GOVERNOR ARNOLD SCHWARZENEGGER

December 2, 2004

Mr. Raymond J. Fatz
Deputy Assistant Secretary of the Army
Environment, Safety and Occupational Health
Department of the Army
110 Army Pentagon
Washington, DC 20310-0110

Dear Mr. Fatz,

You have requested that the State of California concur on the deferral of the completion of the remediation of hazardous substance contamination, known as an "early transfer," at the former Fort Ord, Monterey County, California. The United States Army (Army) proposes to transfer approximately 324 acres of the former Fort Ord to the Fort Ord Reuse Authority (FORA), who intends to transfer the Parcels to the City of Del Rey Oaks (City). The Parcels, known as the Del Rey Oaks Parcels, mainly consist of a portion of the 8,000 acre former munitions impact training area of the former Fort Ord.

In most cases, deeds transferring federal parcels to non-federal entities must contain a covenant warranting 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 Army may proceed with deferral of this covenant with United States Environmental Protection Agency (U.S. EPA) approval and the Governor's concurrence.

The property was historically used for target practice training with antitank rockets, small arms, machine guns, rifle grenades and shoulder-launched projectiles. The Army, U.S. EPA, and the Department of Toxic Substance Control (DTSC) entered into the Fort Ord Federal Facility Agreement (FFA) which regulates the investigation and cleanup of hazardous substances, including military Munitions and Explosives of Concern (MEC) left over from military operations at the former Fort Ord. The Army conducted an investigation on these parcels and removed a number of live MEC and related scrap items. Due to current technical limitations for detecting buried MEC, the Army cannot guarantee that all MEC were detected and removed.

Because of the probability that some MEC remain buried on these parcels, DTSC, the City and FORA have entered into an Enforceable Agreement (EA), and the City has adopted an ordinance, both of which address the potential risk of encountering remaining MEC by requiring worker education and expert construction support for significant excavation activities. In addition, a restrictive Land Use Covenant (LUC) has been negotiated between DTSC, the Army, the City and FORA that restricts residential and related sensitive uses, and requires the same MEC education and expert construction support that is also required by the DTSC/City/FORA Enforceable Agreement and the City Ordinance. The Army is committed to signing the LUC with DTSC before the land transfers. The Army retains an ongoing responsibility to remediate any MEC or other hazardous substances discovered on these parcels in the future.

Based on the information provided in Army investigation and remediation documents, the FFA, the DTSC/City/FORA EA, the City Ordinance, the Restrictive LUC, and the Army's Finding of Suitability for Early Transfer (FOSET), I find that:

1. The Del Ray Oaks Parcels are suitable for transfer to FORA, and then the City; 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).

3. The Army provided public notice of, and opportunity to comment on, the deferral request and responded to all comments received during the 30-day public review period.

4. The covenant deferral and transfer will not substantially delay any necessary remediation at the Del Ray Oaks Parcels.

Based on these findings, I concur with the determination of the U.S. EPA Regional Administrator, Region IX, dated August 19, 2004, that the Del Ray Oaks Parcels on the former Fort Ord are suitable for transfer in accordance with CERCLA section 120 (h)(3)(C), and I approve deferral of the 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 contact Mr. B.B. Blevins, DTSC's Director, at (916) 322-0504, or Ms. Dorothy Rice, DTSC's Deputy Director for Site Mitigation and Brownfields Reuse, at (916) 323-3556.

Sincerely,

Arnold Schwarzenegger

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