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ATTORNEY AT LAW

June 1, 2006

Bill Lockyer, California Attorney General  
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via regular mail /  via fax:

**Re: Request for Investigation**

Dear Mr. Lockyer:

I represent Community Alliance for Riverside's Environment and Economy ("CAREE"). CAREE has grave concerns regarding actions undertaken by the March Joint Powers Authority ("March JPA"), which is an agency with the civil development authority over the joint-use military installation, March Reserve Air Base. As the result of the matters outlined in this correspondence, CAREE requests that the California Attorney General's office conduct an appropriate investigation into a several issues regarding March JPA, the March Joint Powers Commission, its officers and employees.

The issues that concern CAREE include:

1. Is the March JPA a valid, existing entity under California law?
2. Have March JPA commissioners violated conflicts of interests laws in accepting contributions from developers seeking approvals from the March JPA and thereafter voting on proposals directly affecting those developers?
3. Have March JPA commissioners and/or employees violate any conflict of interests laws by accepting travel, gifts and potential employment from developers with matters pending before them?

4. Did March JPA staff intentionally and knowingly alter Environmental documents in order to mislead the public concerning toxic hazards?
5. Has the March JPA diverted grant funds from the FAA to uses not authorized by the grant(s)?
6. Has the March JPA knowingly sanctioned serious "HAZMAT" violations by allowing storage of jet fuel and refueling of jet aircraft from water trucks?
7. Has the March JPA ignored a serious environmental threat by failing to address a known toxic TCE plume and improperly allowing development within that plume?
8. Whether the March JPA has authorized flights on flight paths for which it has failed to apply for FAA approval and for which it has failed to obtain FAA approval. (This is a two-pronged question. The first aspect is whether the Skyes-8 northerly departure is FAA approved. The second aspect is, having assured the Riverside Superior Court and the public that the Skyes-8 departure is the one DHL will fly, why are the DHL planes now departing south over communities that were never involved in the debate?

It should be noted that CAREE has engaged in litigation with the March JPA twice and is subject to two settlement agreements. CAREE is bound by the scope of those agreements and does not request, and does not intend to pursue, any civil action within the scope of those agreements. The agreements and complaints that were settled are provided as supporting documentation to this letter and a summary of the settlements is included as Appendix A to this letter. We note, however, that CAREE did not intend to settle any issues that might involve "criminal wrongdoing" and that it would be against public policy for the settlements to prevent CAREE from seeking action with respect to potential criminal wrongdoing. Whether any such activity has occurred, we leave to your investigators to decide.

We note also that if certain allegations expressed herein are in fact true, then CAREE's assent to the settlement agreement was obtained as the result of affirmative misrepresentations. In particular, there are allegations that the environmental documents on which CAREE relied were actually altered to misrepresent that actual facts.

## **Background**

In the late 1980s, the US government determined that it would downsize certain military installations, one of which was March USAF Base in Riverside County. At the time, the base was the single largest employer in Riverside County and there was a great deal of concern regarding the likely loss of jobs.

The US government therefore determined that the March Air Base would become a “joint use” facility and that certain portions of the real estate and operations would be turned over to local civilian authorities. The California legislature enabled (or may have enabled<sup>1</sup>) the formation of March JPA as the local civilian authority that would take over the civilian portions of the operations and “reuse” development of the real estate and facility.

March JPA was formed by the cities of Riverside, Moreno Valley and Perris, along with Riverside County. The city councils and the Riverside County Board of Supervisors each designate two members to serve as commissioners of the March JPA.

For about 10 years, the March JPA was unsuccessful in attracting any civilian development to the air base. During that time, Riverside County survived the financial/employment crisis of the March downsizing without any significant “replacement” jobs being developed by March JPA. During the same period of time, leadership of the neighboring cities and Riverside County itself approved substantial residential development around March, significantly changing the character of the environs around March, which had formerly been largely rural.

Having surrounded March with residential development, March JPA then began to attract developers. Consistent with the projections of the Southern California Association of Governments agency, proposals for development of air cargo facilities and logistical warehousing began circulating. Naturally, this development was incompatible with the now-existing residential developments and was therefore opposed by many of the residents. CAREE is one coalition of such residents.

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<sup>1</sup>There is some question whether the legislature actually took the action necessary to allow March JPA's creation. At or about the time of the March JPA formation, March JPA's own counsel raised some concerns in this regard.

### **The Present Dispute(s)**

CAREE does not propose that the AG's office should substitute its judgment for that of the March JPA; nor do we ask that the AG's office "take sides" on the development issues.

However, serious questions have been raised by CAREE members and non-members who are concerned about March JPA activities. Given the actions of the March JPA to "push through" various development proposals with apparent disregard for community well-being, CAREE believes sufficient irregularities have been publicly documented to justify appropriate action.

