

MINUTE ITEM

72

S 33

A 71

12/03/99

W25514

J. Frey

**UNITED STATES DEPARTMENT OF THE NAVY
(APPLICANT):**

Commission listened to presentation on El Toro and speakers in favor and concerned.

Item was deferred.

Item attached

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CALENDAR ITEM

72

S 33

A 71

12/03/99

W25514

J. Frey

**RETROCESSION OF PARTIAL LEGISLATIVE JURISDICTION
PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 113
AT MARINE CORPS STATION EL TORO, ORANGE COUNTY**

The Department of the Navy has requested that the State Lands Commission, acting pursuant to Government Code section 113, accept retrocession of legislative jurisdiction over that portion of Marine Corps Air Station El Toro (MCAS El Toro) that is subject to partial legislative jurisdiction in the Federal Government. For the reasons set forth below, staff recommends that the Commission accept the requested retrocession of legislative jurisdiction.

BACKGROUND:

In 1942, the Federal Government acquired 2,319 acres of land northerly of present-day Interstate 5 in Orange County for use as a Marine Corps air station. In 1950, acting under the authority of section 126 of the Government Code, the Commission ceded legislative jurisdiction over this land to the Federal Government. Pursuant to that cession, the Federal Government has the power and duty to enforce civil and criminal law on the property, including the responsibility for police services and criminal prosecution. The cession of jurisdiction was partial; under the provisions of Government Code section 126, the State reserved the right to execute civil and criminal process, the power of taxation, and the civil and political rights of all persons residing on the land subject to the cession. The 2,319 acres over which jurisdiction was ceded lie at the core of the base, which now totals approximately 4,800 acres in area.

In 1993, pursuant to the Base Realignment and Closure Act (BRAC), the Federal Government determined to close MCAS El Toro. Under BRAC, prior to transfer of title out of the Federal Government, a reuse plan must be approved for the base and the Federal Government must conduct an environmental cleanup that will render the property suitable for the intended uses under the reuse plan. The cleanup must include disposition of any unexploded ordnance. Only upon completion of these requirements may the Federal Government execute a Finding of Suitability to Transfer under applicable law. Planning efforts now underway contemplate a possible transfer of the property to the County of Orange. No title will pass to the State.

By letter dated December 1, 1998, the Department of the Navy requested that California accept a retrocession of all partial legislative jurisdiction over 2,319 acres at MCAS El

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Toro. The retrocession would render the Federal Government's jurisdiction over this acreage proprietary only. The retrocession request has no application to the additional lands that are part of MCAS El Toro, since legislative jurisdiction over this additional acreage was never ceded to the Federal Government. As to this latter portion of the base, as has always been the case, the Orange County Sheriff's Office provides police services and criminal prosecutions are handled by the Orange County District Attorney.

At present, the Federal Government still holds title to MCAS El Toro. With future passage of title from the Federal Government, retrocession of legislative jurisdiction to state and local government over the subject 2,319 acres would occur automatically, without the need for action by the Commission. As the Commission has found with other base closures under BRAC, however, it is appropriate to accept retrocession of jurisdiction prior to disposition of fee title where military operations have ceased and the closed military installation has been converted to civilian use under leasing or other interim arrangements.

Here, MCAS El Toro ceased operations as a military base on July 2, 1999. Effective July 3, 1999, the County of Orange leased seven parcels at the base from the Department of the Navy for the continuation of recreational and community service uses that were being made of the parcels while the base was operational. The leased parcels total 334 acres in area. Also effective July 3, 1999, the County assumed caretaker responsibility over the entire base, pursuant to a Base Caretaker Cooperative Agreement between it and the Department of the Navy.

The lease provides for use by the general public of certain existing base facilities: the child development center, golf course and driving range, indoor training pool, horse stables, recreational vehicle storage yard, and Officers' Club. A seventh lease parcel includes a building housing the Local Redevelopment Authority. With the exception of the horse stables, all of these leased facilities are in the area of the requested retrocession. The lease provides that it does not constitute a commitment by the Federal Government to ultimately dispose of the leased premises to the County or any of its sublessees.

