

ATTACHMENT 5

ENVIRONMENTAL PROTECTION PROVISIONS

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The following conditions, restrictions, and notifications will be attached, in a substantially similar form, as an exhibit to the deed and be incorporated therein by reference in order 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. FEDERAL FACILITIES AGREEMENT

The Grantor acknowledges that the former Fort Ord has been identified as a National Priorities List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended. The Grantee acknowledges that the Grantor has provided it with a copy of the Fort Ord Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (US EPA) Region IX, the State of California, and the Department of the Army, effective on November 19, 1990, and will provide the Grantee with a copy of any amendments thereto. For so long as the Property remains subject to the FFA, the Grantee, its successors and assigns, agree that they will not interfere with United States Department of the Army activities required by the FFA. In addition, should any conflict arise between the FFA and any amendment thereto and the deed provisions, the FFA provisions will take precedence. The Grantor assumes no liability to the Grantee, its successors and assigns, should implementation of the FFA interfere with their use of the Property.

2. LAND USE RESTRICTIONS

A. The United States Department of the Army (Army) has undertaken careful environmental study of the Property and concluded that the land use restrictions set forth below are required to ensure protection of human health and the environment. The Grantee, its successors or assigns, shall not undertake nor allow any activity on or use of the property that would violate the land use restrictions contained herein.

- 1) **Residential Use Restriction.** In accordance with the provisions of Section 5 of the Environmental Protection Provisions, the Grantee, its successors and assigns, shall use the Property solely for commercial or industrial activities and not for residential purposes unless the Grantee performs abatement as required under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992). For purposes of this provision, residential use includes, but is not limited to, single family or multi-family residences; childcare facilities; and nursing home or assisted living facilities; and any type of educational purpose for children/young adults in grades kindergarten through 12.
- 2) **Groundwater Restriction.** Grantee is hereby informed and acknowledges that the groundwater under portions of the Property and associated with the Sites 2 and 12 (Sites 2/12) groundwater plume and the Operable Unit 2 (OU2) groundwater plume is

contaminated with volatile organic compounds (VOCs), primarily trichloroethene (TCE).

- a) A Covenant to Restrict Use of Property (CRUP) for portions of the Property within the “Special Groundwater Protection Zone” will be made by and among The United States of America acting by and through the Army and the State of California acting by and through the DTSC and the California Regional Water Quality Control Board, Central Coast Region (RWQCB).
- b) The Grantee covenants for itself, its successors, and assigns not to 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 the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
- c) The Grantee covenants for itself, its successors, and assigns that 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 or tamper with any remediation system or monitoring wells now or in the future located on, over, through, or across any portion of the Property without the expressed written consent of the Grantor in each case first obtained.
- d) The Grantee covenants for itself, its successors, or assigns, 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. Modifying Restrictions. Nothing contained herein shall preclude the Grantee, its successors or assigns, from undertaking, in accordance with applicable laws and regulations and without any cost to the Grantor, such additional action necessary to allow for other less restrictive use of the Property. Prior to such use of the Property, Grantee shall consult with and obtain the approval of the Grantor, and, as appropriate, the State or federal regulators, or the local authorities in accordance with these Environmental Protection Provisions and the provisions of the CRUP(s). Upon the Grantee’s obtaining the approval of the Grantor and, as appropriate, state or federal regulators, or local authorities, the Grantor agrees to record an amendment hereto. This recordation shall be the responsibility of the Grantee and at no additional cost to the Grantor.

C. Submissions. The Grantee, its successors and assigns, shall submit any requests to modifications to the above restrictions to Grantor, the US EPA, the DTSC and the RWQCB, in accordance with the provisions of the CRUP(s), by first class mail, postage prepaid, addressed as follows:

- 1) Grantor: Director, Fort Ord Office
Army Base Realignment and Closure
P.O. Box 5008
Presidio of Monterey, CA 93944-5008
- 2) US EPA: Chief, Federal Facility and Site Cleanup Branch
Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, Mail Code: SFD-8-3
San Francisco, CA 94105-3901
- 3) DTSC: Chief of Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200
- 4) RWQCB: Executive Officer
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

3. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)

