 6 and 7 both contain broad language limiting the Army's liability (or requiring indemnification) but also include a saving's clause which references the Army's obligation under the CERCLA Covenant. This approach is questionable both because of the ambiguity created by the language and the limitation of the Army's obligation noted above. The transferee should receive a clear statement of the obligations retained by the Army and the obligations it is assuming under the deed.

3) Paragraph 8 contains language which EPA believes is inconsistent with the intention of Congress that the military remain responsible for its contamination. Paragraph 8 places on the Transferee the burden of establishing that any newly discovered contamination was

due to the actions of the Army. In addition, the Transferee must show that any release was the result of Army action, thus if the Transferee's action causes or contributes to the release of Army contamination, the Transferee would be responsible. This section contains no provision acknowledging the Army's statutory obligation. The requirement to obtain written permission prior to disturbing any newly discovered hazardous substances may be unrealistic and could preclude a claim by a Transferee who encountered contamination, properly segregated and managed it and subsequently sought to recover the cost of managing the material from the Army.

4) There is also a reference in Section 5 of Attachment 5 which obligates the transferee to conduct the Army's abatement obligation with respect to LBP. Unless the property was "target housing" as that term is defined under TSCA, federal law does not impose an abatement obligation on the Army. To be protective, the LBP section should require that prior to the use of the property for residential purposes, the transferee take all actions which would have been required had the property been subject to the requirements for "target housing".



Department of Toxic Substances Control



Alan C. Lloyd, Ph.D.
Agency Secretary
Cal/EPA

8800 Cal Center Drive
Sacramento, California 95826-3200

Arnold Schwarzenegger
Governor

June 30, 2005

Ms. Gail Youngblood
BRAC Environmental Coordinator
Fort Ord Base Realignment and Closure Office
Post Office Box 5004
Monterey, California 93944-5004

REVIEW OF DRAFT FINDING OF SUITABILITY TO TRANSFER (FOST) TRACK 0
PLUG-IN, AND TRACK 1 PARCELS, GROUP C PARCELS, FORMER FORT ORD,
MONTEREY, CALIFORNIA, MAY 5, 2005

Dear Ms. Youngblood:

The Department of Toxic Substances Control (DTSC) has reviewed the Draft FOST for the subject parcels and has the following comments:

1. Please incorporate the following comment regarding lead-based paint into the draft FOST, or attach it to the draft FOST as an unresolved regulatory comment:

There are buildings on some of these Parcels that probably contain lead-based paint, and this paint may have fallen off the buildings into the soil. Further, the Army did not sample the buildings or the soil for lead-based paint. DTSC's position is that any soils surrounding structures containing lead-based paint should first be evaluated by property owners for releases of lead-based paint to soils prior to the property being used for residential or other sensitive uses.

The FOST contains a section entitled "Environmental Protection Provisions." These provisions will be part of the deed and include a section on lead-based paint which states that the property recipient shall not permit the occupancy or use any of the buildings or structures on the property as residential real property without complying with applicable federal, state and local laws and regulations pertaining to lead based paint hazards. Please be advised that "lead based paint hazards" include lead contamination in soil from lead based paint. DTSC intends to work with all parties to assure the Army's Environmental Protection Provisions and the State law and regulations are complied with regarding lead contaminated soil on former Fort Ord.

2. Please add the following language to the Draft FOST:

Because Fort Ord operated as a Resource Conservation and Recovery Act (RCRA) hazardous waste facility, the owner is required to conduct corrective action for any release or potential release of hazardous substances on the whole facility. The "facility," defined as the Fort Ord Hazardous Waste Facility, is the entire base within the original base boundary. In order to remove this potential corrective action liability for any current or future owners of former Fort Ord property, DTSC must make a Correction Action Complete Determination and Facility Boundary Modification in accordance with the California Hazardous Waste Control Law. This determination officially recognizes that all releases and potential releases of hazardous substances have been addressed pursuant to RCRA and terminates RCRA liability that could potentially be imposed upon future transferees. The boundary modification removes the property from the Fort Ord Hazardous Waste Facility. While DTSC has recommended that the Army do so, the Army has not requested a RCRA Corrective Action Complete Determination for these parcels. Should a transferee desire not to potentially have RCRA liabilities upon transfer of the property, they should contact DTSC to complete the necessary process. Once the request is received, DTSC would work closely with the requestor to complete the process, which includes modifying the facility boundary.

