

ATTACHMENT 1

ENVIRONMENTAL PROTECTION PROVISIONS

ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notification will be placed in the deed/easement to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities at the Former Fort Ord. A list of notices applicable to each parcel is provided at the end of this attachment.

1. INCLUSION OF PROVISIONS

The person or entity to whom the property is transferred shall neither transfer the property, lease the property, nor grant any interest, privilege, or license whatsoever in connection with the property without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

2. NPL ROPERTY

The United States acknowledges that former Fort Ord has been identified as a National Priority List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended. The grantee acknowledges that the United States has provided it with a copy of the Fort Ord Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region IX, the State of California, and the Department of the Army, effective on February 1990, and will provide the grantee with a copy of any amendments thereto. The person or entity to whom the property is transferred agrees that should any conflict arise between the terms of the FFA as they presently exist or may be amended, and the provisions of this property transfer, the terms of the FFA will take precedence. The person or entity to whom the property is transferred further agrees that notwithstanding any other provisions of the property transfer, the United States assumes no liability to the person or entity to whom the property is transferred, should implementation of the FFA interfere with their use of the property. The person or entity to whom the property is transferred, or any subsequent transferee, shall have no claim on account of any such interference against the United States or any officer, agent, employee or contractor thereof.

3. CERCLA ASSESS CLAUSE

The Government, the EPA, and the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC), and their officers, agents, employees, contractors, and subcontractors will have the right, upon reasonable notice to the grantee, to enter upon the transferred premises in any case in which a response or corrective action is found to be necessary, after the date of transfer of the property, or such access is necessary to carry out a response action or corrective action on adjoining property, including, without limitation, the following purpose:

- (a) To conduct investigations and surveys, including where necessary, drilling, soil and water sampling, test-pitting, and other activities related to the Fort Ord Installation Restoration Program (IRP), Ordnance and Explosives (OE) program, or FFA;
- (b) To inspect field activities of the Army and its contractors and subcontractors with regards to implementing the Fort Ord IRP, OE program, or FFA;
- (c) To conduct any test or survey related to the implementation of the IRP by the EPA or the DTSC relating to the implementation of the FFA or environmental conditions at Fort Ord or to verify any data submitted to the EPA or the DTSC by the Government relating to such conditions;
- (d) To construct, operate, maintain or undertake any other investigation, corrective measure, response, or remedial action as required or necessary under any Fort Ord FFA, Record of Decision (ROD), IRP or OE program requirement, including, but not limited to monitoring wells, pumping wells, and treatment facilities.

4. NO LIABILITY FOR NON-ARMY CONTAMINATION

The Army shall not incur liability for additional response action or corrective action found to be necessary after the date of transfer in any case in which the person or entity to whom the property is transferred, or other non-Army entities, is identified as the party responsible for contamination of the property.

5. RESTRICTED TO COMMERCIAL/INDUSTRIAL USE

The Army has undertaken careful environmental study of the property and concluded, to which the grantee agrees, that with the exception of Parcel F2.7.2 (Remedial Investigation Site 33), the property is suitable for unrestricted use. Parcel F2.7.2 is limited by its environmental condition to nonresidential use (*Record of Decision Basewide Remedial Investigation Sites, Fort Ord, California, January 13, 1997*). In order to protect human health and the environment and further the common environmental objectives and land use plans of the United States, State of California and grantee, the covenants and restrictions shall be included to assure the use of the property is consistent with environmental condition of the property. These following restrictions and covenants benefit the lands retained by the grantor and the public welfare generally and are consistent with State and Federal environmental statutes.

A. Restrictions and Conditions. A Covenant to Restrict Use of Property (CRUP) for Parcel F2.7.2 will be made by and among The United States of America acting by and through the Army (Grantor), the grantee, and the State of California acting by and through the Department of Toxic Substances Control (Department). The grantee covenants for itself, its successors, and assigns not to use Parcel F2.7.2 for residential purposes, the property having been remediated only for nonresidential use. The grantee, for itself, its successors or assigns covenants that it will not undertake nor allow any activity on or use of the property that would violate the restrictions contained in the CRUP. These restrictions and covenants are

binding on the grantee, its successors and assigns, run with the land and are forever hereinafter enforceable. Nothing contained herein shall preclude the grantee from undertaking, in accordance with applicable laws and regulations and without any cost to the grantor, such additional remediation necessary to allow for residential use of the property. Upon completion of such remediation required to allow residential use of the property and upon the grantee's obtaining the approval of the State of California Department of Environmental Quality and, if required, any other regulatory agency, the grantor agrees, without cost to the United States, to release or, if appropriate, modify this restriction by recordation of an amendment hereto.

6. NOTICE OF THE PRESENCE OF CONTAMINATED GROUNDWATER

The groundwater beneath portions of the property is contaminated with volatile organic compounds (VOCs), primarily trichloroethene (TCE). The maximum TCE concentration in the groundwater beneath the property (Parcel E2b.2.1) is 280 micrograms per liter (September 2001) as measured in the groundwater extraction Well EW-12-02-180M. The maximum concentrations of the chemicals of concern (associated with the OU2 and Sites 2/12 groundwater plumes) detected in the groundwater monitoring wells on the property (September 2001) are listed below. The quantity released of these compounds is unknown. The OU2 and Sites 2/12 groundwater aquifer cleanup levels (ACLs), presented in the OU2 and Basewide Remedial Investigation Sites Record of Decision (RODs), are provided for comparison.

Without the expressed written consent of the grantor in each case first obtained, neither the grantee, its successors or assigns, nor any other person or entity acting for or on behalf of the grantee, its successors or assigns, shall interfere with any response action being taken on the property by or on behalf of the grantor, or interrupt, relocate, or otherwise interfere with any remediation system now or in the future located on, over, through, or across any portion of the property.

The deed will reserve a non-exclusive easement to allow continued access for the Army (or its designated contractor) and the regulatory agencies to permit necessary groundwater monitoring at wells located on the property and the installation of new treatment or monitoring wells if required for the pump and treat operations. Furthermore, the deed will prohibit all others from tampering with the groundwater monitoring wells.

Chemicals of Concern in Groundwater
(OU 2, Sites 2/12, and Carbon Tetrachloride Plume)
and Aquifer Cleanup Levels

Chemical Name	Regulatory Synonym	CASRN*	RCRA Waste Number	Concentrations (µg/L)	ACL
Benzene	Benzol	71432	U019	4.7	1.0
Carbon Tetrachloride	Methane, tetrachloro-	56235	U211	0.42	0.5
Chloroform	Methane, trichloro-	67663	U044	5.6	2.0
1,1-Dichloroethane	Ethane, 1,1-dichloro-	75343	U076	48	5.0
1,2-Dichloroethane	Ethane, 1,2-dichloro-	107062	U077	6.7	0.5
1,1-Dichloroethene	Ethene, 1,1-dichloro-	75354	U078	3.3	6.0
Cis-1,2-Dichloroethene	Ethene, 1,2-dichloro(E)	156605	U079	130	6.0
1,2-Dichloropropane	Propane, 1,2-dichloro-	78875	U083	1.7	1.0
Total 1,3- Dichloropropene	Propene, 1,3-dichloro-	542756	--	ND	0.5
Methylene Chloride	Methane, dichloro-	75092	U080	110	5.0
Tetrachloroethene	Ethene, tetrachloro-	127184	U210	23	3.0
Trichloroethene	Ethene, trichloro-	79016	U228	280	5.0
Vinyl chloride	Ethene, chloro-	75014	U043	1.3	0.1

*Chemical Abstract Services Registry Number

A. Restrictions and Conditions – A Covenant to Restrict Use of Property (CRUP) within the “Groundwater Protection Zone” has been established between the United States Army, the State of California (DTSC), and the California Regional Water Quality Control Board, Central Coast Region.

