

MINUTE ITEM

This Calendar Item No. 95 was approved as
Minute Item No. 95 by the California State Lands
Commission by a vote of 3 to 0 at its
6-27-00 meeting.

**CALENDAR ITEM
95**

S 33
A 71

06/27/00
W 25514
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:

This request was first brought before the Commission for consideration on December 3, 1999. At the meeting the Commission heard extensive testimony from its staff, the Department of Toxic Substances Control (DTSC), the U.S. Navy, Orange County and many members of the public. The bulk of the testimony focused on the presence of toxic substances on the property and the cleanup process. The DTSC, the Navy and Orange County acknowledged the presence of toxic waste and stated that these substances were being cleaned up through a program involving the Navy, DTSC and the Santa Ana Regional Water Quality Control Board.

Several groups, including the El Toro Reuse Planning Authority (ETRPA), also protested the County's proposed conversion of the property to a cargo aviation facility. ETRPA alleged that the Commission must conduct an environmental analysis because acceptance of the retrocession was the first step leading to the proposed reuse of the property as an airport.

The Commission also heard testimony indicating that Orange County and the Navy had entered into a renewable short term lease for eight areas on the Base for various activities including a child care center, a golf course, horse stables, RV storage and the old Officers Club.

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After hearing this testimony, the Commission raised concerns about the toxics issue and deferred accepting the retrocession pending additional progress in the environmental cleanup.

CURRENT SITUATION:

Since December 1999 a number of events have occurred. In March 2000 the citizens of Orange County passed Measure F requiring, among other things, approval by a two-thirds majority vote of the county voters for conversion of MCAS to a civilian airport. Secondly, the U. S. Navy has recently stated that it will terminate its lease with Orange County for the property unless there is an acceptance of retrocession before July 1, 2000. This stems from the Navy's inability to provide services to the property since departure of military personnel. The County has received protests because of the potential loss of the day care center, the RV storage area and the horse stables. To avoid losing these interim uses, the County and the Navy have renewed their requests for Commission of retrocession.

On June 9, 2000 ETRPA sent the Commission a letter withdrawing its opposition to the retrocession and supporting it because ETRPA no longer believes the retrocession is subject to CEQA. In so doing ETRPA cites the passage of Measure F and the infeasibility of interim aviation uses because of the lack of necessary environmental review. ETRPA notes that the County's draft Environmental Impact Report for civilian reuse of El Toro does not analyze aviation uses and that the Navy has indicated that there will be no aviation related uses of the property without a NEPA document having been first prepared.

DTSC reports that the Navy continues to cooperate with it and the Santa Ana Regional Water Quality Control Board in the cleanup of the property. In March 1999 DTSC had identified some 883 Locations of Concern, 369 of which required further investigation. In March 2000 the number of areas requiring further investigation had been reduced to 271 – approximately a 25 per cent reduction. Originally there were 24 sites identified as Installation Restoration Program Sites identified and classified as contaminated. That number has been reduced 11. The cleanup work continues and DTSC reports that it will be several years before the entire process is completed.

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9601 et seq.) the Navy may not sell property on which toxic substances have stored for more than one year and have been known to have been released until any contamination has been cleaned up. Any deed for the sale of such property must contain a notice of the type and quantity of the hazardous substances, notice of the time of storage, release and disposal of the substances, and a description of the remedial action taken by the United States. Further the United States covenants in the deed that all remedial action necessary to protect human health and the

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environment has been accomplished and that, if further contamination is discovered, the United States will take the necessary steps to remove the contamination. (See 42 USC 9620) The Navy is, of course, aware of these statutes and will not convey the property until the cleanup is finished. Orange County representatives have indicated that the County will not take title to the property until the cleanup has taken place.

The primary functions at MCAS EI 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 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 EI Toro.

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.

The Department of the Navy submitted a written request for retrocession dated December 1, 1998, and a noticed public hearing was held on February 8, 1999. The record 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. The Department of the Navy has agreed to pay for the costs associated with the retrocession process. Staff believes the requirements of Government Code Section 113 have been met and that the Navy's request is ready for consideration.

EXHIBITS:

- A. Land Description

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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. 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 PERSONS AND PROPERTY, THROUGHOUT THE WHOLE OF MCAS EL TORO.
6. 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.
7. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE A DOCUMENT ENTITLED "RETROCESSION OF LEGISLATIVE JURISDICTION", DESCRIBING THE COMMISSION'S ACTION.

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8. AUTHORIZE THE FILING OF THE RETROCESSION OF JURISDICTION WITH THE ORANGE COUNTY RECORDER AS REQUIRED BY GOVERNMENT CODE SECTION 113.

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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."