Prior to leasing the property, the Department of the Navy made a Finding of Suitability to Lease which reviewed the environmental condition of the seven lease parcels and determined that the parcels could be leased to the County for use in a manner that would protect human health and the environment. The leased premises were also jointly inspected by the County and the Federal Government and found to be suitable for human use and occupancy.

In approving the lease, the County determined that the lease was categorically exempt (Class 1 - Existing Facilities) from the provisions of the California Environmental Quality

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Act (CEQA), pursuant to section 15301 of the CEQA Guidelines. That determination was duly filed with the County Clerk and is now final, not having been challenged.

Under the Base Caretaker Cooperative Agreement, the County agrees to provide caretaker services to the Department of the Navy for the base as a whole, including the repair and maintenance of buildings and utility systems, pest control, weed control, custodial services, and refuse collection and disposal. The County as caretaker also agrees to provide, through the Orange County Sheriff's Office, for 24-hour security services at the base. In addition, the County agrees to contract with the Orange County Fire Authority for the operation of a fully staffed fire station on the base, on call 24 hours a day. The County Fire Authority will be taking over a fire station, together with a fire truck and related equipment, that was previously used by the Federal Government in providing fire protection at MCAS El Toro. The Federal Government agrees to reimburse the County for these caretaker services. The budgeted cost for the first year of operation under the agreement is \$4.6 million, with the two largest items being security services (\$790,000) and fire protection (\$1.4 million). The agreement provides (1) that it does not reflect any decision by the Navy that the County will be the eventual recipient of any real or personal property at the base and (2) that it does not confer on the County any right, title, or benefit regarding final disposition of such property.

In approving the agreement, the County determined that the agreement was categorically exempt (Class 1 - Existing Facilities) from the provisions of CEQA, pursuant to section 15301 of the CEQA Guidelines. That determination was duly filed with the County Clerk and is now final, not having been challenged.

Under Government Code section 113 and California Code of Regulations section 2700 et seq., the State Lands Commission is authorized to accept a retrocession of jurisdiction if the following conditions are met:

1. The United States has requested in writing that the State accept a retrocession of jurisdiction;
2. The State Lands Commission has held a public hearing to determine whether it is in the best interests of the State to accept the retrocession; and
3. The United States has agreed to pay for the costs associated with the retrocession process.

Subsequent to the Department of the Navy's written request for retrocession dated December 1, 1998, a noticed public hearing was held on February 8, 1999. The record

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of the hearing was kept open to allow submission of additional information and materials by the parties at a later date. Such additional information and materials have been received, and the record has now been closed. The Department of the Navy has agreed to pay for the costs associated with the retrocession process.

The Navy's retrocession request is supported by Orange County. At the hearing, certain groups and individuals opposed consideration of the request unless an environmental impact report (EIR) was first prepared by the Commission. This position was based on the County's desire that the Federal Government ultimately dispose of MCAS El Toro to it, for primary use as a commercial airport. The opponents' position is that retrocession is a necessary precondition to use of the base as a commercial airport and that CEQA therefore requires the Commission to consider an EIR before it acts on the retrocession application. Neither the lease nor the cooperative agreement authorizes the initiation of new uses or activities, such as commercial aviation, at the base. There is currently underway a base reuse planning process that is examining proposed new uses and activities, and that process includes preparation of environmental review documents both by the Navy under the National Environmental Policy Act and by the County under CEQA. This process must be completed before any decisions may be made by the Navy or the County concerning disposition of the base and the new uses to which it will be put.

