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MCAS EL TORO LOCAL REDEVELOPMENT AUTHORITY • *Janice M. Summerfield, Executive Director*
MCAS EL TORO MASTER DEVELOPMENT PROGRAM • *Courtney C. Wiercioch, Manager*

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Mr. Joseph Joyce
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Navy Facilities Engineering Command
Southwest Division-Code 05BM.JJ
1220 Pacific Highway
San Diego, CA 92132-5187

Subject: Draft Record of Decision – Landfill Sites 2 and 17

Dear Mr. Joyce:

Thank you for the opportunity to comment on the Draft Record of Decision (ROD) for Landfill Sites 2 and 17 located within the Department of Interior site. We have reviewed the Draft ROD and offer the following general comments. These comments are intended to highlight our concerns and to promote a continuing dialogue between the Local Redevelopment Agency (LRA), the Department of Navy (DON) and the United States Marine Corp (USMC), regulatory agencies and key stakeholders concerning selection of the most appropriate remedy for the landfill sites at MCAS El Toro.

Alternative 3, the DON's preferred remedy for Sites 2 and 17, consists of construction of a four-foot thick soil cover, installation of surface drainage, and seeding drought-resistant grasses. Although this remedy may be appropriate for Sites 2 and 17 due to their proposed use as habitat preserve, it should not be universally applied to other landfill sites (i.g. 3 and 5). As you are aware, LRA's Airport and Open Space Plan proposes recreational land uses (Golf Course and Regional Park) on Landfill Sites 3 and 5. The ability to landscape and irrigate these sites is critical for productive reuse. Therefore, LRA strongly opposes application of such a remedy (Alternative 3) on Landfill Sites 3 and 5.

The Draft ROD places the proposed institutional controls for Landfill Sites 2 and 17 into two broad land use and monitoring categories. The lack of specificity is disconcerting given that the institutional controls are not simply a component of the remedy but are a key component. Therefore, LRA recommends that the Draft ROD provide as much detail as possible regarding proposed controls. Particularly, the Draft ROD should be specific regarding the areal extent of such controls. LRA, as the proposed future owner of the base, will own properties within close proximity to Landfill Sites 2 and 17 and will be adversely impacted by these controls. More specifically, construction of the easterly extension of Alton Parkway which would be located within 1000 feet of Site 2, will be directly impacted.

Additionally, DON notes that "[t]he actual drafting of the legal instruments relating to these institutional control measures will occur prior to agency-to-agency transfer." LRA strongly disagrees with this approach. This will preclude LRA from participating in the design of these institutional controls potentially impacting LRA's ability to effectively implement planned uses in the vicinity of these Landfill Sites.



Again, LRA appreciates the opportunity to review and comment on the Draft ROD. The attached provides more detailed discussions of the above issues for your consideration.

Sincerely,



Courtney C. Wiercioch, Manager
MCAS El Toro Master Development Program

Attachment

Cc: Tayseer Mahmoud, DTSC
Glen Kistner, USEPA
Peter Janiki, CIWMB
Patricia Hannon, RWQCB
Steve Sharp, LEA

ATTACHMENT

Comments on Draft ROD for Landfill Sites 2 & 17

In May 1998, the Department of Navy and the United States Marine Corps ("DON/USMC") released its proposed plan for addressing environmental problems associated with four inactive landfills (IRP Sites 2, 3, 5 and 17) located at the Marine Corps Air Station El Toro ("MCAS El Toro") in the County of Orange.¹ For all four sites, DON/USMC proposed the same remedy, identified as "Alternative 3" in the Proposed Plan. Alternative 3 generally consists of (1) a soil cap, (2) institutional controls, and (3) long-term monitoring.

In November 1998, DON/USMC issued a draft Record of Decision for Sites 2 and 17 only.² In the Draft ROD, DON/USMC identified Alternative 3 as its preferred remedy for Sites 2 and 17. As part of its continuing effort to work with DON/USMC, regulatory agencies, and key stakeholders to ensure implementation of the most appropriate remedy for the landfill sites at MCAS El Toro, the County provides the following comments on the Draft ROD.

Impact of Proposed Institutional Controls

One concern previously expressed by the LRA is that DON/USMC has not provided sufficient detail concerning the institutional controls it proposes to include as part of Alternative 3.³ This lack of specificity is problematic because regulatory agencies and others recognize that institutional controls represent a key component of the final remedy for all MCAS El Toro landfills. As such, the LRA has requested DON/USMC to provide as much detail as possible regarding proposed institutional controls as early as possible in the remedy selection process.⁴

¹ "Proposed Plan for Closure of Inactive Landfills at Marine Corps Air Station El Toro" (May 1998) [the "Proposed Plan"].

