

12

Principles
of American
Democracy
Standard 12.7.6.



Making and Implementing Environmental Laws

California Education and the Environment Initiative

Approved by the California State Board of Education, 2010

The Education and the Environment Initiative Curriculum is a cooperative endeavor of the following entities:

California Environmental Protection Agency
California Natural Resources Agency
California State Board of Education
California Department of Education
Department of Resources Recycling and Recovery (CalRecycle)

Key Partners:

Special thanks to **Heal the Bay**, sponsor of the EEI law, for their partnership and participation in reviewing portions of the EEI curriculum.

Valuable assistance with maps, photos, videos and design was provided by the **National Geographic Society** under a contract with the State of California.

Office of Education and the Environment

1001 I Street • Sacramento, California 95814 • (916) 341-6769

<http://www.CaliforniaEEI.org>

© Copyright 2011 by the California Environmental Protection Agency

© 2013 Second Edition

All rights reserved.

This publication, or parts thereof, may not be used or reproduced without permission from the Office of Education and the Environment.

These materials may be reproduced by teachers for educational purposes.



Lesson 1 The Responsibilities of Government: Protecting the Environment and Public Health

The Constitution of the United States: Excerpts 2
The Constitution of the State of California: Excerpts 4
California Connections: Superfund Sites in California 8

Lesson 2 Government at Work: Cleanup at the Former Long Beach Naval Complex

Primary Source Packet 11

Lesson 3 Implementing Public Policy: Cleaning Up the Sulphur Bank Mercury Mine

A History of the Sulphur Bank Mercury Mine 19

Lesson 4 State Powers and Responsibilities: Taking on Brownfields

Brownfields Information 20

Lesson 5 Thinking “Green”: A New State Approach

None required for this lesson.

The Constitution of the United States: Excerpts

Lesson 1 | page 1 of 2

Preamble:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I, Section 8:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; —And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article II, Section 2:

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

(Note: Emphasis added.)

Article 1: Declaration of Rights

SEC. 19. (a) Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

(b) The State and local governments are prohibited from acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person.

(c) Subdivision (b) of this section does not apply when State or local government exercises the power of eminent domain for the purpose of protecting public health and safety; preventing serious, repeated criminal activity; responding to an emergency; or remedying environmental contamination that poses a threat to public health and safety.

(d) Subdivision (b) of this section does not apply when State or local government exercises the power of eminent domain for the purpose of acquiring private property for a public work or improvement.

(e) For the purpose of this section:

1. “Conveyance” means a transfer of real property whether by sale, lease, gift, franchise, or otherwise.
2. “Local government” means any city, including a charter city, county, city and county, school district, special district, authority, regional entity, redevelopment agency, or any other political subdivision within the State.
3. “Owner-occupied residence” means real property that is improved with a single-family residence, such as a detached home, condominium, or townhouse and that is the owner or owners’ principal place of residence for at least one year prior to the State or local government’s initial written offer to purchase the property. Owner-occupied residence also includes a residential dwelling unit attached to or detached from such a single-family residence which provides complete independent living facilities for one or more persons.
4. “Person” means any individual or association, or any business entity, including, but not limited to, a partnership, corporation, or limited liability company.
5. “Public work or improvement” means facilities or infrastructure for the delivery of public services, such as education, police, fire protection, parks, recreation, emergency medical, public health, libraries, flood protection, streets or highways, public transit, railroad, airports and seaports; utility, common carrier or other similar projects, such as energy-related, communication-related, water-related and wastewater-related facilities or infrastructure; projects identified by a State or local government for recovery from natural disasters; and private uses incidental to, or necessary for, the public work or improvement.
6. “State” means the State of California and any of its agencies or departments.