The grantee covenants for itself, its successors, and assigns not to: (a) access or use groundwater underlying the property for any purpose. For the purpose of this restriction, “groundwater” shall have the same meaning as in section 101(12) of CERCLA. The grantee, for itself, its successors or assigns covenants that it will not undertake nor allow any activity on or use of the property that would violate the restrictions contained herein. These restrictions and covenants are binding on the grantee, its successors and assigns; shall run with the land; and are forever enforceable.

B. Enforcement – The restrictions and conditions stated in Section A benefit the public in general and the territory surrounding the property, including lands retained by the United States, and, therefore, are enforceable by the United States government. The grantee covenants for itself, its successors, and assigns that it shall include and otherwise make legally binding, the restrictions in Section B in all subsequent lease, transfer or conveyance documents relating to the property subject hereto.

C. Army Access – The Army and its representatives shall, for all time, have access to the property for the purpose of installing and/or removing groundwater monitoring wells, and to perform continued monitoring of groundwater conditions, allowing chemical and/or physical testing of wells to evaluate water quality and/or aquifer characteristics. The property owner shall allow ingress and egress of all equipment necessary to accomplish the same.

7. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF ORDNANCE AND EXPLOSIVES

Ordnance and explosives (OE) investigations indicate that it is not likely that OE are located within the property. However, there is a potential for OE to be present because OE were used throughout the history of Fort Ord. In the event the grantee, its successors, and assigns, should discover any ordnance on the property, they shall not attempt to remove or destroy it, but shall immediately complete Section A of the Ordnance and Explosives Incident Reporting Form, fax the form to the Presidio of Monterey Police Department at (831) 242-7740 and notify the Presidio of Monterey Police Department via telephone at (831) 242-7851 and competent grantor or grantor-designated explosive ordnance personnel will promptly be dispatched to dispose of such ordnance at no expense to the grantee. The grantee hereby acknowledges receipt of the “Ordnance and Explosives Safety Alert” pamphlet and the Ordnance and Explosives Incident Reporting Form.

In addition, the Army offers OE familiarization training to anyone conducting ground disturbance activities (digging holes, excavating trenches, repairing underground utilities, etc.) at the former Ford Ord. The OE Safety Specialist conducts a thirty-minute training session. This training session includes a lecture on what OE might be found, the procedure to follow if something is found and “Safety Alert” brochures are also distributed. To schedule this training, please contact the Directorate of Environmental and Natural Resources at (831) 242-7919.

The grantor reserves the right to conduct any remedial action and/or investigation that the Army is responsible for, as required or necessary as a result of the ongoing OE Remedial Investigation/Feasibility Study.

8. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

A. The grantee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing material (ACM) have been found on the property, as described in the referenced asbestos survey and summarized in the Environmental Baseline

Surveys (EBS) for the California State University Monterey Bay Parcel, the Main Garrison Parcels, Surplus II Parcels, and the UC Santa Cruz Parcel.

B. Several buildings have been determined to contain friable and non-friable asbestos that may pose a threat to human health. Detailed information is contained in the Asbestos Survey Report, Fort Ord Installation (April 26, 1993). The remaining buildings contain non-friable ACM rated in good to fair condition. The grantor has agreed to transfer said buildings and structures to the grantee, prior to remediation of asbestos hazards, in reliance upon the grantee's express representation and promise that the grantee will, prior to use or occupancy of said buildings, demolish said buildings or the portions thereof containing friable asbestos, disposing of ACM in accordance with applicable laws and regulations. With respect to the friable asbestos in said buildings and structures, the grantee specifically agrees to undertake any and all abatement or remediation that may be required under CERCLA 120(h)(3) or any other applicable law or regulation. The grantee acknowledges that the consideration for the conveyance of the property was negotiated based upon the grantee's agreement to the provisions contained in this Subsection.

C. 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 grantor assumes no liability for any 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 or ACM 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 as a result of the grantee's activities. The grantee assumes no liability for damages for personal injury, illness, disability, death or property damage arising from (i) any exposure or failure to comply with any legal requirements applicable to asbestos on any portion of the property arising prior to the grantor's conveyance of such portion of the property to the grantee pursuant to this deed, or (ii) any disposal, prior to the grantor's conveyance of the property, of any asbestos or ACM.

D. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both 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.

E. The grantee acknowledges that it has inspected the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto prior to accepting the responsibilities imposed upon the grantee under this section. The failure of the grantee to inspect, or to be fully informed as to the asbestos condition of all or any portion of the

property offered, will not constitute grounds for any claim or demand against the United States, or any adjustment under this deed.

F. 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 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 thereof. The grantee's obligation hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

9. LEAD-BASED PAINT WARNING AND COVENANT

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. 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, and child occupied buildings visited regularly by the same child, 6 years of age or under, on at least two different days within any week, including day -cared centers, preschools and kindergarten classrooms, 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.

B. Buildings constructed prior to 1978 are assumed to contain lead-based paint. Buildings constructed after 1977 are assumed to be free of lead-based paint. No sampling for lead within the buildings on the property has occurred. However, limited sampling for lead-based paint was conducted in former barracks buildings located on property immediately north of Parcel L32.2.2 (Industrial Hygiene Survey No. 55-71-R25A-94). One or more of the former barracks interior and/or exterior surface components (e.g., walls, doors, window sills, door frames, etc.) tested positive for LBP. Those barracks sampled were of the same construction type and were constructed in the same year (1954) as former barracks located on Parcel L32.2.2 (Buildings 4552 and 4562) and Parcel L32.4.1.1 (Buildings 4430, 4432, 4434, 4436, 4440, 4442, 4444, and 4446). Limited sampling for lead in soil surrounding some buildings at former Fort Ord has been completed. Soil samples were collected from soil surrounding 10 buildings in Parcel L23.3.2.1 (Buildings 6, 10, 20, 14, 16, 36, 71, 75, 82, and 108). The average concentration of

lead detected in soil was 263 milligrams per kilogram (mg/kg) with a maximum concentration of 2,211 mg/kg detected at Building 6 (*Lead In Soil Survey For Ten Buildings At The East Garrison, Fort Ord, California, April 8, 1998*). As agreed upon in an agency meeting on August 29, 1997, lead analytical results from soil samples collected adjacent to buildings on the Peninsula Outreach and the Marina Sports Center parcels can be used to represent lead concentrations in soil around the buildings on the Main Garrison parcels (E2b.1.1.1, E2b.1.1.2, E2b.1.2, E2b.1.3, E2b.1.4, E2b.2.1, E2b.2.3, E2b.2.4, E2b.3.1.1, E2c.3.1, E2c.3.2, E2c.3.3, E2c.4.2.1, E2d.1, E2d.2, L12.2.2, L12.2.3, L12.3, L23.1.2, L23.1.3, L23.1.4, and L35.1) which were constructed of similar materials and during similar time periods. Average concentrations of lead detected in soil around the buildings on the Peninsula Outreach and Marina Sports Center parcels were 99.4 and 228 mg/kg, respectively. The maximum background concentration for lead in soil at Fort Ord is 51.8 mg/kg (*Draft Final Basewide Background Soil Investigation, Fort Ord, California, March 15, 1993*). The Federal Preliminary Remediation Goal (PRG) for residential non-play area bare soil is 1,200 mg/kg. All purchasers must receive the Federally approved pamphlet on lead poisoning prevention. The grantee hereby acknowledges receipt of all of the information described in this subparagraph.