² "Draft Record of Decision, Operable Unit 2B, Landfill Sites 2 and 17, Marine Corps Air Station, El Toro, California" (November 1998) [the "Draft ROD"].

³ "Comments on the Proposed Plan for Remediation of Inactive Landfills at MCAS El Toro," submitted by the Orange County Local Redevelopment Authority on July 13, 1998 [the "LRA Comments"].

⁴ At a meeting between DON/USMC and the LRA held on April 30, 1998, DON/USMC stated that it would attempt to provide the LRA with examples of institutional controls developed for remediated landfills located at other closing military bases. A specific request for examples of these institutional controls subsequently was made in a letter sent to DON/USMC on June 5, 1998, and also at a meeting between DON/USMC, the LRA and various regulatory agencies held on October 22, 1998. To date, these exemplars have not been provided. Moreover, DON/USMC proposed a November 1998 meeting with regulatory agencies and the LRA to discuss institutional

(Footnote Continued on Next Page.)

Similar sentiments have been expressed by others. The California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") expressed concerns with DON/USMC's position that institutional controls could be determined at the time the property is transferred. According to DTSC, "[i]nstitutional controls are used to support the remedy to assure the protection of human health or the environment. As such, institutional controls are as vital to the remedy as any engineering control or technology." Institutional controls therefore must be evaluated "with the same level of scrutiny as the engineering alternatives."⁵

Likewise, in the comments prepared by the El Toro Reuse Planning Authority, it was noted that institutional controls have been described only in general terms by DON/USMC. As with the LRA and DTSC, the El Toro Reuse Planning Authority requested that the discussion of institutional controls "be expanded and more specific."⁶

Despite these comments, DON/USMC does not provide substantially more detail about proposed institutional controls in the Draft ROD. According to DON/USMC:

[t]he institutional controls identified fall into two broad categories: 1) restrictions on future land use and 2) provision for potential monitoring and maintenance activities by DON and oversight of those activities by the FFA [Federal Facility Agreement] signatories if DON conducts them and for access by DON and the FFA signatories if DOI [Department of Interior] agrees to perform these responsibilities.

DON/USMC further notes that "[t]he actual drafting of the legal instruments relating to these institutional control measures will occur prior to the agency-to-agency transfer." Draft ROD at 7-4.

The LRA has three principal concerns with DON/USMC's approach to developing institutional controls.

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controls; DON/USMC subsequently canceled the meeting and proposed to reschedule it for some unspecified later date following completion of additional technical review.

⁵ Letter from Tayseer Mahmoud, Remedial Project Manager, DTSC, to Joseph Joyce, BRAC Environmental Coordinator, MCAS El Toro (Nov. 17, 1997), at attachment p. 3.

⁶ Draft ROD, Responsiveness Summary, "Response to Written Comments Received During the Public Comment Period" (Item 6H). Ironically, DON/USMC responded to this comment by stating, "DON has worked closely with DTSC to develop the institutional controls language found in the FS report and believes that this language is much less general than that found in a typical FS report for landfill sites." Given DTSC's previous position on this issue, the LRA seriously questions the validity of this response.

First, by deferring development of the proposed institutional controls, DON/USMC effectively precludes any meaningful comment by regulatory agencies, the LRA and other members of the public on an extremely important component of its preferred remedy. If interested parties do not understand what restrictions are being imposed, it is difficult - if not impossible - to provide appropriate and timely comments.

Second, the LRA is uncertain what restrictions, if any, may be imposed on property located outside of the landfill boundaries. DON/USMC states in the Draft ROD that (1) "agency approval is required if postclosure land uses involve *structures within 1000 feet of the disposal area*, structures on top of waste, modification of the low permeability layer, or irrigation over the waste," and (2) "institutional controls proposed for Sites 2 and 17 are designed to comply with this regulatory requirement by restricting land uses and modifications to the *remedy as specified below*." Draft ROD at 7-4 (emphasis added). Yet, all of the institutional controls subsequently discussed by DON/USMC in the Draft ROD appear to be limited to activities occurring at or within the boundaries of the actual landfill sites. Nowhere in the Draft ROD does DON/USMC indicate whether it intends to develop any institutional controls restricting the use of adjoining properties.

DON/USMC's failure to clarify this issue has the potential to complicate important County projects that are taking place near Site 2. For example, as DON/USMC is aware, the County intends to construct the Alton Parkway. A portion of the parkway is located within 1,000 feet of the Site 2 landfill. To date, DON/USMC has not identified any specific restrictions, approval processes, costs or other issues that could impede completion of the project. However, language in the Draft ROD suggests that such issues could arise in the future.⁷

Any uncertainty regarding the County's ability to proceed with this project can and should be addressed by DON/USMC in the record of decision for Site 2. To resolve this uncertainty, DON/USMC should (1) discuss in the final version of the Draft ROD the specific language of the institutional controls it proposes for Sites 2 and 17, and (2) confirm that these controls will not result in any additional obligations or responsibilities being imposed on the County in connection with the construction of the Alton Parkway.