- A. The Grantee is hereby notified that due to the former use of the Property as a military installation, the Property may contain munitions and explosives of concern (MEC). The term MEC means specific categories of military munitions that may pose unique explosives safety risks and includes: (1) Unexploded Ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (2) Discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (3) Munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard. For the purposes of the basewide Military Munitions Response Program (MMRP) being conducted for the former Fort Ord and these Environmental Protection Provisions, MEC does not include small arms ammunition .50 caliber and below.
- B. Portions of the Property were previously used for military training involving military munitions, or for disposal of munitions items. A review of existing records and available information indicates there are ten munitions response sites (MRSs) associated with the Property. Military training on the Property involved only the use of practice and pyrotechnic items that are not designed to cause injury, or military munitions items that do not pose an explosive hazard. Military munitions items were found within materials excavated from a landfill disposal area formerly on the Property; however, this is

attributed to disposal activities at the landfill and not training. All landfill disposal areas within the Property have been fully excavated, the landfilled material removed, and the excavated areas backfilled or regraded. The ten MRSs were evaluated and documented in the *Final Track 1 Ordnance and Explosives Remedial Investigation/Feasibility Study, former Fort Ord, California* (Track 1 OE RI/FS) (June 2004) the *Track 1 Plug-In Approval Memorandum, MRS-6 Expansion Area* (May 6, 2005) and, in accordance with the *Record of Decision, No Further Action Related to Munitions and Explosives of Concern – Track 1 Sites; No Further Remedial Action with Monitoring for Ecological Risks from Chemical Contamination at Site 3 (MRS-22)* (Track 1 ROD) (March 2005), no further action related to MEC is required at these ten MRSs.

- C. The Grantor represents that, to the best of its knowledge, no MEC is currently present on the Property. Notwithstanding the Grantor's determination, the parties acknowledge that there is a possibility that MEC may exist on the Property. If the Grantee, any subsequent owner, or any other person should find any MEC on the Property, they shall immediately stop any intrusive or ground-disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove or destroy it, but shall immediately notify the local law enforcement agency having jurisdiction on the Property so that appropriate U.S. Military explosive ordnance disposal personnel can be dispatched to address such MEC as required under applicable law and regulations and at no expense to the Grantee. The Grantee hereby acknowledges receipt of the "Ordnance and Explosives Safety Alert" pamphlet.
- D. Because the Grantor cannot guarantee that all MEC has been removed, the Grantor recommends reasonable and prudent precautions be taken when conducting intrusive operations on the Property and will, at its expense, provide construction worker ordnance recognition and safety training. For specific Track 1 sites that overlap the Property (MRS-1, MRS-6, (and MRS-6 Expansion Area), MRS-13A, MRS-22, MRS-27Y, MRS-49, MRS-59A, MRS-62, and MRS-66), the Army recommends construction personnel involved in intrusive operations at these sites attend the Grantor's ordnance recognition and safety training. To accomplish that objective, the Grantor requests notice from the Grantee of planned intrusive activities, and in turn will provide ordnance recognition and safety training to construction personnel prior to the start of intrusive work. The Grantor will provide ordnance recognition and safety refresher training as appropriate. For the Track 1 sites where ordnance recognition and safety training is recommended (MRS-1, MRS-6 (and MRS-6 Expansion Area), MRS-13A, MRS-22, MRS-27Y, MRS-49, MRS- 59A, MRS-62, and MRS-66), at the time of the next five-year review (2007), the Grantor will assess whether the education program should continue. If information indicates that no MEC items have been found in the course of development or redevelopment of the site, it is expected that the education program may, with the concurrence of the regulatory agencies, be discontinued, subject to reinstatement if a MEC item is encountered in the future.

