

**FINDING OF SUITABILITY FOR EARLY TRANSFER**

**(FOSET)**

**FINDING OF SUITABILITY FOR EARLY TRANSFER  
WITH A CERCLA 120(h)(3) COVENANT DEFERRAL  
DEL REY OAKS PARCELS**

**FORMER FORT ORD, CALIFORNIA**

**July 2004**

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**FINDING OF SUITABILITY FOR EARLY TRANSFER (FOSET)  
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**1.0 PURPOSE**

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

If a federal agency proposes to transfer real property, on which hazardous substances have been stored for more than a year, are known to have been released, or have been disposed of, by deed, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires a covenant indicating that all remedial action necessary to protect human health and the environment, with respect to any hazardous substances remaining on the property, has been taken prior to transfer of such property by deed. The required covenant may be deferred under certain conditions where it can be shown that the intended reuse of the property is consistent with protection of human health and the environment during the deferral period. The proposed reuse includes a resort hotel and golf course, commercial/retail facilities, offices, and associated infrastructure.

The City of Del Rey Oaks requested the early transfer of the property for the purposes of assisting in the economic recovery of the area and preventing further job and revenue loss by expediting reuse. The property proposed for early transfer is described in Section 2.0.

**2.0 PROPERTY DESCRIPTION**

The property proposed for early transfer includes six parcels and consists of approximately 324 acres (Plate 1- Attachment 3). All six parcels lie in areas of suspect military munitions<sup>1</sup> use. Portions of Parcels E29a and E29b.1 were formerly part of the Impact Area and include portions of three firing ranges (24, 25, and 26). Ranges 24, 25, and 26 were formerly used for antitank training, small arms training, and machine gun training, respectively. Parcels E31a, E31b, E31c and E36 were reportedly used as a backstop for rifle grenades and shoulder launched projectiles in the early 1940's. Four temporary wooden structures (TR2961, TR9242, TR9251, and TR9260) associated with the former firing ranges are located on Parcels E29a and E29b.1 (Plate 1- Attachment 3). The structures include field latrines and storage sheds. Included within Parcel E29a is an approximately 5-acre habitat reserve area that is not included in this transfer.

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<sup>1</sup> Pursuant to Department of Defense and Army policy, terminology describing military munitions and related names, places, actions and conditions has been changed. A description of the new terminology is given in Attachment 4.

| <u>Parcel No.</u> | <u>Approximate Area</u> | <u>Description</u> |
|-------------------|-------------------------|--------------------|
| E29a              | 272 acres               | MRS-DRO.1          |
| E29b.1            | 34 acres                | MRS-DRO.2          |
| E31a              | 5 acres                 | Portion of MRS-43  |
| E31b              | 3 acres                 | Portion of MRS-43  |
| E31c              | 4 acres                 | Portion of MRS-43  |
| E36               | 6 acres                 | Portion of MRS-43  |

### **3.0 ENVIRONMENTAL CONDITION OF THE PROPERTY**

A determination of the environmental condition of the property was made by the United States Army by reviewing existing environmental and military munitions response-related<sup>2</sup> documents and conducting visual site inspections (9/99 and 10/00). The documents reviewed are listed in Attachment 1.

The results of this document review indicate that the property is suitable for early transfer to the City of Del Rey Oaks.

#### **3.1 Environmental Condition of Property Categories**

The Department of Defense (DOD) Environmental Condition of Property (ECP) Category for the Del Rey Oaks property is as follows:

ECP Category 5: Parcels E29a, E29b.1, E31a, E31b, E31c and E36

The DOD ECP category is defined as follows:

ECP Category 5: Areas where release, disposal and/or migration of hazardous substances has occurred, and removal or remedial actions are underway, but all required remedial actions have not yet been taken.

Although all required remedial actions have not yet been taken the property may be transferred using the early transfer authority under CERCLA 120(h)(3)(C). The early transfer authority authorizes the deferral of the CERCLA covenant, requiring all remedial actions to be completed before Federal property is transferred, which allows the DOD to transfer property before all remedial action has been taken as long as approval is obtained from the regional Environmental Protection Agency (EPA) for NPL sites and concurrence by Governor of the State.

A summary of the ECP Category for the six parcels is provided in Table 1 – Description of Property.

The final CERFA report identifies the property as being within CERFA Qualified Parcel 176 and CERFA Uncontaminated Parcel 229. Parcel 176 was qualified because of the presence of the

<sup>2</sup> **Munitions Response.** Response actions, including investigation, removal actions and remedial actions to address the explosives safety, human health, or environmental risks presented by unexploded ordnance (UXO), discarded military munitions (DMM), or munitions constituents (MC).

former Impact Area and the confirmed or potential presence of unexploded ordnance (UXO)<sup>3</sup>. The CERFA report identified areas that were considered to be uncontaminated as defined by CERCLA §120(h)(4) and CERFA, as a parcel in which there is no evidence of current or past storage, release, or disposal of hazardous substances or petroleum products or their derivatives, and for which there is no evidence of the presence of other environmental hazard or safety concerns. California EPA Department of Toxic Substances Control (DTSC) and EPA Region IX concurred that CERFA Parcel 229 was uncontaminated in April 1994. The designation of and concurrence to CERFA Parcel 229 as uncontaminated occurred prior to the identification of Munitions Response Site (MRS)-43.

### 3.2 Storage, Release, or Disposal of Hazardous Substances

The Army has performed munitions response actions on the Del Rey Oaks parcel pursuant to the Fort Ord Federal Facilities Agreement as discussed in Section 3.9. The parties agree that known or suspected munitions response sites (MRS) and detected anomalies that may be munitions and explosives of concern (MEC) will be investigated, analyzed, and managed in accordance CERCLA and the NCP, with due consideration given to applicable or relevant and appropriate requirements (ARARs).

These munitions response actions found approximately 244 unexploded ordnance (UXO) items, such as 35mm subcaliber practice rockets and 2.36-inch rockets. These UXO were destroyed by detonation. Because these items were actively managed for treatment on a closed range, these UXO items are solid wastes. Additionally, because these UXO were capable of detonation or explosive reaction, they have been identified as characteristic (reactivity) hazardous waste and, therefore, are also hazardous substances.

In conjunction with the munitions response activities on these closed ranges, the Army has concluded that hazardous substances in the form of certain UXO were stored, released, or disposed of in excess of the CERCLA reportable quantities listed in 40 Code of Federal Regulation (CFR) Part 302.4.

A release of lead occurred as the result of the military's use of small arms ammunition on the firing ranges located within Parcel E29a. Soil containing residual lead from spent ammunition that exceeded the risk-based target cleanup levels (TCLs) was excavated and removed under the Fort Ord Installation Restoration Program (IRP). All necessary response actions, with respect to lead, have been taken as described in the *Draft Final Remedial Action Confirmation Report Site 39, Ranges 24, 25, and 26, Basewide Remediation Sites (October 2000)* and summarized in Sections 3.10 and 4.0.

Accordingly, the Army will provide appropriate notice under CERCLA 120(h)(3)(A)(i) of the UXO and lead.

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<sup>3</sup> **Unexploded Ordnance (UXO).** Military munitions that (A) have been primed, fuzed, armed, or otherwise prepared for action; (B) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and (C) remain unexploded either by malfunction, design, or any other cause. (10 U.S.C. 101(e)(5)(A) through (C))

### **3.3 Petroleum and Petroleum Products**

#### **3.3.1 Storage, Release, or Disposal of Petroleum Products**

There is no evidence that any petroleum or petroleum products in excess of 55 gallons at one time were stored, released, or disposed on the property. Accordingly, there is no need for any notification of petroleum product storage, release, or disposal.

#### **3.3.2 Underground and Above-Ground Storage Tanks (UST/AST)**

Based on a review of UST and AST records there is no evidence that petroleum products were stored in underground or aboveground storage tanks on the property.

### **3.4 Polychlorinated Biphenyls (PCBs)**

There are no PCB containing transformers, florescent light ballast, or other PCB containing equipment located on the property and no evidence of unremediated releases from PCB equipment.