SEC. 28. (a) The People of the State of California find and declare all of the following:

- (1) Criminal activity has a serious impact on the citizens of California. The rights of victims of crime and their families in criminal prosecutions are a subject of grave statewide concern.
- (2) Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of California. The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system fully protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of high public importance. California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity.
- (3) The rights of victims pervade the criminal justice system. These rights include personally held and enforceable rights described in paragraphs (1) through (17) of subdivision (b).
- (4) The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of California that persons who commit felonious acts causing injury to innocent victims will be appropriately and thoroughly investigated, appropriately detained in custody, brought before the courts of California even if arrested outside the State, tried by the courts in a timely manner, sentenced, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.
- (5) Victims of crime have a collectively shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of the sentences imposed by the courts of the State of California. This right includes the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility in this State as a punishment or correction for the commission of a crime.
- (6) Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.
- (7) Finally, the People find and declare that the right to public safety extends to public and private primary, elementary, junior high, and senior high school, and community college, California State University, University of California, and private college and university campuses, where students and staff have the right to be safe and secure in their persons.

- (8) To accomplish the goals it is necessary that the laws of California relating to the criminal justice process be amended in order to protect the legitimate rights of victims of crime.
- (b) In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:**
- (1) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
 - (2) To be reasonably protected from the defendant and persons acting on behalf of the defendant.
 - (3) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.
 - (4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
 - (5) To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
 - (6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.
 - (7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.
 - (8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.
 - (9) To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.
 - (10) To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
 - (11) To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.

- (12) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
- (13) To restitution.
 - (A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.
 - (B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.
 - (C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.
- (14) To the prompt return of property when no longer needed as evidence.
- (15) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.
- (16) To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.
- (17) To be informed of the rights enumerated in paragraphs (1) through (16)...
- (c) (1) A victim, the retained attorney of a victim, a lawful...

Article 2: Voting, Initiative and Referendum, and Recall

SEC. 1. All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.

Superfund Sites in California



After World War II, Americans became more mobile and wanted more conveniences—toasters, washing machines, cars, radios, electronics, and gasoline. Americans were ready to travel by plane, train, and automobile.

During the war, California attracted many manufacturing industries that supported the war effort—steel mills, foundries, chrome-plating shops, and aircraft manufacturing. After the war, businesses changed from war production to building convenience products. Industries and businesses were using chemicals for many things—tires, rubber belts, cleaning engines and metal parts, chrome plating, paints, controlling pests, and increasing crop production.

For years, people did not really think about dealing with waste chemicals, and few regulations were in place to control how the waste chemicals were discarded. Waste chemicals were flushed down drains, pumped into lakes and rivers, dumped onto the ground or into dirt pits, or sent to landfills with household garbage. By the 1960s, some rivers in the eastern United States were so



Abandoned chemical plant

polluted fish could not survive, and some rivers even caught fire. Chemicals dumped into pits contaminated the soil and often reached the groundwater—the

same groundwater people used for drinking.

People complained about chemicals dumped onto the ground and into the water. Why

should people be exposed to hazardous chemicals that could cause health problems like cancer? Why wasn't the government protecting the people? In 1970, President Nixon created the U.S. Environmental Protection Agency (U.S. EPA) as the lead federal regulator with the mission to protect human health and the environment.

Creating Superfund

In 1980, Congress passed legislation to allow the U.S. EPA to clean up areas contaminated with hazardous and toxic waste. Through the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the U.S. EPA developed the "Superfund" program. The goal of Superfund is to clean up uncontrolled hazardous waste sites that pose a threat to the environment or human health. The U.S. EPA is responsible for identifying and assessing sites, designating toxic sites for cleanup, and managing their cleanup. The agency has the authority to compel the polluters to clean up waste or reimburse the government for its costs in cleaning up the site.

CERCLA set up an account to provide the U.S. EPA with money to pay for assessing and cleaning up nongovernment sites.



Superfund cleanup site

At first, the government raised the money in the Superfund account by taxing chemical and petroleum companies. Monies now come from various federal taxpayer funds.

Evaluating and Cleaning Up a Superfund Site

The Superfund process begins when citizens, state regulators, or U.S. EPA regional offices research and identify or discover toxic sites. When a site is discovered, the state or U.S. EPA uses trained investigators to conduct a preliminary assessment (PA). The PA determines if a site poses a threat to human health and the environment and if the threat requires further investigation. PA investigations collect readily available information about a

site and its surrounding area. If there is a need for more detailed testing, initial sampling is performed during a site inspection (SI). Using the SI data, U.S. EPA calculates a score for the site and ranks it in the Hazard Ranking System. The Hazard Ranking System score determines if a site qualifies for the National Priorities List (NPL) for Superfund cleanup. Only sites on the NPL can use Superfund money for long-term cleanup actions.

