

**WHEN RECORDED MAIL TO:**

Fort Ord Reuse Authority  
100 12<sup>th</sup> St., Bldg. 2880  
Marina, CA 93933  
Attn: Stan Cook

Stephen L. Vagnini  
Monterey County Recorder  
Recorded at the request of  
**Stewart Title**

RALICIA  
7/25/2006  
8:00:00

DOCUMENT: **2006065004** Titles: 1/ Pages: 92



Fees....  
Taxes....  
Other....  
AMT PAID

**THIS SPACE FOR RECORDER'S USE ONLY**

Documentary Transfer Tax \$ EXEMPT - *PAUL EKIN*

Computed on Full Value of Property conveyed  
 or Computed on Full Value less liens and  
encumbrances remaining at time of sale.

As declared by the Undersigned.



**TITLE(S) OF DOCUMENT**

**QUITCLAIM DEED FOR A PORTION OF THE  
FORMER FORT ORD, MONTEREY, CALIFORNIA  
(Parcels E18.2.1, E18.3, E20c.1.2, and E20c.2.2)**

**Quitclaim Deed No. DACA05-9-05-530**

WHEN RECORDED RETURN TO:

Kutak Rock LLP  
1101 Connecticut Avenue, N.W.  
Suite 1000  
Washington, D.C. 20036-4374  
Attn: George R. Schlossberg

Copy to: Fort Ord Reuse Authority  
100 12<sup>th</sup> Street, Building 2880  
Marina, Ca 93933

**RECORDER STAMP**

**QUITCLAIM DEED FOR A PORTION OF THE  
FORMER FORT ORD, MONTEREY, CALIFORNIA  
(Parcels E18.2.1, E18.3, E20c.1.2, and E20c.2.2)**

**THIS DEED**, made and entered into between the **UNITED STATES OF AMERICA**, acting by and through the **SECRETARY OF THE ARMY** (the "Grantor"), under and pursuant to the power and authority contained in the Defense Base Closure and Realignment Act of 1990, (Public Law No. 101-510, 10 U.S.C. § 2687, note), as amended ("DBCRA"), Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. § 101 *et seq.*) and the **FORT ORD REUSE AUTHORITY** (the "Grantee"), created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, *et seq.*, and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, *et seq.*, and Article 4, commencing with Section 33492.70, *et seq.*, and recognized as the Local Redevelopment Authority for the former Fort Ord Army Base, California, by the Office of Economic Adjustment on behalf of the Secretary of Defense.

**WITNESSETH THAT:**

WHEREAS, the Secretary of the Army may convey surplus property to a local redevelopment authority at a closing military installation for economic development purposes pursuant to the power and authority provided by the DBCRA and the implementing regulations of the Department of Defense (32 CFR 174.1-176.1);

WHEREAS, Grantee, by application, requested an economic development conveyance of portions of the former Fort Ord, California, consistent with the redevelopment plan prepared by the Grantee;

WHEREAS, Grantor and the Grantee have entered into a Memorandum of Agreement Between the United States of America Acting By and Through the Secretary of the Army, United States Department of the Army and the Fort Ord Reuse Authority For the Sale of Portions of the Fort Ord, California, dated the 20th day of June 2000, ("MOA") and MOA Amendment No. 1,

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dated the 23<sup>rd</sup> day of October 2001, which sets forth the specific terms and conditions of the sale of portions of the Fort Ord located in Monterey County, California;

WHEREAS, the California State Historic Preservation Officer determined on May 5, 1994, that no structures, monuments, or other property within the property conveyed herein, were identified as having any historical significance;

WHEREAS, an Installation-Wide Multispecies Habitat Management Plan for Fort Ord, California, ("HMP") dated December 1994, as revised and amended by the "*Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California*" dated April 1997, has been developed to assure that disposal and reuse of Fort Ord lands is in compliance with the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 *et seq.* Timely transfer of these lands and subsequent implementation of the HMP is critical to ensure effective protection and conservation of the Fort Ord lands' wildlife, plant species, and habitat values while allowing appropriate economic redevelopment of Fort Ord and the subsequent economic recovery of the local communities;

**NOW, THEREFORE**, the Grantor, for good and valuable consideration, does hereby **remise, release, and forever quitclaim** unto the Grantee, its successors and assigns, all such interest, rights, title, and claim as the Grantor has in and to Parcels E18.2.1 (4.142 acres), E18.3 (6.225 acres), E20c.1.2 (0.267 acre), and E20c.2.2 (2.332 acres); totaling approximately 12.966 acres (the "Property") and buildings, more particularly described in Exhibits "A" and "B", which are attached hereto and made a part hereof.

## **I. PROPERTY DESCRIPTION**

The Property includes:

- A. All buildings, facilities, roadways, and other improvements, including the storm drainage systems and the telephone system infrastructure, and any other improvements thereon,
- B. All appurtenant easements and other rights appurtenant thereto, permits, licenses, and privileges not otherwise excluded herein, and
- C. All hereditaments and tenements therein and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto.

## **II. EXCLUSIONS AND RESERVATIONS**

This conveyance is made subject to the following **EXCLUSIONS** and **RESERVATIONS**:

- A. The Property is taken by the Grantee subject to any and all valid and existing recorded outstanding liens, leases, easements, and any other encumbrances made for the purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, liens,

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reservations, and agreements of record, and any unrecorded leases, easements and any other encumbrances made for the purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, reservations and agreements of record between Grantor and other government entities.

B. The Grantor reserves a perpetual unassignable right to enter the Property for the specific purpose of treating or removing any unexploded shells, mines, bombs, or other such devices deposited or caused by the Grantor.

C. Access to USA Media Group, LLC, or its successor in interest, to TV cable lines is reserved until expiration of its existing franchise agreement, November 19, 2005.

D. The reserved rights and easements set forth in this section are subject to the following terms and conditions:

(1) To comply with all applicable Federal law and lawful existing regulations;

(2) To allow the occupancy and use by the Grantee, its successors, assigns, permittees, or lessees of any part of the easement areas not actually occupied or required for the purpose of the full and safe utilization thereof by the Grantor, so long as such occupancy and use does not compromise the ability of the Grantor to use the easements for their intended purposes, as set forth herein;

(3) That the easements granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easements unless approved in writing by the fee holder of the land subject to the easement;

(4) That any transfer of the easements by assignment, lease, operating agreement, or otherwise must include language that the transferee agrees to comply with and be bound by the terms and conditions of the original grant;

(5) That, unless otherwise provided, no interest granted shall give the Grantor any right to remove any material, earth, or stone for consideration or other purpose except as necessary in exercising its rights hereunder; and

(6) To restore any easement area so far as it is reasonably possible to do so upon abandonment or release of any easement as provided herein, unless this requirement is waived in writing by the then owner of the Property.

E. Grantor reserves mineral rights that Grantor owns with the right of surface entry in a manner that does not unreasonably interfere with Grantee's development and quiet enjoyment of the Property.

**TO HAVE AND TO HOLD** the Property unto the Grantee and its successors and assigns forever, provided that this Deed is made and accepted upon each of the following notices,

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covenants, restrictions, and conditions which shall be binding upon and enforceable against the Grantee, its successors and assigns, in perpetuity, as follows:

**III. CERCLA COVENANT**

Pursuant to Section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(4)(D)(i)), the Grantor has identified the Property as real property on which no hazardous substances and no petroleum products or their derivatives were stored for one year or more, or known to have been released or disposed of. Grantor warrants that any response action or corrective action found to be necessary after the date of this Deed attributable to Grantor activities on the Property and/or hazardous substances or petroleum products contamination existing on the Property prior to the date of this Deed shall be conducted by Grantor using all reasonable means to the extent practicable to avoid and/or minimize interference with the use of the Property. Grantee, its successors and assigns, as consideration for the conveyance of the Property, to the extent authorized by law, agree to release Grantor from any liability or responsibility arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed and not attributable to the activities of Grantor, where such substance or product was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the Grantor's responsibilities to conduct response actions or corrective actions required by applicable laws, rules and regulations, or the Grantor's indemnification obligations under applicable laws.

**IV. RIGHT OF ACCESS**

A. The Grantor, EPA, and DTSC, and their officers, agents, employees, contractors, and subcontractors will have the right, upon reasonable notice to the Grantee, to enter upon the Property in any case in which a response or corrective action is found to be necessary, after the date of transfer of the Property, or such access is necessary to carry out a response action or corrective action on adjoining property at no cost to the Grantor, including, without limitation, the following activities:

(1) To conduct investigations and surveys, including where necessary, drilling, soil and water sampling, test-pitting, and other activities related to the Fort Ord Installation Restoration Program ("IRP"), Military Munitions Response Program ("MMRP"), or FFA;

(2) To inspect field activities of the Army and its contractors and subcontractors with regards to implementing the Fort Ord IRP, MMRP, or FFA;

(3) To conduct any test or survey related to the implementation of the IRP by the EPA or the DTSC relating to the implementation of the FFA or environmental conditions at Fort Ord or to verify any data submitted to the EPA or the DTSC by the Government relating to such conditions;

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(4) To construct, operate, maintain or undertake any other investigation, corrective measure, response, or remedial action as required or necessary under any Fort Ord FFA, Record of Decision ("ROD"), IRP or MMRP requirement, including, but not limited to monitoring wells, pumping wells, and treatment facilities.

Such right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

B. In exercising this access easement, except in case of imminent endangerment to human health or the environment, the Grantor shall give the Grantee, or the then record owner, reasonable prior notice. Grantee agrees that, notwithstanding any other provisions of this Deed, the Grantor assumes no liability to the Grantee, its successors or assigns, or any other person, should remediation of the Property interfere with the use of the Property. The Grantee shall not, through construction or operation/maintenance activities, interfere with any remediation or response action conducted by the Grantor under this paragraph. The Grantee, the then record owner, and any other person shall have no claim against the Grantor or any of its officers, agents, employees or contractors solely on account of any such interference resulting from such remediation.

C. Without the express written consent of the Grantor in each case first obtained, neither the Grantee, its successors or assigns, nor any other person or entity acting for or on behalf of the Grantee, its successors or assigns, shall interfere with any response action being taken on the Property by or on behalf of the Grantor, or interrupt, relocate, or otherwise interfere with any remediation system now or in the future located, over, through, or across any portion of the Property.

### V. "AS IS, WHERE IS"

The Property is conveyed in an "As Is, Where Is" condition without any representation, warranty or guarantee, except as otherwise stated herein, by the Grantor as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the Grantor to make any alterations, repairs, or additions, and said Grantor shall not be liable for any latent or patent defects in the Property. This section shall not affect the Grantor's responsibility under **CERCLA COVENANTS, INDEMNITY, and ENVIRONMENTAL PROTECTION PROVISIONS.**

### VI. ENVIRONMENTAL PROTECTION PROVISIONS

The Grantee shall neither transfer the Property, lease the Property, nor grant any interest, privilege, or license whatsoever in connection with the Property without the inclusion of the following Environmental Protection Provisions, and shall require the inclusion of the following Environmental Protection Provisions in all further deeds, easements, transfers, leases, or grant of any interest, privilege, or license.

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**A. FEDERAL FACILITIES AGREEMENT**

The Grantor acknowledges that former Fort Ord has been identified as a National Priority List (“NPL”) Site under CERCLA. The Grantee acknowledges that the Grantor has provided it with a copy of the FFA entered into by the EPA Region IX, the State of California, and the United States Department of the Army, effective on February 1990, and will provide the Grantee with a copy of any amendments thereto. The Grantee agrees that should any conflict arise between the terms of the FFA as they presently exist or may be amended, and the provisions of this Property transfer, the terms of the FFA will take precedence. The Grantee further agrees that notwithstanding any other provisions of the Property transfer, the Grantor assumes no liability to the Grantee, should implementation of the FFA interfere with their use of the Property. Grantor shall give Grantee reasonable notice of its action required by the FFA and use all reasonable means to the extent practicable to avoid and/or minimize interference with Grantee’s, its successors or assigns’ use of the Property. The Grantee, or any subsequent transferee, shall have no claim on account of any such interference against the Grantor or any officer, agent, employee or contractor thereof. Grantor agrees to use its best efforts to the extent practicable to avoid and/or minimize interference with Grantee’s, its successors or assigns’ use of the Property, and to provide Grantee with a copy of any amendments to the FFA.

**B. NO LIABILITY FOR NON-ARMY CONTAMINATION**

The Army shall not incur liability for additional response action or corrective action found to be necessary after the date of transfer in any case in which the person or entity to whom the Property is transferred, or other non-Army entity, is identified as the party responsible for contamination of the Property.

**C. UNRESTRICTED USE**

The parties acknowledge that the Army has undertaken environmental study of the Property and concluded in a Finding of Suitability to Transfer (“FOST”) that the property is suitable for unrestricted use.

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

(1) Military Munitions Response Program (MMRP) investigations indicate that it is not likely that munitions and explosives of concern (MEC) are located on the Property; however, there is a potential for MEC to be present because military munitions were used throughout the history of Fort Ord. In the event the Grantee, its successors, or assigns, should discover any MEC on the Property, they shall immediately stop any intrusive or ground disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove or destroy it, but shall immediately contact the local law enforcement agency having jurisdiction on the Property. The local law enforcement agency will contact the Army for appropriate response. Competent Grantor or Grantor-designated unexploded ordnance (UXO) personnel will promptly

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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.

(2) 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.

(3) The Army reserves the right to conduct any munitions response actions for which the Army is responsible, as required or necessary as a result of the ongoing Munitions Response Remedial Investigation/Feasibility Study.

(4) The use and/or occupancy of the Property may be limited or restricted, as necessary, under the following scenarios: (a) to provide the required minimum separation distance employed during intrusive munitions response actions that may occur on or adjacent to the Property; and (b) if Army-implemented prescribed burns are necessary for the purpose of a munitions response action (removal) in adjacent areas.

**E. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT**

Applicable to parcels E20c.1.2 and E20c.2.2

(1) The Grantee is hereby informed and does acknowledge that non-friable asbestos or asbestos-containing material (ACM) has been found on the property, as described in the Asbestos Survey Report (April 26, 1993) and summarized in the CERFA Report (April 8, 1994).

(2) Buildings 4372 and 4373 of Parcel E20c.1.2 and Building 4371 of Parcel E20c.2.2 contain non-friable ACM rated in good condition. The Grantor has agreed to transfer said buildings and structures to the Grantee, prior to remediation of asbestos hazards, in reliance upon the Grantee's express representation and promise that the Grantee will, prior to use or occupancy of said buildings, demolish said buildings or the portions thereof containing friable asbestos, disposing of ACM in accordance with applicable laws and regulations. With respect to the friable asbestos in said buildings and structures, the Grantee specifically agrees to undertake any and all abatement or remediation that may be required under CERCLA 120(h)(3) or any other applicable law or regulation. The Grantee acknowledges that the consideration for the conveyance of the Property was negotiated based upon the Grantee's agreement to the provisions contained in this section.

(3) The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the Grantor assumes no liability for any future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, 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

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with asbestos or ACM on the Property, 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 the Property as a result of the Grantee's activities. The Grantee assumes no liability for damages for personal injury, illness, disability, death or Property damage arising from (i) any exposure or failure to comply with any legal requirements applicable to asbestos on any portion of the Property arising prior to the Grantor's conveyance of such portion of the property to the Grantee pursuant to this deed, or (ii) any disposal, prior to the Grantor's conveyance of the Property, of any asbestos or ACM.

(4) Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (US EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and US 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.

(5) The Grantee acknowledges that it has inspected the Property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto prior to accepting the responsibilities imposed upon the Grantee under this section. The failure of the Grantee to inspect, or to be fully informed as to the asbestos condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the Grantor, or any adjustment under this Deed.

(6) 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 the Property after this conveyance of the Property to the Grantee or any future remediation or abatement of asbestos or the need therefor. The Grantee's obligation hereunder shall apply whenever the Grantor incurs costs or liabilities for actions giving rise to liability under this section.

**F. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT AND COVENANT**

(1) The Grantee is hereby informed and does acknowledge that all buildings on Parcels E20c.1.2 and E20c.2.2, 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

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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, preschools 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.

(2) 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 E20c.1.2 and E20c.2.2 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 paragraph.

(3) 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 this deed.

(4) The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on Parcels E20c.1.2 and E20c.2.2 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 E20c.1.2 and E20c.2.2 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).

(5) 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 US 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 (1), 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 US 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.

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(6) 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 E20c.1.2 and E20c.2.2 found to be necessary as a result of the subsequent use of Parcels E20c.1.2 and E20c.2.2 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.

(7) 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 E20c.1.2 and E20c.2.2 if used for residential purposes.

(8) 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.

**G. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF POLYCHLORINATED BIPHENYLS ("PCBS")**

Applicable to Parcels E20c.1.2 and E20c.2.2.

(1) PCBs have been widely used as coolants and lubricants in transformers, capacitors and other electrical equipment like fluorescent light ballasts. US EPA considers PCBs to be probable cancer causing chemicals, in humans. PCB and PCB-contaminated equipment that will be disposed of must be stored in a hazardous storage facility. The Grantee is hereby informed that fluorescent light ballasts containing PCBs are present on the property. The PCB containing equipment does not currently pose a threat to human health or the environment. All PCB containing equipment is presently in full compliance with applicable laws and regulations.

(2) Upon request, the Army agrees to furnish to the Grantee any and all records in its possession related to such PCB equipment necessary for the continued compliance by the Grantee with applicable laws and regulations related to the use and storage of PCBs or PCB containing equipment.

(3) The Grantee covenants and agrees that its continued possession, use, and management of any PCB containing equipment will be in compliance with all applicable laws relating to PCBs and PCB containing equipment and that the Army shall assume no liability for the future remediation of PCB contamination or damages for personal injury, illness, disability, or death to the Grantee, its successors or assigns, or to any other person, including members of the general public arising from or incident to future use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs or PCB containing equipment, whether the Grantee, its successors or assigns have properly warned or failed to

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properly warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of PCBs or PCB containing equipment found to be necessary on the property.

**H. NOTICE OF THE PRESENCE OF CONTAMINATED GROUNDWATER**

**Applicable to parcels E18.2.1 and E18.3**

(1) The property is within the "Consultation Zone" of the Former Fort Ord Special Groundwater Protection Zone. The Consultation Zone includes areas surrounding the Prohibition Zone where groundwater extraction may impact or be impacted by the four identified groundwater contamination plumes at the former Fort Ord. The Consultation Zone is also identified on the Former Fort Ord Special Groundwater Protection Zone Map, which is on file with the County of Monterey (the County). County Ordinance No. 04011 requires consultation with the Grantor, the US EPA, the DTSC, the RWQCB and the County for proposed water well construction within the Consultation Zone.

(2) Enforcement – The restrictions and conditions stated in Section 1 benefit the public in general and the territory surrounding the property, including lands retained by the United States, and, therefore, are enforceable by the United States government. The Grantee covenants for itself, its successors, and assigns that it shall include and otherwise make legally binding, the restrictions in Section 1 in all subsequent lease, transfer or conveyance documents relating to the property subject hereto.

(3) Army Access – The Army and its representatives shall, for all time, have access to the property for the purpose of installing and/or removing groundwater monitoring wells, and to perform continued monitoring of groundwater conditions, allowing chemical and/or physical testing of wells to evaluate water quality and/or aquifer characteristics. The property owner shall allow ingress and egress of all equipment necessary to accomplish the same.

**VII. AIR NAVIGATION RESERVATION AND RESTRICTIONS**

The Monterey Airport and the former Fritzsche Airfield, now known as the Marina Municipal Airport, are in close proximity to the Property. Accordingly, in coordination with the Federal Aviation Administration, the Grantee covenants and agrees, on behalf of it, its successors and assigns and every successor in interest to the Property herein described, or any part thereof, that, when applicable, there will be no construction or alteration unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled, Objects Affecting Navigable Airspace, or under the authority of the Federal Aviation Act of 1968, as amended.

**VIII. ENFORCEMENT AND NOTICE REQUIREMENT**

A. The provisions of this Deed benefit the governments of the United States of America, the State of California, acting on behalf of the public in general, and the lands retained by the Grantor and, therefore, are enforceable, by the United States, the State of California, and by the

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Grantee, and its successors and assigns. Enforcement of this Deed shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this Deed in the event of a breach of any term of this Deed, shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this Deed. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. The enforcement rights set forth in this Deed against the Grantee, or its successors and assigns, shall only apply with respect to the Property conveyed herein and held by such Grantee, its successors or assigns, and only with respect to matters occurring during the period of time such Grantee, its successors or assigns, owned or occupied such Property or any portion thereof.

B. The obligations imposed in this section upon the successors or assigns of Grantee shall only extend to the Property conveyed to any such successor or assign.

**IX. OTHER CONDITIONS**

Should the Property be considered for the proposed acquisition and construction of school properties utilizing State funding, at any time in the future, a separate environmental review process in compliance with the California Education Code Section 17210 *et seq.*, will need to be conducted and approved by DTSC.

**X. NOTICE OF NON-DISCRIMINATION**

With respect to activities related to the Property, the Grantee covenants for itself, its successors and assigns, that the Grantee, and such successors and assigns, shall not discriminate upon the basis of race, color, religion, sex, age, handicap, or national origin in the use, occupancy, sale or lease of the Property, or in their employment practices conducted thereon in violation of the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); and the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 794). The Grantor shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the vicinity of the Property hereby conveyed, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

**XI. ANTI-DEFICIENCY ACT STATEMENT**

The Grantor's obligation to pay or reimburse any money under this Deed is subject to the availability of funds appropriated for this purpose to the Department of the Army, and nothing in this Deed shall be interpreted to require obligations or payments by the Grantor in violation of the Anti-Deficiency Act (31 U.S.C. § 1341).

**XII. GENERAL PROVISIONS**

**Quitclaim Deed No. DACA05-9-05-530**

A. SEVERABILITY. If any provision of this Deed, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

B. NO FORFEITURE. Nothing contained herein will result in a forfeiture or reversion of title in any respect.

C. CAPTIONS. The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

D. RIGHT TO PERFORM. Any right which is exercisable by the Grantee, and its successors and assigns, to perform under this Deed may also be performed, in the event of non-performance by the Grantee, or its successors and assigns, by a lender of the Grantee and its successors and assigns.

**XIII. THE CONDITIONS, RESTRICTIONS, AND COVENANTS**

The conditions, restrictions, and covenants set forth in this Deed are a binding servitude on the herein conveyed Property and will be deemed to run with the land in perpetuity. Restrictions, stipulations and covenants contained herein will be inserted by the Grantee verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof. All rights and powers reserved to the Grantor, and all references in this Deed to Grantor shall include its successors in interest. The Grantor may agree to waive, eliminate, or reduce the obligations contained in the covenants, PROVIDED, HOWEVER, that the failure of the Grantor or its successors to insist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the Grantee, its successors and assigns, with respect to such future performance shall be continued in full force and effect.

