



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

5090  
Ser 09C.RC/0491  
June 26, 2000

VIA TELEFAX

Ms. Thelma Estrada  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Dear Ms. Estrada:

Subj: CALIFORNIA CIVIL CODE 1471 AND MCAS EL TORO ROD FOR OU2B

Thank you for coordinating our phone conference call on Thursday, June 22, 2000 on the above topic. I am sending this letter in order to provide the clarifications requested by U.S. EPA in that meeting.

As indicated in our conference call and in Section 7.2.1.4 of the MCAS El Toro ROD for OU2B, the Department of Navy (DON) will be incorporating land use restrictions specified in that ROD into two legal instruments. One of those instruments will be in the form of a "Covenant to Restrict Use of Property Environmental Restriction" executed by DON and California DTSC pursuant to California Civil Code 1471 and related State authorities. In that instrument DON will convey an interest in an enforceable restrictive covenant under Civil Code 1471 to DTSC as covenantee as provided in the Memorandum of Agreement entered into by DON and DTSC on March 10, 2000.

The other legal instrument will be the Quitclaim Deed by which DON will transfer title to the relevant property to the transferee. The deed will include the same underlying land use restriction in the form of a restrictive covenant that will run with the land pursuant to Civil Code 1471 and which will identify DON as the covenantee. The deed will include language in substantially the following form:

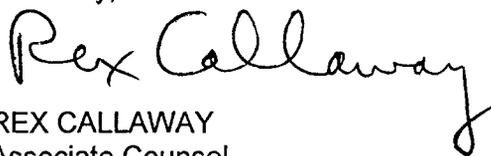
"The following environmental covenants, conditions and restrictions (hereinafter referred to as "environmental restrictions") regarding the use of the property have been determined by the Grantor in this covenant to be reasonably necessary to protect present or future human health or safety or the environment as provided by CERCLA and California Civil Code 1471 as a result of the presence on the land of hazardous materials as defined in Section 25260 of the Health and Safety Code. The environmental restrictions made and accepted herein by Grantee shall be for the benefit of and enforceable by the Grantor herein [and (add DTSC, RWQCB as appropriate)] as covenantees as provided under Civil Code Section 1471, shall run with the land, and shall be binding on the Grantee, its successors and assigns."

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Both of these legal instruments will be executed at the real estate closing. The net effect of this "two-tiered" process will be to establish both DTSC and DON as covenantees with the authority and right to enforce restrictive covenants that implement the land use restrictions identified in the ROD and that run with the land and are binding on successors of the transferee as provided under California Civil Code 1471.

Please call me at (619)-532-0988 .if you have any questions or if I may be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Rex Callaway". The signature is written in a cursive style with a large, prominent "R" and a long, sweeping tail on the "y".

REX CALLAWAY  
Associate Counsel  
(Environmental)