E. Easement and Access Rights.

- 1) The Grantor reserves a perpetual and assignable right of access on, over, and through the Property, to access and enter upon the Property in any case in which a munitions response action is found to be necessary, or such access and entrance is necessary to carry out a munitions response action on adjoining property as a result of the ongoing Munitions Response Remedial Investigation/Feasibility Study. Such easement and right of access includes, without limitation, the right to perform any additional investigation, sampling, testing, test-pitting, surface and subsurface clearance operations, or any other munitions response action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this Deed. This right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.
- 2) In exercising this easement and right of access, the Grantor shall give the Grantee or the then record owner, reasonable notice of the intent to enter on the Property, except in emergency situations. Grantor shall use reasonable means, without significant additional cost to the Grantor, to avoid and/or minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property; however, the use and/or occupancy of the Property may be limited or restricted, as necessary, under the following scenarios: (a) to provide the required minimum separation distance employed during intrusive munitions response actions that may occur on or adjacent to the Property; and (b) if Army implemented prescribed burns are necessary for the purpose of a munitions response action (removal) in adjacent areas. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the grantee nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.
- 3) In exercising this easement and right of access, neither the Grantee nor its successors and assigns, as the case maybe, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this Paragraph. In addition, the Grantee, its successors and assigns, shall not interfere with any munitions response action conducted by the Grantor on the Property.

- F. The Grantee acknowledges receipt of the *Final Track 1 Ordnance and Explosives Remedial Investigation/Feasibility Study (Track 1 OE RI/FS) (June 2004) and the Record of Decision, No Further Action Related to Munitions and Explosives of Concern – Track 1 Sites; No Further Remedial Action with Monitoring for Ecological Risks from Chemical Contamination at Site 3 (MRS-22) (Track 1 ROD) (March 2005).*

4. 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) has been found on the Property, as described in the Asbestos Survey Report (April 26, 1993) and summarized in the CERFA Report (April 8, 1994). The Property may also contain improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground, that contain friable and non-friable asbestos or ACM. The Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (US EPA) have determined that unprotected or unregulated exposure to airborne asbestos fibers increases the risk of asbestos-related diseases, including certain cancers that can result in disability or death.
- B. Several buildings on the Property have been determined to contain friable asbestos. Detailed information is contained in the referenced survey report. The remaining buildings contain non-friable ACM rated in good condition. The Grantee agrees to undertake any and all asbestos abatement or remediation in the aforementioned buildings that may be required under applicable law or regulation at no expense to the Grantor. The Grantor has agreed to transfer said buildings to the Grantee, prior to remediation or abatement of asbestos hazards, in reliance upon the Grantee's express representation and covenant to perform the required asbestos abatement or remediation of these buildings.
- 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. The Grantee agrees to be responsible for any future remediation or abatement of asbestos found to be necessary on the Property to include ACM in or on buried pipelines that may be required under applicable law or regulation.
- D. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its asbestos and ACM 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 or ACM hazards or concerns.

5. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT (LBP) AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSE

- A. The Grantee is hereby informed and does acknowledge that all buildings on Parcels E4.1.2.1, E4.1.2.2, E4.6.2, E8a.1.1.2, L23.5.1, L9.1.1.2, L9.1.2.2, S3.1.1, S3.1.3, and S3.1.4, 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.

- B. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on Parcels E4.1.2.1, E4.1.2.2, E4.6.2, E8a.1.1.2, L23.5.1, L9.1.1.2, L9.1.2.2, S3.1.1, S3.1.3, and S3.1.4 as Residential Property, as defined under 24 Code of Federal Regulations Part 35, 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 Parcels E4.1.2.1, E4.1.2.2, E4.6.2, E8a.1.1.2, L23.5.1, L9.1.1.2, L9.1.2.2, S3.1.1, S3.1.3, and S3.1.4 where their use subsequent to this conveyance 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).
- C. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its lead-based paint 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 lead-based paint hazards or concerns.

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 most recent data available (Annual Report of Quarterly Monitoring, October 2003 through September 2004) indicates that:

- A. One parcel (S4.1.1) overlies the Sites 2/12 groundwater plume where the concentration of TCE in groundwater equals or exceeds 5.0 micrograms per liter ($\mu\text{g/L}$). For the Sites 2/12 groundwater plume area the maximum TCE concentration in the groundwater beneath the Property (Parcel S4.1.1) is between 5.0 $\mu\text{g/L}$ and 10 $\mu\text{g/L}$ and depth to groundwater is 68 to 75 feet below ground surface.
- B. Seven parcels (E4.3.1.2, E4.3.2.1, E4.6.1, E4.6.2, E8a.1.1.2, L5.6.1 and L5.6.2) overlie the OU2 groundwater plume where the concentration of TCE in groundwater exceeds 5.0 $\mu\text{g/L}$. For the OU2 groundwater plume area the maximum TCE concentration in the groundwater beneath the Property (Parcel E4.3.1.2) is 26 $\mu\text{g/L}$ as measured in groundwater extraction well EW-OU2-12A and depth to groundwater is 125 to 175 feet below ground surface.