### **3.5 Asbestos**

An asbestos survey was completed in 1993 for the four temporary structures (TR2961, TR9242, TR9251, and TR9260) on the property as part of a facility-wide asbestos survey. The survey showed that TR09251 contained non-friable asbestos-containing materials (ACM [roofing and roof penetration mastic]) rated in good condition at the time of survey, with a recommendation for management with a 2-year (biannual) inspection cycle. The Army does not intend to remove or repair the ACM in the structure, but only disclose its existence and condition. Recommended inspection of ACM present in the structure is the responsibility of the recipient. No asbestos was found in the inspection of TR2961, TR9242 and TR9260. The appropriate ACM notice is provided in Attachment 2-Environmental Response Obligation Addendum.

### **3.6 Lead-Based Paint (LBP)**

All four structures on the property were either constructed prior to 1978 or the dates of construction are unknown and thus are presumed to contain lead-based paint (LBP). In accordance with the Residential Lead-Based Paint Reduction Act of 1992, the Army does not intend to abate the LBP presumed to be present in these structures because they are not intended to be used as residences. No sampling related to LBP in soil has occurred on the property. The appropriate LBP notice is provided in Attachment 2-Environmental Response Obligation Addendum.

### **3.7 Radiological Material**

No radiological surveys were conducted within structures on the property because radioactive commodities were reportedly not used or stored in the structures.

### **3.8 Solid Waste Management Unit (SWMU)**

No former SWMUs are present on the property.

### 3.9 Military Munitions Response Program (MMRP)

Reviews of existing records and available information, consisting of the Archive Search Report (ASR), ASR Supplement No. 1 and the draft Revised ASR (December 1993, November 1994 and December 1997, respectively), Site 39 Data Summary Work Plan (February 1994), munitions response contractor after-action reports, the Draft Final OE RI/FS Literature Review Report (January 2000), working maps, Fort Ord Training Facilities Maps, and associated interviews from various munitions-related community relations activities, show three potential MRS (MRS-DRO.1, MRS-DRO.2, and MRS-43) within the property.

#### BACKGROUND

MRS-DRO.1, MRS-DRO.2 and MRS-43 (DRO Group) lie in the southwest corner of the Impact Area. The boundaries of MRS-DRO.1 and MRS-DRO.2 are based upon transfer parcel delineation and not on evidence of munitions use. MRS-DRO.1 and MRS-DRO.2 were identified by the Base Realignment and Closure (BRAC) office as disposal parcels and their boundaries are coincident with Transfer Parcels E29a and E29b.1, respectively. Record searches including those conducted as part of the ASR and the MR RI/FS Literature Review indicated that portions of four firing ranges were present within MRS-DRO.1 and MRS-DRO.2 at the time of base closure. Historical maps and photos indicate that the use and positioning of these ranges changed through time. The boundary for MRS-43, which includes Parcels E31a through E31c and E36, is based on information provided in the draft Revised ASR. The site was identified during interviews with a former Fort Ord Fire Chief. The area reportedly included firing positions for rifle grenades and shoulder launched projectiles and was reportedly active in the 1940s. Use of this area for military munitions-related activities are not known to have occurred after that time. To support early transfer of the DRO Group, a munitions response (removal) has been completed of the entire transfer area, with the exception of the habitat area within Parcel E29a (Plate 1- Attachment 3).

The majority of MRS-DRO.1 and MRS-DRO.2 are outside firing ranges that occur within the Impact Area; however, portions of three firing ranges (24, 25, and 26) were present within MRS-DRO.1 at the time of base closure. At the time of base closure, Range 24 was a sniper range, but past records indicate that 40mm practice projectiles have been found or used on the range. The records and recent field investigations also indicate that this former range was used for antitank 35mm subcaliber training. Historical maps and photos indicate that Range 24 was once labeled an AR Table, which means it was also used for automatic rifle training. At the time of base closure, Range 25 was an offensive overhead firing range (small arms range). Past records indicate that 37mm projectiles were found or used on this former range. Historical maps and photos indicate that Range 25 was also once labeled an AR Table. At the time of base closure, Range 26 was a machine gun transition range. Past records indicate that Range 26 may have also been used for training with 3.5-inch rockets, 37mm projectiles, and mortars. The records and recent field investigations also indicate that this former range was used for 2.36-inch rocket training. One range shown on a 1945 training facilities map is coincident with Range 26 and is labeled "Austin Anti-Tank," which also suggests the use of rockets in this area. Historical maps and photos indicate that Range 26 was once labeled a MG Table, which means this former may have been used for machine gun training.

MRS-43 was identified during interviews, conducted for the ASR, with a former Fort Ord Fire Chief, who indicated that a portion of the ridge in this parcel was used as a backstop for rifle grenades and shoulder launched projectiles from 1942 to 1944. According to the former Fire Chief, MRS-43 consisted of firing positions (trenches) that were excavated along South Boundary Road. Firing was reportedly from the southeast to the northwest at a diagonal to the hill. Impact occurred just north of a large stand of pine trees and continued up to the first of the last pair of fire breaks. The firing positions were buried when the use was discontinued. The area was control burned in the early 1940's to support this training. The Army's munitions response contractor removed brush in this MRS to support an MEC inspection of this area. Unexploded ordnance (UXO) specialist performed a munitions response (surface and subsurface removal) as a safety measure for brush cutters. During this munitions response, the UXO specialist discovered 37mm black powder fragmentation projectiles at the northwest end of the site. Based on the presence of 37mm fragmentation projectiles sampling was recommended.

## **MUNITIONS AND EXPLOSIVES OF CONCERN (MEC) INVESTIGATION HISTORY**

Information used to characterize the DRO Group was collected during several separate field activities, including road and trail clearances, firebreak clearances, grid sampling in the Impact Area, SiteStats/GridStats sampling, site-specific grid sampling, a supplemental geophysical investigation, and removals performed during site preparation in support of the remediation of spent small arms ammunition and lead contaminated soil. A removal action was performed to a depth of four feet over 100 percent of the road surface within selected portions of the Impact Area to facilitate travel within the Impact Area during field activities. Many of the roads were informally named for tracking purposes. Canister, Flechette, and Napalm roads are within MRS-DRO.1. One UXO item was found within the DRO Group during MR actions in the roads and trails. No munitions debris<sup>4</sup> was encountered within the area of the DRO Group during this removal effort. A 30-foot wide firebreak comprised of 47 contiguous 30x100-foot grids along the eastern boundary of MRS-DRO.1 and MRS-DRO.2 was subjected to a removal action to a depth of four feet over 100 percent of each grid. During munitions response actions, 29 MEC items were found and removed from the firebreak area of the DRO Group. Of these 4 were UXO (35mm subcaliber practice rockets) and 25 were determined to be munitions debris items. Grid sampling was conducted within specific areas of the DRO Group as part of the characterization of MEC in the Impact Area. Forty-one 100 x 100-foot grids were randomly distributed behind and between the range fans around the perimeter of the Impact Area. These grids were subjected to a removal action to a depth of four feet over 100 percent of each grid (100 percent grid sampling is the survey of the entire grid area and all anomalies encountered are investigated). A total of eight of the 100x100-foot grids are located within the DRO Group. No MEC or munitions debris was recovered from these sample grids in the DRO Group. A total of thirty-four 100x200-foot grids were sampled using the SiteStats/GridStats software procedures in MRS-DRO.1, and eighteen 100x200-foot grids were sampled in MRS-43 to characterize the sites. The program statistically selects random sampling locations within sampling grids in order to collect representative data for the site. Further description of the SiteStats/GridStats program is presented in the Engineering Evaluation/Cost Analysis-Phase 2, Former Fort Ord, Monterey County, California, dated April 1998. Several UXO as well as munitions debris items were

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<sup>4</sup> **Munitions Debris.** Remnants of munitions (e.g., fragments, penetrators, projectiles, shell casings, links, fins) remaining after munitions use, demilitarization, or disposal.



found during the SiteStats/GridStats sampling effort. MEC was cleaned up from portions of MRS-DRO.1 during site preparation in support of remediation of spent small arms target areas and staging areas in Ranges 24, 25, and 26. A total of 60, 100 x 100-foot grids and portions of 7 additional grids were cleaned up in the vicinity of Range 24. Areas cleaned up near Range 25 included a staging area for crews and equipment, access and egress routes, and the area to be remediated. A total of 29 100 x 100-foot grids and portions of 4 additional grids were cleaned up in the vicinity of Range 26. During the remediation activities, 60 UXO and 974 munitions debris items were found.

