

APPENDIX H

COMMENTS ON THE DRAFT FINAL DEL REY OAKS MRA RI/FS

# FEDERAL / JER ASSOCIATES I, LLC

Public/Private Real Estate Development and Asset Management

August 10, 2007

U.S. Army  
Gail Youngblood, BRAC Environmental Coordinator  
Fort Ord Base Realignment and Closure Office  
P.O. Box 5008  
Monterey 93944-5004

**RE: Draft Final Track 2 Munitions Response, Remedial Investigation/Feasibility Study, Del Rey Oaks Munitions Response Area, Former Fort Ord, California.**

Dear Ms. Youngblood:

Thank you for the opportunity to review the Draft Final Remedial Investigation/Feasibility Study ("RI/FS") for the Del Rey Oaks Property ("Property") at the former Fort Ord. We offer the following comments for your consideration.

1. Remedy Details in the Record of Decision

Section 5.5.1 provides that possible deed restrictions to be imposed on the Del Rey Oaks MRA reuse areas would be described in the remedial design/remedial action work plan ("RD/RAWP"). Additionally, section 5.6 provides that long term management measures will be provided in the RD/RAWP. These important remedy details, as well as the associated implementation measures should be disclosed in the RI/FS, Proposed Plan and Record of Decision ("ROD"), rather than deferring the details to the later RD/RAWP stage. This will ensure the remedy selected is adequately analyzed in the upcoming California Environmental Quality Act ("CEQA") analysis.

2. Roles of Army, EPA and DTSC in Modification of Deed Restriction

The RI/FS provides that any modifications to a deed and/or zoning restriction must be approved by the Army and EPA. (P. 5-8) Additionally, in both the discussion of the conditions on soil disturbance and the residential use restriction, the draft final RI/FS provides that the conditions "will be maintained by the Army and the City until EPA and DTSC concur that the site is protective of human health and the environment" (P. 5-13, 5-15, 5-20). These provisions are inconsistent with previous transfer documents, which grant DTSC the right to approve a modification in the residential use restrictions on the Property. The Army and EPA have a right to comment, but not approve, such a modification. This is accurately reflected in another section of the RI/FS that provides that only DTSC will have right to determine whether "residential use is appropriate." (P. 5-14) The RI/FS needs to be revised throughout the RI/FS in order to be consistent with previous transfer documents.

On July 28, 2004, the Army executed the Finding of Suitability for Early Transfer ("FOSET") for the Property, finding that the Property had been cleared of all dangerous and/or explosive material reasonably possible to detect, that no further MR actions were needed on the Property and deferral of the CERCLA covenant was proper pursuant to CERCLA Section 120(h)(3). The Army's FOSET provided that future use of the Property did not present a current or future risk to human health or the environment. However, DTSC believed that a residential use restriction was necessary on the Property and executed the current restriction, entitled the Covenant to Restrict Use of the Property ("CRUP"), which granted DTSC the right to approve any modification to the restriction. EPA and the U.S. Army were granted an opportunity to comment. Additionally, DTSC, the City of Del Rey Oaks, and FORA entered into an Agreement ("Del Rey Oaks --DTSC Agreement (2004)") which specifies construction support and OE education and safety measures that must occur at the Property and that DRO Municipal Code Chapter 15.48, which requires permits for excavation work, may only be amended with the concurrence of DTSC.

Therefore, the provision granting Army and EPA the right to approve modifications to the deed restrictions in section 5.5.1, and granting the EPA the right to approve conditions surrounding the residential use restriction in sections 5.7 and 5.9 is inconsistent with the previously implemented land use controls and, therefore, should be revised to clarify that DTSC, with an opportunity to comment by EPA and the Army, has the right to approve residential use on the Property upon successful implementation of the Protocol.

### 3. Removal of Residential Use Restrictions (Sections 5.5.5, 5.7, 5.7.3, 5.9)

The current residential use restriction and steps related to the potential future modification of the residential use restriction needs to be clarified. The "Covenant to Restrict Use of Property" ("CRUP") currently restricts residential use on all of the Del Rey Oaks MRA, but provides that the residential use restriction may be removed if DTSC determines that the Property has been cleared pursuant to DTSC's standards. (CRUP, Section 4.01(B)) Based on a review of the remedial investigation data, DTSC has determined that the residential use restriction should no longer apply on the central portions of the Del Rey Oaks MRA. Plate E-1 to the Draft Final RI/FS depicts the portion of the Del Rey Oaks MRA that no longer requires a residential use restriction at this time. Additionally, DTSC has proposed a Protocol that it believes will be sufficient to further evaluate the remainder of the Del Rey Oaks MRA MEC areas and, if necessary, remove MEC items to provide assurance that residential and other uses are appropriate. Alternative 3 should be modified to clearly state that the CRUP will be modified as follows: (1) residential use shall be permitted on the central portions of the Property, as depicted in Plate E-1, and (2) residential use shall be permitted on the remainder of the Property after both successful implementation of the Protocol and verification thereof by DTSC.