The maximum concentrations of the chemicals of concern (associated with the OU2 and Sites 2/12 groundwater plumes) detected in the groundwater monitoring or extraction wells on the Property (September 2004) 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 Fort Ord Landfills Record of Decision (ROD) (July 1994) and Basewide Remedial Investigation Sites ROD (January 1997), are provided for comparison.

Chemicals of Concern in Groundwater and Aquifer Cleanup Levels
(OU2 and Sites 2/12 Plumes)

Chemical Name	Regulatory Synonym	CASRN*	RCRA Waste Number	Parcel	Well (EW-OU2)	Maximum Concentrations (µg/L)	ACL (µg/L)
Benzene	Benzol	71432	U019	E4.3.1.2	-10-A	0.3	1.0
Carbon Tetrachloride	Methane, tetrachloro-	56235	U211			ND	0.5
Chloroform	Methane, trichloro-	67663	U044	E4.3.1.2	-12-A	2.3	2.0
1,1-Dichloroethane	Ethane, 1,1-dichloro-	75343	U076	E4.3.1.2	-10-A	6.9	5.0
1,2-Dichloroethane	Ethane, 1,2-dichloro-	107062	U077	E4.3.1.2	-10-A	1.5	0.5
1,1-Dichloroethene	Ethene, 1,1-dichloro-	75354	U078			ND	6.0
Cis-1,2-Dichloroethene	Ethene, 1,2-dichloro(E)	156605	U079	E4.3.1.2	-10-A	8.9	6.0
1,2-Dichloropropane	Propane, 1,2-dichloro-	78875	U083	E4.3.1.2	-12-A	1.3	1.0
Total 1,3-Dichloropropene	Propene, 1,3-dichloro-	542756	--			ND	0.5
Methylene Chloride	Methane, dichloro-	75092	U080			ND	5.0
Tetrachloroethene	Ethene, tetrachloro-	127184	U210	E4.3.1.2	-10-A	5.4	3.0
Trichloroethene	Ethene, trichloro-	79016	U228	E4.3.1.2	-12-A	26	5.0
Vinyl chloride	Ethene, chloro-	75014	U043	E4.3.1.2	-10-A	0.7	0.1

*Chemical Abstract Services Registry Number

7. NOTICE OF THE PRESENCE OF THE FORT ORD LANDFILLS

Portions of the Property are located within 1,000 feet of the Fort Ord OU2 Landfills. In order to evaluate methane levels in soil adjacent to the OU2 Landfills, monitoring probes were installed within the landfill and around the landfill perimeter. The probes were placed at a spacing of 1,000 feet or less. The probes are sampled quarterly for methane and annually for volatile organic compounds. The probes will continue to be monitored for a period of thirty (30) years from the time the monitoring program was implemented (June 2000) or until written authorization to discontinue monitoring is provided by the appropriate enforcement agency with concurrence by the California Integrated Waste Management Board (CIWMB). Methane concentrations do not exceed the CIWMB standard of 5% by volume in probes located at the property boundary, with the exception of areas on the eastern side bordering property that is not included in this FOST. Results of perimeter probe monitoring may be found in the perimeter probe monitoring reports, which the Army publishes annually. The Army has implemented a gas collection and treatment system along the eastern side of the landfill adjacent to the existing housing area. To decrease the potential for landfill gas migration to surrounding property, a buffer was added extending 100 feet beyond the perimeter fencing. Future landowners should

refer to California Code of Regulations Title 27, Section 21190, which identifies protective measures for structures built on or within 1,000 feet of a landfill.