On the basis of the sampling and removal results, it was determined that the DRO Group characterization was inadequate and additional sampling was necessary (*USA, 2000*). A total of 169, 100x100-foot grids were distributed throughout the DRO Group and 100 percent grid sampling was performed. Of the 169 grids, 2, which were located in a habitat area in MRS-DRO.1, were not investigated. Additionally, the seven SiteStats/GridStats grids completed at MRS-43 were re-evaluated (sampled).

Based on the results of the previous sampling and removal actions and the 100 percent grid sampling, three MRS were delineated within the DRO Group. Results of the sampling activities identified the presence of MEC and munitions debris in selected areas of the DRO Group. Areas of concern were identified at each of the three MRS. These areas were identified for removal action based on the presence of an imminent and substantial endangerment at the site. After the 100 percent grid sampling and the removals were complete, each sample grid was resurveyed using digital geophysical equipment. A total of 233 UXO items and 3,534 munitions debris items were found and removed in the DRO Group during the 100 percent grid sampling, removal action and follow-up geophysical investigation (*USA, 2001*).

After operations ended, three areas within the DRO Group were identified as requiring additional munitions response work: the easternmost portion of MRS-DRO.1 and MRS-DRO.2, the Range 26 berm, and an area to the west of the Range 26 berm comprised of 9-grids. These areas were identified because: (1) the digital geophysical investigation that was to be completed over transfer parcels E29a and E29b.1 stopped short of the parcel boundaries at the eastern MRS boundary; and (2) it was believed that MEC potentially remained in the subsurface of the Range 26 berm and adjacent 9-grid area.

Supplemental munitions response work was performed at MRS-DRO.1 and MRS-DRO.2 to complete the work required for the early land transfer of the DRO parcels. This supplemental work in MRS-DRO.1 and MRS-DRO.2 had three major objectives: (1) complete the geophysical investigation of transfer parcels E29a and E29b.1, by mapping and investigating their approximately 30-foot-wide eastern edge; (2) excavate, map, and investigate the Range 26 berm; and (3) clean up machine gun links from the 9-grid area adjacent to the western slope of the Range 26 berm in preparation for the ensuing geophysical mapping and investigation of the area.

## **EASTERN BOUNDARY GEOPHYSICAL INVESTIGATION**

An analog MEC removal using analog equipment (i.e., Schonstedt magnetometer) was first performed on the eastern boundary of the MRS-DRO.1 and MRS-DRO.2 to prepare the area for the subsequent digital geophysical survey. During this analog MEC removal, 10 UXO items were discovered. Of these, eight (five 35mm subcaliber practice rockets and three 2.36-inch

rockets) were determined to be UXO and two (two 2.36-inch practice rockets) were determined to be munitions debris. All items were removed. The work area was then investigated using digital geophysical equipment (i.e., EM61-MK2s) to detect and locate potential subsurface MEC. All anomalies detected were investigated and resolved. During the digital geophysical investigation no UXO was found; however, over 71 lbs of munitions debris and 181 lbs of range-related debris were found and removed.

With the exception of one grid, all 103 operating grids in the eastern boundary investigation area passed the quality control/quality assurance (QC/QA) inspections. The grid failure resulted from the finding of the aluminum body of an illumination signal in grid A20116 during the QC inspection. This finding, along with the munitions debris encountered during QC on the Range 26 berm, led to a corrective action mandating that UXO dig teams use digital geophysical equipment along with analog equipment to recheck excavations to ensure that excavated areas are satisfactorily cleared. During the QC survey, an expended 2.36-inch practice rocket (munitions debris) was found outside the work area in grid A2G1F7; because the item was found outside the work area, it did not constitute a failure.

## **RANGE 26 BERM EXCAVATION**

A scraper removed the top 5 feet (approximately) of soil from the Range 26 berm and deposited the soil over adjacent areas to the north and east of the berm. UXO teams visually inspected the just-scraped areas of the berm and the adjacent areas as the berm material was being deposited. The Range 26 berm supplemental work area (comprised of the berm [11 grids] and the adjacent areas where the berm material was deposited [22 grids]) was then investigated using digital geophysical equipment to detect and locate potential subsurface MEC. All anomalies detected were investigated and resolved. Anomaly excavations produced one UXO item (37mm projectile) in grid A2G1B5 (one of the grids where the excavated soil from the berm was deposited) and 7,941 lbs of range-related debris.

During the anomaly excavations, layers of machine gun links were found below the surface indicating that the level of the scraped berm did not match the contour of the preexisting terrain in some areas. Because the Range 26 Berm has not been completely excavated additional measures (i.e., construction support, a land use covenant, operation and maintenance agreement and an excavation and digging ordinance) will be implemented and are discussed below.

During QC, MEC-like material was found at anomaly excavations in 10 grids. It was initially believed that the UXO dig teams needed to recheck the excavations more thoroughly. It was later determined, however, that the metallic clutter in the berm material covering the areas adjacent to the berm prevented the analog equipment (used to recheck the initial anomaly excavations) from detecting larger anomalies when near the clutter. These findings led to a corrective action mandating that UXO dig teams use digital geophysical equipment along with analog equipment to recheck excavations in order to ensure that anomaly excavations are satisfactorily cleared.

Although all 33 grids passed the digital QC survey, an expended practice hand grenade and an expended 37mm projectile (munitions debris) were found in two separate grids. It was concluded that the metallic clutter in the area prevented the detection of the anomalies.

With the exception of one grid, all 33 grids passed the analog QC inspection. The one grid failure resulted from the finding of a 10-inch, square, concrete block with 6-inch, by ½-inch steel bolts at a location where there was no indication that an anomaly was ever selected or reacquired.

Because of the metallic clutter in the area, an analog QA inspection could not be performed. During the digital QA survey, an approximately 1-inch by 8-inch cylindrical ferrous metal item was found. As a corrective measure, all anomalies in the grid selected by USACE QA were checked again and resolved.

## **MACHINE GUN LINK AREA**

Earth moving equipment removed the top 1-foot of soil from the 9-grid area, and the soil was deposited and stockpiled in the southeast corner of the work area. Areas containing deeper concentrations of machine gun links were excavated again until the concentration of links were no longer apparent. During the excavation operations, machine gun links were found at the northern boundary of the original 9-grid area and the scope of operations was therefore extended 60 feet north into the three grids adjacent to the northern boundary of the 9-grid area. The machine gun link area was thereafter referred to as the 12-grid area or 12-grid machine gun link area.

The approximately 2½-acre machine gun link area was then geophysically investigated using the EM61-MK2s to detect and locate potential subsurface MEC. All anomalies detected were investigated and resolved. Anomaly excavations produced only a single munitions debris item, 3 lbs of munitions debris, and 2,740 lbs of range-related debris. No UXO items were found.

Because of the metallic clutter, the QC and analog QA inspections could not be performed on the 12 grids. Instead, QC/QA in the 12-grid area consisted of visually inspecting the anomaly excavations and checking the spoils from the excavated soil as the soil was being sifted. These activities satisfied the functional requirements of QC/QA.

After the anomaly excavations were inspected, the stockpiled soil in the southeast corner of the work area was sifted, inspected, and returned to the scraped areas. The southeast corner was then scraped and sifted, and the corner was subjected to a digital geophysical survey and the anomaly reacquisition and excavation processes.

## **FINDINGS AND RECOMMENDATIONS**

The U.S. Army has completed MR operations on the transfer parcels. The area has been given a careful search and has been cleared of all dangerous and/or explosive material reasonably possible to detect. Based on the results of the MR operations, no further MR actions are recommended within the area proposed for early transfer.

