

**FINDING OF SUITABILITY TO TRANSFER
(FOST)**

Former Fort Ord, California

**Parcel L36
(FOST 13)**

May 2020

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1. PURPOSE

The purpose of this Finding of Suitability to Transfer (FOST) is to document the environmental suitability of certain parcels or property at the former Fort Ord, California for transfer to the Fort Ord Reuse Authority (FORA) consistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h) and Department of Defense (DOD) policy. In addition, the FOST includes the CERCLA Notice, Covenant, and Access Provisions and other Deed Provisions and the Environmental Protection Provisions (EPPs) necessary to protect human health or the environment after such transfer.

2. PROPERTY DESCRIPTION

The property (Parcel L36) consists of 1.16 acres, which includes no buildings and 1.16 acres of undeveloped land.¹ The property was previously used as an administrative support facility. The property is intended to be transferred as a development mixed use district, including convenience/specialty retail and a neighborhood park, and is consistent with the intended reuse of the property as set forth in the FORA Reuse Plan. A site map of the property is attached (Enclosure 1).

3. ENVIRONMENTAL DOCUMENTATION

A determination of the environmental condition of the property was made based upon the *Final Community Environmental Response Facilitation Act (CERFA) Report* (ADL, 1994), the *Environmental Baseline Survey, Surplus II Parcels* (HLA, 1997), and a visual site inspection performed in January 2020. The information provided is a result of a complete search of agency files during the development of these environmental surveys.

A complete list of documents providing information on environmental conditions of the property is attached (Enclosure 2).

4. ENVIRONMENTAL CONDITION OF PROPERTY

The DOD Environmental Condition of Property (ECP) categories for the property are as follows:

ECP Category 1: Parcel L36

¹ Building 4458 was located on the property, but was demolished and removed from the property in its entirety in 2019.

The property (Parcel L36) was previously a portion of Parcel L32, which was defined as ECP Category 4 because Parcel L32 included a portion of Installation Restoration Program (IRP) Site 22, which had been used as a vehicle maintenance facility where release, disposal, or migration of hazardous substances had occurred and all removal actions to protect human health and the environment were completed (HLA, 1996). The U.S. Environmental Protection Agency (USEPA) and the California Department of Toxic Substances Control (DTSC) concurred remedial actions were complete at IRP Site 22 in letters dated September 19, 1996 and June 8, 1998, respectively. The Parcel L36 boundaries have since been redefined and the parcel now does not include any portion of IRP Site 22. A summary of the ECP categories for parcels and the ECP category definitions are provided in Table 1 – Description of Property (Enclosure 3).

4.1. ENVIRONMENTAL REMEDIATION SITES

There are no environmental investigation/remediation sites and no evidence of groundwater contamination on the property.

4.2. STORAGE, RELEASE, OR DISPOSAL OF HAZARDOUS SUBSTANCES

There is no evidence that hazardous substances were stored, released, or disposed of on the property in excess of the 40 CFR Part 373 reportable quantities. The CERCLA 120(h)(4) Covenant and Access Rights at Enclosure 4 will be included in the Deed.

4.3. PETROLEUM AND PETROLEUM PRODUCTS

4.3.1. UNDERGROUND AND ABOVEGROUND STORAGE TANKS (UST/AST)

There is no evidence that petroleum products were stored in underground or aboveground storage tanks (UST/AST) on the property.

4.3.2. NON-UST/AST STORAGE, RELEASE, OR DISPOSAL OF PETROLEUM PRODUCTS

There is no evidence that non-UST/AST petroleum products in excess of 55 gallons were stored for one year or more on the property.

4.4. POLYCHLORINATED BIPHENYLS (PCB)

There is no evidence that PCB-containing equipment is located or was previously located on the property. PCB-containing light ballasts may have been present in Building 4458 on the property because fluorescent light ballasts manufactured or installed prior to 1978 may contain PCBs in the potting material; however, Building 4458 was demolished and removed from the property in its entirety in 2019.