The United States has more than 1,200 Superfund sites. Approximately 100 of these sites are located in California. Because major industries are typically located in or near urban centers, about 14 million Californians live and work within a few miles of one or more NPL sites.

When a site makes it onto the NPL, additional investigation is conducted to define the extent and concentration of contaminants before the cleanup process can begin. The U.S. EPA works with local leaders to learn how the community might use the site in the future to better tailor the cleanup. Experts conduct a “feasibility study” to evaluate cleanup options and the cost-effectiveness of various technologies. U.S. EPA prepares a “record of decision” document detailing the site cleanup plan, including estimates on costs and time to complete the cleanup. The cleanup process can take many years when dealing with complex sites.

During cleanup activities, U.S. EPA conducts oversight to ensure the community is protected from hazards associated with the site. Every five years, U.S. EPA reevaluates the cleanup to ensure it is still protective. When U.S. EPA determines the cleanup is complete, they delete the site from the NPL.

Brownfields

Not all sites are Superfund sites, and in 1995 U.S. EPA expanded its role under CERCLA to include funding to redevelop contaminated sites. The U.S. EPA's Brownfields Program



Hazardous waste cleanup

provides grant money to organizations and communities to clean up and redevelop potentially contaminated lands.

Here in California, the Department of Toxic Substances Control (DTSC) cleans, identifies, and redevelops brownfields. DTSC has cleaned up hundreds of brownfield sites that are deemed a success to the developers and community.

One example is the Auto Club Speedway of Southern California in Fontana. The speedway was built on the former Kaiser Steel Mill site after the cleanup was complete. The speedway is just one example of how DTSC is working to put formerly contaminated properties back into use while being protective of public health and stimulating the local economy.

Primary Source #1: DSMOA

Department of Defense and State Memorandum of Agreement (DSMOA)

In order to expedite the cleanup of hazardous waste sites on Department of Defense (DOD) installations within the State of California and ensure compliance with the applicable State law and regulations of the State, DOD and the California Environmental Protection Agency (CEPA) on behalf of the State of California enter into this Agreement...

Section 1: Reimbursement of State Costs

A. Coverage

1. This Agreement covers reimbursement of the costs associated with providing State services to Department of Defense installations for activities funded under the Environmental Restoration, Defense (ER, D) appropriation. Installations covered by this Agreement are those owned by the Federal government on the effective date of the Agreement including installations with sites on the National Priorities List (NPL) and installations with sites not on the NPL. This Agreement also covers those installations identified on the Base Realignment and Closure (BRAC) I...[and BRAC II] list... This Agreement also covers Formerly Used Defense Sites (FUDS) defined in...the Superfund Amendments and Reauthorization Act of 1986 (SARA)...
2. ...[T]his agreement is the mechanism for payment of the costs incurred by the State in providing the services listed in Paragraph B of this Agreement in relation to Er,D and BRAC funded activities at the installations covered by this agreement...
4. DOD agrees to seek sufficient funding through the DOD budgetary process in accordance with Section II and to pay the State of California for the services specified in paragraph B for all ER,D and BRAC funded activities at installations covered by this Agreement...

B. Services

State services that qualify for payment under this Agreement include the following types of assistance provided by the State commencing at site identification and continuing through construction...

1. Technical review, comments and recommendations on all documents or data required to be submitted to the State under an agreement between the State and a DOD Component...
2. Identification and explanation of State applicable or relevant and appropriate requirements related to response actions at DOD installations.
3. Site visits to review DOD response actions and ensure their consistency with appropriate State requirements...
4. Participation in cooperation with DOD in the conduct of public education and public participation activities in accordance with Federal and State requirements for public involvement.

5. Services provided at the request of DOD in connection with participation in Technical Review Committees...
7. Other services that the State will provide that are set out in this Agreement, the DSMOA/CA, or are included in installation-specific agreements...

Section III: Lead Agencies

Each DOD Component shall designate an individual responsible for managing remedial and removal actions for each installation within the State...

The State shall designate a lead State agency for each DOD installation within the State... The lead State agency for an installation shall coordinate among other State agencies to represent a single State position as to remedial/removal actions at the installation.