The use and/or occupancy of the property may be limited or restricted, as necessary, under the following scenarios: (1) to provide the required minimum separation distance employed during intrusive MR actions that may occur on or adjacent to the property; and (2) if Army implemented prescribed burns are necessary for the purpose of MR actions in adjacent areas. If MEC is found which necessitates immediate in-place disposal because it is unsafe to move, a minimum

separation distance of 200 feet will be used for the detonation. A buffer of 200 feet will be cleaned up between Parcels E29a and E29b.1 and the habitat area to the east of these parcels prior to the transfer of the property.

A portion of Parcels E29a and E29b.1 (within 11 grids in the Range 26 berm area) will be transferred with restrictions in accordance with AR 405-90, Appendix D-4(b). The berm area includes 11 MR grids, identified as requiring construction support during intrusive work operations that exceed a depth of 4 feet. The Army will provide construction support during soil excavation or movement at depths exceeding 4 feet, within the 11 grid area. Additional information on construction support activities is provided in Section 5.0 of Attachment 2. All intrusive operations in this area (exceeding a depth of 4 feet) shall be in accordance with Engineer Manual (EM) 1110-1-4009, Engineer Regulation (ER) 1110-1-8153, Engineer Pamphlet (EP) 1110-1-18, and EP 75-1-2 (6-1.b.(1); 6-5). Machine gun links found in this area indicate that the excavated level of the berm, in some areas, does not match the surrounding undisturbed terrain. The specific location of each of the 11 grids is delineated in the OE-15DRO.1-2 After-Action Report (*Parsons, 2003*) and shown on Plate 3-Attachment 3 of the FOSET (for informational purposes only).

The Army's assessment indicated that the remaining portions of Parcels E29a, E29b.1, and Parcels E31a, E31b, E31c, and E36, can be transferred with no restriction on land use. However, the Army has agreed to enter into a land use covenant and agreement ("Covenant") with the DTSC, and agreed to by the City of Del Rey Oaks, pursuant to California Civil Code Section 1471(c). The EPA also believes that any proposals for the residential reuse of this parcel should be subject to regulatory review. The Covenant will place additional use restrictions on all of the transferring property and will be signed prior to transfer. The Army and the DTSC agree that the use of the property will be restricted as set forth in the Covenant and described in Section 8.0 of the FOSET.

As agreed to by the DTSC, the Fort Ord Reuse Authority (FORA) and the Redevelopment Agency of Del Rey Oaks, in the Agreement, Del Rey Oaks Former Fort Ord Resort Property (Agreement), the City of Del Rey Oaks will provide on-site expert MEC construction support on all of the property.

Because the Army cannot guarantee that all MEC has been removed, the Army recommends reasonable and prudent precautions be taken when conducting intrusive operations on transferred property and will, at its expense, provide construction worker MEC recognition training.

Pursuant to an agreement with the DTSC, the City of Del Rey Oaks has adopted a City Ordinance (Chapter 15.48), which addresses the potential explosives safety risks posed by MEC, particularly UXO, by requiring permits for certain excavation activities. The City of Del Rey Oaks has designated all real property within the City's land use jurisdiction which was formerly part of Fort Ord and identified as a possible location of UXO as an "Ordnance Remediation District" ("District").

### **3.10 Installation Restoration Program (IRP)**

A portion of one IRP site (IRP Site 39, the Inland Firing Ranges) is within the property. IRP Site 39 was characterized as a Remedial Investigation (RI) site based on the results of site investigations. Portions of three former firing ranges, Ranges 24, 25, and 26, lie within Parcel E29a. Based on the results of sampling and characterization activities conducted at Ranges 24, 25, and 26, it was determined that remediation was warranted at Ranges 24 and 25 only. The selected remedial action for small arms ranges within Site 39 was presented in the Fort Ord Basewide Record of Decision (ROD). The selected remedial action at Ranges 24 and 25 included the excavation and removal of soil containing accumulated spent ammunition and residual lead required to meet the Remedial Action Objectives (RAOs) outlined in the ROD. The RI Sites ROD was signed by the Army, DTSC and the EPA in January 1997. The reuse scenario evaluated in the ROD included a natural resource management area with restricted public access for Parcels E29a and E29b.1. However, due to a change in land use planning, the proposed reuse of these parcels will include development with mixed use. Because a quantitative RAO had not been developed for a development and mixed use scenario, a Post-Remediation Health Risk Assessment (PRHRA) and Post-Remediation Ecological Risk Assessment (PRERA) were performed evaluating the potential human health and ecological risks and hazards associated with exposure to residual munition constituents (lead) remaining in soil following remedial activities. On the basis of a conservative evaluation of potential risks and hazards under post-remediation conditions, impacts on human health are considered unlikely. Additionally, significant risks to ecological receptors exposed to residual concentrations of chemicals of potential concern (lead) remaining in soil at Ranges 24, 25, and 26 are not expected and no further action was recommended. The EPA and DTSC concurred that the area is protective of human health and environment in letters dated September 7, 2000 and July 11, 2003, respectively.

### **3.11 Radon**

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

### **3.12 Air Quality and Other Conditions**

Clean Air Act General Conformity Rule requirements were satisfied by a Record of Non-Applicability based upon an exemption for property transfers or leases where the proposed action will be a transfer of ownership, interest and title in the land, facilities, and associated real and personal property as soon as it meets the requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) either by deed or deferred covenant.

## **4.0 REMEDIATION**

The remediation of Ranges 24 and 25 (portion of IRP Site 39) was conducted as agreed to in the Fort Ord Record of Decision (ROD), Basewide Remedial Investigation Sites (January 13, 1997). All necessary investigations and risk assessments have been completed related to munitions constituents and other contamination on the property. The Army is currently conducting an RI/FS for military munitions response at the former Fort Ord as the Army agreed to do in

November 1998. MR actions have been completed at MRS-DRO.1, MRS-DRO.2 and MRS-43. These sites will undergo additional evaluation in the MR RI/FS. In the event the results of the MR RI/FS indicate that further response action is necessary, the Army reserves the right to carry out those actions.

## **5.0 REGULATORY/PUBLIC COORDINATION**

The EPA Region IX, the DTSC, and the public were notified of the initiation of the FOSET. Regulatory/public comments received during the FOSET development were reviewed and incorporated as appropriate. The comment period for the FOSET was from July 1, 2003 through July 31, 2003. Public comments and responses are provided in Attachment 5.

## **6.0 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE AND CONSISTENCY WITH LOCAL REUSE PLAN**

The environmental impacts associated with the disposal and reuse of the Property have been analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis have been documented in the “Final Environmental Impact Statement Fort Ord Disposal and Reuse,” June 1993, associated Record of Decision December 1993, and “Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse,” June 1996. The environmental effects of the activities anticipated under the proposed transfer were determined not to be significant. In addition, the proposed transfer is consistent with the intended reuse of the property set forth in the Fort Ord Reuse Plan.

## **7.0 DEED RESTRICTIONS AND NOTIFICATIONS**

The environmental documents listed in Attachment 1 were evaluated to identify environmental factors which may warrant constraints on certain activities in order to ensure that it is protective of human health and the environment. Such constraints are generally embodied as restrictions in the deed or as specific notifications in the deed or other documents supporting the transaction. The factors that require either deed restrictions or specific notifications are identified in Attachment 2 (Environmental Response Obligation Addendum [EROA]).

## **8.0 FINDING OF SUITABILITY FOR EARLY TRANSFER**

The proposal to transfer this property has been adequately assessed and evaluated for (a) the presence of hazardous substances and contamination on the property, (b) environmental impacts anticipated from the intended use of the property, (c) the presence of munitions and explosives of concern on the property, and (d) the adequacy of use restrictions and notifications to ensure that it is protective of human health and the environment.

The Army is conducting an MR RI/FS for at the former Fort Ord. In the event the results of the MR RI/FS indicate that further response action is necessary, the Army reserves the right to carry out those actions.