**XIV. LIST OF EXHIBITS**

The following listed Exhibits are made a part of this Deed:

- Exhibit A: List of Parcels and Legal Description of the Property
- Exhibit B: List of Buildings and Structures
- Exhibit C: Amendment #1 to the Finding of Suitability to Transfer (FOST), dated September 2005
- Exhibit D: Finding of Suitability to Transfer (FOST), dated May 2005

**[Signature Pages Follow]**

**Quitclaim Deed No. DACA05-9-05-530**

IN WITNESS WHEREOF, the Grantor, the **UNITED STATES OF AMERICA**, acting by and through the **SECRETARY OF THE ARMY**, has caused these presents to be executed on this 15<sup>th</sup> day of June 2006.

**UNITED STATES OF AMERICA**

By *Joseph W. Whitaker*  
Joseph W. Whitaker  
Deputy Assistant Secretary of the Army  
(Installations and Housing)  
OASA (I&E)

COMMONWEALTH OF VIRGINIA )  
                                ) ss  
COUNTY OF ARLINGTON      )

On 15<sup>th</sup> June 2006 before me, the undersigned, a Notary Public in and for said State, personally appeared Joseph W. Whitaker personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

*Susan M. Stellaph*  
Notary Public, Commonwealth of Virginia

My Comm. Exps. 8/31/2009

ACCEPTANCE:

In Testimony Whereof witness the signature of the Fort Ord Reuse Authority this 16<sup>th</sup> day of February, 2006 and hereby accepts and approves this Quitclaim Deed for itself, its successors and assigns, and agrees to all the conditions, reservations, restrictions, and terms contained therein.

FORT ORD REUSE AUTHORITY

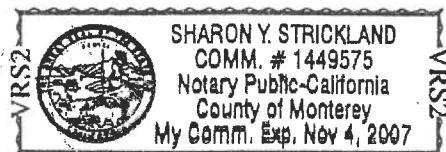
BY: Michael A. Houlemard  
MICHAEL A. HOULEMAR, JR.  
Executive Officer

STATE OF CALIFORNIA )  
                         ) ss  
COUNTY OF MONTEREY)

On 2 - 16 - 06 before me, the undersigned, a Notary Public in and for said State, personally appeared Michael A. Houlemard, Jr. personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sharon Y. Strickland  
Notary Public, State of California



EDC Parcel E18.2.1  
FOST 8 & 9  
Fort Ord Military Reservation  
City of Seaside  
Monterey County, California

Legal Description of Parcel E18.2.1

SITUATE in a portion of the former Fort Ord Military Reservation as it is shown on that certain map recorded in Volume 19 of Surveys at Page 1, Official Records of Monterey County, being within Monterey City Lands Tract No. 1, the City of Seaside, County of Monterey, State of California; being more particularly described as follows:

BEGINNING at a point on the common boundary line of Parcel 6 and Parcel 11, as they are shown on the map recorded in Volume 21 of Surveys at Page 83 being also a point on the boundary line of Parcel 1 as it is shown on that certain map entitled "Seaside IV-A" recorded on June 15, 2000 in Volume 23 of Surveys at Page 99, and running thence from said Point of Beginning along the northerly line of said Parcel 1

1. South  $87^{\circ} 49' 30''$  East for a distance of 784.18 feet to a point on said line; thence leaving said line
2. North  $01^{\circ} 31' 30''$  East for a distance of 18.76 feet to a point on a line; thence
3. South  $87^{\circ} 49' 30''$  East for a distance of 230.67 feet to a point on a line; thence
4. South  $01^{\circ} 31' 30''$  West for a distance of 18.76 feet to a point on said northerly line of said Parcel 1; thence continuing along the northerly line of said Parcel 1
5. South  $87^{\circ} 49' 30''$  East for a distance of 1026.34 feet to a point at an angle point in said northerly line; thence
6. South  $02^{\circ} 12' 30''$  West for a distance of 48.38 feet to a point at an angle point in said northerly line; thence
7. South  $18^{\circ} 59' 46''$  West for a distance of 74.91 feet to a point on a line; thence leaving said boundary of said Parcel 1
8. North  $87^{\circ} 45' 32''$  West for a distance of 599.14 feet to the most easterly point on the boundary line of said Parcel 6 being also a point on the boundary of said Parcel 1; thence continuing along the common boundary line of said Parcel 6 and said Parcel 1
9. North  $87^{\circ} 46' 06''$  West for a distance of 210.20 feet to a point on a line; thence
10. North  $02^{\circ} 13' 54''$  East for a distance of 55.18 feet to a point on a line; thence

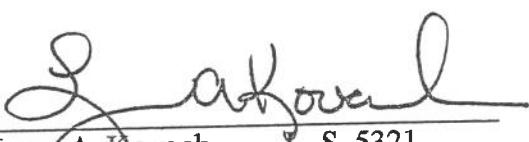
EDC Parcel E18.2.1  
FOST 8 & 9  
Fort Ord Military Reservation  
City of Seaside  
Monterey County, California

11. North  $87^{\circ} 49' 30''$  West for a distance of 1210.20 feet to a point on a line; thence

12. North  $02^{\circ} 10' 30''$  East a distance of 64.00 feet to the POINT OF BEGINNING.

Containing an area of 4.142 acres, more or less.

This legal description was prepared by

  
\_\_\_\_\_  
Lynn A. Kovach L. S. 5321  
My license expires December 31, 2005



Note: Course Numbers Refer to the Legal Description

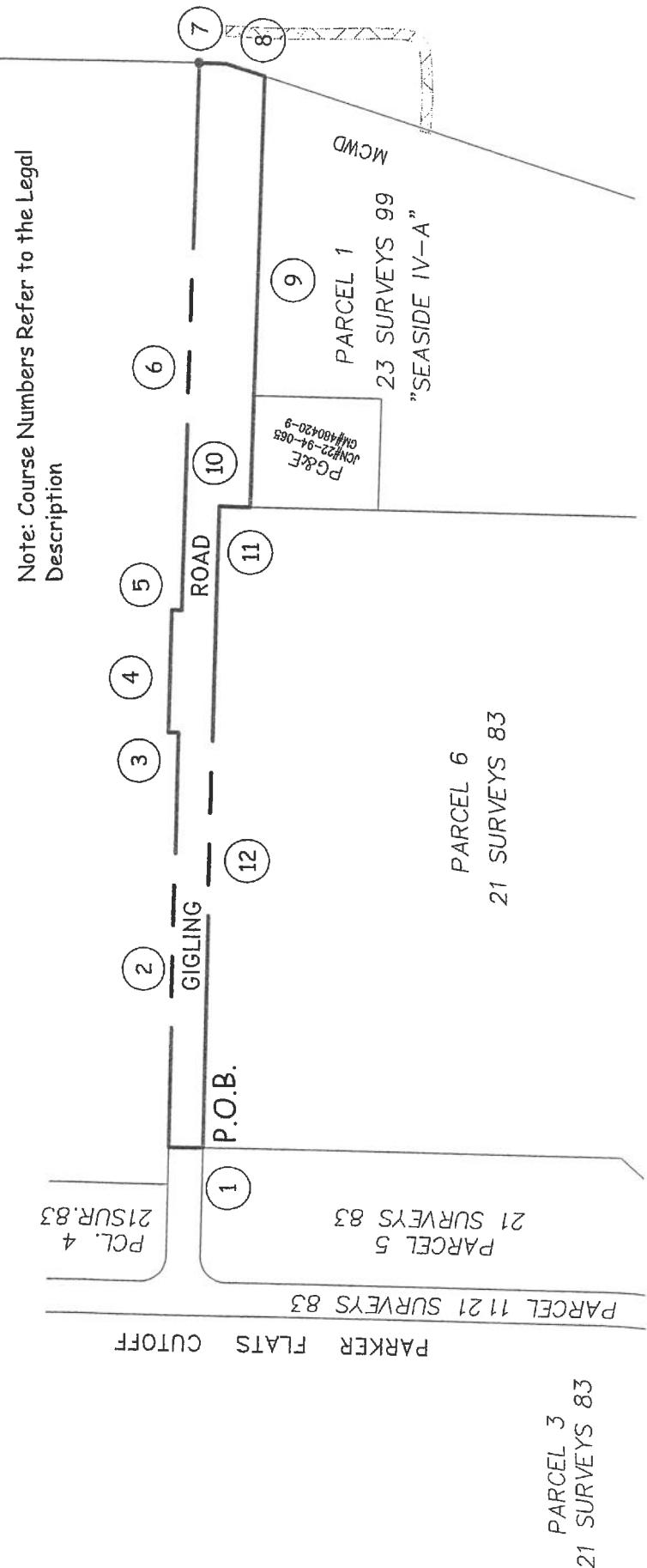


EXHIBIT  
OF

PARCEL E18.2.1  
Seaside Jurisdiction, Fort Ord, FOST 8 EDC

Lying within "Seaside IV-A"

as shown on Vol. 23 of Surveys at Page 99  
Being also within Fort Ord Military Reservation and Monterey City Lands Tract No. 1  
Monterey County, California

EDC Parcel E18.3  
FOST 8 & 9  
Fort Ord Military Reservation  
City of Seaside  
Monterey County, California

Legal Description of Parcel E18.3

SITUATE in a portion of the former Fort Ord Military Reservation as it is shown on that certain map entitled "Seaside IV-A" recorded on June 15, 2000 in Volume 23 of Surveys at Page 99, Official Records of Monterey County, being within Monterey City Lands Tract No. 1, the City of Seaside, County of Monterey, State of California; being more particularly described as follows:

BEGINNING at a point on the common boundary line of Parcel 10, Normandy Road, as it is shown on the map recorded in Volume 21 of Surveys at Page 83 being also a point on the boundary line of Parcel 1 as it is shown on said map of "Seaside IV-A" and running thence from said Point of Beginning

1. North  $67^{\circ} 30' 00''$  East for a distance of 120.92 feet to the beginning of a tangent curve; thence
2. Along a curve to the right through an angle of  $14^{\circ} 00' 00''$ , having a radius of 527.00 feet, for a length of 128.77 feet and whose long chord bears North  $74^{\circ} 30' 00''$  East for a distance of 128.45 feet to a point of intersection with a tangent line; thence
3. North  $81^{\circ} 30' 00''$  East for a distance of 651.55 feet to the beginning of a tangent curve; thence
4. Along a curve to the right through an angle of  $03^{\circ} 12' 00''$ , having a radius of 2064.00 feet, for a length of 115.28 feet and whose long chord bears North  $83^{\circ} 06' 00''$  East for a distance of 115.26 feet to a point of intersection with a tangent line; thence
5. North  $84^{\circ} 42' 00''$  East for a distance of 543.89 feet to the beginning of a tangent curve; thence
6. Along a curve to the right through an angle of  $24^{\circ} 26' 40''$ , having a radius of 964.00 feet, for a length of 411.28 feet and whose long chord bears South  $83^{\circ} 04' 40''$  East for a distance of 408.16 feet to a point of intersection with a tangent line; thence
7. South  $70^{\circ} 51' 20''$  East for a distance of 757.20 feet to the beginning of a tangent curve; thence
8. Along a curve to the left through an angle of  $106^{\circ} 46' 40''$ , having a radius of 50.00 feet, for a length of 93.18 feet and whose long chord bears North  $55^{\circ} 45' 20''$  East for a distance of 80.27 feet to a point of intersection with a tangent line; thence

EDC Parcel E18.3  
FOST 8 & 9  
Fort Ord Military Reservation  
City of Seaside  
Monterey County, California

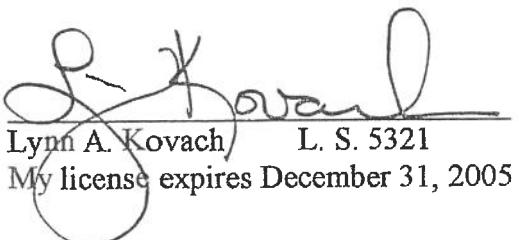
9. North  $02^{\circ} 22' 00''$  East for a distance of 869.86 feet to the beginning of a tangent curve; thence
10. Along a curve to the right through an angle of  $20^{\circ} 00' 00''$ , having a radius of 682.00 feet, for a length of 238.06 feet and whose long chord bears North  $12^{\circ} 22' 00''$  East for a distance of 236.85 feet to a point of intersection with a tangent line; thence
11. North  $22^{\circ} 22' 00''$  East for a distance of 180.11 feet to a point on a line; thence
12. Along a curve to the left through an angle of  $01^{\circ} 16' 28''$ , having a radius of 748.00 feet, for a length of 16.64 feet and whose long chord bears North  $21^{\circ} 43' 46''$  East for a distance of 16.64 feet to a point of intersection with a non-tangential line; thence leaving the common boundary line of said Parcel 10 and Parcel 1 on a radial bearing and continuing along the boundary of said Parcel 10
13. South  $68^{\circ} 54' 27''$  East for a distance of 64.00 feet to the beginning of a non-tangential curve; thence
14. Along a curve to the right through an angle of  $01^{\circ} 16' 27''$ , having a radius of 812.00 feet, for a length of 18.06 feet and whose long chord bears South  $21^{\circ} 43' 46''$  West for a distance of 18.06 feet to a point of intersection with a non-tangential line; thence
15. South  $22^{\circ} 22' 00''$  West for a distance of 180.11 feet to the beginning of a tangent curve; thence
16. Along a curve to the left through an angle of  $20^{\circ} 00' 00''$ , having a radius of 618.00 feet, for a length of 215.72 feet and whose long chord bears South  $12^{\circ} 22' 00''$  West for a distance of 214.63 feet to a point of intersection with a tangent line; thence
17. South  $02^{\circ} 22' 00''$  West for a distance of 1023.30 feet to a point on a line; thence
18. North  $70^{\circ} 51' 20''$  West for a distance of 85.39 feet to a point on the common boundary line of said Parcel 10 and said Parcel 1; thence continuing along said common boundary line
19. North  $70^{\circ} 51' 20''$  West for a distance of 825.25 feet to the beginning of a curve; thence
20. Along a curve to the left through an angle of  $24^{\circ} 26' 40''$ , having a radius of 900.00 feet, for a length of 383.97 and whose long chord bears North  $83^{\circ} 04' 40''$  West for a distance of 381.07 feet to a point of intersection with a tangent line; thence
21. South  $84^{\circ} 42' 00''$  West for a distance of 543.89 feet to the beginning of a curve; thence

EDC Parcel E18.3  
FOST 8 & 9  
Fort Ord Military Reservation  
City of Seaside  
Monterey County, California

22. Along a curve to the left through an angle of  $03^\circ 12' 00''$ , having a radius of 2000.00 feet, for a length of 111.70 feet and whose long chord bears South  $83^\circ 06' 00''$  West for a distance of 111.69 feet to a point of intersection with a tangent line; thence
23. South  $81^\circ 30' 00''$  West for a distance of 651.55 feet to the beginning of a curve; thence
24. Along a curve to the left through an angle of  $14^\circ 00' 00''$ , having a radius of 463.00 feet, for a length of 113.13 feet and whose long chord bears South  $74^\circ 30' 00''$  West for a distance of 112.85 feet to a point of intersection with a tangent line; thence
25. South  $67^\circ 30' 00''$  West for a distance of 120.92 feet to a point on a line; thence
26. North  $22^\circ 30' 00''$  West a distance of 64.00 feet to the POINT OF BEGINNING.

Containing an area of 6.225 acres, more or less.

This legal description was prepared by

  
Lynn A. Kovach L. S. 5321  
My license expires December 31, 2005



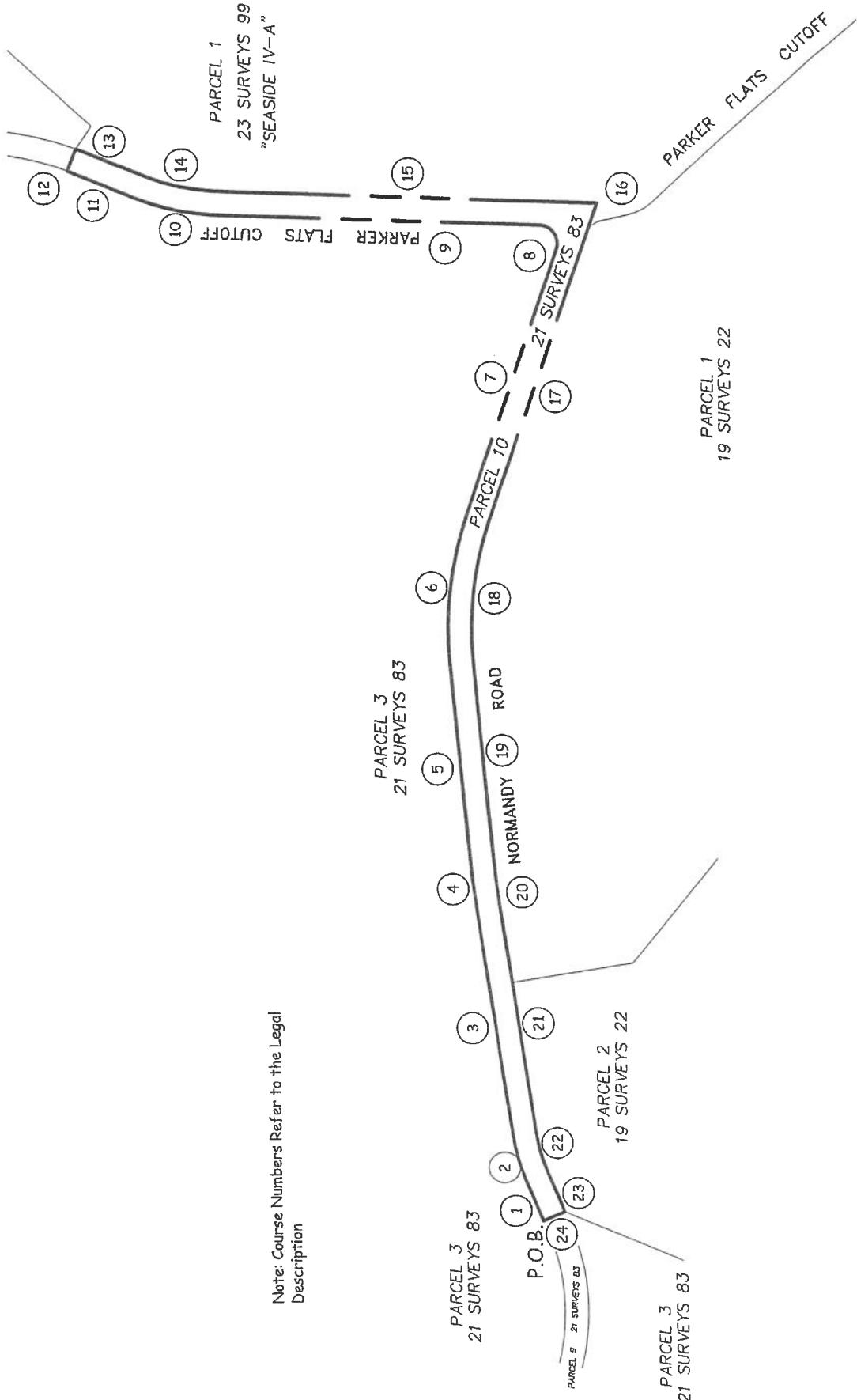


EXHIBIT  
OF

PARCEL E18.3

Seaside Jurisdiction, Fort Ord, FO ST 8 EDC  
Lying within "Seaside IV-A"

as shown on Vol. 23 of Surveys at Page 99

Being also within Fort Ord Military Reservation and Monterey City Lands Tract No. 1  
Monterey County, California

EDC Parcel E20c.1.2  
FOST 8 & 9  
Fort Ord Military Reservation  
City of Seaside  
Monterey County, California



### Legal Description of Parcel 2

SITUATE in a portion of the former Fort Ord Military Reservation as it is shown on that certain map entitled "Seaside IV-A" recorded on June 15, 2000 in Volume 23 of Surveys at Page 99, Official Records of Monterey County, being within Monterey City Lands Tract No. 1, the City of Seaside, County of Monterey, State of California; being more particularly described as follows:

BEGINNING at a point from which the most southerly point of said Parcel 1 as it is shown on the map recorded in Volume 19 of Surveys at Page 22 being also a point on the boundary line of Parcel 1 as it is shown on said map of "Seaside IV-A" bears North 69°02'12" East for a distance of 563.03 feet, and running thence from said Point of Beginning

1. South 57° 40' 00" West for a distance of 94.78 feet to a point on a line; thence
2. South 32° 18' 26" East for a distance of 100.04 feet to a point on a line; thence
3. North 57° 40' 00" East for a distance of 118.89 feet to a point on a line; thence
4. North 32° 18' 26" West for a distance of 79.50 feet to a point on a line; thence
5. North 81° 53' 44" West a distance of 31.67 feet to the POINT OF BEGINNING.

Containing an area of 0.267 acres, more or less.