1. **The Gumport Report.** Completely separately from any activity by CAREE members, public concerns were raised that the March JPA and the March Globalport developers had misrepresented the proposed civilian/DHL flight-path to the public. This was significant, since the misrepresentations reduced community opposition by leading residents to believe they would not be impacted by the proposed DHL operations.

The concerns raised in this regard led to the March JPA hiring Leonard Gumport to investigate the flight path issue and provide a report. His conclusion was that there had *in fact* been an effort to mislead the public concerning the flightpath. Nevertheless, no action has been taken by the March JPA in response to the report. A copy of the report and all of its appendices is provided in pdf format on CD with this letter.

2. **Issues Raised by Jeff Hill.** Jeff Hill was formerly employed as a planning manager for March JPA. In October, 2005 he filed a detailed complaint with the Superior Court in Riverside County, outlining March JPA activities that, if true, would seem to represent significant malfeasance at March JPA. To date, no action has been taken by the March JPA with respect to the allegations. A copy of the complaint is provided in pdf format on the accompanying CD.

Among Hill's allegations in his verified complaint are the following:

1. That his supervisors at March JPA directed him to violate various environmental guidelines and regulations regarding property within the March JPA site.

2. That at the time of his firing, the March JPA executive director slammed his leg in a door and broke it.

3. That he personally observed environmental documents that were used in connection with a "Mitigated Negative Declaration" being physically altered to make it appear that toxic plumes would not be within the confines of proposed development. That in fact, the development would be within toxic plumes that should not be disturbed.

4. That in the course of his job duties, he began to suspect that FAA grant funds were being misdirected; and as a result of those concerns, he was prohibited by his supervisors from communicating further with the FAA.

**3. Violations of Conflicts of Interest Laws.** CAREE believes that various March JPA commissioners may have acted in violation of California conflict of interest laws (Government Code sec. 84308, et seq.) by accepting donations from developers and their associates who had business pending before the March JPA and JPC.

We have been unable to document all of the relevant donations. Further, there are issues that require some interpretation of GC 84308. For instance, in his re-election campaign for the Riverside City Council, March JPA commissioner Frank Schiavone listed Jacques Yeager, and Henry Coil as part of his "Host Committee and Supporters" for a scheduled fundraiser. (A copy of the flier for the event is included on the accompanying CD). It's unclear whether this fundraiser support is such that it violates GC 84308. Nevertheless, the flier demonstrates that two individuals with significant interests March Globalport were directly supporting Frank Schiavone's re-election efforts.

Charles White received \$250 from Robert and Helga Wolf and \$250 from Harley Knox, also March Globalport investors. Cumulatively, these donations exceed the GC 84308 threshold.

We unfortunately do not have all of the fundraising records regarding the commissioners. We are providing those documents that we do have on the accompanying CD.

Additionally, it should be noted that Riverside County Supervisor Marion Ashley was "formerly" a partner in the March Globalport development. He allegedly severed this relationship when he ran for the Board of Supervisors, but it is interesting that he thereafter sought to be appointed to March JPC. (He

did not, however, participate in any of the votes concerning the March Globalport / DHL development that is the subject of this complaint. Those votes preceded Marion Ashley's membership on the March JPC.

Nevertheless, Ashley has been involved in numerous votes involving his former partners subsequent to the appointment to the March JPC.

4. **Failure to Require Compliance with "HAZMAT" Laws** Upon approving operations at March by DHL, DHL planes understandably required refueling capabilities. However, March JPA did not have such facilities. As a result, a number of water trucks were rented with the knowledge and consent of the March JPA, filled with fuel and parked on the March JPA property for refueling the DHL aircraft. This condition continued until shut down by the Riverside County fire marshal. The risks to individuals and the environment from this mismanagement of jet fuel were significant.

An unpermitted, hazardous and dangerous fueling operation was thus allowed to continue, with March JPA's knowledge and tacit consent, from October 2005 through March 2006 – despite March JPA being the regulatory agency tasked with protecting the public and preventing such unpermitted and unsafe activities within its jurisdiction. Among other things, the chronology concerning the fuel farm prepared by March JPA staff for meeting dated April 19, 2006 shows that Commission chairman Richard Stewart knew about the problems and declined to bring them to the commission because shutting down the illegal fuel operation might disrupt DHL operations.

Documentation and details concerning these operations are provided on the accompanying CD.

5. **Failure to Properly Protect Environment from Existing Toxic Plumes.** In the course of its operations over many years, March USAF Base accumulated numerous toxic plumes. In more recent times, there has been a remediation and monitoring program ongoing at March, undertaken by the USAF.