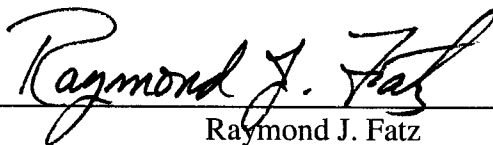
The Army's assessment indicated that, with the exception of an 11 grid area within Parcel E29a, the property could be transferred with no restriction on land use. However, the Army has agreed to enter into a Covenant with the DTSC and agreed to by the City of Del Rey Oaks placing additional use restrictions on all of the transferring property. In accordance with California Health and Safety Code Section 25232(b) (1), the property is restricted from the following use: residential, day care center for children (except day care centers that meet certain requirements to prevent contact with soil), a school for persons under 21 years of age, and hospital for humans. The EPA also believes that any proposals for the residential reuse of this parcel should be subject to regulatory review. Provided the restrictions of the Covenant, to be entered into by the Army and the State of California, are adhered to, future use of this property does not present a current or future risk to human health or the environment, subject to inclusion and compliance with the appropriate notices, disclosures, and restrictions as addressed in the EROA. However, the Covenant provides that the Owner may apply for a variance to change the allowed land use on all or part of the property to include residential. This application shall be accompanied by a description, subject to DTSC approval, with an opportunity to comment by, EPA and the Army, detailing the work to be performed to assure that all or part of the property is suitable for residential use.

Should this property be considered for the proposed acquisition and/or construction of school properties utilizing State funding, a separate environmental review process in compliance with the California Education Code 17210 et. Seq will need to be completed and approved by DTSC.

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

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

Agreement entered into by the EPA Region IX and the State of California. Transfer of property cannot occur until after the request for the covenant deferral is approved by the delegated representative of the EPA Administrator with the concurrence of the Governor of the State of California or his designated representative.



Raymond J. Fatz

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



Table 1 – Description of Property

| Property Description  | Parcel Designation                                      | Condition Category | Remedial Actions   |
|---|---|--------------------|--|
| <p>272 acre parcel. Includes the location of three former firing ranges associated with the Impact Area (Ranges 24, 25 and 26). Two structures (latrines and storage sheds) are located on the parcel. The parcel includes a habitat area that is not part of the transfer.</p> | <p>Parcel E29a. CERFA Qualified Parcel 176 (UXO).</p>   | <p><b>5</b></p>    | <p>RI Site 39: Remediation complete; Excavation to remove spent ammunition and lead impacted soil associated with the use of Ranges 24 and 25. 100% of the 272-acre parcel has undergone a geophysical investigation and removal of all geophysical anomalies to a depth of 4 feet. No further action related to the investigation of munitions is recommended. However, additional construction support is recommended, as described in Section 3.9, if movement of soil occurs four or more feet below ground surface within the berm area (firing line) of Range 26. This area will undergo further evaluation in the Munitions Response (MR) Remedial Investigation/Feasibility Study (RI/FS).</p> |
| <p>34 acre parcel. One structure (latrine) is on the parcel.</p>  | <p>Parcel E29b.1. CERFA Qualified Parcel 176 (UXO).</p> | <p><b>5</b></p>    | <p>100% of the 34-acre parcel has undergone a geophysical investigation and removal of all geophysical anomalies to a depth of 4 feet. No further action related to the investigation of munitions is recommended. However, additional construction support is recommended, as described in Section 3.9, if movement of soil occurs four or more feet below ground surface within the berm area (firing line) of Range 26. This area will undergo further evaluation in the MR RI/FS.</p>  |

| <b>Property Description</b>   | <b>Parcel Designation</b>            | <b>Condition Category</b> | <b>Remedial Actions</b>   |
|---|--------------------------------------|---------------------------|---|
| 5 acre parcel located to the south of the Impact Area includes an area that was formerly used as a backstop for rifle grenades and shoulder launched projectiles in the early 1940s (MRS-43). No buildings or structures are located on the parcel. | Parcel E31a.<br>CERFA<br>Parcel 229. | <b>5</b>                  | 100% of the 5-acre parcel has undergone a geophysical investigation and removal of all geophysical anomalies to a depth of 4 feet. No further action related to the investigation of munitions is recommended. This area will undergo further evaluation in the MR RI/FS. |
| 3 acre parcel located to the south of the Impact Area includes an area that was formerly used as a backstop for rifle grenades and shoulder launched projectiles in the early 1940s (MRS-43). No buildings or structures are located on the parcel. | Parcel E31b.<br>CERFA<br>Parcel 229. | <b>5</b>                  | 100% of the 3-acre parcel has undergone a geophysical investigation and removal of all geophysical anomalies to a depth of 4 feet. No further action related to the investigation of munitions is recommended. This area will undergo further evaluation in the MR RI/FS. |
| 4 acre parcel located to the south of the Impact Area includes an area that was formerly used as a backstop for rifle grenades and shoulder launched projectiles in the early 1940s (MRS-43). No buildings or structures are located on the parcel. | Parcel E31c.<br>CERFA<br>Parcel 229. | <b>5</b>                  | 100% of the 4-acre parcel has undergone a geophysical investigation and removal of all geophysical anomalies to a depth of 4 feet. No further action related to the investigation of munitions is recommended. This area will undergo further evaluation in the MR RI/FS. |
| 6 acre parcel located to the south of the Impact Area includes an area that was   | Parcel E36.<br>CERFA<br>Parcel 229.  | <b>5</b>                  | 100% of the 6-acre parcel has undergone a geophysical investigation and removal of all geophysical anomalies to a depth of 4  |

| Property Description  | Parcel Designation | Condition Category | Remedial Actions   |
|---|--------------------|--------------------|--|
| formerly used as a backstop for rifle grenades and shoulder launched projectiles in the early 1940s (MRS-43). No buildings or structures are located on the parcel. |                    |                    | feet. No further action related to the investigation of munitions is recommended. This area will undergo further evaluation in the MR RI/FS. |

**Category 5:** Areas where release, disposal, and/or migration of hazardous substances has occurred, and removal or remedial actions are underway, but all required remedial actions have not yet been taken.

**ATTACHMENT 1**

**REFERENCES**

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

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

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

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

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

Draft Final Data Summary and Work Plan, Site 39 – Inland Ranges, Fort Ord, California (May 17, 1994),

Basewide Remedial Investigation/Feasibility Study, Fort Ord, California, Volume II – Remedial Investigation Site 39 (October 19, 1995),

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

Final Engineering Evaluation/Cost Analysis (EE/CA) – Phase 1 (September 1997),

Penetration of Projectiles into Earth, An Analysis of UXO Clearance Depths at Fort Ord, (September 10, 1997),

Ordnance and Explosives Remedial Investigation/Feasibility Study (OE RI/FS) Literature Review Report (January 2000),

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

Final EE/CA – Phase 2, Former Fort Ord, Monterey County, California (April 1998),

Final Action Memorandum, Phase 2 EE/CA, Ordnance and Explosives Sites, Former Fort Ord, Monterey County, California (June 28, 1999),

Notice of Intent, Removal Action at Site OE-15DRO.1, Former Fort Ord, California (November 18, 1999),

Notice of Intent, Removal Action at Sites OE-15DRO.2 and OE-43, Former Fort Ord, California (March 6, 2000),

Draft Final Remedial Action Confirmation Report Site 39, Ranges 24, 25, and 26 and Post-Remediation Risk Assessment Site 39, Ranges 24, 25, and 26, Basewide Remediation Sites, (October 2000),

Final After Action Report, Geophysical Sampling, Investigation & Removal, Inland Range Contract, Former Fort Ord, California, Site Del Rey Oaks Group, Volumes 1 through 15 (April 2001),

Final OE-15DRO.1-2 After-Action Report, Geophysical Investigation of Eastern Boundary, Deconstruction of Range 26 Berm, and Clearance of Machine Gun Links from 12 Grid Area, Former Fort Ord, Monterey, California (August 2003),

Various remedial investigation/feasibility study documents, records of decision, remedial action reports, and subsequent approval memoranda.

