

The Role of State and Federal Regulators

In order to address the misinformation and disinformation concerning FORA's mission and activities related to the Environmental Services Cooperative Agreement (ESCA) that has been discussed publicly over the last several months, FORA will address specific issues in short, regular blogs. The public deserves facts, from which they can form their own interpretation. This is the first of FORA's blogs. The subject today addresses the role of State and federal regulators (California Department of Toxic Substances Control [DTSC] and the U.S. Environmental Protection Agency [EPA]) in determining when a parcel at the former Fort Ord is safe for reuse.

Some folks believe that erecting an unauthorized monument to veterans justifies trespassing on land that has not been determined to be safe for entry. The land in question is restricted: access and excavation are prohibited, except for activities associated with the investigation and remediation of munitions and related munitions debris. This prohibition is contained in the deed that transferred title from the Army to FORA and in the Covenant to Restrict Use of Property imposed by DTSC. These restrictions were required by DTSC as a condition of approval of the land transfer from the Army to FORA. The notion that FORA is somehow arbitrarily denying public access for nefarious reasons is a fiction. Any statement to the contrary is either disingenuous or uninformed.

FORA's legal obligation with respect to munitions remediation on the ESCA properties is to obtain the regulators' approval that the site is safe for public access and restrictions can be lifted. In short, EPA and DTSC determine when the property is safe for public use; not FORA, not the Army, and not the public.

For the property in question, such approval has not been obtained. Because of the Army's historical activity including munitions training – both high and low explosive ordnance, there is a risk of explosive material being present. FORA's obligations are to ensure that the public is protected. And it will continue to do so. FORA's mission is to clean up the ESCA properties, while protecting limbs and lives from accidental detonation. There may be some who question how FORA achieves those mission objectives. Trespass is not an appropriate, wise or safe means of raising that question.