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

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 Title X).

The grantee shall, after consideration of the guidelines and regulations established pursuant to Title X: (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 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 attorney's 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.”

10. POLYCHLORINATED BIPHENYLS (PCBs) NOTICE AND COVENANT

A. PCBs have been widely used as coolants and lubricants in transformers, capacitors and other electrical equipment like fluorescent light ballasts. EPA considers PCBs to be probable cancer causing chemicals, in humans. PCB and PCB-contaminated equipment that will be disposed of must be stored in a hazardous storage facility. The grantee is hereby informed that fluorescent light ballasts containing PCBs are present on the property. The PCB containing equipment does not currently pose a threat to human health or the environment. All PCB containing equipment is presently in full compliance with applicable laws and regulations.

B. Upon request, the Army agrees to furnish to the grantee any and all records in its possession related to such PCB equipment necessary for the continued compliance by the grantee with applicable laws and regulations related to the use and storage of PCBs or PCB containing equipment.

C. The grantee covenants and agrees that its continued possession, use, and management of any PCB containing equipment will be in compliance with all applicable laws relating to PCBs and PCB containing equipment and that the Army shall assume no liability for the future remediation of PCB contamination 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 future use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs or PCB containing equipment, whether the grantee, its successors or assigns have properly

warned or failed to properly warn the individual(s) insured. The grantee agrees to be responsible for any future remediation of PCBs or PCB containing equipment found to be necessary on the property.

11. NOTICE OF HISTORIC PROPERTY AND PRESERVATION COVENANT

A. In consideration of the conveyance of the former Fort Ord, located in Monterey County, California, the grantee hereby covenants on behalf of itself, its heirs, successors, and assigns at all times to the State Historic Preservation Officer to preserve and maintain 34 buildings (Table 1), in the East Garrison Historic District, (Parcel L23.3.2.1), in accordance with the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, National Park Service 1992), in order to preserve and enhance those qualities that make the 34 buildings in the East Garrison Historic District eligible for inclusion in/or resulted in the inclusion of the property in the National Register of Historic Places. In addition, any design review guidelines established by a Preservation Commission with appropriate authority will be followed. If the grantee desires to deviate from these maintenance standards, the grantee will notify and consult with the State Historic Preservation Officer in accordance with paragraphs B, C, and D of this covenant.

B. The grantee will notify the State Historic Preservation Officer in writing prior to undertaking any construction, alteration, remodeling, demolition, or other modification to structures or setting. Such notice shall describe in reasonable detail the proposed undertaking and its expected effect on the integrity or appearance of the 34 buildings within the East Garrison Historic District.

C. Within 30 calendar days of the State Historic Preservation Officer's receipt of notification provided by the grantee pursuant to paragraph B of this covenant, the State Historic Preservation Officer will respond to the grantee in writing.

If the State Historic Preservation Officer fails to respond to the grantee's written notice, as described in paragraph B, within 30 calendar days of the State Historic Preservation Officer's receipt of the same, then the grantee may proceed with the proposed undertaking without further consultation with the State Historic Preservation Officer.

D. If the response provided to the Grantee by the State Historic Preservation Officer pursuant to paragraph C of this covenant requires consultation with the State Historic Preservation Officer, then both parties will so consult in good faith to arrive at mutually-agreeable and appropriate measures that the grantee will implement to mitigate any adverse effects associated with the proposed undertaking. If the parties are unable to arrive at such mutually-agreeable mitigation measures, then the grantee shall, at a minimum, undertake recordation for the concerned property--in accordance with the Secretary of Interior's standards for recordation and any applicable state standards for recordation, or in accordance with such other standards to which the parties may mutually agree--prior to proceeding with the proposed undertaking. Pursuant to this covenant, any mitigation measures to which the

grantee and the State Historic Preservation Officer mutually agree, or any recordation that may be required, shall be carried out solely at the expense of the grantee.

E. State Historic Preservation Officer shall be permitted upon reasonable notice at a reasonable time to inspect the 34 buildings within the East Garrison Historic District in order to ascertain its condition and to fulfill its responsibilities hereunder.

F. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the State Historic Preservation Officer may, following reasonable notice to the grantee, institute suit to enjoin said violation or to require the restoration of the 34 buildings within the East Garrison Historic District. The successful party shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorneys fees.

G. In the event that building(s) within the East Garrison Historic District (i) are substantially destroyed by fire or other casualty, or (ii) are not totally destroyed by fire or other casualty, but damage thereto is so serious that restoration would be financially impractical in the reasonable judgment of the owner, this covenant shall terminate for that building(s) on the date of such destruction or casualty. Upon such termination, the owner shall deliver a duly executed and acknowledged notice of such termination to the State Historic Preservation Officer and record a duplicate original of said notice in the appropriate recordation mechanism. Such notice shall be conclusive evidence in favor of every person dealing with the historic buildings as to the facts set forth therein.

H. The grantee agrees that the State Historic Preservation Officer may at his/her discretion, without prior notice to the grantee, convey and assign all or part of its rights and responsibilities contained herein to a third party.

I. This covenant is binding on the grantee, its heirs, successors, and assigns in perpetuity, unless explicitly waived by the State Historic Preservation Officer. Restrictions, stipulations, and covenants contained herein shall be inserted by the grantee verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the transferred premises or any part thereof.

J. The failure of the State Historic Preservation Officer to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

K. The covenant shall be a binding servitude upon the transferred premises and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that the grantee agrees to be bound by the foregoing conditions and restrictions and to perform the obligations herein set forth.

12. NOTICE OF THE PRESENCE OF THE FORT ORD LANDFILL

Portions of the property are located within 1000 feet of the Fort Ord OU 2 Landfill. In order to evaluate methane levels in soil adjacent to the OU 2 landfill, monitoring probes were installed within the landfill and around the landfill perimeter. The probes were placed at a spacing of 1000 feet or less (Plate 14). Methane concentrations generally exceed the California Integrated Waste Management Board (CIWMB) standard of 5% by volume in probes located within the landfill fence. However, the methane concentrations do not exceed the 5% limit at the property boundary, with the exception of areas on the eastern side bordering property that is not included in this FOST. The Army has implemented a gas collection and treatment system along the eastern side of the landfill adjacent to the existing housing. In order to decrease the potential for landfill gas migration to surrounding property a buffer was added extending 100 feet beyond the perimeter fencing (Plate 14). Future landowners should refer to Title 27, Section 21190 of the California Code, which identifies protective measures for structures built within 1000 feet of a landfill.