8. NOTICE OF RARE, THREATENED AND ENDANGERED SPECIES MANAGEMENT

- A. The property contains habitat occupied and/or potentially occupied by several sensitive wildlife and plant species, some of which are listed or proposed for listing as threatened or endangered under the Endangered Species Act (ESA). Applicable laws and regulations restrict activities that involve the potential loss of populations and habitats of listed species. To fulfill Grantor's commitment in the Fort Ord Disposal and Reuse Environmental Impact Statement Record of Decision, made in accordance with the National Environmental Policy Act of 1969, 42 U.S.C 4321 et seq., this deed requires the conservation in perpetuity of these sensitive wildlife and plant species and their habitats consistent with the U.S. Fish and Wildlife Service Biological Opinions for disposal of the former Fort Ord lands issued pursuant to Section 7 of the ESA on March 30, 1999, October 22, 2002, and March 14, 2005 respectively. By requiring Grantee, and its successors and assigns to comply with the Installation-Wide Multispecies Habitat Management Plan (HMP), Grantor intends to fulfill its responsibilities under Section 7 of the ESA and to minimize future conflicts between species protection and economic development of portions of the Property.
- B. Grantee acknowledges that it has received a copy of the HMP dated April 1997. The HMP, which is incorporated herein by reference, provides a basewide framework for disposal of lands within former Fort Ord wherein development and potential loss of species and/or habitat is anticipated to occur in certain areas of the former Fort Ord (the HMP Development Areas) while permanent species and habitat conservation is guaranteed within other areas of the former Fort Ord (i.e., the HMP Reserve and Corridor parcels). Disposal of former Fort Ord lands in accordance with and subject to the restrictions of the HMP is intended to satisfy the Army's responsibilities under Section 7 of the ESA.
- C. The following parcels of land within the Property hereby conveyed or otherwise transferred to Grantee are subject to the specific use restrictions and/or conservation, management, monitoring, and reporting requirements identified for the parcel in the HMP:
- 1) Habitat Reserve Parcels numbered: E11a, E11b.6.2 and S3.1.2; and
 - 2) Habitat reserves within the Development with Reserve Areas or Development with Restrictions Parcels numbered: E2a, E8a.1.1.2, S3.1.1, S3.1.3, and S4.1.1.
- D. Any boundary modifications to the Development with Reserve Areas or Development with Restrictions parcels or the Borderland Development Areas Along NRMA Interface must be approved in writing by the U. S. Fish and Wildlife Service (USFWS) and must maintain the viability of the HMP for permanent species and habitat conservation.

E. The HMP describes existing habitat and the likely presence of sensitive wildlife and plant species that are treated as target species in the HMP. Some of the target species are currently listed or proposed for listing as threatened or endangered under the ESA. The HMP establishes general conservation and management requirements applicable to the property to conserve the HMP species. These requirements are intended to meet mitigation obligations applicable to the property resulting from the Army disposal and development reuse actions. Under the HMP, all target species are treated as if listed under the ESA and are subject to avoidance, protection, conservations, and restoration requirements. Grantee shall be responsible for implementing and funding each of the following requirements set forth in the HMP as applicable to the property:

- 1) Grantee shall implement all avoidance, protection, conservation and restoration requirements identified in the HMP as applicable to the Property and shall cooperate with adjacent property owners in implementing mitigation requirements identified in the HMP for adjacent sensitive habitat areas.
- 2) Grantee shall protect and conserve the HMP target species and their habitats within the Property, and, other than those actions required to fulfill a habitat restoration requirement applicable to the Property, shall not remove any vegetation, cut any trees, disturb any soil, or undertake any other actions that would impair the conservation of the species or their habitats. Grantee shall accomplish the Resource Conservation Requirements and Management Requirements identified in Chapter 4 of the HMP as applicable to any portion of the Property.
- 3) Grantee shall manage, through an agency or entity approved by USFWS, each HMP parcel, or portion thereof, within the Property that is required in the HMP to be managed for the conservation of the HMP species and their habitats, in accordance with the provisions of the HMP.
- 4) Grantee shall either directly, or indirectly through its USFWS approved habitat manager, implement the management guidelines applicable to the parcel through the development of a site-specific management plan. The site-specific habitat management plan must be developed and submitted to USFWS (and, for non-Federal recipients, California Department of Fish and Game (CDFG) as well) for approval within six months from the date the recipient obtains title to the parcel. Upon approval by USFWS (and, as appropriate, CDFG) the recipient shall implement the plan. Such plans may thereafter be modified through the Coordinated Resource Management and Planning (CRMP) process or with the concurrence of USFWS (and, as appropriate, CDFG) as new information or changed conditions indicate the need for adaptive management changes. The six-month deadline for development and submission of a site-specific management plan may be extended by mutual agreement of USFWS, CDFG (if appropriate), and the recipient.