4.5. ASBESTOS

There is no evidence that buildings or structures with asbestos-containing material (ACM) are located on the property (Building 4458 was demolished and removed from the property in its entirety in 2019).

4.6. LEAD-BASED PAINT (LBP)

There is no evidence that buildings or structures with LBP are located on the property (Building 4458 was demolished and removed from the property in its entirety in 2019).

4.7 INDOOR FIRING RANGES

There is no evidence that buildings or structures with a former indoor firing range are or were located on the property (Building 4458 was used for administrative support and was demolished and removed from the property in its entirety in 2019).

4.8. RADIOLOGICAL MATERIALS

There is no evidence that radioactive material or sources were stored or used on the property.

4.9. RADON

Radon surveys were conducted in Building 4458 on the property. Radon was not detected at or above the U.S. Environmental Protection Agency (EPA) residential action level of 4 picocuries per liter (pCi/L) in this building (HLA, 1997); however, Building 4458 was demolished and removed from the property in its entirety in 2019.

4.10. MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)

Based on a review of existing records and available information, including the Archives Search Report (ASR), ASR Supplement No. 1, and the draft Revised ASR (December 1993, November 1994, and December 1997, respectively), the Track 0 Technical Memorandum (January 2000), Fort Ord Training Facilities Maps, and associated interviews from various ordnance-related community relations activities, there is no evidence that Munitions and Explosives of Concern (MEC) are present on the property. In addition, the property was historically used exclusively as an administrative area, there is no record of MEC being discovered on the property, and there is no record that munitions-related activities occurred. The term “MEC” means military munitions that may pose unique explosives safety risks, including: (A) unexploded ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) 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.

4.11. OTHER PROPERTY CONDITIONS

There are no other hazardous conditions on the property that present an unacceptable risk to human health and the environment.

5. ADJACENT PROPERTY CONDITIONS

The following other potentially hazardous conditions existed on adjacent property: CERFA Parcel 34 was categorized as “disqualified” due to hazardous substances (flammable materials) storage northeast of Building 4456. The presence of these hazards on adjacent property does not present an unacceptable risk to human health and the environment because visual site inspections in April, May, and June 1997 revealed all hazardous materials storage areas noted in the CERFA report had been removed and there was no evidence of release (HLA, 1997).

6. ENVIRONMENTAL REMEDIATION AGREEMENTS

The following environmental orders/agreements are applicable to the property: the Fort Ord Federal Facility Agreement (FFA). All remediation activities on the property, required by the FFA, are completed or in place and operating properly and successfully (see Section 4.1 Environmental Remediation Sites). The deed will include a provision reserving the Army's right to conduct remediation activities (Enclosure 4).

7. REGULATORY/PUBLIC COORDINATION

The USEPA Region IX, the DTSC, and the public were notified of the initiation of this FOST. Regulatory/public comments received during the public comment period will be reviewed and incorporated, as appropriate. A copy of the regulatory/public comments and the Army Response will be included at Enclosure 6.

8. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE AND CONSISTENCY WITH LOCAL REUSE PLAN

The environmental impacts associated with the proposed transfer of the property have been analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis are documented in the *Final Environmental Impact Statement Fort Ord Disposal And Reuse* (USACE, 1993a) and associated Record of Decision (Army, 1993), and *Supplemental Environmental Impact Statement Fort Ord Disposal And Reuse* (USACE, 1996) and associated Record of Decision (Army, 1997b). Any encumbrances or conditions identified in such analysis as necessary to protect human health or the environment have been incorporated into the FOST. In addition, the proposed use of the property is consistent with the intended reuse of the property set forth in the FORA Reuse Plan.

