

FINDING OF SUITABILITY FOR EARLY TRANSFER (FOSET)
WITH A CERCLA 120(h)(3) COVENANT DEFERRAL
FRITZSCHE ARMY AIRFIELD PHASE II PARCELS
FORMER FORT ORD, CALIFORNIA

1. PURPOSE

1.1 The purpose of this Finding of Suitability for Early Transfer (FOSET) is to identify environmental factors associated with the proposed property transfer and to demonstrate that the proposed property transfer prior to the completion of all remedial actions, with the appropriate land use controls, is consistent with the protection of human health and the environment.

If a federal agency proposes to transfer by deed real property on which hazardous substances have been stored for more than a year, are known to have been released, or have been disposed of, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires a covenant indicating that all remedial action necessary to protect human health and the environment, with respect to any hazardous substances remaining on the property, has been taken prior to transfer of such property by deed. The required covenant may be deferred under certain conditions where it can be shown that the intended reuse of the property can occur consistent with protection of human health and the environment during the deferral period. CERCLA 120(h)(3)(C) states:

Deferral –

- (i) In General – the Administrator, with the concurrence of the Governor of the State in which the facility is located (in the case of real property at a Federal facility that is listed on the National Priorities List) may defer the requirement of subparagraph (A)(ii)(I) with respect to the property if the Administrator or the Governor, as the case may be, determine that the property is suitable for transfer, based on a finding that –
 - (I) the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;
 - (II) the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the assurances set forth in clause ii;
 - (III) the Federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and

- (IV) the deferral and the transfer of the property will not substantially delay any necessary response action at the property,
- (ii) Response Action Assurance – With regard to a release or threatened release of a hazardous substance for which a Federal agency is potentially responsible under this section, the deed or other agreement proposed to govern the transfer shall contain assurances that –
- (I) provide for any necessary restrictions on the use of the property to ensure the protection of human health and the environment;
 - (II) provide that there will be restrictions on the use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;
 - (III) provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and
 - (IV) provide that the Federal agency responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.
- (iv) Federal Responsibility – A deferral under this subparagraph shall not increase, diminish, or affect in any manner any rights or obligations of a Federal agency (including any rights or obligations under sections [9606, 9607, and this section] existing prior to transfer) with respect to a property transferred under this subparagraph.

1.2 The City of Marina requested early transfer of the Fritzsche Army Airfield (FAAF) Phase II Parcels for the purpose of assisting in the economic recovery of the area and preventing further job and revenue loss by expediting reuse. The property proposed for early transfer is described in Section 2. The proposed reuse of the area is for a resort hotel and golf course, business park, airport support, and related infrastructure modifications. A small portion of that development will take place on this parcel.

1.3 The United States Army made a determination of the environmental condition of the Property by reviewing existing environmental documents and making associated visual site inspections (March 1999). The documents reviewed included:

- (1) Contaminated Surface Soil Remediation, Fort Ord, CA (IAROD) (February 23, 1994);

- (2) Final Community Environmental Response Facilitation Act (CERFA) Report (April 1994);
- (3) U.S. Environmental Protection Agency (U.S. EPA) Region IX's concurrence to the CERFA Report (19 April 1994);
- (4) Environmental Baseline Survey (EBS) for the Fritzsche Army Airfield (FAAF) Parcel (January 1995);
- (5) Remedial Investigation/Feasibility Study (RI/FS), Fort Ord, CA. (October 18, 1995);
- (6) Final Report for Ordnance and Explosive Removal Action, Fritzsche Army Airfield (FAAF) (November 1, 1995);
- (7) Interim Action Confirmation Report Site 40 – Fritzsche Army Airfield Defueling Area, Fort Ord, CA (January 2, 1997),
- (8) U.S. EPA letters of concurrence on the Completion of Interim Actions for IRP Sites 36, 40 and Outfalls 34 and 35 (July 22, 1997, January 31, 1997, and July 23, 1997, respectively);
- (9) Interim Action Confirmation Report Outfalls 34 and 35 – Fritzsche Army Airfield, Fort Ord, CA (June 20, 1997);
- (10) Interim Action Confirmation Report Site 36 – Fritzsche Army Airfield Sewage Treatment Plant, Fort Ord, CA (June 20, 1997);
- (11) Final Engineering Evaluation/Cost Analysis (EE/CA) – Phase 1 (September 1997),
- (12) Penetration of Projectiles into Earth, An Analysis of Unexploded Ordnance (UXO) Clearance Depths at Fort Ord (September 10, 1997);
- (13) Action Memorandum 1, Phase 1 EE/CA, Twelve Ordnance and Explosives Sites (23 April 1998),
- (14) California Department of Toxic Substances Control (DTSC) and U.S. EPA Region IX's concurrence to the Action Memorandum 1, Phase 1 EE/CA (28 Apr 98);
- (15) DTSC letter concurring on the Completion of Interim Actions for IRP Sites 36, 40 and Outfalls 34 and 35 (July 23, 1998);
- (16) DTSC letter of No Further Action for Installation Restoration Program (IRP) Site 34, (August 14, 1998);
- (17) Support for Geophysical Survey OE Sampling After Action Report (Pre-release Draft) dated 28 April 1999;
- (18) Report of Geophysical Results, Fritzsche Army Airfield (FAAF), Fort Ord Monterey dated May 19, 1999
- (19) Various RI/FS documents, records of decision, remedial action reports, and subsequent approval memoranda.

The results of this document review indicate that the Property is suitable for early transfer to the City of Marina for the intended uses.

2. PROPERTY DESCRIPTION

The property proposed for early transfer includes four buildings on 86.293 acres (Plate 1). 74.293 acres will transfer via a Public Benefit Conveyance to the City of Marina. 12.0 acres (part of parcel L5.1.1) will transfer via an Economic Development Conveyance to the Fort Ord Reuse Authority for further transfer to the City of Marina. Buildings 534, 538, 550B, and 550C were

used by the Army for aviation operations and navigation. A former sewage treatment plant and four wash aprons (Wash Aprons 512, 517, 525 and 534) formerly used for cleaning vehicles, are also located on the Property. Area L5.1.1 was formerly used as a bazooka and rifle grenade range.

<u>Parcel No.</u>	<u>Area</u>	<u>Description</u>
L5.1.1	71.402 acres	FAAF ordnance and explosives (OE) Site 34
L5.1.2	0.018 acres	Installation Restoration Program (IRP) Site 40
L5.1.3	0.112 acres	Aboveground storage tank (AST) 711
L5.1.4	6.173 acres	IRP Site 40 and Interim Action (IA) Area 40C
L5.1.5	0.560 acres	IRP Site 40 and IA Area 40A
L5.1.6	0.226 acres	IRP Site 34, Wash Apron 534 and Buildings 534 and 538
L5.1.7	0.232 acres	IRP Site 34 and Wash Apron 525
L5.1.8	6.354 acres	IRP Site 36 (FAAF sewage treatment plant, also called FTO-013) and Building 550C
L5.1.9	0.438 acres	IRP Site 34 and Wash Apron 512
L5.1.10	0.224 acres	IRP Site 34 and Wash Apron 517
L5.2	0.272 acres	Former aviation navigational beacon and Building 550B
L5.3	0.272 acres	Former aviation navigational beacon

3. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

National Environmental Policy Act (NEPA) requirements for this transfer were satisfied by the analyses conducted in the final Environmental Impact Statement Fort Ord Disposal and Reuse (FEIS) dated June 1993, the subsequent FEIS Record of Decision dated December 1993, and the Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse dated June 1996 and its associated Record of Decision dated June 18, 1997.

4. ENVIRONMENTAL CONDITION OF THE PROPERTY

- ASBESTOS

An asbestos survey was completed in 1993 for Buildings 534, 538, 550B, and 550C as part of a facility-wide asbestos survey. The survey showed that Buildings 538 contained non-friable floor tile and roof penetration mastic and building 550C contained nonfriable roof penetration mastic asbestos-containing materials (ACM) rated 13 (management with a 2-year [biannual] inspection cycle) and were in good condition at the time of survey and at the last visual site inspection conducted June 2000. No asbestos was found in the inspection of Buildings 534 and 550B. The Army does not intend to remove or repair the ACM in these buildings, but only disclose its existence and condition. Recommended inspection of ACM present in these buildings is the responsibility of the recipient.

- LEAD-BASED PAINT

All four buildings on the Property were constructed prior to 1978 or the dates of construction are unknown and thus are presumed to contain lead-based paint (LBP). No sampling for lead in soil has occurred on the Property. Buildings 534 and 538, however, are surrounded by pavement and therefore lead is not likely to be present in soil around these buildings. Buildings 550B and 550C are approximately 192 and 554 square feet, respectively, constructed of cinder block, and their paint is reported to be in good condition based on a visual site inspection dated March 1999. These buildings are used for navigational equipment for the Marina Municipal Airport and, because of their size and intended use, are not suitable for residential purposes. Appropriate LBP notice will be provided to recipients in the deed.

- RADON

No radon levels above 4 picocuries per liter (pCi/L) were detected on the Property during a 1990 survey at Fort Ord.

- RADIOLOGICAL

No radiological surveys were conducted within Buildings 534, 538, 550B, and 550C because radioactive commodities were reportedly not used or stored in the buildings.

- POLYCHLORINATED BIPHENYL (PCB)

No PCB-containing transformers are on the Property, and no releases of PCB-contaminated dielectric fluids have been reported for the Property.

- ORDNANCE AND EXPLOSIVES

Installation-wide OE investigations, documented in the Archives Search Report (ASR), ASR Supplement No. 1 and the draft Revised ASR (December 1993, November 1994, and December 1997, respectively), OE contractor after-action reports (December 1994, November 1995), working maps, Fort Ord Training Facilities Map, and associated interviews from various ordnance-related community relations activities resulted in identification of a number of potential OE sites. Some of the sites were identified by more than one source, resulting in multiple site boundaries for many of the potential OE sites basewide. Subsequently, the Army conducted additional focused studies including: OE sampling, mapping, global positioning system (GPS) surveys, OE removal actions, and the expanded ASR process that was performed as part of the Phase 1 Engineering Evaluation/Cost Analysis

(EE/CA). These additional studies resulted in a refinement of the boundaries of the potential OE sites.

One OE location, OE Site 34, was identified within the Property. The OE Site 34 boundary shown on Plate 2 is based on the foregoing information and is described in the draft Revised ASR. OE Site 34, also known as FAAF Parcel L5.1.1, was identified from a historical training facilities map and labeled as a "practice bazooka and rifle grenade area."

Site perimeter surveys were done prior to any OE removal work in the site area. After the site boundaries were established the entire area was divided into 100-foot square grids. The ordnance removal contractor then conducted a systematic visual search within the established grid boundaries. The visual search is conducted to locate surface OE and indications of buried OE. Using flux gate magnetometer detection instruments (Schoenstedt), every magnetic anomaly found was marked and excavated. The following OE items were removed: 23 2.36-inch rockets, one 2.36-inch rocket motor, five TNT demolition charges, and 69 small arms cartridges. The majority of the items were found at or near the surface. Some items were found in shallow trenches, no deeper than two feet. Based on the results of the removal actions as documented in the Phase I EE/CA, no further removal action was recommended for this site. Additional long-term management measures for the site that follow, and the agreement between DTSC and the City of Marina are described below. A notice of the potential for OE to be present on the Property will be included in the deed.

Based on the results of the 1995 removal actions, OE Site 34 was recommended for no further removal action in the Final Phase I EE/CA and the Action Memorandum 1, Phase I EE/CA. In a letter dated April 28, 1998, the U.S. EPA Region IX and DTSC concluded that based on the information provided by the Army regarding OE Site 34, no further sampling and/or removal action was necessary. The conclusion was based on the Army's commitment to implement risk management provisions including (1) annual notification and invitation to the annual public education meeting; (2) recurring reviews by the Army to determine if the response actions taken at the OE site continue to be adequate; and (3) a close-out report documenting that the recurring reviews and response actions have effectively addressed the risks posed at the OE site. In addition to its removal actions, the U.S. Army will also conduct a Remedial Investigation Feasibility Study (RI/FS) for OE at Fort Ord. The Army expects that the OE RI/FS process will involve re-examination of historical information, evaluation of detection and removal technologies, and where appropriate, field investigations. Depending on the results of these efforts, the RI phase may either lead to a No Further Action (NFA) Record of Decision (ROD) or to the preparation of a Feasibility Study (FS) with subsequent actions.

Pursuant to an agreement with DTSC, the City of Marina has adopted an ordinance which will address the potential UXO risk by requiring permits for certain excavation activities. The ordinance requires that a person obtaining a permit inform workers of the potential for encountering UXO and describe precautions to be taken. This ordinance cannot be modified or terminated without notice to DTSC.

In April 1999 as part of its oversight of the Army's cleanup effort, EPA reexamined 10% of OE Site 34 using an EM 61. The sweep identified a 2.36-inch inert training rocket, located at a depth of 2.5 feet below ground surface. The inert training rocket was removed by the Army.

In late 1999 and early 2000, the Army directed USA, Inc. to conduct an investigation and removal activity on the entire 71.4 acre site. A 100 percent OE investigation was conducted. This was a surface investigation using an EM-61 which senses irregularities (anomalies) in the subsurface which could be OE items. This investigation included analysis of all anomalies and excavation of anomalies designated by the responsible geophysicist. In this investigation and removal, no UXO was discovered. A significant amount of OE scrap was discovered, including fragments of 2.36" inert practice rockets.

The transferee will provide construction support, if necessary, pursuant to a workplan approved by the Army, EPA, and DTSC. If OE is discovered, the transferee will immediately notify the local Police Department and the Directorate of Law Enforcement at the Presidio of Monterey. Competent U.S. Army Explosive Ordnance personnel will be dispatched promptly to dispose of such ordnance properly at no expense to the recipient.

- UNDERGROUND STORAGE TANKS (USTs)

Three former USTs used to store regular gasoline, were located on the Property (Plate 2). The former USTs were: UST 550A on Parcel L5.3, UST 550B on Parcel L5.2, and UST 550C on Parcel L5.1.8. UST 550B was removed in April 1992, and the Monterey County Department of Health (MCDOH) granted closure in their letter dated April 6, 1994. UST 550C was removed in March 1996 and granted MCDOH closure in their letter dated January 6, 1996. UST 550A was removed in June 1992 and one water sample was collected from the excavation during the tank removal. Petroleum hydrocarbon concentrations detected in the water sample exceeded Regional Quality Control Board (RWQCB) cleanup levels. An additional investigation, conducted from October 1992 through July 1994, consisted of the completion of 7 soil borings, installation of 5 groundwater monitoring wells, collection of groundwater and soil samples for chemical analysis, and removal of hydrocarbon-containing soil and groundwater. Approximately 440 cubic yards of soil and 2,400 gallons of groundwater were removed from the UST site. Subsequent soil and groundwater analytical results indicated that petroleum hydrocarbons did not remain at the UST 550A site at concentrations above the RWQCB cleanup levels. RWQCB granted closure for UST 550A in their letter dated March 7, 1996. MCDOH granted closure in their letter dated August 22, 1996. Groundwater monitoring wells associated with UST 550A have been properly closed, under MCDOH permit.

- ABOVEGROUND STORAGE TANKS (ASTs)

Five ASTs are present on the Property (Plate 2). AST 524 is a 12,000-gallon gasoline tank in Parcel L5.1.7 and is currently in use. AST 530 is a 90-gallon diesel tank located in Parcel L5.1.6 and is no longer in use. AST 711 is a 200-gallon propane tank in Parcel L5.1.3 and is no longer in use. Additionally, there are two unnumbered active ASTs [1,000- and 200 - gallon diesel tanks not owned by the Army] in use in Parcel L5.3. The ASTs were visually inspected in July 2000 and found to be intact with no leaks.

- SOLID WASTE MANAGEMENT UNIT (SWMU)

One inactive SWMU was located on the Property (Plate 2). SWMU FTO-003 was identified as the location of the former FAAF Sewage Treatment Plant (IRP Site 36 in Parcel L5.1.8). FTO-003 consisted of a barminutor, an Imhoff tank, two cement soil-lined oxidation ponds, and two small sludge drying beds for sludge from the Imhoff tank. The barminutor and Imhoff tank have been removed. No hazardous materials are presently stored on the Property. An interim action was performed at SWMU FTO-003 (IRP Site 36), as summarized below.

- INSTALLATION RESTORATION PROGRAM (IRP)

Portions of three IRP sites are within the Property: (1) IRP Site 34, FAAF Fueling Facility, (2) IRP Site 36, FAAF Sewage Treatment Plant, also called FTO-003, and (3) IRP Site 40, FAAF Defueling Area. Additionally, two stormwater outfalls lie within or adjacent to the property. Outfall 34 is immediately adjacent to Parcel L5.1.4 and Outfall 35 is within Parcel 5.1.4 (Plate 2). IRP Sites 34, 36, and 40, as well as Outfalls 34 and 35, were investigated under the Fort Ord Basewide RI/FS and were remediated in accordance to the Interim Action (IA) Record of Decision (ROD). No further action is required at these sites.

- IRP Site 34 was characterized as an IA site. The IA Approval Memorandum for Site 34 was submitted to the U.S. EPA and the DTSC in February 1995. Areas of concern evaluated at Site 34 included a vehicle wash rack, four wash aprons, and their associated oil/water separators. The vehicle wash rack (516) was designated an IA area (IA Area 34A); the four wash aprons were evaluated but did not meet the criteria for IA designation because the soil was not contaminated. Wash Rack 516 is not on the Property. Thus, although the boundary of IRP Site 34 includes the Property, the IA Area is not on the Property and no impact to adjacent areas was reported. The DTSC concurred in August 1998, with respect to IA Area 34A and its impact on the Property, that no further action was necessary.
- IRP Site 36 was characterized as an IA site. The investigation at Site 36 was conducted to evaluate the potential presence of contamination in the soil and groundwater from the sewage treatment plant operation. Chemicals of concern were chlordane, cadmium, lead,

and total petroleum hydrocarbons (TPH). The IA Approval Memorandum for Site 36 was submitted to the U.S. EPA and the DTSC in March 1997. The interim action was completed in April 1997 and included soil excavation, soil sampling, and excavation backfilling at two separate IA areas (IA Areas 36A and 36B; Plate 2). The Site 36 IA Confirmation Report was submitted to the regulatory agencies in June 1997. The U.S. EPA concurred that no further remedial action was required at Site 36 in a letter dated July 22, 1997; the DTSC concurred that no further remedial action was necessary at this site in a letter dated July 23, 1998.

- IRP Site 40 was characterized as an IA site. Four areas of concern were investigated at Site 40 where helicopter parking, defueling, and routine maintenance operations were performed. Two of the four areas of concern were designated as IA areas (IA Areas 40A and 40C; Plate 2). Chemicals of concern were lead and total petroleum hydrocarbons. The IA Approval Memorandum for Site 40 was submitted to the U.S. EPA and the DTSC in December 1995. The interim action was completed in June 1996 and included soil excavation, soil sampling, and excavation backfilling at IA Areas 40A and 40C. The Site 40 IA Confirmation Report was submitted to the regulatory agencies in January 1997. The U.S. EPA concurred that no further remedial action was required at Site 40 in a letter dated January 31, 1997; the DTSC concurred that no further remedial action was necessary at this site in a letter dated July 23, 1998.

- Outfalls 34 and 35 were identified for characterization under the Basewide Surface Water Outfall Investigation (BWSWOI). This investigation evaluated the quality of the discharges from the surface drainage system and characterized the impact of those discharges on soil at the outfalls. A screening risk assessment assessed the need for further action at the outfalls based on the results of an evaluation of potential health risks associated with site-related chemicals. This resulted in Outfalls 34 and 35 being classified as IA sites. Chemicals of concern identified were PCBs (Outfall 34) and total petroleum hydrocarbons, cadmium, and lead (Outfall 35). The IA Approval Memorandum for Outfalls 34 and 35 was submitted to the U.S. EPA and the DTSC in August 1996. The interim action was completed in April 1997 and included soil excavation, soil sampling, and excavation backfilling at each outfall. The Outfalls 34 and 35 IA Confirmation Report was submitted to the regulatory agencies in June 1997. The U.S. EPA concurred that no further remedial action was required at Outfalls 34 and 35 in a letter dated July 23, 1997; the DTSC concurred that no further remedial action was necessary at this site in a letter dated July 23, 1998.

