



DEPARTMENT OF THE NAVY
SOUTHWEST DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
1220 PACIFIC HIGHWAY
SAN DIEGO, CA 92132-5190

5090
Ser 06CA.MM/0419
June 29, 2000

Mr. Richard Seraydarian
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Dear Mr. Seraydarian:

I am responding on behalf of Mr. Dana Sakamoto to Mr. Daniel Meer's May 11, 2000 letter regarding the retention of an interest, by the Navy for enforcement of institutional controls, in property being transferred to the City of Alameda. The Navy fully agrees with U.S. EPA's sentiments as expressed in that letter. The Navy intends to establish an interest in Federally enforceable restrictive covenants by incorporating Environmental Restrictions into the deeds of transfer for the property to be transferred to the City of Alameda and Alameda Reuse and Redevelopment Authority (ARRA) pursuant to California Civil Code 1471. This will ensure that the Environmental Restrictions will "run with the land" and be enforceable by the Navy against future owners and transferees of the subject property under Civil Code 1471. U.S. EPA has recently endorsed use of this authority in the MCAS El Toro ROD for OU2B.

This "tier" of Federal enforcement of land use restrictions established by Environmental Restrictions included in the deeds will complement a State "tier" of restrictions and enforcement which will be implemented via an Environmental Restriction Covenant and Agreement between the California Department of Toxic Substances Control (DTSC) and the City of Alameda and a local "tier" of restrictions and enforcement via the City of Alameda's Marsh Crust Ordinance (City of Alameda Ordinance No. 2824, February 15, 2000). The retention of the Federal interest via Environmental Restrictions in deeds pursuant California Civil Code 1471 and the three tiers are specifically identified at three places within the text of the Draft RAP/ROD for Marsh Crust at FISC Alameda and Alameda Point. See Section 1.4, p. 1-3; Section 2.9.1, pp. 2-19 and 2-20; and Section 2.12.1, pp. 2-36 and 2-37 for descriptions of the three tiers. The three layers of institutional controls will be drafted in a manner so that the language is consistent and does not create conflicting legal obligations for future owners as requested by the City of Alameda in recent conveyance negotiations.

The Navy believes that it did include language in the Draft RAP/ROD which specifically describes the Environmental Restrictions that will be included in the deed as well as the three-tier structure for institutional controls. However, to the extent that the Navy's intention is not clear in the Draft RAP/ROD, the Navy will include clarifying language in the next revision of the document.

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It should be noted that the Action Memo for Marsh Crust Time-Critical Removal, East Housing Alameda Point (AM) and the (now) Final Finding of Suitability to Transfer (FOST), East Housing Alameda Point referenced in your letter also adopted a three-tier structure of institutional controls not a two-layer structure as stated in your letter. The following sections of the referenced documents describe the Navy's three tier approach: AM -Section 7.2, p. 7-6 and FOST -Section 5.2, p. 4. The USEPA is correct in noting that the Final FS for the Marsh Crust at FISC Alameda and Alameda Point, as written, does not refer to the third "Federal" layer, the environmental restrictions written into the deed for transfer of the property. The Navy made the decision to adopt the third tier after that document had been completed. Because the issue has been addressed in the decision documents, the Navy does not intend to revise the Final FS for Marsh Crust at FISC Alameda and Alameda Point. In their 9 June 2000 phone call, Mr. Michael McClelland, the BRAC Environmental Coordinator for Alameda Point / Alameda Annex, discussed with Mr. Phillip Ramsey, of your office, the Navy decision to not modify the Final FS. At other bases, in response to DTSC and U.S. EPA comments, modifications have been made to draft RODs to include provisions that were not in the final FS. In those cases we did not revise the final FS report and neither U.S. EPA nor DTSC asked us to do so.

The RAP/ROD is at the draft stage, under review by all parties. The enclosed sections from the Final Interim Record of Decision Operable Unit 2B Landfill Sites 2 and 17 for the Marine Corps Air Station El Toro, California (Enclosure 1) contain language regarding institutional Controls and the Land Use Control Certification and Implementation Plan (LUCCIP) that could serve as a model for language to be included in the RAP/ROD for Marsh Crust at FISC Alameda and Alameda Point.

Mr. McClelland has had several telephone discussions with Mr. Ramsey regarding your letter and the Navy's position as detailed in this letter. I believe that as a result of those discussions and this letter you will find that we have retained sufficient legal title and interest in the property to insure continuing Federal enforcement of institutional controls at Navy sites.

Should you have any questions, please call Mr. Michael McClelland at (619) 532-0965 or please call Mr. Rex Callaway at (619) 532-0988 for any legal issues.

Sincerely,



RON PLASEIED
Base Closure Manager
By direction of the Commander

Encl: (1) Final Interim Record of Decision Operable Unit 2B Landfill Sites 2 and 17
Marine Corps Air Station El Toro, California

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ENCLOSURE

FINAL
INTERIM RECORD OF DECISION
OPERABLE UNIT 2B LANDFILL SITES 2 AND 17
APRIL 2000

THE ABOVE IDENTIFIED ENCLOSURE BELONGS
TO MCAS EL TORO. THIS ENCLOSURE IS NOT
BEING FILED WITH THIS DOCUMENT.

QUESTIONS MAY BE DIRECTED TO:

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