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Department of Toxic Substances Control

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December 10, 2019

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Received by EHB
DEC 12 2019

DRAFT MODIFICATION OF THE MEMORANDUM OF AGREEMENT:

MODIFICATION OF THE MEMORANDUM OF AGREEMENT AMONG THE FORT ORD REUSE AUTHORITY, MONTEREY COUNTY AND CITIES OF SEASIDE, MONTEREY, DEL REY OAKS AND MARINA, CALIFORNIA STATE UNIVERSITY MONTEREY BAY, UNIVERSITY OF CALIFORNIA SANTA CRUZ, MONTEREY PENINSULA COLLEGE, AND THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL CONCERNING MONITORING AND REPORTING ON ENVIRONMENTAL RESTRICTIONS ON THE FORMER FORT ORD, MONTEREY COUNTY, CALIFORNIA (HEREINAFTER REFERRED TO AS "AGREEMENT")

Dear Mr. Cook and Mr. Encarnacion:

The Department of Toxic Substances Control ("Department") and the Fort Ord Reuse Authority ("FORA"), Monterey County (County), the City of Seaside ("Seaside"), the City of Monterey ("Monterey"), the City of Del Rey Oaks ("Del Rey Oaks"), the City of Marina ("Marina"), California Sates University Monterey Bay ("CSUMB"), University of California Santa Cruz ("UCSC"), and Monterey Peninsula College ("MPC") entered into a Memorandum of Agreement ("Agreement") pursuant to Health and Safety Code section 25355.5 (a)(1)(c) on or about February 27, 2008. The cities, County, CSUMB, UCSC, and MPC are collectively referred to as "jurisdictions." Section 2.3 of the Agreement requires that FORA, and after FORA ceases to exist, the County submit an Annual Report to the Department by September 1 of each year. The Department, FORA and the jurisdictions agree to move the due date for submitting the Annual Report to the Department from September 1 of each year, to December 1 of each year. The additional time will allow the

jurisdictions to acquire and compile the information required by the Agreement and by the various Land Use Controls Implementation Plans/Operation and Maintenance Plans (LUCIP/OMP), and to consolidate and present the information in one Annual Report.

Background

In 1990, Fort Ord was listed on the National Priorities List (Superfund). The entire property is undergoing, or has undergone remediation, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Land use covenants are required under state law for any properties having remnant hazardous materials. Covenants are placed on such properties being transferred from the federal government to a subsequent owner. The land use covenants on the property transferred to FORA under a Finding of Suitability for Early Transfer required annual reporting to the Department. The annual report is described in the Agreement.

The Agreement was signed by the Department, FORA and all the jurisdictions between November 15, 2007 and February 27, 2008. The Agreement requires the jurisdictions to monitor compliance with all Covenants to Restrict Use of Property (CRUP), including those imposed after the Agreement was executed, for all property on the former Fort Ord, except Fort Ord Dunes State Park, which was transferred to the State of California Department of Parks and Recreation. The Department requires the jurisdictions to report to FORA or the County concerning their compliance with all recorded CRUPs within their jurisdiction. The Agreement further requires FORA or the County to compile data in the jurisdiction report and transmit those data in a report to DTSC.

Each annual report required in the Agreement covers the twelve-month period starting from July 1 to June 30 of the following year. Section 2.3 of the Agreement includes the following statements:

“No later than September 1 of each year, FORA agrees to submit a report to the Department describing compliance with each of the prohibited activities and uses listed in the covenants. The County agrees to submit this report when FORA ceases to exist.”

As FORA completes the CERCLA remediation on each Munitions Response Area (MRA), the remedy includes various land use controls (LUC) which include annual reporting requirements. The LUCs are documented in LUCIP/OMPs. Section 4.7.2 of the LUCIP/OMPs includes the statement:

“...The existing MOA with DTSC Annual LUC Report Outline has been expanded to include and fulfill the requirements in this LUCIP/OMP (Appendix J). Annual LUC monitoring reports cover the period from July 1 to June 30 of each year. [*The applicable jurisdictions*] will submit annual LUC monitoring reports to FORA by September 1 of each year (within 60 days). FORA will compile the annual LUC monitoring reports and submit them to the Army, EPA, and DTSC in annual LUC status reports within 90 days following receipt of reports from [*the applicable jurisdiction(s)*].”

The italicized words list the jurisdictions receiving property during the transfer of each MRA listed in the various LUCIP/OMPs.

Beginning with the 2019 Annual Report, the County is responsible for compiling and submitting the Annual LUC monitoring reports to the EPA and DTSC. The County is also responsible for preparation and submittal of annual MEC letter reports to the EPA and the Department summarizing any MEC found and changes in site conditions that could increase the possibility of encountering MEC; the submittal of the annual LUC status report satisfies this requirement. The annual LUC status reports will also be provided to the Army for inclusion in the five-year reviews.

Agreement Modification

The LUCIP/OMPs expand the MOA report outline to include reporting requirements of institutional controls listed in the LUCIP/OMPs. The additional requirements take additional time to acquire and compile. To accommodate the processing of the annual report, DTSC proposes modification of the Agreement Section 2.3 to extend the due date of the annual report from no later than September 1, to no later than December 1. Section 3.12 of the MOA includes the following statement:

“In addition to modification as provided elsewhere in this Agreement, this Agreement may only be modified or terminated by mutual written agreement of the parties at any time.”

Please have the authorized person from the subsequently listed organizations print and sign their name in the appropriate signature block in the attached agreement to modify the Agreement. DTSC will send you a copy of the agreement modification with all the signatures after all the signatures are compiled.

If you have any questions, please contact me at noel.shrum@dtsc.ca.gov, or (916) 255-3728.

Sincerely,



Noel Shrum
Unit Chief
Military and Corrective Action Unit
Cleanup Program – Sacramento Office
Department of Toxic Substances Control

cc: See next page.

Fort Ord Reuse Authority
Memorandum of Agreement
December 10, 2019
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cc: (Via email)

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