Signed:

James M. Strock, Secretary for Environmental Protection, State of California 2/4/93

Thomas E. Baca, Deputy Assistant Secretary of Defense (Environment) 12/17/92

William F. Soo Hoo, Director, Department of Toxic Substances Control, 1/22/93

Walt Pettit, Executive Director, State Water Resources Control Board 1/28/93

Primary Source #2: Navy Record of Decision

Record of Decision For The Disposal and Reuse of Naval Station Long Beach and Long Beach Naval Shipyard, Long Beach, California

[Federal Register: June 3, 1998 (Volume 63, Number 106)]

Department of Defense • Department of the Navy

Record of Decision For The Disposal and Reuse of Naval Station Long Beach and Long Beach Naval Shipyard, Long Beach, California

Summary

The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. Sec. 4332(2)(C), and the regulations of the Council on Environmental Quality that implement NEPA, 40 CFR Parts 1500–1508, hereby announces its decision to dispose of Naval Station Long Beach and Long Beach Naval Shipyard in Long Beach, California...

Navy intends to dispose of the Naval Station and the Naval Shipyard property in a manner that is consistent with the Redevelopment Plan for Reuse of Surplus Naval Property, dated July 1995, the Redevelopment Plan for Reuse of Surplus Naval Property, dated December 1995, and the Long Beach Naval Shipyard Comprehensive Reuse Plan, dated July 1996. The City of Long Beach (City), the Local Redevelopment Authority (LRA) for both installations, prepared and approved these three reuse plans.

The LRA Reuse Alternative, identified in the Final Environmental Impact Statement/Environmental Impact Report (FEIS/EIR) as the Preferred Reuse Alternative, reflects the City's three reuse plans and proposes to use the Navy property as a marine container terminal facility with an intermodal railyard, a ship repair facility at Drydock 1, a liquid bulk terminal, breakbulk and neobulk terminals, a Sea Launch facility, an oil production relocation area, and a roadway network. Under this alternative, the City of Long Beach would use Building 300 and the surrounding Naval Shipyard property to relocate the City's police headquarters and police training academy.

In deciding to dispose of the Naval Station and the Naval Shipyard in a manner consistent with the LRA's reuse plans, Navy has determined that the LRA Reuse Alternative will meet the goals of achieving local economic redevelopment and creating new jobs, while ensuring land uses that are generally compatible with adjacent property. This Record Of Decision does not mandate specific land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entity and the local land use planning authority.

Navy and the City analyzed the impacts of the disposal and reuse of these properties in a Joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR), as required by NEPA and the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code, Sec. 21000, et seq., as amended. For purposes of the analysis required by CEQA, the Joint EIS/EIR serves as an EIR for reuse of the Naval Shipyard and a Subsequent EIR for reuse of the Naval Station.

Background

This Record of Decision addresses the disposal and reuse of the surplus Navy property on Terminal Island that lies within the corporate limits of the City of Long Beach. This property covers 1,140 acres and contains about 225 buildings and support structures. It includes administrative offices, warehouses, industrial space, an Officers' Club, a medical clinic, a chapel, 11 piers, three drydocks, a heliport, and recreational facilities. The area known as the Roosevelt Base Historic District is located on the Naval Station.

Although located on Terminal Island, Site 6A-LA, Site 6B, the water tank parcel, and a sliver of the Navy Mole lie within the City of Los Angeles, which is the LRA for these properties. Consequently, Navy treated these properties separately when it evaluated the impacts of disposal and reuse...

In accordance with the judgment in *United States of America v. 1,039 Acres of Land*, Civil No. 63-1204 HW (S.D. Cal. 1963), 602 acres of the West Basin and 84 acres Known as Navy Pier E in the Naval Shipyard will revert to the City. Navy has no discretion regarding the disposal of reversionary property, nor any authority to control its use following reversion. Therefore, in this Record of Decision, the Federal action is the disposal of 454 acres of nonreversionary Naval Station and Naval Shipyard property.