**ATTACHMENT 2**

**ENVIRONMENTAL RESPONSE OBLIGATION ADDENDUM  
(EROA)**

## ENVIRONMENTAL RESPONSE OBLIGATION ADDENDUM

INTRODUCTION: This addendum identifies the assurance required in the deed or contract. The following table lists the notices required to be included in the deed or contract.

| <b>PARCEL NUMBER</b> | <b>LBP NOTICE</b> | <b>ACM NOTICE</b> | <b>MEC NOTICE</b> |
|----------------------|-------------------|-------------------|-------------------|
| E29a                 | YES               | YES               | YES               |
| E29b.1               | YES               | NO                | YES               |
| E31a                 | NO                | NO                | YES               |
| E31b                 | NO                | NO                | YES               |
| E31c                 | NO                | NO                | YES               |
| E36                  | NO                | NO                | YES               |

### **DEED ASSURANCES:**

#### **1.0 NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT**

- a. The Grantee is hereby informed and does acknowledge that non-friable asbestos or asbestos-containing material (ACM) have been found on Parcel E29a, as described in the referenced asbestos survey. The interior asbestos does not present a “release or threat of release into the environment” as defined by CERCLA.
- b. The Grantee covenants and agrees that its use and occupancy of Parcel E29a will be in compliance with all applicable laws relating to asbestos; and that the Grantor assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, sublessees, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on Parcel E29a, 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 Parcel E29a as a result of the Grantee’s activities.
- c. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.



- d. The Grantee acknowledges that it has inspected Parcel E29a as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of Parcel E29a, including, without limitation, any asbestos hazards or concerns.
- e. No warranties, either express or implied, are given with regard to the condition of Parcel E29a, including, without limitation, whether Parcel E29a does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Grantor to inspect, or to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States.
- f. The Grantee further agrees to indemnify and hold harmless the 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 Parcel E29a after this conveyance of Parcel E29a to the Grantee or any future remediation or abatement of asbestos or the need therefore. The Grantee's obligation hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

## **2.0 NOTICE OF THE PRESENCE OF LEAD-BASED PAINT AND COVENANT**

- a. The Grantee is hereby informed and does acknowledge that all buildings on Parcels E29a and E29b.1, 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-care centers, pre-school 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 other surveys or studies

assessing the possible presence of lead-based paint in former or existing buildings on Parcels E29a and E29b.1 were performed by the Grantor. 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 the Deed.
- d. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on Parcels E29a and E29b.1 as Residential Real Property, as defined in Subparagraph 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 Parcels E29a and E29b.1 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) (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 Subparagraph 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 Subparagraph 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 Parcels E29a and E29b.1 found to be necessary as a result of the subsequent use of Parcels E29a and E29b.1 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 Parcels E29a and E29b.1 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.”

### **3.0 NOTICE OF THE POTENTIAL FOR THE PRESENCE OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)**

The Grantor hereby notifies the Grantee that munitions response (MR) actions (investigations) identified MRS-DRO.1, MRS-DRO.2 and MRS-43, as described on Plate 2- Attachment 3 of the FOSET, as areas of former military munitions use. The three munitions response sites (MRS) have undergone investigations including sampling and removal of munitions and explosives of concern (MEC) over all of the early transfer area. However, there is a potential for MEC to be present. In the event the Grantee, its successors, or assigns, should discover any MEC on the Property, they shall not attempt to disturb, remove or destroy it, but shall immediately do the following: (1) notify the Presidio of Monterey Police Department via telephone at (831) 242-7851 and (2) complete Section A of the Munitions and Explosives of Concern Incident Reporting Form, fax the form to the Presidio of Monterey Police Department at (831) 242-7740. Competent Grantee or Grantor designated unexploded ordnance (UXO) personnel will promptly be dispatched to dispose of such MEC properly at no expense to the Grantee. The Grantee hereby acknowledges receipt of the “Ordnance and Explosives Safety Alert” pamphlet and the MEC Incident Reporting Form.

The Grantor has completed an investigation for military munitions on the Property. The area has been searched and all MEC detected has been removed. Based on the results of the removal operations, no further MR actions are recommended within the Property. However, a portion of Parcels E29a and E29b.1 (within 11 grids in the Range 26 berm area) will be transferred with restrictions in accordance with AR 405-90, Appendix D-4(b). The berm area includes 11 MEC removal grids, identified as requiring construction support during intrusive work operations that exceed a depth of 4 feet. The Army will provide construction support within the 11 grid area during soil excavation or movement at depths exceeding 4 feet. Additional information on construction support activities is provided in Section 5.0 of Attachment 2. All intrusive operations in this area (exceeding a depth of 4 feet) shall be in accordance with Engineer Manual (EM) 1110-1-4009, Engineer Regulation (ER) 1110-1-8153, Engineer Pamphlet (EP) 1110-1-18, and EP 75-1-2. Machine gun links found in this area indicate that the excavated level of the berm, in some areas, does not match the surrounding undisturbed terrain. The specific location of each of the 11 grids is delineated in the OE-15DRO.1-2 After-Action Report (*Parsons, 2003*) and shown on Plate 3-Attachment 3 of the FOSET (for informational purposes only). The use and/or occupancy of the Property may be limited or restricted, as necessary, under the following scenarios: (1) to provide the required minimum separation distance employed during intrusive

MEC response actions that may occur on or adjacent to the Property; and (2) if Army implemented prescribed burns are necessary for the purpose of MEC removal in adjacent areas. If MEC is found that necessitates immediate in-place disposal because it is unsafe to move, a minimum separation distance of 200 feet will be used for the detonation. A buffer of 200 feet will be cleaned up between Parcels E29a and E29b.1 and the habitat area to the east of these parcels prior to the transfer of the Property.

The Grantor's assessment indicated that the remaining portions of Parcels E29a, E29b.1, and Parcels E31a, E31b, E31c, and E36, can be transferred with no restriction on land use. However, the Army has agreed to enter into a land use covenant and agreement ("Covenant") with the California Department of Toxic Substances Control (DTSC), and agreed to by the City of Del Rey Oaks, pursuant to California Civil Code Section 1471(c). The Covenant will place additional use restrictions on all of the transferring property and will be signed prior to transfer. The Army and the DTSC agree that the use of the property will be restricted as set forth in the Covenant and described in Section 8.0 of the FOSET.

As agreed to by the DTSC, the Fort Ord Reuse Authority (FORA) and the Redevelopment Agency of Del Rey Oaks in the Agreement, Del Rey Oaks Former Fort Ord Resort Property (Agreement), the City of Del Rey Oaks will provide on-site expert MEC construction support on all of the Property.

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 MEC recognition training.

Pursuant to an agreement with the DTSC, the City of Del Rey Oaks has adopted a City Ordinance (Chapter 15.48), which addresses the potential explosives safety risk posed by MEC, particularly UXO, by requiring permits for certain excavation activities. The City of Del Rey Oaks has designated all real property within the City's land use jurisdiction which was formerly part of Fort Ord and identified as a possible location of UXO as an "Ordinance Remediation District" ("District").

#### **4.0 NOTICE OF THE PRESENCE OF THREATENED AND ENDANGERED SPECIES**

##### 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 and October 22, 2002 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) Development with Reserve Areas or Development with Restrictions. Parcels E31a, E31b, and E31c; and
  - 2) Borderland Development Areas Along Natural Resource Management Area (NRMA) Interface. Parcels E29a and E29b.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 requirement 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.

**5.0 GRANTOR RESERVATION OF ACCESS**

The Grantor reserves a right of access to any and all portions of the Property for environmental investigation and remediation, or other corrective action. This reservation includes the right of access to and use of, to the extent permitted by law, available utilities at reasonable cost to the Grantor. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of conveyance of the Property, or such access is necessary to carry out a remedial action, response action or corrective action on adjoining property. Pursuant to this reservation, the United States and its officers, agents, employees, contractors, and subcontractors shall have the right (upon reasonable notice to the Grantee, or the then owner and any authorized occupant of the Property) to enter upon the herein described tracts of land and conduct investigations and surveys, to include drillings, test-pitting, borings, data and/or record compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to monitoring wells, pumping wells, and treatment. The Grantee agrees that notwithstanding any other provisions of the Deed, the Grantor assumes no liability to the Grantee, the then owner, or any other person, should the Grantor’s exercise of its rights hereunder interfere with the Grantee’s use of the Property.