This legal description was prepared by

  
Lynn A. Kovach L. S. 5321  
My license expires December 31, 2005



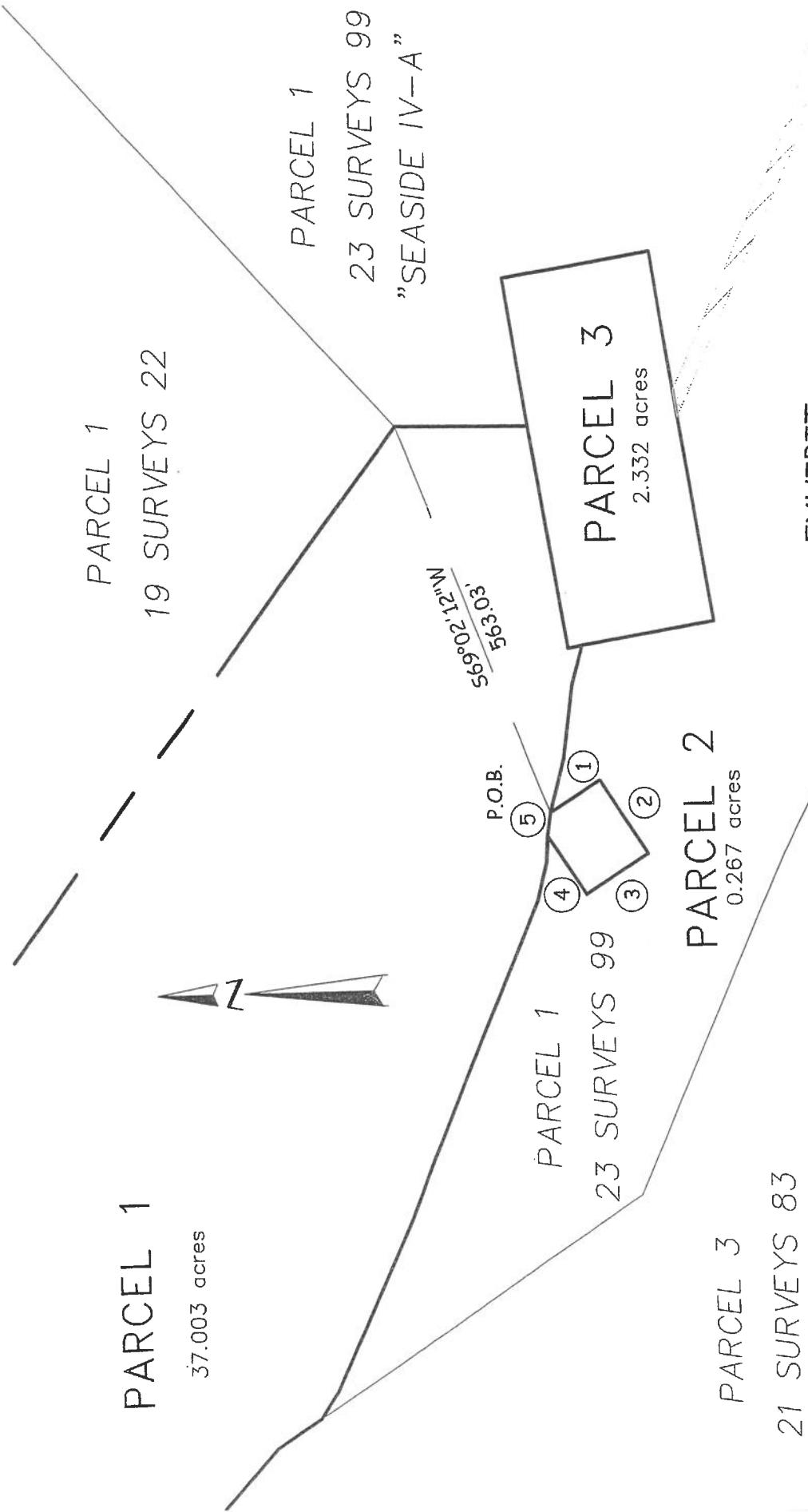


EXHIBIT  
OF

**PARCEL 2 - PARCEL E20c.1.2**

Seaside Jurisdiction, Fort Ord, FOST 8 EDC

Lying within "Seaside IV-A"  
as shown on Vol. 23 of Surveys at Page 99  
Being also within Fort Ord Military Reservation and Monterey  
City Lands Tract No. 1  
Monterey County, California

EDC Parcel E20c.2.2  
FOST 8 & 9  
Fort Ord Military Reservation  
City of Seaside  
Monterey County, California

Legal Description of Parcel 3

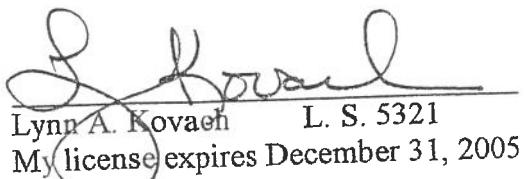
SITUATE in a portion of the former Fort Ord Military Reservation as it is shown on that certain map entitled "Seaside IV-A" recorded on June 15, 2000 in Volume 23 of Surveys at Page 99, Official Records of Monterey County, being within Monterey City Lands Tract No. 1, the City of Seaside, County of Monterey, State of California; being more particularly described as follows:

BEGINNING at a point from which the most southerly point of Parcel 1 as it is shown on the map recorded in Volume 19 of Surveys at Page 22 being also a point on the boundary line of Parcel 1 as it is shown on said map of "Seaside IV-A" bears North 01°00'07" East for a distance of 180.36 feet, and running thence from said Point of Beginning

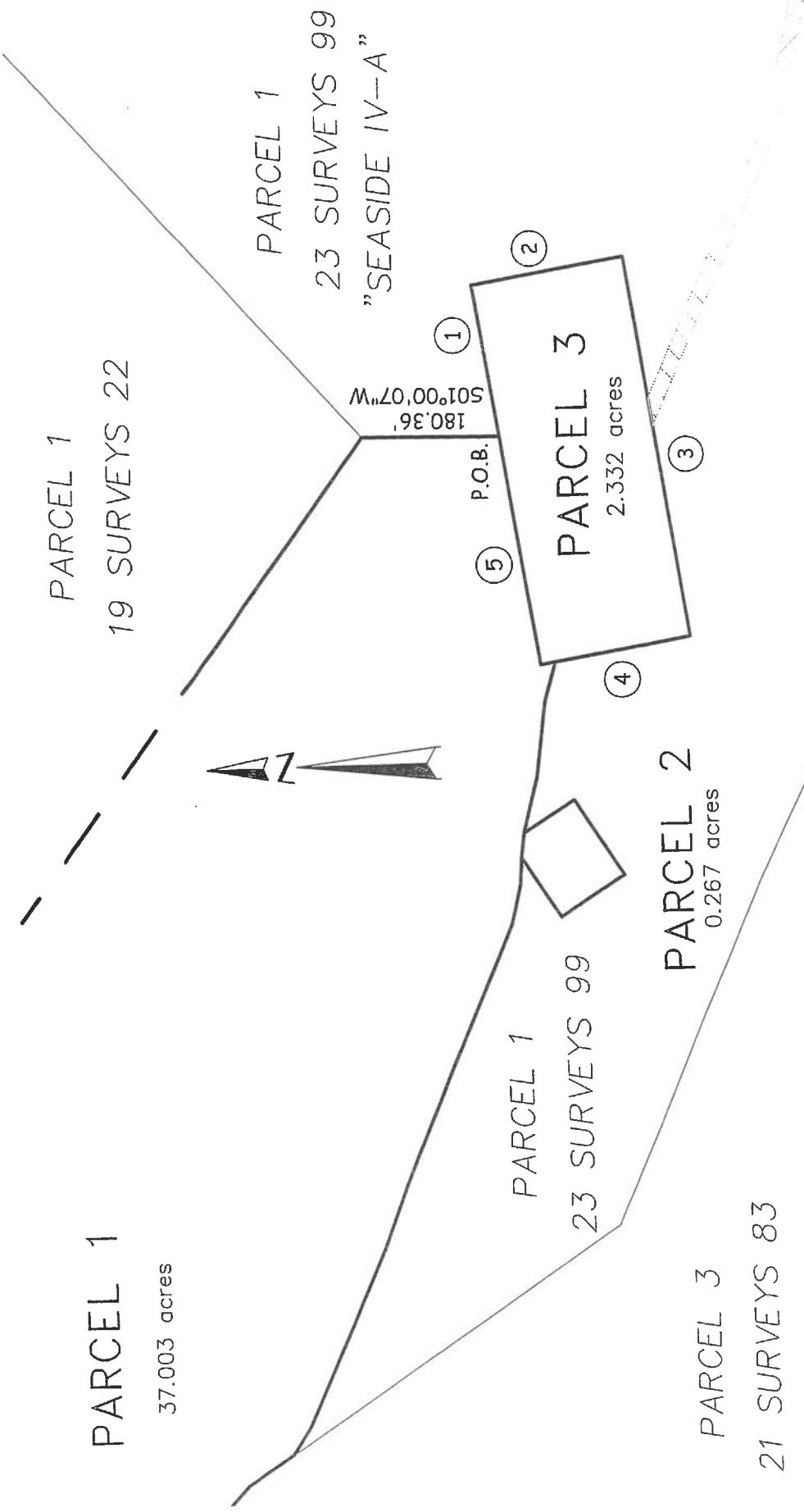
1. North 80° 45' 00" East for a distance of 200.81 feet to a point on a line; thence
2. South 09° 15' 00" East for a distance of 201.11 feet to a point on a line; thence
3. South 80° 45' 00" West for a distance of 505.00 feet to a point on a line; thence
4. North 09° 15' 00" West for a distance of 181.63 feet to a point on a line; thence
5. North 09° 15' 00" West for a distance of 19.48 feet to a point on a line; thence
6. North 80° 45' 00" East a distance of 304.19 feet to the POINT OF BEGINNING.

Containing an area of 2.332 acres, more or less.

This legal description was prepared by

  
Lynn A. Kovach L. S. 5321  
My license expires December 31, 2005





**EXHIBIT  
OF  
PARCEL 3 - PARCEL E20c.2.2**

Seaside Jurisdiction, Fort Ord, FOST 8 EDC  
Lying within "Seaside IV-A"  
as shown on Vol. 23 of Surveys at Page 99  
Being also within Fort Ord Military Reservation and  
Monterey City Lands Tract No. 1  
Monterey County, California

Note: Course Numbers Refer to the Legal Description

**List of Buildings and Structures  
By Parcel**

- |                    |      |
|--------------------|------|
| 1. Parcel E20c1.2  | 4372 |
|                    | 4373 |
| 2. Parcel E20c.2.2 | 4371 |

**AMENDMENT #1  
to the  
FINDING OF SUITABILITY TO TRANSFER  
(FOST)  
FORMER FORT ORD, CALIFORNIA  
TRACK 0 AND TRACK 0 PLUG-IN B PARCELS  
dated June 2005**

**September 2005**

**AMENDMENT #1  
FINDING OF SUITABILITY TO TRANSFER (FOST)  
FORMER FORT ORD, CALIFORNIA  
TRACK 0 AND TRACK 0 PLUG-IN B PARCELS**

**1.0 PURPOSE**

The purpose of this Amendment is to modify Section 6 (NOTICE OF THE PRESENCE OF CONTAMINATED GROUNDWATER) of the Environmental Protection Provisions (EPP, Attachment 1 of the FOST) to reflect which notice of the presence of contaminated groundwater is required for the parcels referred to in the EPP's table of Applicable Notices. More specifically this amendment will clarify which parcels of property are within particular "Groundwater Protection Zones" and therefore require a specific notice to be included in the deeds for those parcels.

**2.0 BACKGROUND**

Because of concerns about the extent of future development at the former Fort Ord, its potential impact on groundwater remedial activities, and protection of public health and the environment, Monterey County promulgated an ordinance in 1999 that established a "Special Groundwater Protection Zone" at the former Fort Ord. Within this zone, property recipients are restricted from drilling new water wells. The Special Groundwater Protection Zone is divided into the "Prohibition Zone," where construction of water wells is prohibited, and the "Consultation Zone," where the County evaluates water well permit applications on a case-by-case basis in consultation with the Army, U.S. EPA Region IX, California Department of Toxic Substances Control (DTSC) and the California Regional Water Quality Control Board (RWQCB). Additionally, the DTSC has required for previous FOSTs the Army to be party to a Covenant to Restrict Use of Property Covenant (CRUP) for each group of properties being transferred that were located within the Special Groundwater Protection Zone.

During development of this FOST, the DTSC determined it only had regulatory authority to enforce CRUPs on property within the Prohibition Zone, but not the Consultation Zone. The Army revised the list of parcels requiring a CRUP accordingly; however, after the FOST was finalized, the Army determined the table of Applicable Notices in the EPP still indicated all parcels within the Special Groundwater Protection Zone required the Notice of Contaminated Groundwater, which describes all such parcels as being included in a CRUP. As a result, the Notice of Contaminated Groundwater was inappropriately included in the draft deeds for property within the Consultation Zone based on the information in the table of Applicable Notices.

**3.0 REGULATORY/PUBLIC COMMENT**

A copy of this FOST Amendment will be distributed to the U.S. EPA Region IX, the DTSC and the RWQCB. The Army will include this FOST Amendment as part of its Administrative Record for the former Fort Ord, California.

#### **4.0 FINDING OF SUITABILITY TO TRANSFER**

Based on the above information, I have concluded that all DOD requirements to reach a Finding of Suitability to Transfer have been fully met for the Property, subject to the terms and conditions set forth in the Environmental Protection Provisions, as modified (Attachment 1).



Thomas E. Lederle  
Director, Hampton Field Office  
Army BRAC

Enclosure

Attachment 1, Environmental Protection Provisions Section 6 as amended.

**ATTACHMENT 1**  
**ENVIRONMENTAL PROTECTION PROVISIONS**

**6. NOTICE OF THE PRESENCE OF CONTAMINATED GROUNDWATER**

For Parcels E2d.3.1, E5a.2 and L5.10.2:

Without the expressed written consent of the Grantor in each case first obtained, neither the Grantee, its successors or assigns, nor any other person or entity acting for or on behalf of the Grantee, its successors or assigns, shall interfere with any response action being taken on the property by or on behalf of the Grantor, or interrupt, relocate, or otherwise interfere with any remediation system now or in the future located on, over, through, or across any portion of the property.

The deed will reserve a non-exclusive easement to allow continued access for the Army (or its designated contractor) and the regulatory agencies to permit necessary groundwater monitoring at wells located on the property and the installation of new treatment or monitoring wells if required for the pump and treat operations. Furthermore, the deed will prohibit all others from tampering with the groundwater monitoring wells.

A. Restrictions and Conditions – A Covenant to Restrict Use of Property (CRUP) for the property within the “Prohibition Zone” of the “Special Groundwater Protection Zone” will be established between the United States Army and the State of California (DTSC and the California Regional Water Quality Control Board, Central Coast Region). The Prohibition Zone encompasses the area overlying or adjacent to the four identified groundwater contamination plumes at the former Fort Ord. The Prohibition Zone is identified on the “Former Fort Ord Special Groundwater Protection Zone Map” (the Map), which is on file with the County of Monterey (the County).

The Grantee, for itself, its successors or assigns covenants that it will not undertake nor allow any activity on or use of the property in the “Prohibition Zone” that would violate the restrictions contained in the CRUP. These restrictions and covenants are binding on the Grantee, its successors and assigns; shall run with the land; and are forever enforceable. For the purpose of this restriction, “groundwater” shall have the same meaning as in section 101(12) of CERCLA.

B. Enforcement – The restrictions and conditions stated in Section A benefit the public in general and the territory surrounding the property, including lands retained by the United States, and, therefore, are enforceable by the United States government. The Grantee covenants for itself, its successors, and assigns that it shall include and otherwise make legally binding, the restrictions in Section A in all subsequent lease, transfer or conveyance documents relating to the property subject hereto.

C. Army Access – The Army and its representatives shall, for all time, have access to the property for the purpose of installing and/or removing groundwater monitoring wells, and to perform continued monitoring of groundwater conditions, allowing chemical and/or physical testing of wells to evaluate water quality and/or aquifer characteristics. The property owner shall allow ingress and egress of all equipment necessary to accomplish the same.

For Parcels E11a.1, E18.2.1, E18.2.2, E18.3, L35.5, S3.2.1 and S3.2.2:

A. The property is within the “Consultation Zone” of the Former Fort Ord Special Groundwater Protection Zone. The Consultation Zone includes areas surrounding the Prohibition Zone where groundwater extraction may impact or be impacted by the four identified groundwater contamination plumes at the former Fort Ord. The Consultation Zone is also identified on the Former Fort Ord Special Groundwater Protection Zone Map, which is on file with the County of Monterey (the County). County Ordinance No. 04011 requires consultation with the Grantor, the US EPA, the DTSC, the RWQCB and the County for proposed water well construction within the Consultation Zone.

B. Enforcement – The restrictions and conditions stated in Section A benefit the public in general and the territory surrounding the property, including lands retained by the United States, and, therefore, are enforceable by the United States government. The Grantee covenants for itself, its successors, and assigns that it shall include and otherwise make legally binding, the restrictions in Section A in all subsequent lease, transfer or conveyance documents relating to the property subject hereto.

C. Army Access – The Army and its representatives shall, for all time, have access to the property for the purpose of installing and/or removing groundwater monitoring wells, and to perform continued monitoring of groundwater conditions, allowing chemical and/or physical testing of wells to evaluate water quality and/or aquifer characteristics. The property owner shall allow ingress and egress of all equipment necessary to accomplish the same.

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

**TRACK 0 AND TRACK 0 PLUG-IN B PARCELS**

May 2005

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**FINDING OF SUITABILITY TO TRANSFER  
TRACK 0 AND TRACK 0 PLUG-IN B PARCELS  
FORMER FORT ORD, CALIFORNIA**

May 2005

**1.0 PURPOSE**

The purpose of this Finding of Suitability to Transfer (FOST) is to document the environmental suitability of certain parcels or property (the Property) at the former Fort Ord, California for transfer to the Fort Ord Reuse Authority (FORA), Monterey County, York School, Marina Coast Water District (MCWD), California Department of Parks & Recreation and, California Department of Transportation (Caltrans) for a variety of uses. These uses are consistent with Department of Defense (DOD) and United States Army (Army) policy and include education, state park facilities, roads and road improvements, habitat management, mixed use and development (Table 1). In addition, the FOST identifies use restrictions as specified in the Environmental Protection Provisions necessary to protect human health or the environment (Attachment 1).

**2.0 PROPERTY DESCRIPTION**

The Property proposed for transfer consists of twenty-nine (29) parcels (approximately 232 acres) of developed and undeveloped land on the former Fort Ord (Plates 1, 2 and 3). The 29 parcels are within "Track 0" areas, which are areas that contain no evidence of munitions and explosives of concern (MEC) and have never been suspected as having been used for military munitions-related activities of any kind. The Final Track 0 Record of Decision (ROD; June 19, 2002) addresses selected land parcels and provides a "plug-in" process to address future land parcels that are considered eligible for inclusion into the Track 0 process. In this FOST, there are two (2) parcels addressed in the Track 0 ROD (E5a.2 and L5.10.2, formerly E5a and L5.10, respectively). The remaining 27 parcels have been addressed through the plug-in process in the *Track 0 Plug-in Approval Memorandum, Selected Parcels – Group B.* (March 23, 2005). The Property is to be transferred to the listed recipients for a variety of uses as described in Table 1. Site maps of the Property are provided in Plates 4 through 10.

**3.0 ENVIRONMENTAL CONDITION OF PROPERTY**

The Army made a determination of the Environmental Condition of the Property (ECP) by reviewing existing environmental and military munitions<sup>1</sup> response-related documents and making an associated visual site inspection of the Property. The documents reviewed are listed in Attachment 2 and the site inspection was conducted in January 2005.

**3.1 Environmental Condition of Property Categories**

On the basis of environmental condition, parcels are placed in one of seven Community Environmental Response Facilitation Act (CERFA)/DOD Environmental Condition of Property

<sup>1</sup> Terminology describing military munitions and related names, places, actions and conditions is presented in Attachment 3.

(ECP) Categories.<sup>2</sup> Only parcels in ECP Categories 1 through 4 are suitable for transfer through a FOST. Table 2 lists the parcels in this FOST, the corresponding ECP Category, and brief descriptions of necessary remedial actions that have been taken. The ECP Categories and the corresponding parcels in this FOST are as follows:

ECP Category 1 Parcels: E11a.1, E18.2.1, E18.2.2, E18.3, E20c.1.2, E20c.2.2, E29b.3, E29e, E5a.2, L20.13.1.1, L20.13.2, L20.13.3.2, L20.13.4, L20.7.1, L20.7.2, L20.7.3, L20.7.4, L20.7.5, L3.1, L35.5, L5.10.2, S3.2.1, S3.2.2, S4.2.1, S4.2.2, S4.2.3, S4.2.4, and S4.3

ECP Category 2 Parcels: No parcels in this FOST are in this category.

ECP Category 3 Parcels: No parcels in this FOST are in this category.

ECP Category 4 Parcel: E2d.3.1

ECP Category 5 Parcels: No parcels in this FOST are in this category.

ECP Category 6 Parcels: No parcels in this FOST are in this category.

ECP Category 7 Parcels: No parcels in this FOST are in this category.

A summary of the ECP Categories for the Property is provided in Table 2 – Environmental Condition of Property.

### 3.1.1 Community Environmental Response Facilitation Act (CERFA) Report

The Final CERFA Report, Fort Ord, Monterey, California (April 1994) summarized the CERFA investigation conducted at the former Fort Ord and classified Fort Ord property as "Uncontaminated," "Qualified," or "Disqualified."<sup>3</sup> Qualified areas were identified based on the potential presence of unexploded ordnance (UXO), radon, radionuclides (contained within products being used for their intended purposes), asbestos (contained within building materials), or lead-based paint (present on building material surfaces). Disqualified areas were identified

<sup>2</sup> ECP Category 1: Areas where no release or disposal of hazardous substances or petroleum products has occurred (including no migration of these substances from adjacent area).

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

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

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

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 actions have not yet been taken.

ECP Category 6: Areas where release, disposal, and/or migration of hazardous substances has occurred, but required actions have not yet been implemented.

ECP Category 7: Areas that have not been evaluated or require additional evaluation.

<sup>3</sup> CERFA parcel with qualifier – A portion of the installation real property for which investigation revealed no evidence of a release or disposal of CERCLA hazardous substances, petroleum, or petroleum derivatives and no evidence of the parcel being threatened by migration of such substances from outside the parcel. The parcel does however contain environmental, hazard, or safety issues, including asbestos contained in building materials or lead-based paint applied to building material surfaces.

<sup>4</sup> CERFA disqualified parcel – A portion of the installation real property for which investigation revealed evidence of a release or disposal of CERCLA hazardous substances, petroleum, or petroleum derivatives or the parcel being threatened by migration of such substances from outside the parcel.

based on evidence of release, disposal, or storage for more than one year of a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substance, petroleum, or petroleum derivative; or a portion of the installation threatened by such release or disposal. US EPA concurred with the Army's determination of "uncontaminated" for 60 CERFA parcels at the former Fort Ord in a letter dated April 19, 1994. In this letter, U.S. Environmental Protection Agency (US EPA) specifically concurred that parcels having buildings with probable lead-based paint (LBP) could be considered uncontaminated because the information in the CERFA Report did not indicate that there are residual levels of LBP on these parcels presenting a threat to human health or the environment. Under the DOD Authorization Act for 1997, the U.S. Congress expanded the definition of "Uncontaminated Property" to include the storage of hazardous substances, petroleum products and their derivatives provided there was no release or disposal of these materials. Table 2 includes a list of the Track 0 and Track 0 Plug-In B Parcels, the CERFA classification assigned, and rationale.

Parcels located within areas originally identified as CERFA Qualified or Disqualified, but through additional site investigation were determined to be Uncontaminated (ECP Category 1), are described below.

#### Parcel E18.2.1

Portions of the parcel (Plate 7) were categorized as CERFA Qualified because of the presence of asbestos containing material (ACM), LBP and the storage, use or repair of equipment containing Nuclear Regulatory Commission (NRC) licensed materials, in buildings that are adjacent to the parcel; however, no buildings are present on Parcel E18.2.1. Portions of the parcel were categorized as CERFA Disqualified due to the former storage of diesel fuel and hazardous substances; however, under the expanded definition of "Uncontaminated Property," Parcel E18.2.1 meets the definition of CERFA Uncontaminated property.