- 5) Grantee shall restrict access to the Property in accordance with the HMP, but shall allow access to the Property, upon reasonable notice of not less than 48 hours, by USFWS, and its designated agents, for the purpose of monitoring Grantee's compliance with, and for such other purposes as are identified in the HMP.
- 6) Grantee shall comply with all monitoring and reporting requirements set forth in the HMP that are applicable to the Property, and shall provide an annual monitoring report, as provided for in the HMP, to the Bureau of Land Management (BLM) on or before November 1 of each year, or such other date as may be hereafter agreed to by USFWS and BLM.
- 7) Grantee shall not transfer, assign, or otherwise convey any portion of, or interest in, the Property subject to the habitat conservation, management or other requirements of the HMP, without the prior written consent of Grantor, acting by and through the USFWS (or designated successor agency), which consent shall not be unreasonable withheld. Grantee covenants for itself, its successors and assigns, that it shall include and otherwise make legally binding the provisions of the HMP in any deed, lease, right of entry, or other legal instrument by which Grantee divests itself of any interest in all or a portion of the Property. The covenants, conditions, restrictions and requirements of this deed and the provisions of the HMP shall run with the land. The covenants, conditions, restrictions, and requirements of this deed and the HMP benefit the lands retained by the Grantor that formerly comprised Fort Ord, as well as the public generally. Management responsibility for the Property may only be transferred as a condition of the transfer of the Property, with the consent of the USFWS. USFWS may require the establishment of a perpetual trust fund to pay for the management of the Property as a condition of transfer of management responsibility from Grantee.
- 8) This conveyance is made subject to the following ENFORCEMENT PROVISIONS
 - a) Grantor hereby reserves a reversionary interest in all of the Property. If Grantor (or its assigns), acting through the USFWS or a designated successor agency, determines that those parcels identified in Paragraph C above or any other portion of the Property subject to a restriction or other requirement of the HMP is not being conserved and/or managed in accordance with the provisions of the HMP, then Grantor may, in its discretion, exercise a right to reenter the Property, or any portion thereof, in which case, the Property, or those portions thereof as to which the right of reentry is exercised, shall revert to Grantor. In the event that Grantor exercises its right of reentry as to all or portions of the Property, Grantee shall execute any and all documents that Grantor deems necessary to perfect or provide recordable notice of the reversion and for the complete transfer and reversion of all right, title and interest in the Property or portions thereof. Subject to applicable federal law, Grantee shall be liable for all costs and fees incurred by Grantor in perfecting the reversion and transfer of title. Any and all improvements on the Property or those portions thereof reverting back to Grantor

shall become the property of Grantor and Grantee shall not be entitled to any payment therefore.

- b) In addition to the right of reentry reserved in paragraph a. above, if Grantor (or its assigns), acting through the USFWS or a successor designated agency, determines that Grantee is violating or threatens to violate the provisions of paragraph 8 of this deed or the provisions of the HMP, Grantor shall provide written notice to Grantee of such violation and demand corrective action sufficient to cure the violation, and where the violation involves injury to the Property resulting from any use or activity inconsistent with the provisions of Paragraph 8 of this deed or the provisions of the HMP, to restore the portion of the Property so injured. If Grantee fails to cure a violation within sixty (60) days after receipt of notice thereof from Grantor, or under circumstances where the violation cannot reasonable be cured within a sixty (60) day period, or fails to continue to diligently cure such violation until finally cured, Grantor may bring an action at law or in equity in a court of competent jurisdiction to enforce the covenants, conditions, reservations and restrictions of this deed and the provisions of the HMP, to enjoin the violation, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the covenants, conditions, reservations and restrictions of this deed or the provisions of the HMP, or injury to any conservation value protected by this deed or the HMP, and to require the restoration of the Property to the condition that existed prior to such injury. If Grantor, in its good faith and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the species and habitat conservation values of the Property, Grantor may pursue its remedies under this paragraph without prior notice to Grantee or without waiting for the period provided for the cure to expire. Grantor's rights under this paragraph apply equally in the event of either actual or threatened violations of covenants, conditions, reservations and restrictions of this deed or the provisions of the HMP, and Grantee acknowledges that Grantor's remedies at law for any of said violations are inadequate and Grantor shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantor may be entitled, including specific performance of the covenants, conditions, reservations and restrictions of this deed and the provisions of the HMP.
- c) Enforcement of the covenants, conditions, reservations and restrictions in this deed and the provisions of the HMP shall be at the discretion of Grantor, and any forbearance by Grantor to exercise its rights under this deed and the HMP in the event of any such breach or violation of any provision of this deed or the HMP by Grantee shall not be deemed or construed to be a waiver by Grantor of such provision or of any subsequent breach or violation of the same or any other provision of this deed or the HMP or of any of Grantor's rights under this deed or the HMP. No delay or omission by Grantor in the exercise of any right or remedy