The groundwater monitoring was overseen by Sue Hill, through a contract between the USAF and Booz, Allen, Hamilton. Ms. Hill's offices were on the third floor in the same building as the March JPA. Rather than attempt to work with Ms. Hill to insure that March JPA development was environmentally sound, the March JPA undertook the following:

1. The executive director of the March JPA wrote to Ms. Hill's USAF supervisor, requesting that she be reassigned elsewhere "for conflict of interest." (See copy of correspondence included on accompanying CD.)

2. The March JPA requested that Ms. Hill's offices be relocated from the building. The offices March USAF real property offices were thereafter relocated to *Victorville*.

3. Ms. Hill was in fact removed from the project and reassigned elsewhere. I am informed and believe that she was in fact reassigned outside of the country.

4. Prior to being reassigned and while still overseeing the monitoring wells, Ms. Hill observed contractors about to bulldoze one of her monitoring wells, a well that was within the DHL development sight. She demanded to know on whose authority they were acting and they referred her to Jeff Hill, who was at that time still employed by March JPA. Jeff Hill denies having authorized the development activity. (See Jeff Hill complaint.) Thereafter, Ms. Hill reports that a fence was placed around the site and that she was physically prevented from carrying out her responsibilities with respect to the monitoring wells on the DHL site. CAREE considers it likely that thereafter, one or more wells were destroyed. CAREE believes that the DHL site was actually built in an area that harbored a toxic plume and that was either in, or adjacent to, a "do not disturb" area of the March JPA property – an area where any form of development was prohibited under the March JPA agreement with the USAF because of in-ground toxicity issues.

**6. Other Failures to Act in the Public's Best Interests.** The March Globalport development was purportedly approved on the basis that such development would be beneficial to the communities surrounding March. However, the developers and March JPA staff made significant errors in calculating the proposed income stream that would result from the development, resulting in projected shortfalls in excess of \$16 million over the ensuing years. In interviews reported by the local Riverside Press-Enterprise, the executive director has admitted that March JPA staff were aware of these "errors" and did not bring them to the attention of the commissioners. The errors probably mean that March JPA can not operate in a solvent fashion without significant cash infusions from the communities that make up the March JPA; or without substantially increasing air operations well beyond those previously anticipated.

Yet to date, no action has been taken by the March JPA with regard to these serious errors.

In another development, some March JPA commissioners have conducted private meetings and negotiated "settlements" of some March JPA business during non-official lunch meetings, in disregard of the Brown Act and the Bagley-Keene Open Meeting Act. These activities have been reported in the Riverside Press-Enterprise.

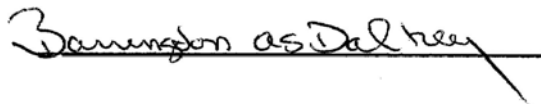
A third issue is that although federal law requires FAA approval of civilian flight paths, the March JPA has been unable to provide any proof that an application was ever made to the FAA approve *any* civilian flight path at March, despite California Public Records Act request for the same. March JPA has been unable to produce proof of any flight path approval from the FAA, despite maintaining that an existing military flight path known as "Skyles 8" is approved for civilian use. Civilian flight operations at the March have nevertheless been routed to the *south* whereas even were Skyles-8 to be a valid departure, it is a northerly departure.

### **Conclusion**

We hope that the Attorney General's office will take appropriate action to investigate the ongoing course of what CAREE believes to be misconduct at the March JPA. If you or your staff require further particulars, please do not hesitate to contact me.

**Cordially,**

**BARRINGTON A.S. DALTRY**  
**Attorney at Law**

A handwritten signature in cursive script that reads "Barrington A.S. Daltry". The signature is written in black ink and is positioned above a horizontal line.

basd:O001.010.odt

cc: CAREE

enclosures: CD with related documents

**Appendix A**

In March 2005 CAREE settled CEQA litigation concerning the zoning change that would allow the DHL/March Globalport project to go forward. A copies of the complaint and settlement agreement are included on the accompanying CD.

The settlement agreement resolved, "... all of the grounds which formed the basis of the Litigation, including any remaining grounds which may still exist and the appeal of the judgment that will be entered pursuant hereto."

The primary cause of action dealt sought to undo the zoning change on the grounds that there should have been an EIR and that the "Mitigated Negative Declaration" supporting the zoning change was inadequate and improperly prepared. In our view, nothing in this letter attempts to re-address zone change issues.

The second cause of action additionally sought relief that would prevent the March JPA from doing business with entities that do not legally exist and/or that have failed to demonstrate creditworthiness. It sought the prevention of expenditure of public funds relative to these matters and actions supported by the Mitigated Negative Declaration we alleged to be defective. We have not raised any similar concerns in this letter.

The third cause of action incorporated the matters alleged in the first two causes of action and sought declaratory relief.

Prior litigation between CAREE and March JPA arose concerning CEQA issues surrounding a business park development by LNR. That lawsuit was settled with concessions on both sides. Copies of the original petition are included for reference and settlement agreement are enclosed on the accompanying CD.