#### Parcel E18.2.2

A portion of the parcel (Plate 7) was categorized as CERFA Qualified because of the presence of ACM and probable LBP in a building adjacent to the parcel; however, no buildings are present on Parcel E18.2.2. A portion of the parcel was categorized as CERFA Disqualified due to petroleum storage; however, under the expanded definition of "Uncontaminated Property," Parcel E18.2.2 meets the definition of CERFA Uncontaminated property.

#### Parcel E18.3

A portion of the parcel (Plate 7) was categorized as CERFA Qualified due to the presence of ACM and probable LBP in buildings that are adjacent to the parcel; however, no buildings are present on Parcel E18.3. This parcel meets the definition of CERFA Uncontaminated property.

#### Parcel E20c.2.2

A portion of the parcel (Plate 7) was categorized as CERFA Qualified because of the presence of ACM and probable LBP, and its proximity to the "Officers' Club Foxhole," where military munitions items (smoke grenade and M-1 ammunition) were discovered in 1993. Because no other military munitions items have been discovered and the presence of water supply and satellite television infrastructure, it is unlikely that training occurred on Parcel E20c.2.2. A

portion of the parcel was categorized as CERFA Disqualified due to petroleum storage in Building 4373; however, under the expanded definition of "Uncontaminated Property," Parcel E20c.2.2 meets the definition of CERFA Uncontaminated property. USTs formerly on the parcel (4373.1 and 4373.2) were removed in 1991.

#### Parcel E29b.3 and E29e

Portions of these parcels (Plate 8) were categorized as CERFA Uncontaminated. The remainders of the parcels were categorized as CERFA Qualified because of proximity to the former Impact Area. These parcels lie on the southwest side of South Boundary Road and are located outside of the fenced Impact Area. No evidence was observed during the CERFA assessment to indicate storage, release, or disposal of hazardous substances or petroleum products or their derivatives within these parcels. Therefore, Parcels E29b.3 and E29e meet the definition of CERFA Uncontaminated property.

#### Parcels L20.13.2, L20.13.3.2, L20.13.4, L20.7.1, L20.7.2, L20.7.3, L20.7.4, and L20.7.5

These parcels (Plates 8 and 9) were categorized as CERFA Qualified because of their proximity to the former Impact Area; however, these parcels comprise South Boundary Road and are located outside of the fenced Impact Area. No evidence was observed during the CERFA assessment to indicate storage, release, or disposal of hazardous substances or petroleum products or their derivatives within these parcels. Therefore, these parcels meet the definition of CERFA Uncontaminated property.

#### Parcels L3.1, S4.2.1, S4.2.2, S4.2.3, and S4.2.4

These parcels (Plates 8 and 9) were categorized as CERFA Qualified because of their proximity to the former Impact Area. These parcels lie on the south side of South Boundary Road and are located outside of the fenced Impact Area. No evidence was observed during the CERFA assessment to indicate storage, release, or disposal of hazardous substances or petroleum products or their derivatives within these parcels. Therefore, these parcels meet the definition of CERFA Uncontaminated property.

#### Parcel L5.10.2

This parcel (Plate 5) was categorized as CERFA Disqualified because of its proximity to Installation Restoration Program (IRP) Site 34. A release of hydrocarbons associated with a former vehicle wash rack and underground storage tank occurred at IRP Site 34; however, the release of hydrocarbons did not occur on this parcel. An interim action including excavation and removal of hydrocarbon impacted soil was conducted. The US EPA and the DTSC concurred that no further action is necessary at IRP Site 34 in letters dated February 2, 2002 and October 23, 2002, respectively.

This parcel is a portion of a parcel previously identified as Parcel L5.10 (Reservation Road). Parcel L5.10 was evaluated for MEC, identified as Track 0, and included in the Track 0 ROD. Because the former Parcel L5.10 was evaluated for the presence of MEC, and the former parcel encompasses Parcel L5.10.2, the identification of Parcel L5.10 as Track 0 also applies to Parcel L5.10.2. Parcel L5.10.2 meets the definition of CERFA Uncontaminated property.

#### Parcel S3.2.1

A portion of this parcel (Plate 4) was categorized as CERFA Disqualified due to its proximity to IRP Site 20 (South Parade Ground, 3800 and 519<sup>th</sup> Motor Pools) and CERFA Qualified because of the presence of a machine gun square formerly located on the parcel. No impact to parcels adjacent to IRP Site 20 was identified during site characterization activities. No evidence was observed during the CERFA assessment to indicate storage, release, or disposal of hazardous substances at the machine gun squares. Machine gun squares were used for the practice of setting up and aiming weapons or dry fire. No evidence was found during the literature review to support the use of live ammunition at the machine gun squares. Therefore, Parcel S3.2.1 meets the definition of CERFA Uncontaminated property.

#### Parcel S3.2.2

A portion of the parcel (Plate 4) was categorized as CERFA Disqualified due to its proximity to IRP Site 20 (South Parade Ground, 3800 and 519<sup>th</sup> Motor Pools). No impact to parcels adjacent to IRP Site 20 was identified during site characterization activities. Therefore, Parcel S3.2.2 meets the definition of CERFA Uncontaminated property.

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

Hazardous substances were released on the Property in excess of the reportable quantities listed in 40 Code of Federal Regulations (CFR) Part 373. These hazardous substances were remediated as part of the installation restoration program (IRP). All necessary response actions have been taken and are described in this section and Section 4.0. A summary of the areas in which hazardous substance releases occurred is provided in Table 3.

#### **3.2.1 Solid Waste Management Units (SWMUs)**

One former SWMU (FTO-022) is located on the Property. FTO-022 was located on Parcel E2d.3.1, and was used by the Defense Reutilization and Marketing Office (DRMO) as a storage area.

SWMU FTO-022 was used to store decommissioned equipment, including transformers containing polychlorinated biphenyls (PCBs). This use was reported to have occurred from approximately 1950 to 1972. SWMU FTO-022 was inspected in 1988 and was described as an approximately 1 acre open field. The 1988 inspection reported that storage included drums, transformers and scrap metal. No records were available detailing the specific storage activities at this SWMU. No evidence of a release was observed during the inspection; however, soil sampling was recommended. SWMU FTO-022 was investigated (soil samples collected) as part of the Basewide Installation Restoration Program (IRP Site 25 – Former DRMO). The Basewide ROD, which includes a recommendation of no further action at IRP Site 25 (SWMU FTO – 022), was signed by the DTSC on January 16, 1997 and by the US EPA on January 17, 1997. A discussion of investigation at SWMU FTO – 022 is provided in Section 3.2.2.

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

All or portions of two IRP sites are located on the Property within Parcel E2d.3.1 (Site 18 and Site 25/SWMU FTO – 022 [Plates 4 and 6]). The investigation of the IRP sites was conducted under the Fort Ord Basewide Remedial Investigation/Feasibility Study (RI/FS) program.

Site 18 was categorized as a No Action Site. The "plug-in" No Action Record of Decision (NoA ROD) for all No Action sites was signed by the regulatory agencies in the spring of 1995. Documentation that site-specific no action criteria were met is provided through the Approval Memoranda process. The overall process is referred to as the "plug-in" process because the Approval Memoranda plug into the NoA ROD. Agency concurrence that Site 18 met the criteria for No Action was granted by the DTSC on March 12, 1998 and by the US EPA on March 18, 1998.

Site 25 was categorized as Remedial Investigation (RI) Site. The Basewide Record of Decision (ROD) and recommended no further action at Site 25 based on a site-specific risk assessment. The Basewide ROD was signed by the DTSC on January 16, 1997, by the US EPA on January 17, 1997; and by the Regional Water Quality Control Board (RWQCB) on January 22, 1997. The remedial action conducted at Site 31 and evaluation of Site 25 are discussed below.

RI Site 25, Former DRMO, was used to store decommissioned equipment, including transformers containing PCBs (SWMU FTO – 022). Other materials that may have been stored at this location include waste oil, diesel fuel, and solvents. IRP Site 25 was investigated (soil samples collected) as part of the Basewide Installation Restoration Program. Low levels of PCBs (less than one part per million) and pesticides and metals above background concentrations were detected in shallow soil. No semi-volatile or volatile compounds, except for acetone, were detected. Low-level pesticide detections were consistent with levels observed in areas where routine application of pesticides has occurred for pest control. Human health and ecological risk assessments were performed to evaluate exposure of chemicals of potential concern to human health under a residential reuse and construction worker scenario, and to plants and animals present at this site. The results of the risk assessments indicated that there are no unacceptable risks to human health and the environment associated with the presence of chemicals at this site and no further action was recommended in the *Record of Decision, Basewide Remedial Investigation Sites, Fort Ord, California*, dated January 13, 1997.

### 3.2.3 Groundwater Contamination

A groundwater contamination plume containing predominantly carbon tetrachloride (CT) lies adjacent to Parcels E5a.2 and L5.10.2.<sup>5</sup> The Army is currently conducting a Remedial Investigation/Feasibility Study (RI/FS) for the CT study area (now called Operable Unit Carbon Tetrachloride Plume [OU CTP]), the results of which will be documented in a Record of Decision (ROD). Well drilling and use of groundwater will be prohibited. Restriction and notification for groundwater contamination are detailed in the attached Environmental Protection Provisions (Attachment 1).

<sup>5</sup> Portions of Track 0 Parcels E5a and L5.10 overlay the CT plume. To facilitate transfer, these parcels were subdivided into ones overlying the CT plume (Parcels E5a 1 and L5.10.1) and ones not overlying the CT plume (E5a.2 and L5.10.2) based on the latest groundwater monitoring data available in the *Draft Annual Report of Quarterly Monitoring, October 2003 through September 2004, Former Fort Ord, California, Groundwater Monitoring Program* (March 2005). As such, no part of the E5a.2 and L5.10.2 overlie the CT plume and are suitable for transfer. Parcels E5a1 and L5.10.1, which do overlie the CT plume, are excluded from transfer and not part of this FOST.

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

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

Based on a review of existing records and available information, there is no evidence that petroleum products in excess of 55 gallons at one time were stored, released, or disposed of on the Property as the result of non-underground or aboveground storage tanks (UST/AST) petroleum activities. Accordingly, there is no need for notification regarding non-UST/AST petroleum product storage, release, or disposal.

#### **3.3.2 Aboveground and Underground Storage Tanks (AST/UST)**

No storage of petroleum products in aboveground storage tanks (ASTs) occurred on the Property.

There were two underground storage tanks (USTs) on the Property used for storage of petroleum products (4373.1 and 4373.2). The USTs were removed in 1991 and closure was granted by the Monterey County of Health (MCDOH) in a letter dated April 6, 1994. A summary of the petroleum product storage is provided in Table 4.

### **3.4 Polychlorinated Biphenyls (PCB)**

There are no PCB-containing transformers or other PCB-containing equipment, with the exception of possible PCB-containing light ballasts, located on the Property. Based on a review of existing records and available information, PCB-containing light ballasts may be located on the Property. Fluorescent light ballasts manufactured or installed prior to 1978 may contain PCBs in the potting material. PCB-containing light ballasts do not pose a threat to human health and the environment when managed properly. The deed will include the PCB notification and covenant contained in the Environmental Protection Provisions (Attachment 1).

### **3.5 Asbestos**

Based on the *Asbestos Survey Report, For U.S. Army Corps of Engineers, Fort Ord Installation* (April 26, 1993), asbestos containing materials (ACM) were identified within buildings or structures on the Property (Parcels E2d.3.1, E20c.1.2, and E20c.2.2). Eight of the buildings or structures located on the Property contain ACM. Detailed descriptions of the asbestos type, location, and condition rating (at the time of survey) are provided in the Asbestos Survey Report and are summarized in the Fort Ord CERFA Report. A list of the buildings and a description of the ACM is provided below.

Building Number	ACM Friability	ACM Condition*	Material**
1443	Nonfriable	G	B, D, G, J, K
2992	Nonfriable	G	A, D, E
2994	Nonfriable	G	B, D, E, L
2995	Friable/Nonfriable	G	A, B, C, D, E, I, M
2996	Nonfriable	G	A, B, D, E, N
4371	Nonfriable	G	E
4372	Nonfriable	G	B
4373	Nonfriable	G	B, H

\*Condition:

G = Good

\*\*Material:

A = Joint Compound  
 B = Roof Penetration Mastic  
 C = Pipe Fitting Insulation  
 D = Resilient Floor Tile  
 E = Transite Pipe  
 F = Sheet Flooring and Mastic  
 G = Roof Cap Sheet

H = Roofing Mastic  
 I = Acoustic Tile Mastic  
 J = Floor Tile Mastic  
 K = Window Putty  
 L = Transite Sheet Material  
 M = Pipe Run Insulation  
 N = Paint/Coating

As noted in the *Asbestos Survey Report*, Building 2995 contains friable ACM in good condition. Friable ACM may pose a health risk if not managed properly. Friable ACM can be effectively managed in place, provided the proper precautions are taken to minimize or eliminate exposure of personnel to airborne asbestos. The Army does not intend to remove or repair the ACM present in the buildings, but discloses its existence and condition. The friable asbestos that has not been removed or encapsulated will not present an unacceptable risk to human health because it will be managed by the Grantee as described in Section 8 of the Environmental Protection Provisions. Any recommended inspection of ACM present in these buildings will be the responsibility of the recipient. Appropriate asbestos notice is given herein and will be included in the deed. The deed will include the asbestos warning and covenant included in the Environmental Protection Provisions (Attachment 1).

### 3.6 Lead-Based Paint (LBP)

Based on the age of the buildings (constructed before 1978) or because the construction date is unknown, most buildings on the Property are presumed to contain lead-based paint (LBP). The Army does not intend to remove or repair the LBP in the buildings or remove lead possibly in the soil surrounding the buildings. Residential or child-occupied use of the buildings is prohibited unless all LBP hazards have been abated. The deed will include the lead-based paint warning and covenant provided in the Environmental Protection Provisions (Attachment 1).

### **3.7 Radiological Materials**

One building on the Property (1443, Parcel E2d.3.1) was among 230 former Fort Ord buildings that were suspected to have contained/stored radioactive commodities at some point in the past, but for which no documented evidence was found. The use of radioactive commodities at former Fort Ord was limited to those under the control of a specific Nuclear Regulatory Commission (NRC) license, or those authorized and managed under Department of the Army authorization. Twenty percent of the 230 buildings were randomly sampled by the U.S. Army Environmental Hygiene Agency (AEHA; reorganized in 1994 as the U.S. Army Center for Health Promotion and Preventive Medicine [USACHPPM]). No radiological health hazards were identified for the twenty percent sampled, and USACHPPM, recommended that all 230 buildings be released for unrestricted use (memorandum dated May 2, 1997). In a memorandum dated October 1, 1997, the California Department of Health Services (DHS) released all buildings with documented or suspected use or storage of radioactive commodities (including Building 1443) for unrestricted use.

### **3.8 Radon**

Radon was not detected exceeding the US EPA residential action level of 4 picocuries per liter (pCi/L) in buildings on the Property during a 1990 former Fort Ord radon survey.

### **3.9 Military Munitions Response Program (MMRP)**

A review of existing records and available information, including the Archive Search Report (ASR), ASR Supplement No. 1 and the draft Revised ASR (December 1993, November 1994 and December 1997, respectively), the *Site 39 Data Summary Work Plan* (February 1994), the *Draft Final Literature Review Report* (January 2000), the *Final Track 0 Record Of Decision, No Action Regarding Ordnance-Related Investigation* (June 19, 2002), the *Final Track 1 OERI/FS* (June 21, 2004), the *Track 0 Plug-In Approval Memorandum Selected Parcels – Group B* (March 23, 2005), military munitions contractor after-action reports, working maps, Fort Ord Training Facilities Maps, and associated interviews from various ordnance-related community relations activities, indicates that no munitions response sites are present on the Property. All parcels included in this FOST lie on Property identified as non-munitions response sites, or areas at the former Fort Ord that contain no evidence of munitions and explosives of concern (MEC) and have never been suspected as having been used for military munitions related activities of any kind (Track 0). The Track 0 process addresses single or grouped areas of land at the former Fort Ord that have no history of military munitions use and for which No Action is necessary to protect human health and the environment. The Track 0 No Action ROD Plug-In process addresses the parcels included in this FOST. The Track 0 ROD was signed on July 2, 2002. An evaluation of two of the parcels included in this FOST was completed in the Track 0 Technical Memorandum and ROD (E5a.2 and L5.10.2, formerly E5a and L5.10). An evaluation of other parcels included in this FOST was completed through the Track 0 Plug-In Approval Memorandum process.

Investigations at MRS-46 and MRS-57 have included an evaluation of two adjacent Track 0 Parcels: L35.5 and L3.1. The investigations and results are summarized below.

Parcel L35.5 (Water Tank F) – To confirm that no MEC are present in this area two site reconnaissances were performed. The first site reconnaissance of the general area was conducted

in January 1996 by a U.S. Army Corps of Engineers (USACE) UXO Safety Specialist as part of the Preliminary Assessment/Site Investigation (PA/SI) phase of the Archive Search. The reconnaissance was performed because interviews with a former Fort Ord fire chief identified this general area (Site K11) as a possible target location associated with adjacent MRS-57. During the site reconnaissance munitions debris, including expended flares, signals, and blank small arms ammunition were found in the parcel vicinity. Based on the results of the reconnaissance the USACE UXO Safety Specialist assigned a Risk Assessment Code (RAC) score of 5 for Site K11, which includes Parcel L35.5. A RAC score of 5 indicates that no further military munitions response (MMR) action is necessary. The recommendation of no further action was reviewed by the Ordnance and Explosives Mandatory Center of Expertise (MCX) and Design Center (Army Corps of Engineers Huntsville Division [CEHND]). Based on this evaluation it was determined that no further investigation of Site K11 was necessary.

The second site reconnaissance, completed in October 1999, was a surface site inspection conducted over roads and trails primarily within the U.S. Department of the Interior, Bureau of Land Management (BLM) land adjacent to Parcel L35.5. The reconnaissance was completed by the military munitions contractor who was performing MMR actions at the former Fort Ord at that time. A portion of the area walked included the unimproved roads adjacent to Parcel L35.5. No MEC were found in the parcel vicinity or in the general area. Four expended smoke grenades (munitions debris) were found on the unimproved road adjacent to Parcel L35.5.

Parcel L3.1 (York School South Area) – Prior to the lease of property from the Army to York School, the DTSC and the US EPA requested that this parcel undergo a geophysical investigation to assure that no military munitions were present. A digital geophysical evaluation (sampling) was performed on a portion of Parcel L3.1, which lies on the south side of South Boundary Road between the road and the former Fort Ord installation boundary. For the purposes of the investigation, this area was identified as the York School South Area. The York School South Area was investigated in conjunction with the investigation of a portion of MRS-46, which was also to be leased to York School. The York School South Area investigation included a visual sweep and subsurface investigation using digital geophysical equipment. No MEC were found during sampling. Three munitions debris items (pieces of practice rifle grenades) were found and removed. Based on these results no further action was recommended and the DTSC concurred with this recommendation in a letter dated June 25, 2001.

### 3.9.1 Adjacent Site Conditions

MRS-2, MRS-4A, MRS-DRO.1, MRS-DRO.2, MRS-MOCO.1, MRS-20, MRS-24B, MRS-27E, MRS-39, MRS-43, MRS-44EDC, MRS-45, MRS-46, MRS-47, MRS-49, MRS-50EXP, MRS-57, and MRS-63 lie adjacent to the Property. A summary of the investigation conducted at each of the adjacent sites is provided below.

MRS-2. MRS-2 lies adjacent to Parcel E2d.3.1 (Plate 4). MRS-2 was identified in the ASR as a chemical training area and a landmine warfare training area. Results of the ASR indicate that MRS-2 was not an impact area. During the archives search it was reported that Chemical Agent Identification Sets (CAIS) may have been buried in the site vicinity along Imjin Road. MRS-2 was sampled for munitions and explosives of concern (MEC) in 1994 and two munitions debris items were found. A portion of MRS-2 overlaps IRP Site 16 and is adjacent to IRP Site 17. During the investigation and remediation of IRP Sites 16 and 17, 468 inert 2.36-inch practice

rockets were removed from burial pits located in former landfill areas within Sites 16 and 17. Landfill areas within MRS-2 were fully excavated in 1997. Although munitions debris items were found at MRS-2, the items were buried in disposal pits and were not associated with military munitions use. Additionally, no evidence of CAIS kits was found during sampling. For these reasons, the portion of MRS-2 that has been fully excavated, backfilled and re-graded (Pete's Pond burial area) is a Special Case Track 0 area, as discussed in the Final Track 0 ROD (June 19, 2002). Any munitions that might not have been located through excavation would most likely have been found during the re-grading process.

MRS-2 was categorized as a Track 1 site, which are sites suspected to have been used for military training with military munitions. Historical research and sampling conducted at this site found no evidence of past training involving military munitions. The adequacy of the sampling conducted at MRS-2 was evaluated in the Track 1 OE RI/FS. The Track 1 OE RI/FS recommended that MRS-2 should be retained in the Track 1 process. Therefore, MRS-2 will be considered as a candidate site for the Track 1 Plug-In process in accordance with criteria identified in the approved Track 1 ROD.

MRS-4A. MRS-4A lies adjacent to Parcels E18.2.1 and E18.2.2 (Gigling Road) (Plate 7). In 1994, Human Factors Applications, Inc. (HFA) completed a subsurface investigation of MRS-4A. Two munitions debris items were found. Based on the sampling results further investigation and confirmatory sampling was recommended.

CMS Environmental, Inc. (CMS) conducted sampling of MRS-4A in 1997. Sampling of this site resulted in the discovery of 70 MEC items, including a high explosive rifle grenade, 2 illumination signals, 67 grenade fuzes found in a burial pit, and 5 munitions debris items. Based on the sampling results, the Army conducted a one-hundred percent (100%) removal to a depth of 4 feet at the site. One MEC item (illumination signal) was found and removed during the removal action. Seven munitions debris items were found, including practice hand grenades, an illumination signal and a grenade fuze. No further military munitions investigation was recommended; however, MRS-4A will undergo additional evaluation in the ongoing former Fort Ord Military Munitions Response Program.

MRS-DRO.1 and MRS-DRO.2. These sites lie on the north side of South Boundary Road and are adjacent to Parcels L20.13.1.1, L20.13.2, L20.13.3.2, L20.13.4, and in close proximity to Parcels E29b.3 and E29e (Plate 8). The boundaries of MRS-DRO.1 and MRS-DRO.2 are based on transfer parcel delineation and not on evidence of munitions use. The investigation of these sites included one-hundred percent (100%) grid sampling, a removal action, and a one-hundred percent (100%) geophysical investigation to support the early transfer of these parcels. Items found and removed included expended practice rockets, practice projectiles, and practice grenades. MRS-DRO.1 and MRS-DRO.2 will undergo additional evaluation in the ongoing former Fort Ord Military Munitions Response Program.