**CONTRACTUAL ASSURANCES**

**PROJECTED SCHEDULE OF MR REMEDIAL INVESTIGATION/FEASIBILITY STUDY (RI/FS)**

|               |         |       |
|---------------|---------|-------|
| MR Agreement  | April   | 2000  |
| Track 2 RI/FS | August  | 2004  |
| Proposed Plan | October | 2004  |
| Track 2 ROD   | March   | 2005* |

\*It is anticipated that the parcels identified in this early transfer will meet the requirements for inclusion in the Track 2 ROD plug-in process. Track 2 areas are those where MEC was found and removal actions have been completed.

**6.0 CONSTRUCTION SUPPORT**

FORA, the DTSC, and the City of Del Rey Oaks have agreed that construction support will be required during all intrusive work operations on the Property and the City of Del Rey Oaks will provide on-site expert MEC construction support on all of the Property. The Army will only provide

construction support for all intrusive activities exceeding a depth of 4 feet within the “Range 26 Berm” (11 grid area), which is delineated in the OE-15DRO.1-2 After Action Report and shown on Plate 3-Attachment 3 of the FOSET. All construction support activities will be in compliance with Engineer Pamphlet (EP) 75-1-2, Engineer Regulation (ER) 1110-1-8153, EP 1110-1-18, and Engineer Manual (EM) 1110-1-4009.

## **7.0 DEFERRED WARRANTY**

Once a remedy is in place, as selected in the pending Record of Decision applicable to the parcels in the Property, the Army, with the concurrence of EPA Region IX and DTSC, shall execute and deliver to the Grantee, or its successor and assigns, an appropriate document, containing a warranty that all response actions necessary to protect human health and the environment with respect to any substances remaining on the property on the date of transfer have been taken, as required by law. This warranty shall be in a form that is recordable in the Office of the Recorder, Monterey County, California.

## **8.0 LONG TERM MEC RISK MANAGEMENT**

Unless modified by the MR RI/FS, long-term risk management measures that will be implemented for former MRS-DRO.1, MRS-DRO.2 and MRS-43 include: (1) annual notification and invitation by the Grantee to the annual public education meeting; (2) recurring reviews by the Grantor to determine if the response actions taken at an MRS continue to be adequate; (3) a Covenant to be entered into between the Army and the State of California, placing restrictions on all of the transferring property; (4) an ordinance adopted by the City of Del Rey Oaks requiring a permit for ground disturbing activities (in addition to those contained in the current Building Code); (5) an Agreement between the State of California, FORA, and the City of Del Rey Oaks, which will include continuous community MEC education and awareness programs, construction worker MEC recognition training, construction support, and the installation of perimeter fencing prior to the commencement of construction; and (6) a close-out report documenting that the recurring reviews and response actions have effectively addressed the risks posed at the MRS.

## **9.0 BUDGETING FOR RESPONSE ACTIONS**

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

- a. The projects for the necessary RI/FS will be identified to and coordinated with the BRAC Cleanup Team (BCT).

- b. After coordination with the BCT, the projects will be submitted through the BRAC Field Office - Hampton to Headquarters Department of the Army (HQDA) for funding validation and approval.
- c. All correspondence regarding these projects will recite that these projects are being undertaken on property being transferred pursuant to CERCLA §120(h)(3)(C) and that once validated, approved, and funded, the funding may not be withdrawn without the consent of the Assistant Secretary of the Army for Installations and Environment.

## **ATTACHMENT 3**

### **SITE MAPS**

#### **Site Maps**

Plate(s)

- 1 Location Map
- 2 MRS Locations
- 3 Area Requiring Army Construction Support

**ATTACHMENT 4**

**MILITARY MUNITIONS TERMINOLOGY**

## Military Munitions Terminology

| New Term and Acronym                                     | Previous Term and Acronym                    | Definition   | Explanation / Example  | Previously Known As   |
|--|--|--|--|---|
| Military Munitions Response Program (MMRP)               | Ordnance and Explosives (OE) Cleanup Program | DoD-established program to manage environmental, health and safety issues presented by MEC.  | Fort Ord MMRP  | Fort Ord Ordnance and Explosives (OE) Cleanup Program   |
| Military Munitions<br><b>(MM is not a valid acronym)</b> | Ordnance and Explosives (OE)                 | Abbreviated Definition, All ammunition products and components produced for and used by the armed forces for national defense and security. Does not include wholly inert items. (See 10 U.S.C. 101(e)(4)(A) through (C))  | General term encompassing all munitions, including small arms ammunition.  | Ordnance and explosives (OE) – the encompassing term used to describe items being searched for and removed. |
| Munitions Response (MR)                                  | Removal Action                               | Response actions, including investigation, removal actions and remedial actions to address the explosives safety, human health, or environmental risks presented by unexploded ordnance (UXO), discarded military munitions (DMM), or munitions constituents (MC).   | MRS-DRO.1–2 Munitions Response.  | OE-15DRO.1–2 Removal Action   |
| Munitions Response Site (MRS)                            | OE Site                                      | A discrete location that is known to require a munitions response.   | <ul style="list-style-type: none"> <li>• MRS-DRO.1</li> <li>• MRS-DRO.2</li> <li>• MRS-43</li> </ul>   | <ul style="list-style-type: none"> <li>• OE-15DRO.1</li> <li>• OE-15DRO.2</li> <li>• OE-43</li> </ul>       |
| Munitions and Explosives of Concern (MEC)                | OE and UXO                                   | <b><u>Munitions and Explosives of Concern (MEC)</u></b> . This term, which distinguishes specific categories of military munitions that may pose unique explosives safety risks means: (A) Unexploded Ordnance (UXO), as defined in 10 U.S.C. 101(e)(5)(A) through (C); (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. | Replaces OE/UXO as the specific term in describing procedures for searching, detecting and disposal of items. Replaces UXO as the term used for quantifying number of items found. | OE and UXO  |
| Unexploded Ordnance (UXO)                                | UXO  | (1) <b><u>Unexploded Ordnance (UXO)</u></b> . Military munitions that (A) have been primed, fused, armed, or otherwise   | In most cases, UXO will be replaced by MEC. Items will be listed as UXO under the MEC type   | UXO   |

|                      |              |   |   |              |
|----------------------|--------------|---|---|--------------|
|                      |              | fuzed, armed, or otherwise prepared for action; (B) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and (C) remain unexploded either by malfunction, design, or any other cause. (10 U.S.C. 101(e)(5)(A) through (C)) | column on tables.<br>Examples: Projectile, 75mm; Shrapnel, MK1. |              |
| Munitions Debris     | OE scrap     | <b><u>Munitions Debris.</u></b> Remnants of munitions (e.g., fragments, penetrators, projectiles, shell casings, links, fins) remaining after munitions use, demilitarization, or disposal.   | Penetrators, projectiles, shell casings, links, etc.            | OE scrap     |
| Range-Related Debris | Non-OE scrap | <b><u>Range-Related Debris.</u></b> Debris, other than munitions debris, collected from operational ranges or from former ranges (e.g., targets).   | Targets, fence posts, concrete, wire, nails                     | Non-OE scrap |
| On the Surface       | —            | <b><u>On-the-Surface.</u></b> A situation in which UXO, DMM or CWM are: (A) entirely or partially exposed above the ground surface (i.e., the top of the soil layer); or (B) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).   | Defines what constitutes an item being found on the surface.    | —            |

## SUMMARY

1. **OE sites are now Munitions Response Sites (MRSs).**
  - (a) The “15” OE site designation in the Impact Area MRSs has been dropped; therefore, OE-15DRO.1–2 is now MRS-DRO.1–2. (Replace “OE” with “MRS” and delete “15”.)
  - (b) Site OE-43 is now MRS-43.
2. **The former Fort Ord and its OE sites are now described differently.**
  - (a) The former Fort Ord is a *defense site* containing multiple *Munitions Response Sites (MRSs)*.
  - (b) The multi-range area is now called the “Impact Area” and is no longer the “MRA”.
3. **The project is now known as the Fort Ord Military Munitions Response Program (MMRP).**
  - (a) Generally, MMRP replaces OE for document titles.
  - (b) OE sites are now *MRSs*.
4. **MEC Replaces OE/UXO as the Term for Describing Items with Explosive Hazards.**
  - (a) MEC consists of military munitions with unique explosive risks.