ENVIRONMENTAL PROTECTION PROVISIONS

Applicable Notices

Parcel Number	Notice of Contaminated Groundwater	Notice of Hazardous Substance Storage, Release or Disposal	Notice of the Potential for Ordnance and Explosives	Notice of the Presence of Asbestos	Notice of the Presence of Lead-Based Paint	Notice of Polychlorinated Biphenyls (PCBs)	Notice of Historic Property and Preservation	Notice of Proximity to Landfill
E11b.1	Yes	NA	Yes	NA	NA	NA	NA	NA
E11b.2	Yes	NA	Yes	NA	NA	NA	NA	NA
E11b.3	Yes	Yes	Yes	NA	Yes	NA	NA	NA
E11b.4	Yes	Yes	Yes	NA	Yes	NA	NA	NA
E15.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2b.1.1.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2b.1.1.2	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2b.1.2	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2b.1.3	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2b.1.4	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2b.1.5	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2b.2.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2b.2.2	Yes	Yes	Yes	NA	NA	NA	NA	NA
E2b.2.3	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2b.2.4	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2b.2.5	Yes	Yes	Yes	Yes	Yes	NA	NA	NA
E2b.3.1.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2b.3.2	Yes	Yes	Yes	NA	NA	NA	NA	NA
E2c.1	Yes	Yes	Yes	Yes	NA	NA	NA	NA
E2c.2	Yes	Yes	Yes	NA	NA	NA	NA	NA
E2c.3.1	Yes	Yes	Yes	Yes	NA	Yes	NA	NA
E2c.3.2	Yes	Yes	Yes	Yes	NA	Yes	NA	NA
E2c.3.3	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2c.4.1.1	Yes	Yes	Yes	NA	NA	NA	NA	Yes
E2c.4.2.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2d.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2d.2	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2e.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E2e.2	Yes	Yes	Yes	NA	NA	NA	NA	NA
E4.5	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E8a.1.2	Yes	Yes	Yes	NA	NA	NA	NA	Yes
E8a.1.3	Yes	Yes	Yes	NA	NA	NA	NA	Yes

ENVIRONMENTAL PROTECTION PROVISIONS

Applicable Notices

Parcel Number	Notice of Contaminated Groundwater	Notice of Hazardous Substance Storage, Release or Disposal	Notice of the Potential for Ordnance and Explosives	Notice of the Presence of Asbestos	Notice of the Presence of Lead-Based Paint	Notice of Polychlorinated Biphenyls (PCBs)	Notice of Historic Property and Preservation	Notice of Proximity to Landfill
E8a.1.4	Yes	Yes	Yes	NA	NA	NA	NA	Yes
E8a.1.5	Yes	Yes	Yes	NA	NA	NA	NA	Yes
F2.7.2	NA	Yes	Yes	Yes	Yes	Yes	NA	NA
F7.2	Yes	NA	Yes	Yes	NA	NA	NA	NA
L1.1	Yes	NA	Yes	Yes	Yes	Yes	NA	NA
L2.2.1	Yes	Yes	Yes	NA	NA	NA	NA	NA
L5.8.1	Yes	Yes	Yes	NA	Yes	Yes	NA	NA
L5.8.2	Yes	Yes	Yes	NA	NA	NA	NA	NA
L7.8	Yes	NA	Yes	NA	Yes	Yes	NA	NA
L7.9	Yes	NA	Yes	NA	Yes	Yes	NA	NA
L12.2.2	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L12.2.3	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L12.3	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L15.1	Yes	NA	Yes	Yes	Yes	Yes	NA	NA
L19.2	Yes	NA	Yes	Yes	Yes	Yes	NA	NA
L19.3	Yes	NA	Yes	NA	NA	NA	NA	NA
L19.4	Yes	NA	Yes	Yes	Yes	Yes	NA	NA
L20.9	NA	NA	Yes	NA	NA	NA	NA	NA
L20.10.1.1	Yes	Yes	Yes	NA	NA	NA	NA	NA
L20.10.1.2	Yes	NA	Yes	NA	NA	NA	NA	NA
L20.10.2	Yes	NA	Yes	NA	NA	NA	NA	NA
L20.10.3	NA	NA	Yes	NA	NA	NA	NA	NA
L20.14.1.2	Yes	NA	Yes	NA	NA	NA	NA	NA
L20.16.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L20.16.2	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L20.16.3	Yes	Yes	Yes	NA	NA	NA	NA	NA
L20.17.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L20.19.2	Yes	NA	Yes	NA	NA	NA	NA	NA

ENVIRONMENTAL PROTECTION PROVISIONS

Applicable Notices

Parcel Number	Notice of Contaminated Groundwater	Notice of Hazardous Substance Storage, Release or Disposal	Notice of the Potential for Ordnance and Explosives	Notice of the Presence of Asbestos	Notice of the Presence of Lead-Based Paint	Notice of Polychlorinated Biphenyls (PCBs)	Notice of Historic Property and Preservation	Notice of Proximity to Landfill
L20.20	Yes	NA	Yes	NA	NA	NA	NA	NA
L20.21.1	Yes	NA	Yes	NA	NA	NA	NA	NA
L20.21.2	Yes	NA	Yes	NA	NA	NA	NA	NA
L20.22	Yes	NA	Yes	NA	NA	NA	NA	NA
L23.1.1	Yes	Yes	Yes	NA	NA	NA	NA	NA
L23.1.2	Yes	Yes	Yes	NA	NA	NA	NA	NA
L23.1.3	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L23.1.4	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L23.1.5	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L23.3.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L23.3.2.1	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
L23.4	Yes	Yes	Yes	NA	NA	Yes	NA	NA
L23.6	Yes	NA	Yes	Yes	Yes	Yes	NA	NA
L27	NA	Yes	Yes	NA	NA	NA	NA	NA
L32.2.1	Yes	NA	Yes	Yes	Yes	Yes	NA	NA
L32.2.2	Yes	NA	Yes	Yes	Yes	Yes	NA	NA
L32.3	Yes	NA	Yes	NA	NA	NA	NA	NA
L32.4.1.1	Yes	NA	Yes	Yes	Yes	Yes	NA	NA
L32.4.2	Yes	NA	Yes	Yes	NA	NA	NA	NA
L33.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L33.2	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L35.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L35.2	Yes	Yes	Yes	NA	NA	NA	NA	NA
L35.3	Yes	NA	Yes	NA	NA	NA	NA	NA
L35.6	Yes	Yes	Yes	NA	Yes	NA	NA	NA
L35.7	Yes	Yes	Yes	NA	Yes	NA	NA	NA
L35.8	Yes	Yes	Yes	NA	Yes	NA	NA	NA
L36	Yes	NA	Yes	NA	Yes	Yes	NA	NA
S1.3.3	Yes	Yes	Yes	NA	NA	NA	NA	Yes
S1.5.1.2	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
S2.1.4.2	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
S4.1.2.1	Yes	NA	Yes	NA	NA	NA	NA	NA
S4.1.2.2	Yes	NA	Yes	NA	NA	NA	NA	NA

