



GOVERNOR ARNOLD SCHWARZENEGGER

July 21, 2008

Mr. Addison D. Davis, IV
Deputy Assistant Secretary of the Army
Environmental Safety and Occupational Health
Office of the Assistant Secretary of the Army (Installations and Environment)
110 Army Pentagon
Room 3E464
Washington, DC 20310-0110

Dear Mr. Davis,

You have requested that I concur on the deferral of the federal deed covenant requirements for approximately 3300 acres of the former Fort Ord, in 47 parcels, which the U.S. Army proposes to transfer to the Fort Ord Reuse Authority (FORA). The Army will provide FORA approximately \$100 million to remediate munitions and explosives of concern (MEC) remaining on 42 of these parcels. This process is known as a "privatized early transfer."

In most cases, deeds transferring federal real property to non-federal entities must contain a covenant warranting that all hazardous substance remedial actions necessary to protect human health and the environment have been taken before the date of transfer. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 120(h)(3)(C) (42 U.S.C. § 9620(h)(3)(C)), the U.S. Environmental Protection Agency (U.S. EPA) may authorize deferral of this covenant with the Governor's concurrence. U.S. EPA's April 15, 2008, letter approved the FORA "early transfer" contingent upon the Governor's concurrence.

The majority of the parcels included in the early transfer are located within the north-central to southwest area of the base in an area commonly referred to as Parker Flats and Seaside Ranges. Other parcels are located within the northeast corner of the Impact Area, the former Explosives Safety Location and land adjacent to the Laguna Seca racetrack.

I am informed that 42 of the parcels were historically used for target practice training and maneuvers using antitank rockets, small arms, machine guns, rifle grenades and shoulder-launched projectiles. These parcels are referred to as the Environmental Services Cooperative Agreement (ESCA) parcels. The Army has conducted some investigation and cleanup on the ESCA parcels and has removed a number of live MEC and related scrap items. Some MEC remain buried on the ESCA parcels, and the Army is funding FORA to complete the MEC investigation and cleanup.

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On January 4, 2007, the Department of Toxic Substances Control (DTSC), U.S. EPA and FORA entered into an Administrative Order on Consent (AOC), which regulates FORA's completion of the investigation and cleanup on the 42 ESCA parcels. Five other early transfer parcels overlie contaminated groundwater, which the Army will continue to remediate. The Army will also retain responsibility for the continuing investigation and possible cleanup of potential contamination associated with munitions constituents and known or suspected small arms firing ranges on 18 ESCA parcels.

On the 42 parcels that contain MEC, DTSC and the Army have negotiated restrictive state land use covenants (LUCs). These state LUCs run with the land and restrict all property owners from using the parcels for residential and related sensitive uses until adequate cleanup has been completed. These state LUCs also require expert MEC construction support. The Army is committed to signing the state LUCs with DTSC before the 42 parcels transfer. Also, working with DTSC, local jurisdictions have adopted ordinances which also address the potential risk of encountering remaining MEC by requiring expert construction support for significant excavation activities. Five parcels with underlying contaminated groundwater and two parcels adjacent to underlying contaminated groundwater will also have restrictive land use covenants, signed by the Army, DTSC and the Regional Water Quality Control Board, Central Coast Region (RWQCB), preventing use of the groundwater and protecting the groundwater cleanup systems.

In 1990, the Army, U. S. EPA, DTSC and the RWQCB entered into the Fort Ord Federal Facility Agreement (FFA), which regulates the investigation and cleanup of all hazardous substances at the former Fort Ord. On July 26, 2007, these parties signed an amendment to the FFA to explicitly address the early transfer and privatized cleanup of MEC on the 42 parcels. The Army retains an ongoing responsibility to remediate any MEC or other hazardous substances discovered on the 42 parcels if the privatized cleanup defaults or if additional contamination is found in the future.

Based on the information provided in Army investigation and remediation documents, the ESCA, FFA, FFA amendment, AOC, LUCs, the Memorandum of Agreement (MOA) between DTSC and FORA, the Army's Finding of Suitability for Early Transfer (FOSET) dated September 25, 2007, the Federal Deed, and the U.S. EPA's findings of suitability and authorization for early transfer dated April 15, 2008, I find that:

1. The parcels are suitable for transfer to FOR A, and the intended use is consistent with protection of human health and the environment.
2. The agreements governing the transfer contain the assurances set forth in CERCLA section 120(h)(3)(C)(ii) (42 U.S.C. § 9620(h)(3)(C)(ii)).
3. The Army provided public notice of and opportunity to comment on the deferral request and responded to all comments received during the 45-day public review period.

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4. The covenant deferral and transfer will not substantially delay any necessary remediation at the parcels.

Based on these findings, I concur with the determination of the U.S. EPA Regional Administrator, Region IX, dated April 15, 2008, that the 47 parcels on the former Fort Ord are suitable for transfer in accordance with CERCLA section 120(h)(3)(C), and I concur with the U.S. EPA Administrator's deferral of the federal covenant required by CERCLA section 120(h)(3)(A)(ii). This determination shall not be interpreted or deemed to be a waiver of any right of the State of California to require any response action by any appropriate party. Furthermore, this determination shall not be deemed or interpreted as an estoppel against the State of California.

Should you have any questions concerning this matter, please call DTSC Director Maureen Gorsen at (916) 322-0504 or DTSC Acting Assistant Deputy Director Mr. Frederick S. Moss at (916) 255-3750.

Sincerely,



Arnold Schwarzenegger

cc: The Honorable Abel Maldonado
The Honorable John Laird
The Honorable Joseph Russell
The Honorable Ralph Rubio
The Honorable Linda Adams
Ms. Illa Mettee-McCutchon
Mr. Michael Houlemard
Ms. Gail Youngblood
Mr. Michael M. Montgomery
Ms. Maureen Gorsen
Mr. Maziar Movassaghi
Mr. Frederick S. Moss