MRS-MOCO.1. This site lies on the north side of South Boundary Road and is adjacent to Parcel L20.13.4 and in close proximity to Parcels E29b.3 and E29e (Plate 8). The boundary of MRS-MOCO.1 is based on transfer parcel delineation and not on evidence of munitions use. One hundred percent (100%) grid sampling was performed at MRS-MOCO.1 and no MEC or munitions debris were found. Based on these results no further action was recommended. MRS-

MOCO.1 will undergo additional evaluation in the ongoing former Fort Ord Military Munitions Response Program.

MRS-20. MRS-20 lies approximately 1,300 feet south of Parcel S3.2.1 (Plate 7). MRS-20 was evaluated in the Track 1 OE RI/FS. Based on review of existing information, MEC is not expected to be found at MRS-20. MRS-20 meets the Track 1, Category 1<sup>6</sup> criteria because historical research and sampling conducted at this site found no evidence of past training involving military munitions. The Track 1 OE RI/FS recommended no further military munitions investigation at MRS-20.

MRS-24B. MRS-24B lies approximately 200 feet southwest of Parcels E20c.1.2 and E20c.2.2 (Plate 7). MRS-24B was evaluated in the Track 1 OE RI/FS. Based on review of existing information, MEC is not expected to be found at MRS-24B. MRS-24B meets the Track 1, Category 1 criteria because historical research and sampling conducted at this site identified evidence of past training involving only practice and pyrotechnic items that are not designed to cause injury. The Track 1 OE RI/FS recommended no further military munitions investigation at MRS-24B.

MRS-27E. MRS-27E lies approximately 200 feet east of Parcel L35.5 (Plate 6). Two site walks of MRS-27E have been conducted. A reconnaissance of a portion of this site was performed as part of the reconnaissance of area K11. As discussed above, expended flares, signals and blank small arms ammunition were found within adjacent MRS-57. The second investigation was conducted as part of the former Fort Ord BRA. The assessment of MRS-27E for potential hazardous and toxic waste related to military munitions included a data review, site reconnaissance, and mapping of portions of the site. Under the BRA MRS-27E was identified as HA-137. A site walk of HA-137 was performed in December 2001. No military munitions or evidence of military training were identified during the site walk and no further action related to chemical contamination was recommended in the BRA.

MRS-39. MRS-39 lies approximately 600 feet north of Parcel E18.3 (Plate 7). MRS-39 was evaluated in the Track 1 OE RI/FS. Based on review of existing information, MEC is not expected to be found at MRS-39. MRS-39 meets the Track 1, Category 3<sup>7</sup> criteria because historical research and sampling conducted at this site identified evidence of past training involving only practice and pyrotechnic items that are not designed to cause injury. No evidence of military munitions was identified during the sampling of this site. The Track 1 OE RI/FS recommended no further military munitions investigation at MRS-39.

MRS-43. This site lies on the south side of South Boundary Road, adjacent to Parcels L20.13.1.1, L20.13.2, and L20.13.3.2, and in close proximity to Parcels L20.13.4 and E29e (Plate 8). Identified during interviews conducted for the Archives Search, and reported to have

<sup>6</sup> Category 1: There is no evidence to indicate military munitions were used at the site (i.e., suspected training did not occur).

<sup>7</sup> Category 3: The site was used for training with military munitions, but military munitions items that potentially remain as a result of that training do not pose an unacceptable risk based on site-specific evaluations conducted in the Track 1 OE RI/FS. Field investigations identified evidence of past training involving military munitions, but training at these sites involved only the use of practice and/or pyrotechnic items that are not designed to cause injury. In the unlikely event that live item of the type previously observed at the site is found, it is not expected that the item would function by casual contact (i.e., inadvertent and unintentional contact).

included a backstop for rifle grenades and shoulder launched projectiles from 1942 to 1944, this site was sampled, and munitions debris (expended projectiles) was removed. Three MEC items (37mm projectiles) were also removed. Additional work was performed at MRS-43 to support the early transfer of property to Del Rey Oaks. The northern portion of the site underwent a 4-foot removal and 100% geophysical investigation. This site will undergo additional evaluation in the ongoing former Fort Ord Military Munitions Response Program.

MRS-44EDC. MRS-44EDC lies approximately 160 feet southeast of Parcel E20c.2.2 (Plate 7). MRS-44EDC was established based on the presence of fragmentation from 37mm HE projectiles found during a site reconnaissance conducted by a USACE UXO Safety Specialist. An investigation of MRS-44EDC was conducted to determine whether a removal action was warranted. The investigation included the sampling of grids randomly distributed throughout the site. Several MEC items were found during sampling at MRS-44EDC; however, none of the MEC items found are penetrating by design and would typically be found on or near the ground surface unless intentionally buried. MRS-44EDC will undergo additional evaluation in the ongoing former Fort Ord Military Munitions Response Program.

MRS-46. This site lies in close proximity to Parcel E29b.3 (Plate 8). The boundary of MRS-46 is based on transfer parcel delineation and not on evidence of munitions use. Sampling of MRS-46 was initially conducted as part of the investigation of the adjacent impact area. During the sampling two MEC items (2.36-inch rockets) were found on the ground surface. The contractor conducting the sampling concluded that the two rockets were discarded military munitions (DMM); however, sampling of the entire site was conducted. No MEC were found during this sampling effort. Ten munitions debris items (various portions of practice rifle grenades) were found and removed. Because a portion of MRS-46 was to be leased to York School for the construction of an athletic field, the entire lease area was re-evaluated (sampled) using digital geophysical equipment. No MEC or munitions debris were discovered and no further action was recommended. MRS-46 will undergo additional evaluation in the ongoing former Fort Ord Military Munitions Response Program.

In 2002, York School completed construction of an athletic field and installation of an irrigation well within the portion of MRS-46 leased to them by the Army. The construction of the athletic field and installation of an underground irrigation system involved significant earth moving and grading. No military munitions were found during the athletic field construction, or installation of the irrigation well and irrigation system.

MRS-47. This site lies immediately adjacent to Parcel L20.7.5 (Plate 9). MRS-47 has undergone two sampling investigations and a removal action. During sampling evidence that the site was used as an impact area was found. The MEC items found included high explosive mortars and projectiles. CMS conducted a 4-foot removal action over the entire site in 1997. Seventy-four MEC and one-hundred and four munitions debris items were found and removed. No further military munitions investigation was recommended. MRS-47 will undergo additional evaluation in the ongoing former Fort Ord Military Munitions Response Program.

A site walk of portions of MRS-47 was conducted under the BRA in 1999. Other than expended small arms and blank small arms casings, no evidence of training, including the presence of military munitions, was observed.

MRS-49. MRS-49 lies adjacent to Parcels E20c.1.2 and E20c.2.2 (Plate 7). MRS-49 was evaluated in the Track 1 OE RI/FS. Based on review of existing information, MEC is not expected to be found at MRS-49. MRS-49 meets the Track 1, Category 3 criteria because historical research and site walks conducted at this site identified evidence of past training involving only practice and pyrotechnic items that are not designed to cause injury. The Track 1 OE RI/FS recommended no further military munitions investigation at MRS-49.

MRS-50EXP. MRS-50EXP lies adjacent to Parcel E18.3 (Plate 7). MRS-50EXP was not initially identified as a MRS in the ASR, but was created due to the expansion of the removal area associated with MRS-50. MEC and munitions debris were found at the boundary of MRS-50, which warranted an expansion of the investigation area in all directions. The investigation of MRS-50 and its expansion areas included a removal action conducted over the entire site to a depth of 4 feet. During the removal, four hundred and twenty-five MEC items were found and removed from MRS-50EXP. The majority of these items were non-penetrating (e.g., pyrotechnics, grenades, and grenade and projectile fuzes). No high explosive or penetrating military munitions were found within 400 feet of Parcel E18.3. The MEC and munitions debris found within the grids closest to the parcel were pyrotechnic and practice type items (i.e., signals, grenade fuzes, and a grenade cartridge). The investigation of MRS-50EXP included the geophysical sampling of a portion of Parcel E18.3 (the shoulder of Parker Flats Road); however, this sampling was conducted to clear MRS-50EXP up to the edge of the pavement of the surrounding roads and not based on evidence that training occurred at this location. Four military munitions items were found in three of the grids that overlap Parcel E18.3, but were located outside of the parcel. These included a hand grenade fuze (MEC), a practice hand grenade (munitions debris [MD]) and two rifle fired parachute signals (MD). The hand grenade fuze was classified as a discarded military munitions (DMM) item by the contractor conducting the military munitions sampling and removal. Because the MEC item found adjacent to Parcel E18.3 was determined to be DMM, further sampling on the west side of Parcel E18.3 was not warranted. No military munitions items were found within Parcel E18.3. MRS-50-EXP is being evaluated in the Track 2 Munitions Response Remedial Investigation/Feasibility Study.

MRS-57. MRS-57 lies adjacent to Parcel L35.5 (Plate 6). A site reconnaissance conducted in 1996 was completed as part of the PA/SI phase of the archives search for known and suspected munitions response sites at the former Fort Ord. MRS-57 was identified as an area of potential ordnance use based on information gathered during interviews conducted as part of the PA/SI. MRS-57 was identified in those interviews as Site K1, an area that included the use of rifle grenades, smoke grenades and shoulder launched projectiles in the 1940s, 1950s, and 1960s. A USACE UXO Safety Specialist walked a portion of Site K1 visually searching the path walked while simultaneously searching for subsurface military munitions using a magnetometer. Munitions debris, including an expended 75mm shrapnel projectile and expended flares and signals, were found. No evidence of other types of training or use as an impact area was identified as a result of the reconnaissance. Based on the presence of the expended 75 mm shrapnel projectile the USACE UXO Safety Specialist assigned Site K1 a Risk Assessment Code (RAC) score of 4, which includes a recommendation for further military munitions investigation (USAEDH, 1997). The recommendation of further investigation was reviewed by the Ordnance and Explosives Mandatory Center of Expertise (MCX) and Design Center (*Army Corps of Engineers Huntsville Division [CEHND]*). The CEHND reviewed the recommendation and agreed further military munitions investigation in the form of site investigation and sampling was

necessary at Site K1 and renamed the location Site OE [MRS]-57 (*USAEDH*, 1997). MRS-57 will undergo additional evaluation in the ongoing former Fort Ord Military Munitions Response Program.

MRS-63. MRS-63 lies approximately 100 feet north of Parcel S4.3 (Plate 10). MRS-63 was evaluated in the Track 1 OE RI/FS. Based on review of existing information, MEC is not expected to be found at MRS-63. MRS-63 meets the Track 1, Category 3 criteria because historical research and site walks conducted at this site identified evidence of past training involving only pyrotechnic items that are not designed to cause injury. The Track 1 OE RI/FS recommended no further military munitions investigation at MRS-63.

### **3.9.2 Findings and Recommendations**

Although no munitions response sites are located on the Property, the potential exists for military munitions to be present because they were used throughout the history of Fort Ord. Appropriate military munitions notice is given herein and will be included in the deed. The deed will include the MEC warning and covenant included in the Environmental Protection Provisions (Attachment 1, Section 7).

The Army cannot guarantee that all military munitions have been removed; therefore, the Army 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 Cities of Marina, Seaside, and Del Rey Oaks have adopted City Ordinances that address the potential MEC risk by requiring permits for certain excavation activities. The Cities of Seaside, Marina, and Del Rey Oaks have designated all real property within their respective land use jurisdictions, which was formerly part of Fort Ord and identified as the possible location of MEC, as an "Ordnance Remediation District" ("District").

### **3.10 Installation-Wide Multispecies Habitat Management Plan**

Parcels in this FOST are designated as Development Parcels in accordance with the Installation-Wide Multispecies Habitat Management Plan (HMP). The parcels identified as HMP Development Parcels have no HMP resource conservation or management requirements; however, the HMP does not exempt the Grantee from complying with environmental regulations enforced by federal, State, or local agencies. These regulations may include obtaining permits from the U.S. Fish and Wildlife Service (USFWS) as required by the Endangered Species Act (ESA); complying with prohibitions against the removal of listed plants occurring on federal land or the destruction of listed plants in violation of any state laws; complying with measures for conservation of state-listed threatened and endangered species and other special-status species recognized by the California ESA, or California Environmental Quality Act (CEQA); and complying with local land use regulations and restrictions. The deed will include the "Notice Of The Presence Of Threatened And Endangered Species" provided in the Environmental Protection Provisions (Attachment 1).

On June 18, 2003, a small population of Yadon's piperia (*Piperia yadoni*) was discovered within Parcel E29b.3 along the southern boundary of the former Fort Ord. The U.S. Fish and Wildlife Service (Service) listed Yadon's piperia, also known as a rein orchid, as an endangered species on August 12, 1998. The Army is in the process of consulting with the Service as required by

Section 7 of the ESA. Parcel E29b.3 will be transferred following completion of the consultation.

As described above, the designation of Parcel E29b.3 as a development parcel in the HMP does not exempt future landowners from complying with environmental regulations enforced by federal, State, and local agencies; however, implementation of the HMP will simplify future regulatory compliance by allowing the Service and California Department of Fish and Game to issue permits and take authorizations if necessary.

### **3.11 Other Conditions**

Clean Air Act General Conformity Rule requirements for this transfer 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 CERCLA.

In 2004, a fuel break was established along South Boundary Road from the York School lease area to Laguna Seca. Establishment of the fuel break included the mechanical cutting and removal of all vegetation extending from the shoulder of the road to 55 feet south of the road and on the north side of the road to the existing fire break. This work was conducted within Parcels L20.7.1, L20.7.2, L20.7.4, L20.7.5, L3.1, S4.2.1, S4.2.2, S4.2.3, and S4.2.4 and was completed in July through September of 2004. The vegetation removal was performed with UXO escort. No MEC or munitions debris was found during the vegetation clearance work.

## **4.0 REMEDIATION**

The following environmental remediation orders and agreements are applicable to the Property: The Fort Ord MR RI/FS and the Fort Ord Federal Facility Agreement (FFA, 1990). All remediation activities on the property required by the FFA are completed or in place and operating properly and successfully (OPS). The Environmental Protection Provisions will include a provision reserving the Army's right to conduct remediation activities and the regulators' right of access (Attachment 1).

## **5.0 REGULATORY COORDINATION AND COMMENTS**

The US EPA and the DTSC were notified of the initiation of this FOST. The 30-day review period was from March 26, 2005 to April 26, 2005. Comments from regulatory agencies and the public received during development of this FOST were reviewed and incorporated as appropriate.

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

The environmental impacts associated with the proposed transfer of the Property have been analyzed per 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, "Supplemental Environmental Impact Statement Fort Ord Disposal And Reuse," June 1996 and associated Record of Decision, June 1997. The environmental effects of the activities anticipated under the proposed transfer

were determined not to be significant. In addition, the proposed use of the Property is consistent with the intended reuse of the Property set forth in the Fort Ord Reuse Plan.

## **7.0 ENVIRONMENTAL PROTECTION PROVISIONS**

Based on the above results from the CERFA Report and other environmental studies, and in consideration of the intended use of the Property, certain terms and conditions are required for the proposed transfer. The terms and conditions are set forth in the Environmental Protection Provisions (Attachment 1) and will be included in the deed/easement.

### **7.1 Covenants to Restrict Use of Property – Environmental Restrictions**

A portion of the former Fort Ord installation lies within a "Special Groundwater Protection Zone" as defined by Monterey County Ordinance 04011. Use of groundwater is prohibited on portions of the Property as described in the Covenant to Restrict Use of Property – Environmental Restrictions (Special Groundwater Protection Zone) (CRUP). Provided the restrictions of the CRUP, to be entered into by the Army and the State of California, are adhered to, no actual or potential hazard exists on the surface of the Property from groundwater contamination or from possible soil gas volatilization resulting from groundwater contamination underlying the Property.

These restrictions and notifications are detailed in the attached Environmental Protection Provisions (Attachment 1).

### **7.2 School Properties**

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 the DTSC.

## **8.0 FINDING OF SUITABILITY TO TRANSFER**

Based on the above information, I have concluded that all DOD requirements to reach a Finding of Suitability to Transfer have been fully met for the Property, subject to the terms and conditions set forth in the Environmental Protection Provisions (Attachment 1).

### **For ECP Category 1 Parcels:**

The deed/easement for this transaction will also contain the following provisions.

- The covenant under CERCLA §120(h)(4)(D)(i) warranting that any response action or corrective action found to be necessary after the date of transfer shall be conducted by the United States.
- A clause as required by CERCLA §120(h)(4)(D)(ii) granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after the date of transfer for the property, or such access is necessary to carry out a response action on adjoining property.

**For ECP Category 4 Parcels:**

All removal or remedial actions necessary to protect human health and the environment have been taken and the property is transferable under CERCLA Section 120(h)(3). In addition to the Environmental Protection Provisions, the deed/easement for this transaction will also contain:

- The covenant under CERCLA §120(h)(3)(A)(ii)(I) warranting that all remedial action under CERCLA necessary to protect human health and the environment with respect to hazardous substances remaining on the property has been taken before the date of transfer.
- The covenant under CERCLA §120(h)(3)(A)(ii)(II) warranting that any remedial action under CERCLA found to be necessary after the date of transfer with respect to such hazardous substances remaining on the property shall be conducted by the United States.
- The clause as required by CERCLA §120(h)(3)(A)(iii) granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of transfer.

As required under CERCLA Section 120(h) and DOD FOST Guidance, notification of hazardous substance activities shall be provided in the deed/easement (see Table 3 – Notification of Hazardous Substance Storage, Release, or Disposal). Notice of response actions taken will be provided in the deed(s), as appropriate, based on the information contained in Table 2.

  
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Thomas E. Lederle  
Director, Hampton Field Office  
Army BRAC

JUN 07 2005

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## **TABLES**

**Table 1 – Description of Property**

Parcel Number	Approximate Parcel Acreage	Intended Reuse	Recipient
E11a.1	7	Development / Road Right-of-way	FORA
E18.2.1	4	Gigling Road Right-of-way	FORA
E18.2.2	0.1	Gigling Road Right-of-way	FORA
E18.3	6	Normandy Road Right-of-way	FORA
E20e.1.2	0.3	Cable TV area	FORA
E20e.2.2	2	Water Tanks / pumps	FORA
E29b.3	28	Business Park / Light Industrial / Office Park	FORA
E29e	9	Future Hwy 68 / Office Park / Research & Dev	FORA
E2d.3.1	25	Development / Mixed Use	FORA
E5a.2	15	Development / Mixed Use	FORA
L20.13.1.1	4	General Jim Moore Blvd. / South Boundary Rd. Right-of-way	FORA
L20.13.2	1	South Boundary Road Right-of-way	FORA
L20.13.3.2	3	General Jim Moore Blvd. / South Boundary Rd. Right-of-way	FORA
L20.13.4	2	South Boundary Road / Future Hwy 68 Right-of-way	FORA
L20.7.1	3	South Boundary Road Right-of-way	Monterey County
L20.7.2	7	South Boundary Road Right-of-way	Monterey County
L20.7.3	1	South Boundary Road Right-of-way	Monterey County
L20.7.4	1	South Boundary Road Right-of-way	Monterey County
L20.7.5	4	South Boundary Road Right-of-way	Monterey County
L3.1	5	South Boundary Road	York School
L35.5	1	Water storage	Marina Coast Water District
L5.10.2	13	Reservation Road Right-of-way	Monterey County
S3.2.1	11	Development	FORA
S3.2.2	0.1	Development	FORA
S4.2.1	37	Future Highway 68 Right-of-way	Caltrans
S4.2.2	1	Future Highway 68 Right-of-way	Caltrans
S4.2.3	14	Future Highway 68 Right-of-way	Caltrans
S4.2.4	26	Future Highway 68 Right-of-way	Caltrans
S4.3	1	Highway 68 Right-of-way	Caltrans

**Table 2 – Environmental Condition of Property**

Parcel Designation	Condition Category*	Remedial Actions
E11a.1, E20c.1.2, E5a.2, L20, L3.1.1, L35.5, S4.3	I	None: the U.S. Environmental Protection Agency (US EPA) concurred that the areas that include these parcels are uncontaminated (CERFA Parcels 226, 227, and 229) in a letter dated April 19, 1994.
E18.2.1	I	None: portions of the parcel were categorized as CERFA Qualified (Parcel 114) because of the presence of asbestos containing material (ACM), probable lead-based paint (LBP) and the storage, use or repair of equipment containing Nuclear Regulatory Commission (NRC) licensed materials in buildings that are adjacent to the parcel; however, no buildings are present on Parcel E18.2.1. Portions of the parcel were categorized as CERFA Disqualified (Parcel 36) due to the former storage of diesel fuel and hazardous substances; however, under the expanded definition of "Uncontaminated Property," Parcel E18.2.1 meets the definition of CERFA Uncontaminated property.
E18.2.2	I	None: a portion of the parcel was categorized as CERFA Qualified because of the presence of ACM and probable LBP in a building adjacent to the parcel; however, no buildings are present on Parcel E18.2.2. A portion of the parcel was categorized as CERFA Disqualified (Parcel 4) due to petroleum storage; however, under the expanded definition of "Uncontaminated Property," Parcel E18.2.2 meets the definition of CERFA Uncontaminated property.
E18.3	I	None: a portion of the parcel was categorized as CERFA Qualified (Parcels 132 and 205) due to the presence of ACM and probable LBP in buildings that are adjacent to the parcel; however, no buildings are present on Parcel E18.3. This parcel meets the definition of CERFA Uncontaminated property.
S3.2.1	I	None: a portion of the parcel was categorized as CERFA Disqualified (Parcel 21) due to its proximity to IRP Site 20 (South Parade Ground, 3800 and 519 <sup>th</sup> Motor Pools) and CERFA Qualified (Parcel 161) because of the presence of a machine gun square formerly located on the parcel. No impact to parcels adjacent to IRP Site 20 was identified during site characterization activities. No evidence was observed during the CERFA assessment to indicate storage, release or disposal of hazardous substances at the machine gun squares. Machine gun squares were used for the practice of setting up and aiming weapons or dry fire. No evidence was found during the literature review to support the use of live ammunition at the machine gun squares. Therefore, Parcel S3.2.1 meets the definition of CERFA Uncontaminated property.
S3.2.2	I	None: a portion of the parcel was categorized as CERFA Disqualified (Parcel 21) due to its proximity to IRP Site 20 (South Parade Ground, 3800 and 519 <sup>th</sup> Motor Pools). No impact to parcels adjacent to IRP Site 20 was identified during site characterization activities. Therefore, Parcel S3.2.2 meets the definition of CERFA Uncontaminated property.
E20c.2.2	I	None: a portion of the parcel was categorized as CERFA Qualified (Parcel 53), because of the presence of ACM, probable LBP and its proximity to the Officers' Club Foxhole, where military munitions items were discovered in 1993. A portion of the parcel was categorized as CERFA Disqualified (Parcel 53) due to petroleum storage in Building 4373; however, under the expanded definition of "Uncontaminated Property," Parcel E20c.2.2 meets the definition of CERFA Uncontaminated property.