upon any breach or violation by Grantee shall impair such right or remedy or be construed as a waiver.

- d) In addition to satisfying Army's responsibilities under Section 7 of the ESA, Grantee's compliance with the covenants, conditions, reservations and restrictions contained in this deed and with the provisions of the HMP are intended to satisfy mitigation obligations included in any future incidental take permit issued by USFWS pursuant to Section 10(a)(1)(B) of the Endangered Species Act which authorizes the incidental take of a target HMP species on the Property. Grantee acknowledges that neither this deed nor the HMP authorizes the incidental take of any species listed under the ESA. Authorization to incidentally take any target HMP wildlife species must be obtained by Grantee separately, or through participation in a broader habitat conservation plan and Section 10(a)(1)(B) permit based on the HMP and approved by USFWS.

ENVIRONMENTAL PROTECTION PROVISIONS – APPLICABLE NOTICES

Parcel Number	Notice of Hazardous Substance Storage, Release or Disposal	Notice of Petroleum Product Storage, Release or Disposal	Notice of the Potential for Munitions and Explosives of Concern	Notice of the Presence of Asbestos	Notice of the Presence of Lead-Based Paint	Notice of Contaminated Groundwater	Notice of Proximity to Landfill	Notice of the Presence of Threatened or Endangered Species
E11a	NA	NA	Yes	NA	NA	Yes	NA	Yes
E11b.6.2	NA	NA	Yes	NA	NA	Yes	NA	Yes
E15.2	NA	NA	Yes	NA	NA	Yes	NA	NA
E20c.2.1	NA	NA	Yes	NA	NA	Yes	NA	Yes
E2a	Yes	Yes	Yes	NA	NA	Yes	NA	Yes
E4.1.2.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E4.1.2.2	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
E4.1.2.3	Yes	Yes	Yes	NA	NA	Yes	NA	NA
E4.3.1.2	Yes	Yes	Yes	NA	NA	Yes	Yes	NA
E4.3.2.1	Yes	Yes	Yes	Yes	NA	Yes	Yes	NA
E4.6.1	Yes	Yes	Yes	NA	NA	Yes	Yes	Yes
E4.6.2	Yes	Yes	Yes	NA	NA	Yes	Yes	Yes
E8a.1.1.2	Yes	Yes	Yes	NA	Yes	Yes	Yes	Yes
L20.13.5	NA	NA	Yes	NA	NA	NA	NA	Yes
L20.14.1.1	NA	NA	Yes	NA	NA	Yes	NA	Yes
L20.14.2	NA	NA	Yes	NA	NA	Yes	NA	Yes
L20.15	NA	NA	Yes	NA	Yes	Yes	NA	NA
L20.6	NA	NA	Yes	NA	NA	NA	NA	Yes
L23.5.1	NA	NA	Yes	Yes	Yes	NA	NA	Yes
L31	NA	NA	Yes	NA	NA	NA	NA	Yes
L5.6.1	Yes	Yes	Yes	NA	NA	Yes	Yes	Yes
L5.6.2	Yes	Yes	Yes	Yes	NA	Yes	Yes	Yes
L9.1.1.2	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
L9.1.2.2	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA
S3.1.1	Yes	Yes	Yes	Yes	Yes	Yes	NA	Yes
S3.1.2	Yes	Yes	Yes	NA	NA	Yes	NA	Yes
S3.1.3	NA	NA	Yes	Yes	Yes	Yes	NA	Yes
S3.1.4	NA	NA	Yes	NA	NA	Yes	NA	Yes
S4.1.1	Yes	Yes	Yes	NA	NA	Yes	NA	NA