Primary Source #3: Cal/EPA News Release

California Environmental Protection Agency

News Release

Department of Toxic Substances Control

August 10, 2000

U. S. Navy Agrees with California Regulators for Local Military Base Cleanup

Sacramento—The California Environmental Protection Agency’s Department of Toxic Substances Control (DTSC) today announced the signing of an enforceable Federal Facilities Site Remediation Agreement (FFSRA) with the U.S. Navy for the cleanup of the Long Beach Naval Complex located in Long Beach.

The agreement was signed by Elsie L. Muncell, Deputy Assistant Secretary of the Navy, for the Environment and Safety; and John E. Scandura, Chief, Southern California Operations Branch, Office of Military Facilities, DTSC.

The Long Beach Naval Complex includes the Long Beach Naval Shipyard and Naval Station. U.S. Navy operations officially ceased at the Naval Station in 1994 and at the Naval Shipyard in 1997.

Since 1983, environmental investigation and remediation efforts at the Long Beach Naval Complex have been ongoing in areas where ship maintenance operations resulted in the disposal of hazardous wastes including solvents, oils, contaminated fuels, degreasers, paint wastes, acids, polychlorinated biphenyls, pesticides, metals, vinyl chloride, and petroleum hydrocarbons.

The primary purpose of the Agreement is to ensure that the environmental impacts resulting from past military activities are investigated and that the appropriate cleanup actions are designed and implemented.

The Agreement outlines the Navy’s obligations under the Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), which provide for the investigation and implementation of cleanup actions.

Under the agreement, DTSC will review and approve a Site Management Plan which outlines remedial work and imposes enforceable deadlines. The Site Management Plan will be reviewed and updated annually. The agreement also requires the Navy to submit quarterly progress reports.

Primary Source #4: Land Use Covenant

Recording Requested By:

United States of America
Department of the Navy
c/o BRAC Operations Office
1220 Pacific Highway
San Diego, CA 92131-5190

When Recorded, Mail To:

Department of Toxic Substances Control
Region IV
5796 Corporate Avenue
Cypress, California 90630
Attention: Mr. John Scandura, Chief
Office of Military Facilities

July 2004

Covenant To Restrict Use Of Property

Environmental Restriction

(Water Tank Parcel [Aka Installation Restoration Site 6a] At Long Beach Naval Complex)

This Covenant and Agreement (“Covenant”) is made by and between the United States of America (the “Covenantor”) acting by and through the Department of the Navy (“DON”), the current owner of property situated in the City of Long Beach, County of Los Angeles, State of California, described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”), and the California Department of Toxic Substances Control (the “Department”). Pursuant to California Civil Code (Civil Code) section 1471 (a)(3), California Health and Safety Code (Health and Safety Code) sections 25222.1 (a) and 25355.5(a)(l)(C) the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. In addition, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 104 (42 USC section 9604), as delegated to the Covenantor by E.O. 12580, ratified by Congress in 10 USC Sec. 2701, et seq., and implemented by the National Oil and Hazardous Substances Pollution Contingency Plan (NCP - 40 CFR Part 300) and implementing guidances and policies, the Covenantor has also determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as the result of the presence on the land of hazardous substances, pollutants and contaminants as defined in CERCLA section 101 (42 USC section 9601).

The Covenantor and the Department, collectively referred to as the “Parties”, therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment. By this Covenant, the Parties further intend to notify the Owner that it will be required to comply with California Code of Regulations, title 22, section 67391 .I.

The Covenantor retains sufficient legal title and interest in the subject property to insure continuing enforcement of the protective covenants and agreements contained within this Covenant to Restrict the Use of Property. Further in any subsequent transfers or conveyance of title to nonfederal entities the DON shall burden the property with additional deed covenants that insure that any subsequent deed or transfer contains the protective covenants and right of access and power to conduct monitoring of wastes retained on site. Those covenants and agreements shall be enforceable against the servient estate in that those protective covenants shall run with the land to all successors and assigns.