9. FINDING OF SUITABILITY TO TRANSFER

ECP Category 1, CERCLA 120(h)(4), Uncontaminated Property (State concurs):

Based on the information above, I conclude that the Property qualifies as CERCLA §120(h)(4) uncontaminated property and is transferable under that section. In addition, all Department of Defense requirements to reach a finding of suitability to transfer have been met, subject to the terms and conditions in the Environmental Protection Provisions (Enclosure 5) that shall be included in the deed for the property. The deed will include the CERCLA 120(h)(4) Covenant and Access Provisions and Other Deed Provisions. Whereas no hazardous substances or petroleum products were stored for one year or more, known to have been released, or disposed of on the parcel, a hazardous substance or petroleum notification is not required.

THOMAS E. LEDERLE
Chief, Army Base Realignment and Closure Office

5 Enclosures

Encl 1 – Site Map of Property

Encl 2 – Environmental Documentation

Encl 3 – Table 1 – Description of Property

Encl 4 – CERCLA Notice, Covenant, and Access Provisions and Other Deed Provisions

Encl 5 – Environmental Protection Provisions

ENCLOSURE 1

SITE MAP OF THE PROPERTY

ENCLOSURE 2

ENVIRONMENTAL DOCUMENTATION²

Arthur D. Little (ADL), 1994. *Community Environmental Response Facilitation Act (CERFA) Report, Fort Ord, Monterey, California*. April 8. AR# BW-1658.

California Department of Toxic Substances Control (DTSC), 1998. *Completion of Interim Actions for Installation Restoration Site 22, Former Fort Ord, California (Army Parcel Number SI.31., California State University Parcel Number 3A)*. June 8. AR# IAFS-131E.

Diagnostic Engineering Inc. (DEI), 1993. *Asbestos Survey Report, U.S. Army Corps of Engineers – Fort Ord Installation, Fort Ord, California*. April 26.

Harding ESE, 2002. *Draft Final Field Investigation and Data Review, Solid Waste Management Units, Fort Ord, California*. July 30. Administrative Record No. BW-1496A.

Harding Lawson Associates (HLA), 1996. *Interim Action Confirmation Report, Site 22 – 4400/4500 Motor Pool, West Block, Fort Ord, California*. May 22. AR# IAFS-131.

HLA, 1997. *Environmental Baseline Survey, Surplus II Parcels, Former Fort Ord, California*. November 19. AR# OTH-137.

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

HLA, 2000a. *Draft Final Literature Review Report, Ordnance and Explosives Remedial Investigation/Feasibility Study, Former Fort Ord, California*. January 4. AR# OE-0245H.

HLA, 2000b. *Track 0 Technical Memorandum, Ordnance and Explosives Remedial Investigation/Feasibility Study, Former Fort Ord, California*. January 21. AR# OE-0258F.

Ludwig, undated. *Results of Radon Study in Family Housing at Fort Ord, Presidio of Monterey, and Fort Hunter Liggett*. Memorandum for Commanding General.

U.S. Army Corps of Engineers (USACE), 1993a. *Final Environmental Impact Statement (EIS) Fort Ord Disposal and Reuse*. June 1. AR#s BW-0414, BW-0415, and BW-1348.

USACE, 1993b. *U.S. Department of Defense, Base Realignment and Closure, Ordnance and Explosive Waste, Archives Search Report, Fort Ord, California*. December. AR# OE-0005.

USACE, 1994. *U.S. Department of Defense, Base Realignment and Closure, Ordnance and Explosive Waste, Archives Search Report (Supplement No. 1) Fort Ord, California, Monterey County, California*. November. AR# OE-0010.

² At the end of references included in the Fort Ord Administrative Record are the Record Numbers (e.g. BW-1234). The Record Number may be entered in the search tool at: <http://www.fortordcleanup.com/adminrec/arsearch.asp> to find the referenced document. Please note the referenced documents were available in the Fort Ord Administrative Record at the time this document was issued; however, some may have been superseded by versions that are more current and were subsequently withdrawn.

USACE, 1996. *Final Supplemental Environmental Impact Statement, Fort Ord Disposal and Reuse*. June. AR# BW-1538.