- **GROUNDWATER MONITORING WELLS**

Two groundwater monitoring wells (MW-36-01-A and MW-40-01-A) are on the Property (Plate 2). Compounds were either not detected or were detected at concentrations below their maximum contaminant levels (MCLs). The monitoring wells will continue to be sampled as part of the basewide groundwater monitoring program. The deed will reserve a non-exclusive easement to allow continued access for the Army (or its designated contractor) and the regulatory agencies to conduct necessary groundwater monitoring at the wells on the Property. Furthermore, the deed will prohibit tampering with the groundwater monitoring wells.

- **CERFA**

The final CERFA report identifies the Property, with the exception of Parcel L5.3 (former aviation navigational beacon) as being within CERFA Disqualified Parcel No. 56 because of (1) the location of the Property in the vicinity of the OU 1 groundwater contamination plume and (2) the inclusion of the Property in IRP Sites 34, 36, and 40, and CERFA Uncontaminated Parcel 221. Parcel L5.3 was not included in the CERFA assessment. The CERFA report identified areas that were considered to be uncontaminated as defined by CERCLA §120(h)(4) and CERFA, and classified various parcels in accordance with the following CERFA definitions: a CERFA uncontaminated parcel is defined as a parcel in which there is no evidence of current or past storage, release, or disposal of hazardous substances or petroleum products or their derivatives, and for which there is no evidence of the presence of other environmental hazard or safety concerns. A CERFA disqualified parcel is defined as a parcel in which storage, release or disposal of petroleum products such as CERCLA hazardous substances has occurred (presently or in the past).

5. DEED RESTRICTIONS AND NOTIFICATIONS

The environmental documents listed in Section 1.3 were evaluated to identify environmental factors which may warrant constraints on certain activities in order to ensure that human health and the environment are protected. Such constraints are generally embodied as restrictions in the Deed or as specific notifications in the Deed or other documents supporting the transaction. The factors that require either deed restrictions or specific notifications are identified in the Environmental Response Obligation Addendum (EROA).

6. PUBLIC COMMENTS

On March 22, 1999, public notice of the proposed CERCLA covenant deferral and transfer of the property to the City of Marina was provided by publication in the Monterey County Herald and

the Californian. both local papers of general circulation in the vicinity of former Fort Ord. Responses to comments are attached to this document.

7. REGULATOR COORDINATION

The State of California and the United States Environmental Protection Agency Region IX (EPA) were notified of the initiation of the FOSET in December 1998, and invited to participate in preparing the Draft FOSET. For purposes of this document the term "State of California" shall mean the Department of Toxic Substances Control, and such other agency or instrumentality of the State of California as may have or as may acquire, by operation of law, regulatory jurisdiction concerning response actions. The State of California and EPA were also provided a thirty (30) day formal comment period on the Draft FOSET concurrently with the public comment period starting March 22, 1999. Comments were received from State of California dated April 20, 1999. In addition, verbal and electronic comments were exchanged among the Army, EPA, and DTSC.

8. FINDING OF SUITABILITY FOR EARLY TRANSFER

Based on assessment and evaluation for (a) the presence of hazardous substances and contamination on the property, (b) environmental impacts anticipated from the intended use of the property, (c) ordnance and explosives, and (d) the adequacy of use restrictions and notifications to ensure that it is protective of human health and the environment, this property is suitable for early transfer for the use intended by the City of Marina.

The proposed reuse of the area is for a resort hotel and golf course, business park, airport support and related infrastructure modifications. A small portion of that development will take place on this parcel. In conjunction with the notices and disclosures listed in the EROA, this use is consistent with protection of human health and the environment, and does not present a current or future risk to human health or the environment.

CERCLA 120(h)(3)(A)(ii)(I) requires that a covenant indicating that all remedial action necessary to protect human health and the environment with respect to any hazardous substances remaining on the property has been taken prior to transfer by deed. The deferral of the covenant for this property has been adequately assessed and evaluated to assure that: (a) the transfer will not delay environmental response actions, (b) the reuse of the property will not pose a risk to human health or the environment, and (c) the federal government's obligation to perform all necessary response actions will not be affected by the early transfer of this property. The property, therefore, is suitable for early transfer.

The Army will submit to the designated representative of the EPA Administrator, for approval, and the Governor of the State of California, for concurrence, a request that the required covenant of CERCLA 120(h)(3)(A)(ii)(I) be deferred for this property. The covenant required by

CERCLA 120(h)(3)(A)(ii)(II) will be included in the Deed to ensure protection of human health and the environment, to ensure that environmental investigations and remedial activities will not be disrupted, and to insure that any additional response action that is the result of Army actions and uses, found to be necessary after the date of transfer will be accomplished by the Army. A clause will be included in the Deed granting the United States, State of California and U.S. EPA access to the property upon reasonable notice in any case where a remedial action, response action, or corrective action is found to be necessary that is the result of Army actions and uses. The Transferee will receive a warranty authorized under CERCLA 120(h)(3)(C)(iii) when all response actions have been taken in accordance with the provisions of the Federal Facilities Agreement entered into by the U.S. EPA Region IX and the State of California. Transfer of property cannot occur until after the request for deferral is approved by the delegated representative of the EPA Administrator with the concurrence of the Governor of the State of California.

31 AUG 2000



Raymond J. Fatz

Deputy Assistant Secretary of the Army
(Environment, Safety, and Occupational Health)

ENVIRONMENTAL RESPONSE OBLIGATION ADDENDUM

INTRODUCTION: This addendum identifies the assurances required to be included in the deed or contract as indicated.

DEED ASSURANCES:

The deed for this transfer will include a clause meeting the covenant requirement of 120(h)(3)(ii)(II) and (iii) providing that the United States conduct any additional remedial action found to be necessary after the date of transfer, and a clause granting the United States access to the property in any case in which remedial action or corrective action that is the result of Army actions or uses, is found to be necessary after the date of such transfer.

NOTICE OF SUITABILITY OF USE

The Property is suitable only for the intended use as resort hotel, golf course, business park, airport support, and related infrastructure modifications.

In addition, the following uses as hereinafter described shall also be allowed provided that they do not include private landscaping or unsurfaced yard areas: timeshare and vacation club rooms, spa, health, athletic and related facilities, commercial recreation, employee recreation facilities, day care facilities and nurseries, caretaker units, and airport loft living units.

NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

A. The Grantee is hereby informed and does acknowledge that non-friable asbestos or ACM has been found on the Property, as described in the ACM survey report. The ACM on the property does not currently pose a threat to human health or the environment.

B. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the Army assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Grantee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of asbestos found to be necessary on the Property.

C. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to

airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

D. The Grantee acknowledges that it has inspected the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the property, including, without limitation, any asbestos hazards or concerns.

E. No warranties, either express or implied, are given with regard to the condition of the property, including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Grantee to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand against the United States.

F. The Grantee further agrees to indemnify and hold harmless the Grantor, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Property after this conveyance of the Property to the Grantee or any future remediation or abatement of asbestos or the need therefor. The Grantee's obligation hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

NOTICE OF THE PRESENCE OF LEAD-BASED PAINT

The Property does not contain any buildings used or intended to be used as residential real property.

A. The Grantee is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint (LBP). Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards.. "Residential Real Property" means dwelling units, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences, and play equipment affixed to the land, available for use by residents (but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways), and buildings visited regulatory by the same child 6 years of age or under, on at least

two different days within any week, including day care centers, preschools, and kindergarten classrooms.

B. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey, which has been provided to the Grantee. All purchasers must also receive the federally approved pamphlet on lead poisoning prevention. Buildings constructed prior to 1978 are assumed to contain lead-based paint. The Grantee hereby acknowledges receipt of the information described in this Subparagraph. Buildings constructed after 1977 are assumed to be free of lead-based paint. No other surveys or studies assessing the possible presence of lead-based paint in former or existing buildings on the Property were performed by the Army.

C. The Grantee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Transfer.

D. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property, as defined in paragraph A, above, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992; hereinafter referred to as Title X).

The Grantee shall, after consideration of the guidelines and regulations established pursuant to Title X and after consultation with the appropriate state environmental agency: (1) Perform a reevaluation of the Risk Assessment if more than 12 months have elapsed since the date of the last Risk Assessment; (2) Comply with the joint HUD and EPA Disclosure rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments; (3) Abate lead dust and lead-based paint hazards in pre-1960 residential real property, as defined in paragraph A, above, in accordance with the procedures in 24 CFR 35; (4) Abate soil-lead hazards in pre-1978 residential real property, as defined in paragraph A, above, in accordance with the procedures in 24 CFR 35; (5) Abate lead-soil hazards following demolition and redevelopment of structures in areas that will be developed as residential real property; (6) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L); (7) Perform the activities described in this paragraph within 12 months of the date of the lead-based paint risk assessment and prior to occupancy or use of the residential real property; and (8) Send a copy of the clearance documentation to the Grantor.

In complying with these requirements, the Grantee covenants and agrees to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Property found to be necessary as a result of the subsequent use of the property for residential purposes.

The Grantee covenants and agrees to comply with the solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.

E. The Grantee further agrees to indemnify and hold harmless the Army, its officers, agents and employees, from and against all suits, claims, demands, or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in a manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint or lead-based paint hazards on the Property if used for residential purposes.

F. The covenants, restrictions, and requirements of this Section shall be binding upon the Grantee, its successors and assigns and all future owners and shall be deemed to run with the land. The Grantee on behalf of itself, its successors and assigns covenants that it will include and make legally binding this Section in all subsequent transfers, leases, or conveyance documents.

NOTICE OF HAZARDOUS SUBSTANCE STORAGE, RELEASE, OR DISPOSAL

The Grantor hereby notifies the Grantee of the former storage, release, or disposal of hazardous substances on the Property. There is no record of hazardous substances stored or disposed of on the Property. Releases occurred on the Property at IA Areas 36A, 36B, 40A, 40C, and Outfalls 34 and 35. The releases at IA Areas 36A and 36B were from sewage treatment operations. Soil samples collected from IA Area 36A contained chlordane; soil samples from IA Area 36B contained TPH as extractable unknown hydrocarbons, cadmium, and lead. The releases at IA Areas 40A and 40C were from helicopter parking, fueling, defueling, and routine maintenance operations. Soil samples collected from IA Area 40A contained TPH as extractable unknown hydrocarbons; soil samples from IA Area 40C contained TPH as extractable unknown hydrocarbons and lead. The releases at IA Area Outfalls 34 and 35 were from discharges from the surface drainage system. Soil samples collected from IA Area Outfall 34 contained the PCBs Aroclor-1254 and Aroclor-1260. Soil samples collected from IA Area Outfall 35 contained TPH as extractable unknown hydrocarbons, cadmium, and lead. At all of the above IA Areas, the contaminated soil was excavated and the excavation was backfilled with clean material. This notice is given pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section (§)120(h)(1) and (3).

Location	Material Released/ Quantity	Synonym	CASRN	RCRA Waste Number	Duration of Site Use	Storage/ Release/ Disposal
IA Area 36A	Chlordane/Unk.	--	57749	U036	1950s - 1991	No/Yes/No
IA Area 36B	Hydrocarbons/Unk Cadmium/Unk.	-- --	Multiple 7440439	-- None	1950s - 1991	No/Yes/No

	Lead/Unk.	--	7439921	assigned		
				None assigned		
IA Area 40A	Hydrocarbons/Unk	--	Multiple	--	Unknown	No/Yes/No
IA Area 40C	Hydrocarbons/Unk	--	Multiple	--	Unknown	No/Yes/No
	nown	--	7439921	None assigned		
	Lead/Unk					
IA Area	Aroclor 1254/Unk	PCBs	11097691	None assigned	Unknown	No/Yes/No
Outfalls 34 and 35	Aroclor 1260/Unk	PCBs	11096825	None assigned		
	Hydrocarbons/Unk	--	Multiple	None assigned		
	Cadmium/Unk	--	7440439	--		
	Lead/Unk	--	7439921	None assigned		
				None assigned		

NOTICE OF USE, DISPOSAL, AND POTENTIAL FOR THE PRESENCE OF ORDNANCE AND EXPLOSIVES

The Grantor hereby notifies the Grantee that Ordnance and Explosives (OE) investigations indicate that former OE Site 34 was located on this Property. Several ordnance removal contractors conducted searches for Ordnance and Explosives (OE) on OE Site 34. All ordnance detected on this site was either destroyed in-place or removed.

However, because this is a former military installation with a history of OE use, there is a potential for OE to be present on the Property. In the event the Grantee or its successors and assigns should discover any ordnance on the Property, they shall not attempt to remove or destroy it, but shall immediately notify the local Police Department and the Directorate of Law Enforcement at the Presidio of Monterey. Competent U.S. Army Explosive Ordnance personnel will be dispatched promptly to dispose of such ordnance properly at no expense to the Grantee.

GRANTOR RESERVATION OF ACCESS

The Grantor reserves a right of access to any and all portions of the Property for environmental investigation remediation, or other corrective action. This reservation includes the right of access to and use of, to the extent permitted by law, available utilities at reasonable cost to the Grantor. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of conveyance of the Property, or such

access is necessary to carry out a remedial action, response action or corrective action on adjoining property. Pursuant to this reservation, the United States and its officers, agents, employees, contractors, subcontractors, and the State of California shall have the right (upon reasonable notice to the Grantee, or the then owner and any authorized occupant of the Property) to enter upon the herein described tracts of land and conduct investigations and surveys, to include drillings, test-pitting, borings, data and/or record compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to monitoring wells, pumping wells, and treatment. Grantee agrees that notwithstanding any other provisions of the Deed, the Grantor assumes no liability to the Grantee, the then owner, or any other person, should the grantor's exercise of its rights hereunder interfere with the Grantee's use of the Property.

CONTRACTUAL ASSURANCES

PROJECTED SCHEDULE OF REMEDIAL INVESTIGATION/FEASIBILITY STUDY

RI	Sep 2001
FS	Sep 2001
Proposed Plans	Apr 2002
ROD	Nov 2002

CONSTRUCTION SUPPORT

If necessary, the Property Owner/and or Occupant will provide adequate construction support within the boundaries of former OE Site 34 pursuant to a workplan approved by the Army, EPA and DTSC.

DEFERRED WARRANTY

Upon EPA and DTSC concurrence with the Army's determination that all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken, and the making of the warranty shall be considered to satisfy the requirement of CERCLA 120(h)(3)(A)(ii)(I). This warranty shall be in a form that is recordable in the Office of the Recorder, Monterey County, California.

LONG TERM OE RISK MANAGEMENT

Unless modified by the RI/FS, measures that will be implemented for former OE Site 34 include; (1) annual notification and invitation to the annual public education meeting; (2) recurring reviews by the Covenantor to determine if the response actions taken at the OE site continue to

be adequate; and (3) a close-out report documenting that the recurring reviews and response actions have effectively addressed the risks posed at the OE site.

BUDGETING FOR RESPONSE ACTIONS.

The Army has submitted and will continue to submit through its established budget channels to the Director of the Office of Management and Budget a request for funds that adequately addresses schedules for investigation and completion of all response actions required. Expenditure of any Federal funds for such investigations or response actions is subject to congressional authorization and appropriation of funds for that purpose. The Army will submit its funding request for the projects needed to meet the schedule of necessary response actions as follows:

- a. The projects for the necessary Remedial Investigation/ Feasibility Study (RI/FS) will be identified to and coordinated with the BRAC Cleanup Team (BCT).
- b. After coordination with the BCT, the projects will be submitted through TRADOC to DA BRACO for funding validation and approval.
- c. All correspondence regarding these projects will recite that these projects are being undertaken on property being transferred pursuant to CERCLA §120(h)(3)(C) and that once validated, approved, and funded, the funding may not be withdrawn without the consent of the Assistant Secretary of the Army for Installations and Environment.

RESPONSE TO COMMENTS

RESPONSES TO DTSC COMMENTS (April 20, 1999)

General Comment: Please ensure all terms are defined the first time and are used consistently throughout the document (e.g. UXO).

Response: Comment noted. The text has been revised accordingly

Comment 1: Page 3, Section 4. Environmental Condition of Property, Asbestos. Since the Asbestos Survey was completed several years ago, DTSC recommends that the Army complete the notice by providing information on any subsequent asbestos surveys conducted for the buildings on this property.

Response:

Comment noted. No additional Asbestos surveys have been conducted for the Property since the buildings have been closed due to closure of the base, however a visual site inspection was conducted in June 2000 which noted no change in the condition of the Asbestos.

Comment 2: Page 5, Paragraph 2. Statements regarding the remedial investigation/feasibility study efforts appear confusing. The text states that a Remedial Investigation/Feasibility Study will be conducted for OE at Fort Ord. Later, the text states that a remedial investigation will be performed which may lead to a Feasibility Study or a No Further Action Record of Decision. Please clarify how these two statements relate to the specific parcels addressed in the FOSET.

Response: Comment noted. The text has been revised accordingly.

Comment 3: Page 9, section 8. Finding of Suitability for Early Transfer. Please clarify what is meant by the term "design OE".

Response: Comment noted. The text has been revised accordingly.

Comment 4: Page 11. Environmental Response Obligation Addendum (EROA). Please add to the EROA as a deed assurance, the covenant required by CERCLA Section 120(h)(3)(ii)(II) "that any additional remedial action found to be necessary shall be conducted by the United States".

Response: Comment noted. The text has been revised accordingly.

Comment 5: Page 14. Grantor Reservation of Access. It appears that the word "for" should be inserted after "...to any and all portions of the Property"

Response: Comment noted. The text has been revised accordingly.

Comment 6 Page 15. Deferred Warranty. Please state clearly that the covenant or warranty mandated by CERCLA Section 120(h)(3)(A)(ii)(I) is being deferred.

Response: Comment noted. The text has been revised accordingly.

COMMENTS FROM MEMBERS OF THE PUBLIC:

Public Comment 1: The EPA and/or the Army should prepare an Environmental Impact Statement regarding this planned transfer as required by the National Environmental Policy Act (NEPA). The Army's EIS and FEIS did not analyze the adequacy of the Army's cleanup of environmental conditions, such as the human health and environmental impacts of hazardous substances that may remain on the property after transfer.

Response: The Army addressed the potential threat to human health and the environment presented by hazardous substances throughout the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. Various environmental documents, referenced in section 1 of the FOSET, were published in support of the final "Environmental Impact Statement Fort Ord Disposal and Reuse" (FEIS) dated June 1993. All the documents referenced above were published and available for public review in accordance with applicable regulations. No further NEPA documentation is required.

Public Comment 2: The Property is not "Suitable for transfer for the use intended by the transferee". The comment further states that the Army had previously stated that the requirement to conduct an RI/FS on the property would effectively suspend issuing a determination that the property is suitable for transfer, thereby blocking the transfer. The commentor concludes, therefore, that the Army's act of issuing a covenant deferral request prior to completion of the RI/FS shows contempt for the court as well as members of the communities affected by the contamination of Fort Ord.

Response: The Army's issuance of a Covenant deferral request (CDR) is in compliance with CERCLA 120(h)(3)(C) and the notice of voluntary commencement of RI/FS on October 30, 1998.

Public Comment 3: The Army has not adequately addressed threats to human health and safety posed by ordnance and explosives on this property. The comment further incorporates all

evidence and arguments submitted in the course of the lawsuit instituted against the Army by the Fort Ord Toxics Project.

Response: FOSET with referenced materials addresses threats to human health and safety in accordance with CERCLA. All evidence and arguments submitted in the course of the lawsuit instituted by FOTP have been addressed by the Army in the context of the court proceedings.