**Table 2 – Environmental Condition of Property**

Parcel Designation	Condition Category*	Remedial Actions
L20.13.2, L20.13.3.2, L20.13.4, L20.7.1, L20.7.2, L20.7.3, L20.7.4, L20.7.5	1	None; parcels were categorized as CERFA Qualified (Parcel 176) because of their proximity to the former Impact Area; however, these parcels comprise South Boundary Road and are located outside of the fenced Impact Area. No evidence was observed during the CERFA assessment to indicate storage, release, or disposal of hazardous substances or petroleum products or their derivatives within these parcels. Therefore, these parcels meet the definition of CERFA Uncontaminated property.
E29b.3, E29e	1	None; portions of these parcels were categorized as CERFA Uncontaminated (Parcel 229). The remainders of the parcels were categorized as CERFA Qualified (Parcel 176) because of the proximity to the former Impact Area. These parcels lie on the southwest side of South Boundary Road and are located outside of the fenced Impact Area. No evidence was observed during the CERFA assessment to indicate storage, release, or disposal of hazardous substances or petroleum products or their derivatives within these parcels. Therefore, Parcels E29b.3 and E29e meet the definition of CERFA Uncontaminated property.
S4.1, S4.2.1, S4.2.2, S4.2.3, S4.2.4	1	None; parcels were categorized as CERFA Qualified (Parcel 176) because of their proximity to the former Impact Area. These parcels lie on the south side of South Boundary Road and are located outside of the fenced Impact Area. No evidence was observed during the CERFA assessment to indicate storage, release, or disposal of hazardous substances or petroleum products or their derivatives within these parcels. Therefore, these parcels meet the definition of CERFA Uncontaminated property.
L5.10.2	1	None; this parcel was categorized as CERFA Disqualified (Parcel 56) because of its proximity to Installation Restoration Program (IRP) Site 34. A release of hydrocarbons associated with a former vehicle wash rack and underground storage tank occurred at IRP Site 34; however, the release of hydrocarbons did not occur on this parcel. An interim action including excavation and removal of hydrocarbon-impacted soil was conducted. The US EPA and the DTSC concurred that no further action is necessary at IRP Site 34 in letters dated February 2, 2002 and October 23, 2002, respectively. Therefore, this parcel meets the definition of CERFA Uncontaminated property.
E2d.3.1	4	Parcel was categorized as CERFA Qualified (Parcel 4) because of the presence of ACM, probable LBP and the storage of hazardous materials on Parcel E2d.3.1 (RI Site 25/SWMU FTO-022), and CERFA Disqualified (Parcel 4) because they overlie the Fort Ord Landfills (OU 2) groundwater plume. Migration of volatile organic compounds (VOC's) from the OU 2 groundwater plume at concentrations exceeding MCLs. Groundwater remediation treatment system installed. US EPA concurrence that the OU2 groundwater treatment system is operating properly and successfully 1/4/1996. Release of low levels of PCBs, pesticides, and metals on Parcel E2d.3.1. Results of the site-specific risk assessment indicated that there are no unacceptable risks to human health and the environment associated with the presence of chemicals at this site. No remedial action at RI Site 25/SWMU FTO-022 necessary. The Basewide Record of Decision, which includes a recommendation of no further action at IRP Site 25 (SWMU FTO - 022), was signed by the DTSC on January 16, 1997, the US EPA on January 17, 1997, and the California Regional Water Quality Control Board on January 22, 1997.

\*Environmental Condition of Property Categories.

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

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

**Table 2 – Environmental Condition of Property**

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

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

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

**Category 6:** Areas where release, disposal, and/or migration of hazardous substances has occurred, but required actions have not yet been implemented.

**Category 7:** Areas that have not been evaluated or require additional evaluation.

**Table 3 – Notification of Hazardous Substance Storage,  
Release, or Disposal**

Location	Material Stored/ Quantity	Regulatory Synonym	CASRN*	RCRA Waste Number	Duration	Release/ Disposal
<b>Parcel E2d.3.1</b>						
RI Site 25 - Former DRMO/ SWMU FTO - 022	Chemicals released at the site/Quantity released is unknown.				1950s through 1972	Yes/No (See Table 2, Parcel E2d.3.1)
	Cadmium	--	7440439	None assigned		
	Mercury	--	7439976	U151		
	Zinc	--	7440666	None assigned		
	Dieldrin	Aldrin epoxide	60571	P037		
	4,4' - DDE	DDE	72559	None assigned		
	4,4' - DDT	DDT	50293	U061		
	Aroclor-1254	PCB	11097691	None assigned		

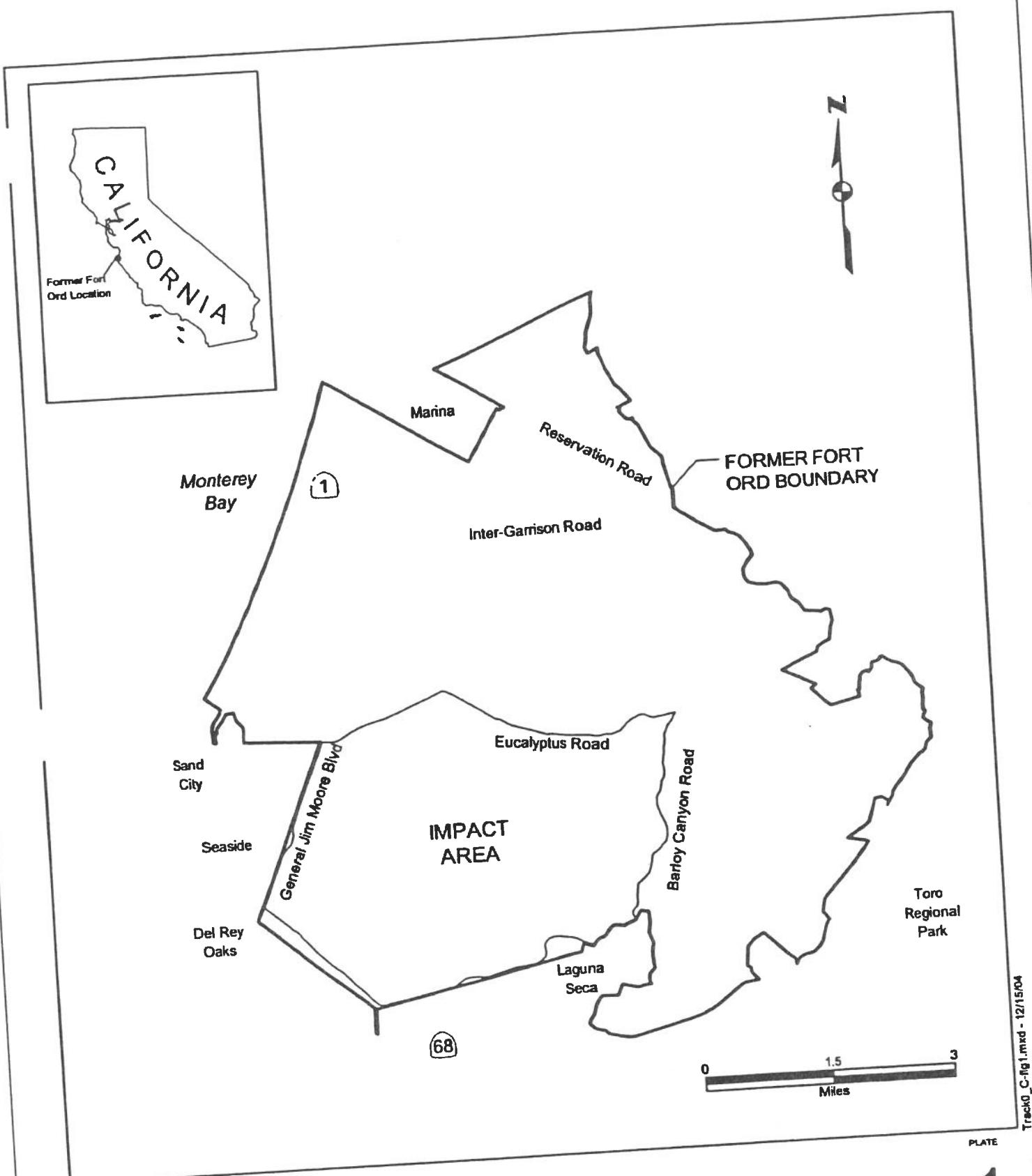
\*Chemical Abstract Service Registry Number

The information contained in this notice is required under the authority of regulations promulgated under Section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund") 42 U.S.C. Section 9620(h). This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1,000 kilograms or the hazardous substance's CERCLA reportable quantity (which ever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substances CERCLA reportable quantity. See 40 CFR Part 373.

**Table 4 – Notification of Petroleum Product Storage, Release, or Disposal**

Parcel Number	Tank Number	Product Type	Date of Storage, Release, or Disposal	Remedial Action
E20c.2.2	4373.1	Gasoline	50-gallon UST installed in approximately 1988. No evidence of petroleum release.	UST removed in March 1991. No remedial action required. Closure granted by the MCDOH in April 1994.
	4373.2	Gasoline	50-gallon UST with unknown duration of use. No evidence of petroleum release.	UST removed in March 1991. No remedial action required. Closure granted by the MCDOH in April 1994.

## **PLATES**



**Site Location Map**  
Finding of Suitability to Transfer  
Track 0 and Track 0 Plug-In B Parcels  
Former Fort Ord  
Monterey County, California

DRAWN  
SDG

JOB NUMBER  
4087040811.03

APPROVED  
JZ E&J

DATE  
3/2005

REVISED DATE

Exhibit 'D'  
Page 30 of 59

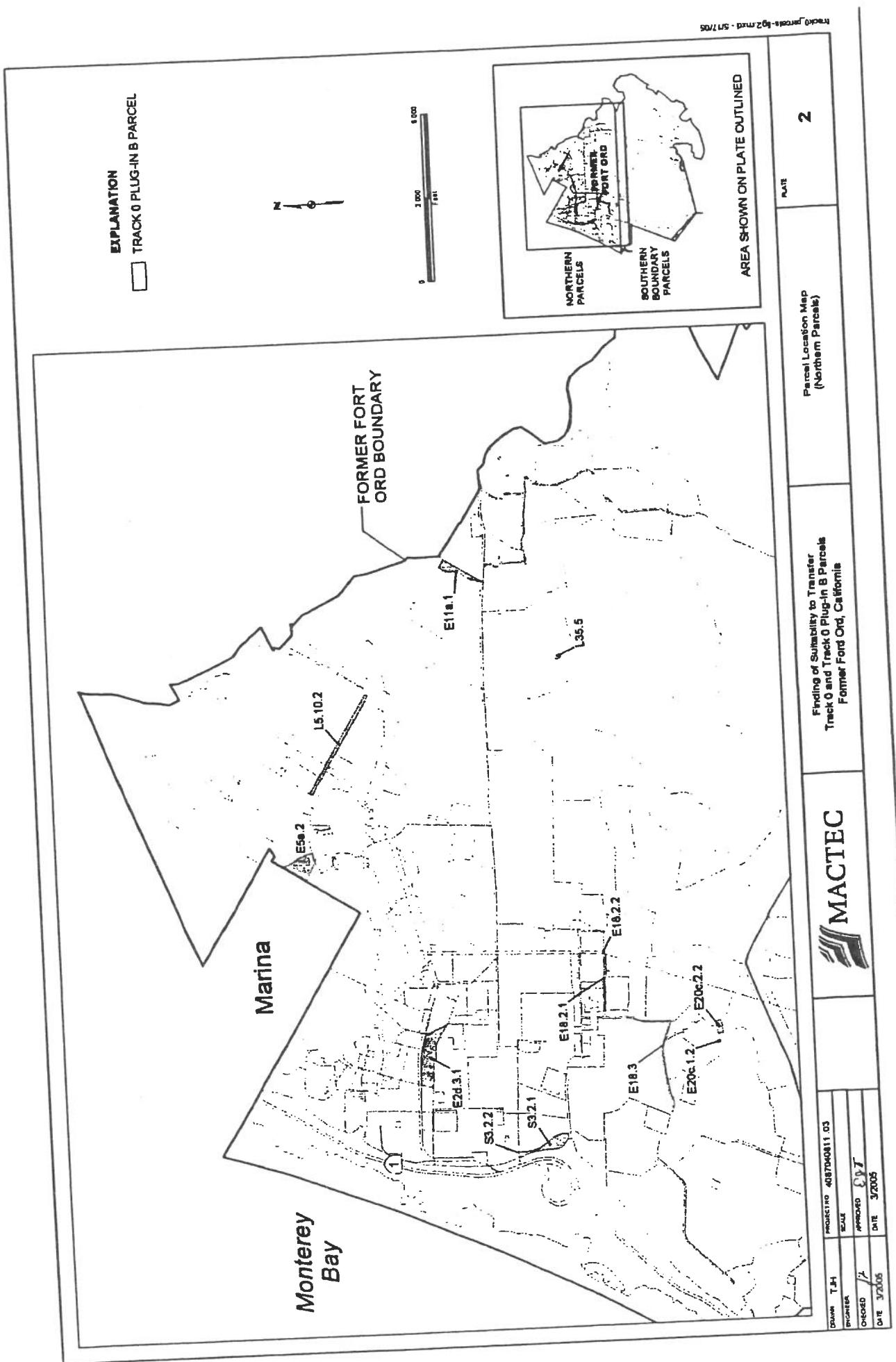
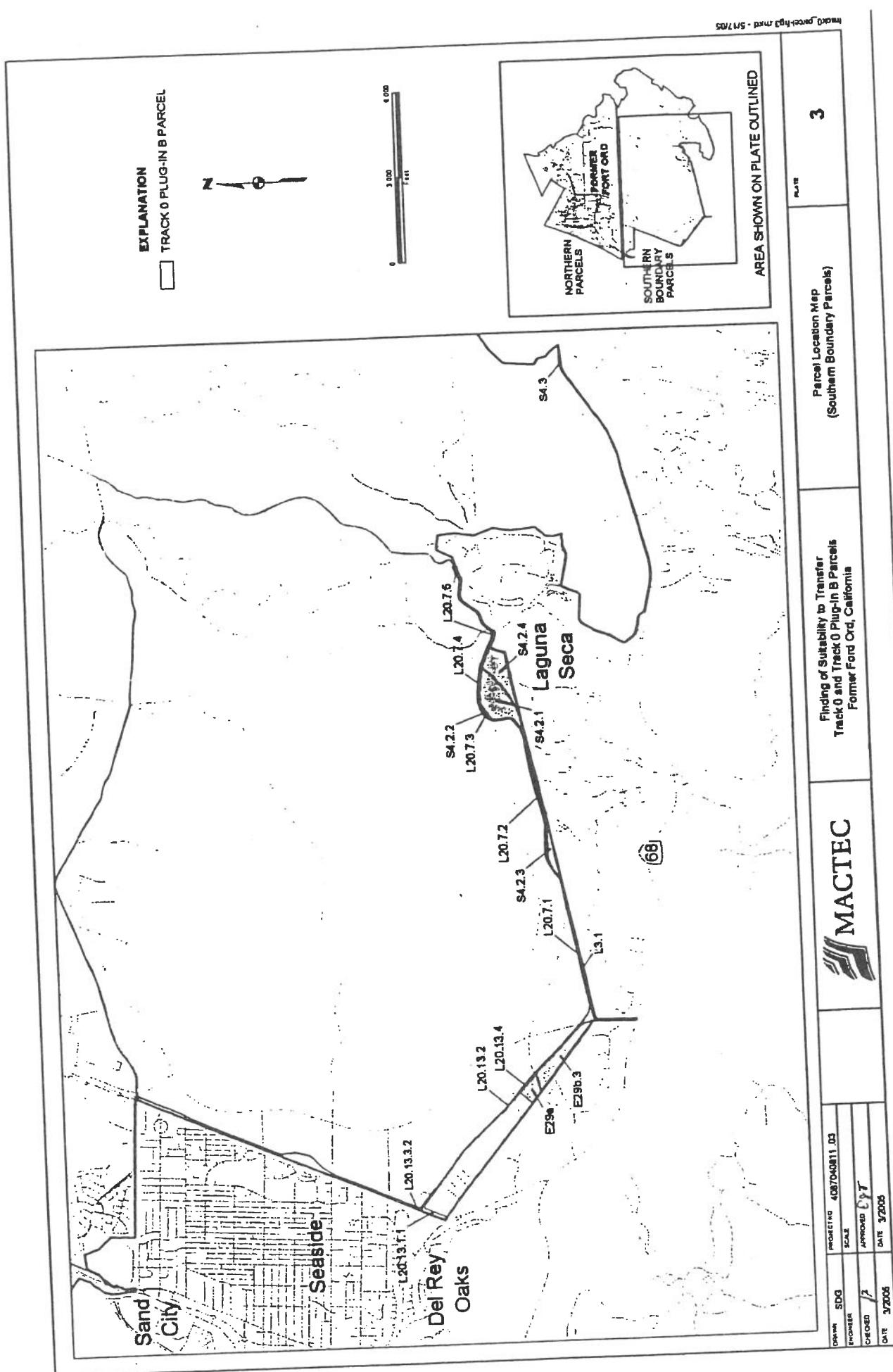
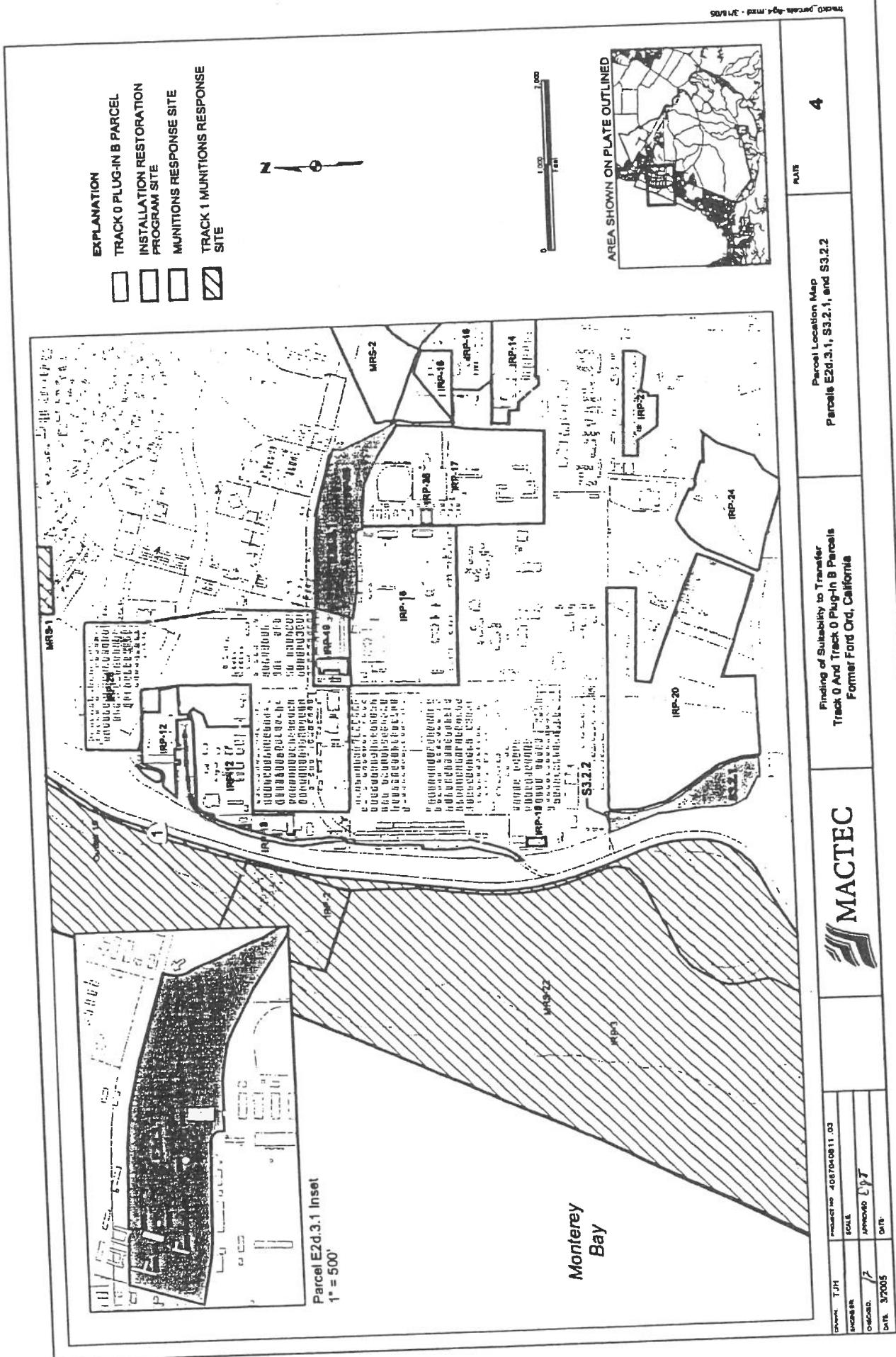


Exhibit 'D'