USACE, 1997a. *U.S. Department of Defense, Ordnance and Explosives, Revised Archives Search Report, Former Fort Ord, Monterey County, California*. AR# OE-0022.

U.S. Department of the Army (Army), 1993a. *Army Radon Reduction Program Completion and Installation Status Update*. Memorandum. September 24.

Army, 1993b. *Fort Ord, California Disposal and Reuse Environmental Impact Statement, Record of Decision*. December 23. AR# BW-0486.

Army, 1994. *Interim Action Record of Decision, Contaminated Surface Soil Remediation, Fort Ord, Monterey, California*. March 15. AR# IAFS-089.

Army, 1997a. *Record of Decision, Base wide Remedial Investigation Sites, Fort Ord, California*. January 13. AR# RI-025.

Army, 1997b. *Record of Decision, Fort Ord, California, Disposal and Reuse Supplemental Environmental Impact Statement*. June 18. AR# BW-1790.

Army, 2002a. *Final Record of Decision, No Action Regarding Ordnance-Related Investigation, Former Fort Ord, California*. July 2. AR# OE-0406.

U.S. Army Environmental Hygiene Agency (USAEHA), 1988. *Interim Final Report, Hazardous Waste Consultation No. 37-26-0176-89, Evaluation of Solid Waste Management Units, Fort Ord, California*. September 18-22.

USAEHA, 1994. *Industrial Radiation Survey Protocol No. 27-43-E2HU-1-94, Seventh Infantry Division and Fort Ord, Fort Ord California, 10 January – 15 April 1994*. AR# BW-2387.

USAEHA, 1994. *Industrial Radiation Survey, No. 27-43-E2HU-2-94, Facility Close-Out and Termination Survey, Fort Ord, California, 10 January 1994 – 15 April 1994*. June 6. AR# BW-2386.

U.S. Environmental Protection Agency (USEPA) Region IX, 1994. *Fort Ord Uncontaminated Property Identification*. April 19. AR# BW-1658.

USEPA, 1996. *Remedial Action Completion, Operable Unit #3, Site 22 – 4400/4500 Motor Pool, West Block, Fort Ord, California*. September 19. AR# IAFS-217.

ENCLOSURE 3

TABLE 1 – DESCRIPTION OF PROPERTY

Building Number and Property Description	EBS Parcel Designation	CERFA Parcel Code	Condition Category	Remedial Actions
Building 4458 was a 12,194 sq. ft administrative and supply building located on Parcel L36. Building 4458 was demolished and removed from Parcel L36 in its entirety in 2019.	L32 (Parcel L36 is a portion of former Parcel L32)	114 Q-A/L(P)/R/RD	1	None on Parcel L36. CERFA Parcel 114 was qualified due to ACM and probable LBP, radon detected in Buildings 4446, 4562, and 4792, and locations where equipment containing Nuclear Regulatory Commission (NRC)-licensed materials were used, stored, or repaired. None of these conditions are on or adjacent to Parcel L36.

Category 1: Areas where no release or disposal of hazardous substances or petroleum products has occurred. (including no migration of these substances from adjacent areas)

Category 2: Areas where only release or disposal of petroleum products has occurred.

Category 3: Areas where release, disposal, and/or migration of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response.

Category 4: Areas where release, disposal, and/or migration of hazardous substances has occurred, and all removal or remedial actions to protect human health and the environment have been taken.

ENCLOSURE 4

CERCLA NOTICE, COVENANT, AND ACCESS PROVISIONS **AND OTHER DEED PROVISIONS**

I. Property Covered by Covenant and Access Rights Made Pursuant to Section 120(h)(4)(D) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)):

For the property (Parcel L36), the Grantor provides the following covenants and retains the following access rights:

A. Covenant Pursuant to Section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)(i)):

Pursuant to section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)(i)), the United States warrants that any response action or corrective action found to be necessary after the date of this deed for contamination existing on the property prior to the date of this deed shall be conducted by the United States.