Public Comment 4: This FOSET does not comply with EPA's guidance on early transfers for the following reasons: (1) The CDR does not demonstrate why findings from the remedial investigation for ordnance and explosives are not necessary. (2) The CDR does not contain a sufficient analysis of the intended land use during the deferral period. (3) The CDR does not contain the results of a completed CERCLA risk assessment. (4) The Army has not made this FOSET available to the Fort Ord RAB and has suspended the RAB's operations during the public review period for the FOSET.

Response:

(1) Although the remedial investigation for ordnance and explosives is in the initial stage, considerable information already exists on the site. A description of previous actions taken as well as references to reports, etc., is included in the FOSET. The land use analysis required by USEPA guidance is a description of the intended use and an analysis of whether the intended use would reasonably be expected to result in an exposure at sites where response actions have not been completed. The Army has completed a removal action at the site, and has agreed to conduct an RI/FS. The previously completed removal action, the requirements for construction support if necessary, and the City of Marina's ground disturbance permit requirements, effectively preclude the possibility that people accessing the site might be exposed to unexploded ordnance. These actions and requirements are described in the FOSET.

(2) A completed CERCLA risk assessment is not required under USEPA guidance, which allows examination of potential exposures during the deferral period, taking into account any proposed restrictions placed on the property to ensure protection of human health and the environment. An assessment of risk for the potential exposure to ordnance and explosives was included in the Final Phase 1 EE/CA which concluded that for OE Site 34 risk was adequately addressed. In April 1999 as part of its oversight of the Army's cleanup effort, EPA reexamined 10% of OE Site 34 using an EM 61. The sweep identified a 2.36-inch inert training rocket, located at a depth of 2.5 feet below ground surface but no OE. In late 1999 and early 2000, the Army conducted another 100 percent OE investigation using the EM-61. A significant amount of OE scrap was discovered, including fragments of 2.36" inert practice rockets, but again no OE.

(3) In addition, several risk management provisions are incorporated into the FOSET, including the requirement for an on-site explosive ordnance disposal specialist to be present if necessary, as well as annual notification and invitation to the annual public education meeting, and recurring reviews conducted by the Army to determine if the response action continue to be adequate. These measures are all detailed in the FOSET.

(4) Members of the Fort Ord Restoration Advisory Board received copies of the FOSET, including the Community Co-Chair and the Chair of the Building and Structures Committee.

Several members were notified by e-mail that the FOSET was available. Members of the RAB commented on the document.

Public Comment 5: We request that the public review period for this draft FOSET be extended by 30 days to May 20, 1999. We further request the Army hold a public information meeting to explain this to community members living around Fort Ord.

Response: The availability of the FOSET was advertised on March 22, 23, and 24 in two local newspapers, which is the standard notification process used for all Findings of Suitability to Transfer. Furthermore, much of the information included in the FOSET has been available for nearly a year. Information concerning the parcel was included in the Finding of Suitability to Transfer (FOST) which was issued on May 11, 1998 for a comment period ending on June 10, 1998. A presentation detailing the site history was given to the Fort Ord Restoration Advisory Board on June 9, 1998. The Draft FOSET incorporates comments regarding the Parcel, as appropriate, which were provided as a result of these previous opportunities to comment.

Public Comment 6: This site must not be transferred for the purposes of redevelopment until a thorough site survey and clearance, to a 10 foot minimum depth, has been completed and has earned concurrence from the Army Technical Center for Explosives Safety. The transfer should not occur until the Remedial Investigation for Ordnance is completed and approved. The magnetometer used to locate ordnance is notoriously unreliable and can detect only one-third of ordnance. The City of Marina's ordnance ordinance is insufficient to address the problem of poor and incomplete ordnance detection and clearance and should not be used as a substitute for proper clearance.

Response: The US Army Technical Center for Explosives Safety has concurred that the property is safe for transfer and development as indicated. The 10-foot minimum depth cited in the comment refers to a default standard issued by the Department of Defense Explosives Safety Board. The default standard is used when no information exists about a given site. The site-specific information, both from historic maps and from the on-site investigation and removal action indicates that the types of ordnance used on the range were 2.36-inch rockets and practice rifle grenades. These items are likely to be found near the ground surface. The comment states that the magnetometer is capable of detecting only one third of buried unexploded ordnance "even under the best circumstances." The comment makes no reference to the source of that statement. On-site experience, and detection capability for the magnetometer used on site indicate otherwise, as described in the Engineering Evaluation/Cost Analysis, Phase I (see Appendix D-G), which describes the instrument used to be 99% effective up to 2 feet in depth, 94% effective from 2 to 4 feet.

Public Comment 7: USEPA must conduct an Environmental Impact Statement (EIS) in accordance with NEPA. Furthermore, the State of California must conduct an

Environmental Impact Report (EIR) in accordance with California Environmental Quality Act (CEQA).

Response: The Army addressed the potential threat to human health and the environment presented by hazardous substances throughout the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. Various environmental documents, referenced in section 1 of the FOSET, were published in support of the final "Environmental Impact Statement Fort Ord Disposal and Reuse" (FEIS) dated June 1993 as well as the Supplemental Environmental Impact Statement, Fort Ord Disposal and Reuse, dated June 1996. All the documents referenced above were published and available for public review in accordance with applicable regulations. No further NEPA documentation is required. It was also asserted that the State of California must conduct an EIR, pursuant to CEQA on the FOSET. The FOSET is not a project under CEQA, because the decision whether to concur with USEPA's approval of the FOSET is the Governor's alone. DTSC will indeed make a recommendation to the Governor, but he will make the final decision. For these reasons, CEQA does not apply to this action.

Public Comment 8: Comment expresses opposition to the way in which the Early Transfer and Deferral of Covenants are being imposed upon the existing residents and favors an RI/FS, fenceline-to-fenceline, for all former Ord lands, without regard to transfer status. Thus far, Army seems opposed to this process. Therefore, until this impasse is settled, no additional lands should be transferred under the Early Transfer mechanism. The public welfare is not being fully protected.

Response: The Army is in the process of initiating a RI/FS for the former Fort Ord. Workplans as well as the RI/FS itself will be available in to the public as the work progresses. Specific opportunities exist for comment regarding content and extent of the studies planned, as required by the Comprehensive Environmental Response, Compensation and Liability Act.

Public Comment 9: Early Transfer of this particular 70-acre parcel is typical of what will happen with an unidentified series of other properties at the former Fort Ord, where developers' eagerness to make money supersedes protection of the environment and human health and safety. The profits of developers that wish to construct a large hotel and a golf course in this area, merely to provide additional low wage jobs for the local residents and provide unhealthy competition to the existing hospitality industry, are not the priority of existing Monterey County residents. Thus there is no urgency to transfer this land via the Early Transfer and deferral of Covenant method.

Response: The purpose of the FOSET is to address whether the Parcel is consistent with the protection of human health and the environment and does not address reuse schedules and issues.

Public Comment 10: What is the present condition of the asbestos in the buildings?

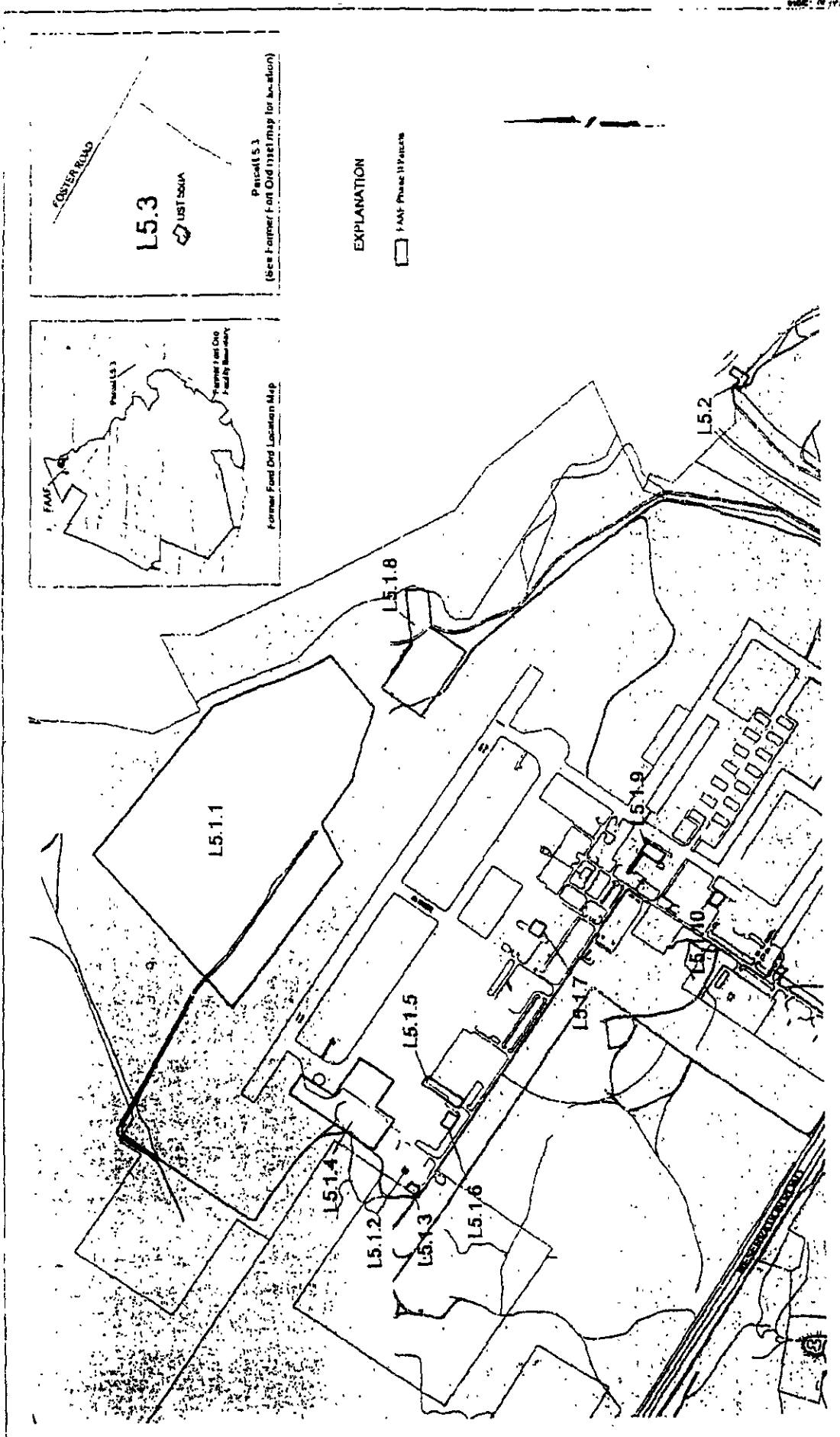
Response: The text has been revised to note that during a visual site inspection in June 2000, the asbestos containing material was found to be in good condition. Asbestos in good condition does not need to be removed, since it is not a threat to human health or the environment.

Public Comment 11: Concern that radon levels below 4 picocuries are acceptable.

Response: Radon levels below 4 picocuries are the standard acceptable levels at which the area is protective of human health and the environment.

Public Comment 12: Why is there a presumption about lead-based paint (LBP)?

Response: Since the four buildings in this transfer were only used for airport related or administrative purposes, and the future use will again be non-residential, there is no requirement to test for LBP. Furthermore, LBP is only a hazard if the paint is not in good condition. A visual site inspection conducted March 1999 showed the paint to be in good condition and thus not posing a threat to human health and the environment.



L5.3
 UST 2004
 Parcel L5.3
 (See Former Fort Ord 1981 Map for location)

Former Fort Ord Location Map
 Former Fort Ord
 Parcel L5.3
 Former Fort Ord
 Parcel L5.3

EXPLANATION

□ FAAF Phase II Parcels

700 0 700 Feet



Huntington Park Associates
 Engineering and
 Environmental Services
 10000
 T/JH 35838 02832

Fritzsche Army Airfield (FAAF) Phase II Parcels
 Parcel Map
 Former Fort Ord
 Monterey, California

DATE 2/80

SCALE 1

MONTEREY BAY ENGINEERS, INC.
607 CHARLES AVENUE, SUITE B
SEASIDE, CA 93955



PLATE 1 A

PARCEL 1
VOLUME 19 SURVEYS PAGE 20

PARCEL A (U X B' AREA)
REEL 3272
OFFICIAL RECORDS
PAGE 713

SCALE 1" = 200'

PARCEL 1
VOLUME 19 SURVEYS PAGE 20

12.000 ACRE PARCEL
12,000 ACRES PARCEL
522,720 SQ. FT.

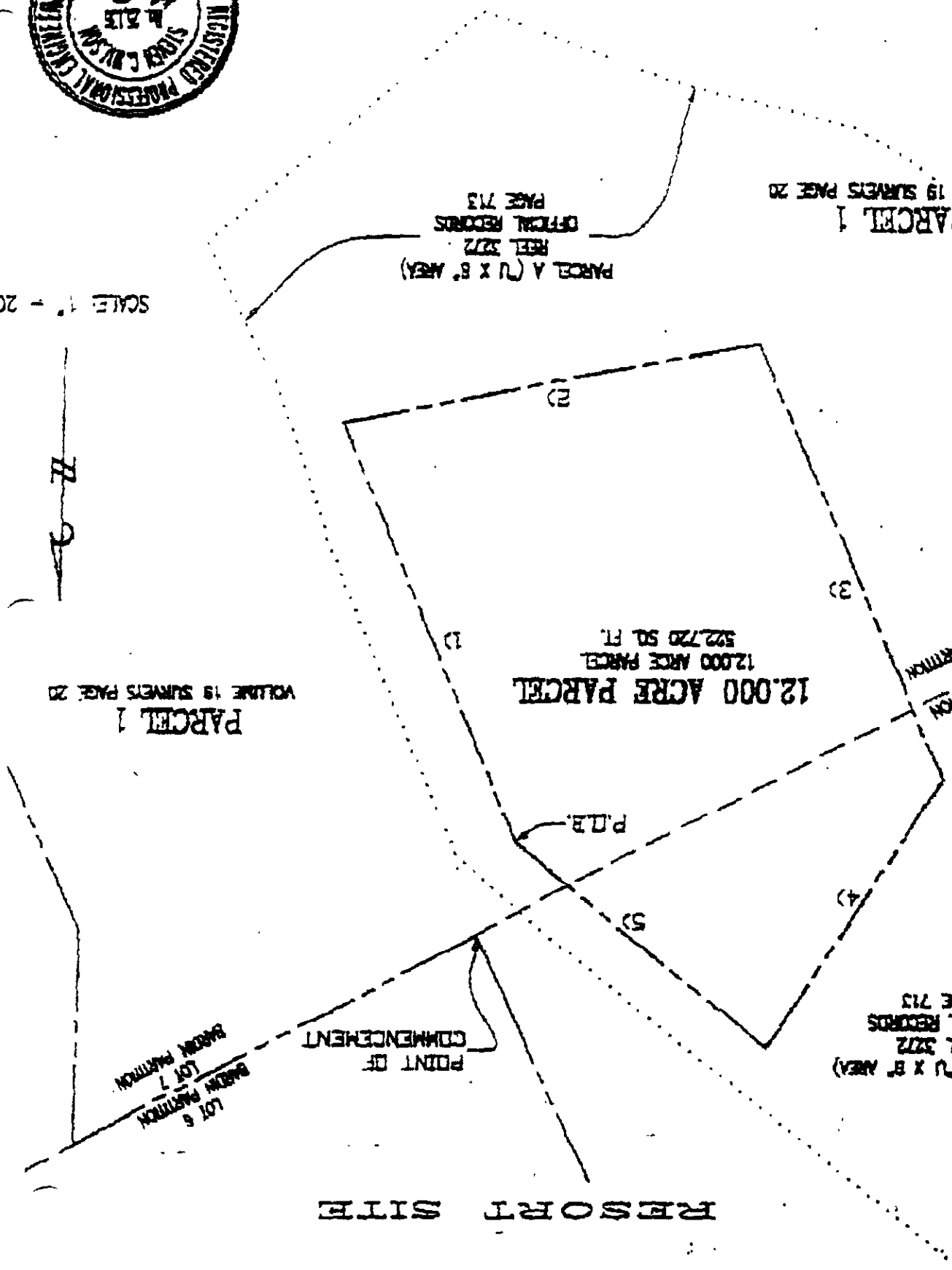
LOT 6
RANDOM PARTITION
LOT 7
RANDOM PARTITION

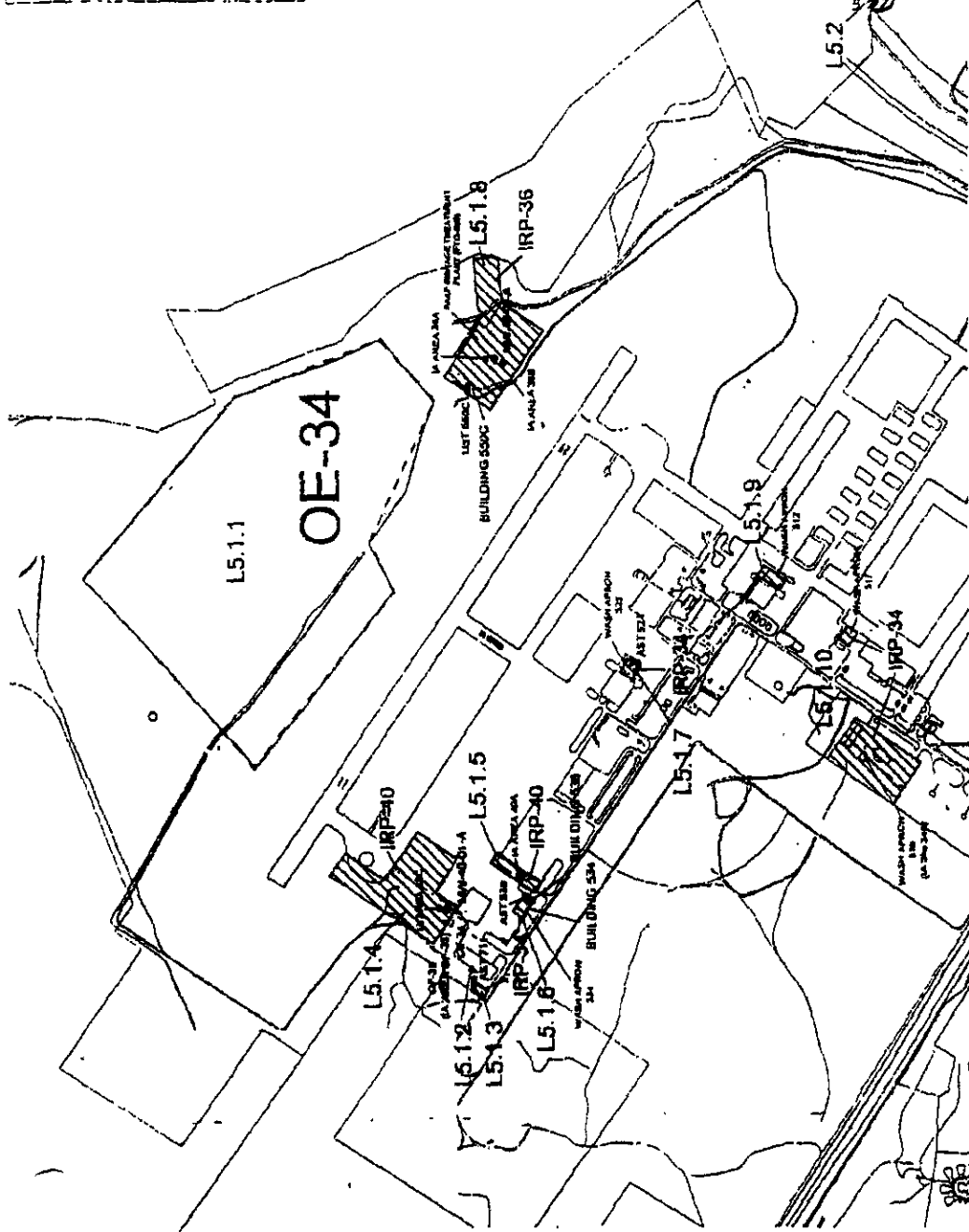
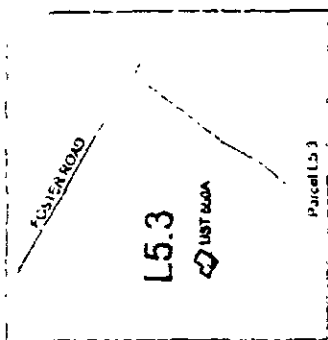
LOT 6
RANDOM PARTITION
LOT 7
RANDOM PARTITION

PARCEL A (U X B' AREA)
REEL 3272
OFFICIAL RECORDS
PAGE 713

POINT OF
COMMENCEMENT

RESORT SITE

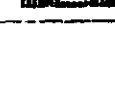




- EXPLANATION**
- FAAF Phase II Parcels
 - Ordinance and Easement (OE) Site Boundary
 - Installation Restoration Program (IRP) Site Boundary
 - Monitoring Well Location
 - Aboveground Storage Tank Location
 - Former Underground Storage Tank Location
 - Storm Sewer Infall Location
- MW 30-01-A
 - AST 711
 - UST 250A
 - 01-34

Fraser Army Airfield (FAAF) Phase II Parcels Environmental Issues Map
 Former Fort Ord
 Monterey, California

Harding Lawson Associates
 Engineering and Environmental Services
 35839 02832
 T.J.H.