ENVIRONMENTAL PROTECTION PROVISIONS

Applicable Notices

Parcel Number	Notice of Contaminated Groundwater	Notice of Hazardous Substance Storage, Release or Disposal	Notice of the Potential for Ordnance and Explosives	Notice of the Presence of Asbestos	Notice of the Presence of Lead-Based Paint	Notice of Polychlorinated Biphenyls (PCBs)	Notice of Historic Property and Preservation	Notice of Proximity to Landfill
S4.1.3	Yes	NA	Yes	NA	NA	NA	NA	NA
S4.1.4	Yes	NA	Yes	NA	NA	NA	NA	NA
S4.1.5	Yes	NA	Yes	NA	NA	NA	NA	NA

ATTACHMENT 2

DOCUMENTS REVIEW LIST

Documents Review List

The following documents provide information on the environmental conditions of the property.

Interim Final Report, Hazardous Waste Consultation NO. 37-26-0176-89, Evaluation of Solid Waste Management Units, Fort Ord, California (September 1988)

Spill Prevention Control and Countermeasure Plan, Fort Ord, California. (December 1988)

Draft Final Basewide Background Soil Investigation, Fort Ord, California (March 15, 1993)

Asbestos Survey Report, Fort Ord Installation (April 26, 1993)

Final Environmental Impact Statement Fort Ord Disposal and Reuse (June 1993)

Draft Verification of Solid Waste Management Units, Fort Ord, California (August 16, 1993)

Industrial Hygiene Survey No. 55-71-R25A-94 Lead-Based Paint Inspection in Military Housing, Fort Ord, California (November 1, 1993 – March 11, 1994)

Interim Action Record of Decision, Contaminated Surface Soil Remediation, Fort Ord, California (February 23, 1994)

Industrial Radiation Survey, Facility Close Out and Termination Survey, Fort Ord, California (January 10, 1994 – April 15, 1994)

Final Community Environmental Response Facilitation Act (CERFA) Report (April 1994)

U.S. Environmental Protection Agency (USEPA) Region IX's concurrence to the CERFA Report (April 19, 1994)

Final Record of Decision Operable Unit 2, Fort Ord Landfills, Fort Ord, California (June 22, 1994)

Volume I, OEW Sampling and OEW Removal Action, Fort Ord Final Report, Fort Ord, California (December 1, 1994)

Draft Final Site Characterization Site 15 – DEH Yard, Fort Ord, California (February 22, 1995)

Draft Final Site Characterization Report Site 28 – Barracks and Main Garrison Area, Fort Ord, California (July 3, 1995)

Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse (June 1996)

Basewide Remedial Investigation/Feasibility Study (RI/FS), Fort Ord, California,
(October 18, 1995)

Basewide Remedial Investigation/Feasibility Study, Volume II – Remedial Investigation Sites 16
and 17. Fort Ord, California (October 19, 1995)

Final Report for Ordnance and Explosives Removal Action, OE Cache, Fort Ord, California
(November 1, 1995)

Confirmation Report, Site 14 – 707th Maintenance Facility, Fort Ord, California
(February 12, 1996)

Confirmation Report Site 30 – Driver Training Area, Fort Ord, California (February 20, 1996)

Interim Action Confirmation Report, Site 22 – 4400/4500 Motor Pool, West Block, Fort Ord,
California (May 22, 1996)

Interim Action Confirmation Report, Site 20 – South Parade Ground 3800 519th Motor Pool,
Fort Ord, California (July 1, 1996)

Draft Field Investigation and Data Review Solid Waste Management Units Fort Ord, California
(August 8, 1996)

Confirmation Report, Site 15 – Directorate of Engineering and Housing Yard, Fort Ord,
California (August 13, 1996)

Interim Action Confirmation Report, Site 24 – Old DEH Yard, Fort Ord, California
(January 23, 1997)

Record of Decision Basewide Remedial Investigation Sites, Fort Ord, California
(January 13, 1997)

Draft Final Site Characterization Site 39A – East Garrison Ranges, Fort Ord, California
(May 16, 1997)

Final Site Characterization Site 33 – Golf Course Fort Ord, California (December 12, 1997)

Interim Action Confirmation Report, Site 32 – East Garrison Sewage Treatment Plant, Fort Ord,
California (March 5, 1998)

Final Interim Action Confirmation Report, Site 34 – Fritzsche Army Airfield Fueling Facility,
Former Fort Ord, California (September 1998)

Interim Action Confirmation Report Site 39A – East Garrison Ranges, Former Fort Ord, California (October 16, 1998)

Draft Closure Plan, DRMO PCB Storage Building T-111, Former Fort Ord, California (February 10, 1999)

Remedial Action Confirmation Report And Post-Remediation Health Risk Assessment, Sites 16 And 17 Remedial Action Basewide Remediation Sites, Former Fort Ord, California (April 1999)

Remedial Action Confirmation Report And Post-Remediation Health Risk Assessment, Site 12 Basewide Remedial Investigation Sites, Fort Ord, California (June 1999)

Archive Search Reports (December 1993, November 1994, and December 1997)

Underground And Aboveground Storage Tank Management Plan Update, Former Fort Ord and Presidio of Monterey, Monterey County, California (March 13, 1998)

Lead In Soil Survey For Ten Buildings At The East Garrison, Fort Ord, California (April 8, 1998)

Action Memorandum 1 – Twelve Sites, Phase 1 Engineering Evaluation/Cost Analysis Ordnance and Explosives Sites, Former Fort Ord, Monterey County, California (April 1998)

OE Sampling After Action Report Site OE-1, Inland Range Contract, Former Fort Ord, California (August 26, 1999)

Ordnance and Explosives (OE) RI/FS Literature Review Report, Former Fort Ord, California (January 2000)

Track 0 Technical Memorandum, Ordnance and Explosives Remedial Investigation/ Feasibility Study, Former Fort Ord, California (January 21, 2000)

Superfund Proposed Plan: No Action Is Proposed For Selected Areas At Fort Ord, California (February 1, 2000)

Final Construction Summary Report, Interim Action and Sludge Removal Sites, Former Fort Ord, California (June 2000)

Report of Quarterly Monitoring, September through December 2000, Former Fort Ord, California (December 2000)

RCRA Closure Certification Report, DRMO Hazardous Waste Container Storage Unit, Former Fort Ord, California (December 6, 2000)

Draft Report of Quarterly Monitoring April through June 2001, Former Fort Ord, California (September 6, 2001)

Sites 2 and 12 Groundwater Remedy Operating Properly and Successfully Evaluation Report, Former Fort Ord, California (November 8, 2001)

Draft Final Data Summary Report, Investigation of Magnetic Anomalies, East Garrison Area, Former Fort Ord, California (March 26, 2002)

