



# Department of Toxic Substances Control

M60050.002372  
MCAS EL TORO  
SSIC #5090.3



Jesse R. Huff, Director  
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Gray Davis  
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Winston H. Hickox  
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Protection

March 12, 1999

Mr. Joseph Joyce  
BRAC Environmental Coordinator  
U.S. Marine Corps Air Station - El Toro  
AC/S, Environmental (1AU), BRAC Building #899  
P. O. Box 95001  
Santa Ana, California 92709-5001

Dear Mr. Joyce:

## REQUEST FOR LAND USE COVENANT FOR LANDFILL SITES 3 & 5 RECORD OF DECISION, MARINE CORPS AIR STATION (MCAS) EL TORO

As was discussed during a recent conference call between you, Tayseer Mahmoud, Aaron Yue, and others, the Department of Toxic Substances Control (DTSC) requests that the Department of Navy (DoN) enter with the State into a Land Use Covenant (LUC) for Environmental Restrictions. Whenever there is hazardous waste left in place at concentrations greater than would be allowable for unrestricted land use, institutional controls must be put in place to protect the remedy, restrict public access and protect public health, restrict digging or drilling of drinking water wells, allow access to the site for monitoring, etc. At MCAS El Toro, the DoN has determined that institutional controls are required for the landfill sites to protect public health and the environment and to protect the remedy, i.e., landfill cap.

As referenced in California Civil Code Section 1471, DTSC customarily utilizes the LUC for all sites with residual contamination as an instrument to document institutional controls and use restrictions. As authorized by California Health and Safety Code Sections 25202.5, 25221, and 25230, and by California Code of Regulations sections 66264.94 and 68500.35(c), DTSC may enter into an agreement with a landowner to impose an easement, covenant, restriction, servitude or any other combination thereof on land. The LUC would ensure that the institutional controls are maintained by future owners, would run with the land, and would enable DTSC and/or the Regional Water Quality Control Board (RWQCB) to have immediate ability to enforce violations of the institutional controls in state court.

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Prior to DTSC's approval of a Remedial Action Plan or Record of Decision (RAP/ROD) or concurrence on associated property transfers, DTSC must have assurance that the current property owner will enter into a LUC with DTSC. At closing federal facilities where the Department of Defense and/or the designated service branch declines to enter into a LUC with DTSC, DTSC requires that there also be a formal agreement, such as a Consent Agreement, between the future landowner and DTSC prior to DTSC's approval of the RAP/ROD. In such an agreement, the future landowner promises to enter into an LUC with the state at the time of property transfer, prepared in accordance with the provisions of California Civil Code, section 1471.

In the event that the future landowner is not willing to enter into a consent agreement with DTSC, and the DoN is unwilling to enter into a land use covenant with DTSC, then DTSC will be unable to approve the respective RAP/ROD or land transfer. In such case, the remedy would need to be changed so as to permit unrestricted future land use.

Therefore, DTSC requests that language similar to the following be added to Sections 7.2.1 and 7.3.2, Institutional Controls, Draft Final Record of Decision for Sites 3 & 5:

"A Land Use Covenant between the DoN and the Department of Toxic Substances Control and the Regional Water Quality Control Board will be the mechanism to implement the above-mentioned institutional controls, in accordance with state policy. The covenant is a legally-binding agreement, which will include a combination of easements, covenants, restrictions, and servitudes. The easements will allow state representatives to enforce the institutional controls, have access to the property in order to ensure that the remedy is protected and to evaluate the monitoring system via site inspection. The Land Use Covenant will include a legal description of the property and/or contaminated areas, parcel maps, and detailed site maps which show restricted areas. In addition, the Land Use Covenant will include information summarizing the remedial actions completed at the specific sites, and provisions for terminating the restrictions in the event that they may no longer apply. The provisions in the Land Use Covenant will be binding upon all future owners until legally terminated; that is, they will "run with the land." The Land Use Covenant will be recorded with the deed of transfer of real property by the County of Orange in accordance with state law. The DoN shall provide the departments with a copy of the land use controls which have been appropriately recorded."

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We will appreciate your review of this request. If requested, we will be available to meet with you and/or the Local Redevelopment Authority to discuss the policy, procedure, and format for the LUC. DTSC staff look forward to working with you to expedite cleanup and reuse of MCAS - El Toro. If you have questions or need further information in this matter, please call me at (714) 484-5433 or Tayseer Mahmoud at (714) 484-5418. Thank you.

Sincerely,



Sharon Fair, Chief  
Base Closure and Reuse Unit  
Office of Military Facilities

cc: Mr. Glenn Kistner  
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