Article I

Statement of Facts

- 1.01 The Property is approximately 0.4-acres of approximately 20-acres that make up Installation Restoration (IR) Site 6A. It is more particularly described and depicted in Exhibit “A”, attached hereto and incorporated herein by this reference. The Property is located in the City of Los Angeles, County of Los Angeles, State of California within the Terminal Island District of the Port of Los Angeles. It is situated along Seaside Avenue near Navy Way within Installation Restoration (IR) Site 6A.
- 1.02 The DON and the Department entered into a Federal Facilities Site Remediation Agreement (FFSRA) for the Long Beach Naval Complex on July 17, 2000. The Property is subject to the FFSRA. Pursuant to the FFSRA, the DON may satisfy some or all of its corrective action obligations under the Resource Conservation and Recovery Act (RCRA) (42 USC 6901 et seq.) or California Health and Safety Code section 25200. I 0 through CERCLA response actions.

The Property is being remediated pursuant to a Record of Decision (ROD) pursuant to the Defense Environmental Restoration Program (DERP), 10 U.S.C. section 2701 et seq., and CERCLA. The ROD for IR Sites 3,4, 5, and 6A provides that land use controls be required as part of the site remediation, because diesel, arsenic, cobalt, benzo(a)pyrene, benzo(a)anthracene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, pentachlorophenol, and polychlorinated biphenyls (PCBs) aroclor-I254 and aroclor-I 260 are hazardous substances that exceeded statistical background concentration and industrial preliminary remediation goal in soil. In addition, 1, 4-d ichlorobenzene, arsenic, vinyl chloride, benzene, chloroform, perchloroethene (PCE), trichloroethene (TCE) are hazardous substances that exceeded statistical background concentration and risk based screening criteria in groundwater. The DON circulated a Proposed Plan, which included the Property, for public review and comment. The ROD, which included the Property, was approved by the DON and concurred with by the Department on June 25,1999.

The Department’s Remedial Action Plan (RAP) requirements were satisfied by the Remedial Investigation (RI) Report and Feasibility Study Report. The California Health and Safety Code section 25356.1 RAP requirements were incorporated into the ROD to fulfill State requirements.

1.03 The DON conducted a Human Health Risk Assessment (HHRA) that evaluated risks to industrial workers, maintenance utility workers and hypothetical residents as a subset of the RI Report. Hazardous substances, as defined in Health and Safety Code section 25316 contribute to an estimated excess lifetime cancer risk of 5.7×10^{-4} dichlorobenzene and PCE in groundwater accounts for 94 percent of the total cancer risk, and ingestion and dermal contact with arsenic, hexavalent chromium, PCBs, and benzo(a)pyrene in soil account for about 5 percent. Based on the HHRA, the Department and the Covenantor have concluded that residential use of the Property or uses including child-care centers, playgrounds, a hospital for humans, public or private school for persons under 21 years of age or other areas frequented by children would entail an unacceptable cancer risks to the users or occupants of such property. The Department and the Covenantor have further concluded that the Property, as remediated, and operated or occupied subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or safety or the environment.

In addition, based on the HHRA, the Department and the Covenantor have concluded that the groundwater, subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or safety or the environment, if limited to uses consistent with the *Water Quality Control Plan: Los Angeles Region Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties*.

A History of the Sulphur Bank Mercury Mine

In 1865, digging began in Clearlake Oaks. Miners gathered sulfur there, to use in making gunpowder. But the mines, it turned out, held more than sulfur. They also contained mercury, used to extract gold from ore—and so a valuable commodity in California. Mercury mining became big business at the Sulphur Bank Mine. At one time Sulphur Bank was the state's largest mercury mine. After using underground digging in the late 19th and early 20th centuries, mining shifted to the open-pit method in the 1920s. When the mine closed in 1957, it left behind a large crater, the Herman Pit, uphill from Clear Lake. The Herman Pit contained exposed mine waste, much of it toxic. Over time, water contaminated with sulfuric acid and mercury waste filled the pit.

Nearby residents have reason to be concerned about the contamination at the Sulphur Bank Mine. Water from the Herman Pit and rainwater running over the exposed mine wastes (called tailings) on the ground wash downhill into Clear Lake. Several California state agencies that analyzed Clear Lake in 1986 found very high mercury levels. Mercury can cause birth defects and neurological damage. Mercury levels in Clear Lake were high enough that health advisories went out to pregnant women and children younger than six: do not eat fish from the lake. The mercury also endangers wildlife; animals easily absorb it.