700 0 700 Feet

2

RECORDING REQUESTED BY:

U. S. Army Corps of Engineers
Real Estate Division, ATTN: CESP-K-RE-MC
1325 J Street
Sacramento, California 95814-2922

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California Region
Office of Military Facilities
ATTN: Anthony J. Landis, Chief
10151 Croydon Way, Suite #3
Sacramento, California 95827

(Space Above This Line For Recorder's Use Only)

**RESTRICTION AND
COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION**

Re: A Portion of the former Fort Ord Installation, Fritzsche Army Airfield now known as Marina Municipal Airport, Parcel L5.1.1 (also known as Site OE-34).

This Covenant and Agreement ("Covenant") is made by and between the United States of America acting by and through the United States Army (also referred to herein as the "Covenantor"), the current owner of the real property located in the City of Marina, County of Monterey, State of California, shown on Exhibit A and described in Exhibit B, attached hereto and incorporated herein by this reference (the "Property"), and the State of California acting by and through the California Department of Toxic Substances Control ("Department"). The Department and the Covenantor have determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment. The Department and the Covenantor also wish to expedite the transfer of this property to the City of

FAAF CRUP 6/12/00

Marina pursuant to the "early transfer" requirements of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA", 42 USCA section 9601 et seq.) section 120(h). All of the Fort Ord facility is subject to the requirements of CERCLA.

As part of the "early transfer" the United States Army has prepared a Finding of Suitability for Early Transfer ("FOSET") which specifically provides that the property is suitable for early transfer only for the intended use as a resort hotel and golf course, business park, airport support and related infrastructure modifications. Accordingly, the United States Army hereby restricts the use of the Property to those contained in the FOSET (as shown on Exhibit C).

The FOSET requires certain "Contractual Assurances" and the Covenantor has determined that those assurances should be contained in a covenant. The Department and Covenantor have determined that for ease of reference all restrictions other than those found in any deed conveying the Property should be contained in one document.

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.

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 Army 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 any Ordnance and Explosives (OE) 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, except as otherwise provided in this covenant.

ARTICLE I

STATEMENT OF FACTS

1.01 The U.S. Army Corps of Engineers' Engineering Evaluation/Cost Analysis Phase I, Former Fort Ord, Monterey County, California, September 1997, includes additional details of the identification of the range and actions taken to date to detect and render safe ordnance and explosives ("OE") found on the Property.

1.02 The Property was historically used as a 2.36" rocket and rifle grenade practice range. The Army's initial clearance effort encompassed the entire 71.4 acres. Results of the effort, along with the Army's analysis of data, was presented in the Engineering Evaluation/Cost Analysis Phase I, Former Fort Ord, which was finalized by the Army in September 1997. In this

investigation. several 2.36" rockets were found, and detonated. The contractor's opinion was that these rockets were inert, practice rockets. In April 1999, the United States Environmental Protection Agency contracted with UXB International to resurvey approximately 10 percent of the 71.4 acre site. No unexploded ordnance (UXO) was discovered. One 2.36 inch inert practice rocket was found.

In late 1999 and early 2000, the Army directed USA, Inc. to conduct an investigation and removal activity on the entire 71.4 acre site. A 100 percent OE investigation was conducted. This was a surface investigation using an EM-61 which senses irregularities (anomalies) in the subsurface which could be OE items. This investigation included analysis of all anomalies and excavation of anomalies designated by the responsible geophysicist. In this investigation and removal, no UXO was discovered. A significant amount of OE scrap was discovered, including fragments of 2.36" inert practice rockets.

The Covenantor is now in the process of developing and implementing a remedial investigation and feasibility study ("RI/FS") for OE at Fort Ord.

1.03 Some portion of the surface and subsurface soils of the Property may contain OE. OE is a hazardous material (as that term is defined in Health and Safety Code section 25260, reference to which is made herein for purposes of definition only).

1.04 The City of Marina has adopted an ordinance (98-04) that addresses the potential OE risk by requiring permits for certain excavation activities. A copy of the ordinance is attached to this Covenant as Exhibit D.

1.05 The Army has issued a Finding of Suitability for Early Transfer (FOSET) dated August 1, 2000, to transfer the Property prior to completion of the RI/FS and a final assessment of the adequacy of any interim response action.. This type of transfer is subject to the requirements of Section 120(h)(3)(C) of CERCLA, and requires a determination by the Administrator of the U.S. Environmental Protection Agency, with the concurrence of the state Governor, that the Property is suitable for transfer. The FOSET states that the intended reuse of the Property is as a resort hotel and golf course, business park, airport support, and related infrastructure modifications.

1.06 CERCLA Section 120(h)(3)(A)(ii)(I) requires a deed covenant warranting that all remedial action necessary to protect human health and the environment with respect to any substances remaining on the property has been taken before the date of the transfer. The required covenant may be deferred when the deed or other agreements contain response action assurances, as specified in CERCLA Section 120(h)(3)(C)(ii)(I-IV), that ensure that the property is suitable for the use intended by the transferee, use restrictions are in place to ensure the protection of human health and the environment, use restrictions will also ensure that transfer will not disrupt remedial activities, and an assurance from the Army that it will request adequate funds to address

schedules for investigation and completion of all actions necessary to support the subsequent issuance of the required CERCLA 120(h)(3)(A)(ii)(I) covenant. In addition, CERCLA requires certain assurances which are contained in Article V.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" means the State of California by and through the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Covenantor. "Covenantor" means the United States of America acting through the United States Army.

2.03 Owner. "Owner" shall include the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, during his or her ownership of at any time all or an portion of the Property.

2.03 Occupant. "Occupant" shall mean Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04 Property. "Property" shall mean the approximate 71.4 acre site more particularly shown in Exhibit A and described in Exhibit B. The Property is located on the United States Army facility of Fort Ord on the northern portion located in the City of Marina.

ARTICLE III

GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Civil Code section 1471; (b) inures to the benefit of the Department and passes with each and every portion of the Property; (c) shall apply to and bind all subsequent Occupants of the Property except as otherwise provided in this Covenant; (d) is for the benefit of and is enforceable by, the Department; and (e) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof, unless modified or terminated as provided for within.

3.02 Binding Upon Owners and Occupants. This Covenant shall be binding upon all of the Owners and Occupants of the land, their heirs, successors, and assignees, and the agents, employees, and lessees of the Owners and Occupants, heirs, successors, and assignees and all successive Owners and Occupants of the Property are expressly bound hereby for the benefit of the covenantee(s) herein.

3.03 Written Notice of Presence of OE. Prior to the sale, lease, or sublease of the Property, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that there is the potential for the presence of ordnance and explosives in the soil of the Property. Such notice shall include a statement describing the OE survey efforts for the Property as discussed in section 1.02 herein.

3.04 Accompaniment to Deeds and Leases. This Covenant shall accompany all deeds and leases for any portion of the Property, unless terminated as provided for within.

3.05 Conveyance of Property. The Owner shall notify the Department at least thirty (30) days before executing any document conveying any ownership interest in the Property (excluding short-term rentals and leases, mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed conveyance, except as otherwise provided by law.

ARTICLE IV

RESTRICTIONS

4.01 Suitable Activities. As set forth above, the United States Army has found that the Property is only suitable for the intended use as resort hotel, golf course, business park, airport support, and related infrastructure modifications as set forth in the FOSET, and has accordingly restricted use of the Property. It is specifically understood that uses which are typically ancillary to the above described uses and/or are intended for the use of guests and/or employees of those uses, are permitted, including but not limited to meeting and conference facilities, training facilities associated with hotel or resort operations, employee dining facilities, cafeterias and other eating facilities, barber and beauty shop and related service activities, business support services, and golf maintenance facilities.

In addition, the following uses as hereinafter described shall also be allowed provided that they do not include private landscaping or unsurfaced yard areas: timeshare and vacation club rooms, spa, health, athletic and related facilities, commercial recreation facilities other than the golf course, employee recreation facilities, day care facilities and nurseries, caretaker units, and

airport loft living units.

Uses inconsistent with those described in this section are prohibited without written approval of the Covenantor and the Department.

4.02 Soil Management. The provisions of the City of Marina ordinance 98-04, attached as Exhibit D are incorporated herein as restrictions of this Covenant.

4.03 Access. The Department shall have reasonable right-of-entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety and oversee any required activities.

ARTICLE V

CERCLA REQUIRED RESPONSE ASSURANCES

5.01 Projected Schedule of Remedial Investigation/Feasibility Study. The Covenantor agrees to pursue as diligently as possible the following projected schedule.

Remedial Investigation (RI)	Sept. 2001
Feasibility Study (FS)	Sept. 2001
Proposed Plans	April 2002
Record of Decision (ROD)	Nov. 2002

5.02 Construction Support. If necessary, the Owner/ and or Occupant will provide adequate construction support pursuant to a workplan approved by the Covenantor, EPA, and the Department.

5.03 Deferred Warranty. Upon EPA and DTSC concurrence, consistent with the CERCLA process, and with the Army's determination that all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken, the United States shall execute and deliver to the property recipient an appropriate document containing a warranty that all such response action has been taken, and the making of the warranty shall be considered to satisfy the requirement of CERCLA 120(h)(3)(A)(ii)(I). This warranty shall be in a form that is recordable in the Office of the Recorder, Monterey County, California.

5.04 Long Term OE Risk Management. For the term of this Covenant as provided in Article VII, measures that will be implemented for the Property include: (1) annual notification and invitation to the annual public education meeting; (2) recurring reviews by the Covenantor to determine if the response actions, taken at the OE site continue to be adequate; and (3) a close-out report documenting that the recurring reviews and response actions have effectively addressed the risks posed at the OE site.

5.05 Budgeting for Response Actions. The Covenantor has submitted and will continue to submit through its established budget channels to the Director of the Office of Management and Budget a request for funds that adequately addresses schedules for investigation and completion of all response actions required. Expenditure of any Federal funds for such investigations or response actions is subject to congressional authorization and appropriation of funds for that purpose. The Covenantor will submit its funding request for the projects needed to meet the schedule of necessary response actions as follows:

- a. The projects for the necessary Remedial Investigation/Feasibility Study will be identified to and coordinated with the Base Realignment and Closure, Base Cleanup Team (BCT).
- b. After coordination with the BCT, the projects will be submitted through Training and Doctrine Command to Department of the Army, Base Realignment and Closure Office for funding validation and approval.
- c. All correspondence regarding these projects will recite that these projects are being undertaken on property being transferred pursuant to CERCLA 120(h)(3)(C) and that once validated, approved, and funded, the funding may not be withdrawn without the consent of the Assistant Secretary of the Army for Installations and Environment.

ARTICLE VI

ENFORCEMENT

6.01 Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require that the Owner or Occupant modify or remove any improvements ("Improvements" herein shall include, but are not limited to, all buildings, roads, driveways, and paved parking areas, etc.) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil and/or criminal actions including nuisance or abatement against the Owner or Occupant as provided by law.

ARTICLE VII

VARIANCE, TERMINATION, AND SUPERSESSION

7.01 Variance. Any Owner or, with the Owner's written consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant.

7.02 Termination and Supersession. Any Owner, and/or any Occupant, with the Owner's written consent, of the Property, or any portion thereof, may apply to the Department for a termination of the restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234 as applicable.

Upon the completion of the RI/FS and implementation of all required remedial action, the Department will review whether the Restrictions of this Covenant are no longer necessary to protect human health, safety and the environment. Unless the Director, after affording interested parties an opportunity to be heard, both orally and in writing, determines in writing based upon the information in the record that this Covenant continues to be necessary to protect human health, safety, or the environment, this Covenant shall be superseded by any land use restriction covenant delineated in the RI/FS and subsequently recorded, provided that such superseding covenant contains, at a minimum, sections 4.01 and 4.03 of this Covenant and all new or continuing restrictions or institutional controls contained in the ROD and shall be executed by the Department and the Owner concurrently with the supersession of this Covenant. Nothing in this Covenant shall be construed to limit the right of any person to seek judicial review of the Director's foregoing determination. The Department shall then execute a release of this Covenant in a form that may be recorded in the Office of the County Recorder of the County of Monterey. Such superseding covenant shall run with the land and shall also contain appropriate provisions so that it can be enforced. No termination or other terms of this Covenant shall extinguish or modify the retained interest held by the United States.

7.03. Reservation of Rights. Nothing in this Covenant shall be construed to limit or abridge the power or authority of the Department to take any enforcement action authorized by law, or to take any other action provided by law to protect human health, safety or the environment.

ARTICLE VIII

MISCELLANEOUS

8.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication of the Property, or any portion thereof, to the general public or anyone else for any purpose whatsoever.

8.02 State of California References. All references to the State of California and the Department include successor agencies/departments or other successor entity.

8.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Monterey within ten (10) days of the Covenantor's receipt of a fully executed original.

8.04 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (2) three business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To U.S. Army: Commander, DLIFLC and POM
 ATTN: ATZP-CDR
 Presidio of Monterey, California 93944-5006

To Department: Anthony J. Landis, P.E.
 Chief Northern California Operation
 Office of Military Facilities
 Department of Toxic Substances Control
 10151 Croydon Way, Suite 43
 Sacramento, California 95827

To City: City Manager
 City of Marina
 211 Hillcrest Avenue
 Marina, California 93933

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

8.05 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

8.06 Attachments. All attachments referenced in this Covenant are deemed incorporated into this Covenant by reference.

8.07. Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

8.08. Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

8.09 Statutory References. All statutory references include successor provisions.

{Signatures follow}

IN WITNESS WHEREOF, the COVENANTOR has caused this Covenant to be executed in its name by the Deputy Assistant Secretary of the Army for Installations and Housing and the Seal of the Department of the Army to be hereunto affixed this ____ day of _____, 2000.

DEPARTMENT OF THE ARMY

Paul W. Johnson
Deputy Assistant Secretary of the Army for Installations and Housing

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA)
)ss
COUNTY OF ARLINGTON)

I, the undersigned, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, whose commission as such expires on the ____ day of _____, 2000, do hereby certify that on this day personally appeared before me in the said Commonwealth of Virginia, County of Arlington, Paul W. Johnson, Deputy Assistant Secretary of the Army for Installations and Housing, whose name is signed to the foregoing instrument and acknowledged the foregoing instrument to be his free act and deed, dated the _____ day of _____, 2000, and acknowledges the same for and on behalf of the UNITED STATES OF AMERICA.

Given under my hand this _____ day of _____, 2000.

NOTARY PUBLIC

IN WITNESS WHEREOF, the DEPARTMENT OF TOXIC SUBSTANCES CONTROL, STATE OF CALIFORNIA has caused these presents to be executed on this 8 day of September, 2000, by ANTHONY J. LANDIS.
(Title)

CHIEF NORTHERN CALIFORNIA BRANCH
OFFICE OF MILITARY FACILITIES

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Anthony J. Landis

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss
COUNTY OF SACRAMENTO)

I, the undersigned, a Notary Public in and for the State of California, County of Sacramento, whose commission as such expires on the 8 day of Sept, 2000, do hereby certify that on this day personally appeared before me in the said State of California, County of Sacramento, Anthony J. Landis, whose name is signed to the foregoing document dated the 8 day of Sept, 2000, and acknowledges the same for and on behalf of the Department of Toxic Substances Control.

Given under my hand this 8th day of Sept, 2000.

Toni Ione Malik
NOTARY PUBLIC

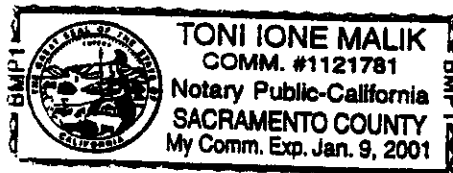
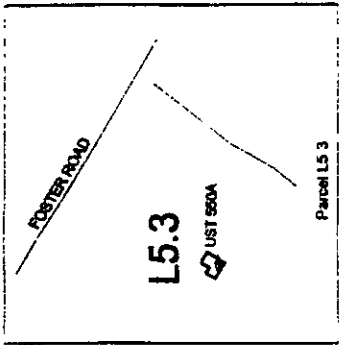


EXHIBIT A

**PARCEL L5.1.1
(OE SITE 34)**

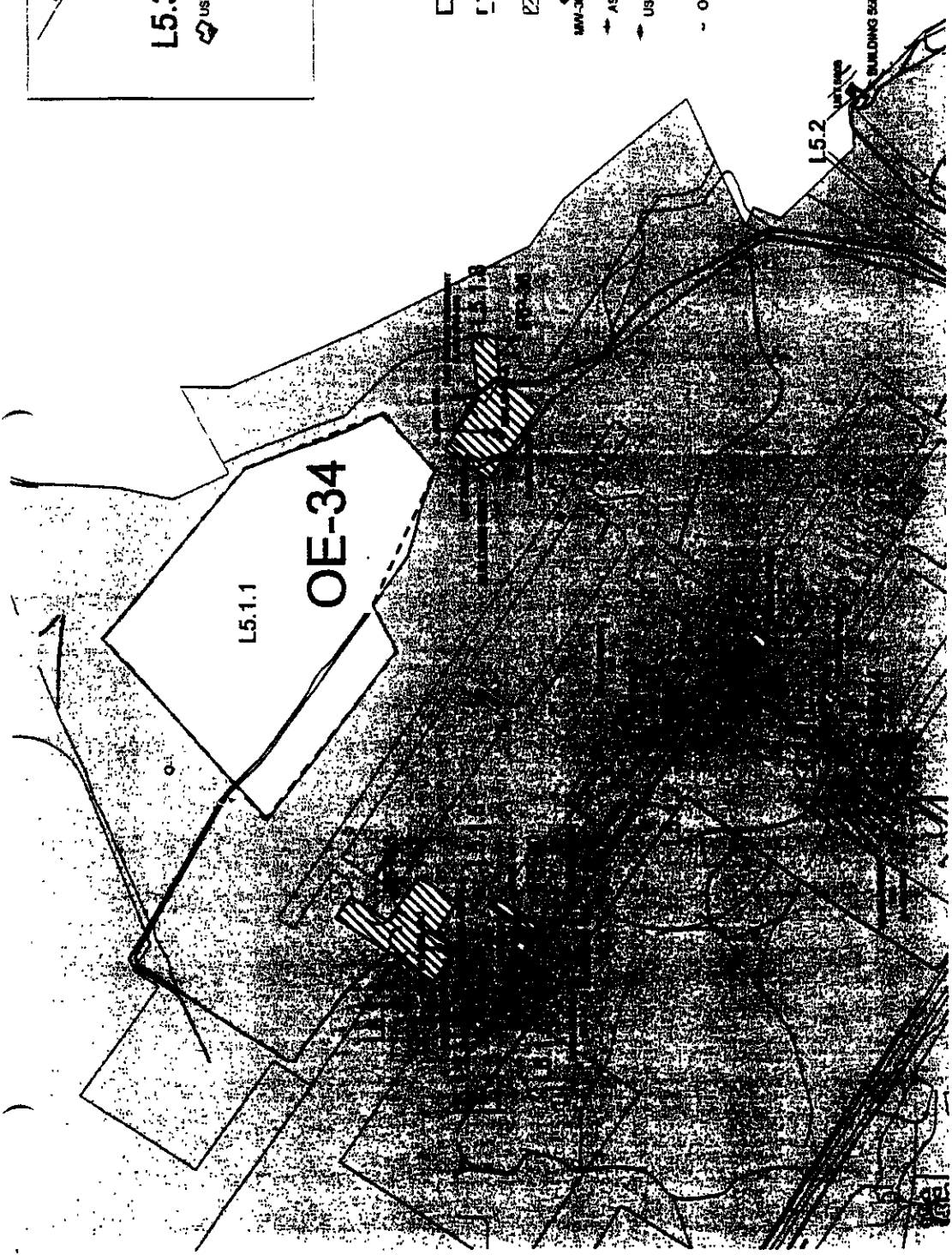
EXHIBIT A



EXPLANATION

- FAAF Phase II Parcels
- Ordinance and Explosive (OE) Site Boundary
- Installation Restoration Program (IRP) Site Boundary
- Monitoring Well Location
- Aboveground Storage Tank Location
- Former Underground Storage Tank Location
- Storm Sewer Outfall Location