Final Record of Decision, No Action Regarding Ordnance-Related Investigation, Former Fort Ord, California (June 19, 2002)

Draft Final Field Investigation and Data Review Solid Waste Management Units, Fort Ord, California (July 29, 2002)

Completion Report, Underground Storage Tank Removal Building 2425, Former Fort Ord, California (August 2002)

Completion Report, Underground Storage Tank Removal Building 2700, Former Fort Ord, California (August 2002)

Draft Final Landfill Gas Perimeter Probe Monitoring Report, 2002, Operable Unit 2 Landfill, Former Fort Ord California, Revision 0, (October 2002)

ATTACHMENT 3

UNRESOLVED COMMENTS

1. DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

RESPONSES TO COMMENTS
THE FINDING OF SUITABILITY TO TRANSFER (FOST), TRACK 0 PARCELS
FORMER FORT ORD CALIFORNIA

**I. DEPARTMENT OF TOXIC SUBSTANCES CONTROL COMMENTS DATED
MAY 9, 2003**

Comment 1: We understand that the Army intends to finalize the Track 0 FOST (FOST) by May 16, 2003. In our April 4, 2003, letter, we stated that we do not concur with the transfer of parcel L23.3.1. This letter serves to restate this non-concurrence.

The FOST states that this parcel is suitable for unrestricted use. We understand that the intent of the property recipient is to develop this parcel for residential use. This parcel contains areas where clay pigeon shards remain on the ground surface at a depth of several inches. Clay pigeons contain polynuclear aromatic hydrocarbons, and therefore are considered hazardous substances. Transfer of this area for unrestricted or residential uses is not acceptable.

The Department of toxic Substances Control (DTSC) requests that the Army not transfer this parcel until the issues regarding the clay pigeon shards are resolved. If the Army still intends to transfer the parcel, this letter must be attached to the FOST as an unresolved comment.

As always, DTSC is willing to work with the Army and the recipient of this parcel to resolve these issues and assure the safe use of this parcel.

RESPONSE: The Army intends to resolve DTSC's issue with clay pigeon shards prior to transferring the referenced areas of parcel L23.3.1. At this time, this comment is considered an unresolved comment.

**II. DEPARTMENT OF TOXIC SUBSTANCES CONTROL COMMENTS DATED
APRIL 4, 2003**

This letter is to follow up on our February 11, 2003 letter commenting on the Track 0 Finding of Suitability to Transfer (FOST). We understand that the latest version of the FOST, dated March 26, 2003, has been forwarded to your headquarters for processing. The Army has stated that, except for the areas covered by the two landuse covenants, there will be no restrictions on the property. Further, the Army is proposing that the remaining property is suitable for unrestricted use, including any sensitive uses such as residential.

DTSC has remaining comments regarding the transfer of the parcels described in this FOST. Please either resolve the comments and gain DTSC's approval of the resolution, or attach them to the FOST as unresolved comments. Regardless of whether these comments are incorporated into the FOST or attached as unresolved comments, DTSC's position is that all of the comments listed below must be resolved prior to property transfer. Our remaining comments are as follows:

Comment 1: The landuse covenants for both the groundwater and Site 33 need to be finalized. DTSC is currently working with the Army on the last changes to these documents. The covenants must be agreed to by DTSC and the Army prior to transfer of the property.

Response 1: The Army is currently working with DTSC to complete the covenants. Once completed, the signed covenants will be recorded before the deeds for the parcels are recorded.

Comment 2: DTSC and the Army are continuing to work out the issue of termination of corrective action and change of the boundary of the RCRA facility. Corrective action must be terminated and the boundary changed prior to transfer of the property. Please refer to the enclosed letter on this subject.

Response 2: Revised boundary maps have been provided to DTSC.

Comment 3: The floor of Building 91 has some features that appear to be filled-in floor drains. The possibility that these features were floor drains, along with the reported use of the building as a storage area for hazardous waste spill remediation supplies, raises the concern that a release of contamination may have occurred. The Army was not able to provide additional information about this building or the floor features. Absent further investigation or confirmation, this situation, which is a remaining uncertainty associated with the property, this information should be included in the Environmental Protection Provisions of the FOST, which will be made part of the deed. The entry in the Environmental Protection Provisions should recommend that if the building is demolished, the owner carefully inspect the soil underlying the building for tanks, sumps or contamination.

Response 3: The Army understands the concerns of DTSC regarding some unusual features in the floor of Building 91. Representatives of DTSC and the Army performed a physical inspection of Building 91 during a site visit on March 26, 2003. This inspection did not reveal conclusive evidence that the features described in Comment 3 were floor drains, though the position of these features and the lack of

slope in the floor suggest they were not floor drains. Additionally, there are no external features on or near Building 91 to indicate the presence of a drainage system.

Between 1990 and 1994, Building 91 was used by the Hazardous Waste Division of the Army's Directorate of Environmental and Natural Resources (DENR) for the storage of emergency response supplies, including over-pack drums and absorbent materials. No hazardous materials or waste was stored in Building 91 while in use by the Hazardous Waste Division.

If Building 91 is demolished by a future property owner and evidence of tanks, sumps or contamination is found, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) already contains provisions that would require the Army return and remediate the site. Based on the historical and physical evidence, and the Army's obligations under CERCLA, it is not necessary for the Army to include additional language regarding Building 91 in the Environmental Protection Provisions (EPP). It is the Army's understanding from further discussion with DTSC that this approach is satisfactory.

Comment 4: Title 27, California Code of Regulations, Section 21190, recommends that protective measures should be taken for structures within 1000 feet of a landfill. DTSC's position is that the future property owner should adhere to these recommendations. Please insert a discussion in the Environmental Protection Provisions of the FOST regarding potential impacts to property located within 1000 feet of the landfill, and a recommendation that Title 27, Section 21190 be followed. DTSC intends to work with local agencies on this issue.

Response 4: The Army agrees with DTSC that it is advisable for the future property owner to adhere to the requirements of Title 27 §21190. Accordingly, the Army will include language regarding the status of landfill gas mitigation in Section 3.11 and the EPP of the Track 0 FOST in addition to already existing language describing the status of the landfill and recommending future property owners refer to Title 27 §21190.

Comment 5: There are buildings on many of these parcels that contain lead based paint. The soil surrounding most of these buildings has not been sampled. Where there was sampling, there were levels detected as high as 2200 ppm.

DTSC's position is that property where lead based paint may have been released into the soil must be sampled, and the sample results evaluated using DTSC's Lead Risk Assessment Spreadsheet (LeadSpread 7). LeadSpread 7 uses site-specific information, but results typically show that lead concentrations in soil of approximately 150 ppm are suitable for

residential use. If the results of this evaluation show that the property is not suitable for unrestricted use, the soil must be remediated, or its use restricted appropriately.

DTSC intends to write a letter to FORA, for passing along to the subsequent owner, stating that soil sampling and remediation, if appropriate, must be done prior to use of this property for residential or other sensitive uses. We will state that we concur with U.S. Environmental Protection Agency's comment that the Army "shall comply with the standards established pursuant to Title X or equivalent State law." We will further state that we intend to work with the property recipient to deal with the residual lead based paint issues.

