

From: <Johnson.Kathleen@epamail.epa.gov>
To: "Richards, JC" <JC.Richards@jer.com>
Date: 11/30/2006 5:52 PM
Subject: Re: Del Rey Oaks project

CC: <attys@wellingtonlaw.com>, <trombadore.claire@epa.gov>, <david.eisen@mon...>
JC,

Thank you for your note and the spirit of cooperation you all brought to the table. Attached you will find the latest version of the AOC we are negotiating with McClellan Business Park for a parcel there. This document is very nearly final, but still undergoing some minor language changes. As it has not been released to the public yet, we ask that you keep it among the group working on the DRO project.

Some additional thoughts on the AOC. The AOC we are contemplating for the DRO project is different in some critical respects from our two privatization efforts which should make the DRO document much simpler. First, in both the McClellan situation and the privatized part of Ft. Ord, the obligations that the developer/FORA are assuming are pre-ROD so the exact nature of the work cannot be spelled out. Second, in the privatization context, the developer/FORA are assuming the obligations of the military – work that must be done to ensure protectiveness at the site. At DRO, the Army has already done the actions necessary to support recreational/commercial land use (with some additional construction support.) The additional work contemplated now is only necessary to support residential use. If the parties were to conclude they didn't want to pursue residential, our need for the AOC would go away as well.

There may be a better (simpler) model AOC we could utilize at DRO which would be more suited to the circumstances. I will be discussing this with our legal staff tomorrow and will be better able to respond to your suggestion of producing a draft by our next meeting after I consult with them. We also anticipate that DTSC will be a party to the AOC as well.

I look forward to meeting with you on the 13th.

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To

11/29/2006 06:17 PM Kathleen Johnson/R9/USEPA/US@EPA,
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Subject
Del Rey Oaks project

Kathleen:

On behalf of Federal/JER, thank you for arranging and hosting the meeting of the various stakeholders in the Del Rey Oaks project yesterday in San Francisco. Our impression is that all parties have expressed their desire to work together to accomplish the objective of a mixture of hotel, recreation, commercial and residential uses on the site that would be commensurate with the health and safety of residents, recreational participants, and commercial users alike. We look forward to convening a follow-on session to discuss specifics of the Institutional Controls needed by the government to accomplish this objective.

I wanted to emphasize the principles which guide the Federal/JER team with respect to the proposed expansion of EPA's role in the process pursuant to EPA's responsibilities under CERCLA. First, it is vital that

the preparation and negotiation of control documents, specifically a proposed Administrative Order on Consent, be undertaken on a timely basis in order to preserve the schedule that Kristie Reimer outlined in yesterday's meeting. Second, it is also vital that the Federal/JER liability under any AOC be limited to a covenant to perform the investigative and follow-on remedial actions in accordance with the **agreed-upon Protocol** by and between Federal/JER and DTSC.

To accomplish these objectives, we focused on the option that you advanced as the "Post-ROD" option, or the second option presented. We also discussed a possible third option, which would essentially be the second option, but with the Army being the principle party to enter into an agreement with EPA, and in turn having the Army "contract" with Federal/JER to undertake the actions outlined in the Protocol.

Kristi Reimer has provided a copy of the currently-contemplated AOC by and between EPA and FORA. It is our understanding that your office will provide a copy of the **McClellan AFB AOC**.

We request that your office prepare the initial draft of the AOC document that EPA would propose to use for the Del Rey Oaks site. For purposes of moving the process along in a timely manner, we should probably assume that the agreement will be between EPA and Federal/JER; this can be changed if the Army is agreeable to the third option. Given the significant time constraints that we are working under, it would be best if the stakeholder parties, including the City of Del Rey Oaks, could receive and review the draft prior to our scheduled meeting on December 13. That would help assure that the December 13 meeting will be a productive one.

Finally, I'd like to reiterate our desire that the implementation of the Protocol in a manner acceptable to EPA, per the to-be-negotiated AOC, be followed by a de-listing of the Del Rey Oaks portion of Fort Ord from the NPL. This will be important from the standpoint of marketing the various land bays resulting from subdivision of the property, post-Protocol.

Again, thank you for arranging the meeting and for the cooperative spirit that your office and the other participants brought to the meeting.