Staff, after consultation with the Office of the Attorney General, has concluded that this retrocession request is not a project for purposes of CEQA and that an EIR need not be prepared for consideration in connection with Commission action on the request. As both the interim lease and Base Caretaker Cooperative Agreement provide, these documents do not commit the Navy to dispose of the MCAS El Toro to the County of Orange. Further, should such disposal to the County occur, retrocession of legislative jurisdiction would take place automatically at that point regardless of the Commission's action on the pending request. In connection with local land use planning decisions regarding new pre-disposal and post-disposal uses of the base, those decisions will be made at the local level and will require the preparation and consideration of an EIR by local authorities. The only pre-disposal uses so far approved at MCAS El Toro are the interim lease by the County of seven parcels for perpetuation of existing recreational and community service facilities, unrelated to aviation, and the caretaker functions undertaken by the County under the Base Caretaker Cooperative Agreement. The activities under both the lease and the cooperative agreement were determined by the County to be exempt from CEQA, and the time for a challenge of these determinations has past.

The primary functions at MCAS El Toro now involve civilians and civilian activities, and the federal presence has been reduced to a minimum. Under the circumstances, it appears advisable to return administration of civil and criminal law regarding the subject

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2,319 acres at the base to state and local government. Such state and local jurisdiction already exists over fully one-half of the base, as it has for many years. Now that the 2,319 acres at the core of the base have been subjected to civilian operation and control, acceptance of retrocession of jurisdiction over this acreage is appropriate in order that state and local government may exercise legislative jurisdiction over the whole of MCAS El Toro.

EXHIBITS:

- A. Land Description
- B. Form of Document Entitled A Retrocession of Jurisdiction

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT ACTION ON THE RETROCESSION REQUEST IS EXEMPT FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO 14 CAL. CODE REGS. 15060 BECAUSE THE ACTION IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.
2. FIND THAT THE U.S. DEPARTMENT OF THE NAVY HAS REQUESTED IN WRITING THAT THE COMMISSION ACCEPT A RETROCESSION OF PARTIAL LEGISLATIVE JURISDICTION AND THE ESTABLISHMENT OF PROPRIETARY JURISDICTION OVER 2,319 ACRES OF LAND AT MARINE CORPS AIR STATION EL TORO, ORANGE COUNTY (MCAS EL TORO).
3. FIND THAT THE UNITED STATES HAS AGREED TO PAY FOR THE COSTS OF THE RETROCESSION PROCESS.
4. FIND THAT THE STATUTORY PUBLIC HEARING HELD ON FEBRUARY 8, 1999 COMPLIES WITH THE PUBLIC HEARING REQUIREMENT OF GOVERNMENT CODE SECTION 113.
5. ADOPT AS THE ADDITIONAL FINDINGS OF THE COMMISSION THE MATTERS SET FORTH IN THE FOREGOING REPORT BY COMMISSION STAFF.
6. DETERMINE THAT IT IS IN THE BEST INTERESTS OF THE STATE OF CALIFORNIA TO ACCEPT THE RETROCESSION OF JURISDICTION REQUESTED BY THE UNITED STATES BECAUSE THE RETROCESSION WILL ALLOW STATE AND LOCAL LAW ENFORCEMENT AND THE COURTS OF THE STATE TO ASSUME RESPONSIBILITY FOR THE ENFORCEMENT OF STATE CIVIL AND CRIMINAL LAW, INCLUDING THE PROTECTION OF

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PERSONS AND PROPERTY, THROUGHOUT THE WHOLE OF MCAS EL TORO.

7. ACCEPT THE RETROCESSION OF PARTIAL LEGISLATIVE JURISDICTION AND ESTABLISH PROPRIETARY JURISDICTION OVER 2,319 ACRES AT MCAS EL TORO, ORANGE COUNTY, AS DESCRIBED IN EXHIBIT A ATTACHED HERETO.
8. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE A DOCUMENT ENTITLED A RETROCESSION OF JURISDICTION, DESCRIBING THE COMMISSION'S ACTION IN SUBSTANTIALLY THE SAME FORM AS FOUND IN EXHIBIT B ATTACHED HERETO.
9. AUTHORIZE THE FILING OF THE RETROCESSION OF JURISDICTION WITH THE ORANGE COUNTY RECORDER AS REQUIRED BY GOVERNMENT CODE SECTION 113.