Additionally, the RI/FS indicates that the details describing the process for removal of the residential land use restriction will be deferred until the RD/RAWP stage. The RI/FS, Proposed Plan and ROD should describe the process clearly and should not defer that clarification until the RD/RAWP. A full, complete discussion of the steps to remove the residential use restriction should be included as early as possible to ensure adequate CEQA analysis.

#### 4. Annual Monitoring (Section 5.6)

Section 5.6 of the draft final RI/FS provides that annual monitoring will be implemented at the Del Rey Oaks MRA as a long term management measure. Annual monitoring is required as part of the agreement entered into by DTSC, the City of Del Rey Oaks, and FORA ("Del Rey Oaks --DTSC Agreement ") which specifies construction support and OE education and safety measures that must occur at the Property. The Del Rey Oaks -- DTSC Agreement provides specific conditions which require annual letter reporting and that the City of Del Rey Oaks or its successor may apply for a variance requesting to decrease the frequency of the submittal of the letter reports. Please clarify that the annual reporting referred to in the Draft Final RI/FS is the existing annual letter reporting requirements described by the Del Rey Oaks – DTSC Agreement, which will be required of the City of Del Rey Oaks, or its successors, as a long term management measure, unless a variance is granted pursuant to the Del Rey Oaks -- DTSC Agreement.

#### 5. Five Year Review (Section 5.6)

Sections 5.4 and 5.6 provide that five year reporting will be implemented as a long term management measure. CERCLA regulations provide that "if a remedial action is selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow unlimited use and restricted exposure, the lead agency shall review such action no less often than every five years after initiation of the selected remedial action." 40 C.F.R. 300.430(f)(4)(ii). Please clarify that the five year reporting requirement referred to in the Draft Final RI/FS is the five year reporting required by CERCLA regulations and it is the Army's, as the lead agency, obligation to conduct five year reporting.

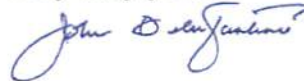
#### 6. Verification Method (Section 5.7.3, 5.9)

The Draft Final RI/FS provides: "[a]ny proposal for residential development in the Del Rey Oaks MRA will be subject to regulatory review. Residential use for specified areas will be prohibited until . . . DTSC is satisfied that residential use is appropriate, on the basis of the Residential Quality Assurance Protocol or further site evaluation incorporating new information." (P. 5-14) As noted throughout the Draft Final RI/FS, the nature and extent of MEC present within the Property have been investigated during at least nine previous efforts through a series of munitions response (MR) actions on the entire Property from 1993 through 2003. During the early efforts at the Property, geophysical signals (anomalies) were prosecuted to four feet below the ground surface. During the last investigation and removal effort, anomalies were prosecuted to depth.

Based on the remedial investigation data, DTSC has already proposed the Protocol after determining that it would be an appropriate method to further evaluate the remainder of the Del Rey Oaks MRA MEC areas. Therefore, only the Protocol should be listed as the DTSC's chosen method of verification. Please revise section 5.7.3 and 5.9 to delete references to the possibility of a different verification method "based on further site evaluation incorporating new information (e.g. geophysical mapping, site development, etc.)".

In conclusion, we very much appreciate the opportunity to review the RI/FS, and also take this opportunity to again thank the Army, EPA and DTSC for the extensive remediation and regulatory oversight efforts completed on the Property. We also look forward to the completion of the Army's Record of Decision pursuant to CERCLA. Thank you for the opportunity to comment.

Very truly yours,



John Infantino  
Chief Executive Officer  
Federal Development LLC  
Managing Member

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## APPENDIX H

### **Response to Federal/JER Associates I, LLC Comments on the Draft Final Track 2 Munitions Response, Remedial Investigation/Feasibility Study, Del Rey Oaks Munitions Response Area, Former Fort Ord, California**

The Army has reviewed the comment letter provided by Federal/JER Associates I, LLC on the Draft Final Track 2 Munitions Response, Remedial Investigation/Feasibility Study, Del Rey Oaks Munitions Response Area, Former Fort Ord, California, dated August 10, 2007.

Changes were made to Section 5.0 of the document based on the comments. The changes included eliminating the text specifying the need for EPA and Army approval for modifications to deed and/or zoning use restrictions, additional detail on the annual reporting, and additional language on the implementation of the Protocol and DTSC verification as a step in the removal of the residential restrictions.