- MM-38-01-A
- AST 711
- UST 500A
- OF-34



Handling License Associates
Engineering and
Environmental Services
TJH
3085 010704

Fritzschke Army Airfield (FAAF) Phase II Parcels
Environmental Issues Map
Former Fuel Oil
Monitory, California
DATE 6/96
EXHIBIT A-1

EXHIBIT B

**PROPERTY DESCRIPTION
PARCEL L5.1.1 (OE SITE 34)**

EXHIBIT B

**DESCRIPTION OF CONTAMINATED AREAS
IN THE FRITZSCHE AIRFIELD
CITY OF MARINA**

CERTAIN real property situated in Rancho Las Salinas, County of Monterey, State of California, particularly described as follows:

PARCEL A ("U X 5" AREA)

COMMENCING at a found brass disk marked "FOMR, A.P.-28, BLM USGS, 1958" designated as corner number 243 in that certain Record of Survey Map filed November 16, 1994 in Volume 19 of Surveys at Page 20, Records of Monterey County, California, and being at coordinate Northing = 2144478.48 and Easting = 5753131.50; thence

- (a) S. 14° 27' 52" E., 116.62 feet to the TRUE POINT OF BEGINNING, being at coordinate Northing = 2144265.56 and Easting = 5753160.63; thence from said TRUE POINT OF BEGINNING
 - (1) S. 23° 16' 36" E., 426.68 feet; thence
 - (2) S. 20° 34' 25" E., 89.23 feet; thence
 - (3) S. 16° 11' 15" E., 83.18 feet; thence
 - (4) S. 18° 15' 03" E., 89.49 feet; thence
 - (5) S. 18° 56' 09" E., 74.18 feet; thence
 - (6) S. 27° 34' 27" E., 76.78 feet; thence
 - (7) S. 25° 57' 47" E., 142.41 feet; thence
 - (8) S. 49° 14' 00" W., 520.36 feet; thence
 - (9) N. 69° 12' 00" W., 295.89 feet; thence
 - (10) N. 74° 54' 02" W., 84.89 feet; thence
 - (11) N. 76° 51' 56" W., 97.03 feet; thence
 - (12) N. 74° 20' 38" W., 88.00 feet; thence
 - (13) N. 60° 38' 03" W., 86.16 feet; thence
 - (14) N. 53° 51' 36" W., 337.67 feet; thence
 - (15) S. 62° 58' 38" W., 335.94 feet; thence
 - (16) N. 52° 16' 22" W., 1417.27 feet; thence
 - (17) N. 48° 57' 47" E., 1399.81 feet; thence
 - (18) S. 50° 12' 30" E., 1457.69 feet to the TRUE POINT OF BEGINNING, and containing an area of 71.402 acres, more or less.

EXHIBIT C

**FINDING OF SUITABILITY
FOR
EARLY TRANSFER**

EXHIBIT C

FINDING OF SUITABILITY FOR EARLY TRANSFER (FOSET)
WITH A CERCLA 120(h)(3) COVENANT DEFERRAL
FRITZSCHE ARMY AIRFIELD PHASE II PARCELS
FORMER FORT ORD, CALIFORNIA

I. PURPOSE

1.1 The purpose of this Finding of Suitability for Early Transfer (FOSET) is to identify environmental factors associated with the proposed property transfer and to demonstrate that the proposed property transfer prior to the completion of all remedial actions, with the appropriate land use controls, is consistent with the protection of human health and the environment.

If a federal agency proposes to transfer by deed real property on which hazardous substances have been stored for more than a year, are known to have been released, or have been disposed of, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires a covenant indicating that all remedial action necessary to protect human health and the environment, with respect to any hazardous substances remaining on the property, has been taken prior to transfer of such property by deed. The required covenant may be deferred under certain conditions where it can be shown that the intended reuse of the property can occur consistent with protection of human health and the environment during the deferral period. CERCLA 120(h)(3)(C) states:

Deferral –

- (1) In General – the Administrator, with the concurrence of the Governor of the State in which the facility is located (in the case of real property at a Federal facility that is listed on the National Priorities List) may defer the requirement of subparagraph (A)(ii)(I) with respect to the property if the Administrator or the Governor, as the case may be, determine that the property is suitable for transfer, based on a finding that –
 - (I) the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;
 - (II) the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the assurances set forth in clause ii;
 - (III) the Federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and

- (IV) the deferral and the transfer of the property will not substantially delay any necessary response action at the property.
- (ii) Response Action Assurance – With regard to a release or threatened release of a hazardous substance for which a Federal agency is potentially responsible under this section, the deed or other agreement proposed to govern the transfer shall contain assurances that –
 - (I) provide for any necessary restrictions on the use of the property to ensure the protection of human health and the environment;
 - (II) provide that there will be restrictions on the use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;
 - (III) provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and
 - (IV) provide that the Federal agency responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.
 - (iv) Federal Responsibility – A deferral under this subparagraph shall not increase, diminish, or affect in any manner any rights or obligations of a Federal agency (including any rights or obligations under sections [9606, 9607, and this section] existing prior to transfer) with respect to a property transferred under this subparagraph.

1.2 The City of Marina requested early transfer of the Fritzsche Army Airfield (FAAF) Phase II Parcels for the purpose of assisting in the economic recovery of the area and preventing further job and revenue loss by expediting reuse. The property proposed for early transfer is described in Section 2. The proposed reuse of the area is for a resort hotel and golf course, business park, airport support, and related infrastructure modifications. A small portion of that development will take place on this parcel.

1.3 The United States Army made a determination of the environmental condition of the Property by reviewing existing environmental documents and making associated visual site inspections (March 1999). The documents reviewed included:

- (1) Contaminated Surface Soil Remediation, Fort Ord, CA (IAROD) (February 23, 1994):

- (2) Final Community Environmental Response Facilitation Act (CERFA) Report (April 1994);
- (3) U.S. Environmental Protection Agency (U.S. EPA) Region IX's concurrence to the CERFA Report (19 April 1994);
- (4) Environmental Baseline Survey (EBS) for the Fritzsche Army Airfield (FAAF) Parcel (January 1995);
- (5) Remedial Investigation Feasibility Study (RI FS), Fort Ord, CA. (October 18, 1995);
- (6) Final Report for Ordnance and Explosive Removal Action, Fritzsche Army Airfield (FAAF) (November 1, 1995);
- (7) Interim Action Confirmation Report Site 40 – Fritzsche Army Airfield Defueling Area, Fort Ord, CA (January 2, 1997);
- (8) U.S. EPA letters of concurrence on the Completion of Interim Actions for IRP Sites 36, 40 and Outfalls 34 and 35 (July 22, 1997, January 31, 1997, and July 23, 1997, respectively);
- (9) Interim Action Confirmation Report Outfalls 34 and 35 – Fritzsche Army Airfield, Fort Ord, CA (June 20, 1997);
- (10) Interim Action Confirmation Report Site 36 – Fritzsche Army Airfield Sewage Treatment Plant, Fort Ord, CA (June 20, 1997);
- (11) Final Engineering Evaluation Cost Analysis (EE CA) – Phase I (September 1997);
- (12) Penetration of Projectiles into Earth, An Analysis of Unexploded Ordnance (UXO) Clearance Depths at Fort Ord (September 10, 1997);
- (13) Action Memorandum 1, Phase I EE CA, Twelve Ordnance and Explosives Sites (23 April 1998);
- (14) California Department of Toxic Substances Control (DTSC) and U.S. EPA Region IX's concurrence to the Action Memorandum 1, Phase I EE CA (28 Apr 98);
- (15) DTSC letter concurring on the Completion of Interim Actions for IRP Sites 36, 40 and Outfalls 34 and 35 (July 23, 1998);
- (16) DTSC letter of No Further Action for Installation Restoration Program (IRP) Site 34, (August 14, 1998);
- (17) Support for Geophysical Survey OE Sampling After Action Report (Pre-release Draft) dated 28 April 1999;
- (18) Report of Geophysical Results, Fritzsche Army Airfield (FAAF), Fort Ord Monterey dated May 19, 1999
- (19) Various RI FS documents, records of decision, remedial action reports, and subsequent approval memoranda.

The results of this document review indicate that the Property is suitable for early transfer to the City of Marina for the intended uses.

2. PROPERTY DESCRIPTION

The property proposed for early transfer includes four buildings on 86.293 acres (Plate 1). 74.293 acres will transfer via a Public Benefit Conveyance to the City of Marina. 12.0 acres (part of parcel L5.1.1) will transfer via an Economic Development Conveyance to the Fort Ord Reuse Authority for further transfer to the City of Marina. Buildings 534, 538, 550B, and 550C were

used by the Army for aviation operations and navigation. A former sewage treatment plant and four wash aprons (Wash Aprons 512, 517, 525 and 534) formerly used for cleaning vehicles, are also located on the Property. Area L5.1.1 was formerly used as a bazooka and rifle grenade range.

<u>Parcel No.</u>	<u>Area</u>	<u>Description</u>
L5.1.1	71.402 acres	FAAF ordnance and explosives (OE) Site 34
L5.1.2	0.018 acres	Installation Restoration Program (IRP) Site 40
L5.1.3	0.112 acres	Aboveground storage tank (AST) 711
L5.1.4	6.173 acres	IRP Site 40 and Interim Action (IA) Area 40C
L5.1.5	0.560 acres	IRP Site 40 and IA Area 40A
L5.1.6	0.226 acres	IRP Site 34, Wash Apron 534 and Buildings 534 and 538
L5.1.7	0.232 acres	IRP Site 34 and Wash Apron 525
L5.1.8	6.354 acres	IRP Site 36 (FAAF sewage treatment plant, also called FTO-013) and Building 550C
L5.1.9	0.438 acres	IRP Site 34 and Wash Apron 512
L5.1.10	0.224 acres	IRP Site 34 and Wash Apron 517
L5.2	0.272 acres	Former aviation navigational beacon and Building 550B
L5.3	0.272 acres	Former aviation navigational beacon

3. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

National Environmental Policy Act (NEPA) requirements for this transfer were satisfied by the analyses conducted in the final Environmental Impact Statement Fort Ord Disposal and Reuse (FEIS) dated June 1993, the subsequent FEIS Record of Decision dated December 1993, and the Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse dated June 1996 and its associated Record of Decision dated June 18, 1997.

4. ENVIRONMENTAL CONDITION OF THE PROPERTY

• ASBESTOS

An asbestos survey was completed in 1993 for Buildings 534, 538, 550B, and 550C as part of a facility-wide asbestos survey. The survey showed that Buildings 538 contained non-friable floor tile and roof penetration mastic and building 550C contained nonfriable roof penetration mastic asbestos-containing materials (ACM) rated 13 (management with a 2-year [biannual] inspection cycle) and were in good condition at the time of survey and at the last visual site inspection conducted June 2000. No asbestos was found in the inspection of Buildings 534 and 550B. The Army does not intend to remove or repair the ACM in these buildings, but only disclose its existence and condition. Recommended inspection of ACM present in these buildings is the responsibility of the recipient.

- LEAD-BASED PAINT

All four buildings on the Property were constructed prior to 1978 or the dates of construction are unknown and thus are presumed to contain lead-based paint (LBP). No sampling for lead in soil has occurred on the Property. Buildings 534 and 538, however, are surrounded by pavement and therefore lead is not likely to be present in soil around these buildings. Buildings 550B and 550C are approximately 192 and 554 square feet, respectively, constructed of cinder block, and their paint is reported to be in good condition based on a visual site inspection dated March 1999. These buildings are used for navigational equipment for the Marina Municipal Airport and, because of their size and intended use, are not suitable for residential purposes. Appropriate LBP notice will be provided to recipients in the deed.

- RADON

No radon levels above 4 picocuries per liter (pCi L) were detected on the Property during a 1990 survey at Fort Ord.

- RADIOLOGICAL

No radiological surveys were conducted within Buildings 534, 538, 550B, and 550C because radioactive commodities were reportedly not used or stored in the buildings.

- POLYCHLORINATED BIPHENYL (PCB)

No PCB-containing transformers are on the Property, and no releases of PCB-contaminated dielectric fluids have been reported for the Property.

- ORDNANCE AND EXPLOSIVES

Installation-wide OE investigations, documented in the Archives Search Report (ASR), ASR Supplement No. 1 and the draft Revised ASR (December 1993, November 1994, and December 1997, respectively), OE contractor after-action reports (December 1994, November 1995), working maps, Fort Ord Training Facilities Map, and associated interviews from various ordnance-related community relations activities resulted in identification of a number of potential OE sites. Some of the sites were identified by more than one source, resulting in multiple site boundaries for many of the potential OE sites basewide. Subsequently, the Army conducted additional focused studies including: OE sampling, mapping, global positioning system (GPS) surveys, OE removal actions, and the expanded ASR process that was performed as part of the Phase I Engineering Evaluation/Cost Analysis

(EE CA). These additional studies resulted in a refinement of the boundaries of the potential OE sites.

One OE location, OE Site 34, was identified within the Property. The OE Site 34 boundary shown on Plate 2 is based on the foregoing information and is described in the draft Revised ASR. OE Site 34, also known as F.AAF Parcel L5.1.1, was identified from a historical training facilities map and labeled as a "practice bazooka and rifle grenade area."

Site perimeter surveys were done prior to any OE removal work in the site area. After the site boundaries were established the entire area was divided into 100-foot square grids. The ordnance removal contractor then conducted a systematic visual search within the established grid boundaries. The visual search is conducted to locate surface OE and indications of buried OE. Using flux gate magnetometer detection instruments (Schoenstedt), every magnetic anomaly found was marked and excavated. The following OE items were removed: 23 2.36-inch rockets, one 2.36-inch rocket motor, five TNT demolition charges, and 69 small arms cartridges. The majority of the items were found at or near the surface. Some items were found in shallow trenches, no deeper than two feet. Based on the results of the removal actions as documented in the Phase I EE CA, no further removal action was recommended for this site. Additional long-term management measures for the site that follow, and the agreement between DTSC and the City of Marina are described below. A notice of the potential for OE to be present on the Property will be included in the deed.

Based on the results of the 1995 removal actions, OE Site 34 was recommended for no further removal action in the Final Phase I EE CA and the Action Memorandum I, Phase I EE CA. In a letter dated April 28, 1998, the U.S. EPA Region IX and DTSC concluded that based on the information provided by the Army regarding OE Site 34, no further sampling and or removal action was necessary. The conclusion was based on the Army's commitment to implement risk management provisions including (1) annual notification and invitation to the annual public education meeting; (2) recurring reviews by the Army to determine if the response actions taken at the OE site continue to be adequate; and (3) a close-out report documenting that the recurring reviews and response actions have effectively addressed the risks posed at the OE site. In addition to its removal actions, the U.S. Army will also conduct a Remedial Investigation Feasibility Study (RI FS) for OE at Fort Ord. The Army expects that the OE RI/FS process will involve re-examination of historical information, evaluation of detection and removal technologies, and where appropriate, field investigations. Depending on the results of these efforts, the RI phase may either lead to a No Further Action (NFA) Record of Decision (ROD) or to the preparation of a Feasibility Study (FS) with subsequent actions.

Pursuant to an agreement with DTSC, the City of Marina has adopted an ordinance which will address the potential UXO risk by requiring permits for certain excavation activities. The ordinance requires that a person obtaining a permit inform workers of the potential for encountering UXO and describe precautions to be taken. This ordinance cannot be modified or terminated without notice to DTSC.

In April 1999 as part of its oversight of the Army's cleanup effort, EPA reexamined 10% of OE Site 34 using an EM 61. The sweep identified a 2.36-inch inert training rocket, located at a depth of 2.5 feet below ground surface. The inert training rocket was removed by the Army.

In late 1999 and early 2000, the Army directed USA, Inc. to conduct an investigation and removal activity on the entire 71.4 acre site. A 100 percent OE investigation was conducted. This was a surface investigation using an EM-61 which senses irregularities (anomalies) in the subsurface which could be OE items. This investigation included analysis of all anomalies and excavation of anomalies designated by the responsible geophysicist. In this investigation and removal, no UXO was discovered. A significant amount of OE scrap was discovered, including fragments of 2.36" inert practice rockets.

The transferee will provide construction support, if necessary, pursuant to a workplan approved by the Army, EPA, and DTSC. If OE is discovered, the transferee will immediately notify the local Police Department and the Directorate of Law Enforcement at the Presidio of Monterey. Competent U.S. Army Explosive Ordnance personnel will be dispatched promptly to dispose of such ordnance properly at no expense to the recipient.

- UNDERGROUND STORAGE TANKS (USTs)

Three former USTs used to store regular gasoline, were located on the Property (Plate 2). The former USTs were: UST 550A on Parcel L5.3, UST 550B on Parcel L5.2, and UST 550C on Parcel L5.1.S. UST 550B was removed in April 1992, and the Monterey County Department of Health (MCDOH) granted closure in their letter dated April 6, 1994. UST 550C was removed in March 1996 and granted MCDOH closure in their letter dated January 6, 1996. UST 550A was removed in June 1992 and one water sample was collected from the excavation during the tank removal. Petroleum hydrocarbon concentrations detected in the water sample exceeded Regional Quality Control Board (RWQCB) cleanup levels. An additional investigation, conducted from October 1992 through July 1994, consisted of the completion of 7 soil borings, installation of 5 groundwater monitoring wells, collection of groundwater and soil samples for chemical analysis, and removal of hydrocarbon-containing soil and groundwater. Approximately 440 cubic yards of soil and 2,400 gallons of groundwater were removed from the UST site. Subsequent soil and groundwater analytical results indicated that petroleum hydrocarbons did not remain at the UST 550A site at concentrations above the RWQCB cleanup levels. RWQCB granted closure for UST 550A in their letter dated March 7, 1996. MCDOH granted closure in their letter dated August 22, 1996. Groundwater monitoring wells associated with UST 550A have been properly closed, under MCDOH permit.