EXHIBIT A

MARINE CORPS AIR STATION EL TORO

LEGAL DESCRIPTION

For

RETROCESSION OF LEGISLATIVE JURISDICTION

All of that land lying and being situate in the County of Orange, State of California, being a portion of Blocks 140, 141, 154, 155, 173 and 174 of Irvine's Sub-division as recorded in Book 1, Page 88 of miscellaneous Records Maps filed in the County Records Office of Orange County, California, and more particularly described as follows:

"Beginning at the point of intersection of the Northeasterly right-of-way line of the Atchison, Topeka and Santa Fe Railroad and the northwesterly line of Lot 286 of Block 140, said point being 50 feet northeasterly from the westerly corner of said Lot 286; thence from said point of beginning north 39° 59' 50" east along the northwesterly line of Lots 286 and 279 of said Block 140, 5230.98 feet to the most northerly corner of said Lot 279; thence north 39° 57' 54" east along the northwesterly line of Lots 278 and 271 of Block 141, 3962.08 feet to the center line of said Lot 271, thence south 50° 01' 26" east with the center line of said Lot 271 and Lot 272 of said Block 5281.56 feet thence south 49° 59' 06" east with the center line of Lots 273 and 274 of Block 154, 3965.23 feet to the center of said Lot 274; thence south 39° 56' 59" west with the center line of said Lot 274 1320.53 feet to the northeasterly line of Lot 275; thence south 49° 58' 06" east with the northeasterly line of said Lot 275 and the northeasterly line of Lot 302 of Block 174, 2523.35 feet to a point; thence south 40° 00' 13" west across Lot 302 and across Lot 303 of Block 173, 3481.76 feet to a point on a northerly line of a drainage ditch; thence with a northerly line of said drainage ditch south 67° 14' 20" west 2619.37 feet to the southeasterly line of Lot 283 Block 155; thence south 39° 59' 00" west with the southeasterly line of said Lot 283, a distance of 2,061.63 feet to the northeasterly right-of-way line of said Atchison, Topeka and Santa Fe Railroad; thence north 50° 00' 00" west with said right-of-way 10,570.13 feet to the point of beginning, containing 2318.833 acres, more or less."

EXHIBIT B

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
STATE LANDS COMMISSION
100 HOWE AVE. SUITE 100 SOUTH
SACRAMENTO, CA 95825
ATTN: LEGAL UNIT
TELEPHONE: (916) 574-1850

STATE OF CALIFORNIA - OFFICIAL
BUSINESS
DOCUMENT ENTITLED TO FREE
RECORDATION
PURSUANT TO GOVERNMENT
CODE SECTION 27383

RETROCESSION OF LEGISLATIVE JURISDICTION

California Government Code Section 113

WHEREAS the United States, acting by and through the Department of the Navy, pursuant to Title 10, Section 2683 of the United States Code, by letter dated December 1, 1998 has requested that the State of California accept a retrocession of partial legislative jurisdiction from the United States over lands comprising a portion of Marine Corps Air Station El Toro; and

WHEREAS the California State Lands Commission, pursuant to California Government Code Section 113, has been authorized by the California State Legislature to accept such a retrocession; and its Executive Officer has been authorized by the Commission on _____ to execute this instrument;

NOW, THEREFORE, I, Paul D. Thayer, Executive Officer of the California State Lands Commission hereby certify that the Commissioners for the California State Lands Commission met on _____ and accepted a retrocession of partial legislative jurisdiction from the United States over those lands comprising a portion of Marine Corps Air Station El Toro described in Exhibit A hereto. A copy of the Commission's Agenda Item No. ___ describing the terms and conditions of the retrocession is attached hereto as Exhibit B.

PAUL D. THAYER, EXECUTIVE OFFICER
CALIFORNIA STATE LANDS COMMISSION

Date: _____

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EXHIBIT A

MARINE CORPS AIR STATION EL TORO

LEGAL DESCRIPTION

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