Response 5: It is the Army's understanding from this comment that DTSC will work with FORA and the property recipients on this issue.

Comment 6: With current information provided by the Army, Site 39a does not appear suitable for transfer for unrestricted use. Therefore, we do not concur with the transfer of the parcel containing Site 39a, parcel L23.3.1. We have concerns about the lead and about constituents from clay pigeons in the soil at levels not suitable for unrestricted or residential use.

- a. We request that the concentration of lead detected in the confirmation samples be evaluated using DTSC's Lead Risk Assessment Spreadsheet (LeadSpread 7) due to the proposed residential reuse of the area.**
- b. In response to DTSC's observation of clay pigeons remaining at the skeet range, the Army conducted a removal action of the clay pigeon debris for Site 39A. Three areas were identified where the debris was over six inches thick. These areas were scraped down to native soil and out horizontally to where the debris depth was two inches. No confirmation sampling was conducted to confirm clean-up was conducted to meet residential standards. We request that confirmation samples be taken and post remediation risk assessment for residential reuse be prepared.**

Once these tasks regarding Site 39a have been performed, the Army should present the resulting information to DTSC. With this information, the Army should present either 1) rationale as to how the residual contamination on the property meets residential/unrestricted use requirements or 2) what remedial measures will be taken to achieve residential/unrestricted use requirements.

Response 6: The Army submitted to DTSC on April 22, 2003 a table summarizing the results of confirmation sampling for lead in the area of parcel L23.3.1. Analysis of the results for the 61 confirmation samples showed that:

- No samples exceeded the Preliminary Remediation Goal (PRG) of 240 ppb (the maximum value was 213 ppb);
- Only eight samples exceeded 150 ppb;
- Four samples were non-detect (with a minimum reported value of 0.045 ppb);
- The mean concentration of lead was 61.6 ppb;
- The median concentration of lead was 35.4 ppb.

It is the Army's understanding that DTSC finds this analysis to be acceptable and no longer considers it necessary to use LeadSpread 7 to evaluate the results of the confirmation samples. Additionally, the Army understands from further discussion with DTSC that DTSC will work with FORA and the property recipients on this issue as needed.

The Army removed additional clay pigeon debris in October 2002 at the request of DTSC. The Army understands that DTSC was concerned about constituents of clay pigeons in the soil at Site 39A; however, no confirmation sampling or post remediation risk assessment was done after this removal because these tasks were already completed as defined by the Interim Action (IA) Record of Decision (ROD), Contaminated Soil Remediation dated March 1994 (which was signed by DTSC) and reported in the Interim Action Confirmation Report dated October 16, 1998. Additional removal action was not necessary, but performed to address the concerns of DTSC.

On April 29, 2003 representatives of DTSC and the Army performed a site visit of the skeet and trap range at Site 39A. As there is clay pigeon debris remaining at the site, the DTSC toxicologist stated he would recommend that the DTSC hazardous materials laboratory perform an analysis of the leachability of clay pigeon debris. The Army understands that DTSC is now concerned about clay pigeon debris at Site 39A; however, existing studies of the toxicity of clay pigeons have found that the materials in them are non-toxic to aquatic, marine¹ and terrestrial organisms.² The Interstate Technology and Regulatory Council (ITRC) summarized the results of these studies: "Existing studies show that PAHs [polycyclic aromatic hydrocarbons] are bound within the limestone matrix of the [clay] target and are, therefore, not bioavailable."³ Ralph G. Stahl, Jr., one of the

¹ Kevin N. Baer, D.G. Hutton, R.L. Boer, T.J. Ward and R.G. Stahl, Jr. "Toxicity evaluation of trap and skeet shooting targets to aquatic test species." *Ecotoxicology* 4 (1995): 385-392.

² Environmental Technology Verification Program. "Technology Fact Sheet for Lawry Shooting Sports Inc." (March 2000).

³ Interstate Technology and Regulatory Council, Small Arms Firing Range Team. *Characterization and Remediation of Soils at Closed Small Arms Firing Ranges*. January 2003. p. 1, Table 1-1.

authors of the 1995 study cited above, stated the following pertaining to toxicity of clay targets:⁴

- Clay target debris is basically inert in soil. In laboratory analysis of soil, PAHs may be detected if the clay targets have been ground up, but they are still not bioavailable.
- Into to the 1940s, clay targets were made using coal tar pitch. There was some anecdotal evidence from farmers that pigs experienced a toxic response when they ingested debris from clay targets made with coal tar pitch (though no other domestic or wild animals were reported to have had this problem). By 1950, manufacturers were making clay targets using petroleum pitch. After this there were no more reports of toxic responses.
- Based on the results of the 1995 study, it was considered [by the scientific community] to be a “waste of money” to perform further studies on terrestrial species. This was because the 1995 study, which was undertaken to support an environmental impact study of trap and skeet shooting activities at a major gun club on the Long Island sound, had established that all clay target materials were essentially non-toxic to aquatic and marine organisms.
- In field observations, there was no apparent difference between populations of marine organisms in the tidal zone in areas where there were large deposits of clay target debris and in adjacent areas where there was no clay target debris. This was a skeet and trap range that had been active for over sixty years, and had clay target debris up to “waste deep.”

The parameters for environmental cleanup at Site 39A were established in the IA ROD and in the Draft Final Technical Memorandum (TM), Preliminary Remediation Goals (PRG) dated June 24, 1994. The Army followed the processes and met the standards described in the IA ROD and TM PRG, and reported completion of these requirements within the time frame dictated by the IA ROD. All documents produced by the Army pertaining to Site 39A are listed in the table below, concluding with the Confirmation Report dated October 16, 1998.

Document	Date	DTSC Comments
Interim Action Record of Decision,	March, 1994	None

⁴ Ralph G. Stahl, Jr., telephone interview by author, Presidio of Monterey, California, 6 May 2003.

Contaminated Surface Soil Remediation		
Draft Final Technical Memorandum, Preliminary Remediation Goals	June 24, 1994	Yes, on Draft version
Draft Work Plan, Site Characterization, Site 39A – East Garrison Ranges	November 3, 1994	None
Draft Data Summary Report, Site Characterization, Site 39A – East Garrison Ranges	December 28, 1994	None
Draft Site Characterization Report, Site 39A – East Garrison Ranges	November 2, 1995	None
Approval Memorandum, Proposed Interim Action Excavation, Site 39A – East Garrison Ranges	January 10, 1997	None
Draft Final Site Characterization Report, Site 39A – East Garrison Ranges	May 16, 1997	None
Draft Final Sampling and Analysis Plan, Interim Action Site 39A	November 14, 1997	None
Addendum to Approval Memorandum, Proposed Interim Action Excavation, Site 39A – East Garrison Ranges	November 20, 1997	None
Sampling and Analysis Plan Addendum, Confirmatory Sampling – Phase II Interim Action Site 39A	July 7, 1998	None
Interim Action Confirmation Report, Site 39A – East Garrison Ranges	October 16, 1998	July 17, 2002

As indicated in the table, the Army did not receive comments from DTSC on most of these documents, and not for the Confirmation Report until July 17, 2002. Since the Confirmation Report is a primary document in accordance with the Fort Ord Federal Facility Agreement (FFA), the Army concluded that DTSC had *de facto* concurred with the findings of the Confirmation Report.⁵

After submission of the Data Summary Report, dated December 28, 1994, additional data needs were discussed in a technical meeting on January 4, 1995, which representatives of DTSC participated in. It was agreed that other potential sources (asphalt paved roads) of PAHs should be evaluated; however, concerns about the clay pigeon debris were not voiced until April 2003. In light of the information provided about clay pigeons above, it is the Army's opinion additional studies are not necessary.