- ABOVEGROUND STORAGE TANKS (ASTs)

Five ASTs are present on the Property (Plate 2). AST 524 is a 12,000-gallon gasoline tank in Parcel L5.1.7 and is currently in use. AST 530 is a 90-gallon diesel tank located in Parcel L5.1.6 and is no longer in use. AST 711 is a 200-gallon propane tank in Parcel L5.1.3 and is no longer in use. Additionally, there are two unnumbered active ASTs [1,000- and 200-gallon diesel tanks not owned by the Army] in use in Parcel L5.3. The ASTs were visually inspected in July 2000 and found to be intact with no leaks.

- SOLID WASTE MANAGEMENT UNIT (SWMU)

One inactive SWMU was located on the Property (Plate 2). SWMU FTO-003 was identified as the location of the former FAAF Sewage Treatment Plant (IRP Site 36 in Parcel L5.1.8). FTO-003 consisted of a barminutor, an Imhoff tank, two cement soil-lined oxidation ponds, and two small sludge drying beds for sludge from the Imhoff tank. The barminutor and Imhoff tank have been removed. No hazardous materials are presently stored on the Property. An interim action was performed at SWMU FTO-003 (IRP Site 36), as summarized below.

- INSTALLATION RESTORATION PROGRAM (IRP)

Portions of three IRP sites are within the Property: (1) IRP Site 34, FAAF Fueling Facility, (2) IRP Site 36, FAAF Sewage Treatment Plant, also called FTO-003, and (3) IRP Site 40, FAAF Defueling Area. Additionally, two stormwater outfalls lie within or adjacent to the property. Outfall 34 is immediately adjacent to Parcel L5.1.4 and Outfall 35 is within Parcel 5.1.4 (Plate 2). IRP Sites 34, 36, and 40, as well as Outfalls 34 and 35, were investigated under the Fort Ord Basewide RI FS and were remediated in accordance to the Interim Action (IA) Record of Decision (ROD). No further action is required at these sites.

- IRP Site 34 was characterized as an IA site. The IA Approval Memorandum for Site 34 was submitted to the U.S. EPA and the DTSC in February 1995. Areas of concern evaluated at Site 34 included a vehicle wash rack, four wash aprons, and their associated oil water separators. The vehicle wash rack (516) was designated an IA area (IA Area 34A); the four wash aprons were evaluated but did not meet the criteria for IA designation because the soil was not contaminated. Wash Rack 516 is not on the Property. Thus, although the boundary of IRP Site 34 includes the Property, the IA Area is not on the Property and no impact to adjacent areas was reported. The DTSC concurred in August 1998, with respect to IA Area 34A and its impact on the Property, that no further action was necessary.

- IRP Site 36 was characterized as an IA site. The investigation at Site 36 was conducted to evaluate the potential presence of contamination in the soil and groundwater from the sewage treatment plant operation. Chemicals of concern were chlordane, cadmium, lead,

and total petroleum hydrocarbons (TPH). The IA Approval Memorandum for Site 36 was submitted to the U.S. EPA and the DTSC in March 1997. The interim action was completed in April 1997 and included soil excavation, soil sampling, and excavation backfilling at two separate IA areas (IA Areas 36A and 36B; Plate 2). The Site 36 IA Confirmation Report was submitted to the regulatory agencies in June 1997. The U.S. EPA concurred that no further remedial action was required at Site 36 in a letter dated July 22, 1997; the DTSC concurred that no further remedial action was necessary at this site in a letter dated July 23, 1998.

- IRP Site 40 was characterized as an IA site. Four areas of concern were investigated at Site 40 where helicopter parking, defueling, and routine maintenance operations were performed. Two of the four areas of concern were designated as IA areas (IA Areas 40A and 40C; Plate 2). Chemicals of concern were lead and total petroleum hydrocarbons. The IA Approval Memorandum for Site 40 was submitted to the U.S. EPA and the DTSC in December 1995. The interim action was completed in June 1996 and included soil excavation, soil sampling, and excavation backfilling at IA Areas 40A and 40C. The Site 40 IA Confirmation Report was submitted to the regulatory agencies in January 1997. The U.S. EPA concurred that no further remedial action was required at Site 40 in a letter dated January 31, 1997; the DTSC concurred that no further remedial action was necessary at this site in a letter dated July 23, 1998.

- Outfalls 34 and 35 were identified for characterization under the Basewide Surface Water Outfall Investigation (BWSWOI). This investigation evaluated the quality of the discharges from the surface drainage system and characterized the impact of those discharges on soil at the outfalls. A screening risk assessment assessed the need for further action at the outfalls based on the results of an evaluation of potential health risks associated with site-related chemicals. This resulted in Outfalls 34 and 35 being classified as IA sites. Chemicals of concern identified were PCBs (Outfall 34) and total petroleum hydrocarbons, cadmium, and lead (Outfall 35). The IA Approval Memorandum for Outfalls 34 and 35 was submitted to the U.S. EPA and the DTSC in August 1996. The interim action was completed in April 1997 and included soil excavation, soil sampling, and excavation backfilling at each outfall. The Outfalls 34 and 35 IA Confirmation Report was submitted to the regulatory agencies in June 1997. The U.S. EPA concurred that no further remedial action was required at Outfalls 34 and 35 in a letter dated July 23, 1997; the DTSC concurred that no further remedial action was necessary at this site in a letter dated July 23, 1998.

- GROUNDWATER MONITORING WELLS

Two groundwater monitoring wells (MW-36-01-A and MW-40-01-A) are on the Property (Plate 2). Compounds were either not detected or were detected at concentrations below their maximum contaminant levels (MCLs). The monitoring wells will continue to be sampled as part of the basewide groundwater monitoring program. The deed will reserve a non-exclusive easement to allow continued access for the Army (or its designated contractor) and the regulatory agencies to conduct necessary groundwater monitoring at the wells on the Property. Furthermore, the deed will prohibit tampering with the groundwater monitoring wells.

- CERFA

The final CERFA report identifies the Property, with the exception of Parcel L5.3 (former aviation navigational beacon) as being within CERFA Disqualified Parcel No. 56 because of (1) the location of the Property in the vicinity of the OU 1 groundwater contamination plume and (2) the inclusion of the Property in IRP Sites 34, 36, and 40, and CERFA Uncontaminated Parcel 221. Parcel L5.3 was not included in the CERFA assessment. The CERFA report identified areas that were considered to be uncontaminated as defined by CERCLA §120(h)(4) and CERFA, and classified various parcels in accordance with the following CERFA definitions: a CERFA uncontaminated parcel is defined as a parcel in which there is no evidence of current or past storage, release, or disposal of hazardous substances or petroleum products or their derivatives, and for which there is no evidence of the presence of other environmental hazard or safety concerns. A CERFA disqualified parcel is defined as a parcel in which storage, release or disposal of petroleum products such as CERCLA hazardous substances has occurred (presently or in the past).

5. DEED RESTRICTIONS AND NOTIFICATIONS

The environmental documents listed in Section 1.3 were evaluated to identify environmental factors which may warrant constraints on certain activities in order to ensure that human health and the environment are protected. Such constraints are generally embodied as restrictions in the Deed or as specific notifications in the Deed or other documents supporting the transaction. The factors that require either deed restrictions or specific notifications are identified in the Environmental Response Obligation Addendum (EROA).

6. PUBLIC COMMENTS

On March 22, 1999, public notice of the proposed CERCLA covenant deferral and transfer of the property to the City of Marina was provided by publication in the Monterey County Herald and

the Californian, both local papers of general circulation in the vicinity of former Fort Ord. Responses to comments are attached to this document.

7. REGULATOR COORDINATION

The State of California and the United States Environmental Protection Agency Region IX (EPA) were notified of the initiation of the FOSET in December 1998, and invited to participate in preparing the Draft FOSET. For purposes of this document the term "State of California" shall mean the Department of Toxic Substances Control, and such other agency or instrumentality of the State of California as may have or as may acquire, by operation of law, regulatory jurisdiction concerning response actions. The State of California and EPA were also provided a thirty (30) day formal comment period on the Draft FOSET concurrently with the public comment period starting March 22, 1999. Comments were received from State of California dated April 20, 1999. In addition, verbal and electronic comments were exchanged among the Army, EPA, and DTSC.

8. FINDING OF SUITABILITY FOR EARLY TRANSFER

Based on assessment and evaluation for (a) the presence of hazardous substances and contamination on the property, (b) environmental impacts anticipated from the intended use of the property, (c) ordnance and explosives, and (d) the adequacy of use restrictions and notifications to ensure that it is protective of human health and the environment, this property is suitable for early transfer for the use intended by the City of Marina.

The proposed reuse of the area is for a resort hotel and golf course, business park, airport support and related infrastructure modifications. A small portion of that development will take place on this parcel. In conjunction with the notices and disclosures listed in the EROA, this use is consistent with protection of human health and the environment, and does not present a current or future risk to human health or the environment.

CERCLA 120(h)(3)(A)(ii)(I) requires that a covenant indicating that all remedial action necessary to protect human health and the environment with respect to any hazardous substances remaining on the property has been taken prior to transfer by deed. The deferral of the covenant for this property has been adequately assessed and evaluated to assure that: (a) the transfer will not delay environmental response actions, (b) the reuse of the property will not pose a risk to human health or the environment, and (c) the federal government's obligation to perform all necessary response actions will not be affected by the early transfer of this property. The property, therefore, is suitable for early transfer.

The Army will submit to the designated representative of the EPA Administrator, for approval, and the Governor of the State of California, for concurrence, a request that the required covenant of CERCLA 120(h)(3)(A)(ii)(I) be deferred for this property. The covenant required by

CERCLA 120(h)(3)(A)(ii)(II) will be included in the Deed to ensure protection of human health and the environment, to ensure that environmental investigations and remedial activities will not be disrupted, and to insure that any additional response action that is the result of Army actions and uses, found to be necessary after the date of transfer will be accomplished by the Army. A clause will be included in the Deed granting the United States, State of California and U.S. EPA access to the property upon reasonable notice in any case where a remedial action, response action, or corrective action is found to be necessary that is the result of Army actions and uses. The Transferee will receive a warranty authorized under CERCLA 120(h)(3)(C)(iii) when all response actions have been taken in accordance with the provisions of the Federal Facilities Agreement entered into by the U.S. EPA Region IX and the State of California. Transfer of property cannot occur until after the request for deferral is approved by the delegated representative of the EPA Administrator with the concurrence of the Governor of the State of California.

Raymond J. Fatz

Raymond J. Fatz

Deputy Assistant Secretary of the Army
(Environment, Safety, and Occupational Health)

ENVIRONMENTAL RESPONSE OBLIGATION ADDENDUM

INTRODUCTION: This addendum identifies the assurances required to be included in the deed or contract as indicated.

DEED ASSURANCES:

The deed for this transfer will include a clause meeting the covenant requirement of 120(h)(3)(i)(II) and (iii) providing that the United States conduct any additional remedial action found to be necessary after the date of transfer, and a clause granting the United States access to the property in any case in which remedial action or corrective action that is the result of Army actions or uses, is found to be necessary after the date of such transfer.

NOTICE OF SUITABILITY OF USE

The Property is suitable only for the intended use as resort hotel, golf course, business park, airport support, and related infrastructure modifications.

In addition, the following uses as hereinafter described shall also be allowed provided that they do not include private landscaping or unsurfaced yard areas: timeshare and vacation club rooms, spa, health, athletic and related facilities, commercial recreation, employee recreation facilities, day care facilities and nurseries, caretaker units, and airport loft living units.

NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

A. The Grantee is hereby informed and does acknowledge that non-friable asbestos or ACM has been found on the Property, as described in the ACM survey report. The ACM on the property does not currently pose a threat to human health or the environment.

B. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the Army assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Grantee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of asbestos found to be necessary on the Property.

C. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to

airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

D. The Grantee acknowledges that it has inspected the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the property, including, without limitation, any asbestos hazards or concerns.

E. No warranties, either express or implied, are given with regard to the condition of the property, including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Grantee to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand against the United States.

F. The Grantee further agrees to indemnify and hold harmless the Grantor, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Property after this conveyance of the Property to the Grantee or any future remediation or abatement of asbestos or the need therefor. The Grantee's obligation hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

NOTICE OF THE PRESENCE OF LEAD-BASED PAINT

The Property does not contain any buildings used or intended to be used as residential real property.

A. The Grantee is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint (LBP). Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards.. "Residential Real Property" means dwelling units, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences, and play equipment affixed to the land, available for use by residents (but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways), and buildings visited regulatory by the same child 6 years of age or under, on at least

two different days within any week, including day care centers, preschools, and kindergarten classrooms.

B. Available information concerning known lead-based paint and or lead-based paint hazards, the location of lead-based paint or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey, which has been provided to the Grantee. All purchasers must also receive the federally approved pamphlet on lead poisoning prevention. Buildings constructed prior to 1978 are assumed to contain lead-based paint. The Grantee hereby acknowledges receipt of the information described in this Subparagraph. Buildings constructed after 1977 are assumed to be free of lead-based paint. No other surveys or studies assessing the possible presence of lead-based paint in former or existing buildings on the Property were performed by the Army.

C. The Grantee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and or lead-based paint hazards prior to execution of this Transfer.

D. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property, as defined in paragraph A. above, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992; hereinafter referred to as Title X).

The Grantee shall, after consideration of the guidelines and regulations established pursuant to Title X and after consultation with the appropriate state environmental agency: (1) Perform a reevaluation of the Risk Assessment if more than 12 months have elapsed since the date of the last Risk Assessment; (2) Comply with the joint HUD and EPA Disclosure rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments; (3) Abate lead dust and lead-based paint hazards in pre-1960 residential real property, as defined in paragraph A. above, in accordance with the procedures in 24 CFR 35; (4) Abate soil-lead hazards in pre-1978 residential real property, as defined in paragraph A. above, in accordance with the procedures in 24 CFR 35; (5) Abate lead-soil hazards following demolition and redevelopment of structures in areas that will be developed as residential real property; (6) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L); (7) Perform the activities described in this paragraph within 12 months of the date of the lead-based paint risk assessment and prior to occupancy or use of the residential real property; and (8) Send a copy of the clearance documentation to the Grantor.

In complying with these requirements, the Grantee covenants and agrees to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Property found to be necessary as a result of the subsequent use of the property for residential purposes.

The Grantee covenants and agrees to comply with the solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.

E. The Grantee further agrees to indemnify and hold harmless the Army, its officers, agents and employees, from and against all suits, claims, demands, or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in a manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint or lead-based paint hazards on the Property if used for residential purposes.

F. The covenants, restrictions, and requirements of this Section shall be binding upon the Grantee, its successors and assigns and all future owners and shall be deemed to run with the land. The Grantee on behalf of itself, its successors and assigns covenants that it will include and make legally binding this Section in all subsequent transfers, leases, or conveyance documents.

NOTICE OF HAZARDOUS SUBSTANCE STORAGE, RELEASE, OR DISPOSAL

The Grantor hereby notifies the Grantee of the former storage, release, or disposal of hazardous substances on the Property. There is no record of hazardous substances stored or disposed of on the Property. Releases occurred on the Property at IA Areas 36A, 36B, 40A, 40C, and Outfalls 34 and 35. The releases at IA Areas 36A and 36B were from sewage treatment operations. Soil samples collected from IA Area 36A contained chlordane; soil samples from IA Area 36B contained TPH as extractable unknown hydrocarbons, cadmium, and lead. The releases at IA Areas 40A and 40C were from helicopter parking, fueling, defueling, and routine maintenance operations. Soil samples collected from IA Area 40A contained TPH as extractable unknown hydrocarbons; soil samples from IA Area 40C contained TPH as extractable unknown hydrocarbons and lead. The releases at IA Area Outfalls 34 and 35 were from discharges from the surface drainage system. Soil samples collected from IA Area Outfall 34 contained the PCBs Aroclor-1254 and Aroclor-1260. Soil samples collected from IA Area Outfall 35 contained TPH as extractable unknown hydrocarbons, cadmium, and lead. At all of the above IA Areas, the contaminated soil was excavated and the excavation was backfilled with clean material. This notice is given pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section (§)120(h)(1) and (3).

Location	Material Released Quantity	Synonym	CASRN	RCRA Waste Number	Duration of Site Use	Storage/ Release/ Disposal
IA Area 36A	Chlordane:Unk.	--	57749	U036	1950s - 1991	No/Yes/No
IA Area 36B	Hydrocarbons Unk Cadmium:Unk.	-- --	Multiple 7440439	-- None	1950s - 1991	No/Yes/No

	Lead Unk.	--	7439921	assigned		
				None assigned		
IA Area 40A	Hydrocarbons Unk	--	Multiple	--	Unknown	No/Yes No
IA Area 40C	Hydrocarbons Unk	--	Multiple	--	Unknown	No/Yes No
	nown	--	7439921	None assigned		
	Lead Unk			None assigned		
IA Area	Aroclor 1254 Unk	PCBs	11097691	None assigned	Unknown	No/Yes No
Outfalls 34 and 35	Aroclor 1260 Unk	PCBs	11096825	None assigned		
	Hydrocarbons Unk	--	Multiple	None assigned		
	Cadmium Unk	--	7440439	--		
	Lead Unk	--	7439921	None assigned		
				None assigned		

NOTICE OF USE, DISPOSAL, AND POTENTIAL FOR THE PRESENCE OF ORDNANCE AND EXPLOSIVES

The Grantor hereby notifies the Grantee that Ordnance and Explosives (OE) investigations indicate that former OE Site 34 was located on this Property. Several ordnance removal contractors conducted searches for Ordnance and Explosives (OE) on OE Site 34. All ordnance detected on this site was either destroyed in-place or removed.

However, because this is a former military installation with a history of OE use, there is a potential for OE to be present on the Property. In the event the Grantee or its successors and assigns should discover any ordnance on the Property, they shall not attempt to remove or destroy it, but shall immediately notify the local Police Department and the Directorate of Law Enforcement at the Presidio of Monterey. Competent U.S. Army Explosive Ordnance personnel will be dispatched promptly to dispose of such ordnance properly at no expense to the Grantee.

GRANTOR RESERVATION OF ACCESS

The Grantor reserves a right of access to any and all portions of the Property for environmental investigation, remediation, or other corrective action. This reservation includes the right of access to and use of, to the extent permitted by law, available utilities at reasonable cost to the Grantor. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of conveyance of the Property, or such

access is necessary to carry out a remedial action, response action or corrective action on adjoining property. Pursuant to this reservation, the United States and its officers, agents, employees, contractors, subcontractors, and the State of California shall have the right (upon reasonable notice to the Grantee, or the then owner and any authorized occupant of the Property) to enter upon the herein described tracts of land and conduct investigations and surveys, to include drillings, test-pitting, borings, data and/or record compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to monitoring wells, pumping wells, and treatment. Grantee agrees that notwithstanding any other provisions of the Deed, the Grantor assumes no liability to the Grantee, the then owner, or any other person, should the grantor's exercise of its rights hereunder interfere with the Grantee's use of the Property.

CONTRACTUAL ASSURANCES

PROJECTED SCHEDULE OF REMEDIAL INVESTIGATION/FEASIBILITY STUDY

RI	Sep 2001
FS	Sep 2001
Proposed Plans	Apr 2002
ROD	Nov 2002

CONSTRUCTION SUPPORT

If necessary, the Property Owner and/or Occupant will provide adequate construction support within the boundaries of former OE Site 34 pursuant to a workplan approved by the Army, EPA and DTSC.

DEFERRED WARRANTY

Upon EPA and DTSC concurrence with the Army's determination that all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken, and the making of the warranty shall be considered to satisfy the requirement of CERCLA 120(h)(3)(A)(ii)(I). This warranty shall be in a form that is recordable in the Office of the Recorder, Monterey County, California.

LONG TERM OE RISK MANAGEMENT

Unless modified by the RI FS, measures that will be implemented for former OE Site 34 include: (1) annual notification and invitation to the annual public education meeting; (2) recurring reviews by the Covenantor to determine if the response actions taken at the OE site continue to

be adequate; and (3) a close-out report documenting that the recurring reviews and response actions have effectively addressed the risks posed at the OE site.

BUDGETING FOR RESPONSE ACTIONS.