Third, DON/USMC's failure to provide adequate detail regarding the institutional controls proposed for Sites 2 and 17 raises serious questions regarding the approach it will adopt in developing similar institutional controls for Sites 3 and 5. The LRA's principal focus is on the remedial activities occurring at Sites 3 and 5 because these sites will be transferred from DON/USMC to the County of Orange. As DON/USMC is aware, Sites 3 and 5, and surrounding

⁷ The LRA notes that, according to DON/USMC, any person seeking to undertake "restricted uses" will have to obtain prior approval from DON/USMC and the FFA signatories and will be responsible for the cost of any additional remedial action required to implement such uses. Draft ROD at 7-4.

property will be developed for a variety of reuses. As such, it is imperative for DON/USMC to identify with particularity the institutional controls being proposed for these two sites. Any approach that defers development of institutional controls until after the remedy is selected or the property is transferred to the County will not be acceptable to the LRA.

Appropriateness of Physical Remedy for Sites 3 and 5

As discussed in earlier comments submitted to DON/USMC by the LRA, a key factor that must be considered in selecting a remedy for the landfill sites at MCAS El Toro are anticipated reuse plans. Though perhaps obvious, it is important to emphasize that the reuses proposed for Sites 2 and 17 are substantially different from those proposed for Sites 3 and 5. Sites 2 and 17 are located on property that will be transferred to DOI for use as a habitat preserve. The reuses proposed for these two sites are relatively passive in nature. For example, DON/USMC intends to prohibit building of any structures other than monitoring wells, planting of any vegetation (apart from the basic ground cover) and irrigating these sites. In addition, DON/USMC intends to restrict access to the site by erecting fences and signs. Draft ROD at 7-5.

In contrast, Sites 3 and 5 are located on property that will be transferred to the County for reuse in a variety of recreational and open space purposes.⁸ Among other things, these sites may be used for golf courses, ballfields, equestrian trails, and regional parks. The ability to plant vegetation, irrigate and provide access to Sites 3 and 5 therefore is critical to effective and productive reuse of this property.

The LRA recognizes that DOI (the ultimate recipient of Sites 2 and 17) and regulatory agencies may have more information concerning the compatibility of Alternative 3 with proposed reuses of Sites 2 and 17 and, more generally, the appropriateness of the proposed implementation of Alternative 3 for Sites 2 and 17. In this regard, the LRA generally would defer to the judgment of these parties concerning the selection of a remedy at Sites 2 and 17.⁹ However, the LRA wishes to restate for DON/USMC the fundamental conclusion presented in its earlier comments on the remediation of the MCAS El Toro landfills: While the selection of Alternative 3 may be deemed appropriate for Sites 2 and 17, it is *not* an acceptable remedy for Sites 3 and 5.

⁸ MCAS El Toro Master Development Program, Airport and Open Space Plan; Letter from Courtney C. Wiercioch, Program Manager, MCAS El Toro Master Development Program, to Joseph Joyce, BRAC Environmental Coordinator, MCAS El Toro (September 1, 1998).

⁹ It should be noted that the LRA has raised a number of comments and concerns in response to the Proposed Plan that have general application to the proposed implementation of Alternative 3 at all four MCAS El Toro landfill sites. These comments and concerns still need to be addressed by DON/USMC.

Conclusion

It is the responsibility of DON/USMC to ensure that the remediation of Sites 2 and 17 be undertaken in a manner that does not jeopardize the development of nearby parcels by third parties, including the County. The LRA therefore requests that DON/USMC address and, if necessary, resolve the issues raised in these comments prior to finalizing the record of decision for Sites 2 and 17.

Finally, please note that the LRA does not intend, through the submission of these or other comments, to suggest that the selection of Alternative 3 at *any* of the MCAS El Toro landfill sites is, in its judgment, lawful, technically sound, or otherwise advisable. In providing these comments, the LRA notes that, at the present time, it remains very concerned about much of the analysis presented by DON/USMC in support of the selection of Alternative 3. Indeed, the LRA intends to present additional comments in the immediate future regarding the proposed implementation of Alternative 3 at Sites 3 and 5. These latter comments are warranted in light of new data and analyses provided by DON/USMC to the LRA and regulatory agencies following the close of the public comment period on the Proposed Plan.