In 1990, the U.S. EPA added the Sulphur Bank Mercury Mine to the National Priorities List of the country's most dangerous polluted sites. It oversaw some emergency cleanup measures, including closing and capping wells to protect them from further contamination and to prevent their use for drinking water, diverting surface water away from the pit, and controlling erosion of contaminated soil.

In 2004, a local group called the Clear Lake Environmental Action Network (CLEAN) got a technical assistance grant (TAG) from the U.S. EPA. The U.S. EPA provides TAGs as part of its

commitment to involving local residents during Superfund cleanups. CLEAN used the money to hire a technical expert. His job included reviewing documents related to cleanup, explaining them to residents, and acting as a liaison with U.S. EPA officials. He also advised community members about whether or not to accept the plans.

In 2005, 15 years after the site attained Superfund status, Sulphur Bank cleanup began. With community input, the U.S. EPA implemented a plan to clean up the Elem Indian Colony, which sits just a few hundred feet from the Sulphur Bank site. The U.S. EPA worked with the Elem Pomo tribal government and the Bureau of Indian Affairs to determine a cleanup plan. The plan included removing all the hazardous material from the area. In addition, cleanup crews removed roads and demolished homes sitting on contaminated soil, removed the soil, and then rebuilt the homes and roads, using clean materials. The U.S. EPA moved displaced residents to temporary housing while work was underway. In addition, the U.S. EPA, with guidance from the tribal government, hired an archeologist to protect cultural artifacts unearthed during the excavation. The work was finished by early 2007.

Voluntary Cleanup Program (VCP)

Goal: To restore the brownfields quickly and efficiently.

What It Is: Property owners agree to pay for and complete cleanup themselves under DTSC supervision.

Property Owners

- gain more control and flexibility over cleanup
- gain access to DTSC experts at each stage of the process
- agree to clean to DTSC standards and to allow DTSC oversight

California Gains

- enables DTSC to focus on more sites
 - health and environmental benefits of being rid of dangerous waste
 - economic benefits of redevelopment (for example, job creation, increased tax base, opportunities for disadvantaged groups)
-

Prospective Purchaser Agreement (PPA)

Goal: To encourage the purchase, cleanup, and redevelopment of contaminated land.

What It Is: An administrative agreement that protects those who might buy a brownfields site from legal liability based on contamination that was already there and that they did not participate in creating.

Property Owners

- gain opportunity to purchase and redevelop property without fear of litigation
- allow and do not interfere with remediation actions
- agree to allow DTSC oversight

California Gains

- health and environmental benefits of being rid of dangerous waste
 - economic benefits of redevelopment (for example, job creation, increased tax base, opportunities for disadvantaged groups)
-

Brownfields Information

Lesson 4 | page 2 of 2

Private Site Management Program (PSMP)

Goal: To provide businesses with incentives to clean up low-threat sites.

What It Is: State of California authorizes private companies to carry out site assessments and remediation at low-risk sites.

California Gains

- enables DTSC to focus on more sites
 - more sites cleaned provides health and environmental benefits of being rid of dangerous waste
 - more sites cleaned provides economic benefits of redevelopment (for example, job creation, increased tax base, opportunities for disadvantaged groups)
-

Property Over Contaminated Groundwater (POCG)

Goal: To encourage the purchase, cleanup, and redevelopment of blighted land.

What It Is: Under CERCLA, persons who bought property that overlay contaminated groundwater would be considered responsible parties who would have to pay for cleanup. This program protects such persons.

Property Owners

- gain protection from paying for cleanup of contaminated groundwater that lies beneath land they own, if they did not cause or contribute to the contamination

California Gains

- health and environmental benefits of being rid of dangerous waste
 - economic benefits of redevelopment (for example, job creation, increased tax base, opportunities for disadvantaged groups)
-

Partial Site Cleanup (PSC)

Goal: To speed up the process of redeveloping brownfields.

What It Is: Program allows parcels of land within a brownfields site to be designated clean and ready for development, even if the groundwater cleanup has not yet been completed.

Property Owners

- get permission to redevelop land (and make back some of their investment) more quickly

California Gains

- economic benefits of redevelopment (for example, job creation, increased tax base, opportunities for disadvantaged groups)



California STATE BOARD OF
EDUCATION

California Education and the Environment Initiative