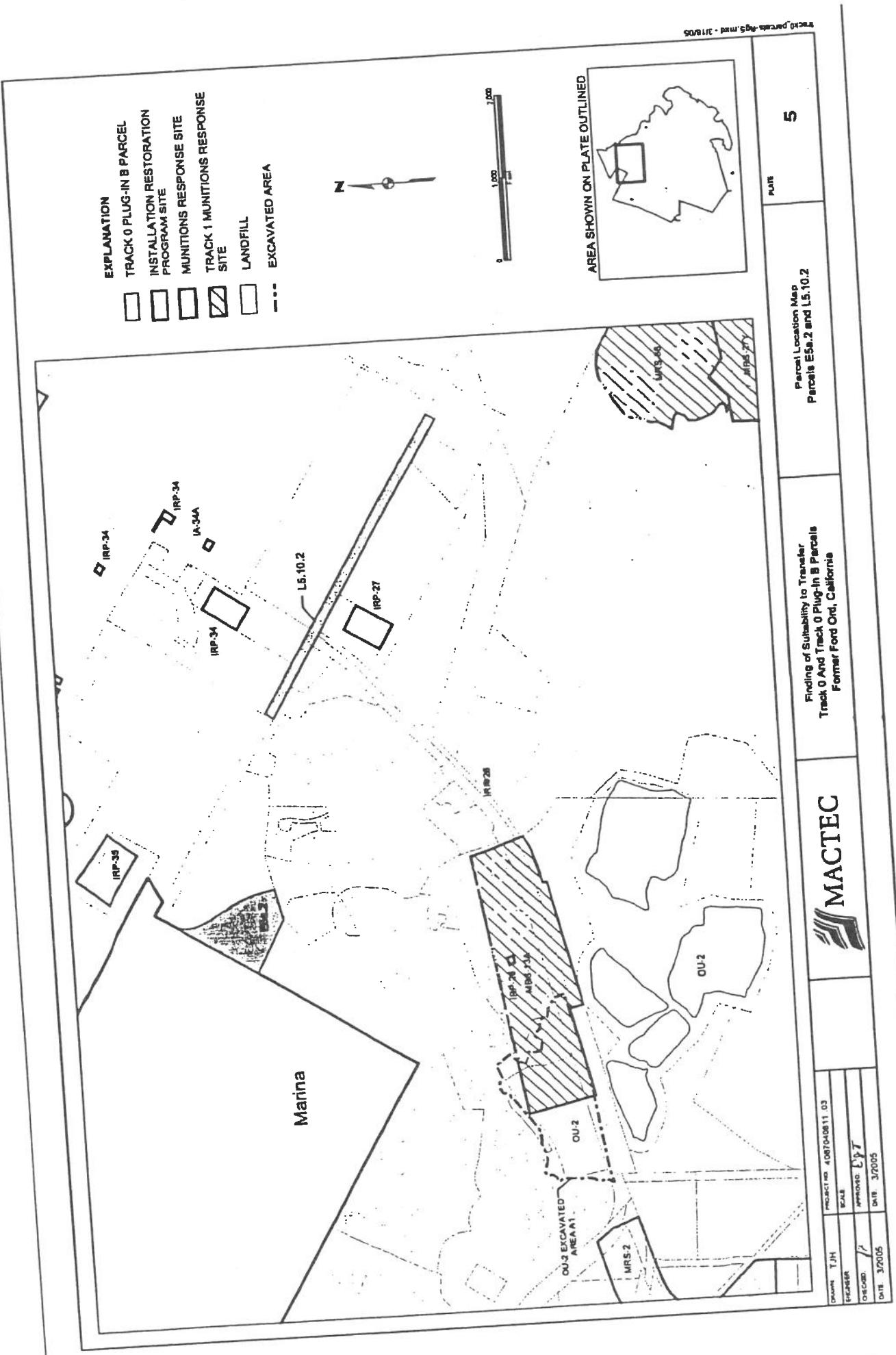
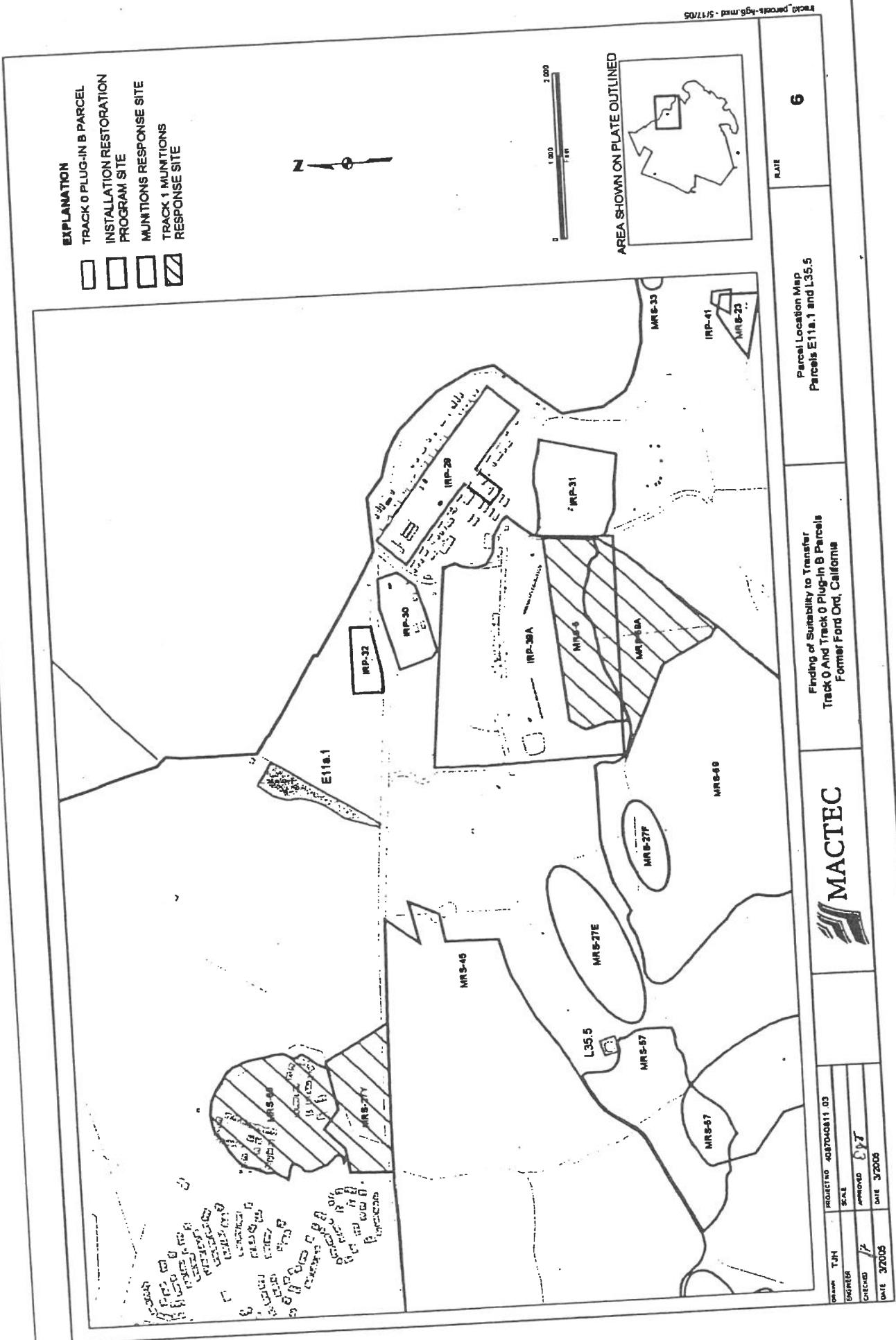
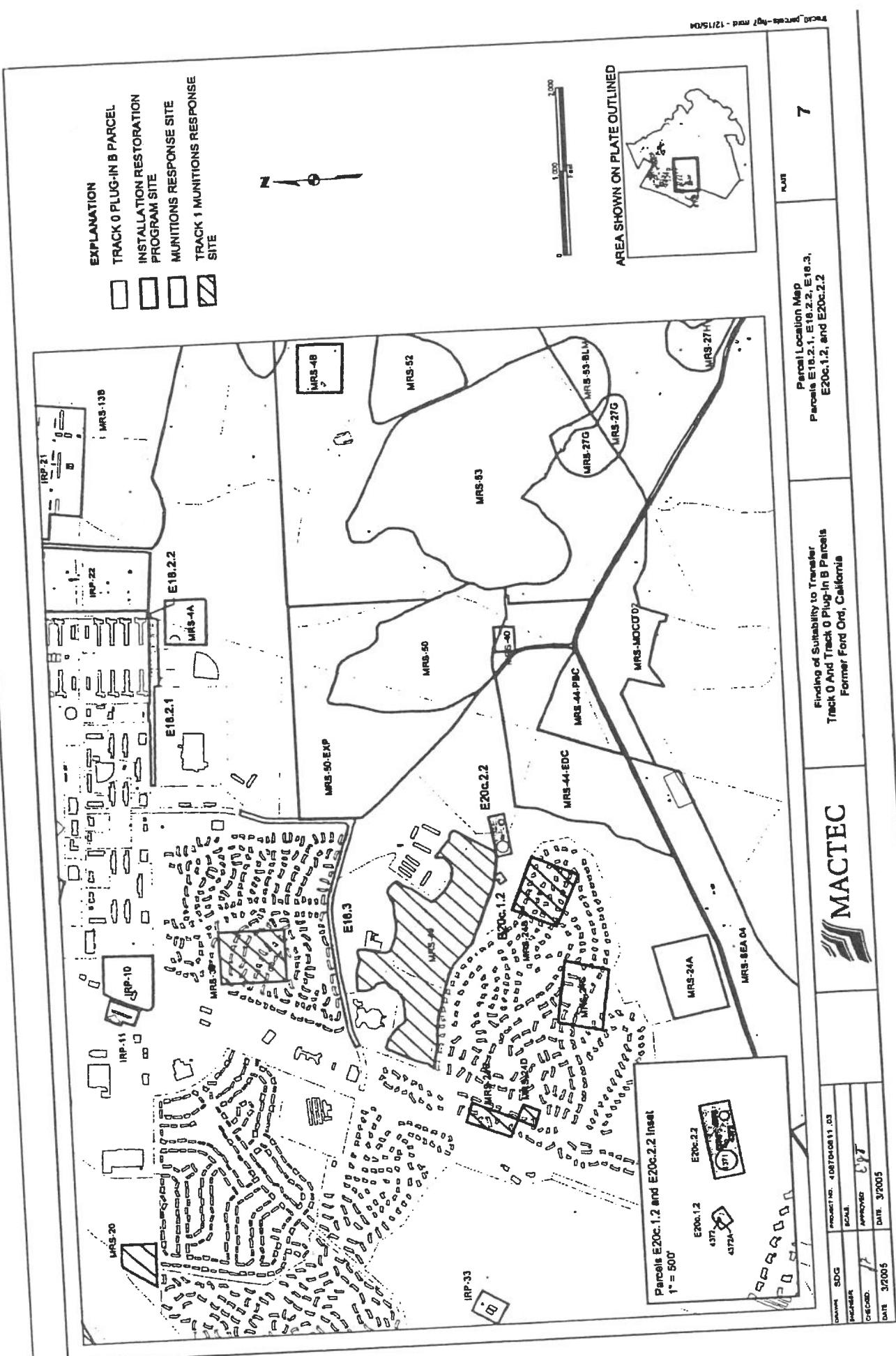


Exhibit 'D'





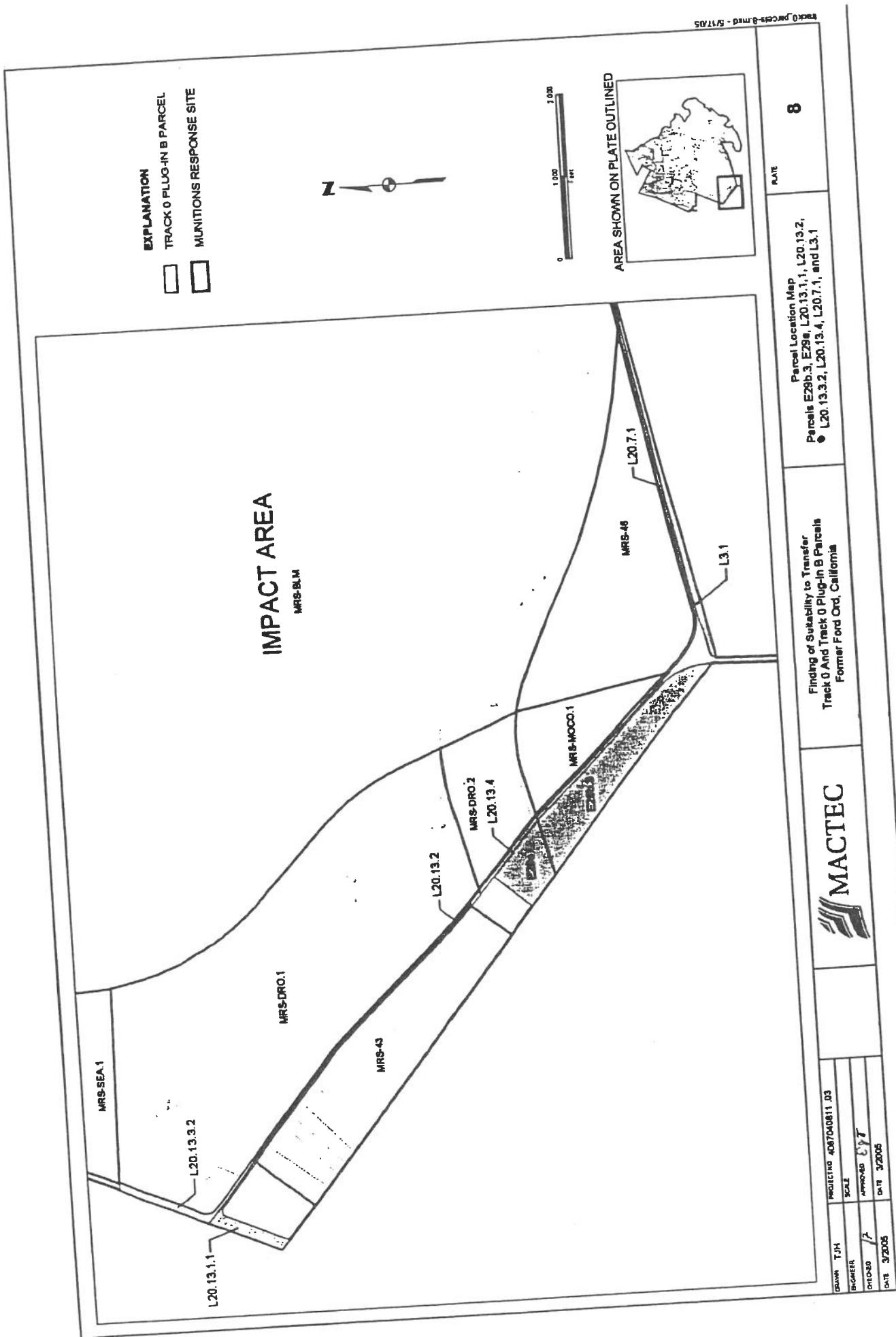
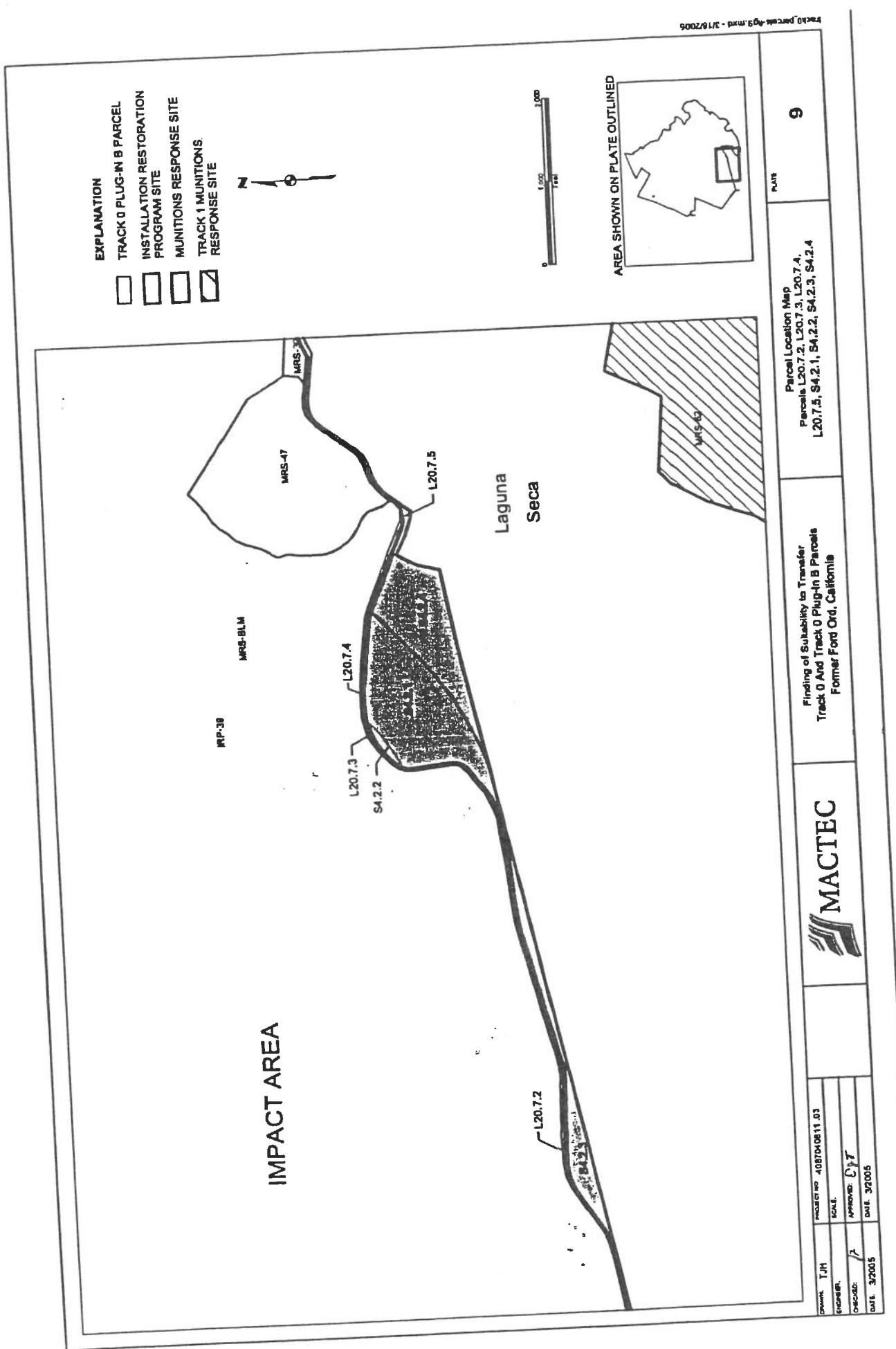
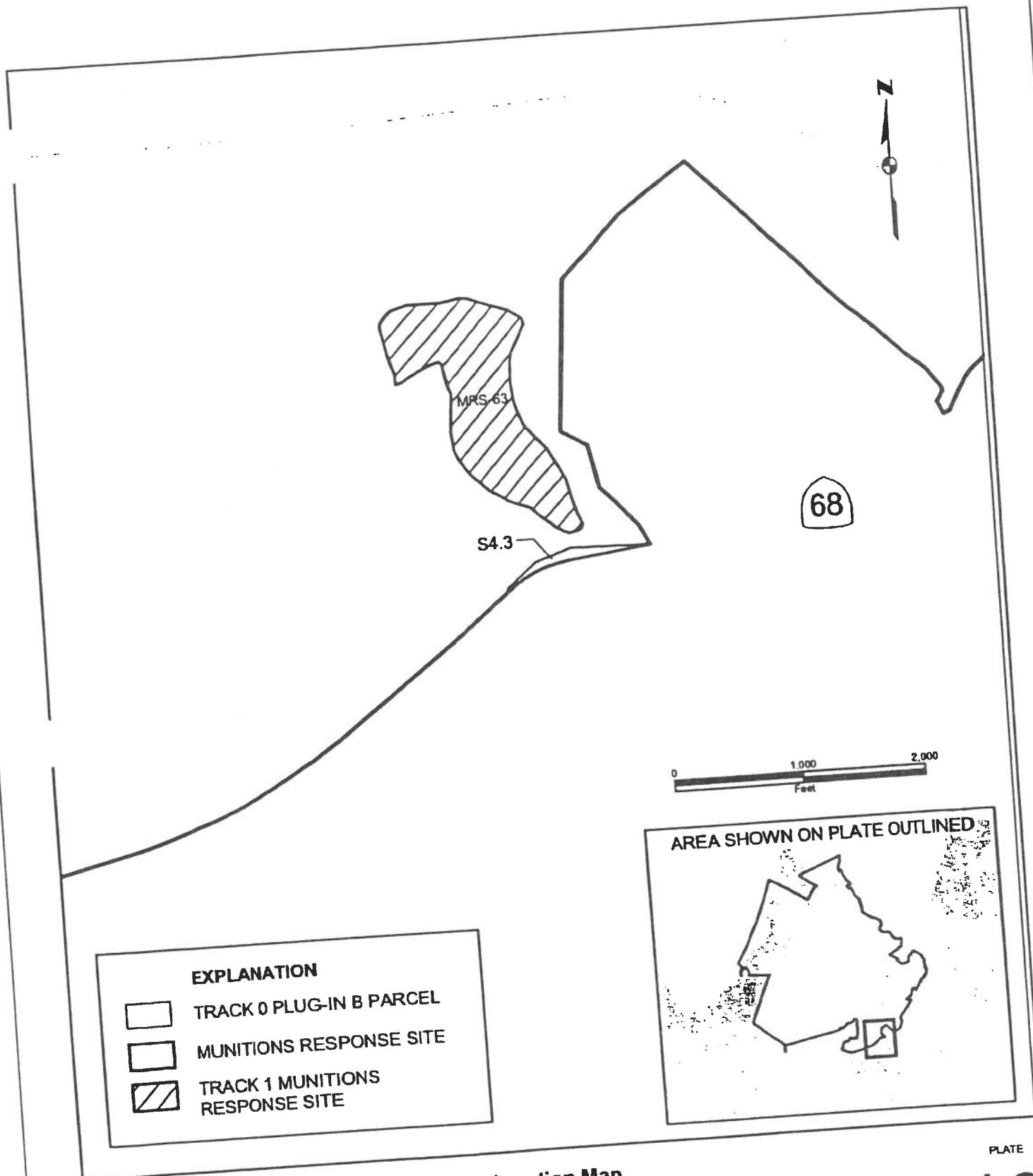


Exhibit 'D'





**MACTEC**

**Parcel Location Map**  
**Parcel S4.3**  
 Finding of Suitability to Transfer  
 Track 0 and Track 0 Plug-in B Parcels  
 Former Ford Ord, California

DRAWN  
TJH

JOB NUMBER  
4087040811 03

APPROVED  
JF EJT

DATE  
3/2005

REVISED DATE

PLATE  
**10**

**Exhibit 'I'**  
Page 39 of

**ATTACHMENT 1**

**ENVIRONMENTAL PROTECTION PROVISIONS**

## ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notifications will be included in the deed/easement to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities at the former Fort Ord. A list of notices applicable to each parcel is provided at the end of this attachment.

### 1. INCLUSION OF PROVISIONS

The person or entity to whom the property is transferred shall neither transfer the property, lease the property, nor grant any interest, privilege, or license whatsoever in connection with the property without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

### 2. NPL PROPERTY

The United States acknowledges that former Fort Ord has been identified as a National Priority List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended. The Grantee acknowledges that the United States has provided it with a copy of the Fort Ord Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (US EPA) Region IX, the State of California, and the Department of the Army, effective on November 19, 1990, and will provide the Grantee with a copy of any amendments thereto. The person or entity to whom the property is transferred agrees that should any conflict arise between the terms of the FFA as they presently exist or may be amended, and the provisions of this property transfer, the terms of the FFA will take precedence. The person or entity to whom the property is transferred further agrees that notwithstanding any other provisions of the property transfer, the United States assumes no liability to the person or entity to whom the property is transferred, should implementation of the FFA interfere with their use of the property. The person or entity to whom the property is transferred, or any subsequent transferee, shall have no claim on account of any such interference against the United States or any officer, agent, employee or contractor thereof.