⁵ Section 7.2 of the FFA states that draft final documents are subject to dispute resolution; however, "the draft final primary document will become the final primary document...thirty (30) days after the issuance of a draft final document if dispute resolution is not invoked..."

Additionally, the U.S. Environmental Protection Agency concurred that confirmation sampling results demonstrated that the remedial action objectives (RAOs) set forth in the IA ROD had been met and no further remedial actions are required at Site 39A in a letter dated February 5, 2002. In summary:

- The Army completed work at Site 39A and met RAOs established in the IA ROD.
- In accordance with the FFA it was the Army's understanding that DTSC had concurred with all the documents listed in the above table, including the Confirmation Report.
- Clay pigeons have not been manufactured with coal tar pitch nor have there been reports of toxic responses in to clay pigeon debris in over 50 years (the East Garrison skeet and trap range began operations approximately 35 years ago).
- Existing studies on clay pigeons find them to be non-toxic to aquatic, marine and terrestrial organisms.

For these reasons, parcel L23.3.1 is suitable for transfer for unrestricted use.

Comment 7: Please add the following statement to the FOST: "Should the subject parcels be considered for the proposed acquisition and construction of school properties utilizing State funding at any time in the future, a separate environmental review process in compliance with the California Education Code Section 17210 et seq will need to be conducted and approved by DTSC."

Response 7: The Army will include this statement in Section 3.11 of the Track 0 FOST text.

ATTACHMENT 4

**MEMO, U.S. ARMY CORPS OF ENGINEERS, GOLF COURSE INSPECTION
DATED 17 SEPTEMBER 2002**

Memo

To: Gail Youngblood DENR
From: Marc Edwards
CC: Glen Mitchell
Date: 17 September 2002
RE: Golf Course Inspection

On Tuesday September 17, 2002 at 1730 Hours an unannounced inspection of the Bayonet/Black Horse Golf Course facility was performed. This inspection was conducted to review the usage of the wash area located at the maintenance yard of the golf course.

Mr. Tim Moore, maintenance director, assisted me in this inspection and was quite helpful in explaining to me the maintenance activities which are routine in golf course maintenance.

The wash area is used only for the cleaning of mowing equipment and grass carriers. The washing performed in this area is to clean the blades off mowers and John Deere type all terrain vehicles affixed with miniature dump beds.

Pesticide and herbicide mixtures are measured and mixed within the drive on sprayer which applies the chemicals where they are needed. Once the sprayer tank has been depleted a neutralizer is added and rinsed through the unit at the back end of the driving range. This area is used due to the excess amount of ice plant which is a continued problem in maintaining

All oil changes and maintenance of equipment is performed within the maintenance bay atop grease traps that collect the waste. The collected waste is stored in 55 gallon drums for disposal. All materials used have an associated MSDS on file within the maintenance area.

The area surrounding the wash area has no signs of stressed vegetation. There are minor erosion paths and grass trimmings along the drainage path of the wash area.

ATTACHMENT 5

CONCURRENCE LETTER

1. Environmental Protection Agency – Region IX



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105**

March 31, 2003

Department of the Army
Environmental and Natural Resources
Attn: Gail Youngblood
P.O. Box 5004
Presidio of Monterey, California 93944-5004

Re: Finding of Suitability to Transfer (FOST)
Track 0 Parcels
Former Fort Ord, California
March 26, 2003

Dear Ms. Youngblood:

The U.S. Environmental Protection Agency, Region IX (EPA) has received the above-referenced Finding of Suitability to Transfer (FOST), dated March 26, 2003, for the property at the former Fort Ord, California, identified as the Track 0 Parcels. The Army intends to transfer 1,184 buildings and structures on approximately 1,234 acres of developed and undeveloped land to a number of recipients for a variety of uses, including education, mixed uses, and development.

The former Fort Ord Army Base is an installation listed on the National Priorities List. All parcels identified within the FOST have either been cleaned up or identified as "uncontaminated" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601-9675. The Army intends to transfer those parcels identified in the FOST as ECP Category 3/4 under CERCLA Section 120(h)(3) and those parcels identified in the FOST as ECP Category 1 under Section 120(h)(4).

When entering into a deed for transfer under Section 120(h)(3), the Army is required to include in such deed a covenant warranting that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the property has been taken before the date of transfer, and that any additional remedial action found to be necessary after the date of the transfer shall be conducted by the United States. For property to be transferred under Section 120(h)(4), the property must be identified (with the concurrence of EPA) as "uncontaminated" and the Army must include in the deed a covenant warranting that any additional response action or corrective action found to be necessary after the date of the transfer shall be conducted by the United States.

EPA has reviewed the FOST dated March 26, 2003, including its Environmental Protection Provisions and referenced Covenants to Restrict Use of Property, which restrict the use of groundwater in certain areas and prohibit the residential use of Site 33; the Fort Ord Community Environmental Response Facilitation Act (CERFA) Report dated April 1994; EPA's

concurrence letter on the CERFA Report dated April 19, 1994; the Track 0 Ordnance and Explosives Record of Decision dated July 2002; the Army's letter to EPA dated March 19, 2003 requesting concurrence on its designation of eight additional Track 0 FOST parcels as "uncontaminated"; and other relevant documents (collectively, "Documentation").

Without independent investigation or verification of certain information contained in the Documentation, the undersigned concurs, to the extent set forth below, with the Army's determination that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the parcels has been taken. Also, the undersigned concurs with the Army's identification of parcels F7.2, L19.3, L20.10.3, L20.14.1.2, L32.3, S4.1.2.1, S4.1.4, and S4.1.5 as "uncontaminated".

The review of the Documentation was completed pursuant to CERCLA sections 120(h)(3) and (h)(4), and the sole purpose of this letter is to satisfy the requirements of these provisions. The concurrence shall not be construed in any manner inconsistent with any obligation, right or authority existing under the Fort Ord Federal Facility Agreement, and all amendments thereto, entered into by EPA, the State of California and the Army. The undersigned expressly reserves all rights and authorities relating to information not contained in the Documentation, whether such information is known as of this date, or is discovered in the future.

Notwithstanding two unresolved EPA comments attached to the FOST, EPA concurs that the Track 0 Parcels are suitable for transfer for the intended reuse, given the environmental restrictions identified. If you have any questions, please contact John Chesnutt, EPA Remedial Project Manager for the Fort Ord Site, at (415) 972-3005.

Sincerely,



Deborah Jordan
Chief, Federal Facility and Site Cleanup Branch
Superfund Division

cc: Dan Ward, DTSC