B. Access Rights Pursuant to Section 120(h)(4)(D)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)(ii)):

The United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the property, to enter upon the property in any case in which an environmental response or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response or corrective action is on the property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such easement and right of access shall be binding on the Grantee and its successors and assigns and shall run with the land.

In exercising such easement and right of access, the United States shall provide the Grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means to avoid and to minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the property. At the completion of work, the work site shall be reasonably restored. 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.

In exercising such easement and right of access, neither the Grantee nor its successors and assigns, as the case may be, 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 clause; provided, however, that nothing in this paragraph shall be considered as a waiver by the Grantee and its successors and assigns of any remedy available to them under the Federal Tort Claims Act.

II. OTHER DEED PROVISIONS:

A. "AS IS"

(1) The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the subject Property. The Grantee understands and agrees that the Property and any part thereof is offered "AS IS" without any representation, warranty, or guaranty by the Grantor as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Grantee, and no claim for allowance or deduction upon such grounds will be considered.

(2) No warranties, either express or implied, are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain asbestos or lead-based paint. 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, lead-based paint, or other conditions on the Property. The failure of the Grantee to inspect or to exercise due diligence to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States.

(3) Nothing in this "As Is" provision will be construed to modify or negate the Grantor's obligation under the CERCLA Covenant or any other statutory obligations.

B. HOLD HARMLESS

(1) To the extent authorized by law, the Grantee, its successors and assigns, covenant and agree to indemnify and hold harmless the Grantor, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed by the Grantee, its successors and assigns, and (2) any and all claims, damages, and judgments arising out of, or in any manner predicated upon, exposure to asbestos, lead-based paint, or other condition on any portion of the Property after the date of conveyance.

(2) The Grantee, its successors and assigns, covenant and agree that the Grantor shall not be responsible for any costs associated with modification or termination of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed, including without limitation, any costs associated with additional investigation or remediation of asbestos, lead-based paint, or other condition on any portion of the Property.

(3) Nothing in this Hold Harmless provision will be construed to modify or negate the Grantor's obligation under the CERCLA Covenant or any other statutory obligations.

C. POST-TRANSFER DISCOVERY OF CONTAMINATION

(1) If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property after the date of conveyance, Grantee, its successors or assigns, shall be responsible for such release or newly discovered substance unless Grantee is able to demonstrate that such release or such newly discovered substance was due to Grantor's activities, use, or ownership of the Property. If the Grantee, its successors or assigns believe the discovered hazardous substance is due to Grantor's activities, use or ownership of the Property, Grantee will immediately secure the site and notify the Grantor of the existence of the hazardous substances, and Grantee will not further disturb such hazardous substances without the written permission of the Grantor.

(2) Grantee, its successors and assigns, as consideration for the conveyance of the Property, agree to release Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the Grantor's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations or the Grantor's obligations under the "Covenant Pursuant to Section 120(h)(4)(D)(i)".

D. ENVIRONMENTAL PROTECTION PROVISIONS

The Environmental Protection Provisions are at Exhibit _____, which is attached hereto and made a part hereof. The Grantee 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 the Environmental Protection Provisions in all further deeds, easements, transfers, leases, or grant of any interest, privilege, or license.

ENCLOSURE 5

ENVIRONMENTAL PROTECTION PROVISIONS

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 to ensure protection of human health and the environment.

1. FEDERAL FACILITY 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), and any amendments thereto, entered into by the United States Environmental Protection Agency Region IX (USEPA), the State of California, and the Department of the Army, effective on November 19, 1990, and that the Grantor will provide the Grantee with a copy of any future 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. NOTICE OF THE POTENTIAL 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.)

B. 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 Police Department so that appropriate explosive ordnance disposal personnel can be dispatched to address such MEC as required under applicable law and regulations.

C. 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. 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. 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.

D. The Grantee acknowledges receipt of the *Final Record of Decision, No Action Regarding Ordnance-Related Investigation, Former Fort Ord, California*, Fort Ord Administrative Record No. OE-0406.