

**ATTACHMENT 4**

**REGULATORY COMMENTS**

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### California Environmental Protection Agency Department of Toxic substances Control (DTSC)

Through verbal and email communication regarding the *Finding of Suitability to Transfer (FOST)*, *Track 0 and Track 0 Plug-in B Parcels*, dated March 23, 2005, the DTSC commented that its position regarding property where there are buildings with probable lead-based paint (LBP) is as follows:

**The Army has not evaluated soils on the Property to determine whether there is a release of lead from lead-based paint (LBP); therefore, DTSC believes that the future property owners should perform this evaluation prior to use of the Property for residential and other sensitive uses. On property where LBP may have been released, the soil must be sampled and the sample results evaluated using the DTSC's Lead Risk Assessment Spreadsheet (LeadSpread 7). LeadSpread 7 uses site-specific information; however, results typically show that lead concentrations in soil of approximately 150 parts per million (ppm) are suitable for unrestricted use. If the results of the LeadSpread 7 evaluation indicate that the property is not suitable for unrestricted use, the soil must be remediated, or its use restricted appropriately.**

**The DTSC intends to write a letter to the Fort Ord Reuse Authority (FORA), for passing along to the subsequent property owner, stating that soil sampling and remediation, if appropriate, must be done prior to use of this property for residential or other sensitive uses. The DTSC intends to work with the property recipient to deal with any residual LBP issues as needed.**

***Response:*** It is the Army's understanding from this comment that the DTSC will work with FORA and subsequent property owners to address LBP issues.

## US Environmental Protection Agency (USEPA)

Comments dated February 15, 2005, regarding the review of the draft *Finding of Suitability to Transfer Track 0 and Track 0 Plug-In B Parcels, Former Fort Ord* dated January 2005.

With the exception of the following all comments were resolved:

**SPECIFIC COMMENT 17:** Attachment 1: Environmental Protection Provisions Paragraph F page 6.

The language contained in this paragraph requires the Grantee to indemnify the Army in a manner which EPA believes is inconsistent with the Army's obligation under CERCLA. Specifically the indemnification extends to "...exposure to asbestos on any part of the Property after this conveyance...." The provision is overly broad because it would require indemnification for any claims associated with asbestos previously disposed of on the Property. To properly limit the indemnification, the provision should be modified by substituting the following phrase: "contained within structures existing on the Property at the time of conveyance" for the word "Property"; making it clear that the indemnification is limited to the asbestos which has been identified and accepted by the Grantee.

**Response:** The Army believes that the standard Army indemnification language is legally sufficient. This comment is unresolved.