### New Terms

1. **MMRP**—replaces *OE* in title of project documents, etc.
2. **Military Munitions**—replaces *OE* as the inclusive term for all types of items
3. **MRS**—replaces *OE* site.
4. **MEC**—replaces OE/UXO for term used to describe items with explosive hazards.
5. **Munitions Debris**—replaces *OE scrap*.
6. **Range Related Debris**—replaces *NOES*.
7. **SAA**—Small arms ammunition (formerly small arms) in its own category

### Deleted Terms and their Replacements (if any) or New Category

1. **OE** = military munitions (general term for items being searched and found); MRS (sites); MEC (items with explosive hazards).
2. **OE Scrap** = munitions debris
3. **Live** = none (UXO is live by definition)
4. **Inert/Expended** = moves to munitions debris categories
5. **Fragments** = moves to munitions debris category
6. **Small Arms Scrap** = moves to munitions debris category



**ATTACHMENT 5**

**PUBLIC COMMENTS AND RESPONSES**

RESPONSE TO COMMENTS ON THE  
DRAFT FINDING OF SUITABILITY FOR EARLY TRANSFER  
WITH A CERCLA 120(h)(3) COVENANT DEFERRAL, DEL REY OAKS PARCELS  
(FORMER FORT ORD, CALIFORNIA)

I. MIKE WEAVER, CHAIR, THE HIGHWAY 68 COALITION, MONTEREY COUNTY, CALIFORNIA,  
DATED JULY 31, 2003 (FULL LETTER ATTACHED)

**Comment 1:** Under Section 1.0 “Purpose,” we learn the early transfer of the property was requested by the City of Del Rey Oaks for the purpose of assisting in the economic recovery of the area and preventing further job and revenue loss by expediting reuse.

**However, where are the statistics? Were former Army troops housed at Del Rey Oaks? Was the town of 1,650 persons all employed as soldiers at former Fort Ord? There is no data to support this stated purpose. The recognized result of the closure of Fort Ord has been the steadily rising housing prices and property values in Del Rey Oaks. There is no evidence of blight.**

Response 1: As stated in Section 1.0, the purpose of the FOSET is to identify environmental factors of concern associated with the proposed property transfer and to demonstrate that the proposed property transfer prior to the completion of all remedial actions, with the appropriate land use controls, if required, is consistent with the protection of human health and the environment. The transfer and subsequent development of the Del Rey Oaks Parcels may benefit the community by creating jobs and generating additional tax revenue for the City of Del Rey Oaks. Providing “statistics” to support the basis for this assessment and the request for early transfer is not within the purview of this FOSET.

**Comment 2:** Under Section 3.10, titled “Installation Restoration Program (IRP),” we learn that the reuse scenario evaluated in the ROD (Record of Decision) included a natural resource management area with restricted public access. “However,” it goes on, “due to a change in land-use planning, the proposed reuse of these parcels will include development with mixed use.”

**We learn of a whole host of explosive devices found on the referenced parcels. We learn of many of the activities conducted on them. We learn of many of the cleanup activities. We come to two conclusions:**

- 1) The Department of Defense is being asked to certify these parcels as being safe EVEN THOUGH all required remedial actions have not yet been taken. (Page 3)**
- 2) The basewide Remedial Investigation Feasibility Study that the U.S. Army agreed to do is nearing completion. A fence to fence analysis is almost done. There is no clear and compelling reason for “short-circuiting” this analysis now.**

Response 2(1): The Army has determined, with concurrence from the regulatory agencies, that removal of unexploded ordnance is complete on the subject parcels and no further OE-related action is necessary prior to transfer. Additionally, it is the position of the

State of California (acting by and through the Department of Toxic Substances Control [DTSC]) that transfer may occur with the implementation of additional safeguards, which are listed below in the response to Comment 4.

As noted in Section 3.1 of the Del Rey Oaks FOSET, Covenant 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) allows for the deferral of the CERCLA covenant requiring all remedial actions to be completed before Federal property is transferred. The remaining remedial actions to be completed by the Army include completion and regulatory approval of the OE Remedial Investigation and Feasibility Study (RI/FS), and providing construction support in the Range 26 berm area, if needed.

Response 2(2): Before the Department of Defense can conclude that all necessary remedial actions have been taken the Army must complete and receive regulatory approval of the OE RI/FS, which will include an evaluation of the Del Rey Oaks Parcels.

**Comment 3: Telling us that the USEPA and DTSC concurred a parcel was uncontaminated in April of 1994 is almost meaningless. Because, in April of 1994 the U.S. Army was still insisting and/or unaware of the tank training activities at the former army base of Fort Ord.**

Response 3: The FOSET states that the designation and concurrence to CERFA Parcel 229 as uncontaminated occurred prior to the identification of Site OE-43. Range 24, a portion of which is in parcel E29a, was used for antitank training. No evidence of tank-fired ordnance was found during OE sampling and removal activities conducted at OE Sites OE-15DRO.1, OE-15DRO.2, and OE-43. Additionally, the Army is unaware of any of tank training being conducted in the area of the parcels to be transferred in this FOSET.

**Comment 4: Del Rey Oaks desires for a large hotel, golf course, time-share units and some commercial uses on the property in question, still leaves the Army responsible for things found in the future.**

**Consider the following; trenches to be dug for building footings, trenches for electrical lines, trenches for sewer lines, septic tank leech fields, golf course wells, trenches for water mains, holes for golf course sand traps, tree planting, excavating and leveling for putting greens, berming, installation of sprinkler heads . . .**

**The Army's proposal to initially train backhoe drivers to recognize OE may do some good, for the short term. What about twenty years from now?**

Response 4: The Army will conduct OE recognition training to all construction workers involved with any ground disturbing activities. In addition to the initial OE recognition training provided, the Army will also conduct construction worker OE recognition training in the future to all "new" construction workers. In an agreement (O&M Agreement) to be entered into between the City of Del Rey Oaks and the DTSC, Del Rey Oaks will give notice to the Army and the DTSC fourteen days prior to commencing site preparation and ground disturbing activities that result in the movement of more than 10 cubic yards of soil. The City of Del Rey Oaks will also adopt a city ordinance which will address potential UXO risk by requiring a city

permit for excavation, digging, development or ground disturbance of any type involving the displacement of 10 cubic yards or more of soil.

Because the Army cannot guarantee that all ordnance and explosives have been removed from the Del Rey Oaks parcels, a Covenant to Restrict Use of Property (CRUP) is being developed jointly between the Army and the State of California (acting by and through the DTSC). The CRUP restricts the property from certain uses including residential, hospital, public or private school for persons under 21 years of age, and a day-care facility. These restrictions will be recorded in the Deed and run with the land.

**Comment 5:** **No where in this document are we provided the costs associated with the cleanup activities on these parcels to date. No where are we provided the estimated potential costs in the future.**

Response 5: As stated in Section 1.0, the purpose of the FOSET is to identify environmental factors of concern associated with the proposed property transfer and to demonstrate that the proposed property transfer prior to the completion of all remedial actions, with the appropriate land use controls, if required, is consistent with the protection of human health and the environment. Reporting costs associated with the clean up activities and estimates for future costs is not within the purview of the FOSET.

**Comment 6:** **We learn on page 8 of this document that 7,941 lbs. of non-ordnance scrap was found in one area and that 2,740 lbs. of non-OE scrap was found in another area. Your report states, “It was concluded that the metallic clutter in the area prevented the detection of the anomalies.”**

**You have not shown how a FOSET on these parcels is consistent with the protection of human health and the environment.**

Response 6: With the exception of the “berm area,” the Army is confident that all dangerous OE has been removed from the Del Rey Oaks parcels. The Army will provide construction support for any ground disturbing activities conducted in the “berm area” and the City of Del Rey Oaks will provide construction support for the remainder of the property.

Based on the results of the environmental evaluation of the Del Rey Oaks parcels conducted to-date (including the OE removal), and with the adoption of the appropriate land use controls, the Army feels that there is no threat to human health and the environment resulting from the transfer of the property. These findings have been the subject of careful regulatory review by both the U.S. Environmental Protection Agency and the State of California (acting by and through the DTSC).