3. Table 4. Please ensure that all regulatory approvals of decision documents are referenced for each parcel in the final FOST. DTSC will complete its evaluation of the parcels and, if appropriate, will issue a No Further Action determination to the Army.
4. Site 39A. Please include a statement that DTSC's No Further Action Letter also applied to the removal of soils with elevated lead from a release of lead based paint. This removal was completed by the future property recipients for Army Parcel L23.3.1. This information explains that lead based paint release issues are addressed for this area to the satisfaction of DTSC and is further evidence of the suitability of the property for varied uses.
5. Plume Maps. Please include a map which depicts the aerial extent of the groundwater plumes in the FOST. The FOST should always show the location of all Installation Restorations Program Sites which impact the property.
6. Plate 6, Landfill areas. This map does not clearly depict the 100 foot buffer zone around the landfill boundary. In addition, the legend does not describe the buffer zone. Please revise the map to clearly delineate the buffer zone and describe it in the map legend.

Ms. Gail Youngblood
June 30, 2005
Page 3

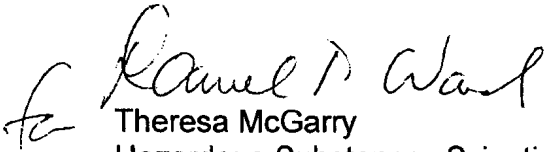
7. As of the date of this letter, DTSC has not received the Munitions and Explosives of Concern information it requested on Parcel E8a.1.1.2.

Finally, DTSC reserves the right to address any appropriate environmental or human health related issues should additional information concerning the environmental condition of subject property become available in the future.

DTSC expects to see the final version of the FOST, prior to release, to ensure all regulatory comments are adequately addressed.

If you have any questions, please contact me at (916) 255-3664 or Roman Racca, Project Manager, at (916) 255-6407.

Sincerely,


Theresa McGarry
Hazardous Substances Scientist
Office of Military Facilities

cc: Mr. Ronald M. Holland
Veterans Transition Center
220 12th Street
Martinez Hall
Marina, California 93933

Ms. Vicky Nakamura
Monterey Peninsula College
980 Fremont Street
Monterey, California 93940-4799

Mr. Chuck Harmon
Head of School
York School
950 York Road
Monterey, California 93950

Ms. Gail Youngblood
June 30, 2005
Page 4

cc: Mr. Derek Lieberman
Fort Ord Base Realignment and Closure Office
Post Office Box 5004
Monterey, California 93944-500

Mr. Michael Houlemard
Fort Ord Reuse Authority
100 12th Street, Building 2880
Marina, California 93933

Mr. Nick Chulos
Monterey County
Environmental Resource Policy
Post Office Box 180
Salinas, California 99302

Mr. David Murray
State of California
Department of Transportation
50 Higuera Street
San Luis Obispo, California 934401-5415

Ms. Ruth Coleman, Director
California Parks and Recreation
Post Office Box 942896
Sacramento, California 94396-0001

Ms. Claire Trombadore
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 93944-5004

Mr. Grant Himebaugh
Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401-7906



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

July 8, 2005

Ms. Gail Youngblood
BRAC Environmental Coordinator
Fort Ord Base Realignment and Closure Office
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Monterey, CA 93944-5004

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Claire Trombadore
Remedial Project Manager

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Grant Himebaugh, RWQCB

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REVISED FINDING OF SUITABILITY TO TRANSFER
TRACK 0 PLUG-IN C PARCELS AND TRACK 1 PARCELS (FOST 9)
FORMER FORT ORD
MAY 2005**

SPECIFIC COMMENTS

1. Please add the following language (or something like it) to Attachment 5, Section 7 - Notice re the OU 2 landfills: The landfill gas monitoring probes are sampled quarterly for methane and annually for volatile organic compounds. Monitoring of landfill gas is required for 30 years. The results of the landfill gas monitoring can be found on the Army's web site: www.fortordcleanup.com.