The Army has submitted and will continue to submit through its established budget channels to the Director of the Office of Management and Budget a request for funds that adequately addresses schedules for investigation and completion of all response actions required. Expenditure of any Federal funds for such investigations or response actions is subject to congressional authorization and appropriation of funds for that purpose. The Army will submit its funding request for the projects needed to meet the schedule of necessary response actions as follows:

a. The projects for the necessary Remedial Investigation Feasibility Study (RI FS) will be identified to and coordinated with the BRAC Cleanup Team (BCT).

b. After coordination with the BCT, the projects will be submitted through TRADOC to DA BRACO for funding validation and approval.

c. All correspondence regarding these projects will recite that these projects are being undertaken on property being transferred pursuant to CERCLA §120(h)(3)(C) and that once validated, approved, and funded, the funding may not be withdrawn without the consent of the Assistant Secretary of the Army for Installations and Environment.

RESPONSE TO COMMENTS

RESPONSES TO DTSC COMMENTS (April 20, 1999)

General Comment: Please ensure all terms are defined the first time and are used consistently throughout the document (e.g. UXO).

Response: Comment noted. The text has been revised accordingly.

Comment 1: Page 3, Section 4, Environmental Condition of Property, Asbestos. Since the Asbestos Survey was completed several years ago, DTSC recommends that the Army complete the notice by providing information on any subsequent asbestos surveys conducted for the buildings on this property.

Response:

Comment noted. No additional Asbestos surveys have been conducted for the Property since the buildings have been closed due to closure of the base, however a visual site inspection was conducted in June 2000 which noted no change in the condition of the Asbestos.

Comment 2: Page 5, Paragraph 2. Statements regarding the remedial investigation/feasibility study efforts appear confusing. The text states that a Remedial Investigation/Feasibility Study will be conducted for OE at Fort Ord. Later, the text states that a remedial investigation will be performed which may lead to a Feasibility Study or a No Further Action Record of Decision. Please clarify how these two statements relate to the specific parcels addressed in the FOSET.

Response: Comment noted. The text has been revised accordingly.

Comment 3: Page 9, section 8, Finding of Suitability for Early Transfer. Please clarify what is meant by the term "design OE".

Response: Comment noted. The text has been revised accordingly.

Comment 4: Page 11, Environmental Response Obligation Addendum (EROA). Please add to the EROA as a deed assurance, the covenant required by CERCLA Section 120(h)(3)(ii)(II) "that any additional remedial action found to be necessary shall be conducted by the United States".

Response: Comment noted. The text has been revised accordingly.

Comment 5: Page 14. Grantor Reservation of Access. It appears that the word "for" should be inserted after "to any and all portions of the Property"

Response: Comment noted. The text has been revised accordingly.

Comment 6 Page 15. Deferred Warranty. Please state clearly that the covenant or warranty mandated by CERCLA Section 120(h)(3)(A)(ii)(I) is being deferred.

Response: Comment noted. The text has been revised accordingly.

COMMENTS FROM MEMBERS OF THE PUBLIC:

Public Comment 1: The EPA and or the Army should prepare an Environmental Impact Statement regarding this planned transfer as required by the National Environmental Policy Act (NEPA). The Army's EIS and FEIS did not analyze the adequacy of the Army's cleanup of environmental conditions, such as the human health and environmental impacts of hazardous substances that may remain on the property after transfer.

Response: The Army addressed the potential threat to human health and the environment presented by hazardous substances throughout the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. Various environmental documents, referenced in section I of the FOSET, were published in support of the final "Environmental Impact Statement Fort Ord Disposal and Reuse" (FEIS) dated June 1993. All the documents referenced above were published and available for public review in accordance with applicable regulations. No further NEPA documentation is required.

Public Comment 2: The Property is not "Suitable for transfer for the use intended by the transferee". The comment further states that the Army had previously stated that the requirement to conduct an RI/FS on the property would effectively suspend issuing a determination that the property is suitable for transfer, thereby blocking the transfer. The commentor concludes, therefore, that the Army's act of issuing a covenant deferral request prior to completion of the RI/FS shows contempt for the court as well as members of the communities affected by the contamination of Fort Ord.

Response: The Army's issuance of a Covenant deferral request (CDR) is in compliance with CERCLA 120(h)(3)(C) and the notice of voluntary commencement of RI/FS on October 30, 1998.

Public Comment 3: The Army has not adequately addressed threats to human health and safety posed by ordnance and explosives on this property. The comment further incorporates all

evidence and arguments submitted in the course of the lawsuit instituted against the Army by the Fort Ord Toxics Project.

Response: FOSET with referenced materials addresses threats to human health and safety in accordance with CERCLA. All evidence and arguments submitted in the course of the lawsuit instituted by FOTP have been addressed by the Army in the context of the court proceedings.

Public Comment 4: This FOSET does not comply with EPA's guidance on early transfers for the following reasons: (1) The CDR does not demonstrate why findings from the remedial investigation for ordnance and explosives are not necessary; (2) The CDR does not contain a sufficient analysis of the intended land use during the deferral period. (3) The CDR does not contain the results of a completed CERCLA risk assessment. (4) The Army has not made this FOSET available to the Fort Ord RAB and has suspended the RAB's operations during the public review period for the FOSET.

Response:

- (1) Although the remedial investigation for ordnance and explosives is in the initial stage, considerable information already exists on the site. A description of previous actions taken as well as references to reports, etc., is included in the FOSET. The land use analysis required by USEPA guidance is a description of the intended use and an analysis of whether the intended use would reasonably be expected to result in an exposure at sites where response actions have not been completed. The Army has completed a removal action at the site, and has agreed to conduct an RI/FS. The previously completed removal action, the requirements for construction support if necessary, and the City of Marina's ground disturbance permit requirements, effectively preclude the possibility that people accessing the site might be exposed to unexploded ordnance. These actions and requirements are described in the FOSET.
- (2) A completed CERCLA risk assessment is not required under USEPA guidance, which allows examination of potential exposures during the deferral period, taking into account any proposed restrictions placed on the property to ensure protection of human health and the environment. An assessment of risk for the potential exposure to ordnance and explosives was included in the Final Phase I EE CA which concluded that for OE Site 34 risk was adequately addressed. In April 1999 as part of its oversight of the Army's cleanup effort, EPA reexamined 10% of OE Site 34 using an EM 61. The sweep identified a 2.36-inch inert training rocket, located at a depth of 2.5 feet below ground surface but no OE. In late 1999 and early 2000, the Army conducted another 100 percent OE investigation using the EM-61. A significant amount of OE scrap was discovered, including fragments of 2.36" inert practice rockets, but again no OE.
- (3) In addition, several risk management provisions are incorporated into the FOSET, including the requirement for an on-site explosive ordnance disposal specialist to be present if necessary, as well as annual notification and invitation to the annual public education meeting, and recurring reviews conducted by the Army to determine if the response action continue to be adequate. These measures are all detailed in the FOSET.
- (4) Members of the Fort Ord Restoration Advisory Board received copies of the FOSET, including the Community Co-Chair and the Chair of the Building and Structures Committee.

Several members were notified by e-mail that the FOSET was available. Members of the RAB commented on the document.

Public Comment 5: We request that the public review period for this draft FOSET be extended by 30 days to May 20, 1999. We further request the Army hold a public information meeting to explain this to community members living around Fort Ord.

Response: The availability of the FOSET was advertised on March 22, 23, and 24 in two local newspapers, which is the standard notification process used for all Findings of Suitability to Transfer. Furthermore, much of the information included in the FOSET has been available for nearly a year. Information concerning the parcel was included in the Finding of Suitability to Transfer (FOST) which was issued on May 11, 1998 for a comment period ending on June 10, 1998. A presentation detailing the site history was given to the Fort Ord Restoration Advisory Board on June 9, 1998. The Draft FOSET incorporates comments regarding the Parcel, as appropriate, which were provided as a result of these previous opportunities to comment.

Public Comment 6: This site must not be transferred for the purposes of redevelopment until a thorough site survey and clearance, to a 10 foot minimum depth, has been completed and has earned concurrence from the Army Technical Center for Explosives Safety. The transfer should not occur until the Remedial Investigation for Ordnance is completed and approved. The magnetometer used to locate ordnance is notoriously unreliable and can detect only one-third of ordnance. The City of Marina's ordnance ordinance is insufficient to address the problem of poor and incomplete ordnance detection and clearance and should not be used as a substitute for proper clearance.

Response: The US Army Technical Center for Explosives Safety has concurred that the property is safe for transfer and development as indicated. The 10-foot minimum depth cited in the comment refers to a default standard issued by the Department of Defense Explosives Safety Board. The default standard is used when no information exists about a given site. The site-specific information, both from historic maps and from the on-site investigation and removal action indicates that the types of ordnance used on the range were 2.36-inch rockets and practice rifle grenades. These items are likely to be found near the ground surface. The comment states that the magnetometer is capable of detecting only one third of buried unexploded ordnance "even under the best circumstances." The comment makes no reference to the source of that statement. On-site experience, and detection capability for the magnetometer used on site indicate otherwise, as described in the Engineering Evaluation/Cost Analysis, Phase I (see Appendix D-G), which describes the instrument used to be 99% effective up to 2 feet in depth, 94% effective from 2 to 4 feet.

Public Comment 7: USEPA must conduct an Environmental Impact Statement (EIS) in accordance with NEPA. Furthermore, the State of California must conduct an

Environmental Impact Report (EIR) in accordance with California Environmental Quality Act (CEQA).

Response: The Army addressed the potential threat to human health and the environment presented by hazardous substances throughout the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. Various environmental documents, referenced in section 1 of the FOSET, were published in support of the final "Environmental Impact Statement Fort Ord Disposal and Reuse" (FEIS) dated June 1993 as well as the Supplemental Environmental Impact Statement, Fort Ord Disposal and Reuse, dated June 1996. All the documents referenced above were published and available for public review in accordance with applicable regulations. No further NEPA documentation is required. It was also asserted that the State of California must conduct an EIR, pursuant to CEQA on the FOSET. The FOSET is not a project under CEQA, because the decision whether to concur with USEPA's approval of the FOSET is the Governor's alone. DTSC will indeed make a recommendation to the Governor, but he will make the final decision. For these reasons, CEQA does not apply to this action.

Public Comment 8: Comment expresses opposition to the way in which the Early Transfer and Deferral of Covenants are being imposed upon the existing residents and favors an RI FS, fenceline-to-fenceline, for all former Ord lands, without regard to transfer status. Thus far, Army seems opposed to this process. Therefore, until this impasse is settled, no additional lands should be transferred under the Early Transfer mechanism. The public welfare is not being fully protected.

Response: The Army is in the process of initiating a RI FS for the former Fort Ord. Workplans as well as the RI FS itself will be available in to the public as the work progresses. Specific opportunities exist for comment regarding content and extent of the studies planned, as required by the Comprehensive Environmental Response, Compensation and Liability Act.

Public Comment 9: Early Transfer of this particular 70-acre parcel is typical of what will happen with an unidentified series of other properties at the former Fort Ord, where developers' eagerness to make money supersedes protection of the environment and human health and safety. The profits of developers that wish to construct a large hotel and a golf course in this area, merely to provide additional low wage jobs for the local residents and provide unhealthy competition to the existing hospitality industry, are not the priority of existing Monterey County residents. Thus there is no urgency to transfer this land via the Early Transfer and deferral of Covenant method.

Response: The purpose of the FOSET is to address whether the Parcel is consistent with the protection of human health and the environment and does not address reuse schedules and issues.

Public Comment 10: What is the present condition of the asbestos in the buildings?

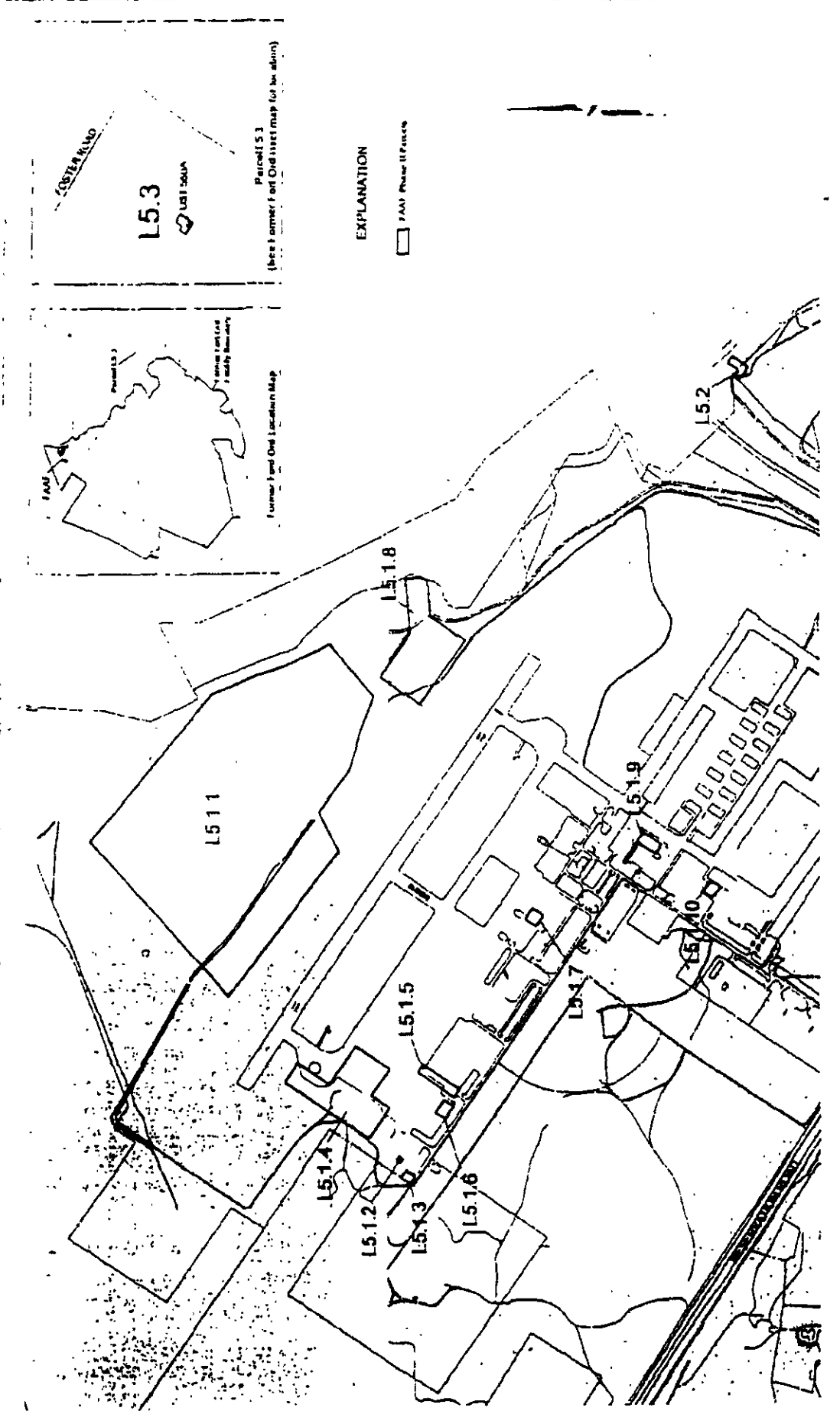
Response: The text has been revised to note that during a visual site inspection in June 2000, the asbestos containing material was found to be in good condition. Asbestos in good condition does not need to be removed, since it is not a threat to human health or the environment.

Public Comment 11: Concern that radon levels below 4 picocuries are acceptable.

Response: Radon levels below 4 picocuries are the standard acceptable levels at which the area is protective of human health and the environment.

Public Comment 12: Why is there a presumption about lead-based paint (LBP)?

Response: Since the four buildings in this transfer were only used for airport related or administrative purposes, and the future use will again be non-residential, there is no requirement to test for LBP. Furthermore, LBP is only a hazard if the paint is not in good condition. A visual site inspection conducted March 1999 showed the paint to be in good condition and thus not posing a threat to human health and the environment.



L5.3
 WATER TOWER

Parcel L5.3
 (see former fuel tank location map for location)

FORMER FUEL TANK
 FORMER FUEL TANK
 FORMER FUEL TANK

Former Fuel Tank Location Map

EXPLANATION

□ FAAF Phase B Parcels

1

Fritzsche Army Airfield (FAAF) Phase B Parcels
 Parcel Map
 Former Fuel Tank
 Members, California

Handling Licensure Associates
 Engineering and
 Environmental Services

TJAI 35639 01832



700 0 700 Feet

MONTEREY BAY ENGINEERS, INC.
607 CHARLES AVENUE SUITE B
SEASIDE CA 93955



PLATE 1 A

PARCEL 1
VOLUME 19 SURVEYS PAGE 20

PARCEL A (U X B' AREA)
REEL 3272
OFFICIAL RECORDS
PAGE 713

SCALE 1" = 200'

PARCEL 1
VOLUME 19 SURVEYS PAGE 20

12.000 ACRE PARCEL
522,720 SQ. FT.

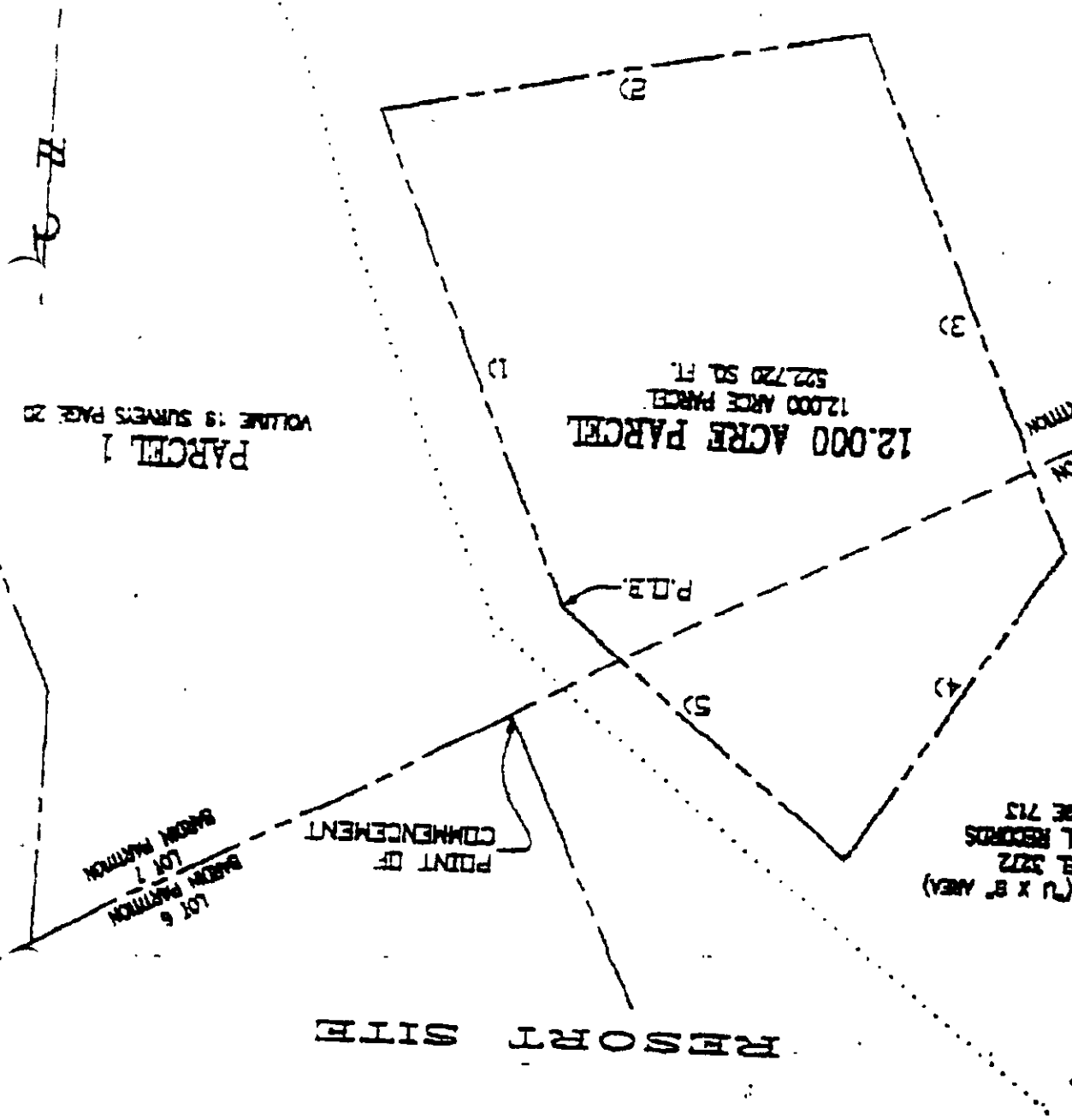
LOT 6
BAGDON PARTITION
LOT 7
BAGDON PARTITION

