

ATTACHMENT 1

ENVIRONMENTAL PROTECTION PROVISIONS

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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	Yes	Yes	Yes	NA
E29b.3	NA	NA	Yes	NA	NA	NA	Yes
E29e	NA	NA	Yes	NA	NA	NA	Yes
E2d.3.1	Yes	Yes	Yes	Yes	Yes	Yes	NA
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	Yes
L20.13.2	NA	NA	Yes	NA	NA	NA	NA
L20.13.3.2	NA	NA	Yes	NA	NA	NA	NA
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	Yes
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	NA
L3.1	NA	NA	Yes	NA	NA	NA	Yes
L35.5	Yes	NA	Yes	NA	NA	NA	Yes
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	NA
S4.2.3	NA	NA	Yes	NA	NA	NA	Yes
S4.2.4	NA	NA	Yes	NA	NA	NA	NA
S4.3	NA	NA	Yes	NA	NA	NA	NA