Mr. Robert Carr, EPA Region 9 Office of Regional Counsel, has completed his review of FOST 9 and has the following comments:

1. The language which appears at page 2 of attachment 4, and is repeated at page 3, limiting the CERCLA Covenant does not reflect EPA's understanding of the Army's obligation. The language is based on the notion that a PRP who acquires federal property is not entitled to the statutory covenant; however the Army language does not focus on the status of the parties at the time of the transfer. Any party who acquires contaminated property is a PRP with respect to that property, subject to various defenses. The second sentence which purports to limit the exclusion contained in the first is also flawed because it would allow the Army to avoid its obligation under the CERCLA covenant if any act of the transferee contributed to a release of a hazardous substance remaining on the parcel. For example, if there were construction debris remaining on the parcel the act of the transferee, unknowingly disturbing the debris and releasing asbestos to the environment, could void the Army's obligation to address the asbestos.

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Sincerely,

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Claire Trombadore
Remedial Project Manager

cc: Roman Racca, DTSC
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Attachment

**REVIEW OF THE
REVISED FINDING OF SUITABILITY TO TRANSFER
TRACK 0 PLUG-IN C PARCELS AND TRACK 1 PARCELS (FOST 9)
FORMER FORT ORD
MAY 2005**

SPECIFIC COMMENTS

1. **Section 4.1 Environmental Remediation Sites, page 7:** Please note in the text of the first paragraph of this section which parcels the OU2 TCE plume flows under. If possible, please also the maximum concentration are as well as the depth to groundwater. Despite this information being included in various attachments to the FOST please include it in the Section 4.1 text.

2. **Section 4.9 Munitions and Explosives of Concern (MEC), MRS-6 Expansion Area, page 19:** The first sentence in this section states that, "The MRS-6 Expansion Area lies within Parcel E2a, between MRS-6 and MRS-1 (Plate 4)." No mention is made here or elsewhere in the section that the MRS-6 Expansion Area overlaps Parcel E4.1.2.2, Parcel S4.1.1 and possibly Parcel E4.1.2.1 as well. However, Plate 4 appears to show such an overlap (the boundaries of Parcel E4.1.2.1 are not well defined on the plate). In addition, a check of Attachment 3 Tables, Table 2 Track 0 Plug-In Parcels Associated with Track 1 Sites (Group C), reveals that the MRS-6 Expansion Area is not listed in the table as overlapping any of these parcels, to include Parcel E2a. Please review the cited section/plate/table and correct the cited inconsistencies as necessary.

3. **Section 4.9.1 Incidental Military Munitions, page 22:** The first sentence in this section states that, "Military munitions items were found in three parcels within Track 0 areas." This seems to be an all-encompassing statement which could be applied to all of the Track 0 parcels which currently exist at the installation, as well as to any future Track 0 plug-in parcels currently unidentified. The sentence should be revised to apply only to the Track 0 parcels under consideration in this FOST.

In addition, the three parcels listed as having contained incidental military munitions (Parcels E4.3.1.2, E8a.1.1.2, and L20.13.5) do not appear to be the only parcels that meet this criteria. A check of Table 5 Environmental Condition of Property of Attachment 3 Tables reveals that Parcel L20.6 also had incidental military munitions items found within its boundaries. Please review the cited discrepancies and correct them as necessary. Also, please review the documentation of all of the parcels scheduled for transfer as Track 0 parcels for the presence of incidental military munitions and list all which have such items present in Section 4.9.1.

4. **Attachment 2, Environmental Documentation, page 3:** The Army should include the following reference, *Final Landfill Gas Perimeter Probe Monitoring Report, 2003, Operable Unit 2 Landfills, Revision 0 dated November 2004.*

ERRATA

- 1. Section 4.0 Environmental Condition of Property, Community Environmental Response Facilitation Act (CERFA) Report, Parcels L20.15, S3.1.3, and S3.1.4, page 6: The third paragraph in this subsection uses two different sizes of fonts for no apparent reason. Please correct this typographical error.**