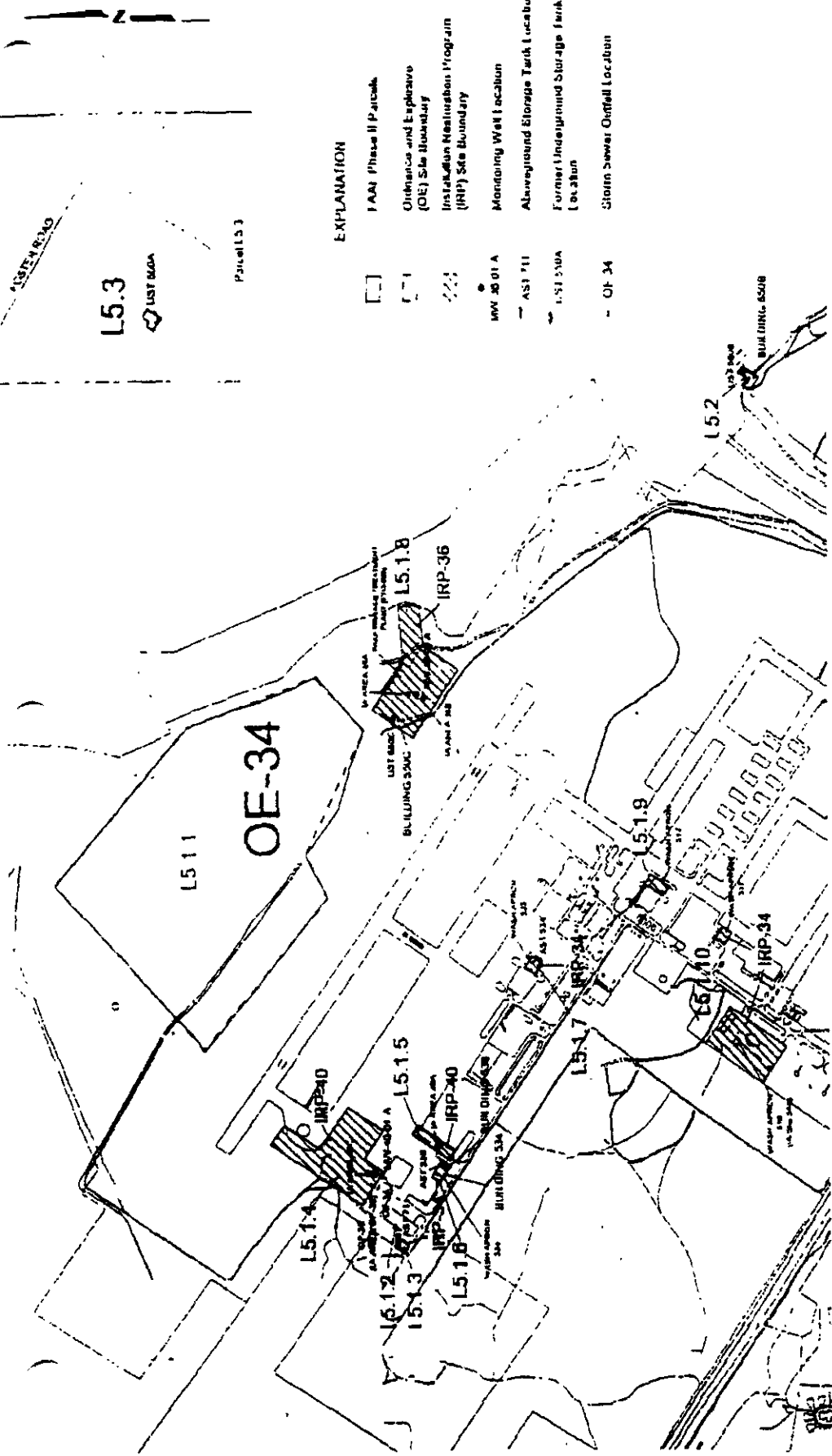
PARCEL A (U X B' AREA)
REEL 3272
OFFICIAL RECORDS
PAGE 713

POINT OF
COMMENCEMENT

LOT 6
BAGDON PARTITION
LOT 7
BAGDON PARTITION

RESORT SITE





EXPLANATION

[Symbol]	FAAF Phase II Parcels
[Symbol]	Ordinance and Easement (OE) Site Boundary
[Symbol]	Installation Remediation Program (IRP) Site Boundary
[Symbol]	Monitoring Well Location
[Symbol]	Alleged Storage Tank Location
[Symbol]	Former Underground Storage Tank Location
[Symbol]	Storm Sewer Offfield Location

L5.3

Parcel L5.3

Fredrick Army Airfield (FAAF) Phase II Parcels
 Environmental Issues Map
 Former Fuel Dry
 Monterey, California
 0/98

Handling Location Address
 Engineering etc
 Environmental Services
 T/JH 35839 02837



EXHIBIT D

**CITY OF MARINA CALIFORNIA
ORDINANCE NO. 98-04**

EXHIBIT D

City of Marina

211 HILLCREST AVENUE
MARINA, CA 93933
TELEPHONE (831) 384-3715
FAX (831) 384-0425




CERTIFICATE OF THE CITY CLERK

I, JOY P. JUNSAY, CITY CLERK OF THE CITY OF MARINA, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. 98-04 adding Chapter 15.56 to the Marina Municipal Code to regulate excavations and soil disturbance activities on lands formerly included within the Fort Ord Military installation which are suspected of containing ordnance and explosive materials, adopted by the City Council of the City of Marina at the Regular City Council meeting of May 5, 1998, and that the original appears on record in the Office of the City Clerk.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MARINA

Date: May 15, 1999


Joy P. Junsay, City Clerk

ORDINANCE NO. 98- 04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARINA
ADDING CHAPTER 15.56 TO THE MUNICIPAL CODE TO REGULATE
EXCAVATIONS AND SOIL DISTURBANCE ACTIVITIES ON LANDS
FORMERLY INCLUDED WITHIN THE FORT ORD MILITARY
INSTALLATION WHICH ARE SUSPECTED OF CONTAINING
ORDNANCE AND EXPLOSIVE MATERIALS

-oOo-

1. Chapter 15.56 Added. Municipal Code Chapter 15.36
entitled "Digging and Excavation on the Former Fort Ord," is
hereby added to the Marina Municipal Code, to read in its
entirety as set forth in the attached six (6) pages, marked
Exhibit "A" and incorporated herein by this reference thereto.

2. Effective Date. This ordinance shall take effect and
be in force thirty (30) days from and after its final passage.

3. Posting of Ordinance. Within fifteen (15) days after
the passage of this ordinance, the City Clerk shall cause it to
be posted in the three (3) public places designated by resolution
of the City Council.

The foregoing ordinance was introduced at a regular meeting
of the City Council of the City of Marina duly held on April 21,
1998, and was passed and adopted at a regular meeting duly held
on May 5, 1998, by the following vote:

AYES: COUNCIL MEMBERS: H. GUSTAFSON, K. NISHI, J. WILMOT, J. PERRINE
AND J. VOCELKA.
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE


James L. Vocelka, Mayor

ATTEST:


Joy P. Junsay, City Clerk

Chapter 15.56

Digging and Excavation on the Former Fort Ord

Sections:

- 15.56.010 Purpose and Intent
- 15.56.020 General.
- 15.56.030 Designation and Applicability.
- 15.56.040 Excavation and Digging Restrictions.
- 15.56.050 Permit Requirements.
- 15.56.060 Permit Procedure.
- 15.56.070 Term of Permit
- 15.56.080 Exceptions to Permit Conditions
- 15.56.090 Performance Bond.
- 15.56.100 Amendment to Permits.
- 15.56.110 Appeals.
- 15.56.120 Notification to Property Owners and Other Land Users
- 15.56.130 Revision of Chapter

15.56.010 Purpose and Intent. The United States Army ("Army") is in the process of transferring various parcels of the former Fort Ord military installation ("Fort Ord") to the City or to other entities within the City's land use jurisdiction. Some parcels of the former Fort Ord were contaminated with unexploded ordnance and explosives ("UXO"), which is a hazardous waste. The Army will not transfer those parcels until it has completed response actions for UXO as required by law. Even following the Army's completion of UXO response actions, it is possible that some UXO materials may remain on those parcels. The California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") has statutory responsibility to oversee cleanup of releases of hazardous substances, which includes hazardous waste. DTSC cannot certify that all UXO has been cleared and has considered requiring land use restrictions that will be recorded with the Monterey County Recorder. The City believes that recorded land use restrictions would burden the title of those parcels and present economic disincentives to develop them. The City and DTSC desire that sufficient controls and restrictions be placed on these parcels to protect the public health, safety and in a manner equivalent to that resulting from recordation of land use restrictions.

15.56.020 General. The City Council hereby finds and determines that those properties formerly included within the Fort Ord military installation which are suspected of containing UXO require special standards and procedures for digging and excavation in addition to those contained in the Building Code, to ensure that:

A. Neither digging or excavation nor development of such properties occurs until ordnance or explosive remediation thereon is completed;

B. Potential purchasers or developers of UXO sites and those persons whose work at UXO sites includes disturbing soil, are aware of the potential that UXO may be located on these properties and are aware of the requirements for UXO remediation prior to any digging, excavation or ground disturbance thereon; and

C. DTSC should be continuously involved in the establishment of controls for those properties because it has statutory oversight responsibility with respect to hazardous substance response actions.

15.56.030 Designation and Applicability.

A. The City Council shall by resolution, and with the concurrence of DTSC, designate all real property within the City's land use jurisdiction which was formerly part of Fort Ord and which have been identified in the Revised Archives Search Report, Former Fort Ord, dated 1997, or are otherwise identified, as the possible location of unexploded ordnance or explosives as an "Ordnance Remediation District." All such Districts shall be depicted on a Grading District Map by an "ORD" suffix to indicate the existence of ordnance remediation obligations on such property and, upon receipt of notification by the Army of specific requirements or restrictions on said Districts, a notation thereof. The City shall notify DTSC of any change in the permitted land uses in any District within thirty (30) days after it adopts any change.

B. The regulations in this Chapter shall apply in all "ORD" districts and shall be in addition and subject to all provisions of the Municipal Code including Title 17 and the Building Code.

15.56.040 Excavation and Digging Restrictions. It shall be unlawful for any person, including utilities, to engage in any of the following activities on any property located within a District unless that person is acting pursuant to a valid permit issued pursuant to this Chapter: excavation, digging, development or ground disturbance of any type 1) involving the displacement of 10 cubic feet or more of soil or 2) in violation of requirements or restrictions placed on such property by the Army and as noted on the Grading District Map.

15.56.050 Permit Requirements. An owner or user of real property located within a District who desires to conduct the activities described in section 15.56.040 shall apply to the Director of Public Works ("Director") for a permit. The application shall be on a form approved by the City, shall be signed by the permit applicant, and shall contain the following information:

A. A description of any previous UXO excavation or removal activity conducted on the property whose soil is proposed to be excavated, moved or graded.

B. A description of the property whose soil is proposed to be excavated, moved or graded. The description shall include a drawing with dimensions to a scale which sets forth the size and details of all proposed excavation activity, including any proposed cut and fill, trenching, well drilling, mineral excavation, post hole drilling, or other activity of any sort whenever the applicant proposes to 1) disturb 10 cubic feet or more of soil or 2) disturb soil in a manner inconsistent with restrictions placed on the property by the Army and as noted on the Grading District Map.

C. A statement that the person submitting the application acknowledges liability for removing all detected unexploded ordnance and explosives in accordance with this Chapter and the Permit.

D. A statement by the person submitting the application that s/he has, within the preceding twelve months, delivered a copy of the Notice to everyone whose work at the Property described in "B" above includes disturbing soil.

E. Any other information which the Director may require as pertinent to the determination of the adequacy of the proposed plan.

F. Payment of the Permit fee, as established by the City Council, at the time of filing the application for the Permit.

15.56.060 Permit Procedure.

The Director shall review the permit application and shall approve the permit unless evidence is available which indicates that the proposed grading or excavation will create an undue risk to the health and safety of the public at large. Prior to acting on any such application, the Director, in his/her sole discretion, may set and conduct a public hearing for the purpose of receiving comments on the proposed grading and excavation. Except as otherwise indicated in section 15.56.080, any permit issued hereunder shall be subject to the following conditions:

A. All excavation and grading shall be performed solely in accordance with the permit approved by the City and in accordance with the Permit as issued by the City.

B. Prior to movement of any soil on any property located within a District, the Permittee or designee shall personally deliver to each person who intends to work on the property described in the permit the Notice and Safety Plan which is attached hereto as Exhibit "A", and explain to each such person the information set forth in that Notice.

C. The Permittee may not move or disturb soil in a manner inconsistent with restrictions placed on the property by the Army and as noted on the Grading District Map unless there is a Department of Defense certified, or equivalent, explosive ordnance disposal technician acceptable to the Director who is on site and visually supervises any such activity. Any excavation or soil disturbance inconsistent with restrictions placed on the property by the Army may be accomplished only after investigation using sweep lanes no wider than five feet throughout the excavation area and after using detection devices and visual identification to locate, identify and remove any unexploded ordnance discovered during such excavation activity.

D. The Permittee shall cease soil disturbance activities and shall notify the Army and DTSC of any suspected unexploded ordnance discovered during any excavation or soil removal immediately upon discovery. The Permittee shall coordinate appropriate response actions with the Army and DTSC.

E. No later than thirty (30) days following the completion of the permitted soil disturbance activity, the Permittee shall prepare and file with the Director, the Army and DTSC an After Action Report that shall state whether and where UXO was detected and the extent and depth of UXO response actions undertaken and completed on the property that is the subject of the permit. The After Action Report shall include site maps to illustrate the information contained in the report. All After Action reports prepared and filed in accordance with this Chapter shall be deemed public records.

F. The permittee agrees as a condition of issuance of a permit to defend at its sole expense, indemnify and hold harmless from any liability the City, and reimburse the City for any expenses incurred resulting from or in connection with the approval of the project including any claim, suit or legal proceeding. The City may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve the Permittee of its obligations under this paragraph.

15.56.070. Term of permit. The permit shall be valid for one year from the date it is issued.

15.56.080 Exceptions to Permit Conditions. Following consultation with and approval by DTSC, the City Council may, upon a finding that the requirements of section 15.56.060.C are no longer necessary, designate by resolution any District as a "Limited Control District." The holder of any permit issued for any Limited Control District shall not be subject to section 15.56.060.C.

15.56.090 Performance Bond.

Upon a finding by the Director that a permit should issue for excavation or grading on the proposed site, a surety bond, lien or other security guarantee conditioned upon

the faithful performance and completion of the permitted excavation activity shall be filed with the City. Such surety shall be executed in favor of the City and shall be maintained in an amount prescribed by the Director sufficient to ensure the completion of the ordnance remediation and excavation of the site as prescribed in the approved permit.

15.56.100 Amendment to Permits.

Request for amendments to an approved excavation permit may be submitted to the Director at any time, detailing proposed changes from the original permit. Deviations from the original permit shall not be undertaken until such amendment has been approved by the City in writing. Amendments to an approved permit shall be approved by the same procedure as prescribed for the approval of the original excavation permit.

15.56.110 Appeals.

Any person aggrieved by any determination of the Director in exercise of the authority granted herein shall have the right to appeal to the City Council. Any appeal setting forth the contested decision and the reasons for contesting same must be filed within ten (10) working days after the posting of the Director's decision at the three places designated by the City Council. The City Council shall render its decision within sixty (60) days following the filing of the notice of appeal. The Council may affirm, reverse or modify the decision of the Director. The Council action shall be final upon issuance of its decision.

15.56.120 Notification to Property Owners and Other Land Users.

A. To the extent that the Army identifies those persons to whom it has conveyed property that is designated Ordnance Remediation Districts, the City will notify those persons and those utilities known to be providing service within the City, of the requirements of this Chapter and provide those persons with the Notice and Safety Plan ("Notice"), which is attached hereto as Exhibit "A". The City shall annually notify the owners of said property as shown on the equalized tax rolls of the requirements of this Chapter and provide those persons with a copy of the Notice. Failure of any owner, occupant or user of such land to receive said notification shall not relieve that person from responsibility for compliance with this Chapter.

B. All owners, occupants or users of land subject to this Chapter, including utilities, shall notify any subsequent owners, assigns, lessees or users of such land of the requirements of this Chapter. Notification shall be made prior to transfer of the property in question.

C. All persons identified in "A" above shall deliver, at least annually, a copy of the Notice to everyone whose work at UXO sites includes disturbing soil and shall explain the contents thereof to those persons.

15.56.130 Revision of Chapter. This Chapter shall not be revised without prior written notice to the DTSC and subject to the terms of that certain agreement between the City and DTSC dated April 21, 1998.

EXPLOSIVES ALERT: NOTICE OF POTENTIAL UNEXPLODED ORDNANCE

Unexploded ordnance ("UXO") is various kinds of weapons or munitions that have been armed, launched or released, but have not exploded. UXO varies in size from $\frac{1}{2}$ " (e.g., bullets) to 10' (e.g., bombs and rockets). Depending on the kind of UXO, motion, pressure or heat can cause the UXO to explode. Various kinds of UXO are shown on the attached paper. [*or, "on the reverse side of this paper".*].

There are certain areas of the former Fort Ord where unexploded ordnance was found buried in the ground. The U.S. Army has attempted to "clear" those areas of UXO. There is a possibility that UXO remains in these areas. The UXO may be intact or in parts or fragments.

UXO CAN HURT OR KILL YOU. YOU MUST BE EXTREMELY CAREFUL WHEN WORKING IN THE SOIL IN THESE AREAS.

UXO SAFETY WARNINGS

- ◆ When you see potential UXO, STOP. Do not move closer.
- ◆ Never transmit radio frequencies (e.g., walkie talkies, C.B. radios or other personal communication devices).
- ◆ Never attempt to remove anything near a UXO.
- ◆ Never attempt to touch, move, or disturb a UXO.
- ◆ Clearly mark the UXO area.
- ◆ Avoid any area where UXO is located.
- ◆ Call the federal police at 408-242-7851 or 7852 to report what you have found.

For more information concerning UXO cleanup at the former Fort Ord, contact the Directorate of Environmental and Natural Resources Management at the Presidio of Monterey (408-242-7924).

EXHIBIT A



75mm Projectile



40mm Projectile



MK2 Hand Grenade



M18 Smoke Grenade



M67 Hand Grenade



37mm Projectile



M127 Signal Flare



Rifle Smoke Grenade



M1 Firing Device



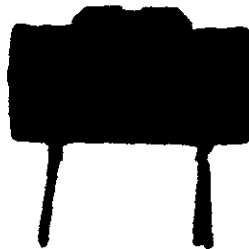
Electric Firing Device



Grenade Fuse



Bounding Anti-Personnel Mine



Claymore Mine



Firing Device



3.5" Rocket



60mm Mortar



3" Anti-Tank Rifle Grenade



25mm Sub Cal for 81mm Mortar



81mm Mortar



2.36" Rocket