### 3. CERCLA ACCESS CLAUSE

The Government, the US EPA, and the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC), and their officers, agents, employees, contractors, and subcontractors will have the right, upon reasonable notice to the Grantee, to enter upon the transferred premises in any case in which a response or corrective action is found to be necessary, after the date of transfer of the property, or such access is necessary to carry out a response action or corrective action on adjoining property, including, without limitation, the following purpose:

- (a) To conduct investigations and surveys, including where necessary, drilling, soil and water sampling, test-pitting, and other activities related to the Fort Ord Installation Restoration Program (IRP), Military Munitions Response Program (MMRP), or FFA;
- (b) To inspect field activities of the Army and its contractors and subcontractors with regards to implementing the Fort Ord IRP, MMRP, or FFA;
- (c) To conduct any test or survey related to the implementation of the IRP by the US EPA or the DTSC relating to the implementation of the FFA or environmental conditions at Fort Ord or to verify any data submitted to the US EPA or the DTSC by the Government relating to such conditions;
- (d) To construct, operate, maintain or undertake any other investigation, corrective measure, response, or remedial action as required or necessary under any Fort Ord FFA, Record of Decision (ROD), IRP or MMRP requirement, including, but not limited to monitoring wells, pumping wells, and treatment facilities.

#### 4. NO LIABILITY FOR NON-ARMY CONTAMINATION

The Army shall not incur liability for additional response action or corrective action found to be necessary after the date of transfer in any case in which the person or entity to whom the property is transferred, or other non-Army entities, is identified as the party responsible for contamination of the property.

#### 5. UNRESTRICTED USE

The Army has undertaken careful environmental study of the Property and concluded, to which the Grantee agrees, that the property is suitable for unrestricted use.

#### 6. NOTICE OF THE PRESENCE OF CONTAMINATED GROUNDWATER

Without the expressed written consent of the Grantor in each case first obtained, neither the Grantee, its successors or assigns, nor any other person or entity acting for or on behalf of the Grantee, its successors or assigns, shall interfere with any response action being taken on the property by or on behalf of the Grantor, or interrupt, relocate, or otherwise interfere with any remediation system now or in the future located on, over, through, or across any portion of the property.

The deed will reserve a non-exclusive easement to allow continued access for the Army (or its designated contractor) and the regulatory agencies to permit necessary groundwater monitoring at wells located on the property and the installation of new treatment or monitoring wells if required for the pump and treat operations. Furthermore, the deed will prohibit all others from tampering with the groundwater monitoring wells.

A. Restrictions and Conditions – A Covenant to Restrict Use of Property (CRUP) within the “Special Groundwater Protection Zone” will be established between the United States Army and the State of California (DTSC and the California Regional Water Quality Control Board, Central Coast Region).

The Grantee covenants for itself, its successors, and assigns not to: (a) access or use groundwater underlying the property for any purpose. For the purpose of this restriction, “groundwater” shall have the same meaning as in section 101(12) of CERCLA. The Grantee, for itself, its successors or assigns covenants that it will not undertake nor allow any activity on or use of the property that would violate the restrictions contained herein. These restrictions and covenants are binding on the Grantee, its successors and assigns; shall run with the land; and are forever enforceable.

B. Enforcement – The restrictions and conditions stated in Section A benefit the public in general and the territory surrounding the property, including lands retained by the United States, and, therefore, are enforceable by the United States government. The Grantee covenants for itself, its successors, and assigns that it shall include and otherwise make legally binding, the restrictions in Section B in all subsequent lease, transfer or conveyance documents relating to the property subject hereto.

C. Army Access – The Army and its representatives shall, for all time, have access to the property for the purpose of installing and/or removing groundwater monitoring wells, and to perform continued monitoring of groundwater conditions, allowing chemical and/or physical testing of wells to evaluate water quality and/or aquifer characteristics. The property owner shall allow ingress and egress of all equipment necessary to accomplish the same.

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

Military Munitions Response Program (MMRP) investigations indicate that it is not likely that munitions and explosives of concern (MEC) are located on the Property; however, there is a potential for MEC to be present because military munitions were used throughout the history of Fort Ord. In the event the Grantee, its successors, or assigns, should discover any MEC on the Property, they shall immediately stop any intrusive or ground disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove or destroy it, but shall immediately contact the local law enforcement agency having jurisdiction on the Property. The local law enforcement agency will contact the Army for appropriate response. Competent Grantor 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.

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.

The Army reserves the right to conduct any munitions response actions for which the Army is responsible, as required or necessary as a result of the ongoing Munitions Response Remedial Investigation/Feasibility Study.

The use and/or occupancy of the Property may be limited or restricted, as necessary, under the following scenarios: (a) to provide the required minimum separation distance employed during intrusive munitions response actions that may occur on or adjacent to the Property; and (b) if Army implemented prescribed burns are necessary for the purpose of a munitions response action (removal) in adjacent areas.

## 8. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

A. The Grantee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing material (ACM) have been found on the property, as described in the Asbestos Survey Report (April 26, 1993) and summarized in the CERFA Report (April 8, 1994).

B. One building (2995) has been determined to contain friable ACM that may pose a threat to human health. Detailed information is contained in the Asbestos Survey Report (April 26, 1993). The remaining buildings contain non-friable ACM rated in good condition. The Grantor has agreed to transfer said buildings and structures to the Grantee, prior to remediation of asbestos hazards, in reliance upon the Grantee's express representation and promise that the Grantee will, prior to use or occupancy of said buildings, demolish said buildings or the portions thereof containing friable asbestos, disposing of ACM in accordance with applicable laws and regulations. With respect to the friable asbestos in said buildings and structures, the Grantee specifically agrees to undertake any and all abatement or remediation that may be required under CERCLA 120(h)(3) or any other applicable law or regulation. The Grantee acknowledges that the consideration for the conveyance of the Property was negotiated based upon the Grantee's agreement to the provisions contained in this Subsection.

C. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the Grantor assumes no liability for any future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, 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 or ACM on the Property, 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 the Property as a result of the Grantee's activities. The Grantee assumes no liability for damages for personal injury, illness, disability, death or Property damage arising from (i) any exposure or failure to comply with any legal requirements applicable to asbestos on any portion of the Property arising prior to the Grantor's conveyance of such portion of the property to the Grantee pursuant to this deed, or (ii) any disposal, prior to the Grantor's conveyance of the Property, of any asbestos or ACM.

D. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (US EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and US 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.

E. The Grantee acknowledges that it has inspected the Property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto prior to accepting the responsibilities imposed upon the Grantee under this section. The failure of the Grantee to inspect, or to be fully informed as to the asbestos condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States, or any adjustment under this deed.

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 the Property after this conveyance of the Property 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.

#### 9. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT AND COVENANT

A. The Grantee is hereby informed and does acknowledge that all buildings on Parcels E2d.3.1, E20c.1.2, E20c.2.2 and L35.5, 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, preschools 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 E2d.3.1, E20c.1.2, E20c.2.2 and L35.5 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 this deed.

D. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on Parcels E2d.3.1, E20c.1.2, E20c.2.2 and L35.5 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 E2d.3.1, E20c.1.2, E20c.2.2 and L35.5 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 US 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 Subparagraph 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 US 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 E2d.3.1, E20c.1.2, E20c.2.2 and L35.5 found to be necessary as a result of the subsequent use of Parcels E2d.3.1, E20c.1.2, E20c.2.2 and L35.5 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 E2d.3.1, E20c.1.2, E20c.2.2 and L35.5 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."

#### 10. POLYCHLORINATED BIPHENYLS (PCBs) NOTICE AND COVENANT

A. PCBs have been widely used as coolants and lubricants in transformers, capacitors and other electrical equipment like fluorescent light ballasts. US EPA considers PCBs to be probable cancer causing chemicals, in humans. PCB and PCB-contaminated equipment that will be disposed of must be stored in a hazardous storage facility. The Grantee is hereby informed that fluorescent light ballasts containing PCBs are present on the property. The PCB containing equipment does not currently pose a threat to human health or the environment. All PCB containing equipment is presently in full compliance with applicable laws and regulations.

B. Upon request, the Army agrees to furnish to the Grantee any and all records in its possession related to such PCB equipment necessary for the continued compliance by the Grantee with applicable laws and regulations related to the use and storage of PCBs or PCB containing equipment.

C. The Grantee covenants and agrees that its continued possession, use, and management of any PCB containing equipment will be in compliance with all applicable laws relating to PCBs and PCB containing equipment and that the Army shall assume no liability for the future remediation of PCB contamination or damages for personal injury, illness, disability, or death to the Grantee, its successors or assigns, or to any other person, including members of the general public arising from or incident to future use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs or PCB containing equipment, whether the Grantee, its successors or assigns have properly warned or failed to properly warn the individual(s) insured. The Grantee agrees to be responsible for any future remediation of PCBs or PCB containing equipment found to be necessary on the property.

#### 11. RARE, THREATENED AND ENDANGERED SPECIES MANAGEMENT

The Grantee, or its successors or assignees, or contractor, acknowledges and agrees to implement the following provisions, as applicable, relative to listed species:

- A. The Property is within a Habitat Management Plan (HMP) Development Area. No resource conservation requirements are associated with the HMP for these parcels. However, small pockets of habitat may be preserved within and around the Property.
- B. The Biological Opinions (March 30, 1999, October 22, 2002, and March 14, 2005) identified sensitive biological resources that may be salvaged for use in restoration activities within reserve areas, and allows for development of the Property.
- C. The HMP does not exempt the Grantee from complying with environmental regulations enforced by Federal, State, or local agencies. These regulations could include obtaining the Endangered Species Act (ESA) (16 U.S.C. §§ 1531 – 1544 et seq.) Section 7 or Section 10(a) permits from the U.S. Fish and Wildlife Service (USFWS); complying with prohibitions against the removal of listed plants occurring on federal land or the destruction of listed plants in violation of any state laws; complying with measures for conservation of state-listed threatened and endangered species and other special-status species recognized by California ESA, or California Environmental Quality Act (CEQA); and, complying with local land use regulations and restrictions.
- D. The HMP serves as a management plan for both listed and candidate species, and is a prelisting agreement between the USFWS and the local jurisdiction for candidate species that may need to be listed because of circumstances occurring outside the area covered by the HMP.
- E. Implementation of the HMP would be considered suitable mitigation for impacts to HMP species within HMP prevalent areas and would facilitate the USFWS procedures to authorize incidental take of these species by participating entities as required under ESA Section 10. No further mitigation will be required to allow development on the Property unless species other than HMP target species are proposed for listing or are listed.
- F. The HMP does not authorize incidental take of any species listed as threatened or endangered under the ESA by entities acquiring or leasing land at the former Fort Ord. The USFWS has recommended that all nonfederal entities acquiring or leasing land at former Fort Ord apply for ESA Section 10(a)(1)(B) incidental take permits for the species covered in the HMP. The definition of "take" under the ESA includes to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Although the USFWS will not require further mitigation from these entities that are in conformation with the HMP, those entities without incidental take authorization would be in violation of the ESA if any of their actions resulted in the take of a listed animal species. To apply for a Section 10 (a)(1)(B) incidental take permit, an entity must submit an application form (Form 3-200), a complete description of the activity sought to be covered by the permit, and a conservation plan (50 CFR 17.22[b]).

Including this covenant is consistent with Army obligations described in the Biological Opinion and HMP. The language above was developed to protect the Army from environmental liability and is included in Appendix D of the HMP.

Parcel Number	Notice of Contaminated Groundwater	Notice of Hazardous Substance Storage, Release or Disposal	Notice of the Potential for Ordnance and Explosives	Notice of the Presence of Asbestos	Notice of the Presence of Lead-Based Paint	Notice of Polychlorinated Biphenyls (PCBs)	Notice of the Presence of Threatened or Endangered Species
E11a.1	Yes	NA	Yes	NA	NA	NA	Yes
E18.2.1	Yes	NA	Yes	NA	NA	NA	NA
E18.2.2	Yes	NA	Yes	NA	NA	NA	NA
E18.3	Yes	NA	Yes	NA	NA	NA	NA
E20c.1.2	NA	NA	Yes	Yes	Yes	Yes	NA
E20c.2.2	NA	NA	Yes	NA	NA	NA	Yes
E29b.3	NA	NA	Yes	NA	NA	NA	Yes
E29e	NA	NA	Yes	Yes	Yes	Yes	NA
E2d.3.1	Yes	Yes	Yes	NA	NA	NA	Yes
E5a.2	Yes	Yes	Yes	NA	NA	NA	Yes
L5.10.2	Yes	NA	Yes	NA	NA	NA	Yes
L20.13.1.1	NA	NA	Yes	NA	NA	NA	NA
L20.13.2	NA	NA	Yes	NA	NA	NA	NA
L20.13.3.2	NA	NA	Yes	NA	NA	NA	Yes
L20.13.4	NA	NA	Yes	NA	NA	NA	Yes
L20.7.1	NA	NA	Yes	NA	NA	NA	Yes
L20.7.2	NA	NA	Yes	NA	NA	NA	NA
L20.7.3	NA	NA	Yes	NA	NA	NA	NA
L20.7.4	NA	NA	Yes	NA	NA	NA	NA
L20.7.5	NA	NA	Yes	NA	NA	NA	Yes
L3.1	NA	NA	Yes	NA	NA	NA	Yes
L35.5	Yes	NA	Yes	NA	NA	NA	NA
S3.2.1	Yes	NA	Yes	NA	NA	NA	NA
S3.2.2	Yes	NA	Yes	NA	NA	NA	NA
S4.2.1	NA	NA	Yes	NA	NA	NA	NA
S4.2.2	NA	NA	Yes	NA	NA	NA	Yes
S4.2.3	NA	NA	Yes	NA	NA	NA	NA
S4.2.4	NA	NA	Yes	NA	NA	NA	NA
S4.3	NA	NA	Yes	NA	NA	NA	NA

## **ATTACHMENT 2**

### **REFERENCES**

## References<sup>8</sup>

- Interim Final Report, Hazardous Waste Consultation NO. 37-26-0176-89, Evaluation of Solid Waste Management Units (September 1988).
- Results of Radon Survey conducted during FY89/FY90 at Fort Ord (FO), Presidio of Monterey (POM), and Fort Hunter Liggett, as required by Army policy. Memorandum (1990).
- Fort Ord Federal Facility Agreement (November 19, 1990).
- Asbestos Survey Report For U.S. Army Corps of Engineers, Fort Ord Installation, Fort Ord, California (April 26, 1993).
- Final Community Environmental Response Facilitation Act (CERFA) Report (April 1994).
- U.S. Environmental Protection Agency (US EPA) Region IX's concurrence to the CERFA Report (April 19, 1994).
- Final Environmental Impact Statement Fort Ord Disposal and Reuse (June 1993).
- Fort Ord, California Disposal and Reuse Environmental Impact Statement, Record of Decision (December 1993).
- Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse (June 1996).
- Fort Ord, California Disposal and Reuse Final Supplemental Environmental Impact Statement, Record of Decision (June 1997).
- Industrial Radiation Survey, Facility Close Out and Termination Survey, Fort Ord, California (January 10, 1994 – April 15, 1994).
- Record of Decision, Operable Unit 2, Fort Ord Landfills, Fort Ord, California (July 15, 1994).
- Basewide Remedial Investigation/Feasibility Study (RI/FS), Fort Ord, CA, (October 18, 1995).
- Field Investigation and Data Review, Solid Waste Management Units (August 1996).
- Draft Final Risk Assessment, Site 25 – Former DRMO, Fort Ord, (October 14, 1996).
- Archive Search Reports (December 1993, November 1994, and December 1997).

<sup>8</sup> The normal sequence for drafts and revisions of documents at the former Fort Ord is Preliminary Draft (for internal review and comment), Draft (for regulatory agency and public review and comment), and Draft Final (final document which addresses all comments from the regulatory agencies and the public). As such, the Draft Final version is typically considered to be the final version. On rare occasion, not all comments are resolved by the Draft Final stage and a Final version of the document will be issued.

- Record of Decision, Basewide Remedial Investigation Sites, Fort Ord, California, (January 13, 1997).
- Installation-Wide Multispecies Habitat Management Plan (HMP) for Former Fort Ord, California (April 1997).
- Underground And Aboveground Storage Tank Management Plan Update, Former Fort Ord and Presidio of Monterey, Monterey County, California (March 13, 1998).
- Interim Action Confirmation Report, Site 39A – East Garrison Ranges, Former Fort Ord, California (October 18, 1998).
- Biological and Conference Opinion on the Closure and Reuse of Fort Ord, Monterey County, California (1-8-99-F/C-39R), (March 30, 1999).
- Remedial Action Confirmation Report, Site 31 Remedial Action, Basewide Remediation Sites, Former Fort Ord, California (April 1999).
- Ordnance and Explosives (OE) RI/FS Literature Review Report, Former Fort Ord, California (January 2000).
- Track 0 Technical Memorandum, Ordnance and Explosives Remedial Investigation/Feasibility Study, Former Fort Ord, California (January 21, 2000).
- Superfund Proposed Plan: No Action Is Proposed For Selected Areas At Fort Ord, California (February 1, 2000).
- Draft Final Post-Closure Operation and Maintenance Plan, Areas B through F Remedial Action, Operable Unit 2 Landfills, Fort Ord, California (May 2000).
- Technical Memorandum, Support Documentation, Potential OE Issues, Parcel E4.3.1, Finding of Suitability for Early Transfer, Housing Areas and Former Garrison Parcels, Former Fort Ord, California (May 2, 2001).
- Final SS/OS Sampling After-Action Report, Inland Range Contract, Former Fort Ord, California, Site OE-45 (September 30, 2001).
- Final SS/GS Sampling After-Action Report, Inland Range Contract, Former Fort Ord, California, Site OE-45 (September 30, 2001).
- Final 100% Grid Sampling 4 OE Removal After Action Report, Inland Range Contract, Former Fort Ord, California, Site OE-15 Seaside 1-4, DRO.02 and MoCo 1 and 2 (October 13, 2001).
- Assessment East Garrison – Parker Flats Land Use Modifications, Fort Ord California (May 1, 2002).
- York School Letter of Final Report (May 28, 2002).

- Draft Final Field Investigation and Data Review, Solid Waste Management Units, Fort Ord, California (July 2002).
- Biological Opinion on the Closure and Reuse of Fort Ord, Monterey County, California, as it affects Monterey Spineflower Critical Habitat, (1-8-01-F-70R), (October, 22, 2002).
- Final Track 1 Ordnance and Explosives Remedial Investigation/Feasibility Study, Former Fort Ord, California (June 21, 2004).
- Comprehensive Basewide Range Assessment Report, Former Fort Ord, California, Revision C (July 30, 2004).
- Draft Final Remedial Action Construction Completion Report, Operable Unit 2 Landfills, Areas A through F, Former Fort Ord, California, Revision 0 (January 2005).
- Draft Track 2 Munitions Response Remedial Investigation/Feasibility Study, Parker Flats Munitions Response Area, Former Fort Ord California (January 2005).
- Draft Annual Report of Quarterly Monitoring, October 2003 through September 2004, Former Fort Ord, California, Groundwater Monitoring Program (March 4, 2005).
- Biological Opinion, Cleanup and Reuse of Former Fort Ord, Monterey County, California, as it affects California Tiger Salamander and Critical Habitat for Contra Costa Goldfields, (1-8-04-F-25R), (March 14, 2005).
- Track 0 Plug-In Approval Memorandum, Selected Parcels – Group B, Former Fort Ord, California (March 23, 2005).

**ATTACHMENT 3**

**DEFINITIONS FOR THE MILITARY MUNITIONS RESPONSE PROGRAM**

## Definitions for the Military Munitions Response Program<sup>9</sup>

**Military Munitions Response Program (MMRP)** – DOD-established program to manage environmental, health and safety issues presented by munitions and explosives of concern (MEC).

**Military Munitions** – Ammunition products and components produced for and used by the armed forces for national defense and security. The term does not include wholly inert items. (10 U.S.C. 101(e)(4)(A) through (C)).

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

**Munitions Response Site (MRS)** – A discrete location that is known to require a munitions response.

**Munitions and Explosives of Concern (MEC)** – 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. For the purposes of the basewide Munitions Response Program being conducted for the former Fort Ord and this FOST, MEC does not include small arms ammunition .50 caliber and below.<sup>10</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, as defined in 10 U.S.C. 101 (e)(5)(A) through (C). For the purposes of the basewide Munitions Response Program being conducted for the former Fort Ord and this FOST, UXO does not include small arms ammunition .50 caliber and below.

**Discarded Military Munitions (DMM)** – Military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of consistent with applicable environmental laws and regulations. (10 U.S.C. 2710(e)(2)). For the purposes of the basewide Munitions Response Program being conducted for

<sup>9</sup> These are concise definitions. The reader is referred to United States Code as referenced in the definitions above for detailed information.

<sup>10</sup> In accordance with U.S. Army Engineering and Support Center, Huntsville, Ordnance and Explosives Center of Expertise guidance on small arms determinations, small arms ammunition (i.e., caliber .50 and smaller) present a very low risk to the public because: 1) caliber .50 and smaller rarely contain explosive projectiles, and 2) a deliberate effort must be applied (using a tool resembling a firing pin) to a very specific and small point (the primer) to make the round function.

the former Fort Ord and this FOST, DMM does not include small arms ammunition .50 caliber and below.

**Munitions Constituents (MC)** – Any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and non-explosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions. (10 U.S.C. 2710).

**Explosive Hazard** – A condition where danger exists because explosives are present that may react (e.g., detonate, deflagrate) in a mishap with potential unacceptable effects (e.g., death, injury, damage) to people, property, operational capability, or the environment.

**Explosives Safety** – A condition where operational capability and readiness, people, property, and the environment are protected from the unacceptable effects or risks of potential mishaps involving military munitions.

**Minimum Separation Distance (MSD)** – MSD is the distance at which personnel in the open must be from an intentional or unintentional detonation.

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

**Range-related Debris** – Debris, other than munitions debris, collected from operational ranges or from former ranges (e.g., targets).

**Range** – A designated land or water area that is set aside, managed, and used for range activities of the Department of Defense. (10 U.S.C. 101(e)(1)(A) and (B)).

**Range Activities** – Research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and the training of members of the armed forces in the use and handling of military munitions, other ordnance, and weapons systems. (10 U.S.C. 101(e)(2)(A) and (B)).

**Small Arms Ammunition** – Ammunition, without projectiles that contain explosives (other than tracers), that is .50 caliber or smaller, or for shotguns.

**ATTACHMENT 4**

**REGULATORY COMMENTS**

## REGULATORY COMMENTS

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 Truck 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.

**END OF DOCUMENT**